

# Common Issues in the Annulment Process

**Marriage is valid unless proven otherwise.**

Canon 1060 tells us:

**Marriage enjoys the favor of the law; consequently, when a doubt exists the validity of marriage is to be upheld until the contrary is proven.**

No one must prove the validity of a marriage. Rather, the burden of proof rests on a Petitioner to prove invalidity. In the absence of such proof, the validity must be upheld.

Canon Law provides a large number of potential grounds for nullity of marriage. It is beyond the scope and purpose of this opinion to address them all. I focus on one, simply because it is the most used, and most abused, among cases I have been involved with. Petitioners claim that one or both parties were “immature” or “lacked sufficient judgment” to enter marriage. Canon 1095.2 provides the legal parameters for these allegations.

**They are incapable of contracting marriage who suffer from a grave lack of discretion of judgment concerning the essential matrimonial rights and duties which are to be mutually given and accepted.**

It is of primary importance to note that a person does not have to achieve an ideal capacity in order to validly consent to marriage, but rather the Canon makes clear that incapacity due to “a grave lack of discretion of judgment” must manifest itself to preclude the ability to enter marriage. This is not a relative concept. The minimum capacity necessary to enter marriage is more objective than the ideal capacity of a self-actualized individual. Therefore, if the minimum requirement is met, regardless of immature ideals or behaviors (these also being relative), the validity of marriage must be upheld.

The Chief Legislator, Pope John Paul II, clarified this critical point when he revealed his intention in a 1987 address to the Roman Rota.

For the canonist the principle must remain clear that only *incapacity* and not *difficulty* in giving consent and in realizing a true community of life and love invalidates a marriage. Moreover, the breakdown of a marriage union is never in itself proof of such incapacity on the part of the contracting parties. They may have neglected or used badly the means, both natural and supernatural, at their disposal; or they may have failed to accept the inevitable limitations and burdens of married life, either because of blocks of an unconscious nature or because of slight pathological disturbances which leave substantially intact human freedom, or finally because of failures of a moral order. **The hypothesis of real incapacity is to be considered only when an anomaly of a serious nature is present, which, however it may be defined, must substantially vitiate the capacity of the individual to understand and/or to will.** (John Paul II, Allocution to the Roman Rota, 5 Feb. 1987, no. 7, emphasis added)

Following the intended interpretation of the Chief Legislator, to invalidate marriage, a lack of discretion of judgment must be grave enough to incapacitate the person's psyche. Furthermore, the lack of discretion must be directly related to an essential right or duty of marriage. Canon law, jurisprudence and the intent of the Chief Legislator demand that an "incapacity for marital consent can arise only where there is a *grave* defect of discretion: only, that is, when the judgmental faculty of the human "psyche" is gravely disordered (*coram* Burke, 29 April 1993; emphasis in original). Since the recognition of this ground within jurisprudence, rotal auditors have demanded proof of a serious anomaly of the psyche as evidence of a lack of discretion of judgment (cf: *coram* Canals, 10/25/72; *coram* Huot, 2/14/73; *coram* Parisella, 1/15/76; *coram* Jarawan, 10/26/84, *coram* Bruno, 12/16/88. A case *coram* Bruno (7/28/81) offers an excellent synthesis of this jurisprudence.)

As these and countless other cases attest, it is not necessary to name the disorder, but rather to prove with many facts the following:

- (1) The presence of a serious anomaly within the person's psyche.
- (2) Proof that this anomaly incapacitates the person's critical faculty, namely, the ability to reason, weigh, judge, and deliberate freely.
- (3) That this incapacity of the critical faculty directly impacts the person's ability to understand an essential right or duty of marriage, and therefore renders the person incapable of choosing the marriage contract.

It is easy to identify discretion of judgment from an ideal point of view, then claim that the ideal is not reached therefore discretion of judgment was not manifest in the person. This danger all-to-often presents itself in marriage nullity cases. As noted above, the ideal is not the measuring line the court must use. Rather, there is a minimum development of the critical faculty that is identified as discretion of judgment sufficient to enter marriage. This consists of two elements: maturity of knowledge about marriage and its essential rights and duties, and freedom of choice. It is not necessary that the parties have perfect mental health, nor that they foresee every situation that will occur in marriage. To expect such would be to expect the impossible. No one could reach it. Furthermore, it is not necessary that the parties weigh every aspect of the ethical, social and religious aspects of marriage. Rather, it is necessary only that the parties have proportionate knowledge of the rights and duties of married life and the faculty for self-determination (cf: *coram* Parisella, 4/12/73; *coram* Pinto, 5/2/77).

Concretely, this capacity is expressed in one who does not exhibit any serious deficiencies in his ability to understand the basic give-and-take of a relationship, makes reasonable decisions in ordinary circumstances, maintains a relative level of self-sufficiency, and who understands how to have children, knows of the obligation to engage in procreative activities when married, knows the obligation of fidelity to spouse, understands that marriage is indissoluble, and freely chooses the union in question.

### **What is the duty of the petitioner regarding submitting proof?**

Canons 1526 – 1586, 1600, and 1678 – 1680 provide the basic norms in regards to the admittance and weighing of proofs in a case. Without belaboring the norms of these canons, there are several points apropos to this case that would be helpful to highlight.

- (1) The burden of proof rests on the petitioner (Canon 1526§1).
- (2) As a general rule, witnesses should be deposed at the tribunal (1558§1). While a judge may determine otherwise due to “distance, sickness, or some impediment” (Canon 1558§3), the spirit of this Canon must be protected. That is, a person giving testimony should do so without having first seen the questions (1565§1); the person should be placed under oath (Canon 1562) in order to encourage a reliable and trustworthy testimony; the identity of the witness must be established with certainty (Canon 1563). These principles are intended to protect the integrity of the process and safeguard against collusion, apathy, and unreliable testimony. It is difficult to apply these principles when a witness is mailed a testimony questionnaire. While this practice is prevalent in North America, and it allows a tribunal to adjudicate cases more quickly, the practice compromises the objectivity demanded by the Virtue of Justice.
- (3) The judges have a grave obligation to determine the reliability and trustworthiness of the proofs presented. When weighing the testimony of witnesses, the judge should determine how the witness knows the information and when the witness obtained the information (Canon 1563). Furthermore, the judge should consider the reputation of the person providing the proof, whether the information given is first-hand or otherwise, whether the proof is consistent with other proof presented, etc. (Canon 1572). Most important, the testimony of one witness cannot constitute full proof of a matter “unless it concerns a qualified witness making a deposition concerning matters done *ex officio*, or unless the circumstances of things and persons suggest otherwise” (Canon 1573). In a marriage case, the first qualifier of Canon 1573 is never met, simply because the matter involves the capacity to consent. And, in the presence of other witnesses, especially first-hand witnesses who testify to the contrary, the second qualifier would not be met either.

### **The importance of an attempt at reconciliation**

*Canon 1676 states:*

**Before accepting a case and whenever there is hope of a favorable outcome, a judge is to use pastoral means to induce the spouses if possible to convalidate the marriage and restore conjugal living.**

In the United States, this obligation of the judge is frequently applied by merely appealing to the passage of time, usually six months to one year, from the date of divorce until the petition of nullity is lodged by one of the parties. The mere use of passage of time is not sufficient to judge this grave obligation. Rather, it is the duty of the judge to consider a

multitude of factors, including the spiritual, social, psychological, and even economic conditions of the parties and bring these to bear in both a full evaluation of the situation and in arguments and pleadings in the hopes of reconciling the parties. Such effort is not a mere ideal. As Our Lord says in the Gospels and as the Epistles of Paul and Peter clearly demonstrate, divorce is not a defining moment of the marriage covenant. And, the same free will used to choose the evil of divorce can redeem a man to choose grace and restore conjugal living. The Church, as the steward and dispenser of God's grace, has a grave obligation to enjoin contentious parties in an effort to restore conjugal living and the stability of life that accompanies it.

### **What is the burden of proof in deciding a case?**

Quite simply, the judges must come to moral certitude based in law and fact that the marriage was invalid at the time consent was exchanged. This moral certitude means that no reasonable doubt in law or fact can be raised against the decision. Such reasonable doubt can be expressed negatively, namely that there was inadequate proof to establish the grounds in law, or positively, namely that specific proof exists to the contrary. Only the ground established in the *contestatio litis* and the jurisprudence associated with it can be applied, and the proofs used must be directly related to this ground.

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