

## **Formal versus Informal Cases**

### **A Brief Description**

There is always some confusion and misunderstandings regarding the annulment process of the Roman Catholic Church.

It is sometimes incorrectly assumed that the marriages of baptized non-Catholics are not recognized by the Catholic Church as valid unions. These marriages are in fact recognized by the Catholic Church, and declaration of nullity is necessary before a divorced non-Catholic may be free to marry in the Catholic Church. Another source of confusion regarding the work of the tribunal is the fact that there are several different types of processes for the investigation of marriages.

For example, individuals who are Catholic must have their marriages witnessed according to the proper canonical form (before a priest or deacon and two witnesses) or receive a special dispensation from the chancery office. If they fail to do so, their marriages are invalid. Another type of case is based solely on the baptismal status of the parties to a marriage. Also, those persons who can prove that they entered a marriage with someone who was not free to marry due to a prior valid bond of marriage would have still another type of case.

Unfortunately, many individuals fail to distinguish between these cases and those which require a formal case. A **formal case** normally involves a union between two baptized persons.

An annulment (**formal case**) is a declaration by a competent ecclesiastical tribunal appointed by the archbishop that in fact the parties to a marriage never entered into a valid marriage due to defective consent. Defective consent is centered upon the intentions and capacities of each of the parties to a marriage at the time of the exchange of vows. Someone who had defective consent on the day of the marriage ceremony would not have possessed the minimum level of abilities or intentions for a sacramental union. Before an annulment decision is made a thorough investigation of the circumstances and events surrounding a marriage ceremony must be completed. Both the petitioner and respondent must be asked to give testimony. Knowledgeable witnesses must be contacted for extensive testimony. The specially trained judge in a marriage

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case must carefully examine all of the testimony, and with moral certainty decide a case. Moral certainty excludes a well-founded or reasonable doubt.

The presumption of the Church is that a marriage of two baptized persons is a valid sacramental union until the contrary is proven. Due to this presumption, the tribunal must obtain serious evidence of a grave defect in the consent of one of the parties to a marriage before a declaration of nullity can be given. Unlike a civil divorce decree which is concerned with the end of a marriage, the proofs for a declaration of nullity must be rooted in the intentions and abilities of the parties to a marriage at the time of the exchange of vows.

**Annulments** are given in other less complicated cases where it is **not necessary to go to trial**. For instance, if it is discovered that a man was validly married to someone else before he married the petitioner, but lied to his wife, the second marriage will be nullified on the grounds of *ligamen*, which is Latin for a "**prior bond**." These cases are settled rather quickly in an **administrative process** which involves documentary evidence.

The same type of **administrative process** is used when Catholics marry outside the Church. This is called a declaration of nullity based on a "**defect of form**." The couple did not exchange vows before a priest and two witnesses in a Catholic church as is required by canon law. When Catholics fail to observe this law, the marriage is invalid. These "**defect of form**" cases account for more than half of all the annulments granted in the Catholic Church

A **defect of form** case can only come into play if one of the parties to the marriage is a Catholic (who has not left the Church by a formal act) or an Eastern Orthodox Christian. In a case involving a defect of canonical form due to a wedding taking place "outside" the Catholic Church, the Tribunal must be able to establish certain facts including the following: that the Catholic (or Orthodox) party was bound by canonical form; that the Catholic party had not left the Church by a formal act prior to or at the time of the wedding; and that the marriage was never subsequently convalidated or otherwise rendered valid in the eyes of the Catholic Church.

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(Canon 1108 §1 Only those marriages are valid which are contracted in the presence of the local Ordinary or parish priest or of the priest or deacon delegated by either of them, who, in the presence of two witnesses, assists, in accordance however with the rules set out in the following canons, and without prejudice to the exceptions mentioned in canon 144, 1112 §1, 1116 and 1127 §23).

The **Pauline Privilege** applies only when both parties were unbaptized at the time of the marriage. Two non-baptized persons marry. One chooses to become baptized. After the baptism, the unbaptized person finds he or she cannot live in harmony with the baptized person. The marriage can be dissolved when the baptized person enters into a marriage with another baptized person. It is not the same as an annulment. The **Pauline Privilege** dissolves a real but natural marriage. An annulment is a declaration that no valid marriage ever existed. If one party was baptized and the other unbaptized at the time of the marriage, the marriage is still natural but can be dissolved only by the Pope personally, exercising his authority as the Vicar of Christ and executive agent of divine law. This is called the **Petrine Privilege (or Favor of the Faith)**.

Parties Contracting Marriage		Place of Marriage		Process Needed
Catholic + Baptized	+	Catholic Church	=	Formal process
Catholic + Baptized	+	anywhere w/ dispensation from bishop	=	Formal process
Catholic + Baptized	+	anywhere w/o dispensation from bishop	=	Lack of form
Catholic + Unbaptized	+	Catholic Church	=	Formal process or Petrine Privilege
Catholic + Unbaptized	+	anywhere w/ dispensation from bishop	=	Formal process or Petrine Privilege
Catholic + Unbaptized	+	anywhere w/o dispensation from bishop	=	Lack of form
Baptized + Baptized	+	anywhere	=	Formal process
Baptized + Baptized	+	either previously married w/o annulment	=	Ligamen
Baptized + Unbaptized	+	anywhere	=	Formal process or Petrine Privilege
Unbaptized + Unbaptized	+	anywhere	=	Formal process or Pauline Privilege

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### **Basic Steps in a Formal Process**

The following are the basic steps in a Formal Case. The procedures will be discussed during the two day training session but it is important that you have a passing acquaintance with the vocabulary and order of a case prior to the workshop.

- Petition is prepared by the client and the Case Sponsor.
- Petition is submitted to the Tribunal
- The appropriate Court is appointed.
- Initial grounds are joined.
- The Respondent is cited.
- Witnesses are cited.
- Evidence is reviewed by Tribunal staff.
- If necessary the Court may ask for an expert evaluation.
- There is a publication of the acts to both parties.
- Conclusion of the Evidentiary Phase.
- Review by the Defender of the Bond.
- Review by Advocates for both parties.
- A decision is reach by the Court of First Instance.
- The decision is ratified by the Court of Second Instance.
- A final decree of Invalidation/validity is issued, sometimes with stipulations