

Grounds for Nullity of Marriage



Advanced Parish Advocate Training

SR. KARLA FELIX-RIVERA, VDMF, JCL

kfelixrivera@scd.org

VERBUM DEI MISSIONARY SISTER

1

October 25, 2021
Session I

Topic to be covered in this Section:

1. Grounds
2. Canon 1095 - Incapacity

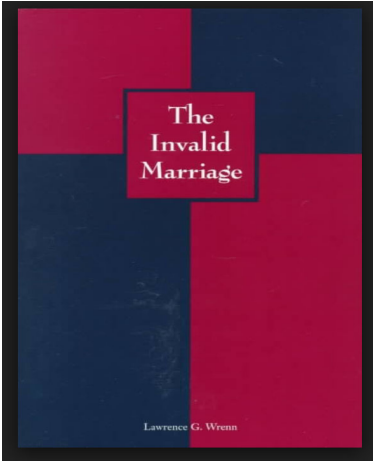
2



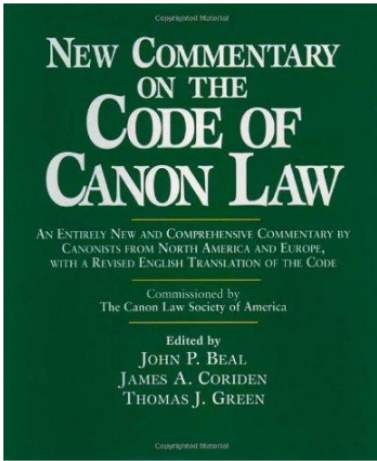
How are annulments viewed in our society?

3

Classic resources with excellent and simple explanations:



Lawrence G. Wrenn, 1998



Beal, Coriden, Green, 2000

4

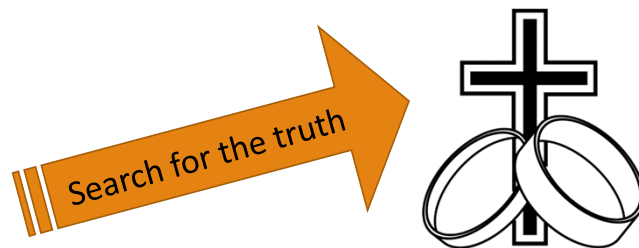
A GROUND = REASON why the consent
was invalid from the beginning

When a person requests that the Tribunal
examine their marriage, the Petitioner
submits a Summary Statement, and the
Parish Advocate offers a 'Note Regarding
Petitioner'.

They suggest possible grounds and explain
in written statements why they believe
those grounds apply to their case.

5

The MARRIAGE BOND is on trial
(not the people!)



A GROUND = REASON why the consent
was invalid from the beginning

6

False intention of finding a ground:

I want to “win” the case!

I know who is “guilty”!

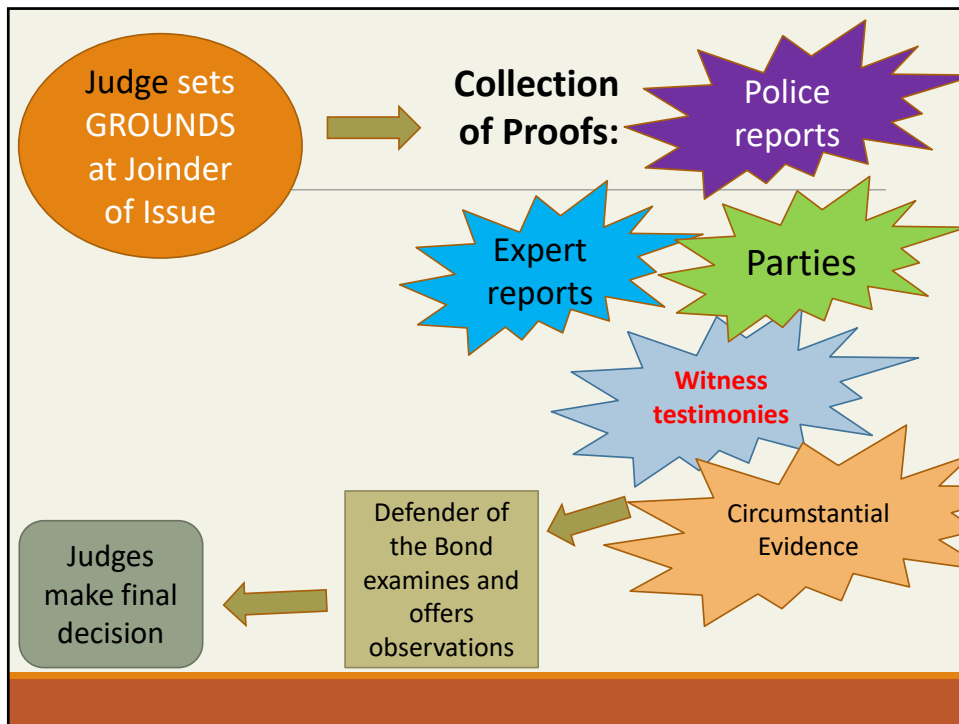


7

Invalid Marriage Factors That Invalidate Marriage

- ❖ Existence of an Impediment (cc. 1083-1094)
- ❖ Defect of Consent (cc. 1095-1103)
- ❖ Defect of Form (cc. 1108-1127)

8



9

Consent Makes Marriage

Matrimonial consent is an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage.
(c. 1057 §2)



10

Both parties need to be humanly and
juridically capable of placing the act and
assuming the consequences of the act



11

**Not every human act
requires the same level
of the use of reason,
discretion, psychic
capacity, knowledge, or
will.**

12

I want

To buy an orange

To marry you

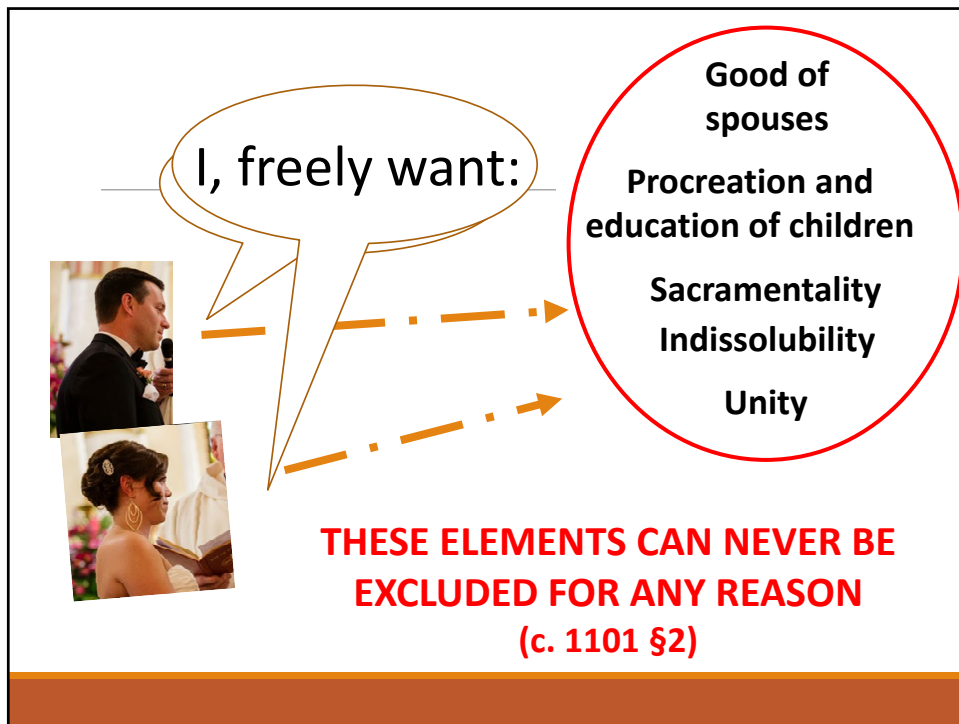
- How much maturity is needed to obtain each of these?
- How much commitment?
- How much sacrifice of oneself?

To get a loan

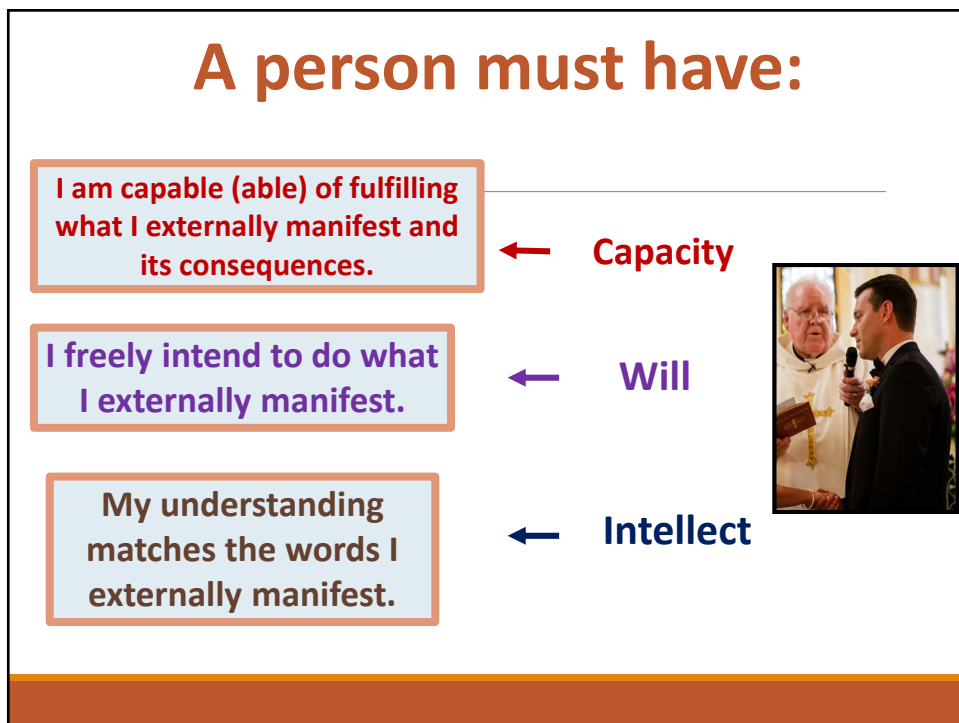
13

Not every man or woman has the capacity, maturity, will, etc. to assume this type of commitment.

14



15



16

Invalidity of Consent Arises From:

Incapacity to consent

Defects related to the **Will**

Defects related to the **Intellect**

17

Incapacity to Consent →
1. Lack of sufficient use of reason (c. 1095 §1)
2. Grave defect of discretion of judgement (c. 1095 §2)
3. Incapacity to assume essential obligations due to causes of a psychic nature (c. 1095 §3)

Defects related to the will →
1. Simulation or exclusion (c. 1101)
2. Condition (c. 1102)
3. Force or grave fear (c. 1103)

Defects related to the Intellect →
1. Ignorance (c. 1096)
2. Error of person (c. 1997 §1)
3. Error of quality (c. 1997 §2)
4. Fraud (c. 1098)
5. Error of law (c. 1099)

18

INCAPACITY TO CONSENT c. 1095

1. Lack of sufficient use of reason (§1)
2. Grave defect of discretion of judgment (§2)
3. Incapacity to assume essential obligations due to causes of a psychic nature (§3)

19

Key words to help remember c. 1095:

§1 → Lacks due REASON

§2 → Lacks due DISCRETION

§3 → Lacks due COMPETENCE

20

Incapacity to
Consent → **Lack of sufficient use of reason**
(c. 1095 §1)

“The following are incapable
of contracting marriage:
those who lack the sufficient
use of reason”

21

At the time of marriage, both
persons must have arrived at
a degree of reasoning ability
sufficient to understand what
marriage entails as the
Church teaches.

22

Presumptions of law:



AGE OF REASON – 7 years old

- reason to distinguish mortal sin
- reason to choose sacraments



AGE OF MARRIAGE – 14/woman - 16/man

- reason PROPORTIONATE to the decision to enter the serious and perpetual covenant/contract
- cognitive capacity for consent

23

In lack of sufficient use of reason

(c. 1095 §1)

We ask: “Does the person have the sufficient cognitive capacity required for consent?”

24

Disturbing condition may be:

Permanent

- Psychosis
- Severe mental retardation

Transitory

Requirement: must severely affect the use of reason at the time of consent. Person was incapable of knowing what was happening, what they said, etc.
(e.g., severe alcohol and drug intoxication)

25

Incapacity to
Consent



Grave defect of discretion of judgement

(c. 1095 §2)

“The following are incapable of contracting marriage:

those who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted”

26

What do we mean with discretion of judgment?

**Cognitive knowledge
and
Critical evaluation**

OF

Oneself

One's perspective spouse

Marriage itself

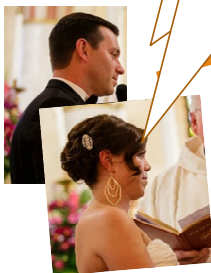
**and
free choice among
options available**

To marry or not

To marry A or B or C

27

I am informed and understand the essential rights and duties of marriage and, through my consent, freely choose to assume them:



**Good of spouses
Procreation and
education of children
Sacramentality
Indissolubility
Unity**

The person is not required to know everything about themselves, their spouse, or marriage itself. Only that discretion of judgment that is proportionate to marriage.

28

Defects of discretion of judgment which invalidate:

- One was incapable of knowing what marriage itself entailed (defect of cognitive capacity)
- One was incapable of exercising one's critical faculty to evaluate themselves and another person as a partner in marriage (a defect in the deliberative capacity)
- One was incapable of freely choosing marriage (defect in the volitional capacity)

29

Dignitas Connubii article 209:

§1. In causes of incapacity, according to the understanding of can. 1095, the judge is not to omit asking the expert whether one or both parties suffered from a particular habitual or transitory anomaly at the time of the wedding; what was its seriousness; and when, from what cause and in what circumstances it originated and manifested itself.

§2, 2º in causes of *defectus discretionis iudicii*, he is to ask what was the effect of the anomaly on the critical and elective faculty for making serious decisions, particularly in freely choosing a state in life.

Dignitas connubii, Instruction for Tribunal, by Pontifical Council for Legislative Texts

30

“Considering therefore the constitutive elements of discretionary judgment, a [grave defect] of it can only consist of a substantial impairment of the faculty of knowing, judging, evaluating, deliberating and choosing proportionately applicable to the mutual giving and receiving of one another’s rights and duties, namely in the context of the giving and accepting of another on the part of those about to marry.”

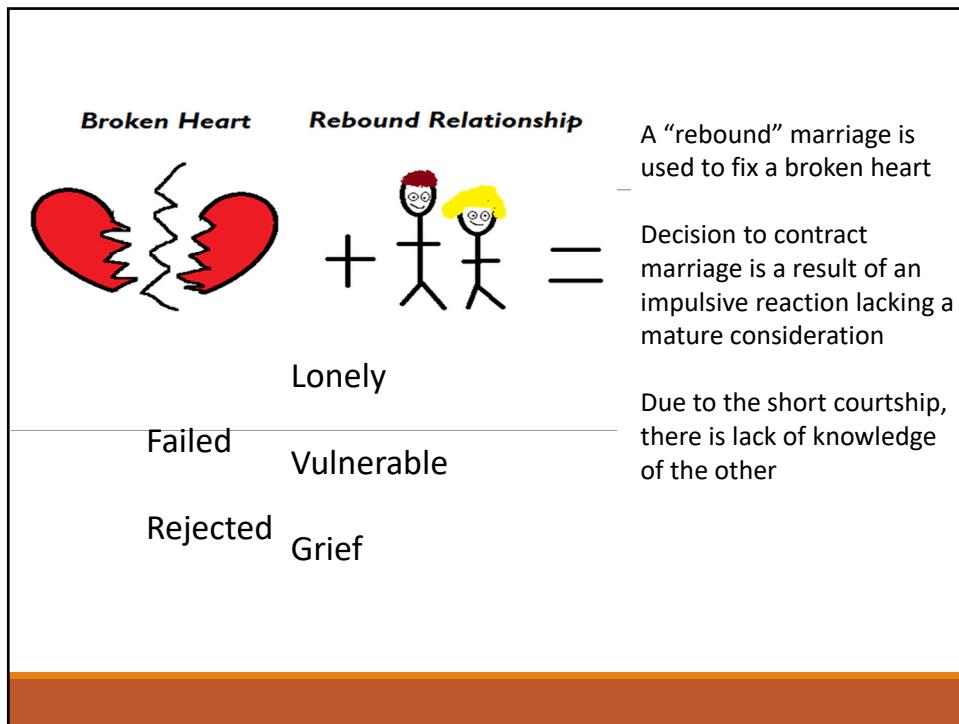
(*Coram Stankiewicz*, July 24, 1997: *RRDec* 89: 640: trans. Vincent Pereira, “Christian Anthropology and the Adjudication of Marriage Nullity Cases in the Light of Canon 1095,” *The Jurist* 66 [2006] 418)

31

A person must be able to have the use of the critical faculty when entering marriage. An individual lacks discretion when “good advice, insight, a sense of the situation, deliberation, foresight, circumspection, appreciation, sound judgement, and clear reasoning that enables the person to draw rational inferences from his or her insights and experiences” are missing.

Lawrence Wrenn, *The Invalid Marriage*, (Washington DC: CLSA, 1998), 26

32



33



me
friends

I don't want to be the "single friend" in the group.

Social-cultural pressure may cause a grave lack of due discretion in a not-so-young adult.



34

For c. 1095 §2, a judge must determine if:

- Mental disorder
- A traumatic event
- Social cultural influence

Cause

The cognitive and volitional faculties to malfunction (grave defect of discretion of judgment)

Essential matrimonial rights and obligations

(cc. 1055-1056 and 1134-1135)

regarding

35

Causes of lack of due discretion

Intrinsic factors

e.g., psychic immaturity

Extrinsic factors

e.g., unplanned pregnancy, seeks to escape home, social-cultural-family pressure

See: Wrenn, page 28.

36

Incapacity
to Consent



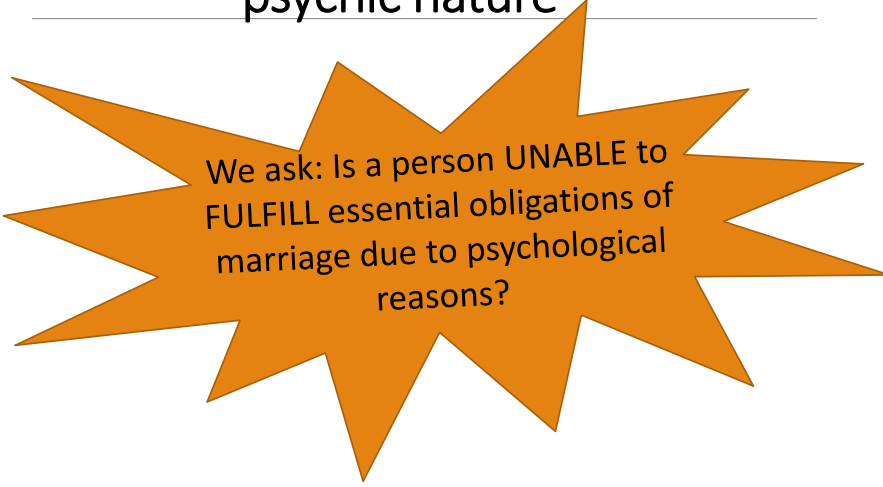
**Incapacity to assume essential obligations
due to causes of a psychic nature** (c. 1095 §3)

The following are incapable of
contracting marriage:

those who are not able to assume
the essential obligations of marriage
for causes of a psychic nature.

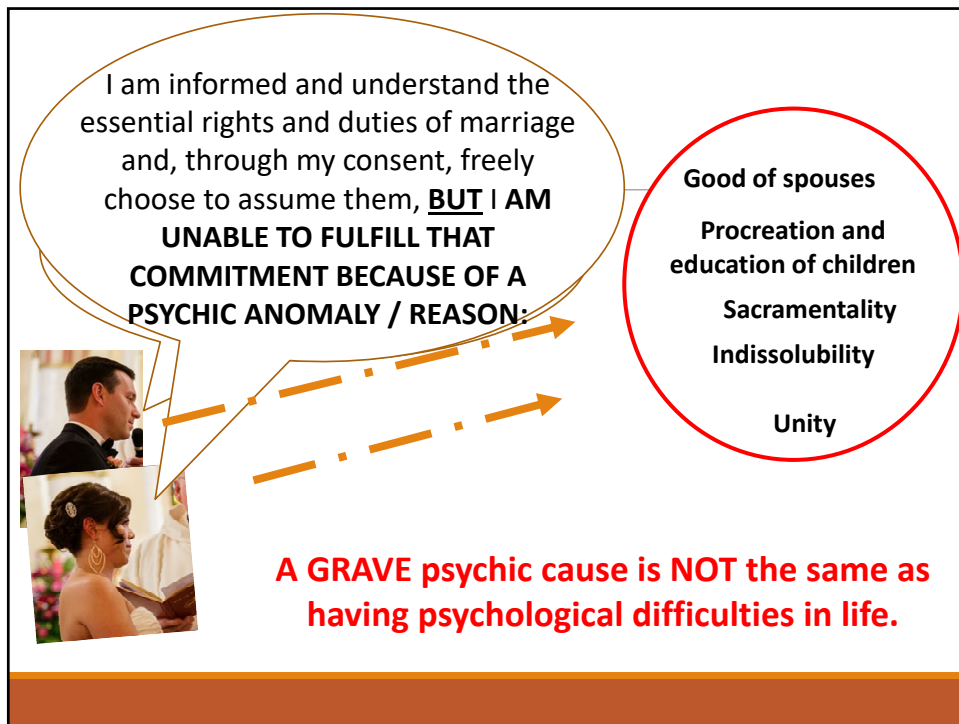
37

Incapacity to **assume** essential
obligations due to causes of a
psychic nature



We ask: Is a person UNABLE to
FULFILL essential obligations of
marriage due to psychological
reasons?

38



39

Rule of Law

“No one can be obliged to the impossible.”

(Regula iuris 6)

“One must be psychologically capable of assuming the essential obligations of marriage: one cannot consent to something actually beyond one’s psychological capacity. The will that consents to what it cannot fulfill lacks power over what it wills: the consent is empty, because the one consenting lacks the power to establish the partnership of the whole of life that is marriage.”

(Tab 3, page 19)

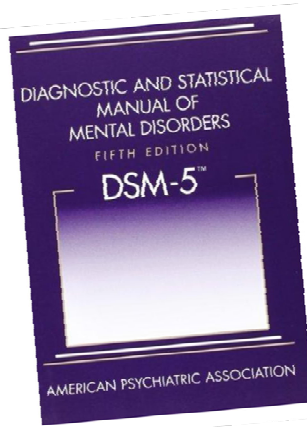
40

Psychic causes may arise from:

1. Clinical disorders
2. Personality disorders
3. Psychosocial and environmental problems
4. Homosexual orientation (which incapacitates)

Must be grave and antecedent

41



DIAGNOSTIC CATEGORIES IN THE DSM-5

1. Neurodevelopmental Disorders	11. Elimination Disorders
2. Schizophrenia Spectrum and Other Psychotic Disorders	12. Sleep-Wake Disorders
3. Bipolar and Related Disorders	13. Sexual Dysfunctions
4. Depressive Disorders	14. Gender Dysphoria
5. Anxiety Disorders	15. Disruptive, Impulse Control, and Conduct Disorders
6. Obsessive-Compulsive and Related Disorders	16. Substance Related and Addictive Disorders
7. Trauma and Stressor-Related Disorders	17. Neurocognitive Disorders
8. Dissociative Disorders	18. Personality Disorders
9. Somatic Symptom and Related Disorders	19. Paraphilic Disorders
10. Feeding and Eating Disorders	20. Other Disorders

Note. DSM = Diagnostic and Statistical Manual of Mental Disorders.
Adapted from American Psychiatric Association (2013).

42

We all have a
“loose screw”



Therefore, a report of an Expert Witness is required to prove the presence of this incapacity at the time of marriage.

43

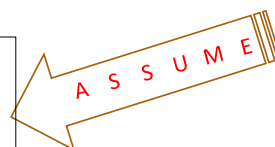
For c. 1095 §3, a judge must determine if:

An antecedent and
severe cause of a
psychic nature
(intrinsic)



Grave lack of
discretion of
judgement that
made the person
unable to

Essential obligations of
marriage related to:
1. the good of the spouses
2. the good of offspring



44



45



QUESTIONS?

46



47

October 25, 2021
Session II

Topic to be covered in this Section:

1. Canon 1101 §2

- Marriage itself (total simulation)
- The Good of Spouses
- Fidelity / Exclusivity
- Sacramentality
- Indissolubility / Permanence

48

Defects related
to the will



Simulation or Exclusion

(c. 1101)

§1. The internal consent of the mind is presumed to conform to the words and signs used in celebrating the marriage.

§2. If, however, either or both of the parties by a positive act of the will exclude marriage itself, some essential element of marriage, or some essential property of marriage, the party contracts invalidly.

49

We need to review the basics in order
to grasp what simulation entails

c. 1055, c. 1057,
c. 1060, c. 1101

50

This partnership is
permanent and a
sacrament if both are
baptized Christians.

51

We presume that the words or
signs say in consenting to
marriage match the internal
consent of the will (c. 1101)

I Do!

I Do!



52

Simulation in a picture



53

Concept of SIMULATION

"I intend something different than what I'm saying"

"I will divorce you if this doesn't work out"

"I want 'an open' relationship"

"I marry you, a citizen, to get a green card"

"I want a dog, a wife, my car, and NEVER children"

I, John, take you, Maria, to be my wife. I promise to be faithful, in good times and in bad, in sickness and in health, to love you and honor you all the days of my life.

54

TOTAL OR PARTIAL SIMULATION?

“One who simulates totally has no intention to contract marriage, while the one who excludes one of the goods, on the contrary, intends to contract marriage, but he or she intends it as conceived or stated by him or herself, namely his or her object is something other than the object to which the matrimonial consent, by its very nature, should lead.”

(*Coram Turnaturi*, November 17, 2005, n. 7, in *Studies in Church Law* 4 (2008) 380. trans. A. Mendonça)

55

Distinction between total and partial simulation

- | | | |
|---|---|---------------------------|
| 1. Marriage itself | } | <u>Total</u> Simulation |
| 2. Essential Elements | | |
| • Personalist (<i>Coniugum</i>) | } | <u>Partial</u> Simulation |
| • Procreational (<i>Prolis</i>) | | |
| 3. Essential Properties | | |
| • Unity (<i>Fidei</i>) | | |
| • Indissolubility (<i>Sacramenti</i>) | | |
| 4. Sacramentality (<i>Sacramentalis?</i>) | | |

See Wrenn, p. 120

56

In grounds on simulation, a judge must determine if:

By a positive act of the will



1. Marriage itself



2. Essential Elements

- Personalist (*Coniugum*)
- Procreational (*Prolis*)

3. Essential Properties

- Unity (*Fidei*)
- Indissolubility (*Sacramenti*)

4. Sacramentality (*Sacramentalitatis*)

A person can exclude one or more of these:

57

In all simulation cases proof needed includes:



1. What was the motive for marrying?
2. What was the motive for simulating?
3. Was this positive act of the will expressed explicitly or implicitly?
4. Is there a confession? (judicial or extra-judicial)
5. What evidence (facts, behaviors, witness testimonies, etc.) help demonstrate the simulation?

58

Why do we need various proofs?

“Often [...] when the marriage turns out badly, someone thinks that she did not give true consent at the time of the wedding, interpreting her intention in the light of her knowledge of later happenings. Had she known about them then, she would have decided differently about [giving] marital consent.”

Coram Felice, October 16, 1976: RRDec 68 (1976) 367

59

Total Simulation

Person internally and willfully excludes marriage or the right to partnership of life.

60

Simulate marriage itself



61

A person can have secondary reasons for marrying:



Family honor



Tribal relations or peace



Economic stability

**These reasons do not invalidate consent
UNLESS a positive act of the will to exclude
marriage itself ALSO existed.**

62

“it is not sufficient to contract solely for some other cause, that is, for an end extrinsic to marriage, but **it is necessary that the very object of marriage be simultaneously excluded by a positive act of the will**, namely the true juridic cause of the matrimonial contract, which, according to c. 1101, §2, is called marriage itself.”

Coram Yaacoub, July 19, 2007, n. 14. Trans. in RRAO (2008) 36

63

A possible
TOTAL
simulation



64

Partial Simulation

2. Essential Elements

- Personalist (*Coniugum*)
- Procreational (*Prolis*)

3. Essential Properties

- Unity (*Fidei*)
- Indissolubility (*Sacramenti*)

4. Sacramentality (*Sacramentalitatis*)

65

Contra Bonum Coniugum Intention against the good of the spouses

The matrimonial covenant, by which a man and
a woman establish between themselves a
partnership of the whole of life (c. 1055)



66



“This love is an eminently human one since it is directed from one person to another through an affection of the will; it involves the good of the whole person, and therefore can enrich the expressions of body and mind with a unique dignity, ennobling these expressions as special ingredients and signs of the friendship distinctive of marriage.”

Gaudium et Spes, n. 49

67

What do we mean for “Good of Spouses”?

Tenderness
Trust
Friendship
Intimacy
Quality Time
Admiration



Forgiveness

Respect

68

Contra Bonum Fidei Intention against fidelity

The essential properties of marriage are unity and indissolubility (c. 1056).

From a valid marriage there arises between the spouses a bond which by its nature is perpetual and exclusive (c. 1134).

69

What do we mean by Fidelity?

- **Broad sense**: the trust, loyalty, and support the spouses show each other
- **Strict sense**: sexual fidelity.
 - Positive element: a person gives the exclusive right of his body for marital acts to spouse.
 - Negative element: this right cannot be given to a third person.

Based on "Matrimonial Jurisprudence," class notes, Prof. Fr. John Foster, 2010, CUA.

70

“Therefore, any intentionally imperfect or defective gifting invalidates consent. The intention of not maintaining fidelity, not only injures and offends marriage, but also impedes the realization of the partnership of the whole of life. And this happens not because the spouse is using his or her sexual faculty in a sinful manner, but because he/she does not hand it over in the presentation of consent to the partner who has the exclusive and perpetual right to it. In summary, such a person does not constitute the spouse as a partner since he/she positively and intentionally withholds from the gift something essential, does not engage in the exchange, and has no intention of establishing the partnership of the whole of life. Everybody knows that nothing is more damaging, deadly and offensive to the partnership of the whole of life than the exclusion of fidelity, even if indefinite, in the act of consent (*matrimonium in fieri*), and the failure in preserving fidelity in married life (*matrimonium in facto esse*).”

See: Augustine Mendonca, “Exclusion of the Essential Properties of Marriage,” in *Simulation of Marriage Consent*, ed. William H. Woestman (Ottawa: St. Paul University, 2000), 101.

71



Possible motives for simulating fidelity

- Attachment to a former lover
- Inability to abandon a life of indulgence
- Single-life mentality / Macho mentality
- Aversion to one's spouse

Based on “Matrimonial Jurisprudence,” class notes, Prof. Fr. John Foster, 2010, CUA.

72

Some key things to look for to prove simulation

- **Indicators of a motive for simulation**
 - Personal values and attitude toward sex, fidelity in general
 - Actual practice prior to marriage and immediately thereafter
 - Reason why person wanted to marry
- **Distinguish between right to fidelity and occasional infidelities**
 - How deep seated was the attitude?
 - What was the reaction when confronted? (one-time infidelity vs. simulation)
 - Is it a psychic disorder: c. 1095 §3?

Based on "Matrimonial Jurisprudence," class notes, Prof. Fr. John Foster, 2010, CUA.

73



The screenshot shows a wikiHow article titled "Understanding an Open Relationship" under the heading "Part 1". The article features an illustration of a woman with red hair looking thoughtful, with her hand on her forehead. Above her is an icon of three people (two men and one woman) with a large red question mark. The article text begins with a numbered step: "1 Ask yourself deeply why you want an open relationship. Are you no longer satisfied with your partner? Do you simply want to try it? Do you think it will enhance your relationship with your current partner? These are all important considerations to make before trying to discuss the topic with your partner." This is followed by two bullet points: "• Be sure your motives are very strong before trying to discuss the topic with your partner. For some people, the topic is incredibly taboo and negative. Unless your partner has mentioned it in the past, do not assume that your partner will accept it." and "• Ask yourself if it is worth pursuing. It is possible that bringing up the topic with your partner will create a rift between you two. It may sound like you are no longer happy in the relationship. Be sure it is something you absolutely want to pursue, because you could possibly lose your current partner."

74

Contra Bonum Prolis
Intention against openness to children

Marriage is for
the good of the spouses
and
the procreation and
education of offspring
(c. 1055)

75

A valid marriage between the baptized is called *ratum tantum* if it has not been consummated; it is called *ratum et consummatum* if the spouses have performed between themselves in a human fashion a conjugal act which is suitable in itself for the procreation of offspring, to which marriage is ordered by its nature and by which the spouses become one flesh.

(c. 1061 §1)

76

“Nevertheless, marriage does not confer upon the spouses the right to have a child, but only the right to perform those natural acts which are *per se* ordered to procreation. A true and proper right to a child would be contrary to the child’s dignity and nature. The child is not an object to which one has a right, nor can he be considered as an object of ownership: rather, a child is a gift, ‘the supreme gift’ and the most gratuitous gift of marriage, and is a living testimony of the mutual giving of his parents. For this reason, the child has the right, as already mentioned, to be the fruit of the specific act of the conjugal love of his parents; and he also has the right to be respected as a person from the moment of his conception.”

CDF, *Donum vitae*, II, 8 (1987)

77

The conjugal act / sterility / impotence

- ◆ At marriage, the couple exchanges the right to the conjugal act. Children are not a right.
- ◆ A sterile person is capable of the conjugal act.
- ◆ An impotent person is incapable of the conjugal act.

78

Education involves the **WHOLE PERSON**

Parents have the most grave duty
and the primary right
to take care as best they can for the physical,
social, cultural, moral,
and religious education of their offspring.

c. 1136



79

In Intention against openness
to children:

We ask: Did the person
exclude the *right* to the
conjugal act done in a
human fashion which is
open to procreation?

80

A few questions to consider

- Is the conjugal act carried out in a human fashion?
- Does a pre-nuptial “pact” to delay having children reveal a temporary or permanent exclusion?
- In the marriage, was a party active in raising and educating the child?

81

Contra Bonum Sacramentalis Intention against the sacramentality

Can. 1055 §1. The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized.

82

This binds non-Catholic Christians:

- ❖ For this reason, a valid matrimonial contract cannot exist between the baptized without it being by that fact a sacrament. (c. 1055 §2)
- ❖ Many non-Catholics do not believe marriage is a sacrament, but we do!

83

A “whatever” attitude towards the Church and the sacraments does not automatically indicate simulation.

84

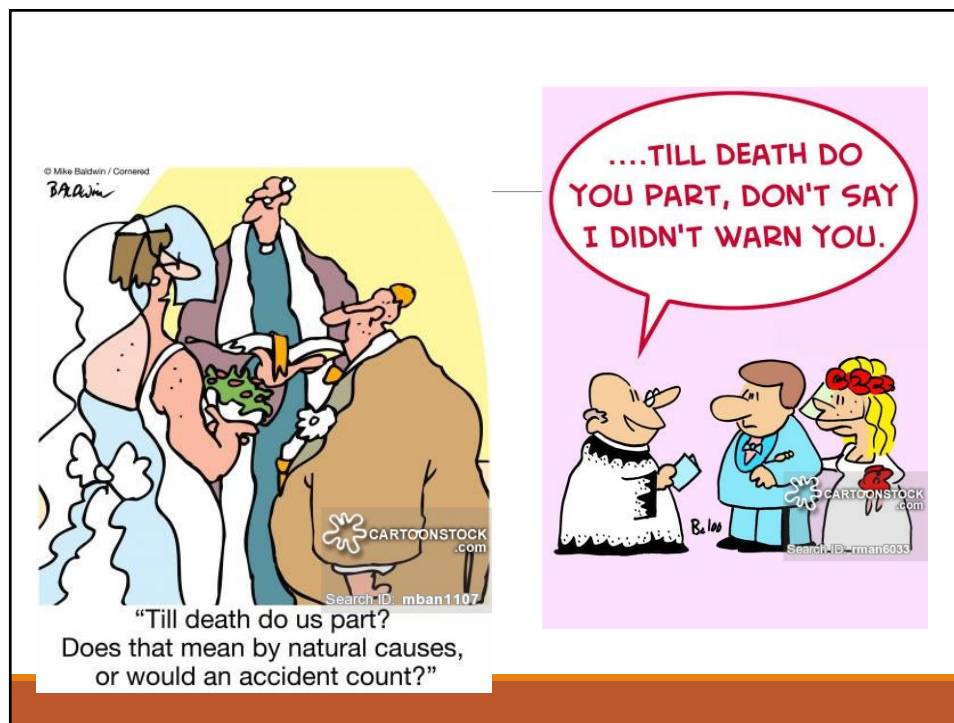
Contra Bonum Sacramenti Intention against permanence

The essential properties of marriage are unity and **indissolubility** (c. 1056)

From a valid marriage there arises between the spouses a bond which by its nature is **perpetual** and exclusive. (c. 1134)

This also true for non-sacramental marriages!

85



86

Intention against permanence summarized



87

Some indications of divorce mentality

- 1) Indecision about marriage as a whole.
- 2) Attitude towards children.
- 3) Attitude towards joint property.
- 4) Divorce as something normal.
- 5) Lack of religious conviction.

88



89

October 25, 2021
Session III

Topic to be covered in this Section:

1. Canon 1102 – Conditioned Consent
2. Canon 1103 – Force and Grave Fear

90

Incapacity to Consent →
1. Lack of sufficient use of reason (c. 1095 §1)
2. Grave defect of discretion of judgment (c. 1095 §2)
3. Incapacity to assume essential obligations due to causes of a psychic nature (c. 1095 §3)

Defects related to the Will →
1. Simulation or exclusion (c. 1101)
2. Condition (c. 1102)
3. Force or grave fear (c. 1103)

Defects related to the Intellect →
1. Ignorance (c. 1096)
2. Error of person (c. 1997 §1)
3. Error of quality (c. 1997 §2)
4. Fraud (c. 1098)
5. Error of law (c. 1099)

91

Defects related to the Will → **Conditioned Consent**
(c. 1102)

Future §1. A marriage subject to a condition about the future cannot be contracted validly.

Past or Present §2. A marriage entered into subject to a condition about the past or the present is valid or not insofar as that which is subject to the condition exists or not.

§3. The condition mentioned in §2, however, cannot be placed licitly without the written permission of the local ordinary.

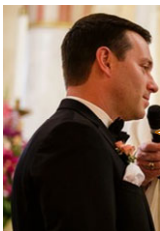
92

Consent must always be
free and total

Regarding **FUTURE** condition:
Today's consent cannot be
conditioned by a future event
or realization.

93

Concept of a FUTURE Condition (c. 1102 §1)



I, John, take you, Maria, to
be my wife.

ON THE CONDITION that ...

You become Catholic.

We live in Hawaii.

Your inheritance pays my
student loan.

94

The law 1917 – 1983 regarding FUTURE condition

Canon 1092 of the 1917 Code stated:

Regarding a condition once imposed and not revoked:

1°: If it concerns the future and is necessary or impossible, or of turpitude, but not contrary to the substance of marriage, it is considered as not applied;

2°: If it concerns the future and is against the substance of marriage, it renders marriage invalid;

3°: If it concerns the future and is licit, it suspends the validity of the marriage

4°: If is about the past or the present, the marriage will be valid or not insofar as the condition exists or not.

95

When a future condition is NOT fulfilled

Prior to the First Sunday of Advent 1983

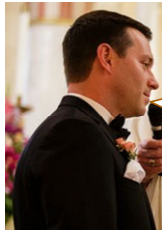
A licitly placed future condition invalidated a marriage if condition was not fulfilled

Starting with the First Sunday of Advent 1983

A future condition invalidates marriage whether or not that condition is fulfilled

96

Concept of a PAST Condition (c. 1102 §2)



I, John, take you, Maria, to be
my wife.

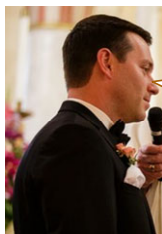
ON THE CONDITION that ...

You were never married before.
You were never in a rock band.
You never dated an alien.

c. 1102 § 3 – Local Ordinary's permission is required.

97

Concept of a PRESENT Condition (c. 1102 §2)



I, John, take you, Maria, to be
my wife.

ON THE CONDITION that ...

You do not have any STDs.
You are not pregnant with another
man's child.
You are debt free.

c. 1102 § 3 – Local Ordinary's permission is required.

98

Caution

Past or present
condition does not
automatically
invalidate consent.

99

Possible indicator of a condition is if divorce was an option

- ❖ Did the parties agree that they would separate if condition was not be met?
- ❖ Did they divorce once condition was never met?



100

Therefore, a judge must determine:

Was a condition an obstacle for consent?

1. What was the nature of the agreement to marry?
2. Would the party have married without it?
3. What were the reasons for the agreement?
4. Was it a genuine agreement or only a mode, demonstration, cause, or postulate?

Taken from "Matrimonial Jurisprudence," class notes, Prof. Fr. John Foster, 2010, CUA.

101

Defects related to the Will → **Force or Grave Fear**
(c. 1103)

A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in order to be free from it.

102

Premise:

The freedom to choose one's own spouse is a human right.

103

Defining Force:

“Force is the coercion which moves the will under the threat of an evil in such a way that the will, otherwise not about to consent, does, in order to avoid the evil, consent to the imposed action.”

See Wrenn, p. 163

104

External force (physical and moral)
can create internal fear



105

Defining Fear:

“Fear is the intimidation
which results from the force”

Fear must be grave and the
CAUSE of the marriage.

See Wrenn, p. 163

106



- ❖ The consent is invalid because the person is choosing the avoidance of the external force (father-in-law shooting him) or that which they internally feared (death).
- ❖ The person married to avoid serious harm or threat.

107

Therefore, a judge must determine:

**Was the
force/fear:**

1) **Grave:** at least subjectively
in the mind who is afraid

2) **External:** It comes from outside

3) **Causative:** a person married
to escape a threatened evil

108

Force and fear
can be
presumed if
there are signs
of aversion:



Indian Man Beaten And Forced To Marry

<https://www.youtube.com/watch?v=asqc0Emsez0>

109

Various Fears:

- Common fear
- Reverential fear

110

In reverential fear, normally the person wants to call off the wedding, but they do not due to the pressure from outside and fear of dishonoring a superior.



"I do not want to dishonor my parents if the wedding is called off – I am afraid of losing their affection, to displease them, to ridicule them before the larger community, to no longer be seen as a good daughter, etc."

111



112



In what cultures might “reverential fear” be more common?

113



QUESTIONS?

114



115

October 25, 2021
Session IV

Topic to be covered in this Section:

1. Canon 1096 – Ignorance
2. Canon 1097 – Error of Quality
3. Canon 1098 – Error Induced by Fraud or Deceit
4. Canon 1099 – Error of Law

116

Incapacity to Consent →

1. Lack of sufficient use of reason (c. 1095 §1)
2. Grave defect of discretion of judgment (c. 1095 §2)
3. Incapacity to assume essential obligations due to causes of a psychic nature (c. 1095 §3)

Defects related to the Will →

1. Simulation or exclusion (c. 1101)
2. Condition (c. 1102)
3. Force or grave fear (c. 1103)

Defects related to the Intellect →

1. Ignorance (c. 1096)
2. Error of person (c. 1997 §1)
3. Error of quality (c. 1997 §2)
4. Fraud (c. 1098)
5. Error of law (c. 1099)

117

Defects related to the Intellect → **Ignorance**
(c. 1096)

“§1. For matrimonial consent to exist, the contracting parties must be at least not ignorant that marriage is a permanent partnership between a man and a woman ordered to the procreation of offspring by means of some sexual cooperation.

§2. This ignorance is not presumed after puberty.

118

What is ignorance?

- Lack of due knowledge
- If a person doesn't know that which they should know, they are ignorant.

119

In the Law:

acts placed out of **ignorance** ... concerning something which constitutes its substance or which amounts to a condition *sine qua non* is invalid. (c. 126)

"Substance of the Act" in Marriage:

- 1) Permanent
- 2) A partnership
- 3) Heterosexual
- 4) Ordered to procreation
- 5) Sexual cooperation

120

Therefore, a judge must determine:

Was the person ignorant that these constitutive elements of marriage must be explicitly known and intended when entering marriage?

1) Marriage is a permanent (perpetuity)

2) A partnership (*consortium*)

3) Between a man and a woman (heterosexuality)

4) Ordered to the procreation of offspring

5) Sexual cooperation

Person believes that marriage entails no right to the body

Person believes that some right to the body is transferred but one is substantially different from the real one

See Wrenn, p. 94

121

NOTE:

Knowledge of these elements is presumed after puberty.

122

Defects related
to the Intellect



Error of Person

(c. 1997 §1)

Error concerning
the person renders
a marriage invalid.

123

What is Error?

It is wrong knowledge.

In the Law:

acts placed out of ... of **error**
concerning something which
constitutes its substance or which
amounts to a condition *sine qua non*
is invalid. (c. 126)



The other
SPOUSE

124

Therefore, a judge must determine:

Was the person in error regarding the physical person they intend to marry?

I erroneously think I am marrying Cleopatra (when it is Mary).



See Wrenn, p. 94

125



126

Inside Edition – “Double Twin Marriage”



127

Defects related
to the Intellect → **Error of Quality of Person**
(c. 1997 §2)

Error concerning a quality of the person does not render a marriage invalid even if it is the cause for the contract, unless this quality is directly and principally intended.

128

Therefore, a judge must determine:

Was there a quality that was directly and principally intended? (e.g., doctor)

I always wanted to marry a doctor and **ONLY** a doctor. I married you, Mary, because you had the quality (profession) that is crucial for me in choosing the person I marry.

I never deceived you.



129

How did HE fall in error?



— They met at the hospital cafeteria.
— She works at the hospital.
— She knew medical terms.
— She wears medical scrubs.
— Her dad is a doctor.
— Her friends are all doctors.

All knew his desire: to marry a doctor.
He mistakenly assumed she was a doctor.

130

Defects related
to the Intellect



Error induced by Fraud

(c. 1098)

A person contracts invalidly who enters into a marriage deceived by malice, perpetrated to obtain consent, concerning some quality of the other partner which by its very nature can gravely disturb the partnership of conjugal life.

131

Therefore, a judge must determine:

Was the deceit for the purpose of getting a person to marry when he/she otherwise would not?

I deliberately concealed facts or created untrue facts to induce you into marriage.

I would NOT have married you had I known the truth.



132

Deceit for the purpose of getting a person to marry

"I know you will only marry a practicing Catholic... so I **TRICK** you into thinking that's who I am so you marry me."

133

Therefore, a judge must determine:

Was the deceit for the purpose of getting a person to marry when he/she otherwise would not?

Imposed
Error



He is in error because she made him fall into that error ON PURPOSE!

134

Defects related
to the Intellect



Error of law

(c. 1099)

Error concerning the unity or
indissolubility or sacramental
dignity of marriage does not
vitiate matrimonial consent
provided that it does not
determine the will.

135

Therefore, a judge must determine:

1) Was there error
on the formal
object of consent?



1) Fidelity (Unity)



2) Indissolubility



2) Did error move
the person's will?

3) Sacramental dignity

136

Possible error on UNITY and Exclusivity

**“When I grow up, I
want to have 12 wives.”**

137

Mormon with 6 wives
(Greenhaven), PBS TV special

A dark green rectangular box containing the text "REAL STORIES" in white, sans-serif, all-caps font. The word "STORIES" is slightly larger and more prominent than "REAL".

REAL STORIES

138

PBS documentary and error regarding unity

Is it possible if one of these children left the desert, fell in love with a loosely practicing Catholic, and entered marriage with error regarding unity?

139

How could this error come about?

- ❖ Isolated upbringing
- ❖ Religious upbringing
- ❖ It is how they understand marriage (all they knew and could know)

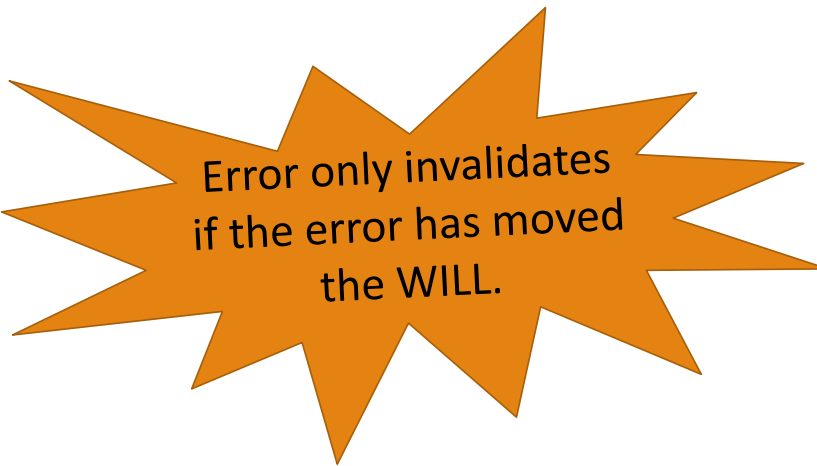
140

Possible error on indissolubility

- ❖ Divorce is an option in ALL marriages (marriage cannot be conceived in any other way).
- ❖ Remarriage is always possible.
- ❖ Marriage only exists as long “as we are in love, we get along, we don’t have problems.”
- ❖ Prenuptial agreement is a must.

141

For consent to be null



Error only invalidates
if the error has moved
the WILL.

142



143