

# Grounds for Nullity of Marriage



Advanced Parish Advocate Training 2022

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## Gentle Reminder:

Only Fr. Mark Richards  
Determines the Grounds...



So, you can relax!

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September 20, 2022  
Session I

### ***Topic to be covered in Session I:***

1. Grounds
2. Canon 1095 - Incapacity

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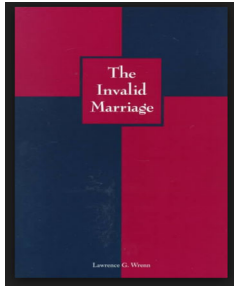
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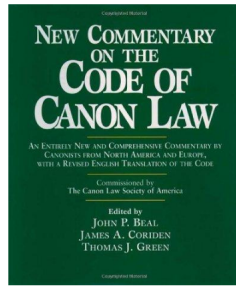
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Classic resources with excellent and simple explanations:



Lawrence G. Wrenn, 1998



Beal, Coriden, Green, 2000

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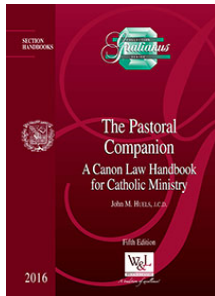
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2016 Edition

The Pastoral Companion  
Fifth Edition

A Canon Law Handbook for  
Catholic Ministry

Pages 256 – 278  
cover the topic in this training

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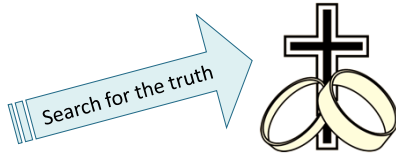
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The MARRIAGE BOND is on trial  
(not the people!)



A GROUND = REASON why the consent  
was invalid (on wedding day)

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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 'Notes Regarding Petitioner'.

They suggest possible grounds and explain why  
they believe those grounds apply to the case.

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False intention of finding a ground:

I want to "win" the case!

I know who is "guilty"!



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### 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)

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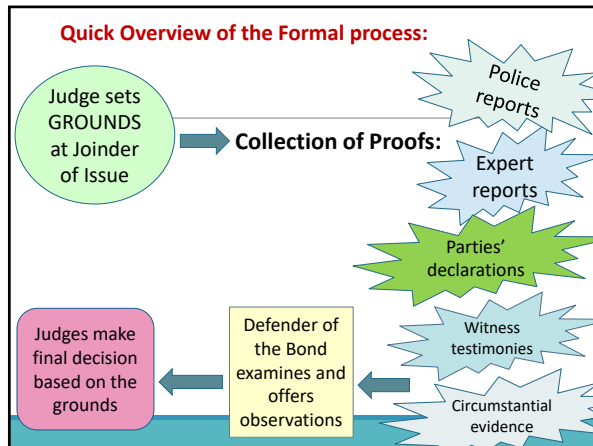
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**Judges make final decision based on the grounds**

The question the judges need to answer is:

**Is this Marriage Null BASED on the grounds?**

Answer can only be: Yes or No

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**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)

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



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

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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

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

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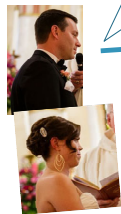
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I, freely want:

Good of  
spouses  
Procreation and  
education of children  
Sacramentality  
Indissolubility  
Unity

THESE ELEMENTS CAN NEVER BE  
EXCLUDED FOR ANY REASON  
(c. 1101 §2)

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## A person must have:

I am capable (able) of fulfilling  
what I externally manifest and  
its consequences.

← Capacity

I freely intend to do what  
I externally manifest.

← Will

My understanding  
matches the words I  
externally manifest.

← Intellect



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## Invalidity of Consent Arises From:

### **Incapacity to consent**

Defects related to the **Will**

Defects related to the **Intellect**

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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)

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## 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)

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Key words to help remember  
c. 1095:

§1 → Lacks due REASON

§2 → Lacks due DISCRETION

§3 → Lacks due COMPETENCE

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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”

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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.

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## 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

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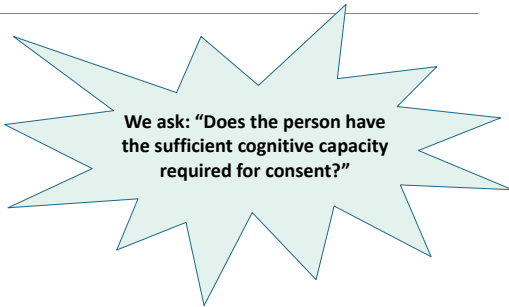
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## In lack of sufficient use of reason

(c. 1095 §1)



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## 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)

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Incapacity to  
Consent → **Grave defect of discretion of judgment**  
(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”

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## 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

Due discretion = intellect makes a mature judgement that the will consents to freely

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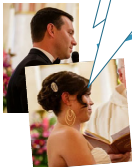
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I am informed and understand the essential rights and duties of marriage and, through my consent, freely choose to assume them:



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.

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## 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)

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## *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, 2° 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

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“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)

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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

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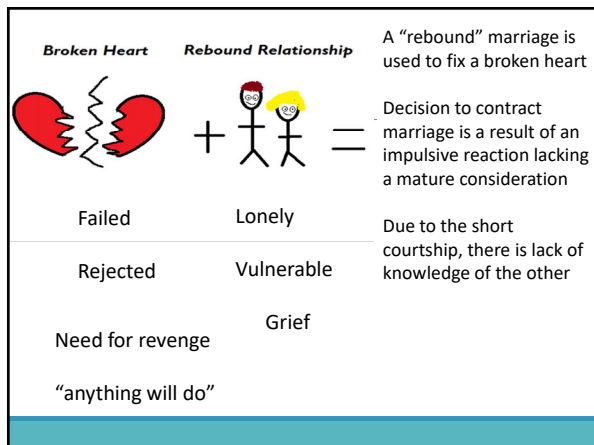
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me  
friends

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.



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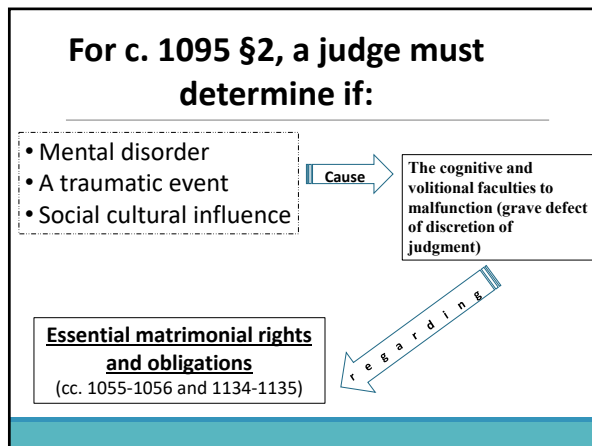
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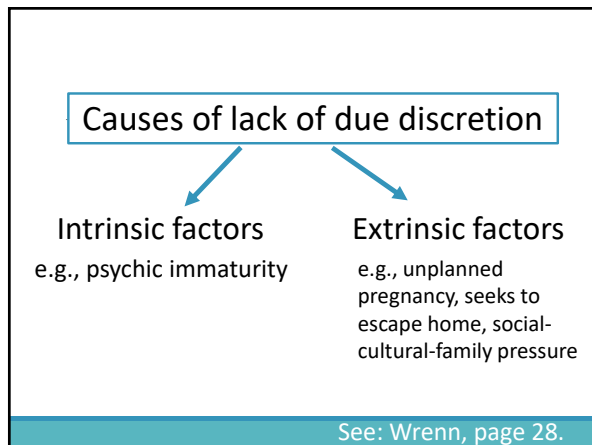
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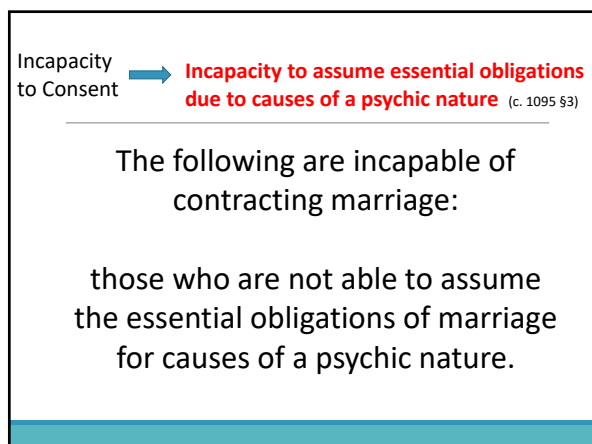
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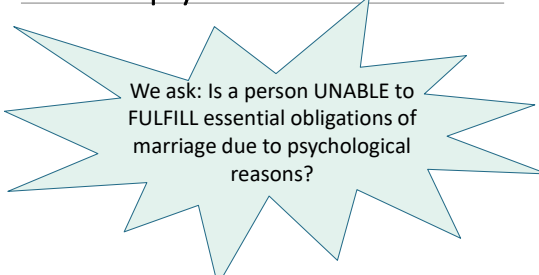
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## Incapacity to **assume** essential obligations due to causes of a psychic nature



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

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I am informed and understand the essential rights and duties of marriage and, through my consent, freely choose to assume them, **BUT I AM UNABLE TO FULFILL THAT COMMITMENT BECAUSE OF A PSYCHIC ANOMALY / REASON:**


**Good of spouses**

Procreation and education of children

Sacramentality

Indissolubility

Unity



A GRAVE psychic cause is NOT the same as having difficulties in life.

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## Rule of Law

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“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, Pg. 19, Par. 1)

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## 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

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**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).

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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.

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

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

caused

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

A S S U M E

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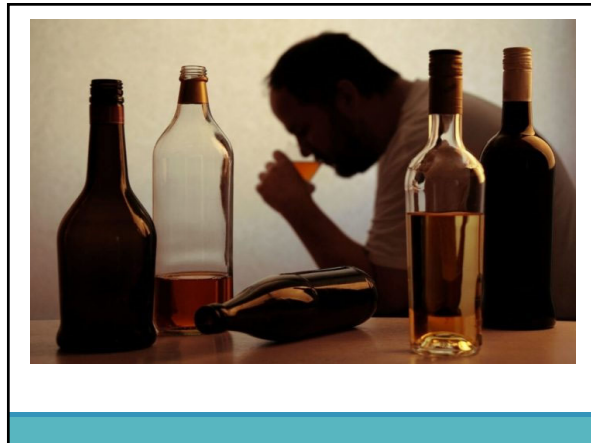
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September 20, 2022

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

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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.

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

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

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

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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!*



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## Simulation in a picture



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## The Concept of SIMULATION

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



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## 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)

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## Distinction between total and partial simulation

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- The diagram illustrates the classification of marriage elements into two categories: Total Simulation and Partial Simulation. A large red bracket on the right side of the slide groups the elements into these two categories. The elements are listed on the left, with some elements grouped under 'Total Simulation' and others under 'Partial Simulation'.
- Total Simulation**
    - 1. Marriage itself
    - 2. Essential Elements
      - Personalist (*Coniugum*)
      - Procreational (*Prolis*)
  - Partial Simulation**
    - 3. Essential Properties
      - Unity (*Fidei*)
      - Indissolubility (*Sacramenti*)
    - 4. Sacramentality (*Sacramentalis?*)

See Wrenn, p. 120

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[illegible]

**In grounds on simulation, a judge must determine if:**

By a positive  
act of the will

**Exclude**

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:

**Exclude**

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**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?



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## 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*

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## Total Simulation

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

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## Simulate marriage itself



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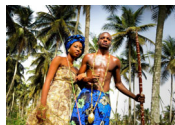
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## A person can have secondary reasons for marrying:



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.**

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“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*

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A possible  
TOTAL  
simulation



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# Partial Simulation

2. Essential Elements
  - Personalist (*Coniugum*)
  - Procreational (*Prolis*)
3. Essential Properties
  - Unity (*Fidei*)
  - Indissolubility (*Sacramenti*)
4. Sacramentality (*Sacramentalitatis*)

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## *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)



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“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*

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## What do we mean for “Good of Spouses”?

Tenderness  
Trust  
Friendship  
Intimacy  
Quality Time  
Admiration



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## *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).

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## 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.

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“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.

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### 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.

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### 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.

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*Contra Bonum Prolis*  
**Intention against openness to children**

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

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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)

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“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)

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### 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.

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### 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



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## 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?

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## 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?

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## *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.

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## 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!

85

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

86

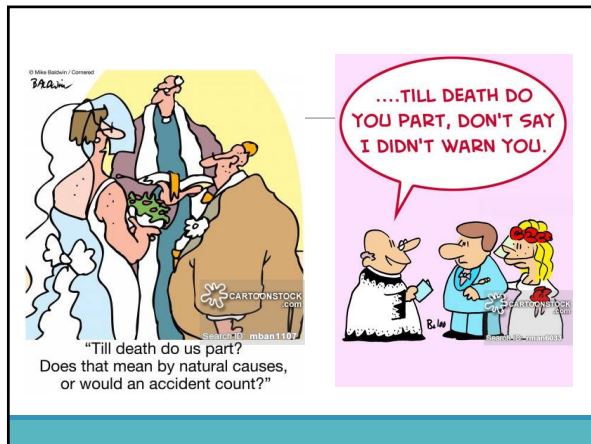
### *Contra Bonum Sacramenti* **Intention against permanence**

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!**

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## Some indications of divorce mentality

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

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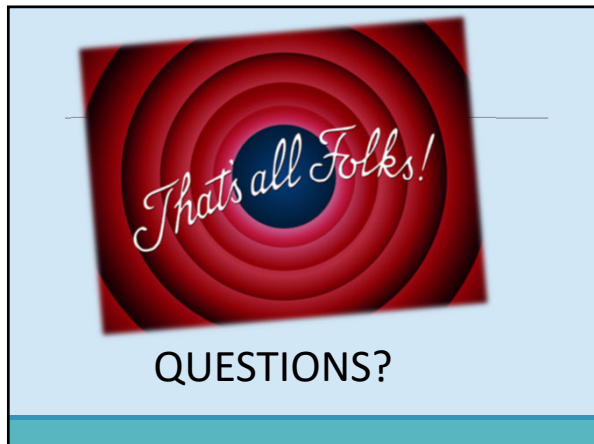
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September 20, 2022  
Session III

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**Topic to be covered in this Section:**

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

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**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)

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

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**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.

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Consent must always be free and total

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

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

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I, John, take you, Maria, to be my wife.  
ON THE CONDITION that ...

You become Catholic.  
You give birth to 3 sons.  
Your inheritance pays my student loan.

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## 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.

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## 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

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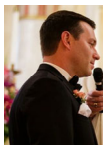
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## Concept of a PAST Condition (c. 1102 §2)



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 had intercourse with  
another.

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

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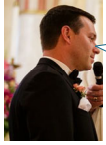
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## Concept of a PRESENT Condition (c. 1102 §2)



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.

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## Caution

**Past or present**  
condition does not  
automatically invalidate  
consent.

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## 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 unmet?



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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

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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.

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**Premise:**

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

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## 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

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External force (physical and moral)  
can create internal fear



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## 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

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- ❖ 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.

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**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

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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>

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## Various Fears:

- Common fear
- Reverential fear

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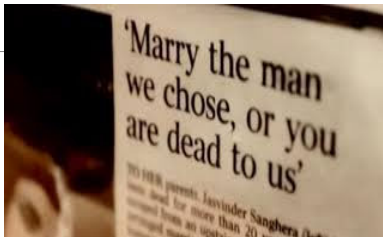
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In reverential fear, normally the person wants to call off the wedding, but they do not do it due the pressure from outside and fear of dishonoring a superior.



*"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."*

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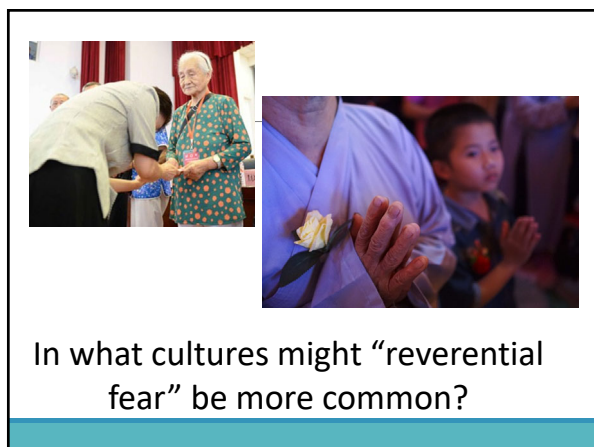
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In what cultures might “reverential fear” be more common?

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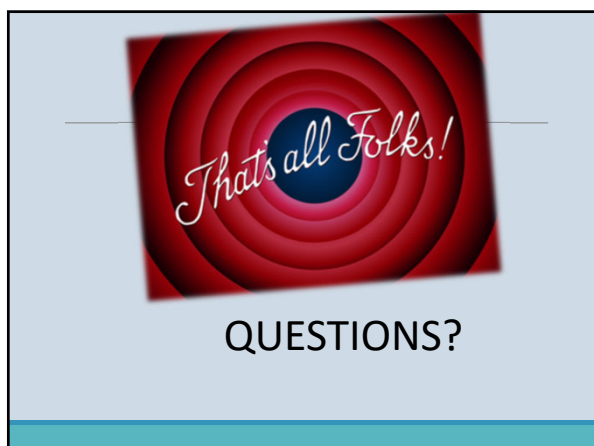
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September 20, 2022  
Session IV

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**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

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**Incapacity to Consent** →

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

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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.

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## What is ignorance?

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

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## 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

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## 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

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## NOTE:

Knowledge of these elements is presumed after puberty.

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Defects related to the Intellect

→ **Error of Person**

(c. 1997 §1)

Error concerning the person renders a marriage invalid.

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# 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**

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Therefore, a judge must determine:

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

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



See Wrenn, p. 94

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## Inside Edition – “Double Twin Marriage”



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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.

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**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.



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### 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.

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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.

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### Therefore, a judge must determine:

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

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

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



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## 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."

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Therefore, a judge must determine:

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



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

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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.

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Therefore, a judge must determine:

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

2) Did error move the person's will?

1) Fidelity (Unity)

2) Indissolubility

3) Sacramental dignity

139

Possible error on  
UNITY and Exclusivity

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

140

Mormon with 6 wives  
(Greenhaven), PBS TV special

REAL STORIES

141

### 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?

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### How could this error come about?

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

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### 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.

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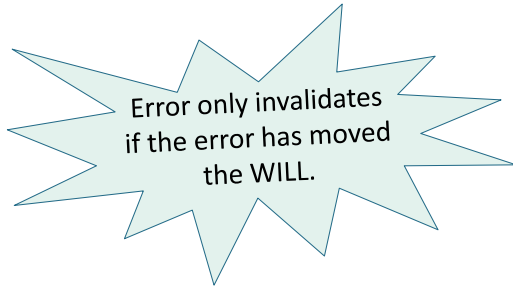
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## For consent to be null



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