

# LOURDES HILL COLLEGE YEAR 12 LEGAL STUDIES

## The Catholic Church on Marriage and Divorce

### 1. Some Important Background

- The Catholic faith/way of viewing the world is sacramental i.e. it sees all of life as reflecting or symbolizing God's presence in the world. 'Finding God in all things' is a way of life for Catholics
- There are seven sacraments, or special signs, or significant occasions in the life of Catholics. Marriage is one of these seven Sacraments, or special occasions celebrating God's grace in the life of his people
- To say that marriage is a sacrament is to say two things: first, it proclaims the intimate union of a man and a woman and, second, that in and through this most natural of interpersonal unions it proclaims *also* the intimate union between Christ and His Church. Any couple wishing their marriage to be a sacrament proclaims "I love you as God loves God's people and as Christ loves His Church, steadfastly and faithfully." Therefore, marriage for a Catholic is **much more than a legal contract** between two parties
- Because Marriage is a sacrament, arguably the most significant of the 7, the Church in its Canon Law (1141) states that a "ratified (i.e. sacramental) and consummated marriage cannot be dissolved by any human power or for any reason other than death." Therefore, only the marriage that is *simultaneously* sacramental and consummated is regarded as indissoluble by the Catholic Church. The Church does not accept a divorce as the end of a marriage.
- In the first generation of Christians some pagans were baptized and subsequently abandoned by their pagan spouses. St. Paul allowed these marriages to break up, indicating a distinction between a natural marriage bond, which existed since creation **and a sacramental marriage, which exists when two baptized Christians contract marriage.**
- There are some situations in Church Law where the Church dissolves marriages it has accepted as valid: a) where the marriage is not sacramental, it is dissolved using the Pauline Privilege; b) the marriage has not been consummated by sexual intercourse. The Church prefers to use the term 'dissolve' when ending a valid marriage, rather than the term 'divorce.'

## 2. The Freedom to Commit to another person is at the core of Marriage

- All the marriage preparation procedures and the completion of documents for both the government and the Church are at pains to ensure that both parties are free to make a lifelong commitment to one another. Both sets of civil and Church documents ask questions to ascertain this freedom
- To reinforce this point, three questions are always asked of the couple in the Catholic marriage service before they make their promises:

**"Fr. Gleeson:** Angie and Patrick, the promise you make today is serious because it will bind you together for life in a relationship so close and so intimate that it will profoundly influence your whole future.

The future with its hopes and disappointments, its successes and failures, its pleasures, pains, joys and sorrows is hidden from your eyes.

These elements are mingled in every life and are expected to be in your own. And not knowing what is before you, but trusting in your companionship, you take each other through the best and worst of what lies ahead until death.

Will you please, as an expression that your hearts are joined together in love, join your hands.

Angie and Patrick, have you come freely and without reservation to give yourselves to each other in marriage?

### **We have**

Will you love and honour each other as husband and wife for the rest of your lives?

### **We will**

Will you accept children lovingly from God, and bring them up according to the law of Christ and his Church?

### **We will"**

- **If is also worth noting** that in Marriage the two parties confer the Sacrament on one another. The Priest is the official Church witness. In this way, Marriage differs from the other Sacraments where the Priest, Deacon, or Bishop confers the various Sacraments on the people.

### 3. Annulment vs. Divorce

- An annulment (sometimes ignorantly dubbed by the media, 'The Catholic Divorce') **is not a divorce**. Divorce, or dissolution in Catholic terms, dissolves a marriage, which is held to be valid in all respects.
- Annulment in the Church is a re-examination of the marriage at the time it was contracted to determine if, for any reason, it was not a sacramental marriage. Annulment declares that, in a particular case, due to some legal defect, there never was at any time a valid marriage between a couple. In many cases, the defect has to do with the free consent required for a marriage to be valid in the Catholic Church
- Grounds for Annulment being granted – 3 most common grounds – (i) **immaturity at the time of the marriage** – e.g. financial irresponsibility, irresponsibility about home life or about the question of children; excessive dependence on parents, rebellion against parents, excessive reliance on peer approval; (ii) **problems about consent** e.g. a 'shotgun' wedding where someone gets married to avoid shame or to please one's parents e.g. "I went through the marriage but I had no real intention of going through the marriage"; "I did it to please my parents"; "I did it to improve my standing in the company by marrying the boss' daughter". (iii) **Force or constraint** – a marriage is invalid if it was entered into due to any kind of force or fear inflicted from the outside
- Rightly understood, the annulment process should demonstrate two aspects of the life of the Church: first, the desire to be faithful to Christ's teaching concerning the permanent nature of a sacramental marriage and second, to have the pastoral solicitude of St. Paul for Catholics who are in non-sacramental marriages.
- Normally, an annulment case should take around 9 months to complete. A person seeking an annulment is assigned an Advocate at the Tribunal who will interview him or her and seek witnesses to give evidence on behalf of the case. The finding and interviewing of witnesses is the most common form of delay in the process. There is no such thing as a court hearing or cross-examination, though the Advocate is charged with the responsibility of finding the truth of the case.

### 4. Some important additional Notes

- In recent days Pope Benedict VI has asked Marriage Tribunals to speed up the process of annulments. 'Catholic News' reported the Pope saying "it was very important that annulment rulings emerge in a reasonable amount of time." Some couples who apply for annulments have to wait four or five years for a decision, meaning their lives as Catholics are essentially on hold.
- A number of people think that for a Catholic to get a divorce is either a sin or alternatively it results in excommunication from the Church. Neither of these is true. The Church has never excommunicated anybody for getting a divorce. Quite the contrary, one cannot complete an annulment process unless they have received a civil divorce demonstrating irretrievable breakdown.
- Similarly, no one has been excommunicated from the Church for remarrying without an annulment of their first marriage.

## 5. A Case in Point

Jack and Jill had been married 8 years. To Jack's great sorrow, and with no medical explanation he knew, no children had been born in the marriage. One evening, Jill told Jack two shocking things: one, she was leaving him to marry another man; two, they had not had children because she had never wanted children and had had herself sterilized before their wedding to ensure she would not have any. It later transpired that she had told two friends of her intention and her action before she and Bob were married. The case for annulment is clear, but it could not be resolved in the Tribunal because Jill refused to testify to what they knew.

Jack later meets someone else, falls in love with her and they marry. Two questions of importance now arise for them.

Is their second marriage a valid marriage in the eyes of the Catholic Church, and can they receive Communion in the Catholic Church?

## 6. The Internal Forum

- ❖ The only people for whom these are two serious questions are people who are very serious about their religion
- ❖ The only reason why a person may not go to Communion is either a public sense or a deep personal sense of being seriously sinful.