

DIVORCE AND RELIGION – RELIGIOUS & CIVIL PRINCIPLES

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I.WHAT IS MARRIAGE?

Church – c.1055: “The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well being of the spouses and to the procreation and upbringing of children, has, between the baptised, been raised by Christ the Lord to the dignity of a sacrament.”

Sacramental marriage: permanent, binding, faithful union open to possibility of Children. Consent makes marriage, consummation gives it firmness. Divorce not possible

State: marriage; the union of two people to the exclusion of all others, voluntarily entered into for life. Not permanent, ended by no-fault divorce.

II. IMPEDIMENTS TO MARRIAGE

Age: M.16, F.14 c.1083

State: M.18, F.18 – or permission

Impotence: Antecedent/perpetual on part of M or F c.1084

Prior Bond: Person bound by previous bond invalidly attempts marriage c.1085

State- one party was married to someone else

Those in sacred orders –Bishop, priest, deacon c.1087

Those bound by a public perpetual vow of chastity c.1088

Abduction of woman by man until free c.1089

Crime – murder of spouse to enter marriage c.1090

Consanguinity – blood relations – direct line, collateral c.1091

State – prohibited relationship

Public concubinage -relatives c.1093

State –prohibited relationship

Adoption c.1094

State – prohibited relationship

Defect of form – c.1108

State – parties did not comply with the civil law requirements where they married

III. GROUNDS FOR NULLITY (defect of consent)

Those incapable: lack sufficient reason, gravely lack judgment about marriage, or cannot assume obligations due to psychological causes c.1095

State: one party was mentally incapable of understanding the nature and effect of the marriage ceremony.

Those who are ignorant of marriage as a permanent partnership between a man and woman ordered to procreation by sexual cooperation c.1096

Error about a person render marriage invalid (Quality) c. 1097

State: one party was mistaken as to the identity of who they were marrying or the nature of the ceremony.

A person contracts invalidly if he/she enters marriage by means of fraud/deceit carried out to secure consent about some quality which could seriously disrupt marital life c.1098

State: consent was obtained by duress or fraud.

Error concerning unity, indissolubility or sacramental dignity of marriage render consent null if it determines the will c.1099

Simulation of consent: permanence, fidelity, children – c.1101

Conditional consent- marriage cannot be contracted validly subject to a condition about the future c.1102

Marriage entered into by force or grave fear imposed from outside where the only escape is to choose marriage c.1103

State: consent was obtained by duress or fraud.

OTHER ITEMS

-Non consummation: Church – Yes, State No

-Never having lived together: Church – Yes, State No

-Family violence – Church – possibly, State No

-Other incompatibility situations – Church – possibly, State No

*NB: Like state Law, Church law DOES NOT declare children illegitimate from the union

**Judge to ensure the interests of the children are protected