

1. Our Holy Father points out that, in principle, marriage is open to every man and woman. It is the vocation of the majority of the human race. The Catholic Church presumes that every marriage - whether it involves a Catholic or not - is valid until the contrary is proven (c. 1060). This presumption is not changed by the separation of a couple or by a civil divorce.
2. A declaration of invalidity by a tribunal of the Catholic Church is strictly an ecclesiastical matter and should not be confused with an "annulment" given by a civil court. According to the laws of the Catholic Church, it should also be clearly understood that the Tribunal's decree of invalidity does not affect the legitimacy of children born to the parties (c.1137). In the event a declaration of invalidity is given, "the children remain what they always were. I (John Paul II, *Famifiaris Consortio*). "The parties are to be reminded of the moral and civil obligations that they may have to each other and to their children, especially as regards their support and education (c.1689).
3. A previously married non-Catholic who wishes to marry a Catholic has a legitimate interest in asking a tribunal of the Catholic Church to examine the question of the validity of his or her marriage, which has civilly ended in divorce. In such a case, the tribunal of the Catholic Church makes a judgment about the alleged invalidity of the marriage of two non-Catholics in order to determine whether one of them is free to marry a Catholic. If the non-Catholic is bound by a previous valid marriage, the Catholic Church, which does not recognize that civil divorce gives a right to remarry, cannot witness a Catholic's marriage to this person.
4. In judging the validity of the marriage of two non-Catholics, an ecclesiastical tribunal does not apply those laws of the Catholic Church that affect only marriages involving a Catholic, for example, the "form" or type of wedding ritual, but rather those principles arising from the natural law or divine positive law that affect the validity of any marriage. These elements belong to the very nature or essence of marriage itself as determined by the Creator and are not optional elements that can be included or excluded at will. Consequently, their positive exclusion from marriage consent makes such consent invalid. (Drawn from a response of the Apostolic Signatura in Roman ReQlies. CLSA, 1997, p. 26, c. 1476).
5. The canonical presumption of validity can be challenged before a Church tribunal by one of the parties of the marriage (c. 1674). Such a challenge does not deny that there was a wedding but claims that, from the first, something essential was missing from the consent the two parties gave to marriage, for example, that one was not free in consenting to marry, or did not understand marriage as the Church means it, or did not mean what was said, or did not have the capacity to carry it out. It is incapacity and not mere difficulty in giving consent to marriage and in realizing a true community of life and love that renders a marriage invalid, our Holy Father notes; and the breakdown of a marriage union is not in itself proof of such incapacity (2 Feb. 1987, to the Roman Rota).
6. A claim of the invalidity of a marriage is made in the form of a request or petition that states the reason for the marriage's invalidity and the proofs of invalidity that can be gathered, e.g., documents, the testimonies of the parties and of witnesses, etc. The tribunal will insist on an impartial examination of witnesses, but the parties must first obtain their cooperation. The tribunal will then question the witnesses in order to establish with moral certainty the truth of the claim of the invalidity of the marriage from its beginning. Reasons for the divorce are the concern of the tribunal's inquiry only when they point to some deficiency that affected the marriage from the first.
7. The process of determining whether a marriage is invalid is that of a trial. However, it is not a trial to determine fault or guilt but to determine the fact of whether the invalidity of the marriage has been proven. The tribunal's purpose is to discover the truth without prejudice to either party.
8. The process involves both parties equally, as both are equal partners in a marriage. A respondent, the one invited to respond to the claim the petitioner has made, may also consider the marriage to be invalid, or he/she might be convinced of its validity. Thus the respondent is invited to present his/her own testimony on the question and to suggest others to be contacted just as the petitioner did.

9. Each party, petitioner or respondent, whether Catholic or not, has the same rights before the tribunal, notably the right to be heard, to offer arguments and proofs, and to know and . respond to the arguments and proofs presented by the other party. If this right of defense is denied, then any decision of the tribunal is null and without canonical effect (c. 1620.7).

10. A parish priest, pastoral coordinator, or pastoral minister ordinarily assists those approaching the tribunal. For additional canonical help, each party also may choose a Procurator- Advocate from the list of those approved for this ministry. An advocate assists the person before the tribunal and presents a written brief advancing his/her claim.

11. Final observations are then given by the defender of the bond, a tribunal member whose task it is to defend the bond of marriage by offering, from the information already gathered, reasons that support the presumption of the validity of the marriage.

12. The tribunal then makes its decision in light of the arguments and proofs presented by the parties and the principles of sound canonical doctrine and jurisprudence. The judge must weigh the claim of the invalidity of the union made by the petitioner and the defense of the validity of the marriage made by the defender of the bond.

13. On the basis of the facts presented and not merely on assertions or opinions, the judge comes to a judgment of whether or not the invalidity of the marriage has been proven. The parties have a right to be informed of the decision, and a party who feels aggrieved by it has the right to appeal to a higher tribunal.

