



Legal issues and family matters

No. 018 July 31, 2009 www.familymatters.org.ph and www.famli.blogspot.com By Atty. Gerry T. Galacio

Void marriages

Article 35 of the Family Code of the Philippines provides that the following marriages shall be void from the beginning:

- (1) Those contracted by any party below eighteen years of age even with the consent of parents or guardians;
- (2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;
- (3) Those solemnized without license, except those marriages where license is not required (for example, when the parties have been living in for five consecutive years without any legal impediment);
- (4) Those bigamous or polygamous marriages not falling under Article 41 (subsequent marriage after the missing spouse had been declared presumptively dead);
- (5) Those contracted through mistake of one contracting party as to the identity of the other; and
- (6) Those subsequent marriages that are void under Article 53 (marriages contracted without registering with the civil registry the judgment annulment or of absolute nullity of the marriage, partition of properties and delivery of presumptive legitimes).

Marriage void because of psychological incapacity

Article 36 provides that *“a marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.”*

The Supreme Court has ruled that (1) sexual infidelity or promiscuity by itself does not constitute psychological incapacity; and (2) irreconcilable differences are not a ground for declaring a marriage null and void.

Incestuous marriage (Article 37)

Marriages between the following are incestuous and void from the beginning, whether the relationship between the parties be legitimate or illegitimate:

- (1) Between ascendants and descendants of any degree;
- (2) Between brothers and sisters, whether full or half blood.

Void marriages for reasons of public policy (Article 38)

- (1) Between collateral blood relatives whether legitimate or illegitimate, up to the fourth civil degree; for example, marriage between first cousins;
- (2) Between step-parents and step-children;
- (3) Between parents-in-law and children-in-law;
- (4) Between the adopting parent and the adopted child;
- (5) Between the surviving spouse of the adopting parent and the adopted child;
- (6) Between the surviving spouse of the adopted child and the adopter;
- (7) Between an adopted child and a legitimate child of the adopter;
- (8) Between adopted children of the same adopter; and
- (9) Between parties where one, with the intention to marry the other, killed that other person's spouse, or his or her own spouse.

Art. 39. The action or defense for the declaration of absolute nullity of a marriage shall not prescribe.

Parties in a void marriage cannot take the law into their own hands

Article 40 states that *“the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.”*

This means that any party to a void marriage cannot by himself or herself declare that the marriage is void. A petition must be filed in court to have the marriage declared void. If any party to a void marriage gets married without complying with Article 40, then he or she can be charged with bigamy. Bigamy is a public offense, meaning anyone who knows about the facts can file the complaint against the guilty party.

If husband and wife have not seen each other for more than seven years, does it mean that their marriage is already void?

This is a very common misunderstanding among Filipinos. The marriage does not become void simply because the spouses have not seen or heard from each other for a number of years. Please read Articles 41 to 54 of the family Code. You can also download my free PDF Issue no. 003 July 16, 2008 at www.familymatters.org.ph

Notes:

The lack or absence of a marriage certificate (or contract) in the files of the NSO does not make a marriage null and void. The marriage certificate is not an essential or formal requisite for the validity of a marriage under the Family Code. The existence or validity of your marriage can be proven by other evidence - the marriage license, the testimony of the officiating minister and the witnesses, wedding pictures, etc.

Is there any difference between annulment and declaration of nullity of marriage?

Under Articles 35 up to 54 of the Family Code, some marriages are considered either void or voidable. Technically speaking, annulment refers to the legal action declaring void those marriages considered as voidable (that is, valid until annulled). On the other hand, declaration of nullity refers to those marriages considered as void from the very beginning.

In laymen’s language, however, annulment is often used as a generic term for the legal action concerning both kinds of marriages.

What is the difference between divorce and declaration of nullity?

In divorce (which is non-existent in the Philippines), the grounds or reasons for such arise during the marriage. In declaration of nullity of a marriage (as provided for by the Family Code), the grounds or reasons are already existing even before the marriage, but such grounds may have manifested themselves only during the marriage.

In practical effect, however, both divorce and declaration of nullity of a marriage allow the former spouses to get married again to other persons.

What are the effects when a marriage is declared null and void under Article 36 of the Family Code?

Articles 50 up to 54 of the Family Code provide for the effects when a marriage is annulled or declared null and void. Among others, the children are considered as legitimate, and their presumptive legitimes (what they are entitled to at the time of the court decision) must be given to them before the judgment can become final.

What is the difference between legal separation and declaration of nullity?

The grounds or reasons are different, and more importantly, in legal separation, the spouses are not allowed to get married again to other parties. The wife also still has to use her husband’s surname. (Practically no one therefore wants to file for legal separation; almost everyone in marital troubles will choose to have his or her marriage declared null and void.)

Biblical grounds for divorce and remarriage: surf to http://-salt-and-light-.blogspot.com/2005/12/divorce-and-remarriage_26.html

How to be saved and go to heaven

Accept that you are a sinner and that your good works, ethical conduct or religion cannot save you. Romans 3:10, Romans 3:23

Believe on the Lord Jesus Christ that He alone can save you. Romans 6:23, Romans 10:13, Acts 16:31

Confess and repent of your sins. Luke 13:3, Isaiah 1:18

Delay not in receiving Jesus Christ into your heart. 2 Corinthians 6:2, Proverbs 27:1

Pray and ask the Lord to save you now: “Dear Lord, I believe that Christ died and shed His precious blood to save my soul. Be merciful to me a sinner, forgive my sins and save me in Jesus’ name. Lord Jesus, I now accept you as my Savior. Amen.”

For more information, please contact Ptr. Yanie V. Genonangan of Great Lamb Baptist Church, San Jose, Sta. Ana, 2022 Pampanga; Tel. no. (045) 631-0233; website: greatlambbaptist.com