

INTERFAITH LEGAL ADVISORS' NETWORK

Centre for Law and Religion

The Law School

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Interfaith Marriages and Civil Partnerships from a Roman Catholic Perspective

Definition of marriage

There is no comprehensive definition of marriage in the 1983 Code of canon law. Roman Catholic canon law admits of different types of valid marriages; sacramental marriage (between two Christians); natural law marriage (between two un-baptised people); and consummated marriages (consummation is presumed if the parties have lived together after the ceremony¹).

Marriage is described, however, in Roman Catholic canon law as an act of free will.² It is an irrevocable covenant.³ It exists between one man and one woman; for their whole life; for their well-being; and for the procreation of children.⁴ If both parties are baptised, marriage is a sacrament.⁵ Unity and indissolubility are essential properties.⁶ Consent must be lawfully manifested by legally capable parties.⁷ To marry is a right of the natural law, but this is not an unlimited right.⁸ Marriage is governed by both divine and ecclesiastical law. However, civil authorities are competent, but only in respect of the civil effects of marriage.⁹

¹ Canon 1061§2.

² E.g., if the person is not free due to psychiatric/psychological incapacity, the marriage could be declared invalid by virtue of canon 1095; because of deceit or external pressure, by virtue of canons 1098 or 1103 respectively; or because of abduction for the purpose of marriage, by virtue of canon 1089.

³³ Canon 1057§2: 'Matrimonial consent is an act of will by which a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing marriage.'

⁴ Canon 1055§1: '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 to the dignity of a sacrament'.

⁵ Canon 1055§2: 'Consequently, a valid marriage contract cannot exist between baptised persons without its being by that very fact a sacrament'.

⁶ Canon 1056: 'The essential properties of marriage are unity and indissolubility; in christian marriage they acquire a distinctive firmness by reason of the sacrament.'

⁷ Canon 1057§1: 'A marriage is brought into being by the lawfully manifested consent of persons who are legally capable. This consent cannot be supplied by any human power.'

⁸ Canon 1058: 'All can contract marriage who are not prohibited by law'.

⁹ Canon 1059: 'The marriage of catholics, even if only one party is a catholic, is governed not only by divine law, but also by canon law, without prejudice to the competence of the civil authority in respect of the merely civil effects of the marriage.'

Divine law is unchangeable¹⁰ and prohibits marriage in certain circumstance, for example, if there is an existing marriage bond,¹¹ or if the parties are related by consanguinity in the direct line or in the second degree in the collateral line (i.e., siblings).¹² Ecclesiastical law¹³ may also prohibit marriage, for example, it extends the prohibited degrees of consanguinity in the collateral line to the fourth degree (i.e, first cousins).¹⁴ Ecclesiastical law, however, can be dispensed, such as the law which prohibits marriage between a Catholic and a non-Christian.¹⁵

Once a marriage ceremony has taken place, marriage is presumed to be valid, but the presumption cedes to contrary proof.¹⁶

Prerequisites for the celebration of marriage

There is provision in canon law for the pastoral care and prerequisites for the celebration of marriage. Pastors are under a canonical obligation to ensure that suitable preparation is available;¹⁷ that nothing stands in the way of valid celebration;¹⁸ and that the marriage is fruitfully celebrated.¹⁹

Form of marriage

A marriage between two Catholics, must take place before a Catholic priest or duly delegated deacon and two witnesses, and in accordance with canon law, including liturgical law.²⁰ There is however, provision for a person who is not ordained to preside in the absence of clergy,²¹ or for a marriage to take place before witnesses only, in certain limited circumstances.²² Permission is required to celebrate the marriage in a place other than the parish church of one of the parties.²³

'Mixed' marriages

¹⁰ Canon 1075§1: 'Only the supreme authority in the Church can authentically declare when the divine law prohibits or invalidates marriage'.

¹¹ Canon 1085§1; 'A person obliged by the bond of a previous marriage, even if not consummated, invalidly attempts marriage'.

¹² Canon 1092§1: 'Marriage is invalid between those related by consanguinity in all degrees of the direct line, whether ascending or descending, legitimate or natural.'

¹³ That is, laws made by man for the internal governance of the Church.

¹⁴ Canon 1091§2: 'In the collateral line, it is invalid up to the fourth degree inclusive.'

¹⁵ Canon 1086§1; 'A marriage is invalid when one of the two persons was baptised in the catholic church or received into it and has not by a formal act defected from it, and the other was not baptised.' §2: 'This impediment is not to be dispensed unless the conditions mentioned in Cann 1125 and 1126 have been fulfilled'.

¹⁶ Canon 1060: 'Marriage enjoys the favour of the law. Consequently, in doubt the validity of a marriage must be upheld until the contrary is proven'.

¹⁷ Canon 1063 and following.

¹⁸ Canon 1066.

¹⁹ Canon 1065.

²⁰ Canons 1108 and 1119.

²¹ Canon 1112.

²² Canon 1116.

²³ Canon 1115.

'Mixed' marriage is the term used to describe marriage between a Catholic and a baptised person of another Church or ecclesial community not in full communion with the Catholic Church. Although generally prohibited, provision is made in canon law for these marriages to take place after the granting of permission. Absence of permission goes to lawfulness only and not to validity. The purpose of the prohibition is to enable the pastors and, indeed the community, to assist the parties in understanding the difficulties, which might be posed by their differing beliefs and to enable them to address these issues during their preparation for marriage. Permission to marry can be granted if certain conditions are fulfilled.²⁴ 'Mixed' marriages must take place according to legitimate form,²⁵ in the parish Church unless permission is granted for it to be celebrated elsewhere.²⁶

A dispensation from form is required if the marriage of a Catholic is to take place according to the rites of another Church or ecclesial community or according to civil law;²⁷ the absence of such dispensation goes to validity. Consent, however, must be exchanged only once.²⁸ A dispensation from form is not available for marriage between two Catholics.

Disparity of worship

'Disparity of worship' is the term used to describe the difference between Christian and non-Christian worship. A marriage of a Catholic to a non-Christian is prohibited; the prohibition going to validity of the marriage.²⁹ However, provision is made for these marriages to be celebrated validly, following the granting of a dispensation and the fulfilment of the conditions applicable to 'mixed' marriages.

Effects of marriage

Marriage produces a permanent and exclusive bond.³⁰ Each spouse enjoys equal obligations and rights.³¹ Children conceived or born of a valid or putative marriage are legitimate,³² as are those born at least 180 days after marriage or within 300 days from dissolution of marriage. Illegitimate children are legitimated by the subsequent marriage of their parents.³³ There are no consequences for illegitimate children in canon law.

Separation of spouses

²⁴ Canon 1125.

²⁵ Canon 1127.

²⁶ Canon 1118.

²⁷ Canon 1127§2.

²⁸ Canon 1127§3.

²⁹ Canon 1086§1.

³⁰ Canon 1134.

³¹ Canon 1135.

³² Canon 1137.

³³ Canon 1139.

There is provision in canon law for the legitimate separation of spouses,³⁴ but these provisions are rarely used in the UK.

There is also provision for dissolution of marriage, in limited circumstances and when there is a spiritual benefit to a person.³⁵ Sacramental, consummated marriages cannot be dissolved.

Invalid consent

Marriage enjoys the favour of the law, but cedes to proof of the contrary. Not only can impediments and lack or defect of form invalidate marriage, but invalid consent also vitiates marriage. There are many causes of invalid consent, such as psychiatric or psychological impairment,³⁶ ignorance,³⁷ error,³⁸ deceit,³⁹ a positive intention to exclude an essential element or essential property of marriage,⁴⁰ a condition,⁴¹ or force or grave fear.⁴²

Process for nullity of marriage

For a marriage to be declared invalid, one of the parties must submit a petition to the ecclesiastical tribunal for investigation.⁴³ The trial must be conducted according to canon law.⁴⁴ Generally, three judges must hear the case both at First and Second Instance,⁴⁵ and judgement is by majority vote.⁴⁶ Judges must weigh proofs according to law and their conscience⁴⁷ and reach 'moral certainty' of nullity.⁴⁸ 'Moral certainty' has been described by Pope Pius XII in 1942, but can be compared with the civil concept of 'beyond reasonable doubt'. This degree of certainty must be derived from the proofs.⁴⁹ An appeal is mandated after an affirmative decision at first instance.⁵⁰ A negative, that is 'not proven' verdict may be appealed. Two conforming sentences are required before a decree of nullity is issued,⁵¹ and after which the parties are free to marry. However, when the status of a person is involved, recourse against the decision can be made at any time.⁵²

³⁴ Canons 1151-1155.

³⁵ Canons 1141-1150.

³⁶ Canon 1095.

³⁷ Canon 1096.

³⁸ Canon 1097.

³⁹ Canon 1098.

⁴⁰ Canon 1101.

⁴¹ Canon 1102.

⁴² Canon 1103.

⁴³ Canon 1501.

⁴⁴ Canons 1400-1685.

⁴⁵ Canon 1425.

⁴⁶ Canon 1426§1.

⁴⁷ Canon 1608§3.

⁴⁸ Canon 1608§1.

⁴⁹ Canon 1608§2.

⁵⁰ Canon 1682§1.

⁵¹ Canon 1684.

⁵² Canon 1644§1.

Decisions of Roman Catholic ecclesiastical courts have no effect in civil law in the UK. In some countries Concordats between the State and the Holy See enable ratification of ecclesiastical court decisions by the State.

Civil Partnerships

There is no provision in canon law for same-sex unions or the blessing thereof as sexual relationships outside marriage, as defined above, is contrary to Catholic doctrine.

Although, in the UK, the laws governing civil partnerships make no reference to sexual relationships, it is doubtful if the Church would approve these unions, even on the basis of financial arrangements, for reasons of public propriety.

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