MARRIAGE LAWS

Legal and Canonical Requirements of Marriage

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Marriage and family are social institutions protected by law.

Article II, section 12 of the 1987 Philippine Constitution “recognizes the sanctity of family life” and affirms the duty of the State to “protect and strengthen the family as a basic autonomous social institution.”

Marriage is the foundation of the family.

The Family is the foundation of the society.

The legal requisites provided by the Family Code of the Philippines are intended to ensure that those getting married possess the basic qualifications required of the married life.
Marriages in the Philippines are governed by state laws and ecclesiastical laws.

Filipinos planning to get married, therefore have to comply with requirements set forth by the Family Code of the Philippines whether such marriage is civil or religious in nature.

The law of the church focuses largely on the spiritual and psychological commitment brought to the marriage.

A wedding always has the potential to become a marriage. The spouses must have the intention and the capacity to carry the marriage beyond the wedding day.
1. MARRIAGE IN THE FAMILY CODE OF THE PHILIPPINES

- Marriage is “a special contract of permanent union between a man and a woman entered into in accordance with the law for the establishment of conjugal and family life.

- It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulations, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.” (Article I)
It improves on the definition of marriage in Art. 52 of the Old Civil Code of the Philippines by stating that:

A. Marriage is “special” contract.

B. It is a “permanent” union.

C. The union is between “a man and a woman.”

D. The union must be entered into “in accordance with the law”

E. The purpose of marriage is “the establishment of conjugal and family life.”
MARRIAGE AS CONTRACT

- A contract is “a meeting of the minds between two persons whereby one binds himself, with respect to the other, to give something or to render some services.” Article 1305, Civil Code of the Philippines

- A contract binds both contracting parties and has the force of law between them.
Moreover, marriage is “a special” contract in the sense that:

1. Only a man and a woman can enter into marriage
2. Marriage is a permanent contract; it can only be dissolved by death or annulment
3. In an ordinary contract, agreement has the force of law between the husband and the wife; in marriage, rights and duties are fixed by law and not subject to stipulations.
4. Breach of contract gives rise to action for damages, while breach of obligations of husband or a wife does not give rise to such action, but law prescribes penal and civil sanctions *e.g.* prosecution for adultery, concubinage, legal separation, etc.
REQUISITES OF MARRIAGE UNDER THE FAMILY CODE

- Essential
  - Legal Capacity
  - Consent of the Contracting parties
- Formal
  - Authority of the Solemnizing Officer
  - Marriage License
  - Marriage Ceremony
ESSENTIAL REQUISITES

- Legal Capacity
  - Must be male and female
  - Must at least be 18 years of age

- Consent freely given by the contracting parties
LEGAL CAPACITY

- Contracting parties must be at least 18 years of age, male and female, and not under any impediment to marry impediments mentioned in Art. 37 (incestuous marriage) and Art. 38 (void marriages).

- If the contracting parties are between the ages of 18 and 21, they must present written consent to the marriage from their father, mother or legal guardian (Art. 14). While any contracting party between the age of 21 and 25 must present written parental advice, i.e., a written indication that the parents are aware of the couple's intent to marry (Art. 15).
Consent of the Contracting Parties

- Consent freely given by the contracting parties before a solemnizing officer and in the presence of at least 2 witnesses of legal age.
FORMAL REQUISITES

- Authority of the Solemnizing Officer
- A Valid Marriage License
- Marriage Ceremony
The following are authorized to solemnize marriage:

✓ Any incumbent member of the judiciary within the court’s jurisdiction
✓ Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the office of the Civil Registrar General.
✓ Any ship captain or airline chief only in cases of *articulo mortis*.
✓ Any military commander of a unit in the absence of a chaplain during military operation cases involving in *articulo mortis*.
✓ Any consul-general, consul or vice-consul in marriages solemnized abroad.
✓ Mayors of cities and municipalities under the new Local Government Code
Under Art. 9 of the Family code, a marriage license shall be issued by the local civil registrar where either contracting party resides. The application for the marriage license shall be posted for ten (10) consecutive days outside the office of the civil registrar. A license shall be valid in any part of the Philippines for a period of 120 days and shall be automatically cancelled at the end of said period.

No valid marriage license, no valid marriage.

Marriages exempted from marriage license requirement:

❖ Marriages in *articulo mortis* (Article 27)
❖ No means of transportation (Article 28)

If the residence of either party is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar, the marriage may be solemnized without necessity of a marriage license.

Marriages among Muslims or among members of the ethnic cultural communities, provided they are solemnized in accordance with their customs, rites or practices. (Article 33)

Couples living together for at least five years and without any legal impediment to marry each other. (Article 34)
Marriage Ceremony

- No particular form of the ceremony is required.
- Requires the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.
- The marriage shall be solemnized publicly in the chambers of the judge or in open court, in the church, chapel or temple or in the office of the consul-general, consul or vice-consul, as the case may be, and not elsewhere.
Article 4 of the Family Code of the Philippines states that “the absence of any of the essential and formal requisites shall render the marriage void ab initio (void from the very start) except as stated in Art. 35 (2)

A defect in any of the essential requisites shall render the marriage voidable as provided in Art. 45.

An irregularity in the formal requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable.
MARRIAGE IN THE PHILIPPINES
Wedding Tip:

Visit the local civil registrar (LCR) beforehand to know the specific requirements.

Although they are under the same laws and regulations, the LCR in each municipality tend to interpret guidelines differently.
Wedding Tip:

When applying for a marriage license, personal appearance of both parties is required.
Wedding Tip:

No license will be required for your marriage if you and your partner have lived together as husband and wife for at least 5 years. Simply secure an affidavit to facilitate the wedding.

Source: Family Code of the Philippines
Wedding Tip:

Confirmation certificates can be requested from the Church or school where you were confirmed. If you were confirmed in the latter, you can request a letter from your school verifying the event.

You can then send the letter to the Church's administration office along with a processing fee.
Wedding Tip:

Two foreigners cannot marry in the country. If you are both foreigners in the Philippines and you wish to marry, contact your embassy. A consul might be authorized by law to solemnize the marriage.
Marriage in the Code of Canon Law
The 1983 Code of Canon Law contains provisions on marriage meant to protect and preserve the sanctity of marriage and the family and to promote love and life.
MARRIAGE is a 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.

It has, between the baptized, been raised by Christ the Lord to the dignity of a sacrament.

(Canon 1055 of the Code of Canon Law)
REQUIREMENTS OF A VALID CATHOLIC WEDDING
LEGAL CAPACITY

INTEGRAL Consent

CANONICAL FORM

3 REQUIREMENTS OF VALID MARRIAGE FOR CATHOLICS
Canons 1073 - 1094

LEGAL CAPACITY

INTEGRAL CONSENT
Canons 1095 - 1107

1

2

3

CANONICAL FORM
Canons 1108 - 1123
All can contract marriage who are not prohibited by law. (Canon 1058). This means that the law can prohibit marriage in some particular cases; one of them, for instance, when contracting parties labor under a diriment impediments.

Matrimonial impediments are incapacitating or invalidating laws that truly restrict the free exercise of the right to marriage that everyone has. Some impediments are derive from natural law (e.g. impotency, consanguinity), while others are established by the Church herself. (e.g. holy orders, public vow of chastity). Accordingly, some of the admit dispensation; others, don’t.
Canons 1073 - 1094

**LEGAL CAPACITY**

*Freedom from any and all of 12 impediments*

1. AGE  
2. IMPOTENCE  
3. PRE-EXISTING BOND  
4. DISPARITY OF CULT  
5. SACRED ORDERS  
6. VOW OF CHASTITY  
7. ABDUCTION  
8. CRIME  
9. CONSANGUINITY  
10. AFFINITY  
11. PUBLIC PROPRIETY  
12. LEGAL RELATIONSHIP
A man cannot validly enter marriage before the completion of his sixteenth year of age; a woman, before the completion of her fourteenth year.

- It is within the power of the conference of Bishops to establish an older age for the licit celebration of matrimony. (Canon 1083) In the case of the Philippines, CBCP fixed it on 18 years for both bride and groom, in consonance with the Family Code of the Philippines.
Antecedent (exists prior to marriage) and perpetual (which cannot be corrected) impotence by its very nature invalidates marriage.

*Antecedent and perpetual impotence refers to the inability to have vaginal intercourse both before the marriage begins and throughout the entire duration of the marriage. Absolute impotency is the inability to have intercourse with anyone while relative impotency is the inability to have intercourse with one's spouse.*
A person bound by a previous marriage cannot contract marriage.
A marriage between a Catholic and a non-baptized person is invalid.

* A prior dispensation (special permission) given by the bishop is required before such wedding can be allowed; without which the marriage shall be considered invalid.
Marriage is invalidly contracted by those in sacred orders; *e.g.* deacons, priests and bishops.

* A prior dispensation from the Pope granting them the permission to leave the priesthood and their ministry is required before they can contract a valid wedding; without which the marriage shall be considered invalid.
Those who are bound by a public perpetual vow of chastity in a religious institute invalidly contract marriage.

* A prior dispensation from their Religious Superior granting them the permission to leave the congregation and to renounce their religious vows is required before they can contract a valid wedding; without which the marriage shall be considered invalid.
No marriage can exist between a man and a woman who has been abducted, or at least detained, with a view to contracting marriage with her.
The impediment arises when someone, with a view of entering marriage with a particular person, has killed that person’s spouse, or his or her own spouse.
Marriage is invalid between those related by consanguinity in all degrees of the direct line, and up to the fourth degree inclusive, in the collateral line.
Affinity is the relationship existing between one spouse and the blood relatives of the other spouse. The impediment extends to any degree of the direct line.
The impediment arises when a couple live together after an invalid marriage, or from a notorious or public concubinage. It invalidates marriage in the first degree of the direct line between the man and those related by consanguinity to the woman, and vice versa.
Those legally related because of adoption cannot validly marry each other if their relationship is in the direct line or in the second degree of the collateral line.
“A marriage is brought into being by the lawfully manifested consent of persons who are legally capable.” (Canon 1057)

The validity of marital consent depends on a good number of factors:

First, on a minimal degree of knowledge of what marriage is and of sufficient freedom to accept its responsibilities.

Secondly, on the personal psychological capacity to assume its essential obligations.
Canons 1095 - 1107

Freedom from invalidation of Consent

1. CONSENSUAL INCAPACITY
   a. Lack of Sufficient Use of Reason
   b. Grave Lack of Due Discretion
   c. Inability to Assume Obligations

2. IGNORANCE

3. ERROR

4. MISCONCEPTION

5. FRAUD

6. SIMULATION

7. CONDITION

8. FORCE OR FEAR

9. PROXY MARRIAGE
A person can be deprived of sufficient use of reason for matrimonial consent by permanent defect like certain mental illnesses or by temporary defect i.e., grave temporary disturbance e.g., by intoxication by drugs or alcohol etc. If that which robs the person of sufficient use of reason is something permanent e.g., permanent mental illness – it would also cause a grave defect of discretionary judgment and would even render the person incapable of assuming the essential obligations of marriage.
1. CONSENSUAL INCAPACITY

B. *Grave Lack of Due Discretion I (Canon 1095 20)*

- those who suffer from a grave lack of discretionary judgment concerning the essential matrimonial rights and obligations to be mutually given and accepted;
- Discretion of judgment can be rendered defective by immaturity, by certain nervous illness which distort the evaluative process or by personality disorder which so moves the person to seek only himself that he is not even able to understand what the duties and obligations of marriage are, what married
1. CONSENSUAL INCAPACITY

C. - Inability to Assume Obligations

Those who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage. One could summarize these rights and obligations as those required to establish and sustain a conjugal communion of life i.e., that relationship between the spouses which according to the common estimation of the culture to which they belong is considered normal, acceptable and humanly liveable. Thus, the person must be able to establish an inter-personal relationship, provide for the good of the other partner, render acts of sexual intercourse apt of themselves for the generation of children and in a normal way, provide for the physical and spiritual education of the children, and observe marital fidelity.
Canons 1095 - 1107

**Priest, 2 witnesses, & the Rite of Marriage**

1. **PROPER MINISTER** – bride and groom
2. **ORDAINED OFFICIAL CHURCH WITNESS** – bishop, priest, or deacon
3. **LAY OFFICIAL CHURCH WITNESS** – principal sponsors (ninongs/ninangs)
4. **COMMON WITNESSES** – families and friends
5. **EXCHANGE OF VOWS** – public pronouncement of “I do’s”
6. **RITE OF MARRIAGE** – in accordance with the canonical form
DECLARATION OF NULLITY ACCORDING TO THE CODE OF CANON LAW
1983 Code of Canon Law with 1,752 laws
Marriage and the Declaration of Nullity
Three Terms:

• legal separation
• divorce
• annulment: declaration of nullity
THE DECLARATION OF NULILITY OF MARRIAGES IS NOT DIVORCE
Factors to be considered:

- Commonality
- Distinct Character
- Effect
- Application in the Philippines
Common:

1. **Church’s ceremony:**
   a. valid priest
   b. the pair is at the right age and with legal capacity
   c. exchange of vows
   d. there are witnesses

2. **Purposes:**
   a. unitive love
   b. procreation

3. **Qualities:**
   a. unity
   b. indissolubility

**Implications:**
   a. one roof
   b. one bed
   c. one table
<table>
<thead>
<tr>
<th>Distinct Character</th>
<th>Legal Separation</th>
<th>Divorce</th>
<th>Declaration of Nullity</th>
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<tbody>
<tr>
<td>Vow remains; though the purposes (unitive and procreative) are set aside.</td>
<td>The vow is destroyed. Destruction of conjugal life.</td>
<td>There is actually no exchange of vows; simply ceremonial.</td>
<td></td>
</tr>
<tr>
<td>Effects</td>
<td>Separation in roof, bed and table</td>
<td>Each to his own.</td>
<td>Each to his own.</td>
</tr>
<tr>
<td>No conjugal property</td>
<td>May opt for civil wedding; though cannot be in the Church.</td>
<td>Ceremony took place though formally, there was no marriage</td>
<td></td>
</tr>
<tr>
<td>Can’t get married</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application in the Philippines</td>
<td>applicable</td>
<td>Not applicable</td>
<td>applicable</td>
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</tbody>
</table>
An annulment is a declaration by an authorized tribunal that a marriage is legally null, without legal effect, in the Church.

- The parties are therefore not bound by that marriage
- They are free to enter a new marriage or validate an existing civil marriage in the Church

An annulment does NOT:

- Assert that a marriage never happened
- Have any effects in civil law
- Have any effects on the legitimacy of children
- Make any judgment about a person’s moral or religious quality
What God has joined together, let no man put asunder.
Ang ayaw pagsamahin ng Diyos, wag piliting pagsamahin ng tao.
Bases for the declaration of nullity:

1. Lack of canonical form

2. Presence of diriment impediment

3. Defective consent
Lack of canonical form:

- Case of the minister. It doesn’t follow that one, though a bishop, can outrightly officiate wedding. There is competence.

- License is required.

- Presence of witnesses, at least 2.
Presence of Diriment Impediment:

- Age
- Impotence
- Existing marriage bond
- Disparity of worship
- Sacred orders
- Public perpetual vow of chastity
Presence of Diriment Impediment:

- Crime
- Consanguinity
- Affinity
- Public decency
- Legal Relationship
- Abduction
Dispensation is viable, but not in the issue of consanguinity.

Cases of dispensation to be solely rendered by the Pope:

- Sacred orders
- Public perpetual vow of chastity
- Crime
Defective Consent:

- Psychological defects
  - lack of due reason
  - lack of due discretion
  - lack of due competence

Ignorance
Error about the Person
Fraud
Subject to Condition
Force or Grave Fear
The difficulty in marriage is not a guarantee for marriage nullity process. The bone of contention needs to be existing before or during the exchange of vows.
Such a defect needs to be existent within the very core of the person so as to be rightfully claimed for the nullity of marriage right from the start.
The Lord does not demand that we be successful, he demands that we be faithful.
MARRIAGE ANNULMENT AND POPE FRANCIS’ REFORMS

Annulment is a process which establishes that a marriage was null from the start; something happened when the marriage took place which meant it was not valid. In other words, the marriage never existed. This is not the same as divorce, which dissolves an existing marriage.

HOW CAN A MARRIAGE BE DECLARED NULL?
Annulment cases can be split into three groups:

1. Impediments
   Eg. Age, degree of blood relationship or legal relationship.

2. Factors affecting consent
   Eg.: Lack of capacity, intimidation, physical violence, etc.

3. Defectos de forma
   Eg. A marriage where there was no minister (priest).

WHAT DID POPE FRANCIS SAY?

“THESE DISPOSITIONS DO NOT FAVOUR THE NULLITY OF MARRIAGES BUT THE SPEED OF THE PROCESS”

The changes have been published in two documents called motu proprio. The key points of the reforms with respect to annulments are:

1. Only one sentence is necessary (previously two were needed). If there is an appeal, the Pope has indicated that this can be done in the archdiocese, without the need to apply to Rome.

2. As pastor of the faithful, the bishop himself is judge in his diocese, assisted by those he appoints (one of these must be a cleric, the others can be laypeople).

3. The process of annulment will be free of charge.

These reforms will come into force from 8th December, the Solemnity of the Immaculate Conception (and start of the Year of Mercy).

SOURCES: ACIPRENSA.COM, CATHOLICEXCHANGE.COM, WWW.OSSERVATORIEROMANO.VA
For updates on Pope Francis’ Reforms on Annulment Process, click on the link below:

Acknowledgment:

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