

# NULLITY

**Leaflet No. 5.**



**LEGAL AID BOARD**

**This leaflet is not an interpretation of the law.**

## LEAFLET No. 5

### NULLITY OF MARRIAGE

A person who wishes to obtain an order of nullity of marriage must apply to court. The effect of this order is that the marriage never existed in the eyes of the State.

#### Grounds for nullity

A court may grant an order for nullity on the following grounds:-

- **lack of capacity:** the parties were not capable of marrying each other.  
For example:
  - one party was already married to someone else at the time of the marriage;  
or
  - one party was under the age of eighteen years and did not have court permission;
- **non-observance of certain formalities:** the parties did not comply with a formal requirement relating to the ceremony. For example, persons planning to marry in Ireland must give the Registrar of Marriages three months notice of their intention to marry;
- **absence of consent:** one of the parties did not give a full, free and informed consent. For example:
  - a party gave their consent to the marriage under duress, for example, serious threats;
  - a party gave their consent to the marriage under undue influence, for example, pressure imposed by a parent;
  - a party did not intend, at the time of the marriage, to fulfill a fundamental part of the contract, for example, one party intended not to have sexual relations with the other and this had not been agreed between them; and
  - a party was insane at the time of the marriage and so was not capable of consenting to the marriage;
- **impotence:** one of the parties is unable to perform the complete sexual act with the other party. It is necessary to establish psychological or physical causes of impotence which are incurable, at least with regard to the other party;
- **inability to form and sustain a normal marital relationship:** this might be established where, for example:
  - one party, unknown to the other, was suffering from manic depression or schizophrenia at the time of the marriage;
  - one party suffered from extreme immaturity at the time of the marriage.

## **Effect of an order for nullity**

Where the court grants an order for nullity:-

- the parties are free to marry;
- neither party can claim maintenance as a spouse from the other party;
- the decree does not affect the rights of the parties' dependent children; and
- neither party can claim a legal right share in the estate of the other party.

## **Church annulments**

A church annulment has no legal standing. Where a person remarries within a church, the law will not recognise that marriage unless an order for divorce or an order for nullity was granted in respect of the first marriage.

## **Invalid Marriage**

It is illegal to be married to more than one person and a person who does so may be prosecuted for bigamy. Where a second marriage is not valid, the parties:-

- are not treated as being married for the purpose of social welfare payments;
- cannot make a claim against the estate of the other (although they could make provision for each other in a will); and
- cannot seek maintenance against each other.

If an invalid marriage breaks down, the parties do not have the protection that the law gives to spouses. However, the parties may be entitled to avail of domestic violence legislation.

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TEL: (066) 947 1000. FAX: (066) 947 1035.

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