



# Voidable Marriages and Legal Separation

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# Outline

VOIDABLE MARRIAGES

LEGAL SEPARATION

RIGHTS AND OBLIGATIONS  
BETWEEN HUSBAND AND  
WIFE

The background features a light gray base with large, organic, overlapping shapes in muted olive green and dusty rose. In the top left corner, there are stylized, layered illustrations of foliage, including what appears to be a pine branch and some feathery leaves. A thin, white, wavy line curves across the bottom right portion of the image.

# Voidable Marriages

# Characteristics of Voidable Marriages

- A voidable marriage IS NOT a void marriage.
- It is deemed valid and produces all civil effects, UNTIL it is set aside by a final judgment of a competent court in an action for annulment.
- Children of voidable marriages are legitimate if conceived or born before the finality of the judgment of annulment.
- Can be ratified by free cohabitation or prescription. Exceptions: Impotency and Incurable and Serious STD.
- A voidable marriage can be questioned only during the lifetime of the parties and not after the death of either.
- The ground or defect must be in existence at the time of the celebration of the marriage.

# Voidable Marriages Under Art. 45

1. Lack of Parental Consent
2. Insanity
3. Consent is obtained through Fraud
4. Consent is obtained through Force, Intimidation, or Undue Influence
5. Either Party was Physically Incapable of Consummating the Marriage (Impotence)
6. Either Party was Afflicted with STD which is Serious and Incurable

# Lack of Parental Consent

- If the party below twenty-one (21) years old is legitimate (marital), his/her father, mother, surviving parent/guardian, or persons having legal charge of the party must give consent, in the specific order mentioned.
- If the party below twenty-one (21) years old is illegitimate (non-marital), only the mother's consent is required. Reason: A non-marital child is under the parental authority only of the mother.
- Note that lack of parental consent will not render the marriage void, but merely voidable. Hence, it can be cured by ratification or prescription.

# Insanity

- The marriage is voidable whether or not the sane spouse was aware of the existence of such insanity at the time of the celebration of the marriage.
- If the sane spouse had no knowledge of such insanity at the time of the marriage, the sane spouse can file for annulment.
- However, if the sane spouse was aware of such insanity at the time of the marriage, only the insane spouse (during a lucid interval or after regaining sanity) or his/her relative, guardian, or person having legal charge of him can file for annulment.

# Consent is obtained through Fraud

- What constitutes fraud :
  - Non-disclosure of previous conviction involving a crime of moral turpitude
  - Concealment of pregnancy by a man other than the husband
  - Concealment of sexually transmissible disease, regardless of its nature
  - Concealment of drug addiction, habitual alcoholism, homosexuality, or lesbianism
- Reckoning point is at the time of the celebration of the marriage
- Enumeration is exclusive. No other circumstance other than the enumeration above may constitute fraud for purposes of making the marriage voidable/annullable.



## Consent is obtained through Force, Intimidation, or Undue Influence

- Force - constraining power, compulsion; strength directed to an end.
- Intimidation - unlawful coercion, extortion, duress, putting in fear.
- Undue Influence - excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity.

# Impotency

- Impotency refers to the physical incapability to consummate the marriage.
- Refers to the physical inability to perform the act of sexual intercourse, and NOT sterility or the inability to procreate.
- May be caused by a physical or structural defect in the anatomy of one of the parties, or may be due to illnesses.
- It must be continuing and incurable.
- Doctrine of Triennial Cohabitation – if the wife remains a virgin after three years of cohabitation, the husband will be presumed impotent.

# Sexually Transmissible Disease

- It must be serious and incurable.
- Comparison:
  - In Art. 45(6), the ground is the existence of the STD itself. In Art. 46(3), the ground is the concealment of the STD.
  - In Art. 45(6), the STD must be serious and incurable. In Art. 46(3), the nature of the STD is immaterial.

# Ratification

- Lack of parental consent – free cohabitation with the other spouse by the party entitled to seek annulment after attaining the age of twenty-one (21).
- Insanity – free cohabitation with the other spouse by the insane after coming to reason.
- Fraud – free cohabitation with the other spouse by the injured party after gaining full knowledge of the fraud.
- Vitiating of consent – free cohabitation with the other spouse by the injured party after the ground for the vitiating of such consent disappeared.
- If the ground is either physical incapability to consummate the marriage (impotence) which is incurable, or sexually transmissible disease which is incurable and serious, the voidable marriage cannot be ratified.

# Action for Annulment of Marriage

- Lack of parental consent
  - Person whose consent is required – must file action before prior to the party attaining the age of twenty-one (21)
  - Party whose parent did not consent – must file action within five (5) years after attaining the age of twenty-one (21)
- Insanity – action must be filed during lifetime of the parties by:
  - The insane spouse – after regaining sanity or during a lucid interval
  - The sane spouse – if he/she was unaware of the other spouse's insanity at the time of the marriage
  - Any relative or person having legal charge of the insane
- Fraud – action must be filed within five (5) years from the discovery of the fraud and only by the victim spouse
- Vitiating of consent – action must be filed within five (5) years from the disappearance of the ground of vitiating of consent and only by the victim spouse
- Physical incapability (impotence) or sexually transmissible disease – action must be filed within five (5) years from the celebration of the marriage and only by the injured party

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# Legal Separation

# Legal Separation

- In Legal Separation, the marital bond is NOT severed. It is merely separation from bed and board.
- Unlike in Void and Voidable Marriages, the ground for legal separation may exist only after the celebration of the marriage.
- The parties to a marriage who are legally separated are still considered by law as spouses. Hence, their children remain legitimate.
- If a person who is legally separated from his/her spouse marries another, he/she may be liable for Bigamy.

# Grounds for Legal Separation

- (1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
- (2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
- (3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
- (4) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
- (5) Drug addiction or habitual alcoholism of the respondent;
- (6) Lesbianism or homosexuality of the respondent;
- (7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
- (8) Sexual infidelity or perversion;
- (9) Attempt by the respondent against the life of the petitioner; or
- (10) Abandonment of petitioner by respondent without justifiable cause for more than one year.



# Defenses in Legal Separation

- Condonation – it is in the nature of conditional forgiveness of a matrimonial offense. Given after the offense is committed.
- Consent – given in advance or prior to the commission of the act which would constitute a ground for legal separation.
- Connivance – implies an agreement, express or implied, by both spouses to the ground for legal separation.
- Collusion – implies an agreement between the parties for one of them to commit, or to appear to commit, a matrimonial offense, or to suppress evidence of a valid defense.
- Recrimination or mutual guilt,
- Prescription
  - Prescriptive period is five (5) years from occurrence of the cause/ground.

# Cooling-Off Period

- The case for legal separation shall not be tried within six (6) months from the filing of the petition.
- Exception: if the ground constitutes “violence” under Republic Act No. 9262 otherwise known as the Anti-Violence Against Women and Children Act.
- During the Cooling-Off Period, the court must take steps towards the reconciliation of the spouses. The court may only issue a decree of legal separation after it is satisfied that, despite such efforts, reconciliation between the spouses is improbable.

# Effects of a Decree of Legal Separation

- The spouses will have the right to live separately from each other.
- The offending spouse will be disqualified to inherit from the innocent spouse.
- Testamentary dispositions by the innocent spouse in favor of the offending spouse shall be revoked by operation of law.
- The court may order the offending spouse to continue giving support to the innocent spouse.
- The children remain legitimate or marital. However, parental authority and custody shall be exercised by the party designated by the court (usually the innocent spouse).

# Effects of Reconciliation

- Upon the Joint Manifestation of the spouses under oath that they have reconciled, the legal separation proceedings (if still pending) or the decree of legal separation itself (if one has been issued) will be set aside.
- In other words, everything will go back to normal.

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# Rights and Obligations between Husband and Wife

# Rights and Obligations

- Live together.
  - Exceptions: (1) the other should live abroad; or (2) if there is valid and compelling reason.
  - The courts are powerless to enforce this right. However, the offended spouse may deny the offending spouse support.
- Observe mutual love, respect, and fidelity.
  - The courts are likewise powerless to enforce this right. But the offending spouse may be liable for adultery, concubinage, and bigamy.
- Render mutual help and support.
  - Can be enforced through legal action.
- Choose Family Domicile
  - The right to choose the family domicile belongs to both husband and wife. In case of disagreement, the court shall decide.
- Exercise any legitimate profession, occupation, business, or activity without the consent of another.
  - Exception: In cases where the husband objects on valid, serious, and moral grounds.

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# End

Thank you and study well