



FAMILY LAW

Exploring Marriage
and Divorce

The Family has changed

- Today's families have changed and consist of:
- Single-parent families
- Blended families-the result of divorce and remarriage
- Childless marriages
- Common-law relationships with or without children
- Same-sex relationships

Other reasons for invalid marriages

- Affinity: a marriage is not valid if the people are too closely related by marriage.
- Consanguinity: marriage is not valid when the people are too closely related by blood.



Formal Requirements for Marriage

- **These requirements are outlined in the Marriage Act for each province.**
- **Marriage licence or Banns; provinces require couples to have at least one of these.**
- **Marriage ceremony must be performed by someone with legal authority (a minister, priest, rabbi, justice of the peace.**
- **Minimum Age: this varies from province to province.**
- **Blood tests are required in Alberta and P.E.I.**

Annulment/Separation? Divorce

- Since marriage is a binding contract between a man and a woman, it is required that in order to terminate or end the marriage, an annulment or divorce is the correct legal procedure.
- An Annulment is a court order that states that a marriage that seems valid is legally void and never existed from the start- in other words , one of the requirements of marriage was not met, e.g. genuine consent.

SEPARATION

- Separation is an intermediate step between marriage and divorce.
- Unless the couple obtains a divorce, even though they may live apart, they are still legally married.



DIVORCE



- Divorce is the legal procedure that ends a valid marriage.
- A judge will hear the case just like Civil court procedure.
- Testimony will be given by both the petitioner and the respondent and sometimes a co-respondent.

Valid Reasons for Divorce



- Marriage breakdown – no one party is totally responsible – the marriage has just broken down
- Adultery
- Cruelty – physical or mental are valid reasons for divorce



The Essential Requirements of Marriage

- The Constitution Act, 1867, divides the power of making marriage laws between the federal and provincial governments.
- Section 91 gives the federal government jurisdiction over marriage and divorce and lists the ESSENTIAL REQUIREMENTS for a valid marriage.
- Section 92 gives provincial governments jurisdiction over the solemnization of marriage which deal with the "formal requirements" of the ceremony.

ESSENTIAL REQUIREMENTS OF MARRIAGE

- Mental capacity: no person who lacks mental capacity by reason of illness, drugs, or alcohol can legally marry.
- No prior marriages; MONOGAMY is the only accepted form of marriage in Canada.
- Genuine consent: since marriage is a contract, the parties must give their free and voluntary consent to it
- Minimum Age: Each party must be old enough to marry – the age will vary from provinces
- Sexual capacity; Both parties must be of the opposite sex and be physically able to have sexual intercourse to consummate the marriage.