



# **RK JUDICIAL ACADEMY**

## **Institute for Judicial Services Exam Hyderabad**

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### **MOCK TEST-01**

### **MAINS EXAMINATION**

**SUBJECT: Hindu Marriage act,1955**

**Batch code: Jan'24-Jun'24**

**TIME: 3:00 HRS**

**MARKS:100**

#### **Instructions:**

- 1) Attempt all the questions compulsorily**
- 2) All questions carry Equal Marks**
- 3) Write the answers as orders of the questions**
- 4) Strict your answer to the Question only**
- 5) Write your Answers in 300 words only**

#### **QUESTION PAPER**

**1.Discuss the concept of marriage under Hindu Law. What are the factors which nullify the Marriage?**

Marriage in Hindu Law is considered a sacred and sacramental union between a man and a woman. It is not just a social contract but is deeply rooted in religious and cultural traditions. Hindu marriage is governed by personal laws, and the Hindu Marriage Act, 1955, is a comprehensive legislation that codifies the principles and rules relating to Hindu marriages. Here are key aspects of the concept of marriage under Hindu Law:

#### **1. Sacrament and Religious Significance:**

- Hindu marriage is viewed as a sacrament (samskara) and is a significant religious and cultural institution. It is a union not just of two individuals but also of their souls, and it is believed to be a lifelong commitment.

## **2. Purpose of Hindu Marriage:**

- The primary purpose of Hindu marriage is the fulfillment of Dharma (moral and social duties), Artha (economic responsibilities), Kama (fulfillment of desires), and Moksha (spiritual liberation).

## **3. Essential Ceremonies:**

- Hindu marriage involves essential ceremonies such as Kanyadaan (giving away the bride), Saptapadi (seven steps around the sacred fire), and Mangalsutra Dharana (tying of the sacred thread). These rituals vary across different regions and communities.

## **4. Conditions for a Valid Hindu Marriage:**

- The Hindu Marriage Act specifies certain conditions for a valid Hindu marriage, including the mental and physical fitness of the parties, absence of prohibited relationships, and compliance with essential ceremonies.

## **5. Monogamy:**

- Hindu Law traditionally recognizes monogamy, meaning a Hindu individual can have only one spouse at a time. The second marriage during the subsistence of the first marriage is void.

## **6. Registration:**



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- The Hindu Marriage Act provides for the registration of marriages. While registration is not mandatory, it serves as evidence of a valid marriage and simplifies legal processes.

#### **7. Void and Voidable Marriages:**

- The Act also classifies marriages as void or voidable under certain circumstances. Void marriages are considered null and void from the beginning, while voidable marriages are valid until annulled by a court.

#### **Factors Nullifying a Hindu Marriage:**

Under Hindu Law, certain factors can render a marriage void or voidable. These factors include:

##### **1. Prohibited Relationships:**

- Marriages between individuals within prohibited degrees of relationships, such as between brother and sister, uncle and niece, are considered void.

##### **2. Mental Incapacity:**

- If either party is of unsound mind or is incapable of giving valid consent due to mental incapacity, the marriage may be voidable.

##### **3. Consent Obtained by Fraud or Force:**

- If consent for marriage is obtained by fraud, misrepresentation, or force, the affected party may seek the annulment of the marriage.

#### **4. Impotence:**

- If either party is incapable of consummating the marriage due to impotence, the marriage can be considered voidable.

#### **5. Existing Marriage:**

- If either party has a living spouse at the time of marriage, the subsequent marriage is void.

#### **6. Unsoundness of Mind:**

- If either party suffers from recurring mental disorder or unsoundness of mind, rendering them unfit for marriage, the marriage may be voidable.

## **2. Explain divorce by mutual consent under the Hindu Marriage Act.**

### **Divorce by Mutual Consent under the Hindu Marriage Act:**

Divorce by mutual consent is a provision under the Hindu Marriage Act, 1955, allowing married couples to obtain a divorce if both parties agree to end their marriage amicably. This provision is covered under Section 13-B of the Act. Here is an explanation of the process and key aspects of divorce by mutual consent:

### **Conditions for Divorce by Mutual Consent:**



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For a divorce by mutual consent to be valid, certain conditions must be met:

#### **1. Separation Period:**

- The couple must have been living separately for a minimum period of one year immediately preceding the filing of the divorce petition. During this period, they should not have cohabited as husband and wife.

#### **2. Mutual Agreement:**

- Both spouses must mutually agree to seek a divorce. The decision should be voluntary and without any coercion or undue influence.

#### **3. No Contesting:**

- Both parties should not contest the divorce petition. They must agree on all matters related to the divorce, including the division of assets, alimony (if any), child custody, and any other relevant issues.

## **Procedure for Divorce by Mutual Consent:**

The process of obtaining a divorce by mutual consent involves the following steps:

### **1. Joint Petition:**

- Both spouses need to file a joint petition for divorce before the family court having jurisdiction over the matter. The petition should state the grounds for divorce and the terms of the mutual agreement.

### **2. First Motion:**

- The court will then record the statements of both parties and verify the grounds for divorce. If satisfied, the court will grant a "first motion" in which a cooling-off period of six months is given to the couple. This period allows for reconciliation or reconsideration.

### **3. Second Motion:**

- After the six-month cooling-off period, if both parties still wish to proceed with the divorce, they can file a second motion. During this hearing, the court examines the petition again and, if satisfied, grants a decree of divorce.



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#### **4. Counseling:**

- The court may also refer the couple to counseling during the cooling-off period to explore the possibility of reconciliation.

#### **5. Final Decree:**

- If, after the second motion, the court is convinced that there is no possibility of reconciliation and the mutual consent is genuine, a final decree of divorce is granted. This decree officially terminates the marriage.

#### **Important Considerations:**

##### **1. Consent Must be Voluntary:**

- Both parties should willingly and voluntarily agree to seek a divorce. No party should be under any undue pressure or influence.

##### **2. Terms of Agreement:**

- The terms of the divorce agreement, including issues like alimony, property division, and child custody, must be settled and agreed upon before filing the joint petition.

### **3. No Withdrawal After Six Months:**

- Once the joint petition is filed, if either party withdraws the consent before the second motion is presented after six months, the court will not grant the divorce.

### **4. Children's Welfare:**

- If the couple has children, the court will ensure that the arrangements for their welfare, including custody and maintenance, are in the best interests of the children.

Divorce by mutual consent is a relatively faster and less acrimonious way of ending a marriage when both parties are in agreement. It provides a legal framework for couples to part ways amicably and move forward with their lives.

### **3. Critically examine the concept of matrimonial bars and bring out their relevance in deciding the' matrimonial disputes.**

Matrimonial Bars under Section 23 of the Hindu Marriage Act:



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Section 23 of the Hindu Marriage Act, 1955, lays down certain conditions that the court must take into account before granting any relief in matrimonial matters. These conditions, often referred to as "matrimonial bars," play a crucial role in deciding matrimonial disputes. Let's examine the concept of matrimonial bars and their relevance in the context of Section 23:

Key Provisions of Section 23:

1. Petition for Relief:

- Section 23 begins by stating that the court may grant any relief under the Act (like restitution of conjugal rights, judicial separation, nullity of marriage, or divorce) on any of the grounds specified in the Act.

2. Bars to Relief:

- The section then outlines certain bars or conditions that restrict the court's discretion in granting relief. The bars are crucial in ensuring that divorce or other matrimonial reliefs are not granted arbitrarily and are based on specific grounds.

## Matrimonial Bars and Their Relevance:

### 1. Adherence to Legal Grounds:

- The presence of matrimonial bars emphasizes the importance of adhering strictly to the legal grounds mentioned in the Hindu Marriage Act for seeking relief. The court cannot grant a divorce or other relief unless the petitioner satisfies the conditions specified in the Act.

### 2. No Collusion or Connivance:

- One of the bars mentioned in Section 23 is that the court shall not grant relief if it finds that the petitioner has, with the consent or connivance of the other party, lived with the respondent after the occurrence of the grounds for relief. This discourages collusion between spouses to obtain a divorce fraudulently.

### 3. No Condonation of Adultery:

- The section specifies that the court should not grant a divorce on the ground of adultery if the petitioner has condoned the adulterous act or lived with the spouse with full knowledge of the adultery. This emphasizes the principle of fairness and prevents spouses from exploiting grounds for divorce that they have previously forgiven or overlooked.



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#### 4. Repentance and Rehabilitation:

- The bars under Section 23 also consider the rehabilitation and repentance of the parties. If the petitioner has deserted the respondent without reasonable cause for a continuous period of two years immediately preceding the presentation of the petition, or if the petitioner has behaved with cruelty, the court may consider these factors in deciding whether to grant relief. This brings a balance to the concept of divorce by taking into account the conduct of both parties.

#### 5. Consideration of Children's Welfare:

- The court, while deciding on relief, has to take into consideration the welfare of any minor children of the marriage. This is in line with the principle that the best interests of the child should be a primary concern in matrimonial matters.

#### 6. Public Policy and Morality:

- Matrimonial bars in Section 23 ensure that divorces are not granted against public policy or morality. For instance, the

court may not grant relief if the petitioner's adultery is accompanied by unreasonable or improper conduct, or if the petitioner has been found guilty of bigamy.

#### 7. Preventing Frivolous Litigation:

- The conditions under Section 23 act as a deterrent against frivolous litigation. The parties are required to adhere to legal grounds and present their case genuinely, discouraging attempts to misuse legal provisions for personal gain.

In conclusion, matrimonial bars under Section 23 of the Hindu Marriage Act serve as important safeguards to prevent the misuse of matrimonial reliefs and ensure that the court's decisions are just, fair, and based on genuine grounds. They take into account the conduct of both parties and prioritize the overall welfare of the family, especially minor children. These bars contribute to the broader objectives of family law by promoting fairness, equity, and the best interests of all parties involved.

#### **4. Under the modern Hindu law marriage is neither a sacrament nor contract. Elaborate**

In modern Hindu law, the conceptualization of marriage has evolved, and it is neither strictly considered a sacrament nor a mere contract. This shift reflects changes in societal attitudes, legal developments, and a more



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nanced understanding of the nature of marriage. Here's an elaboration on why marriage under modern Hindu law is characterized differently:

#### **1. Not Strictly a Sacrament:**

- Traditionally, Hindu marriage was considered a sacrament (samskara) with strong religious and spiritual significance. It was viewed as a sacred duty and an essential part of one's dharma. However, in modern Hindu law, there has been a departure from the strict sacramental view. While many people still value the spiritual and cultural aspects of marriage, the legal perspective has broadened to accommodate changing societal norms.

#### **2. Legal Recognition and Regulation:**

- Modern Hindu law recognizes and regulates marriages through statutes like the Hindu Marriage Act, 1955. This legal framework provides a comprehensive structure for the solemnization and dissolution of marriages, emphasizing the contractual and legal aspects of the institution.

### **3. Contractual Elements:**

- Marriage under modern Hindu law includes contractual elements, where parties enter into an agreement with specific rights and obligations. The Hindu Marriage Act outlines conditions for a valid marriage, and spouses have legal duties toward each other, including support, cohabitation, and fidelity. The consent of both parties is essential for a valid marriage, highlighting the contractual nature.

### **4. Voluntariness and Free Will:**

- Modern Hindu law places a strong emphasis on the voluntariness and free will of individuals entering into marriage. Unlike a sacrament, where the emphasis may be more on religious duty, modern Hindu marriages require the mutual consent of both parties. This aligns with the contractual notion of entering into an agreement willingly.

### **5. Legal Dissolution:**

- The availability of legal mechanisms for divorce is a departure from the sacramental view of marriage. The Hindu Marriage Act provides grounds for divorce, and the dissolution of marriage is governed by legal procedures. This recognition of



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the right to terminate a marriage signifies a legal understanding of marriage as more than just a sacrament.

#### **6. Secular Perspective:**

- The modern legal framework for Hindu marriages is designed to be secular, accommodating diverse beliefs and practices. While the religious and cultural aspects may still be significant for many, the legal system aims to provide a framework that is accessible and applicable to a broad spectrum of individuals, irrespective of their specific religious practices.

#### **7. Social Changes and Diversity:**

- Changes in societal norms, lifestyles, and individual preferences have contributed to a more diverse understanding of marriage. The legal framework recognizes this diversity and allows for flexibility in how individuals choose to define and practice their marital relationships.

In summary, modern Hindu law views marriage as a blend of spiritual, cultural, and legal dimensions. It is neither strictly a sacrament nor just a

contract but represents a dynamic institution that accommodates individual choices, legal regulations, and societal changes. This nuanced perspective reflects the complex nature of contemporary Hindu marriages.

**5. Discuss the changing concept of 'Cruelty' as a ground of matrimonial relief under the Hindu Law. Refer the recent case law on the subject.**

The concept of 'cruelty' as a ground for matrimonial relief under Hindu law has evolved over time, reflecting changes in societal attitudes and legal interpretations. Cruelty can be a valid ground for divorce or other matrimonial reliefs under the Hindu Marriage Act, 1955. The definition of cruelty is not explicitly provided in the Act, leaving room for interpretation based on judicial decisions. Here's a discussion on the changing concept of cruelty

**1. Early Notions:**

- In earlier cases, cruelty was often associated with physical harm or violence. Courts considered cases where one spouse subjected the other to physical abuse or severe harm as constituting cruelty. However, over time, the understanding of cruelty expanded beyond physical violence to include mental and emotional suffering.



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#### **2. Inclusion of Mental Cruelty:**

- The definition of cruelty evolved to encompass mental and emotional cruelty. Courts began recognizing that actions or behavior causing severe emotional distress, humiliation, or mental agony could also constitute cruelty. This broadened the scope of the ground for matrimonial relief.

#### **3. Subjective Nature:**

- The concept of cruelty remains somewhat subjective, as what may be considered cruel can vary based on individual perceptions and cultural contexts. Courts often assess cruelty by considering the impact of the conduct on the aggrieved party, taking into account the circumstances of each case.

#### **4. Persistent Behavior:**

- Courts have clarified that a single or isolated act may not amount to cruelty. There is often a requirement for a pattern of persistent behavior or a continuous course of conduct that makes marital life intolerable for the affected spouse.

### 5. Impact on Mental Health:

- Mental cruelty is now assessed by considering its impact on the mental health of the aggrieved party. Actions that cause significant mental anguish, stress, or trauma can be grounds for claiming relief under the Hindu Marriage Act.

### 6. Legal Recognition of Emotional Abuse:

- Recent developments acknowledge emotional abuse as a form of cruelty. Courts recognize instances where one spouse inflicts emotional harm through verbal abuse, humiliation, constant criticism, or any conduct that undermines the mental and emotional well-being of the other spouse.

#### **Case: V. Bhagat v. D. Bhagat (Mrs.) (1994) 1 SCC 337**

In this case, the Supreme Court of India provided significant insights into the concept of cruelty in the context of matrimonial law. The court held that cruelty could be of two types: physical and mental. Mental cruelty, according to the court, must be of such a nature that it makes it impossible for the parties to live together. The court emphasized that the assessment of cruelty should be based on the cumulative effect of all the facts and circumstances of the case.



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The court observed that the concept of cruelty varies from case to case, depending on individual sensitivities and perceptions. It acknowledged that cruelty might be subtle, and not every harsh or insensitive behavior would constitute cruelty. The court highlighted the need for a qualitative assessment, considering the impact of the conduct on the mental and emotional well-being of the spouse.

**6. Which is the court having jurisdiction to entertain a petition for restitution of conjugal rights and judicial separation under the Hindu Marriage Act?**

Under the Hindu Marriage Act, 1955, petitions for restitution of conjugal rights and judicial separation fall under the jurisdiction of the family courts or district courts, depending on the hierarchy of the courts in the respective states.

**Section 19 of the Hindu Marriage Act, 1955:**

This section outlines the jurisdiction of the court where a petition under the Hindu Marriage Act should be presented. It specifies the criteria for

determining the appropriate court based on certain factors related to the marriage and the parties involved. Here's a breakdown of the criteria:

**1. Location of Marriage Solemnization:**

- The petition can be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized. This means that the court where the marriage ceremony took place has jurisdiction to hear the petition.

**2. Residence of the Respondent:**

- If the respondent, at the time of the presentation of the petition, resides within the jurisdiction of a specific District Court, the petition can be presented to that court.

**3. Last Resided Together:**

- If the parties to the marriage last resided together within the jurisdiction of a particular District Court, the petition can be presented to that court.

**4. Wife's Residence (in case she is the petitioner):**

- If the wife is the petitioner, the petition can be presented to the District Court within the local limits of whose ordinary original civil jurisdiction she is residing on the date of presenting the petition.



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#### **5. Petitioner's Residence (if respondent is outside the jurisdiction or not heard of for 7 years or more):**

- If the respondent is at the time residing outside the territories to which the Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive, then the petitioner's residence at the time of presentation determines the jurisdiction of the court.

In summary, Section 19 provides flexibility in choosing the appropriate court for filing a petition under the Hindu Marriage Act, taking into account various factors such as the location of marriage, residence of the parties, and specific circumstances related to the petitioner and respondent.

**7. "A" files a petition for divorce on the ground that he cannot move in society with his wife who had been gang raped and it is a kind of cruelty on him. Decide.**

**8. When would a court refuse to pass a decree of divorce under the Hindu Marriage Act?**

Under the Hindu Marriage Act, a court may refuse to pass a decree of divorce under certain circumstances. The Act provides for various grounds on which a divorce petition can be filed, and the court has the discretion to refuse a decree based on the facts and merits of each case. Here are some situations where a court may refuse to grant a decree of divorce:

### **1. No Valid Grounds:**

- If the petitioner fails to establish valid grounds for divorce as specified in the Hindu Marriage Act, the court may refuse to pass a decree. The Act provides specific grounds like cruelty, adultery, desertion, conversion to another religion, mental disorder, etc.

### **2. Mutual Consent Not Sufficient:**

- In cases of divorce by mutual consent, if both parties do not genuinely consent to the divorce or if the court is not satisfied with the mutual consent, it may refuse to pass a decree.

### **3. Failure to Comply with Legal Procedures:**

- If the petitioner fails to comply with the procedural requirements laid down in the Act or other legal formalities, the court may refuse to grant a divorce. It's important to



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adhere to the legal procedures specified for filing and presenting a divorce petition.

#### **4. No Irretrievable Breakdown of Marriage:**

- While the concept of "irretrievable breakdown of marriage" is not explicitly mentioned in the Hindu Marriage Act, it is considered by courts in certain cases. If the court does not find that the marriage has irretrievably broken down, it may refuse to grant a divorce.

#### **5. Absence of Consent in Contested Cases:**

- In cases where the divorce is contested, and one party opposes the divorce while the other seeks it, the court may refuse to grant a decree if it finds that the marriage can still be sustained, and there is a possibility of reconciliation.

#### **6. Child Custody and Maintenance Issues:**

- If the court determines that the welfare of minor children is not adequately addressed in terms of custody and

maintenance, it may refuse to pass a decree of divorce. The court is likely to prioritize the best interests of the children.

### **7. Fraud, Coercion, or Undue Influence:**

- If it is proven that the divorce was obtained through fraud, coercion, or undue influence, the court may refuse to pass a decree. Consent obtained through improper means may render the divorce proceedings invalid.

### **8. Violation of Statutory Provisions:**

- Violation of statutory provisions or non-compliance with court orders during the divorce proceedings may lead to the refusal of a divorce decree.

It's important to note that each case is unique, and the court's decision depends on the specific facts and circumstances presented during the proceedings. The court's primary objective is to ensure justice and fairness while considering the interests of both parties involved.

### **9. Narrate the grounds on which a divorce is granted under the Hindu Marriage Act.**

Under the Hindu Marriage Act, 1955, divorce can be granted based on specific grounds outlined in Section 13. The Act provides various grounds



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upon which a petition for divorce can be filed. Here are the grounds for divorce under the Hindu Marriage Act:

#### **1. Adultery (Section 13(1)(i)):**

- If either spouse engages in voluntary sexual intercourse with someone other than their spouse, it constitutes adultery. Adultery is a valid ground for seeking a divorce.

#### **2. Cruelty (Section 13(1)(ia)):**

- Cruelty can be physical or mental and must be of such a nature that it makes it intolerable for the parties to live together. Continuous and willful conduct causing physical or mental suffering may constitute cruelty.

#### **3. Desertion (Section 13(1)(ib)):**

- If one spouse deserts the other without reasonable cause and without their consent for a continuous period of at least two years immediately preceding the filing of the divorce petition, it can be a ground for divorce.

#### **4. Conversion to Another Religion (Section 13(1)(ii)):**

- If either spouse converts to another religion, it is considered a ground for divorce. The other spouse can file for divorce on this ground.

#### **5. Mental Disorder (Section 13(1)(iii)):**

- If a spouse has been suffering from a mental disorder that is of such a nature and extent that the other spouse cannot reasonably be expected to live with them, it can be a ground for divorce.

#### **6. Incurable Diseases (Section 13(1)(iv)):**

- If a spouse is suffering from a communicable venereal disease in a communicable form, or from a disease that is incurable, it can be a ground for divorce.

#### **7. Presumption of Death (Section 13(1)(v)):**

- If a spouse has not been heard of as being alive for a period of at least seven years or more by those who would naturally have heard of them if they were alive, the other spouse can seek a divorce on this ground.

#### **8. No Resumption of Co-habitation after Decree of Judicial Separation (Section 13A):**

- If there has been no resumption of cohabitation between the parties to a marriage for a period of one year or upwards after



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the passing of a decree for judicial separation, either party may file for divorce.

#### **9. Mutual Consent (Section 13B):**

- If both parties mutually agree to dissolve the marriage, they may file a joint petition for divorce by mutual consent. This can be filed after one year of separation, and the parties must have lived separately for at least one year before filing the petition.

It's important to note that the specifics of each ground and the procedures for filing a divorce petition are detailed in the sections mentioned above. Additionally, the court considers the facts and circumstances of each case before granting a divorce decree.

#### **10. Distinguish between "Void" and "Voidable" marriages.**

##### **Void Marriages:**

##### **1. Definition:**

- A void marriage is one that is considered invalid from its inception, and it is treated as if it never took place. It lacks

legal recognition and is deemed null and void ab initio (from the beginning).

## 2. Grounds for Void Marriage:

- Void marriages are typically declared so due to inherent legal defects or prohibitions. Grounds for a marriage being void include:
  - Bigamy or polygamy (one spouse is already married to someone else).
  - Consanguinity or affinity (close blood relations or close relatives by marriage).
  - Marriage within the prohibited degrees of relationship.

## 3. Legal Consequences:

- A void marriage has no legal consequences. It does not create any rights or obligations between the parties. Children born out of a void marriage are considered legitimate.

## 4. Annulment:

- Since void marriages are considered invalid from the start, they can be annulled at any time, and either party or any interested party can seek a declaration of nullity.



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#### **5. No Need for Divorce:**

- There is no need for a formal divorce proceeding to end a void marriage because, legally, the marriage never existed.

#### **Voidable Marriages:**

##### **1. Definition:**

- A voidable marriage is initially valid but possesses some defect that allows one of the parties to seek annulment. Until annulled, it remains a valid marriage.

##### **2. Grounds for Voidability:**

- Grounds for voidable marriages often involve issues of consent, fraud, force, or incapacity. Common grounds include:
  - Non-consummation of the marriage.
  - Mental incapacity of a party.
  - Consent obtained by fraud, coercion, or undue influence.
  - Impotence.

- Concealment of a fact that, if known, would have affected the consent of one of the parties.

### **3. Legal Consequences:**

- Until a voidable marriage is annulled, it continues to have legal consequences, such as property rights and obligations. Children born during a voidable marriage are considered legitimate.

### **4. Annulment Process:**

- An annulment proceeding is required to declare a marriage voidable. The party seeking annulment must prove the specific grounds for voidability in court.

### **5. Time Limitation:**

- Voidable marriages often have a time limitation for seeking annulment. If the parties continue to live together and the grounds for voidability cease to exist, the marriage may become valid and unassailable.

### **6. Rights of Third Parties:**



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- Rights acquired by third parties, such as bona fide purchasers of property acquired during the voidable marriage, are protected until the marriage is annulled.

In summary, the key distinction lies in the validity of the marriage from the beginning. Void marriages are invalid ab initio, while voidable marriages are initially valid but possess defects that allow for annulment under specific grounds.

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