

Annulment of Marriage

As the Family Law Act 1975 has simple grounds for divorce the Family Court is seldom asked for a Decree of Annulment in relation to a marriage, and therefore there have not been many cases where there have not been many cases where the Court has been able to consider the circumstances in which a marriage might be annulled.

However, in 1998, a Husband acting for himself pursued his application for a Decree of Annulment on the grounds that the marriage had not been consummated although the marriage lasted 38 years and had produced four children!!! Not surprisingly his application was unsuccessful, but the Full Court took the opportunity to point out that under the Family Law Act a Decree of Annulment may only be granted on the basis that the marriage is void, but not if it is voidable. The Court confirmed that the only basis for a void marriage are:-

1. Bigamy;
2. Either party being under marriageable age;
3. Marriage between parties within prohibited degrees of relationship;
4. Lack of real consent;
5. No proper marriage ceremony held.

Therefore the ability to have a voidable marriage annulled which was available under the *Matrimonial Causes Act 1959* which is no longer available. Under the 1959 Act marriages were voidable on the basis of:-

- A. Nonconsummation
- B. Mental defect of either party
- C. Either party suffering from venereal disease at the time of the marriage.
- D. The Wife being pregnant to another man at the date of the marriage.