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LETTER TO THE EDITOR

## Matrimonial Attorney Confuses Annulment With Declaration of Nullity of Void Marriage

Joel R. Brandes responds to Michael Liptrot's article, "Differences Between Annulment and Divorce", which the New York Law Journal published on April 8.

April 17, 2024 at 09:44 AM

Family Law

By Joel R. Brandes | April 17, 2024 at 09:44 AM



[Editor's note: This article was submitted in response to Michael Liptrot's article, "[Differences Between Annulment and Divorce](#)", which the New York Law Journal published on April 8.]

The author of the article appears to have confused an "annulment" with a "declaration of the nullity of a void marriage."

In the fourth and fifth paragraphs of his article, the author writes:

"In contrast to a divorce, the law requires a party seeking an annulment to prove that the marriage was void."

"If a court decides to grant an annulment, it erases the legal status of the marriage treating it as though it never legally existed."

These statements refer to the incidents of a declaration of the nullity of a void marriage.

Domestic Relations Law §5 defines incestuous marriages. It provides that incestuous marriages, which are marriages within the prohibited degree of relationship, are absolutely void.

Domestic Relations Law §6 defines bigamous marriages. It provides that they are void. A marriage is absolutely void if contracted by a person whose husband or wife by a former marriage, which has not been annulled or dissolved, is living.

Domestic Relations Law §140 titled "Action for judgment declaring nullity of void marriages or annulling voidable marriage" authorizes both an action to declare the nullity of void marriages (subd (a)) and annulment of voidable marriages (subd (b)-(f)). Domestic Relations Law §141 authorizes the commencement of an action to annul marriage on the grounds of incurable mental illness of a spouse for five years.

A marriage that is void rather than voidable is a nullity from the beginning, without a judgment or order declaring it to be void. *Stein v. Dunne*, 119 A.D. 1, 103 N.Y.S. 894 (1st Dep't 1907), aff'd, 190 N.Y. 524, 83 N.E. 1132 (1907); *Pettit v. Pettit*, 105 A.D. 312, 93 N.Y.S. 1001 (3d Dep't 1905). However, it is deemed so vitally important to society to have the

matrimonial status of citizens judicially determined that the Legislature has authorized an action to declare the nullity of void a marriage.

Voidable marriages are invalid *only* from the time their invalidity is declared by a court of competent jurisdiction. If no action for an annulment is brought, the marriage remains good for all purposes. *Ostro v. Ostro*, 169 A.D. 790, 155 N.Y.S. 681 (1st Dep't 1915); *Taylor v. Taylor*, 181 N.Y.S. 894 (Sup 1920).

The author also erroneously lists bigamy and incest, which are grounds for a declaration of the nullity of a void marriage, in his recital of the grounds for annulment.

The voidable marriages are listed in Domestic Relations Law §7. It provides that a marriage is void from the time its nullity is declared by a court of competent jurisdiction if either party to the marriage is under the age of consent; is incapable of consenting to a marriage for want of understanding; is incapable of entering into the married state from physical cause; has consented to the marriage because of force, duress or fraud; or has been incurably mentally ill for five years or more.

**Joel R. Brandes** practices matrimonial law in New York City concentrating on appeals. He is the author of the 12-volume treatise, *Law and the Family New York, 2023 Edition*, and *Law and the Family New York Forms, 2023 Edition* (five volumes), both published by Thomson Reuters, and the *New York Matrimonial Trial Handbook* (Bookbaby). He has been recognized by the New York Appellate Division as a “noted authority and expert on New York family law and divorce.” He can be reached at [joel@nysdivorce.com](mailto:joel@nysdivorce.com) or his website at [www.nysdivorce.com](http://www.nysdivorce.com).

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