

Institutiones Morales Alphonsianae, Volume II - Treatise VIII: On Matrimony

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Institutiones Morales Alphonsianae, Volume II

Treatise I: On the Sacraments in General and Treatise VIII: On Matrimony

Treatise I

On the Sacraments in General

One must treat: 1. of the Nature; 2. of the Minister; 3. of the Subject of the Sacraments; 4. of Sacramentals.¹

Chapter I

On the Nature of the Sacraments

So that the nature of the Sacraments may become known, 1. certain things must be premised concerning their notion and distinction, whether numerical or specific; 2. their efficacy, or power, must be inquired into; 3. their constitution must be weighed, which is placed in matter and form.

Article I

On the Notion and Distinction of the Sacraments

1390. DEFINITION. A Sacrament of the New Law is a sensible sign of invisible grace, for sanctifying the people of God, permanently instituted by Christ.²

It is said: 1. a sensible sign, that is, one which denotes internal grace and can be perceived by an external sense. For thus the means of salvation are adapted to the nature of man, who, in operating, is subject to the senses, and at the same time they become the foundations of divine worship and of Christian society. 2. Of invisible grace, which the Sacrament produces *ex opere operato*, that is, by force of the divine institution, independently of the work of the one operating, namely of the minister conferring and of the subject receiving, provided the subject is rightly disposed. 3. Instituted by Christ, in distinction both from the Sacraments of the old Law and from the Sacramentals of the Church, which have not been instituted by Christ. There is added: permanently, or stably; for as long as the Christian religion shall remain, so long also will the Sacraments remain.³

“Therefore three things are required for constituting a Sacrament: 1. an external sign; 2. a promise of grace; 3. the institution of Christ, since all the Sacraments have their power from the passion of Christ the Lord.”⁴ See the Dogmatic theologians.

1391. NUMERICAL DISTINCTION. “It is of faith that there are seven Sacraments of the New Law, neither more nor fewer,” as the Council of Trent defined, sess. 7, can. 1.

The Council of Florence, in the Decree to the Armenians, thus demonstrates the fittingness of this sevenfold number: “For spiritual life, just as bodily life, needs seven things: 1. That the faithful be generated, and this Baptism furnishes; 2. that they be increased and strengthened, and this Confirmation gives; 3. that they be nourished, and this the Eucharist furnishes; 4. that they be healed, and this Penance bestows; 5. that the remains of sins be taken away and the powers of the soul be refreshed, and for this there is Extreme Unction; 6. that ministers of the Church be formed, and this Sacred Ordination furnishes; 7. that children be begotten and religiously educated for the worship of God and the conservation of the human race, and this Matrimony gives.”⁵

1392. SPECIFIC DISTINCTION. The Sacraments, according to their various properties, are distinguished:⁶

1. Into Sacraments of the dead, that is, Baptism and Penance, which of themselves are conferred upon the spiritually dead, that is, those lacking grace, and produce first grace; and of the living, which of themselves are not administered except to those having first grace, and work an increase of grace in them.
2. Into repeatable Sacraments, as the Eucharist, Penance, Extreme Unction, Matrimony; and unrepeatable, as Baptism, Confirmation, and Order, on account of the character which they impress indelibly.

¹On the Sacraments in general see St. Thomas, 3, q. 60-65; Salmanticenses, tr. I; Billuart, etc.; but the Roman Catechism should be read first.

²Cf. book VI, 2, and the work on Trent, sess. 7; *Exam. Ordin.*, n. 1.

³Cf. book VI, 1-5.

⁴*Exam. Ord.*, n. 2.

⁵Cf. *Catech. Rom.*, p. 2, c. 1, n. 15; St. Alph., *Condotta ammir.*, p. 2, c. 1, n. 6-12.

⁶Book VI, 6; *Exam. Ord.*, n. 4.

3. Into a permanent Sacrament, as is the Eucharist, which consists in a permanent thing; and transient Sacraments, as are all the others, “because they are Sacraments only when they are made and applied.”⁷
4. Into Sacraments necessary by necessity of means for salvation, as are, for all, at least in implicit desire, Baptism, and more probably also the Eucharist, as will be explained in its own place (n. 1563); likewise, for those fallen into mortal sin, Penance; and necessary by necessity of precept, such as are Confirmation and Extreme Unction, according to the more probable opinion, altogether to be urged. Order and Matrimony are not necessary for private persons, but for the community.
5. Sacraments are called formed, when in the one receiving they really produce grace; unformed, when indeed they are valid in themselves, but in the one receiving, on account of the obstacle which he places, they do not produce the ultimate form of the Sacrament, that is, grace.⁸

1393. Note. In the old Law there were true Sacraments, as the Council of Trent openly implies when it hands down that the Sacraments of the New Law differ from the Sacraments of the Old Law. Such was the tree of life in the state of innocence; the sacrifice of Melchisedech and circumcision in the state of the law of nature; the paschal lamb, various purifications, and consecrations of priests in the Mosaic law. Yet these Sacraments, and even circumcision itself (as the more probable opinion teaches), did not confer grace by a power proper to themselves, that is, *ex opere operato*, but *ex opere operantis*, that is, from the merit of acts of faith, religion, penance, etc., which those ministering or receiving elicited. But for blotting out original sin there sufficed, more probably, faith in Christ to come, manifested by some exterior sign, especially through circumcision.⁹

Article II

On the Power and Efficacy of the Sacraments

1394. There are two EFFECTS of the Sacraments: one common to all, namely grace; the other proper only to some, namely character.

§ 1. On the Grace of the Sacraments A twofold grace is conferred through the Sacraments: sanctifying grace and sacramental grace.

1395. Principles. I. All the Sacraments confer SANCTIFYING GRACE, which renders man a friend of God (see the Dogmatic theologians).¹⁰

This grace is FIRST or SECOND, namely: the Sacraments of the dead, Baptism and Penance, of themselves and primarily confer first grace, by which namely the sinner is justified; the other Sacraments, which are called of the living, confer of themselves and primarily second grace, that is, an increase of pre-existing grace.

We said of themselves and primarily. For: 1. The Sacraments OF THE DEAD sometimes and accidentally confer second grace, when namely they find grace already existing in the soul; otherwise they would be sterile, which assuredly would be said absurdly and impiously. 2. The Sacraments OF THE LIVING, according to the common opinion, can likewise confer first grace, when namely someone in the state of lethal sin receives the Sacrament with good faith and at the same time with attrition. That this must be said of the Most Holy Eucharist seems to be concluded from the words of Trent (sess. 13, can. 5), defining: “If anyone shall say that the principal fruit of the Most Holy Eucharist is the remission of sins, let him be anathema.” St. Thomas hands down this very thing,¹¹ not only concerning the Eucharist, but also concerning Extreme Unction; and theologians commonly agree with the Angelic Doctor, who affirm the same concerning the other Sacraments of the living. But the reason for the affirmation is that in Trent (sess. 7, can. 6) it is read: “If anyone shall say that the Sacraments of the New Law ... do not confer grace on those placing no obstacle ... let him be anathema”; now indeed, “he who approaches a Sacrament of the living with attrition, which excludes affection for sin, both actual and habitual, already places no obstacle”; therefore.¹²

Note. It can happen in many ways that one guilty of mortal sin receives a Sacrament of the living in good faith, namely: 1. if he invincibly does not know that he is in the state of sin; 2. if he invincibly thinks himself perfectly contrite, or

⁷Book VI, 190, 2.

⁸Book VI, 6, note 4; *Exam. Ord.*, n. 4.

⁹Book VI, 3-4.

¹⁰Cf. Lugo, *De Sacram.*, disp. 4, sect. 3.

¹¹3, q. 72, a. 7, ad 2; and q. 79, a. 3.

¹²Book VI, 6; *Exam. Ord.*, n. 4.

rightly absolved, when he is not; 3. if he invincibly does not know that the state of grace is required for the reception of a Sacrament, etc. (cf. n. 1547).

1396. II. "The Sacraments also confer SACRAMENTAL GRACE, namely helps for obtaining the end for which each Sacrament is instituted."¹³ See again the Dogmatic theologians.

In particular: 1. BAPTISM supplies to a man not placing an obstacle a special help, so that he may be able to conquer concupiscence, despise the enticements of the world, and perform Christian works. 2. CONFIRMATION, so that, when occasion is given, he may profess and defend the faith fearlessly. 3. The EUCHARIST, so that he may remain in the love of Christ and in union with God, by advancing in it from day to day. 4. PENANCE, so that he may detest more perfectly the crimes committed, avoid occasions of sins, persevere in grace, and be able to expiate past faults. 5. EXTREME UNCTION, so that he may be purged from the remains of sin, be relieved in illness, and more easily resist the snares of the demon. 6. ORDER confers on sacred ministers helps by which they may worthily carry out ecclesiastical offices. 7. MATRIMONY bestows powers upon spouses for restraining inordinate concupiscence, for preserving conjugal fidelity, for piously educating offspring, and for constantly fulfilling all the obligations of the conjugal state.¹⁴

1397. Questions. Q. 1. Whether Sacraments received FEIGNEDLY, or WITH AN OBSTACLE, revive when that obstacle has been removed?

Preliminary notes. 1. When a Sacrament is indeed valid, but unformed, it is said to be received FEIGNEDLY, because the one receiving in a certain way feigns that he is disposed for the fruit of the Sacrament, when he is not. 2. This feigning is called an OBSTACLE to grace, and is either material, when namely the omission of the required disposition is inculpable, on account of ignorance, forgetfulness, etc.; or formal, when the omission is culpable, so that it contains the malice of sacrilege.

Resp. 1. The Sacrament of BAPTISM, received with feigning, whether material or formal, when the obstacle has been removed through a subsequent disposition, revives. Thus commonly the authors (except Scotus and a few others) from St. Augustine and St. Thomas.¹⁵ "The reason is that sin before Baptism, or consummated in the very reception of Baptism, is not subject to the keys of the Church; whence it must necessarily be remitted through the power of Baptism alone, which, when the obstacle has been removed, has the effect previously suspended by reason of the feigning."¹⁶

2. Many probably teach the same concerning CONFIRMATION, ORDER, EXTREME UNCTION, and MATRIMONY. The reason is that Confirmation and Order absolutely, Extreme Unction in the same danger of death, and Matrimony while the same spouse is living, cannot be repeated; nevertheless it seems consonant with divine goodness that such recipients should not remain forever deprived of the sacramental grace which they need.

3. The Sacrament of PENANCE does not revive when the feigning is formal, and the reason is that then the Sacrament is invalid. But whether it revives when the feigning is only material depends on the question whether this Sacrament can be valid and at the same time unformed. Some indeed deny it, because the dispositions of the recipient required for the liceity of the Sacrament are at the same time the matter of the Sacrament required for its validity; but others commonly and more truly affirm it, for the case namely in which someone places some material obstacle; if, for example, having two mortal sins, one of theft and the other of sacrilege, he in no way thinks of the sacrilege, nor confesses it, nor grieves over it, not even implicitly, and receives absolution for the theft alone, having conceived attrition from the supernatural turpitude of that sin. For in this case, the Sacrament, in which all the essential parts are found (that is, attrition and sincere confession with absolution), cannot, on the one hand, be called invalid; but on the other hand, it is not informed by grace, because the sin stands in the way, concerning which he neither accuses himself nor grieves. Whence that confession, since it is valid, is not to be repeated, and therefore the Sacrament received with a material obstacle, when this has finally been removed, revives. Thus Suarez, Lugo with St. Thomas¹⁷ and others.

4. The EUCHARIST, as is commonly taught, whether the feigning is material or formal, does not revive, unless the obstacle is removed before the sacred species are consumed. It does not revive if the feigning was formal; "otherwise this absurdity would follow, that a priest who several times in his life had celebrated sacrilegiously, if at death he confessed with remiss attrition, would receive the whole heap of graces of so many sacrilegious Communion;

¹³Ibid.

¹⁴Cf. *Exam. Ord.*, n. 22; work on Trent, sess. VII, n. 8-10.

¹⁵3, q. 69, a. 10.

¹⁶Book VI, 87.

¹⁷In 4, dist. 17, q. 3, art. 4, ad 1.

indeed, the more often he had celebrated unworthily, the more abundantly he would be enriched with graces.”¹⁸ Nor, more probably, does it revive if the feigning was only material, because, since this Sacrament from its institution can be frequently repeated, there was no need that a broader efficacy be attributed to it.

Q. 2. How must the OBSTACLE be removed, so that the Sacrament may revive?

Resp. In order that Sacraments validly, but feignedly, received may revive, more probably there is required and suffices the same disposition which was required and sufficient in the reception itself for obtaining grace. Hence: 1. The Sacraments of the dead, namely Baptism and Penance (received with a material obstacle), revive through universal attrition. 2. The Sacraments of the living, that is, Confirmation, Extreme Unction, Order, Matrimony, and, while the sacred species have not yet been consumed, the Eucharist, likewise revive through attrition, if they were received with a material obstacle; for in such a case, even these Sacraments accidentally produce grace in one attrite. Otherwise, if they were received with a formal obstacle, because otherwise they do not seem able to revive except through the Sacrament of Penance received, either in reality with attrition, or in desire with perfect contrition.¹⁹

§ 2. On Character 1398. “Character is a certain spiritual, indelible seal, impressed on the soul of one receiving a Sacrament. It is impressed only in Baptism, Confirmation, and Order; and it signifies the power or dignity received from Sacraments of this kind.”²⁰

It is fitting, according to the Angelic Doctor,²¹ that Sacraments through which a man is constituted in some state which of itself is perpetual should impress a character, by which man is deputed to that state; but through these three Sacraments alone man is constituted in some new state which of itself is perpetual, namely through Baptism he is enrolled forever in the family of Christ, through CONFIRMATION in the army of Christ, through ORDER in the ministry of Christ. Thus there are only three Sacraments which, even if received illicitly, impress a character. Hence: “1. In Baptism character is the sign of the sheep of Christ, by which the faithful are made fit for receiving the other Sacraments. 2. In Confirmation it is the sign of the soldiers of Christ, by which they receive strength for constantly professing the Faith. 3. In Order it is the sign of the ministers of Christ, by which they acquire power for ministering the Sacraments to the faithful.”²²

Article III

On the Constitution of the Sacraments, or on Matter and Form

1399. “All the Sacraments are perfected by three things, namely by things as matter, by words as form, and by the person of the minister conferring the Sacrament with the intention of doing what the Church does.” Thus Eugene IV, to the Armenians. We shall treat of the MINISTER in chapter II.

DEFINITIONS. Generally, that has the notion of matter which is determinable and perfectible through another; but that has the notion of form which is determinative and perfective of another.²³ Hence in the Sacraments:

1. MATTER is a sensible thing, to be determined to the notion of a Sacrament through the form. It is twofold: remote, or the pre-existing sensible thing which is employed in the Sacrament, or about which the sacramental action is exercised; and proximate, which is the very application or use of the remote matter in the sacramental action. Thus in Baptism water is the remote matter, ablution the proximate matter.
2. FORM is the part of the Sacrament which determines the matter to producing the sacramental effect; and it consists in words uttered by the minister, or, for the Sacrament of Matrimony, and this alone, in signs which can hold the place of words.²⁴

1400. Principles. I. Each Sacrament has its OWN matter and form, divinely instituted. It is certain that Christ determined in species the matter and form of Baptism and the Eucharist, as is clear from the Scriptures. As regards the other Sacraments, the same is not altogether certain. For some, with St. Bonaventure, probably think that the Lord constituted the matter and form of several Sacraments, for example Confirmation and Order, only in a general way, by committing to his Apostles the care of determining those signs more particularly when occasion should be given. Yet others, with St. Thomas, more

¹⁸Book VI, 87.

¹⁹Cf. Lugo, disp. 9, n. 50 ff.

²⁰*Exam. Ord.*, n. 24.

²¹3, q. 63, a. 6.

²²*Exam. Ord.*, l. c.

²³Billuart, *de Sacram.*, diss. 1, art. 4, § 2.

²⁴Cf. book VI, 887.

commonly and more probably affirm that all matters, and also forms as to substance, were determined in species by Christ; and consequently that the diversity of sacramental rites which exists between Latins and Greeks, or between the ancient and present Church, does not pertain to the essence of the things.²⁵

Hence you will deduce: 1. Christ the Lord must be called the immediate author of the Sacraments, because, even in the former opinion, he distinguished all the Sacraments singly. 2. The Church, in the dispensation of the Sacraments, can establish or change those things which she judges to be more expedient for the utility of those receiving or for the veneration of the Sacraments themselves, yet with their substance preserved, as Trent has it, sess. 21, cap. 2.

1401. II. For making a Sacrament, certain matter and form must be applied TOGETHER by the same minister, with every essential VARIATION excluded. But that, from the institution of Christ, conjunction, invariability, and certitude of matter and form are required will be clear from what is to be said; for each must be treated singly.

1. As Regards the Conjunction of Matter and Form 1402. So that a Sacrament may be validly made, two RULES must be observed:

Rule 1. Matter and form must be UNITED or applied by the same minister and toward the same subject.²⁶ The reason is that, if one should place the matter and another the form, the words of the form would not be verified; for example, if Titius should say: "I baptize thee," while Caius pours the water, Titius would utter something false, as is plain.

Rule 2. Between matter and form there must be such a CONJUNCTION that, according to the moral estimation of men, with the nature of each Sacrament considered, the one affects the other; or, in other words, the conjunction must be such that, according to human usage, the words are judged to fall upon such a thing and to constitute with it one moral sign. Otherwise the words of the form would not express the truth.

We said with the nature of each Sacrament considered; for according to the diversity of the Sacraments, the conjunction, or simultaneity, must be diverse.

Whence: 1. In the EUCHARIST physical conjunction is required, since the demonstrative pronoun This and This cannot be verified unless the matter is present. 2. In BAPTISM,²⁷ CONFIRMATION, EXTREME UNCTION, and ORDER it suffices for validity that the matter be applied immediately before the form is pronounced, or immediately after it has been uttered. But a delay of one Our Father between the two would invalidate the Sacrament. Whence, in practice, the opinion of Cajetan, as safer, is to be advised; he requires that the form be begun before the application of the matter is completed, or conversely. 3. In PENANCE, which follows the nature of a judgment, a longer delay of time, for example of one hour, can intervene between accusation and absolution. 4. Finally, in MATRIMONY, the same interval is admitted as in contracts, namely it suffices that the consent of one be placed while the consent of the other perseveres.²⁸

2. As Regards Invariability 1403. Preliminary note. In the matter and form of the Sacraments there can occur a twofold variation or change, namely substantial and accidental. "A substantial change of matter is said to occur when, according to the common use and estimation of men, it differs, in name and in reality, from that which Christ prescribed. An accidental one is said to occur when it retains the same use and name with it. A change of form is essential when the same sense does not remain; accidental, when it remains."²⁹

1404. Principles. I. A SUBSTANTIAL change in matter or in form, whether it is made on purpose and deliberately, or from error or inadvertence, always prevents the validity of the Sacrament. The reason is that through such a change the rite instituted by Christ is taken away (cf. n. 1400).

1405. II. An ACCIDENTAL change does not prevent the validity of the Sacrament; but, according to the gravity or smallness of the change, it induces grave or light sin. The reason for the first is that an accidental change does not take away the institution of Christ. The reason for the second is that it takes away the rite prescribed by the Church: either under grave obligation, for example when she commands that consecrated water be employed in solemn Baptism; or under light obligation, for example when she orders that even the least interruption in pronouncing the words of the form be avoided.³⁰

²⁵Book VI, 12; *H. A.*, XVII, 15; 1 *Elench. qq. ref.*, n. 60.

²⁶Gury, n. 197, III.

²⁷1 *Elench. qq. ref.*, n. 59.

²⁸Book VI, 9, 10, 446.

²⁹Book VI, 11.

³⁰Book VI, 109; cf. *Exam. Ord.*, n. 6.

Matter is changed substantially in many ways, the principal of which we shall enumerate in their proper places.

1406. Form can be changed especially in six MODES, as is indicated by these little verses:

Take nothing from the form, add nothing, vary nothing; Beware to transpose, to corrupt words, to delay.

1. By OMISSION: a change of this kind is substantial if essential syllables or words are omitted, for example the word Thee in the conferral of Baptism; but it is only accidental if non-essential words are omitted, for example I, in the same conferral of Baptism.
2. By ADDITION: this is substantial if it takes away the truth of the Sacrament, for example if you say: I baptize thee in the name of the greater Father, of the lesser Son, etc.; accidental, if it does not remove the due sense, for example if you say: In the name of the Father, who created thee, etc.
3. By VARIATION of words: this can be substantial or accidental according as the explicit sense of the form is taken away, for example if you say: In the name of the Most Holy Trinity; or is retained, for example, I wash thee.
4. By TRANSPOSITION; this ordinarily is only accidental, as: Thee I baptize.
5. By CORRUPTION of words, namely from a change of letters. Such a change is more easily substantial at the beginning than at the end of words, because the sense is more easily changed for those hearing, for example if one says: in the name of the mother instead of of the Father; than if one says: chalis instead of chalice.
6. By INTERRUPTION, by which the unity of the speech can be taken away, as if, after having said, This is, you recite a psalm or delay much; but not if, after having said, I thee, you cough, or impose silence on children, and then immediately conclude baptize, etc.

3. As Regards Certitude 1407. Preliminary note. Doubt concerning the matter or form of the Sacraments can be of law or of fact. The first is when it is doubted whether such matter, for example water extracted from flowers in Baptism, or such a form, was instituted by Christ as valid. The other is when it is doubted whether the matter or form to be employed, or already employed, is that which Christ instituted: for example, whether this liquid is water; whether the form was duly uttered.

RULES. In every doubt, whether of law or of fact, concerning matter and form, or generally concerning the VALIDITY of the Sacraments, three rules must be observed: The first is: If there is possibility, let the safest way be chosen, that is, the safer or morally certain opinion. The second: If there is no possibility, let the way be chosen which is nearest to the safest, that is, when certain matter is lacking, let doubtful or probable matter be employed, but under a conditioned form, so that counsel may be taken both for the necessity or grave utility of the recipient, and for the reverence due to the Sacrament. The third: When the impossibility ceases, what the impossibility prohibited must cautiously be supplied.³¹ The first and second rule have already been weighed in the Treatise on Conscience (n. 82). Finally, concerning the third, here:

1408. IT IS ASKED. Whether and when a Sacrament not rightly made can or must be REPEATED?

Resp. 1. If it is prudently doubted whether one of the three unrepeatable Sacraments has been validly conferred, it must again be conferred under condition: Baptism indeed, on account of the greatest necessity of this Sacrament; Order, lest it happen that the Sacraments be invalidly administered; Confirmation, lest the soldier of Christ lack strength for constantly holding and professing the faith. The reason is that, on the one hand, in doubt concerning the validity of a Sacrament, the opinion favoring souls is to be preferred; but on the other hand, no irreverence is inflicted upon the Sacrament when it is conferred under condition from a reasonable cause.

Resp. 2. If there is prudent doubt concerning the validity of a repeatable Sacrament, it CAN be conferred again under condition when notable utility of neighbor is present; but it MUST be, when the Sacrament is necessary. The reason is the same as above.

Resp. 3. To repeat, on account of an empty doubt, a Sacrament, although under condition, is of itself a grave sin. The reason is that a rash repetition of a sacramental action is grave irreverence. Nevertheless, by accident the scrupulous are excused, on account of perplexity. And he seems to sin only venially who repeats a word or syllable in the utterance of the form.

Note. When doubtful Baptism is conferred publicly, the condition must be expressed in words (as the Ritual wills), lest those standing by believe that Baptism is being repeated absolutely against the law of the Church. Indeed, it will be safer

³¹Cf. Haine, *de Sacram.*, cap. 4, dub. 11.

(or at least more becoming) to express the condition in words whenever any Sacrament whatever is ministered under condition, whether publicly or privately.³²

Chapter II

On the Minister of the Sacraments

1409. DEFINITION. The minister of the Sacraments is called the one who, in the name of Christ, whose mandatary he is, completes the sacramental action.

DIVISION. One minister is ordinary, who, according to the customary order constituted by Christ and by the Church, can make the Sacrament. Another is extraordinary, who, outside this order, makes some Sacraments, but on account of a peculiar privilege, delegation, or necessity. Thus in Baptism the ordinary minister is a priest; the extraordinary minister, in a case of necessity, is any man whatever (cf. n. 1411).

These things having been noted beforehand, we shall treat of those things which are required in the minister, 1. that he operate validly, 2. that he operate licitly.

Article I

On the Requisites in the Minister That He May Operate Validly

1410. Principles. I. For the valid making or administration of the Sacraments there is not required in the minister either the STATE OF GRACE, or PROBITY OF LIFE, indeed not even FAITH itself. This is established from Trent, sess. 7, can. 11 and 12; and the reason is that the Sacraments operate not from the disposition of the minister, but through divine power, according to the institution and merits of Christ.³³ But indeed:

1411. II. There is required in the minister POWER divinely granted. The reason is that God alone can join grace to the acts of the minister. But certain Sacraments can be conferred by Bishops alone, either exclusively, as Order, or by ordinary faculty, as Confirmation. Others fall equally under the power of Bishops and simple priests, yet with suitable subordination, as the Eucharist, Penance, and Extreme Unction. Finally others do not require for themselves a specially consecrated or deputed minister, as Baptism, which can validly be conferred by every man; and Matrimony, whose ministers are the contracting parties themselves.³⁴

1412. III. There is required in the minister at least an INTENTION, or will of doing what the Church does; but a VIRTUAL intention suffices. The reason why some intention is required is that the matter and form of the Sacraments are of themselves indifferent to the being of a Sacrament, since they can be ordered to a joke or to another end; therefore they must be determined through intention.³⁵ Now, to denote the object and quality of the intention:

It is said 1. There is required at least the intention of doing what the Church does; this is clear from the Decree of the Council of Florence, where it is said that the Sacraments are made “with the intention of doing what the Church does.” Nicholas I declared the same, who responded that Baptism conferred by a Jew or pagan is valid, “if it was conferred with true matter and form; for such a Baptism is valid, on account of the general intention of doing what the Jew or pagan has heard is done by Christians or by the Church of Christ.”³⁶

From this you will deduce: 1. That for the validity of a Sacrament there is not required an explicit intention of making a Sacrament; or of performing an external rite as formally and absolutely sacred; or of producing the effect of the Sacrament: for these are held implicitly in the intention of doing what the Church does. 2. That a mimicking intention, or another by which the intention of doing a sacred thing would be excluded, does not suffice, as is drawn from the condemnation of Luther;³⁷ nor does an intention, even a serious one, of placing an external act suffice; for that act could be directed to other ends, for example to exciting faith, as heretics will; whence the opinion of Catharinus, teaching that an external intention suffices, is scarcely probable (and therefore in no way safe), although concerning this opinion no express definition of the Apostolic See has come forth.³⁸ 3. The authors add that there is not required the intention of doing what the Roman

³²Book VI, 28-29, and 2 *Elench. qq. ref.*, 17; cf. also the MISSAL, *de Defectibus*, V, 2, where a tacit condition is valid.

³³Book VI, 13.

³⁴*Exam. Ord.*, n. 10; book VI, 113, 170, 539, 761, 897.

³⁵*Exam. Ordin.*, n. 9, 18.

³⁶Book VI, 22, end.

³⁷Trent, sess. 14, can. 9, on Penance.

³⁸Cf. Panzuti, book VI, 19-21.

Church does, but that the intention of doing what the true Church instituted by Christ does suffices. Whence those rightly baptized by heretics, who deny that the Roman Church is the true Church, are not to be rebaptized.³⁹

1413. It is said 2. A VIRTUAL intention suffices (cf. n. 272, 6). For it is certain that an actual intention is not required; although this is excellent, and therefore greatly to be desired, nevertheless it is not always possible to man, “because, besides the intention,” as St. Thomas writes,⁴⁰ “when a man wishes to intend much, he begins to think other things.” It is likewise certain that a habitual intention does not suffice (namely one which someone had at some time and has not revoked, and which endures in no effect); because an intention of this kind does not make the action elicited in a human manner, as is required in the minister, from whom the Sacraments proceed as from an operating cause. Much less sufficient will be the intention which is called interpretative, when someone, for example sleeping or drunk, has no actual intention and never had one, but would have it if he noticed. Therefore a VIRTUAL intention is required and suffices, namely that by which someone, although here and now he does not intend to make a Sacrament, nevertheless acts by force of an actual intention previously had; as if someone, for example, having had in the morning the intention of celebrating Mass, afterwards goes to the church, clothes himself with sacred vestments, etc. For, led by such an intention, the minister operates in a truly human manner, since the intention is the true cause of the act which he places. Thus all.⁴¹

Hence you will deduce: 1. A minister who in the usual manner placed the actions required for a Sacrament, provided he did not exclude the intention, afterwards doubts concerning the same only imprudently; because at least he willed to do what otherwise is usually done by himself or by others, and thus he had the intention in act exercised. 2. Even a coerced intention and one extorted by fear suffices for the validity of the Sacrament, because fear does not take away the voluntary. Matrimony is excepted, from which force and fear must be absent, at least from the definition of the Church. 3. The Sacrament is valid even if the minister perhaps erred concerning the person of the recipient, unless his intention was bound exclusively to some determinate person, which is wont to happen only in Matrimony.

1414. Questions. Q. 1. Whether a Sacrament conferred with a CONDITIONED intention is valid?

Resp. Affirmatively, if the condition is appended concerning a present or past thing; for, since the added condition has already been verified, the conditional intention passes into an absolute one. Nor does an appended condition of this kind prevent the validity of the Sacrament, nor even its liceity, if namely it is appended on account of a just cause, as we shall say in its own place (n. 1663, q. 5).

But the Sacrament is not valid if the condition concerns the future; because no Sacrament is perfected unless the form is applied to present matter. Matrimony is excepted, which, after the likeness of other contracts, can be celebrated under a condition concerning the future; for then the Sacrament is perfected when, the condition having been fulfilled, the contract is perfected.⁴²

Similarly, a Sacrament is not valid if a condition is appended which cannot be known humanly, for example, “I absolve thee, if God truly foreknows that it will be that thou restore.” The reason is that, since God has committed the administration of the Sacraments to the knowledge and will of men, a condition cannot be appended which is impassable to human knowledge.⁴³ Recall what was said, n. 1408, Note.

Q. 2. What if the minister has two contrary intentions?

Resp. 1. If those two contrary intentions are simultaneous, the predominant one prevails, namely that which would be chosen by the minister if he knew that both could not stand together; but if neither is predominant, the minister effects nothing, for the one destroys the other. 2. If one intention succeeds another, the later one prevails. Except if through the former any subsequent will whatever was revoked, at least virtually; for then the prior will, provided it is not expressly revoked, certainly prevails. If doubt perseveres, the validity of the Sacrament will be doubtful. These things can happen especially in the Eucharist and in Matrimony.⁴⁴

Q. 3. Whether, besides intention, ATTENTION also is required in one making a Sacrament?

Resp. Certainly attention is required for LICEITY, as will be seen below.⁴⁵ But the opinion of Lacroix, who affirms that attention is necessary for the VALIDITY of a Sacrament, seems improbable. For all authors say that for the validity of a

³⁹Book VI, 20-23.

⁴⁰3, q. 64, a. 8, ad 3.

⁴¹Book VI, 15-18; *H. A.*, XIV, 2.

⁴²Book VI, 25, 26.

⁴³*Ibid.*, 26; see also St. Alphonsus on Trent, sess. 7, n. 31.

⁴⁴Book VI, 24.

⁴⁵Cf. book VI, 224, and 410, dub. 5.

Sacrament, nothing else is required, besides matter and form, than the intention of the minister, as was defined by the Councils. Nor does it prevent this to say that an action which happens without attention is not human; for although a man, about to operate in a human manner, must attend to the end of the work which he intends to perfect, nevertheless it is not required that he actually attend to the work which he executes. Hence Suarez excellently teaches that a minister, although distracted, truly makes the Sacrament; because, as he says, his action is simply human and free, and proceeds from a prior intention.⁴⁶

Article II

On the Requisites in the Minister That He May Operate Licitly

Besides those things which are necessary for validity, three things are required on the part of the minister, namely that 1. he be worthy and fit; 2. that he act worthily and rightly; 3. that he confer the Sacraments on the worthy.

1. That He Be Worthy and Fit 1415. Principles. I. In order that the minister of the Sacraments be worthy and fit, there is required first that the CHURCH in some way have DEPUTED him. The reason is that the making and administration of the Sacraments is part of the sacred ministry, which Christ committed to his Church.

But one is deputed either generally or specially: generally indeed for private Baptism in a case of necessity, and for Matrimony; specially, however, for the other Sacraments; for these cannot validly be made except by a consecrated or ordained minister, nor licitly administered (indeed, if Penance is in question, not even validly), unless by a minister endowed with some jurisdiction, at least delegated.

1416. II. For the licit making and administration of the Sacraments there is required that the minister (at least if he is consecrated and ministers solemnly) be IN THE STATE OF GRACE. The reason is that holy things are to be treated holily, and because the minister must be conformed to Christ, whose person he bears and in whose name he operates.⁴⁷ “Wherefore” (thus the Roman Ritual) “he will perpetually take care of this, that he conduct life integrally, chastely, and piously; for, although the Sacraments cannot be defiled by the impure, nor the effect impeded by wicked ministers, nevertheless those ministering them impurely and unworthily incur the guilt of eternal death” (cf. n. 583).

1417. From these things it follows: 1. Pastors and other priests upon whom from office it is incumbent to minister the Sacraments are bound always to have themselves prepared for ministering the Sacraments in the state of grace. But if someone, existing in mortal sin, must minister them, he is first bound to elicit an act of perfect contrition; but he is held by no law to confess, except before Communion or the celebration of Mass, according to the Decree of Trent, sess. 13, cap. 7.⁴⁸ “But if he has an abundance of a Confessor, and the account of time and place allows, it is fitting to confess.” Thus the Roman Ritual (cf. n. 1547).

2. One celebrating Mass in mortal sin commits four mortal sins, because he unworthily consecrates, unworthily ministers, ministers to himself unworthily, and unworthily receives.⁴⁹ Yet he sufficiently expresses these in confession if he says: “I celebrated in mortal sin.”
3. A priest (or Deacon) ministering the Eucharist in mortal sin sins mortally, because he unworthily places an act by which he proximately concurs toward the sanctification of those communicating. Thus one must hold with Suarez and many against Lugo and others. Yet he does not commit several sins if he distributes Communion to several, because it is one banquet.⁵⁰
4. A Confessor commits as many sins as the persons whom he absolves while constituted in mortal sin; because each absolution is a complete judgment. But if he only hears confession, more probably he does not sin gravely, because he does not make the Sacrament.⁵¹

NB. See other things n. 1439, on the unworthy MINISTER.

1418. Questions. Q. 1. Whether one sins gravely who, necessity compelling, ministers a Sacrament in mortal sin if he HAS NOT BEEN ORDAINED to it; or, if he has been ordained, ministers it NOT SOLEMNLY?⁵²

⁴⁶Book VI, 14.

⁴⁷Cf. St. Thomas, 3, q. 64, a. 6.

⁴⁸Book VI, 33, end, and 34.

⁴⁹Ibid., 35, Hence; and *Exam. Ordin.*, n. 11, end.

⁵⁰Book VI, 35; *Exam. Ordin.*, 13; 1 *Elench. qq. ref.*, n. 62.

⁵¹Book V, 50, q. 6; VI, 36.

⁵²*H. A.*, XIV, 6, end; *Exam. Ordin.*, n. 12.

Resp. The first opinion denies this with St. Thomas; because he does not exhibit himself as a minister of the Church, but aids one suffering necessity. This opinion is indeed probable; but the second opinion, affirming, considered according to reason, seems more probable. The reason is that the obligation of ministering in the state of grace is not derived only from the consecration of the minister, but also from the sanctity of the Sacraments themselves, which must always be handled holily; and indeed under grave obligation, in a grave matter. Moreover, although a minister who is not consecrated does not act in the name of the Church, nevertheless he acts in the name of Christ, cooperating immediately with Him for the sanctification of the soul; whence whoever exercises such an office ought to be endowed with sanctity.⁵³

Hence, more probably, speaking per se, the following sin gravely: 1. a layman, or a priest, ministering Baptism non-solemnly in a case of necessity, if he ministers in mortal sin; 2. one contracting Matrimony in mortal sin; and since such a person at the same time receives and ministers the Sacrament, he stains himself with a twofold sin.⁵⁴ We have said, speaking per se; for, per accidens, a minister, whether consecrated or not consecrated, is excused if he ministers in mortal sin the Sacrament of Baptism or Penance in necessity, for example if he could not be contrite so quickly, and there were danger that the dying person would depart without Baptism or absolution, as is commonly taught.⁵⁵

Q. 2. Whether a minister sins gravely who, in mortal sin, exercises other SACRED FUNCTIONS which are not the making or administration of the Sacraments?

Resp. Some affirm with St. Thomas, who says that all who exercise, from office, the functions of the Order received, from the Bishop even to the Porter, commit grave fault if they are in mortal sin. But others more commonly, and sufficiently probably, deny this with Suarez; and the reason is that, since all the other exercises of Orders, besides the making and administration of the Sacraments, are not proximately ordered to the sanctification of the soul, they do not seem under grave obligation to require the sanctity of those exercising them. Yet these commit venial fault, and indeed the graver, the more their action approaches the ministry of a Sacrament.⁵⁶

Hence: 1. Not improbably several authors assert that he does not sin gravely who, existing in mortal sin, touches the Eucharist immediately or mediately from office, for example by carrying it in procession, or by blessing the people. Yet the opposite opinion of St. Thomas is also very probable.⁵⁷

2. Deacons and subdeacons who, in mortal sin, minister at the altar do not sin gravely, according to a sufficiently probable opinion, even if they minister frequently.⁵⁸
3. A Bishop who, in mortal sin, makes chrism or holy oil does not seem to sin gravely.⁵⁹ Nor does a Bishop or priest sin mortally who, in mortal sin, consecrates a church, blesses sacred vestments or corporals, assists at Matrimony, blesses ashes, lustral water, etc. Thus very commonly against a few.⁶⁰
4. A preacher, preaching in mortal sin, does not sin gravely, as is taught more commonly and more probably. Yet authors commonly do not excuse him from venial sin, on account of some irreverence which is done to the divine word. Nay more, if the preacher inveighs against a vice concerning which he himself is publicly defamed, he does not seem to be excused from mortal sin; because then he gives scandal and impedes the end of doctrine.⁶¹

2. That He Act Worthily and Rightly 1419. Among SACRAMENTAL RITES, some are essential, others only accidental: ESSENTIAL rites are those which Christ the Lord Himself instituted, and without which the Sacrament is invalid. ACCIDENTAL rites are called those which the Church has prescribed for the more fitting decency and splendor of the sacramental action.

1420. Principles. I. There is a grave obligation of observing all ESSENTIAL rites of the Sacraments. This namely is required: 1. by religion; "for it is in a certain way to mock Christ, the author of the Sacraments, to employ, against His institution, signs for conferring grace in His name which He Himself did not assume for this";⁶² 2. by charity, because

⁵³Book VI, 32; *Exam. Ordin.*, n. 12.

⁵⁴*Ibid.*, end; 1 *Elench. qq. ref.*, n. 61.

⁵⁵*Ibid.*, 33.

⁵⁶*Ibid.*, 37-40.

⁵⁷*Ibid.*, 35, end.

⁵⁸*Ibid.*, 38.

⁵⁹*Ibid.*, 39.

⁶⁰Book VI, 40.

⁶¹*Ibid.*, 41.

⁶²Reuter, p. 4, tract. 1, cap. 1, n. 14.

otherwise one's neighbor is deprived of a great spiritual good; 3. by justice, if the Sacrament is requested; for by the very fact that the minister consents to confer it, he tacitly obliges himself to its valid conferral.⁶³

Hence: 1. One ministering sins mortally if he uses false matter or form, or, outside necessity, doubtful matter or form. 2. He also sins gravely when he pronounces the words of the form corruptly, inarticulately, without devotion, if from this he undergoes proximate danger of erring in substantial matters. Otherwise venially, unless scandal or contempt is present (cf. nn. 1405 and 1406).

1421. II. All rites prescribed by the CHURCH, or received by custom, even IN ACCIDENTAL MATTERS, must be observed with diligent care.

The reason is that the Sacraments, as holy things, must be handled holily, and the precepts of the Church oblige in conscience. Whence Trent (sess. 7, can. 13): "If anyone shall say that the received and approved rites of the Catholic Church, accustomed to be used in the solemn administration of the Sacraments, may either be contemned, or be omitted by ministers according to pleasure without sin, or be changed into other new rites by any pastor whatsoever of the Churches: let him be anathema" (cf. n. 583).

Hence: 1. If the aforesaid rites are omitted or changed from contempt, it is mortal. 2. If from negligence, it is often mortal, when the omission or change is notable, or in a grave matter. But what omission, in individual Sacraments, is to be held notable matter, will be explained below in the proper places. 3. If some ceremony or laudable custom is omitted which is only of counsel, there will per se be no sin.

1422. It is asked: Whether it is of precept to use the ROMAN RITUAL in the administration of Sacraments and Sacramentals?

Resp. Affirmatively, unless perhaps other rites have been granted somewhere. This is established from the Bull of Paul V, *Apostolicae Sedis*, of June 16, 1614, in which one reads that the Roman Ritual contains "rites ... which ought to be observed" by all exercising the care of souls.⁶⁴ The Sacred Congregation of Rites declared the same thing, on April 7, 1832, and May 23, 1835, saying: "Those books alone are to be employed, and in them only blessings which are conformable to the Roman Ritual; ... nor are other formulas to be employed, provided it is not established that they have been approved by this Sacred Congregation."⁶⁵ Nor is it licit for Bishops to change the prescriptions of the Roman Ritual at will; and if perhaps a Bishop had established changes, this is not a sufficient dispensation for priests (S. R. C., January 10, 1852).⁶⁶

We have said unless other rites have been granted somewhere; for the Holy See, for diverse dioceses, has approved Rituals differing in several matters from the Roman Ritual. Moreover, customs according to or beside the law can be retained, as is clear from the Roman Ritual itself and from several declarations of the Sacred Congregation of Rites. But customs contrary to the Rubrics and decisions of the Sacred Congregation of Rites must be eliminated. Yet if abuses are general and inveterate, the Bishop "in correcting these should proceed with all patience and doctrine, and, according to the opportunity given him, should strive to eliminate them in such a way that the faithful suffer no scandal from it." S. R. C., May 9, 1857, to the Bishop of Limburg.⁶⁷

Note from the ROMAN RITUAL: 1. "In every administration of the Sacraments the priest is to be vested in a surplice, and over it with a stole of that color which the rite of the Sacrament demands; unless in ministering the Sacrament of Penance occasion, or custom, or place sometimes advises otherwise. 2. He shall also employ at least one cleric, if he has one, or several, according as the nature of the place and of the Sacrament requires, in becoming habit and likewise vested in surplice."

3. That He Confer the Sacraments on the Worthy 1423. Principles. I. A minister conferring the Sacraments on the UNWORTHY sins gravely, unless from denial graver inconveniences would follow.

The first is clear: 1. from Matthew 7:6: "Do not give what is holy to dogs..." And from 1 Corinthians 4:2: "Here now it is required among dispensers that a man be found faithful." 2. From reason; for a minister who knowingly and willingly would dispense the Sacraments to the unworthy would violate both the virtue of religion, because he would handle the Sacraments irreverently and defraud them of their effects, and the precept of charity, because he would cooperate in the sin of those receiving unworthily. The second follows from what was said on Cooperation; for it is licit, on account of proportionately grave causes, and by giving one's work to a good thing, to cooperate materially in the sins of others.

⁶³Book VI, 619.

⁶⁴Ibid., 285, dub. 4.

⁶⁵Cf. Gardellini, n. 4681, 5; 4748, 9.

⁶⁶Ibid., n. 5165, 4.

⁶⁷Benger, *Compend.*, n. 317.

Whence it is licit to minister the Sacraments to one asking unworthily, if this is necessary to avoid scandal, or unjust defamation, or violation of the sacramental seal.

1424. II. The minister ought to INQUIRE concerning the worthiness of the recipient, according to the nature of each Sacrament. Namely, Sacraments are to be distinguished in whose administration the priest is judge, from those in whose conferral he is only dispenser. Of the former kind are Baptism of adults, Penance, Order, and Matrimony with respect to the impediments of Matrimony: therefore for these Sacraments the minister ought, from positive indications, to form for himself a prudent judgment concerning the worthiness or fitness of the recipients. Of the latter kind are Confirmation, the Eucharist, and Extreme Unction, to which Sacraments all have a right who live as Catholics. Whence for administering these it suffices that it is not established to the minister that those asking are positively unworthy.⁶⁸

From the preceding principles the following RULES are drawn:

1425. Rule 1. A HIDDEN sinner asking publicly is not to be denied a Sacrament. This is established by the example of Christ, who gave Communion to Judas. And the reason is that in these circumstances Christ is judged to yield His right, both so that the sinner may not lose the reputation to which he has a right, and especially so that many very grave inconveniences, such as scandals, omission of the Sacraments, etc., may be avoided.⁶⁹

1426. Rule 2. A HIDDEN sinner, asking secretly, is to be denied the Sacrament until his penitence is established. The reason is that both reverence for the Sacrament and the good of the one asking demand this.

It is said 1. a hidden sinner, namely one whom the minister knows as such from certain knowledge, but outside confession; 2. asking secretly: this happens when the one asking is found either alone with the minister, or only with a few, and of such condition that no attention should deservedly be paid to them, as little children would be; 3. until his penitence is established; but this is established if it is known to the minister that the guilty man has made confession either with him or with another priest, even secretly. Nor is one to inquire whether absolution was given; for, even if the minister himself had denied it, he could not, without breaking the seal, admonish the guilty man, nor, as the truer opinion holds, repel him from the Sacrament under the pretext of other causes.

1427. Rule 3. A PUBLIC sinner, unless he has given sufficient signs of conversion and has removed scandal, is to be denied the Sacrament, whether he asks for it publicly or secretly. The reason is that the divine precept presses: "Do not give what is holy to dogs"; nor is an excusing cause given, as is plain from what has been said.

It is said 1. a public sinner. But a sinner is called public either absolutely, namely when his unworthiness is certain and notorious to the community, by notoriety of law, or of fact, or of reputation (cf. n. 1199); or respectively, when the unworthiness is known only to those in whose presence the Sacrament is requested. If, therefore, the community, or all those present, know the unworthiness of the one asking, the Sacrament is to be denied. And the same must be said if knowledge of a crime committed in another place will easily come into the parish, or if there already exists so grave a suspicion of it that it is equivalent to moral certainty. More probably, however, it is not to be denied if the unworthiness of the one asking is known only to most of those present. The reason is that such a sinner still possesses his reputation with respect to those who are ignorant of his crime.⁷⁰

It is said 2. the Sacrament is to be denied; under this name not only the Most Holy Eucharist is to be understood, but also the other Sacraments, even though the priest is their simple dispenser. Penance alone is excepted, which, since it was instituted for sinners, is never to be denied to anyone, unless perhaps a special prohibition has been made, for example on account of reserved censures, or because the penitent must first make satisfaction or furnish a guarantee of making satisfaction.⁷¹

It is said 3. unless he has given sufficient signs of conversion. For whenever the crime is certain and notorious, the penitence likewise ought to be certain and notorious. But a sufficient indication of conversion is had if a sinner who is not living in habitual scandal makes confession publicly or before several, so that the penitence is shortly to be manifested. It is otherwise if there were a notorious occasion first to be left, or if some retraction to be made beforehand were pressing.⁷²

1428. Let it be noted: 1. Among those who are to be kept from Communion as publicly unworthy are enumerated in the Roman Ritual: excommunicated persons who are notorious, those interdicted, and those manifestly infamous, as prostitutes, concubinarians, usurers, at least those who are public by law or condemned by sentence of a judge, magicians,

⁶⁸Book VI, 43.

⁶⁹Book VI, 50; cf. Lugo, *De Sacram.*, disp. 8, sect. 10-14.

⁷⁰Book VI, 44, 45.

⁷¹Scavini, III, n. 40.

⁷²Book VI, 47.

sorcerers, among whom are fortune-tellers, blasphemers, for example those who are accustomed by writings or words to assail religion and the Church with calumnies, and other public sinners of this kind,⁷³ as are

public customary sinners, those notoriously enrolled in condemned sects, actors and actresses exhibiting impious or shameful plays, those rebelling against the legitimate authority of their prelates, etc. To these, moreover, must be added, as is clear, those who are publicly and actually in sin, for example those manifestly here and now drunk, or women so immodestly uncovered that the uncovering is per se mortal.

2. "The Sacraments, if they are to be publicly denied, must be denied in a prudent manner. Whence all things must be avoided by the minister by which either he himself would become liable to the laws punishing defamation, or a greater impediment would be put in the way of the conversion of the unworthy person. Therefore the motives of the denial are not to be publicly explained; wherefore, if the unworthy person approaches the sacred Table with others, the priest should pass him by in such a way that he reveals nothing either by words or by nod. But if during Mass he alone approaches, let the priest remain at the altar, and through another let him inform him that he cannot offer him the sacred banquet, yet without saying why he cannot."⁷⁴

With respect to the dying in particular, see n. 1854 in the Treatise on Penance.

1429. Questions. Q. 1. What is to be done IN DOUBT concerning the crime or concerning penitence?

Resp. Distinguish. 1. If the crime is certain and penitence doubtful, the Sacrament certainly is to be denied until penitence is established, because infamy possesses. 2. If there is doubt concerning the crime, the Sacrament cannot be denied, except in the case in which a positive sign of the fitness of the one asking would be required, as was said (n. 1424).

There is excepted: 1. The Sacrament of ORDER, from which an unworthy cleric, even though hidden, must altogether be kept; because he who thrusts himself into public offices for which he is not fit is to be repelled even with infamy, if it cannot be done otherwise, on account of the public good. Thus from Trent (sess. 14, cap. 1, *de Ref.*).⁷⁵ Nor is the Bishop obliged to manifest the cause of the rejection; nor does appeal belong to the one rejected, but only recourse to the Holy See⁷⁶ (see n. 1916, q. 2).

2. MATRIMONY, at which the pastor is prohibited from assisting, for example if outside Confession he has known some impediment, as will be said in its place. Yet he can be excused, even though the contracting parties are publicly unworthy, if he assists in order to avoid death or grave evils of the community, or of the contracting parties themselves, for example lest they themselves persevere in sin, e.g. in civil marriage.⁷⁷

Q. 2. Whether fear of DEATH or INFAMY can excuse a minister if he confers a Sacrament on the unworthy?

Resp. 1. "The first opinion affirms, provided the Sacrament is not demanded in hatred of the faith, or in contempt of religion. The reason is that, if the infamy of a sinner publicly asking for a Sacrament excuses such ministration and repairs the irreverence toward the Sacrament, why ought not death or infamy to be undergone by the minister excuse him?"⁷⁸

2. But the second opinion, to which St. Alphonsus adheres, denies; because the adequate reason on account of which the Sacrament is not to be denied to a hidden sinner is not that his reputation be preserved for him, but especially, except in the case of Matrimony, that "grave inconveniences be avoided which would follow from it, namely scandals of others, by which, if a priest could publicly deny Communion on account of a hidden crime, perhaps even the good would be deterred from the reception of Communion, fearing lest because of hatred or imprudence they might be cast away by the priest, etc. But these inconveniences and scandals certainly do not intervene in a minister who would be forced by fear to minister a Sacrament to an unworthy person; indeed it would be an edification to the people if, in order to preserve reverence for the Sacrament, he exposed himself to the danger of death."

Q. 3. Whether it is licit to SIMULATE or DISSIMULATE a Sacrament, lest it be conferred on the unworthy?

Note beforehand. 1. SIMULATION of a Sacrament is had when the minister places its matter and form, or the form alone, without the internal intention of making the Sacrament. It is distinguished into formal and material. Formal is that by which the deception of another is directly intended; material is that by which the deception of another is only permitted. 2. DISSIMULATION of a Sacrament is said to be had when the fiction or defect is so exterior that it can be known of itself:

⁷³Konings, n. 1233.

⁷⁴Konings, n. 1233.

⁷⁵Book VI, 50.

⁷⁶Ibid., 52.

⁷⁷Ibid., 54.

⁷⁸Ibid., 49; cf. 1 *Elench. qq. ref.*, n. 63.

as, for example, if the matter or form of the Sacrament is not placed, but in its place something else is substituted, so that something other than a Sacrament is done.

Resp. 1. It is never licit, not even materially, to SIMULATE a Sacrament. The reason is that every simulation inflicts a grave injury on the Author of the Sacraments, by abusing sacred things instituted by Him. Hence Innocent XI proscribed this proposition: "Urgent grave fear is a cause for simulating the administration of a Sacrament." Say the same concerning reception, because the same reason applies.

Resp. 2. It is licit, for cause, to DISSIMULATE a Sacrament, provided this is done apart from contempt, scandal, intention of deceiving, or another evil circumstance. The reason is that then neither is sacrilege committed, since the sacred sign instituted by Christ is absent, nor a lie, since deception of neighbor is neither intended nor necessarily had; only the truth is hidden, which, when a just cause accedes, all with St. Thomas permit⁷⁹ (cf. n. 1181).

1430. From these things you resolve: 1. It is never licit to utter the words of absolution over one indisposed, or the words of consecration over bread without the intention of consecrating, or to omit the consecration during the celebration of Mass. Nor similarly is it licit to give to one approaching the sacred Table, even one knowing and consenting, a host not consecrated in place of a consecrated one. The reason is that in this case, "although indeed a Sacrament is not simulated, which is not there, nevertheless bread is exposed to the adoration of those standing by and of the recipient himself, who, just as he would sin externally by adoring an idol, even from fear of death, so also would sin externally by adoring an unconsecrated host; and he would sin more gravely than if he communicated unworthily."

2. It is licit for a confessor to pray over one indisposed and to impart a blessing to him, lest his indisposition be disclosed to the others; for this is not an abuse of a sacred thing, since no sacramental thing is placed; nor a lie, because either of itself or from the circumstances the action can be explained, and only for a grave cause is the error of others permitted. Likewise, one can, without simulation, approach the confessional, kneel, and speak about a matter. Likewise, in the case in which someone cannot dispose himself for Communion, it is licit for him, to avoid infamy or scandal, to agree with the priest that the latter only pronounce over him the words: *Corpus D. N. J. C.*, etc., without giving a host; because then a Sacrament is not simulated.

Finally, neither is it illicit for spouses, on account of grave fear, for example of infamy or scandal, to simulate the external celebration of Matrimony; for where voluntary consent is lacking, there the matter and form of the Sacrament are lacking; whence indeed the contract is simulated, but the Sacrament is not simulated.⁸⁰

Note. On the OBLIGATION which a pastor has of ministering the Sacraments, it will be said in the Treatise on the Clerical State (n. 2271). See what has already been said, nn. 485 sqq. and 491 sqq., with respect to the obligation of charity by which other priests are bound.

Chapter III

On the Subject of the Sacraments

1431. The SUBJECT of a Sacrament is he who receives the Sacrament and is capable of the effect of the Sacrament.

That only man as wayfarer is the subject of a Sacrament is established both from Sacred Scripture and from the perpetual tradition of the Church; for he alone is capable of first grace or of its increase. Yet not every man as wayfarer is capable of all Sacraments. Thus infants are incapable of Penance and Matrimony; women, of Order; the healthy, of Extreme Unction.⁸¹

In this chapter we must treat: 1. of the requisites for valid reception of a Sacrament; 2. of the requisites for licit reception.

Article I

On the Requisites for Valid Reception of a Sacrament

1432. Principles. I. For VALID reception of the Sacraments there is not required faith, nor probity in the subject, if you except Penance. This is established from the practice of the Church, which never permitted heretics or wicked men, rightly baptized or ordained, to be baptized or ordained again. A fortiori, ATTENTION is not required, which is not even demanded in the minister.

⁷⁹Book VI, 59.

⁸⁰Book VI, 59-62; *Exam. Ordin.*, 16-17.

⁸¹Book VI, 79.

1433. II. In every recipient, BAPTISM is prerequisite for the validity of the other Sacraments: “The reason is that the Sacraments were instituted for the Church alone, and men become of the body of the Church through Baptism alone, as Eugene IV defined in the Decree of Faith to the Armenians.”

Hence: 1. If the Eucharist were ministered to a Jew or pagan, he would indeed receive the Body of Christ, but only materially, as the pyx receives it. 2. The marriage of unbelievers, even if it were made according to the rite of the Church, would always be a mere contract.⁸²

1434. III. In ADULTS, for valid reception of the Sacraments, INTENTION is required, yet diverse according to the diverse nature of the Sacraments. The reason is that God, in His present providence of things, does not will adults to be justified or sanctified without their will and consent; and therefore He has established that the means of salvation be applied only to those willing. Whence Innocent III says: “But he who never consents, but wholly contradicts, receives neither the thing nor the character of the Sacrament.”⁸³ Therefore one who has himself merely passively, neither willing nor dissenting, and a fortiori one who resists, or one who intends to make a game, does not perceive the Sacrament.

We have said, intention is required, yet diverse according to the diverse nature of the Sacraments. The reason is that some Sacraments require one cooperation from the recipients, others another. For: 1. Some, as PENANCE and MATRIMONY, are not made except by the acts themselves of the subject, which have themselves as matter or form, and therefore for the validity of these Sacraments there is required in the recipient, as in the minister, at least a virtual intention.

2. Others, as BAPTISM and ORDER, have this proper to themselves, that they impose on the recipients obligations of a new state. But since it is in no way equitable that such obligations be imposed on an adult without his positive consent, it follows that for reception of each Sacrament there is required an intention at least habitual, that is, an intention already had and not retracted. The assertion is confirmed by the practice of the Church; for on the one hand it is prohibited in the Roman Ritual that an adult who has fallen into madness or into a sudden illness be baptized, unless before, when he was in possession of himself, he had desired Baptism; and on the other hand the Church never reiterates the Sacraments of Baptism and Order for those who received them from a will previously had.⁸⁴

3. Finally others, as CONFIRMATION, the EUCHARIST, EXTREME UNCTION, require for themselves only this, that the subject be capable of the sacramental operation, which is a benefit of God from the work worked. Whence, that they be validly received, an interpretative intention suffices, namely that which the recipient indeed never had, but probably would have had, if he were in possession of himself. Specifically concerning Extreme Unction the Roman Ritual has this: “This Sacrament is to be given to those destitute of their senses, who previously asked for it, or who would probably have asked for it.” The same is also commonly admitted concerning Confirmation and the Holy Eucharist, with Lugo, Sporer, etc.⁸⁵ Yet take notice that it is illicit, outside danger of death or perpetual madness, to confer Sacraments on adults while they do not enjoy the actual use of reason.

1435. IV. In INFANTS, and the perpetually insane, for VALID reception of the Sacraments of which they are capable, namely Baptism, Confirmation, the Eucharist, and Order, no disposition or intention is required. This is established from the practice of the Church and the common opinion. The reason is that infants are not justified or sanctified through an act of their own will, of which indeed they are incapable, but through the will of another; whence Christ and the Church are judged to supply their intention, just as in civil matters a tutor supplies for a ward.⁸⁶

Article II

On the Requisites for Licit Reception of a Sacrament

In infants and the perpetually insane, that no disposition is required in order that they usefully receive the Sacraments of which they are capable is the common opinion. But in adults, besides those things which are required for valid reception, several other things are required for licit reception of a Sacrament. Hold the following:

1436. Principles. I. For licitly and fruitfully receiving the Sacraments OF THE DEAD, namely Baptism and Penance, there are required in adults acts of FAITH, HOPE, at least virtual, and sorrow for sins, which must at least be ATTRITION. This

⁸²Book VI, 79.

⁸³Cap. *Majores*, v. fin., *de Baptismo*.

⁸⁴Book VI, 82; *Exam. Ordin.*, 19.

⁸⁵Book VI, 82.

⁸⁶*Ibid.*, 80.

is established from Trent, sess. 14, cap. 1, where the dispositions necessary for justification are set forth at length. Yet sorrow in one to be baptized ought to concern actual sins, not original sin; because no one repents of the deed of another.⁸⁷

1437. II. For licitly and fruitfully receiving the Sacraments OF THE LIVING, by divine law the preexisting STATE OF GRACE is required. The reason is that the Sacraments of the living were instituted primarily for increasing sanctifying grace; therefore, speaking per se, they already presuppose

it present in the subject, although per accidens they can generate it (cf. n. 1395).

Hence: 1. He who knowingly receives a Sacrament of the living in the state of mortal sin sins gravely; and indeed more gravely than the minister who makes or ministers it, because he not only handles it unworthily, but also renders it useless, and thus impiously mocks Christ the Lord, the Author of the Sacraments. 2. He who is conscious to himself of grave fault is held to confess before he receives the Eucharist, as Trent commands.⁸⁸ If the matter concerns the other Sacraments of the living, he is held to be contrite;⁸⁹ whether he is also held to confess is denied more commonly and more probably (cf. nn. 1500 and 1684, 2).

1438. III. Besides the said conditions, the reverence owed to the Sacrament requires actual DEVOTION; the greater this is, the more abundant are the fruits perceived from the Sacrament. This is established from Trent, sess. 6, cap. 7. The reason of the first part is clear of itself. The reason of the second is that, although the Sacraments confer grace from the work worked, nevertheless divine wisdom, which in all things and through all things strives to promote the good will of man, has so instituted the Sacraments that, according to the greater disposition of the subject, a more abundant supply of graces is conferred. "Thus from the same fire," says the Angelic Doctor, "he receives more heat who approaches it more, although the fire, as far as concerns itself, pours forth its heat equally to all"⁹⁰ (cf. n. 534).

Hence it follows that in practice one must not admit the opinion which makes licit the RECEPTION of the Sacraments with a probable opinion; because such an opinion, although speculatively it is not destitute of some foundation, "almost never will be able to be brought down into practice by recipients without detriment to their own soul."⁹¹

Moreover, there are also other CONDITIONS, from the law of the Church, to be fulfilled in reception of the Sacraments; these we shall explain when we have come to the individual Sacraments. Meanwhile:

1439. It is asked: Whether it is licit for a faithful person to RECEIVE or ASK for Sacraments from an unworthy minister?

Resp. 1. When the minister is unworthy ON ACCOUNT OF SOME CENSURE or INABILITY, it is licit to ask Sacraments from him, even without grave cause, if he is tolerated; because the Council of Constance absolutely conceded to the faithful communication with tolerated persons. But if he is not tolerated, but one to be avoided, or is a heretic or schismatic, then only in extreme or very grave necessity is it licit to receive from him Penance or Baptism; probably also the Eucharist and Extreme Unction, namely in the case in which the sick person cannot receive the other Sacraments, provided scandal or suspicion of communication with intruded ministers or heretics is avoided.⁹² And these things indeed are from the law of the Church concerning censures (cf. n. 1292, 2 and 1327, Question). With respect to natural law, attend to the following RULE:

2. If the minister is certainly unworthy ON ACCOUNT OF MORTAL SIN, it is not licit, without grave cause, to ask Sacraments from him. The reason is that from the law of charity we are held to impede the sin of neighbor, when we can impede it without grave inconvenience. And this holds, even if the one ministering is the pastor, or is otherwise already prepared; because even external sin must be impeded. "Only," says St. Alphonsus, "would I except him who would receive the Eucharist from an unworthy priest who was actually ministering it to others, according to the opinion ... that it is only one sin to minister the Eucharist to several." We have said, without grave cause, namely of necessity or notable utility: when this stands, it is licit to ask Sacraments from an evil minister, because cooperation with his sin is merely material (cf. n. 519).

"Hence the doctors say that Sacraments are LICITLY received from a sinner minister: 1. if the precept of confession or communion presses; 2. if from delay of reception danger of a fall is imminent; 3. if you must fulfill the precept of hearing Mass; 4. if otherwise you must remain for a long time in mortal sin, and you cannot, indeed if you do not wish to, approach another confessor, nor wait an hour, because to be liberated from sin as soon as possible is not a small utility; 5. if you

⁸⁷Ibid., 86.

⁸⁸Book VI, 86.

⁸⁹Ibid., 34.

⁹⁰3, q. 69, a. 8.

⁹¹Book I, 51.

⁹²Book VI, 88; cf. VII, 339 and II, 79; cf. also 2 *Elench. qq. ref.*, n. 19.

must be without Communion, at least for a long time, or without the fruit of confession, even if you do not have mortal sin; 6. if otherwise you cannot gain a jubilee; 7. if you need a skilled director and do not have another, provided, adds Sporer, you would have to wait a long time for another; 8. if you wish to apply Mass for a deceased friend.”⁹³

What, YOU WILL ASK, in doubt whether the minister is unworthy?

Resp. 1. Any minister is presumed worthy, unless the contrary is established. Hence, probably, you can ask a Sacrament even from him whom you know to have sinned a little before, because he is to be presumed to have already disposed himself, at least by contrition. 2. A minister is judged unworthy if he is a customary sinner, or if he is voluntarily living in a proximate occasion of sin. Likewise, if after sin he has not confessed beforehand, before the celebration of Mass.⁹⁴

Chapter IV

On Sacramentals

1440. DEFINITION. Sacramentals are ecclesiastical ceremonies, or external acts of religion accommodated to worshipping God.⁹⁵

DIVISION. Sacramentals are reduced to four species, which are: 1. Rites and ceremonies which the Church uses in the administration of the Sacraments. 2. Blessings and exorcisms, outside the dispensation of the Sacraments. 3. Sacred things to which, either from divine institution, as to the Most Holy Name of Jesus and the sign of the cross, or from the blessing of the Church, as to lustral water, some salutary power is annexed. 4. Certain pious exercises, as prayer in a dedicated church, the Lord’s Prayer, especially recited in the name of the Church, striking of the breast, the *Confiteor*, alms prescribed by the Church.⁹⁶

The principal Sacramentals are customarily expressed by this verse:

Praying, sprinkled, eating, confessed, giving, blessing.

1. On the Power and Efficacy of Sacramentals 1441. I. “Sacramentals have some EFFECTS, yet not infallible, of which those using them piously and duly are made participants. The first is the excitation of pious movements through prevenient graces. The second is remission of venial sins, by means of movements of this kind, penance expressed or implicit. The third is remission of temporal punishment due to sins. The fourth is the putting to flight or repression of the devil. The fifth is bodily health, or a similar temporal benefit.”⁹⁷

What particular effect, in the temporal order, this or that Sacramental can especially produce is to be gathered from the institution of each, from the manner and prayers of the Church by which they are made; for individual Sacramentals have not been instituted for the same singular end, although all tend to divine worship and to our progress.⁹⁸

1442. II. “Sacramentals cause these effects, not from the work worked, but FROM THE WORK OF THE WORKER: namely by the prayer of the Church impetrating them; also by the prayer of the faithful piously using Sacramentals, for example the sign of the cross, blessed water.”⁹⁹ “Hence, after the taking of blessed water, etc., it is advised to all the faithful to excite themselves to an act of sorrow or of love.”¹⁰⁰

2. On Exorcisms and Blessings The principal place among Sacramentals is held by Exorcisms and liturgical Blessings.

1443. I. EXORCISMS, from the common opinion of the doctors, have this special property, that they infallibly expel or at least repress demons quasi from the work worked, on account of the peculiar power, conceded by Christ the Lord to the Church, of commanding demons. Recall what was said, n. 622.

1444. II. LITURGICAL BLESSINGS are rites which, in the name of the Church, are performed by sacred ministers, and thus they differ from blessings which are given in a private name by laymen, for example by parents to children. They are DIVIDED in various ways:¹⁰¹

⁹³Book VI, 89.

⁹⁴Ibid., end.

⁹⁵Cf. Cavalieri, tom. IV, cap. 11-15 and cap. 23-28.

⁹⁶Book VI, 90.

⁹⁷Polman, 3, p. n. 197; cf. Suarez, in 3 P., disp. 15, q. 65, sect. 5.

⁹⁸Book VI, 93.

⁹⁹Polman, loc. cit.

¹⁰⁰Book VI, 92.

¹⁰¹Cf. Quarti, *De sacris Bened.*; and Ferraris, verb. *Benedictio*.

1. By reason of effects, they are constitutive or invocative. 1. CONSTITUTIVE or consecratory blessings are those by which either persons or things are deputed to divine worship, or are permanently constituted in a sacred and religious being; they are called permanent Sacramentals, because they imitate the Sacraments which imprint a character. Of this kind are: 1. with respect to PERSONS, first tonsure, the consecration of an Abbot, Abbess, nun, etc.; 2. with respect to THINGS, the blessing of a church, oratory, cemetery, chalice, paten, chrism, sacred oils, salt for baptism, vestments for the Sacrifice, altar, wax lamb, etc. 2. INVOCATIVE blessings are those by which the kindness of God is invoked, that He may bestow something good on persons or things to be blessed; they are called passing Sacramentals, because the things so blessed do not change their state, or do not become strictly sacred, and therefore can be turned to profane uses, provided these are honorable.

Of this kind are the blessing of the Supreme Pontiff, of a Bishop, and of a presbyter in Mass, and much more the Blessing with the Most Holy Sacrament, the nuptial blessing, the blessing of a woman after childbirth, etc.; likewise the blessing of houses, fields, produce, foodstuffs, etc.

2. By reason of rite, some are REAL, in which an anointing is employed; others VERBAL, which are perfected by words alone. Likewise, some are solemn, others simple, according as they are done with greater pomp or without preparation.
 3. By reason of minister, some are PAPAL, as the blessing of the Pallium, wax lamb, golden rose, and prince's sword; others EPISCOPAL or PRIESTLY, concerning which fuller things must be said.
- A) To BISHOPS belong: 1. Real blessings, as of a chalice, altar, bell; likewise the blessing of chrism itself and of the sacred oils. These are found only in the Pontifical, and are so proper to Bishops that without a Pontifical Indult they cannot be delegated to presbyters. Whence things which have been blessed without an Indult of this kind ought before use to be blessed anew, if it can be done without scandal (S. R. C., decree of September 22, 1703, ad 3).¹⁰² 2. Blessings which are found in the Missal and Ritual under the title: Blessings to be done by Bishops, or by others having faculty, namely: the blessing of priestly garments, cloths and corporals, the tabernacle, that is, the pyx and lunette; likewise of a cross or images if it is done solemnly with concurrence of the people; then: the blessing and reconciliation of a church not yet consecrated, of a public oratory, or cemetery, or of the primary stone. In these, from the Ritual itself, and in those, from the Holy See by indult, Bishops receive the faculty of delegating. Yet the blessing of a cross can be done by permission of the Bishop.¹⁰³
- B) To PRIESTS, without delegation, belong all blessings which are contained in the Missal and Ritual, from the blessing of water up to the blessings to be done by Bishops, or by others having faculty. Yet not a few of them are by right of the pastor, and are noted in the Ritual as to be done by the Pastor, or by another priest, understand, by permission of the pastor, according to the common interpretation. Of this kind are the blessing of nuptials, the blessing of the baptismal font, the blessing of houses on Holy Saturday, the common blessing over produce, and the blessing of fields, at least if it is done solemnly; likewise the blessing of women after childbirth, to which only women who have given birth in legitimate marriage have a right,¹⁰⁴ where custom or synodal statutes so dispose.¹⁰⁵

1445. It is asked: With what rite are blessings to be done?

Resp. "Blessings which by precept or publicly in churches or in public oratories before the people gathered for this are done, outside Mass are to be given with surplice and stole according to the nature of the time, standing and with head uncovered, with hands joined, with a minister carrying the vessel of blessed water and the sprinkler, and with the formula prescribed in the Missal or Roman Ritual, or approved by the Sacred Congregation of Rites. For blessing those things for which no special blessing is had, the blessing *ad omnia* can be used; or the sign of the cross is to be made over the thing to be blessed, with the formula: 'In the name of the Father, etc.' Then the thing itself is to be sprinkled with blessed water.

"If the cross has the image of the Crucified, the blessing for images is to be used. If the blessing is done at the altar, all things are recited on the Epistle side, and the priest uses a cope. The things to be blessed, if they are priestly vestments, can be placed upon the altar; otherwise, if they are candles and other things of this sort, they are to be placed upon a table before the altar, or on the Epistle side."¹⁰⁶

¹⁰²Gardellini, n. 3663.

¹⁰³Gardellini, n. 764.

¹⁰⁴S. C. Conc., June 18, 1859.

¹⁰⁵Konings, n. 1247-D.

¹⁰⁶Konings, n. 1248.

3. On the Sign of the Cross and Lustral Water 1446. I. In blessings, in ceremonies, and in our actions we often use the SIGN OF THE CROSS, and most fittingly; for this sign has power: 1. by way of invocation, namely of Christ crucified and His merits; 2. as a work of faith and a profession of the Christian religion; 3. on account of the honor which we give to the cross.[^vol2-0008-fn-1]

II. The use of LUSTRAL OR BLESSED WATER is commended by antiquity; for learned men teach that it flowed from Apostolic tradition and always flourished in the Church. The sprinkling of lustral water is a symbol of interior washing; and, sanctified through the prayers of the Church, it has, from the merits of the same Church, much efficacy for producing salutary effects, and especially for warding off demons. Hence, “the sick are sprinkled with blessed water according to the prescription of the RITUAL, that they may be stronger for repelling the temptations of the demon. The corpses themselves of the dead are sprinkled with prayer, that for the souls of Purgatory the ardor may be mitigated and wholly extinguished.”[^vol2-0008-fn-2]

Note. 1. To blessed water, when a cause accedes, water not blessed can be added, provided the latter is always in a lesser quantity. 2. In time of Interdict the sprinkling of blessed water can be done, provided the people are sprinkled without any solemnity. For obtaining the effects of blessed water, moral contact suffices.[^vol2-0008-fn-3]

Treatise VIII. On Matrimony

1948. "Matrimony is so called from this, that a woman ought especially to wed for this reason, that she may become a mother; or because to conceive, bear, and educate offspring is the office of a mother. It is also called conjugal union from joining, because a lawful woman is bound to a man as if by one yoke. Furthermore it is called nuptials, because, as St. Ambrose says, for the sake of modesty maidens veiled themselves; by which it also seemed to be declared that they ought to be obedient and subject to men."¹⁰⁷

Peculiar study must be applied to learning this Treatise. For ministers of the Church ought especially to understand "how great and how many advantages can come to Christian society, if the faithful have known the sanctity of matrimony and preserve it inviolate; but on the contrary, if it is ignored or neglected, very many and very great calamities and losses are brought into the Church."¹⁰⁸

Therefore, that we may be occupied in this study with due order and clarity, we shall distribute the long argument into many chapters, treating namely: 1. of the preparation of matrimony or of betrothals; 2. of the nature and properties of matrimony; 3. of its impediments; 4. of dispensation from impediments; 5. of the celebration of matrimony; 6. of the revalidation of invalid matrimony; 7. of the rights and duties of spouses.

Chapter I. On The Preparation Of Matrimony Or On Betrothals

1949. BETROTHALS are commonly premised to matrimony chiefly for three reasons, namely: 1. that matrimony can be entered more maturely; 2. that the spouses may dispose themselves more aptly and perfectly for the grace of the Sacrament; 3. that it can be known more safely whether some impediment is present.

It comes to be said: 1. of the nature of betrothals; 2. of their effects and obligation; 3. of their dissolution.

Article I. On The Nature Of Betrothals

1950. DEFINITION. "Betrothals are a voluntary, deliberate, and mutual promise, expressed by a sensible sign, of future matrimony between persons capable by law."¹⁰⁹

It is said 1. A PROMISE, that is, not only a simple desire and purpose, although externally manifested, but an act of the will, by which someone sincerely, and with internal consent of the mind, obliges himself to future matrimony. - Hence he is not obliged who promises without the mind of contracting, or without the mind of obliging himself, although he knows the obligation. The reason is, because since obligation arises from one's own will, when the act of the will is lacking, the obligation also is lacking; and this, although the promise is confirmed by oath; for an oath follows the nature of the promise (cf. n. 615). - Therefore one promising fictitiously "is indeed bound by reason of deception to repair damages, but he is not bound by reason of the promise to put true consent and contract matrimony."¹¹⁰ But it must be said otherwise if defloration intervened; because then the deflowerer is altogether bound to matrimony, since he cannot repair the damage by another way sufficiently equivalently,¹¹¹ as was said n. 959.

It is said 2. VOLUNTARY AND DELIBERATE, i.e., made with that knowledge, advertence, and liberty which is required for mortal sin; namely, that the one promising attend both to what he is doing and to what he is binding himself, and add consent with due liberty. For to induce a grave obligation, such as is the obligation of betrothals, full deliberation and free consent are required.¹¹²

Hence Betrothals are invalid: 1. Contracted by those who either habitually, or at least while they contract, do not have perfect USE OF REASON, such as children, the insane, the drunk, the mentally seized. But disturbance of reason arising from concupiscence commonly does not impede the validity of betrothals, because, although it is opposed to prudence and counsel, nevertheless it does not exclude deliberation of mind. 2. Contracted FROM ERROR concerning the substance, or concerning a substantial condition, e.g., if someone should promise expressly under such a particular condition; but if the error concerns an accidental condition, the betrothals are valid, but sometimes they can be dissolved, according to what is to be said below (n. 1960).¹¹³ - 3. Contracted THROUGH FEAR unjust, grave, and inflicted from without; for betrothals

¹⁰⁷ *Catech. Rom.*, p. 2, cap. 8, n. 2.

¹⁰⁸ *Ibid.*, n. 1.

¹⁰⁹ Book VI, 831; *H. A.*, XVIII, 1.

¹¹⁰ Book VI, 832, 833.

¹¹¹ *Ibid.*, 833, in fin.

¹¹² *Ibid.*, 831.

¹¹³ *Ibid.*, 835; *H. A.*, ib., 2.

follow the nature of matrimony, which contracted by fear is certainly null. - It was said 1) through unjust fear; because if it were just, they would be valid no less than matrimony itself; 2) through grave fear; for if it were light, likewise they would be valid, according to the more probable and more common opinion, because he is judged to contract spontaneously who, when he could repel light fear, does not repel it: nevertheless in this case betrothals can be rescinded by sentence of the judge, on account of the greatest liberty which they require; 3) inflicted from without; for if fear arose from within, e.g., if someone promised in order to decline payment of debt, the promise would be valid.¹¹⁴

It is said 3. MUTUAL, i.e., made and accepted in turn by a man and a woman: whence, a promise of matrimony, even confirmed by oath, does not oblige as long as a return promise has not been made by the other party. But the acceptance of the promise and the return promise must be made immediately, and therefore, if the return promise has not been made, the one promising is not bound; nor can the promisee accept the promise alone and deliberate concerning making the return promise; because the promise is judged to have been made under the condition: if the promisee accepts it and returns the promise immediately; unless the contrary is expressly signified, e.g., if the one promising grants delay for acceptance and return promise, or at least for the return promise. If the promisee accepts a gratuitous and liberal promise, and does not yet return the promise, betrothals are not had; but only a promise which obliges, only under light fault, by reason of fidelity, unless the one promising wished to oblige himself under grave fault. If the promisee is silent while the promise is made, she is indeed judged to accept, because it is a question of a favor; nevertheless, her silence does not suffice for a return promise, because a return promise is a burden, and in onerous matters the axiom does not avail: "He who is silent seems to consent." But commonly a promise of matrimony is not judged to have been made gratis and liberally, but under the condition: if the other party also binds herself in turn. And this intention, in doubt, must be presumed.¹¹⁵

It is said 4. EXPRESSED BY A SENSIBLE SIGN; because a contract among men is made only by an external sign. - Hence, in betrothals, consent must be expressed:

- a) Either BY WORDS, which, if they are doubtful, are to be interpreted according to the obvious sense and the custom of places, or also from the intention of the contracting parties. Certain words are these: I promise matrimony to you..., under my faith I will marry you, etc. But these are null, or very doubtful: "You will be mine..., to you I promise love, fidelity, etc..." He who should say: "I will marry no other than you," would indeed not be bound to marry her, but to marry no other, unless from the circumstances it is gathered that such a one truly wished to contract betrothals.¹¹⁶
- b) Or BY SIGNS, e.g., by the extension of the right hand, namely when the circumstances are such that there can be no doubt concerning the value of the sign. But if there is doubt concerning this, liberty is to be favored;¹¹⁷ nevertheless if copulation freely follows (not if it preceded), one must conclude in favor of betrothals. The mere handing over and acceptance of a ring is not a sufficient sign, unless such a custom is given somewhere. Betrothals can also, like matrimony itself, be contracted through a procurator, or through letters (cf. n. 1973).
- c) Or BY THE WORK OF PARENTS, namely if a father or mother promised for a present and silent son or daughter: as is had from the law, saying thus: "Moreover, from betrothals, which parents commonly contract for their children whether pubescent or impubescent, the children themselves, if they expressly consented, or tacitly, or were present and did not contradict, are obliged."¹¹⁸ - Yet it must be adverted: 1. that this is valid for the external forum; for, for the internal forum, the son is not bound, if he does not assent internally, or if he only has himself negatively: because positive consent is required for contracting some obligation; 2. that this proceeds only in the case in which the parents themselves promise; but not others, although they are guardians or curators, unless perhaps somewhere, as among the Indians, a custom is in force that consent is expressed through others; 3. that betrothals contracted by parents for an absent son are valid, if he, made more certain concerning the matter, ratifies them either expressly or tacitly.¹¹⁹

It is said 5. OF FUTURE MATRIMONY, namely to be entered in its own time. Therefore consent expressed through words concerning the present (since, the law standing in the way, it is not valid for matrimony) induces no obligation. Except the consent of impubescents, among whom words concerning the present have the force of betrothals: for in their case the rule is admitted, that an act which is not valid in the mode in which it is made, is nevertheless valid in the mode in

¹¹⁴Book VI, 844; *H. A.*, l. c., 3; cf. *Vind. Alph.*, p. VII, q. 1.

¹¹⁵*Ibid.*, 836, 837.

¹¹⁶Book VI, 838, 842.

¹¹⁷*Ibid.*, 840; *H. A.*, l. c., 6.

¹¹⁸Cap. un., § 2, *de despons. impub.*, in 6.

¹¹⁹*Ibid.*, 838, 869; *H. A.*, XVIII, 5.

which it could be made.¹²⁰

It is said 6. BETWEEN PERSONS CAPABLE, namely between such as at some time are able validly and licitly to enter matrimony, since the promise of an illicit, or impossible, thing is of itself void. But if betrothals are contracted while some impediment stands in the way, it is to be distinguished thus: 1. If the impediment is perpetual and of such nature that it can be removed by no reason, the betrothals are invalid; 2. if it is temporary, e.g., a temporary vow of chastity, or if it can be removed by the industry of the contracting parties, e.g., if the non-Catholic party promises conversion, they are valid, and therefore matrimony, when now it can be contracted licitly, is to be contracted.¹²¹

1951. Questions. Q. 1. Whether children under parental power need the CONSENT OF PARENTS for contracting betrothals?

Resp. 1. For contracting validly their consent is not required, since this is prescribed by no law. - Nevertheless, if the parents justly contradict, e.g., on account of dishonor or scandal of the family to arise from such a marriage, the son by not obeying and by contracting betrothals would sin gravely; and therefore the betrothals, although confirmed by oath, would not oblige, because the promise would be concerning an illicit thing, and an oath cannot be the bond of iniquity.

Resp. 2. For contracting licitly the consent of parents is ordinarily required. For the reverence by which they are to be pursued demands for itself that, in a matter of such moment, their counsel be sought. Therefore children, contracting while parents are ignorant or unwilling, sin more or less gravely, according to the diversity of circumstances. - It is said consent is ordinarily required; for a son is not bound to obey parents, if they contradict irrationally, e.g., if they prohibit marriage, or if they prescribe it with an unworthy person.¹²² Consent reasonably presumed also suffices, e.g., if the father is so distant that he cannot conveniently be made more certain concerning the betrothals to be contracted, which are judged to have been going to have his approval.

Q. 2. Whether CLANDESTINE betrothals are valid?

Resp. Affirm.; for "the S. C. OF THE COUNCIL has often declared that the Council prescribed no form for contracting betrothals through words concerning the future, and therefore that they can be contracted in that mode in which they could be before the Council itself"¹²³ Now, before Trent betrothals of this sort were certainly valid, therefore they are also valid at present. - Therefore generally no determined form is required for contracting them, although it is to be advised that they never be contracted without a witness, so that thus, when circumstances demand it, they can also be proved in the external forum.¹²⁴ We said generally; for in Spain they are not valid if they are contracted without a public writing, on account of the Caroline Pragmatic, which, by legitimate customary law, has obtained for itself the authority of canonical discipline and the force of an ecclesiastical sanction. Thus from the decision of the S. C. C., January 31, 1880.¹²⁵

Q. 3. Whether betrothals contracted between the ABDUCTED WOMAN and the ABDUCTOR are valid, at that time at which the woman was in the power of the abductor?

Resp. Affirm., according to the more probable opinion, provided that fear did not intervene, nor another impediment. For the disposition of law, by which matrimony is invalidated as long as the abducted woman remains under the power of the abductor, is not valid for betrothals, which, as rescindable, require lesser liberty.¹²⁶

Q. 4. What concerning betrothals entered UNDER CONDITION?

Resp. That betrothals, like any other contract, can be made under condition is certain. Nevertheless, concerning the diverse conditions which can be added, one must speak diversely, according to their variety, and indeed: 1. If the condition is concerning the present, the betrothals are immediately either valid or invalid, according as the condition is verified or is not verified. 2. If the condition is concerning the impossible, the betrothals are null, because the addition of an impossible condition naturally denotes dissent rather than consent, nor is there had the favor of positive law, as happens for matrimony. 3. If the condition is concerning a future necessary thing, it is held for completed, and therefore the betrothals are immediately valid and obtain their effects. 4. If the condition is concerning a future contingent and honorable thing, the betrothals become absolute when the condition has been fulfilled, and new consent is not required; for the consent which was given from the beginning suffices, provided it has remained. But from betrothals of this sort there arises

¹²⁰Ibid., 841.

¹²¹H. A., l. c., 7.

¹²²Book VI, 849; H. A., l. c., 10.

¹²³S. C. C., December 19, 1596 (apud Benedict XIV, *Inst.*, 46, n. 12).

¹²⁴Benedict XIV, ib., n. 15.

¹²⁵Cf. *Acta S. Sed.*, XIII, 191.

¹²⁶Book VI, 1107, q. 1.

an obligation of attending to the fulfillment of the condition; and indeed this obligation presses so much that any later betrothals, the prior ones not yet dissolved, are rendered invalid. The added condition is judged to have been renounced if the spouses, while it is still pending, have come together in venereal congress.¹²⁷ 5. If the condition concerning a future contingent thing is dishonorable, there does not arise from it an obligation of awaiting the event, since it induces to sin; but indeed, when the condition has been fulfilled, the betrothals are valid¹²⁸ (cf. n. 1057, 5).

Q. 5. Whether, some impediment standing in the way, betrothals contracted under the condition, IF THE POPE SHALL HAVE DISPENSED, are valid?

Resp. Dist. 1. If the impediment is such that the Pope never or rarely is accustomed to dispense in it, or if a just cause for obtaining the dispensation is lacking, the betrothals are not valid; because they are concerning an impossible thing. 2. But if it is a question of an impediment in which the Pontiff can and is accustomed to dispense, and at the same time sufficient reasons are had for seeking and obtaining the dispensation, the betrothals are valid, as we said concerning betrothals entered under a possible and honorable condition. Whence, although they are not absolute, nevertheless they induce an absolute obligation of seeking the dispensation and awaiting it; but when this has been obtained and signified to the parties, the betrothals are confirmed without new consent, provided the consent furnished from the beginning still perseveres.

But if the other party, before the verification of the condition, should enter new betrothals, these would be invalid, since it would be a promise concerning an unjust thing, which does not oblige. Thus the more common and truer opinion.¹²⁹ - Nor do the laws and decisions of the S. C. C. which the opposite opinion alleges seem to stand in the way of this opinion; because, as will easily be clear to the reader, they are to be understood of the case in which either the Pope is not accustomed to dispense, or a cause for dispensing is not present, or other special circumstances of things occur, which weaken that promise.¹³⁰

Note. - Very often, promises of future matrimony, which are customarily made among adolescents mutually loving each other, are not true betrothals, since they bear before themselves the conditions of a purpose rather than of an onerous contract. And thus it is especially in those regions where it is placed in custom that betrothals be entered with some solemnity. In practice, let attention be given especially to the intention of those promising.

Article II. On The Effects And On The Obligation Of Betrothals

1952. Principles. I. Betrothals OBLIGE under grave fault and from justice, to contracting matrimony either at the pre-defined time, or as soon as the other party shall reasonably have sought it. It is established from the nature of an onerous contract, which in a grave matter obliges under grave fault and from justice (cf. n. 1056 sq.). "But it must be noted, that if the other party from forgetfulness, fear, shame, or similar cause did not seek it, as chiefly happens in women: then the bridegroom is bound of himself, without petition, to contract matrimony, when he can conveniently do so. Conversely, if the other party, when she can conveniently seek, is silent, then she seems to consent to the delay.¹³¹ One receding can be compelled to matrimony, even by a judge through censures: which nevertheless is rarely expedient, on account of danger of an unhappy outcome.¹³²" Recall what was said nn. 959-960.

1953. II. Betrothals induce a PROHIBITING impediment of matrimony with any other person, unless the prior betrothals have been legitimately dissolved. But later betrothals, although sworn, are altogether invalid; for a thing owed to one cannot licitly be handed over to another.¹³³

1954. III. Betrothals induce the DIRIMENT impediment called of public honesty, which endures even when the betrothals have been dissolved. Concerning this, more below (nn. 2032-2034).

But whether betrothals sometimes pass over into matrimony, see n. 1972 at the end.

1955. Questions. Q. 1. If the bridegroom, against the fidelity of the prior betrothals, has CONTRACTED NEW ones, and copulation has followed these, with which of the two brides is he bound to contract?

¹²⁷Cap. *Per tuas, de condit. appos.*

¹²⁸De Angelis, lib. 4, tit. 5, n. 4.

¹²⁹Book VI, 859 and III, 650.

¹³⁰Cf. Vecchiotti, *Instit. can.*, I. 5, § 57; De Angelis, lib. 4, tit. 5, n. 4; *Acta S. Sed.*, vol. I, p. 80.

¹³¹Book VI, 845; *H. A.*, XVIII, 8.

¹³²Book VI, 846.

¹³³*Ibid.*, 848.

Resp. 1. "If the second bride was conscious of the prior betrothals, matrimony (certainly) must be contracted with the first; because then the second was not deceived, but she herself wished to be deceived. Thus commonly."

Resp. 2. If she was not conscious of the prior betrothals, IT IS CONTROVERTED; but "the more common and more probable opinion says, the bridegroom is bound to contract with the first, even if copulation was present with the second." The reason is, because the promise made to the second was null, as concerning an illicit thing, nor does an injury inflicted on her take away the right of the first. But whether the first ought to yield to her right, lest the other undergo a most grave damage? Some affirm that she is bound from charity; but others, and not improbably, deny this: because the second must impute it to her own crime that she suffers such damage.¹³⁴

Q. 2. What is to be judged concerning BETROTHAL EARNESTS, and also concerning the addition of PENALTIES?

Resp. 1. By the name of EARNESTS come the things which one of the spouses, or each, hands over to the other as a token of the contracted betrothals and as a pledge of entering matrimony.¹³⁵ - The handing over of them is prohibited by no law. But when betrothals have been justly dissolved, they must be restored. But if the other party culpably recedes from the fidelity given, that party not only loses his or her own earnest, but is always bound to restore those accepted, and to repair all damages which arise from this receding.¹³⁶

Resp. 2. A CONVENTIONAL PENALTY is an agreement added to betrothals, by which the spouses bind themselves mutually to a penalty, or to a certain sum of money to be paid, if they have not stood by their promises. It differs from an earnest in this, that the latter is actually handed over, and the penalty is promised; and that commonly an earnest is constituted in a small quantity, but a penalty in a greater, since each one is readier to promise than to hand over.¹³⁷ Now then: 1. The addition of a penalty to be paid by one receding, whether he recedes justly or unjustly, is altogether ILLICIT and INVALID, since such a stipulation injures the liberty of matrimony, and therefore is reprov'd by law. "And so, in such a case, he who recedes justly is not bound to the payment of the aforesaid penalty, although he had confirmed the promise by oath. And if the penalty has ever been paid, he who exacted it is bound to restore, as the more probable opinion holds; because for him there is no title by which he may retain it for himself, while the law altogether irritates such a promise." 2. But the promise of a penalty to be paid by one receding unjustly, according to the more probable opinion, is LICIT, since it is prohibited neither by natural law nor by positive law. It is not prohibited by natural law, "since it is equitable that he who recedes unjustly be subjected to penalty; but the liberty which is required in matrimony is rational liberty, not irrational; otherwise a judge could never compel spouses to contracting by censures or prison." Nor is it prohibited by positive law; for the disposition of law must be understood of a just receding, but not of an unjust one.¹³⁸ But indeed since the opposite opinion is sufficiently probable, one receding unjustly cannot be compelled to the payment of the penalty; but when payment has been made, it is licit for the innocent party to retain the money received.

NB. Concerning the PREPARATION of spouses for matrimony, recall what was said nn. 827 and 1850.

Article III. On The Dissolution Of Betrothals

1956. Betrothals, which consist in a contract soluble by its nature, are dissolved not only by the death of the other party, as matrimony is, but by various other causes.

Principles. I. Betrothals are dissolved among the pubescent BY MUTUAL CONSENT. - For with no law standing in the way, the parties can mutually remit to each other the reciprocal obligation by which they are held. But the same consent which was required for contracting is required for dissolving: namely voluntary and free consent, such that it is extorted neither by fraud, nor force, nor fear. If this has been given on both sides, the betrothals are immediately dissolved, although they had been confirmed by oath; and this not only validly, but also licitly, if a reasonable cause is present; otherwise it would be at least venial. Thus commonly.¹³⁹

It is said among the pubescent; for as to impubescent there is present a special disposition of law,¹⁴⁰ by which the dissolution of their betrothals is forbidden before they have arrived at the years of puberty, namely lest on account of unstable judgment, they easily and often rashly contract betrothals, and again dissolve them. But once the age of puberty

¹³⁴Book VI, 848; H. A., l. c., 9.

¹³⁵Vecchiotti, lib. 5, § 55.

¹³⁶Book VI, 852; H. A., XVIII, 11.

¹³⁷Vecchiotti, loc. cit.

¹³⁸H. A., l. c., 11; Book VI, 853.

¹³⁹Ibid., 855.

¹⁴⁰Cap. *De illis, de despons. impuberum* (cf. *Collect. S. Sedis*, n. 843).

has been reached, either spouse will be able, without waiting for the other, to recede from the betrothals, provided he protests before a judge or witnesses within three days, which begin not indeed from the time puberty is reached, but from the day when knowledge was obtained of the privilege of receding. But if the spouse dissents already before puberty, and perseveres in the manifested dissent, the betrothals are dissolved as soon as he arrives at the years of puberty.¹⁴¹

But mutual consent of receding is had: either 1. because a change of wills has intervened; or 2. because the betrothals had been entered under some resolutive condition, which was then verified; or 3. because they had been entered with the condition of contracting matrimony at a determined time, which has now elapsed. - But concerning this last cause of receding, some things are to be NOTED.

A term is added to betrothals either to urge the obligation of contracting matrimony, or to end it. "Then it is added to urge, when the parties therefore set a term, so that neither before it can compel the other to fulfill the contract. But then to end, when the term is added so that, when it has elapsed, no obligation remains."¹⁴² Hence, if the term added for ending the obligation has elapsed by the fault of both or of neither, the betrothals are dissolved on both sides; if by the fault of either, the innocent party remains free; but not the other party, who was in cause why the matrimony was not contracted.¹⁴³

1957. II. Betrothals are dissolved BY ELECTION of a more perfect state. The reason is, because betrothals are judged to have been entered under the tacit condition: unless a more perfect state is chosen.¹⁴⁴ Wherefore one party can also choose this without the consent of the other.

But concerning this it must be NOTED: 1. Through religious profession or reception of sacred Order the obligation of betrothals is so totally extinguished that it no longer revives.¹⁴⁵

2. Through entrance into Religion, likewise through a vow, and even through a simple purpose, but duly manifested, of entering Religion or receiving sacred Order, the obligation of betrothals is similarly extinguished, but only for the party dismissed. But for the other party, the obligation remains only suspended, until the more perfect state has been immutably entered. Whence, if he recedes from the purpose, the obligation so revives, that he is bound to stand by the betrothals, if the dismissed party demands this.¹⁴⁶

3. Through reception of minor Orders, according to the more common and truer opinion, betrothals are not dissolved; "because in truth the state of minor Orders is not impossible with matrimony, since someone can well become a married cleric."¹⁴⁷ Nevertheless, if the reception is made with the will of progressing further, the bride is freed; indeed it can happen that she is freed on account of only the minor Orders received by the bridegroom, namely if she were so averse to matrimony with a cleric that, the change of state having been foreseen, she never would have contracted.

4. Through a vow of chastity made by one party, the other party is released from every obligation; because the one vowing chastity yields his right. But the obligation of the one vowing is not altogether extinguished, but only suspended, as long as he remains bound by his vow. Wherefore, if he afterwards obtains dispensation of the vow, and no other cause of dissolution is present, the betrothals revive.¹⁴⁸

1958. III. Betrothals are dissolved THROUGH ANY IMPEDIMENT WHATEVER by which the promised matrimony is rendered ILLICIT or INVALID.¹⁴⁹

For no obligation to contracting such a matrimony can be given. - Now, besides election of the more perfect state, concerning which we have already treated, FOUR impediments of this sort are commonly enumerated, namely: perpetual impotence, matrimony validly although illicitly contracted, affinity from illicit copulation, and dissent of parents.

1. Through perpetual impotence, which supervenes in either of the spouses, betrothals are altogether dissolved, since the promised matrimony becomes absolutely impossible.

2. Through a valid matrimony contracted by the other party, betrothals are dissolved as to the innocent party. But as to the guilty party, the opinion (St. Alphonsus judging) absolutely more probable teaches that the obligation is not extinguished,

¹⁴¹H. A., l. c., 14; Book VI, n. 856.

¹⁴²Book VI, 867.

¹⁴³Ibid., 868.

¹⁴⁴Ibid., 869; H. A., XVIII, 22-26.

¹⁴⁵Book VI, 869 and 871.

¹⁴⁶Ibid., 870, 873.

¹⁴⁷Ibid., 872.

¹⁴⁸Book VI, 873.

¹⁴⁹H. A., XVIII, 13, 15, 17.

if the other party waits; but is only suspended, so that, when the marriage has been dissolved, he is bound to fulfill the prior betrothals. "The reason is, because it is proved by no law that betrothals are altogether irritated through a subsequent marriage: not by positive law, because this is nowhere had; not by natural law, because this only demands that while the marriage endures, the prior obligation does not bind."¹⁵⁰

3. Through affinity from illicit copulation (concerning this impediment cf. below n. 2027) betrothals are dissolved on the part of the INNOCENT party, so that he or she is not bound to admit dispensation. But the mere fame of an impediment of this sort suffices, i.e., an opinion among the greater part of the neighborhood. But on the part of the GUILTY party, the more common and more probable opinion holds that the obligation of betrothals is not removed, but only suspended, until the impediment is removed; because it is not equitable that the delinquent derive advantage from his crime. Wherefore, he who placed the impediment is also bound, even setting aside the damage inflicted, to obtain dispensation, if this namely can easily be obtained; "otherwise, if great expenses and long delay would be required for it; because the obligation arising from betrothals presses the spouse to apply only ordinary and easy means, but not difficult and extraordinary means. Except nevertheless, unless damage of defloration or fame had to be repaired; because then he would be bound even to expend a great expense."¹⁵¹

4. Through the dissent of parents betrothals are sometimes dissolved, namely as often as they dissent justly: e.g., because the matrimony would verge to the dishonor of the family, since no one can be obliged to execute an unjust thing. - Indeed, they are dissolved through their unjust dissent, if a grave evil, e.g., disinheritance, were to be feared: "because all betrothals are understood to be contracted under this condition: if such a change does not occur, whence it is grave to contract matrimony. - Except, unless this disinheritance had already been foreseen; because then the one contracting is rightly judged to have yielded to his right."¹⁵²

1959. IV. Betrothals are dissolved on the part of the innocent one, through any act whatever by which the other party is judged to have BROKEN betrothal FIDELITY.¹⁵³ For fidelity must not be kept for one breaking fidelity. - Therefore the innocent party is altogether freed: 1. if the other party contracts new betrothals, although invalid (or civil marriage with another); 2. if he delays the celebration of marriage too much, e.g., for three years, or contrary to the judgment of a prudent man; 3. if he transfers his domicile elsewhere: for such things are opposed to betrothal fidelity.¹⁵⁴

1960. V. Betrothals are dissolved through a NOTABLE CHANGE which supervenes when they have already been contracted, and which would have deterred from contracting them if it had been foreseen from the beginning. And the same must be said, IF THE STATE OF THINGS is found DIFFERENT from that which had been known. The universal reason is, because, as is handed down in law,¹⁵⁵ the promise of betrothals is understood to have been made while things remain in the same state; and this, as St. Thomas teaches,¹⁵⁶ lest conjugal union beget perpetual displeasure between the contracting parties, or obtain an unhappy outcome. But if ignorance of the change or defect was merely concomitant, and therefore not the cause of the contract, the betrothals are not dissolved. - But in doubt whether the defect (if it had been known) would have impeded the betrothals, it is presumed that it would have impeded them, if in reality, i.e., in the judgment of prudent men, it is grave in itself and notable.

Moreover, a notable CHANGE from which betrothals can licitly be dissolved can happen in a THREEFOLD way, namely:

1. In GOODS OF SOUL, e.g., when the spouse is discovered to be a drunkard, gambler, blasphemer, impious, a man harsh and hard in morals or savage; when he has committed an atrocious delict, e.g., homicide, grave theft, has fallen into heresy, etc. For the things which commonly suffice so that a marriage already contracted may be dissolved as to cohabitation, much more suffice so that it not be contracted; "for a guest is cast out more shamefully than he is not admitted."

But concerning supervening FORNICATION, or fornication newly detected, these things are to be noted. - If fornication follows betrothals, it effects two things: it breaks the fidelity given, and renders the party who has polluted himself or herself with it more base; if it preceded the betrothals, it produces only the latter effect. Commonly, this crime affects the bride with much greater baseness than the bridegroom. Wherefore it must be said: 1) on account of ANTECEDENT fornication the bridegroom can dismiss the bride; but not vice versa, unless perhaps the bridegroom has had offspring from another, or unless, on account of the frequency of the crime, he is known to be given over to this vice. - 2) On

¹⁵⁰Book VI, 875; 1 *Elench. qq. ref.*, n. 89; cf. *Vind. Alph.*, P. VII, q. 2.

¹⁵¹*Ibid.*, 857, 858.

¹⁵²Book VI, 877.

¹⁵³Thus S. C. C., December 12, 1885 (cf. *Mon. eccles.*, t. IV, p. 244).

¹⁵⁴Book VI, 866.

¹⁵⁵Cap. *Quemadmodum, de jurejurando*.

¹⁵⁶In 4, dist. 27, q. 2, a. 3, ad 3.

account of SUBSEQUENT fornication the innocent party (whether the bridegroom or bride) can similarly dismiss the guilty party, on account of betrothal fidelity not preserved. If each, by fornicating, has broken fidelity to the other, there is had compensation of delict, and neither can on that account recede. But the bridegroom (not the bride) can step back by another title, namely from this, that the bride has been rendered notably more base from fornication, and this even if she had been oppressed by force, or induced to consent from most grave fear. Likewise the bride can be dismissed who has permitted herself to be touched immodestly by another; but the bridegroom cannot on account of similar things, unless it can rightly be feared that he will not preserve fidelity to the bride.¹⁵⁷

2. In GOODS OF BODY, e.g., if grave deformity, blindness, cutting off of a member, habitual and contagious disease supervenes on either party; provided at least a prudent suspicion concerning these is had.

3. In GOODS OF FORTUNE, e.g., if it is discovered that the bride does not have a dowry; if the bridegroom has made a loss of goods, or of the office by which he was sustained; if either tends toward want, or is disinherited by parents: provided at least a prudent suspicion concerning these and similar things is had.

Therefore on account of a notable change of this sort in one party, the other party can recede; but if he does not wish to recede, neither is it licit for the party who has suffered the change to depart, unless perhaps the change would render the burden of matrimony notably more grave.¹⁵⁸

These things concerning a change for the worse. - But if the CHANGE had been made FOR THE BETTER, for example if an abundant inheritance unexpectedly comes to either, the very common opinion teaches that this change precisely in itself is not a sufficient cause why the fortunate party may recede from the betrothals, since that party was not deceived in the condition of the other party. - Nevertheless, if a far better marriage, on account of the change made, is offered, the party who has obtained the change does not seem altogether to be condemned, if, the first betrothals being set aside, he should enter new ones; for just as he would not be bound to stand by the betrothals with great damage to himself, so neither does he seem to be bound with the loss of great gain; for such a loss is equated with grave damage.¹⁵⁹

And generally it must be NOTED, that the obligation of betrothals CEASES when there is present a probable fear of an unhappy outcome. If the cause of fearing has arisen by the fault of one party, this party is bound to repair the damage inflicted on the other, e.g., on account of expenses already made.

IT IS ASKED. Whether the party laboring under an OCCULT DEFECT, sufficient for dissolving betrothals, is bound to MANIFEST it before betrothals, or when they have already been contracted, before matrimony?

Resp. Dist. 1. If the defect is pernicious, rendering matrimony odious and damaging to the other, such as a contagious, venereal disease, or infamy from delict, if e.g., the bride is pregnant from intercourse with another, if the bridegroom is burdened by debt: it must altogether be manifested, unless the other party also labors under the same defect. "The reason is, because just as he sins against justice who sells noxious wares to another believing them good, so *a fortiori* does he who wishes to contract matrimony with a pernicious defect." If therefore he does not wish to manifest the defect, he must abstain from contracting.¹⁶⁰

2. If the defect does not render the nuptials noxious, but only less desirable, e.g., if the bride is falsely thought to be a virgin, rich, beautiful, it is indeed not licit for the bride to pretend that she is immune from defect, but neither is she bound to manifest it. "The reason is, both because it has already been received by custom, that there is no obligation of manifesting such defects to the other; and because no one is bound to reveal his own defect with his own infamy, if he does not injure the right of another." Thus commonly.¹⁶¹

Nevertheless St. Alphonsus adverts that the dissimulation of a defect, although it is not illicit, is not expedient, if it is prudently to be feared that after the marriage has been contracted it may be detected, and become a cause of discords.

1961. VI. Betrothals are dissolved THROUGH PONTIFICAL DISPENSATION. - For although through betrothals a strict right has been made for the other party, nevertheless the Supreme Pontiff can, on account of most grave reasons, prejudice this right. - Dispensation is customarily granted through the S. Congregation of the Council, after information has been received from the Ordinary, who, in this matter, from common law, possesses no authority.¹⁶²

¹⁵⁷Book VI, 860-862; *H. A.*, I. c., 18.

¹⁵⁸*Ibid.*, 863; *ibid.*, 19.

¹⁵⁹*Ibid.*, 876; *H. A.*, *ib.*, 19; cf. *Vind. Alph.*, P. VII, q. 3.

¹⁶⁰Book VI, 864.

¹⁶¹*Ibid.*, 865; *H. A.*, 19.

¹⁶²Cf. *Acta S. Sed.*, vol. X, 185, 312, 319.

It must be noted: 1. The faculty of receding, concerning which we spoke, is to be taken in such a way that either spouse is able to renounce this right; wherefore, if the innocent party, having known his right, nonetheless ratifies the betrothals by words or deeds, and especially by carnal copulation, he cannot recede any more, because he is to be judged to have renounced his right. - 2. If the cause of receding is altogether certain, each can recede by his own right; but if a doubt either of law or of fact intervenes, the cause is to be referred to the ecclesiastical judge, i.e., to the Bishop.¹⁶³

N. B. Concerning those things which regard the external forum, see the Canonists.¹⁶⁴

Chapter II. On The Nature Of Matrimony

We shall treat: 1. of the notion of matrimony; 2. of the matter, form, and minister; 3. of the properties of matrimony.

Article I. On The Notion Of Matrimony

1962. DEFINITION. Matrimony (instituted by God the Creator) is the marital conjunction of man and woman, between legitimate persons, retaining an undivided companionship of life.¹⁶⁵

It is said 1. marital conjunction: by which words the very essence of matrimony is expressed, namely the mutual bond binding man and woman, from the fact that, through consent expressed concerning the present, they hand over to one another dominion of their bodies, in order to generation. - 2. Between legitimate persons: by which words are indicated the conditions of the subject, which ought to be such that the contracting parties are impeded by no law from contracting matrimony; - 3. retaining an undivided companionship of life, which words intimate the properties of matrimony, namely unity and indissolubility.

MATRIMONY, considered formally as a Sacrament, can be defined: the legitimate and indissoluble contract of baptized persons between a man and a woman, by which mutual power over bodies is handed over and accepted, in order to acts of themselves apt for the generation of offspring, elevated by Christ to the dignity of a Sacrament, and conferring grace *ex opere operato*. This definition will be made clear from what is to be said.

DIVISION. Matrimony is distinguished in many ways, namely:

1. Into legitimate, ratified, and consummated. - 1) Legitimate is that which is contracted by the non-baptized according to the norm of the natural law, and which lacks the power of a Sacrament; such is the matrimony of Jews and Infidels. - 2) Ratified, however, is that which has been contracted between baptized persons entangled by no natural or canonical impediment, between whom, however, after the contract, conjugal intercourse has not yet intervened. It is called ratified, insofar as the Church holds it valid. - 3) Finally matrimony is called consummated when to legitimate or ratified matrimony there has been added carnal conjunction of itself sufficient for the generation of offspring.¹⁶⁶
2. Into true, presumed, and putative. True is that whose conditions all objectively stand. - Presumed is called that which, in certain circumstances, is presumed by law, without proofs being brought. - Putative is that which is judged to have been validly contracted, when nevertheless on the side of reality, on account of some latent impediment, it is null.
3. Into canonical, political or civil, and of conscience. Canonical is called that in which all things concur which are required by the canons of the Church. Political or civil is that (which, unless canonical matrimony is added, is called matrimony by injury) in which those things also intervene which civil law requires, such as dotal pacts, consent of parents, and other solemnities, without which it is deprived of civil effect. Matrimony of conscience is that which is contracted in the usual form, the denunciations being omitted, under this law, that it should always be hidden (cf. n. 2080 Note).

Near to this is morganatic matrimony, when a noble man, after the death of a wife who left him children, marries another less noble woman under this law, that she herself and her children are excluded from the dignity of the husband and father and are content with some gift (*Morgengabe*) for their honorable support; and further that they abstain from the other goods, titles, and paternal insignia, and this especially in favor of the children begotten from the former wife.

¹⁶³Book VI, 878; H. A., XVIII, 26-27.

¹⁶⁴Cf. Vecchiotti, L. 5, § 70; and Bangen, *de Sponsal.*, § 8.

¹⁶⁵*Catech. Rom.*, p. 2, c. 8, n. 3.

¹⁶⁶Book VI, 879, 958.

1963. Principles. I. The essence of matrimony considered *in fieri* consists in mutual consent duly expressed; considered *in facto esse*, in the permanent bond which arises from the aforesaid consent and has annexed to itself dominion or mutual right over the body of the other, without, however, the use of this right belonging to the essence of matrimony. The first part is clear from the decree to the Armenians, saying: "The efficient cause of matrimony is mutual consent regularly expressed by words concerning the present." From this the second part also is clear, both because from compact and consent there arise a mutual obligation and bond between the contracting parties;¹⁶⁷ and because every legitimate handing over confers a right in the thing handed over, which thing in the matrimonial contract is the use of bodies in order to generation. Hence the Apostle (1 Cor. 7:4): "The woman does not have power over her own body, but the man. Likewise also the man does not have power over his own body, but the woman." But the third part is manifest from this, that the first parents before sin, at which time no intercourse of the flesh had intervened between them, as the Fathers testify, were plainly joined in true matrimony.¹⁶⁸ It is confirmed also by the example of the Blessed Virgin Mary and St. Joseph, between whom it is altogether certain that true matrimony existed, yet no use intervened. Wherefore, in both laws the rule has been received: "Consent, not intercourse, makes nuptials."

1964. II. Matrimony of Christians, celebrated by legitimate rite, is a true Sacrament of the New Law. - It is of faith, from Trent (sess. 24, can. 1), defining: "If anyone shall have said that Matrimony is not truly and properly one of the seven Sacraments of the evangelical law, instituted by Christ the Lord, but invented by men in the Church, and that it does not confer grace: let him be anathema." Nor does Paul the Apostle obscurely intimate the truth of the proposition, saying (Eph. 5:25): "Men, love your wives, as Christ loved the Church and handed himself over for her," and soon adding (v. 32): "This is a great sacrament; but I speak in Christ and in the Church."¹⁶⁹ And 1. indeed, it is a sign of a sacred thing, namely of that most holy bond by which Christ the Lord is joined with the Church, or the divine Word with human nature. - But 2. that grace also is signified and bestowed by this Sacrament, in which especially the nature of a Sacrament exists, these words of the Holy Synod declare: "But the grace which would perfect that natural love, and confirm the indissoluble unity, and sanctify the spouses, Christ himself, the institutor and perfecter of the venerable Sacraments, merited for us by his Passion." Nor 3. can it be doubted that, from the institution of Christ, matrimony, which before was only a natural and religious contract, was elevated to that dignity that it is a sign of a sacred thing, productive of grace, although it is not established concerning the time at which this was done. Therefore it is clear that nothing is lacking to matrimony from those things which belong to the nature of a Sacrament.¹⁷⁰

It was said: matrimony of Christians; for matrimony of infidels, although perfect in the nature of a contract, cannot be a Sacrament, since Baptism is the gate of all the Sacraments.

But concerning the matrimony of INFIDELS who afterward were converted to the Christian faith, as also concerning the matrimony of a faithful person with an infidel, which has been contracted with previous pontifical dispensation: there are various opinions of Authors, since nothing has been defined by the Church, which may be seen discussed among the Dogmaticians. - Those things which are more approved by us are the following: 1. Matrimony contracted in infidelity, according to the opinion by far more probable, is raised to the nature of a Sacrament by the conversion of both spouses, but not by the conversion of only one spouse. When both turn themselves to the Faith, an express renewal of matrimonial consent is not required; sufficient for the nature of a Sacrament is that virtual consent by which the spouses, approaching Baptism, determine to persist in the matrimony previously entered upon, but in a Christian manner. 2. Matrimony which a faithful person contracts with an infidel, after previous dispensation of the Pontiff has been obtained, has, according to the truer opinion, the nature of a Sacrament on the part of the faithful person.¹⁷¹

1965. III. In Christian matrimony, the contract is NOT DISSOCIABLE from the Sacrament; and therefore a true and legitimate contract cannot stand without being by that very fact a Sacrament. - This is clear from the Encyclical *Arcanum divinae sapientiae* of Our Most Holy Lord Pope Leo XIII, in which the Pontiff speaks thus:¹⁷² "For Christ the Lord increased matrimony by the dignity of a Sacrament; but matrimony is the contract itself, if only it has been made by right. To this is added that matrimony is a Sacrament on this account, because it is a sacred sign and effective of grace, and bearing the image of the mystical nuptials with the Church. But the form and figure of these is expressed by that very bond of the highest conjunction by which man and woman are bound together among themselves, and which is nothing other than matrimony itself. And so it appears that every just union between Christians is in itself and through itself a Sacrament:

¹⁶⁷ *Catech. Rom.*, loc. cit., n. 4.

¹⁶⁸ *Ibid.*, n. 8.

¹⁶⁹ Cf. Martin, *De Matrim.*, p. I, n. 90-102.

¹⁷⁰ Cf. St. Alphonsus, in Trent, sess. 24, n. 4-10.

¹⁷¹ Cf. Perrone, *De Matrim.*, Lib. 2, sect. 1, cap. 7, art. 1.

¹⁷² 10 Feb. 1880 (cf. *Acta S. Sed.*, vol. XII, 385).

and nothing is more abhorrent from truth than that the Sacrament is some adornment annexed, or a property having slipped on from without, which could be disjoined and separated from the contract by the will of men.”¹⁷³

From what has been said you will gather: 1. Matrimony is a contract *sui generis*, differing much from other contracts; and indeed: - 1) Matrimony has its origin and institution from natural and divine law; but other contracts from the law of nations, or from the special law of each nation. - 2) The object of matrimony has been determined by God in such a way that it cannot be modified by the stipulations of the contracting parties, while in other contracts many things are left to the judgment of the contracting parties. - 3) Matrimony, as regards validity, depends on divine, natural, and ecclesiastical law; but not, as civil contracts do, on civil law and the will of princes, who can do nothing in those things which pertain to the Sacraments (cf. n. 1994-1997).

2. Marriages entered into between HERETICS or SCHISMATICS, if no diriment impediment stands in the way, just as they are valid in the nature of a contract, so also truly have the nature of a Sacrament. But

IT IS ASKED. What is to be said of matrimony between BAPTIZED persons duly celebrated, with a positive will NOT TO RECEIVE the Sacrament?

Resp. Dist. 1. If the predominant intention was to exclude absolutely the nature of the Sacrament, and rather to omit matrimony than to receive the Sacrament, the matrimony is invalid in the nature of a Sacrament, and consequently also in the nature of a contract. - 2. If the predominant intention was to celebrate matrimony in the nature of a contract, and therefore to posit all things which are required for its validity, the matrimony is valid, both by reason of the contract and by reason of the Sacrament, although this has been received unworthily. - In doubt as to which was the predominant intention, judgment must be made in favor of matrimony; for everyone is presumed to will to exercise a valid contract, unless the opposite is proved.¹⁷⁴

1966. IV. The ENDS which can be considered in matrimony are of three kinds, namely: intrinsic essential ends, intrinsic accidental ends, and accidental extrinsic ends.

1. The INTRINSIC ESSENTIAL ends are two: 1) the mutual handing over of bodies with the obligation of rendering the debt; 2) the indissoluble bond. - Hence it is certain that, if someone should contract while positively excluding these ends, namely with the mind of not undertaking the obligation of rendering the debt, or of contracting for a time, he would not only sin, but would enter into no matrimony.
2. The INTRINSIC ACCIDENTAL ends likewise are two: 1. The procreation of offspring: for just as matrimony, as a natural conjunction, was instituted from the beginning for propagating the human race, so afterward, that a people might be procreated and educated for the worship and religion of the true God and of Christ our Savior, the dignity of a Sacrament was bestowed on it. 2. The remedy of concupiscence, namely that he who is conscious to himself of his weakness, and does not wish to endure the battle of the flesh, may use the remedy of matrimony for avoiding sins of lust. Concerning which the Apostle (1 Cor. 7:2) writes: “On account of fornication let each man have his own wife, and let each woman have her own husband.” And again (v. 9): “But if they do not contain themselves, let them marry; for it is better to marry than to burn.” Wherefore neither does he sin in any way who marries principally on account of the remedy of concupiscence, provided he does not exclude the end of procreating offspring. For there is no disorder if, from two licit ends, the secondary is chosen before the primary, when the latter is not smothered by the former. - But if someone should exclude these two intrinsic accidental ends, he could contract not only validly but also sometimes licitly: for example, if he were an old man and married without hope of procreating offspring, nor intended the remedy of concupiscence; for it suffices that the substantial ends be saved.¹⁷⁵
3. The ACCIDENTAL EXTRINSIC ends can be very many, such as peace to be reconciled, nobility to be acquired, etc. Ends of this sort, if in themselves honorable, are not to be condemned, since they are not repugnant to the holiness of matrimony; indeed they can even be intended primarily, because it is not a disorder, as we already said, to choose one of the secondary honorable ends before the primary end, provided this is not excluded.¹⁷⁶

IT IS ASKED. Whether matrimony is commanded by SOME LAW?

Resp. Although matrimony is ordered to the conservation of society, and it is necessary that some embrace this state, nevertheless concerning this no precept has been given to individuals. “But what was said by the Lord: Increase and multiply, looks to this, that the cause for which matrimony had been instituted be declared: not that it impose necessity

¹⁷³Ibid., *Acta*, p. 394.

¹⁷⁴Lugo, *De Sacram. in gen.*, disp. 8, n. 136.

¹⁷⁵Schmitt, *Epitome*, L. V, § 121.

¹⁷⁶Book VI, 882, 883.

on individual men. For now, the human race having already been increased, not only does no law compel anyone to take a wife, but rather virginity is commended exceedingly, and it is advised to each one in Sacred Scripture, as being more excellent than the state of matrimony, and containing in itself greater perfection and holiness”¹⁷⁷ (cf. n. 764).

1967. V. “There are three GOODS of matrimony: offspring, fidelity, and Sacrament; by compensation of which those inconveniences are lessened which the Apostle indicates by these words (1 Cor. 7:28): ‘such persons will have tribulation of the flesh’; and it is effected that conjunctions of bodies, which outside matrimony would deservedly have to be condemned, are joined with honorableness.

“The first good therefore is OFFSPRING, that is, children, who are received from a just and legitimate wife. For the Apostle esteemed this so greatly that he said (1 Tim. 2:15): The woman will be saved through the generation of children. Nor indeed must this be understood only of procreation, but also of the education and discipline by which children are instructed unto piety.”¹⁷⁸

“FIDELITY follows, which is the second good of matrimony, namely a certain faithfulness by which mutually the man binds himself to the woman and the woman to the man in such a way that one hands over to the other power over his or her body, and promises that he or she will never violate that holy covenant of marriage... But this fidelity of matrimony demands that husband and wife be joined by a certain singular, holy, and pure love; nor that they love each other as adulterers, but as Christ loved the Church.”¹⁷⁹

The third good is called SACRAMENT, and is found in the nature of a Sacrament.

Article II. On Matter, Form, And Minister

1968. Among all Catholic authors it is certain that the MATTER of this Sacrament is the matrimonial contract; as regards the FORM and MINISTER, various opinions have been handed down. - Certain Theologians, led by Melchior Cano, taught that the minister is the priest, but that the form is had in these words: “I join you in matrimony.” But the opinion which has always been more common, and has now become common, teaches that the ministers are the contracting parties themselves, and that the form consists in their mutual acceptance. - With these things briefly set forth beforehand, let the following be held.

1969. Principles. I. The REMOTE matter of this Sacrament is the bodies of the contracting parties, to be handed over mutually, or the mutual right over the body of the other. The PROXIMATE matter is the handing over itself of the right in the bodies, made through words or signs expressing consent. Thus commonly.

For this Sacrament has the nature of a contract; therefore just as in other contracts the things are the remote matter, and the handing over of the thing the proximate matter, so consequently it is in matrimony, where the right in the bodies is handed over.¹⁸⁰

1970. II. The FORM consists in the mutual acceptance of the contracting parties, expressed by words or signs. Thus commonly, and it will be clear from what is soon to be said concerning the minister.¹⁸¹

1971. III. The MINISTERS of the Sacrament of Matrimony are THE FAITHFUL THEMSELVES contracting. - This is the common opinion, and altogether certain. The evident reason is that in places where the impediment of clandestinity does not exist, matrimony is contracted validly without the presence of a priest. Therefore if a true Sacrament is effected even when the priest is absent, it must certainly be concluded that the contracting parties themselves, and not the priest, are the ministers.¹⁸² Nevertheless the priest is the minister of the solemnity of matrimony, as will be explained below (n. 2073).

Hence, for the contracting parties there apply those things which were said in their places both concerning the administration and concerning the reception of the Sacraments (cf. n. 1416, 1433, 1434, 1436). But,

YOU WILL ASK: Whether it is licit to enter matrimony with a PUBLIC SINNER, and consequently to minister the Sacrament to him? - RESP. This is prohibited at least under venial sin, as many probably say; indeed according to St. Alphonsus, more probably under grave sin, on account of reverence due to the Sacrament. A just cause EXCUSES from every sin,

¹⁷⁷ *Catech. Rom.*, p. 2, c. 8, n. 12.

¹⁷⁸ *Ibid.*, n. 13.

¹⁷⁹ *Ibid.*, n. 14.

¹⁸⁰ Book VI, 880; *H. A.*, XVIII, 28.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*, 880 and 897 sqq.

e.g. if someone cannot withdraw from matrimony without grave inconvenience. Except, however, if the other is an ex-communicate to be avoided, with whom to communicate in a sacred matter is altogether illicit.¹⁸³

1972. IV. The CONSENT by which matrimony is perfected and the Sacrament is administered must be personal, internal, deliberate, mutual, concerning the present, and externally manifested.

1. It must be PERSONAL; for “in matrimony consent cannot be supplied by any human power.”¹⁸⁴
2. TRUE and INTERNAL; for it is an act of one’s own will, which freely imposes on itself a new obligation. - Hence, if both, or either one of the contracting parties, should consent not from the soul but FICTITIOUSLY, there is no matrimony. In the first case the matter is clear of itself; in the other, because, since the matrimonial contract cannot limp, the consent of the other being lacking, the contract is null. The one contracting fictitiously commits both the sin of sacrilege, because he renders the Sacrament null; and the sin of injustice, if the counterpart contracts in good faith, because he deceives that person and inflicts on him or her a grave injury, which he is bound to repair by removing the fiction and truly contracting (cf. n. 2083). If this cannot be done, or if the deceived party does not will it, he is bound at least to repair the other damages. Except, if the other party also deceived, or if the deception was done in order that the deceiver might decline fear unjustly inflicted. Nevertheless Authors commonly say that it is not illicit to simulate the celebration of nuptials, on account of a just cause, e.g. on account of a diriment impediment, when namely the celebration cannot be omitted without grave damage, as was said n. 1430, at the end.¹⁸⁵
3. DELIBERATE, i.e. furnished with sufficient knowledge and due liberty. Force and error stand in the way of deliberation; but concerning these there will be discussion where impediments are treated.
4. MUTUAL; because a contract burdensome on both sides and transferring a mutual right in the bodies, as the matrimonial contract is, is not effected except through the reciprocal consent of the contracting parties. Wherefore it must also be noted: union and at least moral simultaneity are required between the consent of one and of the other, such as namely is required in civil contracts (cf. n. 1044, 3).
5. CONCERNING THE PRESENT, namely by which the contracting parties mutually accept each other here and now as true spouses; for in this matrimony differs from betrothals (cf. n. 1950, It is said 5).
6. EXTERNALLY MANIFESTED; otherwise mutual acceptance would not be possible. - It is not indeed required for the VALIDITY of matrimony that consent be expressed by words; it suffices that it be expressed by signs, which Innocent III declared,¹⁸⁶ saying: “The deaf and mute can contract matrimony through consent without words.” A sufficiently adequate sign would be if the woman, after the man’s consent has already been expressed, should extend her hand to him; but not if she should not withdraw her hand when it has been seized by him. Nor would the giving of a ring suffice, or the leading of the bride into the house of the man, unless by the custom of the place signs of this sort expressed consent. But as regards LICITITY, unless modesty or another reasonable cause excused, it would be a venial sin to express consent by signs alone; because it would be against the rubric of the Ritual and against the custom of the Church.¹⁸⁷

But sometimes explicit consent is not required. For, in places where the impediment of clandestinity does not prevail, BETROTHALS THEMSELVES, to which free and consummated intercourse is added, pass into true matrimony; provided the intercourse was had with marital affection: and this affection indeed is always presumed in the external forum; but in the internal forum, presumption yields to truth.¹⁸⁸

1973. Questions. Q. 1. Whether matrimony can be contracted VALIDLY and LICITLY THROUGH A PROCURATOR?

Resp. 1. It can be contracted VALIDLY, as is clear from law. The reason is that Christ, in elevating matrimony to the being of a Sacrament, did not change the nature of the contract, which is such that it can be entered into among absent persons through a procurator. - But for this many things are REQUIRED, namely: 1) A special mandate, which can be given orally; for writing is not demanded. - 2) That the mandate be concerning contracting with a determinate person. - 3) That the procurator contract by himself; for he himself cannot delegate another, unless he has express and special permission from the mandator. - 4) That the mandate has not been revoked by the mandator, even mentally, before the matrimony is celebrated. And this runs even if the revocation is made tacitly, namely if someone gave a mandate of contracting with

¹⁸³Book VI, 55; H. A., XIV, 6.

¹⁸⁴Pius VI in Letter to the Bishop of Eger, 11 July 1789 (cf. Roskovany, *Matrim. in Eccl. cath.*, I, 292).

¹⁸⁵Book VI, 887, 1113, 62; H. A., XVIII, 29.

¹⁸⁶Cap. 23, *de Sponsalibus*.

¹⁸⁷Book VI, 887-889; H. A., *ibid.*, 31.

¹⁸⁸Cf. Instruction of the S. C. de Propaganda Fide, 14 Jan. 1821 (*Collect. S. Sed.*, n. 992).

one woman, and afterward celebrates betrothals with another. - 5) That, in places where the impediment of clandestinity prevails, the procurator show the mandate to the pastor and witnesses, and before them contract matrimony according to the form of Trent. - 6) That he not exceed the limits of the mandate. But in this it must be adverted that, if the condition is required by the mandator, namely that contraction be made with such a dowry, at such a time, etc., if the condition is not observed, the matrimony will be null. But if the condition is required by law, namely that contraction be made after denunciations have been premised, after permission of the Bishop has been obtained, etc., then the matrimony entered without them will be valid.¹⁸⁹

Resp. 2. It can also be contracted LICITLY, but only when a grave cause suffices, as, e.g., among Princes; for one must not easily recede from the ordinary practice of the Church. And hence it is why the pastor ought not, without consulting the Bishop, to assist at such a matrimony.¹⁹⁰

Q. 2. Whether matrimony can be contracted through a LETTER?

Resp. Affirmatively, on account of the same reason as above. But it is contracted in the following manner: "The groom writes to the bride that he himself hands himself over to her as husband, and from that moment accepts her as wife. The bride writes the same in return to the man; this response is read before the pastor and witnesses. Moreover, it is also enough that the man write to the woman in the way related, and that the bride, without writing back to the groom, open the letters before the pastor and witnesses, and furnish her consent."¹⁹¹ - But that this be done LICITLY, a grave cause is required. Hence it is plainly to be advised that the pastor do nothing in this matter without the permission of the Bishop. Except, unless perhaps it is a question of revalidating matrimony, in which case one party would refuse to present himself before the pastor.¹⁹²

Q. 3. Whether matrimony can be contracted UNDER CONDITION?

Resp. Affirmatively, because neither the sacred canons nor the very nature of matrimony altogether impede certain conditions from being added to matrimonial consent. - But according to the variety of conditions, various things must be DISTINGUISHED:

1. If the condition, even a base one, is concerning the past or concerning the present, the matrimony is valid if the condition stands; on the contrary, if it is lacking, it is not valid, because consent is lacking.
2. If the condition is concerning a necessary future thing, e.g. if the sun rises tomorrow, the matrimony is valid at once, unless the contracting parties intend to suspend consent until the time of the fulfilled condition. Thus commonly.
3. If the condition is against the substance of matrimonial obligation, e.g. if one says to the other: "I contract with you, if you avoid the generation of offspring; or until I find another more worthy in honor or wealth; or if you hand yourself over to be adulterated for gain:" thus it must be DISTINGUISHED: 1) if the condition is added with the intention of not undertaking the obligations which are essential to matrimony, which can easily happen in regions where divorce is permitted by laws and is in use, the matrimony is invalid; 2) if it is added with the intention indeed of undertaking them, but of not fulfilling them, it is valid, and the depraved will must be corrected.¹⁹³ - But here it is customary to ask whether the condition of not consummating matrimony is against the good of offspring? - The more common and more probable opinion denies it; wherefore matrimony entered into under this condition is valid, provided the contracting parties intend to hand over to each other the mutual right in the body and to bind only the use of it (cf. n. 1963).
4. If the condition is concerning an impossible or base thing, which nevertheless is not repugnant to the substance of matrimony, again it must be DISTINGUISHED: 1) if there is evidence of a serious will not to contract unless the added condition has been fulfilled, matrimony entered into under an impossible condition is null; but one entered into under a base condition is not null by that very fact, but before the condition has been fulfilled, it obliges to nothing; when it has been fulfilled, however, it becomes absolute matrimony. - 2) But if there is no evidence of that serious will, the base or impossible condition is held as not added, and the matrimony is immediately valid.
5. Finally, if the condition is concerning a future contingent and honorable thing, the matrimony remains suspended until the condition is fulfilled; but when this has been fulfilled, it becomes absolute. While the condition is pending,

¹⁸⁹Book VI, 885.

¹⁹⁰Cf. Bangen, *de Matrim.*, II, 33, v. *Hinc elucet*.

¹⁹¹*H. A.*, XVIII, 32; Book VI, 886.

¹⁹²Cf. Bangen, loc. cit., p. 32, end; and Craisson, n. 4096.

¹⁹³Book VI, 890.

it is not licit for one, against the will of the other, to revoke consent.¹⁹⁴

But note as regards LICEITY, that the pastor cannot, without a most urgent cause, admit conditional marriages of this sort; namely on account of the many inconveniences and difficulties which afterward can occur and be moved against their validity.¹⁹⁵

Q. 4. Whether, when the condition has been fulfilled, NEW CONSENT is required for matrimony?

Resp. Some indeed affirm, because matrimony is not only a contract, but also a Sacrament, whose validity cannot be pending.

But others, more truly and commonly, deny it, because the condition having been fulfilled, the contract becomes absolute, and consequently by that very fact also is constituted in the nature of a Sacrament.¹⁹⁶

Q. 5. What if a demonstration, cause, or mode is added to consent?

Resp. DEMONSTRATION, e.g. I marry you, who are noble; CAUSE, e.g. I marry you, because you are a virgin; MODE, e.g. I marry you, that you may serve me, differ altogether from condition in this, that they do not suspend consent; wherefore matrimony becomes immediately absolute, unless perhaps the demonstration, cause, or mode have, in the mind of the contracting parties, the nature of a condition, or unless substantial error lies hidden in them.¹⁹⁷

Q. 6. Whether the CONSENT OF PARENTS is required for the matrimony of children-of-the-family?

Resp. 1. Negatively, as regards validity: and this is of faith against the Lutherans and Calvinists. For Trent (sess. 24, cap. 1) "condemns with anathema those who falsely affirm that marriages contracted by children-of-the-family without the consent of parents are invalid, and that parents can make them ratified or invalid." Reason is added: for the contracting parties have power over their own body, nor do parents have power over the body of their children in order to matrimony. - But if CIVIL LAW requires the consent of parents for the validity of matrimony, its force extends only to merely civil effects.

Resp. 2. It is required, at least speaking regularly, for liceity; so that children-of-the-family sin gravely if parents justly contradict, or if they are judged to be reasonably unwilling. We said speaking regularly; for when a just cause intervenes, it is certain that children can, while parents are ignorant of it or even unwilling, enter matrimony¹⁹⁸ (see n. 1951, query 1).

But when parents contradict justly, and when unjustly, cannot easily be defined: wherefore a prudent confessor will indeed persuade children that, in a matter of so great moment, they should not stand against the will of parents; but very rarely will he impose on them an obligation of withdrawing from entering matrimony, especially because greater evils, for the most part, are to be feared from this.

Article III. On The Properties Of Matrimony

1974. Matrimony, "that it might respond more aptly to the most wise counsels of God, either from the beginning bore before itself chiefly two properties, and these especially noble, as though deeply impressed and engraved, namely unity and perpetuity."¹⁹⁹ Concerning these two properties one must now treat.

§ 1. On The Unity Of Matrimony The UNITY of matrimony, which is also called monogamy, is situated in the conjunction of one man with one woman. To unity is opposed polygamy, which is twofold: 1. simultaneous, when one man joins several wives to himself in matrimony at the same time, and this is called simply polygamy; or when one woman marries several men at the same time, and it is commonly called polyandry or polyviry; 2. successive, when after the death of the spouse, the surviving party hastens to new nuptials.

1975. Principles. I. SIMULTANEOUS POLYANDRY is prohibited, by the consent of all, by the NATURAL law itself. - For it is directly opposed to the generation and education of offspring: to generation indeed, since a woman knowing several men at the same time generally remains barren; but to education, since the father of such offspring, if perhaps it is born,

¹⁹⁴Ibid., 891, 892.

¹⁹⁵Book VI, 893.

¹⁹⁶Ibid., 894.

¹⁹⁷Book VI, 896.

¹⁹⁸Book VI, 849.

¹⁹⁹Const. *Arcanum* of Leo XIII; cf. Martin, *de Matrim.*, P. I, n. 59-82.

is uncertain. And hence it is that prostitution, to which polyandry is reduced, has at every time been held as infamous and flagitious.²⁰⁰

1976. II. SIMULTANEOUS POLYGAMY is prohibited in the New Law by DIVINE right. - For Christ expressly taught: "Whoever shall have put away his wife and married another, commits adultery against her" (Mark 10:11). But now, if he is an adulterer who, having put away his wife, marries another, much more will he be an adulterer who does this while retaining the former. Hence Trent (sess. 24, can. 2): "If anyone shall have said that it is licit for Christians to have several wives at the same time, and that this is prohibited by no divine law: let him be anathema." - Wherefore, if some infidel, having several wives, is admitted to Baptism, he must retain only one, namely her whom he validly joined to himself in the first place, or any one of the others who is willing to embrace the Christian faith; unless the Pope has otherwise determined or permitted, according to what is to be said n. 1980.²⁰¹

As regards the natural law, Theologians, led by St. Thomas,²⁰² hold that polygamy is not contrary to the primary end of matrimony; and therefore that it is not intrinsically evil, nor absolutely prohibited by the precepts of nature; yet that it is opposed to the secondary ends of marriage, of which sort are peace, tranquility, mutual services, etc.; and therefore that it is contrary to the secondary law of nature, in which God alone can dispense. And indeed, after the flood, for just causes, moderate polygamy was granted to the Patriarchs and to the Israelite people. Indeed the more common opinion teaches that the same dispensation was extended to the Gentiles. But from the beginning it was not so (Matt. 19:8); and Christ the Lord restored the law of matrimony, whether for Christians or for Gentiles, to its primeval integrity.

1977. III. SUCCESSIVE polygamy has never been prohibited; and therefore second and later nuptials are LICIT, both for the man and for the woman, even under the evangelical law. - This is clear from the authority and practice of the Church, and also from the words of Paul the Apostle (1 Cor. 7:39): "The woman is bound by the law as long as her husband lives; but if her husband sleeps, she is freed; let her marry whom she will, only in the Lord." Recalling these words, Eugene IV in the decree for the Jacobites declared: "not only second, but third and fourth and further nuptials, if some impediment does not stand in the way, can be contracted licitly."

Nevertheless, the Church of God has always followed widowhood with special honor, nor has she ever held second nuptials as honorable as first nuptials, since the union of Christ with the one Church is represented less perfectly through them (cf. n. 1937).

Note. From the modern Codes, a WIDOW cannot enter matrimony unless ten months have elapsed from the death of the prior husband, or she has given birth: nevertheless this prohibition does not have the force of invalidating civil matrimony.²⁰³

§ 2. On The Perpetuity Of Matrimony, Or On Indissolubility 1978. The INDISSOLUBILITY of matrimony is one thing as regards the bond, another as regards bed and cohabitation. The former belongs to the essence of matrimony, the latter to the offices of spouses. Here only the former must be treated.

Principles. I. Matrimony duly entered into is so indissoluble that it can NEVER be DISSOLVED through divorce as regards the bond. It is of faith from Trent (sess. 24, can. 5 and 7). For "the perpetual and indissoluble bond of matrimony the first parent of the human race, by the instinct of the divine Spirit, pronounced, when he said: This now is bone of my bones and flesh of my flesh: wherefore a man shall leave his father and mother, and shall adhere to his wife, and they shall be two in one flesh."²⁰⁴ But the "firmness" of this bond, "pronounced by Adam so long before, Christ the Lord confirmed by these words: What therefore God has joined, let not man separate."²⁰⁵

To the Hebrews indeed, by divine dispensation, the faculty of a bill of repudiation was made, by which the bond of matrimony, in certain circumstances, could be dissolved (Deut. c. 24); but "Jesus Christ restored it to its primeval state, namely to indissolubility, not by establishing a new law, but only by removing the old indulgence, or dispensation conceded over the aforesaid indissolubility."²⁰⁶

But this indissolubility arises from NATURAL LAW itself, at least secondary, because it is necessary for the education of

²⁰⁰St. Alphonsus, in Trent, sess. 24, n. 11.

²⁰¹Cf. *Collect. S. Sed.*, n. 919, 921, 924 ad 5, 928 ad 1.

²⁰²Suppl., q. 65, a. 1.

²⁰³French Code, art. 228; Italian Code, art. 57 (cf. Craisson, n. 4100).

²⁰⁴Trent, sess. 24, in the beginning.

²⁰⁵Ibid.

²⁰⁶Benedict XIV, Const. *Apostolici ministerii*, 16 September 1747.

offspring that parents perpetually devote themselves to its good. Thus most commonly the Authors, led by St. Thomas.²⁰⁷ It is also clear from condemned proposition 67 of the Syllabus: "By the law of nature the bond of matrimony is not indissoluble, and in various cases divorce properly so called can be sanctioned by civil authority." - Hence, "what a mass of evil DIVORCES contain in themselves, it scarcely needs to be said. For by reason of them marital covenants are made changeable, mutual benevolence is weakened, pernicious incentives are supplied to infidelity; harm is done to the protection and instruction of children; occasion is furnished for tearing apart domestic societies; seeds of discords among families are scattered; the dignity of women is diminished and depressed, who come into danger lest, after they have served the lust of men, they be held as abandoned."²⁰⁸

But, although matrimony of itself is indissoluble, nevertheless in certain cases it admits dissolution of the bond; wherefore diverse degrees of indissolubility can be distinguished, as will be clear from what is soon to be said.

1979. II. Matrimony of the faithful RATIFIED and CONSUMMATED can never by any reason be dissolved as regards the bond, except THROUGH THE DEATH of either spouse. - Concerning this especially that word of the Apostle avails: "The woman is bound by the law as long as her husband lives." And Our Most Holy Lord Pope LEO XIII defined: "To dissolve the bond of marriage between Christians ratified and consummated is in the power of no one."²⁰⁹ The practice of the Church is added, which has never dispensed in matrimony of this sort.

1980. III. Legitimate matrimony of INFIDELS, even if it has been consummated, CAN BE DISSOLVED as regards the bond, in the case which they call that of the Apostle: namely if, with one spouse converted to the faith, the other refuses to be converted, or at least does not wish to cohabit without contumely of the Creator. - It is a privilege conceded by Christ the Lord in favor of the faith, as is clear from the testimony of Paul saying: "But if the infidel departs, let him depart; for the brother or sister is not subject to servitude in such cases" (1 Cor. 7:15).

Various things on this point occur to be OBSERVED:

1. From a threefold cause the convert can pass to other nuptials: 1) if the infidel refuses to dwell with him; 2) if he wishes to dwell, but not except with injury of the Creator, e.g. by retaining concubines;²¹⁰ 3) if he wishes to draw him into mortal sin.²¹¹ But the convert can enjoy this privilege, even if the infidel spouse consented to cohabit peacefully for some time, indeed for many years, and afterward, with will changed, no longer wishes to do this. Thus from the Decree of the Holy Office, 5 Aug. 1759.²¹²
2. The convert to the faith cannot use the aforesaid privilege unless there precedes an interpellation of the infidel spouse, whether he wishes to be converted to the faith, or at least to cohabit without contumely of the Creator.²¹³ - This twofold interpellation, which must be made after Baptism, is required not only that new nuptials can be entered into licitly, but also validly: thus from the declaration of the S. C. de Propaganda Fide, 5 March 1816.²¹⁴ But if interpellation is impossible or of the greatest difficulty, the Supreme Pontiff customarily grants an Indult, so that, it having been omitted, the convert can contract a new matrimony.²¹⁵ But indults of this sort, conceded either for various infidel regions or to Apostolic Vicars for a certain number of cases, cannot be extended to other regions or to other cases, unless recourse has been made to the Holy See.²¹⁶ The Church then dispenses from the rigor of the interpellation, so that the convert is bound only to interpellate the infidel spouse whether he wishes to be converted to the faith; the other being omitted, namely whether at least he wishes to cohabit peacefully.²¹⁷ This dispensation is more easily conceded in those places where a law prevails forbidding the faithful to cohabit with infidels, since then there is given a presumption of law concerning the danger of perversion to be undergone (cf. n. 448).
3. The bond of marriage is dissolved only then when the convert contracts a new matrimony. This is clear from the Decree of the Holy Office, 5 Aug. 1759.²¹⁸ Hence 1) if the infidel, after hearing the interpellation and giving a

²⁰⁷Book VI, 956.

²⁰⁸Leo XIII, Const. *Arcanum*.

²⁰⁹Ibid.

²¹⁰Cf. *Collect. S. Sed.*, n. 950, S. Offic. resp.

²¹¹Book VI, 956, end.

²¹²Cf. *Collect. S. Sed.*, n. 924.

²¹³Cap. *Quanto 7, de divortiis*; and S. C. C., 23 Jan. 1603 (ap. Benedict XIV, *de Synodo*, lib. 13, c. 21, n. 1).

²¹⁴*Collect. S. Sed.*, n. 934.

²¹⁵Ibid., n. 920, 956.

²¹⁶Benedict XIV, loc. cit., lib. 13, c. 21, n. 6 (cf. *Collect. S. Sed.*, n. 926).

²¹⁷Cf. Faculties of Apostolic Vicars, *Collect. S. Sed.*, n. 31, 11; cf. Book VI, 957, 3rd sent.

²¹⁸*Collect. S. Sed.*, n. 924, ad 2.

negative response, afterward embraces the faith before the other converted spouse has contracted new nuptials, the matrimony can no longer be dissolved by force of the Pauline privilege, but becomes altogether ratified. 2) If the first convert meanwhile has received sacred Orders, he cannot return to the spouse now converted, because the use of matrimony is no longer licit to him; for, after the negative response was received, he used his right by choosing a new state. But neither can the second convert enter a new marriage, because the first matrimony endures: unless the spouse has emitted solemn vows, as will be said below (n. 1981).

IT IS ASKED. Whether the Supreme Pontiff CAN DISPENSE over matrimony entered in infidelity, when ONE PARTY or BOTH are converted to the faith?

Resp. Dist. 1. If the matrimony after the Baptism of both has been consummated, it has become altogether indissoluble, and therefore a dispensation cannot be given.

2. If the matrimony has never been consummated, the Pope can dispense, as in ratified matrimony of Christians, concerning which we shall speak soon. - 3. If the matrimony was consummated only in infidelity, it is disputed. Some, among whom is St. Alphonsus,²¹⁹ whom we follow, affirm it, and they seek the reason from the Constitution *Romani Pontificis* issued by St. Pius V,²²⁰ and from the Constitution *Quoniam saepe contingit* of Gregory XIII;²²¹ through which Constitutions the aforesaid Pontiffs are said to have dispensed over such a matrimony.²²² Others, however, deny it, from the fact that they judge the said Constitutions must be understood of dispensation from interpellation to be made, but not from the bond of marriage.²²³

Note. Only the baptized can enjoy the Pauline privilege, but not catechumens.²²⁴ Nor can that faithful person enjoy it who, after obtaining pontifical dispensation over the impediment of disparity of cult, contracted matrimony with an infidel, even if this one does not wish to cohabit peacefully. S. C. Off., 4 July 1855.²²⁵ But whether the privilege is to be extended to those who, by receiving Baptism validly, pass to some Christian sect, but not to the Catholic Church, is freely disputed.

1981. IV. Matrimony RATIFIED, but NOT CONSUMMATED, is dissolved by the very fact THROUGH SOLEMN PROFESSION of Religion by either spouse. - It is of faith from Trent (sess. 24, can. 6), affirming that this privilege was conceded by Christ the Lord in favor of the Religious State. Nevertheless Profession would be illicit "if matrimony were necessary for legitimating offspring, or for repairing scandal or the honor of the bride; for then the man could not become a Religious by leaving the bride, who on account of infamy would no longer be able to enter nuptials."²²⁶

But that the spouses may be able to use the aforesaid privilege, there is conceded to them a two-month period from the celebration of matrimony, within which time they are not bound to render the conjugal debt. And indeed each spouse can enjoy this concession, although he does not have the mind of entering Religion: for he uses his own right. But if, after the two-month period has already passed and the matrimony has not been consummated, one, with the other contradicting, embraces the religious state and emits vows: his profession is indeed illicit, but not invalid; wherefore in this case also the bond of matrimony is dissolved. - Nevertheless he would sin who, the counterpart not having been forewarned, should enter matrimony wishing to enter Religion; for besides other inconveniences which can most easily arise from such a manner of acting, the abandoned spouse would be bound to wait for his solemn profession until she should again enjoy the liberty of marrying.²²⁷

For the rest, this case is very rare, especially because civil laws, in many places, impede spouses from having recourse to the use of the privilege.

1982. V. Matrimony RATIFIED, but NOT CONSUMMATED, can, on account of a most grave cause, be dissolved through Pontifical DISPENSATION. - Thus commonly today Theologians and Canonists. This is clear especially from the continued practice of several centuries, at least after Martin V;²²⁸ nor in our times are examples of a dispensation of this sort rare.²²⁹

²¹⁹Book VI, 897, prob. 1; 956.

²²⁰Cf. *Collect. S. Sed.*, n. 919.

²²¹Ibid., n. 920 and 922.

²²²Mansella, *De imp. matrim. dir.*, cap. IV, art. III, 19, 20.

²²³Giovine, I, § 276, 3; Feije, 602; cf. Benedict XIV, *de Syn.*, L. 13, c. 21, and L. 6, c. 4, n. 5.

²²⁴*Collect. S. Sed.*, n. 921 (S. C. de Prop. Fide, 16 Jan. 1806).

²²⁵*Collect. S. Sed.*, n. 950, v. *Generatim*.

²²⁶Book VI, 958 (cf. also n. 870, end).

²²⁷Book VI, 858; *H. A.*, *ibid.*, 90.

²²⁸Ibid., 859; cf. *Op. dogm.* in Trent, sess. 24, n. 20.

²²⁹Cf. Giovine, *de Disp. matrim.*, § 251 and § 264 sqq.; and Feije, *De imp. matr.*, in Appendix n. VII, where there are many examples.

The Supreme Pontiff remits the cause for dispensing to the S. Congregation of the Council to be weighed; and for the most part a cause is judged to be present, if the matrimony is likely invalid, without however its nullity being able to be sufficiently proved, and if otherwise it is plainly established that it was not consummated.²³⁰

Chapter III. On The Impediments Of Matrimony

1983. By IMPEDIMENT OF MATRIMONY is understood that which stands in the way so that matrimony is not entered into duly.

Impediments are of a twofold kind: some render matrimony only illicit, others render it moreover invalid. The former are called IMPEDIENT, or prohibiting, the latter DIRIMENT.²³¹

Article I. On Prohibiting Impediments

1984. Besides mortal sin and excommunication, which render matrimony illicit, FOUR prohibiting impediments are numbered, comprehended in these little verses:

Prohibition of the Church, time, betrothals, vow,
Impede it from being made, permit what is made to stand.

To these impediments TWO others were formerly numbered, namely: - 1. The impediment of Catechism, which was contracted by him who answered for an infant, when the ceremonies were supplied after Baptism conferred in necessity; or, according to others, by him who recited the profession of faith in the name of the one to be baptized before Baptism. This impediment was removed by the Council of Trent (sess. 24, *de reform. Matrim.*, cap. 2). - 2. The impediment of Crime, under which name were comprehended certain delicts, e.g. incest with one's own mother or daughter, abduction of another's bride, wife-murder, priest-murder, public penance as long as it endured, etc.; but this impediment has become obsolete by desuetude.²³² - By others also the dissent of parents is reckoned among prohibiting impediments. See what was said n. 1951 and 1973, qu. 6.

I. Prohibition Of The Church 1985. By PROHIBITION OF THE CHURCH, in the strict sense, is understood an interdict from man, and it is defined: A prohibition by which an ecclesiastical Superior forbids, for a just cause, matrimony to be contracted between certain persons, until that cause or reason has been removed. But under the name of ecclesiastical Superior here comes not only the Pontiff for the universal Church, and the Bishop for his diocese, or the vicar general; but also the pastor, who, although he does not judicially see to matrimonial causes as to other causes, nevertheless can place an INTERDICT as pastor, until namely the cause is discussed and decided by the ordinary judge.

The CAUSES of the prohibition can be: either betrothals entered with another, or suspicion of a latent impediment, or fear of disturbances, ignorance of the elements of faith, or another thing of this sort.²³³ If the prohibition was made on account of a grave cause, the contracting parties sin gravely in contracting matrimony; but lightly, if the prohibition is on account of a light cause, e.g. on account of the veneration of some feast.²³⁴

In a broader sense, PROHIBITION OF THE CHURCH comprehends moreover certain general prohibitions noted in law, such as: that matrimony not be celebrated when proclamations have been omitted; that it not be entered into clandestinely, which prohibition everywhere constitutes an impedient impediment, but where Trent has been promulgated, is a diriment impediment. Concerning these it will more conveniently be said below, where proclamations and clandestinity are treated (n. 2056 and 2040).

Among these prohibitions noted by law, the first place must be assigned to that by which MIXED MARRIAGES are forbidden, concerning which one must speak more fully.

On Mixed Marriages 1986. MIXED matrimony, or matrimony of mixed religion, is called that which is contracted between baptized persons, of whom one is Catholic, but the other non-Catholic.

²³⁰Cf. *Rev. des sc. eccles.*, t. 52, p. 126 (Instr. S. C. Prop. Fid., *De Processu matrim.*).

²³¹Book VI, 978.

²³²Book VI, 985; *H. A.*, XVIII, 53.

²³³De Angelis, lib. 4, tit. 16, n. 3.

²³⁴Book VI, 982.

Principles. I. "MIXED marriages are detestable unions, which Holy Mother Church has perpetually CONDEMNED and interdicted." - Thus Benedict XIV, in the Decree concerning marriages of heretics in Holland.²³⁵

But why they are to be detested Our Most Holy Lord Pope LEO XIII explains in a few words in the Encyclical *Arcanum*, saying: "This also must be guarded against, namely that marriages not easily be desired with those alien to the Catholic name: for it can scarcely be hoped that souls dissenting about the discipline of religion will be otherwise concordant in other things. Indeed, it is chiefly from this that one perceives that marriages of this sort must be abhorred, because they furnish occasion for forbidden association and communication in sacred things, create danger to the religion of the Catholic spouse, are an impediment to the good instruction of children, and very often impel souls to become accustomed to having equal regard for all religions, the distinction between true and false having been removed."

1987. II. Mixed marriages sometimes CAN BECOME LICIT, namely from pontifical dispensation conceded on account of a grave cause, with due cautions moreover being employed and certain conditions being observed. Thus it has been declared many times by the Supreme Pontiffs, and by name by Pius IX in the Instruction promulgated on 15 Nov. 1858.²³⁶

1. PONTIFICAL DISPENSATION is required, since it pertains to the Apostolic See alone to dispense in the general law of the Church.²³⁷ - This dispensation, if at times it concedes it through the Congregation of the Holy Office, it concedes only unwillingly, and solely for grave causes, e.g. on account of hope of gaining the non-Catholic family for the faith, or for avoiding scandals.
2. DUE CAUTIONS must be employed, "namely that a) not only can the Catholic spouse not be perverted by the non-Catholic;²³⁸ indeed b) the Catholic spouse himself knows that he is bound, according to his powers, to draw the non-Catholic back from error; but also c) that all offspring of either sex to be procreated from these mixed marriages must altogether be educated in the holiness of the Catholic religion. These cautions indeed can never be remitted or dispensed, since they are founded in the natural and divine law itself, which the Church and the Holy See strive with every zeal to guard whole and intact."²³⁹ The required cautions formerly had to be confirmed in writing or even by oath; but today it suffices that there be "such a promise, reduced to an agreement, as furnishes a moral foundation concerning the truth of the execution, so that such execution can prudently be expected," from the decision of the Holy Office, 30 June 1842.²⁴⁰ - But if, in some places, diocesan Statutes prescribe writing or oath, or even other cautions besides those enumerated, they must be obeyed.
3. CERTAIN CONDITIONS must be observed, which regard the celebration of matrimony, namely "that these mixed unions be celebrated outside the church, and without the blessing of the pastor, and without any other ecclesiastical rite." - Hence, only passive presence of the pastor is permitted; which ought to be such that he does not assist at the matrimony in a sacred place, nor with vestments which display a sacred rite. Moreover, he ought not recite liturgical prayers over the contracting parties, nor bless them in any way. - Yet it is right for him to question them concerning the will of entering matrimony. But it is not licit to make proclamations of such marriages, as is clear from the Letter of Pius VI to Cardinal de Frankenberg, 13 July 1782.²⁴¹

But the Church does not urge the observance of these conditions with the highest rigor; for, "if in some places the sacred Prelates know that the same CONDITIONS cannot be fulfilled without graver damages and evils arising from it: in this case only His Holiness commits it to the prudent judgment of the same sacred Prelates, for avoiding greater damages and evils of this sort, that they themselves, with the cautions always saved and firm and most diligently observed..., judge when the commemorated conditions concerning these mixed nuptials to be contracted outside the church and without the blessing of the pastor can in no way be fulfilled; and when, in entering these promiscuous marriages, the custom of employing the rite legitimately prescribed in the diocesan Ritual for marriages to be contracted can be tolerated; yet with the celebration of Mass always excluded, and all the circumstances of things, places, and persons most diligently weighed, and with the conscience of the Prelates themselves burdened concerning the truth and gravity of all the circumstances."²⁴²

If ACTIVE assistance of the pastor is judged to be permitted, it can also be tolerated, when circumstances advise it, that the customary PROCLAMATIONS be made, with mention of the religion of the parties to be married being omitted, and

²³⁵ Cf. Book VI, 1044 and *H. A.*, XIV, 6, end.

²³⁶ *Acta S. Sedis*, vol. VI, 456; and *Collect. S. Sed.*, n. 907.

²³⁷ When danger of life is urgent, the Bishop probably can dispense. Cf. *Resp. S. Off.*, 3 Aug. 1873 (*Nouvelle Revue theol.*, XV, 400).

²³⁸ Cf. St. Alphonsus, in Trent, sess. 24, n. 18; and Book VI, 56.

²³⁹ Cited Instruction of Pius IX.

²⁴⁰ Cf. Feije, n. 568, p. 439, Note.

²⁴¹ Cf. Bangen, IV, 21; Text ap. Roskovany, *de matr. mixt.*, tom. II, p. 61, docum. 66.

²⁴² Cited Instruction of Pius IX.

that TESTIMONIAL LETTERS be conceded concerning the facts, which state only that nothing, besides the prohibition of the Church, stands in the way of arranging the matrimony, all words being omitted from which suspicion of consent or of any approval could arise.²⁴³

And let these things have been said concerning MIXED marriages which have become licit. But since pastors are accustomed to be especially anxious concerning illicit mixed marriages, it comes aptly here to be inquired what must be done in such circumstances.

1988. Questions. Q. 1. Whether the pastor CAN ASSIST at a mixed matrimony which, on account of defect of dispensation, remains illicit?

Resp. Negatively, speaking regularly: because such assistance is material cooperation toward an illicit act, and therefore prohibited of itself.²⁴⁴ “Nevertheless, if it is recognized that it can yield to the utility of the Church and the common good of souls that nuptials of this sort, however illicit and forbidden, be celebrated before a Catholic pastor rather than before a heretical minister, to whom the parties could easily flee: then the Catholic pastor himself, or another priest acting in his place, will be able to be present at the same nuptials only by material presence, every ecclesiastical rite being excluded, just as if he performed only the parts of a merely qualified witness, as it is commonly called, or one able to authorize.”

That is, so that, after hearing the consent of each spouse, afterward according to his office he may record the act validly performed in the book of marriages.²⁴⁵ Likewise, proclamations can be made and testimonial letters conceded, in the manner in which it was said above.²⁴⁶ But the pastor, in this matter, should do nothing without consulting the Bishop.²⁴⁷

Q. 2. What if the spouses also wish to contract before a HERETICAL MINISTER?

Resp. 1. “When civil law commands it, it is not disapproved that the Catholic party together with the heretical party present themselves, before or after matrimony contracted according to the form of Trent, also before a minister addicted to heresy, only to fulfill the civil act, namely that they may be held civilly as honorable spouses, and that the offspring may be judged legitimate.”²⁴⁸

2. “But truly, whenever the heretical minister is regarded as one devoted to sacred things and as performing the office of a pastor, it is NOT LICIT for the Catholic party together with the heretical party to furnish matrimonial consent before such a little minister; because he would be employed to complete a certain religious ceremony, and the Catholic party would associate himself with a heretical rite: whence there would arise a certain implicit adherence to heresy, and consequently an altogether illicit communication in divine things with heretics.”²⁴⁹ Wherefore the PASTOR, if the spouses nevertheless wish to express consent before a heretical minister, should abstain from every intervention. - But in these most miserable circumstances, if every scandal can be removed, and a most grave cause accedes, e.g. the danger of concubinage, in those places where the impediment of clandestinity prevails, it seems that passive assistance of the pastor can be permitted.²⁵⁰

3. “Pastors should know moreover that, if they are questioned by the contracting parties, or if they know certainly that these are going to a heretical minister devoted to sacred things, to furnish matrimonial consent, they cannot be silent; but they are bound to admonish the same spouses concerning the most grave sin which they commit, and concerning the censures which they incur”²⁵¹ (see n. 1314, 3). - “Nevertheless, for preventing grave evils, if, in some particular case, the pastor has not been questioned by the spouses whether it is licit now to go to the heretical minister; and no explicit declaration is made by the same spouses concerning going to the heretical minister; yet he foresees that they perhaps are going there to renew matrimonial consent, and moreover from the circumstances occurring in the case he foresees that admonition certainly will not be profitable, indeed that it will be harmful, and from this that a material sin is to be turned into formal fault: then LET HIM BE SILENT, scandal however being removed, and provided the other conditions and cautions required by the Church have been duly placed, especially concerning the free exercise of religion to be conceded to the Catholic party, and also concerning all offspring to be

²⁴³De Angelis, lib. 4, tit. 1, n. 22.

²⁴⁴Cf. Decr. S. Off., 17 June 1829 (apud Roskovany, IV, p. 87, n. 734).

²⁴⁵Instruction to the Bishops of Bavaria, 12 Sept. 1834 (ap. Roskovany, *de matrim. mixtis*, tom. II, p. 291, docum. 205).

²⁴⁶Konings, II, p. 395.

²⁴⁷Cf. Council of Prague, year 1860, tit. IV, cap. 12 (*Coll. Lacen.*, V, col. 522).

²⁴⁸Instr. S. Off. to the Bishop of Hannover, 17 Feb. 1863 (apud Vecchiotti, III, p. 174).

²⁴⁹Ibid.

²⁵⁰Feije, *de imp. matr.*, n. 574.

²⁵¹Cf. *Nouv. Rev. theol.*, XV, 595.

educated in the Catholic religion.”²⁵² Matrimony in such a case becomes licit, and the spouses, on account of good faith, sin only materially by going to the heretical minister.

4. “But if finally consent wishes TO BE RENEWED before the pastor after it has already been furnished before a heretical minister, and this is publicly known, or is notified to the pastor by the spouses themselves: the pastor will not be present at this matrimony unless, other things to be observed having been observed as is supposed, the Catholic party, repentant of the deed, after salutary penances have been premised, has first duly obtained absolution from the censures contracted.”²⁵³ But cautions must be furnished by the spouses also in the external forum, and for this end recourse to the Bishop is required.²⁵⁴
5. Finally, when the spouses refuse to stand by the prescriptions of the Church, it must be said as concerning the case in which they pertinaciously intend to contract before a heretical minister (see above n. 2).

Note. In certain regions, Bishops obtain the faculty of dispensing their subjects over the said impediment of mixed religion, except Italians, concerning whom it is not established that they have altogether abandoned an Italian domicile.²⁵⁵

II. Forbidden Time 1989. FORBIDDEN or closed TIME, as they say, is an impediment by which “from the first Sunday of Advent up to the day of Epiphany, and from Ash Wednesday up to the Octave of Easter inclusive, the solemnities of nuptials are prohibited.”²⁵⁶ The reason of the prohibition is that these solemnities vehemently draw souls away from spiritual things, to which the Christian faithful ought to attend especially in this sacred time: whence it obliges under grave sin of itself (cf. n. 1217, 5).²⁵⁷

But under the name of solemnities are understood: - 1) The blessing of nuptials, which is had in the Mass *For the groom and bride*: this solemn blessing is prohibited under grave sin. - 2) The solemn leading of the bride into the house of the groom, which namely is done with great pomp and great preparation: in this matter one can also sin gravely, if the solemnities are too immoderate: which is to be judged according to the customs of places, from common sense. - 3) More solemn banquets; but “these are not prohibited under grave sin, unless the excess is great: indeed, if they are done moderately, there will be no fault.”²⁵⁸

Therefore by universal law there are NOT PROHIBITED either betrothals, or proclamations, or the celebration of matrimony, with only that blessing employed which is had in the Ritual; nor the leading of the bride itself without solemnities.²⁵⁹ Nevertheless, in some places, the celebration of matrimony, although not solemn, is prohibited by customary law or diocesan law, by which one must stand under grave sin, unless a dispensation of the Bishop intervenes.²⁶⁰ But it is not licit for him, without a special faculty, to permit the solemnities of nuptials, because he cannot dispense, by his own authority, in the universal law of the Church.²⁶¹

III. Betrothals 1990. BETROTHALS validly entered and not legitimately dissolved induce a true and mutual obligation, so that it is no longer licit for either party, against the faith given, to enter another matrimony; although once celebrated, this would be valid. - Recall what was said n. 1952 and 1953.

IV. Simple Vow 1991. Under the name of VOW, which constitutes a prohibiting impediment of matrimony, comes a simple vow, whether of not marrying, or of preserving chastity, or of entering Religion, or of receiving sacred Orders.

Principles. I. A simple vow is an impediment prohibiting the celebration of matrimony UNDER GRAVE SIN. - The reason is that one contracting with such a vow either directly transgresses it, namely if it is a vow of not marrying, or exposes himself to the proximate danger of transgressing, as is evident: and therefore, since it is a question of a grave obligation,

²⁵²Cited Instr. to the Bishop of Hannover.

²⁵³Ibid.; cf. also *Collect. S. Sed.*, n. 908.

²⁵⁴Congr. S. Off., 9 March 1881 (apud Konings, edit. 5, tom. 2, p. 425, note 39).

²⁵⁵Instr. S. C. de Prop. Fide, 30 April 1865 (*Acta S. Sed.*, vol. 2, p. 672).

²⁵⁶*Rit. Rom.*; cf. Trent, sess. 24, *de ref. matr.*, cap. 10.

²⁵⁷Sanchez, *De Matrim.*, L. VII, disp. 7, n. 1.

²⁵⁸Book VI, 983; *H. A.*, XVIII, 53.

²⁵⁹Ibid., 984.

²⁶⁰S. R. C., 14 Aug. 1858 (cf. Gardellini, n. 5275 ad 3).

²⁶¹Cf. Benedict XIV, *Instit.* 80, n. 14, 15.

without doubt he sins gravely against the vow. Besides, he sins against justice, because the counterpart not admonished is gravely deceived. To these there is also added the positive declaration of law.²⁶²

1992. II. The OBLIGATION of the vow, after matrimony has been illicitly celebrated, IS NOT REMOVED, except insofar as its fulfillment has been made morally impossible. - The reason: because on the one hand no one ought to report advantage from his own malice, but on the other no one can be held to the impossible.

Hence: 1. He who enters matrimony, disregarding a vow of NOT MARRYING, or consummates matrimony, disregarding a vow of virginity alone, indeed sins gravely; but now he is held to nothing further, since the vow has been made simply impossible.

2. He who, after spurning a vow of CHASTITY, contracts matrimony, is held to all those things which can be observed in the conjugal state, namely: - 1) He cannot ask the debt, unless charity toward the counterpart placed in danger of incontinence advises it; but generally he can render it, because the right of the spouse asking prevails. But - 2) He cannot render when the counterpart does not have the right of asking, namely in the first two-month period, unless the matrimony has already been consummated: for once it has been consummated, he is bound to render, provided the spouse has not lost the right of asking for another cause, e.g. on account of adultery or incest. - 3) When the counterpart has died, he cannot hasten to new nuptials. But if, during matrimony, he commits adultery, by this very fact he also becomes guilty of violation of the vow.²⁶³
3. He who after emitting a vow of ENTERING RELIGION contracts matrimony, is held to the following: - 1) Within the first two-month period conceded for deliberating, he cannot consummate the matrimony, either by asking or by rendering the debt, but is bound to enter Religion. - 2) After the two-month period has elapsed, the obligation of the vow still endures, if the counterpart, whose will must be seriously explored, is willing to consent to its execution; but if the counterpart does not consent, he can not only render the debt, but also ask it. - 3) If the counterpart loses the right of asking perpetually, or consents to the observance of the vow, or has died, the obligation of the vow revives, unless perhaps the circumstances have been so changed that the vow now ceases intrinsically, e.g. if the one vowing has now grown old. If the vow had been of entrance into an Institute where simple vows are emitted, the obligation would comprehend only those things which we have just said under 3).
4. He who enters matrimony after emitting a vow of RECEIVING SACRED ORDERS can use matrimony, both by asking and by rendering the debt; but he is bound to fulfill the vow, if the counterpart consents, or if she has died, or if she has lost the right of asking perpetually.

Note. The things said concerning the fulfillment of a vow after contracted matrimony indeed hold of themselves, and in the rigor of law; but IN PRACTICE, for the most part, it will be more advisable that recourse be had to DISPENSATION.

1993. IT IS ASKED. Who can DISPENSE from the aforesaid vows?

Resp. 1. If the vow is not reserved to the Pope, e.g. a vow of not marrying or of receiving sacred Orders, the Bishop, by ordinary right, can dispense for a just cause.

Resp. 2. If the vow is reserved to the Pope, as is a vow of perfect chastity and a vow of entering Religion strictly so called, provided all the conditions for reservation are verified, one must distinguish: - 1) Before matrimony, the Bishop cannot dispense by ordinary right, unless there is danger in delay, and easy recourse to the Pontiff is not open (cf. n. 645, q. 2). - 2) After matrimony has been contracted, he can dispense from a vow of chastity, in order to asking the debt, since this faculty is conferred on Bishops by force of custom, which furnishes jurisdiction, from cap. *Cum contingat, de foro competenti*.²⁶⁴ - Nevertheless, in a vow of chastity which spouses have emitted by mutual consent, the Pope alone can dispense, as Authors commonly teach.²⁶⁵

What Regular Confessors can do from privilege, see n. 2191, 2.

Note. There is a sufficient CAUSE for obtaining dispensation or commutation in a vow of chastity, or in a vow of entering religion, "if someone on account of grave temptation is in probable danger even of one fall, because through one fall chastity is already lost."²⁶⁶ - Likewise, if someone has violated a girl by force, or seduced a woman by promise of matrimony; if a girl, bereft of her father, has been left with a very poor mother, and can lead life only from her own labor

²⁶²Cap. *Rursus, Qui Clerici vel voventes*.

²⁶³Feije, n. 559.

²⁶⁴Book VI, 987; H. A., XVIII, 54.

²⁶⁵Ibid., 986.

²⁶⁶Ibid., 1143.

and with difficulty; if the same, bereft of her mother, has a father who vehemently presses, grows angry, and impels her to nuptials, so that to live with him, unless she obeys, becomes most hard; if the one vowing labors under a disease which, by the counsel of physicians, cannot be met by other medicines, and it is more certain to use the remedy of matrimony, etc.²⁶⁷

Article II. On Diriment Impediments

DIRIMENT IMPEDIMENTS, which namely stand in the way so that matrimony is not entered validly, have not all been constituted by the same authority: for some have their origin from natural law, others from positive divine law, and finally others from positive human law, i.e. ecclesiastical law, as we shall see in their places. But before we enumerate them, it must briefly be said both of the POWER by which they are constituted, and of the PERSONS whom their bond constrains. - Hence the following:

1994. Principles. I. The CHURCH, by proper and original right, CAN ESTABLISH diriment impediments of matrimony. - It is of faith, from Trent (sess. 24, can. 4), thus defining: "If anyone shall have said that the Church could not establish diriment impediments of matrimony, or that she erred in establishing them: let him be anathema." - For Christ, when he had renewed marriages to their primary excellence, "entrusted and commended the whole discipline of them to the Church. Which power she exercised in the marriages of Christians at every time and in every place in such a way that it appeared to be proper to her, and not sought by the concession of men, but obtained divinely by the will of its Author."²⁶⁸

1995. II. The CHURCH ALONE can establish diriment impediments, as regards marriages OF CHRISTIANS. - For "since matrimony is sacred by its own force, its own nature, and of its own accord, it is fitting that it be ruled and governed not by the command of princes, but by the divine authority of the Church, which alone has the magisterium of sacred things. Then, the dignity of the Sacrament must be considered, by whose accession the marriages of Christians have become by far most noble. But concerning a Sacrament the Church alone, from the will of Christ, can and ought so to establish and command, that it is plainly absurd to wish even the smallest part of her power to have been transferred to the governors of the civil commonwealth."²⁶⁹

From today's discipline, and already for several centuries, the FACULTY of establishing diriment impediments has been made a greater cause reserved to the supreme authority, namely to the Roman Pontiff or to a general Council; and this seems to have been done for preserving uniformity in so arduous a business, in which difficulties can easily arise.²⁷⁰

1996. III. By diriment impediments of natural law, or of positive divine law, ALL MEN are bound; but by impediments of ecclesiastical law, ONLY CHRISTIANS. - And in very truth: 1. as regards impediments of the law of nature, the matter is evident, since the natural law extends itself to the whole human race. The same must be said as regards impediments of positive divine law; for the things which pertain to it were established in the marriage of our first parents, and therefore are valid for all their children.²⁷¹ - 2. But that only Christians, and not infidels, are bound by impediments of ecclesiastical law is certain, since these are not subject to the Church. It is equally certain that all Catholics, in this matter, are held by the laws of the Church. But whether also non-Catholics are held by the same was more disputed; yet the common opinion now affirms it. The reason: because non-Catholics through Baptism have been made subjects of the Church; but she intends to oblige them, since she holds as invalid marriages contracted in heresy, to which nothing stood in the way except an impediment of ecclesiastical law (cf. n. 198). - An exception mercifully made by the Church, in certain cases, as regards the impediment of clandestinity, will be commemorated below, where the Celebration of matrimony is treated (cf. n. 2071).²⁷²

1997. Questions. Q. 1. Whether the CIVIL LEGISLATOR can establish impediments diriment of matrimony?

Resp. 1. Negatively, as regards marriages of Christians, since power over sacred and divine things belongs exclusively to the Church (cf. n. 149 and 2089). - 2. As regards marriages of infidels, it is disputed. Among the older Theologians the opinion which adjudicated such power to the civil legislator was indeed more received;²⁷³ but among more recent authors the denying opinion has become more common;²⁷⁴ and this pleases us more, since "matrimony is sacred by its own force,

²⁶⁷Planchard, *Disp. matrim.*, n. 429.

²⁶⁸Leo XIII, *Encycl. Arcanum*; cf. Syllabus n. 69, 70; cf. also Book VI, 979; *H. A.*, XVIII, 52.

²⁶⁹*Ibid.*, *Encycl. Arcanum* (cf. Martin, *de Matrim.*, P. 2 throughout).

²⁷⁰Book VI, 980; De Angelis, lib. 4, tit. 1, n. 15; cf. also Benedict XIV, *de Synod.*, lib. 12, c. 5, n. 2.

²⁷¹De Angelis, loc. cit., n. 16.

²⁷²Cf. Benedict XIV, *Constit. Singulare nobis*.

²⁷³Sanchez, *de Matr.*, L. 7, disp. 3, n. 5.

²⁷⁴Perrone, *de Matrim.*, Lib. 2, sect. 2, cap. 3.

its own nature, and of its own accord,” as Our Most Holy Lord Pope LEO XIII says²⁷⁵ (n. 1995).

Q. 2. Whether an INVINCIBLY UNKNOWN impediment renders matrimony invalid?

Resp. Affirmatively; because it induces inability, for contracting which knowledge is not required. And this is valid, according to the more common opinion, even concerning those impediments which seem to have the nature of a penalty, such as the impediment of crime seems to have.²⁷⁶ See what is to be said concerning this impediment (n. 2035 sq.).

Q. 3. Whether an impediment invalidates matrimony, if this is entered FOR AVOIDING a most grave inconvenience?

Resp. Affirmatively; because the common good stands against the cessation of impediments on account of private convenience. For, after some grave fear had been inflicted, too easy a way to condemn them would lie open. Add that marriages would be rendered very uncertain, because it would not always be established concerning a sufficient inconvenience. Thus commonly the Doctors hold it as most certain.²⁷⁷

Q. 4. Whether it is licit to contract matrimony with a DOUBTFUL or PROBABLE impediment?

Resp. 1. Affirmatively, if the diriment impediment is of ecclesiastical law, and after diligence has been employed, there is had an opinion probable by probability of law concerning the absence of the impediment, provided that opinion is universally, or certainly by Authors, received as probable. Nor does it stand in the way that, in the confectio of the Sacraments, it is not licit to use a probable opinion; “for it is answered that in this case the Sacrament of matrimony is not ministered with a merely probable opinion, but with moral certitude:” because, as the Doctors commonly hand down, when a probable opinion of law stands, that an impediment is not present, from most ancient custom the Church is judged to dispense in it, if perhaps it is present.²⁷⁸ But this does not hold, if the probability is of fact: for example, if it is believed only probably that intercourse was not perfect, and therefore that affinity is not present; or that betrothals were not valid, and therefore that the impediment of public honesty is not present. - The reason is that in probability of this sort the Church is no longer presumed to dispense, and the opposite opinion is not commonly received as probable; and from another side too many inconveniences would follow if, after matrimony had been contracted, the error were discovered.²⁷⁹

Resp. 2. Negatively, speaking of itself, if the impediment is of divine law, whether natural or positive; and the reason is that it is illicit to minister a Sacrament with an opinion only probable concerning its validity; but the Church, in this case, cannot supply the probable defect, since the impediment does not depend on her. - “We said speaking of itself; for, when a most grave cause is urgent, matrimony can be contracted, provided there accedes a declaration of the Supreme Pontiff as the sole interpreter of divine law”²⁸⁰ (cf. n. 135).

1998. With these things generally said, one must now treat specifically of the individual impediments.

FIFTEEN are numbered, comprehended in these little verses:

Error, condition, vow, cognation, crime,
Disparity of cult, force, order, bond, honesty,
Age, related by affinity, if clandestine, and impotent,
Or if the woman has been abducted, and not restored to a safe party:
These forbid unions to be joined, retract those made.

These impediments draw their origin, some from defect of valid consent, others from defect of ability of the contracting parties, but one from defect of the form prescribed by the Church. Therefore under a diverse title, according to the variety of origin, we shall treat of each.

§ 1. On Diriment Impediments On Account Of Defect Of Valid Consent FOUR impediments are opposed to the validity of consent: on the part of the intellect, error and unknown servile condition; on the part of the will, force and abduction.

²⁷⁵Encycl. *Arcanum*.

²⁷⁶Book VI, 1079, v. middle; cf. *Vind. Alph.*, vol. II, p. 452.

²⁷⁷Sanchez, loc. cit., Lib. 7, disp. 5, n. 4.

²⁷⁸Book VI, 901; *H. A.*, XVIII, 35.

²⁷⁹Book VI, 902; *H. A.*, ibid.; cf. *Vindic. Alph.*, P. VIII, Qu. 1.

²⁸⁰Ibid., 902; *H. A.*, ibid., 35.

I. Error 1999. A twofold ERROR is distinguished: substantial, which is concerned with the contracting person, or the nature of matrimony; and accidental, which is concerned with the qualities of the person.

Principles. I. Error CONCERNING THE PERSON invalidates matrimony by the law of nature; whether the error is antecedent, or giving cause to the contract, or merely concomitant, and this even if it is vincible and very crass. - The reason is that, since the persons of the contracting parties are the substantial object of matrimony, if the person is varied, there is error concerning the very substance of the contract. Nor does it matter that matrimony would have been contracted even after the error was known; since not even in this case does the one erring consent into the present person, but into the one whom he judged the person to be.²⁸¹

II. Error CONCERNING THE NATURE OF MATRIMONY, e.g. concerning the mutual right in the body, concerning perpetuity, etc., sometimes invalidates, sometimes does not invalidate matrimony. It INVALIDATES, if the one erring positively intends to contract according to his erroneous concept, e.g. not to confer a right in the body, to reserve to himself the faculty of repudiation; for consent to true matrimony is lacking.²⁸² It DOES NOT INVALIDATE matrimony, if that positive intention is lacking, since the one erring in such a case, by a certain general will, desires matrimony such as it has been instituted by Christ or ordered by divine law: wherefore this general will, as Benedict XIV says,²⁸³ in some way absorbs the private error. And this is the constant tradition of the Roman Congregations in judging causes of this sort.²⁸⁴

2000. III. Error CONCERNING THE QUALITIES or FORTUNE of the person does not invalidate matrimony, unless it is concerning a quality which redounds into the substance or into the person. - And this must be held, according to the common and truer opinion, even if the error gave cause to the contract. "The reason: both because then there is already simply voluntary consent concerning the substance of matrimony, namely concerning the person, although voluntary consent in a certain respect is lacking concerning the accidents, which are the qualities of the person; and because otherwise innumerable marriages would become doubtful and exposed to lawsuits."²⁸⁵

We said: unless the error is concerning a quality which redounds into the substance; because then, as the Doctors commonly and rightly teach, true consent is lacking, and therefore the matrimony is invalid.²⁸⁶ - But that it may become known when a quality passes into the substance, the following RULES are handed down:

A quality passes into the substance - 1): If someone actually intends not to contract, or if previously, his will not afterward having been changed, he had intended not to contract, except under the condition of that quality. - 2) If the quality is proper and individual to some determinate person, e.g. that she is the firstborn daughter of the king; but otherwise, if he intended to contract with one of the daughters of the king: because then the quality is not individual, but common to several; in which case, however, the following rule must also be kept before the eyes. - 3) If the contracting party principally intends the quality and less principally the person, for example if he wishes to contract with a noble woman, such as he judges Julia to be; otherwise, if he intended to contract with Julia, whom he believes to be noble.²⁸⁷

Note. In the external forum, it does not suffice if the contracting party affirms that he has erred; due proof of the matter is required before a judge (cf. n. 2081).

II. Condition 2001. By the name of condition here is understood servitude strictly so called.

SERVILE CONDITION invalidates matrimony, if these two things are present at the same time: 1. if the other party is free; 2. if that party is ignorant of the servile condition of the counterpart.²⁸⁸

It is an impediment of ecclesiastical law introduced for this end, that the free party should not ignorantly enter a marriage in which, on account of the very disparity of conditions, innumerable inconveniences would be had.²⁸⁹ - But there is no reason that we should speak more fully of this argument, since slavery properly so called prevails today in very few regions, e.g. in the Turkish empire.

²⁸¹Book VI, 1010; *H. A.*, XVIII, 61.

²⁸²Book VI, 24.

²⁸³*De Synodo*, lib. 13, cap. 22, n. 7.

²⁸⁴Cf. the same, *ibid.*, n. 8-10.

²⁸⁵Book VI, 1011, 1012.

²⁸⁶*Ibid.*, 1013.

²⁸⁷*Ibid.*

²⁸⁸Book VI, 987; *H. A.*, XVIII, 54.

²⁸⁹*Ibid.*, 986.

III. Force 2002. By FORCE here is signified not absolute coercion, which altogether removes the voluntary; but fear, which does not remove it, but diminishes it. - Coercion can be inflicted only on external acts, and renders matrimony null on account of defect of consent; but fear affects the will, and vitiates consent really given.

Principles. I. FORCE, or GRAVE FEAR, invalidates matrimony. - That it invalidates it by ecclesiastical law, all acknowledge, and it is clear from the most open definition of law.²⁹⁰ But whether it invalidates it also by natural law is disputed. Some deny it, because consent remains voluntary, nor are other contracts entered into from fear held invalid. Others, however, no less probably and perhaps more probably, affirm it, and bring forward the following reasons: 1. The law of nature ought to furnish a remedy against injury inflicted through fear: in other contracts, that remedy consists in the faculty of rescinding; but matrimony once valid cannot be rescinded. Therefore another remedy is required, namely that it be invalid from the beginning; otherwise the innocent person would often be compelled to lead a hard life, and the guilty person would report advantage from his iniquity: which things are not consonant with natural reason. - 2. Matrimony is a perpetual bond of mutual love between spouses; but mutual love cannot stand with force and fear, since no one is accustomed to adhere to a thing which he holds unwillingly; therefore matrimony which is contracted on account of fear must be null of itself.²⁹¹

It was said: GRAVE FEAR, namely such as is described in the Treatise on Human Acts (cf. n. 285). For "matrimony entered from LIGHT FEAR is null neither by natural law nor by positive law. - Not by natural law, because he who contracted from light fear, which he could easily repel, is not judged to have contracted unwillingly. - Nor by positive law, for by this only marriages entered from grave fear are declared invalid, and deservedly: for otherwise, if they were rendered null even from light fear, innumerable marriages would be dissolved."²⁹² As regards reverential fear, this itself does not invalidate matrimony unless it has conjoined with itself danger of grave evil.²⁹³

2003. II. That fear may invalidate matrimony, it is REQUIRED that it be inflicted FROM WITHOUT and UNJUSTLY, for EXTORTING matrimony. - Thus commonly, and it will be clear from what is to be said concerning each condition.

1. It is required that it be from without, i.e. inflicted by man; whence fear inflicted from within, or from a natural cause, does not invalidate matrimony. Nor does it matter for the thing whether it was inflicted by the counterpart herself, or by some third party.²⁹⁴
2. It is required that it be unjustly inflicted: for if it is justly inflicted, the one who suffered fear himself gave the cause, nor can he complain that another vindicates his right for himself. But fear must be called justly inflicted when he who inflicted it has a right both of demanding matrimony, and of threatening, and of executing what he threatens: on the contrary, it is inflicted unjustly whenever one of the said things is lacking.²⁹⁵
3. It is required that it be inflicted for extorting matrimony; for otherwise "matrimony is not so much contracted through fear, as a means is chosen for evading danger, and matrimony is simply voluntary."²⁹⁶ - Hence, if a father should find the violator of his daughter and should inflict threats of death on him for extorting matrimony, this indeed would be null, because the violator is not bound absolutely to marry the corrupted woman, but either to marry or to furnish a dowry. But the matrimony would be valid, if the father threatened death for avenging the injury, and the other entered nuptials in order to free himself.²⁹⁷

IT IS ASKED. Whether the COUNTERPART who induced the other party to matrimony by fear CAN WITHDRAW from that matrimony?

Resp. Negatively, from the more probable opinion, because no one ought to report advantage from his own crime. And this especially holds, "if fear cannot be proved; because then, since the Church compels the one who suffered fear to cohabit, such a most grave inconvenience is not reparable except through true matrimony; and so much the more, if the party who suffered fear was a woman, who otherwise, the matrimony being dissolved, would always remain marked with some infamy."²⁹⁸

²⁹⁰Cf. Book VI, 1045; *H. A.*, n. 64.

²⁹¹Book VI, 1054; Book III, 716, end.

²⁹²Book VI, 1055.

²⁹³*Ibid.*, 1056.

²⁹⁴*Ibid.*, 1049.

²⁹⁵*Ibid.*; Feije, n. 133.

²⁹⁶Book VI, 1045.

²⁹⁷*Ibid.*, 1049 (cf. *Acta S. Sed.*, vol. XI, p. 345).

²⁹⁸Book VI, 1057; cf. Instr. S. C. Prop. Fid., *De Processu matrim.*, p. 2, art. 3 (*Rev. des sc. eccles.*, t. 52, p. 141).

Note. The penalty of excommunication was laid by Trent on lords and civil magistrates violating the liberty of matrimony (cf. n. 1358).

IV. Abduction 2004. ABDUCTION, insofar as it is a diriment impediment of matrimony, is defined: the abduction of an unwilling woman for the sake of entering matrimony. - It is an impediment of ecclesiastical law, introduced by Trent, for protecting the liberty of matrimony.²⁹⁹

Principles. I. ABDUCTION invalidates matrimony, provided that it truly is a violent abduction of a woman for the sake of entering matrimony. - Therefore it is REQUIRED: 1. that it be the abduction of a woman, not of a man; but it is all the same what kind of woman she is, honorable or corrupted, virgin, widow, or even the bride of the abductor. - 2. Abduction: under which name properly comes the deed which places the woman in a separated place under the power of the man; wherefore it also comprehends detention, namely if the woman of her own accord received herself into a place from which she is not permitted to depart. Nor does it matter whether the abductor perpetrated the crime by himself or through others; for he who acts through others is judged to act by himself. - 3. Violent abduction, i.e. which was done while the woman was resisting, whether through absolute coercion or grave fear, or through deceit by which she is retained in the place to which she has been enticed; for in this case deceit is equated with force.³⁰⁰ But if the abducted woman consented to the abduction, with parents or tutor contradicting, it is ABDUCTION OF SEDUCTION, which, although it induces other penalties established against abductors of this sort, nevertheless does not induce, according to the more probable and common opinion, a diriment impediment³⁰¹ (cf. n. 780). - 4. For the sake of entering matrimony: whence, if the abducted woman is abducted for another cause, even for the end of fulfilling lust, the impediment is not incurred, since Trent intended by this impediment nothing other than to favor the liberty of matrimony.³⁰²

2005. II. Abduction invalidates matrimony between the ABDUCTOR and the ABDUCTED WOMAN, as long as she HAS REMAINED in the power of the abductor. - Nor does it suffice if the abducted woman, from unwilling, has become willing; but it is altogether required that she be constituted outside the power of the abductor, because otherwise it would not be sufficiently clear concerning consent free from every side. "But if the abducted woman, separated from the abductor and constituted in a safe and free place, shall have consented to have him as husband, let the abductor have her as wife."³⁰³

IT IS ASKED. What are the PENALTIES established against abductors?

Resp. "Let the abductor himself, and all those furnishing counsel, help, and favor to him, be by the law itself excommunicated, and perpetually infamous, and incapable of all dignities; and, if they are Clerics, let them fall from their own grade. Moreover let the abductor be bound decently to endow the abducted woman, whether he has married her or has not married her, according to the judgment of the judge." Thus the Council of Trent.³⁰⁴ The excommunication is incurred by the very fact (cf. n. 1357); the other penalties only after the sentence of the judge.³⁰⁵

§ 2. On Impediments Diriment Of Matrimony On Account Of The Inability Of The Contracting Parties 2006. These impediments refer, some to DEFECT OF NATURE, and these are age and impotence; others to defect of FREE STATE, and these are vow, Order, and bond; others to the REVERENCE DUE to connected persons, and these are cognation, affinity, and public honesty; others finally to DANGER both of CONJUGAL FIDELITY and of CHRISTIAN FAITH, and these are crime and disparity of cult.

To one considering it, it is clear that the FIVE FORMER are absolute impediments, which invalidate matrimony with any person whatever as long as they subsist; but the FIVE LATTER are relative impediments, which invalidate matrimony with certain persons, by reason of whom the impediment exists.

On The Impediments Which Refer To Defect Of NATURE

I. Age 2007. DEFINITION. The impediment of AGE consists in this, that both or at least one of the contracting parties has not yet attained the age of puberty; namely, if the MAN has not yet completed the fourteenth year, but the WOMAN the twelfth year.

²⁹⁹Sess. 24, cap. 6.

³⁰⁰Feije, n. 157-159.

³⁰¹Ibid., n. 171, 185.

³⁰²Book VI, 1107 and 1108.

³⁰³Trent, sess. 24, cap. 6.

³⁰⁴Loc. cit.

³⁰⁵Book VI, 1107, v. Note here.

DIVISION. A twofold puberty is DISTINGUISHED: natural, which consists in an expedited faculty of generating; and legal, which consists in the age determined by law, and which has just been defined. But the definition of law is founded on the presumption that at that age both sufficient discretion and the power of generating are had.

Principle. Defect of the age OF PUBERTY invalidates matrimony by ecclesiastical law, unless malice supplies for age. That matrimony is invalidated by this impediment has been defined many times in law; but that it is invalidated from ecclesiastical law, Benedict XIV declared in the Bull *Magnae Nobis*. The reason is that, by the law of nature, there is required only deliberate consent, and radical ability for the work of marriage, which at some time will be expedited. Moreover, the matrimony of the impubes is of itself null, as is had in law: and this, even if few days were lacking to the age of puberty, as is commonly taught.³⁰⁶

It was said: unless malice supplies for age, i.e. unless there is present, before the established age, sufficient discretion, and it is established concerning actual power of generating. But this is established with the greatest difficulty, apart from the case in which a girl, not yet having attained legal puberty, has already conceived: wherefore, that matrimony can be entered licitly, the declaration of an ecclesiastical judge is required. - But if it is established concerning discretion indeed, but there is doubt concerning expedited bodily ability, there is need of Pontifical dispensation, which is conceded so rarely that the impediment can be held as almost indispensable.³⁰⁷

IT IS ASKED. Whether matrimony is valid, if the contracting parties have attained LEGAL puberty indeed, BUT NOT NATURAL?

Resp. Affirmatively; because natural puberty is required by no law: not by natural law, which demands only radical ability; nor by positive law, which asks only the established age. - From what has been said it is easy to conclude that matrimony is valid, if the contracting parties, besides necessary discretion, have attained either puberty, namely legal or natural.³⁰⁸

II. Impotence 2008. DEFINITION. Impotence, as regards matrimony, is inability for conjugal intercourse of itself apt for generation.³⁰⁹

Whence, the impotent are not the sterile, or old persons, nor women who do not retain the seed received, provided they can perform the act of matrimony; for if they cannot generate, this is by accident. On the contrary, the impotent are perfect eunuchs, who namely lack both testicles, as Sixtus V declared in the year 1587 in the Bull *Cum frequenter*; likewise those who have testicles so crushed that they do not emit true seed; or those who labor under so great bodily debility that they cannot attend to the work of marriage. For all these are incapable of that act "by which generation would be possible of itself."³¹⁰ Likewise women are impotent who lack uterus and vagina,³¹¹ or on account of another infirmity or surgical operation do not suffer the congress of a man.

DIVISION. Manifold impotence is distinguished:³¹²

1. One is natural, which comes from a natural defect, for example from excessive frigidity in the man, or from excessive narrowing of the vessel in the woman. Another is accidental, which comes from an extrinsic eventual vice, e.g. from disease, malefice, a violent act.
2. One is perpetual, which cannot be removed by natural and licit means, but only through a miracle, or through sin, or with danger of death. Another is temporary, which can be removed by licit and ordinary means, e.g. by surgical art, or even by the lapse of time.
3. One is absolute, which is with respect to any persons whatever: with this labors the man lacking both testicles. Another is respective, which is only with such a person: thus a woman can be apt for one man, but not another.
4. One is antecedent, which preceded matrimony; another subsequent, which followed it.

2009. Principles. I. ANTECEDENT and PERPETUAL impotence, whether natural or accidental, INVALIDATES matrimony with respect to all persons, if it is absolute; but if it is relative, with respect only to that person with whom conjugal intercourse is impossible. - This is clear both from canon law and from natural law: "the reason is that matrimony consists

³⁰⁶Book VI, 1066.

³⁰⁷Ibid.; *H. A.*, XVIII, 66.

³⁰⁸Ibid., 1067; De Angelis, lib. 4, tit. 2, n. 5.

³⁰⁹Book VI, 1095.

³¹⁰Ibid.

³¹¹Cf. *Thesaur. Resol.*, year 1863, p. 108, in one Salernitana.

³¹²Book VI, 1095; *H. A.*, loc. cit., 74.

in the mutual handing over of bodies physically apt for generation, or in the handing over of the power of the body for conjugal intercourse: but this power the impotent person cannot hand over, since he does not have it.”³¹³ Wherefore it must be adverted that, although intercourse is not of the essence of matrimony, nevertheless power for it is of the essence.³¹⁴

Hence, when impotence of this sort is CERTAIN, the trial of three years is not conceded, but the unimpeded party can immediately depart from the other; indeed he or she is bound, if there is danger of incontinence. Likewise, that party can pass to other nuptials, if scandal is not present; but if it is present, as commonly happens, that party must altogether recur to the ecclesiastical judge, and prove the impediment.³¹⁵

2010. II. SUBSEQUENT impotence, and TEMPORARY ANTECEDENT impotence, DO NOT invalidate matrimony. - The reason for the first is that subsequent impotence finds matrimony already valid, and therefore indissoluble. The reason for the second is that one laboring under only temporary impotence is, speaking absolutely and of himself, suitable for the conjugal act.³¹⁶ Nevertheless this impotence, if it is certain, makes the use of matrimony ILLICIT during that whole time in which there is no probable hope that the act can be legitimately completed. Yet touches and kisses are not forbidden, provided they do not induce danger of pollution (cf. n. 817).³¹⁷

2011. IT IS ASKED. What must be done IN DOUBT concerning impotence?

Resp. 1. Before nuptials have been entered, the party doubting concerning his potency, understand positively from some probable indication, but not negatively, since ordinarily each person is presumed able, cannot contract; unless he has manifested the doubt to the other party and is at least probably potent, from the judgment of physicians.

The reason of the exception is that even then presumption favors him, and therefore he can marry under condition: if I am able, namely from a just cause, lest he be compelled perpetually to remain celibate.³¹⁸

Resp. 2. After nuptials have been entered, whether the doubt supervenes or preceded, there is conceded to the spouses an experience of three years, which, according to the truer opinion, begins from attempted intercourse; the faculty being made for them, within this time, of rendering and asking the debt, even if they pour out the seminal humor, beyond intention, outside the vessel; remedies also being employed which, from the counsel of physicians, are judged suitable, and which can be employed without grave danger of life, harm to health, or extraordinary troubles. But if impotence still perseveres after the three years, it is judged perpetual, and therefore every experiment of conjugal intercourse is interdicted, since such spouses from that moment are held as released³¹⁹ (cf. n. 2009, end). Wherefore separation of bed must be made immediately, even by one's own authority.

Putative spouses can cohabit as brother and sister. But if this cannot be done without danger of sin, or scandal, let them be altogether separated.³²⁰

Note. “A prudent and discreet Confessor will not ask concerning the impotence of a spouse; nor also will he forewarn those whom he believes impotent; - nor finally will he respond to those consulting him about that matter, unless he himself has first consulted the Bishop.” Thus C. Gousset.³²¹

On The Impediments Which Refer To Defect Of FREE STATE

III. Solemn Vow 2012. Under the name of VOW here comes a solemn vow of chastity, emitted in an approved Religion.³²²

Principle. A SOLEMN vow of chastity freely and spontaneously emitted through profession legitimately made in an approved Religion INVALIDATES matrimony. - This is clear from various places of canon law, and is held as defined in Trent (sess. 24, can. 9): “If anyone shall have said that Clerics constituted in sacred Orders, or Regulars solemnly professed

³¹³Book VI, 1095.

³¹⁴Ibid., 1101.

³¹⁵H. A., *ibid.*, 75; cf. Instr. S. C. Prop. Fid., *De Processu matrim.*, p. 22, art. 5 (*Rev. des sc. eccles.*, t. 52, p. 154).

³¹⁶Book VI, 1095.

³¹⁷Ibid.

³¹⁸H. A., XVIII, 75; Book VI, 1102.

³¹⁹Ibid., 1103.

³²⁰S. C. Conc., 15 Dec. 1877 (apud causes *per sum. prec.*, n. II).

³²¹*Th. mor.*, n. 791.

³²²Book VI, 1024.

in chastity, can contract matrimony, and that what has been contracted is valid, notwithstanding ecclesiastical law or vow: let him be anathema.” Moreover, the Constitution *Apostolicae Sedis* declares that there lie under excommunication *latae sententiae* reserved to Bishops or Ordinaries: “Clerics constituted in sacred things, or Regulars or Nuns after a solemn vow of chastity, presuming to contract matrimony; and also all presuming to contract matrimony with any of the aforesaid persons” (cf. n. 1348).

It was said: vow freely emitted; for otherwise the profession would be invalid, nor would there be present a diriment impediment (cf. n. 2147).

IT IS ASKED. By what LAW does a solemn vow of chastity invalidate matrimony?

Resp. It is disputed. The first opinion says that this is done only by ecclesiastical law, “because a solemn vow does not invalidate matrimony by reason of the vow, otherwise also a simple vow would diriment it, but by reason of solemnity; but since solemnity is from ecclesiastical law, therefore matrimony is dirimented by ecclesiastical law alone.”³²³ This opinion among more recent authors has become more common. The second opinion, more probable to St. Alphonsus, says that matrimony is invalidated by divine law. “The reason: because in a simple vow the body is only promised to God; but in a solemn vow, through the legitimate acceptance of Prelates, the body is moreover HANDED OVER to God.”³²⁴

Note. From the Bull *Ascendente Domino* of Gregory XIII, a simple vow of chastity in the Society of Jesus, after two years of novitiate, does not dissolve ratified matrimony; but it is to be equated with a solemn vow insofar as it invalidates matrimony to be contracted, unless the General of the Order has dispensed.³²⁵

IV. Sacred Order 2013. Which ORDER must be called SACRED is clear from what was said in the Treatise on Order (cf. n. 1886).

Principle. SACRED ORDER, freely received, impedes matrimony from being able to be validly contracted. - This is clear from Trent, in the place cited above (n. 2012). - Similarly, they are subjected to excommunication who, with this impediment standing in the way, presume to contract matrimony, just as was said above concerning those bound by solemn vow.

We said: Sacred Order freely received; for if it was received from grave fear, it does not invalidate matrimony: nevertheless, that this may be contracted licitly, there is required a Rescript of grace, or declaration of the Holy See.³²⁶

IT IS ASKED. By what LAW does Sacred Order invalidate matrimony?

Resp. It is disputed; but the more common and more probable opinion, with St. Thomas, teaches that this is done only by ecclesiastical law. The reason: because the state of Order of itself is not repugnant to the conjugal state, as is clear from the discipline of the Eastern Church³²⁷ (cf. n. 2200).

Note. If some woman spontaneously and freely consented that her husband receive sacred Orders, she cannot, according to the more common and very probable opinion, after her husband initiated in sacred things has died, validly enter a new matrimony. The reason is that the Church, on account of reverence for the Order assumed by the deceased with her permission, renders her unable for a subsequent matrimony. Nevertheless the opinion that such a matrimony is valid, although illicit, “is sufficiently probable”³²⁸ (cf. n. 1939, 2).

V. Bond 2014. By this impediment is understood the bond of matrimony by which one spouse is so obligated to the other that, while the latter lives, he or she cannot contract valid matrimony with anyone else. - It is an impediment of divine law; but it is rooted also in natural law, as is clear from what was said concerning the unity and indissolubility of matrimony (cf. n. 1978).³²⁹

Hence: 1. Second nuptials are prohibited until it has been established certainly concerning the death of the prior spouse.³³⁰ For in DOUBT, whether positive or negative, the prior marriage possesses. Nevertheless, the matrimony celebrated in

³²³Book VI, 1025.

³²⁴Ibid.

³²⁵Cf. Feije, n. 516.

³²⁶Cf. ibid., n. 507.

³²⁷Book VI, 1059; *H. A.*, XVIII, 65; cf. Haine, *De Matr.*, q. 125.

³²⁸Book VI, 812; cf. Feije, n. 513; De Angelis, lib. 3, tit. 32, n. 6.

³²⁹Book VI, 1060.

³³⁰What must be observed in proving the death of some spouse is had in the Instruction of S. C. S. Off., 1868, *Matrimonii vinculo* (apud *Collect. S. Sed.*, n. 975, or apud *Acta S. Sed.*, VI, 436).

such doubt would be valid, if the spouse concerning whose death there is doubt were truly dead, provided true consent is present, although it would be gravely illicit.³³¹

2. For the moral certitude which law requires, the long absence of one spouse does not suffice, since this alone does not certainly prove that person's death; likewise, mere fame from uncertain rumor does not suffice, since a multitude is accustomed easily to receive all rumors; nor does the affirmation of one witness, since in a matter of so great moment the voice of one is the voice of none. - Nevertheless those indications which, taken singly, do not suffice for furnishing moral certitude, can furnish it if they are taken conjointly.³³² - The cause must be remitted to the Ordinary.
3. If, after matrimony contracted in good faith, doubt supervenes, the doubting party should inquire diligently, so that he or she may thus come to certain knowledge of the matter, and meanwhile abstain from exacting the use of matrimony; although the debt must be rendered to the counterpart asking in good faith. But if afterward it is established concerning the life of the prior spouse, he or she is bound immediately to return to this spouse, leaving the later one. - But if on account of distance that party cannot return, and the impediment is occult, let him or her at least be separated from the putative spouse as regards bed. Then when the prior spouse has died, he or she will be able, through renewal of mutual consent, which must be given in the state of grace, secretly to enter matrimony with the second. But if knowledge of the impediment was public, or could easily become public, the matrimony must be repeated publicly (cf. n. 2081, III).³³³

On The Impediments Which Refer To The REVERENCE DUE TO CONNECTED PERSONS

VI. Cognation 2015. Cognation generally is nearness from generation.

It is distinguished threefold: natural, spiritual, and legal. Each must be treated separately.

1. On Natural Cognation

DEFINITION. Natural cognation, or CONSANGUINITY, is the nearness of persons, of whom one descends from the other, or all descend from the same near stock, through carnal generation. But it does not matter whether the generation comes from licit or illicit intercourse; nor whether it arises from father and mother at the same time, or from either one alone, as was expressly declared by Innocent I;³³⁴ for matrimony is equally prohibited among cognates and agnates, uterine, consanguine, and full siblings.

That this impediment may be rightly understood, three things in consanguinity must be DISTINGUISHED, namely: 1) STOCK, or the person from whom others descend; 2) LINE, or the series of persons descending from the same stock; 3) DEGREE, or the distance of one person from another in the same line of consanguinity. Moreover the LINE is either direct, in which are placed those persons of whom one descends from the other, as father, son, grandson; or transverse or collateral, by which are comprehended those who are united by conjunction of blood, not because some descend from others, but because they have a common stock; namely mediately, as cousins, or immediately, as brothers. If collaterals are distant from the stock by equal degree, the transverse line is equal; but it is called unequal, if they are distant by unequal degree, i.e. if one is more remote from the common stock. - See the SCHEMA of Consanguinity described below (n. 2020).³³⁵

2016. That degrees of consanguinity may be duly recognized, from canon law the THREE following RULES are established.³³⁶

Rule 1. In the DIRECT line one person is distant from another by as many degrees as there are persons, the common stock being subtracted; or in other words: there are as many degrees as there are generations: e.g. father, son, grandson, and great-grandson are four persons; but only three degrees are numbered, because there are three generations and three persons, the stock being subtracted, namely the father.

Rule 2. In the equal COLLATERAL line, by however many degrees the individual persons are distant from the common stock, by just so many they are distant among themselves. Therefore there are as many degrees as there are generations,

³³¹Book VI, 901, 903.

³³²Cf. Feije, n. 444 sqq.

³³³Book VI, 904; cf. also Benedict XIV, *de Synodo*, lib. 13, c. 21, n. 7.

³³⁴Can. 2, caus. 35, q. 10.

³³⁵Cf. Ferraris, v. *Matrim.*, art. 5.

³³⁶Book VI, 1029; *H. A.*, XVIII, 62.

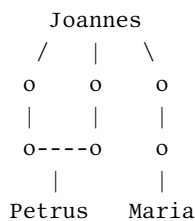
or persons on one side, the stock being subtracted. - Hence, brother and sister are in the first degree, paternal cousins and maternal cousins in the second, their children in the third.

Rule 3. In the unequal COLLATERAL line, by however many degrees the more remote person is distant from the stock, by so many degrees they are distant among themselves. - Therefore there are as many degrees as there are generations, or persons with the stock subtracted, in the more remote side.

Note. In civil law, likewise in the Greek Church, both for marriages and for successions, another rule prevails, namely: in the collateral line, there are as many degrees as there are generations from either side; or as many as persons are similarly numbered from either side, with the common stock subtracted. - See, in the SCHEMA, the numbers placed in the lower part of the cells.

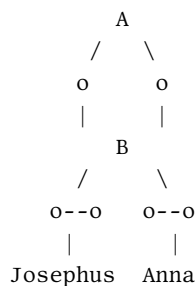
2017. Persons can be joined among themselves not only by one bond of consanguinity, but by a MULTIPLE bond, whether from one or from several stocks, according as there is given a single or multiple foundation of consanguinity. But there are THREE CAUSES why the bond of consanguinity is multiplied.³³⁷

The first cause of multiplicity is when parents are consanguineous, since their children descend, both through the paternal line and through the maternal line, from a common stock.



Thus, in the appended figure, Peter and Mary are consanguineous in the third equal degree, and this by a double degree of the collateral line, from the stock, which is John, from whom Peter descends by a double way.

The second cause of multiplicity is when persons consanguineous among themselves, e.g. brothers, have procreated offspring from persons consanguineous among themselves, e.g. from sisters, or cousins. - Hence, if two brothers marry two sisters, their children are consanguineous in a double second equal degree, as the annexed figure demonstrates concerning Joseph and Anna.



The third cause of multiplicity is when someone has offspring from several persons consanguineous among themselves. - Thus, e.g. if someone procreated sons from two sisters, these are consanguineous by reason of the father in the first degree, by reason of the mothers in the second.

The nature of cognation having been known, it must now be investigated how it impedes matrimony. - Wherefore let the following be held:

2018. Principles. I. Consanguinity in the DIRECT line invalidates matrimony INDEFINITELY, in whatever degree. - This is clear from the Response of Nicholas I to the Bulgarians, cap. 39.³³⁸

But by what law it invalidates it has not likewise been defined. That it invalidates it by the law of nature, if consanguinity is in the first degree, all acknowledge, since the relation of subjection by which children are held toward parents cannot be associated with the relation of equality which ought to exist between spouses. Concerning more remote degrees it is

³³⁷Cf. Feije, n. 356 sqq.; and Benger, *Pastoral. Theol.*, § 187, n. 4.

³³⁸Cf. Giovine, § 205, n. 6.

disputed: some derive the force of invalidating from the law of nature, others from positive divine law, others finally from merely ecclesiastical law. For the rest, the question, as anyone sees, little regards practice.³³⁹

2019. II. Consanguinity in the COLLATERAL line invalidates matrimony up to the fourth degree inclusive, and no further. Thus it was defined in the Fourth Lateran Council by Innocent III, who restricted this impediment, which formerly was extended up to the seventh degree, to the fourth.³⁴⁰ But the reason of this law is both the protecting of modesty, “because great access to concupiscence would be furnished, unless carnal intercourse were interdicted among persons who ought to dwell in the same house;”³⁴¹ and the multiplying of friendship, while the spouse follows the consanguine relatives of the spouse with nearly the same benevolence as his or her own consanguine relatives. Add that through frequent conjunctions from the same cognation, families are weakened.

But concerning the law by which matrimony, on account of the aforesaid impediment, is invalidated, these things must be NOTED: It is certain that in the second and more remote degree, it is invalidated only by ecclesiastical law: whence, if infidels consanguineous in that degree enter nuptials, their nuptials are not, from this title, invalid, as is clear from canon law.³⁴² Concerning the first degree it is not established among Theologians: for some affirm merely ecclesiastical law, others natural law, others finally positive divine law, which last opinion seems more probable.³⁴³ Whatever may be the case, it is certain that the Church has never dispensed in that degree, and never is going to dispense; but very rarely does she dispense in the second degree mixed with the first, as is clear from the Letters of Gregory XVI, issued on 22 Nov. 1836.³⁴⁴ See n. 2042, 3.

N. B. Formerly, persons knowingly and freely contracting marriages in prohibited degrees of consanguinity, or affinity, incurred excommunication *latae sententiae* reserved to no one. From Clementine *un. de Consang. et affin.* This penalty, through the Constitution *Apostolicae Sedis*, has been removed (cf. n. 1348).

2020.

Schema of Consanguinity

Consanguines on the father’s side and on the mother’s side.

The printed tree places the person marked **N.** in the center. The Roman numeral in each cell gives the canonical degree; the Arabic number beneath gives the civil degree.

Schematic transcription of the printed tree:

Position in the printed tree	Canonical degree	Civil degree	Names printed
Direct ascendant, fourth	IV	4	Abavus, Abavia
Direct ascendant, third	III	3	Proavus, Proavia
Direct ascendant, second	II	2	Avus, Avia
Direct ascendant, first	I	1	Pater, Mater
Center			N.
Direct descendant, first	I	1	Filius, Filia
Direct descendant, second	II	2	Nepos, Neptis
Direct descendant, third	III	3	Pronepos, Proneptis
Direct descendant, fourth	IV	4	Abnepos, Abneptis
Father’s side, upper fourth	IV	5	Propatruus, Proamita

³³⁹Cf. Book VI, 470 and 1029.

³⁴⁰Cap. *Non debet* 8, *de consanguinitate*.

³⁴¹St. Thomas, Suppl., q. 54, a. 3.

³⁴²Cap. *Gaudemus* 8, *de divortiis*.

³⁴³St. Thomas, *ibid.*; cf. De Angelis, lib. 4, tit. 14, n. 2.

³⁴⁴Benedict XIV, Epist. *Aestas anni*, n. 13 (11 Oct. 1757); cf. Giovine, § 209, n. 3.

Position in the printed tree	Canonical degree	Civil degree	Names printed
Mother's side, upper fourth	IV	5	Proavunculus, Promatertera
Father's side, third	III	4	Patruus, Amita magna
Mother's side, third	III	4	Avunculus, Matertera magna
Father's side, second	II	3	Patruus, Amita
Mother's side, second	II	3	Avunculus, Matertera
Brother's side, first	I	2	Frater
Sister's side, first	I	2	Soror
Father's side, second collateral	II	4	Patruelis, Amitinus, Amitina
Mother's side, second collateral	II	4	Consobrinus, Sobrina
Brother's descendants, second	II	3	Fratrifilius, filia
Sister's descendants, second	II	3	Sororis filius, filia
Brother's descendants, third	III	4	Fratrifilius, neptis
Sister's descendants, third	III	4	Sororis neptis, neptis
Brother's descendants, fourth	IV	5	Fratrifilius proneptis, proneptis
Sister's descendants, fourth	IV	5	Sororis proneptis, proneptis
Further collateral descendants	III	5	Horum filius, filia
Further collateral descendants	IV	6	Horum neptis, neptis
Further collateral descendants	IV	7	Eorum neptis, neptis
Further collateral descendants	IV	8	Horum proneptis, proneptis

Names of Consanguines (in the language: 1 Italian, 2 Spanish, 3 French, 4 German, 5 English.)

A. Direct Line.

Ascendants. - Fourth Degree. - **Abavus, Abavia:** 1 Trisnonno (trisavolo) - trisnonna (...avola); 2 Tatarabuelo - ...abuela; 3 Trisaieul - ...aieule; 4 Urgrossvater - ...mutter; 5 Great-great-grand-father - ...mother.

Third Degree. - **Proavus, Proavia:** 1 Bisnonno (bisavolo) - bisnonna (bisavola); 2 Bisabuelo - ...abuela; 3 Bisaieul - ...ie; 4 Urgrossvater - ...mutter; 5 Great-grand-father - ...mother.

Second Degree. - **Avus, Avia:** 1 Nonno (Avolo) - ...na (...la); 2 Abuelo - ...la; 3 Aieul (Grand-pere) - Aieule (gr. mere); 4 Grossvater - ...mutter; 5 Grand-father - ...mother.

First Degree. - **Pater, Mater...**

Descendants. - First Degree. - **Filius, Filia:** 1 Figlio - figliuola; 2 Hijos - hijas; 3 Fils - fille; 4 Sohn - Tochter; 5 Son - Daughter.

Second Degree. - **Nepos, Neptis:** 1 Nipotino - ...tina; 2 Nietos - nietas; 3 Petit-fils - petite-fille; 4 Enkel - Enkelin; 5 Grandson - ...daughter.

Third Degree. - **Pronepos, Proneptis:** 1 Pronepotino - ...tina; 2 Bisnietos - ...tas; 3 Arriere-petit-fils - arr.-petite-fille; 4 Urenkel - ...lin; 5 Great-grandson, ...daughter.

Fourth Degree. - **Abnepos, Abneptis**: 1 Abnepotino - ...tina; 2 Tartaranietos - ...as; 3 Bisarriere-petit-fils - ...fille; 4 Ururenkel - ...lin; 5 Great-Great-grandson - ...daughter.

B. Collateral Line.

Paternal line. - First Degree. - **Frater, Soror**.

Second Degree. - **Patruus** (father's brother), **Amita** (father's sister): 1 Zio, zia; 2 Tio, Tia; 3 Oncle paternel, tante paternelle; 4 Oheim (Vaters Bruder), Tante (Vaters Schwester); 5 Paternal uncle, ...aunt.

Patruelles, or **Amitini**, ...**ae**: sons (daughters) of the father's brother or sister.

Third Degree. - **Patruus magnus** (grandfather's brother), **Amita magna** (grandfather's sister): 1 Fratello dell'avolo, sorella dell'av.; 2 Hermano del abuelo, hermana del ab.; 3 Frere, soeur de l'aieul; 4 Grossoheim, ...Tante; 5 Great-uncle, great-aunt.

Sobrini, ae: sons, daughters of the grandfather's brother or sister, that is, the father's nephews, nieces.

Fourth Degree. - **Propatruus** (great-grandfather's brother), **Proamita** (great-grandfather's sister): 1 Fratello, Sorella del bisavolo; 2 Hermano, ...na, del bisabuelo; 3 Grand oncle, grande Tante; 4 Urgrossoheim (Urgrossvaters Bruder), Urgrosstante (Urgrossvaters Schwester); 5 Great-grand-uncle, ...aunt (Great-grandfather's brother, ...sister).

Maternal line. - First Degree. - **Frater, Soror**.

Second Degree. - **Avunculus** (mother's brother), **Matertera** (mother's sister): 1 Zio, zia; 2 Tio, tia; 3 Oncle maternel, tante maternelle; 4 Oheim, Tante; 5 maternal uncle, ...aunt.

Consobrini, ae, sons (daughters) of the mother's brother or sister.

Third Degree. - **Avunculus magnus** (grandmother's brother), **Matertera magna** (grandmother's sister): 1 Fratello, Sorella dell'avola; 2 Hermano, ...na de la abuela; 3 Grand oncle maternel, grande tante maternelle; 4 Grossoheim, ...Tante; 5 Grand mother's brother, ...sister.

Sobrini, ae: sons, (daughters) of the grandmother's brother or sister, that is, the mother's nephews, nieces.

Fourth Degree. - **Proavunculus** (great-grandmother's brother), **Promatertera** (grandmother's sister): 1 Fratello, Sorella della bisavola; 2 Hermano, ...na de la bisabuela; 3 Grand oncle, soeur de la bisaieule; 4 Bruder, Schwester der Urgrossmutter; 5 Great-grand mother's brother, ...sister.

More remote **Sobrini**...

2. On Spiritual Cognation

2021. SPIRITUAL cognation is a certain nearness of persons arising from the conferring or receiving of Baptism, or Confirmation. - The reason of nearness is that in both Sacraments there is a spiritual generation, in which he who confers the Sacrament bears the person of God, as of a father; and he who receives the baptized person from the sacred font, or holds the one to be confirmed, bears the person of the Church, as of a mother.³⁴⁵

I. SPIRITUAL COGNATION is an impediment invalidating matrimony by ecclesiastical law: 1) between the minister of the Sacrament, Baptism or Confirmation, and the subject, and this subject's father and mother; 2) between those lifting up, godfather and godmother, and the subject, and this subject's parents. Thus Trent.³⁴⁶ But no cognation is contracted between the minister and those lifting up, nor between the godfather and godmother.³⁴⁷

The persons to whom the impediment extends are stated in the following manner:

The one baptizing, the one baptized, and the parents of the baptized;

The one lifting, the one lifted, and the parents of the lifted.

II. SPIRITUAL COGNATION arises from the office of sponsor validly performed, both in the conferring of Baptism and in the conferring of Confirmation (n. 1484 and 1504). Wherefore two things come to be noted:

³⁴⁵St. Thomas, Suppl., q. 56, a. 3.

³⁴⁶Sess. 24, cap. 2, *de ref.*

³⁴⁷Book VI, 146 sqq. and 1028; *H. A.*, XIV, 33, 53.

1. If someone, from error, receives one infant for another, he more probably contracts cognation, because he is presumed to have wished to receive the one present, whoever he may be, unless he intended another exclusively.³⁴⁸
2. If the office of sponsor is exercised by procurator, the one mandating, not the mandatary, contracts cognation, as is clear from the following declaration: "The Sacred Congregation judged that a procurator who receives in the name of another, or has held for Confirmation, does not contract cognation for himself, but for the one mandating." Thus S. C. of the Council, 15 March 1631³⁴⁹ and 11 June 1881.³⁵⁰

2022. Questions. IT IS ASKED 1. Whether one receiving someone in Baptism conferred under condition CONTRACTS cognation?

Resp. If concerning the first Baptism there is present only a negative doubt, it is certain that cognation is contracted, because no reason stands for the value of the earlier Baptism; and therefore the presumption stands for the value of the later. But otherwise, if concerning the prior Baptism there is had a positive doubt, namely a probable reason concerning its validity.³⁵¹

IT IS ASKED 2. Whether spiritual cognation is contracted from PRIVATE Baptism?

Resp. 1. The Doctors commonly teach that it is contracted by the one baptizing.³⁵²

2. Concerning the one receiving or lifting there was a place for doubting; but to the question: "Whether the disposition of the Council, cap. 2, sess. 24 *de reform. matrim.*, decreeing that in the Sacrament of Baptism spiritual cognation is contracted between the one receiving, and the father and mother of the one received, has place in Baptism following without solemnities because of necessity?" - S. C. C. judged that the response was to be: Affirmative, on 5 March 1678.³⁵³ And by this decree indeed the question was solved, but the controversy had not yet been ended, because the decree had not been sufficiently published.³⁵⁴

IT IS ASKED 3. Whether cognation is contracted from the SOLEMNITIES completed in church after Baptism privately conferred at home?

Resp. Negatively. The reason is that cognation is contracted only from spiritual generation, which is wholly accomplished through Baptism, not through the solemnity of ceremonies. - Thus S. C. of the Council declared many times (13 April 1669 and 2 October 1687).³⁵⁵

IT IS ASKED 4. Whether PARENTS baptizing or receiving their own CHILDREN in Baptism contract the impediment of asking the debt?

Resp. If parents baptize from necessity or from ignorance, it is certain that the impediment is not contracted; indeed, it is sufficiently probable that it is not contracted if they baptize deliberately and apart from necessity, although in this case they sin gravely. The reason for the first is that the prohibition from the use of marriage has the nature of a penalty; but this is not incurred without fault. The reason for the second is that such a penalty is not found expressed in law; whence it is not certainly established concerning it. But in doubt no one is to be despoiled of a right otherwise certain.³⁵⁶

Note. 1. Parents baptizing their own illegitimate offspring, even in a case of necessity, certainly contract cognation in order to matrimony to be entered, so that a mother, for example, who baptized an illegitimate son cannot enter nuptials with the father of the son, unless she has obtained a dispensation.

2. Sponsors are accustomed to be chosen from consanguines or from affines; whence, to this impediment very great attention must be paid when the betrothed are consanguineous or affined. And it must be noted that multiple spiritual cognation can exist between them, for example if each has reciprocally received the other's offspring in Baptism, or has held the other's offspring in Confirmation: which must be expressed in the petition for dispensation.³⁵⁷

³⁴⁸Book VI, 152.

³⁴⁹Cf. *Analecta J. P.*, series 8a, col. 1786.

³⁵⁰*Acta S. Sedis*, vol. XIV, p. 416.

³⁵¹*H. A.*, XIV, 33; Book VI, 151; cf. also n. 902.

³⁵²Book VI, 149.

³⁵³Cf. *Analecta J. P.*, series 8a, col. 1731.

³⁵⁴Cf. Feije, n. 413.

³⁵⁵*Analecta J. P.*, series 8a, col. 1732.

³⁵⁶Book VI, 150.

³⁵⁷Feije, n. 424.

3. On Legal Cognation

2023. LEGAL cognation is a nearness of persons proceeding from adoption. By reason of this civil nearness, matrimony between certain persons was prohibited by Roman law, on account of modesty and public honesty. The Church rightly preserved this discipline once constituted, and added to it the force of invalidating matrimony, and from this it came about that legal cognation became a canonical impediment.³⁵⁸

The foundation of legal cognation is adoption made according to the norm of civil law. In Roman law a TWOFOLD adoption is distinguished, namely perfect and imperfect. "Perfect adoption is that by which, by rescript of the Prince, a person *sui juris* passes into the power and family of the adopter, just as also his children. Imperfect adoption is when it is made without rescript of the supreme Prince, but by the authority of an inferior magistrate; nor does the adopted person pass with his children into the power of the adopter."³⁵⁹ But adoption, as it is admitted among modern nations, departs more or less from Roman law, and participates in both, namely perfect and imperfect. Concerning this matter let the following be:

2024. Principles. I. From PERFECT adoption there arises legal cognation invalidating matrimony. Thus all, and it is clear from the response of Nicholas I to the Bulgarians.³⁶⁰ It is said from perfect adoption; for the more probable opinion denies that it also arises from imperfect adoption, since this is rather a way to adoption than true adoption.³⁶¹ But if no public authority intervenes in the adoption, it is certain among all that no impediment arises from it.

2025. II. Legal cognation bears before itself a THREEFOLD SPECIES, namely: of paternity, of fraternity, and of affinity, by reason of which matrimony is INVALIDATED in a diverse manner.

1. By reason of PATERNITY, matrimony is invalidated between the adopter and the adopted person and this person's descendants existing under his power at the time of adoption; and this perpetually, even when the adoption has been dissolved (cf. n. 698).
2. By reason of FRATERNITY, matrimony is invalidated between the adopted person and the children of the adopter; but only for a time, namely so long as the children are under the power of the father, and so long as the adoption has not been dissolved.
3. By reason of legal AFFINITY, matrimony is invalidated between the adopted person and the wife of the adopter, and similarly between the adopter and the wife of the adopted person; and this in perpetuity.³⁶²

2026. IT IS ASKED. Whether legal cognation arises from adoption, as it is accustomed to be done NOW among diverse peoples, namely without the form of Roman law being observed?

Resp. Affirmatively, if at least the essentials are observed, namely: 1) if the civil laws admit adoption, and 2) if the adoption has been performed according to the manner prescribed by the civil laws. - This is clear from various decisions of the S. Penitentiary: thus, on 17 May 1826, the S. Tribunal declared that through the adoption prevailing in France and legitimately performed, an impediment is induced. And to the DOUBT: Whether adoption celebrated in the form prescribed by the civil Code of the Neapolitan kingdom produces or does not produce the canonical impediment of legal cognation invalidating matrimony? The Congregation of the Holy Office itself, on 23 February 1853, responded: Affirmatively. Yet the persons to whom this impediment extends are always to be computed from the dispositions of Roman law, since this alone is the norm received in the Church.³⁶³

VII. Affinity 2027. AFFINITY is the nearness which one contracts with the consanguines of that person with whom he has carnal intercourse so perfect that, of itself, it is apt for generation.

The foundation of this nearness is carnal commingling, through which man and woman become one flesh, and each part is inserted into the cognation of the other part. Hence: 1. Affinity is NOT CONTRACTED from betrothals, nor from ratified but not consummated matrimony, nor from imperfect intercourse, or from other acts however immodest; indeed, it is not contracted "unless the intercourse is consummated on both sides with semination, as they probably teach, with St. Bonaventure and St. Thomas, who says: man and woman are made one flesh through the commingling of seeds:

³⁵⁸Cf. Can. 1, caus. 30, q. 3.

³⁵⁹Book VI, 1027, Note 1.

³⁶⁰Cf. Can. 1, caus. 30, q. 3.

³⁶¹Book VI, 1027; cf. Ferraris, v. *Matrimonium*, art. 2, addit., where Resp. S. Off., 16 Apr. 1761.

³⁶²Book VI, 1027, Note 2.

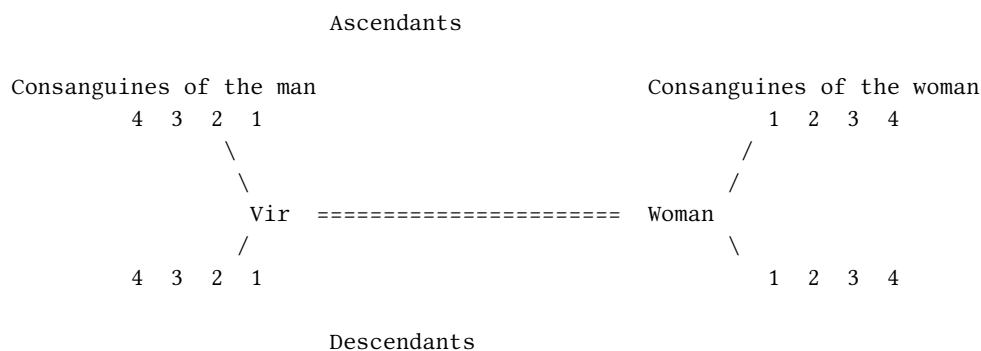
³⁶³De Angelis, lib. 4, tit. 12, n. 3.

whence... unless the mingling of seeds follows, affinity is not contracted.”³⁶⁴ 2. But it IS CONTRACTED from perfect intercourse, whether licit or illicit, whether free or coerced, whether had by an infidel or by a faithful person.³⁶⁵ Nor does it stand in the way if the persons were sterile or old; provided both have reached puberty. - If it is established concerning intercourse, but there is doubt whether it was perfect or not, it is judged to have been perfect.³⁶⁶ Likewise, if it is established concerning conception of offspring having followed, the impediment is certainly present, “however something is said to have been lacking in the very act of conjunction of the man and woman: for, in reality, they have become one flesh, since offspring is conceived from the flesh of the man and woman.”³⁶⁷

2028. Let the following be NOTED concerning these things:

1. The bond of affinity, not otherwise than the bond of consanguinity, can be MULTIPLE; and much attention must be paid to this multiplicity when a dispensation is to be sought. - But this multiplicity arises from a FOURFOLD head, namely: 1) if intercourse has been had with several consanguines of the counterpart; 2) if it has been had with a person joined to the counterpart by a multiple bond of consanguinity; 3) if it has been had on each side with a person consanguineous to the counterpart; 4) if, with a person consanguineous to the counterpart, intercourse has been had both licit and illicit. But see n. 2051, 5.
2. Affinity is CONTRACTED by the man alone with the consanguines of the woman known by him, and by the woman alone with the consanguines of the man with whom she came together; but by no means by the consanguines of one with the consanguines of the other; for affinity does not beget affinity. Nor are the man and woman knowing one another bound by the bond of affinity, but they themselves are the root or stock from which affinity arises. Hence: 1) “two brothers can marry two sisters; indeed father and son can marry mother and daughter.” 2) “Titius can successively marry Titia and Berta, who were wives of Caius and Sempronius, brothers;” 3) “Titius, who had married the sister of Caius, can, after the death of Caius and of his sister, marry Berta the wife of Caius.”³⁶⁸ 4) Any consanguine of a husband validly and licitly contracts with a consanguine of the wife, and conversely a consanguine of the wife with any consanguine of the husband.
3. Affinity, of itself, does not have LINES NOR DEGREES; but only by reason of consanguinity, after the likeness of which it proceeds; so that, in that line, and in that degree, in which one is consanguineous to one party, in the same line and in the same degree he is affine to the counterpart.
4. Affinity is distinguished as antecedent, which precedes matrimony, and supervening, which follows it, from the fact that the man knows a consanguine of the woman, or from the fact that the woman permits herself to be known by a consanguine of the man. Antecedent affinity alone can be a diriment impediment, since matrimony once rightly entered cannot now be dissolved; yet supervening affinity has its effects, concerning which below (n. 2031, qu. 3).

Schema of Affinity



Affines in the first and in the second degree.

(1 Italian, 2 Spanish, 3 French, 4 German, 5 English.)

a) Ascendants.

³⁶⁴H. A., XVIII, 68.

³⁶⁵Book VI, 1069.

³⁶⁶Ibid., 1075.

³⁶⁷Lehmkuhl, II, n. 762, ad II, 1.

³⁶⁸Book VI, 1069.

2. **Prosocer** (grandfather by affinity): 1 Avolo per affinita; 2 Abuelo por afinidad; 3 Aieul par affinite; 4 Grossschwiegervater; 5 Wife's grand-father.

2. **Prosocrus** (grandmother by affinity): 1 Avola per affinita; 2 Abuela por afinidad; 3 Aieule par affinite; 4 Grosschwiegmutter; 5 Wifes' grandmother.

1. **Socer** (father of the husband or wife): 1 Suocero; 2 Suegro; 3 Beau-pere; 4 Schwiegervater; 5 Father-in-law.

1. **Socrus** (mother of the wife or husband): 1 Suocera; 2 Suegra; 3 Belle-mere; 4 Schwiegmutter; 5 Mother-in-law.

1. **Vitricus** (mother's husband): 1 Padrigno; 2 Padrastra; 3 Beau-pere; 4 Stiefvater; 5 Step-father.

1. **Noverca** (father's wife): 1 Matrigna; 2 Madrastra; 3 Belle-mere; 4 Stiefmutter; 5 Step-mother.

b) Descendants.

1. **Privignus, ...a** (son, daughter from the first matrimony of the father or mother): 1 Figliastro, ...a; 2 Hijastro ...a; Entenado, ...da; 3 Beau-fils, Belle-fille; 4 Stiefsohn, ...tochter; 5 Step-son, Step-daughter.

1. **Gener** (daughter's husband): 1 Genero; 2 Yerno; 3 Gendre; 4 Schwiegersohn (Tochtermann, Eidam); 5 Son-in-law.

1. **Nurus** (son's wife): 1 Nuora; 2 Nuera; 3 Bru, Belle-fille; 4 Schwiebertochter (Schnur); 5 Daughter-in-law.

2. **Progener** (granddaughter's husband): 1 Progenero; 2 Proverno, marido de la nieta; 3 Mari de la petite-fille; 4 Kinstochtermann; 5 Grand-daughters' husband.

2. **Pronurus** (grandson's wife): 1 Pronuora; 2 Pronuera; 3 Femme du petit-fils; 4 Gross-Schwiebertochter; 5 Grandson's wife.

c) Collaterals.

1. **Levir** (brother of the husband or wife): 1 Cognato; 2 Cunado; 3 Beau-frere; 4 Schwager; 5 Brother-in-law.

1. **Glos** (husband's sister): 1 Cognata; 2 Cunada; 3 Belle-soeur; 4 Schwagerin; 5 Sister-in-law.

1. **Fratrìa** (brother's wife): 1 Cognata; 2 Cunada; 3 Belle-soeur; 4 Schwagerin; 5 Sister-in-law (a brother's wife).

1. **Sororius** (sister's husband): 1 Cognato; 2 Cunado; 3 Beau-frere; 4 Schwager; 5 Brother-in-law (a sister's husband).

2029. Principles. I. Affinity from CONJUGAL intercourse invalidates matrimony up to the FOURTH DEGREE inclusive. - Thus from the Fourth Lateran Council, by which this impediment, formerly extending itself up to the seventh degree, was restricted to the fourth: "since," says Innocent III, "in further degrees a prohibition of this kind now cannot generally be observed without grave detriment."

2030. II. Affinity from FORNICARIOUS intercourse, that is, non-conjugal, invalidates matrimony up to the SECOND DEGREE inclusive, and no further. - Thus from Trent, sess. 24, cap. 4. - Hence: 1) he who has sinned with two sisters or with first cousins by blood, or with a mother and daughter, cannot marry any one of these; 2) he who has sinned with a consanguine of his betrothed in the first or second degree cannot, without dispensation, marry the aforesaid betrothed. - Concerning other things see n. 2032.

2031. Questions. IT IS ASKED 1. To what DEGREE the impediment of affinity extends from INVALID matrimony, but consummated?

Resp. 1. If the matrimony has been consummated in good faith on both sides, the intercourse is to be called materially only fornicary, but formally conjugal: wherefore the impediment is drawn out up to the fourth degree, as is clear from the declaration of S. C. C. in Brixien., 3 December 1667.³⁶⁹

Resp. 2. If the matrimony has been consummated in bad faith on both sides, or at least on one side, it is CONTROVERTED: wherefore, in an occurring case, the Holy See must be asked.³⁷⁰ But if there is question of a merely civil matrimony, the intercourse is to be held simply as fornicary, so that affinity extends itself only to the second degree. See the Decree of S. C. C. of 13 March 1879, approved by His Holiness Pope Leo XIII on 17 March, and pertaining to the impediment of PUBLIC HONESTY (n. 2034).³⁷¹

IT IS ASKED 2. By what LAW does affinity invalidate matrimony?

³⁶⁹Cf. *Thesaur. Resol.*, tom. 2, d. 241-242; cf. also Giovine, § 285, 6.

³⁷⁰Cf. Feije, n. 378.

³⁷¹Cf. *Thesaur. Resol.*, t. 138, p. 182.

Resp. By ecclesiastical law, in whatever degree, according to the common opinion.³⁷² The reason is that the Church dispenses in whatever degree of the collateral line, and even of the direct line, if affinity arises from illicit intercourse.³⁷³ Some formerly taught that matrimony is invalidated by natural law in the first degree of the direct line, if affinity arises from conjugal intercourse. But this today is commonly denied, since the nature of affinity is the same, whether it comes from licit or from illicit intercourse. Nor does it stand in the way that in the first degree of the direct line from conjugal intercourse, the Church does not dispense; for, as St. Thomas says,³⁷⁴ “Matrimony causes affinity, not only by reason of carnal intercourse, but also by reason of conjugal society, according to which matrimony also is natural” (cf. n. 2042, 4).

Thence it follows that affinity does not obstruct the validity of matrimony among infidels: nor for that reason, without consulting the Holy See, can converts to the faith be separated who, with such an impediment, entered nuptials in infidelity. But affinity contracted in infidelity invalidates the matrimony which affines of this kind would wish to enter after the conversion of either one or of both to the true Faith: because the converted are subject to the laws of the Church, and this is clear from the declaration of the S. Congregation de Propaganda Fide, 23 August 1852.³⁷⁵

IT IS ASKED 3. What concerning SUPERVENING affinity between spouses AFTER matrimony has been contracted?

Resp. 1. Supervening affinity DEPRIVES the guilty party of the right of asking the debt, when the intercourse was consummated with a person consanguineous to the other spouse in the first or second degree. - But if the innocent spouse asks the debt, at least tacitly, or if he or she is in danger of incontinence, the guilty party is bound to render. But although the obligation of not asking is grave, nevertheless it does not seem to subsist in the case in which the incestuous person himself or herself should be in great danger of incontinence, nor could immediately seek dispensation; because, since the law is only ecclesiastical, it does not oblige with so great an inconvenience.³⁷⁶ But as regards DISPENSATION, the Bishop can grant it, and indeed by ordinary right, which belongs to him, if not from an express disposition of law, at least from legitimately prescribed custom. And hence it is that he can also delegate this faculty of his in general.

Resp. 2. This impediment of asking the debt does not have the nature of inability, but the nature of a PENALTY; whence from it there EXCUSE both force or grave fear, and ignorance, whether of fact, namely that the person carnally known is consanguineous to the other spouse; or of law, namely that there exists a human law which peculiarly prohibits such incest; or of penalty, which, since it is extraordinary, and therefore cannot be foreseen even confusedly, probably is not incurred. But with this probability standing, the spouse ought not to be deprived of his or her certain right.³⁷⁷ For the rest, in practice, spouses for the most part are ignorant of the penalty incurred, until, after an incest of this kind has been confessed, they have been taught about it by the confessor, as is fitting.

VIII. Public Honesty 2032. PUBLIC HONESTY is a certain nearness, or quasi-affinity, contracted from betrothals or ratified matrimony with the consanguines of the counterpart. It is an impediment only of ecclesiastical law, but deriving its origin from Roman law, and induced for this reason, because it is congruous to public honesty, especially among Christ's faithful, that, just as from the union of bodies affinity arises, so from the union of souls there should arise quasi-affinity.³⁷⁸

Principles. I. FROM valid and absolute BETROTHALS public honesty is contracted, invalidating matrimony in the first degree of consanguinity. Thus from Trent, sess. 24, cap. 3, *de reform. matrim.*

It is said 1. from valid betrothals; for the impediment from betrothals invalid for whatever reason was altogether removed by Trent; it is said 2. and absolute, because a condition appended, so long as it has not been verified, suspends the effect of the betrothals, and imposes only the obligation of awaiting the event (cf. n. 1951, q. 4). The impediment was restricted to the first degree alone, “since in further degrees,” says Trent in the cited place, “a prohibition of this kind now cannot be observed without detriment.”

Moreover, this impediment is contracted also from occult betrothals, as is clear from the response of the S. Penitentiary, which, being asked “whether from clandestine betrothals the impediment of PUBLIC HONESTY is contracted,” responded on 10 September 1834: Affirmatively (cf. n. 2043, Hence 1).

³⁷²Book VI, 1068.

³⁷³Cf. Feije, n. 379, and Giovine, § 305 and 306.

³⁷⁴In 4, dist. 41, a. 1, q. 3.

³⁷⁵*Collect. S. Sed.*, n. 867.

³⁷⁶Book VI, 1070-1076; *H. A.*, XVIII, 68, 69.

³⁷⁷*Ibid.*, 1052 sqq.

³⁷⁸Feije, n. 334.

And here it must be noted that an impediment once contracted always endures, even though the betrothals had been dissolved by mutual consent. This is clear from the declaration of S. C. C., 6 July 1658, approved by Alexander VII.³⁷⁹

2033. II. FROM RATIFIED MATRIMONY public honesty is similarly contracted, invalidating matrimony up to the FOURTH degree of consanguinity, inclusive; although, on account of whatever cause, except only defect of consent, the matrimony was INVALID. The reason is that, if from betrothals there arises some nearness, or quasi-affinity, *a fortiori* it ought to arise from ratified matrimony. But then it extends up to the fourth degree, because the ancient law, in this matter, was not changed by Trent, as St. Pius V declared in the Constitution *Ad Romanum*, 1 July 1568.

Hence, no impediment is induced from matrimony entered with an insane person, with a drunk person, or entered with error of person, with grave fear, or with fictitious consent, as S. C. C. declared on 28 March 1664.³⁸⁰ Otherwise in other cases. But whether it is induced from matrimony null because of clandestinity is controverted; but the truer and more common opinion, which must be stood by in practice, affirms.³⁸¹

“Here must be NOTED what is had in cap. *un. de sponsal.* in 6, namely that invalid ratified matrimony does not induce an impediment to the prejudice of prior betrothals. Whence, if someone, after betrothals validly contracted with one woman, marries her sister, before he has intercourse with the second, he can and is bound to contract with the first, since the matrimony was null.”³⁸²

2034. IT IS ASKED. Whether the act which is accustomed to be called CIVIL MATRIMONY produces the impediment of PUBLIC HONESTY?

Resp. Negatively, as is clear from the decree of 17 March 1879, by which Our Most Holy Lord LEO XIII “declares and establishes that the aforementioned act, which is commonly called civil matrimony, in places where the decree of the Council of Trent, sess. 24, cap. 1, *de reform. matrim.*, has been promulgated, whether the faithful fulfilling that act intend, as is fitting, to perform a merely civil ceremony, ecclesiastical matrimony already having been duly celebrated, or with the intention of celebrating it as soon as possible; or intend to enter betrothals concerning the future; or finally, from ignorance, or in contempt of ecclesiastical laws, intend to contract matrimony concerning the present, does not produce the impediment of public honesty.”³⁸³

Note. Since the aforesaid impediment is only of ecclesiastical law, it is not contracted by infidels. Whence, for example, Titius, converted from infidelity to the true faith, can enter matrimony with the sister of Maevia, with whom, while both were infidels, he had contracted matrimony, which nevertheless was not consummated, and was legitimately dissolved, for example by death. Thus the Congregation of the Holy Office, 9 April 1837.³⁸⁴

On The Impediments Which Refer To Danger Either Of CONJUGAL FAITH Or Of CHRISTIAN FAITH

IX. Crime 2035. The impediment of CRIME is an inability to contract matrimony, induced by ecclesiastical law, between persons who by nefarious complicity have perpetrated certain crimes determined in law. But there are two crimes, namely adultery and homicide, from which this impediment is contracted, and this in a THREEFOLD case: namely 1) from adultery alone; 2) from homicide alone; 3) from both together. - This threefold case frequently receives its denomination from homicide alone, in these words: 1. neither party perpetrating homicide; 2. both perpetrating; 3. one perpetrating.³⁸⁵ But since each case claims peculiar conditions for itself, concerning each in particular we must speak.

2036. Principles. I. By adultery alone, NEITHER PARTY PERPETRATING homicide, a diriment impediment is contracted, if adultery CONCURS with either a promise or an attempted celebration of matrimony. Thus from the title of law *De eo qui duxit*, cap. 1, 2, 4, 5, 6, 8. But it is REQUIRED that the adultery and the promise or attempted celebration of matrimony should have intervened while the spouse of either adulterer was living, and thus should yield to the injury of matrimony. But it makes no difference whether the promise or attempted celebration of matrimony preceded adultery or followed it, provided that, if it preceded, it was not retracted before the adultery.³⁸⁶ Besides, peculiar CONDITIONS are required, both on the part of the adultery and on the part either of the promise or of the attempted celebration.

³⁷⁹Book VI, 1063.

³⁸⁰Haehnlein, *de Matrim.*, n. 152; cf. also Giovine, § 285, 8.

³⁸¹Book VI, 1064; cf. Feije, ed. 3, 1885, n. 400 sqq., where more fully for and against.

³⁸²Book VI, 1064, end; *H. A.*, XVIII, 65.

³⁸³*Thesaur. Resol.*, cited place, tom. 138, p. 182.

³⁸⁴*Collect. S. Sed.*, n. 875.

³⁸⁵Book VI, 1033.

³⁸⁶*Ibid.*, 1037.

On the part of the ADULTERY it is required: 1) that it was true, and therefore that the prior matrimony was valid, although it was not consummated, or divorce was made; 2) that it be formal on both sides, namely perpetrated by each party with knowledge of the prior matrimony: wherefore, probably, even culpable ignorance excuses, if it is not affected; 3) that it be perfectly consummated, that is, of itself apt for generation: but this is always supposed in doubt.³⁸⁷

On the part of the PROMISE, besides the aforementioned connection with adultery, it is required that it was manifested and accepted; whence, it does not suffice if the adulteress held herself merely negatively.³⁸⁸ The more probable and also the more common opinion teaches that it is required that the promise be true, not fictitious; absolute, not conditioned; accepted by some external sign, and not by silence alone, although a re-promise is not required. - But whether a conditioned promise suffices if the condition is verified while the first matrimony is still standing, is indeed commonly affirmed; but St. Alphonsus did not dare to solve the question.³⁸⁹ "But he who, while his spouse is living, promises matrimony to another, but without adultery and without attempted matrimony, although he does not incur the impediment, nevertheless is not excused from mortal sin."³⁹⁰

On the part of the ATTEMPTED CELEBRATION of matrimony it is required that it be made with the consent of both; otherwise it would not be a true attempted celebration. - But it is the same whether it is made in Tridentine form or clandestinely; that civil matrimony also suffices is clear from various decisions of the S. Penitentiary.³⁹¹

2037. II. By homicide alone, BOTH PERPETRATING, there arises a diriment impediment when a man and woman HAVE CONTRIVED THE DEATH of the spouse of either, for the end that they may contract matrimony between themselves. This is clear from can. *Si quis vivente*, 31, qu. 1.

Moreover, to constitute the impediment from conjugicide alone, without formal and complete adultery, it is REQUIRED: 1. That the killing really followed from the physical or moral action, for example from counsel or mandate, of either accomplice; 2. That it followed from mutual conspiracy, or from the common plan of the man and woman; nor does it suffice if someone, hearing of the killing of the spouse, ratifies it; 3. That it was done with the intention of entering matrimony with the accomplice of the homicide; for thus it is most commonly taught, although it is not expressed in law. It indeed suffices that this intention be on the part of one; but it is more probably required that it had first been manifested to the other in some way, at least through certain indications, for example through amorous letters, or familiarities.³⁹²

2038. III. By homicide and adultery together, ONE PERPETRATING homicide, an impediment is contracted when, ADULTERY HAVING BEEN COMMITTED, the man KILLS his own wife, or the wife her own husband, with the intention of marrying the accomplice of the adultery. Thus from the title of law *De eo qui duxit*, in the cited place.

But for this it is REQUIRED: 1. On the part of the ADULTERY, that it be true, formal on both sides, and perfectly consummated, as was declared above. 2. On the part of the HOMICIDE: 1) that it be consummated, that is, that death truly followed from a blow, poison, etc., given by the spouse or by that spouse's mandate; 2) perpetrated with the intention of marrying the accomplice of the adultery, and that this intention of marrying was in some way manifested to the accomplice. But it is not required that it was committed by common plan: it suffices if one party, the other not knowing, inflicted death.³⁹³

"Hence it is inferred that if a man kills his wife, that he may more freely enjoy an adulteress, or for another cause, even if that woman consented to the homicide, but without intention of matrimony, the impediment is not contracted. - Indeed, if a man kills his wife, that he may marry another indeterminate woman, he can thereafter marry the adulteress. But otherwise, if he kills that he may marry some one of the adulteresses."³⁹⁴

Concerning the third case, however, it occurs that it must be NOTED that the impediment is incurred directly and principally by the adulterous party who inflicted death upon the spouse. Wherefore, if this party does not contract the impediment, for example because he or she is an infidel, neither is the other party entangled by it. But in the other cases the impediment is incurred directly by the faithful party: whence also the infidel is bound by it indirectly, since matrimony cannot limp.³⁹⁵

³⁸⁷Book VI, 1036.

³⁸⁸Ibid., 1037.

³⁸⁹Ibid., 1038 sqq.

³⁹⁰Ibid., 1043.

³⁹¹Cf. De Angelis, lib. 4, tit. 4, n. 11.

³⁹²Book VI, 1034 and 1035.

³⁹³Book VI, 1035 and 1036.

³⁹⁴Ibid., 1036, end.

³⁹⁵De Angelis, lib. 4, tit. 7, n. 4.

IT IS ASKED whether the impediment of crime is incurred by those who are IGNORANT that it is annexed by law to their delict?

Resp. Some deny, bringing forward this reason: this impediment was induced by way of penalty, and indeed an extraordinary one; but ignorance excuses from incurring such a penalty; therefore it also excuses from contracting the impediment.³⁹⁶ - But the common and far more probable opinion affirms. The distinguished Giovine brings forward the reason,³⁹⁷ writing: "the impediment of crime was established by the Church not only as a penalty, but especially because it is publicly dishonest and pernicious that matrimony be contracted between those who are guilty of such great crimes." And the most learned De Angelis adds: "With this opinion the practice of the Penitentiary and of the Apostolic Datary especially coheres,... which sufficiently indicates that those Tribunals do not wish to recognize the reasonableness of the aforesaid negative opinion."³⁹⁸

To be noted FOR PRACTICE: 1. The impediment of crime can be multiple, and indeed from a TWOFOLD source: 1) because several cases are verified with regard to the same matrimony, for example if adultery and homicide have their own proper conditions separately; 2) because the delicts bring injury to diverse marriages, for example if, in the case of adultery alone, each accomplice is joined in matrimony, and if, with respect to each matrimony, the adultery was formal on both sides. Then a double impediment arises, necessarily to be expressed in the supplicatory libellus, for obtaining dispensation.³⁹⁹

2. The confessor ought prudently to question those spouses whom he suspects to be guilty of this crime. - Now, those are suspect both who confess that, in the time of a prior matrimony, they fell into adultery; and those who, after the death of the prior spouse, without delay, eagerly flew to new nuptials with some person belonging to the house or family. But that he may prudently question, let him inquire: whether he lived very familiarly with the present spouse, whether he greatly desired that person's nuptials, whether he was wearied of the prior spouse, whether he wished for that spouse's death, whether he believes himself to be in cause why she died, etc.

X. Disparity Of Cult 2039. DISPARITY OF CULT is that disparity of religion which exists between a baptized person and a non-baptized person, even a catechumen.

Principles. I. Disparity of cult INVALIDATES matrimony BY CUSTOMARY ECCLESIASTICAL LAW.⁴⁰⁰ Thus all, and it is certain from the Constitution of Benedict XIV *Singulari Nobis*, issued on 9 February 1749, § 10. But it makes no difference whether the faithful party is Catholic or non-Catholic; whether the infidel party is Jewish, Pagan, or devoted to another sect.

- II. Matrimonies of the faithful with infidels, outside the case of urgent cause, are FORBIDDEN by divine law. - This is clear: 1. from the positive prohibition made to the Hebrews, Deut. 7:7; and from the words of the Apostle, 2 Cor. 6:14: "do not draw the yoke with infidels." 2. From reason: for natural law dictates that the danger of sinning must be avoided; but from the aforesaid marriages danger of perversion threatens both the faithful spouse and the offspring to be born; therefore.

It was said: outside the case of urgent cause; for when this exists, and the danger of perversion has been removed, they can be rendered licit, as is clear from various examples of sacred history. Hence it is that the Holy See, when in this impediment it dispenses from grave cause, is accustomed to impose nearly the same conditions which it requires for mixed marriages.⁴⁰¹ Recall what was said in n. 1986.

Note. Since Baptism among non-Catholic sects is sometimes doubtful, and therefore great difficulty arises with regard to the validity of matrimony, the following question was proposed to the Congregation of the Holy Office: "Whether Calvinists and Lutherans living in those parts, whose Baptism is doubtful and suspect, are to be held as infidels, so that between them and Catholics the diriment impediment of disparity of cult is to be judged present?"

And the S. Tribunal responded on 17 November 1830: "1. As regards heretics whose sects' Rituals prescribe the conferral of Baptism without the necessary use of essential matter and form, the particular case must be examined. 2. As regards others, who according to their Rituals baptize validly, Baptism is to be judged valid. But if doubt persists even in the first case, Baptism is to be judged valid in order to the validity of matrimony. 3. But if it is known certainly that according to

³⁹⁶See d'Annibale, *Summ.*, III, 312, 2nd ed.; Lehmkuhl, II, n. 770.

³⁹⁷*De disp. matrim.*, I, § 228.

³⁹⁸Lib. 4, tit. 7, n. 5; cf. *Nouv. rev. theol.*, t. XIII, p. 382.

³⁹⁹Cf. Feije, n. 455.

⁴⁰⁰Book VI, 1044.

⁴⁰¹Cf. Vecchiotti, lib. V, § 97.

the actual custom of that sect there is no Baptism, the matrimony is null.”⁴⁰² This is confirmed from another response of the Holy Office given on 1 August 1883⁴⁰³ (cf. n. 1477, Note).

§ 3. On The Diriment Impediment On Account Of Defect Of The Prescribed Form, Or On Clandestinity 2040. Matrimonies are called CLANDESTINE which are not contracted in the face of the Church. - These, indeed, were odious to the Holy Church in every age, until finally the Council of Trent, through the celebrated Decree *Tametsi*,⁴⁰⁴ proscribed them under penalty of nullity: by which namely “it invalidates the matrimony of those who contract otherwise than before the parish priest, or another priest with the license of the parish priest or of the Ordinary, and at least two witnesses, and wills that those who have contracted against this, or even were present, be gravely punished.”⁴⁰⁵

Therefore CLANDESTINITY is an impediment of ecclesiastical law consisting in this, that matrimony is contracted without the assistance of the parish priest and witnesses: by which it happens that the parties are rendered unable to contract, and that the nuptials entered are invalid.

In another sense also, a matrimony is called clandestine, namely when it is contracted maliciously without denunciations; but in this case it is not invalid, but only illicit.⁴⁰⁶

What things are required, however, that satisfaction be made to the PRECEPT both of premising denunciations and of observing the Tridentine form, we shall say below, where we treat of the celebration of Matrimony (n. 2056 sqq. and 2068 sqq.).

Chapter IV

On Dispensation From Diriment Impediments Of Matrimony⁴⁰⁷

2041. Before all things we judge it opportune to premise the genuine signification of words which frequently occur in the matter of dispensations.⁴⁰⁸

1. ORATOR, ORATRIX, EXPONENT, EXPONENTS are called those who seek a dispensation for themselves. - A supplicatory libellus or supplication are the letters by which a dispensation is sought.

The STYLE OF THE CURIA, in this matter, denotes the complex of those things which must be observed in the supplicatory libellus, from the will and practice of the Roman Congregation before which the matter is transacted.

SUBREPTION is the reticence of the true, namely of some circumstance necessarily to be opened. OBREPTION is the expression of the false, for example in the causes alleged which persuade that the dispensation should be granted.

A RESCRIPT of dispensation is called the epistle or letters by which the sought dispensation is granted. CLAUSES are the conditions appended to rescripts, referring both to the executor of the dispensation and to the nupturients themselves; some occur uniformly in all dispensations, others are diverse according to the diversity of impediments.

2. A dispensation FOR THE INTERNAL FORUM, or for the forum of conscience, or for the forum of heaven, is that which is sought under fictitious names, and which effects that the impediment be removed, and that matrimony can be validly contracted; but it does not suffice for proving the celebration of the nuptials before an ecclesiastical judge. The dispensation which they call FOR THE EXTERNAL FORUM, or for the forum of the court, is sought with the names of the orators expressed, and effects that matrimony can be validly contracted, and be proved to have been validly contracted, before an ecclesiastical judge.
3. A dispensation is said to be given in GRATUITOUS FORM, when the ecclesiastical Superior, having been asked to grant the dispensation, applies it directly to the orators by himself. - It is said to be granted in COMMISSORY FORM, when the Superior commits to another the faculty of dispensing with the orators, for example to a parish priest or confessor. A dispensation is given in ordinary form when, on the occasion of the dispensation, a certain sum of money, tax or composition, is to be paid. - It is given in the form of the poor when a money tax is not required; in which case, to the Rescript this clause is customarily added: “provided that the orators are poor and miserable, and live only from labor and industry.” For, if they are not poor, they ought to satisfy the established tax.

⁴⁰² *Collect. S. Sed.*, n. 897; cf. n. 885, Instr. S. C. de Propag. Fide, 13 Sept. 1760, and n. 887.

⁴⁰³ *Monitore ecclesiastico*, vol. IV, p. 2, p. 82.

⁴⁰⁴ Sess. 24, *de ref. matrim.*, cap. 1.

⁴⁰⁵ Book VI, 1078.

⁴⁰⁶ *Ibid.*, 1079.

⁴⁰⁷ Concerning dispensation from impedient impediments we have already spoken where the individual impediments were set forth.

⁴⁰⁸ See Van de Burgt, *de dispens. matrim.*, n. 6 sqq.

4. The FULMINATION of a dispensation is called the act by which the impediment is removed. By another name it is also called the application or execution of the dispensation, although this last word also admits a broader signification, according to which it comprehends all things which must be done on the occasion of the fulmination.
5. One impediment is called OCCULT, another PUBLIC; and this distinction indeed is, in the present matter, of the greatest moment.

OCCULT is sometimes taken more strictly, sometimes more broadly:⁴⁰⁹ Occult strictly so called, or altogether occult, is that which cannot be proved by two witnesses. Occult broadly so called, or quasi-occult, or occult simply, is that which can be hidden by some tergiversation, even if it can be proved by some witnesses. - But to how many persons an impediment can be known, without thereby ceasing to be OCCULT, must be left to the judgment and sentence of a prudent judge. Especially in this matter, attention must be paid to the circumstances of place and of persons. That is still judged occult which in a town has become known to six persons, in a city to seven or eight. Indeed the S. PENITENTIARY has sometimes held as occult an impediment known to about ten persons. - "Therefore attention must be paid not only to how many persons, but to what sort of persons, the impediment is known: because it can well happen that with respect to five prudent and God-fearing persons who know the impediment, there is altogether no danger of further divulging; and, on the contrary, with respect to two or three, for example talkative persons, or enemies, etc., the danger of divulging may seem truly present, especially if other circumstances also threaten such danger."⁴¹⁰ But when true danger of divulging is present, the impediment can no longer be held as occult.⁴¹¹

A PUBLIC impediment is that which has so become known that it can no longer be hidden by any tergiversation.

6. Let it be noted: 1) The fact which induces the impediment can be public materially and occult formally: for instance if the fact of killing is known, but culpability lies hidden, because the killing is believed to have happened by chance. And in such a case indeed the impediment is still judged occult. Likewise, if the thing itself is known, but is unknown according to the reason of impediment, that is, if the impediment is not public insofar as it is an impediment, although it is known by two or three persons.⁴¹² 2) Other impediments by their nature are PUBLIC, such as consanguinity, affinity from licit intercourse, public honesty, spiritual cognation. And although by accident they lie hidden, in order to matrimony to be contracted they must be held as public.
7. CAUSES of dispensation are called some infamous or dishonest, namely those which have origin from the delict of the orators, or which lean upon their defamation; others not infamous or honest, namely those which have no note of either delict or defamation attached to themselves. - These things premised,

We shall treat: 1. of the power of dispensing; 2. of the causes of legitimate dispensation; 3. of the manner of obtaining dispensation; 4. of the things to be observed in executing the same.

Article I

On The Power Of Dispensing

The power of dispensing in the Church is with those to whom legislative power belongs, namely with the Pope and the Bishop. - What, therefore, in this matter, both the Roman Pontiff and the Bishop are able to do must be briefly investigated.

§ 1. What The Roman Pontiff Can Do 2042. I. The SUPREME PONTIFF can DISPENSE in all impediments of ecclesiastical law, but not in impediments of natural and divine law; but concerning these also he can DECLARE that they do not oblige in certain circumstances. Declarations of this kind indeed are accustomed to be called dispensations; but such an appellation is improper. All these things are clear from what was said in the Treatise on Laws (cf. n. 135 and 234).

But that dispensation be licit, a just cause is REQUIRED, namely a cause proportioned to the gravity of the impediment. Besides, there are certain impediments in which, although they are of ecclesiastical law, the Pope is not accustomed to dispense.

From these things it is easily gathered what must be thought concerning dispensation from individual impediments.

1. Error and force are altogether indispensable. - Condition and abduction are indeed absolutely dispensable, but dispensation is never granted. - Similarly age is a dispensable impediment; but the Pontiff dispenses in it very

⁴⁰⁹Cf. Book VI, 1111, and 593, v. *Hic autem*.

⁴¹⁰Reiffenstuel, Append. *de Dispensat. super Impedim.*, n. 46.

⁴¹¹Book VI, 1111.

⁴¹²Book VI, 1111; cf. *Acta S. Sed.*, XIV, 155 sqq.; Bonacina, *de Legib.*, qu. 2, punct. 2, n. 7.

rarely, and only on account of a public cause. Impotence and Bond are indispensable. The Church sometimes dissolves a ratified matrimony, so that it does not stand in the way of new nuptials (cf. n. 1982); but while a valid matrimony stands, even if only ratified, she has never tolerated another, nor can she tolerate it. - In Vow and Order, only on account of a most grave cause, and therefore very rarely, is dispensation granted.

2. Concerning crime a dispensation is obtained; but if both or either have contrived murder, it is granted only rarely, and only from a most grave cause; but never, if the contrivance is public.⁴¹³ - In disparity of cult a dispensation is likewise granted, but with greatest difficulty in Christian regions.⁴¹⁴ - Finally, in clandestinity a dispensation is never given for contracting matrimony; the law ceases, however, if there is in the place a general impossibility, whether physical or moral, of observing it;⁴¹⁵ but it is given, although most rarely, after matrimony has already been contracted, and this through sanation in the root.⁴¹⁶
3. Cognation, according to the diversity of cases, is an impediment either dispensable or indispensable. For dispensation cannot be given concerning consanguinity in the direct line; but neither in the first degree of the collateral line has the Church ever dispensed (cf. n. 2019, end). But in more remote degrees dispensation can be had. - The Church dispenses in spiritual cognation; but more easily between the one lifting and the father or mother of the one lifted, than between the one lifting and the one lifted. - She likewise dispenses in legal cognation, yet with greatest difficulty in paternity.
4. In affinity which is in the collateral line, dispensation is granted, whether the affinity comes from licit intercourse or from illicit; indeed, if it comes from illicit intercourse, it is granted in the first degree of the direct line, although with more difficulty, and "provided that no doubt underlies that the spouse is offspring begotten by the other of the contracting parties." But if it comes from licit intercourse, the Church has never dispensed in the direct line⁴¹⁷ (cf. n. 2031, qu. 2). - In the impediment of public honesty dispensation is granted more easily, other things equal, than in the preceding impediment.

From what has been said it is clear that the impediments in which dispensation is more frequently had are cognation, affinity, and public honesty.

2043. II. The Roman Pontiff is accustomed to exercise his power of dispensing through the tribunals of the DATARY and of the S. PENITENTIARY. Thus from various documents pertaining to the erection and jurisdiction of the said tribunals, and first of all from the Constitutions of Benedict XIV, *Pastor bonus*, 13 April 1744, and *Gravissimum Ecclesiae*, 26 November 1745. It is said: is accustomed to exercise, because dispensations concerning disparity of cult, and mixed religion, are granted through the Holy Office; dispensations for supreme princes through the Secretariat of Briefs; and for regions which are subject to the S. Congregation de Propaganda Fide, all affairs are treated through this same Congregation. Besides, the Supreme Pontiff sometimes uses, on account of peculiar circumstances, the work of some determinate Congregation.

The DATARY dispenses for the EXTERNAL FORUM, namely in public impediments, and also in those which are foreseen soon to become public: of this kind are consanguinity, affinity from licit intercourse, spiritual cognation, public honesty. Wherefore, recourse is made more safely and efficaciously to this Sacred Tribunal through the Ordinaries of places.

But the SACRED PENITENTIARY dispenses for the INTERNAL FORUM, or in occult impediments: such as often are those which come from crime, and especially from illicit intercourse. Likewise, it convalidates a dispensation granted by the Datary, but invalidly because of an occult delict, necessarily to be declared, having been kept back, if this is still secret (cf. n. 2051, 6).

It also sometimes dispenses in impediments which indeed by their nature are public, but which still lie hidden. Hence: 1) It dispenses concerning the impediment of public honesty from occult betrothals. - 2) As regards marriages already contracted and to be revalidated, it dispenses concerning occult impediments of spiritual cognation, of consanguinity and of affinity in the third and fourth degree; indeed also in the second degree, if the impediment remained occult through a decade, and those joined contracted publicly and were reputed as legitimate spouses. 3) It can besides in the same third and fourth public degrees, revalidate marriages contracted invalidly from the cause of subreption and occult obreption of Apostolic Letters; except if the falsity consists in the narration of preceding intercourse, which in reality had not previously intervened.⁴¹⁸

⁴¹³Cf. Giovine, § 229.

⁴¹⁴Id., § 235.

⁴¹⁵Cf. id., § 318.

⁴¹⁶Cf. id., § 317.

⁴¹⁷Cf. Mansella, *de Impedim. matr.*, cap. 3, a. 2, n. 12 and 13.

⁴¹⁸Const. *Pastor bonus*, § 40.

For the EXTERNAL forum also, or in strictly public impediments, the S. PENITENTIARY dispenses as regards poor supplicants, concerning whose poverty there is certainty from testimonial Letters of the Ordinary. But if there is given an extraordinary and urgent case, recourse can also be made to the S. Penitentiary for those not poor, all things pertaining to the matter being set forth clearly: if the S. Tribunal cannot provide for the prayers set forth by its ordinary faculties, nevertheless it looks after the same by the force of faculties which it implores from the Supreme Pontiff in the customary audience which the Cardinal Major Penitentiary has every week.⁴¹⁹

2044. Let it be noted: 1. When the Apostolic See is vacant, the jurisdiction of the Datarary ceases; but not the jurisdiction of the S. Penitentiary as regards the internal forum.

2. In the Datarary a Tax is to be paid, to be determined from the nature of the impediment and the pecuniary condition of the Orators, not indeed as the price of the dispensation, which is granted gratis, but both for the stipend of the Officials of the Datarary and the expenses to be undergone, and for the alms called the composition: which is imposed for this reason, that it may serve somewhat for repairing the wound inflicted upon discipline, and for lessening marriages between consanguines and affines, especially in the first and second degrees, in which a greater composition is imposed. - In the Penitentiary no TAX is paid. But if there is question of public impediments, and the orators are not altogether poor, some slight alms is required, to be transmitted to the Datarary, so that its rights may remain whole and intact.
3. According to the practice of the Datarary, those are to be reputed truly poor whose fortune does not exceed about three thousand francs, if they are beyond the Mountains; one thousand five hundred, if on this side of the Mountains; but those whose fortune does not exceed the value of ten thousand francs are called almost poor.⁴²⁰

§ 2. What The Bishop Can Do 2045. Principles. I. A Bishop CANNOT, from his ORDINARY power, dispense concerning diriment impediments. This is clear from the Letters of Pius VI given to the Archbishop of Trier on 2 February 1782,⁴²¹ and from the Rescript of Pius VII to the Bishops and Vicars general of France, dated 27 February 1809.⁴²² The reason is that episcopal authority does not extend to making, by proper right, dispensations in the general laws of the Church, without at least express or tacit concession of the Superior by whom those laws were sanctioned.

Nevertheless the most common opinion teaches that the Bishop can dispense concerning doubtful impediments.⁴²³ In doubt of LAW, a declaration suffices that one can proceed safely; but in doubt of FACT, a dispensation is given for caution (cf. n. 1997, q. 4).

2046. II. A Bishop CAN, from QUASI-ORDINARY power, dispense, when necessity is urgent, concerning OCCULT impediments in which the Pope is accustomed to dispense. Thus the Doctors most commonly. For when necessity is urgent, "the Pontiff is to be presumed to delegate to the Bishop the faculty which, if asked, he certainly would not deny."⁴²⁴

But it is REQUIRED: 1. That there be present urgent necessity, which is judged to be present if the Pope cannot be approached without too much delay, nor can the matrimony be deferred without scandal, infamy, or another most grave harm: for instance if there is question of matrimony in extremis, or all things are already prepared for the nuptials. Likewise, if spouses, after matrimony has been contracted, cannot be separated without danger of scandal or infamy, and, staying under the same roof, are in danger of incontinence. But if they are in good faith, they are to be left in it until a dispensation has been obtained from the Holy See.⁴²⁵

2. That the impediment be occult, as is clear from the declarations of S. C. of the Council issued on 13 March 1660 and on 19 January 1661, likewise of the Holy Office in 1660 and 3 August 1873, and of the S. Penitentiary on 10 August 1872.⁴²⁶ The reason is "because when the impediment is public, the reason of scandal ceases, if the betrothed desist from such matrimony; indeed, especially to avoid scandal they are bound to desist from the nuptials."⁴²⁷ - Probably, nevertheless, the Bishop can dispense from an impediment public by its nature, but occult by reason

⁴¹⁹Cf. *Acta S. Sed.*, I, 63.

⁴²⁰Cf. Feije, n. 690 sqq.; cf. also Giovine, tom. 2, § 18 and 37 sqq.; Planchard, *Dispens. matrim.*, n. 80.

⁴²¹Roscovany, *Matrimon. in Eccl. cathol.*, vol. I, p. 169, Monum. 47.

⁴²²Moser, *de Impedim. matr.*, App., n. XVII.

⁴²³Book VI, 902, v. *Caeterum*; *De Priv.*, n. 54-58; cf. Scavini, III, n. 1029.

⁴²⁴Book VI, 613.

⁴²⁵Book VI, 1122, 1123.

⁴²⁶Planchard, *Dispens. matr.*, n. 94; Feije, n. 633.

⁴²⁷Book VI, 1122, end.

of circumstances, provided it is of the number of those concerning which the Major Penitentiary has ordinary faculties.⁴²⁸

3. That the Pope is accustomed to dispense; for otherwise his consent cannot be presumed. And from this it follows that the Bishop does not enjoy quasi-ordinary power of dispensing from those impediments in which not even the Major Penitentiary himself, by force of his ordinary faculties, can dispense.⁴²⁹

Another condition is also required if there is question of matrimony ALREADY CONTRACTED, namely that it was contracted in good faith, at least on the part of one spouse, with the prescribed solemnities, for example proclamations, unless there was dispensation. "The reason is both because in Trent it is said: if anyone knowingly shall presume to contract matrimony within prohibited degrees, let him be separated, and let him lack hope of obtaining dispensation; and because otherwise occasion would be given that daily, in hope of dispensation, marriages would be celebrated with contempt for impediments."⁴³⁰ But ignorance of the impediment, even crass, excuses from bad faith, provided it is not so crass that it would seem to be temerity.⁴³¹

Note. Since the aforesaid power of the Bishop is not annexed to the person, but to the dignity and office, and therefore must be called quasi-ordinary, it follows that it can be delegated not only for a particular case, but also for all occurring cases, both present and future. - Yet special delegation is required, even for the Vicar general, who does not obtain this faculty from the general commission of the Vicariate.⁴³²

2047. III. A Bishop ordinarily receives from the Supreme Pontiff DELEGATED power of dispensing from certain impediments in which difficulties occur more frequently. This power is customarily granted through quinquennial, or triennial, or annual faculties, and for a certain number of cases. The same faculties are not granted to all Bishops; wherefore each one ought most carefully to weigh the tenor of the faculties committed to him, the conditions appended, and the clauses under which the dispensation is to be granted, and to communicate opportune instructions to the clergy subject to him (cf. Appendix I).⁴³³

And here it does not seem alien to NOTE the following things concerning the use of an Apostolic Indult:

1. The same rules which are held as necessary in the Roman Curia must necessarily also be observed by the Bishop who grants a dispensation by force of an Indult. For such is the mind of the Supreme Pontiff, as is clear from the Response of the S. PENITENTIARY given on 1 May 1858.⁴³⁴
2. The prescribed clauses, for example the notation of the Apostolic Indult, must altogether be observed; not however under penalty of nullity, unless this is clearly expressed in the Indult, for example by the words: otherwise they are null. - Thus from the Response of the Holy Office, 15 June 1875.⁴³⁵
3. A Bishop can, by force of the Indult, dispense from the impediment either of consanguinity or of affinity, even if the degrees are multiple, Holy Office, 15 June 1875;⁴³⁶ S. Penitentiary, 18 January 1883;⁴³⁷ but not from several impediments concurring in the same case, unless this is expressly granted in the Indult. This is drawn from the words of the Indults, and from the Response of S. C. C., 26 April 1873, and of the S. Penitentiary, 14 July 1881.⁴³⁸
4. A Bishop can use his faculty of dispensing, for example in affinity, even if incest had been committed with the intention of obtaining dispensation more easily. - Thus S. Penitentiary, 10 May 1876.⁴³⁹ (cf. n. 2051, Note).
5. A Bishop cannot dispense except with his own subjects, namely those who have domicile or quasi-domicile in his diocese; or with wanderers who are staying in his diocese and do not have domicile elsewhere (cf. n. 235, q. 2).

⁴²⁸Cf. Feije, n. 634, 7; cf. *Acta S. Sedis*, vol. XIV, p. 155.

⁴²⁹Feije, *ibid.*, 6.

⁴³⁰Book VI, 1124.

⁴³¹*Ibid.*

⁴³²*Ibid.*, 1125.

⁴³³Faculties which are commonly accustomed to be granted, illustrated by excellent commentaries, you will find in Feije, n. 614 sqq., and Planchard, n. 96 sqq.

⁴³⁴Cf. *Nouv. Rev. Theol.*, t. V, 444.

⁴³⁵Apud Konings, n. 1628, qu. 6; cf. also *Collect. S. Sed.*, n. 1019 and 1021.

⁴³⁶Konings, II, p. 397, μ.

⁴³⁷*Nouv. Rev. Theol.*, t. XV, 53.

⁴³⁸Apud Planchard, n. 131 and 129 in note; cf. also Konings, ed. 5, II, p. 399, 10.

⁴³⁹Planchard, n. 99.

2048. Questions. IT IS ASKED 1. What is the power of the Bishop concerning PROHIBITING impediments?

Resp. He can dispense from proclamations of banns, and from a vow not reserved to the Supreme Pontiff. As regards other things, a pontifical dispensation is required, as is clear from what was said in n. 1987, 1989, and following.⁴⁴⁰ In this matter, those things also have force which were said concerning the quasi-ordinary power of the Bishop, in a case of necessity (n. 2046).

IT IS ASKED 2. Whether if the contracting parties are of DIFFERENT DIOCESES, each one must be dispensed by his own Bishop?

Resp. Distinguish. 1. Impediments altogether personal and without relation to the other party, for example the impeding impediment of vow, can be dispensed by the Bishop of the nuptient alone; wherefore if each party is detained by such an impediment, dispensation is required from the Bishop of each (cf. n. 2064).⁴⁴¹

2. But if the impediment is common to both, for example cognation, affinity, it suffices if the Bishop of either party dispenses, "because, the impediment having been removed from one side, the other party also becomes free, since the bond no longer exists between both parties." - But it is fitting that the dispensation, regularly, be granted by that Bishop in whose diocese the matrimony ought to be contracted by law, that is, by the Bishop of the bride. Thus from the Responses of the S. Penitentiary given on 4 September 1839 and 15 April 1853;⁴⁴² confirmed by the Response of the Holy Office, 22 November 1865.⁴⁴³

IT IS ASKED 3. What must be done by the PARISH PRIEST or CONFESSOR, if he detects an impediment when ALL THINGS ARE ALREADY PREPARED for the nuptials, and no time remains for obtaining a dispensation?

Resp. 1. If the impediment is public, the matrimony must altogether be deferred until dispensation is obtained, since from delay no scandal can arise.

2. If the impediment is occult, and of those concerning which the Holy See is not accustomed to dispense, one must abstain from celebration of the matrimony, since the cessation of the law cannot be supposed in such a case.
3. If the impediment is occult, and of those in which dispensation is accustomed to be given, and the matrimony cannot be deferred without scandal or infamy of the betrothed: the celebration of matrimony is to be permitted; and meanwhile the betrothed are to be left in their invincible ignorance, until dispensation, or sanation in the root, is obtained.
4. If, the same circumstances standing, either betrothed or both are in vincible ignorance, or have knowledge of the impediment: a great difficulty arises, for avoiding which some teach that different ways must be entered: namely some by prescribing delay of the matrimony, others by permitting simulation of the Sacrament (cf. n. 1430), others finally by advising celebration under condition of a dispensation to be obtained (cf. n. 1973, q. 3). There is also the opinion of certain persons, which St. Alphonsus calls not unfounded, which holds that the law of the Church concerning impediments does not oblige in such great straits, and consequently that celebration of the matrimony can be permitted, and then recourse must be made as soon as possible to the S. Penitentiary, so that from it either dispensation or sanation in the root may be obtained.⁴⁴⁴

IN PRACTICE, every difficulty would cease if the Bishop expressly delegated to all priests to whom care of souls is committed the faculty which he has for a case of this kind (n. 2046).⁴⁴⁵

Article II

On The Causes Of Legitimate Dispensation

2049. Since dispensation is the relaxation of common law, it cannot licitly be granted except on account of a JUST CAUSE, namely one which rests upon the necessity or certain utility of the dispensation itself. Nor without such a cause is the Superior himself ever presumed to wish to dispense, since this cannot be done licitly. Such a dispensation knowingly made would indeed be valid; but the same must not be said of a dispensation granted by an inferior in the law of a Superior,

⁴⁴⁰Book VI, 1126.

⁴⁴¹Feije, n. 638, 20.

⁴⁴²Planchard, n. 103.

⁴⁴³*Acta S. Sed.*, II, 671.

⁴⁴⁴Book VI, 613; *H. A.*, XVI, 114; Konings, n. 1556, qu. 3; Planchard, n. 547 sqq.; Feije, n. 640 sqq.

⁴⁴⁵*De Priv.*, n. 58.

from delegated or quasi-ordinary power; for if a just cause is lacking, the dispensation would not only be illicit, but also invalid (cf. n. 237 and 238).

Nor indeed must every cause be held as just; for the Council of Trent requires a grave cause, and indeed one so much graver as the impediment which stands against the celebrating of nuptials is graver.⁴⁴⁶ The PRINCIPAL CAUSES which, according to canonical sanctions, have been accustomed to be held as sufficient are set forth in the Instruction of S. C. de Propaganda Fide, 9 May 1877,⁴⁴⁷ in the following manner:

“1. Narrowness of place, whether absolute or relative, only by reason of the oratrix, namely when in the place of origin, or even of domicile, the woman’s cognation has been so propagated that she cannot find another of equal condition whom she may marry, unless a consanguine or affine; but for her to leave her country would be hard. [That place is reputed narrow which does not exceed 300 hearths, or 1500 Catholic inhabitants, from the declaration of Pius IX issued on 30 August 1847.⁴⁴⁸ Wherefore S. Cong. of the Council declared⁴⁴⁹ on 16 Dec. 1876: “Narrowness of place is not to be drawn from the number of hearths of each parish, but from the number of hearths of each place or even of several places, if they are not distant from one another beyond a mile,” or 20 minutes.]

“2. The over-adult age of the woman, namely if, having already passed the 24th year of age, she has hitherto not found a man of equal condition whom she can marry. But this cause does not support a widow who desires to pass to other nuptials.

“3. Deficiency or incompetence of dowry, namely if the woman does not actually have so great a dowry that she can marry, in her own place in which she dwells, an outsider of equal condition who is neither consanguine nor affine. Which cause urges more if the woman is altogether undowered, and a consanguine or affine is ready to take her as wife, or even suitably to dower her entirely. [But it is indifferent whether the dowry is offered by the bridegroom or by another, but on the condition that she marry the consanguine or affine.⁴⁵⁰]

“4. Lawsuits concerning succession of goods already arisen, or grave or imminent danger of the same. If a woman sustains a grave lawsuit concerning succession of goods of great moment, and there is no other who would take upon himself a lawsuit of this kind and pursue it at his own expense, except the one who desires to take her as wife: dispensation is customarily granted; for it is of interest to the Republic that lawsuits be extinguished. Another cause comes near to this, namely Dowry involved in lawsuits, namely when a woman is destitute of another man by whose aid she can recover her goods. But a cause of this kind suffices only for more remote degrees.

“5. The poverty of a widow who is burdened with numerous offspring, and a man promises to support her. But sometimes by the remedy of dispensation aid is given to a widow for this cause only, that she is younger, and is in danger of incontinence.

“6. The good of peace, under which name come not only treaties between kingdoms and princes, but also the extinction of grave enmities, quarrels, and civil hatreds. This cause is adduced either for extinguishing grave enmities which have arisen among the consanguines and affines of the contracting parties, and which would be altogether settled by the celebration of matrimony; or when grave enmities flourished among the consanguines and affines of the contracting parties, and, although peace has already been entered among them, nevertheless the celebration of matrimony would conduce greatly to the confirmation of that peace.

“7. Excessive, suspect, dangerous familiarity, and also cohabitation under the same roof, which cannot easily be impeded.

“8. Intercourse previously had with a consanguine, or affine, or another person laboring under an impediment, and pregnancy, and therefore legitimization of offspring; namely that provision may be made for the good of the offspring itself, and for the honor of the woman, who otherwise would remain unmarried. This is indeed one of the more urgent causes on account of which dispensation is customarily given even to plebeians, provided the intercourse was not perpetrated under hope of an easier dispensation: which circumstance would have to be expressed in the supplication (cf. n. 2051, end).

“9. Infamy of the woman, arisen from suspicion that she, being too familiar with her consanguine or affine, was known by the same, although the suspicion is false: namely when, unless matrimony is contracted, the woman would remain gravely defamed, or unmarried, or would have to marry a man of unequal condition, or grave harms would arise.

⁴⁴⁶Sess. 25, cap. 18, *de reform.*

⁴⁴⁷*Collect. S. Sed.*, n. 1017; or *Acta*, vol. X, p. 291.

⁴⁴⁸Cf. Giovine, § 212, 3; cf. also *Acta S. Sed.*, IX, p. 571 sqq.

⁴⁴⁹In one Oveten., *per summar. prec.*, under n. III.

⁴⁵⁰Konings, n. 1625.

“10. Revalidation of matrimony which was contracted in good faith and publicly, the form of Trent having been observed: because its dissolution can scarcely happen without public scandal, and grave harm, especially of the woman (cap. 7 *de consanguin.*). But if in bad faith the betrothed entered the nuptials, they by no means deserve the grace of dispensation, as the Council of Trent disposes, sess. 24, cap. 5 *de reform. matrim.* [Therefore then dispensation is obtained with more difficulty, today nevertheless more easily than formerly.⁴⁵¹]

“11. Danger of mixed matrimony, or of matrimony to be celebrated before a non-Catholic minister. When danger is present that persons wishing to contract matrimony in some degree, even one of the greater degrees, because of denial of dispensation, will approach a non-Catholic minister for celebrating the nuptials, with contempt of the Church’s authority: there is found a just cause of dispensing, because there is present not only most grave scandal of the faithful, but also fear of perversion and defection from the faith of those acting in such a way and contemning the impediments of matrimony, especially in regions where heresies rage with impunity... The same must be said of the danger that a Catholic party may dare to celebrate matrimony with a non-Catholic.

“12. Danger of incestuous concubinage. From the Instruction of S. C. of the Holy Office, 14 Aug. 1822, it is clear that the remedy of dispensation is to be applied lest someone grow foul in concubinage with public scandal and evident danger of eternal salvation.

“13. Danger of civil matrimony. From what has been said it follows that the probable danger that those who seek a dispensation, if it is not obtained, will celebrate only civil matrimony, as they say, is a legitimate cause of dispensing.

“14. Removal of grave scandals.

“15. Cessation of public concubinage.

“16. Excellence of merits, when someone has deserved very well of religion, either by fighting against the enemies of the Catholic faith, or by liberality toward the Church, or by doctrine, virtue, or in some other way.

“These are the more common and more powerful CAUSES which are customarily adduced for obtaining matrimonial dispensations.”⁴⁵² - Universally, it is expedient to bring forward all reasons making matrimony desirable, which, if they are not from those enumerated, are called certain reasonable causes.

Dispensation also is sometimes granted without an expressed cause, namely when from a pious work, which is imposed by way of compensation, the cause of dispensation arises.⁴⁵³

And here it helps to NOTE that sometimes it happens that one cause, taken separately, is not sufficient, but joined with another is reputed grave, and consequently sufficient; for “things which do not help singly, many together help.”⁴⁵⁴

2050. Questions. IT IS ASKED 1. Whether when the CAUSE of dispensation CEASES, the dispensation ceases?

Resp. “Affirmatively, if the cause ceases before the dispensation is expedited, or before it is made by the Bishop or by another delegate to whom it has been committed by the Pontiff. But otherwise, if the cause ceases when the dispensation has already been expedited and made by the inferior delegate, even if it ceases before the celebration of matrimony. - The reason is that through dispensation the impediment is now removed, or the law is relaxed, whose obligation, having been extinguished, by no means revives if afterward the cause ceases.”⁴⁵⁵

IT IS ASKED 2. But what must be said if it is doubted whether a FINAL or IMPULSIVE cause has been falsely alleged; or whether a cause was TRUE or FALSE?

Resp. “In all these and similar doubts, the dispensation must be judged valid, because in doubt one must stand for the validity of the act”⁴⁵⁶ (cf. n. 240).

⁴⁵¹Feije, n. 678.

⁴⁵²Cf. Pyrrh. Corradus, *Praxis dispens.*, lib. 7 and 8.

⁴⁵³Book VI, n. 1130.

⁴⁵⁴Arg. L. 5, C. *de probat.*; cf. Book VI, 1131.

⁴⁵⁵Book VI, 1132.

⁴⁵⁶*Ibid.*, 1133.

Article III

On The Manner Of Obtaining Dispensation

2051. A dispensation is obtained through supplicatory Letters directed to the DATARY or to the S. PENITENTIARY, according as there is question of dispensation for the external forum or for the internal forum (cf. n. 2043). - If the Bishop, by force of an Indult or of quasi-ordinary power, can dispense, recourse is to be made to him, observing the same things which must be observed before the Roman Curia (cf. n. 2047, 1).

Dispensation for the EXTERNAL forum is sought by the parish priest, through the mediation of the episcopal Curia, to which also the response of the Roman Tribunal, to be communicated to the parties, is directed.

Dispensation for the INTERNAL forum is sought by the confessor, through the mediation of the episcopal Curia, if nothing prevents, but by letters closed and secured by seal; but by direct recourse to the S. Penitentiary if there is danger of otherwise injuring the sacramental seal in some way.

Dispensation is sought in the name of the Orators: even without their knowledge, if reason persuades it.

“But now,” again bringing forward the words of the aforesaid INSTRUCTION of S. C. de Propaganda Fide, “let us come to those things which, besides the causes, must be EXPRESSED in the supplicatory letters for obtaining dispensation, by law or custom or the style of the Curia, so that, if even ignorantly the truth is kept silent or falsity is narrated, the dispensation is rendered null. - These things are:

“1. The name and surname of the orators, each to be written distinctly and clearly and without any abbreviation of letters.” [If an error in the name is accidental, so that the identity of the person is indubitably established, it is not a cause of nullity; but otherwise new recourse is required. Dispensation for the internal forum is sought under fictitious names.]

“2. The diocese of origin or of actual domicile. When the orators have domicile outside the diocese of origin, they can, if they wish, seek that the dispensation be sent to the Ordinary of the diocese in which they now live.” [Mention of the diocese of the orators is not to be made in a supplication to the S. Penitentiary for the forum of conscience.]

“3. Also the lowest species of the impediment, whether it is consanguinity or affinity, arisen from licit or illicit intercourse; public honesty deriving origin from betrothals or ratified matrimony; in the impediment of crime, whether it came from conjugicide with promise of matrimony, or from conjugicide with adultery, or from adultery alone with promise of matrimony; in spiritual cognation, whether it is between the one lifting and the one lifted, or between the one lifting and the parent of the one lifted.” [Error in species renders the dispensation invalid.]

“4. The degree of consanguinity or affinity or honesty from ratified matrimony, and whether it is simple or mixed; not only the more remote, but also the nearer; and also the line, whether it is direct or transverse; likewise, whether the orators are joined by a double bond of consanguinity, both on the father’s side and on the mother’s side.” [In an unequal line, if the nearer degree is the first, it must also be expressed whether the bridegroom or bride is nearer to the stock: for it is dispensed with more difficulty that a grandson marry an aunt than that an uncle marry a niece. If an error increases the gravity of the impediment, it is not a cause of nullity; but otherwise, if it diminishes it. Hence, when a lesser degree is expressed for a greater, the dispensation is invalid; but when a greater is expressed for a lesser, it is commonly affirmed valid.]

“5. The number of impediments, for example if there is present double or multiple consanguinity or affinity; or if besides cognation there is also affinity or any other impediment whether diriment or impedient... Yet in seeking dispensation concerning the impediment of affinity of the first or second degree of the collateral line, if the impediment arises not only from matrimony consummated with the deceased spouse of the orator or oratrix, but also from ante-matrimonial or fornicary intercourse perpetrated with the same deceased person before entering matrimony with that person: it is not necessary that mention be made of illicit intercourse of this kind, as is clear from the response of the S. Penitentiary, dated 20 March 1842, approved by Gregory XVI of holy memory, to the Bishop of Namur, which same Tribunal declared to be general by letters dated 10 Dec. 1874.”

“6. Various circumstances, namely whether the matrimony is to be contracted or has been contracted; if already contracted, it must be opened whether in good faith, at least on the part of one, or with knowledge of the impediment; likewise, whether denunciations were premised, and according to the form of Trent; or whether in the hope of obtaining dispensation more easily; finally, whether it was consummated, if in bad faith, at least of one party, or with knowledge of the impediment.”

“7. Finally, the state of fortune of the orators ought truthfully to be set forth, so that according to the diversity of circumstances, the composition or tax can rightly be determined, or also so that the dispensation may be expedited gratis

(cf. n. 2044).”

Note. Formerly, for the validity of dispensation “concerning whatever prohibited degrees of consanguinity, affinity, spiritual and legal cognation, and also of public honesty,” “INCESTUOUS INTERCOURSE had between the betrothed before the execution of the dispensation” had to be expressed, “whether before or after its obtaining, whether with the intention of obtaining dispensation more easily, or even such intention being excluded, and whether the intercourse is publicly known, or even occult.” Thus from various responses of the Holy Office and S. Penitentiary, and from the cited Instruction of S. C. de Propaganda Fide.⁴⁵⁷ But, these and similar Decrees and Declarations having been abrogated, His Holiness Pope Leo XIII, through the Decree of 25 June 1885, established and declared: “matrimonial dispensations to be granted henceforth, even if incestuous intercourse, or the plan and intention of obtaining dispensation more easily through it, have been kept back, are going to be valid.”⁴⁵⁸ - Yet sanation of the past is still desired.

2052. Questions. IT IS ASKED 1. How dispensation is to be sought, if SEVERAL impediments concur, some PUBLIC, others OCCULT; or if to a public impediment there is annexed an OCCULT CIRCUMSTANCE necessarily to be declared?

Resp. 1. If the orators consent to manifestation of the matter, dispensation is sought for the external forum, all circumstances being expressed, but mention being made of the consent of the orators.

2. If the orators do not consent to manifestation, which they are by no means obliged to do, since no one is bound to defame himself, recourse is made to the Datary for public impediments, the occult impediments or circumstances being kept back; but recourse is made to the S. Penitentiary for occult impediments or circumstances, yet with the public impediments also set forth at the same time, since all things must be opened before one Tribunal, and mention moreover being made of the relaxation of these already sought or to be sought from the Datary.⁴⁵⁹ - It is more advisable first to have recourse to the Penitentiary, lest, after dispensation concerning a public impediment has been granted by the Datary and denied by the Penitentiary concerning the occult one, suspicions arise, and the expenses made in the Datary become useless.

IT IS ASKED 2. Whether he needs a NEW DISPENSATION who, after obtaining dispensation concerning an occult impediment of affinity, again had intercourse with the same consanguine of the bride before he married her?

Resp. Negatively, if the dispensation has not yet been fulminated by him to whom it is committed; “because such dispensations do not receive effect from the day of expedition, but from the time of execution.” Indeed, if it has already been executed, the S. Penitentiary denies, in the Rescript issued on 21 September 1752, that a new dispensation is required. “The reason is that that affinity has already been removed through the dispensation with regard to this effect of contracting matrimony.”⁴⁶⁰ But if he had intercourse with another consanguine of the bride, a new dispensation certainly is required, since a new affinity has been contracted (cf. n. 786).

IT IS ASKED 3. “If someone seeks a SECOND dispensation in the same matter after a first one was previously obtained, whether he ought to express the first?”

Resp. 1. “Affirmatively, when the impediment is from the same crime, because relapse draws the Superior back from dispensing. 2. Negatively, if the impediment is not from some crime, or is from a diverse crime.” Thus commonly.⁴⁶¹

IT IS ASKED 4. Whether a dispensation sought as FOR THE POOR is VALID, if the orators are not poor?

Resp. Affirmatively, as S. C. C. declared on 9 September 1679;⁴⁶² because poverty is not the reason on account of which the dispensation is granted, but on account of which it is granted gratis. Therefore, when the cause of gratuity is lacking, for that reason the cause of dispensation does not fail. Yet false allegation of poverty renders the dispensation INVALID: 1) if it is granted by the Bishop by force of an Indult having the clause: “only in favor of those who are truly poor”; 2) if it is granted by the S. Penitentiary for the external forum; in which case, according to the practice of this S. Tribunal, either another dispensation or sanation is required. Each exception is clear from the declaration of S. C. C., 26 April and 28 June 1873.⁴⁶³

⁴⁵⁷Cf. also St. Alphonsus, Book VI, 1134; H. A., XVIII, 85; 1 *El. qq. ref.*, n. 91.

⁴⁵⁸From an authentic copy.

⁴⁵⁹Book VI, 1139.

⁴⁶⁰Book VI, 1140.

⁴⁶¹Book VI, 1137.

⁴⁶²H. A., *ibid.*, 87.

⁴⁶³*Thesaur. S. C. C.*, tom. 132, 26 Apr., n. II; 28 Jun., n. III; cf. also *Acta S. Sed.*, VII, 290 and 423.

Article IV

On The Manner Of Executing Dispensation

2053. Since matrimonial dispensations are customarily granted by the Holy See only in commissory form, it follows that the impediment is not yet removed by the favorable Rescript, but that besides this the execution of it, or the fulmination of the dispensation, is required. - For fulmination, indeed for the EXTERNAL forum, an Official, Bishop, or generically Ordinary is delegated; but for the INTERNAL forum, the confessor chosen or to be chosen by the orator.

I. First of all it ought to be established for the delegate, from an authentic document, concerning the validity of the Rescript. But the Rescript is vitiated both through substantial subreption or obreption, which can easily be recognized from the things said thus far; and also through accidental subreption or obreption, for example concerning an impulsive cause, if it was alleged in bad faith.⁴⁶⁴ "Wherefore," says Benedict XIV,⁴⁶⁵ "he who executes the Letters ought to expend every care and diligence, that he may know whether what was set forth to the Major Penitentiary or Datary is true. Whether the matter itself, the circumstances, and the causes and reasons brought forward for obtaining dispensation are altogether consonant with truth." If the Apostolic Letters are found invalid, immediately care must be taken for the sanation of the same, a new Rescript being obtained, called *Perinde valere*, by which the prior Letters are declared valid, just as if they labored under no vice. If after sanation a new vice is detected, there is need of a new sanation, which is granted through another Rescript, which is called *Perinde valere* upon *Perinde valere*.⁴⁶⁶

For a Rescript of sanation, recourse must be made to the DATARY or to the S. PENITENTIARY, according to the nature of the matter: the whole cause is set forth summarily, the prior grace granted is mentioned, the vice detected is declared, and the grace is sought that, notwithstanding it, the prior Letters may have force. - Also firm remains the law concerning all things pertaining to the matter to be opened before one tribunal; wherefore, if recourse had been made both to the Datary and to the Penitentiary, and a new impediment is public, a double *PERINDE VALERE* is required: one from the Datary, because there is question of a public impediment; the other from the Penitentiary, because to this tribunal the whole cause must be declared.⁴⁶⁷

2054. II. After the delegate has fulfilled all things which are prescribed as to be fulfilled in the Apostolic Letters, he ought to RELEASE the orators, in the name of the Pontiff, from the impediments mentioned in the Rescript, and declare to them that matrimony can freely be entered, notwithstanding the impediments.⁴⁶⁸ Wherefore the DELEGATE: 1. Ought, and indeed under grave obligation, faithfully to fulfill all things prescribed in the Apostolic Letters, both because they have the nature of a true precept, and because many things are contained in them on the execution of which the validity of the dispensation depends, as will easily be clear to one reading the Rescript. 2. Ought to declare that he acts by force of Pontifical delegation. 3. Ought to release the orators from the impediments designated in the Rescript, expressing them in species, because the faculty of dispensing extends itself to those alone.

This act, which is called FULMINATION, is made in writing for the external forum; by living voice, and ordinarily in sacramental confession, for the internal forum. - Acceptance of the dispensation is indeed required. But this is sufficiently had if the recourse was made at the request of the orators. But if it was made without their knowledge, it cannot be fulminated unless they accept.⁴⁶⁹

N.B. We add nothing concerning the things pertaining to the external forum, since for a delegate in this forum there are many things necessary to know, for learning which he must necessarily approach authors treating of this matter in particular.⁴⁷⁰ - But for the convenience of confessors, a few things seem to be added which pertain to execution in the internal forum. - Hence the following.

2055. Questions.⁴⁷¹ IT IS ASKED 1. Who can EXECUTE the Letters of the S. Penitentiary?

Resp. This must be judged from their inscription. - If, as is commonly done, they are inscribed: *To a confessor from those approved by the Ordinary of the place*, it suffices that the confessor be approved. But if, which rarely happens, there is added *to a master in Theology and doctor of Decrees*, the doctor's laurel is required. - If the confessor elected is unwilling to execute the Letters, another can be chosen.

⁴⁶⁴Cap. *Super litteris* 20, *de rescriptis*.

⁴⁶⁵*Instit.*, 87, n. 34.

⁴⁶⁶Feije, n. 729.

⁴⁶⁷Feije, *ibid.*

⁴⁶⁸Feije, n. 731 sqq., i.e. cap. 34 throughout.

⁴⁶⁹*Ibid.*, n. 730.

⁴⁷⁰Pyrrhus Corradus, Vincentius de Justis, Giovine, Feije, Planchard excellently handle this matter.

⁴⁷¹Cf. Book I, 205; Appendix I, Busembaum; and Book VI, 1131.

IT IS ASKED 2. What CLAUSES are customarily placed in the Letters of the S. Penitentiary?

Resp. The principal ones are the following:

1. *If it is so, if the prayers rest upon truth.* These words impose the necessity of investigating, as we said above. But since there is question of the internal forum, the whole investigation consists in this, that the confessor again question the penitent, seriously warning him concerning the most grave obligation, which presses, of answering sincerely.
2. *We commit to your discretion, insofar as... the bearer, his sacramental confession first having been heard..., you absolve from whatever sentences, censures, and penalties in any way incurred on account of the premises.* - According to this clause the dispensation cannot validly be pronounced unless sacramental confession has been premised, and in the very act of confession. Yet sacramental absolution is not required, if perhaps the penitent is not disposed. - Nor does absolution sacrilegiously received obstruct the validity of the dispensation, as has been declared several times by the S. Penitentiary.⁴⁷² Thus also S. C. de Propaganda Fide, 16 Jan. 1797.⁴⁷³ But if some urgent necessity persuades that, sacramental absolution being denied, the dispensation be fulminated: the confessor nevertheless should absolve from penalties and censures incurred perhaps on account of the delict, for example if in the diocese there were reserved cases. Yet, by force of the Rescript, he cannot absolve from other penalties and censures, for which there would be need of a penitent forum.
3. *The occasion of sin being removed:* this is understood if the occasion is voluntary; because if it were necessary, it suffices that means be chosen by which from proximate it becomes remote.
4. *A salutary penance having been enjoined according to the measure of the fault,* which is to be distinguished from sacramental penance. - "Wherefore the confessor," says Benedict XIV,⁴⁷⁴ "that he may rightly satisfy his office, should not exceed the bounds either of severity or of humanity. He will also have regard to the condition, age, and sex of him on whom the penalty is imposed." If the penance has been determined by the Letters themselves, for example confession once in a month, this is altogether to be imposed by the confessor. - Sometimes a grave, very grave, long, lasting, perpetual penance must be prescribed. *Grave* it will be, if by its weight it so presses the guilty person that he himself feels and recognizes through it the gravity of his delict: a penance of this kind, with St. Alphonsus as witness,⁴⁷⁵ would be, if for six months a fast once a week were imposed to be observed; the rosary to be recited three times a week; likewise frequent confession, at least once in a month; always to wear a habit with respect toward penitents. *Very grave* it will be, if it presses the guilty person so that he sharply feels the atrocity of the delict. *Long*, if it is to be continued through individual weeks for an entire year; *lasting*, if for three years; *perpetual*, if it is extended unto death, to be performed not indeed daily, but on stated days.
5. *Other things to be enjoined by law having been enjoined,* namely those which otherwise would have to be prescribed.
6. *Provided the aforesaid impediment is occult or altogether occult.* This condition was declared above (cf. n. 2041, 5).
7. *Nor does any other canonical impediment obstruct,* namely one concerning which dispensation has not been granted. - If a public impediment concurs with an occult impediment, this clause is customarily added besides: "provided, or after, Letters of dispensation concerning the public impediment have been obtained."
8. *By Apostolic authority you mercifully dispense;* in express words, and with mention made of the delegation received. - Nor is the legitimation of offspring to be received or already received to be omitted, which is ordinarily prescribed.
9. *No Letters having been given concerning these things, but these presents, under penalty of excommunication latae sententiae, having been altogether torn up by you after execution.* For since the impediment is occult, the dispensation also ought to remain occult. This tearing up must be done at once, but understand morally, namely at least within three days. - Nor indeed is the confessor prohibited from retaining with himself a copied text of the dispensation, for his own instruction, yet with mention of day and year omitted, which would easily be an argument for recognizing the dispensed penitent.

IT IS ASKED 3. What is the FORM of fulmination?

Resp. No determinate form is required. Hence, sacramental absolution having been imparted, the confessor will be able at once to add this or a similar formula, the things to be changed having been changed: "And besides, by the Apostolic authority committed to me in this part, I dispense with you concerning the impediment... of the first, first and second,

⁴⁷²Feije, n. 749.

⁴⁷³Cf. *Collect. S. Sed.*, n. 858.

⁴⁷⁴*Instit.*, 87, n. 38.

⁴⁷⁵Book VI, 1143.

second degree of affinity, thence arising, because you had illicit intercourse with the sister of the woman with whom you intend to contract, so that, notwithstanding it, you may contract matrimony publicly with the said woman, the form of the Council of Trent being observed, and afterward may remain in it. In the name of the Father + etc. - Besides, by the same Apostolic authority I declare the offspring to be received legitimate. In the name of the Father +... etc.”

If sacramental absolution seems to have to be denied, the FORMULA can be changed in this manner: “By the Apostolic authority committed to me in this part, I absolve you from whatever ecclesiastical sentences, censures, and penalties perhaps incurred on account of illicit intercourse with the sister of the woman with whom you intend to contract, and from excesses of this kind, and I dispense with you concerning the impediment of the first degree of affinity thence arising, so that notwithstanding it... etc.” as above.⁴⁷⁶

IT IS ASKED 4. How a dispensation is to be executed, if in the Rescript mention is made of a DELICT which is COMMON to both contracting parties?

Resp. “The first confessor, after the dispensation granted according to the form of the Letters, ought to hand over the Letters of the S. Penitentiary to the penitent, so that through him they may be handed over to the other party, who likewise is to cause the same Letters to be executed with himself by another confessor.... For the mind of the S. Penitentiary is that the Letters be put into execution toward each person, if not for removing the impediment, which is supposed already removed by the prior dispensation with one person, at least for imposing congruous salutary penances on both, which it is not fitting to exact from one only, where the fault is common.” Thus the S. PENITENTIARY, 15 Nov. 1748.⁴⁷⁷

Chapter V

On The Celebration Of Matrimony

2056. There are two things which pertain most proximately to the celebration of matrimony, namely: proclamations are to be premised, and the Tridentine form is to be observed. - We shall treat each separately.

Article I

On The Proclamations To Be Sent Before Matrimony

We shall treat 1. of the precept and form of proclamations; 2. of dispensation from making them; 3. of the revelation of impediments.

§ 1. On The Precept And Form Of Proclamations. PROCLAMATIONS, which are also called banns, are public denunciations by which the faithful are warned concerning a matrimony to be contracted between certain persons, to the end that, if anyone knows some diriment or prohibiting impediment to exist between those wishing to contract, he may manifest it at an opportune time. - These, however, ought to be preceded by the private INVESTIGATION of the parish priest, and an opportune ADMONITION of the nupturients concerning those things which are required for contracting matrimony validly and licitly. - That these may become known better, let the following be given.

2057. Principles. I. The parish priest, before he comes to proclamations, is bound to institute a diligent EXAMINATION, by which he may know whether nothing obstructs the valid and licit celebration of matrimony. - For he ought, by reason of his office, to watch that subjects receive the Sacraments worthily. And this is greatly commended both by the Roman Ritual,⁴⁷⁸ and by Benedict XIV’s Constitution *Nimiam licentiam*.⁴⁷⁹ - Congruently with these prescriptions:

1. “The parish priest, having been warned concerning some matrimony to be contracted in his parish, first should know from those to whom it pertains, for example from the parents or other cognates, and especially from the betrothed themselves, who and of what sort are those who wish to contract matrimony. Whether between them there is some canonical impediment, impedient or diriment; whether they wish to contract spontaneously, freely, and according to the honesty of the Sacrament.” Thus the RITUAL.
2. If one party is a foreigner, according to the Instruction of the S. Inquisition approved by Clement X on 21 August 1670,⁴⁸⁰ a testimony or mandate concerning free state is altogether required; in which matter, diocesan Statutes also

⁴⁷⁶You have various FORMULAS in Planchard, n. 529-536.

⁴⁷⁷Apud Planchard, n. 475.

⁴⁷⁸Tit. VII, *De matrim.*, cap. 1.

⁴⁷⁹Dated 18 May 1743, § 10.

⁴⁸⁰Cf. Lucidi, vol. 3, p. 605 (Docum. LXXII, 3).

must be attended to.

3. Let him inquire whether sons and daughters of families contract with the consent of parents. For matrimonies reasonably against the will of parents the holy Church of God has always detested and prohibited for most just causes (cf. n. 1973, q. 6).⁴⁸¹ - But if the children are unwilling to desist from matrimony, and greater evils are to be feared, let the parish priest not deny his ministry; but, if he can, let him set forth the whole matter to the Bishop.
4. Let him not neglect the prescriptions of the civil law, if they can be observed with a safe conscience. For although the civil law can establish nothing concerning Sacraments, nevertheless the parish priest acting against it would involve himself in many entanglements, which always, insofar as divine and ecclesiastical laws permit, he ought prudently to decline according to his strength.⁴⁸²
5. The RITUAL warns "that each spouse know the rudiments of the Faith, since afterward he ought to teach these to his children." The betrothed therefore are to be examined concerning these, yet prudently and discreetly, according as the condition of persons and various circumstances will persuade.
6. Let the parish priest explore whether they live separately, by day as well as by night; or, if previously they have lived under the same roof, whether from the time of the betrothals or of the proclamations they have been separated.⁴⁸³
7. "Moreover let the spouses be admonished that, before they contract, they diligently confess their sins, and devoutly approach the Most Holy Eucharist and the Sacrament of Matrimony to be received; and how they ought to conduct themselves rightly and Christianly in it, let them be diligently instructed from divine Scripture, by the example of Tobias and Sarah, and by the words of the Angel Raphael teaching them how holily spouses ought to live together."⁴⁸⁴

Concerning this we OBSERVE: 1. The state of grace is altogether required for receiving the Sacrament of matrimony worthily, as is plain. But Confession and Communion are strictly prescribed by no law: wherefore the PARISH PRIEST indeed ought urgently and paternally to exhort the betrothed to dispose themselves for matrimony by the reception of these Sacraments; but he cannot strictly command it, unless perhaps diocesan Statutes require it. 2. In setting forth the duties of spouses, and in inquiring concerning impediments from illicit intercourse, the PARISH PRIEST should use such a manner of speech as bears before it a certain singular gravity and integrity of mind; yet those things which pertain to the use of matrimony will scarcely not have to be remitted to the time immediately preceding matrimony, and ordinarily it is better to hand them on in the very act of confession⁴⁸⁵ (cf. n. 2119).

2058. II. Proclamations are NECESSARILY TO BE PREMISED before matrimony: and this from an ecclesiastical precept obliging UNDER GRAVE obligation.

They are to be premised; for the holy Tridentine Synod,⁴⁸⁶ "adhering to the footsteps of the sacred Lateran Council celebrated under Innocent III, commands that for the future, before matrimony is contracted, it be publicly denounced three times by the proper parish priest, on three continuous feast days, in church, during the solemnities of Masses, between whom matrimony is to be contracted." - Yet matrimony would not be invalid if, proclamations having been omitted, it were contracted, provided no other impediment obstructs.

But that the law obliges under grave obligation is evinced both from its end, which is that impediments be known and that clandestine matrimonies be avoided; and from the penalties laid on violators, which similarly are grave, namely: a PARISH PRIEST presuming to assist at a matrimony which legitimate denunciations have not preceded is commanded to be punished by suspension from office, to last three years, or even by a graver penalty.⁴⁸⁷ WITNESSES also, if they act knowingly, are to be affected with a fitting penalty. - But as regards the CONTRACTING PARTIES, if the matrimony was invalid from a hidden impediment, the children born from putative matrimony will be illegitimate, about to have no help from the ignorance of the parents.⁴⁸⁸ Dispensation concerning an impediment afterward detected is also granted with more difficulty, and besides a penance to be defined at the judgment of the Bishop is to be enjoined (cf. n. 2061).⁴⁸⁹

2059. III. Proclamations OUGHT to be made on three continuous feast days, in church, during the solemnities of Masses, by the proper parish priest of the contracting parties. Thus the decree of Trent.

⁴⁸¹Benedict XIV, loc. cit.; Trid. sess. 24, cap. 1, *de ref. matr.*

⁴⁸²Berengo, *Theol. past.*, n. 127, p. 223.

⁴⁸³Trid. *ibid.*; Benedict XIV, l.c.

⁴⁸⁴RIT. Rom., l.c.

⁴⁸⁵Konings, n. 1543.

⁴⁸⁶Loc. cit.

⁴⁸⁷Benedict XIV, *de Syn.*, Book 12, c. 6, n. 2.

⁴⁸⁸De Angelis, lib. 4, tit. 3, n. 3, end.

⁴⁸⁹Trid. sess. 24, cap. 5, *de ref. matr.*; Benedict XIV, l.c.

Therefore they ought to be made: 1. On feast days, i.e. feasts of precept, among which suppressed feasts can be numbered if functions and solemnities are still customarily performed, as before the suppression, and there is a concourse of people.⁴⁹⁰ - Indeed, on account of a just motive, which is approved as such by the Bishop, they can be made on ferial days themselves, if from some cause there would be a great concourse in the church.⁴⁹¹

2. On three continuous feast days, i.e. with no feast day omitted from the first proclamation to the last. - To make proclamations on three non-continuous feast days, provided several feast days do not intervene, according to the truer opinion, is not mortal, because it does not seem a grave transgression; but it is not excused from venial fault, because now the precept of the Council is transgressed. But if three immediate feast days should occur, practice bears that one or another be passed over, because in so brief a time the end of the Council would not be sufficiently obtained.⁴⁹²
3. In church during the solemnities of Masses, i.e. in the parochial or conventual Mass, at the judgment of the parish priest. - According to the decree of S. C. C. dated 20 Sept. 1828,⁴⁹³ the same thing can be done at another time, at which the concourse of the people would be more frequent. - Indeed, it is probable that they can be made outside the church, on the occasion of some sacred function, in a place of great concourse, "at least without mortal fault, and if some cause is present, without any fault."⁴⁹⁴
4. By the proper parish priest of the contracting parties, i.e. by him to whose parish the betrothed pertain by title of domicile or quasi-domicile (concerning domicile see below n. 2074).

Hence: 1) If they are of diverse parishes, proclamations are to be made in each. 2) Likewise in each, if someone has a double domicile, i.e. domicile in one parish and quasi-domicile in another. And this is clearly gathered from the Statute of the City (11 Jan. 1762), prescribing that denunciations be made both in the parish of domicile and of the college, monastery, conservatory, where the betrothed are staying.⁴⁹⁵ - 3) If someone recently has arrived in some parish, proclamations ought to be made both in that parish and in the parish of his prior habitation, if he stayed there for at least six months. But what space of time from changed domicile is required, so that proclamations are to be made only in the actual parish, is not defined by law: the matter therefore must be recognized from custom and from diocesan statutes. 4) They are to be made besides in the place of origin, unless it has already been deserted for several years. - 5) If the nupturients are wanderers, they are to be made in the parishes both of actual habitation and of origin, or even of preceding habitation, if either betrothed stayed there for a longer time. 6) Soldiers are to be proclaimed in the place where they are in garrisons and besides in the parish of their parents if they are minors; and if they are adults, in the place where they resided before undertaking military service.⁴⁹⁶

Note. When proclamations are to be made in two parishes, neither parish priest will be able to assist at the matrimony unless he has received the ATTESTATION of the other parish priest, that three proclamations were duly made in his parish, and that no impediment was detected from them.

2060. IV. In making proclamations, that FORM ought to be held which corresponds to their end. - The reason is that aptitude for the end, i.e. the manifestation of impediments, is principally intended by the legislator. - Wherefore 1) the denunciations are to be made in the vernacular speech, with a high and intelligible voice, and the persons intending to contract and their parish are to be indicated accurately, so that there is room for no error. 2) In the individual denunciations it must be commemorated whether it is the first, or second, or last; indeed if only one, or two, were to be made by dispensation of the Ordinary, this ought to be notified to the people standing by. 3) It is also better to warn the people concerning the grave obligation incumbent upon each faithful person of manifesting impediments known to him, as is had in the formula of the Roman Ritual. 4) It is advised, and in various provinces is held as prescribed, that matrimony be celebrated only after an entire day has elapsed after the last proclamation. - 5) But if within two months after the denunciations have been made, matrimony has not been contracted, the denunciations are to be repeated, unless it seems otherwise to the Bishop (ROMAN RITUAL).

2061. IT IS ASKED. Whether it is a grave sin to omit denunciations, if, diligence having been made, it is altogether ESTABLISHED that no impediment underlies?

⁴⁹⁰Cf. Feije, n. 241 sqq.

⁴⁹¹Decr. S. C. C. in Ravennaten. apud Giraldis, p. II, sect. 114, p. 989; cf. Book VI, 992.

⁴⁹²Book VI, 992.

⁴⁹³*Thesaur.*, tom. 87, p. 240 in Sarzanen.

⁴⁹⁴Book VI, 991.

⁴⁹⁵Vecchiotti, lib. 5, § 71, p. 106.

⁴⁹⁶Cf. on this matter Feije, cap. X, from n. 240 sqq.; Vecchiotti, cit. § 71; Berengo, 131 sqq.; Giraldis, P. II, sect. 114.

Resp. 1. Affirmatively, if the three denunciations are omitted. "The reason is both because, although through diligence the parish priest fulfills the end of Trent, nevertheless he transgresses the form of diligence which the Council prescribes: which, since it is in a most grave matter, is not excused from mortal sin unless urgent necessity which does not allow delay is present; and because otherwise the end of the precept of denunciations is not adequately satisfied; for the diligence of the parish priest does not sufficiently supply the effect of denunciations for impeding evils which otherwise can happen" (cf. n. 2058).⁴⁹⁷

Resp. 2. To omit two denunciations, more probably, is mortal; but omission of only one, probably, is only venial fault, because with respect to the whole precept it does not seem grave matter.⁴⁹⁸

Note. What the Tridentine Synod says concerning denunciations, if they have been omitted, to be supplied before consummation of matrimony, has now everywhere passed into desuetude. - Besides, the Synod itself had remitted the matter to the prudence and judgment of Ordinaries.

§ 2. On Dispensation From Proclamations. Dispensation in matrimonial proclamations, which formerly could be obtained with more difficulty and very rarely, is now obtained with an easier business, as the following will set forth.

2062. Principles. I. The faculty of DISPENSING, from a just cause, in PROCLAMATIONS, belongs to Ordinaries of places. It is established from Trent (sess. 24, cap. 1, *de ref. matr.*). Concerning this it must be NOTED:

1. By the name Ordinary are understood the Bishop, and, the See being vacant, the capitular Vicar; a Prelate having quasi-episcopal jurisdiction, and more probably also the vicar general, as is very commonly taught (cf. n. 2259).⁴⁹⁹
2. For dispensing there is required a just cause, i.e. proportioned to the amplitude of the dispensation. - Hence a less grave cause is required for dispensing from only one denunciation; a graver for dispensing from two; but for licitly dispensing from all, "not any obvious and ordinary cause is enough," says Benedict XIV,⁵⁰⁰ "but a grave, urgent, and most urgent one is required." And it must be noted besides, "that the Bishop, in dispensing in denunciations, is always bound diligently to inquire elsewhere concerning impediments, unless it were commonly established that they are not present."⁵⁰¹

2063. II. According to the variety of causes, the Ordinary sometimes CAN and sometimes IS BOUND to dispense from proclamations. - It is established from those things which have been said concerning dispensation in the Treatise on Laws (cf. n. 234, 2). - Hence:

1. He can dispense, if the cause is sufficient, and no grave inconvenience from denial is to be feared: for example "if nuptials are to be contracted among magnates; if the betrothed are very old, or very disparate in condition, age, riches, or quality."⁵⁰²
2. He is bound to dispense, if the cause is urgent, namely if grave common or private damage, spiritual or temporal, is to be avoided; or if the dispensation will conduce to a notable spiritual or temporal good of the community or of some private person. CAUSES of this kind are: 1) Probable fear lest the matrimony be impeded maliciously. 2) Necessity of matrimony for avoiding damage or infamy of the contracting parties or of offspring: for example if concubinarians were reputed spouses; or if defloration preceded, and the bridegroom were now about to die, or about to depart to a distant region, or a change of will in him were feared. 3) The bad will of a bridegroom refusing, after civil matrimony has already been contracted, that three proclamations be made; and similar things.⁵⁰³

2064. Questions. IT IS ASKED 1. Whether dispensation, when the betrothed are from diverse dioceses, must be obtained from EACH BISHOP?

Resp. The more common opinion today is affirmative, and, the intrinsic reasons being considered, also seems more probable. Yet where contrary custom is in force, it can be observed; but the mandate of free state is altogether required (cf. n. 2048, 1).

IT IS ASKED 2. Whether the PARISH PRIEST can sometimes dispense in denunciations?

⁴⁹⁷Book VI, 990.

⁴⁹⁸Ibid., v. *An autem*.

⁴⁹⁹Ibid., 1007; *H. A.*, XIII, 59.

⁵⁰⁰Const. *Satis vobis*, § 6; cf. also Const. *Nimiam licentiam*, § 12.

⁵⁰¹Book VI, 1006.

⁵⁰²Ibid.

⁵⁰³Ibid., 1005; *H. A.*, XVIII, 58.

Resp. Negatively, “because the parish priest has no jurisdiction in the external forum.”⁵⁰⁴ - Yet very probably authors say that, although the parish priest cannot dispense, nevertheless in cases in which the Bishop is bound to dispense and cannot be approached, he will be able to declare that the precept of proclamations does not oblige, provided he is certain that no impediment is present.⁵⁰⁵

§ 3. On The Revelation Of Impediments. Just as it is the office of the parish priest publicly to denounce matrimonies to be contracted, so also it is the office of the faithful to manifest the impediments which they know obstruct their celebration. - The following will declare the things which pertain to this obligation.

2065. Principles. I. Every Christian faithful person who KNOWS that there is some impediment between the betrothed which obstructs the celebration of matrimony, IS BOUND, and indeed under grave obligation, to DENOUNCE it. The obligation proceeds from the law of charity, by which we are commanded to avert damage which threatens either a private person or the community (cf. n. 479 and 483): certainly damage of this sort would threaten each from impediments not manifested.⁵⁰⁶ Besides this, there is the positive precept of the Church.⁵⁰⁷

It is said 1. *Every*; because no one, unless legitimately excused, is exempt from this law; but first of all the contracting parties themselves are bound to confess an occult impediment, and to obtain dispensation.⁵⁰⁸

2. *Who knows*, i.e. who has had at least probable notice concerning the impediment, even if he cannot prove it; both because such denunciation conduces to further investigations, and because on account of denunciation alone matrimony can sometimes be impeded, namely if the one denouncing is a witness greater than every exception.⁵⁰⁹ But “if you know the impediment by hearing, but do not remember from whom, or if you received it from a person not worthy of faith, you are not bound to denounce.”⁵¹⁰
3. *Some impediment*, “whether it is diriment or impedient, even though it is occult and defamatory, namely one which had origin from sin. For anyone is bound to manifest another’s occult sin, when the prelate legitimately has commanded it,” as in this case (cf. n. 1186).⁵¹¹
4. *Which obstructs*, i.e. in which there has not been dispensation. Whence “if the impediment is occult, and dispensation for it has already been obtained as to the internal forum, the one knowing it is not bound to denounce it.”⁵¹²
5. He is bound to denounce it under grave obligation; for there is question of a most grave matter, in which the Church intends to oblige strictly. Yet he is excused from this obligation who cannot denounce without grave damage to himself, or scandal of others.⁵¹³ Hence no one is bound to manifest his own illicit intercourse, except the nupturients themselves, who ought either to abstain from matrimony, or to procure dispensation for themselves. But one excused ought, if he can, to impede the matrimony.

You ask whether he is excused from denunciation who knew the impediment UNDER SECRET? Resp. Negatively, even if the secret was committed, and an oath of not revealing was added. - The reason is that a promise, even sworn, does not oblige when grave damage threatens the community or a third person⁵¹⁴ (cf. n. 616). - More probably except the case if someone knew the impediment under the secret of counsel, by reason of a public office which he exercises, for example a parish priest, physician, advocate, etc. For thus the public good seems to demand.⁵¹⁵ - Nevertheless they are bound, if they can, to warn the nupturients.

2066. II. Revelation, AS SOON AS morally it can be made, is to be made TO THE PARISH PRIEST of the betrothed, or to the BISHOP, yet the order of charity being observed. - Hence, if the impediment is defamatory, and admonition is probably going to be profitable, first the betrothed are to be warned, so that they may provide for themselves. Otherwise,

⁵⁰⁴Ibid., 1006.

⁵⁰⁵Feije, n. 266; Giovine, § 355, 4 sqq.; De Angelis, lib. IV, tit. 3, n. 3.

⁵⁰⁶Book VI, 994; H. A., XVIII, 56.

⁵⁰⁷RIT. Rom., tit. VII, *de matrim.*, cap. 1, n. 13.

⁵⁰⁸Book VI, 994, 1000.

⁵⁰⁹Ibid., 995, 996.

⁵¹⁰Ibid., 994, end.

⁵¹¹Ibid., 994.

⁵¹²Ibid.

⁵¹³Ibid., 995.

⁵¹⁴Book VI, 994.

⁵¹⁵Gury, II, 742, and others cited there.

the parish priest or Bishop is to be approached at once, because in circumstances of this kind there is ordinarily danger in delay.⁵¹⁶

2067. Questions. IT IS ASKED 1. What the PARISH PRIEST, when an impediment is known, ought to do?

Resp. "If the impediment is denounced by others, it is certain from cap. fin. *de cland. desp.* that the parish priest is bound to interdict the nuptials, and to refer the matter to the Ordinary, that he may take cognizance." And the same must be affirmed, if he alone knows the impediment, outside confession. "The reason is that, if anyone is bound to reveal an impediment, even if he alone knows it, a fortiori the parish priest is bound, upon whom by office it is incumbent to take counsel for the salvation of his sheep. Nor does it obstruct that the Sacrament is not to be denied to an occult sinner publicly seeking it; for it is answered that this proceeds when the impediment merely renders reception of the Sacrament illicit; but otherwise, if the impediment, besides reception, furnishes occasion of other damages and faults."⁵¹⁷

IT IS ASKED 2. Whether and when the denunciation of ONE WITNESS suffices for impeding matrimony?

Resp. 1. The very common and truer opinion affirms that one witness suffices, even if he is not greater than every exception, provided he has the QUALITIES to be explained below. It is proved from cap. *Super eo 22, de test. et attest.*, and also from cap. *Praeterea 12, de sponsal.* "The reason is that, although when there is question of prejudice of a third party, full proof is required, nevertheless since here there is question of avoiding danger of the soul, namely if perhaps matrimony were contracted with an impediment, the law is content with a lesser proof."⁵¹⁸

Resp. 2. The QUALITIES REQUIRED so that one witness can impede matrimony are these: - 1) that he not only denounce, but also depose; unless such a witness by denouncing proved concerning the fame of the impediment, because then it suffices that he denounce; - 2) that he depose or denounce with an oath, because in those things which are to the prejudice of a third person, he is not believed unless he is a sworn witness; - 3) that he depose from certain knowledge, not from hearing; unless it is an impediment of consanguinity or affinity; because then it suffices that he depose that he knew it from certain and trustworthy persons; - 4) that the witness not be a base person; provided the fact is not so occult that it cannot be proved otherwise; for where the faculty of proving is lacking, even proof not sufficient of itself is admitted. Thus commonly.⁵¹⁹

And here it must be noted that the fame of an impediment is sufficient for impeding matrimony, unless the consanguines of the betrothed, or the betrothed themselves, should swear that the impediment is not present.⁵²⁰

Article II

On The Tridentine Form To Be Observed

Here it comes to be said: 1. of the necessity of the Tridentine form; 2. of the requisites for the Tridentine form; 3. of the rite to be observed in the celebration of matrimony.

§ 1. On The Necessity Of The Tridentine Form. 2068. By natural law matrimony indeed is perfected by mutual consent externally manifested; but the Tridentine Synod, wishing to meet the grave evils and sins which have arisen from clandestine marriages, established a solemn form under which consent is to be furnished, namely before the parish priest and witnesses, so that consent furnished otherwise is formless, and therefore invalid. - Hence the following are established.

Principles. I. Clandestine matrimony is everywhere GRAVELY ILLICIT. - The old canons established this, Innocent III confirmed it in the Fourth Lateran Council,⁵²¹ and the Tridentine Synod⁵²² fortified the same by its sanction, when it said that the Church always detested these things. - But if, on account of adjuncts of times or places, the law cannot be observed integrally, it is to be observed as to the possible part, according to the norm prescribed for missions among infidels.⁵²³

⁵¹⁶Book VI, 994.

⁵¹⁷Ibid., 1002.

⁵¹⁸Book VI, 996, 4th opinion.

⁵¹⁹Ibid., 997.

⁵²⁰Ibid., 999; cf. *H. A.*, XVIII, 56-59.

⁵²¹Decretal. IV, III, 3.

⁵²²Sess. 24, cap. 1, *de ref. matr.*

⁵²³Cf. *Collect. S. Sed.*, n. 983 sqq.; specifically n. 984.

Hence: 1. The betrothed sin gravely, although in some place the nuptials are valid, if outside a case of necessity they contract between themselves alone, or before only the civil magistrate. 2. They sin more gravely, and are guilty of participation in heretical worship, if they contract before a non-Catholic minister.

2069. II. Clandestine matrimony, in places where the TRIDENTINE decree concerning the solemnity to be employed has been promulgated, is altogether INVALID. For thus it was defined by the Council itself: "Those who shall attempt to contract matrimony otherwise than in the presence of the parish priest, or another priest by license of the parish priest himself or of the Ordinary, and two or three witnesses, the holy Synod renders them altogether incapable of contracting thus, and decrees that contracts of this kind are void and null, as by the present decree it makes them void and annuls them.... It decrees besides that this decree of this kind shall begin to have its force in each parish after thirty days, to be numbered from the day of the first publication made in that same parish."

Moreover it is required that this PUBLICATION have been made in the individual parishes or quasi-parishes,⁵²⁴ either by mandate of the Ordinary as promulgation of the decree of the Council of Trent, or, from special Indult, in the name and authority of the Roman Pontiff, as Benedict XIV explains diffusely.⁵²⁵ - And the fact of promulgation ought to be indubitable. But as regards proof, S. C. C. on 29 Sept. 1602 defined: "publication is presumed where the decree had been observed for some time in the parish as a decree of the Council."⁵²⁶

We said *in places where it has been promulgated*, etc.; for it is certain that clandestine matrimony "stand RATIFIED and FIRM in those places in which the decree of the Council of Trent either was never published, or was never observed as a decree of the same Council; or if it was ever observed, afterward by a long interval of time went into desuetude";⁵²⁷ or finally if a dispensation concerning it was granted by Pontifical authority.

Here also it must be NOTED that, as Benedict XIV says,⁵²⁸ "when one of the spouses, both by reason of the place in which he lives and by reason of the society in which he lives, is exempt from the law of the Tridentine Synod, the exemption which he enjoys remains communicated to the other party, on account of the individuality of the contract, by force of which the exemption which belongs to one of the parties is extended to the other, according even to civil laws, and is communicated to the same."

2070. III. The Tridentine law invalidating clandestine matrimony is at once LOCAL and PERSONAL. Thus the Instruction to the Archbishop of San Francisco in California given by S. C. de Propaganda Fide, from the resolution of the Holy Office on Wednesday, 14 Dec. 1859.⁵²⁹

As LOCAL, the law affects the territory, and obliges all those who are to be joined in matrimony there, even if they do not have domicile or quasi-domicile there. Hence if two Catholics domiciled in England, where the law is not in force, travel in France where it is in force, and there contract clandestinely, the matrimony is invalid.

But as PERSONAL, the law obliges all those who, having domicile or quasi-domicile in a place where the Tridentine decree has been published and is in force, wish to contract matrimony in another place, where it is not in force. - And this is indubitable, if the nupturients pass over IN FRAUD OF THE LAW, i.e. with the sole intention of contracting matrimony, into an exempt place, unless either one has acquired domicile or quasi-domicile there.⁵³⁰ Nor is the restriction added to be held as an exception of the law, but it expresses the condition which is to be fulfilled so that one can be a participant in the privileges which inhabitants of the place enjoy. But whether the law also obliges those who passed over into the exempt place not indeed with the intention of marrying, but for another cause, is CONTROVERTED, with a great abundance of authors disputing on each side. This controversy standing, the validity of the matrimony indeed seems to us to have to be affirmed, from those things which we have set forth above concerning doubtful impediments⁵³¹ (cf. n. 1997, q. 4).

2071. Questions. IT IS ASKED 1. Whether HERETICS are bound by the Tridentine law concerning clandestinity?

Resp. Since it is certain that heretics are generally subject to the laws of the Church, the whole question is concerned with this, whether the Church wills them to be bound by this law of hers (cf. n. 198). But the question must be answered thus: The more common and much more probable opinion affirms that heretics are bound by the law of clandestinity, no less

⁵²⁴Cf. *Monit. eccl.*, t. X, p. 28, where Resp. S. OFFIC. 14 Nov. 1883, for the Canadian region.

⁵²⁵*De Synodo*, lib. 12, cap. 5, n. 6.

⁵²⁶Relat. in Instr. Pius VI to the Bishop of Luçon, 28 May 1793 (apud Perrone, *de matrim.*, II, p. 210, ed. Liège).

⁵²⁷Pius VII to the Archbishop of Mainz, 8 Oct. 1803 (apud Perrone, II, 236).

⁵²⁸*De Syn.*, Book 6, c. 6, n. 12.

⁵²⁹Apud Konings, II, p. 396.

⁵³⁰Decret. S. C. C. confirmed by Urban VIII, 14 Aug. 1627, and renewed by Benedict XIV, 19 March 1758, in the Letters *Paucis ab hinc*.

⁵³¹Cf. Feije, n. 338.

than Catholics, unless there is had a declaration of the Church establishing otherwise. The reason is sought from many documents issued by the Holy See, which cannot be turned aside into another sense except by force.⁵³²

Most celebrated in this matter is the DECLARATION and concession of BENEDICT XIV as regards matrimony contracted in HOLLAND, made on 4 Nov. 1741, through which the Pontiff “declared and established that matrimony, in the said federated provinces of Belgium, contracted up to now among heretics, and which will be contracted in the future, even if the form prescribed by Trent was not observed in celebrating them, provided another canonical impediment did not obstruct, are to be held as valid.”⁵³³ And he declared the same concerning mixed matrimony, namely those which are contracted by Catholics with heretics.⁵³⁴

As regards the EXTENSION of this Declaration, the Congregation of the Holy Office, on 19 July 1818, declared: “The Decree of Benedict XIV, issued in the year 1741 concerning the matrimony of Holland, looks taxatively only to matrimony contracted in those provinces, but not to other matrimony entered in other places and provinces, to which therefore it cannot be applied without a new and special declaration of the Holy See.”⁵³⁵ But it is established that the aforesaid declaration afterward, from Apostolic clemency, was also extended to other regions, which were in the same necessity as Holland.

From these things you will gather: 1. If it is established that the Tridentine decree was not published in some place, or after its publication the Benedictine declaration was extended to that place: it is certain that the marriages of heretics, whether among themselves or with Catholics, entered there clandestinely, are valid. 2. The same must be said if this has been expressly conceded by a particular Indult of the Holy See.

And here it comes appositely to be NOTED that, for the effect of matrimony, under the appellation of HERETICS there are comprehended in the declaration of Benedict XIV the following FIVE CLASSES: - “1) Those who, baptized Catholic, from childhood not yet seven years old are educated in heresy, and profess heresy. - 2) Those who are educated not so much in heresy as by heretics, namely having received no, or scarcely any, instruction of heretical doctrine, and not frequenting worship, although sometimes having participated. - 3) Those who, while still children, falling into the hands of heretics, are joined to a heretical sect. - 4) Apostates passing from the Catholic Church to a heretical sect. - 5) Those who, born and baptized by heretics, grew up without having emitted any solemn profession of heresy, and as it were of no religion, etc.” Thus C. S. OFFICIUM, 6 Apr. 1859.⁵³⁶

Concerning the matrimony of heretics, S. Congregation of the Council also WARNS these things, in the Instruction to the Bishop of Rosnava (16 March 1780):⁵³⁷ they “must be so dissembled by you, that concerning their validity or invalidity you abstain altogether not merely from pronouncing judgment, but even from promoting a disputation, from which not so much fruit of utility as movement of offense and danger for the ruin of the Catholic religion would have to be expected.” Besides, “If any have entered marriage invalidly in heresy, the form of Trent not being observed, and afterward having been converted to the Catholic religion, persevere in it in good faith and adhere to their marriage, they seem rather to have to be left in the same good faith than to be warned of nullity.” Thus S. C. C. in the case Iprensis, 17 Aug. 1737.⁵³⁸ The same Congregation adds besides: “but particular cases and circumstances of those who are troubled by scruples concerning the validity of these matrimony ought to be set forth distinctly by the Bishop.”

IT IS ASKED 2. Whether, in places where the decree of Trent is in force, matrimony celebrated without the assistance of the parish priest can be held valid, if ACCESS to him DOES NOT LIE OPEN to the parties?

Resp. 1. Affirmatively, if there is in some place a GENERAL impossibility, which is foreseen as about to last for at least a month. It is established from the Response of C. S. Officii, given on 1 July 1863 to the Bishop of Vallis Prati,⁵³⁹ in which these things are read: “The same Eminent Fathers declared: When access is difficult and not safe, and it is unknown when the Parish Priest can be had, and he is foreseen as about to be absent from the place for the space of at least one month, and there is no other who may supply the place of the Parish Priest: matrimony is valid without the presence of the parish priest, yet the form of the Council being observed in that in which it can, namely with at least two witnesses employed.”

⁵³² See them apud Perrone, *de Matrim.*, II, p. 209; cf. Vecchiotti, III, § 107.

⁵³³ Cited Declar., § 2.

⁵³⁴ Ibid., § 3.

⁵³⁵ Apud Perrone, loc. cit.

⁵³⁶ Apud Feije, n. 319.

⁵³⁷ Roskovany, *de matr. mixtis*, II, 539.

⁵³⁸ Cf. Perrone, l.c., II, 232.

⁵³⁹ Apud Konings, II, p. 395 (ζ); cf. Epist. Pius VI to the Bishop of Luçon, 28 May 1793 and to the Bishop of Geneva, 5 Oct. 1793 (apud Moser, p. 164).

Resp. 2. Negatively, if the necessity is PARTICULAR to the nupturients, since an invalidating law does not cease on account of the inconvenience of a private person.⁵⁴⁰ Thus the more common opinion, against others thinking otherwise.

IT IS ASKED 3. Whether matrimonies entered against the law of Trent have ANY EFFECTS?

Resp. From matrimonies of this kind there arises the impediment of PUBLIC HONESTY, as was said above (n. 2033). - But if the matrimony was consummated, it is clear that peculiar obligations arise from this head. - Besides, there are not lacking those who adjudge to such matrimonies the force of betrothals, because an act which does not have force as it is done nevertheless has force as it can be done. But this must plainly be denied, at least if there is question of persons who have reached puberty, as is clear from various decisions of S. C. C.⁵⁴¹

2072. It helps here to add a LIST of the principal places in which the Tridentine Decree must be held as promulgated or not promulgated.⁵⁴²

- A) All clandestine matrimonies, i.e. whether of Catholics, or of heretics, or mixed, are INVALID in Spain, yet at Gibraltar the matrimonies of heretics and mixed matrimonies have force; in Portugal, Italy and the adjacent islands, in France as it existed before the war of 1870, in Germany with the exceptions to be excepted below, in modern Belgium, the grand duchy of Luxembourg, the Ecclesiastical Province of Goa; the Mexican Republic, and the regions of CENTRAL and SOUTH AMERICA, except those to be indicated under C 12; finally in all colonies of the Portuguese or Spaniards.
- B) In various northern regions of Europe, which in the year 1564, in which the Council of Trent was confirmed, had already defected from the faith, the Decree concerning clandestinity DOES NOT OBLIGE. - Thus the matter stands in England, Scotland, Denmark, Norway, Sweden, which is not to be confused with Suevia, as some confuse them, and in the greater part of northern Germany. - The same is commonly handed down concerning the primitive provinces of Prussia, and concerning Saxony. - In some cantons of Switzerland, as Zurich, it does not oblige. The same has force, as regards Bavaria, in the non-Catholic places of Onoldina and Pappenheim, and in the district of the formerly imperial cities of Nuremberg and Weissenburg. - In Russia, one diocese or perhaps another is not obliged. In some more remote parts of Turkey it does not seem to be in force. - In some parishes of Persia and of other regions in that part of the East, even Catholic ones, no publication or observance of the Decree has had place. The same must be said of Greece. In China, Tonkin, and Cochinchina it is not in force, only a few places excepted. In Japan it is now nowhere in force, from the declaration of S. C. of the Holy Office, 11 March 1868.⁵⁴³ - Nor is it in force in Abyssinia and nearly all other regions of Africa.
- C) From the declaration of BENEDICT XIV for Holland and its extension, or from other Pontifical acts, clandestine matrimonies have force, whether of heretics among themselves, or mixed; but not, except those enumerated under B, of Catholics among themselves:
 - 1. In all the Netherlands, except Limburg,⁵⁴⁴ where nevertheless they have force as regards the inhabitants of the city of Maastricht and the suburb of St. Peter, and likewise excepting certain places of the dioceses of Utrecht and Bois-le-Duc. - 2. At Strasbourg, in Alsace. - 3. In all Ireland. Note. From the directory of the year 1851 approved by all the Bishops of Ireland, Catholics contracting among themselves are bound by the Decree, and indeed everywhere from 1 Jan. 1828.⁵⁴⁵ - 4. In Silesia subject to Prussia and in the duchy of Cleves, and, from 25 March 1830 inclusive, in the dioceses of Cologne, Trier, Paderborn, and Münster: with faculty given to the Bishops for revalidating matrimonies contracted before this day. - 5. In the Kingdom of Württemberg the Benedictine declaration was certainly extended to the city of Ulm. Concerning other places of the ecclesiastical province of the upper Rhine there can also be doubt.⁵⁴⁶ - 6. In Russia and in the whole part of Poland subject to the Russians. - 7. In Hungary and Transylvania, within the limits which they had in the year 1841. - 8. In Turkey, Moldavia and Wallachia; in Serbia, Albania, Bulgaria, Turkish Bosnia. - 9. In Persia and other regions in that part of the East. - 10. In Greece. - 11. In the Vicariate of Pondicherry and on the whole Malabar coast, in the Apostolic Vicariates of Bombay and Calcutta, and in the Indian possessions of the English and French, with only some places excepted as regards Catholics. - Likewise in Algeria. - 12. In the islands of Central or South America and other places, formerly existing under the dominion of Catholics, but now subject to the dominion of the English, Dutch, Danes.

⁵⁴⁰Book VI, 1079 (cf. index Alphonsus, P. VII, q. 54).

⁵⁴¹Apud Feije, 282; cf. Book VI, 841.

⁵⁴²Konings, n. 1611; cf. Feije, 320 sqq.; Perrone, lib. 2, sect. 1, cap. 6, art. 3 (II, p. 239 sqq.); and especially Zitelli, *Apparatus juris ecclesiastici*, p. 394.

⁵⁴³*Collect. S. Sed.*, n. 998.

⁵⁴⁴Yet see Feije, n. 320 (1).

⁵⁴⁵*Ibid.*, n. 325.

⁵⁴⁶Cf. Feije, n. 329.

§ 2. On The Requisites For The Tridentine Form. The essential solemnity prescribed by Trent consists in the presence of the parish priest and witnesses. The following will elucidate the things which pertain to each presence.

2073. Principles. I. Only the PROPER PARISH PRIEST of either contracting party can VALIDLY assist at their matrimony. - It is established both from the Tridentine decree itself, and from various declarations of S. C. of the Council,⁵⁴⁷ and finally from the constant practice of the Church and from common interpretation.

It is said 1. PARISH PRIEST, by which name is understood not only the parish priest properly so called, but every ecclesiastical Superior having ordinary jurisdiction over the contracting parties: as the Pope in the universal Church, the Bishop and Vicar general in their own diocese, and, the See being vacant, the capitular Vicar; finally Abbots having quasi-episcopal jurisdiction, in their own territory.

A putative parish priest also VALIDLY assists at matrimony, namely one who lacks parochial jurisdiction because of an occult defect, but who, a title at least colored suffragating, is held from common error as the true parish priest. Yet "since an intruder, nominated by non-legitimate authority, is by no means a parish priest," as Pius VI says,⁵⁴⁸ "and has no title, either true or colored, matrimony contracted before him is certainly of no strength."

Similarly, an excommunicated parish priest VALIDLY assists at matrimony, even one to be avoided, irregular and suspended, or not yet initiated into the priesthood; because in assisting he exercises no jurisdiction, but intervenes only as a qualified witness, and he is still parish priest.⁵⁴⁹ Yet a most grave cause is required for seeking assistance from a parish priest excommunicated by name, or interdicted.⁵⁵⁰ But if he has become a public and declared heretic or schismatic, he can no longer validly assist, because he is deprived of the parochial benefice by the law itself, from the Constitution *Noverit* of Nicholas III.⁵⁵¹

Here also it must be NOTED that a parish priest, even outside the parish, and say the same of the Bishop outside his diocese, can assist at the matrimony of his subject, even if the parish priest of the place where the matrimony is celebrated should contradict it.⁵⁵² And, from a just cause, he also does this licitly: the solemn blessing however being omitted, which he is prohibited under grave obligation from imparting without license of the parish priest or Ordinary of the place.⁵⁵³

It is said 2. PROPER, namely one who is parish priest of the domicile or quasi-domicile of the contracting parties. Thus it has been defined several times.⁵⁵⁴

2074. For perfect understanding of the matter it seems opportune here to repeat the things which above, in the Treatise on Laws, we said concerning domicile and quasi-domicile.

Therefore someone is said to have DOMICILE there where he dwells with the will of remaining perpetually. But since such a will is an internal thing, it ought to be manifested by words or deeds, or to be argued by presumption of law, from a ten-year habitation, provided the contrary intention is not established. Moreover, domicile once acquired is not lost by actual departure, nor by long absence, but only by a formal will of renouncing it. And this same renunciation is required so that the wife may lose the domicile of her deceased husband. But he who is not his own right, as a minor, retains the domicile of his father or tutor, as long as, after his emancipation, he has not dismissed it either by words or by deeds (cf. n. 203).

QUASI-DOMICILE is commonly defined by authors: habitation in some place, with the intention of remaining there through the greater part of the year, or at least for six months. "Wherefore if it is legitimately established that either both or one of the betrothed has the intention of remaining through the greater part of the year, from the first day on which these two things concur together, namely both an intention of this kind and actual habitation, quasi-domicile must be judged to have been acquired, and the matrimony which is contracted therefore to be valid. - Nevertheless, if the aforesaid intention is not established, recourse must be had to the indications which are at hand, and which produce moral certitude. But in an occult and internal matter, it is difficult to have indications of this kind which make the judge secure: hence it is that the rule confirmed by the Supreme Pontiff Benedict XIV must especially be employed, that it be inspected whether before the matrimony, for the space of at least one month, either both or one of them dwelt in the place of the matrimony. But if this is found to have happened, it must be judged from presumption of law that the intention

⁵⁴⁷Book VI, 1081; cf. Benedict XIV, *Instit.*, 33; Giraldis, p. II, sect. 115; Richter, *Decreta Conc. Trid.*, sess. 24, after the decrees *de ref. matr.*

⁵⁴⁸Instr. to the Bishops of France, 26 Sept. 1791 (Moser, p. 162).

⁵⁴⁹Book VI, 1082.

⁵⁵⁰*Ibid.*, 1083.

⁵⁵¹Vecchiotti, III, § 106, p. 204.

⁵⁵²Book VI, 1081.

⁵⁵³*Ibid.*, 1087.

⁵⁵⁴See Resp. S. OFF. to the postulates of the Synod of Mantua, 2 May 1877 (apud Konings, II, p. 412).

of remaining through the greater part of the year existed, and domicile was acquired, and therefore the matrimony is valid. But if this presumption of law, which arises from monthly habitation, is destroyed by contrary proofs, by which it is certainly and clearly established that the aforesaid intention in no way existed: then certainly it is manifest that a contrary judgment must be pronounced, because presumption must yield to truth. - Besides, it is also manifest that actual habitation is inept for producing quasi-domicile, if someone is staying in that region in the manner of a wanderer and traveler, but not as one truly and properly dwelling, namely in the way others are accustomed who in the same place have a true and properly so-called domicile.”⁵⁵⁵

The proper parish priest of wanderers, namely those who have no domicile or quasi-domicile, as to assistance at matrimony, is he in whose parish they actually are. “Therefore they can contract before any parish priest, assisting in his own parish, and this even if only one of the betrothed is a wanderer.... But the parish priest, before he joins wanderers, is bound diligently to inquire concerning their condition, as Trent prescribes,⁵⁵⁶ whether they are joined elsewhere; and afterward to seek license of assisting from the Bishop, without which, although he assists validly, nevertheless he sins gravely by assisting.”⁵⁵⁷

From the things said you will resolve: 1. For the validity of matrimony, it makes no difference whether the parish priest of the bridegroom or of the bride assists. Yet matrimony is contracted more fittingly before the parish priest of the bride.

2. One who has two domiciles, or domicile and quasi-domicile, can contract before the parish priest of either one; yet more decently before the parish priest of actual habitation.
3. From quasi-domicile there acquire for themselves parochial right as to celebration of matrimony: public officials, judges, professors, pupils, servants, maidservants, etc., who by reason of office, duty, study, or for the sake of carrying on business, betake themselves into some place with the intention of spending the greater part of the year there; likewise, soldiers and those detained in prison, who are sent to a place for at least six months, but not if they are going to remain there for a shorter time. - And here it must be noted that those who live in some community, under the spiritual care of some chaplain, for example in a hospice, foundling hospital, cannot contract before him; but the presence is required of the parish priest of the place in which is the hospice or other house where they live.⁵⁵⁸

Nevertheless, for all the aforesaid it is also permitted to contract before the parish priest of the PLACE where they have true domicile; indeed girls who, for the sake of education, live in a monastery or conservatory, and who wish to enter matrimony, are to be sent back to the paternal home; as both the reason of decorum and the decree of S. C. of Bishops and Regulars, 7 October 1723, related by Benedict XIV,⁵⁵⁹ show that it must be done. And this same thing must be done with young men living in a seminary, college, or other house for the sake of education.

2075. II. The parish priest or Ordinary enjoys the faculty of DELEGATING a priest who may assist at matrimony in his place. Thus expressly the Tridentine decree. But that the delegation be VALID it is required:

1. On the part of the delegate, that he be a priest, and have notice of the delegation made; for an ignored delegation profits nothing.⁵⁶⁰ - He can subdelegate if he is delegated for the universality of causes, for example for performing all parochial duties; otherwise, if he is delegated for a case, unless an express faculty also of subdelegating is conceded: which is opportune to add, so that various difficulties perhaps not foreseen may be met.
2. On the part of the one delegating, that the delegation be express, either in writing, which is best, or by living voice, or at least by some sign which manifests consent in the present; whence, tacit delegation sometimes suffices, but never interpretative delegation. Yet delegation has force even if extorted by fear, provided it has not been retracted; for it is sufficiently voluntary (cf. n. 232, 286).

But with what faculty in this matter coadjutors of parish priests, or Vicars, are endowed, certainly cannot be defined by a general rule, but must be known from custom and diocesan statutes. For the Bishop, in constituting Vicars, can either immediately confer on them the right of assisting at matrimony, or leave that right to be committed to them from the delegation of the parish priest.

2076. III. Besides the parish priest, at least TWO WITNESSES ought necessarily to assist at matrimony, and this under penalty of nullity. - It is established from the often-cited decree of Trent.

⁵⁵⁵Instr. S. OFF., 7 June 1867, apud Konings, l.c. (cf. *Acta S. Sed.*, vol. XI, p. 565).

⁵⁵⁶Sess. 24, cap. 7, *de ref.*

⁵⁵⁷Book VI, 1039 (cf. Craisson, n. 1876 sqq.).

⁵⁵⁸Ibid., 1090, 1091; Benedict XIV, *Instit.*, 33, n. 11 sqq.

⁵⁵⁹L.c., n. 15.

⁵⁶⁰De Angelis, lib. 4, tit. 3, n. 5, v. end.

But the common opinion is that any witnesses are suitable for this assistance, even women, children, provided they are capable of reason, infidels, infamous persons, parents, slaves, and even those who by chance pass by there, or are detained by force.⁵⁶¹ Yet honorable Catholics, who know the contracting parties, are to be preferred.

2077. IV. The PRESENCE of the parish priest and witnesses ought to be not only material, but also FORMAL, so that they can attend to what is being done and testify to it. It is established from the end of the law, and from many declarations of S. C. of the Council.⁵⁶²

Hence: 1. "If they did not well understand the consent of the betrothed, for example because they are of a diverse idiom, one interpreter affirming concerning the consent is not enough.

2. "It is not necessary that they see the contracting parties, provided they hear the words of the contract, if they know the voices of the contracting parties. It also suffices if they see the signs of consent.
3. "Nor does it matter, even if unwilling they are detained through fear, force, fraud, or injury, or even if they contradict and resist.... But contracting parties sin gravely by contracting before a parish priest detained by force or fraud, or passing by by chance, on account of the injury which is inflicted on the Sacrament and the Church, since the parish priest then assists as a public person."⁵⁶³ Except if, an urgent necessity of contracting being present, the parish priest were unwilling to assist, and the Superior could not be approached: because the parish priest then is bound from office to assist. Yet it would be only venial to contract before witnesses thus present, that is, detained by fraud.⁵⁶⁴

§ 3. On The Rite Of Celebrating Matrimony. 2078. Since matrimony is a wholly holy thing, inasmuch as it is a Sacrament, and holy things are to be treated holily, the holy Church of God instituted the RITE which is to be observed in the celebration of this Sacrament.

It is found described in the Roman Ritual,⁵⁶⁵ whose prescriptions in this matter look to THREE things: namely the joining, the blessing, and the inscription. A few things concerning each.⁵⁶⁶

I. The JOINING consists in this, that the parish priest, "the man and woman having been questioned, and their mutual consent having been understood, either says: I join you in matrimony, in the name of the Father, and of the Son, and of the Holy Spirit; or uses other words, according to the received rite of each province."⁵⁶⁷ In the joining the following are to be OBSERVED:

1. It ought to be performed publicly, or in the face of the Church, and this under grave obligation: as is gathered from Benedict XIV's Constitution *Satis vobis*, by which the contrary custom is condemned as a grave abuse. - Therefore it cannot be performed in Oratories or in private houses, unless by license of the Ordinary: which only then can be presumed, when some necessity presses, for example in danger of death.
2. The parish priest ought to question each contracting party concerning consent. Yet omission of the questioning, if the free consent of each is established, is only venial.⁵⁶⁸
3. He ought similarly to pronounce the words: *I join you*, etc. Others probably say that this obligation is light; but others, still probably and perhaps more probably, affirm that the same is grave, because it seems a transgression in a matter of great moment.⁵⁶⁹
4. Finally there is added the blessing of the ring, which is a sacramental, and whose omission would be only venial. Nor is it to be omitted in second nuptials.⁵⁷⁰ It can be done in the plural, and likewise the remaining blessings, if several matrimonyes are celebrated at the same time.⁵⁷¹
5. "If the Mass immediately follows the rite of Joining, the Priest besides Alb and Stole ought also to put on the Chasuble."⁵⁷²

⁵⁶¹H. A., XVIII, 70; Book VI, 1085.

⁵⁶²Cf. Benedict XIV, *de Syn.*, Book 13, c. 23, n. 1.

⁵⁶³Book VI, 1092.

⁵⁶⁴*Ibid.*, 1093.

⁵⁶⁵Tit. *de Sac. matrim.*, cap. 2.

⁵⁶⁶Cf. *Collect. S. Sed.*, n. 1027 sqq.

⁵⁶⁷Trid. sess. 24, c. 1, *de ref. matr.*

⁵⁶⁸Book VI, 1094.

⁵⁶⁹*Ibid.*

⁵⁷⁰C. S. OFF., 1 Sept. 1841.

⁵⁷¹S. R. C., 27 Aug. 1836 (Gard., n. 4780).

⁵⁷²S. R. C., 31 Aug. 1867 (Gard., 5382).

IT IS ASKED. Whether the parish priest can assist at the matrimony of those who are PUBLIC sinners, or excommunicated?

Resp. to the 1st. Negatively, of itself, both because by natural law no one can cooperate with the sin of a neighbor, and because the parish priest is bound from justice to apply himself to the spiritual salvation of his sheep, by averting them from sins. - It is said *of itself*; because he is excused if he assists for avoiding death, or other grave evils of the community or of the contracting parties themselves, for example lest they themselves persevere in sin⁵⁷³ (cf. n. 1429, q. 1).

Resp. to the 2nd. If the contracting parties are notoriously excommunicated, but not to be avoided, "let the parish priest consult the Ordinary, who, with account taken of the matters and circumstances, and all things weighed which are handed down by approved authors and especially by St. Alphonsus, should declare those things which he shall have judged more expedient in the Lord, yet the celebration of Mass always being excluded." Response of the S. PENITENTIARY, 10 Dec. 1860.⁵⁷⁴

2079. II. The NUPTIAL BLESSING is read in the missal, the Mass for bridegroom and bride, and pertains to the solemnity of Nuptials. It obliges under venial fault, as is commonly taught.⁵⁷⁵ Concerning it the following things are to be NOTED:

1. "The holy Synod established that the blessing be made by the proper parish priest, and that license for making the aforesaid blessing cannot be conceded to another priest by anyone except by the parish priest himself or by the Ordinary. - But if a priest should have dared to join or bless the spouses without the license of their parish priest, let him remain suspended by the law itself for so long until he is absolved by the Ordinary of that parish priest who ought to have assisted at the matrimony, or from whom the blessing was to be received"⁵⁷⁶ (cf. n. 1373).
2. The Congregation of the Holy Office, on 31 Aug. 1881, decreed that that blessing "is always to be imparted in the matrimonies of Catholics, yet within celebration of Mass according to the Rubrics, and outside the forbidden time, to all those spouses who, in contracting matrimony, did not obtain it from whatever cause: even if they ask after they have already lived in matrimony for a long time, provided the woman, if a widow, herself did not receive the blessing in other nuptials.⁵⁷⁷ Besides, the same Catholic spouses who did not obtain the blessing of their matrimony are to be exhorted to seek it at the first possible time. But it is to be signified to them, especially if they are neophytes, or validly contracted before Conversion from heresy, that the blessing itself pertains to the rite and solemnity, but not to the substance and validity of marriage."⁵⁷⁸
3. The blessing of Nuptials cannot be conferred except in Mass:⁵⁷⁹ in which the spouses are indeed to be exhorted by parish priests and confessors to communicate, but are not to be compelled by force of precept.⁵⁸⁰
4. The Mass, in celebration of nuptials, ought always to be the votive Mass for bridegroom and bride, as in the Missal:⁵⁸¹ except on Sundays and Feasts of precept, on doubles of the first and second class, within the privileged Octave of Epiphany and Pentecost, on the Vigil of Pentecost, on the octave day of Corpus Christi, and on other days excluding doubles of the second class.⁵⁸² - But on days on which the Mass for bridegroom and bride is not permitted, the Mass of the day is to be celebrated, with commemoration from that Mass.
5. The Mass for bridegroom and bride is a private votive Mass; since it is for the private good of those marrying, and therefore it must always be celebrated as any other private votive Mass, without Gloria and Credo, even if it is celebrated in chant and with solemn apparatus.⁵⁸³
6. When, without Apostolic Indult, nuptials are celebrated in the time of Advent or Lent, the Commemoration for the spouses ought not to be made in the Mass by Collect, Secret, and Postcommunion; nor is it licit to recite the Prayers placed in the Missal after the Lord's Prayer and *Ite Missa est*; nor ought the same prayers to be recited outside Mass, the prohibited time having elapsed.⁵⁸⁴

⁵⁷³Book VI, 54.

⁵⁷⁴*Acta S. Sed.*, I, 563, n. 18.

⁵⁷⁵Book VI, 988.

⁵⁷⁶Trid., l.c., cap. 1.

⁵⁷⁷Nor does it matter whether the woman is a virgin or corrupted. S. C. C., 2 Oct. 1593.

⁵⁷⁸From an authentic copy; cf. *Acta S. Sed.*, vol. XIV, p. 513.

⁵⁷⁹S. R. C., 23 June 1853 (Gard. in Limburgen., n. 5190; likewise n. 5275, 5289, 5514); cf. Schober, p. 235.

⁵⁸⁰S. R. C., 21 March 1874 (Gardell., n. 5582).

⁵⁸¹Cited Decr. Limburgen. (Gard., n. 5190).

⁵⁸²Schober, p. 238.

⁵⁸³S. R. C., 28 Feb. 1818 (Gard., n. 4544) and 28 July 1832 (n. 4691).

⁵⁸⁴S. R. C., 31 Aug. 1839 in Montis Pessulan. (Gardell., n. 4868).

7. In the same Mass several spouses can be blessed; yet the prayers are not said in the plural, but are recited as they are read in the Missal.⁵⁸⁵ “If any provinces use other laudable customs and ceremonies beyond the aforesaid in this matter, the holy Synod vehemently desires that they be retained altogether.” To this pertains, for example, the ceremony by which the joined hands of the spouses are covered, or bound, with the lowest part of the stole.⁵⁸⁶
8. When, by reason of the blessing to be imparted, the Mass for bridegroom and bride is to be celebrated, the priest is not bound to apply it for the spouses, unless he receives a stipend: wherefore he is free to apply it for another offering.⁵⁸⁷

2080. III. The INSCRIPTION of matrimony, which Trent and the Ritual prescribe, is to be made under grave obligation; since, after the death of the witnesses and the parish priest, from this inscription alone it can be established that the matrimony was performed. - See the formulas in the Ritual itself.

Note. Concerning secret matrimony, or matrimony of conscience, concerning which see n. 1962, 3, it will help to have noted the following things here.

1. A Matrimony of this kind cannot be celebrated except by license of the Ordinary: for legitimately obtaining it, there are prerequisites: 1) A grave and most urgent cause, for example of recalling from a state of damnation occult concubiniars who are reputed legitimate spouses; 2) diligent inquiry of the matter and circumstances, for example whether the spouses are of their own right or of another's, whether parents justly dissent, etc.; 3) indubitable documents concerning the free state of the spouses.
2. Matrimony is celebrated, denunciations being omitted, with everyone unaware, before only the parish priest and two witnesses, for example two other presbyters, who will most faithfully preserve the secret. But the parish priest ought to admonish the spouses concerning the most grave obligation of providing for future offspring as to education, legitimacy, and inheritance, but especially concerning the obligation of denouncing to the Bishop, within a month to be computed from the day of birth, the offspring received and baptized; if they neglect to do these things, they certainly will lose the right of secrecy.
3. Attestations, both concerning celebration of Matrimony and concerning Baptism conferred, are to be transcribed not in the parochial books, but in books preserved at the episcopal Curia and guarded with seals, and are to be kept cautiously in a more secret place.

Thus from the Constitution *Satis vobis* of Benedict XIV, issued on 9 Nov. 1741.⁵⁸⁸

Chapter VI

On The Revalidation Of Invalid Matrimony

2081. I. A matrimony is called INVALID when it is a conjunction of man and woman which indeed bears before itself the form of matrimony, but which, with consent lacking, or with some diriment impediment obstructing, does not have the substance of true matrimony. - In the external forum the ecclesiastical judge pronounces the nullity of matrimony, a process having been completed according to the paths of law.⁵⁸⁹ In the internal forum, to declare a discovered nullity, unless prudence persuades otherwise, is the office of the confessor. But how cautiously one must proceed in a matter of this kind is declared by the most grave consequences flowing from a pronounced sentence; and hence it is why, in doubt, one must always stand for matrimony, and why in every difficult case counsel must be sought from the Ordinary, or at least from a learned and prudent man.

- II. But when the invalidity of matrimony has been discovered, the CONFESSOR ought, according to the diversity of circumstances, either to permit the putative matrimony, or to urge separation, or to procure revalidation.⁵⁹⁰
1. He ought to PERMIT the putative matrimony, if, the parties being in good faith, only a harmful remedy can be brought, i.e. a remedy from which greater evils, and first of all formal sins, would arise. Therefore in the case in which an occult but indispensable impediment obstructs the validity of matrimony, and in which the putative

⁵⁸⁵S. OFF., 1 Sept. 1841 (apud Schober, p. 241).

⁵⁸⁶Bangen, III, 55.

⁵⁸⁷S. C. PROPAG. FID., 23 March 1844 and 7 June 1853 (cf. *Collect. S. Sed.*, n. 1047 and 1048).

⁵⁸⁸Vecchiotti, lib. 5, § 83; Berardi, *De Occas.*, n. 117-119.

⁵⁸⁹Cf. Benedict XIV, Const. *Dei miseratione*; likewise Instr. C. PROP. F. *De Processu matrim.* (*Rev. des sc. ecclés.*, t. 52, p. 126).

⁵⁹⁰Cf. Benger, *Past. Theol.*, § 191, n. 31-32 (III, 849); Compend., n. 641 sq.

spouses cannot be separated without scandal and cannot cohabit without danger of incontinence, they are altogether to be left in good faith (cf. n. 1810, Rule 2).

2. He ought to URGE SEPARATION, if, the nullity of matrimony being manifest to each or to either party, revalidation cannot be had, or is rejected. - Sometimes juridical separation is required, which is made through the sentence of a judge declaring the nullity of matrimony. Sometimes separation from bed and habitation is to be made, under the species of divorce, namely if the nullity of matrimony cannot be proved, nor can revalidation be obtained, and cohabitation is judged not to be free from danger of incontinence. Sometimes separation from bed suffices, so that the putative spouses cohabit as brother and sister: and this remedy indeed is best of all, provided, which is rare, danger of incontinence threatens from neither side.
3. He ought to PROCURE REVALIDATION, whenever it can be obtained, and the parties do not contradict. But since revalidation, on account of dispensation to be obtained, demands some delay for itself, what is to be observed meanwhile must be indicated in a few words.
- 1) If the nullity of matrimony is public and notorious, separation as to bed and habitation is to be urged, until matrimony, dispensation having been obtained, can be revalidated publicly in Tridentine form. This is required from the necessity of avoiding scandal.⁵⁹¹
- 2) If the nullity is known only to the parties, separation from bed suffices, provided proximate danger of sinning is absent; otherwise, momentary separation from habitation, under an honorable pretext, for example of a journey, is prescribed.
- 3) If the nullity is known to only one party, this one, where no inconvenience underlies, should warn the coparty, and let them act as in the preceding case; or under some pretext let this party refuse the debt even with whatever inconvenience; since it is never licit to use matrimony while its invalidity is established. And meanwhile, every delay having been cast away, either simple dispensation is to be sought, if the party unaware can be warned; or dispensation in the root, if warning is foreseen as going to be impossible (cf. n. 2084).
- 4) If the nullity is known to neither party, and greater inconveniences are foreseen from warning, as for the most part they must be foreseen, the parties are to be left in good faith, until, through the confessor having obtained the necessary faculties, the nullity can both be declared and immediately healed. And in this way indeed one must always act when a spouse confesses a sin committed before the nuptials, from which the nullity of matrimony becomes known to the confessor alone (cf. n. 2041 and 2051).⁵⁹²

The confessor should also take care that the spouses, at the time at which the matrimony is revalidated, be in the state of grace, since at that point of time they receive the Sacrament. - But, right disposition lacking, revalidation is not for that reason to be postponed, since a greater evil would generally come from postponement.

III. For the revalidation of matrimony two things are regularly REQUIRED: dispensation from the impediment, and new consent. - 1) As regards dispensation, the things which we warned above are to be attentively attended to in the petition (cap. IV, especially n. 2049, 10, and 2051, 6). - 2) New consent is to be furnished in Tridentine form, if this was omitted, or if the nullity is publicly established. Nor nevertheless are publications necessarily to be premised; it suffices if consent is renewed occultly before the parish priest and two faithful witnesses, provided scandal is forestalled through opportune divulgation. But if the nullity is occult, and the matrimony has already been celebrated in the face of the Church, it suffices that consent be repeated secretly, the Tridentine form being omitted. The reason is that the Council wills the presence of the parish priest and witnesses for proving the validity of matrimony according to external appearance; but since the matrimony first contracted is now externally reputed valid, the reason ceases why the aforesaid presence would again be required.⁵⁹³ - And thus indeed the S. Penitentiary established from the oracle of St. Pius V, and it itself constantly held this manner of acting.

Moreover, the MANNER OF ACTING in the revalidation of matrimony depends on the nature of the impediment which obstructs validity, and which comes either 1. from defect of true consent, or 2. from defect of habilitation of the parties, or 3. from defect of the Tridentine form. - Therefore, concerning the diverse manner of revalidating, according to the diversity of impediment, some things are to be set down.

⁵⁹¹Cf. *Acta S. Sed.*, vol. II, p. 19 and 52.

⁵⁹²Cf. *De Priv.*, n. 56-57.

⁵⁹³Book VI, 1110.

Article I

On Revalidating Matrimony Invalid On Account Of Defect Of True Consent

2082. Matrimony is invalid ON ACCOUNT OF DEFECT OF CONSENT, if one party or each party, whether fictitiously, or from error, or from force and fear, consented. - Such a matrimony, error or fear having been removed, is revalidated by consent alone duly furnished. - Now:

1. If true consent was lacking from EACH party, it must be expressly renewed by each party, as is clear of itself.
2. If it was lacking from only ONE party, it is certain that it must be renewed from this side. But whether it must also be renewed by the other party, namely so that this one must be warned concerning the nullity of the matrimony, is indeed controverted; but the more common and truer opinion denies with St. Thomas.⁵⁹⁴ - Indeed, if no inconvenience were to be feared, which very rarely is absent, it would be better, on account of reverence for the Sacrament, that consent be renewed on both sides; but this mutual renewal is not necessary. Therefore it suffices if he who previously did not consent furnishes his consent, either by words or by signs, for example through conjugal intercourse and through cohabitation. "The reason is that it is certain that in the contract of matrimony physical simultaneity of the consents of the betrothed is not required, but moral simultaneity suffices, namely if the consent of one morally perseveres while the consent of the other is placed. But in our case..., since the true consent of the other has already preceded and virtually perseveres, through cohabitation or another sign, it is enough that the consent of the one who suffered fear or consented fictitiously accede."⁵⁹⁵ Positive law suffragates.⁵⁹⁶

"Nor does the fear obstruct, lest the party who furnished free consent, if again asked about new consent, perhaps should deny it; for this interpretative dissent is not true dissent, but meanwhile the consent formerly imparted perseveres."⁵⁹⁷

IT IS ASKED. "Whether one who FICTITIOUSLY contracted matrimony is bound FROM JUSTICE to revalidate it by true consent?"

Resp. "The Salmanticenses and others affirm, because the other has already handed over his body through true consent; whence, that equality may be preserved, the one fictitiously consenting is bound also through true consent to hand over his body. But Sanchez, and others, more probably deny, because since the contract of matrimony cannot limp, when one consents fictitiously, there is no handing over on the part of the other, and therefore no inequality remains: for he who placed true consent remains equally free as if he had placed no consent. - Nevertheless all agree that the one consenting fictitiously is bound to revalidate the matrimony by true consent, if he cannot otherwise repair the damages inflicted on the other from that deception."⁵⁹⁸

Article II

On Revalidating Matrimony Invalid On Account Of The Incapacity Of The Parties

Matrimony invalid on account of an impediment of divine law, for example on account of bond, this having been removed, is convalidated through the new consent of each party, according to the things said in n. 2014, 3. - But matrimony invalid on account of an impediment of ecclesiastical law is convalidated, dispensation first having been obtained, either through new consent, or through sanation of the prior consent, which manner is called SANATION IN THE ROOT.

§ 1. On The Revalidation Of Matrimony Through New Consent. 2083. Rule 1. If the impediment obstructing validity is known to EACH party, the matrimony must be revalidated through consent to be expressed in act by each party. For in this case, there is had not so much a revalidation as a simple celebration, although secret.

Rule 2. If the impediment is known to only ONE party, and cannot be REVEALED to the other without danger of grave damage, the party conscious of the impediment is to be admonished concerning consent necessarily but secretly to be renewed with the putative spouse, the other party having been made more certain concerning the nullity of the prior consent, but so cautiously that this one's delict is nowhere detected. This Manner furnishes every security concerning the value of the Sacrament, since both parties, now made capable through dispensation, knowingly emit a new consent, and one independent from the prior consent: wherefore this is especially to be desired.

⁵⁹⁴Suppl., q. 47, a. 4, ad 2.

⁵⁹⁵Book VI, 1114; 1 *Elench. qq. ref.*, n. 90.

⁵⁹⁶Cf. St. Alphonsus, *ibid.*

⁵⁹⁷*Ibid.* from the 6th ed.; *H. A.*, XVIII, 80; cf. *Acta S. Sed.*, vol. XI, p. 345.

⁵⁹⁸Book VI, 1113; *H. A.*, l.c., 79.

But renewal of consent can be sought by the conscious party speaking thus to the coparty: “when I married, I did not have true consent; now I wish to furnish it: do you also wish to furnish it?” or: “the confessor told me that my consent was not duly furnished; come, let us now renew it mutually.”⁵⁹⁹ No one does not see that the aforesaid making-more-certain generally has much difficulty and is full of dangers. And hence it is why the S. Penitentiary, a great difficulty standing, no longer urges the matter, as is gathered from the following rule.

Rule 3. If the impediment is known to only ONE party, and the other party cannot be MADE MORE CERTAIN concerning the nullity of the matrimony without grave danger, this making-more-certain can be omitted, and the matrimony revalidated, “consent having been renewed, according to the rules handed down by approved authors.” - Thus from the style which today the S. Penitentiary commonly observes in conceding faculties.⁶⁰⁰

A manner of this kind is if the conscious party says: “I am troubled by scruples concerning the value of our matrimony, and therefore let us renew consent”; or: “for my consolation I wish to contract anew; come, let us contract”; or: “out of my love toward you I take you as spouse, do you not also in turn?”

Indeed, if none of these manners seemed to have to be employed, the consent of the conscious party expressed through conjugal intercourse would suffice, with the consent of the other virtually enduring. For that consent furnished with an impediment was naturally valid, and lacked its proper effect only on account of the obstacle; therefore, the obstacle having been removed and the consent of the other acceding, the consent becomes mutual, and the matrimony is convalidated.⁶⁰¹

Nor does it obstruct that here use is made of a probable opinion concerning the value of the Sacrament; for: 1) in a case of urgent necessity, this is licit according to the things said in n. 82 and n. 1407; 2) there is question here of matter in which the Church can supply, and, a just cause standing, certainly supplies: which will be clearer from the things soon to be said.

§ 2. On The Revalidation Of Matrimony Through Sanation In The Root. 2084. SANATION IN THE ROOT is the abrogation of the ecclesiastical law which induced the impediment, in a particular case, with retroactive force, so that dispensation from the impediment now conceded is to be had as if it had been conceded before the matrimony was contracted, and the matrimony is revalidated without new consent.

And indeed, just as because of dispensation conceded before the nuptials were entered mutual consent duly furnished would have effected valid matrimony: so through dispensation now conceded with retroactive force it is effected that the same prior consent virtually persevering exercises its force and effects matrimony, which for this reason obtains the same effects just as if it had been valid from the beginning.⁶⁰² - For the dispensation, by fiction of law, is drawn back to the root of the matrimony, and replaces things in that state in which they would have been if the impediment had never existed; and hence it is why it is called sanation in the root.

From the things said it follows that sanation in the root has a twofold EFFECT: one *from now*, i.e. the validity of the matrimony by force of the first consent; the other *from then*, namely the annulling of all the effects that followed from the nullity, first of all as regards children, who obtain the fullest legitimacy, so that they are altogether to be held as born from legitimate matrimony. This effect indeed can be obtained even when the parents are deceased.

Hence the difference between sanation in the root and ordinary revalidation is clear, since the latter requires new consent, and extends its effects only to future time, but not to the past.

2085. I. That the Church possesses the POWER of revalidating matrimony through sanation in the root is of certain law, and is evinced both from constant practice and from the nature of the matter. For just as the civil legislator can so remove his law that he annuls its effects even as to past time: so similarly the Supreme Pontiff can abrogate his own law as to all its effects.⁶⁰³

2086. II. The CONDITIONS required for sanation in the root are FOUR, namely:⁶⁰⁴

1. That the impediment be of ecclesiastical law.
2. That true matrimonial consent was given in the beginning; for the root which did not exist cannot be healed. Wherefore it is required that, at least at the time of celebration, the conjunction had the appearance of matrimony and was

⁵⁹⁹Book VI, 1117.

⁶⁰⁰Cf. at the end of the work, Sheet of S. Penitentiary N. XII.

⁶⁰¹Book VI, 1115-1117.

⁶⁰²Benedict XIV, *de Syn.*, Book 13, c. 21, n. 7.

⁶⁰³Cf. Giovine, § 323 sqq.

⁶⁰⁴Cf. Feije, n. 767 sqq.; *Acta S. Sed.*, vol. I, p. 182 sqq.

not manifestly fornicary. - Matrimonial consent indeed does not regularly consist with knowledge of an impediment, since no one can seriously will what he knows cannot be done; nevertheless it can consist, if one does not sufficiently attend to its invalidating force, or if this force is unknown, or is not believed, or is not held as sufficiently seen through. If one party is in good faith as to the validity of the matrimony, the consent of this one can be healed, the consent of the other party having been renewed. Hence it is concluded that civil matrimony can be healed in the root, provided true matrimonial consent was furnished.

3. That the consent of each party persevered. This condition is customarily expressed, for the most part, in the Pontifical Rescript; but if it has not been expressed, it ought to be supposed by full right. For if the consent, the matrimony not yet having been convalidated, has been revoked, it can no longer be healed, since it has already been destroyed; otherwise one would have to say that the Sacrament of matrimony can be received by one formally unwilling. - But interpretative dissent does not impede sanation in the root, because it does not fight with true consent (cf. n. 2082). Besides, one must not inquire anxiously concerning the perseverance of consent; it suffices if revocation is not established.
4. That a grave and urgent cause be present: which is had if the matrimony cannot be revalidated otherwise, or in no way, or at least not without danger of grave damage. Yet the dispensation would be valid if the Pope knowingly conceded it without cause; otherwise, if the Ordinary conceded it (cf. n. 238).

2087. For practice, the following still come to be NOTED: - 1. Sanation in the root is commonly conceded only for the internal forum; nevertheless, necessity demanding it, it can also be obtained for the external forum; in which case, inscription of the convalidated matrimony is to be made either in the parochial book, if prudence permits this, or in a secret book to be preserved in the episcopal Curia, according to the things said in n. 2080 (Note 3). - 2. In whatever way revalidation is made, scandal, if perhaps it is present, is to be removed through knowledge of the valid matrimony prudently made known. 3. Sanation can be made with each party unaware, and thus is to be made whenever danger of grave damage is feared from warning. - 4. If one party can prudently be warned, the dispensation in the root ought to be fulminated according to the norm described above for ordinary dispensation (n. 2054), the things to be changed having been changed, and those things which are prescribed in the Rescript being diligently observed.

This or a similar Formula can be employed: I, by the Apostolic authority conceded to me, heal and strengthen in its root the matrimony contracted by you with N., and I declare the offspring received or to be received legitimate. In the name of the Father, etc.

Article III

On Revalidating Matrimony Invalid On Account Of Defect Of The Tridentine Form

2088. Matrimony invalid ON ACCOUNT OF DEFECT OF FORM is sometimes convalidated by this very fact, that the betrothed legitimately withdrawn from the Tridentine law, namely through acquisition of domicile in a place where the law is not in force, formally renew consent, at least by signs, for example by living conjugally. Outside this case, the Tridentine form must be observed, or dispensation obtained. - But before all things one must weigh with what mind the spouses are, namely whether each party, or only one, or neither, is rightly disposed.⁶⁰⁵

1. If EACH of the contracting parties is rightly disposed, the Tridentine form is to be observed, either occultly, if the nullity of the matrimony is occult; or publicly, if it is public. - But if the Ordinary, on account of peculiar circumstances, has judged that it is expedient that matrimony be celebrated secretly before the parish priest and two witnesses, it will be able to be celebrated secretly: provided public scandal can be removed by another reason, and is removed as soon as possible (cf. n. 2080, Note).
2. If ONE of the contracting parties refuses to convalidate the matrimony in the face of the Church, it must be striven that this one, through a special procurator or letter, express consent in the present before the parish priest and witnesses, and thus the validity of the matrimony be provided for. If not even this can be obtained, but true matrimonial consent was in no way revoked, one must come to sanation in the root, with the conditions observed, as above (n. 2086).
3. IF NEITHER contracting party consents to revalidate the matrimony in legitimate form, there is no place for dispensation, since contumacious persons by no means deserve to feel the indulgence of the Church (cf. n. 2086, 2).

⁶⁰⁵Instruct. Card. Caprara, *de revalid. matr.* (apud Moser, append. N. XVI).

Note. 1. Nuptials revalidated, if the revalidation was public, are to be blessed again; because in truth they were never blessed; otherwise, if the revalidation was secret.⁶⁰⁶ 2. Public revalidation is INSCRIBED in the usual parochial book. - But if formerly the matrimony was already celebrated in Tridentine form, then either a new inscription is made with reference to the prior one, or the whole matter is duly annotated to this one. - Secret revalidation, if it is made in Tridentine form, is inscribed in the book of secret matrimonies; otherwise, no inscription is made.⁶⁰⁷

Scholium.

On Civil Matrimony.

2089. Just as it is the office of the Church to establish those things which pertain to matrimony, as it is considered in itself and is one of the seven Sacraments, so there is a right in civil society to determine the CIVIL EFFECTS of matrimony. - To this pertain cases of dowry and of inheritance, likewise cases of succession, admission to or exclusion from public or private offices and duties, illegitimacy of offspring in the civil forum, and other things of this kind, which are found described in the codes of each nation or province.

The Church has never not recognized this authority of civil society; indeed she has even openly fought for it; and Pope Leo XIII most recently furnished this in the Encyclical *Arcanum*, with these words: "Likewise she, the Church, does not herself ignore, nor deny, that the Sacrament of matrimony, since it is directed also to the conservation and increase of human society, has cognation and relation with human things themselves, which indeed follow upon matrimony, but turn in the civil genus: concerning which things those who preside over the republic rightly decree and take cognizance."

But civil authority has not used equal equity toward the Church. For it not only did not recognize ecclesiastical authority, but even attacked it with sacrilegious daring, by issuing laws concerning things looking to the nature or validity of matrimony, concerning the firmness of the bond, concerning the form necessarily to be observed in contracting. Thence that pact which is called CIVIL MATRIMONY, which alone is held by the civil legislator as true matrimony, and which consists in the mutual consent of man and woman expressed according to the prescriptions of civil law.

Moreover these prescriptions of law look both to impediments, whether prohibiting or diriment, and to the form necessarily to be observed.⁶⁰⁸ - It helps here to indicate in a few words those which are now more universally in force.

The PROHIBITING impediments received almost commonly are these: - 1) defect of denunciations in the civil forum; - 2) military condition, unless the one who presides over military matters grants permission; - 3) state of widowhood: namely a widow cannot pass to new nuptials except after ten months from the death of the prior spouse, or unless meanwhile she has given birth; for birth immediately removes the impediment.

Very many DIRIMENT impediments have been taken from ecclesiastical legislation, yet under a limitation to be recognized from civilists. They are the following: - 1) Force and fear; 2) error and madness, even if the madman has lucid intervals; - 3) defect of puberty, namely if the man has not yet completed eighteen years, the woman fifteen; - 4) bond, unless somewhere civil matrimony has been dissolved through legal divorce; - 5) consanguinity, affinity, and legal cognation: namely nuptials are prohibited between all ascendants and descendants, whether legitimate or natural; between brothers and sisters, whether legitimate or natural; between affines of the same degree; between paternal uncle and niece, and between maternal aunt and nephew; likewise between adopter and adopted and the descendants of the latter; between brothers and sisters from adoption; between adopter and the spouse of the adopted. [In the ITALIAN Code there is numbered besides: homicide, even merely attempted, which invalidates matrimony between the homicide and the surviving spouse of the one killed; likewise manifest, perpetual, and antecedent impotence. To the impediments mentioned there has been added almost everywhere another impediment, namely defect of consent of the parents, or of those who hold the place of parents, if the son has not yet completed the twenty-fifth year, the daughter the twenty-first.] - THE OTHER canonical impediments ARE NOT RECOGNIZED by the civil legislator, and obtain no force in the civil forum.

As regards the FORM of civil matrimony, the law prescribes that it be contracted publicly before a civil official and witnesses.

2090. From these impious laws, which plainly stand against canonical discipline, most mournful consequences flow, namely: Honors and advantages of true matrimony are attributed to this coupling of man and woman made against the laws of the Church, which therefore is nothing other than foul concubinage. On the contrary, civil effects are denied to true matrimony, i.e. matrimony contracted according to the laws of the Church, unless civil matrimony also accedes to

⁶⁰⁶Catalani, *Theol. mor.*, p. III, q. 14, c. 10, n. 10.

⁶⁰⁷Feije, n. 775-778.

⁶⁰⁸Cf. Scavini, lib. 4, append. 75; Aichner, § 179 and 180; Vecchiotti, III, append. I; Feije, cap. 36, from n. 780 sqq.; Moullart, p. 214.

it. Indeed, afterward the very liberty of contracting in the face of the Church is tyrannically restricted. But what must be done in these straits is taught by the S. PENITENTIARY in the Instruction given on 15 January 1866,⁶⁰⁹ whose principal heads we judge opportune to report here.

I. From true doctrine concerning matrimony it is easily deduced that a civil act can in no way be held before God and his Church either as a Sacrament, or truly even as a contract; and therefore one would be a true concubinarian who should presume to persist in matrimony by force only of the civil act, and he is unworthy of absolution until he repents and, subjecting himself to the prescriptions of the Church, is converted to penance.⁶¹⁰

II. "But although for the value of matrimony there is by no means need that it be ratified or confirmed by the civil power: nevertheless, for avoiding vexations and penalties, and on account of the good of offspring, which otherwise would by no means be held as legitimate by the lay power, and also for averting the danger of polygamy: it seems opportune and expedient that the same FAITHFUL, after they have legitimately contracted matrimony before the Church, present themselves, about to execute the act decreed by law, yet with this intention, as Benedict XIV teaches in the Brief *Redditae sunt Nobis* dated 17 Sept. 1746, that by presenting themselves to the Government official they do nothing other than execute the civil ceremony."⁶¹¹ There are not lacking authors who affirm that the aforesaid obligation must be fulfilled, in certain Kingdoms, under grave obligation, especially on account of the detriment which otherwise would threaten either the parties or the offspring.⁶¹² Yet one must say otherwise if the law somewhere has not yet obtained so great force.

III. "For the same causes, but by no means so that they may cooperate with the execution of the unhappy law, PARISH PRIESTS should not so easily and promiscuously admit to the celebration of matrimony before the Church those faithful who, because they are barred by law, afterward would not be admitted to the civil act, and therefore would not be held as legitimate spouses. In this matter, they will have to use much caution and prudence, and to seek the counsel of the Ordinary; and let him not be easy in assenting; but in graver cases let him consult this sacred Tribunal."⁶¹³

IV. "But if it is opportune and expedient that the Faithful presenting themselves for performing the civil act prove themselves legitimate spouses before the law: nevertheless they ought by no means to perform this act before they have celebrated matrimony before the Church. And if some coercion or absolute necessity, which is not easily to be admitted, were the cause of inverting the order of this kind; then every diligence must be used that matrimony be contracted before the Church as soon as possible, and meanwhile the contracting parties remain separated."⁶¹⁴

N.B. As regards SYNDICS and CIVIL OFFICIALS, see the things to be said in n. 2126 and 2291 sqq.

2091. IT IS ASKED. Whether merely civil matrimony produces no effect in the ecclesiastical forum?

Resp. Civil matrimony, although it lacks the nature of matrimony, nevertheless bears before itself a certain appearance and external form of the same; whence, if true matrimonial consent was present, it can attain validity through sanation in the root (cf. n. 2086). - Besides, it is some attempt at matrimony: and from this head it induces the penalties established against those attempting matrimony, and, adultery acceding, it produces the impediment of crime (cf. n. 2036). Yet from it there does not arise the impediment of public honesty (cf. n. 2034). - And these things indeed have force for places where the Tridentine law concerning the form of matrimony is in force; but in places where the said law is not in force, civil matrimony, true consent having been furnished, is to be held as clandestine matrimony.⁶¹⁵

Chapter VII

On The Rights And Duties Of Spouses

What the RIGHTS and DUTIES of spouses are, we set forth summarily in the Treatise on the fourth Precept (n. 703 and 704). - It remains that here we treat specifically of the conjugal debt and of cohabitation.

⁶⁰⁹ *Acta S. Sed.*, I, 508.

⁶¹⁰ Cited Instr., n. 4.

⁶¹¹ Cited Instr., n. 5.

⁶¹² D'Annibale, *Summula*, III, n. 360.

⁶¹³ Instr., n. 6.

⁶¹⁴ Cited Instr., n. 7.

⁶¹⁵ Cf. *Acta S. Sed.*, XII, 168.

Article I

On The Conjugal Debt

2092. The conjugal act is customarily named by theologians the conjugal debt, both because spouses mutually owe this act to themselves, and especially because the Apostle thus called it, saying (1 Cor. 7:3): Let the husband render the debt to the wife: and likewise the wife to the husband.

This having been noted beforehand, so that all things which pertain to this matter may be weighed, we shall treat: 1. of the liceity of the conjugal act; 2. of the obligation of the conjugal act; 3. of various delicts in the conjugal act, or of the sins of spouses.

N.B. Before we approach the unpleasant matter, it helps to remit the reader to those things which were said in n. 762, where ST. ALPHONSUS warns students not to read these things except with due cautions, and then only when the proximate necessity of hearing confessions has persuaded the reading.

§ 1. On The Liceity Of The Conjugal Act. 2093. That the conjugal act is of itself licit and honorable is already established from the things said concerning the honorableness of matrimony (cf. n. 1967). But that such an act, from every part, be licit and legitimate, it ought to be clothed with certain conditions, which refer both to the persons using matrimony, and to the end and circumstances of the act itself.

I. On The Requisites On The Part Of The Persons For the liceity of the conjugal act there is required on the part of the persons a true right, and this unimpeded.

It is said 1. a true right, that is, a right which arises from valid matrimony; otherwise the conjugal act would be true fornication. Whence: if matrimony is certainly null, it is never licit for the party knowing this either to seek or to render the debt to the other who is ignorant.⁶¹⁶ - It is said 2. an unimpeded right; for spouses can be deprived of conjugal right on account of certain prohibiting impediments, which either preceded matrimony or followed after. The principal ones concerning which we must treat here are FOUR, namely: 1. Doubt concerning the value of matrimony; 2. Impotence of body; 3. Simple vow of chastity; 4. Affinity contracted after matrimony was entered. Concerning these, therefore, the following are established.⁶¹⁷

2094. Principles. I. A spouse DOUBTING concerning the value of his matrimony CAN and OUGHT to RENDER the debt to a coparty seeking in good faith; but he CANNOT SEEK it, unless he prudently has put aside his doubt after due diligence has been made. The reason of the first is that if, after the first two-month period, or after consummation of the matrimony, he refused to obey the coparty seeking in good faith, he would commit himself to grave danger of violating that one's right. Whence, as long as from valid reasons it has not been established with moral certitude concerning the nullity of the matrimony, the certain possession of the coparty presses. - The reason of the second is that in the one doubting the right of possession is suspended until the truth has been diligently investigated, as was seen in n. 46; but with doubt persevering after diligence has been made, possession remains for the value of the matrimony, and therefore for the use of it.⁶¹⁸

St. Alphonsus with others, against many, admits these same things as sufficiently probable, even if the matrimony had been contracted in bad faith or in doubt; because although the one doubting cannot put aside doubt by title of possession, since he began to possess in bad faith, nevertheless he can put it aside from another principle, namely from the principle that in doubt one must stand for the value of matrimony, in favor of which, in the forum both internal and external, judgment must always be made, by reason of the common good of society.⁶¹⁹

Yet two cases are to be excepted, in which doubt cannot be put aside from the aforesaid principles, namely: - 1. If someone prudently doubts concerning the death of a prior spouse; for then the prior matrimony possesses, until it is established as morally certain concerning its dissolution; meanwhile, however, the debt must be rendered to the coparty seeking in good faith, as we said above.⁶²⁰ - 2. If it is established concerning an impediment of ecclesiastical law, and it is not established concerning a dispensation having been obtained; for then likewise the impediment possesses. But otherwise,

⁶¹⁶H. A., XVIII, 35; Book VI, 900.

⁶¹⁷Book VI, 903-905.

⁶¹⁸Book VI, 903-905.

⁶¹⁹Book VI, 906.

⁶²⁰Ibid., 903; cf. *Istruz.*, XVIII, 37.

if it is established concerning the dispensation and there is doubt concerning its value; because one must stand for the value of the act⁶²¹ (cf. n. 1810).

IT IS ASKED. What in the case of a matrimony contracted in GOOD FAITH, if it is PROBABLY invalid, no probability standing for the value?

Resp. It is controverted. The first opinion DENIES the right of seeking the debt; because possession indeed suffragates for one doubting, but not for one opining for the nullity of matrimony. - The second opinion, sufficiently probable, AFFIRMS; because possession confers a certain right of seeking, until it is established concerning the nullity of matrimony. It is confirmed from cap. *Laudabilem, de frigid. et malef.*; for if, after two years, spouses have not yet been able to consummate, it is surely most probable that the matrimony is invalid; and nevertheless they can attempt intercourse until the end of the third year, certainly for no other reason, except because the nullity of matrimony is not yet certain (cf. n. 45).⁶²²

2095. II. Certain impotence SUPERVENING upon matrimony renders the use of it illicit, insofar as danger of pollution underlies.⁶²³ The reason is that the pouring out of seed is not licit except in an act of itself apt for generation. Authors commonly agree.

It is said 1. certain impotence; for if it is doubtful, it is licit to try intercourse for so long as there is probable hope of completing it as nature requires (cf. n. 2011, Resp. 2).

It is said 2. insofar as danger of pollution underlies; because short of such danger, the conjugal act is licit, no otherwise than touches, concerning which below n. 2110.

Whence spouses are not to be prohibited from the use of matrimony if, on account of old age or another cause, it generally happens that the seed is poured out outside the vessel, "provided there is probable hope of emitting seed within the vessel; because whenever such hope is present, they have a right to intercourse, and if seed is poured out, this happens by accident."⁶²⁴

2096. III. He who VOWED chastity after matrimony CANNOT SEEK the debt; nevertheless he is BOUND to RENDER it to one seeking. The reason of the first is sufficiently clear from the obligation of the vow. - The reason of the second is that a vow cannot prejudice the right of the other spouse.⁶²⁵

But if the spouse not only permitted the coparty's vow, but consented to it, intending to yield his right, now neither is permitted the seeking or rendering of the debt. But if "they have vowed mutually, not intending to yield their right, the one is still bound to render to the other seeking," as is commonly taught. And the reason is that the seeking is still just, and on the part of the act honorable, although on the part of the one seeking illicit; and because thus to one seeking there can never be denied a thing which is owed to him from justice⁶²⁶ (cf. n. 216 and 519). But if the vow preceded matrimony, recall the things said in n. 1992, Hence 2.

IT IS ASKED. Whether a spouse bound by a vow can ever seek the debt?

Resp. HE CAN, indeed HE OUGHT, in a twofold case: - 1. If the other is in danger of incontinence; because then the obligation arises from the very end of matrimony, which commands that one assist the other. - 2. If the other seeks tacitly, for instance when a wife does not dare to seek because of modesty, and the husband perceives intercourse to be desired by her; because then the seeking is really a rendering. Thus commonly⁶²⁷ (cf. n. 1992).

2097. IV. A spouse who, during matrimony, contracted AFFINITY with his consort, namely by perpetrating complete and formal incest with a blood relative of the consort, male or female, in the first or second degree, is deprived of the right of seeking the debt until he has obtained a legitimate dispensation. - Recall the things said in n. 2031, q. 3.

Note. Concerning adultery, insofar as it deprives of the right of seeking the debt, see n. 2031, question 3.

II. On The Requisites On The Part Of The End. That the conjugal act be licit and honorable, it must be exercised FOR AN HONORABLE END. This is clear from the things said concerning the honorableness of human acts (cf. n. 306 and 307). - Whence,

⁶²¹Book VI, 901.

⁶²²Ibid., 905; Aertnys, n. 30, qu. 2.

⁶²³Book VI, 1095, I said 2.

⁶²⁴Ibid., 954, Dub. 2.

⁶²⁵Book VI, 930, 949.

⁶²⁶Ibid., 944.

⁶²⁷Ibid., 930; H. A., n. 41.

2098. I. It is licit to exercise the conjugal act for VARIOUS ENDS which COHONESTATE matrimony, namely: - 1. For generating offspring; because this is the end intended by the very Author of matrimony. Nor, however, must the generation of offspring necessarily be intended, provided it is not positively impeded; indeed it is licit for spouses with a simple affection to wish that offspring not be born, for instance because of the difficulty of nourishing it. - 2. For rendering the debt; because this rendering is an act of justice emanating from the institution itself of matrimony. - 3. For avoiding incontinence in oneself or in the coparty; because after the fall of the first parents, matrimony was also ordained as a remedy of concupiscence. - Indeed, if it is a question of avoiding the coparty's incontinence, the act is not only licit, but also obligatory by precept of charity. - And these are the PRIMARY ends.

Moreover, it is licitly exercised for any honorable end whatever, e.g. for fostering conjugal love, for the health of the body; because nothing prevents a means licit in itself, and useful for that end, from being applied to an honorable end.⁶²⁸

2099. II. It is not licit to exercise the conjugal act FOR PLEASURE ALONE. This is clear from the ninth proposition condemned by Innocent XI: "The work of marriage exercised for pleasure alone is entirely without any fault or venial defect." The reason for the condemnation is given because it is a certain perversion of order to intend delight as an end, which nature intends as a means. But there is only VENIAL fault, because the inordinate use of a thing licit in itself is not grave, unless someone rests in it as in an ultimate end (cf. n. 342, q. 3).

It was said: for pleasure alone, i.e. any other end whatever being excluded; because unless such an exclusion is made, the act, apprehended as licit and duly exercised, is referred virtually and by its nature to its proper intrinsic ends. Wherefore it is also without any fault, although the appetite of delight impels one to it (cf. n. 1966).

Here also in passing we note that a spouse sins gravely who exercises marital intercourse with an adulterous affection toward another person, whom he imagines or wishes to be present to himself⁶²⁹ (cf. n. 356).

From these things you will resolve: - 1. The conjugal act is licit, although because of sterility there is no hope of offspring; for this happens by accident, and the other ends of matrimony cohonestate the act.

2. Spouses who assume the pleasure of intercourse as a remedy of concupiscence, or for avoiding incontinence, act rather from love of virtue than from love of pleasure, since they intend to preserve continence and avoid sin. But those who desire pleasure for its own sake are led by love, not of virtue, but of pleasure, which is not honorable.⁶³⁰
3. In practice, as regards the use of matrimony for delight alone, spouses are customarily in good faith, nor usually can fruit be hoped for from admonition. Whence it is more advisable that the confessor leave them in their good faith.⁶³¹

III. On The Requisites On The Part Of Other Circumstances. 2100. The due circumstances of the conjugal act look especially to its manner, place, and time.

I. The natural manner or position in the use of matrimony is that the woman be beneath and the man above, since it is more apt for pouring out and receiving seed; whence, of itself it is unlawful to change this position, since such a change is an inversion of the order of nature. Yet authors commonly say with St. Thomas that it is not of itself mortal if the act is exercised in an improper position, either standing, or sitting, or from behind after the manner of beasts, or with the man beneath, provided it always takes place in the natural vessel. For a change of position ordinarily does not impede generation, since the male seed is of itself naturally drawn into the woman's matrix. - And therefore there will be no sin if the natural manner is changed on account of some just cause, e.g. of danger of abortion, scandal, or difficulty.⁶³²

We said 1. that of itself it is not mortal; for the Angelic Doctor teaches that by accident one can sin gravely in this, if it is done from depraved concupiscence, e.g. from an affection of bestiality or sodomy.⁶³³ 2. Provided it always takes place in the natural vessel; otherwise the order of nature would be essentially violated, and the end of matrimony would be entirely frustrated (cf. n. 2112).

You will ask whether it is mortal to change position if, because of this, some part of the seed is lost? Doctors more commonly deny it; because if seed is poured into the vessel, a partial loss of it after infusion, which can occur in some

⁶²⁸Book VI, 882, 883, 927.

⁶²⁹Ibid., 913.

⁶³⁰*Vindic. Alph.*, p. 7, q. 8, art. II, 2.

⁶³¹Berardi, *Praxis Conf.*, n. 334, q. 12; cf. Aertnys, *De usu matrim.*, n. 3 and 4.

⁶³²Book VI, 917; *H. A.*, XVIII, 39.

⁶³³Ibid.

positions, happens by chance, nor does it forestall conception. For it is clear that a small amount of seed suffices for generation. - On the contrary, if it were established by experience that the woman retains none of the seed because of the natural position having been changed, then it would be mortal; but this very rarely happens. And therefore the confessor ought not to ask about this danger.⁶³⁴

2101. II. The place suitable for the conjugal act cannot be, as natural modesty itself dictates, except secret. In a public place or before others, and especially before children, the conjugal act would be a most grave scandal. But if it were done in a sacred place, apart from the case of necessity, according to the more probable and more common opinion it would be a grave and sacrilegious irreverence (cf. n. 788).⁶³⁵

Note. Spouses are to be admonished not to allow children capable of reason, or already capable of some malice, to lie down with them in bed or in the bedroom.⁶³⁶ But if on account of poverty they are compelled to this, let them at least take care lest the children perceive anything.

2102. III. TIME, of itself, is an indifferent circumstance; nevertheless sometimes, by reason of other adjuncts, it can render the conjugal act lightly or gravely illicit. Thus more commonly with St. Bonaventure. - The reason of the first is that no law can be assigned by which an act of this kind is ever prohibited, and the prescriptions of the ancient Mosaic law have been entirely abrogated by the New Law. Whence if the canons and the holy Fathers seem to prohibit the use of marriage on feast days or in times of penance, the prohibition is to be understood as of counsel, not of precept. Concerning the days of Communion, see n. 1561, 2. - The reason of the second is had from the natural law, because the use of conjugal right can be suspended or impeded on account of the concurrence of another predominant right, e.g. on account of danger of abortion or harm to health, especially in the time of menstruation, pregnancy, purification after birth, lactation, and sickness. - Whence YOU WILL RESOLVE:

1. In the time of menstrual flow conjugal intercourse is forbidden, under venial fault, as the most common and more probable opinion holds; both because it involves a certain indecency, and because, as physicians testify, it can harm the genital parts of the woman and thence, if she conceives, afterward bring on some danger of abortion; and because it is a certain intemperance not to await the suitable time which will shortly be present. In the time of an extraordinary flow of blood, which proceeds from disease and is long-lasting or perpetual, intercourse can then become illicit when it is established by experience that the flow is increased after intercourse; if this happens, intercourse will ordinarily harm somewhat, yet rarely gravely. If it will be only lightly harmful, intercourse will become licit, because otherwise the husband would have to abstain perpetually, which would bring him both grave inconvenience and ordinarily grave danger of incontinence; these two things certainly prevail over a slight harm to the wife.⁶³⁷
2. In the time of pregnancy, intercourse, the danger of abortion being excluded, is more commonly judged licit; because it is prohibited by no law, and it would be a most grave burden if spouses were held to contain themselves for so long a time. - Nevertheless, the opinion of those who judge that intercourse with a pregnant woman, speaking of itself, is not without venial fault, is more pleasing to St. Alphonsus; because the seed is frustrated of its end; yet by accident it is dishonest when an honorable cause accedes, e.g. danger of incontinence, or another cause; and since this is hardly ever absent, in practice this opinion nearly coincides with the former.⁶³⁸

The danger of abortion will be so much the less, the farther intercourse is distant from the day of conception. Whence it can exist only within the first months of pregnancy, and in this time only then when intercourse is performed either more often or more impetuously; wherefore moderation as to number and manner is to be recommended to spouses. - Moreover, on account of the danger of abortion, intercourse can by no means be forbidden; both because no one knows anything concerning beginning pregnancy, at least nothing certain; and because abortions much more often proceed from a morbid disposition than from a direct cause.⁶³⁹

3. In the time of purgation, according to the more common and more probable opinion, intercourse is illicit; both because of indecency and because of danger of harm for the wife. - If slight harm is feared, there will be venial fault; if grave, mortal fault. A new conception is not to be feared except after about six weeks, namely when the uterus

⁶³⁴Ibid.; Capellmann, p. 147; Aertnys, n. 15, fin.

⁶³⁵Book VI, 620 and III, 458.

⁶³⁶*Praxis*, n. 211.

⁶³⁷Book VI, 925; Capellmann, p. 148; Aertnys, n. 8.

⁶³⁸Book VI, 924.

⁶³⁹Capellmann, p. 152; Aertnys, n. 9.

is restored and menstruation recurs.⁶⁴⁰ Moreover, according to the opinion of St. Alphonsus,⁶⁴¹ who consulted a very skilled physician, grave harm can prudently be feared within two days after birth; and, according to more recent physicians, still longer, for one or perhaps two weeks, namely while the puerperal flow, or the woman's great weakness or sickness, persists.

4. In the time of lactation, it is most commonly affirmed that intercourse is licit; because although milk for the most part, when a new pregnancy begins, is soon diluted and shortly ceases, offspring can be nursed in another way, lest spouses be compelled to abstain for so long with so great difficulty. To this there accedes that a woman commonly does not conceive in the time of lactation.⁶⁴²
5. In the time of sickness, the conjugal act is illicit when notable harm to health can prudently be feared from it. Therefore, A DISTINCTION MUST BE MADE between contagious and non-contagious diseases.
 - 1) In the contagious disease of one spouse, if it is a venereal disease or syphilis, intercourse is gravely illicit, on account of the horrendous consequences which it brings with it for the coparty and for offspring. The infected party is not bound to manifest this disease to the coparty, on account of infamy, provided that, while he remains silent, he neither seeks nor renders the debt. Yet see n. 2108, 2.

In other diseases, intercourse is likewise prohibited if they are apt to bring death shortly; but otherwise, if they are chronic or longer-lasting, because the danger of incontinence, which for so long a time can scarcely be absent, seems to prevail. Moreover, the infected party is bound to manifest the disease to the coparty.

It must be admonished in this place that phthisis is not a contagious disease, but hereditary; but it would be better for offspring to be infirm than not to be at all. - On the contrary, the flow of seed which in men is called gonorrhea is for the most part a certain species of syphilis, and therefore contagious, as physicians testify. - Leucorrhea, or white flow, from which pregnant women often suffer, does not forbid intercourse, since it is not harmful.

- 2) In a non-contagious disease, intercourse is very harmful in a disease that greatly debilitates, joined with fever and the greatest pain. In a slight disease, intercourse is not harmful; nevertheless diseases of the genitals are excepted, which in a woman can be aggravated by intercourse and afterward be healed with difficulty.

Note. After a bath, bloodletting, lunch, or dinner, intercourse is not customarily notably dangerous, as present-day physicians testify.⁶⁴³

§ 2. On The Obligation Of The Conjugal Act. Two things are to be weighed here: 1. what the obligation is for spouses, whether of rendering or of seeking the debt; 2. what causes excuse from such an obligation.

I. On The Obligation Either Of Rendering Or Of Seeking The Debt. 2103. Principles. I. EACH spouse is held from justice, and under grave obligation, to RENDER the debt to the other spouse reasonably and seriously seeking. - This is clear from the Apostle (1 Cor. 7:3): "Let the husband render the debt to the wife; and likewise the wife to the husband." The reason is that by force of the matrimonial contract "the woman does not have power over her own body, but the man. And likewise the man does not have power over his own body, but the woman" (ibid.). And therefore they cannot deny to each other the use of marriage without injustice, which is, of itself, a mortal sin; because it is a denial grave from its nature, at least if it is done more often, or obstinately.⁶⁴⁴

We said 1. to one seeking reasonably; for if the one seeking is not master of himself, as a madman or one perfectly drunk, because he does not seek in a human manner; or if he seeks unjustly, immoderately, at an unseasonable time, and whenever generally a legitimate cause of denying intervenes, the obligation ceases, at least that of justice; although then there can still be an obligation of charity, namely for avoiding in the one seeking a danger of incontinence, anger, blasphemy, etc., as will be explained below (n. 2104, 2).

We said 2. to one seeking seriously; for if a spouse seeks weakly, or easily yields to the prayers of the one denying, according to the common opinion it is not mortal, unless the one seeking is placed in danger of incontinence; indeed, not even venial, if some cause of denying is given. Yet it makes no difference whether he seeks expressly or tacitly; for it

⁶⁴⁰Capellmann, p. 149.

⁶⁴¹Book VI, 926.

⁶⁴²Ibid., 911; Capellmann, p. 151; Aertnys, n. 11.

⁶⁴³Book VI, 909, 910, 950; Capellmann, p. 155, 158; Aertnys, n. 12.

⁶⁴⁴Book VI, 938; H. A., n. 44.

suffices if by certain signs he manifests that he desires that act, although because of modesty he does not dare to demand it.⁶⁴⁵

2104. II. NEITHER spouse is held PER SE, or from justice, TO SEEK the debt; but indeed PER ACCIDENS, from charity or another virtue, he can be obliged to this.⁶⁴⁶ - 1. He is not held from justice, because no one is held to use his own right. This, more probably, St. Alphonsus also admits, although the coparty is in formal danger of incontinence; because if no express or tacit seeking occurs, no obligation of justice to render is present. A spouse indeed obliged himself not to break faith, but not to impede the other from breaking faith. - 2. He can be obliged PER ACCIDENS, namely from charity or from another virtue, gravely or lightly, according as this or that virtue urges. But authors commonly teach that there is a grave obligation of seeking from charity, when this is judged necessary for avoiding incontinence in either spouse, or for fostering mutual love. They admit the same if the generation of offspring is very necessary for the public good or for the peace of the family.⁶⁴⁷

Spouses can MAKE AN AGREEMENT not to use matrimony, and then neither can be compelled to render the debt; but this agreement, which is rarely expedient, can be rescinded by mutual consent. Indeed, when danger of incontinence supervenes, it must be remitted from charity, at least for a time, so that incontinence may be avoided.

2105. From the things said you will resolve:⁶⁴⁸ - 1. A wife sins mortally if she obstinately denies even for one time only, while the husband seeks seriously and insistently.

2. Likewise, if in rendering she shows great delay, with danger or even with the intention of deterring the husband from seeking; if she does not grant the debt except when compelled; if she harshly and insultingly reproaches the husband for his requests. Thus commonly.
3. Those worst husbands gravely offend who, whether from avarice so that they may avoid offspring, or from malevolence, or from love conceived toward others, never or almost never know their own wives, although they ought to presume well that the wives bear this most unwillingly.⁶⁴⁹
4. Denial of the debt is EXCUSED from grave fault on account of smallness of matter, if it occurs rarely, e.g. once in a month to one seeking often, short of danger of incontinence or grave dissension; likewise, if the rendering is delayed somewhat, for instance from day to night, from night to morning.⁶⁵⁰

II. On The Causes Excusing From The Rendering Of The Debt. 2106. In one spouse the OBLIGATION of rendering the debt CEASES when the RIGHT of demanding ceases in the other. For these are correlatives.

Now the right of demanding BEGINS after the two-month period from the celebration of matrimony, or after the first rendering of the debt, as was said (n. 1981 and 2087); and it CEASES entirely through legitimate causes of divorce, especially through adultery, as will be said below (n. 2124, 1). - It can also cease on account of very many other causes, both on the part of the one seeking and on the part of the one rendering; which causes now come to be explained.

2107. I. On the part of the ONE SEEKING, first of all the ILLEGALITY of the seeking itself can stand in the way; in this matter, St. Alphonsus teaches that a distinction must be made thus:

1. If the illegality holds on the part of the act and is grave, for instance because one seeks in a sacred or public place, or with proximate danger of abortion or death, the other cannot render without grave fault; since an act grave evil in itself can never be cohonestated by any cause, nor therefore can it be demanded. - But if the illegality is light, because it is sought, for example, in an unnatural position, or in the time of menstruation or puerperium, it is licit to render with a just cause which cohonestates the act, e.g. lest the indignation of the consort be incurred. Indeed, if the one seeking has a just cause of seeking thus, the other is bound to render. But every reasonable cause being absent, he is not bound to render, indeed he cannot do so short of venial fault.
2. If the illegality holds on the part of the one seeking alone, e.g. because he has a vow of chastity, or because he seeks for a depraved end, according to the more common and more probable opinion the coparty is bound to render, nevertheless with an admonition first given, if fruit is hoped for, that the one seeking desist.⁶⁵¹ If the husband is an onanist, see n. 2118, q. 2.

⁶⁴⁵ H. A., *ibid.*; Book VI, 948.

⁶⁴⁶ Book VI, 928, 938, 940.

⁶⁴⁷ *Ibid.*, 938.

⁶⁴⁸ Aertnys, n. 32.

⁶⁴⁹ Berardi, *Prax.*, n. 336.

⁶⁵⁰ Book VI, 940.

⁶⁵¹ *Conf. diretto*, XVII, 15.

2108. II. On the part of the ONE RENDERING, there is held to be a just cause of denying the debt IF GRAVE HARM or DANGER would threaten from it.⁶⁵² - The reason is sought from the order of justice and charity, from which spouses are not judged to have obliged themselves to render the debt with grave harm. If grave and proximate danger of life is present for either spouse, neither can seek or render; because no one is master of his own life, or of the life of another.

Hence: 1. A wife is exempted from rendering the debt who, by her own experience or by the judgment of experts, has learned that she cannot bring forth offspring without grave danger to life. Yet, for avoiding her own or her spouse's incontinence, or for avoiding dissensions, she could expose herself to a danger that is only probable and remote; because although a human being is not master of his own life, nevertheless he can expose it on account of charity.⁶⁵³

2. A healthy spouse is exempted if the coparty suffers from a contagious disease, e.g. plague, venereal disease, and danger of infection threatens. - Yet, for a just cause, he can undergo a danger that is not entirely proximate from a motive of charity, namely by applying preservative means.⁶⁵⁴

3. A spouse who is feverish, or affected by another grave disease, is exempted, namely on account of notable debilitation of the body; likewise a wife, if she suffers from beginning cancer of the uterus, so that after the conjugal act she is subjected to a copious outpouring of blood; or if she undergoes intercourse with very acute pain which is repeated each time.⁶⁵⁵ - But she is not exempted on account of labors and pains, even unusual ones, of pregnancy, birth, lactation, education, etc.⁶⁵⁶

2109. IT IS ASKED. Whether harm which is feared for OFFSPRING exempts from the obligation of the conjugal debt?

Resp. Distinguish. 1. If harm is feared for offspring already conceived, e.g. if it is established that in a particular case by intercourse there is harm to its life or formation, or danger of abortion is induced, spouses do not have a right to intercourse⁶⁵⁷ (cf. n. 2102).

2. But if it is a question of offspring to be conceived, the debt must be rendered, although it is to be feared lest offspring be born infirm; since it is better for it to be thus, than not to be at all. But if the wife has already experienced that she brings forth dead children, authors more commonly hold that, danger of incontinence in herself or in the coparty being excluded, she cannot render the debt, chiefly on account of this reason, that she herself undergoes danger of life from the death of the fetus in the uterus.⁶⁵⁸ - If it is established concerning this danger, the aforesaid opinion will indeed urge; but because rarely is it established concerning it, and spouses would be placed in great danger of incontinence if on account of this cause they had to abstain perpetually from the use of matrimony, hardly, or not even hardly, is the debt to be denied on account of the aforesaid reason.⁶⁵⁹

3. If, finally, an excessive multiplicity of offspring is feared, this of itself seems a sufficient reason for denying the debt, provided that in neither spouse there is danger of incontinence. But since such danger is scarcely ever absent, it is clear that a spouse is not easily excused from rendering the debt on account of the multiplicity of offspring.⁶⁶⁰

§ 3. On The Sins Of Spouses. Besides those things which have already been said concerning those who INJUSTLY seek or deny the conjugal act, it remains that we speak of the same act insofar as it is opposed to CHASTITY. - Hence we shall treat: 1. of the sins of spouses generally; 2. specifically of onanism.

I. On The Sins Of Spouses Generally. 2110. Acts which can be exercised in conjugal commerce are distinguished as of THREE kinds: namely some are according to, others besides, others against the end of marriage.⁶⁶¹ Hence a threefold rule:

I. Whatever is ACCORDING TO the end of marriage, or whatever is necessary or useful either for exercising the conjugal act or for fostering mutual love, is licit for spouses. - The reason is, "because for him for whom the end is licit, the means are also licit; and for him for whom the consummation is licit, the beginning is also licit."⁶⁶²

⁶⁵²Book VI, 950.

⁶⁵³Ibid., 950.

⁶⁵⁴Ibid.

⁶⁵⁵Cf. Berardi, *Prax.*, 342.

⁶⁵⁶Book VI, 952.

⁶⁵⁷Ibid., 924.

⁶⁵⁸Book VI, 951-953; *H. A.*, n. 49, fin.

⁶⁵⁹Berardi, *Prax.*, n. 346.

⁶⁶⁰Book VI, 941; cf. Frassinetti, tr. 18, not. 178.

⁶⁶¹D'Annibale, *Summula*, III, 364.

⁶⁶²Book VI, 932.

Hence: 1. Modest touches, kisses, and embraces for fostering mutual love are without fault, although sometimes unforeseen pollution would follow; because this would be by accident, and a just cause is present for applying blandishments of this kind. - But they are gravely culpable "if they are done with danger of pollution in oneself or in the other, in a case in which they are had for pleasure alone, or even for a light cause; otherwise if for a grave cause, for instance if sometimes there is an urgent cause of showing signs of affection for fostering mutual love; or so that a spouse may avert from the other the suspicion that he is inclined toward another person,"⁶⁶³ provided danger of consent is absent.

2. Touches, kisses, embraces, sights, foul conversations, and all immodest acts are without fault if, danger of pollution being excluded, they are referred to intercourse to be consummated here and now. This also is true, although pollution now and then inculpably precedes intercourse.⁶⁶⁴ - Yet spouses ought according to their strength to beware of an effect of this kind, not lingering too long in the aforesaid acts.⁶⁶⁵

2111. II. Whatever is BESIDES the end of marriage, or whatever is not of itself necessary or useful for the conjugal act, is customarily a venial fault, from which, nevertheless, an honorable end can excuse. Thus commonly according to the truer opinion. And the reason is that just as the conjugal state coonestates intercourse, so also it coonestates immodest acts which do not induce danger of pollution. "For otherwise, since there is so great a companionship between spouses, and they often cannot have intercourse, they would be exposed to continual dangers if such acts were gravely illicit for them. But just as delight sought in intercourse does not exceed venial fault, so also in these touches and sights."⁶⁶⁶

Hence: 1. Spouses do indeed sin, but only venially, if for the sake of pleasure and with proximate danger of pollution excluded, they permit to themselves foul acts or sights without order to intercourse. "And this, even if intercourse were then forbidden to them on account of disease, or were impossible on account of impotence which had supervened, as Sanchez and others say; because, since intercourse is licit between spouses, touches between them cannot be gravely illicit. But otherwise one must say if a spouse were bound by a vow of chastity; because such a vow excludes every venereal pleasure voluntarily taken. Thus commonly." - But one impeded from intercourse on account of affinity contracted, although of himself he is not bound under grave obligation to abstain from touches and sights of this kind, since the penal law prohibiting intercourse is not to be extended to touches, nevertheless "in practice, ordinarily he ought to abstain from touches of this kind, especially foul ones, on account of the proximate danger either of pollution, or of seeking intercourse by seeking against the prohibition."⁶⁶⁷

2. "It is licit, as the truly probable opinion holds, for spouses to take delight, even carnally, concerning intercourse had or future, whenever danger of pollution is absent. The reason is that the matrimonial state itself renders all these things licit; otherwise the matrimonial state would be liable to too many scruples."⁶⁶⁸ - But indeed, "if delight is had not only with commotion of the spirits, but also with titillation or venereal pleasure, I think it cannot be excused from mortal fault, because such delight is proximately joined with the danger of pollution."⁶⁶⁹

2112. III. Whatever is AGAINST the end of marriage, or whatever is opposed to the generation of offspring, namely by inducing of itself, outside natural congress, an outpouring of seed, is gravely illicit; indeed, according to the more probable opinion, it has the malice of a double adultery⁶⁷⁰ (cf. n. 782, 2). - The reason of the first is that the outpouring of seed is not licit except in order to generation, and therefore matrimony gives spouses no faculty except for an outpouring of seed which can of itself serve generation.⁶⁷¹ - The reason of the second is that voluntary pollution by a married person violates the right of the coparty; whence it has annexed to itself the malice of adultery, just as pollution by one bound by a vow of chastity has the malice of sacrilege. Since, therefore, in the conjugal act which is done against the end of marriage, each sinner is married, it follows that the aforesaid malice is superadded to the pollution of each.⁶⁷²

Hence: 1. Sodomy between married persons has the guilt of greater malice than between unmarried persons, far from losing anything of its atrocity on account of the matrimonial state.⁶⁷³ This also holds concerning a sin not consummated, for instance if the husband were to begin intercourse in the unnatural vessel, with the intention of completing it in the

⁶⁶³Book VI, 934; III, 484; *H. A.*, n. 42.

⁶⁶⁴Book VI, 932-934.

⁶⁶⁵Aertnys, n. 37.

⁶⁶⁶Book VI, 933.

⁶⁶⁷*Ibid.*; Ninzatti, n. 1635.

⁶⁶⁸Book V, 25; *Istruz.*, III, 43, fin.

⁶⁶⁹Book VI, 937.

⁶⁷⁰Book VI, 954, 918.

⁶⁷¹Gury, n. 918.

⁶⁷²Book III, 446.

⁶⁷³*Ibid.*

natural vessel; or if he were to rub the private parts around the unnatural vessel of the wife;⁶⁷⁴ or if he were to introduce them into her mouth⁶⁷⁵ (which obscenity is called irrumation); because in these there is either the beginning of sodomy, or an affection toward it, or another sin against nature.

2. Foul touches are gravely illicit which are had without order to the conjugal act, with proximate danger of pollution.⁶⁷⁶ But if acts of this kind are by their nature a kind of disposition toward intercourse, they can be excused in the one rendering, on account of the grave inconvenience otherwise to be undergone by him, as we shall say below concerning onanism, provided they are not such that of themselves they induce an entirely proximate danger of pollution, and therefore seem to be as it were the beginning of it, e.g. lingering handling of the private parts.⁶⁷⁷ For since direct pollution is always illicit, its proximate danger can never be permitted, unless those causes are given and those conditions are observed which sufficiently excuse indirectly voluntary pollution (cf. n. 796).
3. The man sins gravely if, deliberately, he restrains emission, when the wife has already emitted seed or is in probable danger of emitting; because he is the cause why the seed of the wife, the end of generation being frustrated, is wasted. - But otherwise, if he were to interrupt intercourse from a grave cause, for instance to avoid scandal, although with danger of pollution.⁶⁷⁸
4. If the man has already emitted seed, it becomes doubtful whether the WOMAN sins mortally if she withdraws herself from emitting seed, or whether the MAN sins mortally by not awaiting the emission of the wife. The more common and today much more probable opinion denies this; and the reason is that today it has been discovered that in the woman there is not given a true emission of seed which is necessary for generation. The matter which the woman necessarily supplies to generation is the ovum. If the woman has a mature and released ovum, she is apt for fecundation, although she is not moved in the act of intercourse. Certainly, the secretion of humor which theologians call emission, and the concomitant movement of the organ, contribute something to fecundation;⁶⁷⁹ but spouses are not held to come together in the more apt manner, and it is enough if they do not impede generation.

Nevertheless, the contrary practice is earnestly to be advised, both because the aforesaid emission of the woman pertains to the complement of intercourse, and lest conjugal love grow cold. - But if either one were so to behave as to impede generation, on the part of intention there would be mortal fault.⁶⁸⁰

5. It is ordinarily a mortal sin if both spouses, intercourse having begun, restrain emission; and the reason is that although, speaking speculatively, such congress, danger of pollution being excluded, is not gravely illicit, and is reputed like a touch of the private parts, nevertheless practically the danger of pollution can scarcely be absent in both spouses, which would be required. - Except if the spouses have experienced the opposite; yet in that case they would not be excused from venial fault.⁶⁸¹
6. A wife sins mortally who, immediately after the conjugal act, rises or does something with the intention of expelling the received seed. For such an act, although it is done in vain, nevertheless by reason of the perverse intention has the malice of abortion.⁶⁸²

2113. IT IS ASKED. Whether foul touches WITH ONESELF are ever licit for a spouse?

Resp. 1. They are licit if they are ordered to intercourse to be had immediately, as all confess. Indeed, they are licit, more probably, for a WOMAN immediately after intercourse in which the man alone emitted seed, so that she may thus procure her own emission; because although this is not absolutely necessary for generation, nevertheless it can contribute to it and pertains to completing the conjugal act.⁶⁸³ But before intercourse this is never licit, nor after onanistic congress, because in that case the end of nature would be entirely frustrated.

Resp. 2. The aforesaid necessity or utility being excluded, they are not licit; indeed, according to the more probable opinion, and one wholly to be advised, they are, just as for other unmarried persons, gravely illicit if they are had for pleasure. The reason is both that a spouse does not have a right in his own body of itself, but only by accident, namely

⁶⁷⁴Book VI, 916.

⁶⁷⁵Ibid., 935.

⁶⁷⁶Book VI, 934, *His sententiis*.

⁶⁷⁷Ibid.

⁶⁷⁸Book VI, 918.

⁶⁷⁹Capellmann, p. 137-140.

⁶⁸⁰Aertnys, n. 20, q. 5; Berardi, *Prax.*, n. 334, q. 3.

⁶⁸¹Book VI, 918.

⁶⁸²Ibid., 918 and 954.

⁶⁸³Ibid., 919.

in order to intercourse; and that touches of the private parts, when they are done lingeringly and with commotion of the spirits, of themselves tend to pollution and are connected proximately with its danger.⁶⁸⁴

II. On Onanism Between Spouses. 2114. Onanism is intercourse begun or completed with an outpouring of male seed outside the vessel (n. 801).

Intercourse is begun when the man indeed penetrates the natural vessel, but as soon as he notices that the outpouring of seed is proximate, withdraws himself; or also when the woman withdraws herself before the man's emission. - Intercourse is completed, namely in the natural vessel, but with greater malice, when the man uses a certain thin covering or instrument to impede the seminal substance from arriving at a place apt for generation.

Moreover, there has been invented a wicked manner of destroying conception immediately after intercourse, namely by means of a certain injection into the uterus. This injection, as is clear, has the guilt of homicide, just as the procuring of abortion.⁶⁸⁵

2115. Principles. I. Onanism between spouses is an act against nature, and therefore gravely illicit.⁶⁸⁶ - This is clear both from Scripture, which (Gen. 38:10) calls this act a detestable thing, and from reason, which dictates that onanism is true pollution directly defrauding matrimony of its end, and also from the decision of the Church, which, by a Decree of the Holy Office on 21 May 1851, defined that this use of matrimony is prohibited by natural law, and taught that this is elicited from proposition 49 condemned by Innocent XI, which sounds thus: "Mollities is not prohibited by the law of nature."⁶⁸⁷

Hence: 1. Onanism can be cohonestated by no cause, whether of poverty, lest offspring to be nourished be multiplied, or of avoiding infirmity, or of warding off danger of death in childbirth. Yet on account of a cause of this kind it can be perpetrated with good faith; and when this exists, it belongs to the prudent confessor to judge whether admonition is expedient or not.

2. Not only the man exercising onanism, but also the wife formally cooperating with or consenting to him sins mortally, and both are unworthy of absolution unless they sincerely grieve concerning the sin and promise amendment. - The wife formally cooperates if by complaints concerning the pains or dangers of childbirth, concerning more numerous offspring, etc., she supplies to her husband an impulse toward onanism, namely foreseeing this effect or even intending it.⁶⁸⁸

2116. II. Onanism can be PERMITTED by the wife if a JUST cause suffragates for her rendering the debt to an onanistic husband. - The reason is that she then cooperates with the husband's sin only materially, by an act honorable in itself, which it is licit to furnish under certain conditions and with a just cause acceding.

The CONDITIONS are the following:

1. That the wife not consent to the husband's sin, and that she always be ready to impede it efficaciously, if she could (cf. n. 518, 519). - We say to the sin; for nothing prevents her from consenting to the carnal delight arising from intercourse, or even to a simple complacency concerning not having offspring, according to the things said in n. 2098.
2. That she not cease prudently to admonish the husband concerning the obligation of desisting from this foulness. Thus the S. Penitentiary, 13 Nov. 1816. For she is held to such admonition both from charity toward the husband, namely that he may recover his senses, and from charity toward herself, namely that she may decline every danger of consent. It was said prudently; for admonitions ought not to be continual, nor unseasonable, but opportune, namely when hope of amendment shines forth, and no grave evil is to be feared, for instance the husband's adultery, indignation, or great dissension.
3. That she permit the inordinate act only from a just and reasonable cause. And to this pertain the words of the Major Penitentiary in the cited Response: "Approved and chastened moral theologians agree in this, that it is licit for a wife to render the debt, if from its denial she is to be treated badly by her husband, and can fear grave inconvenience to herself from it; for, they say, in this case the wife is not judged formally to cooperate with the sin of her husband, but only to permit it from a just and reasonable cause."⁶⁸⁹ In practice, denial of the debt can scarcely be separated from danger of grave inconvenience.

⁶⁸⁴Book VI, 936.

⁶⁸⁵Aertnys, n. 16.

⁶⁸⁶Book VI, 954.

⁶⁸⁷Cf. Aertnys, n. 17; Konings, n. 1657, where there are various Responses.

⁶⁸⁸Aertnys, n. 18.

⁶⁸⁹Konings, n. 1659, V.

2117. Therefore, when the aforesaid conditions concur, the WIFE can licitly RENDER the debt, provided the act is rightly begun, and she, as regards the interruption, has herself entirely passively. But if the husband is known to be about to commit onanism by means of an instrument, the wife cannot, by having herself passively, permit the act; but she is bound, not otherwise than a virgin to whom force is brought, firmly to resist according to her strength. The reason is that in such a case intercourse on the part of the act itself, already from the beginning, is entirely illicit and against nature.⁶⁹⁰

2118. Questions. QUESTION 1. Whether a wife can also SEEK the debt from an onanistic husband?

Resp. Affirmatively, but only from a grave cause. It is said only from a grave cause, because she is held from charity not to give the husband an occasion of sinning. - Now a grave cause would be danger of incontinence, a long deprivation of the right of seeking, with perpetual scruple whether the cause of seeking is just or not; wherefore she is not held to abstain except for a few times⁶⁹¹ (cf. 2098).

QUESTION 2. Whether the husband commits onanism if he indeed penetrates the wife's vessel, but only slightly, and pours out all the seed at the entrance of the vagina?

Resp. Distinguish. 1. In the work, negatively, because that act indeed renders fecundation less easy, but does not impede it; therefore intercourse so exercised is apt for generation. Yet except if it were done in such a way that all the seed flows away and is lost. - 2. In the mind, subdistinguish: affirmatively, if he intends to impede generation in this way, then from a depraved intention he sins mortally against nature; otherwise, it must be denied. Moreover, if he behaves thus because he wishes to avoid a manner more apt for generation, so that offspring may be less certain, he does not seem to be guilty of lethal fault; because he is not held to choose the more certain manner for conceiving offspring, nor is the desire of lacking offspring a mortal sin. Finally, if he has a legitimate cause of behaving thus, because, e.g., the wife on account of recent birth or infirmity in the private parts does not endure more perfect coition, he sins in no way.⁶⁹²

QUESTION 3. What is to be judged concerning spouses who, for avoiding more numerous offspring, come together only at that time when fecundation can occur with difficulty?

Preliminary note. It is clear from very many testimonies of physicians that the conception of offspring occurs easily about the time in which the woman is in menstruation, namely three or four days before, and about fifteen days after; but with difficulty at another time, called agensis, if the flow of blood is certain and constant every month.⁶⁹³ Now then,

Resp. Of themselves, they are not to be accused of sin; for they use their right, since the work of marriage is not prescribed at the time when the probability of conception is greater, nor is it prohibited at the time when the probability is less or none. But whether by accident fault enters, is to be judged from the end and from the other circumstances. To the point is the following response, which, after various doubts had been proposed concerning this manner of acting, the S. PENITENTIARY, on 16 June 1880, judged should be given: "The S. Penitentiary, having diligently weighed the things proposed, responds: Spouses using matrimony in the aforesaid manner are not to be disturbed, and the confessor can cautiously, however, insinuate the opinion in question to those spouses whom he has attempted in vain to draw away in another way from the detestable crime of onanism."⁶⁹⁴

QUESTION 4. But what concerning ARTIFICIAL fecundation, e.g. between sterile spouses?

Resp. Fecundation of this kind, which is done with seed obtained from the husband's pollution, is intrinsically evil, and therefore wholly illicit.⁶⁹⁵

2119. Admonition. Concerning the office of the confessor in QUESTIONING about the sins of spouses, besides the things said in n. 1804 sqq., let the following be noted:

1. Concerning those things which look to the use of matrimony, the confessor should question only those whom, on account of a just cause, he suspects to be guilty of lethal fault. And he should do this in the most modest manner he can, by inquiring, e.g. from wives, whether "they have always been obedient in those things which look to the conjugal state." - If from a general question of this kind he detects something of culpability, yet does not sufficiently know the nature of the sin, let him come so cautiously to particular questions that he gives the penitent an occasion rather of opening his conscience than seems to investigate it more curiously. - But concerning venial things let him introduce no discussion of his own accord, because, since they are not necessarily to be subjected to the keys, there

⁶⁹⁰Cf. St. Alphonsus, III, 368; VI, 943; Berardi, *Prax.*, n. 327.

⁶⁹¹H. A., XVIII, 47; Book VI, 947.

⁶⁹²Berardi, *Prax.*, n. 334; Aertnys, n. 19, qu. 6.

⁶⁹³Capellmann, p. 133.

⁶⁹⁴Cf. *Nouv. Rev. theol.*, XIII, 460.

⁶⁹⁵Cf. *Disp. phys. th.*, author A. E., Disp. 1, c. 4, a. 1.

is no reason why investigations should be instituted in so slippery a matter. Nevertheless, when questioned, let him respond, so that he can thus provide for the peace of consciences.⁶⁹⁶

2. The confessor ought sometimes to question concerning Onanism, namely when there is prudent fear that the penitent is guilty of this sin. The reason is that he is held, from the office of judge, to supply the defect of the penitent, as the common opinion teaches.⁶⁹⁷ And hence it is why the S. C. INQUIS., on 21 May 1851, declared the opposite opinion, namely that spouses are never to be questioned concerning this matter, “false, too lax, and dangerous in practice.” This declaration especially looks to those regions in which the devastating plague of onanism spreads widely; for many take an occasion for persevering in the worst practice from the fact that the confessor, when the circumstances suggest it, does not question. - At least generally, let him inquire whether there is anything concerning the sanctity of matrimony which gnaws at the conscience.⁶⁹⁸

But to the Question: Whether those confessors satisfy their duty who, when a penitent accuses the sin of onanism, “keep deep silence, and when the confession of sins has been finished, excite him to contrition with general words, and to him asserting that he detests every lethal sin, impart holy absolution” ... the S. PENITENTIARY, on 14 Dec. 1876, responded Negatively.⁶⁹⁹

It seems useful to add also the following document:

“Most Blessed Father - Bishop N. N., reverently presenting himself at the feet of Your Holiness, proposes to Your Beatitude certain doubts to be elucidated, which for a long time have brought grave anxiety of mind and conscience to pastors of souls and confessors.

“As is known to Your Holiness, the unspeakable crime of Onan is being spread more widely day by day in several regions of France, and it is driving deeper roots; so that hardly any Province remains immune from this pest, and the cultivators themselves of social science publicly complain concerning this deadly disease. Nearly everywhere families are seen to become rarer, not indeed from the infrequency of marriages, but from their voluntary infertility. The matter has now come to this, that whereas before many spouses wished to avoid only excessive offspring, now very many dare, by wicked counsel, to exclude every or almost every reception of children. Hence also, at least in great part, comes that lamentable diminution of ministers of the Church by which the dioceses labor more and more.

“Indeed, the deplorable calamity moves pastors of souls, which is derived into society itself from this depraved use of matrimony; but the most grave offense brought against God and the most present danger of souls moves them more sharply, and at the same time affects them with immense sadness. And this sadness of theirs is also increased from the fact that there is not one manner of acting among all confessors in caring for this wound; nor can the desired uniformity be hoped for from the Responses and Declarations of the Holy See which have thus far come forth.

“The knot of the difficulty turns on the necessity of questioning and admonishing penitents. - Indeed all confessors and writers of moral theology acknowledge the very great gravity of this sin; all likewise confess that the greatest prudence and modesty must be applied by the confessor in questioning, and that it is better that the material integrity of confession be deficient than that scandal should come to the penitent from an indiscreet question, or the honor of the sacred ministry be offended. But confessors disagree on this point: whether the questioning itself is necessary or not, even though expressed in chaste and modest words.

“For some confessors have persuaded themselves that among so many faithful who indulge the detestable practice of Onan, at least some are found who are in good faith. - Therefore, lest they disturb these rare penitents from good faith, they think it more advisable to question no one concerning this sin, unless perhaps the penitent himself begins to accuse himself, and the questioning only renders the confession easier. The same confessors judge that the penitent ought not to be admonished concerning the gravity of this sin, because perhaps he thinks the matter is not so grave. And in that opinion they are also confirmed by this reason, that most spouses, openly admonished concerning the malice of onanism, are foreseen to be about to desert the sacraments, and thus incur a greater danger of damnation.

“Other confessors think that silence is not licit for ministers of the divine law, to whom by office it belongs to teach the faithful their proper duties, when they see the precepts of nature itself generally violated. For then, to use the words of Benedict XIV in his Bull *Apostolica Constitutio*, ‘the penitent either is ignorant of crimes which nevertheless he ought to know, or is placed in those circumstances which, if the confessor dissembles, confirm the sinner in a depraved work, not without the scandal of others; since someone thinks those things are licit for himself which he observes to be practiced

⁶⁹⁶Cf. *Praxis*, n. 35, 41.

⁶⁹⁷Book VI, 629.

⁶⁹⁸Aertnys, n. 40; Konings, n. 1657.

⁶⁹⁹From an authentic copy, Angers, 21 Aug. 1878, and Seez, 19 Oct. 1880.

with impunity by those who frequent the Sacraments of the Church.’ - Hence the aforesaid confessors judge that a discreet question must be asked concerning Onanism as often as there is a founded suspicion that the penitent is addicted to this crime; they judge that the common good demands that a penitent who is only probably in good faith be admonished in open, but discreet, words; finally they judge that then only must one abstain from questioning and admonishing, unless the common good demands the contrary, when from the present circumstances of the matter it seems morally certain that the penitent is in good faith, and that the admonition will be fruitless.

“From the Responses hitherto given by the Holy See, various rules are indeed supplied, by which several doubts already pertaining to this matter are clear.

“Thus from the Response of the S. Penitentiary of 14 December 1876, given to the Rector of a Parish in the diocese of Angers, it is clear that it is not licit to favor the error of penitents, which by many is called good faith, nor to create such good faith.

“It is also clear that those confessors do not satisfy their duty who, when a penitent merely accuses Onanism, keep deep silence, and when the confession of sins has been finished, excite him to contrition with general words, and to him asserting that he detests every lethal sin, impart holy absolution.”

“It is clear, moreover, that those confessors are free from every reprehension who, keeping themselves within the limits laid down by the Roman Ritual and approved authors, as regards questions sometimes to be asked of spouses concerning the use of matrimony, ‘do not omit to reprehend any penitent whatever, whether of his own accord or from a question prudently asked, confessing onanism, not otherwise than concerning other grave sins, as much as his good seems to demand; nor do they absolve him, unless by sufficient signs he shows that he grieves concerning the past and has the purpose of no longer acting onanistically.’

“But since from the prior Responses of the Apostolic Holy See not all doubts concerning this matter are solved, and meanwhile action is taken diversely by different confessors with Onanists, not without grave detriment of souls and great sorrow of pastors; hence the aforesaid Orator reverently and confidently approaches Your Holiness, having the words of eternal life, earnestly beseeching that Your Beatitude deign kindly to give a Response to the following doubts, namely:

“I. When there is a founded suspicion that a penitent who is entirely silent concerning ONANISM is addicted to this crime, is it licit for the confessor to abstain from prudent and discreet QUESTIONING, because he foresees that several will be driven from good faith and many will desert the Sacraments? Or rather is the confessor not bound prudently and discreetly to question?

“II. Whether a confessor who, either from spontaneous confession or from prudent questioning, knows that a penitent is an Onanist, is bound to ADMONISH him concerning the gravity of this sin, equally as concerning other mortal sins, and, as the Roman Ritual says, to reprehend him with paternal charity, and to impart absolution to him then only when it is established by sufficient signs that the same one grieves concerning the past and has the purpose of no longer acting onanistically?

“The Sacred Penitentiary, considering that the unspeakable vice of which there is question in the case has widely prevailed, judged that to the proposed doubts response must be made, as it responds:

“To I. Regularly, negatively to the first part; affirmatively to the second.

“To II. Affirmatively, according to the doctrines of approved Authors.

“Given at Rome in the S. Penitentiary, on 10 March 1886.

“Card. Monaco, Major Penitentiary.

“Hip. Can. Palombi, Secretary of the S. P.”

Article II.

On The Cohabitation Of Spouses

Spouses, on account of the undivided manner of life by which they are bound to each other in turn, and on account of the mutual help which one ought to furnish to the other, are held to cohabit together, unless a legitimate cause of separation has freed them from this obligation. - Whence there is a new argument, the treatment of which we shall dispatch in few words.

§ 1. On The Obligation Of Cohabiting. 2120. Principles. I. “It is certain that spouses ARE HELD, from an obligation of justice, TO COHABIT in the same house, at table and bed.”⁷⁰⁰ - This is clear both from reason, namely from the nature of marriage, and from the words of the Lord: “A man shall leave father and mother, and shall cling to his wife” (Matt. 19:5).

Hence it is inferred: 1. “Neither spouse can depart elsewhere, against the will of the other, for a long time, unless just causes are present, namely on account of the public good, or for nourishing or protecting the family, or for avoiding harm from enemies.”

2. “If the husband had to remain elsewhere for a long time, he would be bound, if he conveniently can, to bring his wife there, so that she may cohabit with him.”
3. The wife is held, more probably, to follow the husband into exile; because she is held to suffer his misfortune. Similarly the husband is held to accompany the wife, if necessity compels her to change domicile.⁷⁰¹

2121. II. “Regularly the WIFE is held TO FOLLOW THE HUSBAND changing domicile, even if he changes without just cause, provided the cause is not foul. And this, even if somewhere there is a contrary custom, which cannot derogate from divine law, which constituted the man the head of the wife. Likewise also, if the husband departs far away and will remain there for a long time. But otherwise, if he is going to return from there shortly; for then neither is the wife held to follow the husband, nor the husband to lead the wife with him, just as neither is the husband held to lead her with him, even if he departs far away, if great expenses would be required to transport her there.”⁷⁰²

We said regularly; for “the wife is not held to follow the husband if he wishes to drag her into sin, or if the wife by departure would be exposed to grave danger of life, or to danger of grave detriment. Thus likewise the wife is not held to follow a wandering husband, unless before matrimony she knew his errant life.”⁷⁰³

IT IS ASKED. Whether it is licit for a husband not to cohabit with his wife, and to expel her from the house, ON ACCOUNT OF A DOWRY promised and not paid?

Resp. Panormitanus with others affirms; but others with Sanchez more commonly and more probably deny. - “The reason is that the obligation of cohabiting does not arise from the payment of dowry, but from the natural and divine law itself, by which the husband is held to render the debt to the wife, and therefore to live with her. - Whence authors say that even if the husband has not yet led the wife into his house, he is held to lead her there, notwithstanding that the dowry was not paid.”⁷⁰⁴

§ 2. On The Legitimate Separation Of Spouses. 2122. Principles. I. DIVORCE, or separation from bed or habitation, can be made for just causes, while the bond of marriage remains. - This is clear from Trent (sess. 24, can. 8): “If anyone shall say that the Church errs when she decrees that, on account of many causes, separation between spouses, as regards bed or as regards cohabitation, can be made for a certain or uncertain time: let him be anathema.”⁷⁰⁵

2123. II. There are very many CAUSES OF DIVORCE, or of the separation of spouses as regards bed and habitation. This is clear from different places of canon law, against some Protestants, who acknowledged adultery as the only cause of this separation. - But the CAUSES enumerated by canonists can be reduced to THREE:

1. The first and principal cause, on account of which it is licit to make divorce, and indeed perpetual divorce, is the adultery of a spouse. - This is clear both from divine law, the Lord saying (Matt. 19:9): “Whoever shall dismiss his wife, except on account of fornication, and shall marry another, commits adultery”; and from canon law, cap. *Significasti* and cap. *Gaudemus, de divortiis*. - But it is REQUIRED that the adultery be: 1) morally certain; - 2) voluntary, and not perpetrated from violence brought upon one; - 3) not condoned, whether expressly or implicitly, e.g. by the conjugal act, or by other signs, exhibited by the innocent party conscious and mindful of the adultery, with the mind, for the internal forum, of condoning; - 4) not mutual, because then compensation would exist; - 5) consummated by intercourse, as is more probable to St. Alphonsus; - 6) committed without the consent of the coparty. - And here it must be noted that, from the more common and at least extrinsically more probable opinion of

⁷⁰⁰Book VI, 939; H. A., XVIII, 51.

⁷⁰¹Book VI, 939; III, 353.

⁷⁰²Ibid., 977.

⁷⁰³Ibid.

⁷⁰⁴Book VI, 939, dub. 1.

⁷⁰⁵Cf. *Acta S. Sed.*, I, 213.

authors, under the name of adultery there is also understood every division of flesh, such as sodomy and bestiality.⁷⁰⁶ Long-lasting and injurious desertion is also customarily equated with adultery.⁷⁰⁷

We said that it is licit to make divorce; for the innocent party is not held to dismiss the guilty party, unless this is necessary for correction and amendment, or for removing scandal; and in these cases also he is excused whenever he would prudently fear grave inconvenience from it.⁷⁰⁸ Nor indeed is some adultery admitted before nuptials and afterward disclosed a sufficient cause of divorce, unless injury is inflicted on the husband from it, as would be if the wife, when she married, had already been pregnant by another; for then, as one deceived and injured, he can remove from himself, by the authority of the Church, her who contrived fraud and dishonor for him. And this same thing seems to be said if the wife had given herself to prostitution.

Authors note besides the following: 1. A juridical separation having been made, the innocent spouse is not held to receive the adulterous coparty, although amended; for “on the one hand Christ has perpetually freed him from the obligation of cohabiting with an adulterer, and on the other hand charity does not seem, of itself, to oblige to so great a burden.”⁷⁰⁹ - 2. Yet he can recall the adulterous spouse to himself, although juridically separated, because he can renounce his right; but it is scarcely to be counseled or prescribed to an adulterous woman that she return to the husband, on account of the frequent danger of bad treatment.⁷¹⁰ - 3. If after the sentence of divorce it happens that the other spouse also commits adultery, it is more probable that neither is held to return to the coparty recalling; because by the sentence of the judge each was freed from servitude. Nevertheless, the judge ought to take care that they return to each other, so that they may better provide for the salvation of their souls and remove the scandal of others.⁷¹¹

2. The second cause of divorce is some grave danger of soul or body; by reason of which danger: 1) If one of the spouses slips into heresy or apostasy from the faith, which is spiritual adultery, it is conceded to the other to institute divorce, even perpetual, after the sentence of the judge.⁷¹² 2) If a spouse draws the coparty into sin, e.g. if he solicits that one to heresy, sodomy, adultery, etc., the innocent party can depart, indeed is bound if the danger is grave.⁷¹³ 3) Finally, if from cohabitation there threatens grave danger of life or health, or if cohabitation becomes so burdensome that it is rendered morally impossible; for instance, if a spouse were compelled to suffer cruelties grave and frequent for his condition, or if the wife were expelled without cause.⁷¹⁴
3. The third cause is mutual consent. From this consent spouses separate themselves licitly from bed, or even from habitation, whether for a time or in perpetuity. - Moreover, separation from habitation in perpetuity is not customarily permitted unless each enters Religion; or at least unless, when one professes Religion or receives sacred Orders, the coparty vows chastity. But this ought not to be done inconsiderately; rather, it is required that, all things having been well weighed, every danger of incontinence be absent, and offspring not need the care of parents, etc.; for the evangelical counsels do not free human beings from the duties by which they are bound by the law of nature.⁷¹⁵

2124. Questions. QUESTION 1. By what AUTHORITY ought the separation of spouses to be made?

Resp. It is to be made, regularly speaking, by the authority of the judge, i.e. of the Bishop, whenever there is question of separation from the roof; because such separation is public and pertains to external governance; and although it remained hidden, nevertheless the authority of the Bishop would be required.

We said 1. regularly; for by private authority divorce can be made by an innocent spouse in the case of cruelty or danger of perversion, if there is danger in delay, and the judge cannot be approached, or perhaps the fact cannot juridically be proved. Likewise, it can be made by the husband, more probably, in the case of the wife's adultery, whether the adultery is public or hidden, provided it is certain and provided the separation does not bring public scandal with it. For it is said in law: “Wherever there is fornication, or suspicion of fornication, the wife is freely dismissed.”⁷¹⁶ But in the case in which he were compelled by the judge to cohabit with the adulteress, he would indeed be held to obey, but by no means to render

⁷⁰⁶Book VI, 961, 962, 966; *H. A.*, XVIII, 91, 93, 95.

⁷⁰⁷Cf. *Acta S. Sedis*, V, 12.

⁷⁰⁸Book VI, 963, 964, where there are several things; *H. A.*, *ibid.*, 94.

⁷⁰⁹Book VI, 965.

⁷¹⁰Book VI, 967; *H. A.*, 96.

⁷¹¹*Ibid.*, dub. 2.

⁷¹²Book VI, 974.

⁷¹³*Ibid.*, 973.

⁷¹⁴*Ibid.*, 970-972; *H. A.*, *ibid.*, 92; *Acta S. Sed.*, III, 136.

⁷¹⁵Book VI, 975.

⁷¹⁶Can. *Dixit Dominus*, caus. 35, qu. 1.

the debt.⁷¹⁷

We said 2. whenever there is question of separation from the roof; for spouses, from their own authority and mutual consent, can be separated from each other as regards bed, provided danger of incontinence is absent, as is clear from the words of the Apostle (1 Cor. 7:5): "Do not defraud one another, except perhaps by consent for a time, that you may give yourselves to prayer; and return again to the same, lest Satan tempt you because of your incontinence." Recall the things said in n. 2103.

QUESTION 2. After juridical divorce has been made on account of adultery, can the spouses enter RELIGION, or the man receive SACRED ORDERS?

Resp. 1. The innocent spouse can, even against the will of the adulterous party, enter Religion or receive sacred Orders.

2. The adulterous spouse cannot enter Religion, nor be initiated into sacred Orders, unless the innocent one consents, or has already himself undertaken an irrevocable state; otherwise, if he received the priesthood or entered Religion, he could be recalled by the innocent party, even after profession. Nevertheless, the tacit consent of the innocent party suffices, e.g. if the innocent one, knowing that the adulterer wishes to change state, does not impede him, though he conveniently could; or if, when asked by the adulterer, he did not wish to admit reconciliation.⁷¹⁸

QUESTION 3. After juridical divorce has been made, with which spouse are the CHILDREN to be educated, and at whose expense?

Resp. 1. Natural law being considered, all children are to be educated with the innocent spouse. Except if this one is an infidel or heretic, because then they are to be educated with the faithful spouse.⁷¹⁹ But from civil law, children are generally handed over to the one who obtained the separation, unless, on account of the greater advantage of the children, the judge has established otherwise.⁷²⁰

2. The expenses of the whole education are regularly to be paid by the spouse who is in fault. Yet always in these matters the sentence of the judge is required, by which one must stand.

2125. PRACTICAL RULES. As regards spouses who, legitimate separation not having been sought, live separated, let the parish priest or confessor attend to the following: - 1) A woman whom it is publicly clear to have been unjustly driven away by her husband is not to be barred from the Sacraments; and the husband is not to be absolved unless he restores the consortium of life with the wife. - 2) He who withdrew from the coparty by reason of notorious adultery is not to be disturbed; but the guilty party is not to be admitted to the Sacraments unless he has repaired the crime and scandal. - 3) They are to be held unworthy of absolution who, on account of a matrimony unhappily begun, e.g. mutual aversion, have separated themselves by private counsel. But, scandal having been removed, if they are in good faith and do not wish to acquiesce when admonished, they are not to be admonished concerning this.⁷²¹

Scholium.

On Civil Divorce.

2126. FROM CIVIL LAW, in force in many places, there can be had a judicial sentence of divorce or of separation from bed and from habitation, on account of various CAUSES, which are commonly enumerated as THREE, namely: 1. Adultery of the woman, and also of the man, if he kept a concubine in the house common to the spouses. 2. Cruelties or grave injuries brought by one spouse against the other. 3. Condemnation of one of the spouses to an infamous penalty.⁷²² - And here it must be NOTED that separation of bodies always imports separation of goods, but not vice versa.

Indeed, in several places, civil law permits not only that imperfect separation, or separation of habitation and goods, but also DIVORCE PROPERLY SO CALLED, namely as regards the civil bond, so that it becomes free for spouses to pass to other nuptials. And in that case, to the three causes of separation already numbered, in certain places there is added a fourth, namely mutual consent.

Wherefore it helps to report the following Documents of the HOLY OFFICE.

⁷¹⁷Book VI, 968; *H. A.*, *ibid.*, 96.

⁷¹⁸Book VI, 969; *H. A.*, *ibid.*, 97.

⁷¹⁹Book VI, 976.

⁷²⁰Cf. French Code, art. 302 sqq.; Italian, 154.

⁷²¹E. Mueller, *lib. III*, § 227, v. fin.

⁷²²French Code, art. 230 sqq.; Italian, 148 sqq.

1. Response to the Bishop of St. Gallen: "The law of the Swiss Confederation enacted concerning status and civil matrimony sanctioned that all and singular matrimonial causes, ecclesiastical jurisdiction being suppressed from now and thereafter, are to be treated in lay tribunals according to the norm which is established in civil causes; and that sentences are to be pronounced in them according to the prescriptions of common law and of the most recent enacted law, by which even marriages of Catholics can, under certain very light reasons, be perpetually severed and dissolved as regards the bond, so that litigating spouses of this kind, after the sentence of divorce of secular judges has been passed, can pass to contracting other marriages if they wish. Therefore it is asked: Whether Catholic JUDGES and ADVOCATES in lay tribunals of this kind can with safe conscience take up and defend, or know and judge, matrimonial causes? - Likewise, whether the same Catholic judges and advocates, according to the recent law of Switzerland, can with safe conscience propose the bond of matrimony as to be dissolved, or declare it as dissolved, and also declare that spouses of this kind can pass to contracting another marriage, just as civil law in this case expressly commands and urges judges to judge and declare?"

In discussing this question, it must not be forgotten that the secular tribunals, whose office it is to judge concerning civil causes, are the same tribunals to which by the new law it belongs to know and judge matrimonial causes. But if, therefore, Catholic judges were forbidden to sit in tribunals of this kind, we would experience, to the great harm of citizens, that those tribunals are deprived of those judges who, filled with the fear of God, judge piously and justly.

But the Sacred Congregation, on Wednesday, 3 April 1878, responded: "As regards Judges, let him recur in particular cases. - As regards advocates, let the responses already given to the Bishop of Southwark be given, namely Tuesday, place IV, on 22 May 1860, to the DOUBT: whether a Catholic advocate can defend the causes of the party brought to trial, against an actor seeking dissolution of the bond? The Response was: 'Provided that it is established to the Bishop concerning the probity of the advocate, and provided that the advocate does nothing which deflects from the principles of natural and ecclesiastical law, it can be tolerated.' And to the other DOUBT: whether it is licit to act the parts of advocate and actor, when the end of the lawsuit is simple separation, without any sentence drawing with itself the nullity of matrimony? The Response was: 'Provision has been made in the preceding'; and on Wednesday, 19 December of the same year: 'provided the Catholic party can approach no other tribunal from which he may obtain a sentence of separation as regards bed and table, and provided the sentence of this tribunal has no other effect than the aforesaid separation, it can be tolerated that Catholics, in that forum, act the parts of actor and advocate, and provided just causes of separation are present, in the judgment of the Bishop; and if besides he has anything of doubt, let him recur, setting forth all the circumstances and dispositions of the law.' J. Velamie, Notary of the Holy Roman and Universal Inquisition."⁷²³

2. Letter to all Ordinaries in French territory: "After the recently restored laws of divorce among the French in the year 1884, several doubts were proposed by some Bishops of France to this Holy Roman and Universal Inquisition: namely whether it would be lawful for lay judges in causes concerning the separation of spouses to declare law, whether concerning the bond or concerning habitation only; whether for advocates and procurators to conduct causes of this kind before lay judges; whether for those to whom by law it pertains to appoint the official defenders, as they call them; finally, whether for syndics, commonly *maires*, to pronounce divorce.

"The Most Eminent Fathers, General Inquisitors together with me, after the matter had been maturely weighed, on Thursday, place IV, on 25 June 1885, judged that it should be decreed thus:

"Considering the most grave adjuncts of things, times, and places, it can be tolerated that those who hold magistracies and advocates conduct matrimonial causes in France without being held to resign their office, provided they openly profess Catholic doctrine concerning matrimony and concerning matrimonial causes as pertaining to ecclesiastical judges alone, and provided they are so disposed in mind, both concerning the value and nullity of marriage and concerning the separation of bodies, about which causes they are compelled to judge, that they never pronounce a sentence, nor defend one to be pronounced, nor provoke or excite one contrary to divine or ecclesiastical law; and in doubtful or more difficult cases, let each approach his Ordinary, direct himself by his judgment, and, insofar as there is need, recur through his mediation to the Apostolic Penitentiary."

"The Most Holy Father held this decree ratified; and therefore it is made known to all Archbishops and Bishops in France for their norm, by these letters which otherwise are not to be published. R. Card. Monaco."

3. Decree for excluding false interpretations of the preceding Letter:

"By some Bishops of France the following doubts were proposed to the Holy Roman and Universal Inquisition: 'In the Letter of the Holy Roman and Universal Inquisition of 25 June 1885 to all Ordinaries in French Territory concerning the law of civil divorce, it is decreed thus: Considering the most grave adjuncts of things, times, and places, it can be tolerated

⁷²³In Aug. de Roskovany, *Matrimonium in Eccl. Catholica*, tom. IV, p. 64.

that those who hold magistracies and advocates conduct matrimonial causes in France without being held to resign their office'; it added conditions, of which the second is this: 'Provided they are so disposed in mind, both concerning the value and nullity of marriage, and concerning the separation of bodies, about which causes they are compelled to judge, that they never pronounce a sentence, nor defend one to be pronounced, nor provoke or excite one contrary to divine or ecclesiastical law.' It is asked:

I. 'Whether the interpretation diffused throughout France and also printed is correct, according to which the judge satisfies the aforesaid condition who, although some matrimony is valid before the Church, entirely abstracts from that true and constant matrimony, and by applying civil law pronounces that there is place for divorce, provided he intends in mind to break only the civil effects and only the civil contract, and the terms of the pronounced sentence regard only those things? In other terms, can the sentence thus passed be said not to be contrary to divine or ecclesiastical law?

II. 'After the judge has pronounced that there is place for divorce, can the Syndic, in French, *le maire*, also himself intending only the civil effects and only the civil contract, as is set forth above, pronounce divorce, although the matrimony is valid before the Church?

III. 'After divorce has been pronounced, can the same Syndic civilly join with another the spouse attempting to pass to other nuptials, although the prior matrimony is valid before the Church and the other party is living?'

"Thursday, place IV, on 27 May 1886. In the General Congregation of the Holy Roman and Universal Inquisition held before the Most Eminent and Most Reverend Lords, Cardinals of the Holy Roman Church, General Inquisitors, the above-written doubts having been proposed, and the Vote of the Lord Consultors having been had beforehand, the same Most Eminent and Most Reverend Lords ordered that response be made: To the first, second, and third doubt, Negatively.

"On the same weekday and day, report having been made concerning these things to Our Most Holy Lord Pope Leo XIII, His Holiness approved and confirmed the resolutions of the Most Eminent Fathers. Jos. Mancini, Notary of the Holy Roman and Universal Inquisition."

It seems useful also to add these decisions of the S. PENITENTIARY:

1. Response to a certain Bishop of Italy: "Most Reverend Lord. I have reported to the Eminent Major Penitentiary what you write concerning a certain Syndic of your diocese, who by force of his office would have to assist at the civil matrimony of someone already bound by another matrimony celebrated in the face of the Church; and I must, at the command of the aforesaid Eminent Penitentiary, signify to you that the aforesaid syndic can by no pact furnish his work to an act which is so greatly opposed to the sanctity of matrimony. Therefore, whatever the circumstances of the case may be, he ought altogether to deny his assistance, even though it would happen that for this reason he would be compelled to resign his office.

"From the S. Penitentiary, 28 Nov. 1883. Luigi Martini, Substitute of the S. P."

2. Instruction to the Bishops of Italy, of 29 March 1885.

Q. Whether a CIVIL OFFICIAL can both assist at matrimony which they call CIVIL, and prepare and draw up the legal instrument of the same matrimony, although true matrimony did not precede, indeed although there is suspicion or even certainty that it will by no means be celebrated before the Church?

"R. It can be tolerated, provided civil officials in drawing up acts of this kind intend to exercise a merely civil ceremony, and perform or advise nothing against the sanctity of matrimony and the necessity of contracting it before the Church; indeed let them exhort to contracting it before the Church herself, having before their eyes the most holy laws of our religion and the letters of Benedict XIV, *Redditae sunt Nobis*, concerning which, for removing scandal, let them admonish the contracting parties. - But as regards the cases in which it appears that the faithful, approaching the civil ceremony, are badly disposed, and are not going to celebrate matrimony, which regularly ought to have been premised, before the Church, but are going to persist in concubinage under the pretext of a civil contract, the officials themselves are to be directed according to the rules handed down by approved authors, and especially by ST. ALPHONSUS DE LIGUORI (Lib. 2, tr. 3, cap. 2, dub. 5, art. 3), concerning cooperators."⁷²⁴

From these things you will resolve: - 1. Matrimonial causes look only to the ecclesiastical forum, and therefore cannot, unless the Church permits this, be brought to the civil forum; thus from the constant doctrine of the Church.

2. The Church indeed permits, in various regions, that causes of this kind be treated in the civil forum, but always under the condition that nothing be done which is contrary either to divine or to ecclesiastical law.

⁷²⁴ *Monit. eccles.*, Vol. 4, P. I, p. 274.

3. Where legitimate and canonical causes of divorce are had (cf. n. 2123), spouses can seek separation of habitation and goods, advocates can promote it, and judges can pronounce it. Nor indeed is it licit for spouses to bring the cause to the civil forum before it has been defined by the ecclesiastical judge, since it looks to this judge alone to judge whether sufficient motives of separation are present. Nevertheless, if the spouses, the ecclesiastical judge having been passed over, present themselves to the civil judge, this judge can, on account of grave reasons, know their cause, and, the motives being just, pass a sentence of separation.
4. Divorce as regards the bond of matrimony contracted only civilly can be both sought and pronounced in the civil forum, as is clear. The same must be said concerning matrimony indeed before the Church, but invalidly contracted, provided that the sentence of the ecclesiastical forum concerning the invalidity of the matrimony has preceded.
5. The sentence of divorce by which the bond of a validly contracted matrimony is declared dissolved can neither be sought by spouses nor promoted by advocates. For actors in such a cause seek a thing manifestly unjust and impious. - Nor is it licit for the judge to pronounce a sentence of divorce, even if, while he pronounces it, he intends to abstract from true matrimony and to break only the civil contract, nor do the terms of the pronounced sentence regard anything else.

But whether this is licit if he openly manifests this mind of his and professes the true doctrine of the Church concerning matrimony, there are not lacking those who still move controversy. But to us it seems that it must altogether be denied. The reason is that the sentence of the judge, as regards its being and as regards its effects, depends in no way on his intention or on the declaration of intention, but on the law which he applies. Whence a sentence of divorce, whether the judge wishes it or not, is of itself, not otherwise than the law of divorce itself, evil and iniquitous, and it furnishes help and support to iniquity.

6. Whether a civil official can join by civil rite persons if one of them or each is already bound by the bond of true matrimony, there is not yet one opinion of all; nevertheless, from the above-cited document of the S. Penitentiary, it seems to be denied. But he can, on account of most grave reasons, assist at the civil matrimony of those who are held to be badly disposed, even if he foresees that matrimony will not be celebrated before the Church.⁷²⁵

⁷²⁵Cf. concerning these things: Bucceroni, S.J., *Enchiridion morale*, App. Commentarius tertius; *Nouv. Rev. theol.*, tom. XVIII, p. 473 sqq.; *Monitore eccles.*, loc. cit.