PASTORAL QUESTIONS

VII

On the Sacrament of Matrimony: A Pastoral Treatise

Proposed for the benefit of the clergy

by Fr. Ceslaus-M. Salmon, O.P.

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To the Benevolent Reader

After the pastoral questions concerning the Sacraments of Baptism and Penance, learnedly and lucidly arranged by R. P. Merkelbach, O.P., our purpose is to attempt a similar work concerning the sacrament of matrimony, so that the pastoral treatise on the sacraments may thus be completed. The office of pastoral theology is wholly practical, since its proximate end is to guide pastors of souls in fulfilling their office faithfully, prudently, and with spiritual fruit. Therefore in this treatise concerning the sacrament of matrimony our scope will be above all practical: namely, to provide parish priests and confessors, and also young men who are being taught the pastoral art, with brief, clear, certain, and, so far as possible, complete notions concerning matrimonial matters insofar as these concern them. We cannot, indeed, pass over the dogmatic part altogether, since it exists in great part as the principle and source of matrimonial legislation. But it will be enough for us briefly to indicate the theses which pertain to that part. We have also judged it better to abstain from enumerating individually the authors who favor or oppose this or that opinion. Thus we believe that we are serving brevity and lucidity. The reader will at once notice, by scanning the index with his eyes, that we have omitted those things which pertain to the conjugal debt and the sins of spouses. The reason is that R. P. Merkelbach, in the excellent book *Concerning Chastity and Lust*, which was the first published among the *Pastoral Questions*, has arranged that matter very well. It was proper for us to refer the reader to his work, lest we do again what has already been done.

Chapter I: Concerning the Nature of Matrimony

Article I: The Notion of Matrimony

1. ○ I. Definition.

a) The same name "matrimony" designates two things, connected indeed, since one is the cause of the other, but truly diverse. For it is necessary to distinguish matrimony *in fieri* and matrimony *in facto esse*, which differ from one another as a transitory action differs from the permanent effect which that action produces.

b) Matrimony *in fieri* is an entirely singular contract, and at least in some manner sacred,[1] by which a man and a woman legitimately hand over to each other the exclusive and perpetual right over the body, in order to acts of themselves apt for generation.

[1] Leo XIII, *Arcanum*, 10 February 1880.

Matrimony *in facto esse* is the perpetual bond produced from the matrimonial contract, which joins the man and the woman into one society of life for fulfilling conjugal offices.

c) Those definitions are valid for every matrimony. But our Savior has raised the matrimony of the baptized to the dignity of a sacrament of the New Law, so that it is unlawful to distinguish in Christian matrimony the contract and the sacrament as two things; rather, the contract itself is the sacrament.

2. ○ II. Essence of matrimony.

a) Although the mutual right to carnal union is the formal object of matrimonial consent, nevertheless the union itself as exercised does not in any way pertain to the essence of matrimony. For there was a true matrimony between Adam and Eve while they were still dwelling in Paradise; likewise there was a true matrimony of the Blessed Virgin Mary with St. Joseph; and nevertheless in neither case did carnal union intervene.

Moreover this is the perpetual and certain doctrine of the Fathers and Theologians.

b) The essence of matrimony *in fieri* consists in mutual consent outwardly manifested, by which a man and a woman mutually hand over and accept the mutual, exclusive, and perpetual right over the body, in order to acts of themselves apt for generation.

If such a right is not conferred, there is no matrimony, since that right is the formal object in the matrimonial contract.

c) The essence of matrimony *in facto esse*, or the matrimonial state, consists in the perpetual obligation of the spouses to render mutually to each other the offices which are owed from the legitimate matrimonial contract.

3. ○ III. Division of matrimony.

Matrimony can be distinguished in many ways:

a) Into legitimate, ratified, ratified and consummated.

That is called legitimate which is "matrimony validly celebrated between non-baptized persons" (can. 1015, § 3).

That is called ratified which is "a valid matrimony of baptized persons... if it has not yet been completed by consummation" (can. 1015, § 1).

"Ratified and consummated, if between the spouses there has taken place the conjugal act, to which by its nature the matrimonial contract is ordered and by which the spouses become one flesh" (ibid.).

b) Into public, secret, and clandestine.

It is public when it is celebrated in the face of the Church and in the form established by the Church, whether for the ordinary case or for extraordinary cases.

Secret matrimony, or matrimony of conscience, is indeed celebrated in the form prescribed by the Church, but is kept hidden, with the proclamations and registration in the parish books omitted.

Clandestine matrimony is one which is celebrated outside the form prescribed by the Church, namely, without the intervention of the parish priest or Ordinary or delegated priest and two witnesses in ordinary cases, or at least of two witnesses in extraordinary cases.

As will be explained more fully below, clandestine matrimony is always invalid, unless it is a question of matrimony of unbelievers, or of those baptized or educated outside the Catholic Church and never converted to it, when they contract among themselves, or also unless there has been a legitimate dispensation from the form of celebrating matrimony.

c) Into valid, invalid, putative.

It is valid when all the conditions required for validity are fulfilled.

It is invalid when some condition necessary for validity is lacking.

It is called putative when it is "an invalid matrimony..., if it was celebrated in good faith by at least one party, until each party becomes certain of its nullity" (can. 1015, § 4).

4. ○ IV. Goods of matrimony.

Three goods of matrimony are assigned, which honor the conjugal state and make it supernaturally meritorious, and which are customarily expressed in these words: offspring, fidelity, sacrament.

a) Offspring, i.e., "to be received and educated for the worship of God."

b) Fidelity, "which one spouse ought to preserve for the other."

c) Sacrament, i.e., "the indivisibility of matrimony, because of this, that it signifies the indivisible union of Christ and the Church" (Council of Florence, Decree for the Armenians. Denz. n. 702).

As we shall see below, a matrimony is invalid in which there has been attached a condition excluding one of these essential goods of matrimony.

5. ○ V. Ends of matrimony.

"The primary end of matrimony is the procreation and education of offspring; the secondary end is mutual aid and a remedy for concupiscence" (can. 1013, § 1).

It is licit to contract matrimony while intending the secondary end, even if the primary end cannot be obtained.

6. ○ VI. Matrimonial legislation.

a) Divine law, whether natural or positive, governs all matrimony, even of unbelievers, unless nevertheless there is question of matrimony as sacrament.

The reason is evident: all men are subjects of God.

b) The matrimony of the baptized is governed besides by ecclesiastical law.

Nor are heretics and schismatics exempt from that law, because baptism makes them subjects of the Church, unless insofar as the Church intends and declares them to be exempt.

c) The matrimony of non-baptized persons, if they contract among themselves, is not subject to ecclesiastical law, since they do not depend upon the Church.

d) If, however, an unbeliever contracts with a baptized person, he is subject to ecclesiastical law by reason of the other party.

e) The civil power has no right of establishing diriment or prohibiting impediments with respect to the baptized, "saving the competence of the civil power concerning the merely civil effects of the same matrimony" (can. 1016).

f) More probably, the civil power has the right of establishing impediments, even diriment impediments, for the marriages of unbelievers, if they contract among themselves.

g) No right seems to belong to the civil power for establishing impediments when an unbeliever contracts with a baptized party.

Article II: Concerning the Properties of Matrimony

7. ○ "The essential properties of matrimony are unity and indissolubility, which in Christian matrimony obtain a peculiar firmness by reason of the sacrament" (can. 1013, § 2).

§ 1. Concerning the Unity of Matrimony

8. ○ I. The unity of matrimony consists in this, that one man is joined to one woman. It excludes both polyandry, i.e., the simultaneous plurality of husbands, and polygamy, namely, the simultaneous plurality of wives, but by no means second or further marriages after the death of the spouse.

II. Simultaneous polyandry is plainly condemned by the natural law, since it is directly contrary to the primary end of matrimony, namely, the generation and education of offspring. For experience teaches

that women habitually known by several men are rarely fruitful, and moreover polyandry, by rendering paternity uncertain, would deprive the offspring of the care and assistance of the father.

III. Polygamy is not thus opposed to the natural law, since one man suffices for making several women fruitful and for caring for the education of the offspring received from them. And in fact God granted the patriarchs permission to use polygamy. Nevertheless a plurality of wives does not sufficiently provide for the good of peace among spouses, nor does it preserve the equal right of man and woman in the asking of the conjugal debt. And therefore theologians say that polygamy is opposed to the secondary natural law, whose office is to prescribe those things which are necessary not for simply being, but for being well and better.

Christ restored the matrimonial institution to its first purity and unity, and thereafter it is licit for no man, even a gentile, to have several wives at the same time; and, if such marriages are attempted, they are plainly invalid.

§ 2. Concerning the Indissolubility of Matrimony

9. ○ Notion.

I) a) Indissolubility is the property of matrimony by which the matrimonial bond is not dissolved, except by the death of either spouse.

b) That property belongs to every matrimony, both natural and Christian, with a certain qualification, however, as we shall say at once.

c) The Mosaic law admitted a bill of repudiation, by which the matrimonial bond was dissolved and power was given to the repudiated wife of entering a new marriage. But here also the Savior restored for all men the first indissolubility of matrimony.

10. ○ II) In what sense matrimony is indissoluble.

a) "Valid matrimony that is ratified and consummated can be dissolved by no human power and by no cause, except death" (can. 1118).

This doctrine is certain by faith, since the Council of Trent defined thus: "If anyone says that the Church errs when she has taught and teaches, according to evangelical and apostolic doctrine (Mark 10; 1 Cor. 7), that because of adultery by one of the spouses the bond of matrimony cannot be dissolved, and that neither party, nor even the innocent party who gave no cause for the adultery, can, while the other spouse is living, contract another matrimony, and that he commits adultery who, after dismissing the adulteress, marries another, and she who, after dismissing the adulterer, marries another: let him be anathema."[1]

[1] Sess. XXIV, *De sacramento matrimonii*, can. 7. Denzinger-Bannwart, n. 977.

This alone was the reason why the Fathers abstained from directly defining as a dogma of faith that doctrine concerning the absolute indissolubility of matrimony ratified and consummated, lest they offend the Greek schismatics, who follow the contrary practice and admit the dissolution of the bond because of adultery by one of the spouses.

11. ○ b) "Matrimony not consummated between baptized persons or between a baptized party and a non-baptized party is dissolved both by the law itself through solemn religious profession, and by dispensation granted by the Apostolic See for a just cause, at the request of both parties or of either party, even if the other is unwilling" (can. 1119).

Therefore matrimony ratified and not consummated can be dissolved in two ways:

1°) By the law itself through solemn religious profession of either spouse. For thus speaks the Council of Trent: "If anyone says that matrimony ratified but not consummated is not dissolved by the solemn religious profession of either spouse: let him be anathema."[2]

[2] Ibid., can. 6. Denz.-Bannwart, n. 976.

Solemn profession has place only in Orders strictly so called, but not in religious Congregations. In France, Belgium, and Holland very few monasteries of women pronounce solemn vows.

2°) Through dispensation granted by the Supreme Pontiff. The practice of the Church from the time of Martin V has rendered that right of the Pontiff so certain that it cannot be denied without the note of temerity.

12. ○ c) "Legitimate matrimony between non-baptized persons, although consummated, is dissolved in favor of the faith by the Pauline privilege" (can. 1120, § 1).

1. The Pauline privilege is so called because it is drawn from the words of the Apostle, 1 Cor. 7:12-15: "For to the rest I speak, not the Lord: If any brother has an unbelieving wife, and she consents to dwell with him, let him not put her away; and if any woman has an unbelieving husband, and he consents to dwell with her, let her not put away her husband.... But if the unbeliever departs, let him depart; for the brother or sister is not subject to servitude in such things; but God has called us in peace."

2. After Innocent III, who first gave the authentic interpretation of the words of the Apostle, the Church understands this privilege thus: if one of the spouses is converted to the faith and receives baptism, while the other perseveres in his unbelief, the converted party has the right of entering a new matrimony with one of the faithful, provided that there are grave reasons for departure indicated by law, and that, in addition, the due interrogation of the unbelieving party by the faithful party has preceded.

13. ○ 3. Concerning this privilege the following things are to be carefully noted:

1°) "It does not obtain in matrimony entered between a baptized party and a non-baptized party with dispensation from the impediment of disparity of cult" (can. 1120, § 2).

2°) A threefold case gives place to entering new nuptials:

a) if the unbelieving party departs, even inculpably.

b) if he refuses to cohabit peacefully with the converted party.

c) if he does not consent to cohabit except with dishonor to the Creator, e.g., by retaining concubines, by tempting the spouse to grave sins, etc.

3°) There is no place for the privilege if the converted party "after baptism himself gave the non-baptized party a just cause for departing" (can. 1123).

4°) "§ 1. Before the converted and baptized spouse validly contracts a new matrimony, he must... interrogate the non-baptized party:

1. whether she too wishes to be converted and receive baptism;

2. whether at least she wishes to cohabit peacefully with him without dishonor to the Creator.

§ 2. These interrogations must always be made, unless the Apostolic See has declared otherwise" (can. 1121).

5°) "§ 1. The interrogations are regularly to be made at least in summary and extrajudicial form, by the authority of the Ordinary of the converted spouse; by which Ordinary there are also to be granted to the unbelieving spouse, if indeed she has asked for them, delays for deliberation, with this warning, however, that if the delays pass uselessly, the response is presumed negative.

§ 2. Interrogations made even privately by the converted party himself are valid, indeed are licit, if the form prescribed above cannot be observed; nevertheless in this case, for the external forum, they must be established by at least two witnesses or by another legitimate mode of proof" (can. 1122).

6°) The aforesaid interrogation is indeed altogether necessary, except in the case of a dispensation granted by the Roman Pontiff alone or by his delegate. But it is not altogether established that a matrimony celebrated without the due interrogation or its dispensation is null, if otherwise there is proof of the true departure of the unbelieving party.[3]

[3] Dom. Prummer, O.P., *Manuale Theologiae Moralis*, t. III, second and third edition, p. 469.

7°) "The faithful spouse, although after receiving baptism he has again lived matrimonially with the unbelieving party, nevertheless does not lose the right of celebrating new nuptials with a Catholic person, and therefore can use this right, if the unbelieving spouse, having changed will, afterward departs without just cause, or no longer cohabits peacefully without dishonor to the Creator" (can. 1124).

8°) "The bond of the former marriage, contracted in unbelief, is dissolved only then when the faithful party has actually entered validly into new nuptials" (can. 1126).

9°) "In a doubtful matter the privilege of the faith enjoys the favor of law" (can. 1127).

10°) Against a few, it seems certain that the Pauline privilege also benefits those who, having been converted from unbelief, are validly baptized in a non-Catholic sect.

14. ◦ d) Whether the Supreme Pontiff is able to dispense concerning matrimony contracted in unbelief when one or both parties are converted to the faith?

R. 1° It is certain that the Pope can dispense, if the matrimony was never consummated.

2° More probably, the Supreme Pontiff can dissolve the bond of a legitimate matrimony even consummated, which nevertheless after both spouses have been baptized has not again been consummated.

Thus Prummer,[4] who adds: "Thus is the common opinion among moderns." A twofold argument is brought forward in favor of this opinion:

[4] Ibid., p. 471.

1°) Intrinsic: Such a matrimony is not ratified and consummated, because before baptism it was not ratified; but only the bond of Christian matrimony ratified and consummated is altogether indissoluble.

2°) Extrinsic: The Constitutions of St. Pius V, *Romani pontificis*, 2 August 1571, and of Gregory XIII, *Populis*, 25 January 1585, seem to proceed beyond the limits of interpreting the Pauline privilege and to grant a true dissolution of the matrimonial bond; these Constitutions the Code of Canon Law extends to all regions, in the same circumstances (can. 1125).

3° It is certain that no place is given to dispensation if the matrimony has been consummated after the baptism of both.

Article III: Concerning Matrimony as Sacrament

15. ○ The existence of the sacrament of matrimony.

There is no reason for us to linger in establishing the existence of the sacrament of matrimony, since doing this pertains to the office of dogmatic theology. In this practical treatise let it suffice to remember that the Council of Trent strikes with anathema him who says: "That matrimony is not truly and properly one of the seven sacraments of the evangelical law instituted by Christ the Lord, but was invented by men in the Church, and does not confer grace,"[1] and hence that the existence of the sacrament of matrimony is a defined dogma of the Catholic faith.

[1] Sess. XXIV, *De sacramento matrimonii*. Denz.-Bannwart, n. 971.

In this article we shall treat: 1°) of the matter, form, and minister; 2°) of the subject of this sacrament.

§ 1. Concerning the Matter, Form, and Minister of the Sacrament of Matrimony

16. ○ I. In this sacrament the matter and form do not differ from the matter and form of the matrimonial contract, since the contract itself has been raised by Christ to the supernatural dignity of a sacrament.

17. ○ II. The remote matter of the sacrament in matrimony is the persons contracting, or the mutual right over the body of the other in order to generation.

For in any contract, the remote matter is called the thing concerning which stipulation is made. But in the matrimonial contract a pact is made concerning the mutual right over bodies in order to generation.

18. ○ The proximate matter is the signs or words insofar as they express the reciprocal handing over of the right over bodies.

Thus the opinion far more common. For in every contract the proximate matter is the handing over of the thing.

19. ○ III. The form is the mutual acceptance of this handing over, outwardly manifested. It is the common and certain opinion. In the matrimonial contract, as in other contracts, the acceptance of the thing handed over is considered as form.

20. ○ IV. The minister of the sacrament of matrimony.

Melchior Cano, O.P., the famous theologian, taught that the priest is the minister of the sacrament of matrimony; that the words, *I join you*, are the form; but that the matter is the mutual consent of the contracting parties.[1]

[1] *De locis theologicis*, book 8, ch. 5, in solution to 3.

And although many and great theologians have defended the opinion of Cano, nevertheless today it is commonly admitted that the contracting parties themselves are the ministers of the sacrament. And in fact it is certain that the marriages of baptized persons can sometimes be celebrated validly and even licitly without the intervention of a priest, and that such matrimony is a true sacrament.

Therefore not the priest, but the contracting parties themselves, are the ministers of this sacrament.

§ 2. Concerning the Subject of the Sacrament of Matrimony

21. ○ I. All baptized persons contracting among themselves and laboring under no impediment are a subject capable of a valid sacrament of matrimony.

Not only Catholics, but also heretics and schismatics or apostates, cannot contract valid matrimony without by that very fact receiving the sacrament of matrimony, provided that they are truly baptized and contract with a baptized person.

This is altogether certain and admitted by all.

"§ 1. Christ the Lord raised the matrimonial contract itself between baptized persons to the dignity of a sacrament.

§ 2. Therefore between baptized persons there cannot be a valid matrimonial contract without its being by that very fact a sacrament" (can. 1012).

22. ○ II. The worthy and fruitful reception of the sacrament of matrimony besides requires that the spouses be free from every prohibiting impediment and endowed with the state of grace.

For the sacrament of matrimony is a sacrament of the living, which therefore is received sacrilegiously if the soul is not living by the supernatural life of grace. Nevertheless sacramental grace in matrimony more probably revives afterward, when the obstacle of sin is removed by sincere conversion.

23. ○ III. Valid matrimony between a baptized person and an unbelieving party is not a sacrament, not even on the part of the faithful one.

Although many contradict it, this opinion seems certain. "For matrimony," says the Angelic Doctor, "cannot limp."[1] If the matrimonial contract is invalid on one side, it must necessarily be invalid also on the other side. Similarly, if the sacrament is lacking on one side, neither is it present on the other side. But no one doubts that an unbelieving party is incapable of the sacrament. Therefore neither does the baptized party receive the sacrament.

[1] *Supplementum*, q. 47, a. 1.

"But the opinion of the adversaries seems to have arisen from this, that in the sacrament they see nothing other than the exterior rite by which grace is immediately conferred; for certainly, as to receiving sacramental grace, each of the spouses is entirely independent of the other party, and the condition of one cannot impede the gratification of the other. But if you keep before your eyes that grace is not conferred except through the mediation of the sacramental bond, and that the sacramental bond itself is the sole immediate exterior effect of the sacrament, then there will not be even a doubtful matter for you. For the bond is a certain relation between two, and indeed a relation of equiparance of the same account in each; therefore, if one is absolutely incapable of the sacramental bond because of the defect of baptism, the other, although baptized, seems likewise incapable of a sacramental nexus, not absolutely indeed, but with respect to the non-baptized person. Therefore there is no sacrament there, where no sacramental effect can either exist or be conceived."[2]

[2] Billot, S.J., *De Ecclesiae Sacramentis. De matrimonio*, thesis 38, apud Prummer, op. cit., p. 444.

24. ○ IV. If of two non-baptized spouses only one is baptized, that matrimony does not become a sacrament, even for the baptized party.

The same reason is valid here as for establishing the preceding opinion.

But it is astonishing here that almost no one contradicts it. Truly, they do not dare, because such a matrimony, even if after the baptism of one party it has been consummated, remains liable to dissolution by the Pauline privilege or even by pontifical dispensation, as was said above nn. 13, 7° and 14, 2°; and it is entirely unheard of that a matrimony which is a sacrament should be dissolved after consummation. But is there not here a new and valid argument in favor of the preceding thesis? For why does the matrimony previously legitimate not become, for the converted party, a sacramental bond, as it does when both spouses are baptized, unless because "matrimony cannot limp?"

25. ○ V. If both spouses are converted and baptized, their matrimony by that very fact becomes a sacrament.

It is the more common opinion, which few contradict.

Chapter II: Concerning Matrimonial Consent in Particular

As is plain from what has been said, matrimonial consent is a matter of the greatest moment, since it constitutes matrimony itself in its becoming, and exists as at once the matter and form of the sacrament of matrimony. And therefore it is necessary to treat consent more accurately. In the present chapter there must be treated successively, in distinct articles: 1) concerning the qualities of valid consent; 2) concerning the vices of consent.

Article I: Concerning the Qualities of Matrimonial Consent

26. ◦ I. In order that it be sufficient for valid matrimony, matrimonial consent must be: true and internal, free, mutual and simultaneous, concerning the present, externally manifested.

a) True and internal: namely, it is necessary that the will of the contracting parties sincerely intend to undertake the matrimonial obligations.

b) Free: i.e., immune from error, force, and grave fear, and offered with sufficient knowledge and deliberation.

c) Mutual and simultaneous: since matrimony is a bilateral contract, from its very nature it requires the consent of both persons about to marry. There is also required, as in civil contracts, at least the moral simultaneity of each consent.

d) Concerning the present: for consent concerning the future effects betrothal, not a matrimonial contract.

e) Externally manifested: for who can conceive a merely internal bilateral contract?

Any external and certain manifestation of consent suffices for validity. But the Church commands that words be employed.

"The spouses are to express matrimonial consent by words; nor is it lawful for them to employ equivalent signs, if they can speak." (Can. 1088 § 2.)

27. ◦ II) Matrimony by an interpreter.

"Matrimony can also be contracted by an interpreter." (Can. 1090.)

For liceity alone there is required a just cause and, if time allows, the license of the Ordinary. Moreover it is necessary that in no way should it be lawful to doubt the trustworthiness of the interpreter. (Can. 1091.)

28. ◦ III) Matrimony by a procurator.

Both validly, and licitly from a just cause, matrimony can be contracted by a procurator. This is clear from can. 1088 § 1 and can. 1089.

For the validity of matrimony of this kind there is required:

a) A special mandate to contract with a certain person (from natural law), signed by the mandator and either by the pastor or the Ordinary of the place in which the mandate is made, or by a priest delegated by either of them, or by at least two witnesses.

If the mandator does not know how to write, or is not able to write, this is to be noted in the mandate itself, and another witness is to be added who also signs the writing. Otherwise the mandate is void. All these things are from ecclesiastical law.

b) That the mandator, before matrimony has been contracted in his name, has not revoked the mandate, or fallen into insanity, even though this was unknown to the procurator or to the other party. (From natural law.)

c) That the procurator himself personally fulfill the office. (Can. 1089.) (From ecclesiastical law.)

For liceity the law prescribes:

a) That diocesan statutes perhaps existing concerning this matter be observed.

b) That a just cause be present.

c) That, if time allows, the license of the Ordinary of the place be had.

d) That the pastor should always be certain concerning the authenticity of the mandate. (Can. 1089 § 1. - Can. 1091.)

29. ◦ IV) Matrimony by letters.

It is altogether invalid, from ecclesiastical law, since the law decrees: "For matrimony to be contracted validly, it is necessary that the contracting parties be present, either personally or by procurator." (Can. 1088 § 1.)

Article II: Concerning Those Things Which Can Vitiate Consent

30. ◦ Matrimonial consent is essentially an act of the will; but, as is plain, it supposes a previous act of the intellect. For nothing is willed unless it is first known. Wherefore matrimonial consent can be impeded both by causes which stand in the way of the full knowledge of the mind, and by those which directly influence the will.

On the part of the intellect, defect of reason, ignorance, and error can vitiate consent; on the part of the will, simulation, an appended condition, force or fear. Concerning each of such sources of invalid consent we must now treat.

§ 1. Defect of Reason and Ignorance

31. ◦ I. Defect of the use of reason.

a) Those who actually are not masters of reason, such as: infants, the completely intoxicated, those sleeping, the hypnotized, and also the insane, i.e., those who are mad regarding all things, contract matrimony invalidly. The reason is evident, because they are incapable of human acts.

b) What concerning the demented, i.e., those who are mad regarding some matter?

Resp. Most certainly they contract invalidly if they are mad precisely concerning matrimony. Otherwise, in practice, their matrimony will often be doubtful.

32. ○ II) Ignorance.

"In order that matrimonial consent can be had, it is necessary that the contracting parties at least not be ignorant that matrimony is a permanent society between a man and a woman for procreating children." (Can. 1089 § 1.)

a) Therefore one contracts invalidly who does not know that matrimony consists in the mutual handing over and acceptance of a right over the body in order to generation.

Certainly there is not required a precise and exact knowledge of the mode by which conjugal intercourse occurs, but it is necessary that the contracting parties know that children are generated through joined bodies, or at least that "by a certain concurrence and familiarity of the parents offspring is obtained, and is brought forth by the mother."[1] Otherwise knowledge concerning the formal object of the contract is lacking, and consequently consent into it.

[1] Vermeersch, *Theologia Moralis*, t. IV, n. 39.

b) In the external forum, ignorance concerning the essence of matrimony is presumed before puberty; after puberty, however, knowledge is presumed. (Can. 1081 § 2.) Yet that presumption is only of law, namely admitting proof to the contrary.

c) Any other ignorance whatsoever, besides that which regards the essence of matrimony, does not make matrimony invalid, even if, had it not existed, matrimony would never have been contracted.

§ 2. Error

33. ○ I) Notion.

Error in general is a false judgment.

In matrimonial consent a manifold error can be found:

a) Error of law: it regards the nature, properties, and essential goods of matrimony.

Error of fact: it regards some fact.

b) Vincible error: i.e., one which can easily be removed.

Invincible error: i.e., one which in no way, or only with difficulty, can be removed.

c) Substantial error: i.e., one which regards the contracting person or the essentials of matrimony.

Accidental error: i.e., one which is borne toward the qualities of the person.

d) Antecedent error: i.e., one which is such that, once the truth was known, the contract would not have taken place.

Concomitant error: i.e., one which is such that, even once the truth was known, matrimony would likewise have been contracted.

II) What error renders matrimony invalid, and what error does not.

A. Error of fact.

34. ○ a) "Error concerning the person renders matrimony invalid." (Can. 1083 § 1.)

The reason is that such an error is substantial and by the law of nature vitiates consent, which is borne toward a person plainly diverse from the one with whom the contract is made. It does not matter in the case whether the error is antecedent or merely concomitant.

35. ○ b) Error concerning a quality of the person, even if it gives cause to the contract, generally does not invalidate matrimony. (Can. 1083 § 2.)

The reason is that such invalidation is introduced neither by natural law nor by positive law. Not by natural law, because notwithstanding that error concerning accidental qualities, the substance of the contract nevertheless remains, namely the person himself or herself. Not by positive law, which, as is plain from the cited canon, expressly declares the contrary.

36. ○ c) Error concerning a quality, however, invalidates matrimony if it itself redounds into error of the person. (Can. 1083 § 2, 1°.)

The reason is that then the error becomes truly substantial, which invalidates matrimony by natural law itself.

But this is verified in a twofold case:

1°) if the quality is altogether proper and individual to some determinate person, e.g., if someone intends to enter matrimony with the firstborn daughter of the king.

2°) if someone intends any quality whatsoever, however accidental, as a condition without which not, or if the circumstances prove that his consent was at least implicitly conditioned.

37. ○ d) Matrimony is invalid "if a free person contracts matrimony with a person whom he thinks free, when she is a slave by servitude properly so called." (Can. 1083 § 2, 2°.)

Three things must concur in order that matrimony be invalidated under this head, and otherwise from ecclesiastical law alone:

1° servitude properly so called in the other party alone.

2° freedom of the other party.

3° ignorance, on the part of the free person, of the servitude of the co-party.

This impediment, as having been introduced by ecclesiastical law alone, does not bind unbelievers contracting among themselves, unless perhaps civil law has established a similar impediment. Indeed

if a free unbelieving party takes in matrimony a believing party who is a slave, whose servitude he does not know, then the matrimony still seems to be valid. The reason is that the Church seems to invalidate the consent of the free party alone. But now, in the case, since the free party is an unbeliever, his consent escapes ecclesiastical law, and thus in no way, not even indirectly, is the unbelieving party held by that impediment.[1]

[1] Thus Gasparri, *De Matrimonio*, n. 640, against Wernz, *Jus Decretalium*, IV, n. 242, note 27. - Cf. Vermeersch-Creusen, *Epitome Juris Canonici*, t. II, n. 370.

B. Error of law.

38. ◦ a) Error concerning the very essential object of the matrimonial contract, i.e., concerning the mutual right over the body, invalidates consent and consequently matrimony.

The reason is that in the case error effects the same thing as ignorance. But now, as was said above in n. 32, ignorance concerning the essential object of matrimony renders matrimony void.

39. ◦ b) "Simple error concerning the unity or indissolubility of matrimony or its sacramental dignity, even if it gives cause to the contract, does not vitiate matrimonial consent." (Can. 1084.)

Notice in this text the word "simple" error, i.e., an error resting in the intellect without there following a positive act of the will conformable to it. For such an error does not take away the will of contracting true matrimony.

40. c) But if to such an error there is joined an express and positive intention of excluding something from the essential properties or goods of matrimony, the matrimony is invalid, at least if such an intention prevails over the intention of contracting matrimony.

The reason is that such an intention is exclusive of matrimony itself, because these things are inseparable from true matrimony.

§ 3. Simulation

41. ◦ I. Notion.

Simulation or fiction consists in this, with respect to contracting matrimony: that, while words which express matrimonial consent are externally pronounced seriously and duly, one or both contracting parties withhold interior consent.

The intention of the simulator can be conceived as threefold: 1. not of contracting; 2. indeed of contracting but not of assuming the obligation; 3. of not fulfilling the obligation.

II. What simulation effects with relation to the validity of matrimony.

42. ◦ a) The intention of not contracting matrimony invalidates.

This is plain, because such simulation excludes every consent of the will. Cf. Can. 1086 § 2.

43. ◦ b) The intention of not assuming the obligation likewise makes matrimony invalid.

The reason is that without the undertaking of the matrimonial obligation, matrimonial consent itself can no longer be conceived, without which there is no matrimony. Cf. ibid.

44. ○ c) The intention of not fulfilling the matrimonial obligations does not invalidate matrimony, but is a grave sin and an unjust deception of the co-party.

For in this simulation nothing is present which is contrary to matrimonial consent itself.

45. ○ III. Whether and how one consenting fictitiously sins.

a) Most certainly it is a grave sin, without grave cause, to consent fictitiously in contracting matrimony.

b) One consenting in such a simulated way sins against justice toward the co-party, unless that party is herself or himself complicit in the simulation; against truth in a grave matter; against chastity, if he intends to consummate the matrimony. Whether he commits true sacrilege is disputed among the Doctors.

c) From a grave motive it is lawful to contract fictitiously; but, as is plain, it is altogether necessary to exclude the intention of consummating the matrimony.

d) One who with grave fault has contracted fictitiously is bound from justice to repair the damage inflicted upon the co-party, and ordinarily ought to offer true consent.

§ 4. Condition

46. ○ I. Notion.

A condition is a circumstance upon which both contracting parties, or one of them, wills the validity of his consent to depend.

47. ○ II. The liceity of appending a condition to matrimonial consent.

Although the Code of Canon Law is silent concerning this matter, several authors judge that it is not lawful to contract matrimony under a condition, except for grave motives and with the consent of the Bishop, because they think that such a manner of contracting is foreign to the practice of the Church and provides an occasion for many and grave inconveniences.

Certainly it is not lawful to contract in this way while the co-party is unaware, or while those things are omitted which are necessary for proving the appended condition in the external forum.

III. Concerning the influence of a condition on the validity of matrimony.

48. ○ a) "If (the condition) concerns the future and is necessary, or impossible, or base, but not against the substance of matrimony, it is to be regarded as not having been added." (Can. 1092, 1°.)

Notwithstanding the appending of this condition, matrimony is judged valid from the beginning, because such a condition is reputed by the law as not existing and as not seriously added.

But note that here there is question of a simple presumption of law, which must altogether yield to the truth. Therefore, if both contracting parties, or one of them, altogether wills his consent to depend upon such a condition, either the validity of the matrimony is suspended until the event is verified, or the matrimony is invalid from the beginning, according to the quality of the appended condition. If the condition concerns the future and is necessary or base, the validity of the matrimony is suspended; if the condition is impossible, there is no matrimony.

49. ○ b) "If (the condition is) concerning the future against the substance of matrimony, it renders it invalid." (Can. 1092, 2°.)

A condition of this kind excludes in the matrimonial contract some essential element. And therefore, by natural law itself, such a condition renders matrimony invalid, as being destructive of matrimonial consent itself. For these two things are mutually repugnant: to will to give something, and to be unwilling to give an essential element of that thing.

Conditions against the substance of matrimony are those which are opposed to the essential goods of matrimony, namely of offspring, fidelity, and sacrament.

Against the good of offspring: e.g., if you avoid conception or procure abortion.

Against the good of fidelity: e.g., if you commit adultery.

Against the good of sacrament: e.g., provided that I have the right of dismissing you at pleasure.

It makes no difference whether those conditions are brought into the agreement explicitly between the parties or not, provided that they altogether exclude the assumption of some essential obligation. But the existence of a pact more easily demonstrates the fact of an appended condition.

In practice, let the priest who must judge concerning the case of a condition of this kind attend to the fact that such appended conditions most often signify the will of not fulfilling obligations rather than of not assuming them. And if the matter is thus, it is certain that the matrimony is valid. (Cf. above n. 44.)

50. ○ c) "If (the condition is) concerning the future and lawful, it suspends the validity of the matrimony." (Can. 1092, 3°.)

Once the condition has been verified, the matrimony immediately becomes valid, without a new consent being required.

But if the condition is not verified by the event, the conditioned consent altogether vanishes.

51. ○ d) "If (the condition is) concerning the past or concerning the present, the matrimony will be valid or not, according as that which underlies the condition exists or not." (Can. 1092, 4°.)

§ 5. Force and Fear

52. ○ I. Notion.

a) Force can be defined: "the exterior impulse of a greater thing which cannot be repelled."

Fear is: "trepidation of mind by reason of an instant or future danger."

b) Fear is distinguished:

1° Into antecedent fear, i.e., that which is the cause of the operation which is said to be done from fear; and concomitant fear, which does not influence the operation but exists together with it. And such an operation is said to be done with fear.

2° Into fear from without, i.e., that which is inflicted by an external cause; and from within, i.e., that whose cause is internal to the one suffering fear.

3° Into just fear, namely when the evil which is feared can be inflicted by strict right, justice being uninjured; and unjust fear, when the infliction of that evil would injure justice.

4° Into grave fear, which is present when these two things concur at once: a grave evil, either absolutely or relatively to the person who suffers fear, and an imminent danger of that evil, at least in the opinion of the one fearing, without there being at hand another means of escaping than to choose that which he would not will; light fear, namely when the two things aforesaid are not verified; reverential fear, which is the fear of incurring the indignation of parents or superiors. Of itself it is light, but from circumstances it can become grave.

II. Concerning the influence of force and fear upon matrimonial consent.

53. ◦ a) Absolute force renders matrimony contracted under its influence invalid by natural law itself.

The reason is that physical violence excludes every human act and therefore every consent of the will.

54. ◦ b) "Matrimony entered into on account of... grave fear, inflicted from without and unjustly, is invalid." (Can. 1086 § 1.)

Therefore five conditions must be present in order that fear invalidate matrimonial consent:

1°) Fear must be grave, either absolutely or relatively.

In doubt it is reputed light, because matrimony enjoys the favor of law.

2°) It must have been brought from without, and indeed by a free cause.

It matters little what person is the one causing the fear.

3°) It must be unjust as to substance, or at least as to mode.

Fear is unjust as to substance when the threatened punishment is unjust. It is unjust as to mode when the punishment itself is just, but the order of law is not observed.

4°) It must be in order to matrimony, i.e., such that in order to free himself from it one is compelled to choose matrimony.

It matters little whether one is compelled by fear to a determinate matrimony or to matrimony in general.

But authors dispute whether there is required in the author of the fear an intention of extorting consent or not.

Most assert the necessity of this intention.[1]

[1] De Smedt, *De sponsalibus et matrimonio*, n. 537. - Vlaming, *Praelectiones de Jure matrimoniali*, ed. alt. 1920, n. 539. - Marc-Gesterman, *Institutiones morales Alphonsianae*, ed. 18., t. II, n. 1979, 4°. - Prummer, op. cit., n° 795.

Others, and more truly, as it seems to us, deny that such an intention is required.[2] For the words of the Code, "fear from which, in order that one may free himself, he is compelled to choose matrimony" (Can. 1087 § 1), abstract from the aforesaid intention.

[2] Capello, *De matrimonio*, n° 606, 4°. - Vermeersch-Creusen, op. cit., n. 377 d).

Practically almost always an intention of this kind will be found in him who inflicts the fear. But it can also happen that fear is inflicted not precisely for extorting consent, and yet no other way lies open besides entering matrimony by which someone can free himself from a grave and unjust evil. In such consent the words of the canon seem altogether to be verified, and therefore the matrimony is invalid.

Whatever may be the case concerning that controversy, it is always necessary that, on the part of the one suffering threats, matrimony appear as the single means of freeing himself or his own from a grave and unjust evil.

5°) The fear must persevere in the act of the celebration of matrimony. Therefore if the party who suffered fear puts it aside before matrimony is celebrated and consents freely, the matrimony is valid.

55. ○ III. By what law fear dirimently impedes matrimony.

a) If the fear is so great that it takes away the use of reason and free choice, by natural law there is no matrimony.

b) All agree that grave fear, clothed with the other conditions stated above, dirimently impedes matrimony from ecclesiastical law.

c) But whether fear dirimently impedes matrimony also from natural law is disputed. St. Thomas affirms it. In fact, in the impediment of fear the Church never dispenses.

56. ○ IV. What concerning the matrimony of the non-baptized which is contracted from fear clothed as above.

a) If an unbeliever contracts with a faithful party, there is no matrimony, whether the faithful or the unbelieving party suffers the fear.

b) The same holds if civil law declares invalid matrimony contracted from fear.

c) Outside this twofold case, such matrimony contracted by unbelievers is doubtful, because probably that impediment is of natural law.

Chapter III: Concerning the Preparation of Matrimony

In this chapter we shall treat of those things which are prior to matrimony, namely:

I. Concerning betrothals; II. Concerning the examination of the spouses and the publication of banns.

Article I: Concerning Betrothals

57. ○ I. Notion.

Betrothals are the mutual promise of future matrimony, legitimately given between capable persons.

58. ○ II. Conditions of a valid betrothal contract.

Four conditions are required:

a) A promise, and indeed a true, deliberate one, not extorted by force or by unjust and grave fear.

b) A mutual promise: otherwise there is had not a betrothal contract, which necessarily is bilateral, but a simple promise of matrimony.

c) Capability of the contracting parties: they must be such as at some time can validly and licitly enter matrimony between themselves. For every promise of an impossible or illicit thing is plainly invalid.

d) A written promise.

Before the decree *Ne temere*, promulgated by the S. C. C. on 2 Aug. 1905 and in force for the whole Latin Church from 19 Apr. 1908, betrothals were valid in whatever way they had been sufficiently manifested from natural law.

But that decree introduced a new discipline, by force of which betrothals are valid in neither forum unless they are: 1. made in writing; 2. with the apposition of the date; 3. duly signed.

1. The writing can be drawn up by anyone whatsoever, or even printed with type. An appended condition or a time added for ending the obligation, if the contract is entered with such clauses, must necessarily be expressed in the writing itself.

2. The date, or apposition of the day, month, and year, should be indicated of necessity; but the place in which the betrothals are entered should suitably be indicated.[1]

[1] S. C. C., 27 Jul. 1908, ad 2.

3. The writing must be signed both by each party who contracts the betrothals, and by the pastor or Ordinary of the place, or by two witnesses.

If one or both contracting parties does not know how to write or cannot write, this is to be recorded in the writing, and then another witness must be added, who with the others indicated above signs

the writing.

All who must sign the writing must be assembled together when they fulfill that office.

Nothing prevents betrothals from being contracted by a procurator, since this is prohibited by no law.

59. ○ III. Who are comprehended under the name of Ordinary of the place and pastor.

The Ordinary of the place and the pastor, as we have said, are privileged witnesses in a betrothal contract. For the Ordinary of the place or the pastor alone suffices to sign the writing with the contracting parties, while, if they are absent, two signing witnesses are required.

a) Under the name of Ordinary of the place there come, besides the Roman Pontiff, each for his own territory: the residential Bishop, Abbot or Prelate nullius, Vicar General, Administrator, Vicar or Prefect Apostolic, and all who, when the aforesaid are lacking, exercise their office ad interim, e.g., the Capitular Vicar, when the Bishop is dead or removed.

b) Under the name of pastor there come:

1. The pastor properly so called.

2. The quasi-pastor, i.e., one who governs a quasi-parish or a part of an apostolic Vicariate or Prefecture.

3. The vicar curate, i.e., a pastor in a parish whose habitual care pertains to a chapter or monastery.

4. The vicar oeconomus, who undertakes the governance of a vacant parish.

5. The substitute vicar, i.e., a priest to be approved by the Ordinary of the place, who in all things holds the place of a pastor absent for more than a week.

6. The substitute vicar designated by the Ordinary to act in the place of a pastor who, by sentence, is to be deprived of his benefice, but is having recourse to the Holy See.

7. According to the cases, either the first assistant vicar or the one senior in office, or the nearer pastor, or the Superior of a religious house, who assumes the governance of the vacant parish before the appointment of an oeconomus, unless provision has been made otherwise.

8. The assisting vicar, when he supplies the place of the pastor in all things, or even if he supplies in part, when the care of souls in matrimonial matters is entrusted to him in the letters of deputation.

But assistant vicars, even those having the right of assisting at marriages, cannot supply for the pastor, because that office of assisting at betrothals is not delegable.[2]

[2] S. C. C., 28 Mar. 1908, ad 6.

9. The chaplain or rector of a pious place of whatever kind exempt from parochial care, provided full parochial power has been committed to him, but only with regard to the persons entrusted

to him and in the place where he presides.[3]

[3] S. C. C., 1 Feb. 1908, ad 10.

The pastor or Ordinary does not validly assist at betrothals unless after having obtained possession of the benefice.[4]

[4] Cf. Capello, op. cit., n° 92.

60. ○ IV. Witnesses.

No special quality in them is required by law. It suffices that they be capable of bearing testimony and of signing the writing.

It is not fitting to employ non-Catholics.

61. ○ V. What an appended condition effects in a betrothal contract.

a) When a condition concerning the present has been placed, the betrothals are immediately valid or invalid, according as the condition is verified or not.

b) If it concerns a necessary future thing, they are immediately valid.

If it concerns an impossible future thing, they are invalid, unless it is clear that the condition has been added jokingly.

If it concerns a future contingent thing resolutively, e.g., if it is said: We mutually promise matrimony, unless the parents refuse their consent, the betrothals are valid immediately, but, once the resolutive condition has been verified, they are dissolved.

If it concerns a future contingent thing suspensively and honestly, the validity of the contract is suspended, with the obligation of awaiting the event. Once the condition has been verified, the betrothals immediately become absolute by the fact itself. If the condition is not verified, every obligation ceases, unless the condition has been revoked explicitly or implicitly, or the other party has culpably impeded the condition from being verified.

If it concerns a future dishonorable thing and is against the substance of betrothals or of matrimony, the contract is invalid by natural law.

But if the dishonorable condition is not against the substance of betrothals or of matrimony, the betrothals still seem invalid. Nevertheless there are those who defend their validity.[5]

[5] Capello, op. cit., n. 100.

62. ○ VI. Concerning the effects of betrothals.

Three are principally assigned:

a) A grave obligation of justice to contract matrimony at the due time.

Nevertheless, under the new law, there is not yet given from betrothals an action before the ecclesiastical tribunal for petitioning the celebration of matrimony, but only for obtaining reparation of damages. (Can. 1017 § 3.)

b) An inability validly to contract betrothals with another person.

c) An inability licitly to contract matrimony with another.

Nevertheless the aforesaid inability is not strictly a canonical impediment, although he sins mortally who, with betrothal faith broken without just cause, contracts matrimony with another person.

63. ○ VII. Concerning the dissolution of betrothals.

Betrothals can be legitimately dissolved in various ways:

a) By mutual consent fully free on each side.

b) By a notable change which supervenes, after the betrothals have already been contracted, whether the matter is new or newly known.

A change is judged notable which, if previously known, would have deterred from the betrothals.

A change of this kind can happen: in the goods of the soul, body, status, or fortune, or even in external circumstances, for instance if grave enmities have arisen between the parents of the spouses, etc.

c) By violation of betrothal fidelity on the part of one party: e.g., if one party falls into fornication with another person, or contracts matrimony or betrothals with another, or unduly delays the celebration of matrimony. For then the innocent party is altogether freed.

d) By election of a more perfect state.

For according to all, by natural law itself, in every betrothal contract this implicit condition is always judged to be present: "unless I shall have chosen a more perfect state."

But now one chooses a more perfect state not only who undertakes the religious or clerical state, as all acknowledge, but also one who emits a private vow of perfect chastity, of virginity, of not marrying, of receiving sacred orders, or of entering religion.

The party left behind immediately becomes altogether free. But most teach that the obligation of betrothals revives on the part of the one assuming the more perfect state if afterwards he leaves that state, provided that the more perfect state was, from its nature, temporary.

e) By dispensation of the Supreme Pontiff from a just cause.

For the Pope, who can dispense concerning a ratified non-consummated matrimony, a fortiori has the right of dispensing in the less firm contract of betrothals.

Article II: Concerning the Office of the Pastor Before Matrimony Is Contracted

Before the celebration of matrimony, two duties must be fulfilled by the pastor: namely, to examine the spouses and to carry out the antenuptial proclamations.

Concerning each duty we must now treat in distinct paragraphs.

§ 1. Examination of the Spouses

64. ○ Before the publication of the banns, the pastor must subject the persons about to marry to a serious examination, both concerning their free state and concerning impediments perhaps standing in the way of matrimony, and concerning Christian doctrine and especially conjugal duties.

65. ○ I. Examination concerning the free state.

Under grave sin it is prescribed to the pastor that he diligently institute an examination concerning the immunity of the spouses from every impediment which would render matrimony invalid or illicit. No cause excuses from that prescription, and even in danger of death it must be observed in the best possible manner.

a) 1. First of all, he should require from the spouses a testimonial of baptism received, namely when they received baptism in another parish, and this even if the other party is heterodox.

2. If it is certainly established that baptism was either in no way or invalidly conferred, baptism must be conferred absolutely, unless, as is plain, there is question of a heterodox person refusing to embrace the Catholic faith.

3. But if, after diligent investigation has been made, baptism remains positively doubtful, even if the doubt is very slight, it must be conferred under condition, unless again there is question of a heretic or schismatic unwilling to be converted.

4. The testimonial of baptism must be recent, if there is question of Catholics, so that it may be able to serve for detecting impediments perhaps existing of bond, solemn vow, or sacred order. For by prescription of law, matrimony contracted, solemn religious profession, reception of the order of subdiaconate, and an authentic declaration of nullity of matrimony must be noted in the baptismal register, and annotations of this kind must be reported in the testimonial of baptism. (Can. 470 § 2.)

For non-Catholics even a non-recent testimonial of baptism suffices; but from them also it must always be required, unless there is question of a matrimony to be contracted with the impediment of disparity of cult dispensed.

5. A testimonial of baptism extracted from the baptismal register must always be required when it can be had.

But if it cannot be had: 1° "In danger of death, if other proofs cannot be had, there suffices, unless contrary indications are present, the sworn affirmation of the contracting parties that they were baptized." (Can. 1019 § 2.)

2° Outside danger of death, "one witness above every exception is sufficient, or the oath of the baptized person himself, if he received baptism at an adult age." (Can. 779.)

b) The pastor must inquire whether any diriment or prohibiting impediment is present, even if there is question of occult impediments. Inquiry of this kind should be made especially by questioning the

spouses; but, if there is question of occult impediments, by questioning each separately. If some occult and infamous impediment is present, the persons about to marry are not bound to reveal it to the pastor, but it suffices to reveal it to the confessor.

c) The pastor should ask the spouses whether they contract freely, whether they are being driven to matrimony by force, fear, or troublesome entreaties. It is especially fitting to question the woman concerning free consent.

66. ○ II. Examination concerning Christian doctrine and concerning the duties of the state of matrimony.

Unless this is altogether plain from the circumstances, the pastor should question the spouses concerning the chief truths of the Catholic faith, and should teach those who are ignorant. He should diligently instruct them concerning the proper duties of spouses and parents. Especially in our times let him insist upon showing the grave obligation of spouses to do nothing which impedes the generation of offspring. Finally, he should "earnestly exhort them that before the celebration of matrimony they diligently confess their sins and devoutly receive the Most Holy Eucharist." (Can. 1033.)

Let the pastor remember that the celebration of matrimony is rather often the final occasion given to him for addressing some of his parishioners; and therefore let him use that occasion to exhort them to a truly Christian life.

§ 2. Banns to Be Published

67. ○ I. Notion.

Banns are public denunciations which must be sent before the matrimony to be celebrated, for this end: that canonical impediments perhaps existing may more easily be detected. Lateran Council IV (1215) had prescribed one proclamation. The Council of Trent[1] established that three proclamations were to be made by the proper pastor of the contracting parties on three continuous feast days during the solemnities of Masses. The Code prescribes the same, with a few changes. (C. C. 1022-1030.)

[1] Sess. 24, c. 1, *de ref. matrim.*

68. ○ II. Obligation of banns.

1. All agree that that law obliges under grave sin. For grave is the end of that law, which is to detect impediments and to avoid secret marriages.

To omit three proclamations, necessity or dispensation excepted, would be a mortal sin. According to several, it would also be grave to omit two. To omit one is a light fault.

2. Proclamation of banns is prohibited in marriages of mixed religion or of disparity of cult, unless by license of the Bishop and with scandal removed. But then no mention is made of the religion of the non-Catholic party. (Can. 1026.)

69. ○ III. Time of the proclamations.

a) "Publications are to be made on three continuous Sundays and other feasts of precept in church, during the solemnities of Masses or during other divine offices, to which the people come in number." (Can. 1024.)

Therefore the publications must be made:

1. On three Sundays or feasts of precept, i.e., on which the obligation of assisting at Mass is imposed upon the faithful.

2. Continuously: namely with no feast day omitted.

It is only venial, or even, when a reasonable cause exists, no sin, to omit one intermediate feast day.

3. In church during the solemnities of Masses or during other offices.

Therefore publications can be made not only at solemn Mass, but at any office whatsoever, provided that a numerous people is accustomed to be present.

b) 1) Unless a reasonable cause demands otherwise, the pastor should not assist at the matrimony before three days have passed from the last publication. (Can. 1030 § 1.)

2. "If within six months the matrimony has not been contracted, the publications are to be repeated, unless it seems otherwise to the Ordinary of the place." (Can. 1030 § 2.)

70. ○ IV. Form of the publications.

a. It varies in different dioceses. They must be made in the vernacular tongue and in a loud and intelligible voice.

b. But "the Ordinary of the place can, for his own territory, substitute for the publications a public posting at the doors of the parish church or of another church of the names of the contracting parties for the space of at least eight days, yet in such a way that, in this space, two feast days of precept are comprehended." (Can. 1025.)

71. ○ V. The place in which the publications are to be made.

a. They are to be made in the parish both of the groom and of the bride. And if they have several domiciles or quasi-domiciles in several parishes, let the banns be published in all of them, saving the dispensation of the Ordinary.

b. "If a party has stayed in another place for six months after having attained puberty, the pastor should expose the matter to the Ordinary, who, according to his prudence, should either require publications to be made there, or prescribe that other proofs or conjectures concerning the freedom of state be gathered." (Can. 1023 § 2.)

c. "If there is some suspicion concerning an impediment contracted, the pastor should consult the Ordinary even for a shorter stay, who should not permit the matrimony unless the suspicion has first been removed according to the norm of § 2." (Can. 1023 § 3.)[2]

[2] In Belgium the Council of Mechelen, 1920, moderates that prescription thus: when it is clear to him "through public documents, through private testimonies or trustworthy documents together with the sworn affirmation of the contracting parties, that nothing stands in the way of the matrimony and especially that the persons about to marry are free, the pastor is not bound to expose the matter to the Ordinary, nor are publications to be made in another parish."

72. ○ VI. Dispensation from banns.

a. "The proper Ordinary of the place, according to his prudent judgment, can from a legitimate cause dispense from publications to be made even in another diocese." (Can. 1028 § 1.)

"If there are several proper Ordinaries, that one has the right of dispensing in whose diocese the matrimony is celebrated; but if the matrimony is entered outside the proper dioceses, any proper Ordinary can dispense." (Can. 1028 § 2.)

b. A Bishop cannot dispense except from a legitimate cause. Otherwise the dispensation is invalid, because in this case the Ordinary dispenses in a common law, i.e., in the law of his Superior.

c. For estimating what cause must be held sufficient, it is necessary not only to weigh the cause itself, but also to inspect whether there is present moral certitude, or only a greater or lesser probability, concerning the absence of any impediment whatsoever.

If it is morally established that there is no impediment, any reasonable cause, indeed the petition of the spouses itself, is a sufficient cause for dispensing even from all publications.

But if a positive doubt is present concerning some impediment, the Ordinary cannot in any way, not even from a most grave cause, dispense from all publications.

Finally, if neither moral certitude concerning absence nor positive doubt concerning the existence of an impediment is had, the Ordinary can dispense for various causes.[3]

[3] Capello, op. cit., n. 168.

73. ○ VII. Obligation of revealing impediments.

a) 1. "All the faithful are bound to reveal impediments, if they know any, to the pastor or to the Ordinary of the place before the celebration of matrimony." (Can. 1027.)

This obligation is grave, because the end of the law is of great moment, namely to impede illicit and invalid marriages. Nor does it proceed from positive law alone, but also from natural law.

2. If the revelation would bring some infamy upon the spouses, they themselves must first be warned, if this is possible; but if the warning is of no benefit, then the impediment is to be revealed to the pastor.

b) Nevertheless there are causes which excuse from revelation:

1. Uselessness of denunciation: for instance if the pastor already knows the impediment, or if there has been a dispensation from the impediment in the forum of conscience, etc.

2. Grave damage, one's own or another's.

But then even the one who knows the impediment is bound to impede the matrimony insofar as he can.

3. A sacramental or professional secret, but not a natural secret or a promised one, even with an oath.

Then also the one thus excused is bound to warn the persons about to marry, if he can.

74. ○ VIII. What must be done by the pastor if some impediment is detected.

The impediment is either doubtful or certain.

a) A doubtful impediment.

"1° The pastor should investigate the matter more accurately, by questioning under oath at least two trustworthy persons, provided that there is not question of an impediment from whose knowledge infamy would arise for the parties, and, if it is necessary, the parties themselves also.

"2° He should carry out or complete the publications, if the doubt has arisen before the publications were begun or completed.

"3° He should not assist at the matrimony, without consulting the Ordinary, if he should prudently judge that the doubt still remains." (Can. 1031 § 1.)

b) A certain impediment.

"1° If the impediment is occult, the pastor should carry out or complete the publications and refer the matter, withholding names, to the Ordinary of the place or to the Sacred Penitentiary.

"2° If it is public and is detected before the publications have been begun, the pastor should proceed no further until the impediment is removed, even if he knows that a dispensation for the forum of conscience alone has been obtained; if it is detected after the first or second publication, the pastor should complete the publications and refer the matter to the Ordinary." (Can. 1031 § 2.)

75. ○ IX. Testimonial concerning publications performed.

a. "If another pastor has carried out the investigation or publications, he should immediately make the pastor who must assist at the matrimony certain concerning their outcome by an authentic document." (Can. 1029.)

b. For the authenticity of that testimonial (*lettres de liberté*), it is required that it be duly signed by the pastor and furnished with the parochial seal.

76. ○ X. Matrimony of wanderers.

"At the matrimony of wanderers... the pastor, except in a case of necessity, should never assist unless, after the matter has been referred to the Ordinary of the place or to a priest delegated by him, he has obtained license to assist." (Can. 1032.)

77. ○ XI. Matrimony of minor children.

"The pastor should gravely exhort minor children of families not to enter nuptials while their parents are unaware or reasonably unwilling; but if they refuse, he should not assist at their matrimony unless the Ordinary has first been consulted." (Can. 1034.)

Chapter IV: Concerning the Impediments of Matrimony in General and Concerning Merely Prohibiting Impediments in Particular

The principal place in a pastoral treatise on matrimony is claimed for itself by impediments, which, whether from the precept of natural or divine law or from an ecclesiastical statute, stand in the way of the valid or licit celebration of matrimony. But lest the present chapter become too long, in this one we shall treat only of impediments considered in general and of prohibiting impediments. In the following chapter, however, we shall subject each of the diriment impediments to the examination of the studious reader.

Article I: Concerning Impediments in General

78. ○ I. Notion of a matrimonial impediment.

a. An impediment is called a certain circumstance which, from the disposition of law, bars one from entering a matrimonial contract, either licitly or validly.

b. Division: 1° by reason of the author, impediments are distinguished as of divine law, whether natural or positive; and of human law, whether ecclesiastical (for the baptized) or civil (for unbelievers).

2° by reason of effect, impediments are distinguished as diriment and merely prohibiting.

"A diriment impediment both gravely prohibits matrimony to be contracted, and prevents it from being contracted validly." (Can. 1036 § 2.)

A prohibiting impediment, or "an impeding one, contains a grave prohibition of contracting matrimony; which nevertheless is not rendered void if, notwithstanding the impediment, it is contracted." (ibid. § 1.)

3° by reason of scope, impediments are absolute, i.e., those which stand in the way of matrimony with any person whatsoever; or relative, i.e., those which stand in the way of contracting matrimony only with certain persons.

4° by reason of divulgation, an impediment will be public or occult. It is public if it can be proved in the external forum; otherwise occult. (Can. 1037.)

5° by reason of duration, an impediment is perpetual, i.e., one which of itself always remains; or temporary, which ceases by the very fact when time has elapsed.

6° by reason of knowledge, an impediment can be certain or doubtful. But a doubt affecting an impediment is borne either toward the law itself which introduces the impediment, and then it is a

doubt of law; or it concerns the very fact of incurring the impediment, and then there is a doubt of fact.

7° by reason of possible dispensation, impediments are distinguished as dispensable, namely those in which the Church can and is accustomed to dispense; and indispensable, those in which the Church either cannot dispense, or at least never dispenses.

79. ○ II. A doubtful impediment.

a. A doubtful impediment, in a doubt of merely ecclesiastical law, is to be considered practically as not existing. (cf. Can. 15.)

b. An impediment of ecclesiastical law, doubtful by a doubt of fact, indeed urges; but the Ordinary can dispense in it, provided that there is question of an impediment in which the Roman Pontiff is accustomed to dispense. (cf. Can. 15.)

c. In a doubt either of law or of fact, or of law and fact at once, when there is question of an impediment of divine law, matrimony cannot be celebrated, unless there is question of the impediment of impotence. For then matrimony must not be impeded, because the natural right of contracting matrimony prevails. (Cf. Can. 1068 § 2.)

80. ○ III. An unknown impediment.

Ignorance, although altogether invincible, does not prevent a diriment impediment from being incurred and matrimony contracted with such an impediment from being plainly invalid.

The reason is that "no ignorance of invalidating or incapacitating laws excuses from those laws, unless it is expressly stated," (Can. 16 § 1) and no impediment of matrimony is found excepted from this general rule.

Article II: Merely Impeding Impediments

81. ○ Only three merely impeding impediments remain in the law of the Code, namely: mixed religion, vow, and, in places in which civil law has adoption as producing a prohibiting impediment, legal kinship.

§ 1. Mixed Religion

82. ○ I. Notion.

Mixed religion is present when one party is Catholic, but the other is enrolled in a heretical or schismatic sect and validly baptized.

83. ○ II. Mixed religion as a prohibiting impediment of matrimony.

a. From ecclesiastical law.

"Everywhere the Church most severely prohibits matrimony from being entered between two baptized persons, of whom one is Catholic, but the other is enrolled in a heretical or schismatic sect."

(Can. 1060.)

b. Sometimes from natural and divine law.

"But if there is present a danger of perversion of the Catholic spouse and of the offspring, the union is forbidden also by divine law itself." (Ibid.)

84. ○ III. What the Church thinks concerning mixed marriages.

a. The Church detests mixed marriages, since they import communion in divine things with a heterodox person, since the spouses mutually administer to each other the sacrament of matrimony, and besides induce a grave danger for the Catholic party of losing the faith and for the offspring to be born of non-Catholic education. And unless that twofold danger is guarded against and made remote, the natural divine law itself forbids unions of this kind. (Can. 1060.)

b. Wherefore "Ordinaries and other pastors of souls:

1° Should deter the faithful from mixed nuptials, as much as they can;

2° If they cannot impede them, should take care with every effort that they not be contracted against the laws of God and of the Church." (Can. 1064.)

85. ○ IV. Dispensation from this impediment.

By proper right it pertains to the Holy See alone, namely to the Holy Office (can. 247 § 3), even for regions subject to the Sacred Congregation de Propaganda Fide and the Sacred Congregation for the Oriental Church (Can. 252 § 4; Can. 257 § 2).

Bishops do not have such power, unless it has been specially delegated to them by the Holy See, which nevertheless they are accustomed to obtain.

86. ○ V. Conditions required for dispensation.

a. "Just and grave causes must urge." (Can. 1061 § 1, 1°.)

Such causes are: the good of the Christian republic, grave danger of apostasy for the Catholic party, fear of a civil marriage or one before a non-Catholic minister, founded hope of conversion of the non-Catholic party, etc.

Dispensation without a just and grave cause, if granted by the Roman Pontiff, would be illicit but valid, saving natural law; if by a Bishop by force of an indult, it would be illicit and invalid.

b. "The non-Catholic spouse must have given a caution concerning removing from the Catholic spouse the danger of perversion, and each spouse concerning all offspring to be baptized and educated only Catholic." (Can. 1061 § 1, 2°.)

The aforesaid cautions are to be required even when danger of death is urgent. (Can. 1043.)

c. "There must be had moral certitude concerning the fulfillment of the cautions." (ibid. 3°.)

d. "The cautions are regularly to be required in writing." (ibid. § 2.)

Care must be taken that the written promise be preserved in the parochial or episcopal archive.

"Once mixed nuptials have been celebrated, whether in one's own or in another territory, let them diligently watch (Ordinaries and other pastors of souls) that the spouses faithfully fulfill the promises made." (Can. 1064, 3°.)

87. ○ VI. The rite to be observed in a mixed marriage.

a. The pastor or delegate must altogether require and receive the consent of the parties before two witnesses, as in other marriages. (Can. 1102 § 1.) And therefore the so-called passive assistance is altogether prohibited as invalid, even in places where it had previously been granted for illicit mixed marriages.[1]

[1] Cf. Response of the Pontifical Commission for Authentically Interpreting the Canons of the Code, of the day 10 March 1928 (*Acta Apostolicae Sedis*, v. XX, p. 120).

b. "All sacred rites are prohibited" (Can. 1102 § 2), and the matrimony is celebrated outside the church. (Can. 1109 § 3.)

The priest is to be clothed in no sacred habit for celebrating the matrimony.

c. "If, however, grave evils are foreseen from this prohibition," the Ordinary can dispense in this law and permit that matrimony be celebrated in church with some "of the customary ecclesiastical ceremonies, the celebration of Mass always being excluded." (Can. 1102 § 2; 1109 § 3.)

88. ○ VII. The prohibition of approaching a non-Catholic minister as one devoted to sacred things.

a. "Even if a dispensation has been obtained from the Church concerning the impediment of mixed religion, the spouses cannot, either before or after matrimony entered before the Church, also approach, whether personally or by procurator, a non-Catholic minister as one devoted to sacred things, for the purpose of offering or renewing matrimonial consent." (Can. 1063 § 1.)

This prohibition does not admit dispensation, as pertaining to divine law.

For the manner of acting which is here reproved would be, for the Catholic party, sacrilegious participation in a heretical or schismatic rite.

b. Note the words "as one devoted to sacred things." For indeed "it is not disapproved... that, when civil law commands it, the spouses present themselves also before a non-Catholic minister, functioning only in the office of a civil official, and this only for fulfilling the civil act, for the sake of civil effects." (Can. 1063 § 3.)

c. "If the pastor certainly knows that the spouses are going to violate or have already violated this law, he should not assist at their matrimony, unless for most grave causes, scandal being removed and the Ordinary first consulted." (ibid. § 2.)

A grave obligation is imposed here on the pastor, as is clear from the legislator's manner of speaking. Those most grave causes will be, e.g., danger of invalid matrimony, or apostasy of the Catholic party, or education of the offspring in heresy, etc.

89. ○ VIII. Penalties against delinquents concerning mixed marriages.

a. "Catholics who shall have dared to enter a mixed marriage, even a valid one, without dispensation of the Church, remain by the fact itself excluded from legitimate ecclesiastical and sacramental acts until they have obtained dispensation from the Ordinary." (Can. 2375.)

For what those legitimate ecclesiastical acts are, see can. 2256, 2°.

From incurring that penalty any ignorance except affected ignorance, and even light fear, excuse. For the canon uses this phrase, "shall have dared," which requires full knowledge and liberty.

b. "Catholics are subject to an excommunication latae sententiae reserved to the Ordinary:

1° Who enter matrimony before a non-Catholic minister, against the prescription of can. 1063 § 1;

2° Who are united in matrimony with an explicit or implicit pact that all or some offspring be educated outside the Catholic Church;

3° Who knowingly presume to offer their children to non-Catholic ministers to be baptized;

4° Parents, or those holding the place of parents, who knowingly hand over children to be educated or instructed in a non-Catholic religion." (Can. 2319 § 1.)

Those censures are incurred by the Catholic party alone. Moreover, from the excommunication in nn. 1° and 2°, ignorance that is not gravely culpable excuses; from that which is contained under nn. 3° and 4°, any ignorance except affected ignorance, and even light fear. The reason of that diversity is drawn from the diverse manner of speaking, because under nn. 3° and 4° it is said "knowingly" and "presume."

c. "Those concerning whom there is question in § 1, nn. 2-4, are moreover suspected of heresy." (ibid. § 2.)

And therefore they are also subject to the penalties which affect one suspected of heresy, i.e.:

1. if, having been warned, he does not remove the cause of suspicion, let him be prohibited from legitimate acts;

2. if within six full months from the contracted penalty he has not amended himself, let him be held as a heretic, liable to the penalties of heretics. (Can. 2315.)

90. ○ IX. Matrimony with apostates from the Catholic faith, followers of condemned societies, public sinners.

Although it does not establish an impediment properly so called, the Church nevertheless disapproves the matrimony of her children with those very wicked persons.

a. "The faithful are also to be deterred from contracting matrimony with those who have notoriously either cast off the Catholic faith, even if they have not passed over to a non-Catholic sect, or are enrolled in societies condemned by the Church." (Can. 1065 § 1.)

b. "The pastor should not assist at the aforesaid nuptials unless the Ordinary has been consulted; and he, after inspecting all the circumstances of the matter, will be able to permit him to be present at the matrimony, provided that a grave cause urges, and according to his prudent judgment the Ordinary

judges sufficient provision to have been made for the Catholic education of all the offspring and for removing the danger of perversion of the other spouse." (Ibid. § 2.)

c. "If a public sinner or one notoriously bound by a censure has first refused to approach sacramental confession or to be reconciled with the Church, the pastor should not assist at his matrimony unless a grave cause urges, concerning which, if it can be done, he should consult the Ordinary." (Can. 1066.) Let pastors and confessors be mindful of their obligation of deterring, as far as possible, the faithful from contracting matrimony with apostates and followers of condemned societies, which rather often has lamentable outcomes.

§ 2. Simple Vow

91. ○ I. What vows impede matrimony.

"A simple vow of virginity, of perfect chastity, of not marrying, of receiving sacred orders, and of embracing the religious state impedes matrimony." (Can. 1058 § 1.)

92. ○ II. Whether and how one contracting matrimony, bound by those vows, sins.

a) He who has emitted a vow of not marrying sins gravely by contracting matrimony, because he injures the vow in grave matter. But once matrimony has been contracted, he can conduct himself as other spouses.

b) He who has emitted a vow of virginity sins gravely by contracting matrimony, unless he is certain from the promise or vow of the other party that he can preserve virginity in matrimony. For he gravely exposes himself to the danger of violating the vow. But once virginity has been lost, he is no longer bound to anything.

c) He who has emitted a vow of perfect chastity sins gravely by contracting matrimony, unless, as was said in the preceding case, he has full assurance concerning perfect chastity to be preserved in matrimony. Joined in matrimony, he can and ought to render the debt, but not to ask it, unless he is dispensed for this by the Bishop or by a regular confessor.

d) One bound by a vow of entering religion or receiving sacred orders sins gravely by contracting matrimony, because he makes the fulfillment of the vow impossible for himself. Rigorously speaking, he would be bound to ask from the spouse license to enter religion or to receive sacred orders. But the other party is by no means bound to consent. He can render and ask the debt, because he has not vowed chastity. Once the matrimony has been dissolved, or perpetual divorce has been pronounced, the vow revives.

93. ○ III. Dispensation from an impediment of this kind.

a) A vow of perfect and perpetual chastity or a vow of entering a regular order strictly so called, i.e., with solemn vows, provided that those vows were emitted absolutely, without an appended condition, and after the completed eighteenth year of age, require dispensation of the Holy See.

b) The same holds concerning a vow emitted in religion, even if it is temporary, unless in another way according to the canons the vow has ceased.

c) For the other vows, dispensation of the Bishop or of a regular confessor, granted from a just cause, suffices.

§ 3. Legal Kinship

94. ○ I. Notion.

It is the propinquity of persons arising from adoption.

95. ○ II. When it is a merely prohibiting impediment.

This depends upon the civil law of each nation, which in this matter is canonized by the Church.

"In those regions where by civil law legal kinship, arising from adoption, renders nuptials illicit, by canon law also the matrimony is illicit." (Can. 1059.)

a) In Belgium, France, Luxembourg, and Romania civil law establishes a merely prohibiting impediment, and indeed one in force:

1. between the adopter and the adopted person and his descendants.
2. between the diverse adoptive children of the same adopter.
3. between the adopted person and the children whom the adopter shall afterward have.
4. between the adopted person and the wife of the adopter, and between the adopter and the wife of the adopted person.

The impediment is perpetual with respect to legal paternity and affinity, i.e., with respect to the persons indicated under nn. 1 and 4.

It is temporary with respect to legal fraternity, i.e., with respect to the persons listed under nn. 2 and 3. For the impediment ceases as soon as the adopted son or the natural children are emancipated.

b) In Germany it is in force only between the adopted person and the adopter and his descendants, whether natural, even illegitimate, or adoptive.

It ceases with the adoption itself.

c) In Hungary it is in force:

1. between the adopter and the adopted person.
2. between the adopter and the wife of the adopted person, and between the adopted person and the wife of the adopter.
3. between the natural children, even illegitimate, of the adopter and the adopted person and the wife of the same.
4. between the natural children of the adopted person and the wife of the adopter.

Once the adoption has been dissolved, the impediment ceases.

d) In Switzerland it is in force:

1. between the adopter and the adopted person.

2. between the adopter and the wife of the adopted person, and between the adopted person and the wife of the adopter.

e) In Venezuela it is in force:

1. between the adopter and the adopted person and his descendants.

2. between the diverse adoptive children of the same adopter.

3. between the adopted person and the later-born children of the adopter.

4. between the adopter and the spouse of the adopted person, and between the adopted person and the spouse of the adopter.

Once the adoption has been dissolved, the impediment vanishes.[1]

[1] Capello, op. cit., n. 324.

N. B. In the other regions, besides those indicated here and at n. 173 b, the impediment of legal kinship is in no way in force.

Chapter V: Concerning Diriment Impediments

96. ○ I. Which they are.

a) In the law of the Code there are numbered thirteen impediments properly so called, namely those which constitute true inabilities for entering matrimony validly, and they are: age, impotence, bond, disparity of worship, sacred order, solemn vow, raptus, crime, consanguinity, affinity, public honesty, spiritual kinship, legal kinship.

b) Error, condition, fear, and clandestinity, which formerly were listed among the impediments, in the new law are rightly considered as vices or defects which are opposed to consent or to form.

97. ○ II. Division.

a) The Code of Canon Law has introduced a distinction between impediments of a major grade and impediments of a minor grade. Practically, that distinction refers only to diriment impediments.

b) Minor impediments are: consanguinity in the third degree of the collateral line, affinity in the second degree of the collateral line, public honesty in the second degree, spiritual kinship, and crime from adultery with a promise or attempted matrimony.

All the others are major impediments. (Can. 1042.)

c) The practical usefulness of this distinction lies in this: "a dispensation granted from a minor impediment is rendered invalid by no vice either of obreption or of subreption, even if the final cause set forth in the petitions was false." (Can. 1054.)

Article I: Age

98. ○ I. Notion of this impediment.

"A man before the completion of his sixteenth year of age, and a woman before the completion likewise of her fourteenth, cannot enter matrimony." (Can. 1067, § 1.)

Note: a) the years must be altogether completed, so that, if even one day is lacking, the matrimony is invalid.

b) the day of birth is not counted, so that one who was born on the 19th day of July is considered to have completed the fourteenth year of age only on the 20th day of July.

99. ○ II. Nature of this impediment.

a) It has force from ecclesiastical law alone. For by natural law no determinate age is required, provided that the use of reason is present, which suffices for giving true matrimonial consent.

b) Before the Code the age of legal puberty was assigned, i.e., twelve completed years for females and fourteen likewise completed years for males.

c) Moreover, in the preceding law the impediment of age was not absolute. For if before that age there were present together both sufficient knowledge of the matrimonial contract and the power for completing copula, matrimony was permitted. But there was need of a declaratory sentence of the Roman Pontiff or of the Bishop concerning the twofold fact, namely knowledge and physical power. And in this sense the condition affecting that impediment was understood: "Unless malice should supply age."

100. ○ III. Cessation of the impediment.

a) By the lapse of time, namely when the canonical age has been attained, it ceases with respect to contracting matrimony.

b) But if there is question of a matrimony already contracted and invalid under this head, renewal of consent is required after the due age has been completed and after the nullity of the matrimony has been known, and this in the face of the Church, if the nullity is public.

c) The Pope indeed can dispense, supposing sufficient discretion in those contracting. But he dispenses very rarely, and outside danger of death dispensation is never given without a public cause.

d) Once the dispensation has been granted and matrimony celebrated, cohabitation of the spouses is interdicted until puberty, on account of the danger of harming chastity.

101. ○ IV. The wish of the Church.

"Although matrimony contracted after the canonical age is valid, pastors of souls must nevertheless take care to turn young persons away from it before the age at which, according to the received customs of the region, matrimony is usually entered." (Can. 1067, § 2.)

Article II: Impotence

102. ○ I. Notion.

The best definition seems to be that given by St. Raymond of Pennafort, O.P.[1]

[1] *Summa*, l. 4, *De impotentia coeundi*, § 2, apud Prummer, op. cit., n. 808.

Impotence is "the impossibility of coition, or a defect of soul or body or of both, by which someone is impeded from being carnally commingled with another (in the natural manner)."

a) It is called the impossibility of coition, not the impossibility of generating.

Perfect coition is had when the male member enters the vaginal canal of the woman and pours forth true semen within the vaginal canal. Whenever coition can be completed, true potency must be acknowledged.

b) It is called a defect of soul or body or of both.

Thus are indicated the diverse spiritual or corporeal causes from which impotence can arise. Among spiritual causes there frequently occurs hatred or aversion toward the spouse. The older authors wrote at great length concerning malefice as a cause of impotence. But modern authors judge that a diabolical cause of impotence is to be admitted very rarely and with difficulty. Spiritual causes rarely produce perpetual impotence.

II. Who, in the concrete, are impotent.[2]

[2] Capello, op. cit., nn. 348, 350, 375.

103. ○ A man is impotent:

1. lacking the virga, or male member.
2. lacking both testicles.
3. affected by perpetual atrophy of both testicles.
4. suffering from a defect of the virga which renders the pouring forth of semen into the vaginal canal impossible, i.e., when the meatus is opened not at the extremity of the virga, but in its middle, whether in the inferior part (hypospadias) or in the superior part (epispadias).
5. having a virga too large or too small (often only relative impotence, sometimes absolute).
6. whose virga cannot be erected for completing copula (anaphrodisia).
7. who suffers from excessive venereal excitation, by which it happens that he always pours forth semen before copula (aphrodisia).

The two latter defects rarely constitute absolute and perpetual impotence.

104. ○ b) A woman is impotent:

1. lacking a vaginal canal.
2. whose vaginal canal is wholly closed, so that it cannot in any way be opened.
3. whose vaginal canal is too narrow, absolutely or relatively.
4. suffering from vaginismus, by which, from excessive excitation, the vulva is closed, impeding copula.

In the two former cases impotence is absolute; in the third and fourth, absolute or relative.

105. ○ c) What concerning a man who has undergone vasectomy?

1. Vasectomy for a man is the resection of the canal carrying semen elaborated by the testicles to the seminal vesicles, by which it happens that ejaculation of semen is wholly impossible.

He who has undergone this operation is able to erect the member, to enter the female vessel, and in it to pour forth a certain watery humor secreted by the prostate, but he cannot emit true semen.

2. Nearly all authors admit true impotence in a man who has undergone vasectomy, because for perfect coition the effusion of true semen is required.

But whether such impotence is perpetual or temporary, they do not agree. The whole question is placed in this: whether the interrupted communication with the seminal vesicles can be restored. Some affirm and some deny.

106. ○ d) A woman lacking a uterus or ovaries or both organs is not impotent, but only sterile.

The reason is obvious: for nothing is lacking to such a woman for completing conjugal copula.

And this opinion is strengthened by several responses of the Sacred Congregations of the Holy Office and of the Discipline of the Sacraments, which declare that matrimony is not to be interdicted to a woman of this kind.[3]

[3] S. Off., 3 Feb. 1887; 23 Jul. 1890; 31 Jul. 1895; S. C. de Sacram., 12 Apr. 1909.

A fortiori the same must be held concerning a woman who has undergone an operation similar to vasectomy.

107. ○ III. Division.

a) Impotence is antecedent or consequent, according as it preexists or supervenes upon the celebration of matrimony.

b) It is perpetual if it can be removed by no human manner, or only by illicit or gravely dangerous means; or temporary if it can cease by a human means, licit and not gravely dangerous.

c) It is natural or accidental, according as it arises from a defective conformation of the body or from an extrinsic cause, e.g., a surgical operation, injury, disease.

d) It is absolute, i.e., existing with respect to every person, or relative, which is restricted to a determinate person.

e) It is organic, which arises from a physical defect of the organs, or functional, which arises from a merely physiological defect.

f) It is certain or doubtful.

108. ○ IV. When impotence dirimently impedes matrimony.

"Antecedent and perpetual impotence, whether on the part of the man or on the part of the woman, whether known to the other party or not, whether absolute or relative, is a diriment impediment of matrimony from the natural law itself." (Can. 1068, § 1.)

The reason is ready to hand: no one can validly enter a contract concerning an impossible thing. But an impotent person cannot complete copula. Therefore he cannot validly hand over the right to it.

109. ○ V. Doubtful impotence before matrimony.

a) One who positively doubts whether he is potent cannot contract matrimony before he has resolved the doubt by diligent investigation as far as he can. Otherwise he exposes himself both to the danger of contracting an invalid matrimony and to the danger of gravely deceiving the other party.

b) If the doubt continues after diligent investigation, he can licitly enter matrimony, provided that he warns the other party concerning the doubt.

"If the impediment of impotence is doubtful, whether by a doubt of law or by a doubt of fact, matrimony is not to be impeded." (Can. 1068, § 2.)

For there prevails the right naturally belonging to anyone of contracting matrimony, until the impediment appears certain.

110. ◦ VI. Doubtful impotence known after matrimony.

a) While some hope of completing coition remains, the spouses can attempt copula, even though semen is poured forth outside the vessel contrary to intention.

b) The spouses are bound to apply suitable remedies. They can also seek, as a precaution, even if the other party dissents, a dispensation concerning a ratified and non-consummated matrimony, provided that non-consummation can be proved.

c) If remedies have been applied in vain, and there is danger of incontinence or scandal, let the spouses be separated.

111. ◦ VII. Certain impotence detected after matrimony.

a) 1. If impotence is at once antecedent and perpetual, there is altogether no matrimony, and therefore the putative spouses are immediately to be separated as to bed, or even as to cohabitation, scandal being excluded.

But if there is grave danger of sinning, separation also as to cohabitation is necessary.

If, however, scandal is present, separation from cohabitation requires the intervention of ecclesiastical authority.

It pertains to the ecclesiastical judge to give sentence of nullity after proof of the impediment, and then the party free from impotence can enter a new marriage.

If grave danger of incontinence and scandal is absent, and separation is morally impossible, the putative spouses can cohabit as brother and sister.

2. Nothing is licit to putative spouses which is not licit to the unmarried.

b) 1. If impotence is antecedent but temporary, the matrimony is valid and the spouses are not to be separated.

2. But as to the use of matrimony:

1. if some hope is present of completing the conjugal act, they can attempt it.

2. if hope is not present, they must abstain from acts which generate a proximate danger of pollution in the other spouse.

3. even in the case in which the completion of coition is impossible or gravely harmful to the woman, it is not licit for the man to pour forth semen at the opening of the vaginal canal, whatever one or the other may have said.

c) If impotence is consequent, even though perpetual, the matrimony remains altogether firm. As to its use, the same things hold which we have just said under b).

112. ○ IX. Practical warning. [Printed as IX; probably VIII.]

Often it is expedient that the pastor or confessor leave in good faith those whom he has found invalidly joined under the head of impotence. For worse evils more often flow from admonition. It is otherwise if the putative spouses themselves know that the matrimony is null.

Article III: Bond

113. ○ I. Notion.

"He invalidly attempts matrimony who is held by the bond of a prior matrimony, although not consummated, saving the privilege of faith." (Can. 1069, § 1.)

It is a corollary of those things which we said concerning the two properties of matrimony, namely unity and indissolubility, chap. I, art. II, §§ 1 and 2.

114. ○ II. Nature of the impediment.

This impediment is of divine law, and therefore altogether indispensable. Yet remember the exceptions explained above, with respect to the not perfect indissolubility of matrimony ratified only and of matrimony contracted in unbelief, nn. 11-14.

115. ○ Concerning proving the free state.

a) In order that it be licit to contract a new matrimony, moral certitude is required concerning the dissolution or nullity of the prior marriage. (Cf. Can. 1069, § 2.)

b) In even a slight doubt it is necessary that an authentic declaration of the Ordinary or of the Holy See be obtained concerning the death of the spouse or concerning the invalidity of the prior matrimony.

c) Permission to pass to other nuptials includes dispensation from the impediment of crime on account of adultery alone with permission of matrimony, if a license of this kind emanates from the Holy See, but not if from the Ordinary.

116. ○ IV. Penalties against violators of this impediment.

One who in bad faith attempts a new matrimony, the prior matrimony not having been dissolved, incurs these penalties:

a) Infamy by the fact itself (can. 2356).

b) Irregularity from delict (can. 985, 3°).

c) Privation of the sacraments and, if he dies without signs of penitence, of ecclesiastical burial, as being a public sinner.

d) Excommunication or personal interdict to be imposed against him by the Ordinary if, having spurned his warning, they persist in illicit cohabitation. (Can. 2356.)

Article IV: Disparity of Worship

117. ○ I. Notion.

Disparity of worship is the diversity of religion which exists between two persons, of whom one has validly received baptism and the other has not.

118. ○ II. Extension of the impediment.

"There is no matrimony contracted by a non-baptized person with a person baptized in the Catholic Church or converted to the same from heresy or schism." (Can. 1070, § 1.)

a) Before the Code all the baptized, even non-Catholics, were subject to that impediment.

b) But now the impediment affects only directly those baptized in the Catholic Church or converted to the same from heresy or schism; indirectly, the non-baptized who intend to contract with such persons.

119. ○ III. Who are considered baptized in the Catholic Church.

a) Certainly those who, by their own will if in adult age, or by the will of parents or guardians if infants, were baptized for this end, that they be joined to the communion of the Catholic Church. It suffices that that intention be tacit.

b) More probably, infants who, placed in danger of death, were baptized by a Catholic person, even without the knowledge of the parents.

Indeed, those who were baptized by a Catholic contrary to the prescription of cc. 750-751.

c) Yet if the aforesaid children born of non-Catholics (b) were educated from infancy in heresy or schism or without any religion, it is not established that they are held by the impediment, especially if they were baptized illegitimately in the Catholic Church.

Practically, while a doubt of law stands, they are not bound by the impediment.

120. ○ IV. Who are converted.

a) Those who return to the Catholic Church of their own accord.

b) Children who, having attained the use of reason, were educated as Catholics by parents or guardians.

121. ○ V. Doubtful baptism with respect to matrimony.

a) If there is question of celebrating.

The doubt must be shaken out as far as possible. If after diligent investigation a serious doubt remains, if the Catholic party is doubtfully baptized, let that party be rebaptized conditionally; if the non-Catholic party, who wishes to be converted, then that party also is to be rebaptized conditionally; but if he does not wish to be converted, it is not licit to rebaptize him conditionally, but it is preferable to obtain, as a precaution, a dispensation upon disparity of worship, together with a dispensation from mixed religion.

Marc warns that such a dispensation as a precaution can be granted by the Ordinary, since there is question of a doubt of fact, according to can. 15.[1]

[1] Op. cit., n° 2039.

b) If there is question of a matrimony already celebrated.

In doubt, matrimony is always presumed valid. (Can. 1070, § 2.)

But note well that this presumption yields to truth.

Whence, if a person baptized in the Catholic Church or converted to the Catholic Church contracted matrimony without dispensation from the impediment of disparity of worship with a person who truly is not baptized, the matrimony is in reality null.

122. ○ VI. From what law that impediment proceeds.

Indubitably it is of merely ecclesiastical law.

123. ○ VII. Cessation of the impediment.

a) Besides the conversion and baptism of the unbelieving party, that impediment ceases through a dispensation of the Roman Pontiff granted through the organ of the Holy Office. Outside mission places, Ordinaries of places very rarely have the faculty of dispensing.

1. In Catholic regions a dispensation is rarely granted, especially if there is question of matrimony with a Jew.

2. The cautions which are required for mixed nuptials must always be exacted (can. 1071).[2]

[2] Cf. above n° 83.

The delegate dispenses invalidly if the cautions are not furnished.[3]

[3] S. Off., 21 Jun. 1912, *Acta Apostolicae Sedis* 1912, p. 443.

3. As to the rite to be employed, the same restrictions are in force as for mixed nuptials. (Can. 1071.)[4]

[4] Cf. above n° 87.

4. More probably, a dispensation upon disparity of worship still implies, as in the prior law,[5] dispensation from all impediments from which the unbelieving party is exempt, such as consanguinity in the second degree of the oblique line, etc. For "the style of the Curia, to which the aforesaid dispensation is referred, must be attended to also in the new law (can. 20), where there is lacking an express prescription of law, whether general or particular."[6]

[5] Instr. S. Officii, 16 Sept. 1824 ad 2, Coll. De Pr. Fide, I, n. 784.

[6] Capello, op. cit., n° 422. Thus also Vermeersch-Creusen, op. cit., n. 346.

Marc rather favors the contrary opinion.[7]

[7] Op. cit., n. 2038, note 1.

b) The impediment seems also to cease in a case of true necessity.

Such a case indeed will be rare, but not altogether impossible. "Hence, if in some region of unbelievers there were so few Christians that they could not contract matrimonies among themselves, and on account of the distance of places or other circumstances they could not ask for a dispensation upon disparity of worship, Christians, at least probably, would not be held by this impediment."[8]

[8] Capello, op. cit., n. 199.

Article V: Sacred Order

124. ○ I. Notion of the impediment.

"Clerics constituted in sacred orders invalidly attempt matrimony." (Can. 1072.)

125. ○ II. Whom this impediment holds.

a) Every cleric of the Latin Church who has received at least the order of subdiaconate can neither validly contract matrimony nor use matrimony contracted before the order was received.

b) There is excepted: 1. he whose ordination is invalid.

2. He who, compelled by force or grave fear, received sacred order, unless afterward, fear having been removed, he ratified the ordination expressly or tacitly.

3. He who received order before puberty, unless after the years of puberty he freely ratified the ordination.

4. He who was not sufficiently instructed concerning the obligation of observing chastity.

126. ○ III. Quality of this impediment.

Without any doubt it is of merely ecclesiastical law.

127. ○ IV. What is the obligation of observing chastity for clerics in major orders.

Although several think otherwise, nevertheless that obligation seems to arise not from ecclesiastical law alone, but from a vow annexed to the subdiaconate by the will of the Church. And therefore a cleric in major orders, sinning internally against chastity, commits true sacrilege. But in the opposite opinion it is not explained how an internal violation of chastity is sacrilegious.

128. ○ V. Dispensation.

The Holy See, by its undoubted power of dispensing from this impediment, never uses it with Bishops, very rarely with presbyters, more rarely with deacons, and rarely with a subdeacon, although for these two last orders modern praxis is easier.

129. ○ VI. Penalties against transgressors.

a) Excommunication latae sententiae and simply reserved to the Apostolic See, both for the cleric himself and for the person with whom he attempts to contract matrimony, even civilly only. (Can. 2388, § 1.)

b) If, after being warned, within a time determined beforehand by the Ordinary according to the diversity of circumstances, they have not come to their senses, let them be degraded (ibid.).

c) Loss by the fact itself and without any declaration of all ecclesiastical offices. (Can. 188, 5°.)

d) Irregularity from delict. (Can. 985, 3°.)

130. ○ VII. Discipline of the Eastern Church.

a) One constituted in major orders cannot contract matrimony. Among certain Churches, however, the custom is to permit matrimony to subdeacons.

b) A married man can receive the subdiaconate, diaconate, and presbyterate, and use matrimony as before the order was received.

c) A married man cannot be assumed into the episcopate except by dispensation, and with the obligation of observing perfect chastity.

d) Whether matrimony attempted by a cleric in major orders of the Eastern Church is not only illicit, but also invalid as in the Latin Church, up to this time has not been defined by the Apostolic See by a decree binding all the Oriental Churches.

It is invalid: 1) for Italo-Greeks and Romanians as to the subdeacon.

2. for Maronites as to the deacon.

3. for Ruthenians as to the presbyter.

For the other Orientals, authors commonly and more probably hold, even for schismatics, with few exceptions, that matrimony is invalid.

e) Not from a vow, but from ecclesiastical law alone, sacred order impedes one from contracting matrimony.[1]

[1] Cf. Capello, op. cit., n. 436.

Article VI: Solemn Vow

131. ○ I. Notion of that impediment.

"Religious who have professed solemn vows, or simple vows to which by special prescription of the Apostolic See the force of invalidating nuptials has been added, invalidly attempt matrimony." (Can. 1073.)

Already the Council of Trent had defined the existence of this impediment:[1] "If anyone shall have said... that regulars solemnly professed in chastity can contract matrimony, and that the contract is valid notwithstanding... the vow; and that the opposite is nothing other than to condemn matrimony, and that all can contract matrimony who do not feel that they have the gift of chastity, even if they have vowed it: let him be anathema."

[1] Sess. XXIV, *De sac. Matr.*, can. 9. Denz-Bannwart, n. 979.

132. ○ II. Extension of the impediment.

To this impediment are subject:

a) those who have validly professed solemn vows. Solemn vows are only those which are recognized by the Church as such. Otherwise they are simple. Vows of this kind do not exist except in Orders strictly so called.

b) Scholastics of the Society of Jesus who have emitted simple vows after the two-year novitiate. Thus by special statute of the Holy See.

133. ○ III. Nature of the impediment.

a) For the simple vows of the Society of Jesus, the impediment most certainly has force from ecclesiastical law alone.

b) For solemn vows, formerly it was sharply disputed among theologians and canonists whether they dirimently impede matrimony by divine or ecclesiastical law. But today most think that the diriment impediment of solemn vow is of merely ecclesiastical law, although the matter still remains doubtful, with theologians of the best note opining otherwise.

134. ○ IV. Dispensation.

a) The Holy See grants dispensation from a grave and urgent cause, even from a private cause.

b) Scholastics of the Society of Jesus dismissed from the Society by the Superior General become, by the fact itself, free from that impediment.

135. ○ V. Penalties against violators.

Besides the penalties indicated above at n. 129 a) and d), which are common to solemnly professed regulars and clerics of major orders, those attempting matrimony incur the penalty of dismissal by the fact itself from the Order. (Can. 646, 3°.)

If they are also constituted in sacred Orders, they incur besides all the other penalties indicated at n. 129.

Article VII: Raptus

136. ○ I. Notion.

Raptus, as it is an impediment of matrimony, is defined: "the abduction or detention of an unwilling woman, for the sake of entering matrimony with her."

137. ○ II. Existence of the impediment.

That impediment is of ecclesiastical law, established for protecting the liberty of matrimony.

"§ 1. Between a man who abducts and a woman abducted with a view to matrimony, so long as she remains in the power of the abductor, no matrimony can stand.

§ 3. As regards the nullity of matrimony, violent retention of the woman is held equal to raptus, namely when a man violently detains a woman with a view to matrimony in the place where she is staying or to which she freely came." (Can. 1074.)

138. ○ III. What conditions are necessary that the impediment be present.

a) Abduction is required, i.e., removal from a place in which the woman is free from the power of the abductor to a morally diverse place in which she is under his power; or detention, i.e., custody of the person in some place from which she is impeded from departing and where she is under the power of the one detaining her.

b) Force done to the woman is required. But it matters little whether the woman is unwilling as to the abduction or detention, or only as to entering matrimony.

c) It is necessary that a woman be abducted or detained. The law does not concern itself with the unusual case of the raptus of a man by a woman.

d) It is necessary that raptus have matrimony as its end. If it is done for another end, even a most wicked one, the impediment is not present.

139. ○ IV. Cessation of the impediment.

a) It ceases by the fact itself, once the woman has been separated from the abductor and placed in a safe and free place, and consents to have the abductor as husband. (Can. 1074, § 2.)

Nevertheless let the pastor not assist at the matrimony without consulting the Ordinary, whose part it will be to judge whether the raptus has truly ceased and the woman freely consents to matrimony.

b) The Church dispenses very rarely in this impediment, on account of the danger of consent that is not free.

But it is not excluded from the faculty granted by cc. 1043-1045. Then, however, care must be taken that the woman give free consent.

Article VIII: Crime

140. ◦ I. Notion.

a) It is a diriment impediment of matrimony to be contracted between persons who have committed qualified adultery or qualified conjugicide.

b) Under a threefold form the impediment of crime can be found:

1. adultery with a promise or attempted matrimony.

2. adultery with conjugicide perpetrated by only one of the adulterers.

3. conjugicide alone, but perpetrated by common counsel.

141. ◦ II. First form.

a) "They cannot validly contract matrimony:

1° Who, while the same legitimate matrimony endures, have consummated adultery between themselves, and have mutually given faith to each other concerning matrimony to be entered, or have attempted matrimony itself, even by a civil act." (Can. 1075.)

b) Conditions that crime under the first form exist as an impediment.

1. On the part of adultery.

It is necessary that the adultery be: true, i.e., that at least one accomplice be validly bound by matrimony; formal on the part of each, i.e., that each know at least one, and indeed the same, party to be married. Therefore if each party is married, but neither knows the accomplice to be married, the impediment is not present; consummated, i.e., that the man enter the vaginal canal of the woman and pour forth true semen in it.

Copula is presumed perfect in both forums.

2. On the part of the promise.

It is necessary that the promise of matrimony be: true and serious, i.e., a simple purpose or a feigned or joking promise does not suffice. According to the more common and more probable opinion, and one safe in practice, any fiction, even merely internal, prevents the impediment from being present. For an invalidating law is of strict interpretation (Can. 19), and in a doubt of law the impediment is practically null (Can. 15); free, i.e., not extorted by grave fear or deceit, nor vitiated by substantial error; absolute, i.e., not made under a condition; concerning matrimony to be entered after the death of the spouse, although it is not necessary that this be added expressly to the promise; injurious to the existing matrimony: such would not be a promise made at the insistence of a dying spouse; joined with adultery in the same matrimony: the impediment is not present if before the adultery the promise was sincerely and externally revoked; externally manifested and mutually accepted.

3. On the part of the attempted matrimony.

Attempted matrimony is the act by which two persons, conscious of the existing impediment of bond, truly and seriously give conjugal consent to each other, although invalidly.

It matters little in what manner that attempt is made.

142. ○ III. Second form.

a) "They cannot validly contract matrimony:

2° Who, while the same legitimate matrimony endures, have consummated adultery between themselves, and one of them has perpetrated conjugicide." (Can. 1075.)

b) Conditions necessary that the impediment really exist.

1. On the part of adultery: the same conditions as above for the first form, n. 141 b) 1.

2. On the part of conjugicide.

It is necessary that the death of the spouse be plotted by one or the other of the adulterers, and indeed from the intention of contracting matrimony with the accomplice of adultery; that it actually follow, at least probably; therefore in practice it is required that the adultery precede the act which is the cause of death; the spouse to whom death is brought must be the same one who was living at the time the adultery was committed.

For the canon says: "while the same legitimate matrimony endures."

143. ○ IV. Third form.

a) "They cannot validly contract matrimony:

3° Who by mutual physical or moral work, even without adultery, have brought death to a spouse." (Can. 1075.)

b) Conditions required for incurring the impediment.

1. The killing of a true spouse.

2. Death following from the true and mutual cooperation of both accomplices.

3. Intention of entering matrimony with the accomplice.

In practice this intention is required in both accomplices. Certainly, on this point authors disagree theoretically. But from this the impediment becomes doubtful by a doubt of law if the intention of matrimony is not found in each party, and therefore null.

For the same reason it is necessary in practice that such intention be manifested in some way to the other accomplice.

In the external forum this intention is presumed.

144. ○ V. Reason for the impediment.

The intention of the Church in establishing that impediment was both to provide for conjugal fidelity and the safety of spouses, and to inflict punishment on account of the most grave crime committed.

145. ○ VI. Multiplication of the impediment.

The impediment of crime is multiplied:

a) if by delicts diverse in species injury is brought upon one and the same matrimony.

If adulterers promise each other matrimony, then attempt it while the spouse is living, and finally at least one of the spouses kills, a threefold impediment is present.

b) If injury is brought upon several matrimonies.

For if both are married, provided that each knows it, a twofold impediment is present from adultery with a promise or attempted matrimony. Or also, if Peter successively takes Paula and Cecilia in matrimony, and during each matrimony commits adultery with Margaret with a promise or attempted matrimony, a twofold impediment is contracted by the accomplices.

146. ○ VII. Quality of the impediment.

a) It is of merely ecclesiastical law.

b) Therefore it directly affects only the baptized, except in the case in which civil law establishes a similar impediment.

c) Nevertheless indirectly, namely by reason of the faithful party, an unbeliever can be liable to this impediment. This obtains when the faithful party fulfills all the conditions necessary so that he himself contracts the impediment. For then the faithful party communicates his own inability to the unbeliever. But if the unbeliever alone acts in an essential element of the crime, the impediment is not present.

147. ○ VIII. Dispensation.

This impediment is removed by dispensation alone.

a) If there is question of public conjugicide, never; if of occult conjugicide, sometimes dispensation is granted from a most grave cause.

b) Dispensation is easier in the first form of the impediment, which moreover is held in law as a minor impediment. (Can. 1042, § 2, 5°.)

c) In a dispensation upon a ratified and non-consummated matrimony, and in permission given by the Supreme Pontiff, but not by the Ordinary, of passing to other nuptials on account of the presumed death of the spouse, there is implicitly contained dispensation upon this impediment in its first form. (Can. 1053.)

d) Pius X, on 3 June 1912, through a Decree of the Sacred Congregation of the Sacraments, revalidated and sanated all matrimonies celebrated up to that day and invalid on account of adultery with attempted matrimony.[1]

[1] *Acta Apostolicae Sedis*, 1912, p. 403.

Article IX: Consanguinity

148. ○ I. Notion of consanguinity.

a) It is the propinquity of persons of whom one descends from another, or all descend from a proximate common stock through carnal generation.

b) Stock: the person from whom others descend.

Line: a series of persons of whom one descends from another, or who all descend from one stock.

Direct line: that which is constituted from persons of whom one descends from another.

Transverse or collateral line: that which is constituted from persons who have a common stock, without one descending from another.

Degree: the distance of one person from another in the same line.

Equal line: when collateral persons are distant from the common stock by an equal degree.

Unequal line: if collateral persons are distant from the common stock by a diverse degree.

c) Concerning the manner of computing degree.

1. In the direct line there are as many degrees as there are persons composing the line, the stock being removed. (Can. 96, § 2.)

Thus a grandson is consanguineous with his grandmother in the second degree.

2. In an equal collateral line there are as many degrees as there are persons in one tract of the line, the stock being removed. (ibid., § 3.)

Thus a brother and sister are in the first degree, first cousins in the second.

3. In an unequal collateral line there are as many degrees as there are persons in the tract of the line that belongs to him who is more distant from the common stock. (ibid.)

Thus a maternal uncle with his niece is consanguineous in the second degree.

149. ○ II. Extension of the impediment.

a) "§ 1. In the direct line of consanguinity matrimony is invalid between all ascendants and descendants, both legitimate and natural."

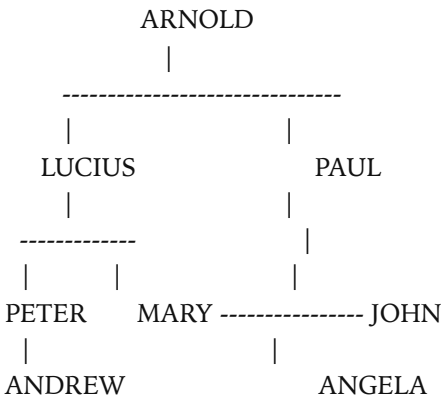
b) "§ 2. In the collateral line it is invalid up to the third degree inclusive."

c) "The impediment of matrimony is multiplied only as often as the common stock is multiplied." (Can. 1076.)

Multiplication of this kind of common stock can occur in three ways:

1. When the common ascendants already are consanguineous.

For example: Arnold has two sons, Lucius and Paul. Again Lucius begot Peter and Mary, and Paul begot John. John contracted matrimony with Mary and from her begot Angela. Peter begot Andrew. Between Andrew and Angela there is a twofold impediment of consanguinity, one in the second degree from the common stock Lucius, and the other in the third degree from the common stock Arnold.

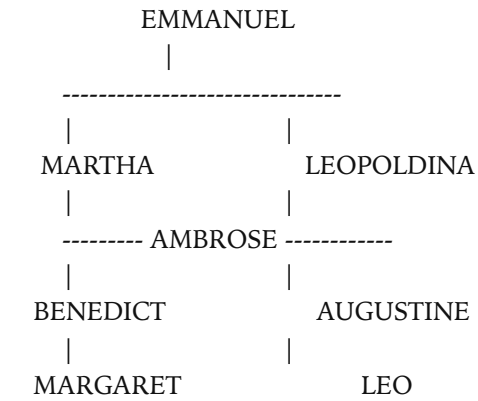


2. When men who are consanguineous with each other have begotten offspring from women who are consanguineous with each other.

For example: Albert and Reginald, brothers, take in matrimony, the one Mary, the other Aloysia, sisters. From the former matrimony Louis is born, from the other Eugenia. Between Louis and Eugenia there exists a twofold impediment in the second degree of consanguinity, because they have a twofold common stock, namely the parents both of their father and of their mother.

3. When someone has offspring from consanguineous persons whom he successively married.

For example, Ambrose successively took Martha and Leopoldina, sisters, in matrimony. From the former he begot Benedict, from the other Augustine. Benedict begot Margaret and Augustine begot Leo. Between Leo and Margaret there is a twofold impediment of consanguinity, one in the second degree, the other in the third degree, because they have a twofold common stock, namely Ambrose, their grandfather, and Emmanuel, their great-grandfather.



d) An easy manner of detecting consanguinity.

On separate sheets, above the names of the betrothed persons, let the names of their ascendants be written up to the third degree. If names are found common to each betrothed person, the impediment is present. Otherwise it is not.

150. ○ III. The law in force before the Code.

Before the Code, i.e., before the day 19 May 1918:

a) the impediment in the collateral line extended up to the fourth degree inclusive.

b) The impediment was multiplied also when either one of the betrothed persons ascended to the common stock by multiple ways.

151. ○ IV. By what law consanguinity makes matrimony diriment.

a) In the direct line, most certainly by natural law in the first degree; and more probably also in any degree, even more remote.

b) In the collateral line, in the first degree, by natural law according to many, although others contradict.

In practice: "Let matrimony never be permitted, if any doubt lies beneath whether the parties are consanguineous in any degree of the direct line or in the first degree of the collateral line." (Can. 1076, § 3.)

c) In the collateral line beyond the first degree, no one doubts that the impediment is of merely ecclesiastical law.

152. ○ V. What concerning a brother and sister who, as unbelievers, contracted matrimony between themselves, if afterwards they are converted to the faith?

R. The Holy See should be consulted.

153. ○ VI. Dispensation.

a) In the third degree it is dispensed easily, less easily in the equal second degree, with difficulty in the second touching the first.

b) A dispensation is valid if in the petition or concession an error concerning the degree has crept in, provided that the degree really existing is inferior, or even though the multiplicity of the impediment in an equal or inferior degree has been passed over. (Can. 1052.)

Article X: Affinity

154. ○ I. Notion.

a) Affinity, in the new law, is the propinquity of persons which "arises from a valid matrimony, whether ratified only or ratified and consummated," and which "exists only between the man and the blood-relatives of the woman, and likewise between the woman and the blood-relatives of the man." (Can. 97, §§ 1 and 2.)

b) "It is so computed that those who are consanguineous with the man are, in the same line and degree, affinities of the woman, and vice versa." (ibid., § 3.)

155. ○ II. Extension of the impediment.

a) "Affinity in the direct line makes matrimony diriment in any degree; in the collateral line up to the second degree inclusive."

b) "The impediment of affinity is multiplied:

1° As often as the impediment of consanguinity from which it proceeds is multiplied."

That is, as often as between the counterpart and his or her blood-relatives there is a multiple common stock.

"2° By matrimony being repeated successively with blood-relatives of the deceased spouse." (Can. 1077.)

156. ○ III. By what law affinity is an impediment.

a) Without any doubt it is of merely ecclesiastical law, even in the first degree of the direct line.

b) This is clear both from the modern concept of affinity, which constitutes a merely legal bond, and from declarations of the S.S.C.C. already issued under the prior law and which have greater force concerning affinity as it is now established in law.

c) Therefore unbelievers contracting among themselves are not held by such an impediment, as being immune from ecclesiastical law, unless nevertheless the civil law establishes a similar impediment.

157. ○ IV. From what matrimony affinity arises.

a) Although some contradict, it seems certain that affinity does not arise from the matrimony of non-baptized persons. This is gathered from the tenor of the law itself. For it "arises from a valid matrimony, whether ratified only or ratified and consummated." (Can. 97, § 1.) But the Code itself, by the name of ratified matrimony, designates only the matrimony of baptized persons. (Cfr. Can. 1015, § 1.)

b) From the matrimony of a faithful party with an unbeliever, even when celebrated with the impediment of disparity of worship dispensed, affinity does not arise, since, as we said above at n. 23, such a matrimony is not a sacrament.

And, notwithstanding the contrary opinion of several, this sentence is altogether safe in practice, since a doubt of law makes the impediment null. (Can. 15.)

c) If from two unbelieving spouses only one is converted, affinity does not arise on that account. But it arises by the fact itself when both have been converted and baptized, because the matrimony by that very fact becomes ratified and a sacrament.

158. ○ V. Dispensation.

a) In the first degree of the direct line, when the matrimony has been consummated, and with legitimate blood-relatives of the deceased spouse, the Church never dispenses.

b) In the collateral line it is easily dispensed. And with regard to affinity in the second degree, the law counts that impediment among the lesser ones. (Can. 1053.) Cfr. above n. 97.

c) A dispensation is valid if, in the petition or concession, an error concerning the degree has crept in, provided that the degree really existing is inferior, or even though the multiplicity of the impediment in an equal or inferior degree has been passed over. (Can. 1052.)

VI. Law before the Code.

159. ◦ a) For the pastor of souls and for the confessor, knowledge of the ancient law still remains necessary. For although the impediment of affinity, such as the law in force before the Code had established, has now been altogether abolished, nevertheless its force in some way perseveres with respect to matrimonies celebrated before the day 19 May 1918. For these matrimonies, if they were celebrated with a diriment impediment then existing, are and remain invalid. To convalidate such a matrimony invalid from law now suppressed, no dispensation indeed is required, but renewal of consent from the part at least of the spouse who is conscious of the impediment.

160. ◦ b) Notion of affinity.

1. It was the propinquity of persons arising from perfect copula alone, licit or illicit, and existing between the man and the blood-relatives of the woman, and vice versa between the woman and the blood-relatives of the man.

2. Perfect copula is that by which the man penetrates the woman's vaginal passage and pours forth true semen in it.

161. ◦ c) Extension of the impediment.

It made matrimony diriment in any degree of the direct line. In the collateral line, to the fourth degree inclusive if from licit copula; to the second inclusive, if from illicit copula.

Copula had in a putative matrimony most certainly, and more probably also in a union which had the species and figure of matrimony, was equated with licit copula with respect to the generation of the impediment.

Article XI: Public Propriety

162. ◦ I. Notion in the law of the Code.

a) As was said concerning affinity, the notion of this impediment is totally diverse in the preceding law and in the new law.

Public propriety now "arises from invalid matrimony, whether consummated or not, and from public and notorious concubinage; and it makes nuptials diriment in the first and second degree of the

direct line between the man and the blood-relatives of the woman, and vice versa." (Can. 1078.)

b) A twofold cause is apt to produce the impediment:

1. Invalid matrimony, from any defect whatever, even of consent, if nevertheless you except civil matrimony, for those whom the nullity of clandestine matrimony holds.[1]

[1] Cfr. response of the Pontifical Commission for the authentic interpretation of the Code of Canon Law, 12 March 1929, II, *A.A.S.*, vol. XXI, p. 170.

2. Public or notorious concubinage.

Concubinage is carnal and habitual commerce between a man and a woman, covered by no species of matrimonial bond.

Concubinage is public if it has already been divulged or is found in such circumstances that it can and must prudently be judged that it will easily be divulged. (Can. 2197, 1°.)

It is notorious either by notoriety of law, which has place after a sentence of the judge that has passed into a judged matter or after the confession of the delinquent; or by notoriety of fact, namely when the delict is publicly known and cannot be concealed by any evasion. (ibid. 2° and 3°.)

163. ◦ II. Multiplicity of the impediment.

The impediment seems to be multiplied if either party has entered successively into invalid matrimony or public concubinage with two or more blood-relatives, in the first or second degree of the direct line, of the counterpart.

But, since the Code is silent concerning such multiplicity and authors depart into diverse opinions, that multiplication becomes doubtful by a doubt of law and therefore is practically not to be attended to. (Can. 15.)

164. ◦ III. From what law that impediment proceeds and whom it holds.

a) From merely ecclesiastical law.

b) It obliges all and only the baptized, even non-Catholics.

c) Authors dispute whether betrothed persons who before baptism had lived in invalid matrimony or public concubinage, after conversion incur the impediment of public propriety.

1. If that bond perseveres after baptism, they most certainly incur the impediment.

2. If otherwise, they seem not to be held by that impediment.

165. ◦ IV. Dispensation.

a) Dispensation is the only manner by which the impediment can cease.

b) In the second degree it is reputed a lesser impediment. (Can. 1042.)

166. ◦ V. Law before the Code.

a) Notion.

Public propriety was the propinquity of persons arising from valid betrothals or from ratified non-consummated matrimony, and existing between the man and the blood-relatives of the woman and vice versa between the woman and the blood-relatives of the man in the degrees determined by law.

b) Therefore a twofold cause was apt to produce the impediment:

1° Valid betrothals, absolute or at least those whose condition had been purified, and certain.

Such betrothals made the impediment to the first degree in each line.

Notice that already from the day 19 April 1908 only betrothals drawn up in writing and duly signed according to the norm of the Decree *Ne temere* are valid.

2° Ratified and non-consummated matrimony, whether valid or invalid, celebrated absolutely, provided the invalidity was not from defect of consent.

And that cause produced the impediment to the fourth degree inclusive in each line.

Article XII: Spiritual Kinship

167. ○ I. Notion.

It is the propinquity of persons arising from the reception of baptism or confirmation.

168. ○ II. Scope of the impediment.

a) In the new law only spiritual kinship arising from baptism received constitutes an impediment of matrimony.

b) That impediment is present between the baptizer and the baptized, and between the sponsor and the baptized. (Can. 1079 - Can. 768.)

169. ○ III. Conditions required for producing the impediment.

a) On the part of baptism: it must be valid. But even from private baptism the impediment is begotten, since the law does not distinguish.

b) on the part of the minister: he himself must be baptized.

c) on the part of the sponsor (or sponsress): it is required that he or she fulfill all the conditions which can. 765 requires for undertaking that office validly.

170. ○ IV. By what law that impediment exists.

a) It is of merely ecclesiastical law.

b) Consequently it is contracted only by the baptized.

171. ○ V. Multiplication of the impediment.

It is never multiplied, unless the minister is at the same time, through himself or through a procurator, the sponsor.

172. ○ VI. Dispensation.

It is the only means of removing that impediment, which is of the lesser grade. (Can. 1042.)[1]

[1] Cfr. above n. 97.

173. ○ VII. Law before the Code.

a) Not only baptism but also confirmation generated a diriment impediment.

b) The impediment was in force:

1. Between the minister and the subject of the sacrament.

2. Between the sponsor (or sponsress) and the subject.

3. Between the sponsor (or sponsress) and the parents of the subject.

4. Between the minister and the parents of the subject.

Article XIII: Legal Kinship

174. ○ I. Notion.

It is the propinquity of persons coming from adoption.

175. ○ II. When it is a diriment impediment.

a) This depends on the civil law of each nation, which in this matter the Church canonizes or makes its own.

"Those who by civil law are held incapable of entering nuptials between themselves on account of legal kinship arising from adoption cannot by force of canon law contract matrimony between themselves." (Can. 1080.)

b) A civil law having adoption as a diriment impediment is in force in the following states: Italy, Spain, Poland, Croatia, Slavonia, Russia, Monaco, Guatemala, Bolivia, Brazil, Colombia, Peru, and perhaps Greece.[1]

[1] Cfr. Capello, cited work, n. 570.

c) From the diverse laws in force in diverse nations, it must be drawn out between which persons the impediment is present.

176. ○ III. Cessation of the impediment.

a) It ceases by abrogation of the civil law promulgating it.

b) Or by dispensation granted not by the civil prince, but by the Church.

Chapter VI: Concerning Dispensation from the Impediments of Matrimony

Article I: Concerning Matrimonial Dispensation in General

177. ○ I. Notion.

Dispensation, as it regards the impediments of matrimony, can be defined: the relaxation of an ecclesiastical impediment invalidating or prohibiting matrimony, in a particular case, made by the legislator or by his delegate.

178. ○ II. Division.

Dispensation from impediments of matrimony is distinguished in many ways:

a) For the external forum, which is granted for a public impediment.

For the internal forum, which is granted for an occult impediment.

Again, dispensation for the internal forum is subdivided: for the sacramental forum and for the non-sacramental forum, according as it is given within or outside the administration of the sacrament of penance.

A dispensation given in the external forum is valid also for the internal forum.

Given in the internal forum, it is valid only in conscience.

If afterwards the impediment becomes public, unless the dispensation was given only in the sacramental forum or unless a rescript of the Sacred Penitentiary provides otherwise, a new dispensation in the external forum is not necessary. (Can. 1047.)

b) A dispensation for contracting matrimony, and the convalidation of a matrimony already contracted.

c) A pontifical dispensation, which is given by the Roman Pontiff immediately or through the organ of the Sacred Congregations; and a non-pontifical dispensation, which is given by others.

d) In gracious form, which is immediately granted to the petitioner himself and directed to him;

In commissory form: which is committed to a third person to be executed.

Article II: Concerning the Authority of Dispensing

179. ○ Since it belongs to the Roman Pontiff alone to constitute impediments to matrimony, whether merely prohibiting or diriment, he alone also dispenses by proper and native right, as in his own law.

But in fact, whether by a disposition of common law or by special indults, the Supreme Pontiff grants to others part of his dispensatory power, and therefore now we must treat of the competence of diverse persons for granting dispensations from matrimonial impediments.

§ 1. Concerning the Power of the Roman Pontiff

180. ○ I. Scope of his power.

a) His power of dispensing extends to all impediments of ecclesiastical law. For the supreme legislator of the Church, by that very fact, can dispense in any law of the Church.

b) Neither the Pope nor any man can dispense from impediments of absolute divine law, whether natural or positive.

c) But if the impediment arises from an obligation freely undertaken, which is not altogether indissoluble from divine law, the Pope, as vicar of Christ, can remove it. And by acting thus he does not properly dispense in divine law, but only improperly, namely by changing the matter of the obligation.

Thus he dispenses from the impediment of vow and from bond, when there is question of a matrimony ratified only.

d) To him alone belongs the declaration of doubtful divine law.

181. ○ II. Exercise of that power.

a) The Roman Pontiff never dispenses in impediments concerning which it is disputed whether they are of the law of nature or of positive divine law, for example in the impediment of consanguinity in every degree of the direct line and in the first degree of the collateral line.

b) Even with respect to merely ecclesiastical impediments, in practice he does not use his whole faculty of dispensing.

1. He never dispenses in the impediment of the episcopate, and from the impediment of public conjugicide only in danger of death.

2. Very rarely, and only from a most grave cause, does he grant dispensation in the first degree of affinity of the direct line after consummated matrimony, in raptus, and in the presbyterate.

3. Rarely and from a grave cause he dispenses in occult conjugicide, in disparity of worship outside mission regions, in age, sacred order, and solemn profession.

4. More frequently, and on account of less grave causes, in the other impediments of ecclesiastical law.[1]

[1] Cfr. Capello, cited work, n. 224.

182. ○ III. Competence of the Sacred Congregations.

Almost always the Roman Pontiff uses the organ of the Sacred Congregations for dispensing in a matrimonial matter.

a) The Holy Office dispenses any faithful whatsoever from impediments which have a special connection with the faith, i.e., from the impediments of disparity of worship and mixed religion.

b) The Sacred Congregation of Religious dispenses religious from the vow of chastity.

c) The Sacred Congregation for the Discipline of the Sacraments grants all other dispensations for the external forum, provided there is not question of Orientals.

d) The Sacred Congregation for the Oriental Church is competent for all impediments, except those which pertain to the Holy Office, whenever at least one party is of an oriental rite.

e) The Sacred Penitentiary has its jurisdiction extended to all impediments whatever, but only for the internal forum.

1. To the internal forum belongs an impediment occult by nature and by fact.

2. Nevertheless, probably the Sacred Penitentiary is competent also with regard to certain impediments not altogether occult by fact, or indeed public by nature, but occult by fact. Therefore the Sacred Penitentiary can be approached until the Holy See declares otherwise:

1. If, with respect to matrimony to be contracted, the impediment of vow, of crime, and of consanguinity from illicit copula is known to a few and altogether discreet persons (which must be declared in the petition).

2. When there is question of a matrimony contracted, for occult spiritual kinship and consanguinity even in the second degree, "if it has remained occult for at least ten years and the petitioners contracted publicly together and lived together and were held as legitimate spouses."

For such power belonged to the Sacred Penitentiary before the Code, nor is it certain that it has been revoked.[2]

[2] Cfr. Vermeersch-Creusen, cited work, n. 304, 4. - Capello, cited work, n. 227.

§ 2. Concerning the Power of the Local Ordinary

183. ○ The local Ordinary,[1] especially in urgent circumstances, enjoys broad ordinary power attributed to him by law. Moreover he almost always has special faculties delegated to him by the Holy See.

[1] Cfr. above, n. 59, a.

184. ○ I. Power of the local Ordinary in the ordinary course of affairs.

He can dispense: a) in banns; b) in a doubt of fact, provided there is question of impediments in which the Pope is accustomed to dispense; c) in non-reserved vows.

II. Power of dispensing in extraordinary circumstances.

185. ○ a) When danger of death is urgent.

"Ordinaries of places, for providing for conscience and, if the case should bear it, for the legitimation of offspring, can dispense both from the form to be observed in the celebration of matrimony and from all and individual impediments of ecclesiastical law, whether public or occult, even multiple, except impediments arising from the sacred order of the presbyterate and from affinity in the direct line after consummated matrimony, with respect to their own subjects dwelling anywhere and all actually staying in their own territory, scandal having been removed, and, if dispensation is granted upon disparity of worship or mixed religion, the customary cautions having been furnished." (Can. 1043.)

1. Conditions required so that the Ordinary can dispense.

1° Danger of death, grave, certain or seriously probable, from whatever cause it proceeds, affecting either party.

2° Necessity of providing for conscience or for the legitimation of offspring.

Either necessity suffices according to the common sentence of doctors.

To provide for conscience, i.e., to remove sin or the proximate occasion of sin in any matter whatever.

What offspring can be legitimated?

R. Certainly natural or even incestuous offspring. More probably and more commonly they judge that sacrilegious or adulterine offspring cannot be legitimated.

3° Removal of scandal.

4° For impediments of mixed religion or disparity of worship, the furnishing of the customary cautions. Whether this condition is imposed for the validity of the dispensation is not established.

2. Nature of that faculty.

It is ordinary, and therefore delegable even habitually (Can. 199, § 1), valid for each forum (can. 202, § 3), and to be interpreted broadly (can. 200, § 1).

3. Scope of the power.

1° This power is very broad. It can dispense from all impediments established by ecclesiastical law, with only two excepted, and also from the assistance of the parish priest or of two witnesses, or of both, if this is necessary.

2° With respect to his own subjects by reason of domicile or quasi-domicile, wherever they are, and with respect to all actually staying in his own territory, the Ordinary can exercise it.

3° The possibility of having recourse to the Holy See does not remove this faculty of the Ordinary.

186. ○ b) In other urgent cases.

"§ 1. Ordinaries of places can, under the clauses established at the end of can. 1048, grant dispensation upon all impediments concerning which there is question in cited can. 1043, whenever

the impediment is detected when all things are already prepared for the nuptials, and the matrimony cannot, without probable danger of grave evil, be deferred until dispensation is obtained from the Holy See.

"§ 2. This faculty is valid also for the convalidation of a matrimony already contracted, if the same danger is present in delay and time does not suffice for recourse to the Holy See." (can. 1045.)

1. Conditions required so that this faculty can be exercised.

1° In each case indicated in § 1 and § 2, probable danger of grave evil, one's own or another's, spiritual or temporal.

2° If there is question of matrimony to be contracted, it is necessary that all things already be prepared for the nuptials, so that the nuptials morally cannot be deferred.

3° As in danger of death, it is prescribed that scandal be removed, and that for impediments of disparity of worship and mixed religion the customary cautions be furnished.

2. Nature of this faculty.

It is altogether the same as that which belongs to the Ordinary when danger of death is urgent. Cfr. above n. 185, 2.

3. Scope of the power.

This faculty is equally as broad as that which is granted in danger of death, except that the faculty is granted only when time is not present for recourse to the Holy See, and that the Ordinary cannot dispense from the customary form of celebrating matrimony.

187. ○ III. Power from pontifical indult.

Let the tenor of the indult be seen. This power is delegated.

§ 3. Concerning the Power of the Parish Priest or of the Priest Assisting at Matrimony

188. ○ I. In danger of death.

a) The parish priest has the same power as the Ordinary, but restricted to cases in which not even the local Ordinary can be approached. (Can. 1044.)

What we said above at n. 185, 2 and 3 concerning the nature and scope of the power of the local Ordinary here must be applied altogether to the parish priest.

b) The same faculty belongs to the priest who, the parish priest or his delegate being absent or impeded, assists at matrimony according to the norm of can. 1098. (Can. 1044.)

c) Does a priest legitimately delegated by the Ordinary or by the parish priest to assist at matrimony enjoy the same power?

R. The Code indeed is silent, but several judge that there is here place for the application of can. 200 § 1, since in the case the delegate cannot assist without the concession of dispensation. By conceding delegation, the parish priest or Ordinary is held implicitly to delegate his faculty of dispensing.[1]

[1] Capello, cited work, n. 236.

189. ○ II. In other urgent cases.

a) The parish priest enjoys the same faculty as the Ordinary, in the circumstances explained above at n. 186, restricted nevertheless to occult cases and to those in which not even the local Ordinary can be approached, or only with danger of violation of secrecy. (Can. 1045, § 3.)

1. "Occult cases" must be understood of any impediment occult by fact, even if by its nature it is public. This has now become certain from the response of the Commission for authentically interpreting the Canons of the Code, on the 28th day of December 1927.[2]

[2] *Acta Apostolicae Sedis*, 1928, p. 61. III, Concerning matrimonial dispensations.

2. Secrecy is not here restricted to sacramental secrecy.

b) A similar faculty is granted to the priest assisting at matrimony according to the norm of can. 1098 2°, i.e., when outside danger of death the parish priest or Ordinary or delegated priest who would assist at matrimony cannot be had or approached without grave inconvenience, and it is prudently foreseen that this condition of affairs will last for a month. (Can. 1098.)

c) What we said above at n. 188, c, concerning a priest delegated to assist in danger of death, also has force here.

190. ○ III. The parish priest or priest assisting at matrimony should at once inform the local Ordinary concerning the dispensation granted for the external forum; and it should be noted in the book of matrimonies. (Can. 1046.)

§ 4. Concerning the Power of the Confessor

191. ○ I. In danger of death.

He enjoys the same power as the parish priest, but only for the internal forum and in the act of sacramental confession. (Can. 1044.)

192. ○ II. In other urgent cases.

The same power belongs to him as to the parish priest, and under the same conditions and limitations expressed above at n. 189. But he seems unable to use it outside sacramental confession, although the canon does not expressly state this.

Article III: Concerning the Causes of Dispensation

193. ○ I. Necessity of a just cause for dispensing.

a) From an ecclesiastical law establishing an impediment of matrimony, let there be no dispensation without a just and reasonable cause, account being taken of the gravity of the law from which dispensation is made; otherwise the dispensation, by whomsoever granted, except the Holy See, is illicit and invalid. (Can. 84 § 1.)

b) "A dispensation, in doubt concerning the sufficiency of the cause, is licitly sought and can be licitly and validly granted." (ibid. § 2.)

194. ○ II. Division of the causes of dispensation.

a) Motive or final causes are called those which, taken singly or collectively, suffice of themselves for obtaining the dispensation.

Impulsive causes are those which, although insufficient of themselves, nevertheless dispose the superior to grant the dispensation more quickly or more easily.

In practice it is better to set forth all causes which are apt to incline the superior to granting the favor.

b) Causes which law or the style of the curia recognizes as final or motive are called canonical causes.

195. ○ III. List of canonical causes.

The Instruction of the Sacred Congregation of Propaganda Fide of the day 9 May 1875[1] enumerates sixteen canonical causes. They are:

[1] *Collectanea S. Congregationis de Propaganda Fide*, II, n. 1470.

a) Narrowness of place, whether absolute, i.e., when in the place there are not more than 300 hearths or 1500 inhabitants and the place is distant more than 1500 meters from the nearest place; or relative, when the kinship of the woman in this place has been propagated so broadly that she cannot find another man of equal condition besides the one impeded.

b) Superadult age of the woman: i.e., if a virgin has completed the age of 24 years and does not find another spouse suitable for herself. If nevertheless she has reached her 40th year, this cause is no longer admitted as canonical.

c) Deficiency or incompetence of dowry, which namely prevents the woman from finding another man of equal condition besides the one impeded.

d) Lawsuits over succession of goods already arisen, or grave or imminent danger of the same: in this sense, that there is no one willing to assist the woman in this matter besides the man who desires to marry her.

e) Poverty of a widow burdened with numerous offspring, or who at the same time is younger and is found in danger of incontinence.

f) The good of peace, or grave enmities to be composed.

i) Infamy of the woman, from suspicion, even false, of evil familiarity with an affine or blood-relative.

j) Revalidation of a matrimony contracted in good faith and in the form of the Church.

l) Danger of a mixed matrimony or of one to be celebrated before a non-Catholic minister, with most grave scandal of the faithful and grave spiritual harm.

m) Danger of incestuous concubinage.

n) Danger of civil matrimony.

"Nevertheless, in this or similar cases, let dispensation not be granted with excessive facility on account of threats, with grave danger of spreading religious indifferentism."[2]

[2] Vermeersch-Creusen, cited work, t. II, n. 318.

p) Removal of grave scandals.

q) Cessation of public concubinage.

r) Excellence of merits in a benefactor of the Church or one very well deserving concerning religion.

196. ◦ IV. Non-canonical causes.

Such causes are usefully alleged as render matrimony with another person difficult.

197. ◦ V. Truth of the causes which are alleged.

a) Generally it is required, even for the validity of the dispensation, that true motive causes be alleged.

b) Nevertheless, a dispensation is valid, notwithstanding the falsity of the cause adduced, in two cases:

1. When the Holy See uses this or an equivalent formula in the concession: "from certain reasonable causes."

2. Whenever there is question of an impediment of lesser grade. (Can. 1054.)

[Printed here after n. 197; the following two items evidently continue the canonical-cause list in n. 195.]

g) Excessive, suspect, dangerous familiarity, and also cohabitation under the same roof, which cannot easily be impeded.

h) Copula and pregnancy, and therefore legitimation of offspring. This cause is among the more urgent ones.

Article IV: Concerning the Petition for Dispensation

I. Who should petition, and to whom the petition should be directed.

198. ◦ a) For obtaining a dispensation in the external forum from the Holy See.

The parish priest, in the name of the petitioners, composes the supplicatory libellus and transmits it to the local Ordinary, so that the Ordinary himself, adding his own commendation, may transmit it to

the competent Sacred Congregation in Rome.

Or the parish priest sets forth the whole matter to the Ordinary, who himself will compose the libellus and send it to Rome.

199. ○ b) For obtaining a dispensation in the internal forum from the Holy See.

The confessor directly seeks the dispensation from the Sacred Penitentiary, in the name of the petitioners with supposed names. Or he transmits the libellus to Rome through the Ordinary. Or he also asks the Ordinary himself to compose the libellus and send it to the Sacred Penitentiary.

But the petition can never be directed to the Ordinary when there is danger of violating sacramental or other secrecy.

200. ○ c) For obtaining a dispensation from the Bishop:

The parish priest, if for the external forum, or the confessor, if for the internal forum, has recourse to the Bishop, secrecy always being preserved if there is question of the internal forum.

201. ○ d) In practice, unless the necessity of preserving secrecy stands in the way, it is always preferable to have recourse through the Bishop. For perhaps he himself has the faculty, at least delegated, of dispensing. And, if he does not have it, he will transmit the libellus to Rome.

202. ○ e) The Ordinary to whom the petition must be directed is the Ordinary of the domicile or quasi-domicile or actual stay of the betrothed persons.

203. ○ f) If the betrothed persons are of diverse dioceses, a dispensation granted by the Bishop of either betrothed person suffices, if he has the faculty of dispensing from a special indult.

II. What the supplicatory libellus should contain.

204. ○ a) To the Holy See for the external forum.

The following must necessarily be expressed:

1. The name and surname of the petitioners, to be written distinctly and neatly, and without any abbreviation of letters.

2. The diocese of domicile or quasi-domicile of the petitioners, or, if there is question of vagi, of actual stay.

3. The lowest species of the impediment.

4. The number of impediments.

5. The various circumstances:

Whether there is question of matrimony to be contracted or already contracted; if already contracted, whether in good faith, at least on one side, or with knowledge of the impediment; whether, the denunciations having been premised and according to the prescribed form; whether it has been consummated.

6. The causes of dispensation.

7. The pecuniary status of the petitioners, so that the tax may be determined or so that dispensation may be granted gratis.

205. ◦ b) To the Sacred Penitentiary for the internal forum.

1. If the petition is made for the sacramental forum, let anything that could lead to knowledge of the petitioners be carefully avoided, and let fictitious names be used. As to the rest, let the same be observed as for dispensation in the external forum. (n. 204.)

2. Even if there is question of the internal non-sacramental forum, neither the names nor the place of the petitioners are to be expressed, unless when the dispensation is to be noted in the secret book of the Sacred Penitentiary.

206. ◦ c) To the Ordinary.

1. In a libellus for the external forum the style of the curia must be observed as to substantial things for the validity of the dispensation. As to other things, for liceity if the Ordinary dispenses from delegated power, and only for suitability if he dispenses from ordinary power.

2. For the sacramental forum, the same cautions must be used as in recourse to the Sacred Penitentiary. (n. 202, 1.)

3. For the internal non-sacramental forum, the name, surname, and place of the petitioners are to be expressed, so that the dispensation can be noted in the secret book of the Curia according to the norm of can. 1047.[1]

[1] Capello, cited work, nn. 278-279.

Article V: Concerning the Execution of Dispensation

207. ◦ I. When execution is necessary.

a) As was said above at n. 178 d, dispensation can be given in gracious form or in commissory form.

The former form does not require execution, but is valid from the moment of its concession. But if it has been given in commissory form, the dispensation then only exerts effect when it is committed to execution or fulminated by him who has been designated for this office.

b) The Roman Curia is accustomed to grant dispensations in commissory form.

Bishops, however, grant them in gracious form if there is question of a public impediment; in commissory form, if there is question of an occult impediment.

208. ○ II. Executor.

a) For public impediments the Sacred Congregation is accustomed to designate as executor the Ordinary of the place or of the petitioners. He is the one who composed or commended the supplicatory libellus, even if the nupturients have migrated into another diocese. But then, as is evident, the Ordinary of the diocese in which the matrimony is to be celebrated must be warned.

b) For occult impediments the Sacred Congregation is accustomed to commit execution to a confessor from those approved by the Ordinary.

c) If granted by the Ordinary: for the sacramental forum, to the confessor; for the internal non-sacramental forum, to the parish priest or confessor or other priest who transmitted the petition.

209. ○ III. Manner of execution.

a) No execution is made unless the executor already has the rescript of dispensation.

b) The executor is bound to attend to and adhere faithfully to all the clauses of the rescript. For omission of any essential condition makes the execution invalid.

c) He is bound, unless there is question of an impediment of lesser grade, to examine whether at the moment of execution the prayers still rest upon truth. Nevertheless, if this inquiry is neglected, the execution does not on that account become invalid, provided that in fact the prayers still rest upon truth.

In the internal forum the petitioner is to be trusted.

d) For the external forum execution is prescribed to be made in writing. Nevertheless it is valid, and, from a grave cause, also licit, if made orally.

For the sacramental forum it must be made by the living voice in the act of confession.

For the internal non-sacramental forum it is generally to be made by the living voice. But sometimes it must be made in writing, namely when the impediment from which dispensation is made is occult by fact, but public by nature. For then the dispensation given and fulminated must be registered in the secret book of the episcopal Curia.

e) The dispensation must be made expressly, by designating the impediment from which dispensation is made and by making mention of the apostolic faculty by force of which the dispensation is granted. This last, however, is not prescribed for validity.

Whether a dispensation given implicitly or tacitly by the executor is invalid is not established.

f) No determinate form is prescribed.

Here is a formula which the executor can use:

"By the apostolic authority specially delegated to me (or, by the authority of the Most Illustrious Bishop of the diocese N. specially delegated to me), I dispense with you upon the impediment (e.g., of affinity in the first degree of the collateral line), so that, it notwithstanding, you may and can freely contract matrimony with the said woman (or said man), the legitimate form having been observed, and remain in it. In the name of the Father... etc."

Or if there is question of convalidating a matrimony already contracted: "...so that, it notwithstanding, you may and can freely contract matrimony anew and remain in it." Or for sanation in the root: "The matrimony contracted nullly by you on account of the impediment (e.g., of crime, neither party plotting) I sanate in the root, and I declare that offspring received and to be received will be legitimate..."

g) If the impediment affects only one party, or is culpable for one party only, dispensation made with that party suffices. Otherwise each party must approach either the same confessor or diverse confessors, and the dispensation is to be fulminated twice. Nevertheless this is not required for validity. Indeed, when a just cause persuades, execution with only one party becomes licit. If there are two confessors, the first hands the rescript to his penitent, after he has fulminated the dispensation for his part, so that it may be transmitted to the other confessor by the other penitent.

h) The rescript of dispensation for the external forum must be preserved in the archive of the episcopal curia, but the decree by which it is fulminated in the parish archive.

i) The rescript for the internal forum is prescribed to be torn up or burned after execution. Except the case of an impediment public by nature but occult by fact. For then, unless there is question of the sacramental forum, the rescript must be preserved in the archive of the episcopal curia, so that it can make proof for the external forum if afterwards the impediment is revealed. (can. 1047.)

210. ○ IV. Concerning the force of the clauses of the rescript.

a) Clauses introduced by the words *if*, *provided that*, or equivalent words pertain to the validity of the dispensation.

b) Those things which are expressed by the ablative pertain to liceity alone, unless from the nature of the matter or the style of the curia they are necessary. Thus the promise concerning the removal of danger to the faith is necessary in dispensation upon disparity of worship or in mixed matrimony. The imposition of penance, removal of scandal, etc., are not necessary.[1]

[1] Vermeersch-Creusen, cited work, t. II, n. 323.

Chapter VII: Concerning the Form of Celebrating Matrimony

Article I: The Law Before the Code

211. ○ a) If you attend only to the law of nature or even to divine-positive law, it must be confessed that every matrimony, however clandestine, provided the contracting parties, not impeded, express true consent concerning the present, is true and valid, and, if there is question of baptized persons, a true sacrament.

212. ○ b) Nevertheless it is not licit to turn into doubt that the Church, with respect to the matrimonies of the faithful, can not only establish impediments properly so called, even diriment ones, but with equal right prescribe the form of celebrating matrimony under penalty of nullity of the matrimonial contract.

213. ○ c) Indeed, the Church always abhorred and interdicted clandestine matrimonies, as being the source of many and grave evils. But up to the Council of Trent she did not hold them invalid.

214. ○ d) 1. The Tridentine synod, through the celebrated decree beginning *Tametsi*,[1] prescribed the form of celebrating matrimony, from defect of which unions would be not only illicit but even plainly invalid.

[1] Sess. XXIV, cap. I, De reform. matrim.

"Those who attempt matrimony otherwise than in the presence of the parish priest, or of another priest with the permission of that parish priest or of the Ordinary, and of two or three witnesses, the holy Synod renders altogether incapable of contracting thus, and decrees that contracts of this kind are invalid and null, just as by the present decree it makes them invalid and annuls them."

2. Nevertheless, the Tridentine Fathers commanded, lest innumerable matrimonies of heretics become invalid on this head, that the decree should not exert its force except after thirty days from its promulgation made in each parish.

In fact, in many regions it was never promulgated. What were the places in which it was promulgated, and which inhabitants of those places the decree obliged, often was not established.

3. Under Tridentine legislation, the parish priest (or Ordinary) of domicile or quasi-domicile was competent to assist with respect only to his own subjects, and indeed everywhere on earth, whether through himself or through a delegate. Passive assistance of the parish priest was sufficient, even if forced and unwilling.

The state of legislation introduced by the Tridentine Council with respect to the celebration of matrimony in the Church was in force up to 19 April 1908.

215. ○ On 2 August 1907 the Sacred Congregation of the Council issued the decree *Ne temere*, which nevertheless began to oblige from the following feast of Easter, on 19 April 1908. This law, which, with few things changed, was received into the Code of Canon Law, introduced a new discipline with regard to the form of matrimony.

Article II: The Form Prescribed by the Code in Ordinary Cases

§ 1. Conditions for Validity

216. ○ I. "Only those matrimonies are valid which are contracted before the parish priest, or the local Ordinary, or a priest delegated by either, and at least two witnesses." (Can. 1094.)

II. Conditions necessary on the part of the qualified witness.

That qualified witness is either the parish priest, or the local Ordinary, or a priest legitimately delegated by the Ordinary or parish priest for assisting.

217. ○ a) The parish priest or local Ordinary.

1. Which persons come under the name of parish priest or local Ordinary, see above n. 59.

2. "They validly assist at matrimony only from the day of canonical possession of the benefice obtained according to the norm of can. 334, § 3, 1144, § 1, or of office begun." (Can. 1095, § 1, 1°.)

3. "unless by sentence they have been excommunicated or interdicted or suspended from office, or declared such." (ibid.)

The right of the parish priest or Ordinary with regard to assistance at matrimony ceases:

1. by loss of office, in whatever way this happens.

2. by excommunication, interdict, or suspension from office, provided that those censures are inflicted by condemnatory or declaratory sentence.

4. Nevertheless, a putative parish priest or Ordinary assists validly, because the Church supplies his power in common error. (Can. 209.)

Likewise, by reason of the Church's supplying, the parish priest or Ordinary assist validly in a positive and probable doubt of law or fact concerning their competence for assisting at matrimony. (ibid.)

5. "Only within the limits of their territory, in which they validly assist at the matrimonies not only of their subjects, but also of non-subjects." (Can. 1095, § 1, 2°.)

1. Within the limits of their proper territory they validly assist at the matrimony of all; outside those limits, at the matrimony of no one, even of a subject.

2. Churches and houses of exempt regulars, with respect to assistance at matrimony, are considered to be in the territory of the parish priest and Ordinary.

3. Where several parish priests cumulatively hold the same territory, each one validly assists in the whole territory.[1]

[1] S. C. C., 1 Feb. 1908, ad VIII.

4. Rectors of pious places, e.g., hospitals, who enjoy full parochial power, cannot assist except at the matrimonies of their own subjects and only in the place where they exercise jurisdiction.[2]

[2] Ibid., ad X.

5. Strictly personal parish priests, e.g., military chaplains, where care of souls has been entrusted to them, validly assist only at the matrimony of their own subjects, but everywhere.[3]

[3] S. C. C., 1 Feb. 1908, ad VII.

6. "Provided they are constrained neither by force nor by grave fear, and ask for and receive the consent of the contracting parties." (Can. 1095, § 1, 3°.)

1. Force and grave fear brought by anyone to extort assistance directly or indirectly renders the matrimony null.

2. Deceit employed does not harm valid assistance.

3. Now active assistance is always required, i.e., he must ask for and receive the consent of the contracting parties, even in mixed matrimonies. Otherwise the matrimony is invalid.

4. It makes no difference for validity whether the parish priest acts through himself or through an interpreter, by words or writing or sign.

5. The matrimony is valid if, after the consent has been asked for, the parish priest voluntarily does not perceive it, e.g., by stopping up his ears.

218. ◦ b) A priest delegated by the parish priest or Ordinary.

"The parish priest and local Ordinary who can validly assist at matrimony can also give permission to another priest to assist validly at matrimony within the limits of their territory." (Can. 1095, § 2.)

1. All and only those can delegate who above at n. 59 are said to be included under the name of parish priest or local Ordinary, and only insofar as they themselves personally have the right of assisting and under the same conditions. For "no one can transfer more right to another than is recognized as belonging to himself."[4] First of all it must be noted that delegation has no force outside the limits of the territory of the one delegating.

[4] Rule of Law 79 in the Sext.

2. Thus one delegated can subdelegate another in the following cases:

1. if he has been delegated by the Apostolic See, and has not been chosen by reason of special skill, nor has subdelegation been prohibited to him. (Can. 199, § 2.)

2. if he has been delegated for all matrimonies (can. 199, § 3.)[5]

[5] Cfr. also response of the Pontifical Commission for the authentic interpretation of the Code, IV, Concerning subdelegation for assisting at matrimony, I, on 28 Dec. 1927, *A.A.S.* 1928, pp. 61 and 62.

3. if the faculty of subdelegating has been expressly conceded to him. (Can. 199, § 4.)[6]

[6] Same response II, *A.A.S.*, 1928, p. 62.

3. The subdelegate cannot again subdelegate his own power, unless this has been expressly conceded. (Can. 199, § 4.)

"Permission to assist at matrimony, granted according to the norm of can. 1095, must be given expressly to a determinate priest for a determinate matrimony, any general delegations being excluded, unless there is question of assistant vicars for the parish to which they are attached; otherwise it is invalid." (Can. 1096, § 1.)

1. Any priest can be delegated, provided he is determined in some way. Several priests can be delegated, e.g., all those dwelling in the parish.

2. 1. The permission of assisting is restricted to a determinate matrimony or determinate matrimonies. It matters little by what way that determination is made, whether by the name, title, or office of the contracting parties, or by the hour and place of celebration.

2. An exception is given with regard only to assistant vicars, who, in the parish only which they serve, can receive general delegation for all matrimonies or for matrimonies of a certain category.

In this matter, vicar-adjutors (*coadjuteurs*) are assimilated to assistants, who only in part supply the place of the parish priest.

3. Delegation must be given expressly.

4. It is required that the delegate know the delegation and at least implicitly accept it, unless nevertheless the delegation is given by law or statute.

5. Delegation extorted by fear is valid.

6. In order to furnish assistance at matrimony validly, the delegate must conduct himself in precisely the same way as the parish priest or Ordinary himself personally assisting.

7. By the death or removal of the one delegating, delegation does not cease, unless this has been expressly established. (Can. 207, § 1.)

219. ○ III. Conditions necessary on the part of the witnesses.

a) It suffices that the witnesses be apt to make proof concerning the matrimony celebrated, without any special quality being required in them.

b) They must be at least two.

c) It is necessary that they be physically or corporally and at the same time morally present at the celebration of matrimony, namely in such a way that they perceive that matrimony is being celebrated between this man and this woman.

d) With witnesses ignorant of the language, if an interpreter explains the words expressing consent, or even if two interpreters are used, of whom one explains the words of the other, the matrimony is valid.

e) Force and fear employed so that witnesses assist in no way harm the validity of the matrimony.

§ 2. Conditions for Liceity

220. ○ I. On the part of the parish priest or Ordinary or delegated priest.

a) Let moral certitude be had concerning the free status of the contracting parties.[1]

[1] Cfr. above, n. 65.

b) Let either one of the nupturients be a subject of the parish priest or local Ordinary. Now one becomes a subject: by domicile, quasi-domicile, monthly stay, or, if there is question of vagi, by actual stay.

1. Domicile in the common meaning is the stable seat or habitation of some person. But juridical domicile requires certain conditions of stability defined by law.

It is distinguished into:

1. necessary or legal, which is obtained by the law itself, without any condition of fact. Thus a wife not legitimately separated from her husband has the domicile of the husband; a minor has the domicile of him to whom he is subject; a person of unsound mind, that of the curator. (Can. 93, § 1.)

2. voluntary or proper, which must satisfy certain conditions of fact.

The Code introduced, besides domicile in a parish or quasi-parish, domicile in a diocese. (can. 92.) Therefore someone can be a vagus in the parish and have a domicile in the diocese.

Voluntary domicile is acquired in two ways:

By stay in a parish, quasi-parish, or at least diocese, or quasi-diocese, joined with the intention of remaining there perpetually, if nothing calls him away from there.

By stay alone prolonged to ten years. (Can. 92, § 1.)

In either case the stay must be after the manner of an inhabitant. But continuous stay for a year is not necessary.

In the former case domicile is acquired from the first day of stay; in the other, after ten years have been completed.

2. "Quasi-domicile is acquired by stay as above, which is either joined with the intention of remaining there at least for the greater part of the year, if nothing calls him away from there, or is in fact prolonged for the greater part of the year." (Can. 92, § 2.)

In the former case quasi-domicile is acquired from the first moment of stay, in the other when the time has been completed.

3. "Domicile and quasi-domicile are lost by departure from the place with the intention of not returning" (c. 95). There is question here of voluntary domicile and quasi-domicile, not of legal and necessary domicile, which is always preserved so long as subjection toward husband, parents, tutor, or curator remains.[2]

[2] Vermeersch-Creusen, cited work, t. I, nn. 184, 187.

4. Monthly stay.

a) It requires only the fact of stay for a continuous month. The month is taken as it is in the calendar. The first day is not counted and the time ends when the last day of the same number of the other month has been completed, or, if that month lacks a day of the same number, when the last day of that month has been completed. (Can. 34.)

b) Absence of one day or another is not to be attended to, nor are days of absence to be supplied. Daytime absences are not to be counted.

5. Actual stay in a parish.

It suffices not only for vagi, but also for those who have only diocesan domicile or quasi-domicile. (Can. 94, § 3.)

But where there is question of the matrimony of those truly vagi, permission of the local Ordinary or of his delegate is needed in order to assist licitly. (Can. 1032.)

c) Whenever there is not question of a subject by any of the ways just explained, "permission of the parish priest or Ordinary of the domicile or quasi-domicile or monthly stay of either contracting party" is required. (Can. 1097, § 1, 3°.)

1. This permission can be given by word or in writing, expressly or tacitly; indeed, it can be reasonably presumed. It can also be granted generally.

2. Grave necessity excuses from seeking it. (Can. 1097, § 1, 3°.) A case of grave necessity is present whenever a fairly notable inconvenience is verified on the part of the parish priest or of the nupturients.[3]

[3] Capello, cited work, n. 687.

3. If without due permission the parish priest assists, he does not make the stole-fees his own, and he should remit them to the proper parish priest of the contracting parties. (Can. 1097, § 3.)

1. Proper parish priest, i.e., whether by reason of domicile, quasi-domicile, or monthly stay.

2. He does not incur that penalty who acts from reasonably presumed permission, or who is excused from seeking permission by grave necessity.

d) "In any case let it be held as the rule that matrimony be celebrated before the parish priest of the bride, unless a just cause excuses." (Can. 1097, § 2.)

Any just cause excuses from this prescription, which moreover obliges only under light obligation. When a just cause is present, no permission of the parish priest of the bride is required, but it is fitting to warn him.

e) "But matrimonies of Catholics of mixed rite, unless something else has been provided by particular law, are to be celebrated in the rite of the man and before his parish priest." (Can. 1097, § 2.)

221. ○ II. On the part of the witnesses.

Non-Catholics and excommunicated persons should not regularly be admitted. It is less fitting to admit women.

Article III: The Form Permitted by the Code in Extraordinary Cases

222. ○ I. The Code posits two cases in which one can validly and licitly depart from the customary celebration of matrimony.

"If the parish priest or Ordinary or delegated priest who are to assist at matrimony according to the norm of cc. 1095, 1096 cannot be had or approached without grave inconvenience:

1° In danger of death matrimony before witnesses alone is valid and licit; and also outside danger of death, provided it is prudently foreseen that that condition of things will endure for a month;

2° In either case, if another priest is at hand who can be present, he must be called and, with the witnesses, assist at the matrimony, the validity of the union before witnesses alone remaining intact." (Can. 1098.)

223. ○ II. The former case: in danger of death.

a) Three conditions are required:

1. Danger of death.

The danger suffices, as we have already said above at n. 185, 1, 1°, from whatever cause, threatening either of the contracting parties, grave, certain, or seriously probable. Error in estimating the danger

does not harm the validity of the matrimony.

It matters little what the motive cause of the matrimony is.

2. A grave inconvenience preventing the parish priest or Ordinary or delegated priest from being had or approached.

Any grave inconvenience suffices, spiritual or temporal, affecting either the parties, or the priest, or a third person, so that the parish priest is considered unable to be had or approached.

3. Presence of two witnesses.

There must be at least two witnesses, as in the ordinary celebration of matrimony, and they must conduct themselves in the same way.

b) 1. If another priest who can be present is at hand, he must be called and must assist with the witnesses, even if bound by censure, provided he is not, however, a *vitandus*.

2. Nevertheless this is not prescribed under penalty of invalidity of the matrimony.

3. Such a priest has the very ample faculty regarding dispensation from impediments, as was said above at n. 188 b).

4. If such a priest is lacking and there is a diriment impediment of ecclesiastical law, concerning which the Church is accustomed to dispense, probably the union can be validly celebrated, the ecclesiastical law ceasing in conflict with the natural law.[1]

[1] Capello, cited work, n. 692, 4.

224. ○ III. The other case: outside danger of death.

a) Three conditions are required:

1. A grave inconvenience preventing the parish priest or Ordinary or delegated priest from being had or approached.

As above, n. 223, a) 2.

2. A prudent estimate that that condition of things will endure for a month.

1. It makes no difference whether the qualified witness has been absent for a long or a short time. It suffices that it is prudently to be presumed that he will not be present within a month, although in fact that foresight may be erroneous.

2. The month must be continuous and complete.

3. The nuptials are valid, even if the nupturients have acted in fraud of the law.

3. Presence of two witnesses.

225. ○ IV. What sort of absence of the qualified witness suffices so that there is place for the celebration of matrimony with witnesses alone?

This question of very great moment was disputed among authors: namely, whether matrimony is valid without the intervention of the parish priest or delegated priest, when the parish priest indeed can be approached or summoned, but refuses to celebrate the matrimony, e.g., because the civil law forbids him to celebrate it, in a case in which the nupturients have not been joined by civil matrimony and cannot be joined.

And indeed the greater part of authors judged that such a matrimony was altogether valid, since here at least the law obliging matrimony to be celebrated before the parish priest was doubtful.

But on the 10th day of the month of March 1928, the Pontifical Commission for the authentic interpretation of the Code of Canon Law promulgated a response which altogether settles the cause. "Q. Whether canon 1098 is to be understood so that it refers only to the physical absence of the parish priest or local Ordinary.

R. In the affirmative."[2]

[2] *A.A.S.*, XX, 1928, p. 120.

Therefore now there is no doubt that such matrimonies to be celebrated henceforth are altogether invalid. But it seems that those which had been celebrated in such a way beforehand were valid, on account of the doubtful character of the law.

226. ○ V. As in danger of death, so also in other cases, another priest must be called if he is at hand, so that he may assist at the matrimony with the witnesses. Cf. n. 223, 3. b.

Article IV: Who Are Bound to Observe the Form of the Code

227. ○ I. Principle.

Ecclesiastical law of itself obliges all the baptized, even non-Catholics, unless the Church herself excepts certain persons from her law.

In fact the Church grants exceptions in favor of certain persons with respect to the obligation of observing the external form in the celebration of matrimony.

228. ○ II. Statute of canon law.

"The following are bound to observe the form established above:

1° All those baptized in the Catholic Church and those converted to it from heresy or schism, although whether the former or the latter they afterwards defected from it, whenever they enter matrimony among themselves.

2° The same persons of whom above, if they contract matrimony with non-Catholics, whether baptized or non-baptized, even after a dispensation from the impediment of mixed religion or disparity of worship has been obtained.

3° Orientals, if they contract with Latins bound to this form." (Can. 1099, § 1.)

Therefore the following are bound:

a) Those baptized in the Catholic Church and belonging to the Latin rite.

1. Which persons are baptized in the Catholic Church, see above n. 119.

2. Those born of non-Catholics are excepted who were indeed baptized in the Catholic Church, but from infantile age, i.e., before the completion of the seventh year (can. 88, § 3), grew up in heresy or schism or unbelief or without any religion. (Can. 1099, § 2.)

3. But children born of Catholic parents are not dispensed, who, as above, were educated outside the Catholic religion.[1] But they are dispensed if either parent was non-Catholic.[2]

[1] Capello, cited work, nn. 700, 1° and 701, 3°; Vermeersch-Creusen, cited work, t. II, n. 407.

[2] Pont. Comm. ad Cod. can. auth. inter. II, De matr. acath., 20 Jul. 1929, *A.A.S.* 1929, p. 573.

4. If doubt exists concerning baptism or concerning its validity, a matrimony celebrated without the form of the Code is judged valid whenever the other party is one of those dispensed from the law.

b) Those converted to the Catholic Church, if they are of the Latin rite.

Which persons they are, cf. above n. 120.

c) All the aforesaid are bound to the form of the Code, whether they contract among themselves or with those who are immune from that form.

229. ○ III. Who are immune from the law.

a) Non-baptized persons.

b) Those baptized in a heterodox sect and never converted.

c) Those baptized in the Catholic Church, but at the same time born of non-Catholics and educated outside the Catholic Church from infantile age.

d) Eastern Catholics.

Nevertheless the following are excepted:

1. Ruthenians, who are bound to observe the form of the decree *Ne Temere*.

2. Maronites, among whom the Tridentine form is in force.

230. ○ IV. All exempt persons are bound to the juridical form if they contract with a non-exempt party.

Article V: Liturgical Prescriptions

231. ○ I. Their obligation.

"Outside the case of necessity, in the celebration of matrimony the rites prescribed in ritual books approved by the Church, or received by laudable customs, are to be observed." (Can. 1100.)

From various decrees of the S.S.C.C. it is established that the liturgical form must be observed under grave obligation, even in second nuptials.

232. ○ II. Solemn blessing.

a) "The parish priest is to take care that the spouses receive the solemn blessing, which can be given to them even after they have lived a long time in matrimony, but only in Mass, with the special rubric observed and excepting the forbidden time." (Can. 1101, § 1.)

1. The obligation of receiving the solemn blessing is light. Indeed, there is no certainty concerning an obligation properly so called. If it has not been received on the day itself, no obligation of receiving it afterwards exists.

2. In many dioceses, notably in Liege, that blessing is almost always omitted, because nuptials are very rarely celebrated with Mass.

b) "Only that priest himself, by himself or through another, can give the solemn blessing who can validly and licitly assist at the matrimony." (Can. 1101, § 2.)

One priest can ask for and receive the matrimonial consent, and another can celebrate the Mass and impart the solemn blessing.

c) The solemn blessing must be omitted:

1. During forbidden time (Can. 1101, § 1), namely from the First Sunday of Advent to the Nativity of the Lord inclusive, and from Ash Wednesday to the feast of Easter inclusive. (Can. 1108, § 2.)

For a just cause the local Ordinary can dispense, with the liturgical laws preserved, and with the spouses warned to avoid excessive pomp. (can. 1108, § 3.)

2. In mixed matrimonies or with an unbeliever.

3. When the woman has already received that blessing. (Can. 1143.)

4. When only one Mass in the rite of the dead is celebrated on the day of the nuptials, because that blessing cannot validly be received in such a Mass.

5. On account of a general interdict affecting the place (can. 2271, 2°), or a particular interdict affecting the church in which the nuptials are celebrated. (Can. 2272, § 3, 2°.)

233. ○ III. The form to be observed in mixed matrimonies or matrimonies of disparity of worship.

a) We have already said that those matrimonies must be celebrated with the entirely same juridical form under penalty of invalidity as matrimonies among Catholics. Therefore the parish priest must ask for and receive the consent of the spouses.[1]

[1] Cf. above, n. 87, a.

b) With respect to the liturgical rites to be omitted or in some way permitted by the permission of the Ordinary, recall the things said above at n. 87 b.

Article VI: Concerning the Inscription of Celebrated Matrimony

234. ○ I. Inscription in the book of matrimonies.

"When matrimony has been celebrated, the parish priest or the one who takes his place is, as soon as possible, to describe in the book of matrimonies the names of the spouses and witnesses, the place and day of the celebrated matrimony, and other things according to the manner prescribed in the ritual books and by his own Ordinary, and this although another priest, delegated either by him or by the Ordinary, assisted at the matrimony." (Can. 1103, § 1.)

a) It is the office of the parish priest himself or of the one taking his place, even in the case of matrimony celebrated by another priest, to inscribe the matrimony in the book of matrimonies. If he uses the hand of another, he himself at least must sign.

b) As soon as possible, i.e., within three or four days, the inscription is to be made.

c) Let the inscription be made in the book, not on separate leaves.

d) That obligation is grave.

e) The convalidation or dissolution of the matrimony also is to be noted.

f) 1. As often as, by reason of secrecy, the matrimony cannot be inscribed in the parochial book, and yet the good of the offspring requires that such a matrimony be able to be proved in the external forum, the inscription is to be made in the secret book of the episcopal Curia.

2. But if the sacramental seal stands in the way, the confessor cannot arrange even the secret notation without the express permission of those whom it concerns.[1]

[1] Capello, cited work, n. 718.

235. ○ II. Inscription in the book of the baptized.

"Moreover, according to the norm of can. 470, § 2, the parish priest is also to note in the book of the baptized that the spouse contracted matrimony on such a day in his parish. But if the spouse was baptized elsewhere, the parish priest of the matrimony is to transmit notice of the contract entered into to the parish priest of baptism, either by himself or through the episcopal Curia, so that the matrimony may be referred into the book of the baptized." (Can. 1103, § 2.)

a) That notation is prescribed for this end, that a matrimony perhaps already contracted by the one who wishes to marry may more easily be detected.

b) If each spouse or either spouse was baptized in the parish of the matrimony, in the book of the baptized, in the margin or at the foot of the inscribed baptism, let it be noted that such a person contracted matrimony in this parish, on such day, month, and year, with the names, surnames, and age of the other party indicated, and with the names and surnames of the parents of the other party, of the witnesses, and of the parish priest.

But an easier and licit manner is to indicate in the margin at the place of the inscribed baptism: "Contracted matrimony with N. N. Cf. the book of matrimonies."

c) If each spouse or either spouse was baptized elsewhere, the parish priest who assisted at the matrimony must report the union to the parish priest or parish priests of baptism, with all the indications enumerated under b), and must furnish the written notice with the parochial seal.

In a mixed matrimony, care must be taken concerning inscription in the book of baptisms for the Catholic party alone.

d) The parish priest of baptism should accurately note all things in the book of the baptized.

e) If the place is unknown, but the diocese of baptism is known certainly or by presumption, let the Ordinary of that diocese be informed, who himself is to institute an inquiry so that the matrimony may be inscribed rightly in the book of the baptized.

f) This obligation is grave, like the obligation of inscribing in the book of matrimonies.

236. ◦ III. Inscription of matrimony celebrated without the intervention of the parish priest or delegate.

"Whenever matrimony is contracted according to the norm of can. 1098, the priest, if he assisted at it, otherwise the witnesses, are bound in solidum with the contracting parties to take care that the union entered into be noted as soon as possible in the prescribed books." (Can. 1103, § 3.)

a) The obligation affects first the priest, if he assisted at the matrimony. If no priest assisted, the witnesses and contracting parties are bound in solidum.

b) The matrimony must be reported either to the parish priest of the place where the matrimony was entered into, or to the proper parish priest of the contracting parties and the parish priest of baptism. If in that place there is no parish or quasi-parish, the report is to be made to the local Ordinary.

Article VII: Concerning Matrimony of Conscience

237. ◦ I. Notion.

Matrimony of conscience is a matrimony indeed celebrated before the parish priest or local Ordinary or a priest duly delegated and two witnesses, but with the announcements omitted and secretly.

238. ◦ II. Conditions which render such a matrimony licit.

"Only from a most grave and most urgent cause, and by the local Ordinary himself, the Vicar General excluded without a special mandate, can it be permitted that a matrimony of conscience be entered." (Can. 1104.)

a) What is that most grave and most urgent cause?

From the style and practice of the Sacred Penitentiary such a cause is judged to exist if two persons live publicly under the appearance of matrimony, but in reality are persons living in concubinage, without any suspicion concerning their sin being present. But other causes can be given.

b) It is the office of the Ordinary accurately to weigh the causes and especially to become altogether certain concerning the free state of the contracting parties.

239. ◦ III. What consequences the permission of celebrating a matrimony of conscience brings with it.

a) "The permission for celebration of a matrimony of conscience brings with it the promise and grave obligation of observing secrecy on the part of the assisting priest, the witnesses, the Ordinary and his successors, and also the other spouse, when the other does not consent to publication." (Can. 1105.)

b) The Ordinary becomes free from that obligation of observing secrecy:

1. If some scandal or grave injury toward the sanctity of matrimony threatens from the observance of secrecy.

2. If the parents do not take care that children received from such a matrimony be baptized.

3. If they take care that they be baptized under false names expressed, unless, however, within thirty days they provide to the Ordinary notice of the offspring received and baptized, with a sincere indication of the parents.

4. If finally they neglect the Christian education of the children. (Can. 1106.)

c) Concerning these things, as is evident, the spouses are to be warned; indeed, they must promise that they will fulfill their obligations toward the offspring.

240. ◦ IV. Inscription of the matrimony.

"A matrimony of conscience is not to be noted in the customary book of matrimonies and of the baptized, but in a particular book to be kept in the secret archive of the Curia, of which in can. 379." (Can. 1107.)

Chapter VIII: Concerning the Convalidation of Matrimony

Article I: Concerning the Convalidation of Matrimony in General

241. ○ I. Diverse remedies to be applied to an invalid matrimony.

In four ways the case of an invalid matrimony can be met:

a) By procuring a juridical declaration of nullity and separation of the spouses.[1]

[1] More often, for obtaining that declaration of nullity, only the judicial way lies open. Sometimes, however, one can proceed by the administrative way. Cf. Can. 1990.

b) By permitting the putative spouses to continue to cohabit as brother and sister.

c) By leaving them in good faith.

d) By convalidating the matrimony.

But, as is evident, these means cannot be applied indiscriminately; rather, one must use this or that one according to the diverse cause of nullity and also the diverse disposition of the putative spouses.

a) A declaration of nullity is rarely to be advised and is to be restricted to necessary cases: suppose when the nullity of the matrimony cannot be sanated, or when each spouse or either spouse in no way wishes to cohabit with the other party, or wishes to contract another matrimony, etc...

b) Very rarely is it expedient, on account of grave danger of sinning, to permit putative spouses to cohabit as brother and sister.

c) When each is ignorant of the nullity, often it is better to leave them in good faith, provided, however, that the nullity is occult.

d) But insofar as it is possible, the convalidation of matrimony ought to be preferred.

242. ○ II. Notion of convalidation.

a) Convalidation is called the act by which a matrimony contracted invalidly is made valid.

b) A twofold species of convalidation is distinguished:

1. Simple convalidation.

2. Sanation in the root.

c) They differ from one another in this:

1. Simple convalidation always requires that consent be renewed, while sanation in the root dispenses from that renewal.

2. Simple convalidation regards only the future, while sanation in the root exerts its force even into the past, through a fiction of law, with respect to canonical effects.

Article II: Concerning Simple Convalidation

243. ○ According to the diverse cause of invalidity of the matrimony, there is a diverse manner of acting in convalidation. Now, nullity of matrimony can be conceived as arising from a threefold source:

a) from a diriment impediment,

b) from defect of consent,

c) from defect of form.

§ 1. Convalidation of Matrimony Invalid from a Diriment Impediment

244. ○ "For convalidating a matrimony void on account of a diriment impediment, it is required that the impediment cease or be dispensed, and that at least the party conscious of the impediment renew consent." (Can. 1133, § 1.)

Therefore a twofold condition is required for convalidation: cessation of the impediment and renewal of consent.

245. ○ a) Cessation of the impediment.

1. Convalidation is restricted to impediments which can be removed in one way or another. For if there is question of an immovable impediment, convalidation is impossible.

2. Sometimes an impediment ceases intrinsically, because the very fact which constituted the impediment no longer exists. Thus the impediment of age ceases by the flow of time, the bond is removed by the death of the spouse, disparity of worship ceases through the conversion of the unbelieving party, and raptus when liberty has been restored to the woman.

3. Sometimes it ceases extrinsically, through abrogation of the law. Thus several impediments of the former law ceased from the day 19 May 1918, because they were abrogated by the Code of Canon Law.

4. An impediment also can cease extrinsically through dispensation. We treated broadly above in Chapter VI concerning this manner of removing an impediment.

5. Let it be noted carefully that only then does the impediment which was the cause of nullity of the matrimony need dispensation, when it still persists.[1]

[1] Cf. Vermeersch-Creusen, cited work, t. II, n. 449. - Capello, cited work, n. 844.

b) Renewal of consent.

246. ○ 1. Its necessity.

1. Renewal of consent is always required, at least with respect to the party conscious of the impediment. (Can. 1133, § 1.)

2. "This renewal is required by ecclesiastical law for validity, even if at the beginning each party gave consent and afterwards did not revoke it." (Ibid., § 2.)

247. ○ 2. Its nature.

"The renewal of consent must be a new act of the will into a matrimony which is known to have been null from the beginning." (Can. 1134.)

Therefore it is necessary that the other party or each party be warned concerning the nullity, and then that explicit renewal of consent be made by him or her.

248. ○ 3. Its manner.

The manner to be employed in renewal of consent must be various according to the various cases which can occur.

But there is a threefold hypothesis:

1. "If the impediment is public, consent must be renewed by each party in the form prescribed by law." (Can. 1135, § 1.)

1° "The form prescribed by law," whether ordinary or extraordinary, according to the circumstances, as was said above in Chapter VII.

2° If, however, the impediment is public by nature but in fact occult, a more or less secret form can be employed with permission of the Ordinary, by binding the witnesses to observe secrecy and even by celebrating the matrimony in private dwellings.[2]

[2] Vermeersch-Creusen, cited work, t. II, n. 451, I. - Capello, cited work, n. 845, 1°.

2. "If it is occult and known to each party, it suffices that consent be renewed by each party privately and secretly." (Can. 1135, § 2.)

In this hypothesis there is no need of the presence of a priest or witnesses. It suffices that each express consent by these or similar words: I receive you as husband, I receive you as wife.

3. "If it is occult and unknown to one party, it suffices that only the party conscious of the impediment renew consent privately and secretly, provided the other perseveres in the consent given." (Can. 1135, § 3.)

1° It is no longer necessary that the party who is ignorant of the impediment and nullity be warned.

2° Consent must be renewed explicitly, but this can be done in any way, even by an internal act alone.

3° The other party, unaware of the nullity, perseveres in the consent given in the celebration of matrimony until he or she has retracted it by a positive act of the will.

N. B. Let the parish priest or confessor take care, insofar as possible, that the putative spouses, or at least the party conscious of the nullity, be in the state of grace when they renew consent, because at that time they receive the sacrament.

§ 2. Convalidation of Matrimony Invalid from Defect of Consent

249. ○ I. Necessity of a new and valid consent.

"Matrimony void on account of defect of consent is convalidated if the party who had not consented now consents, provided that the consent given by the other party perseveres." (Can. 1136, § 1.)

a) The one condition, but one altogether necessary and entirely indispensable for the convalidation of matrimony invalid on account of defect of consent, is that the party who had not consented validly consent.

b) The party ignorant of the nullity is not to be warned.

c) Nevertheless his or her consent previously given must persevere. But it perseveres if it has not been retracted by a positive act of the will.

250. ○ II. Concerning the manner of giving that consent.

a) "If the defect of consent was merely internal, it suffices that the party who had not consented consent inwardly." (Can. 1136, § 2.)

b) "If it was also external, it is necessary to manifest consent also externally, either in the form prescribed by law, if the defect was public, or in another private and secret manner, if it was occult." (Ibid., § 3.)

N. B. Here also there applies what we said at the end of the preceding paragraph concerning the care to be expended by the parish priest or confessor that that consent be given in the state of grace.

§ 3. Convalidation of Matrimony Invalid from Defect of Form

251. ○ "A matrimony null from defect of form, in order that it become valid, must be contracted anew in legitimate form." (Can. 1137.)

Article III: Concerning Sanation in the Root

252. ○ I. Notion.

a) "Sanation in the root of matrimony is its convalidation, bringing with it, besides dispensation from or cessation of the impediment, dispensation from the law concerning renewing consent, and retrotraction, through a fiction of law, concerning canonical effects, to the past." (Can. 1138, § 1.)

b) "Convalidation is made from the moment of the concession of the grace; retrotraction, however, is understood to have been made to the beginning of the matrimony, unless something else is expressly provided." (Ibid., § 2.)

1. Matrimony begins to be valid "from the moment of the concession of the grace," i.e.: if sanation is given in gracious form, as soon as the rescript is signed; but if in commissory form, as soon as it is committed to execution.

2. But the canonical effects are retrotracted by a fiction of law to the beginning of the matrimony, as if the matrimony had been valid from the beginning. Thus children born from such a matrimony are held as legitimate.

3. Sometimes retrotraction is had not to the beginning of the matrimony, but to some intermediate time, especially in a partial sanation which regards only offspring to be legitimated.

c) "Dispensation from the law concerning renewing consent can also be conceded, with only one party or with each party unaware." (Can. 1138, § 3.)

1. Even when one party is unwilling, sanation in the root can be conceded and sometimes is conceded.

2. Likewise when either or each party is deceased, if there is question of partial sanation.

3. Even when each party is unwilling, sanation can be conceded. In practice the Supreme Pontiff sometimes does this in a particular case, only if there is question of partial sanation with respect to canonical effects, e.g., for the good of the offspring. But general sanations sometimes conceded by the Pope touch all matrimonies, whether the spouses wish or do not wish their matrimony to be convalidated, provided the conditions required for sanation in the root are verified.[1]

[1] Capello, cited work, n. 852.

253. ○ II. Conditions necessary for obtaining sanation in the root.

"Any matrimony entered into with the consent of each party naturally sufficient, but juridically inefficacious on account of a diriment impediment of ecclesiastical law or on account of defect of legitimate form, can be sanated in the root, provided consent perseveres." (Can. 1139, § 1.)

Therefore that canon requires three conditions so that sanation in the root can validly be conceded.

a) First, it is necessary that each party gave true and naturally, or of itself, sufficient consent, and did not revoke it.

1. It is altogether impossible for the Church to sanate a matrimony in which the very root to be sanated is wholly lacking, which is matrimonial consent. For without consent no matrimony can be conceived. (Can. 1140, § 1.)

2. Civil matrimony, if marital consent naturally sufficient truly was present, nothing prevents from being sanated in the root.

3. "But if consent indeed was lacking from the beginning, but afterwards was given, sanation can be conceded from the moment of the consent given." (Can. 1140, § 2.)

b) It is necessary that the cause of nullity of the matrimony be either an impediment of ecclesiastical law or defect of legitimate form.

1. But if there is question of an impediment of natural or divine law, the Church cannot sanate that matrimony in the root from the beginning of the matrimony. For neither can the Church by a fiction of law hold as valid a matrimony to which there stands opposed an impediment of natural or positive-divine law, which surpasses her power of dispensing.[2]

[2] Capello, cited work, n. 854.

2. From the time when an impediment of divine or natural law has already ceased, the Church indeed could sanate the matrimony. But in fact she does not concede even that partial sanation to such a matrimony.

"But a matrimony contracted with an impediment of natural or divine law, even if afterwards the impediment has ceased, the Church does not sanate in the root, not even from the moment of cessation of the impediment." (Can. 1139, § 2.)

c) Besides, a grave and urgent cause is required.

Such a cause is present when otherwise the matrimony cannot be convalidated in any way, or only with danger of grave harm.

254. ○ III. The authority competent to concede sanation in the root.

"Sanation in the root can be conceded only by the Apostolic See." (Can. 1141.)

a) The Supreme Pontiff ordinarily uses the organ of the Sacred Congregations to concede sanation in the root, or, if there is question of the internal forum, the Sacred Penitentiary, as was said for dispensations from impediments. Cf. above n. 182, the things said concerning the respective competence of the diverse Congregations and of the Sacred Penitentiary.

b) By indult of the S. C. de Prop. Fide, Ordinaries in places of the missions can sanate in the root matrimonies which are null on account of an impediment upon which they can dispense.

Moreover, faculty is conceded to them to sanate in the root mixed matrimonies contracted before a non-Catholic minister or civil magistrate.

c) Legates of the Holy See and local Ordinaries obtain faculties of sanating matrimonies in the root, circumscribed by a certain ambit.

255. ○ IV. Concerning the petition of sanation in the root.

a) According to the diversity of the case, let the petition be directed to the Holy Office, or the S. C. of the Sacraments, or the S. C. for the Eastern Churches, if there is question of the external forum, through the episcopal curia, or to the Ordinary; or to the Sacred Penitentiary, for the internal forum. Cf. the things said at nn. 198-203.

b) In the supplicatory libellus let those things be indicated which we mentioned above at nn. 204-206.

256. ○ V. Concerning execution.

Recall the things said in Chapter VI, Article V.

Let the parish priest or confessor take care insofar as possible that, at the moment of execution of the rescript of sanation, the spouses be in the state of grace, because at that moment they contract matrimony and receive the sacrament.[3]

[3] Marc., cited work, n. 2087.

Chapter IX: Concerning the Effects of Matrimony

Matrimony legitimately contracted induces several effects, both with respect to the rights and obligations of the spouses, and concerning the children who are born from that matrimony, whom it constitutes legitimate.

Article I: Concerning the Rights and Duties of Spouses

257. ○ I. "From valid matrimony there arises between the spouses a bond by its nature perpetual and exclusive." (Can. 1110.)

Cf. the things we said concerning the properties of matrimony, Chapter I, Article II.

258. ○ II. "Christian matrimony furthermore confers grace upon spouses who do not place an obstacle." (Ibid.)

For matrimony between baptized persons is a true sacrament of the New Law, and therefore it confers grace upon those who receive it worthily. The sacramental grace of matrimony is an increase of grace making one pleasing, together with special help so that spouses can duly fulfill the duties of conjugal life.

259. ○ III. "To each spouse from the very beginning of the matrimony there belongs an equal right and duty as regards acts proper to conjugal life." (Can. 1111.)

a) "From the very beginning of the matrimony." From these words, as otherwise from the silence of the Code, it is licit to infer that the privilege existing in the law of the Decretals is now abolished, by force of which a period of two months was granted to each spouse for deliberating whether he or she wished to enter a religious institute of solemn vows, without being held during that whole time to render the conjugal debt.

b) Concerning the rights and duties of spouses in the use of matrimony, we shall not treat here. But we remit to the solid, clear, and learned doctrine of the distinguished Father Merkelbach, O.P., in *Questions concerning Chastity and Lust*; question eight: Concerning spouses in the use of matrimony.

260. ○ IV. "Unless something else is provided by special law, the wife, concerning canonical effects, becomes a participant in the status of the husband." (Can. 1112.)

Here there is question of domicile, competent forum, rite, and burial, but to linger over these is not our province.

261. ○ V. "Parents are bound by a most grave obligation to care according to their powers for the education of their offspring, both religious and moral, and physical and civil, and also to provide for their temporal good." (Can. 1113.)

Let the parish priest or confessor take careful care often to exhort parents duly to fulfill the most grave office of educating their children. Both in public sermons and in private conversations let him induce them to send their children to Catholic schools.

Article II: Concerning the Legitimacy of Children

262. ○ I. Notion.

a) Legitimacy is the juridical condition of children whose birth is conformable to the prescriptions of the laws.

Legitimacy is distinguished in the ecclesiastical forum and in the civil forum. For someone can be held legitimate by the Church and illegitimate by the civil authority, and vice versa.

Here we shall treat only of legitimacy in the ecclesiastical forum.

b) Legitimation is an act of the law or of the prince, i.e., of the Roman Pontiff, by which an illegitimate child obtains the rights of a legitimate one, either wholly or in part.

263. ○ II. What things are required for legitimacy of birth.

"Children conceived or born from a valid or putative matrimony are legitimate, unless, on account of solemn religious profession or sacred order received by the parents, the use of matrimony previously contracted was prohibited at the time of conception." (Can. 1144.)

a) Not only those who were conceived from a valid or putative matrimony, but also those who were conceived before matrimony and born after the valid or putative matrimony of the parents, are legitimate by full right.

b) An exception is given which is very rarely verified. For if from two spouses joined by valid matrimony, even consummated, each or either has pronounced solemn vows, or the husband has legitimately received sacred orders, if afterwards, notwithstanding the vow or sacred Order, they have had carnal intercourse, the child born from such intercourse will be illegitimate.

264. ○ III. Proof of legitimacy.

a) "The father is he whom just nuptials demonstrate, unless the contrary is proved by evident arguments." (Can. 1115.)

1. A child born of a legitimate wife is held by the law as the child of the husband, if the husband does not reject paternity.

2. Even if the husband refuses to acknowledge the child as his own, or the wife confesses adultery, a child of this kind is held as legitimate by the Church until the contrary is proved by evident arguments, as is, e.g., the continuous absence of the husband from the tenth month to the completed sixth month before the birth of the child.

b) Nevertheless the aforesaid presumption has no place, so that the husband can reject paternity, if the child is born before six months from the day of the celebrated matrimony or after ten months

from the day of dissolved conjugal life. (Can. 1115, § 2.) In this case the burden of proving legitimacy falls upon the child.

The reason is that scarcely any offspring is born before 180 or after 300 days from conception. If the child is born before six months, he cannot be the husband's except from fornication; if after ten months from the day of dissolved conjugal life, he cannot be the husband's except on the hypothesis of gestation contrary to the laws of nature, or of sexual intercourse between separated spouses. Now such hypotheses cannot be presumed. And therefore then legitimacy is not presumed and must be proved, unless the husband acquiesces by silence.[1]

[1] Vermeersch-Creusen, cited work, t. II, n. 420.

265. ○ IV. Diverse modes of illegitimacy.

Illegitimate children are distinguished into:

1. natural children, namely those who have been born from simple fornication.

2. spurious children, namely those who have been born from adultery, sacrilege, i.e., from a person bound by a solemn or solemnized vow, or from incest.

266. ○ V. Legitimation of children.

Legitimacy is conferred in a twofold way: either by the law itself which declares legitimation annexed to some fact, or by a rescript of the Supreme Pontiff.

a) Legitimation is had by the fact itself:

1. "Through the subsequent matrimony of the parents, whether true or putative, whether newly contracted or convalidated, even non-consummated." (Can. 1116.)

1. But this condition is required: that "the parents were capable of contracting matrimony between themselves at the time of conception, or pregnancy, or birth." (Ibid.) But if in none of those times, namely conception, gestation, or birth, the parents were free from a diriment impediment, subsequent matrimony does not confer legitimacy.

2. "Children legitimated through subsequent matrimony, as far as canonical effects are concerned, are in all things equated to legitimate children, unless something else has been expressly provided." (Can. 1117.)

But the law excludes those thus legitimated only from the office of Cardinal, Bishop, Abbot nullius, or Prelate nullius. (Can. 232, § 2, 1°; Can. 331, § 1, 1°; Can. 320, § 2.)

2. Through solemn profession in a religious Order.

But legitimation of this kind is altogether partial, because it only removes the irregularity for orders which comes from illegitimacy. An illegitimate person solemnly professed can receive sacred orders, but he does not become suitable for the office of major superior (can. 504), or a fortiori of cardinal, bishop, or abbot or prelate nullius. (Canons cited above, § 2.)

3. Through sanation in the root of the matrimony.

Those who become legitimate from the sanation of matrimony in the root seem to be fully assimilated to legitimate persons, since by a fiction of law they are considered as legitimate from the beginning, and therefore, contrary to those legitimated through subsequent matrimony, able to become Cardinals and Bishops.[2]

[2] Vermeersch-Creusen, cited work, t. II, n. 455, 4.

4. Through dispensation from the impediments of matrimony, granted from ordinary power or delegated by a general indult. Adulterous or sacrilegious offspring, however, are excepted from legitimation. (Can. 1051.)

b) Legitimation can be conceded by rescript of the Supreme Pontiff or of the Congregations which are organs of his supreme power.

Then the extension of the grace conceded is to be measured from the tenor of the rescript.

Chapter X: Concerning the Dissolution of Conjugal Life

267. ○ A matrimony validly celebrated makes the spouses one thing and obliges them to live together perpetually in communion of dwelling, table, and bed. For without a partnership of life of this kind, the fulfillment of conjugal duties becomes impossible. Nevertheless, the common life between spouses is apt to be dissolved or to cease in various ways, legitimately or illegitimately, perpetually or for a time, totally or partially. Already above at nn. 11-14 we spoke concerning the diverse cases in which the matrimonial bond itself can be broken. But, the conjugal bond remaining, there can be place for separation of the spouses on account of causes admitted by the Church herself; and besides, in many modern nations there is in force the most evil law of civil divorce. Therefore, so that the steward of souls may know clearly what he ought to do both toward spouses who seek to be separated from one another or have already departed, and toward those who wish to have recourse to civil divorce or have already obtained it, we shall treat in two distinct articles:

1. concerning the separation of spouses.

2. concerning civil divorce.

Article I: Concerning the Separation of Spouses

268. ○ I. A legitimate cause of separation is necessary.

a) "Spouses must preserve the communion of conjugal life, unless a just cause excuses them." (Can. 1128.)

b) Just causes of this kind admit great variety, and judgment concerning the sufficiency of the cause differs much according as there is question of perpetual or temporary separation, of total or partial separation.

269. ○ II. Causes of perpetual and total separation.

a) First of all, adultery of the other spouse.

"On account of adultery of the spouse, the other spouse, the bond remaining, has the right of dissolving the communion of life, even perpetually." (Can. 1129, § 1.)

1. The reason is that, by breaking the promised fidelity, the adulterer has lost every right in relation to the other party with respect to matrimonial duties.

2. But in order that adultery confer such a right of separation, it must be:

1. formal: i.e., committed knowingly and freely.

2. consummated by copula, even onanistic.[1] Sodomy with a person other than the wife and bestiality are equated with adultery. For the reason of the injury inflicted is equal in all these cases.

[1] Cf. Vermeersch-Creusen, cited work, t. II, n. 440, 2, b. - Capello, cited work, n. 826.

On the contrary, immodest acts, even grave ones, do not suffice, but without copulation.

3. morally certain. For in this matter physical certitude is almost never had.

4. that to which the other spouse did not consent. (Can. 1129, § 1.)

5. that to which the other spouse did not give cause. (ibid.) He is judged to give cause to adultery who deserted his wife, or who often omitted to render the conjugal debt.

6. not condoned expressly or tacitly. (ibid.) For if the fault of the adulterous party has been freely condoned by the spouse, now the innocent spouse by the very fact has renounced his or her right of departing.

"Tacit condonation is had if the innocent spouse, after having been made more certain concerning the crime of adultery, has dealt with the other spouse voluntarily with marital affection; but it is presumed, unless within six months he or she has expelled or deserted the adulterous spouse, or has made a legitimate accusation." (Can. 1129, § 2.)

7. not mutual. (Can. 1129, § 1.) For the crime of one is compensated by the crime of the other.

b) Mutual consent for embracing religious life or for receiving sacred orders.

Nevertheless, from the law of the Code, dispensation of the Holy See is required. (Can. 542, 1°; can. 987, 2°.)

270. ○ III. Causes of total but not perpetual separation.

a) If the other spouse has given his or her name to a non-Catholic sect;

b) If he or she has educated the offspring non-Catholically;

c) If he or she leads a criminal and disgraceful life;

d) If he or she causes grave danger either to soul or to body for the other;

e) If by cruelties he or she renders common life too difficult;

f) And other things of this kind. (Can. 1131, § 1.)

"In all these cases, when the cause of separation ceases, the custom of life is to be restored; but if the separation has been pronounced by the Ordinary for a certain or uncertain time, the innocent spouse is not obliged to this except from the decree of the Ordinary or when the time has elapsed." (ibid., § 2.)

271. ○ IV. Causes of separation from the bed only, whether perpetual or temporary.

a) It is licit to make a separation from the bed, even perpetual:

1. From mutual consent on account of a grave cause.

2. As often as the other spouse is not bound to render the debt.

b) Such a separation is necessary:

When the conjugal debt cannot be rendered and use of the common bed introduces proximate danger of sinning.

272. ○ V. By what authority separation ought to be made.

a) If there is question of embracing the religious or clerical state, dispensation of the Holy See is always required, as was said above at n. 269, b.

b) If separation is made on account of adultery, the sentence of the Ordinary is required if it is not public; otherwise it can be made by proper authority.

c) If separation is made on account of the motives enumerated above at n. 270, it must be made by the authority of the Ordinary. Nevertheless, it can be made also by proper authority, if those causes are certainly established and there is danger in delay. (Can. 1131, § 1.)

d) Finally, separation from the bed only is made by proper authority.

273. ○ VI. Whether the innocent party always retains the right of recalling the dismissed party.

Such a right always belongs to him or her, provided the other party, with the consent of the innocent party, has not assumed a state contrary to matrimony. (Can. 1130.) Nevertheless the other party is excused from returning if he or she deservedly fears grave cruelties to be inflicted upon him or her by the spouse.

274. ○ VII. Whether the innocent party is bound to admit the other party again.

a) If there is question of perpetual separation legitimately made on account of adultery, the innocent party is never bound to receive the dismissed spouse, at least from justice. (Can. 1130.)

b) If there is question of temporary separation, on account of the causes enumerated at n. 270, "when the cause of separation ceases, the custom of life is to be restored; but if the separation has been pronounced by the Ordinary for a certain or uncertain time, the innocent spouse is not obliged to this except from the decree of the Ordinary or when the time has elapsed." (Can. 1131, § 2.)

275. ○ VIII. Care of the children after separation.

"Once separation has been instituted, the children are to be educated with the innocent spouse, and, if one of the spouses is non-Catholic, with the Catholic spouse, unless in either case the Ordinary, for the good of those children, always with their Catholic education preserved, has decreed otherwise." (Can. 1132.)

276. ○ IX. What is to be done by the parish priest or confessor with respect to separation of spouses.

a) As far as they can, they must dissuade spouses from making separation as to the roof, unless causes are present which render it truly necessary. For separation has grave evils as consequences.

b) In cases which require the intervention of the Bishop, the spouse who seeks separation regularly must have recourse to the authority of the Ordinary through the parish priest.

c) If, however, the penitent on one side has grave motives for instituting separation from the spouse, and on the other side is not conscious of the obligation of having recourse to the Bishop, he or she can be left by the confessor or parish priest in good faith, if it is foreseen that he or she can only with difficulty be brought to institute recourse, and no grave scandal is to be feared.

And this holds a fortiori for spouses already separated, if scandal is absent.

Article II: Concerning Civil Divorce

277. ○ I. In our days among many nations God and Christ are exiled from public life. The state is judged to have every power, without being bound in any way to attend to divine or ecclesiastical laws. And thus civil matrimony and civil divorce have been instituted against the rights of God and of the Church. Concerning civil matrimony there is no great difficulty. Not only can the faithful admit it, provided they do not attribute to it any effect with respect to matrimony itself beyond the acquisition of civil rights, but they are altogether to be invited to fulfill that formality, on account of procuring the temporal good of the spouses themselves and of the offspring to be born.

But concerning civil divorce a graver difficulty remains: namely whether it is licit for Catholics both to petition for it, and to pronounce it as judge, and finally to join civilly those who are kept back from new nuptials by the impediment of bond.

278. ○ II. Notion of civil divorce.

a) Civil divorce is the dissolution of civil matrimony even with respect to the bond, so that the spouses can freely contract another matrimony.

b) But note well that in the intention of the legislator, at least in Belgium and in France, civil matrimony is considered as true and indeed the only matrimony, to such an extent that matrimony contracted before the Church only, the law holds as concubinage, and the children born from such a union as illegitimate.

279. ○ III. What must be thought concerning the law permitting divorce.

No one of the Catholics can doubt that that law is most evil, as usurping the rights of the Church, which alone is competent to render judgment in matrimonial causes, and, what is still worse, as sacrilegiously contending to break the matrimonial bond, against the precepts of divine law itself.

280. ○ IV. What concerning the sentence itself of perfect divorce.

a) There is a great dispute among authors whether such a sentence is intrinsically and essentially evil, so that for no cause, although most grave and most urgent, can it be rendered by a judge or petitioned for by spouses.

b) Nevertheless, that essential malice seems to be absent from a sentence of divorce, so that sometimes under certain conditions, with conscience unharmed, it can both be pronounced by a judge and be sought by spouses and advocates.

For such essential malice appears neither with respect to the very object of the sentence, nor with respect to the circumstances necessarily annexed.

1. Not with respect to the object. For a sentence of divorce is of itself nothing other than the destruction of civil matrimony, or the privation of legal recognition and civil effects for the matrimony. Now nothing there seems to be essentially evil.

2. Not with respect to the circumstances necessarily conjoined: For if the judge clearly expresses his will of touching only the civil effects of matrimony, no other evil circumstances can be conjoined with the sentence of divorce except scandal for the people and cooperation in the sins of others.

Such scandal is not present in most European nations, where the law of divorce has been in force for a long time and is constantly applied, if the judge or spouses or advocate, driven by true necessity, render or seek such a sentence.

But with respect to cooperation in the sins of others, the cooperation is not so proximate, and since it is not by an action evil of itself, it can be excused from a most grave cause.[1]

[1] Prümmer, cited work, nn. 901 and 902.

281. ○ V. What concerning the judge in relation to the sentence of divorce.

a) He can pronounce divorce whenever the matrimony of which there is question is certainly invalid, as being merely civil between those who are bound to canonical form, or when its nullity has been declared by ecclesiastical authority, or it has legitimately been dissolved with respect to the bond.

b) He can take up the cause so that he may repel the petition for divorce.

c) If, however, he is compelled to put aside the office of judge unless he is willing to judge the cause of divorce, and he cannot repel the petition of the plaintiffs, he seems able to pronounce the sentence of divorce, provided he protests that he wishes to touch only the civil effects.

282. ○ VI. What concerning the plaintiff in a divorce cause.

a) Divorce can be petitioned for in the case of an invalid matrimony, and insofar as necessary one declared such by the Church, or legitimately dissolved with respect to the bond.

b) The plaintiff sins most gravely if he intends the dissolution of the matrimonial bond itself or to obtain freedom of entering other nuptials.

c) Even if he seeks only the civil effects, generally one petitioning for civil divorce sins gravely.

d) If, however, most grave causes for petitioning for divorce are present, the plaintiff does not seem able to be condemned, provided he obtains the permission of the local Ordinary.

The Provincial Council of Mechelen of the year 1920, celebrated under the presidency of the Most Eminent Cardinal Mercier and approved by the Apostolic See, thinks in the same way, saying: "Catholic spouses incur the guilt of grave sin who, while the matrimony is valid before the Church, without a most urgent and most grave cause, to be known by the Ordinary, do not hesitate to solicit civil divorce as plaintiffs."[2]

[2] *Acta et Decreta Conc. Prov. Mechlin. quarti*, n. 81, Mechlin, 1923.

e) But whether such most urgent and most grave causes which excuse a petition for divorce really are now ever present, at least in Belgium and France, may deservedly be doubted.

1. For formerly a twofold cause could be present in Belgium for Catholics to solicit divorce and to judge bodily separation insufficient: fear lest adulterous offspring be unduly ascribed to the husband, and the desire for the wife to vindicate to herself sufficient freedom in the administration of her goods and the education of the offspring.

2. But now such causes no longer exist. For the law of 20 March 1927 brought opportune changes into the regime of bodily separation, which extended the principal advantages of divorce to the regime of bodily separation.

Thus from the new law, in the case of a judgment or even only a petition in a cause of bodily separation, the husband can reject paternity of a child born at least on the three-hundredth day from the date of the decision by which the tribunal permits the wife to have a separate domicile, or before one hundred and eighty days to be computed from the definitive rejection of the petition or from the reconciliation accomplished between the spouses. Indeed, the action of the husband in denial of paternity is not admitted if the wife proves that meanwhile she was again with the husband in fact, but that proof is incumbent upon the wife.

On the other side, the new law grants to the wife who is bodily separated from her husband the full exercise of her civil power independently from the husband.

3. In France already the law of 6 December 1850, confirmed by the law of 27 July 1884, established nearly the same things as the new Belgian law with respect to denial of paternity in the case of bodily separation. And the law of 6 February 1893 grants full civil capacity to a bodily separated wife.[3]

[3] Cf. *Annales du Notariat et de l'Enregistrement*. Aug.-Sept. 1927, pp. 316-337. Jules Chevalier, *Loi du 20 mars 1927 portant modification au regime de separation de corps*.

4. But with respect to the custody and education of children, bodily separation and divorce practically have the same effects.

283. ○ VII. What concerning the advocate.

Since the advocate is nothing other than the vicegerent of the plaintiff, the things we said concerning the plaintiff, with respect to the most grave and most urgent causes and the permission of the

Ordinary which are required so that he may licitly petition for divorce, are altogether to be applied to him.

284. ○ VIII. What concerning the mayor celebrating the civil matrimony of those who are held by another valid matrimony.

Since neither does that action seem intrinsically evil, the mayor can, from a grave cause, suppose lest he be compelled to put aside his office, provide that assistance. Thus the modern authors commonly teach.[4]

[4] Prümmer, cited work, n. 898.

285. ○ IX. Concerning the manner of acting of the parish priest or confessor toward those who have obtained divorce without permission of the Ordinary.

a) Let him induce them to repent concerning the fault admitted.

b) If reconciliation appears morally possible, and no sufficient cause of bodily separation is present, let the parish priest or confessor command that the party who petitioned for divorce procure reconciliation as far as possible.

c) But if reconciliation is impossible, or if causes altogether sufficient for making bodily separation are present, I judge that the penitent can be admitted to the sacraments. But it would be better to refer the matter to the judgment of the Ordinary.

PRAISE TO GOD AND TO CHRIST THE KING!

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Publisher's Notices

Final Notices and Testimonials

The little works published by Rev. Fr. Merkelbach, O.P., in the collection "Pastoral Questions" were everywhere received with a grateful mind and approved with many praises. Concerning this, let certain testimonies be reported:

I. On Chastity and Lust

The purpose of our Review does not permit us a detailed examination of this little work. But the importance of the subject, and the truly masterly manner in which it is treated there, induce us to recommend it also to the Italian clergy. All know that questions of this sort are, as St. Alphonsus de Liguori wrote, the more frequent and more abundant matter of confessions, and that because of which the greater number of souls fall into hell, and therefore that for all confessors there is an extreme necessity of being perfectly instructed in them.

(*Civilta Cattolica*, 1926, p. 450.)

A work of great exactness in its terminology, of true solidity in its pastoral and penitential practice, and in which we find - what too often is lacking in similar works - the physiological and moral notions necessary for the confessor.

(P. Hourat, *Bull. Circulaire*, August 1927.)

...His chapter on the causes of and remedies of carnal sins is well-timed, and will be especially valuable for confessors and directors of youth.

(*The Month*, 1926, p. 476.)

Brief, clear, methodical: the first qualities of a summary which the author wished, so far as possible, to be complete in order that it might be practical. Happy choice of the preliminary anatomical and physiological notions: one finds here details ordinarily passed over in silence, and nevertheless indispensable. We cannot note all the particular points worthy of praise in this work: we would not finish.

(*Collationes Namurc.*, 1927, p. 213.)

The treatise *de castitate*, while complete, remains brief, as befits a work having above all a pastoral purpose. Its object is chastity in marriage as well as in celibacy; it does not omit studying the causes and remedies of lust.

(*Collationes Tornacenses*, 1927, p. 47.)

II. On Embryology and on the Administration of Baptism

This volume gathers and develops, somewhat more than the general treatises of morals do, the questions relating to abortion, to surgical interventions, and to the administration of baptism. In these matters, which give rise to so many distressing cases of conscience, one will learn with great

interest the opinion of the eminent professor, whose fineness of analysis and rigor of reasoning are well enough known. He solidly proves the strict solutions proposed by the Church; he very happily refuses to proclaim a certain obligation when it does not allow itself to be proved in a sufficient manner.

(J. Salsmans, S.J., *Nouv. Rev. theol.*, 1928, p. 71.)

We do not doubt in the least that we should warmly recommend the acquisition of this beautiful fascicle to all priests, for whom it will be a sure guide in all the difficulties which can come to meet them in the exercise of their sacred ministry.

(*Estudis Franciscans*, 1927, p. 118.)

A succinct treatise, but complete and well adapted to the needs of parish ministry.

(*Rev. Liturg. et Monastique*, Christmas, 1927.)

One will be glad to find gathered there all the practical questions having relation to embryology and which are usually scattered in various treatises of moral theology, for example the questions relative to abortion, to embryotomy, to the caesarean operation and to other surgical interventions of the same order, those which have regard to the administration of baptism *foetibus immaturis* or else *in utero matris*.

(*Collationes Tornacenses*, 1927, p. 47.)

Here again are found the qualities which we noted in the first volume of these *quaestiones pastorales* (see *Collat. Namurc.*, XXI, 213). Exact recalling of the scientific data indispensable for understanding the moral problems relative to the existence of the "not born"; clear statements of the principles from which the solutions must be inspired; the solutions themselves firmly expressed; manifest concern to avoid everything that would resemble an evasion, where others seem to wish to turn aside ... so many reasons which recommend this work to the attention of serious readers.

(*Collationes Namurc.*, 1928, p. 321.)

III. On Various Categories of Penitents

Most Reverend Father,

I am eager to thank you for sending your new work *Quaestiones de variis Poenitentium categoriis*. After having rapidly gone through it, I am happy to express to you my congratulations and my gratitude. It will be most useful for directors of souls and for all priests, being very practical, very clear, and at the same time so truly theological.

May the good God bless the book and its well-deserving author...

19 January 1928. † J. E. Card. Van Roey, Archbishop of Malines.

The mere reading of these dense pages leaves the impression of a considered work.

...The doctrines are clearly set forth, the arguments summarily but solidly proposed, the solutions frankly given. Everything is almost sinewy in this work. We shall not complain of it. And we shall open it with the certainty that we shall find what we are seeking. For everything is there which ought to be there, and there is more than one thought to find. All kinds of penitents are reviewed, from

children, the simple, those in occasions, relapsers, those bound by custom, the sick, etc., etc., up to the abnormal, the devout, contemplatives, etc., etc. The author profits from these various questions to sketch little special treatises: thus he sets forth a whole doctrine on contemplation and its degrees; elsewhere, a note on the morality of dances and clothing; elsewhere, a brief view of the absolution of the excommunicated; elsewhere, a word on temperaments. How many instructive things professors of pastoral theology do not have time to develop before their students! Here it is done by a master. Let confessors consult it: they will not regret it.

(G. Kiselstein, *Revue Eccl. de Liege*, March 1928.)

We recommend this work to the clergy, not for its originality or the novelties which it does not contain, but for the wisdom and prudence of the counsels which it contains. There are several questions which all young priests should absolutely read. Let us note the confession of children, of young people, of persons of the sex, and of the abnormal. All these questions, little developed in the manuals, find here a more complete exposition, always clear and precise. The author rightly insists (p. 101) on conditional absolution "if thou art capable" and not "if thou art disposed."

(*Collationes Namurcenses*, 1929, p. 99.)

IV. On the Minister of Penance and His Duties

Most Reverend Father,

... It is with lively gratitude that I have received your book *De Poenitentiae Ministro*; thank you for having sent it to me, and thank you also for having published it. I am persuaded that it is worthy of your earlier works.

Your studies of pastoral theology will thus constitute a whole of the first value. I wish for your books the widest and most lasting influence.

25 April 1928. † J. E. Card. Van Roey, Archbishop of Malines.

The learned author, professor of Theology at Louvain, sets forth there with profundity and clarity, both from the speculative side and from the practical, the questions of moral and pastoral theology which concern the jurisdiction and duties of the confessor, most important questions which are wont to be treated too succinctly in the common scholastic treatises of Moral Theology.

(*Osservatore Romano*, 9 March 1929.)

They are both Pastoral treatises, and will be acceptable to all shepherds of souls. The former deals with the confessor's treatment of various classes of penitents, much as St. Alphonsus did so well in the *Homo Apostolicus*. The chapters on Contemplatives are, we think, particularly helpful to confessors, and Father Merkelbach has given us the benefit of wide reading and a long experience. The second monograph deals with the confessor himself, his powers, jurisdiction, reservation, the Seal, etc... Though the Seminarist will hardly have time to read them with all his other work, the priest on the mission should find time to do so. We look forward to other works on the subject, promised by the scholarly author.

(*The Month*, August 1929, p. 184.)

The Manager. P. RUTTEN.

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