**TREATISE X**

**The Sacrament of Marriage**

This treatise is divided into nine chapters: 1. nature and kinds of marriage; 2. marriage as a sacrament; 3. the properties of marriage; 4. the benefits of marriage; 5. the obligations of marriage; 6. preparation for marriage —betrothal, preliminary investigation, publication of the banns; 7. the external celebration of marriage; 8. impediments to marriage; 9. civil marriage.

CHAPTER I. NATURE AND KINDS OF MARRIAGE

**836.** Definition. Marriage is the conjugal union of a man and a woman who are free from impediments, which binds them to a life lived in common and together.

Such a union between baptized persons is a sacramental contract, because of the institution of Christ; between unbaptized persons this union is not a sacrament, but it is nevertheless “from its very nature, and meaning something holy” (Leo XIII, Const. “ Arcanum,” Feb 10, 1880).

Explanation of the definition

1. Union: this word, if taken in its active meaning, i.e. for the transitory act of internal and external consent by which the man and woman promise conjugal fidelity to each other, refers to the marriage actually being made (in fieri) and is the sacrament of Marriage (between Christians); if understood in its passive meaning, i.e. for the effect produced or the state of life resulting from the consent, it refers to the state of marriage (in facto esse) and is the actual bond of marriage. Therefore the essence of the contract (which is the sacrament) of marriage consists in the mutual consent of both parties, and not in the act of sexual intercourse, as some authors have taught.

2. a conjugal union, whereby is signified the special purpose of this union. Man and woman join together to lead a lawful conjugal life and not for lust or business purposes.

3. a conjugal union of one man and one woman, and not of several men and women, in order to signify monogamy and exclude polygamy.

4. who are free from impediments, so that not every person may enter into the contract of marriage, but only those who are not prevented by some impediment.

5. which binds them to a life in common and together, in order to signify primarily the indissolubility of marriage, but secondarily a) their united domestic life; b) their spiritual union in charity and desire to act in unison; c) at least some sharing of temporal goods.

837. **Kinds of marriage**

1**.** A marriage is either legitimate, ratified or consummated.

- A legitimate marriage is a valid matrimonial contract between two persons, at least one of whom is not baptized—that is to say, it is a valid marriage which is not a sacrament; and it makes no difference whether sexual intercourse has taken place or not.

- A ratified marriage is a valid matrimonial contract between two Christians which has not yet been completed by conjugal intercourse.

- A consummated marriage is one in which the contract has been followed by sexual intercourse directed to the procreation of children. Therefore a marriage is not regarded as consummated by any sexual intercourse which may have occurred prior to a valid marriage. Once the marriage contract is concluded consummation of the marriage is presumed in law if the parties have lived together, until the contrary is proved (c. 1015, § 2).

1. A marriage is either public, clandestine, or secret.

- A public marriage is one which is celebrated in the face of the Church or in some other public way recognized by the Church as valid.

- A clandestine marriage is one which is contracted without the presence of the parish priest and two witnesses. According to the present discipline of the Church clandestine marriages are invalid (apart from cases of grave necessity), except such marriages between non-Catholics.

- A secret marriage (or marriage of conscience) is that which is contracted before the parish priest and two witnesses but secretly, for a very grave reason. Such marriages are not to be entered in the ordinary registers of marriage, but are to be kept in the secret archives of the Curia (c. 1107). Special permission is required from the bishop for the celebration of such marriages (c. 1104).

1. A marriage is valid (or true) when there exists no annulling impediment between the two parties.

- Marriage is invalid (null and void) when there exists such a diriment impediment; if the two parties being conscious of such an impediment contracted marriage in bad faith, the marriage is said to be attempted.

- Marriage is putative when it is invalid because of the presence of an annulling impediment and yet was contracted in good faith by at least one of the parties. When both parties become certain of the invalidity of their marriage, it is no longer a putative marriage (c. 1015, § 4). Such a marriage is not recognized by the Church unless it was contracted publicly and without her disapproval. Children born of a putative marriage are considered legitimate, as was stated above, n. 828.

A presumed marriage is no longer recognized, except when sexual intercourse has taken place willingly after a marriage which was contracted conditionally.

CHAPTER II. MARRIAGE AS A SACRAMENT

838. PRINCIPLE. *Any marriage lawfully celebrated between two Christians is a genuine sacrament (in the proper sense of the term) of the New Law* *instituted by Christ.*

This has been defined in the Council of Trent, sess. 24, can. 1, and may be proved both from Sacred Scripture (Eph. v, 22-32) and from Tradition (cf. the author’s Man. Theol. mor. Ill, 643).

Theologians are not agreed on the exact time when Christ instituted this sacrament. Some authors incline to the view that He raised the contract, of marriage to the dignity of a sacrament at the marriage feast of Cana; others, that the sacrament was instituted when He abrogated the writ of separation; others include the institution of this sacrament amongst the various instructions on the kingdom of God which Christ gave to His apostles after His resurrection.

Amongst baptized people the contract and the sacrament are inseparable, so that if either is invalid, both are invalid, and whenever there exists valid contract, there also is the sacrament (c. 1012).

**Corollaries.**

1. Only the Church has the right to determine and to pass judgement on everything which affects the essence of Christian marriage, since; it is the duty of the Church only and not of the civil authority to regulate the sacraments.

**839.** 2. The civil authority has no power to establish annulling or prohibitory impediments for Christian marriages; likewise she possesses no power to pronounce complete divorce or to allow Christians to remarry after obtaining a divorce.

All such matters affect the essence and sacramental character of marriage, over which the civil authority has no power.

3. The civil power can and must on its own authority regulate the civil con­sequences of the marriage contract (c. 1016).

It is in the best interests of civil society that even the temporal side of marriage should be duly controlled, such as the sharing of property and its administration, questions relating to succession and inheritance, etc. which do not come within the direct jurisdiction of the ecclesiastical courts. On all such matters civil authority, can and should make just laws which arc binding in conscience.

**840.** 4. A marriage between two unbaptized persons, or between one baptized and one unbaptized person, is not a sacrament.

The first part of this statement is certain and is now admitted by all, since without Baptism (which is the gateway to all the other sacraments) no sacrament can be received validly.

The second part is denied by many theologians (Dom. Soto, Christ. Pesch, Scherer), but nevertheless it would seem to be true. For if a marriage is invalid in respect of one party, then it must be invalid in respect of the other; marriage cannot exist in one person only, and certainly the unbaptized party does not receive the sacrament, even though contracting a valid marriage. So neither does the other party, although baptized, receive the sacrament.

What has just been said regarding marriages between Catholics and pagans applies similarly to those marriages in which one of the two pagans later receives Baptism. Such a marriage does not assume a sacra­mental character for the person receiving Baptism. However a marriage contracted between two pagans does become a sacrament if both are later baptized, so long as their marriage consent persists.

**841.** 5. A legitimate marriage between pagans is not subject to the laws of the Church, but is subject to all the just laws and impediments instituted by the State.

This corollary is the subject of fierce discussion, but the principle as proposed seems not merely probable but also at present more common and more in conformity with the practice of the Roman Curia. For a fuller discussion of this question the student is referred to the author’s Man. Theol. mor. III, n. 631 sq.

842. The remote matter of the sacrament is to be found in the bodies of the two parties, or, as some authors desire, in the right over the body of each other for the purpose of sexual intercourse.

The **proximate matter** consists in the application of the remote matter, namely the signs or words used to express the transference of that right.

The **FORM** of the sacrament is the mutual acceptance of this transference expressed externally. Consequently the opinion proposed by Melchior Canus and a few others that the blessing by the priest constitutes the form is false; this is also evident from what remains to be said regarding the minister of this sacrament.

It follows from the principles proposed regarding the matter and form that it is the marital consent of the two parties which, considered from different aspects, constitutes the matter, form, and efficient cause of this sacrament. Therefore there can be no sacrament of marriage without the consent.

843. The CONSENT of the two parties must be:

1. genuine; and therefore a fictitious consent does not suffice;
2. free and deliberate; consequently, grave fear and substantial error prevent certain essential conditions;
3. present; therefore any consent relating to the future is not sufficient;
4. mutual and simultaneous, since marriage is a bilateral contract;
5. externally and legitimately expressed, since the matter and form of the sacraments constitute the external sign;
6. absolute and unconditional. It is rare that a condition attached to the marriage contract does not affect its lawfulness, and sometimes a condition which is genuinely suspensive destroys the validity of the marriage. The following points are worthy of note:

a) A marriage contracted with a condition attached relating to the present or to the past is valid or invalid according as the condition is verified or not.

b) If a condition is added which refers to the future and it is a lawful condition, the validity of the marriage is suspended until the condition is fulfilled; once the condition is fulfilled the marriage immediately becomes valid and there is no strict necessity for the consent to be renewed. If the marriage was contracted with the following condition added: “if the Pope grants a dispensation”: once the dispensation is obtained the consent must be renewed in accordance with the form specified by law, since the parties prior to obtaining this dispensation were incapable of giving an effective consent.

c) If a condition attached is contrary to the essence of marriage, the marriage is void.

The essence of marriage consists in the three benefits of offspring, conjugal fidelity, and the sacrament. For a discussion of these benefits, cf. n. 858.

d) If a condition *refers to the future and is mi immoral condition, although not contrary to the essence of marriage,* the marriage is valid since such conditions are considered as not having been present.

844. The ministers of the sacrament are the two contracting parties. |

This is now the most common opinion and it is morally certain, for there are occasions when the sacrament of marriage may be celebrated; when a priest is not present, as will be noted later on. Therefore it is abundantly clear that the priest cannot be the minister of the sacrament, and there is no foundation whatsoever for regarding the priest as the ordinary minister and the contracting parties as the extraordinary minister.

**845.** The subject capable of receiving the valid sacrament of marriage is any baptized person who is free from any annulling impediment.

In order to receive the sacrament worthily and fruitfully it is necessary that the parties be in a state of sanctifying grace and free from all prohibitory impediments.

There is no prescription of the common law enjoining the reception of the sacraments of Penance and Holy Eucharist prior to marriage, provided that the two parties are in the state of sanctifying grace, but all will realize how fitting it is that these sacraments should be received prior to marriage.

CHAPTER III. THE PROPERTIES OF MARRIAGE

The essential properties of marriage are its unity and its indissolubility. We shall consider these properties in general, and then treat in detail of divorce which is contrary to the indissolubility of marriage.

**Art. 1. The Unity and Indissolubility of Marriage**

**846.** **The** UNITY of marriage (monogamy) is the bond of marriage existing between one man and one woman. This property excludes simultaneous polyandry and polygamy.

- Simultaneous polyandry, which consists in a marital union between one woman and two or more men, is forbidden by the Natural law.

- Simultaneous polygamy which consists in a conjugal union between one man and two or more women existed before the time of Christ not only amongst the gentile nations but also amongst the Jews, with the permission of God. But since the era of the New Dispensation polygamy has been forbidden to everyone, to Christian and pagan alike. Christ restored marriage to its original unity and regarded as adulterous anyone who married another after sending away his first lawful wife. Therefore, a fortiori, a person commits adultery by marrying another while retaining his first lawful wife.

Successive polygamy is lawful and therefore constitutes a true sacrament when both parties are Christians (c. 1142). Some of the older Fathers held stricter views on this form of polygamy.

**847.** The INDISSOLUBILITY of marriage was once more instituted by Christ, and therefore the valid marriage of Christians, consummated by the conjugal act, cannot be dissolved by any human authority for any reason (c. 1118). Neither can the following text from Scripture be urged as an objection: “He who puts away his wife, not for any unfaithfulness of hers, and so marries another, commits adultery” (Mt. xix, 9). For God certainly allows a separation from the wife in the event of her unfaithfulness, as will be explained more fully below, but in those circumstances neither of the parties is permitted to contract a new marriage.

**Art. 2.** Divorce

Divorce is contrary to the indissolubility of marriage; it is perfect or absolute if it affects the bond of marriage itself, it is imperfect if it consists in the mere discontinuance of married life while the bond of marriage persists.

1. Perfect or Absolute Divorce

**848.** Principle. Perfect divorce occurs in three cases: a) through the Pauline privilege; b) through Papal dispensation; c) through solemn religious profession. But the two latter affect only ratified marriages which have not been consummated.

**849.** a) The Pauline privilege permits the complete dissolution of a legitimate marriage, even if consummated, provided the following conditions are verified:

1. One of the parties (not both) is validly baptized.

It is therefore supposed that since contracting a legitimate and valid; marriage one of the parties has been validly baptized. Therefore the Pauline privilege cannot be invoked in a marriage between a Catholic and an unbaptized person if contracted with the dispensation from the disparity of cult (c. 1120, § 2)

But the privilege may be used even if the convert after receiving Baptism renews married life with the unbaptized party, if the latter refuses to live peacefully and without offence to God with the converted Catholic or separates from him (or her) without just cause (c. 1124). Notice that the canon adds: without just cause, for if the baptized party after receiving Baptism gives just cause for separation, e.g. by adultery, he cannot con­tract a new marriage (c. 1123).

2. that the unbaptized party either a) departs or refuses to live peacefully with the baptized partner, or b) refuses to live with the other without offence to God.

In order to make certain of the existence of these conditions it is necessary in ordinary circumstances, i.e. unless the Holy See declares otherwise, to ask the unbaptized party two questions: a) whether he wishes to be converted to the Faith; b) whether he or she is willing to live in marriage peacefully and without offence to God (c. 1121, § 1).

Offence is given to God if the unbaptized partner tries to persuade the other to commit grievous sin or blasphemes the name of God or refuses to dismiss his mistresses.

These interpellations should normally be made by the bishop or Ordinary of the converted party; however it is sufficient if they are made in some other way and even privately, provided that there is written proof or the testimony of two witnesses that they were in fact made (c. 1122). No one has the power to dispense on his own authority from these interpellations, with the exception of the Holy See which sometimes delegates the faculty to vicars apostolic.

Notes.

1. The bond of the first marriage contracted in infidelity is dissolved not when one of the parties is baptized but when the convert actually contracts a new and valid marriage (c. 1126).

2. The Code of Canon Law states, c. 1125: “The Constitution of Pope Paul III Altitudo,’ June 1, 1537; of Pope St. Pius V, ‘Romani Pontifices,’ Aug. 2, 1571; of Pope Gregory XIII, ‘Populis,’ Jan. 25, 1585, given to individual countries, are, as far as marriage is concerned, extended to all other countries in the same circumstances.”

Pual III allowed the husband who before receiving Baptism possessed several wives to retain the wife who he first married, or, if he could not remember which was the first one he married, to take any one of them and contract marriage with her.

St. Pius V allowed these same polygamous husbands (even in those cases where they could remember which was the first wife) to continue to live in marriage with the wife who received Baptism with him.

Gregory XIII granted faculties to local Ordinaries, parish priests, and priests of the Society of Jesus to dispense from the customary interpellations, provided that it was certain (even in the summary and extra-judicial form) that the absent pagan party could not be legitimately questioned or, if interpellated, did not reply within the time fixed for the answers. If the convert then contracts a new and legitimate marriage it is to be considered firm and valid, even though afterwards it becomes known that the unbaptized party had no chance to reply to the interpellation or that he had become a Catholic by the time the second marriage took place.

These three Constitutions are to be found at the end of the Code of Canon law.

3. When there is any doubt whether all the conditions required for the Pauline privilege are verified or not, the privilege enjoys the favor of law—that is to say, judgement is to be given in favor of the freedom of the baptized party (c. 1127).

**850.** b) A DISPENSATION OF THE HOLY SEE can dissolve a ratified marriage between Christians which has not yet been consummated. This is the constant practice of the Roman Curia, so that at present no one could lawfully question this power to dispense. But it is necessary that the request for the dispensation should come, not from a third party but from the married partners themselves or from one of the parties even though the other objects (c. 1119).

**851.** c) Solemn religious profession dissolves a non-consummated Christian marriage. This is defined by the Council of Trent: "If anyone declares that a ratified non-consummated marriage is not dissolved by the solemn religious profession of one of the parties, A.S.” (sess. 24, can. 6 de matr.). Neither simple profession nor the solemn vow of chastity made during the reception of the subdiaconate dissolves a previous marriage.

Formerly if one of the parties considered entering a religious Order within the first two months of the marriage, he or she could refuse the; marriage debt, but the Code of Canon law states, c. mi, that from the moment the contract has been concluded both parties must render the debt if requested. Accordingly the ancient privilege has been withdrawn.

1. **Imperfect Divorce**

**852.** Married partners are obliged to live together by reason of the very nature of marriage which is an undivided partnership, and from the words of Christ Himself: “A man therefore, will leave his father and mother and will cling to his wife ” (Mt. xix, 5). This obligation includes a) living under the same roof, and b) sharing the same bed, i.e. the use of marriage. Neither partner may live apart from the other for a long time contrary to the wish of the other, unless there are grave reasons (c. 1128).

Imperfect divorce may be a) permanent or temporary; b) undertaken on private or public authority; c) limited to conjugal relations, or extended also to cohabitation if both parties refuse to live together in the same dwelling.[[1]](#footnote-1)

Causes which permit imperfect divorce, or divorce in the restricted sense of the word, are: 1. carnal adultery; 2. spiritual adultery, i.e. heresy or apostasy; 3. grave danger to soul or body; 4. mutual consent.

**853.** 1. Carnal adultery committed by either of the parties gives the right to the innocent party to discontinue conjugal life.

The innocent person who, either upon sentence of the judge, or by his or her own authority, leaves the guilty party, has no longer any obligation to admit the adulterer again to conjugal life; however the innocent partner has the right to admit the guilty person and even to oblige him or her to return, unless the latter has in the meantime, with the consent of the former, embraced a state of life contrary to marriage (c. 1130). If, therefore, the guilty party has embraced the religious life with the consent of the other person, he or she cannot be obliged to return later on. Although it is highly desirable that the consent of the Ordinary should be obtained before the parties cease living together because of adultery or for other reasons to be mentioned later, since this would obviate much inconvenience, nevertheless the innocent party may separate from the guilty person on his or her private authority if there is certainly and without any doubt a sufficient reason for separation and there is danger in delay (c. 1131, § 1).

The innocent party cannot separate from the other, unless the adultery is:

1. morally certain;
2. formal, blameworthy, freely committed;
3. not condoned: tacit condonation i) exists when the innocent party, after having become certain of the crime, nevertheless continues to live with the other in marital relations; ii) is presumed to exist, if the innocent party has not protested against the guilty party within six months (c. 1129, § 2);
4. not mutual or committed by common consent (c. 1129, § 1).

Note:

1. The innocent party is permitted to sever conjugal life because of the adultery of his or her partner, but it is very rare that there is any obligation to do so. Generally speaking, it is preferable for the two parties to attempt a reconciliation.

2. The innocent party may enter a religious Order or receive major Orders, even contrary to the will of the guilty partner.

854. 2. SPIRITUAL ADULTERY, i.e. heresy or apostasy (occurring after marriage), committed by one of the married parties who formally adheres to a non-Catholic sect or educates the children in heresy, is sufficient reason for separation.

After such a crime there usually exists a serious danger of perversion either of the innocent party or of the children. But it is rarely lawful to effect a separation on private authority for such a reason; however if this is done, the innocent party is bound to return to the other if the latter ceases to be a heretic (c. 1131, § 2).

**855.** Grave danger to soul or body is a sufficient reason for divorce in this restricted sense. There is considered to be grave spiritual danger if one of the patties constantly solicits the other to commit grave sin, e.g. theft, onanism, prostitution, or to transgress the laws of the Church, etc., so that separation becomes the only remedy for avoiding grave sin. It is rarely advisable to resort to separation for this reason since there are nearly always other remedies which may be used against this constant inducement to sin.

Grave physical danger arises

a) from serious cruelty inflicted by one of the parties in word or deed;

*b)* from an intolerable life under the same roof, caused by the criminal and base life of the guilty party, or by strife, quarrels, habitual drunkenness, wanton neglect of the home, waste of money, etc.

*c)* from serious contagious disease which has been contracted as the result of grave sin by one of the parties. Such a disease would be syphilis which is usually contracted through adultery.

**856.** 4. Mutual CONSENT freely and lawfully given is a sufficient reason for severing conjugal relations even permanently.

For although the married may indulge in sexual intercourse they remain at liberty to observe continence by mutual consent. In order that the married cease by mutual consent to live together either permanently or for a time not only must there be a sufficient reason but it is likewise necessity to avoid scandal, harm to the offspring, any danger of incon­tinence, etc.

857. NOTES.

1. RESUMPTION OF CONJUGAL LIFE. If the separation was due to adultery there is never any strict obligation on the innocent party to resume conjugal life, as noted already; in all other cases the common life must be restored when the reason for the separation ceases: if, however the separation was pronounced by the bishop either for a time or indefinitely, the innocent party is not obliged to return except when the time specified has elapsed or the bishop gives orders to return (c. 1131).

2. The duties of the separated parties. After the separation the children are to be placed in charge of the innocent party; if one of the parties is a non-Catholic the Catholic party is to have charge of them. However the Ordinary is always free to decide otherwise for the sake of the welfare of the children, always safeguarding their Catholic education (c. 1132). The amount of support to be provided, if any, is usually determined by the civil court.

CHAPTER IV. THE BENEFITS OF MARRIAGE

**858.** The Roman Catechism sets forth the following instruction: "The faithful are to be taught that marriage has three benefits: offspring, conjugal fidelity, and the sacrament; by these three means are alleviated those troubles mentioned by the Apostle: ‘those who do so will meet with outward distress’ (1 Cor. vii, 38); and thus it comes about that the physical union which is rightly condemned when practiced outside the state of marriage is regarded as morally good.”—Any action which seriously violates one or other of these benefits is a mortal sin.

1. The benefit of offspring consists in the acceptance and education of children for the worship of God, and thus it is necessary that the parents should care for the physical and spiritual welfare of their children. Therefore parents who procure an abortion or who neglect the feeding and proper education of their offspring commit grave sin (c. 1113).

2. Conjugal fidelity, to which must be conjoined the right to sexual intercourse—to be discussed in the following chapter—is another benefit of marriage. Such fidelity is an immense blessing proper to the married state, and the more carefully it is preserved, the greater the happiness existing between the married partners. It is violated by adultery and by all similar acts, even by solitary pollution.

3. The benefit of the sacrament refers to the indissolubility of the bond of marriage and to the union of love existing between the partners. This marital union is violated not only by improper divorce but also by any neglect of those duties which belong to husband and wife. These duties were discussed in the treatise on the Fourth Commandment, n. 462 sqq.

CHAPTER V. THE OBLIGATIONS OF MARRIAGE

INTRODUCTION. There are many obligations flowing from the benefits of marriage enumerated in the preceding chapter. Here we shall consider no more than the obligation arising from the benefit of conjugal fidelity, viz. the marital dues.

**859.** 1. The lawfulness of the Conjugal Act.

Principle. The conjugal act is lawful and even meritorious as often as it is not opposed to the benefit of offspring and conjugal fidelity.

St. Paul writes: “Let every man give his wife what is her due, and every woman do the same by her husband” (1 Cor. vii, 3).—The intrinsic reason for this is that the conjugal act is necessary not only for the propaga­tion of the human race but also for the fostering of married love. As often as one of these purposes is desired, the conjugal act is lawful, pro­vided that no other ills or inconveniences ensue. Consequently the partners in marriage are not obliged to exercise sexual intercourse simply for the sake of procreation. Therefore this act is lawful even if both parties are sterile, also during the time of lactation or pregnancy, on Sundays and on feast days, but it is forbidden to exercise the sexual function by means of onanism or with serious danger to health or at the same time causing, scandal to others, etc.

Circumstances of the conjugal act. Not only the conjugal act itself but also touches and looks and all other acts are lawful between the married, provided that there is no proximate danger of pollution and the sole intention is not mere sexual pleasure. Therefore in ordinary cir­cumstances the confessor should not interrogate married persons about these accompanying acts.

**860.** 2. The obligation to render the marriage dues.

First Principle. As often as one of the parties asks reasonably and seriously for the rendering of the marriage dues, the other is bound injustice to accede to the request; otherwise grave sin is committed.

Explanation. The request must be reasonable and serious.

The request is unreasonable if made in a state of drunkenness, or when one of the parties is seriously ill, or if the request is too frequent or causes scandal to others, or if the act is accompanied by the practice of onanism.— The request is not considered serious if made in the form of a desire rather than a definite will.—But if the request is reasonable and serious, then the other party is obliged in justice to render the marriage debt under pain of grievous sin, as is evident a) from the words of St. Paul quoted above, and b) from the nature of the marriage contract in which the right to sexual intercourse is handed over from one party to the other. This obligation of rendering the marriage dues, although of its nature serious since it is concerned with a grave matter stipulated in a just con­tract, does admit of parvity of matter. Thus, if the wife were to refuse marital relations once or twice, awaiting a time more suitable to herself, she would not be guilty of grave sin—at least, if the husband is not thereby placed in proximate danger of incontinence or provoked to excessive anger.

It is self-evident that there is no obligation to render these dues if one of the parties has forfeited the right to ask for them by reason of his or her adultery or as the result of severance of conjugal relations having been legitimately obtained.

**861.** Second Principle, a) In itself there is no obligation to ask for the act proper to the married state, and therefore it is permissible for both parties by mutual free consent to abstain from the act either permanently or for a time; b) but incidentally, by reason of charity, there does exist on occasions such an obligation.

The reason justifying the first part of the principle is that both parties are free to renounce their right to sexual intercourse. Thus Our Lady and St. Joseph, although truly married, freely renounced their right of asking for the marriage dues, and at least temporary continence is usually beneficial in promoting the spiritual life of husband and wife.

The reason for the second part of the principle is that the withholding of marital relations can be the cause of many evils, e.g. danger to chastity, a weakening of married love.

**862.** 3. Sins of the married.

Principle.

a) Whatsoever is directly and seriously opposed to the benefits of offspring and conjugal fidelity is a grave sin against chastity; b) anything that is done for mere sexual pleasure is a slight sin, provided it is not directly contrary to the offspring or to conjugal fidelity; c) whatever is useful for or necessary to the perfect fulfilment of the conjugal act and the fostering of marital love is not sinful.

Explanation. The second and third parts of this principle are sufficiently evident from what has been said in n. 859 regarding the use of the conjugal act for mere sexual pleasure and the circumstances accompanying the use of the act.

Serious harm is caused to the offspring and conjugal fidelity by:

1. sins of impurity committed with others either in deed or desire;
2. by solitary pollution;
3. by the practice of onanism. Sufficient has been said already in n. 518 sqq. in the treatise on chastity regarding sins belonging to the first and second categories. We must now consider the sin of onanism.

**863.** Onanism is of two kinds; solitary onanism, which is the same as pollution or self-abuse, and conjugal onanism which is practiced either

1. by breaking off the conjugal act before semination,[[2]](#footnote-2) or
2. by the use of various instruments (e.g. a pessary) which prevent the seed of the male reaching its proper place. Here we shall speak of conjugal onanism only.

Moral character. Conjugal onanism, no matter in what way it is freely practiced, is always grievously sinful.

Such is the teaching of right reason and of the Church. Right reason testifies clearly that onanism is directly contrary to the procreation of children and to conjugal fidelity and is merely a form of pollution. Furthermore this practice usually has disastrous consequences; the bodily health of both parties is often seriously affected, the birth of children is prevented, families and states are underpopulated, the feelings are exposed to every form of lust.—The Holy Office, May 21, 1851 declared as “scandalous, erroneous, and contrary to the natural law of marriage’’ the following proposition: “For morally good reasons married people may use marriage in the manner proposed by Onan." The Sacred Penitentiary, Nov. 13, 1901, replied: “It is not permissible to absolve any penitent who refuses to desist from a way of acting which is plainly onanism.”

**864.** Formal co-operation in the practice of onanism is never lawful; material co-operation in onanism which is practiced by withdrawal is sometimes lawful, provided there is a proportionately grave reason. The reason for the prohibition against formal co-operation is that it is never permitted to co-operate formally in the sin of another, cf. n. 234. Material co-operation is sometimes permitted because the action of the person who co-operates materially is objectively good, and its evil character arises from the misuse of the act by the other person. Accord­ingly we must apply here the rules concerning evil actions which are indirectly voluntary. Reasons which are sufficiently grave to permit one of the parties to co-operate materially in the practice of onanism would be, e.g. a well-grounded fear of strife and quarrelling, or of adultery, etc. Furthermore it is required: a) that the innocent party is purely passive in the act of withdrawal; b) that he or she should try to persuade the other to refrain from the evil practice; c) that all internal pleasure in the evil act is withheld. If all these conditions are verified, either party may not only render but also request the marital duties from the other who practices onanism. However the innocent party is quite justified in refusing intercourse, since the other has no right to the conjugal act as the result of the desire to abuse marriage in that way. Material co-operation in that form of onanism which is practiced by the use of mechanical contrivances can only be permitted when there is fear of very grave harm, so that the innocent party is obliged to offer positive resistance to any act which of its nature and from its commencement is unlawful. Some authors maintain that the wife should then behave in almost the same way *as* a virgin would if attacked by a man.

**865.** No other known remedies against onanism exist at present which are both effective and lawful, apart from virtuous continence and firm trust in God. There are known to exist many physical means of preventing conception but they are all cither unlawful or not certainly effective.

To make use of the so-called safe period (i.e., to refrain from the conjugal act during the period when the woman is fertile) has been declared lawful by the Sacred Penitentiary, but it is not a certain means of preventing conception, since there is no infallible way of determining the safe period.

CHAPTER VI. PREPARATION FOR MARRIAGE

Introduction, There are three acts performed prior to marriage: 1. betrothal; 2. the investigation of the betrothed; 3. the publication of the banns.

Art. 1. Betrothal

**866.** Definition. Betrothal is a mutual promise of marriage in the future made in legal form between two persons capable of being betrothed.

EXPLANATION.

1. *a mutual promise of marriage in the future:* consequently, betrothal is essentially a promise relating to the future and not to the present. Such a promise must be:

1. free, i.e. free a) from error ; b) from fear. Substantial error, inasmuch as it invalidates any contract, also renders betrothal null and void; a serious accidental error enables the contract of betrothal to be rescinded. Grave fear justly induced by sonic natural cause or even by a free agent neither invalidates betrothal nor renders it voidable. Slight fear unjustly induced does render the contract voidable, at least if the fear was not merely concomitant but was the cause of the contract being made; grave fear unjustly induced certainly renders betrothal voidable (c. 103, # 2).
2. deliberate. Since betrothal is an onerous contract having most serious consequences, that amount of deliberation is required which is generally necessary for entering into valid and lawful onerous contracts.
3. mutual, and therefore a one-sided promise is insufficient, since betrothal must be a bilateral and reciprocal agreement.

2. between persons capable of betrothal. Persons are incapable of being betrothed either by nature or by law. They are naturally incapable of betrothal if they lack sufficient use of reason to undertake so onerous a contract of such importance, e.g. lunatics, the perfectly intoxicated, persons under hypnotism, infants. Persons are legally incapable of being betrothed a) if they do not observe the form prescribed in Canon law (cf. below); b) if they labor under some impediment prohibiting or annulling marriage. They are certainly incapable if the impediment is one which is not normally dispensed, since in such circumstances the act of betrothal would be a promise regarding something unlawful. But if it is easy to obtain a dispensation in the impediment which exists, it is not so certain whether in those circumstances the betrothal would not be conditionally valid. The case is most likely to arise when the parties are of mixed religion. In practice any betrothal between two persons who require a dispensation in order to contract marriage because of some prohibitory or annulling impediment can be regarded as invalid. Accordingly the parish priest will not sanction such a betrothal to be made before the requisite dispensation has been obtained; c) those below the age of puberty, who nevertheless may be validly betrothed after attaining the use of their reason but the contract is spontaneously voidable within three days after attaining the age of puberty or after learning of this privilege.

3. made in legal form. Unless the following conditions set forth in c. 1017 § 1 are fulfilled, the contract is null and void: a) the promise must be made in writing with the day, month and year indicated; b) it must be signed by the parties and by the parish priest (or Ordinary), or at least two witnesses. If one or both parties are unable to write (whether because they do not know how to write or because of some physical infirmity), this should be expressly stated in the document and an extra witness employed to sign this addition. If both parties to the contract are non-Catholics, whether baptized or not, they are not bound by these instruc­tions.

No obligation is contracted in either forum by a betrothal, if it is not made according to the legally prescribed form. However if any deceit was practiced in such a contract which does not observe the canonical form, there exists an obligation of making reparation for any ensuing damage.

**867.** The effects of betrothal are two-fold: 1. a grave obligation to contract marriage at a suitable and legitimate time; 2. an impediment prohibiting any other marriage.

By reason of the first effect, grave sin is committed by anyone who withdraws from a contract of betrothal without sufficient reason, or who contrary to the will of the other party postpones the marriage unduly. By reason of the second effect all other betrothals are rendered invalid and other marriages unlawful, unless the first betrothal has been legitimately dissolved.

Note. The engagement to marry, although it be valid and there is no just reason to refuse to fulfil it, does not in law admit of action in the' ecclesiastical court to force the other party to marry; action for possible injury caused by the breaking of the engagement is admitted (c. 1017, #3). This action for damages is more effectively undertaken in the civil courts, and may be undertaken even by Catholics, since it is a matter which belongs to either forum (Act, Ap. Sed., 1918, X, 345).

**868.** The dissolution of betrothal. Betrothal can be rescinded: 1. by mutual consent; 2. by a notable change of circumstances; 3. by a violation of the fidelity proper to the betrothed; 4. by the adoption of a more perfect state of life; 5. by a dispensation granted by the Holy See.

1. Mutual consent given freely and not obtained by fear or deceit dissolves the contract of betrothal, even if it was sanctioned by oath, since the contract was arbitrary.
2. A notable change of circumstances occurring after the contract has been made dissolves the betrothal. A change of circumstances is considered notable if it would have prevented one or both of the parties entering upon the betrothal, had it been known previously. Such a change could occur: a) in bodily gifts, e.g. if one of the parties suffers blindness or lameness; b) in personal wealth, as when one of the parties loses a large part of his or her possessions; c) in spiritual or mental gifts, e.g. if one of the betrothed is discovered to be a drunkard, or a spendthrift, or subject to evil habits; d) in external circumstances, e.g. if great enmity arises between the families of both parties, or if the parents fall into serious disagree­ment.
3. The fidelity which is proper to the betrothed may be violated in three ways: a) by fornication or other serious acts of impurity committed with another person; b) by marriage with a third party; c) by undue post­ponement of marriage.
4. The choice of a more perfect state of life, such as the religious state (even if only simple vows are taken) or the clerical state, dissolves a previous contract of betrothal, which is made with the implicit condition—“unless I choose a more perfect state.” There are some authors who maintain that the contract may be rescinded by embracing the state of virginity through a private vow of perpetual chastity.
5. A papal dispensation can dissolve a betrothal. If the Pope has the power of dissolving a ratified marriage, a fortiori he has the power to dissolve a betrothal. Although the contract has the effect of giving to each of the betrothed a strict right preventing the other from withdrawing from the fulfilment of the promise, nevertheless one must bear in mind the lamen­table consequences which ensue both for the parties themselves and for the Church from marriages contracted under duress. The Pope has the right of safeguarding the Church from harm and consequently he may restrict the right of the individual in virtue of his supreme power. Sometimes the Pope in the course of dissolving a valid betrothal imposes damages to be paid by the party which has withdrawn unjustly from the contract; in other cases he leaves the question to be decided by the civil authorities.

THE MANNER OF DISSOLUTION is not prescribed in law, and therefore betrothal may be rescinded for a just cause, even spontaneously, provided that scandal is avoided and there is no diocesan law to the contrary.

Art. 2. The Preliminary Investigation and Publication of the Banns of Marriage

Before marriage is celebrated it must be established with certainty that there are no obstacles to its valid and lawful celebration (c. 1019, § 1). To ensure this it is necessary to hold a preliminary interrogation of the parties to be married and to publish the banns of marriage. But in danger of death, if other proofs arc not available and there are no indications to the contrary, the sworn affirmation of the parties that they are baptized and that there is no impediment to their marriage suffices (ibid. § 2).

**869.** 1. The interrogation of both parties must take place in the presence of their parish priest or his delegate—that is to say, in the presence of the parish priest whose right it is to assist at the marriage. Who this parish priest is will be indicated when the celebration of marriage is discussed. This parish priest:

1. must ask for the baptismal certificate of both parties (unless the sacrament was conferred in his own parish) or of the Catholic party only, if the parties are to be married with a dispensation from disparity of cult (c. 1021, §1). If the marriage is mixed, the priest must enquire about the validity of the baptism of the heretic, since there may exist an impediment of disparity of cult;
2. must ask for the certificate of Confirmation. Catholics who have not yet received Confirmation should first receive that sacrament, if they can do so without great inconvenience (ibid. § 2);
3. should prudently question both the man and the woman separately whether they are under any impediment, whether they freely consent to the marriage, and whether they are sufficiently instructed in Christian doctrine, unless he knows from some other source that they are well instructed in their religion. The local Ordinary usually prescribes special regulations for this examination into the freedom of the parties to marry (c. 1020, §§2 and 3). If the parish priest discovers that the parties are ignorant on matters of Christian doctrine, he should give them at least the essential elements, but he should not deter them from marriage Act. Ap. Sed. 1918, X, 345);
4. should instruct both parties regarding the sanctity of marriage, their mutual obligations, the duties of parents towards their offspring. He should also admonish them to make a good confession prior to marriage and to receive Holy Communion devoutly (c. 1033). The parish priest must earnestly warn young people not to contract marriage against the reasonable objections of their parents or without their knowledge; if they nevertheless persist, he must not assist at their marriage without first consulting the local Ordinary (c. 1034).

**870.** 2. The publication of the banns of marriage consists in a public announcement prior to the celebration of marriage in order to ensure that possible impediments can be discovered with greater ease and certainty.

Obligation. The law of the Church imposes a grave obligation to publish the banns of marriage. This is the common opinion, and the obligation follows from the serious purpose of the banns. The law does not cease to bind in an individual case, even when it is certain that there is no impediment to a future marriage. The omission of one of the three publications and even, perhaps, of two of them is a slight sin.

The banns are omitted a) in a case of urgent necessity; b) when a dis­pensation is obtained from the proper Ordinary; [[3]](#footnote-3) c) in mixed marriages or those contracted with a dispensation of disparity of worship. However the local Ordinary may order the publication of the banns even for those marriages, but then no mention must be made of the religion of the non- Catholic party.

**871.** TIME of publication. “The publication of the banns is to be made in church on three successive Sundays or holidays of obligation during the Mass or at other services (e.g. Vespers) to which the people come in large numbers” (c. 1024). If marriage is delayed for six months after the announcement of the banns they must be repeated, unless the local Ordinary decides otherwise (c. 1030, § 2).

FORM. The banns are to be announced in the vernacular in the form given in the Roman Ritual (tit. 7, c. 1, n. 13) or according to any other approved diocesan formula, mentioning a) the Christian name, surname, place of residence, and parents of both parties; b) the precise number of the publication; c) the obligation incumbent on the faithful of revealing any impediment to the parish priest or Ordinary. No reference is to be made to anything odious or likely to cause embarrassment, e.g. the fact that one of the parties is a non-Catholic, or illegitimate, or the age of either party, etc.

The Ordinary may also substitute in his diocese another form of publishing the banns, by posting the names of the parties at the church doors and leaving them there for at least eight days, during which there must be two Sundays or holidays of obligation (c. 1025).

**872.** PLACE. The banns of marriage are to be announced by the proper parish priest of each of the parties (c. 1023, § 1), where the parties have a domicile or quasi-domicile. Therefore, objectively speaking, the banns should be published in all places where the parties have possessed a domicile since attaining the age of puberty, but since this may sometimes lead to grave inconvenience, if either of the parties has lived in some other place for six months after the age of puberty, the parish priest should refer the matter to the bishop who may either have the banns announced in that place or otherwise order investigations to be made regarding the freedom of the parties to marry (ibid. § 2). If the banns are published in several places, all the parish priests concerned should inform the priest who is to assist at the marriage by sending some authentic document (c. 1029) However in each diocese it is usual to find certain statutes determining the places in which the banns are to be published.

The revealing of impediments. Since the primary purpose of the publica­tion of the banns is to discover the possible existence of any impediments to marriage, it follows that all the faithful are under a serious obligation to reveal any impediments of which they are aware to the parish priest or local Ordinary prior to the celebration of marriage (c. 1027).

Causes which would excuse them from revealing such impediments are:

1. grave danger to themselves or to others;
2. when the disclosure would be useless—that is to say, if the impediment is already known to the parish priest;
3. the seal of confession or a professional secret. Thus, for example, a confessor or doctor or nurse cannot reveal anything which they have learned in the course of discharging their office; however they must admonish both parties, so far as this may be possible, to disclose the impediment themselves.

**873.** What is to be done after the parties have been questioned and the banns published. There are three possible alternatives; once the investigation is complete and all the essential documents received, 1. no impediment has been discovered : then the parish priest should assist at the marriage, but normally not before the lapse of three days (c. 1030, § 1), and in the case of a marriage between persons with no fixed abode, not before obtaining the permission of the Ordinary; 2. a doubtful impediment has been disclosed; the doubt must then be removed by a more thorough enquiry; if the doubt cannot be removed, the local Ordinary is to be consulted (c. 1031); 3. a certain impediment has been disclosed: a dispensation must then be sought from this impediment, cf. n. 932.

CHAPTER VII. THE EXTERNAL CELEBRATION OF MARRIAGE

**874.** Introduction. To the external form of marriage as demanded by the canons are obliged under pain of their marriage being invalid (c. 1099); “all persons baptized in the Catholic (Latin) Church and converts to the Church from heresy or schism, even though the first mentioned as well as the latter should have subsequently fallen away,” if:

1. they contract marriage among themselves, i.e. they contract a purely Catholic marriage;
2. they contract a mixed marriage with non-Catholics (whether baptized or unbaptized, even after they have obtained a dispensation from dis­parity of cult or mixed religion). Indults previously granted to Germany and Hungary in this matter are no longer valid;
3. they marry Catholics or non-Catholics belonging to Oriental Rites.

The following persons are not obliged to observe this form:

1. non-Catholics (whether baptized or unbaptized) when they contract marriages amongst themselves and thus contract a non-Catholic marriage,1
2. those belonging to Oriental Rites when they contract marriage among themselves. This is the ruling given by common law, but by local law members of the Ruthenian Church are obliged to the same form as Latin Catholics.

In order to give a clearer explanation of what is required for the cele­bration of marriage, the following chapter is divided into three articles:

1. What is required for the valid and lawful external celebration of marriage in normal cases; 2. What is required in extraordinary cases, viz. in danger of death, or when no priest is present with the proper delegation; 3. The rite to be observed and the registration of marriage.

Art. 1. The Valid and Lawful Celebration of Marriage in Ordinary Cases

1. Requisites for valid external celebration.

**875.** The law: “Only those marriages are valid which are contracted either before the parish priest or the Ordinary of the place or a priest delegated by either, and at least two witnesses” (c. 1094).

Consequently under pain of the marriage being invalid there is required for the external celebration of marriage the presence of: either the local Ordinary or the parish priest of the place and two witnesses, or a priest properly delegated.

The term “parish priest” includes:

1. all parish priests strictly so-called;
2. all who are equivalently parish priests, namely, a) the administrate of a vacant parish; b) a quasi-parish priest who exercises the care of souls in a specified territory which has not been raised to the dignity of a parish; c) a permanent or temporary vicar of a parish ruled in con­junction with others; d) chaplains or rectors of pious establishments of any type exempt from parochial jurisdiction; e) personal parish priests, e.g. military chaplains.

The term “Ordinary” includes: diocesan bishops, administrators vicars apostolic, prelates or prefects exercising the power of jurisdiction in a separate territory of their own, and their vicars general in spiritual matters, and, while the see is vacant, the vicar capitular or legitimate diocesan administrator (c. 198, § 2).—The senior forces chaplain is the Ordinary for all persons belonging to the army by virtue of civil law.

The term “delegated priest’’ includes any priest who receives the faculties to assist validly at a marriage either from the local parish priest or Ordinary. The delegation must be granted for each individual marriage—that is to say, to a specified priest for a specified marriage, all general delegation being excluded. Such general delegation cannot be given except to regularly appointed assistants (curates), for the parish to which they are appointed (c. 1096, §1). The delegation need not be granted explicitly; it is sufficient that it be tacitly given, that it can be clearly deduced from actions which presume that delegation has been granted; but delegation may not be presumed nor is it retrospective.--Any priest with general delegation to assist at all marriages, e.g. an assistant priest, may subdelegate for particular marriages; a priest who is delegated for a specified marriage cannot subdelegate, unless such a power has been given expressly (c. 199, § 4).

Delegation ceases a) when it is revoked, b) when the stated period has elapsed, but not by the death or passing out of office of the one delegating (c. 207). Therefore, for example, if a parish priest dies suddenly, his assistant may continue to assist validly and lawfully at marriages in the parish,

**876.** THREE CONDITIONS MUST BE FULFILLED BY THE PARISH PRIEST AND LOCAL ORDINARY IN ORDER THAT THEIR ASSISTANCES AT MARRIAGE MAY BE VALID:

1. *they must have taken canonical possession of their benefice or office and not be excommunicated, nterdicted, or suspended from office by a condemnatory or declaratory sentence of the ecclesiastical court* (c. 1095, § 1, n. 1).

A parish priest takes canonical possession of his parish by induction (c. 1444, § 1); the local Ordinary, i.e. the bishop, by presentation of the Apostolic letters (c. 334, § 3).—Even a putative parish priest may validly assist at marriages, since the Church supplies jurisdiction in a case of common error (c. 209).

1. they must assist at marriages within the limits of their own territory (ibid. *n. 2).*

Therefore it does not matter—so far as the validity of the marriage is concerned—whether the parties married are members of his parish or not, provided that the priest is assisting at the marriage within the limits of his own parish. Parish priests with personal faculties may assist at the marriage of their subjects anywhere.

1. *they must not ask for nor receive the consent of the contracting parties under stress of violence or grave fear* (ibid, n. 3).

Therefore any assistance under duress or extorted by fear is no longer considered sufficient; the priest must freely ask for and freely accept the consent of the parties. Even when the parish priest is a mere passive spectator, he must ask for and receive that consent. The circumstances in which such passive assistance is lawful will be discussed later in n. 894 in the treatise on mixed marriages.

**877.** Two witnesses in addition to the parish priest or another priest must assist at the celebration of marriage. Nothing further is required of these two witnesses than that they should be able to testify to the celebration of the marriage. Therefore lunatics, the perfectly intoxi­cated, those who are both deaf and blind cannot be witnesses. It is fitting that the witnesses be persons of upright life; heretics may be tolerated for a just cause, provided that there is no danger of scandal (Holy Office, Aug. 19, 1891).

878. II. Lawful celebration of marriages.

1. *There must be moral certainty of the freedom of the contracting parties, according to the regulations of the Code* (c. 1097, **§** 1, n.1).

The free state of the parties means their freedom from all prohibiting and annulling impediments. Moral certainty of their freedom may be obtained: a) through interrogation of the parties themselves; b) through publication of the banns; c) in certain circumstances, through the testimony of the parties themselves to their freedom given on oath.

2. *The priest must be sure that one or other of the parties has a domicile or quasi-domicile in the place of marriage or has lived there at least a month* (ibid. n. 2).

What constitutes a domicile or quasi-domicile has been discussed already in the treatise on law, n. 84. Those who have but a diocesan domicile or quasi-domicile have for their parish priest the one in whose territory

they are actually staying (c. 94, § 3); therefore such a priest may assist validly and lawfully at their marriage. Consequently a domicile in the parish is no longer necessary.—The month’s residence is not interrupted if the parties were absent from the place for one or two days during the thirty preceding marriage; such a short absence is counted as none at all.

3. Marriage is to be celebrated by the parish priest of the bride, unless some just reason excuses *(c. 1097, § 2).*

This obligation does not appear to be grave, and an excusing cause can be discovered easily. However the diocesan statutes on this matter must be observed, if such exist. When Catholics of different Rites marry (e.g. Catholics of the Latin and Oriental Rites) marriage shall be contracted in the presence of the parish priest of the husband’s Rite, unless a particular' law rules otherwise.

4.The permission of the Ordinary (or of a priest delegated by him) of the place where the marriage is to be celebrated must be sought (in normal cir­cumstances) in order to assist at the marriages of persons who have no fixed abode(c. 1032).

In this context persons of no fixed abode refer to all those who at the time of their marriage have no parish priest or proper Ordinary through lack of a domicile or quasi-domicile or at least a month’s residence. In a case of necessity, e.g. if there is danger of a civil marriage being contracted or if these persons are actually travelling (c. 1097, § 1, n. 3), the parish priest may lawfully assist at their marriage without the prev­ious permission of the Ordinary.

5.Permission must be obtained from the parish priest or Ordinary where one of the parties has a domicile or quasi-domicile or one month’s residence, unless there is grave necessity which excuses from obtaining permission.

A parish priest celebrating marriages in his own territory where he always assists validly does not require the delegation of any other parish priest or Ordinary, but he does require their permission unless at least one of the parties has a domicile or quasi-domicile or a month’s residence in his territory. If a parish priest assists at a marriage without the requisite permission he cannot retain the stole fee for himself but must forward it to the proper parish priest of the contracting parties, viz. the parish priest of the bride (ibid. § 3). The stole fee is the tax due by diocesan law to the priest who assists at the marriage; it does not include the stipend received for the nuptial Mass or any other gifts which may be presented.

Art. 2. **The Valid and Lawful Celebration of Marriage in Extraordinary Cases**

The two extraordinary cases to be considered are: 1. Marriage in danger of death; 2. marriage when the legitimate priest cannot be obtained.

879. 1. The celebration of marriage in danger of death.

If the parish priest or Ordinary or priest delegated by either cannot be present or the parties cannot go to him without great inconvenience in order that he should assist at their marriage in danger of death, marriage contracted in the presence of two witnesses is both valid and lawful; but if some other priest (who is not delegated) can be present, he should be summoned and together with the witnesses assist at the marriage, but only the two witnesses are necessary for validity (c. 1098).

EXPLANATION.

1. in danger of death, i.e. of either party. It makes no difference whether the danger is caused by illness or by something else, e.g., war, shipwreck, etc.

2. if the priest cannot be present or the parties cannot go to him without great inconvenience. . . . For since the celebration of marriage without the assistance of the legitimate priest is most unfitting and could give rise to great inconvenience, there is required a grave excusing cause, which is easily to be found in danger of death when there is insufficient time to summon the parish priest or another delegated priest.

3. if another priest can be present, he should be summoned. . . . The case frequently arises where a confessor discovers that a dying person is not validly married; in such circumstances the putative husband and wife may give their conjugal consent in the presence of the confessor and two witnesses. Since the confessor has the faculty to dispense front the canonical form of marriage and from all ecclesiastical impediments (with the exception of the two mentioned in c. 1043), the two parties may for a just cause be dispensed from the obligation of summoning witnesses and give their consent in the presence of the confessor alone; however they are under an obligation to dispel any scandal which may already exist and to give the usual promises, if either of the parties is under the impediment of mixed religion or disparity of worship.

880. II. THE CELEBRATION OF MARRIAGE IN THE ABSENCE OF A COMPETENT PRIEST.

Even apart from the danger of death marriage celebrated in the presence of two witnesses is valid and lawful if the parish priest or Ordinary or a priest delegated by either cannot be had or the parties cannot go to him without grave inconvenience, provided that it is prudently foreseen that this state of affairs will continue for a month. If there is another priest not delegated who can be present, he should be summoned and together with the two witnesses assist at the marriage, but without prejudice to the validity of the marriage in the presence of the witnesses only (c. 1098).

Such cases are most likely to arise in missionary countries. If the parties desire to contract marriage, and neither now nor within the space of a month can they obtain or visit a properly delegated priest without grave inconvenience, they may validly and lawfully contract marriage in the presence of two witnesses only. It is to be recommended that they should follow the procedure set forth in the Instruction of the S.C. of Propaganda, June 23, 1830: “In such circumstances the parents shall select two witnesses; these, together with the contracting parties and their relatives, should proceed to Church, and kneeling down recite together the cus­tomary acts of faith, hope, charity and contrition, and thus the parties will prepare themselves fittingly for the contract of marriage. When these prayers are concluded the bride and bridegroom2 will express their mutual consent in the presence of the two witnesses, making use of any formula of words which express a present consent ; afterwards having given thanks to God they shall return home. If it is impossible to go to a church, the procedure outlined already may be observed in a private house.” It is immediately evident that the two parties should take care to be free from mortal sin and from all impediments to marriage. The procedure to be adopted for absolution from these impediments if a simple priest happens to be present will be discussed in n. 927, where special attention will be given to marriage impediments.

After the celebration of such marriages the witnesses and the contracting parties are severally responsible for seeing that the marriage is entered without delay in the marriage and baptismal registers of their own church or of the neighboring church, if they have no church of their own (c. 1103, § 3).

**Art. 3.** **The Rite of Celebration and the Registration of Marriage**

**881.** 1. The rite of celebration. “ Outside the case of necessity marriage is to be celebrated in accordance with the sacred rites prescribed in the liturgical books approved by the Church or sanctioned by laud­able customs” (c. 1100).

Among these rites the nuptial blessing holds pride of place; it may be either simple, as set forth in the Roman Ritual (tit. 7, c. 2), or solemn, as found in the Missal for the Nuptial Mass.

1. The solemn nuptial blessing consists of three prayers, two of which are recited after the “Pater Noster,” the third after “Ite Missa est” or “Benedicamus Domino.” The parish priest should see to it that the married receive the solemn blessing, and this may be given them even after they have lived together in marriage for a long time but it can be pronounced only during a Nuptial Mass with the observance of the special rubric, and on all days with the exception of the days specified in c. 1108(c. 1101**,** § 1**).** No one but the priest who can validly and lawfully assist at the marriage or his delegate can give this solemn blessing (ibid. § 2), since the blessing is, so to speak, the fulfilment of the priest’s assistance at marriage. It is not required that the Mass in which the blessing is given should be the votive mass for bride and bridegroom2 nor is it necessary that it be applied for the parties themselves; but the blessing must not be given: 1. outside the time of Mass (unless there exists a special privilege to the contrary); 2. during the closed times (viz. from the first Sunday of Advent until Christmas Day inclusive, and from Ash Wednesday until Easter Sunday inclusive), except with the sanction of the Ordinary (c. 1108,§ 3); 3. in mixed marriages; 4. if the woman has already received the blessing in a previous marriage (c. 1143)-—The bride and bridegroom are to be encouraged to receive Holy Communion during the Nuptial Mass.
2. The simple blessing, as set forth in the Ritual, may be given outside the time of Mass in a church or public or semi-public oratory, but not in a private dwelling, unless the local Ordinary grants permission in an extraordinary case.

**882**. c) The time and place of celebration of marriage. Marriage (together with the simple blessing) may be contracted any time of the year, but the solemn nuptial blessing of marriage is forbidden during the closed times (as already noted), unless the local Ordinary grants his permission for a good reason (c. 1108).

The place in which marriage is to be celebrated in normal circumstances is the parish church, but the parish priest can give permission for marriage to be contracted in another church or in a public or semi-public oratory; the local Ordinary may permit marriage to be celebrated in a private oratory or in some other fitting place. Ordinaries cannot permit the celebration of marriage in the churches or chapels of seminaries or of religious women, except in urgent necessity and with due precautions (c. 1109, § 2).

Mixed marriages shall be contracted outside the church, unless the local Ordinary permits otherwise, but the Nuptial Mass may never be allowed (ibid. § 3).

**883.** 2. THE REGISTRATION OF MARRIAGE. After the celebration of marriage the parish priest or he who takes his place must as soon as possible enter in the marriage register the names of the married couple and of the witnesses, the place and date, and other items prescribed in the rituals and by the local Ordinary; the entry shall be made even though another priest, delegated either by himself or by the Ordinary, assisted at the marriage (c. 1103, § 1).

Moreover the parish priest must note in the baptismal record that the parties contracted marriage in his parish on a specified day. If one or both parties were baptized in another parish, the priest in whose parish the marriage was celebrated must send notice of the fact either directly or through the episcopal Curia to the parish priest where the parties were baptized, so that the marriage may be recorded in the baptismal register (ibid. § 2).

Whenever marriage was contracted in danger of death or in other extraordinary circumstances without the assistance of the parish priest or his delegate (cf. n. 879 sq.), then any other priest who was present, and otherwise the witnesses, are severally obliged together with the contracting parties to see to it that the marriage is entered in the registers of marriages and baptisms as soon as possible (ibid. § 3).

The obligation to make these entries is grave, since their purpose—the recording of the state of the parties—is grave. The entries must be made without delay, i.e. within at least three days; otherwise omissions or inaccuracies may occur through forgetfulness.

A marriage of conscience must not be entered in the ordinary register of marriages and baptisms, but in a special register kept in the episcopal Curia (c. 1107).

CHAPTER VIII. IMPEDIMENTS TO MARRIAGE

This chapter is divided into four articles: 1. definition and kinds of impediments; 2. the prohibiting impediments; 3. the annulling impedi­ments; 4. dispensation from impediments.

Art. I. **Definition and Kinds of Impediment**

4. Definition. *An impediment to marriage is any circumstance which prevents the marriage contract between two persons being valid or at least lawful.*

Although the impediment may exist in only one of the parties, e.g. insufficient age, marriage is either illicit or invalid for both (c. 1036, § 3). “ Matrimonium nequit claudicare.”

Impediments of the Natural and Divine laws are binding on all men; impediments of ecclesiastical law affect the baptized only (whether Catholic or non-Catholic). Unbaptized persons are indirectly obliged by these impediments when they wish to contract marriage with a baptized person, because of the same principle quoted already: “matrimonium nequit claudicare.”—Annulling impediments of the civil law are not obligatory unless both parties are unbaptized.

**885.** Kinds.

1. By reason of their effects, impediments are either annulling (diriment) if they seriously forbid and invalidate an attempted marriage, or prohibiting if they seriously forbid but do not invalidate the marriage (c. 1036);
2. By reason of their origin, impediments arise either from the Natural law (e.g. impotency), or from the Divine positive law (e.g. the bond of a previous marriage), or from the ecclesiastical law (e.g. affinity);
3. By reason of their scope, impediments are either absolute if they prevent marriage being contracted with any person (e.g. the bond of an existing marriage), or relative if they forbid marriage with a particular person (e.g. consanguinity).
4. By reason of the way in which they are known, impediments are either public or occult, depending on whether they can be proved in the external forum or not (c. 1037)1.
5. By reason of their liability to dispensation, some impediments are capable of being dispensed, others are not. The former are further distinguished, according as they can be dispensed with greater or less ease and according to the manner of their dispensation, into:

minor and major impediments. There are five minor impediments (c. 1042):

1. consanguinity in the third collateral degree;
2. affinity in the second collateral degree;
3. public propriety in the second degree;
4. spiritual relationship;
5. crime arising from adultery with either promise to marry or attempted civil marriage.

All other impediments are major.

**886.** Author. The Holy See alone has the right to state authoritatively in what circumstances the Divine law prohibits or annuls marriage. This is self-evident, since no one apart from the Holy See has the right to give an authentic interpretation of Divine law. Furthermore she possesses the privative right (i.e. to the exclusion of all other authorities) of declaring in the form of a general or particular law other annulling or prohibiting impediments which will be binding on the baptized (c. 1038). Regarding the unbaptized the State seems to possess the power of establishing annulling impediments. Special consideration will be given below to the prohibition of particular marriages—the so-called prohibition of the Church.

Custom is no longer able to introduce or abrogate any impediment (c. 1041).

The cessation of impediments will be discussed in n. 921.

Art. 2. **The Prohibitory Impediments**

Introduction. For a long time the prohibiting impediments have been numbered differently, some authors giving nine, others eight, others six, and others five. In the new Code three only are given: the impediment of simple vow; that of legal relationship; and the impediment of difference of religion. In order to avoid confusion it has been thought better to follow the old verse which lists five prohibitory impediments:

Ecclesiae vetitum, tempus, sponsalia, votum,

Cultusque impediunt mixtus, sed facta valebunt.

**887.** 1. The prohibition of the Church is a particular precept (not a law) by which the Holy See or local Ordinary forbids a particular marriage for a just cause.

1. The Holy See usually attaches such a prohibition:

a) to the dispensation from a public and perpetual vow of chastity granted to allow the individual to contract a specific marriage: “if he or she outlives the other party, he (or she) must abstain for ever from any further marriage”;

b) to a dispensation from a ratified marriage granted because of impotency: “ the man (or woman) is forbidden to contract any other marriage without first consulting the Holy See ”;

c) to a dispensation granted from the impediment of abduction: “if the man mentioned in the dispensation outlives the woman, he must abstain from any further marriage.”

The Holy See alone can attach to its prohibition the pain of invalidity, so that the prohibition then assumes the form of an annulling impediment (c. 1039, #2).

2.A *local Ordinary* can forbid anyone actually staying in his diocese (including, therefore, travelers and those with no fixed abode), and his subjects also while they are outside his diocese, to contract marriage, if there is some special reason, and only *for the time* that the reason lasts (ibid. #1), e.g. when there is suspected some hidden impediment or when there is fear of grave harm—especially spiritual harm—resulting from the marriage.

Obligation and cessation. This prohibition of the Church binds under grave sin both the contracting parties and the priest invited to assist at the marriage. But it is always permissible to have recourse to legitimate ecclesiastical authority. The prohibition ceases when it is revoked by the ecclesiastical superior concerned.

**888.** II. The forbidden or closed times are those periods when the solemn blessing of marriage is forbidden. But according to common law marriage itself may be contracted any time of the year (c. 1108). “The solemn nuptial blessing of marriage is forbidden from the first Sunday in Advent to Christmas Day inclusive, and from Ash Wednesday to Easter Sunday inclusive. But the local Ordinary may permit marriage during these periods for a good reason, without prejudice to liturgical laws, but the parties must be warned to refrain from excessive pomp (ibid. §§2 and 3).

Therefore present discipline on this matter is much less severe.

**889.** III. Betrothal legitimately contracted constitutes a prohibitory impediment in respect of any other marriage, since it is an onerous promise which cannot be broken except by permission of the other party or by legitimate dissolution of the betrothal or by dispensation. Cf. n. 867.

**890.** IV. The vow which constitutes a prohibiting impediment to marriage is not a solemn vow (which not merely prohibits but also annuls marriage) but a simple vow which is the cause of obligations incompatible with the married state. There are five such vows (c. 1058, § 1).

1. The vow of virginity has for its object the preservation of bodily integrity, and therefore anyone bound by this vow commits grave sin by con­tracting marriage, unless in a very exceptional case there was moral certainty that this vow would not be violated, e.g. if the other party agreed to respect the vow. Once virginity has been lost through sexual intercourse, the vow has become impossible of observance and consequently is no longer binding.

2. The vow of perfect chastity has for its object the observance of complete chastity, externally and internally. Therefore any person under such a vow commits grave sin by contracting marriage, unless in a very excep­tional case there exists moral certainty that this vow will not be violated by marriage; if nevertheless marriage is contracted contrary to the law, the person bound by vow cannot ask for the marriage dues first, but he (or she) is bound to render them when legitimately asked, since the other party has a right to them.

3. The vow of celibacy has for its object the exclusion of marriage, and therefore anyone bound by this vow commits grave sin by contracting marriage, but if marriage is contracted such a person can lawfully give and request the marriage dues.

4. The vow of receiving sacred Orders renders the contract of marriage gravely unlawful, since it makes the fulfilment of the vow morally impossible. However if marriage is contracted, the person under the vow may lawfully request and render the marriage dues. If he is subsequently freed from the bond of marriage, he must abide by his original vow if that is still possible.

5. The vow of entering the religious life obliges and ceases in the same way as the vow of receiving sacred Orders.

Note. Confessors with the privileges of Mendicants cannot dispense from public vows, but may dispense from all private vows with the exception of the vows of perfect chastity and of entering a religious Order with solemn vows, if such vows have been made unconditionally after the age of eighteen. Not only in danger of death but also in other cases when all preparations for marriage have been made and the marriage cannot be postponed without the probable danger of grave harm until the dis­pensation is obtained from the competent superior, a parish priest or confessor may dispense from any of these five vows (cf. n. 927 sqq.).

**891.** V. The impediment of mixed religion exists between two persons, one of whom is a Catholic and the other a member of a non-Catholic or schismatic sect. The Code of Canon law, c. 1060, gives the following instruction: “The Church forbids most severely and in all countries marriage between two baptized persons, one of whom is a Catholic and the other a member of an heretical or schismatic sect; if there is danger of perversion for the Catholic party and the offspring, such marriages are forbidden also by Divine law.”

The duty of the Ordinary and other pastors of souls in the avoid­ance of mixed marriages (c. 1064).

1. Priests must use all their energy and power of persuasion and even rebukes to deter the faithful from mixed marriages. This purpose is more readily achieved if in each country all pastors of souls would unite together in a common plan.
2. If they cannot prevent these marriages, they should endeavor by all means possible to see to it that they are not contracted against the laws of God and those of the Church, i.e. they must ensure that the promises are given, as will be discussed later.
3. After any mixed marriage in their own or in another parish, they must carefully see to it that those who contracted such a marriage live up to their promises.

**892.** The dispensation required for the lawful celebration of a mixed marriage is reserved to the Holy See, viz. the Holy Office. In what

way the local Ordinary, or parish priest, or confessor, may grant a dispensation from this impediment in danger of death and in any other urgent case is indicated below, in the section devoted to dispensation from all impediments, n. 924 sqq.

Conditions required for granting a dispensation from the impediment of difference of religion.

The Church does not grant such a dispensation, unless:

1. there are good and serious reasons, e.g a grave danger of contracting a purely civil marriage or marriage in the presence of a non-Catholic minister;
2. *the non-Catholic party promises to remove all danger of perversion of the Catholic party, and both parties promise that all their children shall be baptized and brought up as Catholics: such promises are normally to be made in writing1.*
3. *there is moral certainty that the promises will be kept (c.* 1061).

**893.** Duties of the contracting parties.

1. The Catholic party must prudently endeavor to convert the non-Catholic partner (c. 1062), e.g. by prayer, by the good example of a Christian life, by exhortation, etc.
2. The parties to a mixed marriage are not allowed either before or after their Catholic wedding to approach either in person or through proxies a non-Catholic minister as such to give or renew their consent. If the parish priest knows that the parties will certainly violate this law, he shall not assist at their marriage unless there are very serious reasons and pro­vided that all scandal has been removed and the Ordinary has been consulted. But the Church does not censure those parties who are forced by civil law to appear before a non-Catholic minister, acting as an official of the government, but their intention must be merely to comply with the requirements of law, for the sake of securing the civil effects of marriage (c. 1063).

The external rite for the celebration of mixed marriages. By common law all sacred rites are forbidden in mixed marriages, and there­fore the parish priest must ask for and receive the matrimonial consent of the parties in a suitable place without wearing any sacred vestments. But if greater evils are foreseen to follow from this prohibition, the local Ordinary may allow some of the usual church ceremonies, with the exception of the celebration of Mass (c. 1102, § 2).

**894.** Passive assistance at mixed marriages whereby the parish priest merely fulfils the role of a qualified witness without using any sacred rite (i.e. without sacred vestments and outside a sacred place) and afterwards records the consent of the parties in the register of marriages, is not at present recognized by common law as being either valid or lawful (cf. Holy Office, Nov. 26, 1919). In some countries, however, (e.g. in Chile Austria, Hungary, and in certain dioceses of Germany) in order to avoid greater evils the Holy See has permitted passive assistance at mixed marriages when the parties stubbornly refuse to give the necessary guar­antees (cf. the author's Man. iur. can. q. 334). But these indults seem to have been revoked by the decree of the Holy Office already quoted.

**895.** Penalties inflicted on those who contract a mixed marriage con­trary to the law,

1. Catholics who have dared to contract such a marriage, even though validly, without a dispensation from the Church are by that very fact excluded from legitimate ecclesiastical acts and from the use of the sacramentals, until a dispensation is obtained from the Ordinary (c. 2375). Unlawful but valid mixed marriages cannot be contracted in present circumstances, except a) where passive assistance is both valid and lawful; *b)* in danger of death and in those cases when marriage can be contracted validly before two witnesses only (cf. n. 879 sq.).

2. Those who contract marriage in the presence of a non-Catholic minister incur excommunication reserved to the Ordinary (c. 2319, § I, n. 1). Such marriages are always invalid.

**896.** Scholium. Marriage of a public sinner. Because of the grave dangers which will ensue, the faithful are to be discouraged from con­tracting marriage with notorious apostates from the faith, even though they have not joined a non-Catholic sect, and with notorious members of any sect condemned by the Church, e.g. the society of Freemasons. The parish priest shall not assist at such marriages without first consulting the Ordinary who may permit him to assist at such a marriage, provided there are serious reasons, if a) sufficient safeguard is made for the Catholic education of the children, and b) all danger of perversion of the Catholic party is removed (c. 1065).

If a public sinner or a person known to be under censure, e.g. a formal socialist or anarchist, refuses to go to confession and be reconciled with the Church prior to marriage, the parish priest shall not assist at the marriage unless there is grave and urgent reason, concerning which he should consult the Ordinary, if it is possible (c. 1066).

Art. 3. **The Diriment (or Annulling) Impediments**

**897.** Introduction. The Church displays such great wisdom in instituting these impediments that her directions are frequently adopted even by the civil authorities for civil marriages.

All these impediments have as their primary effect the invalidating of attempted marriages; the element of punishment to be found in some of them, e.g. in the impediments of crime and public propriety, is quite secondary, and consequently ignorance never excuses from these impedi­ments.

The purpose which the Church intends by these diriment impediments is *a)* the public good; b) the good of the contracting parties; c) the good of religion.

The number of annulling impediments is variously reckoned, still more so now because in the new Code the impediments of error, violence, and fear are included in the chapter “on matrimonial consent,” and the impediment of clandestinity in the chapter “on the form of celebration of marriage.” We shall discuss the following fourteen impediments:

1. error (and servile condition); 2. duress and fear; 3. abduction; 4. impotency; 5. existing marriage bond; 6. insufficient age; 7. disparity of worship; 8. major Orders and religious profession; 9. crime; 10. consanguinity; 11. affinity; 12. public propriety; 13. spiritual relation­ship; 14. legal relationship.

1. **The Impediment of Error and of Servile Condition**

**898.** Definitions. Error and servile condition are sometimes considered as two distinct impediments, although in effect they are one, having a twofold material object. Error affects either the actual person and the qualities of that person, or the servile condition or status of one of the parties. In the first case there exists the impediment of error, in the second case the impediment of servile condition.

For the various kinds of error, cf. the author’s Man. Theol. mor. Ill, 787.

First Principle. *By Natural law, only substantial error is an annulling impediment to marriage.*

The reason is that only substantial error renders a genuine marital consent, and therefore marriage itself, impossible.

Substantial error exists in three cases:

1. if a *mistake is made regarding the actual person with whom marriage is contracted.*

Such an error (as existed in the marriage of Jacob with Lia) is hardly possible in modem conditions, at least when the marriage is not contracted by proxy.

1. if a *mistake is made concerning a certain quality of one of the parties which amounts to an error regarding the person* (c. 1083, § 2).

This type of error is never recognized in the external forum as a diriment impediment unless the quality was expressly mentioned as a condition sine qua non. Consequently the same rules apply in this case as for any marriage contracted conditionally. The Code states concerning such a condition (c. 1092, n. 4): “ If the condition is either of the past or the present, the marriage is valid if the condition is verified, but invalid if it is not verified.”

3. if a mistake is made regarding the three benefits of marriage, viz. offspring, conjugal fidelity, and the sacrament.

Thus, for example, a virgin who does not know that marriage is a per­manent union for the procreation of children cannot contract a valid marriage (c.1082). The mere error concerning the unity and indissolu­bility or sacramental dignity of marriage does not annul the matrimonial consent, even if the error was the cause of the consent (c. 1084). But a different situation arises if some explicit condition is made contrary to the unity or indissolubility of marriage: “ If either one or both parties by a positive act of the will exclude the contract itself or all right to the conjugal act or any of the essential qualities of marriage, the marriage is null and void” (c. 1086, § 2).

The error is accidental and not substantial if one of the parties was gravely mistaken or deceived about the wealth, health, or moral character of the other; such marriages are valid.

**899.** Second Principle. *By ecclesiastical law error regarding the servile condition of one of the parties is a diriment impediment to marriage.*

Such is the teaching of the Code, c. 1083: “Error concerning some quality of the person renders a marriage invalid, if a free person contracts with another believed to be free when he, or she, is in fact a slave properly so-called.” Slavery in the strict sense of the word is to-day almost universally unknown, since it only exists when a master possesses a servant in such a way that he can sell or exchange him as though he were a thing.

The impediment does not exist: 1. if a free person knowingly marries a slave; 2. if one slave marries another; 3. if a slave marries someone whom he supposes to be free but who is in fact a slave.

A dispensation from the impediment caused by substantial error can be granted by no one but the Holy See, since it is an impediment of the Natural law. Therefore such marriages can be rendered valid only by the person who erred renewing his, or her, consent.

1. **The Impediments of Duress and Fear**

The definitions of duress and fear have been given already in n. 26 sqq.

900. FIRST principle. *By Natural law marriage is null and void if contracted under the influence of physical violence or of that form of fear which completely disturbs the use of reason.*

This is agreed by all, since in such circumstances there is no genuine matrimonial consent and therefore no marriage.

Second principle. *By ecclesiastical law, and probably by Natural law also, marriage is null and void if contracted under the influence of fear which is a) grave* *(absolutely or relatively considered*); *b) unjustly inflicted by an outside free agency; c) of such a nature that a person is forced to choose marriage.*

The Code states, c. 1087: “Marriage is invalid if contracted by grave fear or force unjustly inflicted by an outside agency, and by which a person was forced to choose marriage as a means to free himself from the force or threats. No other fear, even if it is the cause of the contract, renders marriage null and void.”

There are many learned authors who maintain that even by the Natural Law marriage is null and void if entered upon through grave fear, e.g. St. Raymund de Pcnnafort, St. Thomas, Reiffenstuel, Wernz, etc., because while such fear exists, although it is true that other human acts are possible, the contract of marriage which of its nature is incapable of being rescinded cannot be made fittingly.—It follows from this that not only Christian marriages but also pagan marriages are rendered invalid if contracted under such fear. This must be carefully con­sidered in practice, since marriages between pagans are frequently contracted under the influence of grave fear inflicted unjustly.

Cases.

1. A person living in concubinage who contracts marriage in danger of death through a vivid fear of Hell contracts a valid marriage, since the fear is not inflicted unjustly. Similarly marriage is valid if entered upon by a youth who has seduced a virgin and whose father now compels him through grave fear either to marry her or to make reparation for the harm caused.

2. A marriage laboring under the impediment of fear is not only con­tracted invalidly but also remains invalid so long as the party under the influence of fear does not give a free consent in the recognized form. Consequently the right remains of asking for a marriage contracted through fear to be declared invalid even after several years of married life and the birth of children.

A dispensation from this impediment is not granted by the Church; consequently in order to con-validate a marriage contracted under the influence of fear, it is necessary that the matrimonial consent be given freely in the presence of the parish priest and two witnesses, if the impediment is well known; otherwise it is sufficient for the party suffering from grave fear to give his or her consent privately in some external sign, so long as the consent of the other party persists at least virtually.

1. The **Impediment of Abduction**

**901.** Definition. *The impediment is caused by the forcible abduction of a woman from a safe place to one which is not safe with a view to contracting marriage with her.*

Explanation. In order that abduction constitute an annulling impediment distinct from the impediments of duress and fear, there is required:

1. the forcible abduction of a woman from a safe place to one which is not safe; that is to say, the woman must be removed from a place in which she was safe to another place physically and morally distinct from the first in which she is no longer safe, e.g. from one city to another city; the removal must be forced, i.e. contrary to the will of the woman. The force may be either physical (raptus violentiae), or moral (raptus seductionis) which is exercised through grave fear, deceit, guile, hypnotic suggestion. If the woman willingly consents to her abduction, then it is an elope­ment rather than an abduction, and no impediment ensues.
2. the abduction of a woman; therefore the impediment does not arise if a man is forcibly abducted;
3. with a view to contracting marriage with her. Therefore the purpose of abduction must not be the satisfaction of lust, or a desire for revenge;
4. The forcible detention of a woman is equivalent to forcible abduction, namely when the man forcibly detains a woman with the intention of marrying her in the place where she lives, or to which she came of her own free will. This is stated in the Code, c. 1074, § 3, thus bringing to an end the controversy which existed on this point.

Cessation of the impediment. This impediment ceases not by dis­pensation but through the release of the woman. “If the abducted woman, after having been separated from the man and attained complete freedom consents to marry him, the impediment ceases” (c. 1074, § 2). However in danger of death the confessor or parish priest may dispense from this impediment, even though the woman has not been placed at full liberty, provided that her consent is perfectly free.

Penalties for abduction. “Those men who with a view to marriage or for the satisfaction of lust have abducted a woman against her will through force or deceit, or who elope with a girl of minor age without the knowledge or consent of her parents, even though she herself is willing, are ipso facto deprived of the right to legal ecclesiastical actions and shall incur other penalties according to the gravity of the offence (c. 2353). Other punishments inflicted by ancient law are now revoked.—Even civil law usually punishes with severity men guilty of rape.

1. **The Impediment of Impotency**

902. Definition. *The impediment of impotency arises from the impossibility of sexual intercourse, or, from some defect of mind or body or of both which prevents a person from exercising the act with another in the normal way.*

Explanation. Impotency is not the same as sterility which neither prohibits nor annuls marriage (c. 1068, § 3). Sexual intercourse is regarded as impossible when the true and natural conjugal act cannot be performed. Sexual intercourse is rightly defined by Cardinal Gaspari (De matr. I, 510) “the insertion of the male organ into the vagina of the woman with the emission of the seed.” Therefore if conjugal intercourse is possible, even though the procreation of children is impossible, e.g. in the case of a woman from whom both ovaries and the womb have been removed, the impediment of impotency does not exist. The causes which make sexual intercourse impossible are either physical or mental. Due to some physical defect the following persons suffer from this impediment: *a)* men who are eunuchs or who have been castrated, viz. who lack both testicles; similarly those who lack the male organ or whose organ is so deformed that intercourse is impossible, e.g. in some cases of hypospadia and epispadia; b) women who possess no vagina or whose vagina is so small that intercourse is impossible, or who suffer from some incurable disease of the vagina. Due to mental defects men who are afflicted with complete sexual anaesthesia or with certain mental diseases suffer from this impediment.

It is probable that the impediment likewise arises from vasectomy, i.e. from the excision of the vas deferens. This surgical operation is performed frequently in these days.

Kinds.

1. Impotency is antecedent if it exists prior to marriage, consequent if it ensues after marriage.
2. Impotency is permanent if it will never cease; otherwise it is temporary.
3. Impotency is absolute if it prevents sexual intercourse with all persons; it is relative if it prevents intercourse with some individual.

903. Principle. “*Antecedent and permanent impotency, whether on the part of the man or the woman, whether known to the other or not, and whether absolute or relative, annuls marriage by the very law of nature. If the impedi­ment is doubtful, either as to fact or as to law, marriage is not to be forbidden.”* (c. 1068).

There were some of the older theologians who maintained that impotency was not an impediment to marriage if it were known to both parties, but this opinion cannot now be held.

Duty of the parish priest and confessor. If the confessor or parish priest is in any doubt whether a penitent about to contract marriage or already married is impotent or not, he must act with his greatest prudence.

1. If the doubt arises *before* marriage, the truth should be discovered by a skilled and trustworthy doctor. If the doubt persists, marriage is not to be forbidden, provided there exists a grave reason for marriage and both parties are aware of the doubtful impediment.
2. If the doubt arises *after* marriage, the services of a skilled and trustworthy doctor should be used; if he affirms the existence of impotency, the two parties may be left in good faith for a grave reason. But if they are in bad faith, i.e. they know of the impediment, they can and must separate spontaneously from each other so far as conjugal relations are concerned, but complete separation (of the bond and of life together) is impossible without permission of the Holy See.—If the existence of impotency still remains in doubt even after serious enquiry, the parties are permitted the use of marriage, even though carnal inter­course cannot be performed perfectly.
3. **The Impediment of an Existing Bond**

**904.** Definition. *The impediment of an existing bond consists in the incapa­bility of contracting a new marriage white the bond of a previous marriage whether ratified or consummated, still endures.*

This impediment is founded on Natural law and on Divine positive law. We have discussed already (n. 849 sqq.) how a ratified marriage may be dissolved by solemn religious profession and by papal dispensation and how a legitimate marriage may be dissolved by the Pauline privilege. But even though the first marriage be, for some reason, invalid or dis­solved, it is not lawful for Catholics to contract another marriage until legal proof of the invalidity or dissolution of the previous marriage is obtained (c. 1069, § 2) Consequently, especially when the death of a former spouse is in doubt, a *death certificate* must be obtained not only from the civil authority but also from ecclesiastical authority. The manner in which such a document may be obtained is discussed in the author’s Man. Theol. mor. III, 806.

Penalties inflicted on those ignoring this impediment.

1. If a person contracts a new marriage in good faith while still bound by the tie of a former marriage, he incurs no ecclesiastical penalty, but the two parties must separate immediately from each other, once the truth is discovered.

2. Anyone who knowingly attempts a second marriage while bound by a former one incurs ipso facto:

1. the impediment of crime, cf. n. 908;
2. irregularity through bigamy (c. 984, n. 4);
3. infamy of law (c. 2356).

If the person continues to live in unlawful union after ignoring the admonition given by the local Ordinary, he incurs excommunication or personal interdict according to the gravity of the offence (ibid.).

1. **The Impediment of Age**

**905.** Definition. *The impediment of age arises from the absence of the age required by ecclesiastical law for a valid marriage.*

It is stated in the Code, c. 1067: “A male before his sixteenth year of age completed and a female before her fourteenth year of age completed cannot contract a valid marriage. Although marriage is valid when these years are completed, pastors of souls should dissuade young people from marriage at an earlier age than is commonly the custom in their respective countries.”

Since this impediment is instituted by ecclesiastical law, it does not affect the unbaptized and therefore marriages contracted by pagans before the canonical ages are valid.

1. **The Impediment of Disparity of Worship**

**906.** Definition. *“The impediment of disparity of worship annuls marriage contracted between a person not baptized and another baptized in the Catholic Church, or received into the Church from heresy or schism”* (c. 1070, § 1).

Explanation. This impediment is founded on ecclesiastical law and therefore (according to present discipline) does not bind Protestants or others baptized outside the Catholic Church. Accordingly if a Protestant contracts marriage with a Jewish girl, he is not bound by this impediment. So far as marriage is concerned, doubtful Baptism is regarded as being valid. If a person at the time of the marriage was commonly held to have been baptized, or if the Baptism was doubtful, the validity of such marriage must be upheld, until it is proved with certainty that one party was baptized and the other was not (c. 1070, § 2). But when it is known for certain that a doubtful Baptism was in fact invalid, the marriage cannot be rescinded on private authority on the grounds that there existed an impediment of disparity of worship, but the authority of the local Ordinary must be invoked who, after having summoned the parties and having given the defensor vinculi opportunity to examine into the case, may declare the nullity of the marriage (c. 1990).

**Cessation** of the impediment.

1. The impediment ceases if the unbaptized party receives valid Baptism and the consent of both parties is renewed legitimately.
2. The impediment also ceases if a dispensation is granted by the Holy See (i.e. the Holy Office). In granting such a dispensation which in danger of death or in other urgent cases may be given by the local Ordinary, parish priest, or confessor, all the promises must be obtained, such as were required for a dispensation from the impediment of mixed religion (cf. n. 892); c. 1071.

**The Impediments of Sacred Orders and of Religious Profession**

907. Present discipline. *Marriage is invalid if attempted by:*

1. *clerks in major Orders* (1072).
2. *religious who have taken solemn vows or whose simple vows have by a special law of the Holy See the power to annul marriage* (c. 1073).

Explanation. The impediment of major Orders. In the Oriental Church, only bishops, priests and deacons are forbidden to marry, but in the Latin Church the prohibition extends to subdeacons. It is necessary that the major Order should have been received validly and freely, without grave fear having been unjustly inflicted, and with sufficient knowledge of the obligation of celibacy. Otherwise the impediment will not exist, unless after the fear was removed he ratified his ordination at least tacitly by the exercise of the Order received with the intention of subjecting himself to the obligations of the major Orders (c. 214).

Cessation of the impediment. It is most difficult for a cleric to be freed from this impediment The extent of a confessor’s faculties in danger of death will be discussed below, n. 927.

The impediment of religious profession. The vows which render marriage impossible are:

1. solemn vows taken in religious Orders strictly so-called;
2. simple vows taken by Jesuits (Gregory XIII, Const. “Ascendente Domino,” May 25, 1584).

**Cessation** of the impediment. It is easier to be freed from this impediment than from the former.

**Penalties** inflicted on clerics and religious solemnly professed who attempt marriage, are :

1. excommunication simply reserved to the Holy See (c. 2388);
2. irregularity arising from crime (from analogous bigamy) c. 983, n. 3;
3. dismissal from their Order (c. 646, § 1, n. 3). Religious who attempt or contract even civil marriage are by that very fact considered as having been legitimately dismissed;
4. *those punishments inflicted on clerks leading a life of concubinage* (c. 2359).
5. **The Impediment of Crime**

**908.** Definition, *The impediment of crime is the law of the Church which denies valid marriage to those who have committed either adultery or murder of the consort with varying degrees of malice.*

Explanation. There are three degrees of malice with which adultery may be committed: 1. with an added promise of subsequent marriage; 2. with attempted marriage; 3. with murder of the consort. The malice of conjugicide is increased when it is committed by mutual co-operation. Therefore there are four cases in which the impediment of crime exists:

1. *adultery with an added promise of marriage;*
2. *adultery accompanied by attempted marriage;*
3. *adultery accompanied by murder of the consort committed by one of the adulterous parties;*
4. *murder of the consort committed by mutual co-operation.*

The older authors used to distinguish three different cases in which the impediment arose by these words: by joint commission of murder = the fourth case; by individual commission of murder = the third case; by neither committing murder = the first and second cases.

**909.** I. Adultery with an added promise of marriage.

In order that the impediment of crime be contracted in this way, it is necessary:—

**that the adultery be:**

1. true adultery, so that a genuine, valid marriage is violated;
2. formal in both parties, i.e. both parties must realize that they are causing injury to one and the same marriage (or to two marriages)—in other words, each must realize that one of them is married, and it is not sufficient if each is only aware of his own married state;
3. consummated, i.e. by complete sexual intercourse which of its nature is directed to the procreation of children. Therefore sexual intercourse accompanied by onanism would not be sufficient.

**that the promise be:**

1. genuine and serious. Therefore a fictitious promise is insufficient, so also would be a mere desire or proposal of marriage;
2. free, and not obtained through grave fear;
3. mutual. The Code (c. 1075, n. 1) requires that each party give to the other a promise of subsequent marriage;
4. absolute, or at least, if made conditionally, that the condition be verified;
5. made in the course of the same marriage, i.e. both the adultery and the promise must take place during the same legitimate marriage. Therefore, for example, the impediment would not arise if Peter promised to marry Bertha, then marries Anne, and during this latter marriage commits adultery with Bertha.

**910.** II. Adultery combined with attempted marriage.

1. The act of adultery must fulfil the conditions given already for the first case.
2. An attempt at marriage exists when a man and woman being aware of the impediment of an existing bond of marriage truly and seriously give their consent to each other in words referring to the present, whether publicly or secretly. Such attempts at marriage are to-day frequent in civil marriages contracted by one of the parties after obtaining a civil divorce from a previous valid marriage. The impediment of crime would not exist if both parties intended no more than to live in concubinage, or if one party were unaware of the bond of a previous marriage.

**911.** III. Adultery combined with murder of consort committed BY ONE OF THE PARTIES.

1. The act of adultery must fulfil the conditions previously given.
2. *The act of murder:*
3. must result in actual death caused by the physical or moral action of one of the parties;
4. must *have as its motive marriage with the accomplice* in the act of adultery.

Therefore if murder is committed for some other reason, e.g. out of hatred, the impediment does not arise.

**912.** IV. Murder of consort committed by mutual co-operation. In this instance adultery is not required, although in practice it is usually present. The murder must be:

1. true, i.e. murder of a true consort (and not of a putative one);
2. committed by mutual co-operation, i.e. there must exist a mutual plan directed towards the murder of a consort. Therefore each must exercise a genuine influence on the death of the consort; subsequent approval of the act would not be sufficient;
3. *committed with the intention of marrying the accomplice.*

**913.** THIS impediment may be multiple:

1. if two or more marriages are injured;
2. if different crimes are committed in respect of the same marriage, but not if the same crime is repeated, e.g. when during the same marriage two accomplices commit several acts of adultery and make several prom­ises of marriage.

Cessation of the impediment. This impediment is removed by legitimate dispensation, which is not normally granted if the murder of the consort is publicly known. When the impediment arises from adultery accom­panied by promise of marriage or attempted marriage, it is considered to be a minor impediment, as stated already.

Note. Although this impediment possesses also a penal character, ignorance of it is not admitted as an excuse.

1. **The Impediment of Consanguinity**

**914.** Definition. *The impediment of consanguinity or natural relationship is the intimate union existing between persons belonging to the same stock through carnal descent, which invalidates marriage within certain degrees.*

Explanation. In order to determine and measure consanguinity correctly, three points must be borne in mind: the stock, the line, and the various degrees of relationship.

1. The stock (root, trunk) of the descendants is that person (male or female) from whom the parties about to be married are descended by birth as from a common source. Thus, for example, a grandfather is the common stock of all his grandchildren.
2. The line is the natural series of persons springing from the same stock. The line is direct if we consider either the descent of individuals from each other (direct descent: grandfather, father, son) or their ascent to a common stock (direct ascending line : son, father, grandfather); the line is collateral in the case of several individuals having one and the same stock, but not being descended from each other, e.g. brother and sister do not stem from each other but from the same stock, viz. their father.—If those about to marry are equi-distant from a common stock, as in the example of brother and sister, the collateral line is said to be equal; otherwise it is unequal.
3. The degree of relationship is the measure of the distance from a common ancestor, and the following rules are used:
4. In the direct line the number of degrees is the same as the number of genera­tions, or (which comes to the same thing), the number of degrees is the same as the number of persons, omitting the ancestor; e.g. between grand­father and grandson there are two degrees because there are two generations, the grandfather giving birth to the father, and the father to the son—or, to put it in another way, there are three persons counting the ancestor, viz. grandfather, father, and son.
5. In the collateral line, when direct degrees are equal, the number of degrees is the same as the number of generations (or persons omitting the common stock) in either line of descent; e.g. between cousins there are two degrees collateral, because there are two generations from a common stock in either line of descent.
6. In the collateral line, when the direct degrees are not equal, there are as many degrees as there are generations in the longer line of descent (c. 96); and thus the less remote degree has to be adjusted to the more remote degree; e.g. if there are three generations in one line of descent and two in the other, it is customary to say that the parties about to be married are related to each other in the third degree touching the second.

In order to discover and count the degrees of consanguinity more easily, the text of the old canon law carried a so-called “tree of consanguinity ”; this we reproduce below with the changes made necessary by the new law.

 

**915. Kinds of consanguinity.**

1. Consanguinity is legitimate if the act of generation took place in legitimate marriage; it is illegitimate if the birth occurred outside of marriage. Illegitimate children can be legitimated, as will be shown later, n. 942.
2. Consanguinity is complete (perfect) if the persons related to each other are descended from the same two parents; it is less complete (imperfect) if they are descended from the same father or from the same mother.—Brothers having the same father but not the same mother are known as “half-brothers” (consanguinei); those having the same mother but not the same father are called “brothers uterine”; those having the same mother and the same father are known as “brothers german.”
3. Consanguinity may exist either *on the father’s side* or *on the mother’s side.*
4. Consanguinity is simple if two persons related to each other are des­cendants of one and the same ancestor; it is multiple if their common stock is multiple. This is the explanation adopted in the present discipline of the Church (c. 1076, § 2). Previously there were other instances of multiple consanguinity.

Since in practice difficulties often occur in discovering the existence of multiple consanguinity, it is advisable to give a somewhat fuller explana­tion of two cases of such relationship.

 

Multiple consanguinity. First case. In tracing back the line of two persons intending to marry it is discovered that the members of one family have intermarried with members of the other; e.g. two brothers of one family married two sisters of another. In this case there are two common stocks, as is evident from Fig. 2. The grandparents of the bridegroom and those of the bride were brothers and sisters. Therefore the parties to be married are related to each other doubly in the third degree. As is immediately evident, it is possible to think of similar examples.

Second case. It is discovered that the ancestors of the parties intending to contract marriage were related to each other by blood, and one of them married successively two sisters, as indicated in the third figure. In this case there are two common stocks, and the parties are related to each other both in the second and in the third degree.

 

Note. In applying for a dispensation from the impediment of consan­guinity it must be stated whether the consanguinity is simple or multiple, whether it is perfect or imperfect, whether it exists in the direct or in the collateral lines. It is useful to include in the petition a scheme showing the relationship, such as is given in Fig. 4; in some dioceses such a scheme is expressly demanded in petitions from this impediment.

Method of discovering the degree of consanguinity. There are many methods suggested, but the following seems to be easier, clearer and safer than any other. If the parish priest is in any doubt regarding the blood relationship of the parties presenting themselves for marriage, the names of both parties should be written on a large piece of paper, then above the name of the bridegroom insert the names of his ancestors, and above the name of the bride her ancestors. One then proceeds to count the number of intervening generations until one arrives at a common stock. The number of these generations between the common stock and the bridegroom gives the degree of consanguinity existing on his side; the number of generations between the common stock and the bride gives the degrees existing on her side. If, for example, there are found to be three generations on both sides, the parties are related to each other in the third degree collateral; cf. Fig. 4. If there are four generations on the side of the bridegroom from the common stock, and three on the side of the bride, the parties will be related to each other in the fourth degree collateral touching the third. In this latter case a dispensation will not be required because, according to the principle already given, the less remote degree must be adjusted to the more remote degree and a dispensation is only required if the parties are related to each other in any degree up to the third inclusive. If the consanguinity is multiple, the degrees are to be reckoned from each of the common stocks, or according to the different lines in which it is possible to rise to a common stock.

**916.** Extent of this impediment.

1. In the direct line marriage is invalid between any two persons related by blood, whether they are legitimate or natural offspring.
2. In the collateral line the impediment extends to all who are related to each other in any degree up to the third inclusive (c. 1076).

An easy rule to give to the people and to use in practice in order to discover whether there exists an impediment of consanguinity in the collateral line is this: no impediment exists unless the grandparents were brothers or sisters.

Cessation of this impediment. The impediment ceases to exist y lawful dispensation only, which is never granted in the direct line or in the first degree collateral (c. 1076, § 3). Consanguinity in the third degree collateral is a minor impediment (c. 1042, §§ 2, n. 1).

1. **The Impediment of Affinity**

**917.** Definition. *Affinity is relationship by marriage whether consummated or not between a man and certain blood relations of his wife, and vice versa between a woman and certain blood relations of her husband* (c. 97, § 1 and 2).

**Explanation.** Prior to the new Code affinity arose from sexual inter­course whether licit (up to the fourth degree) or illicit (to the second degree collateral); but now it arises from Christian marriage only, and carnal intercourse is not essential. Consequent affinity which was admitted in the old law is no longer recognized.

NUMBERING OF THE DEGREES. The degrees of affinity are counted in such a way that *the blood relations of the husband are related by affinity to his wife in the same line and degree as they are related by consanguinity to him, and vice versa* (ibid. § 3); or, in other words there are as many degrees of affinity on one side as there are degrees of consanguinity on the other.

Extent of the impediment. The impediment extends indefinitely in the direct line and to the second degree inclusive in the collateral line. Therefore the extent of the impediment has been greatly reduce. The following principle should be noted: affinity does not cause affinity. Therefore no affinity exists between the blood relations of the husband and the blood relations of the wife; consequently, e.g. there is nothing to prevent two brothers marrying two sisters, or a father and son marrying a mother and daughter, or a son marrying a mother and his father marrying the daughter of that mother.

MULTIPLE affinity. Affinity is multiple in two cases only (c. 1077, § 2);

1. where the consanguinity from which affinity arises is itself multiple;
2. by successive marriage with the blood relations of a deceased consort. Thus, e.g. if Peter marries two sisters, he has a double affinity with any third sister.

Cessation oe this impediment. The impediment is removed by lawful dispensation which is never granted (not even in danger of death) in the direct line, if the affinity arises from consummated marriage. Affinity in the second degree collateral is included among the minor impediments as previously indicated.

1. **The Impediment of Public Propriety**

**918.** Definition. *The impediment of public propriety* (which is also known as quasi-affinity is *the relationship between two persons arising from a) an invalid marriage, whether consummated or not; or b) from public or notorious concubinage* (c. 1078).

Explanation. This impediment was introduced or at least expressed in this form by the new Code. The impediment known as that of public propriety existing previously was something entirely different, arising from betrothal (extending to the first degree) or from a ratified marriage (extending to the fourth degree inclusive). The new impediment resembles the former impediment of affinity which arose from illicit intercourse, but it goes much further in so far as it arises from any invalid marriage, even when the putative married parties are in good faith If the impediment is caused by concubinage, the latter must be public or notorious ; therefore secret concubinage is not sufficient. A civil marriage contracted by a Catholic is regarded as public or notorious concubinage. (The impediment of public propriety does not arise from a civil act only, independently of cohabitation (P.C.C.J., March 12, 1929. Act. Ap. Sed. XXI, 170).

Extent of the impediment. The impediment extends to the first and second degree of the direct line between a man and the blood relations of the woman, and vice versa (c. 1078). Since it is an ecclesiastical impediment it does not affect unbaptized persons, at least directly. Indirectly, when an unbaptized person desires to marry one who is baptized and who is affected by this impediment, he himself is likewise affected.

Cessation of the impediment. This impediment is removed by lawful dispensation. But it is disputed amongst authors whether this impediment becomes an impediment of genuine affinity, so that it ceases if the invalid marriage is subsequently con-validated when the two parties living in concubinage marry each other, or whether in similar circumstances it continues. Both opinions are probable. In practice it is safer to state

clearly in the petition for a dispensation the exact nature of the case under consideration.—The impediment of public propriety in the second degree is a minor impediment, as stated already.

1. **The Impediment of Spiritual Relationship**

**919.** Definition. *The impediment of spiritual relationship is the relationship incurred by the conferment and reception of Baptism.*

Explanation. Although spiritual relationship is likewise incurred by the conferment and reception of Confirmation (c. 797), it is no longer regarded as an impediment to marriage. In order that the impediment may arise from Baptism, the following conditions must be verified.

1. Genuine Baptism whether private or solemn must have been administered validly. Consequently the impediment does not arise from the ceremonies which may be supplied afterwards, nor from the conditional repetition of the sacrament, unless the same sponsor was present at both Baptisms (c. 763, § 2).
2. The minister of the sacrament and the sponsor must be baptized. Since the impediment is ecclesiastical, it does not bind those who are unbaptized.
3. The sponsor must exercise his office knowingly and freely, and fulfil all that is required by law for the validity of his action. These legal requisites have been indicated already, n. 570. Thus, for example, no Protestant may be admitted as a valid sponsor; therefore if such a person exercises that office he does not contract the impediment of spiritual relationship.

The extent of the impediment has been much restricted in the new Code. The impediment exists only a) between the minister of the sacrament and the recipient; b) between the sponsor and the baptized (c. 1079).

Cessation of the impediment. It is a minor impediment and is removed by lawful dispensation.

1. **The Impediment of Legal Relationship**

 **920.** Definition. *The impediment of legal relationship is the relationship arising from legal adoption.*

Explanation. Ecclesiastical law prior to the new Code followed the ancient civil law of Rome, but now it adapts itself to the civil code of each country. “In those countries where by civil law marriage is for­bidden on account of legal adoption, marriage is likewise illicit by Canon law” (c. 1059). “Those who are declared by civil law to be incapable of contracting marriage on account of legal adoption cannot under Canon law enter into valid marriage” (c. 1080). It is not abundantly clear in which countries legal adoption is a prohibitory impediment, and in which countries it is an annulling impediment. It seems to be regarded as annulling marriage in Spain (art. 84), Italy (a. 60 and 104), Switzerland (a. 100) in certain Latin American countries, e.g. Bolivia (a. 108), Brazil (a. 183), Costa Rica (a. 140), Peru (a. 143). Cf. Ferreres, Theol. mor. II, 1051 sqq. On the other hand legal adoption seems to prohibit marriage in Germany (§§ 1311 and 1741), France (a. 348), Belgium (a. 348).

Legal adoption seems to offer no obstacle to marriage in England, Holland Austria, Portugal, Argentine, Chile, Mexico and other American countries' (cf. De Smet, De spons. et matr. n. 499).

Cessation of the impediment. The impediment is removed not only by a lawful dispensation granted by the Church but also by civil enact­ments. Since Canon law follows the various civil codes on this question when the latter cease to regard legal adoption as an impediment to marriage, so likewise does the Church.

Art. 4. **Dispensation from Impediments**

921. Introduction. Impediments to marriage may cease in three ways:

1. through lapse of time, e.g. closed times, or the bond of an existing marriage by the death of the consort;
2. through legitimate consent of both parties, e.g. the impediments of error, violence, fear;
3. through legitimate dispensation. This will now be given special considera­tion under the following headings : a) definitions and kinds of dispensa­tion; b) author of dispensations; c) causes for dispensation; d) the petition itself; e) the grant of dispensations.

**§ 1.** **Definition and Kinds of Matrimonial Dispensations**

922. Definition. *Dispensation from a matrimonial impediment is the relaxation of a law annulling or prohibiting marriage granted in a particular case by legitimate ecclesiastical authority.*

**Kinds.**

1. A dispensation may be granted either for the internal forum or for the external forum. It is necessary to remember that a dispensation granted in the external forum is valid also in conscience, but not vice versa; at least, that is the usual procedure.
2. A dispensation is granted either for contracting marriage or for con-validating a marriage previously invalid.
3. A dispensation is granted in forma gratiosa, if it is granted directly and immediately by the Roman Curia; it is granted in forma commissoria, if it is transmitted to a bishop or priest so that the latter may dispense in the name of the Holy See. Nowadays dispensations are normally given in forma commissoria.

**§ 2. The Power of Dispensation**

**923.** Principle. “*The Roman Pontiff alone can abolish or modify eccles­iastical impediments* *(whether prohibitory or annulling); similarly no one else can dispense in these impediments unless they are given the faculty to do so by common law or special indult of the Holy See*” (c. 1040).

The Pope has no power to dispense in those impediments which annul marriage owing to Natural or Divine positive law, as in the impediments arising from lack of consent or from the bond of a consummated marriage.

He does not dispense (although possessing the power to do so) in the impediments of consanguinity in the first degree of the collateral line, of affinity in the direct line—at least when the affinity is caused by con­summated marriage—,of crime arising from notorious murder of consort, of abduction; but he does dispense in other impediments if there exists a proportionate cause.

1. The Roman Pontiff usually exercises his power of dispensation :
2. through the Congregation of the Holy Office for the impediments of mixed religion and disparity of worship, and also for the omission of the interpellations in the use of the Pauline privilege (c. 247, § 3);
3. through the Congregation of the Sacraments for all other impediments (affecting members of the Latin Rite) so far as the external forum is concerned, and also for the dissolution of a ratified marriage. But in the case of the impediment arising from religious profession, the application for a dispensation must be made to the Congregation for Religious;
4. through the Congregation for the Eastern Church, regarding marriages of Catholics belonging to that Church, whether they are marrying each other or a Catholic of the Latin rite or a pagan (c. 257);
5. through the Sacred Penitentiary for secret impediments and so far as the internal forum alone is concerned (c. 258).

924. II. **Powers of local Ordinaries to dispense.**

For the sake of clarity we shall consider these powers: 1. in ordinary cases; 2. in urgent cases; 3. in danger of death.

1. In ordinary cases local Ordinaries may dispense:
2. from impediments concerning which there exists a doubt of fact, provided that they are impediments in which the Pope usually dispenses (c. 15), e.g. if there exists some doubt whether in an impediment of crime a genuine promise to marry can be found or not;
3. *from the publication of the banns, from vows not reserved to the Holy See, and from the observance of the closed time.*

**925.** 2. IN URGENT CASES OF NECESSITY, namely when an impediment is discovered only after everything has been prepared for the marriage and the ceremony cannot be delayed until dispensation from the Holy See can be obtained without probable danger of great evil, local Ordinaries may dispense from all and every ecclesiastical impediment (whether public or secret, and even if multiple), except from the impediments arising from the priesthood or from affinity in the direct line when the marriage has been consummated. Any scandal that may have been caused must be removed, and the usual guarantees must be obtained from both parties when a dispensation is required from difference of worship or mixed religion (c. 1045, §1.

Local Ordinaries may use this power of dispensing

a) for their own sub­jects wherever they may be and for all persons actually staying in their territory, e.g. travellers and persons with no fixed abode;

*b*) not only for contracting marriage but also for con-validating an invalid marriage (ibid. § 2).

**926.** 3. IN urgent danger of death local Ordinaries enjoy the same power of dispensation which they have in urgent cases of necessity. Moreover in these circumstances they may dispense from the canonical form for the celebration of marriage (c. 1043). Thus, for example, a bishop may grant a dispensation for a just cause in order to allow a putative spouse in urgent danger of death to contract marriage in the presence of the confessor without the two witnesses, but he cannot con-validate a marriage without the renewal of consent (cf. n. 928, 4).

Note. By virtue of special faculties local Ordinaries may have the power to grant other dispensations, as will be evident from the appendix at the end of this work.

927. III. **Powers of parish priests and confessors to dispense.**

1. In ordinary cases parish priests and confessors have no power to grant dispensations.
2. In urgent cases of necessity, as mentioned previously in n. 2, when the local Ordinary cannot be approached or only with danger of violating the seal of confession, the following persons enjoy the same power possessed by local Ordinaries: a) parish priests ; b) priests who legiti­mately assist at a marriage, when the parish priest is not available; *c)* confessors. But this power of dispensation is restricted to occult cases (c. 1045, § 3). In public impediments the local Ordinary can and must be approached without any great inconvenience.
3. In urgent danger of death, as mentioned above in n. 3, and only when there is no time to approach the Ordinary, the same faculties as those given to local Ordinaries in the same circumstances are granted to: *a)* parish priests, b) priests who legitimately assist at a marriage in the absence of the parish priest, c) confessors. But the power of the con­fessor to dispense is restricted to the internal forum and may be exercised only in the course of sacramental confession (c. 1044). Thus, for example, if a confessor while hearing the confession of a dying man discovers that he has contracted an invalid civil marriage and further­more cannot contract a valid marriage at present owing to the impedi­ment of crime, the priest may dispense both from the latter impediment and from the canonical form of celebrating marriage, provided that there is not sufficient time to have recourse to the Ordinary. If both parties know that their marriage is null and void, they should first take care to be in the state of grace and then renew their consent in the presence of the confessor. If the invalidity of the marriage is known to one patty only, it is sufficient if that person (being in the state of grace) renews the consent, since the consent of the other party is con­sidered to persevere virtually (c. 1135).

**928.** Note.

* 1. The parish priest or other priest who in urgent danger of death granted a dispensation for the external forum from an impediment or the form of marriage must at once inform the local Ordinary of this fact and note it in the marriage register (c. 1046). It is obvious that a confessor who has granted a dispensation for the internal forum in the course of sacramental confession cannot and must not say anything to anyone.
1. One who has a general indult to dispense can normally (unless the contrary is stated expressly) dispense from one and the same impediment even if it is multiple and from several impediments of various species occurring in one and the same marriage (c. 1049). This power is known as “facultas cumulandi.”
2. If he who has an indult to dispense from several public impediments meets with a case where there is also another impediment from which he cannot dispense, he cannot exercise his power of dispensation but must ask the Holy See for dispensation from all the impediments in the case. If, however, the impediments from which he can dispense are discovered only after dispensation has been obtained from the Holy See, he may make use of his faculties (c. 1050).
3. Those who dispense in the cases mentioned above from any diriment impediment in virtue of a general indult (and not by reason of a particular rescript), such as bishops, parish priests, confessors, effect ipso facto the legitimation of the offspring, with the exception of adulterous or sacrilegious offspring (c. 1051). Cf. n. 943.
4. Unless the rescript of the Sacred Penitentiary states otherwise, dispensations from occult impediments granted by this tribunal for the internal sacramental forum are not valid for the external forum, and therefore new dispensation is required if the impediment later becomes public • if granted for the internal extra-sacramental forum they are valid for the external forum, even if afterwards the impediment becomes public This latter dispensation granted by the Sacred Penitentiary should be recorded in the secret archives of the episcopal Curia (c. 1047).

**929.** Scholium. “ Casus perplexus.” This phrase was used formerly by theologians in reference to a case in which an annulling impediment was discovered immediately prior to the celebration of marriage, so that the marriage could not be postponed without grave inconvenience and yet there was insufficient time to obtain the requisite dispensation. But by reason of the wide indults granted to local Ordinaries, parish priests and confessors (as noted already) this case is hardly possible in present circumstances, and thus no useful purpose would be served by noting the various procedures proposed by earlier theologians.

**§ 3. Causes for Dispensation**

**930.** THE NECESSITY OFA CAUSE. The Council of Trent (sess. 24, c. 5 de reform, matr.) has stated: “In contracting marriages rarely, if ever, should dispensations be granted; if they are they must be granted for some cause and without payment.” By a concession of the law, and thus incidentally, no cause is required for the validity of dispensations granted from the five minor impediments. A dispensation from any of these impediments “is not invalidated by any misrepresentation or concealment of facts, even though the only motive reason advanced in the petition be false” (c. 1054).

Kinds:

1. Causes are said to be final (or motive) if they are self-sufficient for obtaining the required dispensation; if they are not in themselves sufficient but aid in obtaining a dispensation, they are impelling causes.
2. Causes reflect defamation (or dishonor) if they arise from delinquency and usually cause infamy (e.g. if the bride is pregnant as the result of fornication), or they are morally good if they have no suspicion of delin­quency or defamation, e.g. the large family of a widow;
3. Causes are canonical if accepted by the Roman Courts as final and sufficient; otherwise they are uncanonical (reasonable, certain) which are the same as the impelling causes previously mentioned.

 **931. Canonical causes** for dispensation are usually regarded as being sixteen in number:

1. place of domicile very restricted, either absolutely (containing less than approximately 1,500 inhabitants and is more than a mile away from any other place) or relatively, if the family of the petitioner is very numerous in the locality;
2. advancing age of the woman, i.e. if she is more than twenty-four years old. This cause is not accepted if the woman is a widow;
3. *lack or at least insufficiency of means;*
4. *legal proceedings in respect of inheritance of property;*
5. poverty of the widow who has a large family to support;
6. *the benefit of peace;*
7. *excessive, suspected familiarity or cohabitation;*
8. *pregnancy of the woman and therefore legitimation of offspring;*
9. *defamation of the woman as the result of suspected intercourse;*
10. Con-validation of an invalid marriage, contracted publicly and in good faith;
11. *danger of contracting a mixed marriage even in the presence of a non- Catholic minister;*
12. *danger of incestuous concubinage*;
13. *danger of a civil marriage;*
14. *removal of grave scandal;*
15. *cessation of concubinage known to all;*
16. *excellence of merits.*

**932. Uncanonical causes are** numerous, e.g. a) in respect of the woman: difficulty of finding another man equally acceptable, sickness and other failings, need of helping parents; b) in respect of the man: sickness which requires the help of a good wife, care of offspring from a previous marriage; c) in respect of both parties: the intention to marry already known to many which could not be changed without causing defamation of character, the virtues and good character of both, help to parents.

**§ 4. The Petition Itself**

**933.** 1. All requests for matrimonial dispensations are to be made in the name of the contracting parties and therefore must be made in the third person, e.g. John Smith requests. The parties petitioning for the dispensation are known in Curial language as: oratores, orator, oratrix, latores, lator, latrix.

2. If a dispensation is required for the external forum, the petition should be made by the parish priest, normally the parish priest of the bride, through the episcopal Curia; if the dispensation is required for the internal forum the petition is made by the confessor either through the episcopal Curia, or, if there is danger of violating the seal, directly to the Sacred Penitentiary.

3. If a dispensation is required from a public impediment the petition must contain:

1. the surname and Christian names of the petitioners, the diocese of their origin or of their actual domicile;
2. the nature of the impediment precisely defined; thus, for instance, in a case of consanguinity not merely the degree but also the line must be recorded;
3. the number of the impediments;
4. the various circumstances, e.g. whether the petition refers to a marriage not yet contracted or to one already contracted;
5. the causes for dispensation;
6. the social condition of the petitioners.

4. If a dispensation is sought from an occult impediment fictitious names must be used in the petition, and the confessor must exercise the utmost care not to violate the seal of confession; however he is obliged to state clearly the precise nature of the impediment and the causes for dispensation.

5. If a dispensation is required from two or more impediments of which one is public, a dispensation must be obtained from the public impediment, as indicated already in n. 3, but no mention is to be made of the occult impediment. In the petition for a dispensation from an occult impediment mention must be made of any public impediment from which a dispensation has been granted already or at least requested in the proper forum.

**§ 5. The Granting of Dispensations**

934. General rule. According to present discipline the Roman Curia usually grants all matrimonial dispensations in forma conmissoria, whereas local Ordinaries normally grant them in forma gratiosa, at least when the impediments are public. Dispensations from public impediments committed by the Holy See to the Ordinary of the petitioners shall be executed by the Ordinary who gave letters of recommendation or who forwarded the petition to the Holy See, even if by the time the dispensation arrives the parties have left the former diocese in which they had a domicile or quasi-domicile with the intention not to return; but the Ordinary of the place where they wish to contract marriage must be advised of the dispensation having been granted (c. 1055).

All who grant a dispensation in virtue of delegated powers received from the Holy See must make explicit mention of the papal indult in granting the dispensation (c. 1057), e.g. by the use of these or similar words: Auctoritate Apostolica mihi commissa dispenso. . . .

**935.** Conditions. Once the rescript is received the executor must heed carefully all the clauses or conditions attached to it, since it becomes invalid if he ignores essential conditions or does not follow substantially the form of procedure indicated. Only those clauses are considered essential which are introduced by the conditional words “ if,” “provided that,” and similar terms (c. 39).

The more important conditions expressed arc the following:

1. “If the request is founded on fact.” Normally for the validity of the dispensation it is necessary that at the moment of concession (for dispensa­tions granted without an executor) or execution (for other dispensations) everything stated in the petition should be at least substantially true. Therefore before the dispensation is executed it is necessary to verify the petition by undertaking a new and short enquiry into the actual truth of the statements made in the course of the petition. If an essential mistake is discovered a new dispensation (“ Perinde valere ”) must be sought.—An exception is made in the case of dispensations granted from the minor impediments of marriage (cf. n. 885) which are never invalidated by either false statements or concealment of facts.

Sometimes a particular method of verifying the truth of the petition is demanded for the external forum. All that is required for the internal forum is that the confessor should repeat in a summarized form the statements previously made by the penitent.

1. “A salutary penance being imposed suited to the gravity of the offence and left to your own choice.” This penance is distinct from the sacramental penance, but its omission would not render the dispensation invalid (S. Penitentiary, Nov. 12, 1891).
2. “This document having been destroyed immediately,” i.e. the Rescript granted by the Sacred Penitentiary must be destroyed without delay, i.e. within three days of the execution of the dispensation. But there is nothing to prevent a confessor making a copy of this Rescript for his own guidance and retaining it, so long as there is no danger of violating the seal of confession.

936. Note. For the external forum the dispensation must be executed in writing (c. 56) and the fact recorded in the matrimonial register ; for the internal forum it is usually required that the dispensation be granted by word of mouth, which may be done in the following or any similar manner ; after giving the customary absolution from censures and sins, the confessor should say: “Insuper auctoritate Apostolica mihi specialiter delegata dispenso tecum super impedimento affinitatis (vel criminis), ut eo non obstante matrimonium cum dicta muliere contrahere valeas. Eadem auctoritate prolcm susceptam vel suscipicndam legitimam declaro. In nomine Patris et Filii et Spiritus Sancti, Amen. Passio D.N.I.Ch. merita B.M.V. etc.” For a reasonable cause the dispensation may be granted in the vernacular.

Art. 5. **Rectification** of **Invalid Marriages**

937. Introduction. When a marriage is discovered to have been invalid due to the presence of a diriment impediment the greatest prudence is required. There are four courses open.

1. separation of the two parties. Normally speaking, this should be avoided because of the many inconveniences which would ensue; however, if the impediment is one which cannot be dispensed and the putative spouses cannot live together as brother and sister this is the course of action which must be taken; but before such a separation a declaration is normally required from the local Ordinary to the effect that the marriage was invalid.
2. TO LEAVE THE PUTATIVE SPOUSES IN GOOD FAITH; this is not lawful unless there exists an urgent reason.
3. BOTH PARTIES MAY CONTINUE TO LIVE TOGETHER AS BROTHER AND SISTER; this may be permitted a) if the invalidity of the marriage is not public, and b) if there is no proximate danger of incontinence.

II. rectification of the invalid marriage. This may be done in one of three ways: a) by a simple renewal of consent without any dispensation; *b)* by an ordinary dispensation; c) by regularizing the original consent (sanatio in radice). Each of these methods must be considered in turn.

**§** 1**. Rectification by Renewal of Consent**

**938.** An invalid marriage may be rectified by a simple renewal of consent in three cases:

1. when the marriage was invalid solely through defect of true consent (e.g. when the consent was fictitious or extorted by fear or duress or accompanied by substantial error);
2. when the marriage was contracted in spite of the existence of an annulling impediment which has now ceased to exist through lapse of time, e.g. when the parties were below the age of puberty, or one of the parties was already married;
3. when the marriage was contracted with an impediment which can be freely removed by the action of one of the parties, e.g. the impediment of disparity of worship which ceases to exist when Baptism is received voluntarily,—The renewal of consent must be a new act of the will for the marriage that is known to have been invalid from the beginning (c. 1134).

Regarding the form in which this renewal of consent should be made, the following points are to be noted.

1. If the invalidity of the marriage is public the consent must be renewed in public in accordance with the form prescribed by law in the celebration of marriage (c. 1135, § 1). Otherwise the scandal would not cease to exist.
2. If it is occult but known to both parties, it suffices that the consent be renewed privately and secretly by both parties (ibid. § 2).
3. If it is occult and known to one party only and cannot be revealed to the other without great inconvenience, it is sufficient if the party con­scious of the impediment renews the consent privately and secretly, provided the other party continues to consent (c. 1135, § 3). There­fore the various methods devised by earlier theologians of inducing the party unaware of the impediment to renew the consent implicitly are no longer of use.
4. If the marriage is null and void on account of the want of the pre­scribed form, e.g. if a mixed marriage is not contracted before a com­petent priest, it must be validated by contracting the marriage anew in the form prescribed by law, i.e. in the presence of the parish priest and two witnesses (c. 1137), No one (outside the danger of death) has power to dispense from this form except the Holy See or someone delegated by her.

**§** 2**. Rectification by dispensation**

**939.** In danger of death the marriage of either of the reputed spouses may be con-validated by the Ordinary, or parish priest, or indeed by any priest, provided that the impediments are capable of being dis­pensed and all the requisite conditions are verified, as already explained in n. 926 sqq.

Outside the danger of death a simple dispensation may be obtained from:

1. a public impediment in order to rectify an invalid marriage, if both parties are prepared to give a new consent in the form prescribed by law;
2. an occult impediment, if it is possible to renew the consent in the manner described in the preceding paragraph. If there is any difficulty in this respect, one must have recourse to retrospective con-validation.

**§** 3**. Retrospective Convalidation**

**940.** Definition. *Retrospective con-validation* *(sanatio in radice) is a dis­pensation granted by the Holy See which renders an invalid marriage valid, even (by fiction of law) in reference to the canonical effects not merely from the moment of granting this dispensation but also from the beginning of the marriage* (c. 1138).

The same thing can be stated more briefly thus: by retrospective con-­validation an invalid marriage is rendered just as valid in regard to the canonical effects as if there had been no annulling impediment present from the beginning. Accordingly once the original consent is regularized in this way there is no longer required: a) legitimation of natural offspring, *b*) renewal of consent, since this has been healed at its source. By retros­pective con-validation the moral effect of marriage and especially the sacramental grace are not extended to the beginning of the marriage but only to the moment of the granting of the dispensation. This is at least the more common opinion.—The sanatio in radice can be granted by the Holy See alone (c. 1141).

941. The conditions required for granting this form of con-validation are:

1. that the diriment impediment concerned in the case is capable of dispensation, i.e. it is not an impediment of the Natural or Divine positive law;

Consequently marriage contracted under an impediment of the Natural or Divine law (e.g. the impediment of an existing bond) is not validated by the Church by means of retrospective con-validation, even though the impediment should have ceased afterwards, not even from the moment of the cessation of the impediment (c. 1139, § 2);

1. that at the inception of marriage there existed a genuine consent; If consent was wanting in the beginning but was given later on, the sanatio in radice can be applied from the moment when the consent was given (c. 1140, § 2);
2. that the consent virtually persists and has never been revoked with certainty (ibid. § 1);
3. that there exists a grave and urgent reason, e.g. the impossibility of obtaining a renewal of the consent.

**942. Petition for retrospective con-validation and its execution.**

Anyone may petition for a sanatio in radice, since it may be obtained and used even without the knowledge of the putative spouses (c. 1138, § 3). But normally the confessor or parish priest will ask for this dispensation; the petition must include the grave reasons prompting the request for a sanatio, rather than a simple dispensation.—In executing the con-validation careful attention must be paid to all the conditions expressed in the Rescript. Furthermore care should be taken to see that the parties are in the state of grace when the con-validation takes place, since they then receive the sacrament of Marriage.

943. Scholium. Illegitimate children. Generally speaking, legitimate children are those conceived or born in valid marriage, or in marriage contracted in good faith though invalidly (c. 1114). All other children are illegitimate, and these are either natural if born from simple fornication, or spurious if born from adultery (adulterous offspring) or sacrilege (sacrilegious offspring) or incest (incestuous offspring).

The legitimation of illegitimate children is effected in three ways:

1. by subsequent marriage of the parents contracted validly or in good faith, or by validation of marriage (c. 1116). This affects only natural children, not spurious children (Offspring born of parents between whom there existed the impediment either of age or of disparity of worship is not legitimated by the subsequent marriage of the parents at a time when the impediment had ceased to exist (P.C.C.J., Dec. 6, 1930. Act, Ap. Sed, XXIII, 25));
2. by the children being solemnly professed in a religious Order or simply professed in certain Institutes which possess a special privilege. This method of legitimation is valid for the reception of Orders but not for the acceptance of any dignity;
3. by a rescript from the Holy See or by dispensation granted by one who dispenses from an annulling impediment in virtue of a general indult (c. 1051), e.g. in danger of death or in any other urgent case. Legitimation must be recorded in the baptismal register.

**CHAPTER IX. CIVIL MARRIAGE AND DIVORCE**

This chapter is divided into two articles: 1. civil marriage; 2. Civil divorce.

**Art. 1. Civil Marriage**

944. Definition. *Civil marriage is the contract of marriage*  (*even of Christians) entered upon in the presence of a civil magistrate.*

Explanation. The term applies to the contract of marriage only, i.e. a contract which is concerned not merely with the civil effects of marriage but also with the marital rights.

Civil marriages are to-day universal, but they vary in kind.

In some countries they are obligatory for all, e.g. in France, Germany, Switzerland; in others they are optional, in so far as Christians are allowed the alter­natives of contracting a religious or civil marriage, as in England and North America; in other countries they are subsidiary in the sense that they are accepted by the State when the parties are either unable or unwilling to contract a religious marriage, e.g. in Austria and Spain.

**945.** FIRST principle. *A civil marriage between Christians is not recognized by the Church and is deprived of all canonical effects.*

The chief reasons why the Church has always condemned such civil marriages are the following: 1. they violate the right of the Church which alone has authority over Christian marriages in so far as they are sacraments; 2. they make marriage a purely secular affair; 3. they are a potent cause of indifference and divorce.

The effects of a civil marriage are negative rather than positive.

1. Civil marriage lacks the force of a true marriage, and since it must be considered a form of public concubinage it gives rise to the impediment of public propriety.
2. Children born of such civil marriages are illegitimate.
3. Persons contracting a civil marriage are regarded as public sinners since they are living in concubinage and therefore they cannot be admitted to the sacraments nor to ecclesiastical burial and they are likewise debarred from all legitimate acts.
4. Aconsummated civil marriage contracted after a divorce from a previous legitimate marriage engenders the impediment of crime.
5. Clerics in major Orders and solemnly professed religious who contract a civil marriage incur excommunication reserved to the Holy See and other penalties, previously noted in n. 770.

Religious with simple profession incur excommunication reserved to the Ordinary (c. 2388, § 2).

Note. Although civil marriage as such produces no canonical effect, it is valid marriage—provided it is contracted with true consent—a) between all non-Catholics; b) in those cases where marriage may be celebrated without the presence of an assistant priest (cf. n. 879 sq.).

946. Second principle. *For a reasonable cause Christians contracting marriage are permitted to observe the civil law regarding the celebration of marriage, provided there is no intention of receiving the sacrament itself in the presence of a civil official* (c. 1063, § 3). Such is the explicit teaching of Leo XIII in his encyclical “Arcanum.”

Is it lawful to assist at a civil marriage as an official or witness?

1. Yes, if the parties to be married intend no more than to gain the civil effects of marriage; likewise if they intend and actually contract a true and valid marriage.
2. Probably, if the parties knowingly and with certainty contract marriage: invalidly, provided there exists a grave reason and there is no special ecclesiastical prohibition. Those officials who for a grave reason assist at such civil marriages co-operate merely materially in the sin of the parties. This is the more common opinion.

**Art** 2. **Civil Divorce**

947. Definition. Civil divorce is the separation of married partners by civil I authority. The separation affects either the bond of marriage or bed and board.

Principle.Any civil law permitting complete divorce of a valid marriage is evil and deserving of the most severe condemnation.

Such a law permits an action which is intrinsically evil, viz. the dissolution r of the bond of marriage, and produces most evil results.

948. Corollaries.

1. For a grave reason those who are married may petition the civil authorities for a separation (imperfect divorce), but they are never allowed to seek an absolute divorce of the marriage bond (Holy Office, Dec. 19, 1860).

2. A civil judge

a) must recognize his lack of authority in matters relating to the sacrament of marriage, and he is not permitted to pronounce a civil divorce in a country where there exists a special prohibition;

b) may pronounce a civil divorce in a marriage which is certainly invalid, e.g. when two Catholics contract a civil marriage;

c) he cannot grant a decree of absolute divorce in any Christian marriage unless there exists a very grave reason. If this latter condition is verified, it seems that he cannot be forbidden to pronounce the decree if he intends nothing more than the civil effects of divorce. This at present is the more common opinion, as opposed to those who think that such a pronouncement is intrinsically evil.

The reason justifying this concession is that by his action the judge ; intends no more than to protect the parties from legal punishment if they subsequently contract a new and valid marriage. In other words, such a pronouncement seems merely to destroy the previous civil marriage, and this cannot be regarded as an intrinsically evil act. Furthermore there can be no grave scandal resulting from his action since all must realize that civil law compels him to act in this way.

**949.** 3. Advocates rarely have sufficient reason to justify them under­taking a divorce suit, since they are under no compulsion to do so by reason of their office. In practice a confessor should not cause disquiet to any Catholic advocate who cannot refuse to undertake such cases without very serious inconvenience, provided that there is no scandal and nothing more is intended than the civil effects of divorce.

1. Separation effected by public authority is to be decreed in administrative form, unless the Ordinary decides otherwise ex officio or at the instance of the parties (P.C.C.J., June 25, 1932. Act. Ap. Sed. X [↑](#footnote-ref-1)
2. It is gravely unlawful to wash out the vagina immediately after sexual intercourse with the express intention of expelling the seed or destroying the spermatozoa (by means of a liquid specially prepared for the purpose) so as to .prevent conception. However such washing is lawful if undertaken for hygienic reasons and not immediately after sexual intercourse, for it is certain that in those circumstances conception is not rendered impossible. [↑](#footnote-ref-2)
3. **If the parties belong to two different dioceses, the bishop in whose diocese the marriage is to take place has the right to dispense. If the marriage is to be contracted outside either of the two dioceses, either bishop is competent to dis­pense.** [↑](#footnote-ref-3)