

The Ordinary Contentious Process

1. Introduction of a *libellus*
2. Decision to accept or reject the *libellus*
3. Citation of the parties
4. Setting the grounds
5. Instruction of the case
6. Publication of the acts
7. Conclusion of the case
8. Discussion of the case
9. Sentence of the judge
10. Appeal

The ordinary contentious process proceeds through these ten steps. Each step requires some action by one of the parties or by the Tribunal. Many of these steps involve a decree by the Tribunal.

The *libellus*

The Elements of a *libellus*:

- *Species facti* (The Facts)
- *In iure* (The Law)
- *In facta* (The Argument)
- Wherefore...(The Plea)

Libellus is a Latin word and means little book. A *libellus* is fundamentally a petition. A *libellus* is the introductory petition which introduces a case to a tribunal. The structure of a *libellus* is similar to the structure of a judicial sentence. A *libellus* has four sections, plus a list of witnesses.

Canon 1502: “A person who wishes to bring another to trial must present to a competent judge a *libellus* which sets forth the object of the controversy and requests the services of the judge.”

Proofs

Canon 1526 and 1060

Types of proof:

1. Extrajudicial confession
2. Judicial confession
3. Documents
4. Witnesses
5. Experts
6. Judicial Inspection
7. Presumptions

Dignitas connubii, art. 179 § 2. [...] in causes of the nullity of marriage a judicial confession is understood to be a declaration, made in writing or orally, before a competent judge, spontaneously or at the questioning of the judge, by which a party asserts a fact regarding oneself that is opposed to the validity of the marriage.

Can. 1678 § 1 (*Mitis iudex*): In cases of the nullity of marriage, a judicial confession and the declarations of the parties, possibly supported by witnesses to the credibility of the parties, can have the force of full proof, to be evaluated by the judge after he has considered all the indications and supporting factors, unless other elements are present which weaken them.

Conclusion of the Case

Canon 1599

‘Conclusion’ refers to the conclusion of the gathering of proofs, not to the final conclusion of the case.

The conclusion of the gathering of proofs can occur in one of three ways:

1. Both parties declare that they have nothing else to add.
2. The time-period for instruction has elapsed which was stated in the instruction decree.
3. The judge declares that the case has been sufficiently instructed.

Discussion of the Case

Canons 1601-1606

After the judge has declared by decree that the conclusion of the case has occurred, he is to set a period of time for the parties or their advocates to present a defense brief. A defense brief is similar to closing arguments in the English common law system.

The defender of the bond is also to submit his observations at this time.

The defense briefs and observations of the defender are exchanged and a brief period of time is given for responses. The defender of the bond is always given the last word.

Writing an Advocate Brief

An advocate brief should be written by the advocate, after the advocate has reviewed the acts at publication.

When an advocate writes a *libellus*, the *libellus* is based largely on the Petitioner's own statements and declarations. An advocate brief, on the other hand, should take account of all the proofs, including the Petitioner's deposition, the testimonies of the witness, and reports by any experts or other proofs.

The advocate brief should argue on behalf of the Petitioner or Respondent, based on the evidence and proofs collected during the canonical process.

Appeal

Canon 1628

Mitis iudex eliminated the mandatory second instance court for marriage nullity cases. Such cases will now only go to second instance upon appeal by one of the parties or the defender of the bond.

There are two choices for a second instance court of appeal: 1) the ordinary second instance court, and 2) the Roman Rota. The ordinary second instance court is either the metropolitan tribunal or another stably constituted tribunal.