

Section I: Other Marriage Case Types

Other *More* Common Cases

- **A. Documentary Process (cc. 1686 – 1688)**
- **B. Lack of Form “Process”**
- **C. Pauline Privilege (c. 1143 – 1147)**
- **D. Privilege of the Faith**

There are others too!

- **Dissolutions**
 - **Non-consummation (c. 1142; 1697 - 1706)**
 - **Polygamy (c. 1148)**
 - **Captivity/persecution (c. 1149)**
- **Separation of the spouses with the bond remaining (c. 1151-1155; 1696-1696)**
- **Presumed Death (c. 1707)**
- **Etc.**

A. Documentary Process

Definition

- **Can. 1686 “After receiving a petition proposed according to the norm of can. 1677, the judicial vicar or a judge designated by him can declare the nullity of a marriage by sentence if a document subject to no contradiction or exception clearly establishes the existence of a diriment impediment or a defect of legitimate form, provided that it is equally certain that no dispensation was given, or establishes the lack of a valid mandate of a proxy. In these cases, the formalities of the ordinary process are omitted except for the citation of the parties and the intervention of the defender of the bond.”**

Application

- **Impediments (c. 1083-1094)**
 - e.g, ligamen, age, disparity of cult, impotence, consanguinity, etc.
 - *Defect of Form*
 - **Invalid Proxy**

The Impediment of Ligamen

Definition

- **Can. 1085 §1. A person bound by the bond of a prior marriage, even if it was not consummated, invalidly attempts marriage.**
- **§2. Even if the prior marriage is invalid or dissolved for any reason, it is not on that account permitted to contract another before the nullity or dissolution of the prior marriage is established legitimately and certainly.**

Understanding distinction between Invalid and Illicit

- **Can. 10 Only those laws must be considered invalidating or disqualifying which expressly establish that an act is null or that a person is affected.**

Proving Invalidity with a Document

Probative Value of Documents

- **Can. 1540 §1.** Public ecclesiastical documents are those which a public person has drawn up in the exercise of that person's function in the Church, after the solemnities prescribed by law have been observed.
- **§2.** Public civil documents are those which the laws of each place consider to be such.
- **§3.** Other documents are private.
- **Can. 1541** Unless contrary and evident arguments prove otherwise, public documents are to be trusted concerning everything which they directly and principally affirm.
- **Can. 1542** A private document, whether acknowledged by a party or approved by the judge, has the same force of proof against the author or signatory and those deriving a case from them as an extrajudicial confession. It has the same force against those who are not parties to the case as declarations of the parties which are not confessions, according to the norm of can. 1536, §2.
- **Can. 1543** If the documents are shown to have been erased, emended, falsified, or otherwise defective, it is for the judge to decide what value, if any, must be afforded them.

Burden of Proof

- **Can. 1060 Marriage possesses the favor of law; therefore, in a case of doubt, the validity of a marriage must be upheld until the contrary is proven.**
- **Due Diligence**
 - **Can. 1584 A presumption is a probable conjecture about an uncertain matter; a presumption of law is one which the law itself establishes; a human presumption is one which a judge formulates.**
 - **Can. 1585 A person who has a favorable presumption of law is freed from the burden of proof, which then falls to the other party.**
 - **Can. 1526 §1. The burden of proof rests upon the person who makes the allegation.**
 - **§2. The following do not need proof:**
 - **1° matters presumed by the law itself;**

**Important to attempt to verify
parties' religious and marital history**

Further Prudential Considerations

- *Semblance of validity*

The Documentary Process in brief

- **Libellus/Documentation**
- **Citation**
- **Contestatio Litis**
- **Further “Instruction”**
- **Votum of Assessor**
- **Votum of Defender**
- **Decision of Judge**
- **Facultative Appeal**
 - **Can. 1687 §1.** If the defender of the bond prudently thinks that either the flaws mentioned in can. 1686 or the lack of a dispensation are not certain, the defender of the bond must appeal against the declaration of nullity to the judge of second instance; the acts must be sent to the appellate judge who must be advised in writing that a documentary process is involved.
 - **§2.** The party who considers himself or herself aggrieved retains the right of appeal.
 - **Can. 1688** The judge of second instance, with the intervention of the defender of the bond and after having heard the parties, will decide in the same manner as that mentioned in can. 1686 whether the sentence must be confirmed or whether the case must rather proceed according to the ordinary method of law; in the latter event the judge remands the case to the tribunal of first instance.

B. Lack of Form “Process”

The Requirement of Canonical Form

- **Can. 1108 §1. Only those marriages are valid which are contracted before the local ordinary, pastor, or a priest or deacon delegated by either of them, who assist, and before two witnesses according to the rules expressed in the following canons and without prejudice to the exceptions mentioned in cann. 144, 1112, §1, 1116, and 1127, §§1-2.**
- **Can. 1117 The form established above must be observed if at least one of the parties contracting marriage was baptized in the Catholic Church or received into it, without prejudice to the prescripts of can. 1127, §2.**

Consequences of Absence or Defect of Form

?? ??

**Is a Lack of Form “Process”
Required?**

According to the Universal Law

- DC art 5§ 3. However, in order to establish the free state of those who, while bound to observe the canonical form of marriage according to can. 1117, attempted marriage before a civil official or non-Catholic minister, it is sufficient to use the prematrimonial investigation in accordance with cann. 1066-1071

In the Archdiocese of Denver

This aspect of the prenuptial investigation
handled by.....

Canonical Conditions

- At least one party was baptized Catholic at the time of the wedding
- Form was not dispensed
- Form was not observed
- Marriage was not “sanated” later

Exception for Formal Act of Defection?

- **Only if the wedding occurred between November 27, 1983 (effective date of CIC 1983) and April 8, 2010 (effective date of Omnium in mentem)**
- **Easy way out of canonical form?**
- **Nope.**

Archdiocese of Denver's Lack of Form Process in brief

- **PQ**
- **LF Petition sent**
- **Requested Documents received**
- **Letter to Petitioner/Citation to Respondent**
- **Decree**

C. Pauline Privilege

Scriptural Origins

- I Corinthians 7: 12 – 16 “To the rest I say (not the Lord): if any brother has a wife who is an unbeliever, and she is willing to go on living with him, he should not divorce her;**13**and if any woman has a husband who is an unbeliever, and he is willing to go on living with her, she should not divorce her husband.**14**For the unbelieving husband is made holy through his wife, and the unbelieving wife is made holy through the brother. Otherwise your children would be unclean, whereas in fact they are holy.
- **15**If the unbeliever separates, however, let him separate. The brother or sister is not bound in such cases; God has called you to peace.**16**For how do you know, wife, whether you will save your husband; or how do you know, husband, whether you will save your wife?

Canonical Definition

- **Canon 1143 §1.** A marriage entered into by two non-baptized persons is dissolved by means of the Pauline privilege in favor of the faith of the party who has received baptism by the very fact that a new marriage is contracted by the same party, provided that the non-baptized party departs.
- **§2.** The non-baptized party is considered to depart if he or she does not wish to cohabit with the baptized party or to cohabit peacefully without affront to the Creator unless the baptized party, after baptism was received, has given the other a just cause for departing.

**A dissolution of a presumptively
valid bond**

Canonical Conditions

- Both spouses were non-baptized at the time of the wedding
- The Respondent remains non-baptized (prior to the Petitioner's marriage in the Church)
- The Petitioner was validly baptized or (prior to marriage in the Church) intends to be baptized in the Catholic Church or in another church or ecclesial community
- The non-baptized party has departed. This departure is verified when there is either a physical separation (the party does not wish to cohabit) or moral separation. Moral separation can include any of the following:
 - (contumelia Creatoris) a threat to the freedom of the baptized person to practice his/her religion
 - inducement to sin
 - unchaste conjugal life/adultery/polygamy
 - opposition to the Christian education of the children
 - physical or similar abuse
- The Pauline Privilege is not applicable, according to can. 1143 §2 if, after baptism, the baptized party gave just cause for the separation.

Just Causes for Separation?

- **Can. 1152 §1.** Although it is earnestly recommended that a spouse, moved by Christian charity and concerned for the good of the family, not refuse forgiveness to an adulterous partner and not disrupt conjugal life, nevertheless, if the spouse did not condone the fault of the other expressly or tacitly, the spouse has the right to sever conjugal living unless the spouse consented to the adultery, gave cause for it, or also committed adultery.
- **Can. 1153 §1.** If either of the spouses causes grave mental or physical danger to the other spouse or to the offspring or otherwise renders common life too difficult, that spouse gives the other a legitimate cause for leaving, either by decree of the local ordinary or even on his or her own authority if there is danger in delay.

Process in brief

- **Initial documents**
- **Collection of Evidence**
 - Concerning :
 - *non-baptism of both parties*
 - *the circumstances of the separation*
 - Petitioner Testimony
 - Witness Testimony
- **Interpellations**
 - The Respondent is asked about the parties' baptismal status, the separation and 2 additional questions: whether he wishes to cohabit peacefully without affront to the Creator and whether he wishes to receive baptism.
 - It is possible that the Interpellations may be unnecessary or imprudent if it is clear from other sources that the Respondent's responses to one or both questions will be negative (as in the case that the non-baptized person is already civilly remarried, or when it is evident that the responses would be negative and contacting the Respondent would harm the newly baptized spouse or the children of the marriage)
 - Key is verifying Departure
- **Investigation concludes with a Decree verifying the applicability of the Privilege**

Can. 1146 The baptized party has the right to contract a new marriage

with a Catholic party:

- **1° if the other party responded negatively to the interrogation or if the interrogation had been omitted legitimately;**
- **2° if the non-baptized party, already interrogated or not, at first persevered in peaceful cohabitation without affront to the Creator but then departed without a just cause, without prejudice to the prescripts of can. 1144 and 1145.**
- **Can. 1150 In a doubtful matter the privilege of faith possesses the favor of the law.**

D. Petrine Privilege/Privilege of the Faith/Favor of the Faith

A favor, not a right—a dissolution

Background

- Derived from the Pauline Privilege, the power of binding and loosing, Papal constitutions in mission territories, and the principle that only consummated, sacramental marriages are *intirnisically and extrinsically indissoluble*.
- Can. 1141 “A marriage that is ratum et consummatum can be dissolved by no human power and by no cause, except death.”
- Privilege developed over the course of the 20th century in response to increasing numbers of disparity of cult situations.

**Governed by norms outside the
Code of Canon Law: “Norms on the
Preparation for the Process for the
Dissolution of the Marriage Bond in
Favor of the Faith”**

Granted in favor of the faith of a Catholic (the Petitioner and/or the intended spouse) or even a catechumen (art. 8)

Canonical Conditions

- *Norms, Article 1:* “A marriage entered into by parties, of whom at least one is not baptized, can be dissolved in favor of the faith by the Roman Pontiff provided that it has not been consummated after both parties have received baptism.”
- *Norms, article 4:* “For the concession of the favor of the dissolution of the bond, at the moment it is given, it is required that:
 - there is no possibility of resuming the partnership of conjugal life
 - the petitioner was not exclusively or predominantly the culpable cause of the breakdown of their conjugal life, and that the party with whom the new marriage is to be contracted or convalidated was not at fault in provoking the separation of the spouses.

Process in brief

- **Initial Documents**
- **Citation of both parties, witnesses, intended spouse, defender of the bond**
- **Instruction**
- **Meeting with Pastor**
- **Vota : Instructor ,Defender of the bond,**

Section II: Less Common Defects of Consent

More Common of the Less Common

- **Force and Fear**
- **Dolus**
- **Determining Error**

Force and Fear

Canon 1103

- **“A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in order to be free from it.”**

Vatican II

- “It is only in freedom that man can turn himself towards what is good. The people of our time prize freedom very highly and strive eagerly for it. In this they are right. [Parents and teachers] should beware of exercising any undue influence, directly or indirectly to force [young people] into marriage or compel them in their choice of partners.” (*Gaudium et Spes*, Pastoral Constitution, December 7, 1965, Second Vatican Council, nn.17, 25. English Translation in Flannery, *Vatican Council II* 1:917, 956).

Force

- **Definition: Coercion to commit an action to avoid a threatened evil (paraphrasing L. Wrenn)**
- **Canon 125 §1 An act placed out of force inflicted on a person from without, which the person was not able to resist in any way, is considered as never to have taken place.**

Fear

- **Must be:**
 - **Grave**
 - **Extrinsic**
 - **Causative**
- **Can be unintentionally inflicted!**
- **Two Types:**
 - **Common**
 - **Reverential**

Elements of Proof

- **Direct Proof:**
 - Evidence of the objective force/cause of fear;
 - fear (subjective response to the external cause)
- **Indirect Proof: Aversion (strong indicator of coerced consent)**

Determining Error

Canon 1099:

- **“Error concerning the unity or indissolubility or sacramental dignity of marriage does not vitiate matrimonial consent provided that it does not determine the will.”**
- **Object of the Error**
 - **Unity (monogamy)**
 - **Indissolubility**
 - **Sacramentality**

**Manifested in Simulation or its own
ground?**

Canon 126:

- “An act placed out of ignorance or out of error concerning something which constitutes its substance or which amounts to a condition sine qua non is invalid. Otherwise it is valid unless the law makes other provision. An act entered into out of ignorance or error, however, can give rise to a rescissory action according to the norm of law.”

Elements of Proof

- **Similar to Simulation (prenuptial and postnuptial evidence)**
 - Beliefs, behaviors, extrajudicial statements, culture, family, etc.
- **Confession not required since does not involve a positive act of the will**
- **Need to identify:**
 - the “intransigence” of the error (not simple error)
 - relationship to marital consent (ie., to the will to contract *this* marriage)

Imposed Error/Dolus/Fraud

Canon 1098

- **“A person contracts invalidly who enters into a marriage deceived by malice, perpetrated to obtain consent, concerning some quality of the other partner which by its very nature can gravely disturb the partnership of conjugal life.”**

Intentional Deception

**Not necessarily committed by the
other party**

**Objective gravity of the quality
matters**

Qualities that Qualify

- **Rotal examples: Illness, pregnancy, sterility, homosexuality, virginity, addiction, moral character, etc.**
- **Rotal definition of a quality (in the context of another ground, error of quality)**
- **“[....] [I]t is clear that the qualities which identify a person as an individual cannot be generic, external, foolish, or transitory in time; they cannot be among the more or less changing ones, the optional or elective ones; rather it is necessary that they have a certain objectivity and firmness, just as the substance of the person, indeed of the ‘person as a totality,’ has and that they enter into that which constitutes the one so that from all of these qualities this person can be recognized as an individual” (*coram* de Lanversin, July 7, 1993 SRRDec 85:536).**

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Elements of Proof

- **Intentional, malicious deception by another person**
- **Aim of the deception is marriage**
- **Once above conditions met, invalidity arises from one spouse's error about an quality of the other spouse that has objective, negative implications on married life**
- **Deceit was successful**

Less Common of the Less Common

Ignorance

Canon 126

- “An act placed out of ignorance or out of error concerning something which constitutes its substance or which amounts to a condition sine qua non is invalid [. . .].”

Canon 1096

- **“§1. For matrimonial consent to exist, the contracting parties must be at least not ignorant that marriage is a permanent partnership between a man and a woman ordered to the procreation of offspring by means of some sexual cooperation.**
- **§2. This ignorance is not presumed after puberty.”**

Absence of Knowledge concerning substance of marriage:

- **permanence**
- **heterosexual consortium**
- **ordination to procreation**
- **sexual “cooperation”**

Elements of Proof

- **Culture, education, familial background**
- **maturity**
- **Motives for marrying**
- **Postnuptial behaviors**
- **Confession of party**

Error of Person

Canon 1097§1

- **“Error concerning the person renders a marriage invalid.”**

Error about the physical identity of the person—not qualities

- **Might happen in arranged marriages**
- **Unlikely in US society *but....***
- **Online relationships?**

Error of Quality

- **Canon 1097§2 “Error concerning a quality of the person does not render a marriage invalid even if it is the cause for the contract, unless this quality is directly and principally intended.”**

Definition of Quality in jurisprudence

- “[....] [I]t is clear that the qualities which identify a person as an individual cannot be generic, external, foolish, or transitory in time; they cannot be among the more or less changing ones, the optional or elective ones; rather it is necessary that they have a certain objectivity and firmness, just as the substance of the person, indeed of the ‘person as a totality,’ has and that they enter into that which constitutes the one so that from all of these qualities this person can be recognized as an individual” (coram de Lanversin, July 7, 1993 SRRDec 85:536).

Directly and Principally intended

- **Desired for its own sake and the most important reason for marriage**
- **Subjective importance of the quality**
- **The quality matters more than the person**
 - **Eg. Marrying the King**
 - **Marrying a Wealthy person**

Future Condition

Canon 1102 §1

- **“ A marriage subject to a condition about the future cannot be contracted validly.”**

**Prior to 1983, future conditions
might have been valid;**

- **Suspending the validity of the marriage**

Past or Present Condition

Canon 1102 §2

- **“A marriage entered into subject to a condition about the past or the present is valid or not insofar as that which is subject to the condition exists or not.”**
- **For one spouse, eliciting marital consent depends upon a fact having been true now or in the past.**
- **Essentially a “Sine qua non”:**
 - **Wanting marriage depends upon the fulfillment of the condition**

Elements of Proof

First Demonstrate the Condition existed:

- **Similar to simulation**
- **Motives**
- **Confession**
- **Pre-nuptial/Post-nuptial behavior**

**Next, demonstrate it was not fulfilled
in the past or the present.**

- **Important to distinguish conditions between circumstances that lead a person to marry.**
- **As with simulation there is strong willfulness**