

## Section I

### Principles of Marriage Nullity

### Church's Authority over Marriage

- In relation to the celebration
- In relation to the Faithful

### Authority over the Sacraments

- *Munus sanctificandi*
  - *Sacrosanctum concilium* 7:
    - “Rightly, then, the liturgy is considered as an exercise of the priestly office of Jesus Christ. In the liturgy the sanctification of the man is signified by signs perceptible to the senses, and is effected in a way which corresponds with each of these signs; in the liturgy the whole public worship is performed by the Mystical Body of Jesus Christ, that is, by the Head and His members.”

### *Mediator Dei*

- Pius XII, *Mediator Dei* 47:
  - “The entire liturgy, therefore, has the Catholic faith for its content, inasmuch as it bears public witness to the faith of the Church.”
  - [ . . . ] the liturgy is also a profession of eternal truths, and subject, as such, to the supreme teaching authority of the Church[ . . .].”

## Catechism of the Catholic Church

- CCC 1076: “The Church was made manifest to the world on the day of Pentecost by the outpouring of the Holy Spirit. The gift of the Spirit ushers in a new era in the “dispensation of the mystery” the age of the Church, during which Christ manifests, makes present, and communicates his work of salvation through the liturgy of his Church, “until he comes.” In this age of the Church Christ now lives and acts in and with his Church, in a new way appropriate to this new age. He acts through the sacraments in what the common Tradition of the East and the West calls “the sacramental economy”; this is the communication (or “dispensation”) of the fruits of Christ’s Paschal mystery in the celebration of the Church’s “sacramental” liturgy.
- CCC 1117-1118: “As she has done for the canon of Sacred Scripture and for the doctrine of the faith, the Church, by the power of the Spirit who guides her “into all truth,” has gradually recognized this treasure received from Christ and, as the faithful steward of God’s mysteries, has determined its ‘dispensation.’ Thus the Church has discerned over the centuries that among liturgical celebrations there are seven that are, in the strict sense of the term, sacraments instituted by the Lord.
- The sacraments are “of the Church” in the double sense that they are “by her” and “for her.” They are “by the Church,” for she is the sacrament of Christ’s action at work in her through the mission of the Holy Spirit. They are “for the Church” in the sense that “the sacraments make the Church,” since they manifest and communicate to men, above all in the Eucharist, the mystery of communion with the God who is love, One in three persons.”

## Marriage in the Sacramental Economy

- *Gaudium et spes* 48:
  - “Authentic married love is caught up into divine love and is governed and enriched by Christ’s redeeming power and the saving activity of the Church, so that this love may lead the spouses to God with powerful effect and may aid and strengthen them in sublime office of being a father or a mother. For this reason Christian spouses have a special sacrament by which they are fortified and receive a kind of consecration in the duties and dignity of their state.”
- Pius XII Allocution 1946:
  - “Even between non-baptized persons, marriages legitimately contracted are in the order of nature a sacred thing [...]”

## Authority over the Faithful

- *Munus regendi*
  - LG 27:
    - “Bishops, as vicars and ambassadors of Christ, govern the particular churches entrusted to them by their counsel, exhortations, example, and even by their authority and sacred power, which indeed they use only for the edification of their flock in truth and holiness, remembering that he who is greater should become as the lesser and he who is the chief become as the servant. This power, which they personally exercise in Christ’s name, is proper, ordinary and immediate, although its exercise is ultimately regulated by the supreme authority of the Church, and can be circumscribed by certain limits, for the advantage of the Church or of the faithful. In virtue of this power, bishops have the sacred right and the duty before the Lord to make laws for their subjects, to pass judgment on them and to moderate everything pertaining to the ordering of worship and the apostolate.” (emphasis added)
  - LG 22:
    - “For our Lord placed Simon alone as the rock and the bearer of the keys of the Church and made him shepherd of the whole flock. It is evident, however, that the power of binding and loosing, which was given to Peter, was granted also to the college of apostles, joined with their head. This college, insofar as it is composed of many, expresses the variety and universality of the People of God, but insofar as it is assembled under one head, it expresses the unity of the flock of Christ. In it, the bishops, faithfully recognizing the primacy and pre-eminence of their head, exercise their own authority for the good of their own faithful, and indeed of the whole Church, the Holy Spirit supporting its organic structure and harmony with moderation” (emphasis added).
  - CCC 880- 881:
    - “This pastoral office of Peter and the other apostles belongs to the Church’s very foundation and is continued by the bishops under the primacy of the Pope.”

## Baptism brings us into communion (LG 14):

- Canon 96 :
  - “By baptism one is incorporated into the Church of Christ and is constituted a person in it with the duties and rights which are proper to Christians in keeping with their condition insofar as they are in ecclesiastical communion and unless a legitimately issued sanction stands in the way.”
- Canon 205:
  - “Those baptized are fully in communion of the Catholic Church on this earth who are joined with Christ in its visible structures by the bonds of *the profession of faith, the sacraments and ecclesiastical governance*” (emphasis added).
- Cannot be sheep in a flock without a shepherd

## Judging invalidity

- Derived from power of Governance/Jurisdiction (Shepherding)
- LG 27:
  - “In virtue of this power, bishops have the sacred right and the duty before the Lord to *make laws for their subjects, to pass judgment on them and to moderate everything pertaining to the ordering of worship and the apostolate*”(emphasis added).
- Pius Allocation 1946
  - “For the Church, the primary source of authority is the express will of Christ [ . . . ] The power of the Church embraces the whole human person, internally, and externally for the attainment of the person’s supernatural destiny, so that the person is completely subject to the law of Christ [ . . . ] *the Church in the use of her power does not aim to enslave the human person, but to assure its liberty and perfection ,redeeming it from the weakness, errors, and aberration of the spirit and of the heart which sooner or later always end in dishonor and servitude*” (emphasis added).

## Historically

- The Church has always known a certain procedure to judge matters pertaining to the faithful both in Scriptures
- In Scriptures (Mt. 18: 15-18; 1 Cor 5: 1-13; 2 Thess 3:14; 1 Tm 1:20;5:19; Tit 1:13; 3:10)
- the Fathers, Councils, Gratian, etc.

## Scriptural examples

- MT 18: 15-18 “If your brother sins (against you), go and tell him his fault between you and him alone. If he listens to you, you have won over your brother. *If he does not listen, take one or two others along with you, so that ‘every fact may be established on the testimony of two or three witnesses.’ If he refuses to listen to them, tell the church. If he refuses to listen even to the church, then treat him as you would a Gentile or a tax collector. Amen, I say to you, whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven*” (emphasis added).
- 1 COR 5:1-13: It is widely reported that there is immorality among you, and immorality of a kind not found even among pagans - a man living with his father’s wife. [ . . . ] The one who did this deed should be expelled from your midst. *I, for my part, although absent in body but present in spirit, have already, as if present, pronounced judgment on the one who has committed this deed, in the name of (our) Lord Jesus: when you have gathered together and I am with you in spirit with the power of the Lord Jesus you are to deliver this man to Satan for the destruction of his flesh, so that his spirit may be saved on the day of the Lord*” (emphasis added).

## Meaning Invalidity/Nullity

- First, understand validity
- Canon 124 §1: “For the validity of a juridic act it is required that the act is placed by a qualified person and includes those things which essentially constitute the act itself as well as the formalities and requirements imposed by law for the validity of the act.
- Canon 1057 §1: The consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power is able to supply this consent.
- Canon 1134: “From a valid marriage there arises between the spouses a bond which by its nature is perpetual and exclusive.”

## Definitions

- **Technical**
  - Null and Invalid are used interchangeably in common parlance and the Code, but there are scholars that would argue that they have different meanings.
  - 1917 Code: Essential constituents of the act were missing
  - Cause and Effect definition (Gregory IX, Gasparri, Wernz, Coronata, etc)
  - The act does not produce its effect
  - Thus, Canon 1134: "From a valid marriage there arises between the spouses a bond which by its nature is perpetual and exclusive."
  - Likewise, an invalid marriage is one in which a perpetual and exclusive bond does not arise.
- **Colloquial**
  - Non-binding from the beginning
  - Something essential was lacking from the beginning
  - "Annulment" is too misleading
  - Marriage is invalid for a reason and only one reason is needed, though there may be multiple grounds of nullity

## What it doesn't mean

- **Nonexistent**
  - Lifelong bond may have been nonexistent, but the relationship, love, emotions, experiences, even daily commitment may have been real and certainly can't be erased.
  - People think about marriage as a relationship not a bond which comes into being through consent
- **Non-sacramental**
  - Sacrament = marriage between 2 baptized persons
  - Misconception: annulment says a marriage was non-sacramental
  - Object of a marriage trial is invalidity, not sacramentality
  - A negative decision about the marriage of two Muslims doesn't mean it is sacramental
- **Immoral**
- **Children are illegitimate**
  - if one party enters a marriage in good faith (not certain that the marriage is invalid), children are legitimate, regardless of the validity of the marriage
  - canonical definition of illegitimacy has no effect in the United States

## PRESUMPTION: MARRIAGE IS VALID!!!

- **Canon 124 §2: "A juridic act placed correctly with respect to its external elements is presumed valid."**
- **Canon 1060: "Marriage possess the favor of the law; therefore, in a case of doubt, the validity of a marriage must be upheld until the contrary is proven"**
- **This is why there is a process to declare a marriage invalid**

## Three ways a marriage is invalid:

- **Impediment**
- **Defect/Absence of Canonical Form**
- **Defective Consent**

## **Impediment (cc. 1083 – 1094)**

- **General Definition**
  - Renders a person unqualified to contract marriage validly (c 1073)
  - All impediments under the 1983 code are invalidating (diriment v. impediens)
- **Some from Divine/natural law; can't be dispensed**
  - E.g. consanguinity in the direct line, prior bond
- **Some ecclesiastical law; can be dispensed**
  - E.g. Disparity of worship/cult

## **Canonical Form (cc. 1108 – 1123)**

- **In facie ecclesiae**
- **2 witnesses**
- **Manifestation of Consent**

## **Defect of Consent (cc. 1095 – 1107)**

- **Consent is an act of the will (1057 §2)**
  - Involves the Intellect (perceptive/cognitive/deliberative)
  - Involves the Will (informed by the intellect toward the chosen good)
- **For consent to be true act of the will, rational faculties need to be functional, free, and informed.**
- **A marriage is invalid for a specific reason—a ground; defects of consent constitute the various ways that the intellect and the will may be defective**

## **Grounds of Nullity in brief**

### **Psychological (c. 1095)**

- **Lack of Due Reason**
- **the capacity for rational thought**
- **Lack of Due Discretion**
- **The deliberative faculty—practical judgment, critical evaluation, “internal freedom”**
- **Inability to Assume the essential obligations of Marriage**
- **Defect of the will itself; cannot take on what has been chosen; can’t live up to marriage (usually in relation to the demands of an interpersonal relationship)**

### **Ignorance (c. 1096)**

- **Lack of knowledge of the essentials of marriage**

### **Error (cc 1097 – 1099)**

- **Nuanced; sometimes it invalidates, sometimes it doesn’t**

### **Simulation (c. 1101)**

- **Willful exclusion of essential property/element (fidelity, permanence, openness to children )**
- **Of marriage itself (want the semblance but not the substance of marriage)**

### **Condition (c. 1102)**

- **Contracts can have conditions, validity depends upon the nature of the condition**

### **Force and Fear (c. 1103)**

- **Freedom of choice eliminated by external threat/force**

### **Invalid Proxy (c. 1105)**

- **In order to guarantee the authenticity of consent, certain requirements/safeguards for validity**

## **Section II**

### **Overview of the Formal Marriage Nullity Process**

## When Required?

- **To prove nullity of a marriage when the Documentary Process (c. 1686 – 1688) or Lack of Form “process” is not applicable:**
  - Invalidation of marriage can sometimes be proved by documents
    - Impediment
    - Defect of Form
    - Lack of valid mandate of proxy
    - Lack (absence) of Form
- **Essentially, formal process required, then, for *defects of consent***

## Fundamental Principles

## Authority

- **Can. 1401.1 “By proper and exclusive right the Church adjudicates cases which regard spiritual matters or those connected to spiritual matters”**
- **C. 1671: Marriage cases of the baptized belong to the ecclesiastical judge by proper right**

## Contentious Judicial Process

- **Petition and Citation**
- ***Dubium* is formulated and resolved by judgment**
- **Different sides (parties, advocates, defender)**
- **Proceeds by decrees and direction of the Court**
- **Governed by established, indispensable procedural law**
- **Seeks to protect rights, marriage**
- **Jurisdiction/competence**



## Investigation of fact not moral merit or character

- Not a dispensation or favor

## Rooted in Justice and Truth

## A right of the faithful and duty of ecclesiastical officials

- Can. 221 §1. The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law.
- §2. If they are summoned to a trial by a competent authority, the Christian faithful also have the right to be judged according to the prescripts of the law applied with equity.
- Can. 1400 §1.1. “The object of a trial is the pursuit or vindication of the rights of physical or juridic persons, or the declaration of juridic facts”
- DC Art. 118 – § 1. “Once a *libellus* has been exhibited, the Judicial Vicar must constitute a tribunal as soon as possible by his decree in accordance with artt. 48-49” (emphasis added).
- Petition can only be rejected for very specific reasons, subject to strict interpretation.

## Right of Defense

- C 221 §1. The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law.
- §2. If they are summoned to a trial by a competent authority, the Christian faithful also have the right to be judged according to the prescripts of the law applied with equity.
- Right to a citation (Adam and Eve- Genesis 3) and fair trial
- Even the Devil, as the medieval canonists would say, should have his day in court

## JP II. Allocution (1989)

- “One cannot conceive of a just judgment without the contention (*contradittorio*), that is without the concrete possibility granted to each party in the case to be heard and to be able to know and contradict the requests, proofs, and deductions adopted by the opposing party or *ex officio*.”

## The right to be heard, to know, to contradict

- Facilitated by a) Publication of the Acts and b) Publication of the Sentence: a) Knowledge of the foundation of the decision and b) the contents/motivation of the decision
- Also facilitated by written notifications and deadlines (*fatalia legis*)

## Tempus utile

- c 201 §2 “§2. Useful time is understood as that which a person has to exercise or to pursue a right, so that it does not run for a person who is unaware or unable to act.”
- NOT business days!! 15 days is 15 days, not three weeks. However, if the deadline falls when tribunal is closed, next day that the tribunal is open.
- Burden on the party to prove that a person unaware or unable to act.

## Denial of the Right of Defense

- De facto defense is not required: a party can renounce right of defense
- Can. 1620.7 A sentence suffers from the defect of irremediable nullity if the right of defense was denied to one or the other party;

## Officials in brief

- Defined by what they do, their duties
- Important to understand how the process works and who is responsible
- Necessary to convey to the parties

## Judge/Court

- Responsibilities
  - Formulating the doubt (grounds/contestatio litis)
  - Directing the Investigation (instruction)
  - Resolving the doubt (sentence)
  - On a collegiate court, the *Ponens* is the key figure, especially in proposing a draft of the decision to the other judges

## Auditor

- Responsibilities
  - c. 1428.3: “It is for the auditor, according to the mandate of the judge, only to collect the proofs and hand those collected over to the judge.”
  - In Denver, Auditor acts as liaison between the Court and the parties/advocates

## Notary

- Responsibilities
  - Can. 484 It is the duty of notaries:
    - 1/ to draw up the acts and instruments regarding decrees, dispositions, obligations, or other things which require their action;
    - 2/ to record faithfully in writing what has taken place and to sign it with a notation of the place, day, month, and year;
    - 3/ having observed what is required, to furnish acts or instruments to one who legitimately requests them from the records and to declare copies of them to be in conformity with the original.
  - DC Art. 62 – § 1. A notary must take part in every process, so that acts (*acta*) which have not been signed by the same are null (cf. can. 1437, § 1).
  - § 2. Acts which notaries draw up in the exercise of their function, having observed the formalities required by law, warrant public trust (cf. cann. 1437, § 2; 1540, § 1).

## Notaries are crucial

- Guarantors of the integrity of the process
- Present at depositions
- **Denver: all of the non-canonists appointed as notaries; draft decrees, send notices, maintain the files.**

## Defender of the Bond

- **Responsibilities**
  - Canon 1432: “the defender of the bond is bound by office to propose and explain everything which reasonably can be brought forth against nullity or dissolution.”
- **Counterpart to the Advocate for the Petitioner;**
- **Has same rights as the party (DC art. 59)**
- **Can never speak *pro nullitate***
- **Operates within the search *pro rei veritate***

## Promoter of Justice

- **Can. 1430 A promoter of justice is to be appointed in a diocese for contentious cases which can endanger the public good and for penal cases; the promoter of justice is bound by office to provide for the public good.**
- **Acts like the Petitioner; rarely involved in marriage nullity cases**
- **Like Defender, has the same rights as parties (DC art 59)**

## Parties

- **Active (*actor*) and passive subjects (*conventus*) of trial**
- **Those with a personal, legal interest in the outcome in the trial**
- **It affects them personally**
- **They have standing in the trial, can exercise rights**
- **In a marriage, it is the Petitioner and the Respondent, but guardians, advocates, and procurators assist parties and share some procedural rights with them**

## Petitioner

- Catholic or non-Catholic—even non-Christian (if the freedom of a Catholic is at stake): *DC art. 3 §2*
- (Besides Promoter of Justice) only one of the parties to the marriage

## Respondent

- The other spouse
- Equal rights in the process, especially the right of defense.

## Guardian

- For those incapable of standing trial (mentally impaired partially or totally)
- With the same procedural rights as a party, acts as a proxy for the party

## Advocate

- DC Art. 101 – § 1. Without prejudice to the right of the parties to defend themselves personally, the tribunal is bound by the obligation to provide that each spouse is able to defend his rights with the help of a competent person, most especially when it concerns causes of a special difficulty.
- DC Art. 104 – § 1. The advocate and procurator are bound according to their function to protect the rights of the party and to keep the secret of office.
- § 2. “[ . . . ] those things pertaining to defense are always reserved to the advocate.”
- Advisor to a party
- More info later

## Procurator

- **DC art 104 § 2. “It pertains to the procurator to represent the party, to present the libellus or recourses to the tribunal, to receive its notifications, and to inform the party of the state of the cause;”**
- **Legal representative**
- **Equivalent to the party**
- **In other tribunals, often joined with advocacy.**

## Procedure

## Introduction (of the Cause)

- **Art. 115 – § 1. One who wishes to challenge a marriage must present a libellus to a competent tribunal (cf. can. 1502).**
  - **Art. 116 – § 1. A libellus by which a cause is introduced must:**
    - 1o express the tribunal before which the cause is to be introduced;
    - 2o describe the object of the cause, that is, specify the marriage in question, present a petition for a declaration of nullity, and propose—although not necessarily in technical terms—the reason for petitioning, that is, the ground or grounds of nullity on which the marriage is being challenged;
    - 3o indicate at least in a general way the facts and proofs on which the petitioner is relying in order to demonstrate what is being asserted;
    - 4o be signed by the petitioner or his procurator, indicating also the day, month and year, as well as the place in which the petitioner or his advocate live, or declare they reside for the purpose of receiving acts;
    - 5o indicate the domicile or quasi-domicile of the other spouse (cf. can. 1504).
- § 2. There should be attached to the libellus an authentic copy of the marriage certificate and, if need be, a document of the civil status of the parties.

## Admission of the *Libellus*

- **Art. 118 – § 1. Once a libellus has been exhibited, the Judicial Vicar must constitute a tribunal as soon as possible by his decree in accordance with artt. 48-49.**
- **Court then must decide whether to admit the Libellus = acceptance of case**
- **law favors the right to petition—rejection of libellus is rare. Only substantive reasons (pertaining to the merits): c. 1505.4**
  - certainly clear
  - *from the libellus itself*
  - the petition lacks *any* basis
  - *no possibility* that any such basis will appear through a process
- **Examples and Practical Considerations (next month)**

## Citation

- DC Art. 126 – § 1. In the decree by which the *libellus* of the petitioner is admitted, the *praeses* must summon or cite to the trial the respondent party, stating whether he must respond in writing or, at the request of the petitioner, appear before the tribunal for the concordance of the doubt(s).
- DC Art. 127 – § 1. The *praeses* or *ponens* is to see that the decree of citation to the trial is communicated immediately to the respondent party and at the same time made known to the petitioning party and the defender of the bond (cf. cann. 1508, § 1; 1677, § 1).
- Start of the process: DC Art. 129 – “When the citation has been legitimately communicated to the respondent party or that same party has appeared before the judge to participate in the cause, the instance begins to be pending and becomes proper to the tribunal, otherwise competent, before which the action was instituted (cf. can. 1512, nn. 2-3, 5).”

## Crucial moment to activate or renounce right of defense

- By positive affirmation
- Declaration of absence

## Contestatio Litis

- “Formulation of the doubt”
- Art. 135 – § 1. When fifteen days have passed from the communication of the decree of citation, the *praeses* or *ponens*, unless one or another of the parties or the defender of the bond has requested a session for the determination of the formulation of the doubt, is to set by his decree within ten days the formulation of the doubt or doubts, taken from the petitions and responses of the parties (cf. can. 1677, § 2).
- § 3. The formulation of the doubt must determine by which ground or grounds the validity of the marriage is being challenged.

## Other info

- Decreed by judge but relies on the parties information;
- Can be appealed
- Multiple grounds permitted

### **Crucial moment in the *direction* of the trial**

- Art. 136 – Once the formulation of the doubt has been set, it cannot be validly changed unless by a new decree, for a grave reason, at the request of a party, with the other party and the defender of the bond having been heard and their reasons considered (cf. can. 1514).

### **Instruction**

- **Evidentiary Phase: Collecting evidence**
- **Meat of the Process: Witnesses, depositions, testimony, expert reports**
- ***Proving the case hinges on this***

### **Practical considerations**

- **At the moment, mailed questionnaires for witnesses; in the future moving toward depositions for everyone**
- **Almost all cases involving psychological grounds (c. 1095) will involve expert report or interview**
- **In other sessions, we'll address the proofs.**

### **Publication of the Acts**

- **Concept**
  - Art. 229 – § 1. After the proofs have been acquired, the judge is to proceed, before the discussion of the cause, to the publication of the acts (cf. can. 1598, § 1).
  - § 2. The publication of the acts is carried out by a decree of the judge by which the parties and their advocates are given the faculty of examining the acts.
  - § 3. Therefore the judge by the same decree must permit the parties and their advocates to examine the acts not yet known to them, without prejudice to art. 230, at the chancery of the tribunal (cf. can. 1598, § 1)



## Violation of Publication

- Art. 231 – The violation of the prescription given in art. 229, § 3, brings with it the remediable nullity of the sentence, but in a case in which the right of defense was actually denied it brings irremediable nullity (cf. cann. 1598, § 1; 1620, n. 7; 1622, n. 5).

## Confidentiality

- **Oath a prerequisite**
  - Art. 232 – § 1. Before the examination of the acts, the judge can require the parties to take an oath or, as the case may be, a promise, that they will use the knowledge gained through this inspection of the acts only for their legitimate defense in the canonical forum (cf. can. 1455, § 3).
  - § 2. But if a party refuses to take an oath or, as the case may be, make a promise, he will be considered to have renounced the faculty of examining the acts, unless particular law establishes otherwise.
- **Excluded Proofs**
  - Art. 230 – In order to avoid very serious dangers, the judge can decree that some act is not to be shown to the parties, with due care taken however that the right of defense remains intact (cf. can. 1598, § 1).
  - Art. 234 – If the judge thinks that in order to avoid very serious dangers some act is not to be shown to the parties, the advocates of the parties, having first taken an oath or made a promise to observe secrecy, may study the same act.

## Advocates rights to the Acts

- Can read the acts at any time (DC 159)
- At judge's discretion can receive a copy at publication
- Art. 235 – § 1. The judge can hand over a copy of the acts to advocates requesting this (cf. can. 1598, § 1).
- § 2. The advocates however are bound by the serious obligation not to hand over a copy of the acts, whether whole or in part, to other persons, including the parties

## New proofs permitted

**Art. 236 – When the publication of the acts has been completed, the parties and the defender of the bond, in order to complete the proofs, can propose others to the judge; when these have been acquired, if the judge thinks it necessary, it is again an occasion for the decree mentioned in art. 229, § 3 (cf. can. 1598, § 2).**

## Conclusion

- **Definition**
  - Art. 237 – § 1. When all those things pertaining to the production of the proofs have been completed, it is time for the conclusion in the cause (can. 1599, § 1).
  - § 2. This conclusion takes place either when the parties and the defender of the bond declare that they have nothing else to be added, or when the useful time period set by the judge for proposing proofs has elapsed, or when the judge has declared that he considers the cause to have been sufficiently instructed (cf. can. 1599, § 2).
- **No instruction after conclusion unless there are serious reasons (see. c 1600 for list)**

## Discussion

- **Definition**
  - Art. 240 – § 1. When the conclusion in the cause has taken place, the judge is to set a suitable period of time for the preparation of the summary of the acts, if needed, and for exhibiting defenses and observations in writing (cf. can. 1601).
- **Procedure and Briefs (discussed in another session)**

## Definitive Sentence

- **Resolves the *dubium***
- **Elements**
  - Introduction
  - Species Facti
  - In Iure
  - In Facto
  - Dispositive (Resolution)

## Publication of the Sentence

- **Definition**
  - Can. 1614 The sentence is to be published as soon as possible, with an indication of the means by which it can be challenged. It has no force before publication even if the dispositive part was made known to the parties with the permission of the judge.
  - Can. 1615 Publication or communication of the sentence can be done either by giving a copy of the sentence to the parties or their procurators or by sending them a copy according to the norm of can. 1509.
- **Denver: Parties invited to read a copy of the sentence and can receive a copy in person.**
- **Purpose**
  - Activates the right to appeal and sets in motion (for an affirmative) 2nd concordant sentence

## Second Instance

- **Affirmative decisions in regard to marriage nullity must be reviewed by a higher court (Philadelphia or Roman Rota): known as second instance**
- **Basic principle: 2 conforming, affirmative decisions (same parties, same marriage, same grounds, same reasoning) necessary for right to a new marriage**
- **Possibility of equivalent conformity**

## Ratification *ex officio*

- **Only for affirmative decisions**
- **Philadelphia is the normal appellate court**

## Ordinary Process

- **If appellate court cannot ratify.**
- **Appeal**

## Appeal

- **Both parties and Defender have the right to appeal, irrespective of ex officio review**
- **Appellate court considers appeals when deciding whether to ratify**
- **Appeal challenges the substance of the decision**
- **Appeal of a Negative always requires an ordinary process**

### **Complaint of nullity**

- **Challenges the procedures**

### **Life after 2 conforming decisions?**

- **Possible vetitum or monitum**
- **Otherwise, a person considered free to marry, to seek religious life, priesthood**

### **Aggrieved parties**

- **Marriages never become *res iudicata*, but there must be new and grave proofs or arguments to petition *same case* to a higher tribunal (Rome) (c 1643-1644)**

### **Life after Negative decision**

- **Incompetence by reason of grade (c. 1440); can't petition on the same grounds concerning the same marriage to a 1<sup>st</sup> instance tribunal, only to the higher tribunal**
- **On different grounds, nullity of a marriage can be petitioned in 1<sup>st</sup> instance**

## Section III

### Role of the Advocate

### In general

- In *Dignitas connubii*: An advisor focused on defense of a party's rights and interests; distinct from the procurator

### The Right of Defense

- Discussed above
- When acting as advocate only (not a procurator) the advocate mostly *assists* the party, whereas the party himself primarily speaks for himself
- 2 major exceptions: during a deposition and during the discussion (briefs)

### Pius XII - Allocution to the Roman Rota (1944)

- “[ . . . ] All those who have part in the trial, without exception must make their action converge to the one end: *pro rei veritate!*”
- “ But in the unity of the end, the direction toward it, and the obligation of subordination to it in the matrimonial trial must be considered and pondered with particular attention in their relation to the legal counsellor or advocate, who represents the plaintiff of the defendant or the petitioner, because no one is more exposed than the advocate to the danger of losing sight of them.”
- “In this multiple activity, advocates may well exert effort to win the case for their clients; but in all their action they must not withdraw themselves from the one common final end: the discovery, ascertainment, and legal assertion of the truth.”

### **Delicate balance**

- between promoting the interest of the party and the interests of truth and justice.
- A prohibition on immoral practices certainly but also a single-minded approach to marriage nullity process
- A Christian ethics and conscience must imbue this service.
- Can. 223 §1. In exercising their rights, the Christian faithful, both as individuals and gathered together in associations, must take into account the common good of the Church, the rights of others, and their own duties toward others.

### **For the Petitioner or for the Respondent**

- same ultimate goal, but different
- neither fatalism or opportunism.
- Defender of the Bond and Respondent may be in effect on the same side; their presentation of truthful arguments for validity in humility is appropriate. Neither a Respondent nor his advocate is required to act as judge and not participate if he suspects the marriage is invalid.
- Both sides' presentation of the truth as they perceive helps the Court identify the whole truth.
- If both parties are in agreement in seeking declaration of nullity, one advocate can serve for both (DC 102)

### **Importance of Respondent's advocate**

- To the parties
- In the process

### **Professionalism of an Advocate**

- Change in mentality concerning "pastoral"/moral issues
- Importance of listening to the parties
- Helps maintain the impartiality of the tribunal

## Specific Responsibilities

## Drafting the *Libellus*

- for the Petitioner's signature (and with his input!)
- whole session on this
- basically:
- condensing the Petitioner's initial "testimony" into a succinct summary of the best grounds and proposed proofs
- All initial documentation submitted (marriage, divorce, witness lists etc.)

## Responding to Citation (mostly Respondent's Advocate)

- Opportunity to object to grounds proposed by Petitioner
- Helps the court narrow its focus
- Key opportunity to engage a Respondent

## Formulation of the Doubt

- As above in relation to grounds
- Possibility to advise concerning appeal the decision to set grounds (10 days (tempus utile) to do so)

## **Instruction**

- **Qualified Right to be present during examinations (DC 159 §1 1°)**
- **Can be restricted**
- **Proposing Questions**
- **Aim:**
- **help the Court uncover the truth of the matter**
- **assist and defend the party (e.g. against unfair questions)**
- **Not a courtroom drama**
- **Truth and the party are together served by a good instruction.**
- **Judge arbiter of all proofs and questions**

## **Participation at Publication of the Acts**

- **Advising the party on deficiencies in the Acts, strength of the case**
- **Help propose new proofs, if needed**
- **Advising on how to succinctly and effectively rebut adverse testimony and clarify inconsistencies.**
- **Help parties avoid repetition in responding**

## **Participation in the Discussion of the Case**

- **Writing a brief on behalf of one's client.**
- **At times, countering the Defender of the bond.**
- **Defender has the last word**

## **Response to Publication of the Sentence**

- **Interpreting the sentence.**
- **Advising whether to appeal**
- **Help drafting the appeal**



## **Second Instance**

- **If admitted to Ordinary Process, request admission as advocate**
- **If party opposed after 2 conforming decisions, advising on possibility of new and grave proofs or arguments.**
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