

UNIVERSITY



Theologia moralis IV
De matrimonio (Engl. Essay)

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No. 4B
64 Pages

Price
0-3-0

by a Catholic but lived all his life outside the Church are both considered as baptized in the Church and are subject to the impediment. (Note that the second of these two is expressly exempted from the law of Canonical form of marriage. cf. 1.)

cf.

For dispensation to be granted from this impediment, the conditions are: i) There can be no danger of perversion to the Catholic party, ii) Guarantees should be given as in impediment for mixed religion cf. and iii) There should be grave reasons for contracting the

cf

it is required to contract

if a mixed marriage

marriage. Dispensation given without guarantees is invalid. If marriage already contracted without dispensation, recourse must be had to the Holy See.

(Nothing special in India)

5 Order: Clerics in major orders cannot validly contract marriage.

This impediment arises from ecclesiastical law, but and applies without any restriction to the whole of the Latin Church.

6 Solemn Vow Religious profession:

marriage is invalid when attempted by a religious of who is professed of solemn vows, or even of simple vows, if by particular disposition of the Holy See, this annulling force is annexed to simple vows.

This is an impediment is solely of ecclesiastical law.

7 Abduction:

No marriage is valid between an abductor and a woman abducted with a view to marriage so long as she remains in the power

of the abductor.

For this impediment to arise the following conditions are necessary: i) The abduction should be with a view to marriage ii) The abduction should be contrary to the will of the woman. That it is merely contrary to the will of the woman's parents does not cause the impediment, even if the woman be a minor. iii) The woman remains under actually under the power of the abductor.

~~It is not required that the woman should be in the house of~~ Impediment exists even if she be in her own house or in that of a third person, but is subject to the power of the one who wishes to marry her. Impediment does not cease until she is left at liberty, and the even

Even if the woman changes her mind, consents to marry, the

Crime of ~~invalid~~ marriage is invalid between those who are accomplices in adultery or murder of consort with certain limitations. It may arise in any of the following cases they have

Two of a man and woman

- a) When two persons commit adultery and have either promised to marry or attempted a civil marriage (*neuro fabante*)
- b) When they have committed adultery, and one of them, without knowledge of the other, has committed murder of the consort

There can be no valid marriage between

- a) Those who during the same legitimate marriage, have committed adultery with and promised marriage to each other, or attempted it, even by a merely civil act (*promissio cum adulterio*)

b) Those who during the same legitimate marriage have committed adultery together and one of them conjugicide (uno machinante et adulterio.)

c) Those who, even without adultery, caused the death of a partner by mutual cooperation, either physical or moral (utroque machinante absque adulterio)

For the impediments to arise in a) adultery should be consummated and should be formal on both sides; that is, both should be aware that of their act is an injury to the marriage bond. ~~Of course in being adultery the marriage of the fact that one of the parties two persons is married should be known to both.~~

The promise of marriage should be real, uncond not fictitious, and unconditionally and mutually expressed, and should be with a view to its being contracted after the death of the consort.

In b) Both adultery and promise of marriage or adultery and attempted marriage should be contrary to the rights of one and the same existing bond.

In c) Adultery should be consummated and formal as in a)

Conjugicide (murder of consort) implies that death actually ^{occurred} followed and one of the parties to the adultery was the physical cause (e.g. giving poison) or moral cause (persuading ^{e.g.} on the doctor to give wrong medicine) of the death.

In c) Both should have conspired for the

Death of the Consort.

The impediment of crime may be multiple e.g. in a) when both parties to the adultery are married. Ignorance of the impediment is no excuse, and the marriage would still be invalid, unless ~~dispensation~~ dispensation is obtained.

only with great difficulty
Cully p. 1

But the Church does not readily grant dispensation, especially if the impediment is futile, and still more so if the murder of the consort has been committed.

a) Consanguinity

This impediment exists between persons related to one another by carnal descent, and affects illegitimate offspring as much as legitimate offspring.

The following table will explain.

The ~~various~~ manner of computing consanguinity may be explained with reference to Table i

A, B, C, & D are in direct line; so also are A, E, F & G.

B and C are in collateral line.

A and B are related in first degree in direct line

(the degree order of the degree

leaving the number of intervening generations.

A and G are in 3rd degree colla ~~of~~ in direct line.

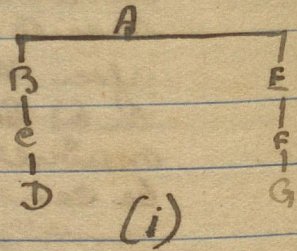
B and C are in first degree in collateral line.

D and G are in 3rd degree in collateral line.

B and G are in 3rd degree in collateral line

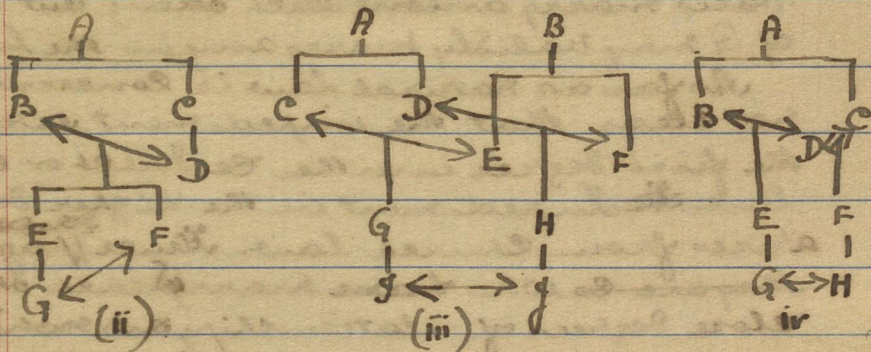
(leaving the first

Note: The number of generations in the longer line - A to G - determines the degree of relationship) ~~or~~



How in Civil Law

Multiple Consanguinity may arise in the three ways shown in tables ii, iii and iv



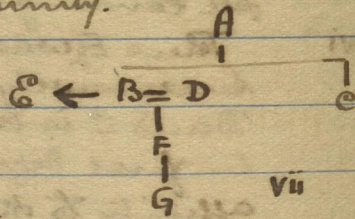
ii shows the case of near relatives marrying. Both are in 2nd degree ~~to~~ though the common stock. iii shows the case when two persons related to each other (C and D) marry two others related to each other though in a different stock. iv shows the case of the same person D marrying (successively) two who are blood relations of each other.

Multiple consanguinity where it exists should be mentioned when dispensations are sought. An easy practical rule to be followed when examining whether the existence of impediment in a proposed marriage and when petitioning for dispensation is to draw up the genealogical tree of both parties.

The impediment of consanguinity according to canon law is as follows: marriage is invalid ~~into~~ between persons who are related to each other (1) in any degree of consanguinity in the direct line (2) or in the first, second or third degrees of consanguinity.

and blood relations of the other in first or second degree of direct consanguinity.

Thus in table VIII C who lives in concubinage with B or married B invalidly cannot validly marry A, F or G; but can validly marry E.



The impediment is solely of ecclesiastical origin. 1) If C and B are ~~not~~ baptized the impediment does not arise, nor if C and B are ~~not~~ unbaptized, nor if both receive baptism after discontinuing their state of invalid marriage or public concubinage. 3) If both ~~are~~ ^{receive} baptized and the concubinage continued, impediment arises. 4) If only one is baptized the impediment probably does not arise.

12 Spiritual relationship

Spiritual relationship as understood in Church law arises by baptism and is a diriment impediment for marriage between a) ^{the} baptizer and the baptized b) the godparent and the baptized.

Spiritual relationship arises from all valid baptism, whether solemnly or plenary conferred, but not from conditional baptism. The baptizer should be called to the impediment does not arise if the baptized ~~is~~ a non-baptized person, nor if the godparent was not one who could validly fulfil that office. 1 et

13 Legal adoption:

For countries in which the Civil Code makes legal adoption a diriment impediment to marriage, Church law enforces

the same impediment for baptized persons.

In Indian Civil Code legal adoption is not an impediment to marriage.

Impedient impediments

*) The following three impediments make marriage illicit, but not invalid

1) Simple vow of charity

A simple vow of charity taken privately or in a religious ~~sect~~ order or congregation makes subsequent marriage illicit; so also ~~do~~ the vows of ^{keeping} virginity, of not marrying, of receiving sacred orders, or of embracing the religious life.

If a person illicitly contracts marriage notwithstanding the vow, and has not obtained dispensation from the vow, the obligation of the vow continues. Thus if the vow be of charity, he may not ask for marital dues, but should give when asked. [If the vow be of virginity, when once virginity has been lost by a consummated venereal act, the vow lapses.] After the death of the partner the person under vow ~~is~~ becomes once more bound to keep the vow, to receive sacred orders or not to marry again, and so on, as the case may be.

2) Legal adoption:

This is similar to (cf 13¹² diriment impediment given above) For countries in which legal adoption is an impedient impediment to marriage, Church law enforces the same for baptized persons.

3) Mixed religion. (cf 4¹² Diriment Impediment given above) It is illicit for a Catholic to marry a baptized non-Catholic.

In so far as
Mixed marriages give rise to are a proximate
danger to the faith of the Catholic party and offspring
and give occasion for participating in the religious
rites of non-Catholics, this impediment is based on
divine law. Even where this danger is absent, mixed
marriage remains gravely illicit in virtue of posi-
tive legislation of the Church.

Dispensation from the impediment may be
granted by the Holy See or those to whom the faculty
has been delegated. Dispensation will not be granted
unless there are very grave reasons urging the
marriage 2) guarantees the non-Catholic party
gives guarantees that the Catholic party will be
allowed free exercise of religion and that all
offspring will be baptized and educated as Catholics,
and 3) there is a moral certainty that the guarantees
will be kept by ~~the~~

Parish priest may not assist at ^{a mixed} the marriage
unless dispensation has been obtained. Dispensation
is invalid unless the guarantees have been given by
the non-Catholic party. If marriage has been
already contracted without canonical form, and
grave reasons urge that ~~the~~ marriage should be
consolidated, the non-Catholic party should
give guarantees at least as regards the baptism and
upbringing of offspring to be born in future. If ~~no~~ the
guarantees of non-Catholic party still refuses to
give guarantees, ~~however~~ the marriage may
not be consolidated without having recourse to the
Holy See.

If the contracted marriage was valid, but
without dispensation, and the non-Catholic party
still refuses to give the guarantees, the Catholic

4

party should be excluded from legitimate ecclesiastical acts of $\&$ and from sacramentals; but may be admitted to the sacraments if sincerely repentant.

$\&$. It is gravely illicit to ^{approach} a non-Catholic minister to perform the marriage ceremony either before or after his marriage in presence of the Catholic priest. ^{When} the parish priest knows that the parties ^{intend doing} this, he should refuse assistance.

(which would not be the case in India) $\&$ But if it is not forbidden to notify the non-Catholic minister as civil registrar, it is not forbidden to have the marriage registered by him.

to come earlier Consent of parents.

not written of Davis p 100.

Dispensation from impediments

In what follows we treat only of ecclesiastical impediments, since those arising from the divine natural law cannot be dispensed from.

The persons who can dispense are the Pope, Ordinaries and priests.

- The Pope can dispense from all ~~the~~ impediments validly, ~~and~~ and also licitly if there is just reason. This ~~he~~ he exercises this power through
- 1) ^{The} Sacred Office (for impediments of mixed marriages)
 - 2) Sacred Congregation of the Sacraments (for all that pertains to the external forum)
 - 3) Sacred Penitentiary (for all that pertains to the internal forum)
 - 4) The Sacred Congregation of the Propaganda (for all petitions from Mission Countries)

The power of dispensation enjoyed by others beside the Pope is distinguished as delegated and ordinary. The ^{extent of the} delegated power for each person depends on the special faculties he has received from the Holy See. The ordinary power is defined by the Canon law, and is the is as follows

1) Ordinaries have power to dispense

(C) In doubt about the fact of an impediment, provided it be a case in which the Holy See would dispense

(A) In urgent cases: that is, the impediment ^{becomes} ~~is~~ discovered ^{known} only when everything is ready for the marriage, there is no time to have recourse to the Holy See, and there is danger in delay.

Also when there is urgent need of consolidating a marriage.

Two impediments are excepted from this faculty: viz. ~~the~~ ^{the} ~~receiving~~ ^{receiving} from the order of priesthood, and from affinity in the direct line after a consummated marriage. For mixed marriage the guarantee must be given obtained before dispensation is given

(b) ~~When one~~ For consolidating marriage when one of the parties is in danger of death if such consolidation is necessary for peace of conscience or for legitimizing the offspring.

By the very fact of the dispensation offspring is legitimized unless it be the born of adultery or adulterous fornication.

2) Parish priests can dispense their own subjects in cases ~~1~~ and ~~2~~ given above, but with certain restrictions

(a) Urgent cases: but only if the impediment ^{is urgent} be ~~hidden~~ ^{known} only to a few who will

not be make it public, and if ~~off~~ the bishop cannot be approached either ^{because} ~~due~~ to lack of time or because of danger of violating sacramental seal.

b) In danger of death: Only if the bishop cannot be approached for either of the two reasons in a.

cf For this case (danger of death) the priest who assists at the marriage (cf) enjoys the same faculty.

3) Confessors: ^{In ordinaries} The power of ~~parish priests is~~ enjoyed for cases a and b is also enjoyed by all confessors, but subject to the restriction that the dispensation is valid only on the internal form, must be granted only the act of sacramental Confession, and ^{only if} not unless the bishop cannot be approached.

Causes for dispensation

The following are called Canonical Causes since they are usually accepted as sufficient in the Roman Courts, ~~and may be~~: Place of domicile very circumscribed; advancing age of woman; defect of means or competence for a different marriage; legal proceedings pending or likely to arise; suspected family ties; sexual intercourse or the danger thereof; defamation of the woman; convalidation of an invalid marriage; danger of marriage ~~act~~ without the priest's assistance; removal of grave scandal; excellence of merits of the petitioners.

~~Causes that must~~

The petition should as a rule be sent to the ordinary, who will grant the dispensation

if he has the faculty for it or send the petition to ^{otherwise} the Holy See. However, ^{petition by the bishop entail} if there is danger of the sacramental or professional secret being violated, the petition ^{should} be sent directly to the Sacred Penitentiary.

The petitions to the Holy See for the external forum should contain ^{full} names of the petitioners, their diocese, the precise nature of the impediment, the degree of relationship, the circumstances of the marriage already contracted, the social condition of the parties, that is, as to whether the customary tax may be levied or not. These details are required ex stylo Curial; and if these are not expressed, dispensations for what are called major impediments are invalid. The major impediments are all except the five following:

- 1) Conganguinity in 3^d degree in collateral line
- 2) affinity in second degree in collateral line
- 3) public propriety in second degree
- 4) spiritual relationship
- 5) crime of adultery with promise of or attempted marriage.

These five are minor impediments; dispensations granted from these would be valid even though in the petition falsehood was alleged or the full truth was not expressed. Whereas ^{for} such defects in the petition would render ^{invalid} dispensations from major impediments.

Dispensations are granted either in forma gratiosa or in forma commissoria. In the former case the dispenser himself grants it directly, and the causes alleged must be true when the grant is made. In the latter case, the dispensations are granted ^(Bishop or Confessor) is appointed with the duty of applying the

dispensation. The alleged causes must be true
when he actually executes the dispensation;
and the dispensation is not valid until it is exe-
cuted. The executor ~~has~~ should ^{investigate} ~~verify~~ that the
^{alleged} causes ~~also~~ actually exist; but this is not
required for validity of the dispensation.

Human acts.

Human acts are those acts of man that flow deliberately from the will. Intellectual knowledge of what is being done and the exercise of free will are necessary to constitute a human act.

Various kinds of human acts are distinguished

1) Elicited acts, solely performed solely by the will; Commanded acts, performed by some other faculty under the command of the will 2) Internal and external acts 3) Natural and supernatural acts.

Voluntariness
 Willfulness in an act may be perfect or imperfect, according as there is or there is not full knowledge and free consent.

Some acts may be fruitful in themselves; for others only the cause of the act may be directly willed, not the act itself, as e.g. I had a man ^{when} A kills B by rolling ^{unintentionally} a stone down a mountainside.

The intention in the performance of an act, as also the willfulness may be distinguished as actual, virtual, habitual and interpretative.

In such cases, i.e., when an evil act has a double effect, one good or indifferent, the other evil, the evil effect the act may be performed and the evil effect permitted provided the evil good does not come out of the evil, and there is a proportionately serious reason for permitting the evil.

The degree of culpability in an evil act which is willed only in cause (e.g. a doctor administers poison to a patient) is measured by the voluntariness in the cause, not by and does not depend on whether the effect followed or not.

Voluntariness of an act may be diminished by or may be totally lacking due to 1) imperfect use of reason 2) ignorance 3) passion 4) duress 5) fear.

1) In the infants and in persons who are asleep or inebriated, use of reason is lacking, and hence the actions

above
of

are involuntary &

2) Ignorance is distinguished as invincible, vincible, and affected. Invincible ignorance is that which could not be removed with that diligence ^{search for truth} which seemed necessary and was possible under the ^{the} circumstances. Vincible ignorance implies negligence to make proper search for truth. ① Affected ignorance implies a positive refusal to make inquiry lest one be informed of the truth. ② Such ignorance excuses the doer from being guilty of the act. ③ It does not totally excuse the guilt; the degree of guilt depends on the degree of negligence, ^{culpable} which not on the effect that follows (e.g. a doctor who administers medicine that is injurious to the patient ^{renders} without sufficient diagnosis). ④ Such ~~per se~~ ignorance makes a person certainly guilty of what he does.

3) Passion here means a violence of feeling, say of anger, which to a greater or lesser extent clouds the reasoning. When such violence of feeling is intentionally aroused, the willfulness or ⁱⁿ ^{one} guilt of the act ^{is} increased; if an act that is performed in such passion would be greater or lesser according as the violence of feeling is intentionally fomented and fomented or arises unintentionally out of the circumstances.

4) Duress or force is an external ^{power} force obliging one to act, himself willing the contrary (e.g. A gangster forces an unwilling ^{person} ^{resistant} to commit murder). It diminishes or even completely excuses the guilt of the doer.

5) Fear of some imminent danger may cause a person to do ~~willingly~~ what in other circumstances he might not do. The act done through fear is ordinarily a voluntary act, unless the reason fear is so great that reason is clouded.

Morality of an act is its relation to the norm of rectitude. An act is morally good or bad according as it to whether it conforms or does not conform to the norm of rectitude.

De Secundo Praecepto.

Now assumes nomen Domini Dei tui in vanum.

Blasphemy: Cursing God, showing contempt of God in words.

Properly blasphemy consists in words spoken or written.

Probably also in thoughts and gestures.

Asserta I Direct blasphemy (with the intention of contempt) and indirect blasphemy (without the intention, but really causing contempt) are mortal sins

II When blasphemy entails also violation of other virtues, e.g., faith, hope, & charity, a new species is introduced.

III Cursing saints, sacred objects, priests, etc., may be blasphemy in some cases - i.e., where their relation to God is perceived and contempt of God is intended.

Rules for Confessors:

See whether the expressions used are generally taken to be blasphemy

For *concreta* *ordinarii* - insist on ~~the~~ avoiding clear blasphemy - No need of exact numbers - Those who deliberately blaspheme often and refuse to amend should be refused absolution - Greater severity in case of scandal

Taking God's name in vain - i.e. without intention contempt
but lacking in due reverence.
- Is often a venial sin.

Oaths: Invoking God as witness - Is an actus
latria.

De iuramento procepto.

May be explicit or implicit (on objects connected
Non assumit nomen Domini Dei sui in votum.
with God)

May be for assertion or promise.

That both may be valid conditions are:

{ Intention, at least implicit

{ Expression of that intention by words or sign

That oath may be licit conditions are

{ Veritas: - Other wise perjury which is grave peccatum

{ iudicium: i.e. only for a proportionate cause
- Otherwise leve peccatum irreverentiae

{ iustitia: promise only what is licit.

assert only what may justly be asserted.

Oath of assertion promise

{ Declares will to promise fulfill

{ Contains obligation to fulfil etiam ex religione.

{ Failure to do so is sin, which may be venial
ex parvitate material.

{ No obligation if the promise was to something
sinful.

Adjuration: Confirming a command or curse
in God's name.

- May be private or solemn.

- Special case of adjuration is exorcism, which
may be used only with the permission of
the ordinary. C. 1151

Vows: Promissio deliberata ac libera Deo facta
De bono possibili ac meliore.

Conditions for valid vow:

- Should be with full deliberation
- Free from fear unjustly caused
- Free from error ^{Chiefly} either substantial or accidental

Obligation of vow

Degree of obligation depends on the ^{intention} ~~will~~ the one who vows

Or if intention was lacking, on the gravity of the matter.

Obligation is only on the person who vows - except for vows made by a community.

Obligation ceases ab intrinsecis

- if an attached condition is not verified
- if matter is substantially changed or becomes sinful

Obligation may cease ab extrinsecis

per irritacionem - All those who have potestas

dominativa can annul the vow.

Annulment without justa causa is illicit.

per dispensacionem -

Only by those who have jurisdiction, or Confessors who have special faculty, but not parochi.

Dispensation is valid only if there is justa causa.

Vows of charity or of an order are reserved to the Holy See.

per commutationem

In bonum aequale - by the one who vows if it is in ^{private} private

In bonum minus - by those who can dispense
to only for justa causa

De Tertio Praecepto

Memento ut diem Sabbathi sanctifices.

I Works which are prohibited

What are prohibited

Service works: those requiring body rather than mind

Whether for gain or not, whether implying great or small labour

Printing, making rosaries etc, embroidery are service; journey, driving carts, grinding,

Painting, Copying, hunting, Cooking are not
servile.

Judicial processes are prohibited - but custom
may excuse material cooperation.

Commerce is prohibited.

Prohibition is gravis ex genere suo - will be
venial sin if work lasts for less than two
hours.

When obligation ceases ex intrinsecis

Ex religione - e.g. Decorating Church, making
vestments for poor churches.

Ex caritate - To help the poor, to help oneself if
in extreme need, to make vestments for the poor
(probabilis)

Ex necessitate propria vel aliena.

II Hearing Mass

How the precept is fulfilled

Precept is only about mass, per se none about sermon
etc.

Precept is to hear the whole mass - sub gravi.

Omitting a fourth part or more, or some essential
part would be mortal sin.

In actual practice sin consists in the voluntary
negligence to be which caused being late.

Corporeal presence as would make moralis con-
finitio is necessary.

Præsentia animo i.e. intentio & attentio are required.

Mass heard in oratorio privato (exceptio completio)
or in loco privato does not fulfil the precept.

When one may be excused

In general for those causes for which business
of some importance would be omitted.

The following in specie: Sick, Convalescent,
those needed to take guard home etc, Chi depen-
dents, when Church is about 4 miles, propter
indorem

De Quarto praecepto.

Honora patrem tuum et matrem tuam:

Indirectly applied to ^{all} mutual relations of
superiors and subjects.

Duties of children towards parents

Ex virtute pietatis children should show our
love, reverence and obedience to parents.

- Obligatio gravis ex genere suo.

Mortal sins:

Contra amorem are - hatred, causing great
sorrow e.g. by drinking, not helping in
grave need, not executing the will

Contra reverentiam are - beating or pre-
tending to do so, contemptuous words,
not to recognize them.

Contra obedientiam -

until children are major
In matters concerning their upbringing
The sin is mortal if a true precept in
grave matter is violated.

Duties of parents towards children.

Ex virtute pietatis parents should see to the upbringing
of their children - even of illegitimate children.

Ab infantia: non abicere; lactare propriis uberibus.
In ~~ad~~ childhood:

Cura temporalis - food, education, temporal goods,
and dowry.

Cura spiritualis - X'tian doctrine, safeguard
from occasions of sin, good example, correction.
Not to send to bad schools

De obligatione conjugum.

Uxor debet esse de subdita non sicut serua
sed sicut socia.

Uxor peccat: by giving grave offence to husband,

{ by being disobedient in grave matter

{ by administering goods as if she were sole master.

Maritus peccat: beating; giving grave offence.

{ Preventing from religious duties

{ Denying sustenance; neglecting management of home.

Servants and masters.

Causa: T Aloysius facit advocatum tum actoris tum accusati in iudicio neque subreptione neque obreptione peccare posse.

Advocatus dicitur qui litigantium causam in iudicio defendendam suscipit. Quod praestat tum opportuna consilia praebendo tum causam coram iudice agendo. De illa actione coram iudice quaeritur praesertim in casu.

Actor (plaintiff) in causis civilibus, et accusator in criminalibus est qui alterum in iudicium vocat. Hodieo iure in criminalibus sola denuntiatio competit privati, accusator est gubernium vel policee, et advocatus est procurator (public prosecutor). Accusatus est ille qui in iudicium trahitur et contra quem agitur.

Obreptio est insinuatio falsi v. g. si advocatus conatur probare aliquos alibi, ⁷⁻⁸ peccum fuisse Daryaling eodem tempore ac crimen patratum est Kurreong. Subreptio est reticentia veri, v. g. si advocatus occultat nomen alicujus testis qui revera vidit remum crimen patrantem. Haec duo verba, ut dicit Wernig-Vidal saepe promiscue adhibentur. Causa obreptionis vel subreptionis potest esse aut vera intentio allegandi falsum vel celandi verum, aut mera ignorantia, aut

etiam simplicitas. Agitur in Casu de Obreptione
et subreptione quae fit ex vera intentione;
aliter nec prodest causae nec est voluntarium.

Quaeritur quis liceat advocato et quis non
liceat et quoad responsam plane distinguendum
est inter causas criminales et causas civiles.

Primo quoad causas criminales

Advocatus potest licite suscipere omnem
causam criminalem, etiam ubi certo
sciat reum esse nocentem et culpabilem.
Excipitur tamen Casus ubi magnum scam-
dalum existeret — *U. g.*, ex defensione
aliquis in qua notorie nocet moribus vel
religioni. Excepto hoc Casu omnis accusatus
etiam certo reus potest ante tribunal defendi.
Etenim lex naturalis ad vitandas condemna-
tiones innocentium exigit ut omni accusato
praestetur facultas defendendi suam causam.
Atque hoc non fit convenienter ab eodem accu-
sato. Ergo accusatus quaerit auxilium advocati.

Advocatus vice gerit accusati rei et eum
representat. Ergo habemus generale principium
omne quod est licitum reo est etiam advocato
licitum. Et ideo quod obreptionem et subreptio-
nem habentur sequentia.

1^o — Advocatus potest simpliciter regere cum
haec regatio non est mendacium et tantum signi-
ficat Crimen nondum iudicium probatur esse, et
affirmata accusationem nondum convictum esse
et reum.

2^o — Advocatus potest suggerere has explicationes
etiam omnino fictitias ad monstrandum reum
non potuisse patrare hoc crimen, ad stabilendum
aliquos 'alibi', etc. Iste explicationes nec

producentur nec accipiuntur ut verae, et ad hoc tantum
sunt prolatas ut monstrant argumentis procuratoris
non esse invidium, et pliationem alternatam
dari posse, Culpabilitatem rei nondum constare.
Onus probandi stat cum procuratore.

3^o Adversarius non tantum potest sed etiam debet
insistere in probabilitatem harum explanationum,
etenim tenetur adhibere omnia media legitima
ad excusandum reum si hoc est possibile, ad
diminuendam responsibilitatem, ad mitigandam
sententiam etc.

4^o Si vero adversarius cognoscit, testem aliquem
non suadente adversario vel reo, se probabiliter
perjuraturum esse, adversarius per se non tenetur
prohibere hujus testimonium ante tribunal. Prin-
cipium enim duplex effectus hic potest at quando
que applicari, ut v. g., propter alia ab eodem di-
cenda quae sunt vera et utilia. Si vero testis illi
requirit adjuvare causam de nisi mediante perjurio
(bonum ex malo) vel si mores juridici non obligant
ejus citationem, severius ingerendum est utrum
hoc perjurium permitti possit.

5^o Si in decursu causae orientur testimonia
favorabilia, quae tamen adversarius scilicet esse falsa,
horum falsitatem revelare non tenetur, neque pro-
hibetur quin eorum mentionem ^{in sua defensione} faciat. Attamen illi-
citerum est in haec insistere, vel argumentum ex
falsis praecipue testimoniis construere.

Haec quoad criminalis causas.
Secundo videndum est quid liceat in causis
civilibus. Multa quae sunt licita in criminalibus
hic sunt illicita, neque potest adversarius suscipere
quamcumque causam civilem. Etenim agitatur
hic de justitia commutativa, et omne quod prodest

uni parti nocet alteri.

Supponimus hie causam susceptam non esse injustam, et clientem habere persant eorum aut saltem probabile. Etenim advocatus secus ac in criminalibus, requirit suscipere causam quam scit esse falsam.

Quoad media in defendendo sum clientem, actorem vel accusatum, principium generale est advocatum loqui nomine clientis; et ideo advocatus, sicut et eliens, debet conari ^{hoc, ut} ad ^{probabilitatem} id quod est verum et iustum, non vero ad vincendum per fas et nefas, vel ad obtinendum pro cliente id quod ei non debetur.

Ergo 1^o. Secus ac in criminalibus non licet advocato uti explanationibus contra veritatem, negare verum delictum, affirmare jura fictiosa, retinere ea facta vel documenta quae revera pertinent ad causam et iudicium postulatur. Facta debent agnoscere secus. Dum veritatem, et ideo licentia obreptionis vel subreptionis maxime limitatur.

2^o. Tamen, admittis factis, advocatus potest ea explicare modo suo clienti favorabili, dum modo talis interpretatio rerum datis adjunctis sit vere probabilis. Monstrare improbabilitatem hujus explanationis pertinet ad advocatum partis adversae.

3^o. Advocatus ^{potest} debet etiam, imo debet, defendere causam secundum opinionem iudicalem quae suo clienti maxime favet, v. g., citando iudicia praeterita quae in suo sensu sunt praestita a nobis iudicibus, insistendo in leges magis favorabiles,

dando legibus interpretationem (quomodo
probabilis sit) quae suam causam adjuvet,
etc. In hoc praecise advocatus monetur
~~ingenium suum forensium~~
sum ~~placitum~~, et ad hoc tenetur per sum
Contractum cum cliente.

4^o Advocatus non tenetur detegere parti
adversae facta, circumstantias, omissiones
etc, quibus ignorantis pars adversa detrimen-
tum pateretur. Neque tenetur monere partem
adversam de tempore citi quod elabit, de
prescriptione superveniente, de obligatione
extinguente, etc.

Ergo summam licet advocato obreptio et
subreptio in negando crimen in causis crimina-
libus, in explendo hanc negationem, in recurrendo
de perjuris factis plenis, de interpretatione factorum
et minus favorabili, de legibus et iudiciis quae stant
contra se, in non revelando parti adversae facta
et circumstantias quae ipsa propter negligentiam
ignorat. Tamen sunt multa quae tenentur illicita.
Si v.g., nequit profere mendacia proprie dicta contra
adversam adversae partis, nequit Calumniare
testes ^{contra se} ad debilitanda eorum testimonia, nequit ad-
hibere falsos testes, ^{pro se} nequit concealere perjurium, nequit
ubi falsis documentis vel fraude.

Ergo monetur Aloysius suam facilem ge-
neralizationem de leg moribus forensibus haud con-
cedere legibus naturalibus honestati neque christianis
moribus.

Hippolytus noster scit quaedam de C. U.
^{forte} sed magis theoretice et modo valde confuso.
Ergo de rebus ubi ^{genu} administrandum est ad Sacra-
mentum incidit in non paucos errores. Primum
non tulit secum sufficientem copiam olei
eijsanorum. Et cur? Forte habuit in Presby-
terio sufficientem copiam et fuit simpliciter
negligens. Negligentia in re tali momenti certe
non est ^{excusanda} toleranda. Vel forte cito vocatus, oblitus
est implere ampulam. Excusanda humana fragilitas.
Forte etiam non habuit plus in presbyterio. Dabatur
tempestive renovare, vel licet etiam addere ^{ampullae}
minor copia oleum non benedictum sed minor
copia quam iam adest. Oleum additum censetur
benedictum.

Quidquid sit de ratione sufficienti ^{manus} veni-
^{ipsum} administrationem sacramenti. Hippolytus bene
ad ^{confessionem} scit certe quaedam rationes
sint faciendae. Et extra casum necessitatis
ubi sufficeret unica unctio in fronte, et ideo
pergit secundum modum praescriptum in tri-
tuali. Unguntur palpebrae ^{oculorum}, extremas aures,
et nares, et os. Et quando venitas manus ^{operando}
vidit nullum sacrum oleum iam adesse. Tamen
pergit in unctione. Sapposimus nullam
aliam unctionem esse faciendam, quia dicit
Canon ⁹⁶⁷ unctio pedum ex qualibet rationali
causa omitti potest et unctio rerum semper
omittatur. Ergo questio est oritur tantum de
villa ^{de} pseudo-unctione manuum. Dicit Hippolytus
se valde dubitare utrum nee ne valde fecerit
unctionem manuum, quia sibi videbatur
nullum sacrum oleum iam adesse. Si non
adferit sacrum oleum, non est locus dubitandi.

unctio fuit nulla. Sac. Coena sine materia non
fit ^{unctio} sacramentalis unctio. Certe sacramentum
ipsum fuit validum, siquidem per unctam
unctionem sacramentum valide confertur.

Ergo requiritur ne quod nihil plus sit facien-
dum? Certe non. Supplenda manet illa unctio
manuum ~~quae~~ ^{quae} fuit nulla. ~~Certe?~~ De hoc
omnes moralistae consentiunt, etsi Canon 947
meminit tantum casum necessitatis ubi
unctio ^{unctio sola} tantum fuit adhibita et de praecipit
singulas unctiones postea esse supplendas.
Sed urquedum remanet illa obligatio supplendi?
Hactenus cessante illo morbo periculoso, vel
mortuo homine certe cessat obligatio supplendi,
quia nec cadaver nec morbidus extra periculum
ingitur. Sed manetne obligatio urquedum
durat durat idem morbus periculosus. Avumen-
lus respondet proet horam unam cessare obligatio-
nem. Et ratio est quia ~~unctio~~ ^{unctio} supplenda si nimis
separata a prioribus requirit dici moraliter unum
cum prioribus. Sed in hoc casu sententiae ~~idetur~~
Avumenuli videtur dependenda pto alia, nempe
quam tenet Magister Nepotis, Vermeerseh. Vermeerseh
tenet obligationem supplendi manere urquedum
durat idem morbus periculosus. Ratio patebit si
Consideramus Curia unde oritur ipsa obligatio
supplendi unctionis omisso. Supplenda est unctio
quia ex integra administratione Sacramenti
plenior effectus obtinetur. Effectus Ex. unctionis
est: primario integritas spiritualis, ~~Confessio~~
et secundario remissio Culparum, ~~et~~ ^{et} ~~conditio-~~
naliter sanitas Corporis. Secundarius effectus
nempe remissio Culparum univertur in ipsa forma
"Per istam sanctam unctionem etc indulgeat

tibi dominus per me quidquid per oculos... manus
etc. deliquisti." Plenior effectus obtinetur
per integram administrationem Sacramenti
et hoc facile apparet ex nostra theoria de Causa-
litate physica perfectiva quam vidimus in dogmate
Sacramenta significando causant. Et si gratia Sacra-
mentalis significatur per unam unctionem
alia unctiones perficiunt significationem et
effectum, non ~~quia~~ dispositiones faciunt rationi
Subjecti et dicit avertentibus, non ex novo titulo
juridico ut dicitur videtur dicere Venerabili, sed
ex pleniore significatione et causa efficiencia
physica.

Nunc ad secundam partem: Gratibaldus
publicus peccator jaet sensibus destitutus, nec
dederat signum penitentiae. Canon 942 dicit quod
S. Ex. unctionis non licet conferri eis qui
Contumaciter in peccato mortali perseverant. Et
Gratibaldus etiam pessimus peccator negavit dicit
Contumax; forte erat penitens antequam desti-
tueretur sensibus. In Casu dubio Conditionaliter
Conferendum est sacramentum ut dicit idem
Canon. ^{Quo hoc recitavit Hippolytus?} Sed quatenam conditio? Reverentia erga
sacramentum videtur requirere conditionem
quam ponit hovet Hippolytus, nempe "Si non est
imperitens in mortali." Sed oritur alia difficultas.
Supponamus Gratibaldum ^{quando ungitur} ~~non~~ esse imperitentem,
postea vero destitutus sensibus esse actum
penitentiae. Quod sequitur? Prima unctio fuit
nulla; debet iterum ungi. Et Contra si Hippoly-
tus ^{posuerat} ~~ponit~~ aliam conditionem non "Si non es
imperitens", sed "Si es Capax", tunc sequi-
tur quod prima unctio fuit valida siquidem

II - 1) Hippolytus, sacerdos, in ministracione Extremae Uctionis valde dubitat utrum necne valide fecerit unctionem manuum quia sibi videbatur nullum sacrum oleum jam adesse. Rogat quid sibi sit faciendum. - Alia vice, cum Garibaldus, publicus peccator, sine ullo signo poenitentiae, subito gravi morbo correptus, sensibus destitus jaceat, Hippolytus, memor canonis 942, ei dedit Extremam Uctionem sub hac conditione: 'Si non es impoenitens in mortali'. Postea cum Garibaldus, iterum usum rationis habens, signa poenitentiae manifestaret, Hippolytus conditionaliter repetit Extremam Uctionem: 'Si es capax'.

2) Pater Timotheus varia dubia habet de validitate ordinationis suae sacerdotalis: - a) Non meminit utrum necne in impositione manuum Episcopus ejus caput physice tetigerit; - b) Minister caerimoniarum oblitus erat ponere aquam in vino calicis pro traditione instrumentorum; - c) Ipse manu sua tetigit tantum calicem et hostiam, non vero patenam; - d) Dubitat etiam de intentione sua; nam, multas semper habens anxietates conscientiae, nolebat sacrilege recipere sacram ordinationem.

in unctionem
penitentiam
penitens.
licet actum
Sacramentum
diliget
deinde
nisi sic dicit
Hippolytus
et in sua
conditionem
negat
manifestat,
in manu sinistra
et per bene
in a fessis
itione
in excreta
tenae
a fessis
in parte
apud fessis
de unctione
omnino
Hippolytus
in penitentia;
nisi
et fortis
a fessis

II 1 *Lehmh.* Th. Ma. II n. 788 3 (418, 3)
Casus II n. 681 ss.

Verm. III n. 663, 666.

2. cf. *Boussaron II ad can. 1002*

Verm. III n. 678.

Caribaldus erat Capax, nempe habebat intentionem
habitualement, sed fuit informe, non fructuosa
quia ~~et~~ ~~ex~~ ~~Caribaldus~~ ~~subjectum~~ ~~erat~~ ~~imperitens~~.
Nemo, restitutus sensibus quando elicit actum
penitentiae, remouetur obex gratiae. Sacramentum
validum et informe reuiviscit, et non indiget
iterata unetione. ~~Haec sententiam de Condi~~
Ergo, ~~ubi~~ ~~reuiui~~ ~~sententia~~ ~~fit~~ ~~possibilis~~ ~~Conditio~~ ~~debet~~
esse "Si Capax es", non id quod ^{de facto} posuit Hippolytus.
Haec est sententia quam tenet Vermeersch in sua
ultima editione, et si antea defenderat Conditionem
"Si non est imperitens."

Quid de iterata Conditione unetione? ^{quia}
Cum Caribaldus ^{habens usum rationis} signa penitentiae manifestaret,
Hippolytus Conditionaliter repetit Extremam unetio-
nem sub Conditione "Si est Capax." Certe non bene
facit in repetendo unetionem, quia prima fuit
Conditio fuit erronea. Sed quid de Conditione
quam nunc ponit? Conditio est iterum erronea
Et cur? In eodem periculo iteratio extremae
unetionis est graviter illicita. Si prima fuit
invalida ~~et~~ ~~Certe~~ ~~non~~ ~~fit~~ ~~iteratio~~ ~~Sacramenti~~.
Sed si prima fuit valida, ex hoc non sequitur
quod Caribaldus est incapax secundae unetionis.
Haec Conditio "Si non es Capax" videtur omnia
otiosa. ~~Et~~ ~~Caribaldus~~ ~~in~~ ~~eodem~~ ~~Caribaldus~~ ~~in~~ ~~eodem~~ ~~periculo~~;
bis valide arguit Caribaldum in eodem periculo;
facit aliquid graviter illicitum. Conditio
ponenda non est "Si non es Capax", sed potius
"Si nondum es unctus" ^{quod significat.} ~~et c.~~ "Si prima unctio
fuit nulla"

① Ut si habuerat multas longasque
practices sub peritissimo ministro
Caerimoniarum, nunc laborat
multis Dubiis

Pater Linosteus ^① ~~habet~~ dubia

Circa valorem sacrae ordinationis. Valor
ordinationis est maximi momenti ut pa-
tet. Invalidè ordinatus neque ^{Conficit et} neque
valide administrat alia sacramenta, cum
magno damnorum animarum sequeretur.

Sed Linosteus noster habet dubia
omnis inania. quae

1^o - Non meminit utrum episcopus
physice tetigerit remum Caput in fine
impositione manuum. Valde dubium est
hoc non meminisse. Forte somniabat
secundum nos consuetudinem. Sed dubium
est hanc negativam. Neillam habet rationem
affirmandi vel negandi Contactum physicum
in impositione; Et ut respondit Sacrum officium
in 1898, hoc dubium negativum est spernendum.
Si ~~Linosteus~~ ^{Linosteus} ~~positivè~~ affirmaret episcopum
physice non tetigisse remum Caput, tunc certe
tota ordinatio esset iteranda conditionaliter.
Positivè non affirmat; tantum dicit se non
meminisse. Ego nihil iterandum.

2^o - Inmixta Dubitate de perfectione
instrumentorum. Ad validitatem sacramenti
requiritur quod episcopus Calix et patena
contineant materiam consecrabilem. Si Calix
est ~~vacuus~~ vino vel patena est sine hostia
tota ordinatio esset iteranda conditionaliter.
Sed in Casu hoc non fit. Inmixtio aquae cum
vino requiritur ~~de~~ ^{de} vi praecepti, non vi
sacramenti. In ~~vinum~~ ^{vinum} sine aqua est materia
consecrabilis, siquidem in sacrificiis missae
vinum inmixtum aqua valitè consecratur.

Ergo ordinatio Timothei ex hoc Capite non
fit invalida.

39^o Dubitat de ordinatione quia tetigit
Calicem et hostiam non vero pateram.
Cereemoniale dicit omnia tria tangere debere;
Sed si quis tangit tantum pat. Calicem et hos-
tiam, non pateram, ordinatus tamen est
valida ut sacrum officium & respondit
multoties - in 1866, 71, 75, 92, et iterum in
1895. Hoc dubium videtur rat. commune,
sed tangendo hostiam indirecte tangit et
pateram.

40^o - Dubitat Timotheus etiam de inten-
tione sua. ratio est "volebat sacrilege
recipere sacramentum." Hoc dubium
non est omnino rarum, sed fundatur
in confessione mentis. ^{Deposuit} ~~Volens~~ ordinandus
vult velle ~~ordinandus~~ vult sacrilegam
receptionem Sacramenti, sed hoc non includit
quod non vult ipsam recipere sacramentum.
Directe vult sacramentum; indirecte et con-
ditionaliter ejus sacrilegam receptionem.
Quin imo accedere ad ordinationem sine
intentione hoc ipsum est sacrilegium.
Ergo velle sacrilegam receptionem dicit
in casu Timothei actu intentionem
recipiendi sacramentum.

A I Unctio manuum sine oleo.

Quid supplendum?

Usque dum viget obligatio supplendi?

Cui supplendum?

II Res unctio ubi dubitatur de dispositione subjecti
Quaenam conditio?

{ Si non est imperitens in mortali

{ Si es Capax

III Iteratio unctio ubi dubitatur de prima unctio.

Quaenam conditio?

{ Si est Capax

{ Si nondum es unctus.

B Dubia de validitate ordinationis Josephi.

De ~~contactu~~ ^{prima} impositione manuum

De traditione instrumentorum

{ Vinum sine aqua

{ Tangere ~~per~~ hostiam et Calicem, non patenam

De intentione.

Primo dubitet utrum realiter fecerit unctio.

Remanent quia sibi videbatur nullum
Sacramentum oleum iam adfuisse. Certe si nullum
oleum adfuit, ^{non est locus dubitandi de} ista unctio ~~est~~ ^{est} invalida ista unctio.

Sacramentalis unctio non fit per formam sine
materia. Vel si rationaliter dubitat utrum
adfuit oleum vel non, ista unctio deinde
est dubia invalida.

In utroque casu non sequitur quod
Sacramentum ipsum fuit invalidum siquidem
ut dicit Canon 947, etiam per unctam unctioem
Sacramentum valide confertur.



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