

IMMATURITY AND THE JURIDICAL ABILITY TO CONTRACT MARRIAGE IN TERMS OF CANON 1095 OF THE CODE OF CANON LAW

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By far the most common grounds that are brought forward in Ecclesiastical Tribunals nowadays to prove the nullity of a marriage are those of lack of due discretion and inability to assume and fulfil marital obligations¹. Often enough, the motive to sustain such a claim is that either or both parties were not sufficiently mature to contract marriage at the time of their wedding.

But what exactly are the canonical implications of this? What amount of maturity does canonical jurisprudence require of a person to be considered capable of contracting a valid marriage?

The following is a reproduction of The Law Section in a recent Decision of the First Instance Ecclesiastical Tribunal, before Fr. Joseph Bajada, Judge and Relator. The Nullity of the marriage in case was alleged on the grounds of lack of sufficient discretion of judgement and / or inability to assume marital obligations because of immaturity in one of the parties.

THE LAW

3. In line with c. 1055 † 1, marriage can be described as a “covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children”. This covenant and partnership has been raised “to the dignity of a sacrament” between the baptised² and has as its essential properties unity and indissolubility³. In other words, marriage can be described as a partnership between a man and a woman which is exclusive, indissoluble, and sacramental. The goals of this partnership are the well-being of the parties and the procreation and upbringing of children.

4. According to c. 1057 † 1, “a marriage is brought into being by the lawfully manifested consent of persons who are legally capable. This consent cannot be supplied by any human power”. Consent then is the efficient cause of marriage; it is consent which brings a marriage into being; if that consent is lacking or if it is in some way gravely defective, then there is something radically defective about the marriage contracted. The Code supplies a definition of consent in c. 1057 † 2: “Matrimonial consent is an act of will by which a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing a marriage”.

5. While this definition, which has its roots firmly fixed in scholastic philosophy and theology, distinguishes between the various functions of the human psyche, e.g. intellect and will, it must be stressed that in reality the human psyche cannot be divided up into little pieces. On the contrary it acts as a unit. Thus canonists have stressed that consent is not simply and solely an act of the will. Says L. ORSY: “everything in a human psyche contributes to it in varying degrees”⁴.

Indeed, it was St. THOMAS himself who taught that man “differs from

non-intelligent creatures in this, that he is the master of what he does ... Now he is master through his mind and will, which is why his free decision is referred to as an ability of reason and will. Therefore those acts alone are properly called human which are of his own deliberate willing”⁵.

Jurisprudence, in turn, has stressed that such distinctions between intellect and will are not actual divisions: “Actus itaque liber minime habendus est ut constans duobus actibus independentibus ac perfectis, intellectus scilicet et voluntatis ... Prior est unitas. Haec unitas in agendo fundatur in unitate subiecti, in quo utraque facultas radicatur et exprimit mutuam obiectorum formalium implicationem atque identitatem realem. Quidquid ergo, funditus vel graviter laedit hanc mutuam obiectorum formalium implicationem atque identitatem realem, quidquid funditus vel graviter laedit hanc mutuam causalitatem intellectus et voluntatis in deliberatione de tali matrimonio contrahendo et in volitione elicienda, consensum matrimonialem irritat”⁶. For this reason when investigating the alleged nullity of marriage because of a defect of consent, one cannot simply focus on problems associated with the will. On the contrary, all the aspects of the person’s personality and experience must be examined, as far as possible and this to consider how any aspect of it may have adversely affected the act of consent.

6. According to c. 1095, “the following are incapable of contracting marriage: 1. those who lack sufficient use of reason; 2. those who suffer from a grave lack of discretion of judgement concerning the essential matrimonial rights and obligations to be mutually given and accepted; 3. those who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage.”

The second and third of the grounds in the canon, are the ones which are relevant to this particular case, namely lack of discretion of judgement and inability to assume the marital obligations.

A. LACK OF REQUIRED DISCRETION OF JUDGEMENT

7. “In brief, ‘discretion’ means ‘maturity’ and ‘judgement’ means ‘decision’. In other words, ‘discretion of judgement’ means a ‘mature decision’ which presupposes the presence of adequate knowledge about all the essential elements which constitute marriage including the very persons of the contractants, and internal freedom to deliberate and choose marriage without any interference. Rotal Jurisprudence has isolated some of the elements of this ‘decision’, that is marriage consent.

The first element is “adequate knowledge” of the subjects and of the object of matrimonial consent. This knowledge should be not merely speculative or abstract, but appreciative (evaluative) as well.

The second element is the ability for critical reflection which consists in putting judgements together in order to arrive at a new judgement or decision.

The third element is internal freedom not only for critical reflection but also for making the final decision (election) concerning the object”⁷.

We read in a decision before SABATTANI: “Unica mensura sufficientis consensus est discretio iudicii matrimonio proportionata. Quando deficit

huiusmodi maturitas iudicii sufficiens ad matrimonium intelligendum vel elicendum, sive id proveniat ex habituali alienatione animi, sive ex exturbatione transeunti, sive ex psychica debilitate, habetur amentia in sensu contractuali... nec sufficit facultas cognoscitiva, quae sistit in apprehensione simplici veri, sed requiritur facultas critica, quae est vis iudicandi et ratiocinandi, et iudicia una componendi ut novum iudicium inde logice deducatur (cfr. SRR c. Felici, diei 3*12*57; c. Lamas, diei 21*10*59). Matrimonium tunc tantum valet, quando per hanc criticam facultatem homo potuit deliberationes efformare et libere voluntatis excitare actus”⁸.

8. According to the Code of Canon Law, a grave lack of discretion of judgement concerning the essential matrimonial rights and obligations renders a person incapable of marriage and thereby renders any marriage contracted by such a person invalid.

This faculty is something which is possessed by the majority of human beings. It is not unreasonable to presume that this discretion of judgement, this critical, evaluative faculty is present in all persons who have attained a certain age. The basic reason behind this conclusion is that marriage is a natural state and all humans are presumed capable of contracting marriage unless the contrary has been proved.

“Sed lege ecclesiali haud requiritur immodicus quidem capacitatis psychicae gradus, quia ad valide contrahendum sufficit ut vir decimum sextum aetatis annum expleat, mulier vero decimum quartum item completum habeat (c. 1083 † 1). Tunc enim praesumitur in contrahentibus sufficiens gradus discretionis iudicii circa iura et officia matrimonialia essentialia mutuo tradenda et acceptanda ... Qui igitur legitimam aetatem ad matrimonium attingit, sufficientem discretionem ad sese obligandum habere censetur ita ut in matrimonium valide consentire possit (c. 1058)”⁹.

“Nullibi requiritur altissimum intelligentiae acumen, plenave psychologica aut affectiva maturitas nec perfecta obligationum coniugalium communionisve vitae intellectio”¹⁰.

In other words, the law presumes that sufficient maturity of judgement to validly contract marriage is present in a fourteen year old girl. This means that a fourteen year old, who is as mature as a fourteen year old in her culture would be expected to be, and in that respect at least, has the capacity for marriage.

9. It must be concluded therefore that, although it does occur, a lack of discretion of judgement proportionate to marriage is something exceptional. It does happen occasionally that a person is not able to weigh up all that he or she knows about marriage, about his or her situation, about his or her partner in such a way that a valid consent to marriage is given. But allegations to the effect that “he wasn’t mature enough for marriage” ... “she was too young” ... “only a child” ... “didn’t know what he was doing” ... “hadn’t a notion” ... “knew nothing”, etc., are not enough to declare a marriage null. To declare a person as “immature” does not in itself permit one to draw any immediate conclusion as to the person’s ability to consent to marriage. Just as in the case of other psychological disturbances, including those in which a diagnostic tag can be applied with certainty, each case must be judged on its own merits,

on the basis of the evidence presented in the Acts, and, on the evidence of the expert witnesses¹¹. Phrases like those mentioned further up in this paragraph can easily be expressions of sympathy with the person whose marriage has failed, or in retrospect from the vantage of experience. However, the lay witness may not mean what a judicial mind might take it to mean. What is required is to identify a *cause*, some reason why he or she was not able to do what most other persons in that situation are able to do.

10. Precisely because of this, in cases of alleged nullity for reasons of *immaturity*, special attention is called for since this term “is an umbrella-term which covers many conditions, involving various degrees of seriousness, duration, and incapacitating consequences”¹². It is clear therefore that such a term can mean almost anything. Yet it does have value in marriage nullity cases -- as the frequent references to it in ecclesiastical Jurisprudence clearly shows.

W.J. DEVLIN has described psychological or emotional immaturity as “meeting adult situations with infantile patterns of behaviour”¹³. “Immaturity can be seen, therefore, as a defect of personality or character development, the seriousness of which can vary according to the degree to which the balance between the various aspects of the person’s psychic make-up is disturbed”¹⁴.

11. In the just-quoted work, McAREAVEY indicated four sources of emotional immaturity¹⁵ :

- a. immaturity connected with adolescence, which is also referred to as “prematurity” or “immaturité de passage”¹⁶. It is distinguished from an immaturity which is deeply rooted in the structure of the personality and is generally overcome with experience of life. This immaturity is of a transient nature and can be considered as a lack of experience of life rather than a radical personality or character defect. Youthful immaturity is not per se a bar to marriage.
- b. immaturity found in adults. In these persons, immature character traits have endured into adulthood so that although they have reached chronological adulthood, they have not reached a corresponding degree of psychological maturity. Such persons are described as being “arrested in growth of character, intellect and emotions, ... characterised by weakness of will, vacillating opinion and convictions, infantile attitudes and viewpoints, and a lack of emotional control”¹⁷.
- c. immaturity as a symptom of personality disorder: in this case persons who suffer from a specific personality disorder manifest immature behaviour as a characteristic symptom. In this category, N. CAMERON also speaks of the *inadequate personality*¹⁸.

The term “inadequate personality” includes those personalities whose response to the ordinary demands of life -- intellectual, emotional, social and physical -- are generally ineffectual. Such persons are “inept in life, show poor judgement continually, are usually improvident and lacking in a normal sense of responsibility”¹⁹. In spite of normal or above average intelligence,

the inadequate personality pursues immediate pleasure like a child, unable to postpone it in the interest of the reality principle. Cameron notes that for some reasons this personality is “unable to carry through a normal maturing process that would lead to a responsible adulthood”²⁰.

- d. immaturity which emerges in the context of mental retardation²¹. The characteristic traits of this emotional immaturity are: an exaggerated fixation on parental images, the need of protection, lack of independence, the focusing of the person’s interest on himself or on his own activities, and an egoism which is expressed in touchiness, vanity and stubbornness²².

12. In marriage nullity cases it is not sufficient to allege or even to prove that someone was “immature” or “showed immature traits” in his or her behaviour, no matter what the source of the immaturity. One needs to examine the known facts about the person’s behaviour before and during marriage and see how these reflect the person’s alleged immaturity. In addition, careful consideration should be given to other important decisions made by the person around the time of marriage, to see what effect, if any, his immaturity had. But what must always be kept in mind is the necessity to show the influence of alleged immaturity on the decision to marry, to show from the evidence how this condition adversely affected the person’s judgement and rendered him or her incapable of contracting marriage.

“There is a risk too of confusing the canonical category of “maturity” with the psychological category of “maturity”. In psychology, maturity is understood to be the “end-point” of human development: ... In Canon Law, however, “maturity” is the minimal “starting-point” necessary and sufficient for a person both to intend and to implement the object of matrimonial consent, even when difficulties and obstacles create conditions of distress because of bad will, or even if there are unconscious conflicts in the parties”²³. What the Judge must look for in cases of nullity for alleged immaturity “is that minimum “discretion of judgement” and “use of reason” which prepares someone to enter marriage and then continues to grow and develop. When we use the term “immaturity”, we can confuse it if we are looking for the situation in which a person experiences an almost eschatological integration of himself or herself, at which point everything is simply in order”²⁴. “*Matrimonium non est maturitatis acquisitae culmen, sed phasis evolutiva in processu marioria maturitatis acquirendae*”²⁵.

B. INABILITY TO ASSUME MARITAL OBLIGATIONS

13. In a case where a lack of due discretion is claimed on the basis of a deep-rooted psychological disorder, the question of a person’s ability / inability to assume the essential obligations of marriage may also arise, regardless of whether or not a lack of due discretion is proved.

The distinction between these two grounds is clear in principle, even if it is not easy in application. The ground of lack of due discretion refers to an ability to posit a true act of consent. Where the powers of reason and will are so disordered or undeveloped at the time of the wedding that the object of consent cannot be sufficiently understood in its practical and relational

implications, then no true consent can be given. On the other hand the ground of inability to assume relates not to the act of consent but to its object. One cannot validly consent to deliver an object not within one's power: "the obligation has no value if someone obliges himself to give or do something of which he is incapable". "Psychica incapacitate adsumendi onera matrimonialia essentialia laborat qui, ob gravem anomaliam psychicam, haud se obligare ad constituendam vitae consortium perpetuum et exclusivum, ex sua natura ordinatum ad coniugum bonum et ad prolem generandam atque aducandam" 26.

14. The object we are speaking about here is not every aspect of marriage needed to make it happy, but those elements which are constitutive of marriage, understood as a whole life partnership ordered to the well-being of the spouses and the procreation and upbringing of children. It involves the essential properties of unity and indissolubility and, for the baptised, sacramentality. Where causes of a psychological nature render impossible one or more of these elements, or the "consortium vitae", then the marriage would be null.

Given the nature of the case under examination, the Tribunal deems it important to make a number of observations.

15. In the first place it must be noted that the conjugal relationship we have referred to above "non est ita cum exito suo confundenda ut coniuges qui nequeunt certum quemdam gradum felicitatis connubialis vel 'perfectionis' propriae vel 'satisfactionis' mutuae assequi, statim existimentur oporteat inhabiles ad ipsam relationem valide constituendam" 27.

16. In cases which come under this heading of nullity, what is in question is a disorder which is of its nature destructive of a marriage relationship. It is not alone the non-existence of a marriage relationship which is relevant. It is only if this non-existence is due to genuine incapacity arising from a personality disorder that a plea of nullity can be entertained on this particular ground. Therefore in the method of proof, it is necessary to demonstrate a direct relationship between the absence of any of the obligations of marriage, including the community of life and the personality structure of one of the parties. One must be cautious lest, as Mgr. DI FELICE pointed out, incapacity be confused with an unwillingness to fulfil the duties assumed in matrimonial consent 28. Of course, not all personality disorders are incapacitating. While psychic defects can render the creation of a marital relationship *difficult*, it is only the very serious and relatively rare disorders which render a marriage *impossible*. A valid marriage cannot be beyond the attainment of the "average person", who is equipped with both good and bad personality characteristics. For this reason one must distinguish between what is *desirable* for marriage and what is *essential*. The pastors and counsellors of the Church have a duty of promoting the desirable and even the ideal. Judges in nullity cases are confined to a consideration of the minimum required for validity. This minimum does not depend on the subjective expectations of any individual.

With regards to the case under examination, it is never too much to stress how dangerous it is to use the term *immaturity* in a vague, general sense as constituting an incapacity to sustain an interpersonal relationship 29. As another decision before PINTO pointed out, although it is only in the final

stage of adolescence (between the age of sixteen and nineteen) that the capacity for true oblativ love develops in men, such degree of maturity is not necessary to be present for valid consent³⁰. And he adds: "With regard to immaturity and the lack of equilibrium, it must be remembered that not just every defect is sufficient to warrant a declaration of nullity. Rather a defect must be so serious as to render the person either incapable of free consent or incapable of assuming the essential responsibilities of marriage, i.e. with regard to children, fidelity and indissolubility"³¹.

17. In assessing the degree of severity of the psychic disorder in case, the Court considers the long-term pattern of a person's behaviour, taking into account whether or not it was significantly deviant from what might be considered normal and pre-dated the wedding. Indeed, pre-marital indications are vital in order that the severity of the illness can be determined at the time of the wedding. If the personality defect is to be shown to have impinged on the act of consent, it must therefore be shown to have existed at the time consent was given, as distinct from something which developed subsequently. This will be clear from the continuity of a behaviour pattern from prior to the marriage. Although one's capacity for marriage is not put to the test until after the parties have begun to cohabit, deductions can be legitimately made about pre-marriage behaviour in the context of what is known about the married life. One who has been proved to have been incapable of the obligations of marriage will, most likely, have also been incapable of other relationships and other responsibilities.

18. Also to be considered are possible causes of the behaviour other than a severely disturbed personality, e.g. illness after marriage, extraneous factors such as inadequate accommodation or third party interference - anything which might have prevented the person from putting his / her capacity to the test.

"Quibus principiis attentis, perpendi potest, utrum res peractae a coniugibus post matrimonium demonstrent vitia gravia psychologica antenuptialia, quibus iidem prohibeantur onera coniugalia adimplere, an potius merae violationes onerum susceptorum, responsabiliter, seu scienter et volenter, positas. Non autem licet pravas violationes onerum coniugalium, ab iisdem patratas, semper tribuere vitiis psychosexualibus vel psychologicis et denegare eorumdem responsabilitatem. Ita non omnes mulieres adulterae, quae etiam plures amasios habuerunt, sunt nymphomanes. Neque adulteria, perdurante vita coniugali, patrata, semper demonstrant grava vitia psychologica, quae auferant responsabilitatem ac possibilitatem adimplendi onera suscepta. Humana enim fragilitas ad obligationes matrimoniales assumptas scienter et volenter non servandas saepe inducit, cum voluntas susceptis bonis consiliis ac propositis constanter non haereat. Quod magis tenendum est, si qui incapacitate psychologica adimplendi onera coniugalia affecti dicuntur, nullo vitio corporis et nervorum laborant"³².

The efforts made by the parties to create a good marriage and resolve difficulties are not irrelevant. It is always difficult to discern genuine incapacity if there is no evidence of effort, however misdirected those efforts might have been. It is true that some marriages fail due to a lack of effort, but this would not reflect in any way an "inability to fulfil". There are disordered personalities

who find it *difficult* to adjust to a marital relationship, but who, by patience and counselling, manage to overcome their difficulties and perhaps even to come to terms with incompatibility of temperament. In such cases the degree of severity of the disorder is not incapacitating. The fact that a partner proves to be a difficult person for the other partner to live with is not indicative that the former is incapable of marriage - in the correct judicial sense. When Courts are confronted with cases where there is reasonable doubt as to whether the line between difficulty and impossibility has been crossed, in such cases the decision must according to law, be in favour of the upholding of the validity of marriage ³³.

19. In assessing the degree of severity of a psychic disorder the opinions of psychiatric and / or psychological experts are always valuable and often indispensable in the interpretation of the facts presented by the non-professional witnesses. "Attendendo ... est ad conclusiones peritorum *dummodo* eaedem sint suffultae solidis argumentis ex aegroti exploratione et ex actorum consideratione collectis" ³⁴. "Iudicis erit investigare utrum periti in constabiliendo morbo recte in factis certis institerint, testimoniorum veritati adhaeserint, rerum adiuncta matrimonium antecedentia, concomitantia ac consequentia consideraverint, omnia nempe congesserint atque aestimaverint ad sententiam adstruendam, an vero praeiudicatis opinionibus indulserint" ³⁵

NOTES

1. Cfr. Code of Canon Law, c. 1095, nn.2,3.
2. Canon 1055 § 2.
3. Canon 1056.
4. *Marriage in Canon Law*, Wilmington, Delaware 1986, p.63.
5. *Summa Theologica*, I-II, q.1, art.1.
6. Coram BEJAN, 25*10*72, *SRRD*. vol. 64, p.611; coram COLAGIOVANNI, 18*10*86, in *MONITOR ECCLESIASTICUS*, 112 (1987)228, n.8; coram STANKIEWICZ, 22*3*84, in *ME*, 111(1986)263-264, n.5.
7. A. MENDONCA, *The effects of personality disorders on matrimonial consent*, in *Studia Canonica*, 21(1987/1), p.86.
8. Decision of the 24*2*61, in *SRRD*, vol. 53, p.118.
9. Coram STANKIEWICZ, dec. cit., loc. cit., p.262, n.3; coram PINTO, 23*11*79, in *ME*, 105(1980/IV)390, n.3.
10. Coram HUOT, 7*12*82, *SRRD* vol. 74(1982)578, n.5; cfr. coram POZZI, *SRRD*, vol. 64(1972)142.
11. Cfr. C. LEFEBVRE, *L'evolution actuelle de la jurisprudence matrimoniale*, in *Revue de Droit Canonique*, 24(1974)p.352.
12. J. McAREAVEY, *Emotional Immaturity and Marriage*, Rome 1978, p.89.
13. *Psychodynamics of personality development*, New York 1964, p.230.
14. J. McAREAVEY, op. cit., p.90.
15. Cfr. also the sentence before STANKIEWICZ, 11*7*85, in *Me*, 111(1986/II) 165-166, n.6, in which the Auditor very heavily relied on McAreavey's work, pp.88-89.
16. Cfr. L. WRENN, *Annulments*, 1972, pp.50-51; N. PICARD, *l'immatùritè et le consentement matrimonial*, in *Studia Canonica*, 9(1975)37-56.

17. A.H. CLEMENS, *Design for successful marriage*, New Jersey 1973, p.319.
18. N. CAMERON, *Personality development and psychopathology*, Boston 1963. The court-appointed Expert had concluded that one of the parties in case was suffering from a personality disorder which he classified as inadequate personality disorder.
19. CAMERON, *op. cit.*, p.649.
20. *Ibid.*
21. Cfr. H.EY - P. BERNARD - Ch. BRISSET, *Manuel de psychiatrie*, Paris 1963, p.649.
22. Cfr. *Ibid.*
23. G. VERSALDI, *The dialogue between psychological science and canon law*, in *Incapacity for Marriage: Jurisprudence and interpretation*. Acts of the III Gregorian Colloquium, R. Sable (ed), Rome 1987, p.62.
24. R. BURKE, *Canon 1095, 1 and 2*, in *Incapacity for Marriage*, *cit.*, p.118.
25. Coram PINTO, 8*7*74, n.5.
26. Coram PINTO, 12*2*72, in *ME*, 1982, pp.448-449.
27. Coram EGAN, 9*12*82, in *ME*, 108(1983)237, 239, n.4.
28. Cfr. decision of the 8*3*73, in *ME*, 101(1976)86, n.3; 17*1*76, in *EIC*, 32(1976)285, n.4; coram SERRANO, 5*4*73, in *REDC*, 30(1974)118, n.15.
29. Cfr. coram LEFEBVRE, 31*1*76, in (*EIC*), 32(1976)286, n.3.
30. Decision of the 8*7*74 in *ME*, 100(1975)498, n.3.
31. *Ibid.*, p.501, n.5.
32. Decision of the 12*1*74, *SRRD*, vol. 66, pp.3-4, n.4.
33. Cfr. canon 1060.
34. coram DE JORIO, *SRRD*, vol. 66, pp. 3-4, n.4.
35. Coram POZZI, *SRRD*, vol. 65(1973)21-22.

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