PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS

INSTRUCTION

TO BE OBSERVED BY DIOCESAN AND INTERDIOCESAN TRIBUNALS IN HANDLING CAUSES OF THE NULLITY OF MARRIAGE

DIGNITAS CONNUBII

The dignity of marriage, which between the baptised “is the image of and the participation in the covenant of love between Christ and the Church”(1), demands that the Church with the greatest pastoral solicitude promote marriage and the family founded in marriage, and protect and defend them with all the means available.

The Second Vatican Council not only presented the doctrine on the dignity of marriage and the family(2) using new concepts and renewed terminology, and developed it by exploring more deeply their Christian and properly human aspects, but also prepared a correct path for further doctrinal perspectives and laid renewed foundations upon which the revision of the Code of Canon Law could be based.

These new perspectives, which are commonly called ‘‘personalist", offered much for the progressive development of certain values in a doctrine which was commonly accepted and quite often proposed by the Magisterium in a variety of ways, values which by their nature offer much to assist the institution of marriage and the family in attaining those highest ends which were destined for it by God the Creator by a marvelous plan and given to it by Christ the Redeemer with a spousal love(3).

It is evident that marriage and the family is not a private matter that each person can construct at will. The Council itself, which so extols whatever pertains to the dignity of the human person, aware that the social dimension of man belongs to this dignity, does not fail to point out that marriage by its nature is an institution founded by the Creator and endowed by his laws(4), and that its essential properties are unity and indissolubility, “which in a Christian marriage by reason of the sacrament obtain a particular firmness” (can. 1056).

From all this it follows that the juridic dimension of marriage is not and cannot be conceived as something “juxtaposed as something foreign to the *interpersonal reality* of marriage, but constitutes *a truly intrinsic dimension* of it”(5), as is affirmed explicitly in the doctrine of the Church beginning with Saint Paul, as Saint Augustine observes: “The Apostle attributes so much of a right to this fidelity [of the covenant of marriage] that he calls it a power, saying ‘a wife does not have power over her own body but rather her husband does, likewise a husband does not have power over his body, but rather his wife does' (*1 Cor* 7, 4)”(6). Therefore, as John Paul II affirms, “in a vision of authentic personalism, the Church's teaching implies the affirmation that marriage can be established as an *indissoluble bond*

between the persons of the spouses, a bond essentially ordered to the good of the spouses themselves and of their children"(7).

To this doctrinal progress in the understanding of the institution of marriage there is added in our day a progress in the human sciences, especially the psychological and psychiatric ones which, since they offer a deeper understanding of the human person, can offer much help for a fuller understanding of those things which are required in the human person in order that he or she be capable of entering the conjugal covenant. The Roman Pontiffs, since Pius XII(8), while they called attention to the dangers to be encountered if in this area mere hypotheses, not scientifically proved, were to be taken for scientifically acquired data, always encouraged and exhorted scholars of matrimonial canonical law and ecclesiastical judges not to hesitate to transfer for the advantage of their own science certain conclusions, founded in a sound philosophy and Christian anthropology, which those sciences had offered in the course of time(9).

The new Code promulgated on 25 January 1983 attempted not only to translate "into 'canonical' language"(10) the renewed vision of marriage and the family which the Council presented, but also to gather together the legislative, doctrinal and jurisprudential progress which in the meanwhile had taken place in both substantial and procedural law, of which is especially relevant here the Apostolic Letter given *Motu proprio* of Paul VI, *Causas matrimoniales* of 28 March 1971, which, "while a fuller reform of matrimonial procedure was awaited" provided some norms by which the process itself was rendered more rapid(11), which norms for the most part were incorporated into the promulgated Code.

However, the new Code followed the same method as the Code of 1917, in regard to the matrimonial process for the declaration of nullity. In the special part *De processibus matrimonialibus*, it gathers together in one chapter the particular norms proper to this process (cann. 1671-1691), while the other prescriptions which govern the entire process are found in the general part *De iudicibus in genere* (cann. 1400-1500) and *De iudicio contentioso* (cann. 1501-1655), with the result that the procedural path which the judges and ministers of the tribunal are bound to follow in causes for the declaration of the nullity of marriage is not found in one and the same continuous tract. The difficulties which follow from this in handling causes of this nature are obvious in themselves and judges admit to experiencing them continuously, all the more so because the canons on trials in general and on the ordinary contentious trial are only to be applied "unless the nature of the matter prevents this" and also "without prejudice to the special norms concerning causes of the status of persons and causes concerning the public good" (can. 1691).

In regard to the Code of 1917, since these difficulties were encountered, the Sacred Congregation for the Discipline of the Sacraments issued the instruction *Provida Mater* on 15 August 1936(12), with the stated intention "of providing for the same causes to be instructed and decided more quickly and more securely". In regard to the method and the criteria employed, the instruction organized the material by gathering together the canons, the jurisprudence and the praxis of the Roman Curia.

After the Code was promulgated in 1983, there appeared a pressing need to prepare an

instruction which, following the footsteps of *Provida Mater*, would be helpful to judges and other ministers of tribunals in properly understanding and applying the renewed matrimonial law, all the more so because the number of causes of the nullity of marriage had increased while, in contrast, the judges and ministers of tribunals were often found to be fewer and entirely unequal to the task of carrying on the work. Nonetheless it also seemed necessary that some time would be allowed to pass before that instruction would be prepared, as had happened after the promulgation of the 1917 Code, so that in preparing the instruction account could be taken of the application of the new matrimonial law in the light of experience, of any authentic interpretations that might be given by the Pontifical Council for Legislative Texts, and also of both doctrinal development and the evolution of jurisprudence, especially that of the Supreme Tribunal of the Apostolic Signatura and the Tribunal of the Roman Rota.

Once such a suitable period of time had elapsed, the Supreme Pontiff John Paul II, on 24 February 1996, judged it opportune that an interdicasterial Commission be established to prepare, using the same criteria and the same method as in the Instruction *Provida Mater*, an instruction by which judges and ministers of tribunals might be led by the hand, as it were, in carrying out this sort of work of great importance, namely, in processing causes which pertain to the declaration of the nullity of marriage, avoiding the difficulties which can emerge in the course of a trial even from the manner in which the norms of this process have been distributed throughout the Code.

The first and second drafts of this instruction were prepared through the cooperation of the Dicasteries concerned, namely, the Congregation for the Doctrine of the Faith, the Congregation for Divine Worship and the Discipline of the Sacraments, the Supreme Tribunal of the Apostolic Signatura, the Tribunal of the Roman Rota and the Pontifical Council for Legislative Texts; Conferences of Bishops were heard as well.

After he had studied the work carried out by the Commission, the Roman Pontiff, with a letter dated 4 February 2003, determined that this Pontifical Council, taking into consideration the two drafts previously mentioned, would prepare and publish the definitive text of an instruction concerning the norms in force. This was carried out with the help of a new interdicasterial Commission and in consultation with the Congregations and Apostolic Tribunals concerned.

The Instruction then has been drafted and published with the intention that it be a help to judges and other ministers of the tribunals of the Church, to whom the sacred ministry of hearing the causes of the nullity of marriage has been entrusted. Thus, the procedural laws of the Code of Canon Law for the declaration of the nullity of marriage remain in their full force and reference is always to be made to them in interpreting the Instruction. However, keeping in mind the proper nature of this kind of process, it is especially important to avoid both a juridical formalism, which is entirely foreign to the spirit of the laws of the Church, and a way of acting that indulges in too great a subjectivism in interpreting and applying both the substantive and the procedural norms(13). Furthermore, in order to achieve in the Church that fundamental unity of jurisprudence which matrimonial causes demand, it is necessary that the tribunals of a lower level look to the Apostolic Tribunals, namely to the Tribunal of

the Roman Rota, to which it pertains ‘‘to provide for the unity of jurisprudence" and ‘‘through its sentences, to be of assistance to lower tribunals" (*Pastor bonus*, art. 126), and to the Supreme Tribunal of the Apostolic Signatura, to which it pertains, ‘‘besides the function which it exercises of a Supreme Tribunal", to provide ‘‘that justice in the Church is properly administered" (*Pastor bonus*, art. 121).

It must be stated that the observation which *Provida Mater* made is still valid today and is even more urgent now than when that Instruction was issued, namely, “However it must be observed that such rules will be insufficient to achieve their stated purpose unless diocesan judges know the sacred canons thoroughly and are well prepared through an experience of tribunal work"(14).

For this reason it falls to the Bishops, and this should weigh heavily on their consciences, to see to it that suitable ministers of justice for their tribunals are trained in canon law appropriately and in a timely manner, and are prepared by suitable practice to instruct causes of marriage properly and decide them correctly.

Therefore, the following norms are to be observed by diocesan and interdiocesan tribunals in handling causes of the nullity of marriage:

Art. 1 – § 1. This Instruction concerns only the tribunals of the Latin Church (cf. can. 1).

§ 2. All tribunals are regulated by the procedural law of the Code of Canon Law and by this Instruction, without prejudice to the proper laws of the tribunals of the Apostolic See (cf. can. 1402; *Pastor bonus*, artt.125; 130).

§ 3. Dispensation from procedural laws is reserved to the Apostolic See (cf. can. 87; *Pastor bonus*, art. 124, n. 2).

Art. 2 – § 1. A marriage between Catholics, even if only one party is a Catholic, is governed not only by divine law but also by canon law, without prejudice to art. 3, § 3 (cf. can. 1059).

§ 2. A marriage between a Catholic party and a baptized non-Catholic party is governed also:

1º by the proper law of the church or ecclesial community to which the non-Catholic party belongs, if that community has its own marriage law;

2º by the law used by the ecclesial community to which the non-Catholic party belongs, if that community lacks its own marriage law.

Art. 3 – § 1. The matrimonial causes of the baptized pertain by right to the ecclesiastical judge (can. 1671).

§ 2. However, an ecclesiastical judge hears only those causes of the nullity of marriage of non-Catholics, whether baptized or unbaptized, in which it is necessary to establish the free

state of at least one party before the Catholic Church, without prejudice to art. 114.

§ 3. Causes concerning the merely civil effects of marriage belong to the civil magistrate, unless particular law provides that those same causes, if they are to be treated incidentally and subordinately, can be heard and decided by an ecclesiastical judge.

Art. 4 – § 1. Whenever an ecclesiastical judge must decide about the nullity of a marriage of baptized non-Catholics:

1º in regard to the law by which the parties were bound at the time of the celebration of the marriage, art. 2, § 2 is to be observed;

2º in regard to the form of celebration of marriage, the Church recognizes any form prescribed or accepted in the Church or ecclesial community to which the parties belonged at the time of the marriage, provided that, if at least one party is a member of a non-Catholic Eastern Church, the marriage was celebrated with a sacred rite.

§ 2. Whenever an ecclesiastical judge must decide about the nullity of a marriage contracted by two unbaptized persons:

1º the cause of nullity is heard according to canonical procedural law;

2º however, the question of the nullity of the marriage is decided, without prejudice to divine law, according to the law by which the parties were bound at the time of the marriage.

Art. 5 – § 1. Causes of the nullity of marriage can be decided only through the sentence of a competent tribunal.

§ 2. However, the Apostolic Signatura enjoys the faculty of deciding by decree cases of the nullity of marriage in which the nullity appears evident; but if they require a more detailed study or investigation the Signatura is to remit them to a competent tribunal or another tribunal, if need be, which is to handle the cause according to the ordinary procedure of the law.

§ 3. However, in order to establish the free state of those who, while bound to observe the canonical form of marriage according to can. 1117, attempted marriage before a civil official or non-Catholic minister, it is sufficient to use the prematrimonial investigation in accordance with cann. 1066-1071(15).

Art. 6 – § 1. Causes for the declaration of the nullity of marriage cannot be handled through the oral process (cf. can. 1690).

Art. 7 – § 1. This Instruction is concerned only with the process for the declaration of the nullity of marriage, and not with the processes for obtaining the dissolution of the marriage bond (cf. cann. 1400, § 1, n. 1; 1697-1706).

§ 2. Therefore the distinction between the declaration of the nullity of a marriage and the dissolution of a marriage must be kept clearly in mind also in regard to terminology.

Title I

THE COMPETENT FORUM

Art. 8 – § 1. It is the right of the Roman Pontiff alone to judge causes of the nullity of the marriage of those who hold the highest office of governance of a state, as well as other causes of the nullity of marriage which the same Roman Pontiff has called to his own judgement (cf. can. 1405, § 1, nn. 1, 4).

§ 2. In the causes mentioned in § 1, the incompetence of other judges is absolute (cf. can. 1406, § 2).

Art. 9 – § 1. The incompetence of a judge is also absolute:

1º if the cause is legitimately pending before another tribunal (cf. can. 1512, n. 2);

2º if competence by reason of grade or by reason of matter is not observed (cf. can. 1440).

§ 2. Thus the incompetence of a judge is absolute by reason of grade if the same cause, after a definitive sentence has been issued, is heard again in the same instance, unless the sentence happens to have been declared null; it is absolute by reason of matter if a cause of nullity of marriage is heard by a tribunal which is able to judge only causes of another type.

§ 3. In the case mentioned in § 1, n. 2, the Apostolic Signatura for a just cause can entrust the hearing of the cause to a tribunal otherwise absolutely incompetent (cf. *Pastor bonus*, art. 124, n. 2).

Art. 10 – § 1. In causes of the nullity of marriage which are not reserved to the Apostolic See and have not been called to it, the following tribunals are competent in the first grade of jurisdiction:

1º the tribunal of the place in which the marriage was celebrated;

2º the tribunal of the place in which the respondent party has a domicile or quasi-domicile;

3º the tribunal of the place in which the petitioning party has a domicile, as long as both parties live in the territory of the same Conference of bishops and the Judicial Vicar of the domicile of the respondent party has given his consent; before doing so, he is to ask the respondent party whether he has any objection to make;

4º the tribunal of the place in which *de facto* the greater part of the proofs are to be collected, as long as the Judicial Vicar of the domicile of the respondent party has given his consent; before doing so, he is to ask the respondent party whether he has any objection to make (cf.

can. 1673).

§ 2. The incompetence of a judge who does not enjoy any of these titles of competence is called relative, without prejudice however to the prescriptions regarding absolute incompetence (cf. can. 1407, § 2).

§ 3. If no exception of relative incompetence is filed before the concordance of the doubt, the judge becomes competent *ipso iure*, but without prejudice to can. 1457, § 1.

§ 4. In a case of relative incompetence the Apostolic Signatura for a just cause can grant an extension of competence (cf. *Pastor bonus*, art. 124, n. 3).

Art. 11 – § 1. In order to verify the canonical domicile of the parties and especially their quasi-domicile, as treated in cann. 102-107, in case of doubt a simple declaration of the parties does not suffice, but suitable documents are required, whether civil or ecclesiastical, or if these are lacking, other means of proof.

§ 2. If it is claimed that a quasi-domicile has been acquired by a stay in the territory of some parish or diocese, combined with the intention of remaining there for at least three months, particular care is to be taken to see whether the requirements of can. 102, § 2 have truly been fulfilled.

§ 3. A spouse separated for whatever reason either permanently or for an indefinite time does not follow the domicile of the other spouse (cf. can. 104).

Art. 12 – Once a cause is pending, a change of the domicile or quasi-domicile of the spouses does not remove or suspend the competence of the tribunal (cf. can. 1512, nn. 2, 5).

Art. 13 – § 1. Until the conditions stated in art. 10, § 1, nn. 3-4, have been fulfilled, the tribunal cannot proceed legitimately.

§ 2. In these cases there must be written proof of the consent of the Judicial Vicar of the domicile of the respondent party; such consent cannot be presumed.

§ 3. The prior hearing of the respondent party by his Judicial Vicar can be done either in writing or orally; if done orally, the Vicar is to draw up a document attesting to this.

§ 4. Before giving his consent, the Judicial Vicar of the domicile of the respondent party is to consider carefully all the circumstances of the cause, especially the difficulties of the respondent party in defending himself before the tribunal of the place in which the petitioning party has a domicile or in which the greater part of the proofs are to be collected.

§ 5. The Judicial Vicar of the domicile of the respondent party in this case is not the judicial vicar of an interdiocesan tribunal but rather the diocesan judicial vicar; if in a particular case there is no such Vicar, it is the Diocesan Bishop(16).

§ 6. If the conditions stated in the preceding paragraphs cannot be observed because, after a diligent investigation, it is not known where the respondent party lives, this must be documented in the acts.

Art. 14 – In weighing the question of whether some tribunal is truly that of the place in which the greater part of the proofs is to be collected, one must take into consideration not only those proofs which it is expected that the two parties will propose but also those which should be collected *ex officio.*

Art. 15 – When a marriage is being challenged because of several different grounds of nullity, those grounds, by reason of connection, are to be considered by one and the same tribunal in the same process (cf. cann. 1407, § 1; 1414).

Art. 16 – § 1. A tribunal of the Latin Church, without prejudice to artt. 8-15, can hear the cause of the nullity of the marriage of Catholics of another Church *sui iuris*:

1º *ipso iure* in a territory where, besides the local Ordinary of the Latin Church, there is no other local Hierarch of any other Church *sui iuris*, or where the pastoral care of the faithful of the Church *sui iuris* in question has been entrusted to the local Ordinary of the Latin Church by designation of the Apostolic See or at least with its assent (cf. can. 916, § 5, CCEO);

2º in other cases by reason of an extension of competence granted by the Apostolic Signatura whether stably or *ad casum*.

§ 2. In such case, the tribunal of the Latin Church must proceed according to its own procedural law, but the question of the nullity of marriage is to be decided according to the laws of the Church *sui iuris* to which the parties belong.

Art. 17 – In regard to the competence of tribunals in the second or higher grade of jurisdiction, articles 25 and 27 are to be observed (cf. cann. 1438-1439; 1444, § 1; 1632, § 2; 1683).

Art. 18 – By reason of prevention, if two or more tribunals are equally competent, the right to hear the cause pertains to the tribunal which first legitimately cited the respondent party (can. 1415).

Art. 19 – § 1. Once an instance has finished through abatement (*peremptio)* or renunciation, a party who wishes to introduce the cause anew or pursue it can approach any tribunal which is competent at the time of resumption(17).

§ 2. If the abatement or renunciation or desertion (*desertio*) took place, however, before the Roman Rota, a cause which was either entrusted to that same Apostolic Tribunal or was brought there through a legitimate appeal can be resumed only before the Rota(18).

Art. 20 – A conflict of competence between tribunals subject to the same tribunal of appeal is to be resolved by that tribunal; if they are not subject to the same tribunal of appeal it is to

be resolved by the Apostolic Signatura (can. 1416).

Art. 21 – If an exception is proposed against the competence of a tribunal, articles 78-79 are to be observed.

Title II

TRIBUNALS

Chapter I

Judicial power in general and tribunals

Art. 22 – § 1. In each diocese the judge of first instance for causes of nullity of marriage not expressly excepted by law is the Diocesan Bishop, who can exercise judicial power personally or through others, in accordance with the law (cf. can. 1419, § 1).

§ 2. Nonetheless, it is expedient that, unless special causes demand it, he not do this personally.

§ 3. Therefore all Bishops must establish a diocesan tribunal for their respective dioceses.

Art. 23 – § 1. Several Diocesan Bishops, however, with the approval of the Apostolic See, can by common agreement establish a single tribunal of first instance for their dioceses, in accordance with can. 1423, in place of the diocesan tribunals described in cann. 1419-1421.

§ 2. In such case, a Bishop can establish in his own diocese an ‘‘instructional" section, with one or more auditors and a notary, for the purpose of collecting the proofs and communicating judicial acts.

Art. 24 – § 1. If it is entirely impossible to establish a diocesan or interdiocesan tribunal, a Diocesan Bishop can request from the Apostolic Signatura an extension of competence for another nearby tribunal, with the consent of the Bishop Moderator of that tribunal.

§ 2. The Bishop Moderator is understood to be the Diocesan Bishop in regard to a diocesan tribunal and the designated Bishop, mentioned in art. 26, in regard to an interdiocesan tribunal.

Art. 25 – § 1. In regard to tribunals of second instance, without prejudice to art. 27 and any indults granted by the Apostolic See:

1º from the tribunal of a suffragan Bishop appeal is made to the tribunal of the Metropolitan, without prejudice to the prescriptions of nn. 3-4 (cf. can. 1438, n. 1);

2º in causes judged in first instance before the tribunal of the Metropolitan appeal is made to

the tribunal which he, with the approval of the Apostolic See, has stably designated (cf. can. 1438, n. 2);

3º if a single tribunal of first instance has been established for several dioceses, in accordance with art. 23, the Conference of Bishops must establish a tribunal of appeal, with the approval of the Apostolic See, unless the dioceses are all suffragans of the same archdiocese (cf. can. 1439, § 1);

4º the Conference of Bishops can, with the approval of the Apostolic See, establish one or more tribunals of second instance even apart from the cases mentioned in n. 3 (cf. can. 1439, § 2).

Art. 26 – In regard to the tribunal mentioned in art. 23, the *coetus* of Bishops, and in regard to the tribunals mentioned in art. 25, nn. 3-4, the Conference of Bishops, or the Bishop designated by either body, has all the powers which pertain to a Diocesan Bishop in regard to his own tribunal (cf. cann. 1423, § 1; 1439, § 3).

Art. 27 – § 1. The Roman Rota is an appeal tribunal of second instance concurrent with the tribunals mentioned in art. 25; therefore all causes judged in first instance at any tribunal whatsoever can be brought to the Roman Rota by legitimate appeal (cf. can. 1444, § 1, n. 1; *Pastor bonus*, art. 128, n. 1).

§ 2. Without prejudice to particular laws issued by the Apostolic See or indults granted by it, the Roman Rota is the only tribunal of third and higher instance (cf. can. 1444, § 1, n. 2; *Pastor bonus*, art. 128, n. 2).

Art. 28 – Apart from a legitimate appeal to the Roman Rota in accordance with art. 27, a referral of a cause (*provocatio*) made to the Apostolic See does not suspend the exercise of jurisdiction by a judge who has already begun to hear that cause; therefore he can continue the trial through to the definitive sentence, unless the Apostolic See has notified the judge that it has called the cause to itself (cf. can. 1417 § 2).

Art. 29 – § 1. Any tribunal has the right to call upon another tribunal for help in instructing a cause or in communicating acts (can. 1418).

§ 2. If need be, rogatorial letters can be sent to the diocesan bishop so that he can take care of the matter.

Art. 30 – § 1. Causes of the nullity of marriage are reserved to a collegial tribunal of three judges, without prejudice to artt. 295, 299 (cf. can. 1425, § 1), with any custom to the contrary being reprobated.

§ 2. The Bishop Moderator can entrust more difficult or more important causes to the judgement of five judges (cf. can. 1425, § 2).

§ 3. In the first grade of trial, if it happens that a college cannot be formed, the Conference of

Bishops, as long as this impossibility persists, can permit a Bishop Moderator to entrust causes to a single clerical judge who, when this can be done, is to employ an assessor and an auditor; to the same single judge, unless it is determined otherwise, pertain those things attributed to a college, *praeses* or *ponens* (cf. can. 1425, § 4).

§ 4. A tribunal of second instance is formed in the same way as a tribunal of first instance; but for validity that tribunal must always be collegial (cf. cann. 1441; 1622, n. 1).

Art. 31 – Whenever a tribunal must proceed collegially, it is bound to make its decisions by a majority of votes (cf. can. 1426, § 1).

Art. 32 – § 1. The judicial power enjoyed by judges or judicial colleges is to be exercised in the manner prescribed by law and it may not be delegated except for the purpose of carrying out acts preparatory to some decree or sentence (can. 135, § 3).

§ 2. Judicial power is to be exercised in one's proper territory, without prejudice to art. 85.

Chapter II

The ministers of the tribunal

1. Ministers of justice in general

Art. 33 – In light of the seriousness and the difficulty of causes of the nullity of marriage, it is the responsibility of Bishops to see to it:

1º that suitable ministers of justice are prepared for their tribunals;

2º that those selected for this ministry each fulfill their respective functions diligently and in accordance with the law.

Art. 34 – § 1. Ministers of a diocesan tribunal are named by the Diocesan Bishop; ministers of an interdiocesan tribunal, unless otherwise expressly determined, are named by the *coetus* of Bishops or, as the case may be, by the Conference of Bishops.

§ 2. In an urgent case the ministers of an interdiocesan tribunal may be named by the Bishop Moderator until the *coetus* or Conference provides.

Art. 35 – § 1. All who make up the tribunal or assist it must take an oath to carry out their function properly and faithfully (can. 1454).

§ 2. In order to exercise their respective functions properly, judges, defenders of the bond and promoters of justice are to be diligent in continuing to deepen their knowledge of matrimonial and procedural law.

§ 3. With particular reason it is necessary that they study the jurisprudence of the Roman

Rota, since it is responsible to promote the unity of jurisprudence and, through its own sentences, to be of assistance to lower tribunals (cf. *Pastor bonus*, art.126).

Art. 36 – § 1. The Judicial Vicar, Adjunct Judicial Vicars, other judges, defenders of the bond and promoters of justice are not to exercise the same function or any other of these functions in a stable manner in two tribunals which are connected by reason of appeal.

§ 2. The same officials are not to exercise simultaneously two functions in a stable manner in the same tribunal, without prejudice to art. 53, § 3.

§ 3. It is not permitted for the ministers of the tribunal to exercise, at the same tribunal or at another tribunal connected with it by reason of appeal, the function of advocate or procurator, whether directly or through an intermediate person.

Art. 37 – No other minister of the tribunal can be established besides those listed in the Code.

2. Ministers of justice in particular

a) *The Judicial Vicar, the Adjunct Judicial Vicars and other Judges*

Art. 38 – § 1. Every Diocesan Bishop is bound to appoint for his tribunal one Judicial Vicar or Officialis with the ordinary power of judging; he is to be distinct from the Vicar General, unless the smallness of the diocese or the scarcity of causes suggests otherwise (cf. can. 1420, § 1).

§ 2. The Judicial Vicar forms one tribunal with the Bishop, but he cannot judge causes which the Bishop reserves to himself (cf. can. 1420, § 2).

§ 3. Without prejudice to those things which pertain to himself by right, especially freedom in passing judgement, the Judicial Vicar is bound to render an account concerning the state and activity of the tribunal to the Bishop, who is responsible for monitoring the proper administration of justice.

Art. 39 – A Judicial Vicar is also to be appointed for each interdiocesan tribunal; to him those things concerning the diocesan Judicial Vicar are to be applied in an appropriate manner.

Art. 40 – Judicial Vicars are bound by the obligation of making personally, before the Bishop Moderator of the tribunal or his delegate, the profession of faith and oath of fidelity, according to the formula approved by the Apostolic See (cf. can. 833, n. 5)(19).

Art. 41 – § 1. The Judicial Vicar can be given assistants, called Adjunct Judicial Vicars or Vice-Officiales (can. 1420, § 3).

§ 2. Without prejudice to their freedom in judging, the Adjunct Judicial Vicars are bound to

act under the direction of the Judicial Vicar.

Art. 42 – § 1. Both the Judicial Vicar and the Adjunct Judicial Vicars must be priests or bishops (*sacerdotes*), of unimpaired reputation, having a doctorate or at least a licentiate in canon law, and not less than thirty years of age (can. 1420, § 4).

§ 2. It is strongly recommended that no one lacking experience of tribunal work be appointed a Judicial Vicar or Adjunct Judicial Vicar.

§ 3. The same officials do not cease from office during the vacancy of the see nor can they be removed by the diocesan administrator; however, when the new Bishop arrives they need confirmation (can. 1420, § 5).

Art. 43 – § 1. Judges are to be appointed for both diocesan and interdiocesan tribunals; they are to be clerics (cf. can. 1421, § 1).

§ 2. The Conference of Bishops can permit even lay judges to be named; when necessary, one of these can be chosen in order to form a college (can. 1421, § 2).

§ 3. Judges are to be of unimpaired reputation and to have a doctorate or at least a licentiate in canon law (cf. can. 1421, § 3).

§ 4. It is also recommended that no one be named a judge who has not already carried out another function in the tribunal for a suitable period of time.

Art. 44 – The Judicial Vicar, the Adjunct Judicial Vicars and the other judges are named for a definite period of time, without prejudice to what is prescribed by art. 42, § 3, nor can they be removed except for a legitimate and grave cause (cf. can. 1422).

Art. 45 – § 1. It pertains to a collegial tribunal:

1º to decide the principal cause (cf. art. 30, §§ 1, 3);

2º to hear an exception of incompetence (cf. art. 78);

3º to hear a recourse proposed to it against the rejection of a *libellus* (cf. art. 124, § 1);

4º to hear a recourse proposed to it against a decree of the *praeses* or *ponens* by which the formulation of the doubt or doubts was set (cf. art. 135, § 4);

5º to decide the question *expeditissime* if a party insists that a rejected proof be admitted (cf. art. 158, § 1);

6º to decide incidental questions according to artt. 217- 228;

7º to grant, for a grave reason, a period longer than a month for the drawing up of the

sentence (cf. art. 249, § 5);

8º to impose a *vetitum*, if need be (cf. artt. 250, n. 3; 251);

9º to determine the judicial expenses and to hear a recourse against a decision regarding expenses and remunerations (cf. artt. 250, n. 4; 304, § 2):

10º to correct a material error in a sentence (cf. art. 260);

11º in the grade of appeal to confirm expeditiously by decree a sentence in favour of the nullity of marriage given in the first grade of trial or to admit it to an ordinary examination in the new grade, in accordance with art. 265;

12º to hear questions about the nullity of a sentence (cf. artt. 269; 274, § 1; 275; 276, § 2; 277, § 2);

13º to issue other procedural acts which the college has reserved to itself or which have been deferred to it.

Art. 46 – § 1. The collegial tribunal is to be presided over by the Judicial Vicar or Adjunct Judicial Vicar or, if this cannot be done, by a cleric from the college designated by either one of them (cf. can. 1426, § 2).

§ 2. It pertains to the *praeses* of the college:

1º to designate the *ponens* or to replace the *ponens* with another for a just cause (cf. art. 47);

2º to designate an auditor or for a just cause to delegate a suitable person *ad actum* to interrogate a party or witness (cf. artt. 50, § 1; 51);

3º to hear an exception against the defender of the bond, the promoter of justice, or other officials of the tribunal (cf. art. 68, § 4);

4º to discipline those taking part in the trial in accordance with cann. 1457, § 2; 1470, § 2; 1488-1489 (cf. artt. 75, § 1; 87; 111, § 1; 307, § 3);

5º to admit or designate a guardian (*curator*) (cf. artt. 99, § 1; 144, § 2);

6º to provide for the ministry of a procurator or advocate in accordance with artt. 101, §§ 1, 3; 102; 105, § 3; 106, § 2; 109; 144, § 2);

7º to admit or reject the *libellus* and to summon the respondent party to the trial in accordance with artt. 119- 120; 126;

8º to see that the decree of citation is communicated immediately and, if need be, to convoke

the parties and the defender of the bond with a new decree (cf. artt. 126, § 1; 127, § 1);

9º to decree that the *libellus* is not to be communicated to the respondent party before that party has given a deposition in the trial (cf. art. 127, § 3);

10º to propose and set the formulation of the doubt or doubts (cf. artt. 127, § 2; 135, § 1);

11º to arrange and carry out the instruction of the cause (cf. artt. 137; 155ss.; 239);

12º to declare the respondent party absent from the trial and to try to get him to participate (cf. artt. 138; 142);

13º to proceed in accordance with art. 140 if the petitioner does not respond to the citation (cf. art 142);

14º to declare the instance abated or to admit a renunciation (cf. artt. 146-147; 150, § 2);

15º to name experts and, if need be, to accept reports already made by other experts (cf. art. 204);

16º to reject at the outset (*in limine*) a petition to introduce an incidental cause, in accordance with art. 120, or to revoke a decree issued by himself that has been challenged (cf. art. 221, § 2);

17º by mandate of the college to decide an incidental question by decree in accordance with art. 225;

18º to decree the publication of the acts and the conclusion in the cause and to oversee its discussion (cf. artt. 229-245);

19º to schedule the session of the college for deciding the cause and to lead the discussion of the college (cf. art. 248);

20º to provide in accordance with art. 225 if a judge is not able to affix his signature to the sentence;

21º in the process mentioned in art. 265, to provide by his decree that the acts are to be sent to the defender of the bond for his *votum* and that the parties are advised to propose their observations, if they wish;

22º to grant free legal representation (cf. artt. 306-307);

23º to place other procedural acts which have not been reserved to the college by the law itself or by an act of the college.

Art. 47 – § 1. The *ponens*, or presenter, designated by the *praeses* from among the judges of

the college, is to present the cause in the meeting of the judges, to write down the decision in the form of a response to the proposed doubt, as well as to draw up in writing the sentence and decrees in incidental causes (cf. can. 1429; artt. 248, §§ 3, 6; 249, § 1).

§ 2. Once the *libellus* has been admitted, the powers of the *praeses*, mentioned in art. 46, § 2, nn. 8-16, 18, 21, *ipso iure* belong to the *ponens*, or presenter, without prejudice to the faculty of the *praeses* to reserve some matters to himself.

§ 3. For a just cause the *praeses* can replace the *ponens* with another (cf. can. 1429).

Art. 48 – § 1. The Judicial Vicar is to assign judges in order by panels to judge each individual cause or, as the case may be, to assign a single judge according to a pre-established order (cf. can. 1425, § 3).

§ 2. In individual cases the Bishop Moderator can determine otherwise (cf. can. 1425, § 3).

Art. 49 – Once they have been assigned the Judicial Vicar is not to replace judges except for a very serious cause to be expressed in the decree (cf. can. 1425, § 5).

b) *Auditors and Assessors*

Art. 50 – § 1. The *praeses* of the tribunal can designate an auditor to carry out the instruction of the cause, selecting him either from among the judges of the tribunal or from among the persons approved by the Diocesan Bishop for this function (cf. can. 1428, § 1).

§ 2. The Diocesan Bishop can approve for his diocese for the function of auditor clerics or laypersons who are outstanding for their upright life, prudence and learning (cf. can. 1428, § 2).

§ 3. It pertains to the auditor, according to the mandate of the judge, only to collect the proofs and give them to the judge; however, unless the mandate of the judge provides otherwise, he can also decide in the interim what proofs are to be collected and how they are to be collected, if the question should happen to arise while he is carrying out this function (cf. can 1428, § 3).

§ 4. At any point in the trial the auditor can be removed for a just cause by the one who appointed him (cf. can. 193, § 3).

Art. 51 – The *praeses*, *ponens* and, without prejudice to art. 50, § 3, an auditor for a just cause can delegate *ad actum* a suitable person who, especially if a party or witness cannot come to the seat of the tribunal without grave inconvenience, is to question them according to the mandate received (cf. cann. 1558, § 3; 1561).

Art. 52 – An assessor, who is assumed as a consultant to a single judge in accordance with art. 30, § 3, is to be chosen from among those clergy or laypersons approved for this function

by the Bishop Moderator (cf. can. 1424).

c) *The Defender of the Bond and the Promoter of Justice*

Art. 53 – § 1. For all causes of the nullity of marriage, there must be appointed in each diocesan or interdiocesan tribunal at least one defender of the bond and promoter of justice, with due observance of art. 34 concerning their nomination (cf. cann. 1430; 1432).

§ 2. However, others may be appointed for individual causes, with due observance of art. 34, to carry out the function of defender of the bond or promoter of justice (cf. can. 1436, § 2).

§ 3. The same person, but not in the same cause, can carry out the office of defender of the bond and promoter of justice (cf. can. 1436, § 1).

§ 4. The defender of the bond and the promoter of justice can be removed, for a just cause, by those who appointed them (cf. can. 1436, § 2).

Art. 54 – The defender of the bond and the promoter of justice are to be clerics or laypersons, of unimpaired reputation, having a doctorate or at least a licentiate in canon law, and of proven prudence and zeal for justice (cf. can. 1435).

Art. 55 – The Judicial Vicar can name substitutes for the defender of the bond and promoter of justice from among those named in accordance with art. 53, §§ 1-2; this is to be done by a decree to be mentioned in the acts, and can be done either from the beginning of the process or during it. The substitutes are to stand in for those who were originally named whenever the latter are impeded.

Art. 56 – § 1. In causes of the nullity of marriage the presence of the defender of the bond is always required.

§ 2. The defender must participate from the beginning of the process and during its course, in accordance with the law.

§ 3. In every grade of trial, the defender is bound by the obligation to propose any kind of proofs, responses and exceptions that, without prejudice to the truth of the matter, contribute to the protection of the bond (cf. can. 1432).

§ 4. In causes concerning the incapacities described in can. 1095, it pertains to the defender to see whether the questions proposed in a clear fashion to the expert are relevant to the matter and do not go beyond the limits of the expert's competence; it pertains to the defender to observe whether the expert opinions are rooted in a Christian anthropology and have been drawn up according to a scientific method, pointing out to the judge anything he has found in the reports that is to be advanced in favour of the bond; in case of an affirmative sentence, before the tribunal of appeal it pertains to the defender to indicate clearly if anything in the expert reports was not correctly evaluated by the judges to the detriment of the bond.

§ 5. The defender can never act in favour of the nullity of marriage; if in a special case he has nothing that can be reasonably proposed or argued in favour of the bond, the defender can remit himself to the justice of the court.

§ 6. At the appellate level, after having carefully considered all the acts, even though the defender can refer back to the observations in favour of the bond proposed in the prior instance, he nonetheless must always propose his own observations, especially in regard to a supplementary instruction, if one has been carried out.

Art. 57 – § 1. The promoter of justice must take part when he challenges a marriage in accordance with art. 92, n. 2.

§ 2. The promoter of justice, by virtue of a decree issued by the judge, whether ex officio or at the instance of the defender of the bond or a party, must take part when it is a matter of safeguarding a procedural law, especially when the question concerns the nullity of the acts or exceptions.

§ 3. If in a preceding instance of a principal or incidental cause the promoter of justice took part, his participation is presumed to be necessary in a higher grade of the same cause (cf. can. 1431, § 2).

Art. 58 – In causes in which the promoter of justice has challenged a marriage in accordance with art. 57, § 1, the promoter enjoys the same rights as a petitioning party, unless something else is determined by the nature of the matter or a prescription of the law.

Art. 59 – § 1. Unless something else has been expressly provided:

1º whenever the law prescribes that the judge is to hear the parties or one of them, the defender of the bond and the promoter of justice, if he is taking part in the trial, are to be heard as well;

2º whenever a request by a party is required in order for the judge to be able to deliberate on a matter, a request by the defender of the bond or the promoter of justice, if he is taking part in the trial, has the same force (cf. can. 1434).

Art. 60 – If the defender of the bond or the promoter of justice, if his presence is required, have not been cited, the acts are invalid unless the same persons, even though not cited, actually took part, or at least, having examined the acts, were each able to perform their proper function before the sentence (cf. can. 1433).

d) *The Head of the Tribunal Chancery and the other Notaries*

Art. 61 – § 1. It pertains to the head of the tribunal chancery, who is automatically a notary for tribunal acts, to see that the acts of the tribunal are properly drawn up and sent, according to the mandate of the judge, and are preserved in the archive (cf. can. 482).

§ 2. Therefore, unless otherwise determined, it pertains to this person: to record in the protocol book all the acts which arrive at the tribunal; to note in the protocol book the beginning, the progress and the end of causes; to receive documents exhibited by the parties; to send citations and letters; to see to the preparation of the *summaria* of processes and their distribution to the judges; to safeguard the acts of each cause; to send an authenticated copy of the acts to the tribunal of appeal if an appeal is filed or *ex officio*; to keep the original copy of acts and documents in the archive; to authenticate a copy of any act or document at the legitimate request of an interested party; finally, to return documents in accordance with art. 91, §§ 1-2;

§ 3. The head of the chancery is to abstain carefully from any kind of intervention in a cause apart from those things which pertain to his function.

§ 4. If the head of the chancery is absent or impeded, another notary for judicial acts is to take care of all these matters.

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).

§ 3. A notary can be given a substitute to stand in for him when the notary is impeded; this appointment is to be made by a decree to be mentioned in the acts.

§ 4. For a just reason, a substitute can be named *ad actum* by the judge or his delegate or the auditor, especially when a party or a witness is to be questioned outside the seat of the tribunal.

Art. 63 – The head of the chancery and the notaries must be of unimpaired reputation and above all suspicion (cf. can. 483, § 2).

Art. 64 – In the diocesan tribunal they can be removed from office in accordance with can. 485 and in an interdiocesan tribunal by the Bishop Moderator.

Title III

THE DISCIPLINE TO BE OBSERVED IN TRIBUNALS

Chapter I

The duty of the judge and the other ministers of the tribunal

Art. 65 – § 1. A judge, before he accepts a cause and whenever he perceives the hope of a

good outcome, is to employ pastoral means to convince the spouses, if this can be done, to conval- idate the marriage and reestablish conjugal life (can. 1676).

§ 2. If this cannot be done, the judge is to urge the spouses to work together sincerely, putting aside any personal desire and living the truth in charity, in order to arrive at the objective truth, as the very nature of a marriage cause demands.

§ 3. If, however, the judge observes that the spouses are affected by a spirit of mutual animosity, he is to urge them strongly to observe mutual courtesy, graciousness, and charity within the process, avoiding any hostility.

Art. 66 – § 1. One who has taken part in a cause as a judge cannot afterwards in another instance validly decide the same cause as a judge or carry out the function of assessor (cf. can. 1447).

§ 2. One who has taken part in a cause as a defender of the bond, promoter of justice, procurator, advocate, witness or expert cannot in the same or another instance validly decide the same cause as a judge or carry out the function of assessor (cf. can. 1447).

Art. 67 – § 1. A judge is not to take up a cause in which he has some interest by reason of consanguinity or affinity in any degree in the direct line and up to the fourth degree in a collateral line, or by reason of guardianship or tutelage, close personal relationship, great hostility, gain to be made or damage to be avoided, or in which any other sort of founded suspicion of favoritism could fall upon him (cf. can. 1448, § 1).

§ 2. In the same circumstances the defender of the bond, promoter of justice, assessor and auditor, and the other ministers of the tribunal must abstain from exercising their office (cf. can. 1448, § 2).

Art. 68 – § 1. In those cases mentioned in art. 67, unless the judge, defender of the bond, promoter of justice or other tribunal minister abstains, a party can object to them (cf. can. 1449, § 1).

§ 2. The Judicial Vicar hears an objection (*exceptio*) against a judge; if the objection is against himself, the Bishop Moderator is to deal with the matter (cf. can. 1449, § 2).

§ 3. If the Bishop is the judge and the objection is filed against him, he is to abstain from judging (cf. can. 1449, § 3).

§ 4. If the objection is filed against the defender of the bond, the promoter of justice or other ministers of the tribunal, the question is heard by the *praeses* in a collegial court or by the judge himself, if he is a single judge (cf. can. 1449, § 4).

§ 5. Without prejudice to art. 67, § 1, an objection filed because of acts legitimately placed by a judge or other minister of the tribunal cannot be considered to have any foundation.

Art. 69 – § 1. If the objection is admitted, the persons must be changed, but not the grade of the trial (can. 1450).

§ 2. If the tribunal cannot take the cause due to a lack of other ministers and there is no other competent tribunal, the matter is to be deferred to the Apostolic Signatura so that it may designate another tribunal to handle the cause.

Art. 70 – § 1. The question of an objection is to be decided *expeditissime*, after the parties have been heard, as well as the defender of the bond and the promoter of justice, if taking part in the process, unless they themselves have been recused (cf. can. 1451, § 1).

§ 2. Acts placed by the judge before an objection was made against him are valid; those taken after an objection was filed must be rescinded if a party so requests within ten days of the admission of the objection (cf. can. 1451, § 2).

Art. 71 – § 1. Once a cause of the nullity of marriage has been legitimately introduced, the judge can and must proceed not only at the request of the parties but even *ex officio* (cf. can. 1452, § 1).

§ 2. Therefore the judge can and must supply for the parties' negligence in presenting proofs and placing exceptions, whenever he deems it necessary in order to avoid an unjust sentence, without prejudice to the requirements of art. 239 (cf. can. 1452, § 2).

Art. 72 – Judges and tribunals are to see that all causes are finished as soon as possible, while safeguarding justice, and that they not be prolonged beyond one year in a tribunal of first instance and beyond six months in a tribunal of second instance (can. 1453).

Art. 73 – § 1. Judges and other ministers of the tribunal and assistants are bound to keep the secret of office (cf. can. 1455, § 1).

§ 2. Judges are bound in a special way to maintain secrecy concerning the discussion among themselves prior to issuing a sentence, as well as concerning the various votes and opinions expressed therein, without prejudice to art. 248, § 4 (cf. can. 1455, § 2).

§ 3. Whenever the nature of the cause or of the proofs is such that from the divulgation of the acts and proofs the reputation of others could suffer, an occasion could be given for disagreements, or a scandal or other inconveniences of this type could arise, the judge can bind the witnesses, experts, parties and their advocates or procurators to secrecy by a special oath or, as the case may be, at least a promise, without prejudice to artt. 159, 229-230 (cf. can. 1455, § 3).

Art. 74 – The judge and all ministers of the tribunal are prohibited from accepting any gifts on the occasion of their acting in a trial (can. 1456).

Art. 75 – § 1. Judges and other ministers of the tribunal who commit an offense against the office entrusted to them are to be punished in accordance with the law (cf. cann. 1386; 1389;

1391; 1457; 1470, § 2).

§ 2. When the correct administration of justice is impeded because of negligence, incompetence or abuses, the Bishop Moderator or the *coetus* of Bishops is to address the matter by apt means, not excluding removal from office, as the case may require.

§ 3. Whoever illegitimately causes harm to another by a juridic act, indeed by any other act placed maliciously or negligently, is bound by the obligation to repair the damage (can. 128).

Chapter II

The order of proceeding

Art. 76 – § 1. Causes are to be judged in the order in which they were presented and inscribed in the case register (cf. can. 1458).

§ 2. However if some cause demands a quicker handling ahead of others, that is to be ordered by a special decree containing the reasons (cf. can. 1458).

Art. 77 – § 1. At any stage or grade of trial, defects by which the nullity of a sentence can occur can be proposed as an exception and likewise declared by the judge *ex officio* (can. 1459, § 1).

§ 2. Apart from the cases mentioned in § 1, dilatory exceptions, especially those which pertain to persons and the manner of trial, are to be proposed before the formulation of the doubt is set, unless they emerge after the doubt has been set, and are to be decided as quickly as possible (cf. can. 1459, § 2).

Art. 78 – § 1. If an exception is proposed against the competence of the tribunal, the college must hear the question, without prejudice to art. 30, § 3 (cf. can. 1460, § 1).

§ 2. In case of an exception of relative incompetence, if the college declares itself competent, its decision does not admit an appeal, but a complaint of nullity, treated in artt. 269-278, is not prohibited, nor is a *restitutio in integrum*, treated in cann. 1645-1648 (cf. can. 1460, § 2).

§ 3. But if the college declares itself incompetent, a party who considered himself injured can have recourse to the tribunal of appeal within fifteen canonical days (cf. can. 1460, § 3).

Art. 79 – A tribunal which at any stage of the cause realizes that is absolutely incompetent must declare its incompetence (cf. can. 1461).

Art. 80 – Questions regarding the deposit to be made against the expenses of the trial or concerning the granting of gratuitous legal assistance, when this was requested from the very beginning, and other such questions are normally to be heard before the formulation of the doubt has been set (cf. can. 1464).

Chapter III

Time limits and delays

Art. 81 – § 1. The so-called *fatalia legis*, that is, the time limits established by the law by which rights expire, cannot be extended, nor can they be validly shortened except at the request of the parties (can. 1465, § 1).

§ 2. Judicial or conventional time limits, that is, those established by the judge on his own initiative or with the agreement of the parties, can be extended for a just cause by the judge before their expiration, after the parties have been heard or at their request, but they can never be validly shortened without their consent (cf. can. 1465, § 2).

§ 3. Nonetheless the judge is to take care lest the handling of the cause become too prolonged as a result of this extension (cf. can. 1465, § 3).

Art. 82 – When the law does not set time limits for carrying out procedural acts, the judge must set them beforehand, having taken into account the nature of each act (can. 1466).

Art. 83 – If the tribunal is closed on the day set for a judicial act, the time limit is understood to be extended to the first subsequent day which is not a holiday (can. 1467).

Chapter IV

The place of the trial

Art. 84 – The seat of each tribunal is to be a stable one, inasmuch as possible, which is open at set times (can. 1468).

Art. 85 – § 1. A judge expelled by force from his territory or impeded from exercising his jurisdiction there, can exercise his jurisdiction and issue a sentence outside his territory; however the Diocesan Bishop of the place has to be informed of this (can. 1469, § 1).

§ 2. Apart from the case mentioned in § 1, a judge, for a just cause and having heard the parties, can go even outside his territory for the purpose of acquiring proofs, but with the permission of the Diocesan Bishop of the place in question and in a place designated by the same (can. 1469, § 2).

Chapter V

Persons to be admitted to the courtroom and the manner of preparing and conserving the acts

Art. 86 – While causes are being conducted at the tribunal, only those persons are to be present in the courtroom whom the law or the judge has determined are necessary for the

carrying out of the process (cf. can. 1470, § 1).

Art. 87 – The judge can call to task all those taking part in the trial who are gravely lacking in the respect and obedience due the tribunal; furthermore he can even suspend advocates and procurators from exercising their function in the cause (cf. can. 1470, § 2).

Art. 88 – § 1. Judicial acts, both those which concern the merits of the question, that is, the acts of the cause, and those which pertain to the formalities of the procedure, that is, the acts of the process, must be put into written form (cf. can. 1472, § 2).

§ 2. The individual pages of the acts are to be numbered and authenticated (can. 1472, § 2).

Art. 89 – Whenever the signature of parties or witnesses is required on judicial acts, if the party or witness is unable or unwilling to sign, that fact is to be noted on the acts themselves. At the same time, the judge and notary are to certify that the act itself was read verbatim to the party or witness and that the party or witness was unable or unwilling to sign (can. 1473).

Art. 90 – § 1. If the cause is to be heard at the tribunal of appeal, a copy of the acts, whose authenticity and completeness has been certified by the notary, is to be sent to the higher tribunal (cf. can. 1474, § 1).

§ 2. If the acts are drawn up in a language unknown to the higher tribunal, they are to be translated into a language known to that tribunal, with due precautions having been taken to verify the fidelity of the translation (can. 1474, § 2).

Art. 91 – § 1. When the trial has finished, documents belonging to private individuals are to be returned, but a copy of them authenticated by a notary is to be retained (cf. can. 1475, § 2).

§ 2. Without the mandate of the judge, the head of the chancery and the notaries are prohibited from giving out a copy of the judicial acts and of documents which were acquired for the process (cf. can. 1475, § 2).

Title IV

THE PARTIES IN THE CAUSE

Chapter I

The right to challenge a marriage

Art. 92 – § 1. The following have the ability to challenge a marriage:

1º the spouses, whether Catholics or non-Catholics (cf. cann. 1674, n. 1; 1476; art. 3, § 2);

2º the promoter of justice, when the nullity of the marriage has been revealed and the

marriage cannot be convalidated or this would not be expedient (cf. can. 1674, n. 2).

Art. 93 – A marriage which was not challenged when both spouses were living can be challenged after the death of one or both spouses by one for whom the cause of the nullity of the marriage would be prejudicial to the resolution of a controversy in canonical or civil court (cf. can. 1675, § 1).

Art. 94 – If a spouse dies while the cause is pending, art. 143 is to be observed (cf. can. 1675, § 2).

Chapter II

The spouses as parties in the cause

Art. 95 – § 1. In order for the truth to be more easily discovered and for the right of defense to be more aptly safeguarded, it is most expedient that both spouses take part in a process of the nullity of marriage.

§ 2. Therefore a spouse legitimately summoned to the trial must respond (cf. can. 1476).

Art. 96 – Even when a spouse has named a procurator or advocate, he is still bound to take part in the trial when so prescribed by the law or the judge (cf. can. 1477).

Art. 97 – § 1. Those who are deprived of the use of reason can stand trial only through a guardian (cf. can. 1478, § 1).

§ 2. Those who at the beginning of the process, or in its course, are of impaired mind can stand trial for themselves only at the prescription of the judge; in other matters they must act and respond through their guardians (cf. can. 1478, § 4).

§ 3. Minors can act and respond on their own behalf without the permission of parents or guardian, without prejudice to §§ 1-2 (cf. can. 1478, § 3).

Art. 98 – Whenever there is a guardian appointed by the civil authorities, the same can be admitted by the judge, who is first to hear, if possible, the Diocesan Bishop of the one for whom the guardian is appointed; if there is none, or it appears that the existing one is not to be admitted, the judge himself will designate a guardian for the cause (cf. can. 1479).

Art. 99 – § 1. It pertains to the *praeses* to admit or designate a guardian by a decree which indicates the reasons and which is to be kept in the acts.

§ 2. The decree in question is to be communicated to all interested parties, including the spouse who was given a guardian, unless a grave cause should prevent this, with the right of defense nonetheless remaining intact.

Art. 100 – § 1. The guardian is bound by office to protect the rights of the person to whom

he was given.

Chapter III

Procurators and advocates

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.

§ 2. If in the judgement of the *praeses* the ministry of a procurator or advocate is necessary and the party has not so provided within a prescribed time limit, the *praeses* is to name them, as the case requires, but they remain in function only as long as the party has not named others.

§ 3. If gratuitous legal assistance has been granted, it pertains to the tribunal *praeses* himself to name the procurator or advocate.

§ 4. In any case, the appointment of a procurator or advocate by decree is to be communicated to the parties and the defender of the bond.

Art. 102 – If both parties are seeking a declaration of the nullity of the marriage, they can name for themselves a common procurator or advocate.

Art. 103 – § 1. The parties can name a procurator separate from the advocate.

§ 2. Each person can name only one procurator for himself, who cannot appoint another in his place unless the express faculty has been given to him to do so (can. 1482, § 1).

§ 3. If, however, for a just cause several have been appointed by the same person, they are to be so designated that prevention is operative among them (can. 1482, § 2).

§ 4. Several advocates can still be named at the same time (can. 1482, § 3).

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. 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; but those things pertaining to defense are always reserved to the advocate.

Art. 105 – § 1. The procurator and advocate must be of good reputation; in addition the advocate must be a Catholic, unless the Bishop Moderator allows otherwise, and a doctor in canon law, or otherwise truly expert, and approved by the same Bishop (cf. can. 1483).

§ 2. Those who have the diploma of Rotal Advocate do not need this approval; however the Bishop Moderator for a grave cause can prohibit them from practicing in his tribunal; in such case, recourse can be had to the Apostolic Signatura.

§ 3. The *praeses* because of special circumstances can approve as procurator *ad casum* someone who does not reside in the territory of the tribunal.

Art. 106 – § 1. Before a procurator and advocate can take up their function, they must deposit an authentic mandate at the tribunal (can. 1484, § 1).

§ 2. Nonetheless, in order to prevent the extinction of a right, the *praeses* can admit a procurator even before the mandate has been exhibited, with a suitable guarantee having been offered, if the matter so warrants; any act lacks force, however, if the procurator does not properly present an authentic mandate within the peremptory time limit to be set by the same *praeses* (cf. can. 1484, § 2).

Art. 107 – § 1. Unless he has a special mandate, a procurator cannot validly renounce an action, an instance, or judicial acts, nor in general do those things for which the law requires a special mandate (cf. can. 1485).

§ 2. Once a definitive sentence has been issued, the procurator retains the right and duty to appeal, unless the mandating party declines (can. 1486, § 2).

Art. 108 – Advocates and procurators can be removed at any stage in the cause by the person who named them, without prejudice to the obligation of paying the remuneration due them for the work they have done; in order for the removal to take effect, however, it is necessary that it be communicated to them and, if the doubt has already been established, that the judge and the other party be informed of the removal (cf. can. 1486, § 1).

Art. 109 – Both the procurator and the advocate can be rejected by the *praeses*, by a decree containing motives, either *ex officio* or at the instance of a party, but only for a grave cause (cf. can. 1487).

Art. 110 – Advocates and procurators are forbidden:

1º to renounce their mandate without a just reason while the cause is pending;

2º to contract for an excessive fee for themselves: if they should do so, the agreement is null;

3º to betray their duty because of gifts, promises or another reason;

4º to withdraw causes from competent tribunals or to act *in fraudem legis* in any way whatsoever (cf. cann. 1488-1489).

Art. 111 – § 1. Advocates and procurators who commit an offense against the responsibility entrusted to them are to be punished in accordance with the law (cf. cann. 1386; 1389; 1391,

n. 2; 1470, § 2; 1488-1489).

§ 2. If however they were found to be unequal to their duty because of incompetence, a loss of good reputation, negligence or abuses, the Bishop Moderator or *coetus* of Bishops is to provide for the matter using appropriate means, not excluding, if need be, a prohibition from practicing in their tribunal.

§ 3. Whoever has harmed another by any act illegitimately placed, either maliciously or through negligence, is bound by the obligation to repair the harm (cf. can. 128).

Art. 112 – § 1. It pertains to the Bishop Moderator to publish an index or directory in which there are listed the advocates admitted before his tribunal and the procurators who usually represent parties there.

§ 2. The advocates inscribed in the directory are bound, by a mandate of the Judicial Vicar, to provide gratuitous legal assistance to those to whom the tribunal has granted this benefit (cf. art. 307).

Art. 113 – § 1. At every tribunal there is to be an office or a person available so that anyone can freely and quickly obtain advice about the possibility of, and procedure for, the introduction of their cause of nullity of marriage, if such should be the case.

§ 2. If this office should happen to be carried out by the ministers of the tribunal, they cannot have the part of judge or defender of the bond in the cause.

§ 3. In each tribunal, to the extent possible, there are to be stable advocates designated, receiving their salary from the tribunal itself, who can carry out the function described in § 1, and who are to exercise the function of advocate or proc- urator for the parties who prefer to choose them (cf. can. 1490).

§ 4. If the function described in § 1 is entrusted to a stable advocate, he cannot take on the defense of the cause except as a stable advocate.

Title V

THE INTRODUCTION OF THE CAUSE

Chapter I

The introductory libellus of the cause

Art. 114 – A judge cannot hear a cause unless a petition has been proposed by one who in accordance with artt. 92-93 enjoys the right to challenge the marriage (cf. can. 1501).

Art. 115 – § 1. One who wishes to challenge a marriage must present a *libellus* to a

competent tribunal (cf. can. 1502).

§ 2. An oral petition can be admitted, whenever the petitioner is impeded from presenting a *libellus*, in which case the Judicial Vicar is to order the notary to draw up the act in writing, which is then to be read to the petitioner to be approved, and which then takes the place of a *libellus* written by the petitioner, for all legal effects (cf. can. 1503).

Art. 116 – § 1. A *libellus* by which a cause in 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.

§ 3. It is not permissible to require expert reports at the time when the petition is being exhibited.

Art. 117 – If proof through documents is being proposed, these, inasmuch as possible, are to be sumitted with the petition; if, however, proof through witnesses is being proposed, their names and domicile are to be indicated. If other proofs are being proposed, there should be indicated, at least in general, the facts or indications from which they are to be brought to light. Nothing however prevents further proofs of any kind from being brought forth in the course of the trial.

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.

§ 2. The names of the judges and the defender of the bond must be communicated to the petitioner immediately.

Art. 119 – § 1. The *praeses*, once he has seen both that the matter is within the competence of his tribunal and that the petitioner does not lack legitmate standing in the trial, must either

admit or reject the *libellus* by his decree as soon as possible (cf. can. 1505, § 1).

§ 2. It is advisable that the *praeses* hear the defender of the bond first.

Art. 120 – § 1. The *praeses* can and must, if the case requires, institute a preliminary investigation regarding the question of the tribunal's competence and of the petitioner's legitimate standing in the trial.

§ 2. In regard to the merits of the cause he can only institute an investigation in order to admit or reject the *libellus*, if the *libellus* should seem to lack any basis whatsoever; he can do this only in order to see whether it could happen that some basis could appear from the process.

Art. 121 – § 1. The libellus can be rejected only:

1º if the tribunal is incompetent;

2º if the petition is without a doubt presented by one who does not have the right to challenge the marriage (cf. artt. 92- 93; 97, §§ 1-2; 106, § 2);

3º if the prescriptions of art. 116, § 1, nn. 1-4 have not been observed;

4º if it is certainly apparent from the *libellus* that the petition lacks any basis, and that it could not happen that some basis could appear from the process (cf. can. 1505, § 2).

§ 2. The decree must express at least in a summary manner the reasons for the rejection and must be communicated as soon as possible to the petitioning party and, if need be, to the defender of the bond (cf. can. 1617).

Art. 122 – There is no basis for the admission of the *libellus* if the fact upon which the challenge is based, even if completely true, is nonetheless entirely incapable of making the marriage null or else, even if the fact is such that it would make the marriage null, the untruth of the assertion is obvious.

Art. 123 – If the *libellus* is rejected because of defects that can be remedied, these defects are to be indicated in the decree of rejection and the petitioner is to be invited to present a new *libellus* properly drafted (cf. can. 1505, § 3).

Art. 124 – § 1. The party always has the right to present a recourse, indicating reasons, against the rejection of the *libellus* within the canonical time period of ten days to the college, if the *libellus* was rejected by the *praeses*, otherwise to the tribunal of appeal: in either case the question of the rejection is to be decided *expeditissime* (cf. can. 1505, § 4).

§ 2. If the tribunal of appeal admits the *libellus*, the cause is to be judged by the tribunal *a quo*.

§ 3. If the recourse was presented to the college, it cannot be proposed again to the tribunal of appeal.

Art. 125 – If within a month of the *libellus* having been presented the judge does not issue a decree by which the *libellus* is accepted or rejected, the interested party can insist that the judge carry out his duty; if the judge nonetheless should remain silent, once ten days from the presentation of the request have passed without a response the *libellus*, if it had been presented legitimately, is considered to have been admitted (cf. can. 1506).

Chapter II

The citation and the communication of judicial acts

1. The first citation and its communication

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). If from the written response it appears necessary to convoke the parties and the defender of the bond, the *praeses* or *ponens* is to state this by a new decree and is to see that it is communicated to them (cf. cann. 1507, § 1; 1677, § 2).

§ 2. If the *libellus* is considered admitted in accordance with art. 125, the decree of citation to the trial is to be issued within twenty days of the request mentioned in the same article (cf. can. 1507, § 2).

§ 3. If the respondent party in fact appears before the judge to take part in the cause, there is no need for that party's citation, but the notary is to signify in the acts that the party was present in the trial (cf. can. 1507, § 3).

§ 4. If the marriage is being challenged by the promoter of justice in accordance with art. 92, n. 2, both parties are to be cited.

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).

§ 2. It is advisable that the *praeses* or *ponens*, together with these communications, propose to the parties the formulation of the doubt or doubts based on the *libellus* so that they may respond.

§ 3. The introductory *libellus* is to be attached to the citation, unless the *praeses* or *ponens* for grave reasons decrees, with a decree indicating reasons, that the *libellus* is not to be communicated to the respondent party before that party has given his judicial deposition. In this case, however, it is required that the respondent party be notified of the object of the

cause and the ground(s) proposed by the petitioner (cf. can. 1508, § 2).

§ 4. Together with the decree of citation the names of the judges and defender of the bond are to be communicated to the respondent party.

Art. 128 – If the citation does not contain those things which are necessary in accordance with art. 127, § 3 or if it was not legitimately communicated to the respondent party, the acts of the process are null, without prejudice to the prescriptions of artt. 60; 126, § 3; 131 and with the prescriptions of art. 270, nn. 4, 7 remaining in force (cf. can. 1511).

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).

2. Those things to be observed in citations and communications

Art. 130 – § 1. The communication of citations, decrees, sentences and other judicial acts is to be done through the postal service or by another means which is very secure, having observed the requirements established by particular law (can. 1509, § 1).

§ 2. There must be proof in the acts of the fact of communication and of the manner in which it was carried out (can. 1509, § 2).

Art. 131 – § 1. If a party lacks the use of reason or is of impaired mind, the citations and communications are to be made to the guardian (cf. can. 1508, § 3).

§ 2. A party who has a procurator is to be informed of citations and communications through that person.

Art. 132 – § 1. Whenever, after a diligent investigation has been made, it is still unknown where a party lives who is to be cited or to whom some act is to be communicated, the judge can proceed further, but there must be proof in the acts of the diligent investigation that was made.

§ 2. Particular law can establish that in this sort of case the citation or communication can be made by edict (cf. can. 1509, § 1).

Art. 133 – One who refuses to receive a citation or other judicial communication, or who prevents it from reaching himself, is to be considered to have been cited legitimately or to have been legitimately informed of the matter that was to have been communicated (cf. can. 1510).

Art. 134 – § 1. To those parties who are taking part in the tribunal either personally or through a procurator, all those acts shall be communicated which by law must be

communicated.

§ 2. To those parties who entrust themselves to the justice of the court, there must be communicated the decree by which the formulation of the doubt is determined, any new petition which might have been made, the decree of publication of the acts, and all decisions of the college.

§ 3. To a party who has been declared absent from the trial, there shall be communicated the formulation of the doubt and the definitive sentence, without prejudice to art. 258, § 3.

§ 4. To a party absent in accordance with art. 132 because the place of residence is unknown, no communication of acts is made.

Chapter III

The 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).

§ 2. The petitions and responses of the parties, in addition to the introductory *libellus*, can be expressed either in the response to the citation or in declarations made orally before the judge (cf. can. 1513, §§ 1-2).

§ 3. The formulation of the doubt must determine by which ground or grounds the validity of the marriage is being challenged.

§ 4. The decree of the *praeses* or *ponens* is to be communicated to the parties, who, unless they have already agreed to it, can have recourse to the college within ten days to have it changed; the question however is to be decided *expeditissime* by the decree of the college itself (cf. can. 1513, § 3).

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).

Art. 137 – After ten days from the communication of the decree, if the parties have not offered any opposition, the *praeses* or *ponens* is to order by a new decree the instruction of the cause (can. 1677, § 4).

Chapter IV

Parties who do not appear

Art. 138 – § 1. If the respondent party is properly cited but neither appears nor offers a suitable excuse for the absence or does not respond in accordance with art. 126, § 1, the *prae- ses* or *ponens* is to declare that party absent from the trial and decree that the cause, with due observance of those things to be observed, is to proceed through to the definitive sentence (cf. can. 1592, § 1).

§ 2. However, the *praeses* or *ponens* is to make an effort to have the party withdraw from the absence.

§ 3. Before the decree mentioned in § 1 is to be issued, there must be proof, even through a new citation if needed, that the citation, made legitimately, reached the respondent party in sufficient time (cf. can. 1592, § 2).

Art. 139 – § 1. If the respondent party then appears in the trial or gives a response before the decision of the cause, he can offer conclusions and proofs, without prejudice to art. 239; the judge however is to see that the trial is not deliberately drawn out into longer and unnecessary delays (cf. can. 1593, § 1).

§ 2. Even if the party did not appear or give a response before the decision in the cause, he can use the means of challenging the sentence; if the party proves that he was detained by a legitimate impediment, which he through no fault was unable to demonstrate earlier, that party can use a complaint of nullity in accordance with art. 272, n. 6 (cf. can. 1593, § 2).

Art. 140 – If at the day and hour set for the concordance of the formula of the doubt the petitioner does not appear either personally nor through a procurator, nor offers a suitable excuse:

1º the *praeses* or *ponens* is to cite that party again;

2º if the petitioner does not appear in response to the new citation, the cause will be declared deserted by the *praeses*, unless the respondent party or the promoter of justice, in accordance with art. 92, n. 2, continues for the nullity of the marriage;

3º if the petitioner later wishes to take part in the process, art. 139 is to be observed (cf. can. 1594).

Art. 141 – Art. 134, § 3, is to be observed in regard to a party who was declared absent from the trial by the judge.

Art. 142 – The norms on the declaration of absence of a party from the trial are also to be observed, with suitable adaptations, if a party must be declared absent during the process.

Title VI

THE ENDING OF THE INSTANCE

Chapter I

The suspension, abatement and renunciation of the instance

Art. 143 – § 1. If a spouse dies during the process:

1º if the cause has not yet been concluded, the instance is suspended until the other spouse or another interested party insists on its prosecution; in the latter case it must be proved that there is a legitimate interest;

2º if the cause has been concluded in accordance with art. 237, the judge must proceed further, having cited the procurator, if there is one, or else the heir or successor of the deceased person (cf. cann. 1518; 1675, § 2).

Art. 144 – § 1. If a guardian or procurator, whose presence is necessary in accordance with art. 101, § 2, should cease his function, the instance is suspended for the moment (cf. can. 1519, § 1).

§ 2. The *praeses* or *ponens* is to name another guardian as soon as possible; he can even name a procurator if the party neglects to do so within a brief time limit set by the same judge (cf. can. 1519, § 2).

Art. 145 – § 1. The progress of the principal cause is also suspended whenever a question must first be resolved on which depends the continuation of the instance or the very resolution of the principal cause.

§ 2. This sort of suspension takes place when a complaint of nullity is pending against a definitive sentence or if, in a cause concerning the impediment of a prior bond, the existence of the prior bond is being called into question at the same time.

Art. 146 – If no procedural act is placed by the parties for six months, while no obstacle is preventing this, the instance is abated; however, the tribunal is not to neglect to inform a party beforehand of an act that must be placed. Particular law can establish other peremptory time limits (cf. can. 1520).

Art. 147 – Abatement (*peremptio*) takes place by virtue of the law itself and must even be declared *ex officio* (cf. can. 1521).

Art. 148 – Abatement extinguishes the acts of the process, not however the acts of the cause, which retain the same force in a new instance for the declaration of the nullity of the same marriage (cf. can. 1522).

Art. 149 – The expenses of the abated instance which each of the parties incurred, are to be

borne by the same party, unless the judge for a just cause has decided otherwise (cf. can. 1523).

Art. 150 – § 1. In any state or grade of the trial the petitioner can renounce the instance; likewise both the petitioner and the respondent party can renounce all or some of the acts of the process which they themselves had requested (cf. can. 1524, § 1).

§ 2. In order to be valid, the renunciation must be made in writing, must be signed by the party or by the party's procurator who has a special mandate to do so, must be communicated to the other party, must be accepted by that party or at least not challenged, and must be admitted by the *praeses* or *ponens* (cf. can. 1524, § 3).

§ 3. The defender of the bond is to be informed of the renunciation, without prejudice to art. 197.

Art. 151 – A renunciation admitted by the judge has the same effect, for the acts which were renounced, as the abatement of the instance and likewise obliges the renouncing party to pay any expenses already incurred, unless the judge for a just cause has decided otherwise (cf. can. 1525).

Art. 152 – In case of abatement or renunciation, the cause can be resumed in accordance with can. 19.

Chapter II

The suspension of the cause in case of a doubt about non-consummation

Art. 153 – § 1. If in the course of the instruction of the cause a very probable doubt has arisen about the non-consummation of the marriage, the tribunal, with the consent of the parties and at the request of one or both parties, can suspend the cause by decree and begin a process concerning marriage which is *ratum et non consummatum* (cf. can. 1681).

§ 2. In such case, the tribunal is to complete the instruction for a dispensation *super rato* (cf. cann. 1681; 1702-1704)(20).

§ 3. When the instruction has been completed, the acts are to be sent to the Apostolic See together with the petition for the dispensation, as well as the observations of the defender of the bond and the *votum* of the tribunal and the Bishop (cf. can. 1681).

§ 4. If either party refuses to give the consent mentioned in § 1, that party is to be warned of the juridic consequences of that refusal.

Art. 154 – § 1. If the cause of nullity has been instructed in an interdiocesan tribunal, the *votum* mentioned in art. 153, § 3 is to be drawn up by the Bishop Moderator of the tribunal, who is to confer with the Bishop of the party requesting the dispensation, at least concerning

the advisability of granting the requested dispensation(21).

§ 2. In preparing its *votum* the tribunal is to explain the fact of inconsummation and the just cause for the dispensation.

§ 3. In regard to the *votum* of the Bishop, there is no reason why he cannot follow the *votum* of the tribunal by putting his signature to it, as long as the existence of the just and proportionate cause for the favour of the dispensation and the absence of scandal on the part of the faithful have been verified(22).

Title VII

PROOFS

Art. 155 – § 1. The following norms are to be observed in collecting the proofs.

§ 2. Unless something else is apparent or required by the nature of the matter, the term "judge" in this title refers to the *praeses* or *ponens*, the judge of the tribunal which is called to assist by virtue of art. 29, their delegate and the auditor, without prejudice to art. 158, § 2.

Art. 156 – § 1. The burden of proof lies on the one making an assertion (can. 1526, § 1).

§ 2. Those things which are presumed by the law itself have no need of proof (cf. can. 1526, § 2, n. 1).

Art. 157 – § 1. Proofs of any kind which seem useful for understanding the cause and are licit can be brought forward. Proofs which are illicit, whether in themselves or in the manner in which they are acquired, are neither to be brought forward nor admitted (cf. can. 1527, § 1).

§ 2. Proofs are not to be admitted under secrecy, unless for a grave reason and as long as their communication with the advocates of the parties has been guaranteed, without prejudice to artt. 230 and 234 (cf. can. 1598, § 1).

§ 3. The judge is to restrain an excessive number of witnesses and other proofs, and likewise is not to admit proofs brought forward in order to cause delays in the process (cf. can. 1553).

Art. 158 – § 1. If a party insists that a rejected proof be admitted, the college itself is to decide the matter *expeditissime* (cf. can. 1527, § 2).

§ 2. The auditor in accordance with art. 50, § 3 can decide only in the interim, if a question of admitting a proof should happen to arise.

Art. 159 – § 1. It is the right of the defender of the bond and the advocates of the parties:

1º to be present for the examination of the parties, the witnesses and the experts, unless the

judge, in regard to advocates, decides that because of the circumstances and persons involved, the proceeding should be done in secret;

2º to view the judicial acts, even if not yet published, and to inspect documents produced by the parties (cf. cann. 1678, § 1; 1559).

§ 2. The parties cannot be present at the examination mentioned in § 1, n. 1 (can. 1678, § 2).

Art. 160 – Without prejudice to art. 120, the tribunal is not to proceed to collecting the proofs before the formulation of the doubt has been set in accordance with art. 135, except for a grave reason, since the formulation of the doubt is to delimit those things which are to be investigated (cf. can. 1529).

Art. 161 – § 1. If a party or witness refuses to submit to a judicial examination in accordance with the following articles, it is permitted to hear them through a suitable person designated by the judge, or to ask for their declaration to be made before a notary public or in any other legitimate manner (cf. can. 1528).

§ 2. Whenever the following articles cannot be observed in collecting the proofs, precautions must always be taken so that there is proof of their authenticity and integrity, avoiding any danger of fraud, collusion or corruption.

Chapter I

The judicial examination

Art. 162 – § 1. The parties, the witnesses, and as the case may be, the experts are to be examined in the seat of the tribunal, unless the judge for a just reason thinks otherwise (cf. can. 1558, § 1).

§ 2. Cardinals, Patriarchs, Bishops and those who by the law of their own state enjoy a similar favour are to be heard in a place of their choosing (can. 1558, § 2).

§ 3. The judge is to decide where persons are to be heard for whom it would be impossible or difficult to come to the seat of the tribunal because of distance, illness or other impediment, without prejudice to the prescriptions of artt. 29; 51; 85 (cf. can. 1558, § 3).

Art. 163 – § 1. The summons to the judicial examination is to be made by a decree of the judge legitimately communicated to the person to be questioned (cf. can. 1556).

§ 2. The one who has been duly summoned is to appear or inform the judge without delay of the reason for his absence (cf. can. 1557).

Art. 164 – The parties, either personally or through their advocates, and the defender of the bond are to exhibit, within a time limit set by the judge, the specific points of the matters about which the interrogation of the parties, witnesses or experts is being sought, without

prejudice to art. 71 (cf. can. 1552, § 2).

Art. 165 – § 1. The parties, witnesses and experts are each to be questioned individually and apart from one another (cf. can. 1560, § 1).

§ 2. If however they disagree with one another in a grave matter, the judge can have the disagreeing parties discuss or confer between themselves, while avoiding disagreements and scandal as much as possible (cf. can. 1560, § 2).

Art. 166 – The examination is to be carried out by the judge who must be assisted by a notary; therefore, without prejudice to art. 159, the defender of the bond or the advocates who are present for the examination, if they have further questions to be asked, are to propose them to the judge or the one taking the judge's place, so that he may put the questions, unless particular law provides otherwise (cf. can. 1561).

Art. 167 – § 1. The judge is to remind the parties and the witnesses about their duty to speak the whole truth and only the truth, without prejudice to art. 194, § 2 (cf. can. 1562, § 1)(23).

§ 2. The judge is also to have them take an oath to tell the truth, or at least an oath about the truth of the things they have already said, unless a grave cause would suggest otherwise; if someone should refuse to take an oath he is to make a promise to tell the truth (cf. cann. 1532; 1562, § 2).

§ 3. The judge can also administer to them an oath, or if need be, a promise to keep secrecy.

Art. 168 – The judge is first to establish the identity of the person to be questioned; he is to inquire what is his relationship with the parties and, when he is asking specific questions about the object of the cause, he is also to ask for the sources of this knowledge and in what specific moment of time the person came to know of what he is now asserting (cf. can. 1563).

Art. 169 – The questions are to be brief, adapted to the capac- ity of the person being questioned, not involving several matters at the same time, not confusing, not tricky, not suggesting a response, avoiding any offensiveness, and pertinent to the cause in question (can. 1564).

Art. 170 – § 1. The questions are not to be communicated in advance to the persons to be questioned (cf. can. 1565, § 1).

§ 2. However, if it is a matter of things which are so remote from memory that they certainly cannot be affirmed unless they are first recalled, the judge can give the persons some advance notice, if he thinks that this can be done without danger (cf. can 1565, § 2).

Art. 171 – The persons being questioned are to respond orally and are not to read anything written, unless it is a matter of explaining an expert report; in such case, the expert can

consult the notes which he has brought with him (cf. can. 1566).

Art. 172 – If the person to be questioned uses a language unknown to the judge, a sworn interpreter designated by the judge is to be employed. The declarations are still to be written down in the original language and the translation added. An interpreter is also to be used if a person with a speech or hearing impairment must be questioned, unless the judge should prefer that the questions which he proposes be answered in writing (cf. can. 1471).

Art. 173 – § 1. The answer is to be written down immediately by the notary under the direction of the judge, and must relate the very words of the deposition, at least in regard to those things which directly touch on the matter of the trial (cf. can. 1567, § 1).

§ 2. The use of a recording machine or a similar device can be admitted, as long as the responses are then put into writing and, if this can be done, signed by those giving the deposition (cf. can. 1567, § 2).

Art. 174 – The notary is to make mention in the acts of the oath taken, postponed or refused, or the promise taken, postponed or refused, of the presence of the defender of the bond and advocates, of the questions added *ex officio* and in general of all things worthy of remembrance that may have happened during the examination (cf. can. 1568).

Art. 175 – § 1. At the end of the examination, there must be read to the questioned person what the notary wrote down about his deposition, or the person must be made to listen to what was recorded concerning the deposition, giving him the faculty of adding, deleting, correcting and changing (cf. can. 1569, § 1).

§ 2. Without prejudice to art. 89, the questioned person, the judge and the notary must sign the act, as must the defender of the bond and, if they are present, the promoter of justice and the advocates (cf. can. 1569, § 2).

§ 3. If the device mentioned in art. 173, § 2 is used, an act attesting to this is to be drawn up with the signatures mentioned in § 2. The notary is also to authenticate the recording, taking care that it is preserved safely and intact.

Art. 176 – The questioned person, although already interrogated, can be called again for an examination at the request of the defender of the bond or a party or *ex officio*, if the judge deems this necessary or useful, as long as there is no danger whatsoever of collusion or corruption (cf. can. 1570).

Chapter II

Specific proofs

1. The declarations of the parties

Art. 177 – In order to arrive better at the truth, the judge is to see that the parties are

questioned (cf. can. 1530).

Art. 178 – A party who has been legitimately questioned must respond and speak the truth wholly. If he refuses to respond, it pertains to the judge to evaluate what can be concluded from this for the purpose of proving the facts (cf. cann. 1531; 1534; 1548, § 2).

Art. 179 – § 1. In accordance with can. 1535, an assertion about some fact, made in writing or orally before a competent judge by a party concerning the matter itself of the trial, whether spontaneously or at the questioning of the judge, and made against oneself, is a judicial confession.

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

Art. 180 – § 1. Confessions and other judicial declarations of the parties can have probative force, to be evaluated by the judge together with the other circumstances of the cause, but the force of full proof cannot be attributed to them, unless there are present other elements of proof that entirely corrob- orate them (cf. can. 1536, § 2).

§ 2. Unless full means of proof are present from other sources, the judge, in order to evaluate the depositions of the parties, is to use witnesses to the credibility of the parties, if possible, in addition to other indications and helps (cf. can. 1679).

Art. 181 – In regard to extrajudicial confessions of the parties against the validity of the marriage and other extrajudicial declarations of theirs introduced into the trial, it pertains to the judge, having considered all the circumstances, to evaluate how much to make of them (cf. can. 1537).

Art. 182 – A confession or any other declaration of the party lacks all force whatsoever, if it is determined that it was made on the basis of an error of fact or that it was extorted by force or grave fear (can. 1538).

2. Proof by documents

Art. 183 – In causes of the nullity of marriage proof by documents, both public and private, is also admitted (can. 1539).

Art. 184 – § 1. Public ecclesiastical documents are those which a public person has created in the exercise of his function in the Church, having observed the formalities prescribed by law (can. 1540, § 1).

§ 2. Public civil documents are those which according to the laws of each place are considered in law to be such (can. 1540, § 2).

§ 3. Other documents are private (can. 1540, § 3).

Art. 185 – § 1. Unless something else is proven by contrary and evident arguments, public documents are to be trusted concerning all things which are directly and principally affirmed in them (can. 1541).

§ 2. The certification of a private document, done by a notary having observed those things which must be observed, is indeed public, but the document itself remains private.

§ 3. In causes of nullity of marriage any written document purposely prepared in advance in order to prove the nullity of marriage obtains only the probative force of a private document, even if it was deposited with a notary public.

Art. 186 – § 1. Among private documents, letters which the engaged parties before marriage or the spouses after marriage, but *tempore non suspecto*, gave to one another or to other persons, can be of no little value as long as there is manifest proof of their authenticity and of the time when they were written.

§ 2. Letters, like other private documents, have that weight which can be attributed to them in light of the circumstances, especially the time when they were written.

Art. 187 – A private document examined in the presence of a judge has the same probative force as a confession or a declaration made outside the trial (cf. can. 1542).

Art. 188 – So-called anonymous letters and other anonymous documents of any kind whatsoever, per se cannot be considered even an indication, unless they describe facts which can be verified from other sources, and only to the extent that they can be so verified.

Art. 189 – If documents are shown to have been erased, corrected, added to or tainted by any other defect, it pertains to the judge to evaluate how much, if anything, can be made of this kind of document (can. 1543).

Art. 190 – Documents do not have the force of proof in a trial unless they are original or exhibited in a certified copy and deposited at the chancery of the tribunal so that they can be examined by the judge, the defender of the bond, the parties and their advocates (cf. can. 1544).

Art. 191 – The judge can order that a document common to both parties, or which affects both parties, is to be exhibited in the process (cf. can. 1545).

Art. 192 – § 1. No one is bound to exhibit documents, even if they are common, which cannot be exhibited without danger of harm in accordance with art. 194, § 2, n. 3, or without danger of the violation of a secret (cf. can. 1546, § 1).

§ 2. However, if at least some portion of the document can be described and exhibited in a copy without the aforementioned dangers, the judge can decree that it be produced (can.

1546, § 2).

3. Witnesses

Art. 193 – Proof through witnesses is to be carried out under the direction of the judge in accordance with artt. 162-176 (can. 1547).

Art. 194 – § 1. Witnesses must speak the truth to a judge who is legitimately questioning them (cf. can. 1548, § 1).

§ 2. Without prejudice to the prescription of art. 196, § 2, n. 2, the following are exempted from the obligation to respond:

1º clerics, in regard to those things which have been revealed to them by reason of the sacred ministry;

2º magistrates of the state, physicians, midwives, advocates, notaries and others who are bound to secrecy of office even by reason of advice given, in regard to matters subject to this secrecy;

3º those who fear that from their testifying there could result dishonor, dangerous harassments, or other grave evils for themselves, their spouse or those closely related to them by blood or marriage (cf. can. 1548, § 2).

Art. 195 – All persons may be witnesses, unless expressly excluded completely or partially by the law (can. 1549).

Art. 196 – § 1. Minors under fourteen years of age and those of impaired mind are not to be admitted to give testimony; nonetheless they can be heard in virtue of a decree of the judge declaring that this is expedient (can. 1550, § 1).

§ 2. The following are considered incapable of testifying:

1º those who are parties in the cause or who are participating in the trial in the name of the parties, the judge and his assistants, the advocate and others who are assisting or had assisted the parties in the same cause; therefore care should be taken lest these functions be assumed by persons who through their testimony could make a contribution toward ascertaining the truth;

2º priests, in regard to all those things which have been made known to them in a sacramental confession, even if the penitent should ask for the revelation of those things; indeed those things heard by anyone in any manner whatsoever on the occasion of a confession cannot be admitted, not even as an indication of the truth (cf. can. 1550, § 2).

Art. 197 – A party who has proposed a witness can renounce the examination of the witness; but the other party or the defender of the bond can ask that the witness be examined anyway

(cf. can. 1551).

Art. 198 – When the hearing of witnesses is requested, their names and domicile or place of residence are to be indicated to the tribunal (cf. can. 1552, § 1).

Art. 199 – Before the witnesses are examined, their names are to be communicated to the parties; if this, in the prudent estimation of the judge, cannot be done without grave difficulty, it is to be done at least before the publication of the testimonies (can. 1554).

Art. 200 – Without prejudice to the requirement of art. 196, a party can request that a witness be excluded, if a just cause for the exclusion is demonstrated before the questioning of the witness (cf. can. 1555).

Art. 201 – § 1. In evaluating the testimonies, the judge, having sought, if necessary, testimonial letters, is to consider:

1º what is the condition of the person and whether he is honest;

2º whether he is testifying from his own knowledge, especially from what he has seen and heard, or rather from his opinion, from a rumor, or from what he has heard from others;

3º when he came to know what he is asserting, especially whether it was *tempore non suspecto*, that is, when the parties had not yet considered introducing the cause;

4º whether the witness is consistent and firmly coherent with himself, or rather changeable, uncertain or wavering;

5º whether there are other witnesses to what is testified, or whether or not it is confirmed by other elements of proof (cf. can. 1572).

Art. 202 – The deposition of one witness cannot provide full proof, unless it is a matter of a qualified witness who is testifying concerning matters carried out *ex officio*, or unless circumstances of things or persons suggest otherwise (can. 1573).

4. Experts

Art. 203 – § 1. In causes concerning impotence or a defect of consent because of a *mentis morbum* or because of the incapacities described in can. 1095, the judge is to employ the assitance of one or more experts, unless from the circumstances this would appear evidently useless (cf. can. 1680)(24).

§ 2. In other causes the assistance of experts is to be employed whenever, according to the prescription of the judge, their study and expert opinion, based on the precepts of their art or science, are required in order to establish some fact or to ascertain the true nature of something, as when an investigation of the authenticity of some written document is to be

made (cf. cann. 1574; 1680).

Art. 204 – § 1. It pertains to the *praeses* or the *ponens* to appoint experts and, as the case may be, to accept reports already made by other experts (cf. can. 1575).

§ 2. The appointment of an expert is to be communicated to the parties and the defender of the bond, without prejudice to art. 164.

Art. 205 – § 1. For the role of expert there are to be chosen those who not only have obtained a testimonial of their suitability, but are outstanding for their knowledge and experience of their art, and commended for their religiosity and honesty.

§ 2. In order that the assistance of experts in causes concerning the incapacities mentioned in can. 1095 may be truly useful, special care is to be taken that experts are chosen who adhere to the principles of Christian anthropology.

Art. 206 – Experts can be excluded or exception can be taken to them for the same reasons as witnesses (cf. can. 1576).

Art. 207 – § 1. The judge, taking into account those things which might have been brought forward by the parties or the defender of the bond, is to define by his decree the individ- ual points about which the assistance of the expert is to be concerned (cf. can. 1577, § 1).

§ 2. The expert is to be given the acts of the cause and other documents and aids which he could need in order to carry out his task properly and faithfully (can. 1577, § 2).

§ 3. The judge, having heard the expert himself, is to set the time period within which the examination is to be carried out and the report presented, taking care, however, that the cause not suffer useless delays (cf. can. 1577, § 3).

Art. 208 – In causes of impotence the judge is to ask of the expert the nature of the impotence and whether it is absolute or relative, antecedant or subsequent, perpetual or temporary, and, if curable, by what means.

Art. 209 – § 1. In causes of incapacity, according to the understanding of can. 1095, the judge is not to omit asking the expert whether one or both parties suffered from a particular habitual or transitory anomaly at the time of the wedding; what was its seriousness; and when, from what cause and in what circumstances it originated and manifested itself.

§ 2. Specifically:

1º in causes of *defectus usus rationis*, he is to ask whether the anomaly seriously disturbed the use of reason at the time of the celebration of the marriage; and with what intensity and by what symptoms it manifested itself;

2º in causes of *defectus discretionis iudicii*, he is to ask what was the effect of the anomaly

on the critical and elective faculty for making serious decisions, particularly in freely choosing a state in life;

3º finally, in causes of incapacity to assume the essential obligations of marriage, he is to ask what was the nature and gravity of the psychic cause on account of which the party would labour not only under a serious difficulty but even the impossibility of sustaining the actions inherent in the obligations of marriage.

§ 3. The expert in his opinion is to respond to the individual points defined in the decree of the judge according to the precepts of his own art and science; he is to take care lest he exceed the limits of his task by giving forth judgements which pertain to the judge (cf. cann. 1577, § 1; 1574).

Art. 210 – § 1. Each individual expert is to prepare his own report distinct from the others, unless the judge orders that one report be signed by all the experts; if this is done, then differences of opinion, should there be any, are to be carefully noted (can. 1578, § 1).

§ 2. The experts must indicate clearly by which documents or other suitable means they verified the identity of the persons or things; by what path and method they proceeded to carry out the task entrusted to them; and, most especially, which arguments form the basis for the conclusions reached in the report and what degree of certainty those conclusions enjoy (cf. can. 1578, § 2).

Art. 211 – The expert can be called by the judge in order to confirm his conclusions and to supply further explanations which seem necessary (cf. can. 1578, § 3).

Art. 212 – § 1. The judge is to weigh carefully not only the conclusions of the experts, even if they are in agreement, but also the other circumstances of the cause (can. 1579, § 1).

§ 2. When he gives the reasons for his decision, he must express by which arguments he was moved to accept or reject the conclusions of the experts (can. 1579, § 2).

Art. 213 – § 1. The parties can designate private experts to be approved by the judge (can. 1581, § 1).

§ 2. These experts, if the judge so admits, can examine the acts of the cause, if need be, and be present at the carrying out of the expert examination; moreover they can always exhibit their own report (cf. can. 1581, § 2).

5. Presumptions

Art. 214 – A presumption is a probable conjecture about an uncertain matter; one kind is a presumption of law (*iuris*), which is established by the law itself, the other is a presumption of an individual (*hominis*), which is made by the judge (can. 1584).

Art. 215 – One who has a presumption of law in his favour is freed from the burden of proof,

which falls on the other party (cf. can. 1585).

Art. 216 – § 1. The judge is not to make presumptions, which are not established by law, unless from a certain and determined fact, which is directly connected with the object of the controversy (can. 1586).

§ 2. Likewise the judge is not to make presumptions which are contrary to those developed in the jurisprudence of the Roman Rota.

Title VIII

INCIDENTAL CAUSES

Art. 217 – An incidental cause arises whenever, after the instance of the trial has begun through the citation, a question is proposed which, even though it is not contained in the *libellus* which introduced the principal cause, nonetheless pertains to the principal cause in such a way that for the most part it must be resolved before the principal cause is decided (cf. can. 1587).

Art. 218 – In causes of matrimonial nullity, given the nature of the principal cause, incidental questions are not to be lightly proposed or admitted, and if they are admitted, particular care is to be taken so that they are resolved as soon as possible(25).

Art. 219 – An incidental question is to be proposed in writing or orally, indicating the connection between it and the principal cause, before the judge competent to decide the principal cause (can. 1588).

Art. 220 – If the petition does not pertain to the principal cause or appears evidently devoid of any basis, the *praeses* or *ponens* can reject it at the outset, without prejudice to art. 221.

Art. 221 – § 1. Unless something else is expressly provided for, an interested party or the defender of the bond can have recourse to the college against a decree of the *praeses*, *ponens* or auditor which is not merely procedural, in order to institute an incidental cause. However, the recourse is to be placed within the period of ten days from the communication of the decree; otherwise the parties and the defender of the bond are considered to have acquiesced to the decree.

§ 2. The recourse is to be proposed before the author of the decree, who, unless he has decided that the decree issued by him is to be revoked, is to defer to the matter to the college without delay.

Art. 222 – § 1. The college, having received the petition and having heard the defender of the bond and the parties, is to decree whether the proposed incidental question seems to have a basis and a connection with the principal cause, or whether it is to be rejected at the outset; if it admits the question, it is also to decree whether it must be be resolved with observance of the full form of trial, and thus with the proposition of doubts, or rather through briefs and

then by decree (cf. can. 1589, § 1).

§ 2. Those things prescribed in § 1 are to be carried out without delay and *expeditissime*, that is, excluding any appeal and not allowing any recourse (cf. cann. 1589, § 1; 1629, n. 5).

§ 3. If the college decides that the incidental question is not to be resolved before the definitive sentence, it likewise is to decree *expeditissime* that it is to be taken into account when the principal cause is decided (cf. can. 1589, § 2).

Art. 223 – The college, at the request of a party or the defender of the bond or *ex officio*, can request the intervention of the promoter of justice, even if he has not yet taken part in the process, if the nature or difficulty of the incidental question recommends this.

Art. 224 – § 1. If the incidental question must be solved by a sentence of the college, cann. 1658-1670 on the oral contentious process are to be observed, unless, in light of the gravity of the matter, it appears otherwise to the college (cf. can. 1590, § 1).

§ 2. Nonetheless, the college can by its decree, containing reasons, derogate from those procedural norms mentioned in § 1 which are not required *ad validitatem*, in order to provide for speed, without detriment to justice (cf. can. 1670).

Art. 225 – If the question must be decided by decree, a time limit is to be given as soon as possible to the parties and the defender of the bond, within which they are to present their reasons in a written brief or memorial; the college can also entrust the matter to an auditor or the *praeses*, unless something to the contrary is evident or is required by the nature of the matter (cf. can. 1590, § 2).

Art. 226 – Before the principal cause is finished, and unless it concerns a decision having the force of a definitive sentence, the college can revoke or change an interlocutory decree or sentence, if there should be a just cause, either at the request of a party or the defender of the bond, or *ex officio*, having heard the parties and the defender of the bond (cf. can. 1591).

Art. 227 – If a single judge is deciding the cause, he himself, with the appropriate adaptations, is to hear incidental questions.

Art. 228 – There is no appeal against a decision by which an incidental question is decided and which does not have the force of a definitive sentence, unless it is joined with an appeal from the definitive sentence (cf. can. 1629, n. 4).

Title IX

THE PUBLICATION OF THE ACTS, THE CONCLUSION IN THE CAUSE AND THE DISCUSSION OF THE CAUSE

Chapter I

The publication of the acts

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).

§ 4. In this Title, the term judge is understood to mean the *praeses* or the *ponens*, unless otherwise is evident or is required by the nature of the matter.

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. 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).

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.

Art. 233 – § 1. The examination of the acts is to be done at the chancery of the tribunal which is hearing the cause, within the time limit set in the decree of the judge.

§ 2. But if a party lives far away from the seat of this tribunal, he can inspect the acts at the seat of the tribunal in the place where he now lives, or else in another suitable place, in order that his right of defense remains intact.

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.

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.

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).

Chapter II

The conclusion in the cause

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).

§ 3. The judge is to issue a decree declaring the conclusion in the cause to have taken place, in whatever way this has happened (cf. can. 1599, § 3).

Art. 238 – Nonetheless the judge is to take care not to issue the decree of the conclusion in the cause if he thinks that something else is still to be sought in order that the cause might be sufficiently instructed. In such case, having heard the defender of the bond, if this is expedient, he is to order that those things which are lacking be provided.

Art. 239 – § 1. After the conclusion in the cause, the judge can still call the same or other witnesses or provide for other proofs which had not been sought earlier:

1º whenever it is likely that, unless the new proof is admitted, the sentence will be unjust for the reasons given in can. 1645, § 2, nn. 1-3;

2º in other cases, provided that the parties have been heard, that there is a grave reason, and that any danger of fraud or subornation is removed (cf. can. 1600, § 1).

§ 2. Furthermore, the judge can order or allow to be exhibited a document which, without the fault of the interested party, was not able to be exhibited before (can. 1600, § 2).

§ 3. The new proofs are to be published, with due observance of artt. 229-235 (cf. can. 1600, § 3).

Chapter III

The discussion of the cause

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).

§ 2. The regulations of the tribunal are to be observed in regard to the preparation of the summary and the writing of the defenses and observations, the number of copies, and other things of this nature (cf. can. 1602).

Art. 241 – It is entirely forbidden that information given to the judge by the parties or their advocates or even other persons remain outside the acts of the cause (can. 1604, § 1).

Art. 242 – § 1. When the defenses and observations have been mutually exchanged, each party is permitted to exhibit responses within a short time period set by the judge (can. 1603, § 1).

§ 2. This right is to be given to the parties only once, unless it seems to the judge that for a grave cause it is to be granted again; then, however, a concession granted to one party is considered to have been granted to the other as well (can. 1603, § 2).

Art. 243 – § 1. It is always the right of the defender of the bond to be heard last (cf. can. 1603, § 3).

§ 2. If the defender of the bond offers no response within the brief time limit set by the judge, he is presumed to have nothing to be added to his observations, and it is permitted to go forward.

Art. 244 – § 1. After the discussion of the cause has been carried out in writing, the judge can allow a moderate debate to take place orally before the tribunal in session, in order to clarify some questions (cf. can. 1604, § 2).

§ 2. A notary is to be present at this oral debate so that, if the judge orders or a party of the defender of the bond requests and the judge consents, he may immediately make a record of the points debated and the conclusions reached (cf. can. 1605).

Art. 245 – § 1. If the advocates neglect to prepare their defenses within the time given them, the parties are to be informed of this and advised to take care of the matter within the time period set by the judge, either themselves or through a new advocate legitimately designated.

§ 2. But if the parties do not take care of this within the time period given, or if they entrust themselves to the knowledge and conscience of the judge, the judge, if he has a full understanding of the matter from the acts and proofs, having received the written observations of the defender of the bond, can pronounce his sentence immediately (cf. can.

1606).

Title X

THE PRONOUNCEMENTS OF THE JUDGE

Art. 246 – The principal cause is decided by the judge by means of a definitive sentence, without prejudice to art. 265, § 1; an incidental cause by means of an interlocutory sentence, without prejudice to the requirement of art. 222, § 1 (cf. can. 1607).

Art. 247 – § 1. In order to declare the nullity of a marriage there is required in the mind of the judge moral certainty of its nullity (cf. can. 1608, § 1).

§ 2. In order to have the moral certainty necessary by law, a preponderance of the proofs and indications is not sufficient, but it is required that any prudent positive doubt of making an error, in law or in fact, is excluded, even if the mere possibility of the contrary remains.

§ 3. The judge must derive this certainty from those things which have been carried out and proven in the process (*ex actis et probatis*) (can. 1608, § 2).

§ 4. The judge must weigh the proofs according to his conscience, without prejudice to the prescriptions of the law regarding the efficacy of certain proofs (can. 1608, § 3).

§ 5. The judge who, after a diligent study of the cause, is not able to arrive at this certainty, is to rule that the nullity of the marriage has not been proven, without prejudice to art. 248, § 5 (cf. cann. 1608, § 4; 1060).

Art. 248 – § 1. Once the discussion of the cause has been finished, the *praeses* of a collegial tribunal is to determine on what day and at what hour the judges must convene for the deliberation, without the presence of any ministers of the tribunal whatsoever; this meeting, unless a particular cause recommends otherwise, is to be held in the seat of the tribunal itself (cf. can. 1609, § 1; art. 31).

§ 2. On the day assigned for the meeting, the individual judges are to bring their written opinions on the merits of the cause, with the reasons both in law and in fact by which they each reached their conclusions (cf. can. 1609, § 2).

§ 3. After the invocation of the Divine Name, and after the individual opinions have been presented in order of precedence, always beginning, however, with the *ponens* or presenter of the cause, a discussion is to be carried out under the guidance of the *praeses* of the tribunal, chiefly in order to establish what is to be determined in the dispositive part of the sentence (cf. can. 1609, § 3).

§ 4. In the discussion, however, each one is permitted to withdraw from his original opinion, with a notation of this withdrawal being made on the opinion itself. But a judge who does not wish to agree to the decision of the others can demand that his opinion be sent *sub secreto* to

the higher tribunal.

§ 5. But if the judges in the first discussion are not willing or able to arrive at a sentence, the decision can be deferred to another meeting to be set in writing, but not beyond a week, unless the instruction of the cause is to be completed, in accordance with art. 239, in which case the judges must decree: *dilata et compleantur acta* (cf. can. 1609, § 5).

§ 6. When a decision has been agreed upon, the *ponens* is to write it in the form of an affirmative or negative response to the doubt proposed, then sign it together with the other judges and attach it to the dossier of the acts.

§ 7. The opinions of the individual judges are to be added to the acts in a closed envelope to be kept secret (cf. can. 1609, § 2).

Art. 249 – § 1. In a collegial tribunal, it pertains to the *ponens* or presenter to draw up the sentence, unless in the discussion it appeared that for a just cause this task was to be entrusted to another of the judges (cf. can. 1610, § 2).

§ 2. The one drawing up the sentence is to take the reasons from those things which the individual judges brought up in the discussion, unless the motives to be set forth had already been determined by a majority of the judges (cf. can. 1610, § 2).

§ 3. The sentence is then to be submitted for the approval of the individual judges (cf. can. 1610, § 2).

§ 4. If there is a single judge, he will draw up the sentence (can. 1610, § 1).

§ 5. The sentence is to be issued not longer than a month after the day when the cause was decided, unless, in a collegial tribunal, the judges for a grave reason had given a longer time period (cf. can. 1610, § 3).

Art. 250 – § 1. The sentence must:

1º decide the question being debated before the tribunal, with an appropriate response given to each of the doubts;

2º present the arguments or reasons, in law and in fact, on which the dispositive part of the sentence is based;

3º add, if need be, the *vetitum* mentioned in art. 251;

4º make a determination about the judicial expenses (cf. can. 1611).

Art. 251 – § 1. If a party in the process was found to be absolutely impotent or incapable of marriage by reason of a permanent incapacity, a *vetitum* is to be added to the sentence, by which the party is prohibited to enter a new marriage unless the same tribunal which issued

the sentence has been consulted.

§ 2. But if a party was the cause of the nullity of the marriage by deception or by simulation, the tribunal is bound to see whether, having considered all the circumstances of the case, a *vetitum* should be added to the sentence, by which the party is prohibited to enter a new marriage unless the Ordinary of the place in which the marriage is to be celebrated has been consulted.

§ 3. If a lower tribunal added a *vetitum* to the sentence, the tribunal of appeal is to see whether it is to be confirmed.

Art. 252 – In the sentence the parties are to be warned about the moral obligations or even civil ones by which they may be bound in regard to the other party or offspring concerning support and education to be provided (can. 1689).

Art. 253 – § 1. The sentence, after the invocation of the Divine Name, must express in order the following: who is the judge or tribunal; who is the petitioner, the respondent party, the procurator, with name and domicile properly indicated; and who is the defender of the bond and the the promoter of justice, if he had had taken part in the process (cf. can. 1612, § 1).

§ 2. Then it must present briefly the facts with the positions of the parties and the formulation of the doubts (can. 1612, § 2).

§ 3. The dispositive part of the sentence follows these things, preceded by the reasons both in law and in fact on which it is based (cf. can. 1612, § 3).

§ 4. It is to be concluded with the indication of the place, the day, the month and the year in which it was given, and with the signatures of all the judges, or of the single judge, and the notary (cf. can. 1612, § 4).

§ 5. There is to be added, moreover, information about whether the sentence can be executed immediately, about the way in which it can be challenged and, as the case may be, information about the transmission *ex officio* to the tribunal of appeal (cf. cann. 1614; 1682, § 1).

Art. 254 – § 1. The sentence, avoiding both an excessive brevity and an excessive length, must be clear in explaining the reasons in law and in fact and must be based *in actis et probatis*, so that it is apparent by what path the judges arrived at their decision and how they applied the law to the facts.

§ 2. The presentation of the facts, however, as the nature of the matter requires, is to be done prudently and cautiously, avoiding any offense to the parties, the witnesses, the judges and the other ministers of the tribunals.

Art. 255 – But if a judge, by reason of death, grave illness or other impediment is not able to add his signature to the sentence, it is sufficient that the *praeses* of the college or the judicial

vicar declares this, attaching an authentic copy of the dispositive part of the sentence signed by the judge on the day of the decision according to art. 248, § 6.

Art. 256 – The rules set out above concerning a definitive sentence are also to be adapted to an interlocutory sentence (can. 1613).

Art. 257 – § 1. The sentence is to be published as soon as possible, and it has no force before the publication, even if the dispositive part, by permission of the judge, is made known to the parties (cf. can. 1614).

§ 2. If there is the possibility for an appeal, information is to be provided at the time of the publication of the sentence regarding the way in which an appeal is to be placed and pursued, with explicit mention being made of the faculty to approach the Roman Rota besides the local tribunal of appeal (cf. can. 1614).

Art. 258 – § 1. The publication or communication of the sentence is to be made either by giving a copy of the sentence to the parties or their procurators, or by sending it to them in accordance with art. 130 (cf. can. 1615).

§ 2. The sentence must always be communicated in the same way to the defender of the bond and to the promoter of justice, if he took part in the process.

§ 3. But if a party has declared that he does not want any notice at all about the cause, he is considered to have renounced his right to obtain a copy of the sentence. In such case, with due observance of particular law, the dispositive part of the sentence may be communicated to the same party.

Art. 259 – A valid definitive sentence cannot be retracted, even if the judges unanimously consent to this.

Art. 260 – § 1. If an error found its way into the text of the sentence in transcribing the dispositive part or in relating the facts or the petitions of the parties, or if those things required by art. 253, § 4 are omitted, the sentence can be corrected or completed by the tribunal which issued it, either at the request of a party or *ex officio*, but the defender of the bond and the parties must always be heard first, and a decree must be added at the end of the sentence (cf. can. 1616, § 1).

§ 2. But if a party or the defender of the bond does not agree, the incidental question is to be decided by decree (cf. can. 1616, § 2).

Art. 261 – The other pronouncements of a judge, besides a sentence, are decrees. These however, if they are not merely procedural, do not have force unless they express the reasons at least summarily, or refer to reasons expressed in another act which has been properly published (cf. can. 1617).

Art. 262 – An interlocutory sentence or decree has the force of a definitive sentence if it

impedes the trial or puts an end to the trial or a grade of it, at least in reference to a party in the cause (can. 1618).

Title XI

THE TRANSMISSION OF THE CAUSE TO THE TRIBUNAL OF APPEAL AND ITS PROCESSING

Art. 263 – § 1. For validity, a tribunal must be collegial in the second or higher grade of trial, in accordance with art. 30, § 4.

§ 2. The same is the case if the cause is processed through the shorter form, in accordance with art. 265.

Art. 264 – A sentence which has first declared the nullity of a marriage is to be sent *ex officio* to the tribunal of appeal within twenty days of the publication of the sentence, together with the appeals, if there are any, and the other acts of the trial (can 1682, § 1).

Art. 265 – § 1. If a sentence has been pronounced in favour of the nullity of marriage in the first grade of trial, the tribunal of appeal, having considered the observations of the defender of the bond of the same court of appeal and also of the parties, if they have any, is by a decree either to confirm the sentence by an abbreviated procedure or to admit the cause to an ordinary examination in a new grade of trial (cf. can. 1682, § 2).

§ 2. Once the time limits established by law have passed and the judicial acts have been received, a college of judges is to be named as soon as possible and the *praeses* or *ponens* by his decree is to send the acts to the defender of the bond for an opinion and is to advise the parties that, if they wish, they are to propose their observations to the tribunal of appeal.

§ 3. All the acts are to be available to the judges before the college issues the decree mentioned in § 1.

§ 4. For validity, the decree by which an affirmative sentence is confirmed by the abbreviated procedure must express the reasons at least summarily and must respond to the observations of the defender of the bond and, as the case may be, of the parties (cf. can. 1617).

§ 5. Even in a decree by which a cause is admitted to an ordinary examination the reasons are to be expressed summarily, indicating what further instruction is required, if that is the case.

§ 6. If a sentence issued in the first grade of trial declared a marriage null on the basis of several grounds of nullity, that sentence can be confirmed by the abbreviated procedure on several grounds or on one only.

Art. 266 – A cause is always to be processed through an ordinary examination in the second or higher grade of trial, whenever it is a matter of a negative sentence against which an

appeal has been filed or an affirmative sentence which has been issued in the second or higher grade.

Art. 267 – § 1. If a cause is to be handled in the second or higher grade of trial through an ordinary examination, it is to be processed in the same way as in first instance, with appropriate adaptations (cf. can. 1640).

§ 2. Unless the proofs are to be completed, after the citations have been carried out and the formulation of the doubt has been set, the tribunal is to proceed as soon as possible to the discussion of the cause and to the sentence (cf. can. 1640).

§ 3. New proofs, however, are to be admitted only in accordance with art. 239 (cf. can. 1639, § 2).

Art. 268 – § 1. If in the grade of appeal a new ground of nullity is proposed, the tribunal can, as if in first instance, admit it, with due observance of artt. 114-125, 135-137, and make a judgement concerning it (cf. can. 1683).

§ 2. For validity, however, the hearing of that new ground in the second or higher instance is reserved to a tribunal of the third or higher grade of trial.

§ 3. If a sentence in favour of the nullity of marriage on the basis of that new ground is given as if in first instance, the competent tribunal is to proceed in accordance with art. 265, § 1.

Title XII

THE CHALLENGE OF THE SENTENCE

Chapter I

A complaint of nullity against the sentence

Art. 269 – If the tribunal of appeal sees that the oral contentious process was employed in the lower grade of trial, it is to declare the nullity of the sentence and remit the cause to the tribunal which issued the sentence (cf. can. 1669).

Art. 270 – In accordance with can. 1620, a sentence is affected by the defect of irremediable nullity if:

1º it was issued by a judge who was absolutely incompetent;

2º it was issued by one who lacked the power of judging in the tribunal which issued the sentence;

3º the judge issued the sentence impelled by force or grave fear;

4º the trial was carried out without the judicial petition mentioned in art. 114, or was not instituted against any respondent party;

5º it was issued between parties, at least one of whom lacked personal standing in the trial;

6º someone acted in the name of another without a legitimate mandate;

7º the right of defense was denied to one or both of the parties;

8º the controversy was not decided even in part.

Art. 271 – A complaint of the nullity described in art. 270 can be proposed in perpetuity by way of an exception, but by way of an action it can be proposed within ten years from the day of the publication of the sentence (cf. can. 1621).

Art. 272 – A sentence is affected by the defect of remediable nullity only if:

1º it is issued by an illegitimate number of judges, contrary to the rule of art. 30;

2º it does not contain the motives, that is, the reasons for which the decision was made;

3º it lacks the signatures required by law;

4º it does not bear the indication of the day, month, year and place in which it was issued;

5º it is based on a null judicial act, whose nullity has not been sanated;

6º it is issued against a party who was legitimately absent in accordance with art. 139, § 2 (cf. can. 1622).

Art. 273 – A complaint of nullity in the cases mentioned in art. 272 can be proposed within three months from the notice of the publication of the sentence; once this term has elapsed the sentence is considered to have been sanated *ipso iure* (cf. can. 1623).

Art. 274 – § 1. The judge who issued a sentence is to hear the complaint of nullity proposed by way of an action; but if the party fears that the judge, who issued the sentence being challenged by a complaint of nullity, is overly concerned about the matter, and thus considers him suspect, he can demand that another judge be appointed in his place, in accordance with art. 69, § 1 (cf. can. 1624).

§ 2. If the complaint of nullity concerns sentences issued in two or more grades of trial, the judge who issued the last sentence is to hear the matter.

§ 3. A complaint of nullity can also be proposed together with an appeal, within the time limit established for appealing, or together with a petition for an new examination of the

same cause, mentioned in art. 290 (cf. can. 1625).

Art. 275 – The judge before whom a cause is pending is to hear a complaint of nullity proposed by way of an exception or *ex officio* in accordance with art. 77, § 1.

Art. 276 – § 1. Not only the parties who consider themselves aggrieved can propose a complaint of nullity, but also the defender of the bond and the promoter of justice, whenever he had taken part in the cause or is taking part in it by virtue of a decree of the judge (cf. can. 1626, § 1).

§ 2. The judge himself can retract or amend a sentence issued by himself, within the time limit for acting set by art. 273, unless in the meantime an appeal together with a complaint of nullity has been filed or the nullity of the sentence has been sanated by the passage of the time limit mentioned in art. 273 (cf. can. 1626, § 2).

Art. 277 – § 1. Causes of complaint of nullity proposed by way of an action can be handled following the rules for the oral contentious process, while causes of complaint of nullity proposed by way of an exception or *ex officio* in accordance with art. 77, § 1 are to be handled according to artt. 217-225 and 227 concerning incidental causes (cf. can. 1627).

§ 2. It pertains, however, to a collegial tribunal to hear the nullity of a decision issued by a collegial tribunal.

§ 3. Appeal is possible from a decision concerning a complaint of nullity.

Art. 278 – If a sentence has been declared null by the tribunal of appeal, the cause is remitted to the tribunal *a quo* so that it may proceed in accordance with the law.

Chapter II

The appeal

Art. 279 – § 1. A party who considers himself aggrieved by a sentence, the defender of the bond, and likewise the promoter of justice if he had taken part in the trial, have the right to appeal from the sentence to the higher judge, without prejudice to the requirement of art. 280 (cf. can. 1628).

§ 2. Without prejudice to the requirement of art. 264, the defender of the bond is bound by office to appeal, if he considers the sentence which first declared the nullity of the marriage to be insufficiently founded.

Art. 280 – § 1. There is no appeal given:

1º from a sentence of the Supreme Pontiff himself or of the Apostolic Signatura;

2º from a sentence affected by the defect of nullity, unless it is filed together with a

complaint of nullity, in accordance with art. 274, § 3;

3º from a sentence which has passed into *res iudicata*;

4º from a decree of the judge or from an interlocutory sentence which do not have the force of a definitive sentence, unless it is filed together with an appeal from a definitive sentence;

5º from a sentence or from a decree in a cause which the law provides is to be decided *expeditissime* (can. 1629).

§ 2. The prescription given in § 1, n. 3, does not concern a sentence by which the principal cause of nullity of marriage has been decided (cf. can. 1643).

Art. 281 – § 1. An appeal must be filed before the judge by whom (*a quo*) the sentence was issued, within the peremptory time limit of fifteen canonical days from notice of the publication of the sentence (can. 1630, § 1).

§ 2. It is sufficient that the appellant party signify to the judge *a quo* that he is filing an appeal.

§ 3. If this is done orally, the notary is to consign this to writing in the presence of the appellant himself (can. 1630, § 2).

§ 4. But if the appeal is filed when only the dispositive part of the sentence has been made known to the parties before the sentence is published, in accordance with art. 257, § 1, then art. 285, § 1 is to be observed.

Art. 282 – If a question arises concerning the legitimacy of the appeal, the tribunal of appeal is to hear it *expeditissime* following the rules for the oral contentious process (cf. can. 1631).

Art. 283 – § 1. If it is not indicated in the appeal to which tribunal it is directed, it is presumed to have been made to the tribunal of appeal mentioned in art. 25 (cf. can. 1632, § 1).

§ 2. If one party appeals to the Roman Rota but the other party to another tribunal of appeal, the Roman Rota is to hear the cause, without prejudice to art. 18 (cf. can. 1632, § 2).

§ 3. When an appeal to the Roman Rota has been filed, the tribunal *a quo* must send the acts to it. But if the acts already have been sent to the other tribunal of appeal, the tribunal *a quo* is to inform it immediately of the matter, lest it begin to treat the cause, and so that it sends the acts to the Roman Rota.

§ 4. However, before the time limits set by the law have expired, no tribunal of appeal can make a cause its own, lest the parties be deprived of their right of appealing to the Roman Rota.

Art. 284 – § 1. An appeal is to be pursued before the judge to whom (*ad quem*) it has been directed within a month of its filing, unless the judge *a quo* has granted the party a longer time for pursuing it (can. 1633).

§ 2. The appellant can call upon the assistance of the tribunal *a quo* to send to the tribunal *ad quod* the act pursuing the appeal.

Art. 285 – § 1. In order to pursue a appeal, it is required and it is sufficient that the party calls upon the assistance of the higher judge to emend the challenged decision, attaching a copy of this sentence and indicating the reasons for the appeal (can. 1634, § 1).

§ 2. But if the party cannot obtain a copy of the challenged sentence within the canonical time period, the time limits do not run in the meantime and the obstacle is to be made known to the appellate judge, who is to oblige the judge *a quo* to carry out his duty as soon as possible (can. 1634, § 2).

§ 3. Meanwhile the judge *a quo* must send the acts in accordance with art. 90 to the appellate judge (cf. can. 1634, § 3).

Art. 286 – When the time limits concerning appeals, before both the judge *a quo* and the judge *ad quem*, have expired without any action, the appeal is considered to have been abandoned (can. 1635).

Art. 287 – The appellant can renounce the appeal, with the effects described in art. 151 (cf. can. 1636).

Art. 288 – § 1. An appeal filed by the petitioning party benefits the respondent party as well, and vice versa (cf. can. 1637, § 1).

§ 2. If an appeal is filed by one party regarding one ground of the sentence, the other party, even if the time limits for the appeal have expired, can appeal incidentally concerning other grounds of nullity within the peremptory time limit of fifteen days from the day when the principal appeal had been communicated to him (cf. can. 1637, § 3).

§ 3. Unless it is otherwise evident, an appeal is presumed to be made against all the grounds of a sentence (can. 1637, § 4).

Art. 289 – § 1. Causes of the nullity of marriage never become *res iudicata* (cf. can. 1643).

§ 2. However, a matrimonial cause which has been judged by one tribunal can never be judged again by the same or another tribunal of the same grade, without prejudice to art. 9, § 2.

§ 3. This provision applies only if it is a matter of the same cause, that is, concerning the same marriage and the same ground of nullity.

Chapter III

A petition for a new examination of the same cause after two conforming decisions

Art. 290 – § 1. If a double conforming sentence in a cause of the nullity of marriage has been passed, there is no possibility for an appeal, but the sentence can be challenged at any time before a tribunal of third or higher instance, as long as new and grave proofs or arguments have been brought forward within the peremptory time limit of thirty days from the time the challenge was proposed (cf. can. 1644, § 1).

§ 2. This provision is to be followed also if a sentence which declared the nullity of marriage has been confirmed not by another sentence but by decree (cf. can. 1684, § 2).

Art. 291 – § 1. Two sentences or decisions are said to be formally conforming if they have been issued between the same parties, concerning the nullity of the same marriage, and on the basis of the same ground of nullity and the same reasoning of law and of fact (cf. can. 1641, n. 1).

§ 2. Decisions are considered to be equivalently or substantially conforming when, even though they specify and determine the ground of nullity by different names, they are still rooted in the same facts rendering the marriage null and the same proofs.

§ 3. Without prejudice to art. 136 and without prejudice to the right of defense, the tribunal of appeal which issued the second decision is to decide about the equivalent or substantial conformity, or else a higher tribunal.

Art. 292 – § 1. It is not required that the new arguments or proofs, mentioned in art. 290, § 1, be most grave, much less that they be decisive, that is, those which peremptorily demand a contrary decision, but it is enough that they render this probable.

§ 2. However mere objections or critical observations about the sentence are not sufficient.

Art. 293 – § 1. Within a month of the exhibition of the new proofs and arguments, the tribunal of appeal, having heard the defender of the bond and having informed the other party, must decide by decree whether the new proposition of the cause must be admitted or not (cf. can. 1644, § 1).

§ 2. If the new proposition of the cause is admitted, the tribunal is to proceed in accordance with art. 267.

Art. 294 – A petition for obtaining a new proposition of the cause does not suspend the execution of a double conforming decision, unless the tribunal of appeal, holding that the petition is probably founded and that irreparable damage could arise from the execution, orders the suspension (cf. can. 1644, § 2).

Title XIII

THE DOCUMENTARY PROCESS

Art. 295 – When a petition proposed in accordance with artt. 114-117 has been received, the Judicial Vicar or a judge designated by him, having omitted the solemnities of the ordinary process but with the parties having been cited and with the defender of the bond having taken part, can declare the nullity of the marriage by a sentence if, from a document which is subject to no contradiction or exception, there is established with certainty the existence of a diriment impediment or of the defect of legitimate form, as long as with equal certainty it is clear that a dispensation was not granted, or the lack of a valid mandate of a proxy (cf. can. 1686).

Art. 296 – § 1. The competent Judicial Vicar is determined in accordance with art. 10.

§ 2. The Judicial Vicar or the designated judge first of all is to see whether all those things are present which in accordance with art. 295 are required in order for the cause to be able to be decided through the documentary process. But if he judges or prudently doubts whether all those things are present, the ordinary process must be followed.

Art. 297 – § 1. Since, however, the existence of the impediment of impotence or a defect of legitimate form can only rarely be established through a document not subject to contradiction or exception, the Judicial Vicar or judge is to carry out a preliminary investigation in these cases, lest a cause be admitted lightly and with temerity to the documentary process.

§ 2. But in regard to parties who attempted marriage before a civil official or non-Catholic minister while they were bound to canonical form according to can. 1117, art. 5, § 3 is to be observed.

Art. 298 – § 1. Against the declaration mentioned in art. 295, the defender of the bond, if he prudently thinks that the defects indicated in that same article or the lack of dispensation are not certain, must appeal to the judge of second instance, to whom the acts are to be sent and who is to be advised in writing that it is a matter of the documentary process (cf. can. 1687, § 1).

§ 2. A party who feels aggrieved retains the right to appeal (can. 1687, § 2).

Art. 299 – The judge of the second instance, with the intervention of the defender of the bond and having heard the parties, is to decide, in the same manner indicated in art. 295, whether the sentence is to be confirmed or rather that the cause must be handled through the ordinary process of law; in the latter case, he is to remit the cause to the tribunal of first instance (cf. can. 1688).

Title XIV

THE RECORDING OF THE NULLITY OF THE MARRIAGE AND THOSE THINGS WHICH ARE TO PRECEDE THE CELEBRATION OF A NEW MARRIAGE

Art. 300 – § 1. As soon as a sentence in favour of the nullity of marriage has been made executable in accordance with art. 301, the Judicial Vicar is to communicate it to the Ordinary of the place in which the marriage was celebrated. The Ordinary, however, must see that mention of the declaration of the nullity of the marriage and of any *vetita* that may have been imposed is made in the marriage and baptismal registers (cf. can. 1685).

§ 2. But if the Ordinary has it for certain that the decision is null, he is to remit the matter to the tribunal, without prejudice to art. 274, § 2, and with the parties having been informed (cf. can. 1654, § 2).

Art. 301 – § 1. After a sentence which has first declared the nullity of marriage has been confirmed in a grade of appeal either by sentence or by decree, those whose marriage has been declared null can contract new marriages as soon as the decree or the second sentence has been communicated to them, unless this has been prohibited by a *vetitum* added to the sentence or decree itself or imposed by the Ordinary of the place, without prejudice to art. 294 (cf. can. 1684, § 1).

§ 2. The same is the case after a marriage has been declared null in a documentary process by a sentence which has not been appealed.

§ 3. However, those things which must precede the celebration of marriage in accordance with can. 1066-1071 are to be observed.

Title XV

JUDICIAL EXPENSES AND GRATUITOUS LEGAL ASSISTANCE

Art. 302 – The parties are bound to contribute to paying the judicial expenses according to their ability.

Art. 303 – § 1. The Diocesan Bishop, in regard to a diocesan tribunal, or the *coetus* of Bishops or the Bishop designated by them, in regard to an interdiocesan tribunal, is to set norms:

1º concerning judicial expenses to be paid or reimbursed;

2º concerning the honoraria of procurators, advocates, experts and interpreters, as well as the recompense of witnesses;

3º concerning the granting of gratuitous legal assistance or the reduction of expenses;

4º concerning the reparation of damages if they were inflicted on the other party;

5º concerning the deposit or security to be offered in regard to expenses to be paid or damages to be repaired (cf. can. 1649, § 1).

§ 2. In setting these norms, the Bishop is to keep in mind the particular nature of matrimonial causes, which demands that, inasmuch as this can be done, both spouses take part in a process of nullity (cf. art. 95, § 1).

Art. 304 – § 1. It pertains to the college to determine, in the definitive sentence, whether the expenses are to be paid by the petitioner alone or also by the other party, and to set the proportion of payments between one party and the other. Account is to be taken, however, of the poverty of the parties in terms of the payment of expenses to be decided, with due observance of the norms mentioned in art. 303 (cf. can. 1611, n. 4).

§ 2. No separate appeal is allowed against the decision regarding expenses, honoraria, and damages but a party can have recourse within fifteen days to the same college, which can change the amount charged (cf. can. 1649, § 2).

Art. 305 – Those who are completely unable to bear the judicial expenses have a right to obtain an exemption from them; those who can pay them in part, have the right to a reduction of the same expenses.

Art. 306 – § 1. In setting the norms mentioned in art. 303, § 1, n. 3, it is advisable that the Bishop keep the following in mind:

1º one who wishes to obtain an exemption from judicial expenses or their reduction and gratuitous legal assistance, must give the Judicial Vicar or *praeses* a *libellus*, with proofs or documents attached, by which he demonstrates what is his economic condition;

2º the cause however, must enjoy a presumed *bonum ius*, especially if it is a matter of an incidental question which he has proposed;

3º before the granting of gratuitous legal assistance or a reduction of the expenses, the Judicial Vicar or the *praeses*, if he considers it appropriate, is to request the votum of the promoter of justice and the defender of the bond, having first sent them the libellus and documents;

4º the total or partial exemption from expenses is presumed to perdure in higher instance, unless the *praeses* for a just cause revokes it.

Art. 307 – § 1. If the *praeses* thinks that gratuitous legal assistance is to be granted, he is to request the Judicial Vicar to designate an advocate who will provide the gratuitous legal

assistance.

§ 2. An advocate designated to provide gratuitous legal assistance cannot withdraw from this function unless for a reason approved by the judge.

§ 3. If the advocate does not fulfill his duty with due diligence, he is to be called to do so, whether *ex officio* or at the insistence of the party or the defender of the bond or the promoter of justice, if he is taking part in the cause.

Art. 308 – The Bishop Moderator is to see that neither by the manner of acting of the ministers of the tribunal nor by excessive expenses are the faithful kept away from the ministry of the tribunal with grave harm to souls, whose salvation must always remain the supreme law in the Church.

This Instruction, prepared by this Pontifical Council by mandate of the Supreme Pontiff John Paul II granted *pro hac vice* on the 4th of February, 2003, with the close cooperation of the Congregation for the Doctrine of the Faith, the Congregation for Divine Worship and the Discipline of the Sacraments, the Supreme Tribunal of the Apostolic Signatura and the Tribunal of the Roman Rota, was approved by the same Roman Pontiff on the 8th of November, 2004, who ordered that it be observed by those to whom it pertains immediately from the day of its publication.

Given in Rome at the Pontifical Council for Legislative Texts, on the 25th day of January, 2005, the Feast of the Conversion of St. Paul.

Julián Cardinal Herranz
President

Bruno Bertagna
Secretary

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(1) Second Vatican Council, Past. Const. *Gaudium et spes*, n. 48d.

(2) Second Vatican Council, Past. Const. *Gaudium et spes*, chap. I, nn. 47-52.

(3) Second Vatican Council, Past. Const. *Gaudium et spes*, n. 48b.

(4) Second Vatican Council, Past. Const. *Gaudium et spes*, n. 48a.

(5) John Paul II, Alloc. to the Auditors of the Roman Rota, 27 Jan. 1997, in *AAS* 89 (1997) 487.

(6) St. Augustine, *De bono coniugii*, 4,4, in *CSEL* 41, 191.

(7) John Paul II, Alloc. to the Auditors of the Roman Rota, 27 Jan. 1997, in *AAS* 89 (1997) 488 (cf. John Paul II, Alloc. to the Auditors of the Roman Rota, 28 Jan. 2002, in *AAS* 94 [2002] 340- 346).

(8) Cf. Pius XII, Alloc. to the Auditors of the Roman Rota, 3 Oct. 1941, in *AAS* 33 (1941) 423.

(9) Cf. especially John Paul II, Alloc. to the Auditors of the Roman Rota, 5 Feb. 1987, in *AAS* 79 (1997) 1453-1459, and 25 Jan. 1988, in *AAS* 80 (1997) 1178-1185.

(10) John Paul II, Apost. Const. *Sacrae disciplinae leges*, 25 Jan. 1983, in *AAS* 75/2 (1983) VIII and XI.

(11) Paul VI, Motu proprio *Causas matrimoniales*, 28 Mar. 1971, in *AAS* 63 (1971) 442.

(12) Cf. *AAS* 28 (1936) 313-361.

(13) Cf. John Paul II, Alloc. to the Auditors of the Roman Rota, 22 Jan. 1996, in *AAS* 88 (1996) 774-775, and 17 Jan. 1998, in *AAS* 90 (1998) 783-785.

(14) *AAS* 28 (1936) 314.

(15) Cf. Pont. Comm. for the Auth. Interp. of the CIC, Resp., 26 June 1984, in *AAS* 76 (1984) 747.

(16) Cf. Pont. Comm. for the Auth. Interpr. of the CIC, Resp., 28 Feb.1986, in *AAS* 78 (1986) 1323.

(17) Cf. Pont. Comm. for the Auth. Interpr. of the CIC, Resp., 29 Apr. 1986, in *AAS* 78 (1986) 1324.

(18) Cf. Norms of the Tribunal of the Roman Rota, 18 Apr. 1994, art. 70, in *AAS* 86 (1994) 528.

(19) Cf. Cong. for the Doctrine of the Faith, *Professio fidei et iusiurandum fidelitatis in suscipiendo officio nomine Ecclesiae exercendo una cum nota doctrinali adnexa*, 29 June 1998, in *AAS* 90 (1998) 542-551.

(20) Cf. Cong. for the Sacraments, Circular Letter, 20 Dec. 1986, n. 7.

(21) Cf. Cong. for the Sacraments, Circular Letter, 20 Dec. 1986, n. 23b.

(22) Cf. Cong. for the Sacraments, Circular Letter, 20 Dec. 1986, n. 7.

(23) Cf. Pius XII, Alloc. to the Auditors of the Roman Rota, 2 Oct. 1944, in *AAS* 36 (1944)

281-290.

(24) Cf. John Paul II, Alloc. to the Auditors of the Roman Rota, 5 Feb. 1987, in *AAS* 79 (1987) 1453-1459 and 25 Jan. 1988, in *AAS* 80 (1988) 1178-1185.

(25) Cf. John Paul II, Alloc. to the Auditors of the Roman Rota, 22 Jan. 1996, n. 4, in *AAS* 88 (1996) 773-777.