

## A DISCUSSION OF MATRIMONIAL IMPEDIMENTS

**Prior Marital Bond** - Canon 1085 — §1. A person bound by the bond of a prior marriage, even if it was not consummated, invalidly attempts marriage.

§2. Even if the prior marriage is invalid or dissolved for any reason, it is not on that account permitted to contract another before the nullity or dissolution of the prior marriage is established legitimately and certainly.

**Who can dispense:** only the Roman Pontiff by way of the Favor of the Faith or a dispensation from a ratified but non-consummated marriage. However, many times freedom to marry is determined by a nullity of marriage case.

**Age** - Canon 1083 — §1. A man before he has completed his sixteenth year of age and a woman before she has completed her fourteenth year of age cannot enter into a valid marriage.

**Who can dispense:** Canon 1078 — §1. The local ordinary can dispense his own subjects residing anywhere and all actually present in his own territory from all impediments of ecclesiastical law except those whose dispensation is reserved to the Apostolic See.

However, prudence dictates that such dispensations should rarely be granted because “the necessary discretion of mind, even if it is had before this age is weak.” (Gasparri, *De Matrimonio*, n. 493).

Further, state laws also are involved in setting minimum ages.

**Impotence** - Canon 1084 — §1. Antecedent and perpetual impotence to have intercourse, whether on the part of the man or the woman, whether absolute or relative, nullifies marriage by its very nature.

§2. If the impediment of impotence is doubtful, whether by a doubt about the law or a doubt about a fact, a marriage must not be impeded nor, while the doubt remains, declared null.

**Who can dispense?** Actually, no one can dispense since this is an impediment of the divine natural law and is connected to the essential purposes of marriage.

N.B.: A marriage cannot be forbidden unless there is proof of perpetual impotence ahead of the marriage. Proof is obtained through a judicial process which reaches moral certitude about the antecedent and perpetual impotence. If there is any positive doubt, the marriage cannot be forbidden because of the natural right to marry.

**Disparity of Worship** - Can. 1086 — §1. A marriage between two persons, one of whom was baptized in the Catholic Church or received into it, and the other of whom is not baptized, is invalid. (Present law stems from *Omnium in Mentem*, 26 October 2009. This constitution was

promulgated in the 8 January 2010 issue of the AAS. Therefore, *Omnium in Mentem* became **effective on April 8, 2010.**)

§2. A person is not to be dispensed from this impediment unless the conditions mentioned in cann. 1125 and 1126 have been fulfilled.

§3. If at the time the marriage was contracted one party was commonly held to have been baptized or the baptism was doubtful, the validity of the marriage must be presumed according to the norm of can. 1060 until it is proven with certainty that one party was baptized but the other was not.

**Sacred Orders** - Canon 1087 — Those in sacred orders invalidly attempt marriage.

**Who can dispense?** Canon 1078, §2 - Impediments whose dispensation is reserved to the Apostolic See are: 1<sup>o</sup> the impediment arising from sacred orders.

**Perpetual Vows of Chastity in a Religious Community** - Canon 1088 — Those bound by a public perpetual vow of chastity in a religious institute invalidly attempt marriage.

**Who can dispense?** Canon 1078, §2 - Impediments whose dispensation is reserved to the Apostolic See are: 1<sup>o</sup> ..... from a public perpetual vow of chastity in a religious institute of pontifical right.

**Abduction** - Canon 1089 — No marriage can exist between a man and a woman who has been abducted or at least detained with a view of contracting marriage with her unless the woman chooses marriage of her own accord after she has been separated from the captor and established in a safe and free place.

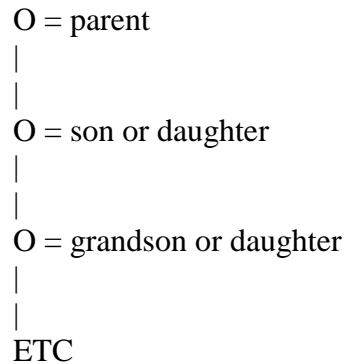
**Who can dispense:** Although according to Canon 1078, §2 the local ordinary can dispense while the woman is still detained, this abduction situation creates the un rebuttable presumption (*praesumptio iuris et de iure*) that the woman lacks the requisite freedom of choice. This situation would counsel the local ordinary not to dispense.

**Murder of one's spouse** - Canon 1090 — §1. Anyone who with a view to entering marriage with a certain person has brought about the death of that person's spouse or of one's own spouse invalidly attempts this marriage.

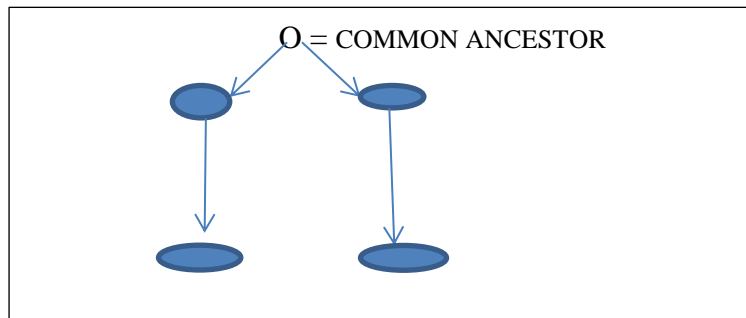
§2. Those who have brought about the death of a spouse by mutual physical or moral cooperation also invalidly attempt a marriage together.

**Who can dispense:** Canon 1078, §2. Impediments whose dispensation is reserved to the Apostolic See are: 2<sup>o</sup> the impediment of crime mentioned in Canon 1090.

**Consanguinity** - Canon 1091 — §1. In the direct line of consanguinity marriage is invalid between all ancestors and descendants, both legitimate and natural.



§2. In the collateral line marriage is invalid up to and including the fourth degree.



§3. The impediment of consanguinity is not multiplied.

§4. A marriage is never permitted if doubt exists whether the partners are related by consanguinity in any degree of the direct line or in the second degree of the collateral line.

**Who can dispense:** Canon 1078 — §1. The local ordinary can dispense his own subjects residing anywhere and all actually present in his own territory from all impediments of ecclesiastical law except those whose dispensation is reserved to the Apostolic See.

§3. A dispensation is never given from the impediment of consanguinity in the direct line or in the second degree of the collateral line.

Keep in mind that secular laws also have the equivalent of impediments which might be even stricter than those of the Catholic Church.

**Relationship of Affinity** - Canon 1092 — Affinity in the direct line in any degree invalidates a marriage.

**Example:** George, a widower, marries Mary but George dies. Mary is impeded by this impediment from marrying any of George's sons by his first marriage or from marrying George's widowed father.

**Who can dispense:** Cf. Canon 1078, §2.

**Relationship of Public Propriety** - Canon 1093 — The impediment of public propriety arises from an invalid marriage after the establishment of common life or from notorious or public concubinage. It nullifies marriage in the first degree of the direct line between the man and the blood relatives of the woman, and vice versa.

**Example:** George and Mary, both Catholics, attempt marriage before either a public official or Protestant minister. After some time, Mary dies. George and Mary never married in the Catholic Church. George is impeded from marrying Mary's widowed mother. If Mary had a daughter by a prior marriage, George would be impeded from marrying this daughter.

**Who can dispense:** Cf. Canon 1078, §2.

**Adoptive Relationship** - Canon 1094 — Those who are related in the direct line or in the second degree of the collateral line by a legal relationship arising from adoption cannot contract marriage together validly.

**Example 1:** Titius and Titia get married and have a son whom they named George. They discover after the birth of George, that Titia has become infertile but they want more children. They really want to have a girl. So they go to Catholic Charities and go through the option process and legally adopt Mary as their daughter. Sadly, after a few years more Titius and Titia break up and divorce before either George or Mary have reached the use of reason. In the divorce agreement Titius has total custody of George and Titia similarly has full custody of Mary. They really go their separate ways and never see each other again. George and Mary happen to enroll in the same college. Not knowing they are adoptive brother and sister they fall in love. When they go to the priest about getting married and get all their records they are surprised by the fact that they are adoptive brother and sister and by reason of Canon 1094 they are impeded in the second degree of the collateral line by adoption.

**Example 2:** Titius and Titia get married very young (18 and 17) and legally adopt a 15 year old girl whom they named Mary. After about 5 years Titia dies. Titius would like to marry Mary since by this time she is 20 years old and he is only 23. Rightfully the priest tells Titius that he is impeded from marrying Mary because he related in the direct line by a legal relationship arising from adoption.

**Who can dispense:** Cf. Canon 1078, §2.