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THE PREVALENT INTENTION OF THE SPOUSES AND THE ERROR ON THE ESSENTIAL PROPERTIES OF MARRIAGE AND SACRAMENTALITY (CIC c. 1099)

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The author explains how a substantial error (CIC c. 126; CCEO c. 933) regarding the essential content of marriage - a permanent "partnership" between a man and woman ordered to the generation of offspring by means of some sexual cooperation (see, CIC c. 1096; CCEO c. 819 on ignorane) - always invalidates marriage consent while an accidental error of law renders it null only if: 1) it concerns the essential properties of unity and indissolubility or sacramentality (CIC c. 1099; CCEO c. 822); 2) it is so intense to condition the act of the will. The accidental error of law is not applicable to other essential elements of marriage as the good of the spouses or the good of offspring.

Introduction

The current mentality of society accords emphasis and priority to the values of beauty, youth, health, individual choice, interpersonal relationship and personal fulfilment. Those values are not

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intrinsically opposed to the Catholic view of marriage, but can put partners in conflict with the Church's understanding of the essence of marriage as the "covenant by which a man and a woman establish between them a partnership of the whole of life" (CIC c. 1055, § 1), whose essential properties are unity and indissolubility, "which in Christian marriage obtain a particular firmness by reason of the sacrament" (CIC c. 1056). Pope John Paul II did not consider this mentality to amount necessarily to a concrete rejection of Christian marriage or of its essential properties,"[1] promoting easy access to divorce holding that marriage is dissoluble at the will of the parties.[2]

The propensity to divorce is rather less among persons affiliated with an ecclesial community regularly attending Sunday mass, active in specific ecclesial communities, trained in religion by their parents during childhood and youth who participated in catechism, prayer meetings, etc.[3] There is danger even within the Catholic parishes where marriage preparation programs are influenced by the secular culture and catechists who fail to teach the authentic Catholic meaning of marriage, specially if preparation programs focus only on interpersonal relationships, communication skills and conflict resolution paying little attention to the Church's teaching on sacramental and moral theology. They may inadvertently reinforce errors about the nature and indissolubility of marriage.[4]

2. Error about the Substance of Marriage

Error concomitans (= *error incidens*) means that the act would have been placed even knowing the true situation at the time of the act. The effect of nullity does not follow the error on any element which is deemed essential to the act, but according to c. 126 only if the error refers to the substance of the act which essentially constitutes the act

[1]John Paul II, *Allocution to the Auditors of the Roman Rota*, 21 January 2000, in *AAS* 92 (2000) 352-353, n. 4.

[2]C. T. Jorgensen, "Culture and Error non Simplex – Not so Rare," in *CLSA Proceedings* 62 (2000) 196.

[3]C. T. Jorgensen, "Culture and Error non Simplex – Not so Rare," in *CLSA Proceedings* 62 (2000) 206.

[4]C. T. Jorgensen, "Culture and Error non Simplex – Not so Rare," in *CLSA Proceedings* 62 (2000) 208.

itself (CIC c. 124 § 1), that is, to that which forms the essential content of the declaration of the will.[5]

For the validity of juridic acts in general and of marriage in particular, it is not necessary to have an exhaustive knowledge of the nature of the juridic act or a detailed knowledge of the essential elements of the specific act to be placed. If one were to require all these, marriage would no longer be possible, including those who, in the varying situations of the contemporary world, following a natural inclination to marriage, grasp rather intuitively its essential content.[6]

Already CIC c. 126 distinguishes clearly error about the substance of the act defined by CIC c. 1096 and CCEO c. 819 which always renders it null. In marriage, the minimum knowledge required on the part of the *subjects* concerning the nature of the juridic act to be fulfilled is determined by CIC c. 1096. Anyone who is not ignorant of the fact that marriage is a permanent "partnership" between a man and a woman ordered to the generation of offspring by means of some sexual cooperation has sufficient knowledge to be able to contract marriage.

Ignorance, and consequently also error, which concerns this essential content of the act and is, therefore, called substantial error, always invalidates consent as CIC c. 1096 states: "For matrimonial consent to exist, the contracting parties must at least not be ignorant that marriage is a permanent partnership between a man and a woman ordered to the procreation of children by means of some sexual cooperation." The parties can either be ignorant, that means simply they do not know or have a wrong opinion about what error means. Thus, for example, if a person does not adequately perceive the implications of matrimonial consent and considers it merely to be a continuation of a dating relationship, or the only manner by which to be emancipated from home, or it involves only "bed and board," but not the mutual donation of lives, etc., then the marriage would be null because of substantial error.

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[5] H. Pree, *Münsterischer Kommentar zum Codex luris Canonici, unter besonderer Berücksichtigung der Rechtslage in Deutschland, Osterreich und der Schweiz,* 5 vol., ed. Klaus Lüdicke, Münster 1984, vol. 4, at canon 126, May 1998, n. 4.

[6] See, Apostolic Signatura, *Circular Letter to some ecclesiastical Tribunals approved by the Plenary Session*, 3 and 4 February 2011, n. 2.

In the substantial error, the will determined by error is directed to follow an object essentially different from the formal essential object of matrimonial consent, thus substituting, even though unknowingly, its own concept of marriage.

In any case, an extension of the object of substantial error of law concerning marriage, beyond the limits stipulated by CIC c. 1096 and CCEO c. 819 regarding the minimum knowledge, does not appear admissible, since it concerns a norm subject to a strict interpretation, in as much as it limits the free exercise of the right to contract marriage (see, CIC cc. 18 and 1058; CCEO cc. 1500 and 778).[7]

Error about anything, that is not substantial, renders the act null only when the erring person makes of it a condition *sine qua non*. In this second hypothesis one must prove not only the existence of the error but also its reduction to a condition *sine qua non*. The canon adds that the act "is otherwise valid, unless the law provides differently." The final clause of the canon about the possible rescission of the act has no importance for matrimonial law.[8]

CIC c. 126 and CCEO c. 933 contains general principles made specific by the Legislator in CIC cc. 1096-1099 (CCEO cc. 819-822) and specifically for *error iuris* on the substance of marriage (CIC c. 1096; CCEO c. 819) and error of law on the essential properties and sacramentality (CIC c. 1099; CCEO c. 822). It does not refer to cases where there is a special provision (CIC c. 1099; CCEO c. 822) in which the law foresees that error which does not determine the will does not invalidate marriage consent.[9]

If the minimum knowledge described in CIC c. 1096 is not present, the marriage is null according to CIC c. 1096, whereas CIC c. 1099 treats another idea on other essential elements and properties.[10]

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[7]See, Apostolic Signatura, *Expert Opinion on Two Sentences of A Local Tribunal*, prot n. 153/05 ES, transmitted by letter prot. n. 1012/07 SAT of November 26, 2007 (unpublished).

[8] See, Apostolic Signatura, *Circular Letter to some ecclesiastical Tribunals approved by the Plenary Session*, 3 and 4 February 2011, n. 1.

[9]See, Apostolic Signatura, *Letter, Answer to the explanation of a local judicial vicar on the use of CIC c. 126 as ground of nullity* (prot. n. 1050/01 SAT and prot. n. 140/01 ES), 5 November 2001.

[10]K. Lüdicke, *Münsterischer Kommentar zum Codex luris Canonici, unter besonderer Berücksichtigung der Rechtslage in Deutschland, Osterreich und*

CIC c. 1097 § 1 and CCEO c. 820 § 1 describes error regarding the identity of a person, which touches upon the *substance* of the act, whereas CIC c. 1097 § 2 and CCEO c. 820 §2 describes error on the quality of the partner which is relevant only if it refers to a quality principally and directly desired.

Indicating the substance of marriage – which could be the object of error – with terms such as *interpersonal relationship* and finding its necessary presupposition in *intrapersonal and interpersonal integration,* means resorting to a terminology that, at least in the canonical field, is somewhat allusive and of indeterminate content. Perhaps in the psychological field it could have a more clear content.[11]

It is neither correct to say that error on the *consortium totius vitae* which is ordered toward the *bonum coniugum* and to the *bonum prolis* is an error on substance which renders any marriage null nor is it acceptable that all essential elements must concern the "substance of the [juridic] act" of marriage.

In these cases also the nullity of matrimony is attributed formally to the act of the will, which is directed to an object, which, because of substantial error, is perceived by the intellect in a way discordant with the doctrine of the Church. The consent of the marrying party is directed to the object changed by such error.[12]

3. The Accidental Error Limited to the Intellect

Error, by definition, is of the intellect. It is the false apprehension of a thing with accompanying false judgement: *falsa rei apprehensio* and *iudicium falsum*. It is not sufficient that two non-Catholics celebrate marriage in the conviction that it can be dissolved in case of adultery. Pope Benedict XIV based his solution on the well known Decretal *Gaudemus in Domino* of Pope Innocent III.[13] The Holy Office

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der Schweiz, 5 vol., ed. Klaus Lüdicke, Münster 1984, vol. 4, at canon 1099, Juli 2006, n. 4.

[11]See, Apostolic Signatura, *Expert Opinion on Two Sentences of A Local Tribunal*, prot n. 153/05 ES.

[12]M. F. Pompedda, *Mancanza di fede econsenso matrimoniale,* in *Studi di diritto matrimoniale canonico,* Milano 1993, 438.

[13]Lib. Extra, lib. 4, tit. 14, cap. 4 (Pope Innocent III, *De infidelibus*, 30 December 1198, ex Palatio Laterani, ad Archiepiscopo et capitulo Tirensibus, in A. Potthast, *Regesta Pontificum Romanorum inde ab a post Christum natum 1198-1304*, 3 voll., Berlin 1874-1875, vol. I, n. 507, p. 48); see, Pope Benedict XIV, *De synodo dioecesana*, lib. 13, cap. 22, n. 4.

reminded in 1872 that the merely speculative error remains in the intellect and does not influence validity.[14]

The notion of error of law regarding the essential properties of marriage, which is specified with the so called *simple error* in c. 1084 of the 1917 Code, has been developed by the rotal jurisprudence and doctrine and received into c. 1099 of the 1983 Code. It explicitly admits that an error of law at times may enter and determine the will, ceasing by this very fact to be "simple" or merely intellectual, even if it repeats the traditional and general principle that an error about the essential properties of marriage (unity and indissolubility) or the sacramentality of marriage (between the baptized) does not invalidate the marriage. If the error determines the will against this general principle in the concrete case, it would mean that it is not an inert idea but exerts much influence on action.[15]

The universal church always recognized the validity of marriages celebrated among non-Catholics who afterwards converted to Catholicism[16] according to the general principle that a simple error on the indissolubility, unity or sacramentality does not vitiate consent,[17] nor would make the marriage invalid, if the non-Catholic authorities dissolve marriages.[18] The error even on essential elements does not necessarily determine the will because of the fundamental distinction between *volitum in se* and *volitum in alio*. The fact that one who wants a certain thing (*volitum in se*) also necessarily wants all those things which are inseparable from it (*volitum in alio*) should not be overlooked, even if the person is ignorant of those things or erroneously thinks that they do not exist or that they are different

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[14] See, Sacred Congregation of the Holy Office, *Instructio*, 18 December 1872, ad Vic. Ap. Oceaniae Central., in *Codicis Iuris Canonici Fontes*, vol. 4, 332-333.

[15] See, D. M. Campbell, "Canon 1099: The Emergence of A New Juridic Figure?" in *Quaderni dello Studio Rotale*, vol. V, Vatican City 1990, 49.

[16] Pius VI, Letter *Gravissimam matrimonii*, 11 July 1789, Romae, apud S. Petrum, Antonio Archiepiscopo Pragensi, in *Ius Pontificium de Propaganda Fide* (ed. R. De Martinis), 8 voll., Rome 1888-1909, vol. 4, 337, § 6.

[17] See, Roman Rota, "Sentence c.," Boccafola, 21 November 2002, in *RRDec* 94 (2002) 669, n. 5.

[18] See, Sacred Congregation of the Holy Office, *Instruction*, 24 January 1877, ad Ep. Nesquallien., in *Codicis Iuris Canonici Fontes*, ed. by P. Gasparri - I. Serédi ed., 9 voll., Vatican City 1923-1939, vol. 4, 373.

from what they really are. For example, if someone from Delhi seriously wishes to visit Rome (*volitum in se*) then that person also necessarily wishes to visit Italy (*volitum in alio*), even if the person is ignorant of the fact that Rome is in Italy, and erroneously thinks that Rome is in France. Only if the person had a prevailing will not to visit Italy, for example, because he or she did not get the visa, would this prevailing will invalidate the will to visit Rome.[19]

If the will desires a Catholic marriage, it necessarily also desires all those elements which are inseparably linked with Catholic marriage, even if it is not aware of them and even if it is in error about them.[20] If this were not so, then, as far as the properties of indissolubility, unity and sacramentality are concerned, one would have to conclude that all those who have a divorce mentality or a secularized vision of marriage – which nowadays a majority of people hold – would not be able to elicit a true matrimonial consent, even if they were in love with their partner and even if they had the will to give themselves to their partner forever, in accordance with the proper ends of marriage.[21]

As for CIC c. 1099, it must be emphasized that error about the essential properties or about the sacramentality of marriage, even if deeply ingrained, does not vitiate consent. A person, who wants to marry implicitly and inseparably, also wants unity, indissolubility and sacramentality, even if he/she does not know them, or has a wrong idea about them.[22]

For the valid celebration of marriage it is not required that the will of the spouses includes explicitly the essential properties of marriage or its sacramentality, because they are included in the marriage not because of the will of the spouses, but the will of the creator. These

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[19]See, Apostolic Signatura, *Letter, Answer to the explanation of a local judicial vicar on the use of CIC c. 126 as ground of nullity*.

[20]A. Scheuermann, "Die irrtümliche Eheauffassung," in *Österreichisches Archiv für Kirchenrecht* 15 (1966), 168-186; R. Brown, "Simple Error in Marriage Tribunal Cases: A Reappraisal," in *Heythrop Journal* 9 (1967), 168-180.

[21]See, Apostolic Signatura, *Letter, Answer to the explanation of a local judicial vicar on the use of CIC c. 126 as ground of nullity.*

[22]Cf. Z. Grocholewski, "L'errore circa l'unità, l'indissolubilità e la sacramentalità del matrimonio," in *Error determinans voluntatem (can. 1099)*, ed. by P. A. Bonnnet / C. Gullo (*Studi giuridici*, vol. 35), Vatican City 1995, 12.

do not depend on the will of the spouses. Whoever wants marriage wishes implicitly also those properties of marriage mentioned above and also its sacramentality which are inseparable from it. CIC c. 1099 denies, therefore, an invalidating effect to an intellectual error concerning the essential properties of marriage (unity or indissolubility) or its sacramentality.

Furthermore, law does not require that the partners adequately grasp their personal abilities and liabilities in sustaining a faithful partnership of the whole of life which is sacramental or do not adequately perceive and evaluate those elements in terms of the intended partner. The proposal of those consultors who suggested the irritating effect of any error has not been accepted.[23] There is nothing inherently contradictory about wanting or hoping for a long lasting or even lifelong marriage in the concrete case, but still understanding marriage as dissoluble.[24] CIC c. 1100 reminds that even who erroneously thinks his marriage is null, marries validly.

4. The Habitual Intention and Its Effect on the Will

The difference between habitual and virtual intention might be made easily and explained theoretically, but in actual fact the border between the two is not clear. Traditionally, invalidating effect is attributed to virtual intention and not to habitual intention.

Benedict XIV distinguishes between two intentions, a general intention to do what the Church does, that is, to accept marriage as Christ has instituted it and a special intention for the celebration of marriage in the concrete case. The Church presumes that the two acts of will are not in contrast.[25] If there is a contrast, then the special

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[23]"*... si habeatur error circa unitatem vel indissolubilitatem, praesumitur vitiatum fuisse consensum matrimonialem*" in: Pontificia Commissio Codici Iuris Canonici Recognoscendo, Coetus studiorum de iure matrimoniali (17-20 May 1977), in *Communicationes* 9 (1977), 373.

[24]C. T. Jorgensen, "Culture and Error non Simplex – Not so Rare," in *CLSA Proceedings* 62 (2000) 209.

[25] "*... praevalente nimirum generali, quam diximus, voluntate de matrimonio iuxta Christi institutionem ineundo, eaque privatum illum errorem quodammodo absorbente: quo fit, ut matrimonium ita contractum, validum firmumque maneat. At, ubi contrahentes in ipso matrimonii contractu expressam apposuerunt conditionem de dissolvendo quoad vinculum matrimonio in casu adulterii; iam fieri nequit, ut error particularis absorptus maneat a generali voluntate contrahendi matrimoium, prout a Christo Domino institutum fuit: sed*

intention is prevalent according to rule of law: "*Generi per speciem derogatur*."[26] The canonists before and after Benedict XIV wanted to save the validity of the majority of marriages celebrated between non-baptized and even between baptized non-Catholics. The orthodox Bishops frequently declared divorce. Many orthodox faithful married with the errorneous knowledge that marriage can be dissolved for certain reasons. Famous Cardinal Lugo (1583-1660), who taught at the *Collegio Romano*, considered those marriages valid except when both parties convened in their hypothetic exclusion. If both partners accept the wrong idea on indissolubility and apply it on their marriage, that is, celebrate under the condition that the marriage bond can be dissolved, then their marriage is null, otherwise it will be valid.[27]

Pope Pius VI reminds that the intention to celebrate marriage according to the discipline of the non-Catholic community or civil law which permits the dissolution of marriage does not preclude its validity. The partner in simple error will celebrate marriage with his habitual intention according to his error, which is not sufficient to render null consent: "Voluntas enim habitualis respicit tantum matrimonium in genere."[28]

The difficulty in the concrete case is to determine whether this intention prevailed or whether that general intention to contract according to the institution of Christ and the Church, in fact, was stronger.

Caution is necessary concerning a possible *confession* of error, which generally tends to be retrospective and is prone to the manifestation of an interpretative intention. If somebody contracts exactly the marriage, which he/she considers is dissoluble, and would not have

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potius voluntas generalis eiusmodi extinguitur et suffocatur ab errore particulari, qui manifeste praevalet et dominatur; atque hinc oritur nullitas matrimonii, in quo contrahendo apposita fuit conditio ipsius substantiae contraria" (Pope Benedict XIV, *De synodo dioecesana*, in *Opera omnia,* in tomos XVII distributa, Prati 1832-1844, vol. 11, lib. 13, cap. 22, n. 7).

[26]Boniface VIII, *Lib. Sextus*, lib. 5, tit. 12, *De regulis iuris*, n. 34.

[27]See, Sacred Congregation of the Holy Office, *Responsum*, 2 dec. 1680, Bosniae, in *Codicis Iuris Canonici Fontes*, vol. 4, 35: "*Si ista sint deducta in pactum, seu cum ista conditione sint contracta, matrimonia sunt nulla; sin aliter, sunt valida*."

[28]See, Roman Rota, "Sentence c.," Rogers, 7 February 1967, in *RRDec* 59 (1967) 69, n. 2.

contracted it had he known that the bond is indissoluble, then the intention is only interpretative which does not limit consent, but would have limited it (if it were already present at the moment of consent).[29]

Even in the case of habitual intention error has some effect on the will. If this influence of habitual intention is strong, authors and rotal jurisprudence traditionally speak of *error pervicax*. In this case the error is so strong as to contain in itself the exclusion of a property.

5. The Deep Rooted Error

Felici introduced this new form of error into rotal jurisprudence in 1953. But if such erroneous judgments become part of the nature (of the partner) so that the contracting partner cannot, in any way, feel or act differently and there isn't present a specific reason by which the contracting partner is forced to give up his/her deep rooted judgments, then, we have to conclude easily that he placed a positive act of will.[30] Sometimes error "so penetrates and influences the personality, so to speak, of the one contracting marriage, that sometimes he opposes what is in his mind or sometimes doesn't do or carry out what the mind might want. In this case error can he said to lead to the nullity of the marriage, not so much in itself but rather because of the will, which has brought about its own defect."[31]

It is in virtue of the principle that nothing can replace marital consent (CIC c. 1057) that an error of law, by way of exception, can have an invalidating effect on consent if it positively determines the will of the contracting party to decide against the indissolubility of marriage. This can only occur when the erroneous judgment has a determining influence on the will's decision; for, it is prompted by an inner conviction deeply rooted in the contractant's mind and is

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[29]See, Roman Rota, "Sentence c.," Heard, 31 May 1940, in *RRDec* 32 (1940) 109, n. 2: "*Quis enim praecise matrimonium contrahit, quod censet solubile, neque contraxisset, si scivisset vinculum indissolubile esse, nam haec est intentio interpretativa, quae consensum non limitat, sed limitasset*."

[30]See, Roman Rota, "Sentence c.," Felici, 24 March 1953, in *RRDec* 45 (1953) 227, n. 2: "*Attamen si huiusmodi sententiae veluti in naturam verterint, adeo ut aliter sentire vel operari pars contrahens haud quaquam possit, neque occurrat peculiaris ratio, ob quam contrahens ab veluti ingenitis sententiis abscedere impellatur: pro actu positivo voluntatis facile concludimus*."

[31]See, Roman Rota, "Sentence c.," Felici, 17 December 1957, in *RRDec* 49 (1957), 844, n. 3.

decisively and stubbornly held by him.[32] "The contracting party positively and directly anticipates and intends marriage without indissolubility, since he recognizes it only as a matrimonial custom or only accepts it as such."[33]

Even the strongest type of error, traditionally called "pervicax,"[34] the one deep-rooted and ingrained in the person's nature, which is also known as stubborn or obstinate error, will not direct the will irresistably. Only if it reaches such intensity as to condition the act of the will[35] or that it has a determining influence on the will's decision[36] it will cause the consent to be null.

The deeper the error and the more reflexive or conscious it is, the easier is the transition from error to act of the will.[37] The more stable, diffuse, persistent and deep-seated the error is, the easier it will influence the act of the will and one or both baptized Christians will want a merely profane union and, thus, a marriage would be essentially different from the Church doctrine, resulting in an invalid marriage. The invalidity is not directly caused by the error but by the will directed to the wrong object.[38]

Only when the acceptance of divorce brings about a practical judgment which proposes to the will an erroneous object to be chosen in such a way that the will certainly and infallibly chooses that object, then the error about the indissolubility of marriage is so

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[32]John Paul II, "Allocution to the Roman Rota," 21 January 2000, in *AAS* 92 (2000) 352-353, nn. 4-5.

[33]See, Roman Rota, "Sentence c.," Pompedda, 17 July 1989, in *RRDec* 81 (1989), 508s, n. 4.

[34]See, I. Parisella, *De pervicaci seu radicato errore circa matrimonii indissolubilitatem*, in: *Ephermerides Iuris Canonici* 32 (1976) 142.

[35]John Paul II, *Allocution to the Roman Rota,* 29 January 1993, in *AAS* 85 (1993) 1259, n. 7.

[36]John Paul II, *Allocution to the Roman Rota*, 21 January 2000, in *AAS* 92 (2000) 353, n. 5.

[37]See, Roman Rota, "Sentence c.," Ewers, 18 May 1968, in *RRDec* 60 (1968) 351, n. 15.

[38] See, Apostolic Signatura, *Circular letter to some ecclesiastical Tribunals approved by the Plenary Session*, 3 and 4 February 2011, n. 3.

rooted and persistent that it enters into the will, determines it and vitiates matrimonial consent (CIC c. 1099).[39]

Those judges who, from the existence of error, easily conclude positive exclusion of a property are certainly not justified in doing so. It is probable that they have interpreted the development of jurisprudence as a license to treat error as necessarily leading to invalid consent. This line of thought is not true to rotal jurisprudence and is very damaging both to this jurisprudence and to the institution of marriage itself.

"As the Rota explored the jurisprudential relevance of deeply rooted errors about the indissolubility of marriage, it applied its findings first to cases where the error functioned as a remote motive for simulating or excluding permanence from one's consent by a positive act of the will."[40] The deep rooted error can amount to b a proportionate, grave and proximate or remote cause of the exclusion of indissolubility through a positive act of the will (CIC c. 1101 § 2).[41]

In concrete cases persons imbued with error can be so eager to overcome their own hesitations about marriage, a fact "which demonstrates to what extent his desire to contract marriage had prevailed in the concrete circumstances of the case."[42] The deep-rooted error gives a new nature to the person so that he or she cannot act in any other way than the way the intellect presents the object to the will.[43]

The question in those cases is whether the erring partner harbored a deeply entrenched error about the indissolubility of marriage because of his adherence to the teaching of the non-Catholic

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[39]See, Roman Rota, "Sentence c.," Stankiewicz, 29 January 1981, in *RRDec* 73 (1981) 50, n. 10.

[40]J. P. Beal, "Determining Error: Hot New Ground or Recycled Old Ground," in Canon Law Society of Great Britain and Ireland, *Newsletter,* March 2012, 75.

[41]See, Roman Rota, "Sentence c.," Boccafola, 21 November 2002, in *RRDec* 94 (2002) 669, n. 672, n. 8

[42]See, Roman Rota, "Sentence c.," McKay, 4 February 2005, English translation by Augustine Mendonça, in *Studies in Church Law* 4 (2008) 357, n. 23. The Latin version of this decision was published in *lus Ecclesiae* 18 (2006) 159-175.

[43]Roman Rota, "Annual Report 2005, Sentence," prot. n. A. 27/05, in *L'attività della Santa Sede nel 2005*, ed. by N. Sarale, Vatican City 2006, 842.

ecclesiastical community that, on the authority of Matthew 5 and 19, an innocent spouse is entitled to divorce and remarry if his or her spouse has committed adultery. In spite of the ground of simulation of the good of permanence it was error that was the central focus of the case, the rotal judge McKay acknowledged that canonists might legitimately approach the case as one involving simulation or as one involving determining error. Normally, a simulator possesses "both the knowledge of the nature of the matrimonial institute and simultaneously the internal will to reject the same institute."[44]

McKay called the attention to the great care and respect necessary when assessing the teaching of non-Catholic churches and ecclesial communities. He noted that, in these groups, "even if divorce is in fact admitted, fidelity is always proposed, and forgiveness and mutual reconciliation are highly esteemed." He cautioned to the fact that, in the Baptist tradition, even after adultery, "divorce is a permission not a necessity, rather a last resort. Therefore, it is evident that divorce among the Baptists is regarded as an extreme remedy."[45]

In secularized social and cultural contexts which are alienated from Catholic doctrine or in cultures where polygamy is admitted, deep-rooted error is conceivable whereas it must be excluded in places and families where the Catholic doctrine and the Magisterium of the Church are well known. This is so even more, if the party studied in Catholic schools and colleges.[46]

6. The Accidental Error Involving the Will

The present CIC c. 1099 which does not differ from CCEO c. 822 expressly establishes that error concerning the properties which "determines the will" vitiates consent and is called "determining error." Then this takes us back to the second part of CIC c. 126, that is, error about an element which does not pertain to the substance of the act but is willed by the agent with such intensity as to amount to (*recidit*) a condition *sine qua non*.[47]

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[44]See, Roman Rota, "Sentence c.," McKay, 4 February 2005, 350-351, n. 14.

[45]See, Roman Rota, "Sentence c.," McKay, 4 February 2005, 353, n. 16.

[46]Roman Rota, "Annual Report 2009, Sentence," prot. n. A. 159/08, in *L'attività della Santa Sede nel 2009*, ed. by N. Sarale, Vatican City 2010, 622.

[47]See, Apostolic Signatura, *Letter, Answer to the explanation of a local judicial vicar on the use of CIC c. 126 as ground of nullity.*

Nevertheless, what CIC c. 1099 itself foresees as rather an exception, in some cases, error can determine the act of the will in the sense of willing marriage without unity, indissolubility or sacramentality.

Only a positive act of the will contrary to marriage itself or a good or to its essential goods and elements is strong enough to overcome this general will and therefore invalidate consent. Error regarding single goods and properties will not detract from this consent.[48] The canonical efficacy of this error of law does not consist in the error itself, as an act of the intellect, but only if it becomes the object of the will.

Error of law is, therefore, deemed juridically irrelevant as long as it did not determine that specific and concrete act of the will which is matrimonial consent. A spouse can still enter a valid marriage in spite of his error. Even if a person did not adequately perceive indissolubility, fidelity or sacramentality, this error will invalidate marriage if the person intended at the moment of consent to celebrate his/her own marriage open to intimate relationships with other partners or a merely profane union.

The will determined by the error is directed towards the attainment of another object which is essentially different from the formal object of matrimonial consent, by substituting, albeit unknowingly, one for the other. In place of the two essential properties of marriage and sacramentality, this will is directed to its own idea of marriage according to the proper erroneous opinion.[49] Who is in error, determining the will exclusively, accepts marriage according to his ideas, that is, without unity (dissoluble) or without sacrament.[50] The spouse directly applies his/her error on marriage, marrying with the determined will to choose marriage without indissolubility, unity or sacramentality.

Error causes nullity, if a person, convinced that marriage is dissoluble, marries a partner by a marriage without indissolubility. An erroneous jugdment made because it appeared as true

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[48]D. M. Campbell, "Canon 1099: The Emergence of A New Juridic Figure?" in *Quaderni dello Studio Rotale*, vol. V, Vatican City 1990, 55.

[49]See, Roman Rota, "Sentence c.," Stankiewicz, 26 June 1987, in *RRDec* 79 (1987), 456-457, n. 5.

[50]See, Roman Rota, "Sentence c.," Boccafola, 21 November 2002, in *RRDec* 94 (2002) 669, n. 672, n. 9.

determines the object of the internal will so that the partner accepts it because it appears as good.[51]

7. The Object of the Accidental Error of Law

CIC c. 1099 is not a repetition when "law provides differently" (cf. CIC c. 126). The error which does not determine the will regarding the two essential properties and the sacramentality of marriage does not vitiate matrimonial consent (CIC c. 1099). The error on *bonum coniugum* and *bonum prolis* does not vitiate consent by itself, even if it determines the will.

To describe the object, that is *bonum coniugum* the expressions (*communio vitae* and *consortium vitae*) are used in two different meanings: one is *essential*, indicating the substance of marriage, the bond created between the spouses; the other is *existential*, indicating what the spouses should work to build together, although it is not fully clear exactly what this should be.[52]

The right to conjugal acts which are *per se* apt for the generation of children (CIC c. 1061 § 1) and performed in a human manner, the right to the good of the spouse (CIC c. 1055 § 1), perpetuity (CIC c. 1134), exclusivity (CIC c. 1134), and sacramental dignity (CIC c. 1099)"[53] are neither objects of the substantial nor of the accidental error determining the will. An extensive interpretation of the object of such error, which would apply equally, for example, to the marriage itself (*matrimonium ipsum*), to the good of offspring (*bonum prolis*), or to the good of the spouses (*bonum coniugum*) is not admissible.

8. The Error on Sacramentality

Sacramentality is not something accidental to marriage so that it can be either present in marriage or not, but it is inherent to its essence so that it cannot be separated.[54] Marriage does not, for the purposes of

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[51]See, Roman Rota, "Sentence, c.," Stankiewicz, 25 April 1991, in *RRDec* 83 (1991) 284, n. 7: "*error sub ratione apparentis veri determinat obiectum voluntatis internae ut haec sub ratione boni apparentis illud acceptet.*"

[52]Apostolic Signatura, *Expert Opinion on Two Sentences of A Local Tribunal*, prot n. 153/05 ES.

[53]Apostolic Signatura, *Letter, Answer to the explanation of a local judicial vicar on the use of CIC c. 126 as ground of nullity.*

[54]"*Nam baptizatorum coniugii sacramentalitas non est ei accidentalis, ita ut adesse vel abesse possit, sed eius essentiae ita inhaeret ut ab eo separari non*

the sacrament, require from those engaged to be married, their personal faith; what it does require, as a necessary minimal condition, is the intention to do what the Church does. However, though it is important not to confuse the problem of the intention with that of the personal faith of those contracting marriage, it is, nonetheless, impossible to separate them completely.[55]

Sacramentality is not an essential property of marriage. The valid marriage contract between two baptized persons is sacrament in itself according to CIC c. 1055 § 2 and CIC c. 1056, since there can be no valid Christian marriage that is not a sacrament. Marriage bond and sacrament are identical. For this reason the consultors suggested to omit the expression "*aut sacramentalem dignitatem*" from the canon on error of law.[56] Thus, while error determining the will might be juridically relevant for indissolubility and unity, it would not be so for sacramentality until such time as a positive intention excluding sacramentality is made. Before the promulgation of the Code of Canon Law the Sacred Congregation for the Doctrine of Faith requested the restoring of this phrase.

The intention required from baptized for validity is to do what Christ and the Church does ("*faciendi quod facit Christus et Ecclesia*") which is the minimal condition for valid consent. The question of the intention and the problem of the personal faith should not be mixed up. The sacramentality of marriage certainly does not depend on the grade of personal faith of the parties.[57] The personal faith can have different grades of intensity[58] whereas the intention is present or it is not present. The validity of marriage does not admit grades. It is either valid or invalid; there is no other possibility.

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possit" (International Theological Commission, "The Catholic Doctrine on Marriage, Propositions Approved by the Commission," in *Documenti 1969-1985*, 222, n. 3.2).

[55]Benedict XVI, "Allocution to the Roman Rota," 26 January 2013, in AAS 105 (2013) 168-169, n. 1.

[56] Pontificia Commissio Codici Iuris Canonici Recognoscendo, Coetus studiorum de iure matrimoniali (17-20 May 1977), in *Communicationes* 9 (1977), 373-374.

[57]See, Roman Rota, "Sentence c.," Stankiewicz, 10 February 2004, in *Periodica* 97 (2008), 514, n. 7.

[58]See, Roman Rota, "Sentence c.," Stankiewicz, 10 February 2004, in *Periodica* 97 (2008), 516, n. 9.

According to the doctrine constantly professed by the Catholic Church, opinions opposed to the principle of sacramentality or attitude contrary to it, but without the formal refusal to celebrate a sacramental marriage, do not exceed the limits of simple error, which, according to canonical tradition and current legislation, does not vitiate marital consent:[59] "The church does not refuse to celebrate a marriage for the person who is well disposed, even if he is imperfectly prepared from the supernatural point of view, provided the person has the right intention to marry according to the natural reality of marriage."[60]

It is crucial to keep in mind that an attitude on the part of those getting married that does not take into account the supernatural dimension of marriage can render it null only if it undermines its validity on the natural level on which the sacramental sign itself takes place.[61]

9. The Formulation of the Doubt

Even the use of formulas used by non-baptized or Protestant communities which are in contrast to unity or indissolubility, do not vitiate consent: "... *contraho tecum donec in fidelitate permanseris*."[62] The marriage would be null only if the wrong formula has been explicitly accepted by both parties and applied to consent.[63]

It is wrong to formulate the doubt on general norms of the marriage or on the canons on the nature of marriage or on the juridic acts in general, as the legislator with the promulgation of the CIC expressed the general principles of law in specific norms (CIC cc. 1095-1107) on marriage consent. So, the formulation of the doubt needs to refer to those specific norms as marriage.

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[59]John Paul II, *Allocution to the Roman Rota*, 21 January 2000, in *AAS* 92 (2000) 352-353, nn. 4-5.

[60]John Paul II, *Allocution to the Roman Rota*, 30 January 2003, in AAS 95 (2003) 397, n. 8.

[61]John Paul II, *Allocution to the Roman Rota,* 30 January 2003, in *AAS* 95 (2003) 397.

[62]See, Sacred Congregation of the Holy Office, *Responsum*, 6 April 1843, Vic. Ap. Oceaniae, in *Codicis Iuris Canonici Fontes*, vol. 4, 171.

[63]See, Sacred Congregation of the Holy Office, *Instruction*, 18 December 1872, ad Vic. Ap. Oceaniae Central., in *Codicis Iuris Canonici Fontes*, vol. 4, 333.

A wrong formula of the doubt omits the determination of the object of error, as the following formula expresses it: "If the nullity of marriage is proven because of: 1. Error of the petitioner on the quality of the respondent (CIC c. 1097 §2); 2. A juridic act placed out of ignorance or out of error concerning something (CIC c. 126)."

The use of generic formulations on grounds of nullity, such as *error iuris*, without any further specification about the object of such error[64] is not a correct judicial practice and does not help at all in reaching moral certitude about the nullity of the marriage in question.[65]

In the formulation of the doubt (see, CIC c. 1677 § 3; DC, art. 135 § 3) the judge must indicate also the object of the alleged error determining the will. For example, it is stated that *whether the nullity of the marriage has been established because of error determining the will regarding indissolubility [according to the norm of c. 1099] on the part of the petitioner.*

An error of law cannot be hypothesized, without specifying the party and its object. Such a late formulation of the doubt and its vagueness are not very helpful in facilitating both parties for an effective exercise of their right of defense, concerning proof or counterproof, which they should provide.[66]

10. The Distinction between Error and Simulation

In the case of error, people are in a state of subjective certitude grounded in the error and often feel quite certain of what they know and, accordingly, harbor no doubt about it.[67]

Error that determines the will to a dissoluble marriage (CIC c. 1099) and the exclusion of indissolubility through a positive act of the will (CIC c. 1101 § 2) pertain theoretically to two incompatible grounds of nullity, which ought, therefore, to be treated and settled subordinately, nevertheless in practice they are to be joined. A

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[64]Roman Rota, "Annual Report 2007, Decree," prot. n. B. 84,706, in *L'attività della Santa Sede nel 2007*, ed. by N. Sarale, Vatican City 2008, 763.

[65] See, Apostolic Signatura, *Circular letter to some ecclesiastical Tribunals approved by the Plenary Session*, 3 and 4 February 2011, n. 6.

[66]See, Apostolic Signatura, *Expert Opinion on Two Sentences of A Local Tribunal*, prot n. 153/05 ES.

[67]C. T. Jorgensen, "Culture and Error non Simplex – Not so Rare," in *CLSA Proceedings* 62 (2000) 196.

person who holds an erroneous opinion that determines the will, usually will, in view of the canonical force of the indissoluble marriage, explicitly exclude indissolubility from marital consent; first, because such a person accepts only a dissoluble marriage and, secondly, because he or she explicitly excludes the indissolubility of marriage bond.

The categories of error and simulation are juridically and logically incompatible and practically very different. In simulation there is a divergence or contradiction of wills or intentions: this occurs between what is expressed externally and what is willed internally.

Error, however, is always unaware of this dichotomy: it does not say one thing and intend another. The error determining the will in its consent involves a state of certitude regarding the acceptance of divorce and contains a firmness of mind and an exclusion of the fear of being wrong, since it does not consciously perceive that it is not in accord with the objective reality of the matrimonial canonical order. While, in simulation, there is a willed and intended defect of will, in the case of error the will can only choose what the intellect is presenting to it. Relevant error, in short, excludes the right formation and direction of the will: simulation is already an act of the will which excludes marriage itself, or, an essential property of marriage.[68]

So, the will determined by the error is directed towards the attainment of another object which is essentially different from the formal object of matrimonial consent, by substituting, though unknowingly, essential properties of marriage with something that is dissoluble based on the erroneous opinion.[69] Who is convinced that marriage is dissoluble, will not exclude indissolubility.[70]

11. Presumptions of the Judge and Presumptions of Law

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[68]D. M. Campbell, "Canon 1099: The Emergence of A New Juridic Figure?" in *Quaderni dello Studio Rotale*, vol. V, Vatican City 1990, 58.

[69]C. T. Jorgensen, "Culture and Error non Simplex – Not so Rare," in *CLSA Proceedings* 62 (2000) 198.

[70]See, Roman Rota, "Sentence c.," Boccafola, 21 November 2002, in *RRDec* 94 (2002) 669, n. 672, n. 9.

The general presumption, explained already by the canonists of the sixteenth and seventeenth century,[71] was considered part of natural law and applied also to them when the missionary work of the Church encountered new and pagan cultures. According to this general presumption, all men and women wish to marry as God has instituted it. CIC c. 1101 § 1 states that the internal consent of the mind is always presumed to be in conformity with the words or signs used in celebrating marriage. Even if the culture is no longer overtly Christian, this principle or general presumption must remain.

The judge can never perceive the erroneous or simulatory mind of the person directly and immediately, but only its behavioural and verbal manifestations. Therefore, in cases involving error about or simulation of indissolubility, judges may not be able to reach moral certitude without the use of presumptions formulated by the judge.[72] According to CIC c. 1584, "A presumption is a reasonable conclusion concerning the truth of a doubtful matter that is deduced from indices generally or frequently connected with the truth of the matter."

A decree of the Apostolic Signatura reminds that standardized presumptions in favour of nullity, such as those formulated by some tribunals, cannot be accepted: "in dictating sentences, judges may simply give the *number* of any presumption. The typist will use the computer to place the corresponding paragraph in the text at that point."[73]

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[71]"*... error concomitans et impertinens ad operandum. Requiritur ergo voluntas actualis, qua velit contrahere matrimonium validum omnibus modis, et cum omnibus obligationibus illi adnexis, quaecumque illae sint. Haec voluntas si adsit, adest consensus sufficiens, licet ex privato errore velit retinere ius ad repudium, quia illa prima voluntas, si est efficax, destruit secundam, quae est minus efficax, et subordinatur illi. Si autem desit illa voluntas generalis, et efficax, tunc secunda voluntas limitat contractum ad matrimonium dissolubile quod eo ipso est invalidum*" (J. Card. De Lugo, *Disputationes scholasticae de sacramentis in genere*, Venetiis 1751, disp. 8, sect. 8, nn. 135-136).

[72]C. T. Jorgensen, "Culture and Error non Simplex – Not so Rare," in *CLSA Proceedings* 62 (2000) 213.

[73]See, Apostolic Signatura, English translation of the Decree on the use of the presumptions of fact in marriage nullity cases, 13 December 1995, prot. n. 25652/94 VT, published in the original Latin version in *Periodica* 85 (1996) 531-534, with commentary by U. Navarrete, 535-548; cf. *Ius Ecclesiae* 8

The presumption needs to be based on established facts which provided the basis for the presumption to be verified in the concrete case being adjudicated. Thus, during the instruction of cases, judges need to identify and establish the specific facts and circumstances that are critical for the applicability of the presumption to the concrete case.[74] The "presumptions" of the judge simply based on the general mentality which favours divorce or infidelity cannot be admitted. No judge can presume the invalidity of nearly all broken marriages in regions where divorce or infidelity are widely in practice or admitted, since the law presumes the validity of marriage, until the contrary is proven positively in a concrete case.

The presumptions of the judge are considered in approved canonical jurisprudence solely as aids, indications or circumstances, but not as true presumptions for the nullity. Even in the case of circumstances in which more often than in other cases nullity of marriage is present, it still cannot, in any way, be presumed that nearly all the marriages which have been contracted or will be contracted in such circumstances are null.

"It is not sufficient to affirm that the analyzed facts render plausible or probable the petitioner's hypothesis. The credibility, the verisimilitude of a thesis is not synonymous for moral certainty. If it were so, the possible intervention of the ecclesiastical institution in cases of nullity risks merely registering a failure."[75]

Substantially, there is an equivocation between the essential juridical structure of marriage and what is appropriate to do, so that a marriage will function well. Thus, for example, it is wrong to state the critical family situations of the parties lead them automatically to experience and know *the laws of marriage* and such a negative experience would already constitute an error of law. If so, no person coming from a difficult background could marry validly. Any deterministic perspective of family problems or non-Catholic faith should be avoided, especially exaggerations in the interpretation of

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(1996) 821-23, with commentary by M. A. Ortiz, 823-850; cf. *De processibus matrimonialibus* 3 (1996) 316-317; cf. *Forum* 7 (1996), 15-20, with commentary by Ch. J. Scicluna, 45-67 and *Il diritto ecclesiastico* 108 (1997), II, 22-25.

[74]C. T. Jorgensen, "Culture and Error non Simplex – Not so Rare," in *CLSA Proceedings* 62 (2000) 213.

[75]Pope Benedict XVI, "Allocution to the Roman Rota," 28 January 2006, in *AAS* 98 (2006) 138.

negative facts.[76] We cannot presume that all Protestants are in error determining the will on indissolubility or on sacramentality.[77] Those who enter marriage endowed with "genuine conjugal love" inevitably and connaturally intend lifelong marriages. The mischief caused by this presumption is compounded when judges simply accept uncritically the parties' statements that they were "in love" at the time of the marriage.[78]

12. Required Proofs

There is divergence among the rotal auditors regarding whether a positive act of the will is necessary or whether it is just a form of simulation. Some auditors consider it as a sort of partial simulation.[79] It should be remembered that even Felici, in his innovative sentence of 17 December 1957, would only affirm that the positive act of the will of the erring partner cannot be presumed, but needs to be proven: "*haec nihilominus positiva voluntas non potest praesumi, sed probanda est*."[80]

Boccafola, for example, requires the positive act of the will not only for the exclusion of indissolubility but also for the error of law, judicial and extrajudicial confession of the simulating partner, near and remote cause of the passage of error to the will and circumstances before, during and after marriage: "*quae internam voluntatem contrahentis eiusque determinationem factis undique certis collustrant*." [81] If the spouse positively determines explicitly or implicitly the object wanted without indissolubility, unity or

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[76]See, Apostolic Signatura, *Expert Opinion on Two Sentences of A Local Tribunal*, prot n. 153/05 ES.

[77]See, Roman Rota, "Sentence c.," Boccafola, 21 November 2002, in *RRDec* 94 (2002) 669, n. 672, n. 10.

[78]J. P. Beal, *Determining Error: Hot New Ground or Recycled Old Ground,* 98.

[79]See, Roman Rota, "Sentence c.," Funghini, 22 February 1989, in *RRDec* 81 (1989) 130-131, n. 2; cf. "Sentence c.," Huot, 10 November 1987, in *RRDec* 79 (1987) 624, n. 9.

[80]See, Roman Rota, "Sentence c.," Felici, 17 December 1957, in *RRDec* 49 (1957) 844, n. 3.

[81]See, Roman Rota, "Sentence c."" Boccafola, 21 November 2002, in *RRDec* 94 (2002) 669, n. 673, n. 11.

sacramentality, then, the object wanted is not marriage, even if he thinks it is marriage.[82]

But since it is a question of a positive act of the will operating both in simulation and error of law hypotheses, this is most often proved by either a judicial or an extra-judicial confession of the person who is erring or simulating; proof also comes from the proximate and remote cause of simulation, that is to say, the transition of the error into the will, and also from the antecedent, concomitant and subsequent circumstances that make apparent the internal will of the contractant and its determination by certain facts.[83] Doubts on the success of marriage, counsel not to marry the concrete partner, doubts on certain qualities of the spouse can be proximate for the assimilation of error in a concrete marriage.[84]

An acceptance of divorce firmly rooted in the mind of the contractant, can become the proportionate and grave cause (either proximate or remote) of excluding an essential property by a positive act of the will, which likewise renders the marriage invalid (CIC c. 1101 §2). The error on sacramentality determining the will, will be very rare as there is very rarely a concrete reason for the application of the error on concrete marriage.[85] For which reason who is in the error will think that he does not want marriage with sacramentality?

Proof of the invalidating influence of the error in question includes establishing the existence of a will which has led to a matrimonial consent lacking essential elements or properties, that is, an object which differs from the object of Catholic marriage.[86]

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[82]See, Z. Grocholewski, "L'errore circa l'unità, l'indissolubilità e la sacramentalità del matrimonio," in *Error determinans voluntatem (can. 1099)*, ed. by P. A. Bonnnet / C. Gullo (*Studi giuridici*, vol. 35) 12.

[83]See,. Roman Rota, "Sentence c." Stankiewicz, 25 April 1991, in *RRDec* 83 (1991) 285, n. 10.

[84]See, Z. Grocholewski, "L'errore circa l'unità, l'indissolubilità e la sacramentalità del matrimonio," in *Error determinans voluntatem (can. 1099)*, ed. by P. A. Bonnnet / C. Gullo (*Studi giuridici*, vol. 35)18.

[85]See, Z. Grocholewski, "L'errore circa l'unità, l'indissolubilità e la sacramentalità del matrimonio," in *Error determinans voluntatem (can. 1099)*, ed. by P. A. Bonnnet / C. Gullo (*Studi giuridici*, vol. 35) 19.

[86]See, Apostolic Signatura, *Observations on can. 1009*, approved by the Plenary Session of 3 and 4 February 2011, and sent to tribunals which frequently use can. 1099, n. 4.

In judicial praxis, in order to prove the invalidating effect of an *error iuris*, that is, concerning unity, indissolubility or sacramentality, it is not enough:

- to verify the presence of the error;
- to prove that the party was "prone to share the contemporary divorce mentality;"
- for the Judge "to perceive" that the party "had an understanding of marriage far different from the Church's understanding," or "could not intend marriage as a communion of life."[87]

Consequently, even if it is possible that two young people who love each other can have a divorce mentality, this can hardly affect their concrete relationship, which they, if they are in love, will want to endure, and one must presume that this intention is present at the moment of the celebration of marriage.

The proof should not be limited to the behaviour of the petitioner during marriage which caused its end. If, for example, the petitioner was at the time of marriage a Mormon, that is, according to the Congregation for the Doctrine of Faith, not validly baptized, and as his case does not result in a dispensed form with regard to the impediment of disparity of cult,[88] it would have been better to try the dissolution in favour of the faith or the declaration of nullity because of impediment.

13. Conclusion

The *substantial* error whose object is determined by the CIC c. 1096 and CCEO c. 819 on ignorance is relevant (i.e., invalidating) in itself (*eo ipso*), whilst the *accidental* errors of law (CIC c. 1099; CCEO c. 822) are irrelevant (not invalidating) in itself and it is the *determination of the will* that has to be ascertained in order for it to have an invalidating effect.[89]

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[87] See, Apostolic Signatura, *Circular Letter to some ecclesiastical Tribunals approved by the Plenary Session*, 3 and 4 February 2011, n. 4.

[88] See, Tribunal of the Roman Rota, "Annual Report 2011, Decree," prot. n. B. 59/11, in *L'attività della Santa Sede nel 2011*, ed. by N. Sarale, Vatican City 2012, 629.

[89] See, Apostolic Signatura, *Expert Opinion on Two Sentences of A Local Tribunal*, prot n. 153/05 ES.

The extensive interpretation of the so-called *error of law* determining the will (*error iuris,* see, CIC cc. 1099 and CCEO c. 822) in doctrine and its application by ecclesiastical tribunals considering the consent to be null even if it did not acquire such intensity as to condition the act of will or its application not only to the essential properties of unity, indissolubility and sacramentality, but also to other essential elements of marriage as the good of the spouses or the good of offspring runs the risk of imprecise, incoherent or innovative interpretations.[90]

[90]John Paul II, *Allocution to the Roman Rota*, 29 January 1993, in *AAS* 85 (1993) 1259, n. 7.