

Canon 1098
& the
Validity of Marriages Today
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Marriage is obviously an extremely important matter to the Church and Her members, which is illustrated by the vast amount and extent of ecclesiastical laws regarding the subject. It can, at times, be a complicated matter due to the seemingly endless variety of circumstances and cases that can occur with regard to marriage. This, no doubt, is the reason why so much canon law commentary has been devoted to the subject. To anyone who's browsed collections of canon law books and articles, it might seem like every other one deals with marriage, or some particular law or subject related to marriage. The validity of marriage is, obviously, a subject with the highest importance in the Church. Canon 1098 of the 1917 Code of Canon Law is a particular law of marriage that has maximum significance today, as it concerns validity of marriages in the very unique circumstances we are living under. The purpose of this paper is to provide a concise explanation of canon 1098 and to show some fundamental conclusions regarding its application, which have significant relevance today. It is not the purpose of this paper to delve into the licitness or morality of particular marriage cases, only their validity.

The marriage of baptized persons is governed not only by divine law, but also by canon law (c.1016). Since all baptized persons are subject to the Catholic Church, the Church has the legal right to regulate their marriages; and "the *extent* of this power embraces the whole range of the nuptial contract, aside from its purely civil effects" (Augustine, Vol.V, p.23). As prescribed in canon 1094 of the 1917 Code of Canon Law, the *forma canonica* (canonical form) requires, for validity, that a marriage be contracted before the pastor, or the Ordinary of the diocese, or before a priest delegated by either the pastor or the Ordinary of the diocese, along with at least two witnesses; with the exceptions mentioned in canons 1098 and 1099. The term *Ordinary* refers to, "all who rule or govern a diocese or ecclesiastical district tantamount to a diocese." (Augustine, Vol.II, c.198, p.172). The term *pastor* refers to, "the priest upon whom the parish has been conferred as his own (*in titulum*) and who has the actual care of souls by the authority of the bishop" (Augustine, Vol.V, c.1094, p.271). The office of a pastor is, "a benefice in the true canonical sense... a juridical entity, permanently constituted or erected by the competent ecclesiastical authority" (Freking, p.86). According to canon 1094, then, a marriage is invalid due to a defect of form if it is not contracted before one who is not a canonically established pastor, an Ordinary of the diocese, or a priest delegated by either; with the exceptions of canon 1098 and 1099. Considering the circumstances today, it's very important to know what these exceptions are.

The latter exception, canon 1099, enumerates who are and who aren't bound to observe the canonical form of marriage. Generally speaking, Catholics are bound to observe the form, while non-Catholics are not. Consequently, marriages between those baptized non-Catholics who have never been Catholic are valid without using the Catholic form (Augustine, Vol.V, c. 1099).

The former exception, canon 1098, has relevance to those who are bound to the canonical form – those who are, or ever were, Catholic. The canon "indicates the circumstances in which Catholics are excused from the *forma canonica*, so that they can contract a valid and licit marriage in the presence of only two witnesses and without a priest." (De Reeper, 149). This is

highly significant for circumstances, such as those today, when offices lie vacant, and legitimate Ordinaries and pastors are missing from nearly all dioceses; making it generally impossible for most Catholics to marry in the presence of the Ordinary or pastor prescribed by c.1094. In these circumstances, the validity of the marriages of Catholics depends on c.1098.

We must, then, try to gain a proper understanding of canon 1098. This begins with looking at the canon itself, along with translation and commentary provided in the 1920 book "A Commentary on the New Code of Canon Law" by the Rev. P. Chas. Augustine, O.S.B., D.D.

"Can. 1098. Si haberi vel adiri nequeat sine gravi incommodo parochus vel Ordinarius vel sacerdos delegatus qui matrimonio assistant ad normam can. 1095, 1096:

1.º In mortis periculo validum et licitum est matrimonium contractum coram solis testibus; et etiam extra mortis periculum, dummodo prudenter praevideatur eam rerum conditionem esse per mensem duraturam;

2.º In utroque casu, si praesto sit alius sacerdos qui adesse possit, vocari et, una cum testibus, matrimonio assistere debet, salva coniugii validitate coram solis testibus.

If the pastor, or the Ordinary, or a priest delegated by either, as prescribed by can. 1095 and 1096, cannot be had without great inconvenience, then:

1) In danger of death marriage may be validly and licitly contracted in the presence of two witnesses; the same holds good also where there is no danger of death, provided it may prudently be foreseen that this condition of things will last for a month.

2) In both cases, however, if a priest is available, he must be called and assist at the marriage together with the two witnesses; but the marriage is valid if contracted in the presence of the witnesses alone.

The wording of our canon betrays a modification or mitigation of the "*Ne temere*" (VII and VIII).

1. The *danger of death* need not be imminent, but it must be probable or likely. Neither, of course, is it necessary that *both* parties be in danger.

2. The second case touches *peculiar conditions*. It may happen in our country that a pastor visits his mission only once a month or even less often. Note the wording of the text, which says nothing of a region or district. Therefore it must now be held that provincial or regional reasons have nothing to do with the case, but merely personal reasons, which indirectly may be due to local conditions, are here considered. But the condition must last one month (thirty days) or rather it must be foreseen that it may last that long.

3. That assistance without the pastor or the Ordinary or a delegate of either be allowable and the marriage be valid, the impossibility of having such an authorized witness must be verified. The text says: (a) if they cannot be had or reached (*haberi aut adiri*). The first term, *to have*, means that the pastor cannot come, or is not available because of sickness, or absence, or for some other reason. *To reach* or to approach signifies that the parties themselves have made an effort to get the pastor by calling him by ordinary means of communication, i.e., letter or messenger. The telegraph and the telephone are not regarded as ordinary means, and justly so, for a country telephone line is often not only

unsafe, but liable to abuse on account of the publicity involved. Moreover, conditions may be unsafe for travellers, as in times of war, flood or quarantine, (b) The text furthermore says: *without great inconvenience*, which is a rather elastic term. An inconvenience would be great if the expenses were above the means of the parties concerned, or if one party would have to leave the other alone sick. Now-a-days automobiles are a great help to swift and agreeable travelling. The parties themselves must conscientiously judge as to the character of an existing inconvenience, (c) The text also says that in case of sickness or other impossibility *a priest should be called who can be present*. This priest may be any priest, even one under censure, or of some other diocese, because "*qui adesse possit*" must, we believe, be taken in the sense of physical, not moral, possibility. But the priest must be at hand (*si praesto sit*); the parties need not search for him. The assistance of a priest at the marriage is very convenient, because he may dispense from the impediment of clandestinity and others (can. 1043) if there is danger of death. This is the meaning of an answer given by the S. Congregation to the following query: "In several districts the pastors are not allowed to assist before the civil marriage is contracted; and yet this cannot be done in every instance, although for the spiritual welfare of the parties it would be expedient to have them married. What should the Ordinaries do? Resp. Recourse must in each case be had to the S. Congregation, except when there is danger of death, in which case any priest may dispense." (d) Lastly, calling a priest does not *affect the validity of the marriage*, which therefore may be contracted validly in the presence of only two witnesses. We hardly believe that the second case is of frequent occurrence now-a-days, except in missionary countries." (Augustine can.1098, pp. 293-296)

It can be seen that in the current crisis of the Church, all of the conditions of canon 1098 are fulfilled. This is true even *extra mortis periculum*, or without the danger of death, since even without a danger of death, c. 1098 prescribes only two conditions to be fulfilled. This canon, along with these two conditions, deals with an exception to the normal law, and must, therefore, be interpreted according to the principle of canon 19. Canon 19 prescribes a *strict interpretation* to all laws that embody an exception to the law, "hence we must follow the strict interpretation in studying these two conditions." (De Reeper, p.166). According to Augustine, "strict interpretation clings to the text, and pays due regard to the mind of the legislator, but mitigates the rigor of the law as far as the *ratio legis* [reason of the law] will permit" (Augustine, Vol.I, c.19, p.98). Outside of a danger of death, these are the two conditions of c.1098:

1. The pastor, or the Ordinary, or a priest delegated by either, as prescribed by can. 1095 and 1096, cannot be had without great inconvenience.
2. It may prudently be foreseen that the first condition will last for a month.

The first condition is fulfilled by the fact that, as previously stated, nearly all offices lie vacant, and established pastors and Ordinaries are absent from nearly all dioceses. Not only can they not be had without great inconvenience, but they can hardly be found anywhere in the world today.

While jurisdiction can be supplied to the Catholic priests and bishops adhering to the true faith and administering sacraments today, this supplied jurisdiction is only received *in actu*, that is, at the very moment of an act. This jurisdiction is not possessed “one moment before nor a single moment after the performance of the action,” and it, “does not render an incompetent agent *habitually* competent” (Miaskiewicz, p.25). For example, jurisdiction can be supplied to an invalidly elected bishop, but he “will never be the true bishop unless and until he is elected in the proper manner or has the matter sanated by the Holy See” (Miaskiewicz, p.25). Likewise, a person who obtained an office through simony can still receive supplied jurisdiction for his acts, but it does not give him true possession of the office, as “a person who has simoniacally obtained a pastorate or some other ecclesiastical office never becomes the true occupant of his chair by reason of mere tenure of that office” (Miaskiewicz, p.25). This is not to say that the traditional clergy today are guilty of simony, or any other crimes, or claim to have been elected to a pastorate or other ecclesiastical office. The vast majority of our traditional clergy do not claim to possess a true pastorate or other ecclesiastical office of the Church, but only do what is necessary in the absence of those who would possess such offices. However, the same principles of supplied jurisdiction apply, in that no amount of supplied jurisdiction gives a priest possession of the ecclesiastical offices of pastor or Ordinary. As much supplied jurisdiction that our traditional clergy may receive for their acts, this supplied jurisdiction does not make them the pastors and Ordinaries normally required for the validity of Catholic marriages. Therefore, the first condition of c.1098 remains fulfilled, despite any jurisdiction supplied to our traditional priests, and no matter how near or available they may be.

Even under a sedeplenist position, such as that of the SSPX, which holds that these offices are still filled by the clerics of the Novus Ordo; such Novus Ordo priests would not be morally available, due to the numerous moral reasons a Catholic would not want a Novus Ordo priest performing their marriage. Therefore, even under the view that the Novus Ordo clerics truly possess ecclesiastical offices, the first condition of c.1098 remains fulfilled, since, “moral impossibility, that is, grave inconvenience is sufficient,” and “such an impossibility exists when the pastor or Ordinary, though materially present in the place, is unable by reason of grave inconvenience to assist at the marriage” (Bouscaren and Ellis, p.526).

The second condition of c.1098 is fulfilled by the simple fact that it may prudently be foreseen that our crisis, and the subsequent unavailability of established pastors and Ordinaries, will last for at least a month. With both conditions of c.1098 existing today, and barring any *diriment impediments*, all marriages of Catholics, and those who ever were Catholic, are valid, as long as they are contracted in the presence of at least two witnesses.

Though a marriage by one bound to the canonical form will be valid if done in the presence of at least two witnesses and without any diriment impediment, Catholics are still obliged to have a non-authorized priest marry them, if one can be had, for purposes of *licitness*. But as the canon states, and as is affirmed by all authorized commentaries, seeking a non-authorized priest is not necessary for *validity*, and a marriage under the conditions of c.1098 will be valid even if such a priest is not present. As our traditional clergy do not truly possess an ecclesiastical pastorate, or other office, their assistance should be requested for marriages; but it is not necessary for validity. If it could be claimed that supplied jurisdiction to a traditional priest would in some way make the validity of a marriage dependent on their assistance or presence, then this would’ve also been true for the “other” priest that c.1098 says should be called when the authorized priests are unavailable. Yet, if this were the case, then c.1098 would have never been able to declare, as it does, that this “other” priest’s assistance and presence was

not required for validity. The claim that, because of supplied jurisdiction, the validity of a marriage can depend to some extent on the presence of a traditional priest would also be contrary to the strict interpretation required by c.1098. While a strict interpretation mitigates the rigor of the c. 1098 as far as the reason of the law permits, to claim that a traditional priest is today required for validity because of his supplied jurisdiction would be to increase and extend the rigor of the law to include an element that the law clearly says is not required for validity.

Other conclusions can be established regarding particular aspects of the application of canon 1098. This can be done with the help of authorized Catholic sources, especially the 1954 article “The History and Application of Canon 1098” published in volume 14 of the Catholic University of America’s canon law publication, *Jurist*. What follows are brief statements of the principles and conclusions drawn from these sources. The relevant excerpts from the sources are included in the appendix, which can be referenced using the corresponding reference designators (A1 through A21) next to the conclusions. If not explicitly stated, all statements are strictly in regard to the validity of the marriage and presuppose that the two conditions of c.1098 are fulfilled, no *diriment* (invalidating) impediments exist, and at least two witnesses are present.

Judgment of Duration

For c.1098 to apply, it is not necessary for the marrying parties (*nupturientes*) to personally form a judgment about the probability of the one month-duration of the authorized priest’s absence. The judgment of the people of the place, or of a third person, is sufficient (A1). There is also no need to take into account the possible arrival of an unexpected priest (A2). Again, it suffices that others could foresee the probable length of absence, and if after the marriage it appears that the people were mistaken about the one-month duration of the absence, the marriage is still valid, as long it was a prudent estimate and not premature (A2, A3).

Necessity of a Non-Authorized Priest

Under the conditions of c.1098, another, non-authorized, priest should be called to perform the marriage. However, even if this non-authorized priest is not called to perform the marriage, the marriage is still valid, as long as there are at least two witnesses (A4, A5).

Nature and Requirements of the Two Witnesses

Under the conditions of c.1098, the only requirement of the nature of the *two witnesses* is that they should have reached the age of reason and be able to act as witnesses. The witnesses can be male or female, Catholic or non-catholic, voluntary or forced, warned beforehand or totally unexpected. The witnesses are not required to ask anything or receive the mutual consent as a priest would. The witnesses only need to be present in person and together, knowing that a marriage is being contracted between those two persons. Even if the parties unexpectedly exchange consent in the presence of the two witnesses, the marriage is valid (A6, A7).

Knowledge of the Law

Those marrying under the conditions of c.1098 need not invoke, or even know about, c.1098. Ignorance of the law has no effect on the validity of the marriage. Canon 1098 takes effect as soon as the conditions are fulfilled, independent of the parties knowing it or a priest declaring it (A8, A9).

Beliefs, Motives, and Intentions of the Marrying Couple

The beliefs, motives, and sinful intentions have no effect on the validity of a marriage under the conditions of c.1098. Even if the parties purposefully and intentionally go to a place where no authorized priest is within reach, or delay the marriage until the authorized priest is gone for a month, the marriage would be valid (A9, A10, A11, A12). The fact of the conditions of c.1098 existing is all that matters for validity, and a *bona fide* belief of the parties has no effect on validity. If the parties had a *bona fide* conviction that the authorized priest was absent, yet in reality he was available, the marriage would be invalid, since the belief of the parties cannot substitute for the fact itself (A13, A14, A15). Conversely, therefore, if the parties had a *bona fide* belief that the authorized priest was available, yet in reality he wasn't, the marriage would still be valid without a priest. This is true even if by marrying without a priest others, or even the couple themselves, think they are committing a sin, or are blamed for living in concubinage; the marriage is still valid (A8, A9). Even if the parties erroneously believe that their marriage is invalid in the eyes of the Church, the marriage is still valid (A9). Again, the motives of the parties do not affect validity under the conditions of c.1098 (A16).

Mixed Marriages

Under the conditions of c.1098, mixed marriages between a baptized Catholic and a baptized non-Catholic are valid, even without a priest, since the impediment of mixed religion is a *prohibiting impediment*, not a *diriment impediment* (A17). Mixed marriages between a baptized Catholic and a baptized non-catholic are valid, even if in bad faith they are married by a civil official or non-catholic minister (A20). If, after the marriage, any doubt should exist about the baptism of the non-Catholic party, one must presume the validity of such a marriage until it can be proved for certain that the party in question was not baptized (A18).

Marriage by a Civil Official or Non-Catholic Minister

A marriage before a civil official or non-catholic minister is valid under the conditions of c. 1098 (A8, A9, A19, A20, A21). According to the Holy Office in 1925, under the conditions of c.1098, the circumstance of a mixed-marriage blessed in a non-Catholic church is an argument, not against validity, but against licitness (A21). The law disregards the official capacity of a civil official or non-Catholic minister and takes cognizance merely of the exchange of matrimonial consent in the presence of two witnesses (A20). Though it is forbidden, even if the parties, whether in good or bad faith, approached a non-Catholic minister and exchange matrimonial consent in the presence of two witnesses, the marriage will nonetheless be valid. (A20) Matrimonial consent in the presence of two witnesses is all that is required for validity under the conditions of c.1098. The fact that it takes place in a non-Catholic ceremony is irrelevant, at least in regards to validity (A20).

Conclusion

With the crisis of the Church today, we live under the conditions described in canon 1098. The true pastors and Ordinaries of the Church are unavailable, and it can prudently be foreseen that this will last more than a month. We also live in a time when the vast majority of people reject the true Catholic faith. Despite these things, Catholics should definitely not be seeking non-Catholic spouses, and those Catholics that are ready to marry should certainly attempt to find a valid and reputable priest to give them advice and perform their marriage. If a priest cannot be found, a Catholic should not resort to a non-Catholic minister, and most Catholics know and understand this. However, along with understanding the morality of certain marriages, Catholics should also understand the unique aspects concerning the validity of marriages today.

In summary, all that matters for a marriage to be valid under the conditions of canon 1098 is the fact that the conditions of c.1098 truly exist when and where the marriage takes place. This is of course assuming there are no diriment impediments. The judgment, beliefs, motives, or sinful intentions of those marrying does not affect validity, even if those marrying think their marriage will be invalid in the eyes of the Church. A traditional priest should be sought to perform the marriage, but it will be valid without him. A marriage under the conditions of c.1098 is valid even if performed by a civil official, or a non-Catholic minister in a non-Catholic ceremony. The conditions of c.1098 exist today and, diriment impediments aside, a valid marriage under c.1098 requires only that the conditions of c.1098 exist.

Appendix

Canon 1098 & the Validity of Marriages Today: Sources

**Note that the pastor, or one delegated by the pastor or Ordinary, is sometimes simply referred to as “the priest” or “the authorized priest”.

**A1 *The Jurist. “The History and Application of Canon 1098.”*
John De Reeper, M.H.F. (1954)**

“Although the *‘nupturientes’* are primarily concerned, it is not necessary that they themselves form a judgement about the probability of the month-duration of the priest’s absence, if the inability to reach the priest is general as well as personal, e.g. in times of floods, war, etc., i.e. in such circumstances the judgement need not be personal.

So it is enough that the people of the place where the couple are, should judge it probable that the parish priest or another authorized priest cannot come (*haberi nequit*) or cannot be reached (*adiri nequit*) within a month. The Codex purposely says: “*ut praevideatur prudenter*” and not “*ut nupturientes prudenter praevideant*”. It is sufficient if the judgement is given by a third person, e.g. a doctor who judges that the sickness of one of the parties or of the priest will last another month.” (p.165)

**A2 *The Jurist. “The History and Application of Canon 1098.”*
John De Reeper, M.H.F. (1954)**

“In making this judgement, one must judge according to the normal run of events and there is no need to take into account the possible arrival of an unexpected priest. (S.C.C., 27 Julii, 1908, ad VI; cf. Cappello, o.c., n.693; Vromant, o.c., n.207.) So the marriage is valid neither is there any reason for uneasiness, if, soon after the contracting of the marriage, an authorized priest turns up, or if one had made a mistake of the probable absence for a month, as long as it was a prudent estimate.” (pp.164-165)

**A3 *The Jurist. “The History and Application of Canon 1098.”*
John De Reeper, M.H.F. (1954)**

“Since the canon says “*Ut praevideatur*” and not, “*Ut nupturientes praevideant*”, it appears not to be necessary that the parties themselves form the probable judgement about the absence for a month; it suffices that the inability to reach the priest should affect them personally, and that people (other people, the doctor, etc.) should foresee that it will last a full, uninterrupted month. If it appears *post factum* that people were mistaken, this still does not affect the validity of the marriage, so long as the judgement had not been premature.” (p.175)

A4 *The Jurist. “The History and Application of Canon 1098.”*
John De Reeper, M.H.F. (1954)

“*Ad liceitatem – a non-authorized priest.* To avoid all difficulties and doubts concerning validity of a marriage contracted ‘*coram solis testibus*’, especially if there might be an ‘*impedimentum juris ecclesiastici*’ obstructing the procedure, the *Codex* imposes the duty of calling a non-delegated priest when there is none other available. And this *ad liceitatem* but not *ad validitatem* and obliges only *sub levi*.

His presence is not only demanded with a view to the dignity and sanctity of the marriage, but his presence may well be needed *ad validitatem*, if there are *impedimenta dirimentia* which could endanger the validity of the marriage. For it is not certain that these are dispensed by canon 1098 in normal circumstances. Should, therefore, a non-delegated priest be present, he has then the power in virtue of canon 1045 “*Si omnia parata sint ad nuptias*” to assist at the marriage and even to dispense from *impedimenta dirimentia* according to canon 1044 which says that the priest who assists at a marriage *ad normam canonis 1098 par.2*, has the same power as that spoken of in canon 1043. This last canon discusses the dispensations from all impediments of ecclesiastical law and from the *forma canonica*; hence a non-authorized priest could in the eventuality as visualized in canon 1098 dispense also from these . But since such a priest is not a *testi qualificatus seu autorizabilis*, “*neque ad valorem neque ut videtur ad liceitatem matrimonii necesse est ut requirat excipiatque consensum.*” (p.171)

A5 *Commentary on the New Code of Canon Law, Vol.V.*
Charles Augustine, O.S.B., D.D. (1920)

“Lastly, calling a priest does not *affect the validity of the marriage*, which therefore may be contracted validly in the presence of only two witnesses.” (can.1098, p.296)

A6 *The Jurist. “The History and Application of Canon 1098.”*
John De Reeper, M.H.F. (1954)

“The *second essential condition* requires that *two witnesses* should be present. The canon uses the expression ‘*testes*’ in the plural, so one witness is not sufficient. The witness need ask nothing and need not receive the mutual consent, as must the priest when assisting. It suffices that the consent should be given in their presence. So they must be present: personally (not by telephone), together, ‘*moraliter*’ i.e. they must know that a marriage is being contracted between those two persons. In order to be *valid witnesses*, i.e. *ad validitatem*, the only requirements are that they should have reached the age of reason and be able to act as witnesses. So male or female, *puberes* or *impuberes*, Catholic or non-catholic, voluntary or forced, warned beforehand or totally unexpected, -so long as the ‘*actu*’ witness the contracting of the marriage.” (pp.170-171).

A7 *The Jurist. “The History and Application of Canon 1098.”*
John De Reeper, M.H.F. (1954)

“*Coram solis testibus*. Since the Codex uses the plural, it goes without saying that one witness will not suffice. They need, however, ask or do nothing even if the parties should unexpectedly exchange consent in their presence, that would be sufficient to satisfy the demands of the law; it suffices, therefore, if they are merely present.” (p.175)

A8 *The Jurist. “The History and Application of Canon 1098.”*
John De Reeper, M.H.F. (1954)

“It is *not necessary* that those going to marry should *know* about c.1098, or think of it when they marry without a priest, or know that an exception of this kind occurs in law. The law takes effect as soon as all the prescribed conditions have been fulfilled, independent therefore from the parties knowing it or a priest declaring it. For in these circumstances nothing more is done than applying the general principle which says: In order that someone may be said to obey a positive ecclesiastical law, it suffices that he posits an action such as is prescribed by the law. Moreover, if it is a question of a ‘*lex irritans*’, the ignorance of the law has no effect on the action. Just as ignorance does not prevent an action in opposition to a ‘*lex irritans*’ from being null and void (c.36, par.1) so there is nothing to prevent an action which complies with the demands of the law, from being valid. It suffices for the validity that the parties wish to contract a valid marriage and that the conditions of c.1098 are fulfilled, even though the couple and others ‘*ex conscientia erronea*’ imagine that they are committing a sin, or even are blamed for living in concubinage. For according to c.1085 “*Scientia aut opinio nullitatis matrimonii consensum matrimoniale necessario non excludit*”. It need scarcely be remarked that in these circumstances the parties are justified in going to a justice of the peace, or any other official of the government who is entitled to witness marriages, so that their marriage may have the recognition of the civil law. They can also marry before a non-catholic minister, not as a minister of religion but as official entitled by civil law to witness marriages; the must not allow him to use any religious ceremony, as may be seen from Canon 1063.” (p.168-169)

A9 *The Jurist. “The History and Application of Canon 1098.”*
John De Reeper, M.H.F. (1954)

“According to an answer of the S.C. Sac. 22nd March, 1910 such a marriage is valid even if the couple intentionally went to a place where no authorized priest was within reach, and this is even licit, since they merely use their rights. Similarly it is licit to delay the marriage until all the conditions demanded by canon 1098 have been fulfilled. Should the couple then contract a so-called civil marriage, i.e. according to the customs of the district, provided that all the conditions of canon 1098 have been fulfilled, even if they erroneously believe that their marriage is invalid in the eyes of the Church and that therefore they have been guilty of sin, and even if they know nothing of the exception of canon 1098, still the marriage is valid.” (p.174)

**A10 The Jurist. “The History and Application of Canon 1098.”
John De Reeper, M.H.F. (1954)**

“The parties could even deliberately delay the marriage until the priest had gone away and then contract ‘*coram solis testibus*’. That would be quite valid.” (p.164)

**A11 The Jurist. “The History and Application of Canon 1098.”
John De Reeper, M.H.F. (1954)**

“The marriage can be contracted on the very first day that one foresees that the absence of the authorized priest will probably last a month. It makes no difference whether the priest was there recently or a long time ago. It is even valid and probably also licit if one deliberately delays the marriage till that moment.” (pp.174-175)

**A12 The Jurist. “The History and Application of Canon 1098.”
John De Reeper, M.H.F. (1954)**

“The marriage is, however, *valid*, even if the parties: a) have *on purpose gone to a place* where an authorized priest cannot come.” (p.168)

**A13 The Jurist. “The History and Application of Canon 1098.”
John De Reeper, M.H.F. (1954)**

“If, however, the parties had acted on the mistaken *bona fide* conviction that the priest was absent whilst in reality he was available, then the marriage contracted in the presence of only two witness is not valid, according to a Rota decision of 30 Jan. 1926.” (p.165)

**A14 The Jurist. “The History and Application of Canon 1098.”
John De Reeper, M.H.F. (1954)**

“The ‘*bona fide*’ conviction on the part of the couple about the inavailability or inapproachability of the priest or about the ‘*grave incommodum vel moralis impossibilitas habendi vel adeundi*’ cannot serve as substitute for the actual fact. So if the grave inconvenience or moral impossibility was not there, though the parties honestly and inculpably believed that it existed, then the marriage contracted in the presence of only two witnesses is null.” (p.168)

**A15 Canon Law Digest, Vol.II.
T. Lincoln Bouscaren, S.J. (1943)**

“Bona Fide Belief of Party That Neither Pastor Nor Ordinary Nor Delegate Can Be Reached, Is Not Sufficient (Rota, 30 Jan., 1926) **R.D. 18—17.**

The Facts. On 4 Nov., 1918, a Catholic man married an Orthodox woman before an Orthodox minister and witnesses. The man at the time sincerely believed that there was no

Catholic Bishop or pastor in the city, nor any priest who could be delegated by either to assist at the marriage. But the Catholic pastor of the place testifies that he himself was there at that time, and could have assisted without grave inconvenience.

The Law. 1. Canon 1098 provides for valid marriage before witnesses alone, in two cases: first, in danger of death, where the authorized witnesses required by canon 1094 cannot be reached without grave inconvenience; and secondly, outside of danger of death, where not only the same authorized witnesses cannot be reached without grave inconvenience, but it is prudently foreseen that this condition will last for a month. The honest belief on the part of the parties that this fact (that is, the impossibility of reaching the pastor or Ordinary) exists, cannot be substituted for the fact itself. If the fact of moral impossibility required by the canon, was non-existent, though the parties honestly and inculpably believed that it existed, the marriage is null.

2. A pastor in good standing, testifying to matters within the scope of his office, is a qualified witness, whose testimony produces full proof, in the sense of canon 1791, § 1.

The Decision. Since the conditions of canon 1098 were not verified, the marriage before witnesses alone is null. **R.D. 18—17; Rota, 30 Jan., 1926. Final.”** (pp.335-336)

A16 The Jurist. “The History and Application of Canon 1098.”
John De Reeper, M.H.F. (1954)

“*Recapitulation.* From all this it follows that, when no authorized priest is available, and when the parties cannot approach him by normal means and without great inconvenience (*neque haberi neque adiri potest*), a valid and licit marriage can be contracted – no matter what the motives are – in the presence of at least two witnesses.” (p.172)

A17 The Jurist. “The History and Application of Canon 1098.”
John De Reeper, M.H.F. (1954)

“According to canon 1060 the impediment of mixed religion is an ‘*impedimentum prohibens*’ which *sub gravi* forbids the marriage between a Catholic and a baptized non-Catholic, but does not make it invalid. Moreover, it is stipulated in canon 1061 that, before a dispensation from this impediment can be given, the ‘*cautiones*’ must first be given, whereby the non-Catholic promises to avoid all that might lead to a weakening of the faith of the Catholic party, while both the Catholic and non-Catholic party promise to see to the baptism and Catholic upbringing of the children of their marriage. The ‘*cautiones*’ are required *ad validitatem* for the dispensation, even in danger of death. Hence, no dispensation from the impediment is possible without the ‘*cautiones*’. And in the case where no dispensation from the impediment of mixed religion was obtained, the marriage is *graviter illicitum*, but all the same *validum* since it is a question of an *impedimentum prohibens*. If they contracted a marriage without the ‘*cautiones*’ being given either *implicite* or *explicite*, they are validly married without dispensation or suspension from the impediment, and the Catholic party is punishable according to canon 2375, *ipso facto* excluded from all legitimate ecclesiastical acts and from the sacramentals. The *latae sententiae* penalty of exclusion from legitimate ecclesiastical acts is *vindicative* and supposes full knowledge and deliberation, since canon 2375 uses the term ‘*ausi fuerint*’. Hence ignorance

even crass or supine, fear, even light, and any cause which lessens imputability excuses from the penalty (canon 2229, par 1, 2). But the Ordinary can dispense from these penalties. However, as we saw already, the marriage is valid though punishable because of the absence of ‘*cautiones*’.” (p.176)

**A18 The Jurist. “The History and Application of Canon 1098.”
John De Reeper, M.H.F. (1954)**

“Should any doubt exist about the baptism of the non-Catholic party, or should it arise at the ‘*revalidatio*’, one must according to canon 1070 par.2 presume the validity of such a marriage in virtue of canon 1014 until it can be proved for certain that the one party was validly baptized while the other party was definitely not baptized.” (p.179)

**A19 A Practical Commentary on the Code of Canon Law, Vol.I.
Stanislaus Woywod, O.F.M. (1948)**

“It need scarcely be remarked here that, when the parties are entitled to contract marriage without the presence of the priest, they are justified in going to a justice of the peace, or any other official of the government who is entitled to witness the marriages, so that their marriage may have the recognition of the civil law. They can also marry before a non-Catholic minister, not as a minister of religion but as an official entitled by civil law to witness marriages; they must not allow him to use any religious ceremony, as may be seen from Canon 1063.” (pp.779-780)

**A20 The Extraordinary Form of Marriage According to Canon 1098.
Edward Fus, J.C.D (1954)**

“It is a gratuitous assumption to say that the witnesses mentioned in Canon 1098 have to be *privatae personae*. To state that Canon 1094 excludes civil officials and non-Catholic ministers and that therefore they are to be excluded in Canon 1098 does not quite follow. A non-Catholic minister or a civil official, *qua talis*, cannot take part in a Catholic ceremony in his official capacity. They are not excluded by law from acting as ordinary witnesses in the ordinary form of marriage. In marriages contracted according to the extraordinary form, at least as far as validity is concerned, there is nothing in the law that excludes them from acting in their official capacity. The law disregards their official capacity and takes cognizance merely of the exchange of matrimonial consent in the presence of two witnesses.

As for the argument that a non-Catholic ceremony was excluded by the legislator because of the divine law prohibiting participation in a non-Catholic religious service, one may say that such was not the *finis legis* of the legislator in framing this canon. Non-Catholic ceremonies are still forbidden, even in cases envisioned in Canon 1098. However, if the parties, whether in good or bad faith, do approach a non-Catholic minister and exchange matrimonial consent, otherwise naturally sufficient, in the presence of two witnesses, the marriage will nonetheless be valid. The Church has at times recognized marriages contracted before non-Catholic ministers. Pope Pius X, in his apostolic letter “*Provida*,” dated January 18, 1906, declared that in Germany

the parties in a mixed marriage would be exempt from the ordinary form of marriage. Marriages contracted before a civil official or a non-Catholic minister were to be considered valid in such cases. This exemption was later extended also to Hungary. It had been a long-standing rule under the *Tametsi* matrimonial discipline that with reference to the form prescribed by the decree *Tametsi* there should be observed that part which could be observed. Hence matrimonial consent in the presence of two witnesses was all that was required. The fact that this took place in a non-Catholic ceremony was something irrelevant and could be abstracted from.” (p.133)

A21 *Canon Law Digest, Vol.III.*
T. Lincoln Bouscaren, S.J. (1954)

“Mixed Marriage Before Protestant Minister Valid If Conditions of Canon 1098 for Marriage Before Witnesses Only Are Verified (S. C. Sacr., 4 March, 1925) Private.

The following rescript was received by the Bishop of Pinsk in reply to a question concerning mixed marriages.

Reply. If all the conditions which are required by canon 1098 for the validity of marriages before witnesses only are verified, the circumstance that such marriages were blessed in a non-Catholic church is an argument, not against validity, but against licitness.

(Private); S. C. Sacr., 4 March, 1925. Reported by Dalpiaz in *Apollinaris*, Vol. 10, 1937, p. 277. See also Nevin in *The Australasian Catholic Record*, Vol. 19, 1942, p. 96." (p.454)

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