CHAPTER VI

THE SECOND POSTULATED CONDITION: DANGER OF DEATH OR ABSENCE FORESEEN TO LAST A MONTH

In itself, the impossibility of having a qualified witness at a marriage as described above would not suffice to allow one to contract marriage according to the extraordinary form. Not every case in which a qualified witness would be unavailable would permit one to forego his presence and to contract marriage solely in the presence of two witnesses. Although the concession granted in Canon 1098 is indeed a great one, nevertheless the Code of Canon Law very wisely and very prudently circumscribed its use to only two eventualities, namely, in cases in which the contracting parties are constituted in danger of death, and in cases in which the impossibility of having a qualified witness is prudently foreseen to last a month. Each of these cases will be discussed separately.

Article 1. Danger of Death

Under the Tridentine matrimonial discipline, danger of death was not acknowledged as a cause excusing one from observing the prescribed form of marriage.[1] In time, however, the Holy See began to acknowledge danger of death as a cause for allowing marriage to be contracted apart from the strict adherence to the established form of the decree *Tametsi*. Faculties to dispense from the observance of the juridical form of marriage, i.e., from the diriment impediment of clandestinity, were given to local ordinaries, who in turn could subdelegate these faculties to other ecclesiastics. It was still necessary that a priest having these faculties be present so that he could dispense in such a case; otherwise, a marriage contracted in the presence of solely two witnesses was invalid.

With the decree *Ne temere*, provision was made for the first time for people constituted in danger of death when the ordinary

[1] *Vide supra*, p. 41.

prescribed form could not be observed. Even with this concession, the law was still difficult of observance, because the decree demanded the presence of a priest, an imminent danger of death, and, as a reason for its use, that thereby provision could be made for the conscience of the parties.[2] The Code of Canon Law adopted the legislation of the decree *Ne temere*, but with certain relaxations, in order to make it as easy as possible for people in such circumstances to contract marriage.

Under the *Ne temere* discipline, it was necessary that the danger of death be imminent; the Code, using very general terms, merely requires that a danger of death be present (*in mortis periculo*). Accordingly, it is not necessary that death be imminent, that one of the parties is at the point of death (i.e., *in articulo mortis*). Any danger of death that would allow Viaticum to be administered would be sufficient.[3] It is not demanded that there be present such conditions as would allow one to administer the sacrament of Extreme Unction,[4] i.e., that the danger come from bodily infirmity or old age.[5]

Danger of death is that condition in which it is seriously probable that a person may either die or live.[6] The danger may arise from a cause which is intrinsic or internal to the individual himself, e.g., from serious sickness, from a difficult case of childbirth, from a serious operation, or from a cause which is extrinsic or external to the person. The latter can affect the individual alone, e.g., a sentence of capital punishment, or it can affect many persons. In the latter category, one can distinguish two distinct sources whence the danger may arise, namely, natural causes or social disturbances. Among the natural causes, one may consider a raging epidemic; expected further earthquake shocks; hurricanes, typhoons, tornadoes,

[2] S. C. C., decr. *"Ne temere,"* 2 aug. 1907, art. VII—*ASS*, XL (1907), 529; *Fontes*, n. 4340.

[3] Payen, II, n. 1815.

[4] This was the example that was given by Ojetti (*Synopsis*, I, s.v. *Clandestinitas*, n. 1124) in commenting on the decree *Ne temere*.

[5] C. 940, § 1.

[6] D'Annibale, *Summula Theologiae Moralis* (5. ed., 3 vols., Romae: 1908), I, n. 38; Cappello, *Tractatus Canonico-Moralis de Censuris* (4. ed., Romae: Marietti, 1950), n. 114 (hereafter cited *De Censuris*).

cyclones, and the like; the eruption of volcanoes; extensive floods; mine disasters; a disaster at sea; a very dangerous trip, and other similar situations.[7] Among the causes traceable to social disturbances one may list airplane bombings, even of open cities,[8] bloody revolutions, riots which are not just temporary outbursts; invasion by a hostile and barbarous enemy, danger from robber bands, etc.[9]

A condition commonly considered as a danger of death is the condition of mobilization for war. It is true that a person in the Armed Forces is never certain when he or she will be sent to the battle-front, where the danger of death would be imminent. Still one must remember that the mere fact that a person is in uniform does not constitute him in danger of death. All agree that at the battle-front the danger of death is imminent.

A natural question arises in regard to soldiers who are ready to go to a battle-area. Are they to be considered in danger of death? It was this consideration that prompted the Bishop of Verdun to inquire of the Sacred Penitentiary whether any soldier who is in the state of mobilization is *ipso facto* in danger of death and, therefore, capable of being absolved by any priest. To this query the Sacred Penitentiary replied: "In the affirmative, according to the rules proposed by approved authors."[10] To a similar query, asking whether such a soldier may be considered (*aequiparatus*) *ipso facto* the same as one in danger of death, the Sacred Penitentiary on May 28, 1915, gave the same answer, citing the former reply.[11]

Since the first reply was being applied to marriage as well (Art. VII of the decree *Ne temere*), the Bishop of Osnabrück inquired

[7] Gasparri, n. 1107; Coronata, *De Matrimonio*, n. 567; Cappello, *Tractatus Canonico-Moralis De Sacramentis*, Vol. I (*De Sacramentis in Genere*, Romae: Marietti, 1947), nn. 421, 432; Vol. III (*De Matrimonio*), n. 231; Oesterle, *Consultationes de Iure Matrimoniali* (Romae: Officium Libri Catholici, 1942), p. 99.

[8] Military Faculties, n. 14 c.

[9] Gasparri, *loc. cit.*; Coronata, *loc. cit.*; Cappello, *loc. cit.*

[10] S. Poenit., ad ep. V., 18 mart. 1912—apud *Archiv für katholisches Kirchenrecht* (Innsbruck, 1857-1861; Mainz, 1862-), XCV (1915), 156-157. Cf. also S. Poenit., 29 maii 1915—*AAS*, VII (1915), 282, where allusion is made to this response.

[11] *AAS*, VII (1915), 282.

of the Sacred Congregation of the Sacraments on November 28, 1914, whether a mobilized soldier is to be considered *ipso facto* in danger of death so that a priest assisting at his marriage in accordance with Article VII of the decree *Ne temere* could dispense from matrimonial impediments in virtue of the grant of powers made on May 9, 1909, by Pope Pius X.[12] If the reply was to be in the negative, the bishop requested a general sanation of the marriages theretofore contracted.[13] The reply, dated December 17, 1914, without answering the question proposed, left it open for discussion, neither forbidding the practice nor declaring the marriages already contracted invalid. Alluding to the replies of May 14, 1909, and of August 16, 1909, it simply indicated a norm of action and granted the Bishop the faculty to sanate whatever marriages may have been invalid.[14] It was safe to conclude, then, that there was danger of death in such circumstances and that, if all the other prescripts of the law were followed, Article VII of the decree *Ne temere* and the accompanying powers granted to a priest assisting according to this Article could be used.[15]

The same reasoning can be applied to the law as we have it today. In faculty n. 14 of the Military Faculties granted to Military Vicars by the Sacred Consistorial Congregation on December 8, 1939,[16] one reads that all soldiers immediately before a battle, or fighting in battle, are in danger of death.[17] A soldier when being sent to the battle-front, or when in a highly strategic position, such as supply depots, airplane fields and the like, which are prime bombing targets, as well as a sailor when assigned to a ship that is to go into dangerous waters, would *ipso facto* be constituted in danger of death.

Today one would no longer class long ocean voyages or airplane trips as inducing a danger of death. These means of travel have been

[12] S. C. de Sacramentis, *Parmen et aliarum*, 14 maii, 1909—*AAS*, I (1909), 468-469; *Fontes*, n. 2097.

[13] *Archiv für katholisches Kirchenrecht*, XCV (1915). 337-338.

[14] *Loc. cit.*

[15] *Archiv für katholisches Kirchenrecht*, XCV (1915), 341.

[16] *AAS*, XXX (1939), 710-713; Bouscaren, *Digest*, II, 607-615.

[17] . . . omnes milites ante proelium vel in proelio dimicantes, prout in mortis pericula constitutos . . .

so perfected that they can be classified as safe.[18] As a general rule, it may be stated that the norms which approved authors have invoked for determining what constitutes a danger of death truly reflect what is contemplated in the phrase *"in mortis periculo."* The Holy See replied in this sense to the Archbishop of Cincinnati on September 12, 1859.[19]

It is not necessary that both parties be constituted in danger of death. As long as the danger threatens either of the parties, this exemption may be invoked because the wording of the canon is quite general.[20] Absolute certainty as to the existence or seriousness of the danger of death is not demanded. This would make the canon practically inoperative, and would raise many doubts whenever it should be used. Such a demand would take away the very concession that is granted. Accordingly, all that is required is a moral certainty that is based on a probable judgment as to the existence or the seriousness of the danger of death according to the circumstances of each particular case.[21] As long as this judgment is prudently based on common occurrences, on what people commonly consider as inducing a danger of death, one need not fear afterwards if an error should have been made in such a judgment and it should develop that a person quickly recovers from what appeared to be a serious sickness.[22] The opinion of a doctor, though it can be very helpful, is not essential in such a case. However, if he should declare that death is imminent, the parties need not wait for a qualified witness, but may proceed immediately to contract marriage in the presence of witnesses alone, on the supposition naturally that a priest is not present or cannot immediately be had.[23] If the danger is not imminent, the parties in expecting a qualified priest who has been summoned will have to wait till the last possible moment, i.e., just before the person is to be taken to the operating

[18] Cappello, *De Sacramentis,* I, n. 421.

[19] *Fontes,* n. 955.

[20] Payen, II, n. 1815; Gasparri, n. 1007; Cappello, *De Matrimonio,* n. 691.

[21] Gasparri, n. 1107; Coronata, *De Matrimonio,* n. 567; Chelodi-Ciprotti, n. 136.

[22] Chelodi-Ciprotti, *loc. cit.;* Gasparri, *loc. cit.;* Cappello, *De Matrimonio,* n. 691.

[23] Gasparri, *loc. cit.*

room, just before he is to leave for the front, just before he lapses into unconsciousness. If there is any prudent doubt whether there will be time or opportunity later, or some reasonable danger that further delay would prevent the marriage, the parties need wait no longer.

The reason or motive for contracting marriage need no longer be considered. The Code of Canon Law does not postulate any particular reason in view of which alone the extraordinary form may be invoked. The mere desire to contract marriage will suffice. Since the clause *ad consulendum concientiae et si casus ferat ad legitimationem prolis,* which was found in Article VII of the decree *Ne temere,* is no longer found in the present discipline concerning the form of marriage, one may safely say that the legislator studiously omitted it. True, these reasons will often exist, but the use of this form for contracting marriages is not to be restricted solely to such cases. Bad faith in postponing the contracting of marriage till such time will not invalidate the marriage, because the canon does not have an invalidating clause in this respect.[24] One may likewise argue analogically from a reply of the Sacred Congregation of the Sacraments, which declared that a marriage contracted in accordance with Article VIII of the decree *Ne temere* would be valid even if the person betook himself, *in fraudem legis,* to a place where there was no priest.[25]

Article 2. The Qualified Witness' Absence Foreseen to Last for a Month

While the Tridentine discipline obtained, the Holy Office declared that if a pastor was away and it was foreseen that he would be away at least a month a couple could contract marriage in the presence simply of two witnesses.[26] It was considered that a month's delay would constitute a grave inconvenience and consequently would excuse from the obligation of observing the law on the form of

[24] Canon 11. Cf. also Gasparri, n. 1009; Vlaming, *Praelectiones Iuris Matrimonii,* II, 200.

[25] S. C. de Sacramentis, 13 mart. 1910, ad III—*Fontes,* n. 2101.

[26] S. C. S. Off., *Vallispraten,* 1 iulii 1863—*vide supra,* pp. 32-33.

marriage. In Article VIII of the decree *Ne temere* a change was introduced. There the law postulated the pastor's absence for a month before one could use the extraordinary form of marriage. The Code of Canon Law in Canon 1098 returned to the commonly admitted practice as it obtained prior to the *Ne temere* discipline, i.e., it simply postulates the foreseeing of an absence that is to last for at least a month.[27]

The legislator realized that, once everything is prepared for a marriage, to expect a couple to wait for a very long time would cause a great inconvenience. Besides, it would infringe on their natural right of marrying. Accordingly, it was decided that a month's delay would be considered an inconvenience grave enough to excuse one from this particular ecclesiastical law. Absolute certainty that a qualified priest will be unavailable for a month is not required. All that is required by the legislator is that it can be prudently foreseen that this condition will last for a month.[28] To demand certainty would make the canon practically inapplicable, and would defeat the very purpose for which it was instituted. As in all normal human relations, so here too, all that one can expect is moral certitude. Moral certitude as to the unavailability for a month of a qualified priest when based on the knowledge of facts that are known to all, or when based on information gathered from a prudent investigation, will suffice.[29]

In the first place, there must be established the fact of the unavailability of a priest who could assist at the marriage in question. The wording of the canon demands this when it requires that the condition, i.e., that a priest cannot be had, will last for a month. Therefore, any false opinion, even though based on an excusable error, on the part of the parties, which is not verified in fact will not suffice. If a priest could be had and it was judged that he could not be had, a marriage contracted without his assistance would be invalid. A false estimate will not change the actual facts of a

[27] Payen, II, n. 1820.

[28] . . . dummodo prudenter praevideatur eam rerum conditionem esse per mensem duraturam.

[29] P.C.I., 10 nov. 1925—*AAS*, XVII (1925). 583.

situation. The very first requisite would be lacking because an actual and not a presumed unavailability is postulated.[30]

Once the unavailability of a qualified priest has been established, before the extraordinary form may be used, it must be prudently foreseen that this condition will last for a month. Since a prudent prevision has to do with the future it will be based on a human judgment. It connotes also a subjective persuasion of the truth of the judgment that is made. Such a judgment, being human, could prove to be erroneous. However, later facts will not affect a marriage contracted in view of this subjective moral certainty as long as the judgment was not entirely without a basis in fact.[31] The prevision must be truly prudent, based, as the Pontifical Commission for the Interpretation of the Code has stated, on facts known to everyone in the locality or on a diligent investigation. It is possible that the unavailability of a priest for a month will be known to everyone in the neighborhood. This can, and usually does, happen in missionary countries, where, because of the shortage of priests, it is a common practice for a missionary to visit his mission stations only at regular intervals, e.g., once every two months. In fact, he may even announce that he will not be back for two months. From past experience people will know that that is exactly what will happen. Or again, everyone knows that during the winter months the parish church has no pastor, that the church is closed and that the priest will not return till the spring. On the other hand, if the fact of the qualified priest's unavailability is not well known, it can be established through an investigation. One may inquire of people in the neighborhood. From information thus gathered and from the circumstances of the case, it may be prudently judged with moral certainty that the priest will be unavail-

[30] S. R. R., *Nullitatis matrimonii*, 7 dec. 1931, coram R.P.D. Andrea Jullien, dec. LV, n. 3—*Decisiones*, XXIII (1931), p. 473; S. R. R., *Nullitatis matrimonii*, 30 ian. 1926, coram R.P.D. Maximo Massimi, pro-Decano, dec. IV, nn. 3, 9—*Decisiones*, XVIII (1926), pp. 18, 20.

[31] S. R. R., *Nullitatis matrimonii*, 20 iul. 1926, coram R.P.D. Iosepho Florczak, dec. XXXVI, n. 5—*Decisiones*, XVIII (1926), p. 289; S. R. R. Nullitatis matrimonii, 7 dec. 1931, coram R.P.D. Andrea Jullien, dec. LV, n. 3—*Decisiones*, XXIII (1931), p. 473; Vlaming, *Praelectiones Iuris Matrimonii*. II, n. 202; Rossi, p. 112; Coronata, *De Matrimonio*, n. 568.

able for at least a month.[32] In making the judgment, one need consider only the usual and ordinary circumstances and occurrences.[33] One is not expected to foresee any possible extraordinary developments or unexpected happenings. If by chance a qualified priest should have unexpectedly appeared or become available during the month, it would not affect the validity of the marriage.[34] Whether the investigation when made proves sufficient will depend in each case on the capabilities of the persons, the means at their disposal, the sources of information available to them, and the like. Extremes in making practically no investigation and also all undue scrupulosity in the conducting of the investigation are to be avoided.[35] The Rota indicated a practical norm to be followed when it quoted from D'Annibale: "If one doubts, he must inquire either himself or through others, not in every possible way, but with a diligence which is not necessarily of the greatest type, because this could go on *ad infinitum* and would lead to scrupulosity, nor of a perfunctory character, but which is evinced as a common ordinary diligence in proportion to the gravity of the matter under consideration." [36]

A question that has to be asked at this point is whether the prudent prevision postulated by the canon must be had by the contracting parties for the valid use of the extraordinary form. Most commentators leave the question unanswered by delineating the obligation of the prudent prevision in the same impersonal passive phrase that is found in the canon. There are commentators, however, e.g., Sipos,[37] Schönsteiner [38] and Rossi,[39] who demand that the contracting parties themselves prudently foresee that the postulated unavailability will last a month. The merit of this interpreta-

[32] S. R. R., *Nullitatis matrimonii,* 7 dec. 1931, coram R.P.D. Andrea Jullien, dec. IV, n. 3—*Decisiones,* XXIII (1931), p. 473.

[33] S. C. C., *Romana et aliarum,* 27 iul. 1908 ad VIum—*Fontes,* n. 4350; Chelodi-Ciprotti, n. 137; Schönsteiner, *Grundriss des kirchlichen Eherechts,* p. 732.

[34] Gasparri, n. 1009; Cappello, *De Matrimonio,* n. 693, b; Rossi, p. 112.

[35] S. R. R., *loc. cit.;* Regatillo, *Interpretatio et Iurisprudentia Codicis Iuris Canonici,* p. 382.

[36] *Summula Theologiae Moralis,* I, n. 132.

[37] *Apollinaris,* XX (1940), 99.

[38] *Op. cit.,* p. 732.

[39] *Op. cit.,* p. 112.

tion can be seriously called into doubt. In the first place, the very text of the canon does not seem to demand this interpretation. The wording is in the passive impersonal (*prudenter praevideatur*). Had the legislator intended that the parties themselves have this prevision, he could have very easily adopted the wording *"dummodo prudenter contrahentes praevideant."* The fact that he did not do so militates against this interpretation. To demand more would be to read into the canon something that is not intended by the legislator.

In the second place, in instituting this law, the legislator had for his purpose not the hindering of the contracting of marriages, but the certifying of them as certain and valid unions.[40] In many instances the parties could be ignorant of the fact that marriage could be contracted according to the extraordinary form. Consequently, they would know nothing of the postulated prudent prevision. Granted that the unavailability of a qualified priest has been established, and granted, likewise, that it is not known after a diligent investigation just when he will be available (although *de facto* the circumstances are such that it may be prudently foreseen that he will be unavailable for at least a month), the parties may decide to contract a true and valid marriage in the best way they can in the presence of two witnesses, e.g., in a civil marriage or even before a minister. How can such a marriage be declared invalid when the prescripts of the canon have been fulfilled? Accordingly, if the foreseen unavailability is of the type that is not merely personal to the parties but common to all in the territory, the prudent prevision on the part of the contracting parties is not required. It is sufficient that the circumstances will merit such a prevision.[41] If the foreseen unavailability is common but not personal to the parties, the canon, as explained above [41a] will not apply. However, if the unavailability is not common but merely personal, then an investigation would have to be made and the parties themselves would

[40] S. R. R., *Nullitatis matrimonii,* 7 dec. 1931, coram R.P.D. Andrea Jullien, dec. LV, n. 3—*Decisiones,* XXIII (1931), 473.

[41] Payen, II, n. 1819, footnote 3; Vromant, *Ius Missionarium,* Tom. V (*De Matrimonio*) (Louvain: Museum Lessianum, 1931), p. 207; Oesterle, "De Validitate aut Nullitate Matrimoniorum a Captivis ex Bello in Russia Initorum," *Apollinaris,* IX (1936), 451.

[41a] *Vide supra,* p. 86.

although the parties did NOT know at the time of the marriage that the N.O., or Trad Cat priest was NOT a qualified witness, the parties DID contract a valid marriage because the fulfilled the requirements of c. 1098. see P 113

have prudently to foresee that the unavailability will last a month.[42] If the moral certitude in regard to the unavailability of a priest for a month has to be gathered from an investigation, only two possibilities can be envisioned, viz., either the parties know the law or they do not. If they do, they must govern their actions according to the results of the investigation. If they do not know the law, once again two possibilities present themselves. The foreseeable length of time that the qualified priest will be unavailable will be either definite or indefinite. If it is indefinite, but *de facto* the facts are such that it can be prudently foreseen that the unavailability will last at least a month, a marriage contracted will be valid because the prescripts of the canon have been observed. Should the unavailability, on the other hand, be prudently foreseen not to last a month, a marriage contracted will be invalid because the canon has not been observed. Postulated a period of time that is definite, even though the parties know nothing of the law, the validity of the marriage would depend on whether the period of time was at least a month. Ignorance of the law would not excuse them.[43] = Therefore they were validly married

In computing the period of a month's duration in regard to the unavailability of a qualified priest, the initial day (*dies a quo*) is the day when everything is prepared for the marriage (*omnia parata sunt ad nuptias*).[44] It is only with that day that grave inconvenience for the parties can be said to begin. Besides, the legislator demands that an investigation be made concerning the free state of the contracting parties.[45] If one were to consider the day the parties decided to marry as the *dies a quo* in the computation, then the concession granted in Canon 1098 would destroy the very safeguard set up by the legislator in demanding such an investigation. Such was definitely not his purpose. As mentioned previously, Canon 1098 contains an exception to the general law as stated in Canon 1094; consequently, it requires a strict interpretation.[46]

[42] Vromant, *De Matrimonio*, p. 207.

[43] Canon 16.

[44] Regatillo, *op. cit.*, p. 383; Ubach, *Compendium Theologiae Moralis*, II, n. 855.

[45] Canons 1019-1034.

[46] Canon 19.

Accordingly, the concession granted herein is granted only when everything is ready for the marriage to take place except for the fact that a qualified priest is unavailable. It matters not how long the priest has been unavailable[47] nor how long the parties have already waited. One must look to the priest's unavailability from the moment that the marriage is about to be contracted.

In computing the period of one month, one must be governed by Canon 34, § 3, inasmuch as the *terminus a quo* is implicitly given (*cum omnia parata sunt ad nuptias*).[48] Therefore the month is to be taken as it is in the calendar.[49] Since the *terminus a quo* does not coincide with the beginning of the day, or at least is not considered to do so, the first day, i.e., the rest of that day does not enter into the computation, and the month will end with the end of the day that marks the same date in the next month.[50] If the next month should lack a corresponding day marking the same date, then the computed month will end with the last day of the next month.[51] An example will serve to illustrate the computation. If on January 31st, everything is ready for the marriage to take place, then, before the couple can avail themselves of the concession in the extraordinary form, it must be prudently foreseen that no qualified priest will be available until after the midnight between the last day of February and the first day of March. The rest of the day of January 31st does not enter into the computation, and the month will end with the last day of February. Hence, if a priest will not be available till after the midnight mentioned above, the couple can contract marriage according to the extraordinary form anytime on January 31st.

In using the phrase *per mensem*, the legislator intends it to be a

[47] Gasparri, n. 1009; Chelodi, n. 137.

[48] The *omnia parata* spoken of here is not to be taken in the sense mentioned below on page 177, i.e., any case of grave necessity. The phrase is to be understood in the sense that everything is ready as far as the church is concerned for the parties to contract marriage. This would eventuate when all proofs concerning the free state of the parties have been adduced. Cf. below, page 142, where it is stated upon whom this obligation rests and what the extent of the obligation is.

[49] Canon 34, § 3, 1°.

[50] Canon 34, § 3, 3°.

[51] Canon 34, § 3, 4°.

continuous and complete month.[52] Furthermore, the canon requires a strict interpretation. Therefore, the month's foreseen unavailability of a qualified priest must be interpreted as a month that is continuous and complete.[53] If it is prudently foreseen, then, that a qualified priest will be available before the month is complete, the canon may not be invoked. A passing through of a possible qualified priest which is so short that the parties could not possibly have known of his availability, will not be considered as breaking the continuity of the month required by the canon.[54]

There are authors, however, who do not demand this mathematical exactness. Even though Cappello holds that the month must be continuous and complete, he is of the opinion that, when an hour or even a day is lacking in the foreseen month's unavailability of a qualified priest, it would not affect the validity of a marriage contracted under such circumstances.[55] Cerato goes even further. He allows the computation of the month to be left to the parties who need not follow the computation as outlined in the Code.[56] He bases his opinion on the moral certitude demanded by the reply of the Code Commission given on November 10, 1925.[57] He reasons that, if moral certitude about the priest's unavailability suffices, mathematical exactness in regard to the period of one month is not required. Chrétien holds that 30 continuous days, morally considered, will suffice.[58]

It is difficult to see how these opinions can be sustained. Were one to allow Cappello's opinion, then a mathematical norm no longer would be had. If one day were lacking, why not a day and an hour? Why not two days? To avoid ambiguity and uncertainty, the legislator instituted a standard norm which must be followed under pain of nullity. The canon requires a strict interpretation; a month is a month and nothing less. Besides, there is

[52] Reiffenstuel, lib. IV, tit. XXXI, n. 94.

[53] Gasparri, n. 1009; Chelodi-Ciprotti, n. 137; Payen, II, n. 1820; Vlaming, *Praelectiones Iuris Matrimonii,* II, 202.

[54] S. C. C., *Romana et aliarum,* 27 iul. 1908, ad VIum—*Fontes,* n. 4350.

[55] *De Matrimonio,* n. 693, 2d.

[56] *Matrimonium Codice Iuris Canonici integre Desumptum,* p. 165.

[57] *AAS,* XVII (1925), 583; Bouscaren, *Digest,* I, 542.

[58] *De Matrimonio (Praelectiones),* p. 342.

no basis in law or in fact for holding this opinion. As for Cerato's opinion, if it were to be allowed, it would destroy the very law itself, because whatever the parties considered a month would suffice. This would substitute a personal opinion for a standard norm. It would be impossible to question the validity or invalidity of such a marriage on this ground. The conclusion he draws from the authentic interpretation given to Canon 1098 by the Pontifical Commission for the Interpretation of the Code on November 10, 1925, is unwarranted. To say that a person is morally certain that a priest will be unavailable for a month is not the same as to say that a person is morally certain that a qualified priest will be unavailable for a period of time which, morally taken, may be termed a month. Finally, Chrétien seems to reach his opinion, as did Ubach,[59] by using paragraph 2 of Canon 34 to compute the period of one month. It was chosen because they probably felt that the *terminus a quo* is neither implicitly nor explicitly given. This is a mistaken interpretation; as was seen above, the *terminus a quo* is implicitly given, namely, everything is ready for the marriage. Besides, Canon 34, § 3, states that a month is to be taken as it is in the calendar. Therefore, it may have only 28, or 29 days as in February, 30 or 31 days depending on the *terminus a quo.* Would Chrétien and Ubach say that 28 days would be insufficient? or that 30 days would suffice if the month has 31 days?

Foreseeing all these problems, the legislator instituted a practical norm—a period of one month. Since no qualifying words are given, it must be computed according to the Code. Following this norm, one can have a definite norm according to which the validity of a marriage can be judged. For these reasons it is the writer's opinion that the month in Canon 1098 must be continuous and complete and computed according to Canon 34, § 3, 1° and 3°. In practice, it may be said that the problem will hardly ever arise unless a person is definitely certain as to the exact time when a qualified witness will be available; otherwise, it will depend on one's prudent judgment.

An interesting point deserves mention here, namely, whether a coalescence of time would avail in the determining of the postulated

[59] *Compendium Theologiae Moralis,* II, n. 855.

period of one month. The writer has in mind a situation wherein a qualified witness is *de facto* unavailable for a period of time which is foreseen to be less than a month. However, before this unavailability will cease, the qualified witness will be unavailable for some other reason. If the two periods equal or surpass a month, may the extraordinary form be used? The Code allows this, so it has been seen, only in cases of actual unavailability. If, therefore, both unavailabilities are of the actual type, e.g., deriving from adverse prescripts of law, or from a physical absence followed by a moral impossibility traceable to a prohibition of the civil law, and like cases, such an eventuality seems to be comprehended within the scope of the canon. On the other hand, if an actual unavailability is foreseen to be of less than a month's duration, one may not add a period of what may only be a *possible future* unavailability in order to make the period equal a month. Possible future unavailabilities are not contemplated by the legislator in this canon.[60]

As to the actual time for contracting the marriage, it must be contracted while the prudent prevision of the qualified witness' unavailability for a period of one month still obtains.[61] If the unavailability was foreseen to last for a month, but *de facto* the marriage was then planned for and contracted on a day whereon one could foresee that the unavailability would no longer last for a month, the marriage would be invalid. For example, on April 1st the parties wished to marry and it was prudently foreseen that a priest would be unavailable till May 5th. The marriage was then planned for and contracted on April 10th. The marriage would be invalid because the period of one month's unavailability would no longer obtain. If one were to allow marriage to be contracted any time during the month, then it could be postponed till the very day before the qualified priest would become available. This would make the law absurd. Accordingly, as long as the unavailability is foreseen to last at least a month more, marriage may be contracted according to the extraordinary form.

[60] König, "Eine interessante Ehenichtigkeitsklage zu c. 1098," *Österreichisches Archiv für Kirchenrecht,* III (1952), 278-282.

[61] Vlaming-Bender, p. 431.

Finally, a marriage would be valid even though the parties deferred the contracting of their marriage till such time when a qualified priest became unavailable.[62] Since the legislator does not distinguish, it is not for us to do so.

[62] Gasparri, n. 1008; Cappello, *De Matrimonio,* n. 693; Vlaming, *Praelectiones Iuris Matrimonii,* II, 589, who cite the reply of the S. C. de Sacramentis, 13 mart. 1910, ad IIIum (*Fontes,* 2011), in this sense.