

The Declarations and Promises Made in Mixed Marriages: Procedural Acts for Legislation

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Abstract: The Church safeguards the rights of her members through enormous canonical provisions, not excluding the right to marry (*ius connubii*). The right to marry is the freedom of each Christ's faithful to choose a person to become his or her husband or wife in living out the partnership of one's whole life (*totius vitae consortium*), including in entering into mixed marriages. The marriage of at least one party who is a Catholic, however, is governed not only by divine law but also by canon law. The making of declaration to be faithful to the Catholic faith and a sincere promise to have all children baptized in the Catholic Church to be made by the Catholic party are required by canon 1125. In fact, it is left to the authority of the Bishops' Conference to determine the manner of the making of declarations and promises *ad normam* canon 1126. With respect to the legislative power endowed by universal law to the Bishops' Conference, this research is an attempt to offer procedural acts to be legislated by the said ecclesiastical authority.

Keywords: right to marry, mixed marriages, declaration, promises, Bishops' Conference

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Introduction

“**O**mnes possunt matrimonium contrahere, qui iure non prohibentur.”¹ These are the wordings of canon 1058 which underscore the *ius connubii* (the right to marry). Nonetheless, the marriage of Catholics, accordingly, is governed not only by divine law but also by canon law, even if only one party is a Catholic.² Consequently, mixed marriages in strict sense *ad normam* canon 1124, wherein one party is a Catholic, is regulated by canon law. One of the canonical provisions governing mixed marriages is canon 1125 in correspondence with canon 1126.

Canon 1125 regulates the conditions prescribed for the granting of permission, namely, the declarations and promises to be made by the Catholic party. However, the manner of making declarations and promises in mixed marriages,³ namely, the marriage between a Catholic or one who has been received into it, and a baptized non-Catholic, as well as the opportune time in informing the non-Catholic party *ad normam* canon 1126, has been left to the particular norms laid down by the Bishops' Conference.⁴ Why does the Church require declarations and promises made in mixed marriages? What procedural acts concerning the making of declarations and promises can be proposed to be legislated by the Bishops' Conference?

Reasons for Making Declaration and Promise

Canon 1125, 1° legislates, “The Catholic party is to declare that he or she is prepared to remove dangers of defecting from the faith, and is to make a sincere promise to do all in his or her power so that all the children be baptized and brought up in the Catholic Church.”⁵ The Catholic party, therefore, has twofold obligations derived from canon 1125, 1°, namely, first, to make a declaration that he or she is

¹ AAS 75/2 (1983) 187.

² See 1983 CIC c. 1059.

³ See 1983 CIC c. 1124.

⁴ See José T. Martín de Agar, “Le Competenze della Conferenza Episcopale: CC 1126 e 1127 § 2,” 12-14, in *I matrimoni misti*. Relazione tenuta nell’Arcisodalizio della Curia Romana. Città del Vaticano (1998): 139-157; accessed on August 22, 2018, in <http://bibliotecanonica.net/docsaj/btcajw.pdf>.

⁵ 1983 CIC c. 1125: AAS 75/2 (1983) 197. It reads, “1° pars catholica declaret se paratam esse pericula a fide deficiendi remove atque sinceram promissionem praestet se omnia pro viribus facturam esse, ut universa proles in Ecclesia catholica baptizetur et educetur.” See English version in Rafael Navarro, “Chapter VI: Mixed Marriages,” in *Code of Canon Law Annotated*, 2th edition, eds. Ernest Caparros, Michel Theriault and Jean Thorn (Montreal and Woodridge: Wilson & Lafleur Limitee and Midwest Theological Forum, 2004), 879.

prepared to remove dangers of defecting from the faith; and second, to make a sincere promise to do all in her or his power all the children be baptized and brought up in the Catholic Church.

The wordings and formulation of canon 1125, 1° came up from a thorough discussion of the consultors during the revision of 1917 Code. The original formulation of this canon was in canon 1061 of the 1971 *Schema Codicis Iuris Canonici* (hereafter: Schema), as follows:

2° the Catholic party is to declare that he or she is prepared to remove the danger of defecting from the faith and then to make sincere promise to do all in his or her power to have all children baptized and educated in the Catholic Church.⁶

One of the consultors suggested additional clause to the second point (2°) of the second paragraph, as follows, “dispensation is to be rejected when there exists the danger of perversion.”⁷ The other consultor proposed that no. 4 of *MP Matrimonia Mixta* was to be integrated into the second point (2°). The secretary of the group of consultors did not agree to prescribe declaration and promise for the validity of dispensation. Having been discussed thoroughly and taking into account the importance of *MP Matrimonia Mixta*, eventually the following formulation concerning declaration and promise of the Catholic party was agreed by the consultors: “To be granted dispensation, the Catholic party is to declare that he or she is prepared to remove the danger of defecting from the faith. Then he or she is gravely obliged to make sincere promise to do in all his or her power to have children baptized and educated in the Catholic Church.”⁸

Then there were two additional words, namely: ‘*atque*’ and ‘*praestet*’ added to canon 1079 of 1980 Schema, “The Catholic party is to declare that he or she is prepared to remove danger of defecting from the faith and to make sincere promise to do all in his or her power to have all children baptized and educated in the Catholic

⁶ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema Codicis Iuris Canonici*, “Coetus Studiorum de Matrimonio: Adunatio V^a,” May 26, 1971: *Comm.* 34 (2002) 98. “2° pars catholica declaret se paratam esse pericula a fide deficiendi remove et insuper promissionem sinceram praestet se omnia pro viribus facturam esse, ut universa proles in ecclesia catholica baptizetur et educetur.” English translation by the author.

⁷ Ibid. “Dispensationem esse denegandam quando adit periculum perversionis.”

⁸ Ibid., 99. “Ad impetrandam dispensationem, pars catholica declaret se paratam esse pericula a fide deficiendi remove. Eadem insuper gravi obligatione tenetur promissionem sinceram praestandi, se omnia pro viribus facturam esse, ut universa proles in Ecclesia catholica baptizetur et educetur.” English translation by the author.

Church.”⁹ This formulation appeared in the 1982 Schema and was then presented to the Holy Father¹⁰ who finally incorporated it into 1983 *CIC*.¹¹

Bearing in mind the aforesaid processes which were enriched by the wordings of article 4 of *MP Matrimonia Mixta*, namely, “*se omnia pro viribus*”¹², the twofold obligations of the Catholic party need, therefore, to be understood in accord with the *mens legislatoris*. The twofold obligations derive from the divine law¹³ and thus the Church “can never remove the obligation of the Catholic party, which, by divine law, namely, by the plan of salvation instituted through Christ, is imposed according to the various situations.”¹⁴ In fact, the obligation *a lege divina* was not explicitly expressed in the wordings of canon 1125 of the 1983 Code.

The emphasis of the 1983 Code concerning the fulfillment of these obligations has been put upon the part of the Catholic party. Regarding the education of children, the canon takes the word “*omnia pro viribus*”¹⁵, translated into English:

⁹ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema Codicis Iuris Canonici*. Libreria Editrice Vaticana: 1980, 245; accessed on August 26, 2018; in <http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schemata-canonumcic/schemaCIC1980.pdf>. “*Pars catholica declaret se paratam esse pericula a fide difficiendi removeere atque sinceram promissionem praestet se omnia pro viribus facturum esse, ut universa proles in Ecclesia catholica baptizetur et educetur.*” English translation by the author.

¹⁰ Cf. Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Codex Iuris Canonici: Schema Novissimum Iuxta Placita Patrum Commissionis Emendatum atque Summo Pontifici Praesentatum*. Typis Poliglottis Vaticanis: 1982, 199-200, accessed on August 26, 2018, <http://www.delegumtextibus.va/content/dam/testilegislativi/documenta/cic/schematacanonumcic/schemanovissimumCIC1982.pdf>.

¹¹ Cf. AAS 75 II (1983) i-324.

¹² Wilfredo C. Paguio, *Marriage: Notes on Sacraments and Sacramentals according to the Code of Canon Law*. Vol. 2 (Manila: St. Paul Publication, 1992), 453. Paguio makes observation upon this matter and mentions, “Clearly the most difficult problem is the understanding and practical application of the Catholic party’s obligation to “do all in his or her power” to see to the Catholic baptism and nurture of the children.”

¹³ Cf. *Comm.* 2 (1970) 11. Pope Paul VI was indeed concerned with the obligations of the Catholic party. It was manifested in the introductory part of *MP Matrimonia Mixta*, “The faithful should therefore be reminded that the Catholic party in a marriage has the duty of preserving his or her own faith. Nor is it ever permitted to expose oneself to a proximate danger of losing it...the Catholic partner in a mixed marriage is obliged, not only to remain steadfast in the faith, but also, as far as possible, to see to it that the children be baptized and brought up in that same faith.”

¹⁴ *Ibid.* “*Numquam posse partis catholicae obligationem auferre, quae lege divina, ipso videlicet ordine salutis per Christum instituto, pro variis casuum adiunctis imponitur.*”

¹⁵ Cf. Bernard Andrew Siegle, *Marriage Today: A Commentary on the Code of Canon Law* (New York: Alba House, 1979), 154. “This canon also stresses the practical application of the Catholic’s obligation to ‘do all in his or her power’ to see to the Catholic baptism and education of the children. Canon law acknowledges the right and duty of the Catholic party to fulfill this obligation, but it also considers the principles of religious liberty and the rights of the non-Catholic party to practice his or her faith freely and to seek the education of the children in that faith.” See also Paguio, *Marriage*, 454. Paguio places the discussion on the interpretation over the phrase in question into two positions, “Many highlighted the concrete circumstances of the situation, i.e., good will of the parties, absence

“to do in his or her power.”¹⁶ Accordingly, to do all in one’s power’ does not mean an absolute promise at the risk of jeopardizing the marriage itself and at once the right of the non-Catholic party is respected, though preference is apparently given to the Catholic party’s right and obligation to have the children brought up and educated in the Catholic Church. For that purpose, therefore, the Catholic party should do what she or he can optimally do with all capability or possible efforts, that is, “*quantum fieri potest*.”¹⁷

Respecting the freedom of conscience and the right of his or her partners, the Catholic parties still hold the duty of transmitting the Catholic faith. While the obligation to safeguard the Catholic faith and to transmit it to the offsprings have been considered of divine law, *motu proprio Matrimonia Mixta* for instance, still acknowledges that “the duty of educating the children is of natural law and obliges both parents and neither may ignore it.”¹⁸ This new attitude has been comprehensively contemplated in the following position:

Accordingly, in order that ecclesiastical discipline on mixed marriages be more perfectly formulated and that, without violating divine law, canonical law should have regard for the differing circumstances of married couples, in accordance with the mind of the Second Vatican Council expressed especially in the Decree *Unitatis Redintegratio* and in the Declaration *Dignitatis Humanae*...¹⁹

The natural law concerning the right of parents to educate their children has ecumenical implication in mixed marriages. According to Pivonka, “this would be a further reason for showing proper respect to the non-Catholic party in a mixed marriage concerning education of the children.”²⁰ As regard the obligation toward children, Bishop Cruz expounds, “The said ‘upbringing of children’ means much

of an unwilling spirit on the part of the non-Catholic. Several also stated that the promise does not involve an absolute obligation to baptize and educate the children in the Catholic faith.”

¹⁶ Paguio, *Marriage*, 454.

¹⁷ Leonard D. Pivonka, “Ecumenical or Mixed Marriages in the New Code of Canon Law,” *The Jurist*, 43 (1983): 111-113. The term “*quantum fieri potest*” is translated into English: “as far as possible” and the term “*pro viribus*” is translated: “to do all power.” See also Adolfo N. Dacanay, SJ, *Canon Law on Marriage: Introductory Notes and Comments* (Manila: Loyola School of Theology, 2000), 174. Dacanay, SJ., speaks of this matter, “The promise concerning baptism of the children in the Catholic Church and their upbringing in the Catholic faith is much more reasonable and realistic now, emphasizing as it does that the Catholic party must do all in his power in this regard. Respect for the non-Catholic spouse and his religion requires that this obligation not be absolutized and that his right as a parent cannot be ignored altogether.”

¹⁸ Paul VI, Apostolic Letter “*Motu Proprio Matrimonia Mixta*,” March 31, 1970: *Comm.* 2 (1970) 9-14; English version accessed on August 27, 2018, in http://w2.vatican.va/content/paul-vi/en/motu_proprio/documents/hf_p-vi_motuproprio_19700331_matrimonia-mixta.html.

¹⁹ Siegle, *Marriage Today*, appendix a-10.

²⁰ Pivonka, “Ecumenical or Mixed Marriages,” 113.

more than feeding, clothing and housing them, whereas it cannot but also include their formal or informal education, particularly in terms of faith and morals that have basic reference to their growth and development with correct and sound value system...”²¹

In this challenging situation, No. 151 of the Directory for the Application of Principles and Norms on Ecumenism states, “If, notwithstanding the Catholic’s best efforts, the children are not baptized and brought up in the Catholic Church, the Catholic parent does not fall subject to the censure of Canon Law. At the same time, his or her obligation to share the Catholic faith with the children does not cease.”²² It should be noted that 1983 *CIC* has legislated this matter, “Parents, and those taking the place of parents, who hand over their children to be baptized or brought up in a non-Catholic religion, are to be punished with a censure or other just penalty.”²³

In the view of canon 1366, the Catholic parents are not allowed to let their children be baptized or be brought up in other religion. Violation of this norm is liable to a censure or just penalty (*censura aliave iusta poena*). This penalty, however, is not applicable to the Catholic parents who live out mixed marriages and have exhausted all efforts and power to have their children be baptized and educated in the Catholic Church. This is an exception from the force of canon 1366 applied to parents who live in mixed marriages. But the obligation remains intact for the Catholic parties to be fulfilled in any other way possible.

The fundamental obligations may be done by permeating the Catholic faith and values through other possibilities. It is regulated:

It continues to make its demands, which could be met, for example, by playing an active part in contributing to the Christian atmosphere of the home; doing all that is possible by word and example to enable the other members of the family to appreciate the specific values of the Catholic tradition; taking whatever steps are necessary to be well informed about his/her own faith so as to be able to explain and discuss it with them; praying with the family for the grace of Christian unity as the Lord will it.²⁴

²¹ Oscar V. Cruz, *Impediments to Canonical Marriage (Canon 1083-1094 CIC)* (Philippines: ALD Publications, 2002), 21.

²² Pontifical Council for Promoting Christian Unity. *Directory for the Application of Principles and Norms on Ecumenism* (Vatican City: March 25, 1993), 74.

²³ C. 1366. It reads, “*Parentes vel parentum locum tenentes, qui liberos in religione acatholica baptizandos vel educandos tradunt, censura aliave iusta poena puniantur.*” English translation in Juan Arias, “Book VI: Sanctions in the Church,” in E. Caparros et al. eds. *Code of Canon Law Annotated*. 2nd edition (Montreal and Woodridge: Wilson & Lafleur Limitee and Midwest Theological Forum, 2004), 1065.

²⁴ Pontifical Council for Promoting Christian Unity, *Directory*, 151.

Through those sincere and gentle efforts, the Catholic parties would permeate the family with the Catholic traditions and the light of the faith in which others would realize that the Catholic Church is “an attractive community.”²⁵ Having fulfilled those obligations in all his or her power *ad normam* canon 1125 and in fact, the children have not become Catholics, the force of law *ad normam* 1366 will not be imposed for the peace of conscience of the Catholic parties.

Manner of Making Declaration and Sincere Promise

The 1983 Code of Canon Law legislates, “It is for the Bishops’ Conference to prescribe the manner in which these declarations and promises, which are always required, are to be made, and to determine how they are to be established in the external forum, and how the non-Catholic party is to be informed of them.”²⁶ The declaration and promise “may be given in written form, or orally before a witness who will testify to what has taken place.”²⁷ Aside from the manner of formulating and performing declaration and promise, the other two related elements are also governed by the norms issued by the Bishops’ Conference. Firstly, the establishment of the declaration and promise are necessarily made in external forum.²⁸ Secondly, it concerns the proper manner to inform the non-Catholic party about the promises of the Catholic. It should be taken into account the circumstances, culture, and sensitivity of the place. Moreover, the opportune time to deliver the information is really important to make the non-Catholic party aware and respectful to those promises made by the Catholic party.

Ad normam canon 1126, the universal law has prescribed the legislative power of the Bishops’ Conference to lay down norms concerning the manner of making declarations and promises. This legislative power is governed by canon 455

²⁵ James A. Coriden, “Introductory Canons (cc. 747-755),” in *The Code Canon Law: A Text and Commentary*, edited by James A. Coriden, Thomas J. Green and Donald E. Heintschel (New York/Mahwah, NJ: Paulist Press, 1985), 913.

²⁶ C. 1126.

²⁷ Gerard Sheehy et al., eds., *The Canon Law: Letter and Spirit. A Practical Guide to The Code of Canon Law* (London: Geoffrey Chapman, 1995), 635; see also Beal, “Title VII: Marriage (cc. 1055-1165),” in *New Commentary on the Code of Canon Law*, eds. John P. Beal, James A. Coriden and Thomas J. Green (Bangalore: Theological Publications in India, 2000), 1348. The norms of canon 1126 as well as canon 1125 have their origin in *MP Matrimonia Mixta*. Because of that, “many episcopal conferences, including that of the United States, simply reiterated the norms they issued in response to *Matrimonia Mixta* after the revised code was promulgated.” See also Dacanay, SJ, *Canon Law on Marriage*, 176. It is noted that in 1976 the Catholic Bishops’ Conference of the Philippines (CBCP) established the formula of declaration and promises with the facts to be made in writing by the Catholic party; see also de Agar, “Le Competenze,” 13.

²⁸ Cf. John P. Beal, “Chapter VI: Mixed Marriages (cc. 1124-1129),” 1348. The praxis in the USA, “the Catholic should normally make declaration and promise in writing, but he or she may make them orally.”

§1 which states, “The Episcopal Conference can make general decrees only in cases where the universal law has so prescribed, or by special mandate of the Apostolic See, either *on its own initiative* or at the request of the Conference itself.”

What are general decrees and what makes them valid norms? Canon 29 governs, “General decrees, by which a competent legislator makes common provisions for a community capable of receiving a law, are true laws and are regulated by the provisions of the canons on laws.” Referring to this canon, it is clear that general decrees are provisions enacted by a competent legislator or by a lawfully authorized person or group of persons either by law or by the supreme legislator and then the norms are given to a community which is capable of receiving a law.

Within its territory, Bishops’ Conference *ad normam* canon 1126 is competent to legislate particular norms concerning the roles of interested party involved in making declarations and promises. There are four interested parties, namely the Catholic party, the non-Catholic party, the parish priest, and the local Ordinary. What are the respective roles of these parties? They can be defined clearly by the particular norms laid down by the Bishops’ Conference.²⁹

Procedural Acts: Step By Step

In accordance with the norms of canon 1125, there are four parties who get involved directly or indirectly in the making of declarations and promises in mixed marriages governed by canon 1126, namely, the local Ordinary, the parish priest, the Catholic party and the non-Catholic party. These four interrelated persons have their respective roles in order to perform a set of procedural acts.

1. The local Ordinary
 - a. The local Ordinary accepts the request in a form proper for the application of permission with the prescribed conditions attached, namely, the declaration and promise made by the Catholic party.
 - b. The local Ordinary discerns and weighs the circumstances (few Catholics in certain locality, regularized otherwise marriage, etc.) and reasons (maturity of the parties, responsibility to sacramental marriage or commitment to one’s Church) of the request proposed by the Catholic party through his or her respective parish priest.

²⁹ Cf. Bishops’ Conference of South Africa, “Mixed Marriages: Particular Norms for South Africa,” 1-4 September, 1970; CLD 7 : 727.

- c. The local Ordinary then grants permission for a lawful celebration of mixed marriage.
2. Parish priest
 - a. The parish priest carries out assessment toward the engaged couples concerning:
 1. Personal data
 2. Period of courtship
 3. Decision to get married
 4. Communication with respective parents
 - b. The parish priest ensures the minimum knowledge of the engaged couples regarding mixed marriages in the Catholic Church
 1. Sacramental marriage, ends, and essential properties of marriage
 2. Prohibition and permission
 3. Obligations of both parties
 - c. The parish priest expounds to the engaged couples the ecumenical significance and challenges in living out mixed marriages.
 - d. The parish priest provides the proper form for the making of declaration and sincere promise by the Catholic party.
 - e. The parish priest is to be present at the moment the Catholic party makes declaration and sincere promise. He also ensures that the oral and written declaration and promise are signed and properly documented.
 - f. The parish priest needs to inform the non-Catholic party concerning the obligations to be fulfilled by the Catholic party.
 - g. The parish priest requires proper documents:
 1. baptismal certificate
 2. certificate of confirmation (if the party concerned has received confirmation)

3. certificate of accomplishing Pre-Cana seminar
 4. birth certificate
 5. statement of free status (*status liber*) from one's pastor
- h. The parish priest formulates a formal application for permission of mixed marriages to the local Ordinary with written declaration and sincere promise made by the Catholic party as well as attached proper documents.
3. Catholic Party
- a. The Catholic party attends the preliminary assessment carried out by the parish priest.
 - b. The Catholic party must secure the following required documents before making declaration and promise:
 1. baptismal certificate not later than six months
 2. birth certificate
 3. confirmation certificate (if it has been received)
 4. certificate of accomplishing Pre-Cana seminar
 5. statement of free status
 - c. The Catholic party is to make declaration to be faithful to the Catholic faith and sincerely promise to have all children baptized and brought up in the Catholic Church.
 - d. Catholic party, having made the declaration and promise, is to place signature over the printed name.
4. Non-Catholic Party
- a. The non-Catholic party comes together with the Catholic party to meet the pastor of the Catholic party and attend the preliminary assessment carried out by the Catholic pastor.
 - b. The non-Catholic party needs to secure the required documents:

1. baptismal certificate issued by his or her ecclesial community not later than six months
 2. birth certificate
 3. certificate of accomplishing Pre-Cana seminar held by certain parish
 4. statement of free status (*status liber*) issued by his or her respective pastor
- c. Having been informed about the obligations of the Catholic party, the non-Catholic party must fulfill the following duties, namely, to be respectful to the obligations of the Catholic party and to support the Catholic party in fulfilling those obligations.

Conclusion

Declarations and sincere promises prescribed by canon 1125 are to be made by the Catholic party in written form in order that there exists proof in the external forum and that the non-Catholic party can be fraternally informed about those obligations of his or her partner. It is for the Bishops' Conference to legislate the proposed procedural acts in making declarations and promises *ad normam* canon 1126.

With these procedural acts, those parties involved directly or indirectly in the making of declaration are properly guided in carrying out one's roles and responsibility. In so doing, the Bishops' Conference exercises its legislative power and at the same time fosters better juridico-pastoral assistance offered by parish priest and the local Ordinary toward those faithfuls who intend to enter into mixed marriages. **PS**

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