DECLARATIONS OF THE PARTIES AND DOCUMENTS AS PROOFS IN A TRIAL ACCORDING TO 1983 CODE (CC. 1526-1546)[1]

1. Introduction

Can. 1607 states that every judicial case "is decided by the judge by a definitive judgement". "To give this judgement, the judge must have in his mind moral certainty about the matters to be decided in the judgement" (c.1608§1) and this moral certainty is derived by him from the acts and from the proofs (c.1608§2), not merely by his subjective convictions. But it is not always possible to ascertain the truth of the facts by direct proof, instead it is mostly deduced from the objective information he obtains through allegations and declarations of the parties, documentary evidences, testimonies of the witnesses, experts' opinions, presumptions, etc. Therefore, it is a great challenge to the ecclesiastical judge, not merely assembling the evidences, but also to sift through the objective information, understand it and weigh its significance in order to reach moral certainty about the truth of the matter, and issue a 'just' judgement.[2]

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1 This paper was presented at the XXXth Annual Conference held at Goa (Ed).

2 Craig A. Cox, "The Contentious Trail (cc. 1501-1670)," in *New Commentary on the Code of canon Law*, John P. Beal, James A. Coriden, Thomas J. Green (eds), Bangalore: Theological Publications in India, 2003, p. 1716; Pope Piux XII, in his Allocution to the Tribunal of the Roman Rota on 1st Nov. 1942, says that this moral certitude proceeds from a multitude of indications and demonstrations which, taken separately, might not e deceive, but taken together can form the basis of genuine certainty – excluding any reasonable doubt from a person of sound mind. Cfr. *AAS* 34 (1942) 338-342; Lincoln Bouscaren, (ed), *The Canon Law Digest* (1942-1953), Vol. III, The Bruce Publishing Company, Milwaukee, 1954, 605-611.

This paper, after analyzing 'proofs in general' (cc.1526-1529;[3] Articles 156-158; 160-161[4]) will deal with the two initial stages of the period of gathering evidences or probatory period, namely, 'declaration of the parties' (cc.1530-1538) and 'documentary proof' (cc.1539-1546).

2. The definition of proof

'Proof'is an objective evidence which gives rise to certainty about the existence of a particular fact or to a conviction about the correctness of a particular proposition. The term can be applied to the individual piece or pieces of evidence which gives rise to this certainty, or to the state of certainty itself. 'To prove' means to establish the truth or validity of an assertion by the presentation of arguments or evidence;[5] it also means, to demonstrate the certainty of a fact or the truth of an assertion.[6] The word 'proof' comes from the Latin word probare, meaning to make a thing credible, to show, prove, or demonstrate; it also means to convince one of a thing.[7] In civil law, a proof is the logically sufficient reason for assenting to the truth of a proposition advanced; it includes everything that may be adduced at a trial, within the legal rules, for the purpose of producing a conviction in the mind of the judge or jury.[8] The 1983 Code itself does not define proof;

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3 In this paper, the canons are quoted from *The Code of Canon Law, New Revised English Translation*, Bangalore: Theological Publications in India, 2013.

4 Pontifical Council for Legislative Texts, *Dignitas connubii*, Instruction to be observed by Diocesan and Inter-Diocesan Tribunals ion handling causes of the nullity of marriage, Bangalore: St. Peter's Pontifical Institute, 2005 = hence forth quoted as *Dignitas connubii*.

5 *The American Dictionary*, 3rd ed., Boston: Houghton Mifflin Company, 1996, s.v. "Probe."

6 León del Amo, "Proofs," in *Code of canon Law Annotated*, E. Caparros, M. Thériault, J. Thorn (eds), Montréal: Wilson & Lafleur Limitée, 1993, p. 949.

7 *A Latin Dictionary*, Charton T. Lewis and Charles Short, eds., Oxford: Clarendon Press, 1938, s.v. "Probo."

8 *Black's Law Dictionary*, 6thed (1990) s.v. "Proof."

but in the canonical tradition, a judicial proof is defined as a demonstration of a dubious or contested fact through legitimate arguments made to a judge.[9] Another classical definition of the proof is that it is a judicial act by which a judge comes to a certain clarity about a doubtful and controversial matter through documents, witnesses, or suitable arguments.[10]

There are several common elements in above descriptions: i) the procedural means of proof, that is, the ways or instruments accepted by law for introducing the proof into the process: for instance, declarations made by the parties, documents, testimonies, inspections, experts' reports, presumptions; ii) the object or the immediate effect of proof, which is to contradict or confirm the doubtful and disputed fact through the specific means; iii) the judge, for whom the proof is intended; iv) the ultimate effect, which consists in the judge having moral certitude about the truth of the disputed facts after evaluating the proofs; v) the agent of proof, who provides the instrument or exercises the probative function: the party who makes declarations, the person who produces a document, the witness who testifies, the expert who gives his or her report, and the judge who undertakes a judicial examination of some place or thing; vi) the motives of proofs, which are the reasons, arguments, or facts provided in the aforementioned means and which are sufficient for the judge to come to a decision.[11]

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9 Francisco X. Wrenz, *Ius Decretalium*, vol.5, Prati: Giachetti, 1914, 450.

10 Francisco Schmalzgrueber, *Ius Ecclesiasticum Universum*, vol.4, Rome: Ex Typographia Rev. Cam. Apostolicae, 1843, 28-29.

11 León del Amo, "Proofs,"950. Refer also: Mario F. Pompedda, "The Probative Value of the Declarations of the Parties in the New Jurisprudence of the Roman Rota," in *Simulation of Marriage Consent*, William H. Woestman, ed., Bangalore: Theological Publications in India, 2000, 146-147.

3. The general principles of proof

Canons 1526-1529 of the 1983 Code and Articles 156-157 and 160-161 of Dignitas connubii state certain principles that govern proofs in general. In the code, these canons are placed immediately after the Title IV: "Proofs" with the aim that these general principles are intended to regulate the presentation, admission, and evaluation of the means of proof that might assist the judge in verifying the truth of the facts alleged in the trial.[12]

3.1. Burden of proof

Can. 1526 §1 The onus of proofrests upon the person who makes an allegation.

From the Roman Law, the canonical procedural law inherited the maxim affirmantiincumbit probation: the onus of proof rests upon the person makes an allegation, or claiming for justice, not on the one who denies.[13] In the marriage nullity process, the petitioner must prove that the marriage is invalid. Since the validity of the bond is presumed (c.1060), the petitioner therefore has the burden of proving the invalidity of the contracted marriage. Accordingly, if the petitioner is unable to prove its alleged invalidity to the judge, the marriage is presumed to be valid.

This norm also applies to the respondent. The respondent does not have to prove anything, if he or she is content denying the claim. But if the respondent does not merely deny the petitioner's claim but invokes certain facts by reason of exception or counterclaim, the respondent must assume the onus of proof regarding his or her own statements. The exception is said to be any defense made by the respondent through the judicial use of facts and arguments to impede, extinguish, or overthrow the action of the petitioner. The respondent consequently becomes the plaintiff in the exception that he or she has raisedreus in exceptione actor

12 *Ibid*, 949.
13 Dig.22.3.2.

ist, and so obliged to prove his or claims. The respondent may also assume the burden of proof in establishing any counterclaims made in response to the initial petition.[14]

Though the norm states that it is up to the one who asserts a fact to produce the necessary proofs, it also applied indirectly to the judge. In the light of c. 1452§1, the code instructs the judge to collect proofs on his or her own initiative not only in defense of the public good but also every time the search for the truth and justice demands after the conclusion of the instruction phase.[15] According to c. 1452§2, the judge has also the right and duty to supply for the negligence of the parties in furnishing proofs or in lodging exceptions whenever the judge considers it necessary to avoid a gravely unjust judgement.[16]

Even the defender of the bond and the promoter of justice are bound by the onus of proof (c. 1434) as they are entitled to make use of different means of proof when they are heard in a trial.

If the disputed facts are not proved, whether by the claim of the petitioner or to the counter claim of the respondent, with pertinent and effective evidence, the judge will conclude that what is supported in the statement is not sufficiently clear (non liquet).[17]

Because of the respondent's exceptions and counter claims, if the judge rejects the petitioner's claim, it does not mean that the respondent's claim is automatically accepted. The onus of proof is on the respondent to prove his or her claim.

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14 Craig A. Cox, "The Contentious Trail (cc. 1501-1670)," 1668.

15 Eugenio Zanetti, "Il giudiziocontenzioso," in *Codice Di Diritto Canonicao Commentato* (Vatican: Libreria Editrice, 2004) 1198.

16 Craig Craig A. Cox, "The Contentious Trail (cc. 1501-1670)," 1668.

17 Jean-Pierre Schouppe, "Proofs,"in *Exegetical Commentary on the Code of Canon Law*, Angel Marzoa, Jorge Miras and Rafael Rodríguez-Ocaña, eds, vol. IV/2, Montreal, Canada: Wilson & Lafleur, 2004, 1194.

A party can never be forced to prove something that goes against his or her claim nemo contra se ederetenetur.

If a document has to be submitted as a proof and if it is a common document to both the parties, the judge can direct both of them to submit it (cc. 1545-1546). If they refuse, he cannot force them or impose sanctions on them. But he can presume from their refusal that the document has unfavorable elements for the party who refuses to present it.[18]

The principle negantis factum per rerum naturamnullaestdirectaprobatio says that sometimes negative facts also can be proved indirectly by means of specific circumstances of time, place, or some other elements.[19]

3.2. Matters not requiring proof

Can. 1526 §2 The followingmatters do not requireproof:

1°matters which are presumed by the law itself;

2°factsalleged by one of the litigants and admitted by the other, unless their proof is nevertheless required either by law or by the judge.

Para 2 of c. 1526 speaks of two matters which do not require proof or what need not be proved: what the law presumes[20] and the statements admitted by both the parties, except in cases in which the judge or law demands the proof.

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18 *Ibid*, 1194-1195.

19 *Ibid*, 1197.

20 A presumption is a probable conjecture about an uncertain matter. This presumption may be a presumption of law, which is based in the law itself or a human presumption, which is a personal conjecture of the judge (c.1584).

What presumed by the law itself: For example, c. 1060 establishes a presumption in favour of the validity of marriage; c. 1061§2 presumes the consummation of a marriage subsequent to the cohabitation of the parties; according to c. 1101§1, the external manifestation of consent leads to the presumption in law of the existence of internal matrimonial consent; c. 1321§3 establishes the presumption of imputability whenever an external violation of ecclesiastical law or precept has occurred. But these presumptions can be overturned by sufficient evidence to the contrary by direct and indirect means of proof, presented by the opposing party.

Facts alleged by one party and admitted by the other party: Those facts that are alleged by one of the litigants and admitted by the other, need not be proved, since there is agreement between them to the same facts, unless the law or the judge requires proof of the alleged facts because the question under discussion concerns the public good (c. 1536§2), which includes marriage nullity cases (1691), and those in which the risk of collusion between the parties should not be excluded (c. 1679).[21]

3.3. Admittance of proofs

According to Dignitas connubii, Art. 157§1: "Proofs of any kind which seem useful for understanding the cause and are licit can be brought forward. Proofs which are illicit, whether in themselves or in the manner in which they are acquired, are neither to be brought forward not admitted (cf. c. 1527§1)."[22]

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21 Jean-Pierre Schouppe, "Proofs", 1196.

22 Can. 1527 §1 Any type of proof which seems useful for the investigation of the case and is lawful, may be admitted.

Though both the 1983 Code and Dignitas connubii refer to any type of proofs[23] probationesceriuslibet generis can be produced in a trial, it is not and cannot be entirely left to the will of the parties but must follow the norms established by the law even as regards the procedural formalities. Thus, proofs of any kind are permitted but under very precise condition, that is, they must be licit and pertinent to the case and admitted by the judge.[24]

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[23] León del Amo distinguishes the following kinds of proofs: " 1) *direct proof*, relating directly to the object to be proved, establishes by itself the doubtful fact, such as documents, testimonies, confession, expert reports, and *indirect proof*, when the object offered to the judge is different from the fact to be proved, but related to it, and establishes a fact only by way of an induction drawn from other known facts, as for instance, *indici*a, presumptions; 2) *historical* and *critical* proofs, depending upon whether their function is representative; 3) *first* proofs, for the offence or for the prosecution, and contrary proofs, for the defence, according to the goal pursued by one or the other party; 4) *personal*, and *real* or material proof, according to the means of furnishing the proof: persons (parties, witnesses, experts), or things (documents, drawings, plans, photographs, recordings); 5) *full*, *complete*, *perfect*, and the proofs, rather inappropriately called *semi-full* (*probationes semi plenae*) instead of *incomplete* and *imperfect*, according to whether or not they are sufficient to instill in the judge moral certainty; 6) proof of the parties or ex officio, depending on the persons who propose it, either the parties or the judge; 7) *simple* or *compound*, *concurrent* and *contradictory* proofs, depending respectively, on whether they are composed of one or several means, whether they are sufficient to convince the judge or tend to produce the opposite effect; 8) *judicial* and *extrajudicial* proofs depending on whether they are gathered within the trial or outside it;" "…*normal* and *preliminary* proofs depending on whether they are alleged in the probatory stage or before the joinder of the issue, *generated* and *causal* proofs whether they are established with the intention of producing evidence for a future trial, or only incidentally (for instance, traces, fingerprints, and clues which proceed from a previous fact)": León del Amo, "Proofs,"951; for other kinds of proofs, refer *Black's Law Dictionary*, Bryan A. Garner, editor-in-chief, St. Paul. Minn: West Group, 2000, s.v. "proof."

[24] Luigi Chiappetta, *Il Codice di DirittoCanonico: commentariogiuridico-pastorale*, vol.3, (Rome: Edizioni Dehonine, 1996)113.

3.4. Relevant, useful and lawful proofs

The admission of proofs in a trial is subject to intrinsic and extrinsic conditions. C. 1527 mentions intrinsic conditions as 'useful' and 'lawful'. From the practical point of view, the proofs must be useful for the instruction of the case and relevant to what must be proven. From the moral point of view, the proofs are lawfully collected: no force was used, fear caused to obtain proofs. For example, according to c. 1546§1, no one is obliged to exhibit documents that cannot be communicated without danger of harm or of violating a secret.[25] The extrinsic conditions are that the proofs should be presented in a lawful form and their timeliness or opportune. But it is the discretionary responsibility of the judge to decide about the lawfulness, usefulness or relevance of any particular proof: for example, a judge can refuse to admit a proof obtained by immoral means; or, he can refuse useless proofs or those brought forward as delaying tactics, such as the multiplication of witnesses (c.1553).[26]

In a trial, if a party requests the judge to reconsider the proposed proof which was already rejected by him by a decree because they were not relevant, useful or unlawfully procured (c. 1527§2),[27] the same judge must decide in a short period of time as possible (expeditissime) and there is no appeal against this decision.[28]

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[25] Jean-Pierre Schouppe, "Proofs,"1200.

[26] Craig A. Cox, "The Contentious Trail (cc. 1501-1670)," 1669

[27] Can. 1527 §2 If a party submits that a proof, which has been rejected by the judge, should be admitted, the judge is to determine the matter with maximumexpedition.

[28] Against this decision of the judge there is no possibility of appeal (c.1629,5°), but the question can be proposed again if and when there is a second instance process. Luigi Chiappetta, *Il Codice di DirittoCanonico: commentariogiuridico-pastorale*, vol.3, 113.

3.5. Alternative methods of obtaining testimony

Discovering the truth is the primary goal of the instruction of a case. But all the parties or witnesses will not cooperate, in the same manner, with the judge or auditor in obtaining evidence and therefore the code speaks of alternative methods of obtaining testimony.[29]

When a party or witness refuses to appear at the tribunal and testify in the usual manner, that is, before the judge, c. 1528 stipulates "that person may lawfully beheard by another, even a lay person, appointed by the judge, or asked to make a declaration either before a public notary or in any other lawful manner". In this situation, the tribunal will follow four steps: first, the judge will find out the reasons for the refusal: whether it is an aversion or contempt for the Church tribunal, or whether the tribunal is too far to travel and the expenses and trouble incur along with that, or whether it is intended to prejudice the case for one or the other party, especially in matrimonial case, etc; second, once the judge knows the real reason for refusal, he will decide the best way to overcome the refusal, especially if the case concerns public good; third, when it is not possible to observe the judicial formalities, the judge shall choose non-judicial formalities, like, a sworn declaration attested by a notary public, two witnesses, a single witness, a priest, or a lay person, or if none of these available, a written declaration made by the person himself or herself. In this, it is the responsibility of the judge to make sure the guarantee of honesty and truthfulness in the person's declarations and of the integrity of the one who receives the declarations; fourth, in assessing the refusal, the judge shall also find out the reasons and motives behind it.

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[29] Craig A. Cox, "The Contentious Trail (cc. 1501-1670)", 1669.

[30] *Coetus de processibus*, Nov 3, 1976: *Communicationes*, 9(1976)188.

The motive behind c. 1528 is to respect the freedom of conscience of one who refuses to appear before a Catholic priest.[30] But, in applying the canon, the judge will use his discretion to consider all the reasons and evaluate the evidence given by the party or witness outside the tribunal in any form.[31]

In case a lay person is designated, his role is limited to hearing the party or witness in accordance with the judge's instructions. "This role is more limited than that of the auditor, who generallyreceives a mandate from the judge to instruct the cause as a whole and can decide what proofs must be gathered and the means of obtaining them (c.1428).[32]

In this situation, whether a written questionnaire can be given to the party or witness? Answering the question, Z. Grocholewski concludes that this method may not be accepted as an ordinary means of questioning the parties and witnesses, and the testimony taken in this way will have a very limited probative force.[33] On the other hand, John Beal argues that the practice can be justified especially in situations "where a party or a witness would, in the judgment of a tribunal, refuses or be reluctant to appear personally."[34]

What about the practice of seeking testimony by telephone? Though Z. Grocholewski strongly criticizes this method, he leaves the door partly open saying that an interrogation by letter or telephone could be justified only by the most exceptional

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31 León del Amo, "Proofs," 952; Jean-Pierre Schouppe, "Proofs,"1203; Luigi Chiappetta, *Il Codice di DirittoCanonico: commentariogiuridico-pastorale*, 113.

32 Jean-Pierre Schouppe, "Proofs," 1203.

33 Z. Grocholewski, "Interrogation by Letter or Telephone" in *Roman replies andCLSA Advisory Opinions 1984-1993*, ed. P. Cogan, Washington D.C.: CLSA, 1995, 464-465.

34 John Beal, "Making Connections: Procedural Law and Substantial Justice," *The Jurist*, 54(1994) 152.

circumstances and the burden is on the judge to ensure that the identity and freedom of the one making the deposition.[35]

3.6. Prohibition against evidence gathering before the Joinder of Issue

According to Dignitas connubii, Art.160: "Without prejudice to art. 120, the tribunal is not to proceed to collecting the proofs before the doubt has been set in accordance with art. 135, except for a grave reason, since the formulation of the doubt is to delimit those things which are to be investigated (cf. can.1529)." The Instruction states that the judge can only collect proofs before the joinder of issue to determine the tribunal's competence and the petitioner's procedural capacity. According to Article 120: "The praeses can and must, if the case requires, institute a preliminary investigation regarding the question of the tribunal's competence and of the petitioner's legitimate standing in the trial. In regard to the merits of the cause he can only institute an investigation in order to admit or reject the libellus, if the libellus should seem to lack any basis whatsoever, he can do this only in order to see whether it could happen that some basis could appear from the process."

The purpose of the joinder of the issue (c.1513) is to focus the investigation on the central question(s) to be decided by the tribunal and normally the investigation is conducted after defining the issue (c.1516) by the judge based on the elements presented by the parties. Therefore, one must wait until the joinder of issue. Based on the issue, the questions are prepared, appropriate witnesses are contacted, and the other sorts of proofs are admitted. Moreover, to respect the right of the respondent, the investigation should not proceed until the respondent gives the responses as per c. 1513§2, to secure the services of advocate and to nominate witnesses.[36]

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35 Z. Grocholewski, "Interrogation by Letter or Telephone,"464.

36 *Tribunal Handbook, Procedures for Formal Matrimonial Cases*, Lawrence G. Price, Daniel A. Smilanic, Victoria Vondenberger, eds., NY: CLSA 2005, 55-57.

In accordance with Dignitas connubii, Z. Grocholewski distinguishes between 1) investigation concerning the competence of the tribunal and the petitioner's legitimate personal standing in court, and 2) proofs concerning the merits of the case. Regarding the first one, he notes that the judge, before deciding whether to accept or reject the libellus, must verify whether or not the tribunal is competent in accordance with c. 1505§1 and whether the petitioner had legitimate personal standing in court (cfr. cc.1476-1480). Thus, the judge must gather adequate proofs concerning these elements before accepting or rejecting the libellus.[37] On the other hand, regarding gathering proofs on the merits of the case before the joinder of the issue, "it is not the judge's responsibility to verify whether the allegations of the petitioner are true or not."[38] However, if there are serious reasons, the judge may collect proofs, without waiting for the joinder of issue.[39] "Such a serious cause could be the danger that later a proof could not be collected (e.g., in the case of the danger of the death of a witness) or could be collected only with great inconvenience (e.g., in the case of someone leaving on a long journey)."[40] Even when there is a danger of important proofs disappearing, the judge may gather evidence before the joinder of issues. It is left to the discretionary power of the judge to weigh the arguments for collecting any proof before the joinder of issue. Though it should never become a usual practice, the search for truth certainly justifies gathering of proofs, provided there is a sufficient grave reason.[41]

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37 Zenon Grocholewski, "Canons 1505 and 1529: The Gathering of proofs Before the Joinder of Issues," in *Roman replies andCLSA Advisory Opinions 1984-1993*, ed. P. Cogan, Washington D.C.: CLSA, 1995, 460; Refer also, Robert Samson, "A Preliminary Investigation for Marriage Annulment" *Studiacanonica*, 11 (1977) 37-66.

38 Zenon Grocholewski, "Canons 1505 and 1529: The Gathering of proofs Before the Joinder of Issues," 460.

39 By way of exception, the proofs can be presented even after the publication of the acts (c.1598§2) and even after the conclusion of the case (c.1600).

40 Zenon Grocholewski, "Canons 1505 and 1529: The Gathering of proofs Before the Joinder of Issues," 460.

41 Jean-Pierre Schouppe, "Proofs,"1204.

4. The declaration of the parties

In the 1917 Code, cc. 1742-1746 had the Title De InterrogantibusPartibus[42] - "The Interrogation of the Parties" and Provida Mater changed it into De Partium Depositione - "The Deposition of the Parties" and the 1983 Code renamed it as De Partium Declarationibus - "The Declaration of the Parties". The 1917 Code, by using the word interrogatio gave more importance to the questions to be asked than to the response of the parties; the Provida Mater used the word depositio which is normally done by the witness, not the party to the case. The declaratio of the 1983 Code is more of a solemn nature, which can be given under oath (c.1532) and has significant value, even ifit cannot be taken for full proof.[43]

All the details of the case cannot be written in the petition by the petitioner. During their declarations, which must be honest and forthright, the parties are given further opportunity to clarify, substantiate their claims or contra claims. Though properly speaking, the declaration of the parties are not in themselves proofs, they are placed under the Title "Proofs" because they can be used to "more effectively to elicit the truth", "to reveal the truth more effectively", which is, after all, the object of the judicial process or inquiry.[44]

4.1. The right of the judge to question the parties

Can. 1530 The judge may always question the parties in order the more effectively to elicit the truth. He must do so if requested by one of the parties, or inorder to prove a fact which the public interest requires to be placed beyond doubt.

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42 Title IX, Book IV, pt I, sec.1

43 Thomas G. Doran, "The Declarations of the Parties,"1205-1206

44 L. Chiappetta, *Il Codice di DirittoCanonicao: commentariogiuridico-pastorale*, II, 636, no.4878; Refer also, Lynda Robitaille, "Evaluating Proofs: Is it Becoming a Lost Art?" in *The Jurist*, 57/2 (1997) 541-559.

The judge, in his responsibility of discovering the truth, has a fundamental right to question the parties at any time (c.1530). This questioning, especially in cases involving the nullity of marriage, are conducted at the very beginning of the instruction of the case, as the formal introduction of the case (cc. 1501-1512) and after the 'joinder of the issue' (cc.1513-1516), when the actual gathering of information starts. However, the judge may repeat it any time during the probatory stage of the trial, if he decides that such a questioning is necessary to obtain further truth of the matter.[45]

The judge is always entitled to question the parties and should do so always, if the parties request it, including the defender of the bond and the promoter of justice (c.1434);[46] and even when they do not, if it is necessary to place beyond doubt the proof of a fact related to the public good (cc.1691, 1696, 1430, 1721).

4.2. The obligation of the party to testify truthfully

Can. 1531 §1 A party who is lawfully questioned is obliged to respond and to tell the whole truth.

A party, lawfully called to an ecclesiastical court to make a declaration, must answer questions put to him or her and tell the whole truth (c. 1368, regarding penalty for perjury). But this obligation calls for other factors to be taken care of: the questioning must be conducted in a legitimate manner, by the one legitimately appointed (c.1528); the questions must be legitimate, not dealing with matters or facts extraneous to the controversy, and correctly

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[45] Craig A. Cox, "The Contentious Trail (cc. 1501-1670)," 1671.

[46] Acc. to c. 1533, even the parties, the promoter of justice and the defender of the bond, propose questions to the judge, but not to the party directly during the interrogation. It is the judge or the one who legitimately takes his place (cc.1528, 1561) who is the interrogator, but the promoter of justice, defender of the bond and the advocate who take part in the case have the right to present to the judge articles for use in the interrogation.

formulated according to the norms of c. 1564.[47] The dignity of the human person and the right to privacy which emanates from that dignity demands that the questions posed to the parties should be appropriate to the case (c.220).[48]

4.3. "If the party refuses to respond"

Can. 1531§2 If aparty hasrefused to reply, it is for thejudge to evaluate what, as far as the proof of the facts is concerned, can be deduced there from.

If a party refuses to reply during the questioning, it is the judge's responsibility to evaluate the significant importance of a refusal to respond and to draw conclusions pertaining to the merits of the case because express a nocent, non express a noncent. Silence cannot be automatically interpreted as a tacit admission but as an indication (indicium probationis) which can mean different things according to the case and circumstances.

4.4. Oath to tell the truth

Can.1532 Unless a grave reason suggests otherwise, in cases in which the public good is at stake the judge is to administer to the parties an oath that they will tell the truth, or at least that what they have said is the truth. In other cases, it is left to the prudent discretion of the judge to determine whether an oath is to be administered.

In cases concerning the public good, the judge is obliged to administer to the parties an oath[49] to tell the truth or confirm the truth of information previously provided by them.

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47 In penal cases, the accused is not obliged to confess the crime and cannot be forced to testify under oath (c.1728§2).

48 *Tribunal Handbook, Procedures for Formal Matrimonial Cases*,72.

49 An oath is the "invocation of the divine name as witness to the truth (c.1199§1).

The testimony given under oath is never a means of proof but merely a guarantee whose value depends exclusively on the religious character of the persons, their sincerity and fidelity to what they know and say to the judge.[50]

The party takes the oath to testify what he or she knows, which can be sometimes different from the facts as they really exist. Therefore, a judge cannot rest satisfied that he is already in possess of the truth and he need not investigate further or not in need of further additional proof, just because a party has sworn to tell the truth.

If the judge decides that a grave reason warrants the omission of oath, he needs to remind the parties of their obligation to tell the truth (c.1562§1).[51] In cases involving private good, it is left to the prudent discretion of the judge. In penal cases, the accused may not be compelled to take an oath (c.1728§2).

4.5. Judicial Confession

During the probative period, the parties besides "declarations" make also "confessions". These confessions have probative force under certain conditions.

4.5.1. What is a judicial confession?

C. 1535 gives a precise definition of a judicial confession: A judicial confession is an assertion of fact against oneself, concerning a matter relevant to the trial, which is made by a party before a judge who is legally competent; this is so whether the assertion is made in writing or orally, whether spontaneously or in response to the judge's questioning.

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[50] Lynda Robitaille, "Evaluating Proofs: Is it Becoming a Lost Art?" 548-549.; Refer also. Francis G. Morrisey, "Elements of Proofs in Simulation Cases," *Canonical Studies*, XVIII (October 2004) 124;Mario F. Pompedda, "The Probative Value of the Declarations of the Parties in the New Jurisprudence of the Roman Rota," 154.

[51] *Tribunal Handbook, Procedures for Formal Matrimonial Cases*, 31.

The main components of this definition are:

- The subject, that is the person making the confession must be one of the parties to the controversy under judgement, whether the petitioner or the respondent, not the procurator or the advocate, a witness or a third party;
- The object of the confession, that is, what is confessed must be specific facts or facts, not mere speculations or statement of opinions, but related to the dispute to be proved by the parties in the trail.
- The confession must be made by the party against himself or herself – which is the main characteristic of a confession and it is indispensable.
- It is as assertion about the fact that the opposing party alleged in his or her favour.
- The confession may be given in writing by means of a document presented to the tribunal; or orally, which should be scrupulously recorded and attested in the judicial acts.
- The confessions may be also made spontaneously or made in response to questioning done by the judge.
- The confession should be made in the presence of a competent judge, his delegate or his auditor (c.1568), not outside a trial, before a different, non-competent judge or before a judge who is not acting in an official capacity.[52]

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[52] Thomas G. Doran, "The Declarations of the Parties,",in *Exegetical Commentary on the Code of Canon Law*, Angel Marzoa, Jorge Miras and Rafael Rodríguez-Ocaña, eds, vol. IV/2, Montreal, Canada: Wilson & Lafleur, 2004, 1214-1215; Refer also, León del Amo, "Proofs,"955; Craig A. Cox, "The Contentious Trail (cc. 1501-1670)," 1672; Michael Manzelli, "The Judicial Confessions of the Parties in Marriage Cases," in *CLSA Advisory Opinions 1994-2004*, Arthur J. Espelage, ed., Washington: CLSA, 2002, pp. 468-470; Mario F. Pompedda, "The Probative Value of the Declarations of the Parties in the New Jurisprudence of the Roman Rota," 148-149.

4.5.2. The effects of a judicial confession

Can.1536 §1 In a private matter and where the public good is not at stake, a judicial confession of one party relieves the other parties of the onus of proof.

§2 Incases which concern the public good, however, a judicial confession, and declarations by the parties which are not confessions, can have a probative value that is to be weighed by the judge in association with the other circumstances of the case, but the force of full proof cannot be attributed to them unless there are other elements which wholly corroborate them.

C. 1536§1states that the judicial confession, in cases of completely private character, not involving the public good in any way, relives the other party of the burden of proving their own case (c.1526§2,2°). But it does not mean that the judicial confession by one party constitutes "full proof' in favour of the other party. Sometimes a confession against oneself may be false. The judge has to verify whether the party confessed so freely and responsibly, seriously, sincerely, plausibly, not having been influenced by error, faulty memory or emotional disturbance, and in a manner truthful, clean and coherent.[53]

Regarding the probative value of the judicial confessions and declarations of the parties concerning public good, it is left to the prudent discretion and evaluation of a judge. In weighing these declarations and confessions, the judge has to consider the "other circumstances of the case" and whether "there are other elements which wholly corroborate with them."[54] For marriage nullity cases, c. 1679 states that the judge, "in addition to other indications and supportive elements," can hear witnesses regarding the credibility of the parties in order to weigh the declarations of the parties.

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[53] Jean-Pierre Schouppe, "Proofs,"1217; Refer also, León del Amo, "Proofs,"956; Luigi Chiappetta, *Il Codice di DirittoCanonico: commentariogiuridico-pastorale*, II, 642ff.

[54] *Tribunal Handbook, Procedures for Formal Matrimonial Cases*,52

4.5.3. Extrajudicial confessions

Can. 1537 It is for the judge, having considered all the circumstances, to evaluate the weight to be given to an extra-judicial confession which is introduced into the trial.

Though c. 1537 does not define "what is extrajudicial confession", it has all the characteristics of judicial confession (c.1535); the only exception is that it was made outside of the context of the trial and later on, the statement was brought to the attention of the court, often by a witness who heard the confession.[55]

The extrajudicial confession can be useful, provided its authenticity and veracity can be established, usually by the corroborating testimony of credible witnesses and also in the context of the evidence as a whole.

Usually more value is attached to the facts than to the words: factasuntverbisvalidiora; and more value given to written than to spoken words: verba volant, scriptamanent.[56] Therefore, "the judge must be extremely careful in conscientious and astute in ascertaining the exact words the party used in making the alleged extrajudicial confession, and when, where, to whom, under what circumstances, for what reason, in what frame of mind, with what degree of seriousness, etc., the alleged extra judicial confession was made."[57]

4.6. Declarations and confessions done under error, force and fear

Can. 1538 A confession, or any other declaration of a party, is devoid of all force if clearly shown to be based on an error off act or to have been extracted by force or grave fear.

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55 Craig A. Cox, "The Contentious Trail (cc. 1501-1670)," 1673.

56 León del Amo, "Proofs,"956.

57 Thomas G. Doran, "The Declarations of the Parties,"1219

The tribunal, especially judge, in establishing truth, during a trial, must be careful to obtain proofs, through the declaration of parties, confessions, etc., which are devoid of any error, or made under force or fear.

C. 1538 states that any of the kinds of statement made by the parties in judgement, whether judicial confessions, extrajudicial confessions, or declarations, will lack probative value if they were proved to have been made through factual error or are extorted by force or grave fear. The factual error can be due to inexact knowledge, ignorance, inattention, misunderstanding, lack of personal knowledge, forgetfulness, deceit, etc.[58]

The confession or a declaration must be also free and deliberate, not given under or extracted by force or grave fear. A person, without freedom or undue threat of violence or fear, usually cannot reveal the truth, or at least not all the truth (Refer also cc.125-126).[59]

4.7. Evaluation of the declarations of the parties by the judge

Most of the time the judges have the idea that the parties are truthful because, before giving their declarations, the parties take an oath to tell the truth. Sometimes, even though they take the oath, due to their bad will or human frailty, they may tell untruth. It is up to the judge to perceive and confirm what one party says with the statement of the other party and the witnesses, as well as in the circumstances of the case, by which he may arrive at different possibilities: “that the allegations of the petitioner are just, well-founded, objective, and will be proven; that the allegations of the petitioner are colored by time and are very subjective; or that the allegations of the petitioner are completely

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58 Thomas G. Doran, “The Declarations of the Parties,”1220.

59 León del Amo, “Proofs,”957.

false."[60] The declarations of the respondent are to be evaluated in the same way.

The first step in evaluating the declarations of the parties is to evaluate their credibility. To know whether a party really speaks the truth can be known by assessing his or her credibility. For this, the judge can ask the other party and witnesses about the truthfulness or untruthfulness of the party; the auditor can give an assessment of the credibility of the party basing on the interview done. Finally, in cases where most of the proof rests on the declarations of one party, character or credibility witnesses are sought regarding this person (c.1679).[61]

Though in themselves the declaration of the party does not have the full probative value (cc. 1536§2 and 1679), the judge can attribute full probative value when the credibility of the party has been established and also when it can be supported by other facts, circumstances or indications in the case. The judge must evaluate the declaration of the party in a critical fashion: "how truthful is the declaration, how worthy of being believed, was the declaration given in a serious and coherent fashion, whether the declaration makes any sense, what is the reason why the case is being based solely on this one person's declaration, etc."[62]

After evaluating the declarations of the parties, if the judge comes to know that they are completely contradictory, then he must demonstrate it in his arguments, showing clearly how the contradiction was resolved and the truth was affirmed. A judge can never be satisfied only with proving that one party's allegations

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60 Lynda Robitaille, "Evaluating Proofs: Is it becoming a lost art?," 548; Refer also: Michael Hilbert, "Le dichiarazionidellepartinelprocesso matrimonial," *Periodica* 84 (1995)737-739.

61 Raymond Burke, "La confessioiudicialis e le dichiarazionigiudizialidelleparti," in *I mezzi di provanelle cause matrimoniali second la giurisprudenzarotale*, StudiGiuridici 38, Vatican City: LibreriaEditriceVaticana, 1995, 19.

62 Lynda Robitaille, "Evaluating Proofs: Is it becoming a lost art?," 550.

as true without explaining how he was convinced of the other party's untruthfulness.[63]

5. Documentary proof

Proof by documents is admitted in all types of trials (c.1539) whether involving the public or private good, whether concerning marriage nullity, property issues, penal matters or any other issue.

In the order of proofs, to demonstrate the certainty of a fact or the truth of an assertion, the 1983 Code places "documentary proof" after the "declarations of the parties" and before the "testimony of the witnesses." Compared to testimony, a document is a more reliable source of proof than human memory, if it is unaltered, because it is clear, exact, genuine, authentic and also stable. On the other hand, it can also lack sincerity, or contain untruth, it can be falsified, be unauthentic, depending on the one who made it.[64]

5.1. Meaning of document

Etymologically the word document means an object or thing that shows or instructs, in order to make some facts known.[65] In a broad sense, documents are "those objects which show something: for instance, monuments, photographs, films or tape-recordings, records and paintings, etc. In a restricted sense, the word document refers to private or public writings suitable for use as proof in a trial. Taken in its both strict and proper sense, "a document is any object which, resulting from a human act and perceptible to the senses, can be used as a representative proof of any fact."[66]

The document is a special means of proof and distinct from other procedural means, because it is real and objective. It is a

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63 *Ibid*, 551.

64 León del Amo, "Proofs,"957.

65 *Ibid*.

66 *Ibid*.

representative proof like the declaration of parties and testimony of witness, but different from both of these; they are personal while the document is a thing or object.

The credibility of a document is judged by its authenticity, that is, they should be true regarding their origin and their author; by their genuineness, that is, that what they express should comply with the objective truth of the act; and by its probative value by which the judge acquires knowledge of the acts they support and which disputed in the trial.[67]

The probative value, authenticity and genuineness of a document can be directly challenged, claiming that they are materially and factually false. A document may be 'materially false' in reference to its external object or body; for example, "forging and falsifying handwriting, signatures or initials; any alteration or addition to a true document to change its meaning; new additions to any entry, record or office book; counterfeiting a document so as to make it appear authentic," etc. A document may be 'factually false' if it affects its intrinsic contents of the document; for instance, "listing of persons who did not actually appear, making declarations or statements other than those who actually made, by persons who did appear, misinterpreting the truth in recounting the facts, issuing certified copy of a presumed document or stating anything in that copy that is different from or contrary to the true document," etc.[68]

5.2. Kinds of documents

Can. 1539 In every type of trial documentary proof is admitted, whether the documents be public or private.

Can. 1540 §1 Public ecclesiastical documents are those which an official person draws up in the exercise of his or her

67 *Ibid*, 957-958.

68 Jose Maria Iglesias Altuna, "Documentary Proof,"in *Exegetical Commentary on the Code of Canon Law*, Angel Marzoa, Jorge Miras and Rafael Rodríguez-Ocaña, eds, vol. IV/2, Montreal, Canada: Wilson & Lafleur, 2004, 1229.

functionin the Church and in which the formalities required by law have been observed.

§2 Public civil documents are those which are legally regarded as such in accordance with the laws of each place.

§3 All other documents are private.

C. 1539 speaks of two kinds of documents: public and private, depending on the persons who formulated them. "Public documents are prepared (written originally or transcribed as authentic copies) by a public official within the scope of his or her competence in accordance with legal requirements, and the rest are private documents, i.e. documents that are produced, written and if necessary signed by private person."[69]

Public ecclesiastical documents are those issued by the public persons in the exercise of an ecclesiastical office, by virtue of which they are authorized by law to prepare documents, observing the proper formalities. Public ecclesiastical documents can be of three kinds: administrative, judicial and notarized documents.[70]

Public civil documents are those which are legally regarded as such by the local civil law (c.1540§2).[71] All the other documents are called as private documents.[72]

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69 *Ibid*, 1224.

70 For example: Administrative documents issued "by the Roman Pontiff and Roman Congregations, bishops and their curias and authentic copies thereof; records of baptism, confirmation, ordination, religious profession, marriage and death that are kept in the registers of the curia, parish or religious houses and authentic copies and testimonies thereof", in Jose Maria Iglesias Altuna, "Documentary Proof," 1225.

71 It is an example of canonization of civil laws (c.22) since canon law accepts the legal definitions of documents provided by the civil authority of the place; for example, birth, marriage and death certificates, the rulings of civil courts, the judicial and administrative documents, those authenticated by a notary public, other government records, etc. Refer, Craig A. Cox, "The Contentious Trail (cc. 1501-1670)," 1674.

72 For example: letters, diaries, financial records, tape recordings, calendar entries, etc. Ibid, 1674.

5.3. Probative value of public documents

Can. 1541 Unless it is otherwise established by contrary and clear arguments, public documents constitute acceptable evidence of those matters which are directly and principally affirmed in them.

All public documents, whether ecclesiastical or civil, carry probative weight; but this probative efficacy is restricted to what is "directly and principally" affirmed in them. The public persons attest only to the evidence perceived de visu et auditu, suissensibus, which took place in his presence, and records the fact, for which cause the document is prepared. It means, the probative efficacy cannot be extended to the entirety of the document, but only to the base event mentioned in it.

If the public document contains all the essentials of the juridic act it proves, and if the formalities have been observed, its probative effectiveness is complete. But its probative value can be attacked only by arguments which totally and conclusively prove the contrary to be true.[73]

5.4. Probative value of private documents

Can. 1542 A private document, whether acknowledged by a party or admitted by a judge, has the same probative force as an extra-judicial confession, against its author or the person who has signed it and against persons whose case rests on that of the author or signatory. Against others it has the same force as have declarations by the parties which are not confessions, in accordance with Can. 1536§2.

A private document has different probative values. First, if a party, to whom it is attributed or against whom it is presented, does not admit its validity and veracity, or if the judge does not admit it as being authentic and genuine, it has no probative value;

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[73] Jose Maria Iglesias Altuna, "Documentary Proof,"1229.

if it is acknowledged by its author or admitted by the judge, it has probative value;[74] second, c. 1542 indicates that a private document, if admitted, may be attributed the same probative force as a party's declaration in accord with c. 1536§2; third, c. 1542 indicates also that a private documents may amount to an extra-judicial confession which would be an assertion of a fact regarding oneself, which must have corroboration with the other circumstances of the casefor full probative value and which has no value if its anonymous.

Sometimes the private documents may contain certain important information which is not available from any other source. In addition, in marriage cases, "these documents may even more useful to a tribunal than a judicial confession because of the act that such private documents were written at a non-suspect time such as during the common life when they were going well."[75] At the same, the judge must cautiously weigh information in private documents, whether theyare authentic, erroneous or ambiguous, etc.[76]

5.5. Defects or alterations in documents

Can. 1543 If documents are shown to have been erased, amended, falsified or otherwise tampered with, it is for the judge to evaluate to what extent, if any, they are to be given credence.

A document may deteriorate due to natural factors, officially corrected or unofficially amended, falsified or tampered with (c.1543). Thus, if the document gives indications of alteration or lack of authenticity, the tribunal must be very cautious to accept them as proofs. The canon does not mean that these kinds of documents should be automatically rejected, but it is for the judge to evaluate the absolute lack of efficacy of adulterated document or to calculate their greater or lesser probative value. First, he

74 *Ibid*, 1232.

75 *The Tribunal Handbook, Procedures for Formal Matrimonial Cases*, 74-75.

76 Craig A. Cox, "The Contentious Trail (cc. 1501-1670)," 1675.

must make sure, whether the erasures, corrections were authenticated, either in the original or in an authentic copy; otherwise, the document will have no probative value. Secondly, the judge must assess whether the essential elements of the content of the document were corrected, erased or tampered with – in which case, the document is not valid, or whether only the secondary matters were altered, leaving intact the essential and main elements for which the document exists, whereby the integrity of the document is maintained.

5.6. Presentation of documents: By whom, when and how?

Can. 1544 Documents do not have probative force at a trialunless they are submitted in original form or inauthentic copy and are lodged in the office of the tribunal, so that they may be inspected by the judge and by the opposing party.

The documents are presented directly by the interested party, together with the petition, or when replying to it, or when opposing preliminary objections or replying to them or in the probatory stage.[77]

Except for oral contentious process, where at least authentic copies of documents on which a plea is based, must be attached to the petition (c.1658§2), c. 1529 states that, unless for a grave reason, the judge is not proceed to collect the proofs before the joinder of issue.[78]

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[77] León del Amo, "Proofs," 960.

[78] But there are some documents which should be presented with the petition or with the response to the petition: documents proving domicile and quasi-domicile for the purposes of competence; documents proving age, baptism, marriage, sacred orders, public vow of perpetual chastity, kinship, dispensation from impediments, defect of legitimate form, special mandate for contracting by proxy, etc; or any other document which the parties base their petition or oppose the claims of the petition, in the ordinary contentious process, oral process (c.1658§2), and in documentary process; and these documents offer principle proofs of the terms if the controversy which are set by the joinder of issue: Jose Maria Iglesias Altuna, "Documentary Proof,"1238.

Though the time for presenting the proofs has passed, an absent party (c.1593§1), and as per c. 1590§3, a third party can also present documents after the publication of the acts, before the conclusion of the case (c.1598§2), after the conclusion of the case (c.1600§2), and it is possible also at the appeal level (c.1639§2).

Though all these possibilities permit the presentation of the documents, even after the end of evidence collection stage, the documents should be submitted as soon as possible so that the judge and the opposing party can review them, acknowledge or challenge them before the conclusion of the case. But the judge should be cautious to find out whether the documents were submitted lately and purposely to delay the process or, "could not be presented earlier, without the fault of the interested party" (c.1600§2).

If there is a document, common to both the parties in a trial,[79] and if it is possessed by only one party, and not submitted on one's own initiative, the judge may direct the submission of the document to be incorporated into the acts (c.1545). For instance, if the party refuses, with no legitimate reasons, to submit a document (c.1546), which is of some importance to the case, it rests on the judge to decide the significance of that refusal.

C. 1544 speaks off the probative force of the documents only when they are presented to the tribunal in the originals or in the authenticated copies. Usually the original public documents are kept in the records or archives. When they are requested by the interested parties, the official-in-charge makes a copy of the original documents and certifies the copies as being true and faithful to the originals (cc.484,3°; 1474 and 1475). Hence an

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[79] For example, Last Will, document regarding succession, a contract between the parties, an agreement regarding conjugal separation, etc.

authentic copy is any copy that faithfully or completely reproduces the original.[80]

Even the private documents, though need to be submitted in the original, it is allowed to submit certified copies, photocopies, xerox copies, by showing the original to an ecclesiastical or civil notary and get certified as "concordant with originals".

In submission of the original or the authentic copies, c. 1544 states that the judge and the opposing party has the right to inspect the documents, whether the photocopies, xerox copies are truly authentic of the originals.

If the language of the document is not known to the judge or the parties, the judge may order that it must be translated into a language the judge and the parties, and he must take precautions to make sure that the translation is exact and faithful to the original.

5.7. Norms for production of documents

Can. 1545 The judge can direct that a document common to each of the parties is to be submitted in the process.

Can. 1546 §1 No one is obliged to exhibit documents, even if they are common, which cannot be communicated without danger of the harm mentioned in Can. 1548§2, n. 2, or without the danger of violating a secret which is to be observed.

§2 If, however, at least an extract from a document can be transcribed and submitted incopy without the disadvantages mentioned, the judge can direct that it be produced in that form.

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[80] How to make sure that a document is an authentic copy? One way is to certify these authentic copies by the ecclesiastical and civil notaries as "concordant with originals".

The code gives rights both to the judge to demand the presentation of a document, and also to all those who partake in giving evidence in a case to present documents as means of proof. But there is a need to balance their rights, especially to protect parties and other persons from damages that might result from the disclosure of confidential documents.

"No one is obliged to present documents,even if they are common, which cannot be communicated without danger of harm" (c. 1548§2,2°). The canon foresees harm which could arise from the presentation of a document: loss of reputation, dangerous harassment, or some other serious injury for either to the possessor of the document or to his or her spouse, close relatives by consanguinity or affinity.

Can. 1546§2 states that if there is a danger of violating a secret which is to be observed, no one is obliged to exhibit documents. The Church recognizes both moral and legal obligation to maintain secrecy. C. 1248§2,1° speaks of "the danger of violating an obligation of confidentiality which the clergy may be bound by virtue of having been entrusted to them in their sacred ministry legitimately excuses them from the obligation to submit documents, as it does civil court judges, physicians, midwives, lawyers, notaries public and others that are obliged to keep secrets as part of their duties,, including any advice given that is related to that secret."[81]

It is the onus of the judge to make sure that the exemption involves a genuine danger. Mere existence of some fear, or insufficient causes should not entitle a person for exemption. Likewise, a fear that disclosure of information in the document will cause embarrassment or to lose the case, does not dispense one from the obligation to present the document.

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[81] Jose Maria Iglesias Altuna, "Documentary Proof,"1242.

If there is a real danger in presenting documents, c. 1546§2 provides for presentation of a transcript of a document in the place of a full document. The judge may decide how this transcript should be presented, removing the names of the parties who could be injured and removing section of the document which contain harmful information, or which are of no relevance to the case.

If a judge knows that a party has a document but refuses to present to the tribunal without giving a lawful excuse, though ordered to present, then it is his duty to evaluate the refusal.

Conclusion

Among the many proofs mentioned by the 1983 Code, the 'declarations of the parties' and the 'documents' play a vital role in forming moral certainty in the judge to elicit truth and render justice in an ecclesiastical trial. Though both of them are, by themselves, are not full proofs, they are placed at the beginning in the order of proofs because of their importance, compared to testimonies of the witnesses, opinions of the experts, presumptions, etc. However, it is a great responsibility of the judge to clearly evaluate these proofs to arrive at the truth.

In the tribunals, where most of the time we handle marriage nullity cases as judges, we often receive all the evidence presented in the acts without evaluating it. Because the petitioner alleges something, it does not mean that it is completely true and does not need any further proof, even if the person is very good or apparently honest. The judge must make sure of the person's credibility and also the objectivity in his or her declarations. In the same way, if the respondent contradicts, it does not necessarily mean that he or she is telling the truth or lying. As judges, we have the right to make use of any proof presented and also, we can reject a proof if necessary, but never without reason. We must

critically evaluate the proofs concerning its objectivity and how they support the claim in the trial. In evaluating a proof, weshould ask these questions: How credible is this proof? Is it corroborated by other evidence in the case? Or, at least by the circumstances of the case? When was this proof first put forward, in a non-suspect time? How is it corroborated by witnesses? etc. No proof can be accepted at their face value. The judges should not end up like automatic machines, which receive any proofs presented and conclude in favour of nullity without critical evaluation.

- Rev Dr T Lourdusamy