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Indications and Proof of Non-Consummation

Paul V. Harrington
Joseph B. Doyle

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education methods of today will recognize that as clinical clerkship—an
integral part of modern medical education.

Here we are in the middle ages of Christendom—with seven centuries
behind us. But even at this point, the record of the Christian—that is, the
Catholic—support and fostering of medical progress was nine centuries old.
I stress "Catholic" because at that time there was only one Christian
Catholic Faith, for it was three centuries before the so-called Reformation

Let us call as our witness another non-Catholic authority—the Encyclopædia
Britannica. I refer specifically to the article on Hospitals, Eleventh
Edition, Vol. XIII, Page 791, which states the following:

"In Christian days no establishments were founded until the time of
Constantine (about the fourth century). . . A law of Justinian referring to
various institutions connected with the Church mentions among them the
nosocomia which correspond to our idea of hospitals. In A.D. 370, Basili
had one built for the lepers of Caesarea. St. Chrysostom founded a hospital
at Constantinople. At Alexandria a religious order of parabolani was chosen
by the prelate of that city to attend the sick there. In A.D. 416, Fabiola,
a rich Roman lady, founded the first hospital at Rome, possessed of a
convalescent home in the country."

Let me digress here for a moment to recall a personal experience. In
1943 I attended a meeting at the Benjamin Franklin Hotel in Philadelphia.
It was a regional meeting of the American College of Physicians, and at it
a report was given on the work that was being done at a convalescent home
which had recently been established on the Hudson for the care of children
with rheumatic fever. Those in attendance were advised to establish similar
institutions in their respective communities. This, mind you, took place in
the year 1943 or exactly 1500 and 27 years after Fabiola had founded her
hospital in Rome with its convalescent home in the country. But let us get
back to the Britannica's record. I again quote from the Encyclopedia:

"One of the four great Fathers of the Latin Church—St. Augustine of
Hippo, in Africa—founded a hospital in this See city in the fifth century.
These nosocomia (or early hospitals) fell almost entirely into the hands of
the Church, which supported them by its revenue when necessary, and
controlled their administration."

To quote further from the Britannica:

"Though hospitals cannot be claimed as a direct result of Christianity,
no doubt it softened the relations between men and gradually tended to
instill humanitarian views and to make them popular with the civilized
people of the world."

More will follow in the next issue.

William P. Chester, M.D.

Indications and Proof of Non-Consummation

Rev. Paul V. Harrington, J.C.I., and Joseph B. Doyle, M.D.

In connection with the ordinary work of the Diocesan Tribunal,
it is very often necessary to enlist the assistance of medical experts
and to receive from them an objective judgment based on observable
anatomical and physiological phenomena. The conclusions of the doctors
will assist the judges in arriving at their decision, which is essentially an
application of the law and legal principles to a specific case. Thus the
opinion of the medical experts must be an interpretation of the observed
phenomena in the light of the legal norms that govern that particular species
of case. Since there is the possibility that the medical and legal definitions
of one and the same idea might differ and since cases must be adjudicated
in terms of legal definitions, not medical definitions, it is thought necessary
and advisable to explain and describe the legal interpretation to doctors who
might be called upon to assist in the work of their Diocesan Tribunals.

The thought that all Catholic doctors might appreciate a description
of the procedure of Diocesan Tribunals in cases of non-consummation
prompted the writers to include an account of the methods of proof that
are demanded and accepted in such instances. This outline is coupled with
a legal definition of non-consummation as set forth in the commentaries on
the law, the jurisprudence of the Supreme Tribunals of the Church and
the responses of the Holy See.

A brief introductory paragraph, which would demonstrate the right and
the power of the Catholic Church to dissolve an unconsummated marriage,
might not be out of place, since many people find it difficult to reconcile
the fact of an ecclesiastical dissolution with the divine mandate of indissolubility.

When a valid sacramental marriage has the perfecting note of consummation
added to it, then there is expressed and verified the inseparable
union of Christ with His Bride, the Church, which St. Paul so beautifully
describes and which is set forth as the model upon which all Christian
marriage is to be founded. Such a union is completely indissoluble and thus
referred to in the Evangelical Law, where the stern words of God are
recorded: "What God has joined together, let no man put asunder." 1 The
Latin and Greek Fathers, writing in the early Christian centuries and
recognizing the indissolubility of marriage, refused to allow a man to
remarry after he had separated from his wife, even if he alleged as a cause the crime of adultery on the part of his spouse. Further evidence of this is found in the uncompromising ruling of the Canon Law which states that "a valid sacramental marriage which has been consummated cannot be dissolved by any human power or for any reason other than death."

If one of the above-described elements, either of sacramentality or proper consummation, is lacking, there is a possibility of a dissolution of that marriage, since one of the perfecting characteristics is missing. A very important fact to remember is that such a marriage is always considered to be valid and, therefore, binding until the actual dissolution has been conceded.

An unconsummated sacramental marriage (for that is to occupy our attention more specifically) continues to be a true sacrament and, for this reason, is intrinsically indissoluble by the divine law but extrinsically, it can be dissolved provided that, in a particular case, there is verified a proportionately just and serious reason which would dictate that the supreme authority of the Church should be invoked.

A consideration of the sweeping and unlimited faculty which was conferred by Christ on St. Peter and on all of his successors—"Whatsoever I bind on earth, will be bound in Heaven and whatsoever is loosed on earth, will be loosed in Heaven"—clearly indicates and demonstrates that the Church does have the power to dissolve a marriage of the faithful which has remained unconsummated and from the words of the Master: "Feed my lambs; feed my sheep," it is concluded that this power is to be used in favor of the faithful, for the good of souls and for the utility of the Church.

This power to dissolve an unconsummated marriage is not in any way contrary to texts of Sacred Scripture or opposed to the acknowledged dictates of authoritative tradition. Further, the Roman Pontiff, who is the guardian of divine law and its infallible interpreter, recognizes the indisposability of marriage but, at the same time, is aware that exceptions can be made in favor of a non-consummated marriage. It would be rash indeed to state that over such a long period of time and in so many instances, the Pontiffs would have erred in a matter of such great importance, for from the time of Pope Martin V (15th century) it has been the constant and certain practice of the Holy See, upon proof of compelling reasons, to dissolve unconsummated marriages. In addition, the Code of Canon Law states definitely: "An unconsummated marriage between two baptized persons or between one person who is baptized and one person who is not baptized, is dissolved by a dispensation granted by the Holy See for a just cause."

Thus, from the above, it can be concluded on sufficient evidence that the Church of Christ has been endowed by its Founder with the power to dissolve such a marriage.

Since, in cases of this type, the Holy Father does not act in virtue of a personal power of ordinary jurisdiction but rather by the authority and in the name of Christ by a vicarious power, it is essential and absolutely necessary for the validity of the dispensation that there be present a just and proportionately grave reason, which would justify papal intervention; otherwise the dispensation would be invalid and a second marriage, contracted in virtue of it, would likewise be invalid.

In the last analysis, what constitutes such a reason is left to the prudent judgment of the Holy Father but one fact is beyond all dispute, that some urgency, whether public or private, must be verified. The following is a list of reasons which, singly or in combination have been accepted in the past and thus will serve as precedent to give some idea to the reader of the quality demanded:

1) Complete and actual separation without any hope of a future reconciliation.
2) Probable fear of grave scandal in the future and of discord and disagreements among blood relatives.
3) Probable suspicion of impotency on the part of one of the spouses coupled with a danger of incontinence on the part of the other spouse.
4) Civil divorce already obtained by one party with a danger of incontinence on the part of the innocent person.
5) Suspension of validity of the marriage because of defect of consent or the presence of some diriment impediment.
6) Attempted second marriage without any possibility of validating it.
7) Danger of perversity of either or both of the spouses.

This list is not necessarily exhaustive and therefore other reasons, similar to the above, which denote urgency, might be offered for consideration.

Since the verification with moral certainty of a just and proportionately serious reason is only part of the process, the second factor of actual non-consummation must now be investigated. This naturally brings us to a discussion of what constitutes proper consummation of a marriage from the point of view of Canon Law and the purpose will be to establish a minimum standard so as to determine the least necessary for verification of consummation.

The Code of Canon Law states that a marriage is to be judged as consummated: "if between the spouses, there has occurred the conjugal act to which the marriage contract is, by its nature, ordained and by which the spouses become one flesh." As can be readily seen, this norm is much too
general and requires specification and determination before it can be of a practical value in determining this matter more accurately.

By reflection, we can say that the consummation in which we are interested must be an external fact, capable, by its nature, of being proven juridically and its mode must be established by nature, ordinary to the essential purpose of marriage and ordinary. To realize all of these essential elements, it is required and suffices that the vagina of the woman be penetrated by the male organ and that there be an effusion of male semen therein.

The further question arises as to how much penetration and semination is required before a marriage can be described as consummated. Must there be perfect penetration of and complete semination within the vagina or would a partial accomplishment of both suffice? This vexing question is answered by a study of cases that have already been officially decided as of replies that have been given by Congregations of the Holy See. The jurisprudence of the Sacred Roman Rota has always held that marriage is consummated by a true sexual union in which the husband, with an erect male organ, penetrates, at least imperfectly, the vagina of his wife, and therein deposits semen. In one particular decision, the judges of the Rota declared that "in order to have perfect copula, it is not necessary to have complete penetration by the male organ i.e. that the entire male organ enter the vagina of the woman, but only that penetration is required by which, after the erection of the male organ has ceased, there is exclusion of semen ad x vaginam (near the intritus)." It is sufficient to have partial penetration so that some part of the male organ enters through and beyond the hymenial membrane and into the vaginal canal and to have at least a partial semination within the canal.4 In other words, intra-vaginal deposition of semen is essential although penile penetration need not be complete. A decision of the Holy Office, of March 1, 1941, consistent with the Rota jurisprudence, stated that for perfect copula and consummation of the marriage, it is required and suffices that 'a man, in some fashion, even though imperfectly, penetrates the vagina and immediately effects in a natural manner a semination, at least partial,' within the vagina, with this reservation that the entire male organ need not enter the vagina.5

It is clear from the above that the minimum, which is required and suffices for true consummation, on the one hand, and complete penetration of the entire male organ, on the other. There must be verified a true entrance through the hymenial membrane and into the vaginal canal, so that part of the male organ can be truly said to be enveloped by the vagina. Intercourse of the glans penis against the hymenal orifice with the result that only the tip of the glans enters beyond the hymenial membrane, and this without in any way stretching or tearing it or loosening the hymenal ring, is not sufficient. For, in this instance, it could not be said that any penetration had occurred. Rather must there be realized the apposition of an erect male organ against the hymenal orifice with a definite pressure which will cause the membrane to be pushed aside and to be stretched, at least momentarily, so that part of the male organ can actually enter the vagina. This minimum penetration, coupled with a consummatory semination, will constitute proper consummation.

It can be readily seen that the above determination has no necessary correlation with either actual conception or the possibility of conception, since the consummation of a marriage must be within the capability of all persons who are allowed to marry and persons who might be naturally sterile or who have become sterile by surgery or by advanced age are not prevented from contracting marriage. On the other hand, actual conception is not always a certain and indubitable sign that a marriage has been properly consummated, since it is possible for such to occur by the deposit of semen ad x vaginam, without benefit of any penetration and with the subsequent migration of the sperm into the vaginal canal, through the cervix and body of the uterus and into the fallopian tubes. To substantiate this conclusion, reference is made to two decisions of the Rota, wherein a definite judgment was made that marriages had not been properly consummated even though the fact of conception was beyond all controversy6 and in a particular case, even though a woman had given birth to two children, for in this instance, it was verified that the subject was suffering from such severe vaginismus that penetration was impossible.8

It is safe to say that where the practices of "coitus interruptus" or condomnic intercourse are exclusively verified or where semen is extracted directly from the epididymis and then injected into the vagina or uterus, without any type of marital relationship being accomplished, such marriages are to be considered theoretically as unconsummated, since the essential constituents of consummation—partial semination, in the former instance, and partial penetration, in the latter instance, are lacking. True and proper consummation has been realized in the instance where the spouses have participated in a relationship which is normal and natural, sufficient penetration and semination but where a doctor, or some other competent person, collects the semen, with the aid of an instrument, and injects it into the deeper recesses of the vagina or into the cavity of the uterus.

Having considered the legal definition of consummation and its constitu-
ent elements, it remains now to investigate the more difficult problem of the proof of alleged non-consummation.

In this regard and at the very outset, the Code of Canon Law establishes the principle that once the marriage ceremony has taken place and the spouses have cohabitated, then it is presumed in law that proper and true consummation has taken place. This is a simple presumption which will yield to proof to the contrary but the entire burden of proof falls upon the one who alleges non-consummation.

Since Canon Law, on the one hand, normally presumes that the marriage has been consummated, and since, on the other hand, the divine law states that a consummated, sacramental marriage can in no wise be dissolved, greater or less probability or mere conjecture of non-consummation is insufficient. There is required and demanded full proof so that moral certainty of the non-consummation might be had before the dissolution will be granted. This seems to be evident and clear when one considers that, in a matter of such importance, the Holy Father could not risk the dissolution of a possibly consummated union.

To safeguard the essential indissolubility of Christian marriage, special rules of procedure have been drafted by the several Roman Congregations which have jurisdiction in these matters. In all, there have been four separate and distinct instructions relevant to alleged non-consummated marriages. The remainder of this presentation will be a summary review of these four instructions.

The first point to consider is that the ordinary diocesan Tribunal does not have jurisdiction to draw up and decide alleged cases of non-consummation, since the Holy Father himself must intervene personally and make the judgment. However, he can delegate the diocesan Tribunal to act as his agent in instructing the case, in receiving the sworn statements of the parties involved and their witnesses and, in general, in supervising all accepted methods of presenting evidence.

Before this delegation of agency is granted, however, a petition, addressed to the Holy Father, must be signed by either or both spouses and transmitted to the proper Congregation. This petition should contain an accurate and complete description of all of the facts and list the reasons which would justify the granting of the dissolution. This libellus should be forwarded to Rome through the local Bishop, who is to give or refuse his recommendation but doing neither until he tries to reconcile the husband and wife, if this is possible.

A word of caution is contained in the instructions to the effect that if there is an indication that either or both parties had recourse to sexual acts of perversion during the continuance of the marriage, the petitioner should be advised of the futility of prosecuting the matter further. This is true because there is always the possibility that the marriage had been consummated during the course of these abnormal acts, especially if the perversion took the form of condomistic intercourse. In addition, such parties would not be considered worthy of this favor, since, in committing these actions, they consciously violated the sanctity of marriage and, at the same time, made it impossible to attain the primary purpose of marriage. The past unworthiness of the parties could be supplied for by evidence that the petitioner did not participate in these acts or encourage them but merely tolerated them and, in addition, is truly repentant of the previous scandalous conduct and seriously promises that, in a future marriage, he will not be a party to such sinful actions. Yet, even if the present worthiness of the person is verified, there always remains the possibility that the marriage had been consummated and this would indicate the inadvisability of pressing the matter further.

When the necessary faculties of delegation have been granted, the Bishop will constitute a Tribunal to hear the case consisting of a judge, who will preside, a defender of the marriage bond, who will argue in favor of proper consummation in keeping with the legal presumption and a notary, who will record the testimony, assemble the evidence and authenticate the records.

After the Tribunal has been duly constituted, both parties to the original marriage—the petitioner and the respondent—will be cited to appear individually before the court to give their formal testimony under oath. If one or the other party lives outside of the confines of the diocese, where the case is being instructed, he will be cited to appear before the Tribunal of the diocese where he is residing. This is true also in regard to the witnesses who are to be summoned at a later date.

On presenting themselves, the presiding judge must be careful to verify the identity of the parties involved. This is done principally by checking a photograph, driver’s license, social security card, commercial charge accounts, military papers, character testimonial letters etc. and in general in any way in which it can be established definitely that the person before the court is actually the person he represents himself to be. This precautionary measure is taken to guarantee, insofar as it is humanly possible, that there is no fraudulent substitution of persons. Obviously, the need for identification will be more urgent on the occasion of the vaginal inspection by the medical experts, since there is more reason to fear such substitution at that time. If, in the process of instructing a case, it becomes evident that both parties have conspired to a substitution of persons, either for purposes of testifying before the Tribunal or of submitting to a physical examination, the judge
is to decree that the matter be terminated and no further evidence is to be received. This is done partly as a penalty for the perpetration of such a serious crime and partly because the testimonies of the parties and their witnesses would forever be suspect.

By direction of the Holy See, the spouses are to be interrogated regarding the following points: the period of courtship and engagement, the reason which prompted the marriage, the freedom with which they entered the marriage, the consent given, time and place of the marriage ceremony, incidents or circumstances which accompanied it, time at which common life was inaugurated and the duration of it, time and causes of separation, attempts at sexual relations and their success, attitude of the wife toward marriage relations, presence or absence of fear or pain on her part, evidence of bleeding, acts of perversity or contraception, determination of both parties as to consummation, time when the spouses learned of the possibility of a papal dissolution and the source of their knowledge, reasons for seeking the dissolution, possibility of scandal if the favor should be granted and they should remarry.

In questioning the petitioner and the respondent about the fact of possible consummation, it is most important that each be informed as to how little is actually required before the marriage is to be declared as properly consummated. Otherwise, if penetration and seminam, sufficient to satisfy the legal definition, has occurred even on one occasion, the parties, through ignorance, would swear that the marriage had never been consummated, since their concept of consummation might be the perfect penetration of the vagina by the complete male organ.

It is interesting to note that when the woman to the marriage is given her testimony before the Tribunal, she is to be interrogated directly by physician in accordance with questions which have been previously prepared according to the norms of law. This insures a frank, honest and complete discussion of intimate facts which normally a modest Christian woman would be reluctant to discuss with a priest.

Since the testimony of the principals, in any type of litigation, is never accepted as proof but only as an indication of the facts involved, their statements must be corroborated and confirmed by the testimony of thoroughly reliable witnesses. These will fall into two distinct categories: witnesses de scientia and witnesses septimae manus.

Witnesses de scientia are those who have some knowledge of the marriage involved, its background, circumstances and problems. These are usually members of the family of both parties, relatives or close friends, who have been apprised of the situation by one or both of the parties concerned. They are to be questioned in regard to their knowledge of the background of the marriage, the reason for the alleged non-consummation, the time when they heard that the marriage had not been consummated—a time when the married life was peaceful and happy or a time when trouble had started, the final separation had already taken place, a civil divorce had already been obtained or after the parties had learned, for the first time, that a marriage could be dissolved on the basis of non-consummation. It is important to determine this time element as precisely as possible because the information, given to the witnesses by the petitioner or respondent, could conceivably be dictated by the circumstances existing at the time and the personal interest of the parties.

The presiding judge should be careful to obtain from the witnesses the exact words which were spoken, if possible, but at the very least the precise idea which was conveyed. Very often, the principals told them that the marital relations were not at all satisfactory or that a proper adjustment had not been made and from these general statements, they arrive at a personal conclusion that the marriage had not been consummated and then testify under oath to the actual non-consummation of the marriage when, in fact, the relations which were had, although not entirely satisfactory, were sufficient to constitute consummation. If the witnesses had been informed that the marriage had not been consummated, then, if possible, an effort should be made to determine exactly what was the spouse's understanding of consummation at the time when the statement was made, for it is entirely possible, as was mentioned above, for the principal to state erroneously, through ignorance, that the marriage had not been consummated when, in fact, it had. Thus, the error would be perpetuated throughout the testimonies of all of the witnesses.

Since decent people do not normally discuss with friends and associates such intimate, personal details of their marriage as consummation, it is understandable that in many cases, brought before the Tribunal, there will be a paucity of witnesses de scientia and this gap must somehow or another be filled. This is done in most instances by summoning witnesses septimae manus, who do not testify to facts but to the character of the persons involved. This mode is a carry over from Germanic Law which was willing to accept proof of one's credibility in place of factual proof, where the latter was lacking.

Each side is advised to produce seven character witnesses—hence the name septimae; however, fewer will be accepted, if it is impossible to have the full number. These will be interrogated about the uprightness and honesty of the petitioner or respondent, his veracity, his reputation in the community, his observance of the ecclesiastical precepts, the fulfillment of his religious duties and most especially as to whether or not his sworn testimony of non-consummation can be readily believed without hesitation or reservation.
In addition to the verbal testimony of witnesses, private documents of an extra-judicial nature can also be submitted as evidence, if such are genuine and authentic. Examples of these would be letters, transcript of the proceedings before the civil court in cases where legal action had already taken place and where the question of consummation had been reviewed and medical records of previous physical examinations or hospitalization.

The last and final mode of proof is the physical examination, which is always required unless it is clearly evident that this would be useless either because the woman had been previously married and had consummated that marriage or because she had been violated in the past or has, since the marriage in question, had intercourse. In the event that the presiding judge should decree that an examination of the woman is to be made and she refuses to submit to it, this refusal must be evaluated in the light of existing circumstances.

By formal decree, the judge will designate the two experts, who are to conduct the examination, the matron or nurse who is to be present throughout the proceedings, and the place, the date and the time of examination.

To qualify as a medical expert and thus to be placed on the staff of experts associated with the Tribunal, a doctor must submit a statement of his fitness from a competent and recognized authority and must be considered, by reason of his experience, to be outstanding in his specialty and he must be known for his honesty, integrity and uprightness. However, even though an individual doctor fulfills the above requirements for appointment to the associate staff of experts, he cannot be appointed as an examiner in a particular case where he might be related to one of the parties by blood or marriage or where he might have a personal interest or concern in the eventual outcome of the case or where he has examined the person privately regarding the fact of non-consummation, but in this latter case, he can be summoned as a witness and his written report can be filed among the other documents.

The physical examination is to be made by each doctor individually and separately but always in the presence of a matron or nurse of upright character and it is to be conducted with due regard for all of the rules of Christian modesty and only after the patient has taken a bath in tepid water for a period of no less than one-half hour immediately preceding the examination. This was originally invoked not so much as a hygienic measure but to cause the dissolution of any foreign substance which might have been inserted within the vagina, for the purpose of simulating integrity and giving evidence of virginity. The doctors and nurse are also obliged to take an oath that they will fulfill the duties committed to them as conscientiously as it is humanly possible and observe complete secrecy.

The corporal inspection, as it is sometimes called, should be concerned exclusively with the female genitalia; there is no need to record the temperature, blood pressure, pulse, previous medical history etc. unless this last is necessary to explain some present physiological phenomena. Attention should be centered on the labia majora and minora, the hymenial membrane and the hymenal ring. Special note should be made of any swelling or scars on the labia majora and minora, the presence or absence of an anatomically intact hymen, any evidence of hymeneal tears, fissures or carunculae myriiformes, the relative snugness of the hymenial ring and finally, indications of vaginismus, i.e., reaction of the woman to the examination—whether it was the normal reaction a doctor would expect, i.e. a very slight, fleeting contraction of the sphincter ani, or whether it was abnormal and unusual—viz. a true spasm. In addition, any other abnormal or unusual anatomical or physiological findings should be recorded.

The examination should take place under the best possible medical conditions, in good light and with the use of a regulation examining table. Anaesthesia should not be administered, since it would destroy any evidence of vaginismus, if such exists, and would make it impossible for the doctor to determine the reaction of the patient to the entire procedure.

If the hymenial membrane is noticeably absent, the doctor should try, fact—was it lost by a hysterectomy or a hysterectomy. If the latter, then the name of the doctor, who performed the surgery, should be recorded, along with the name of the hospital and the approximate date of the operation. This is necessary and useful, so that these records might be obtained to verify these facts.

If old hymeneal scars, tears, fissures or carunculae myriiformes are witnessed, then some explanation should be sought by the doctor. Can their presence be satisfactorily explained by trauma, resulting from falls on sharp objects, by the forceful stretching and tearing of the membrane by reason of violent athletic exercising, such as riding horseback, in which the patient was accustomed to participate, by the habitual use of menstrual tampons, or by reason of a past history of autoeroticism, where either a digital manipulation or the insertion of objects into the vaginal canal was resorted to?

The elasticity and size of the hymenial ring should be carefully computed. In the past, many doctors measured this factor in terms of the number of fingers which could be inserted easily into the orifice. Unless one could observe the size of the fingers or have their dimensions, a report, stating that one or two fingers could be easily inserted, would mean little to the one who was reviewing it. It is suggested that a more accurate and objective measurement could be easily obtained by inserting a standard gauge
Hanks uterine sound through the hymeneal orifice until the largest size, that penetrates easily, is determined.

If there is any indication of vaginismus, its extent must be carefully noted, especially if its severity would have made it impossible for an penetration to have occurred.

With all this factual information before him, the doctor is expected to make a conscientious judgment as to whether the marriage in question has or has not been consummated. This opinion is to be reached only after careful consideration of the minimum penetration and semination required by the norm described above.

As is evident, it is always much easier to establish a positive fact—the something did occur—than to try to prove a negative fact—that something did not occur.

A very specific norm was set forth by the S.C. de Discip. Sacram. on December 18, 1950 in a private reply to the Tribunal of the Archdiocese of Boston, which should be of great value in aiding the doctor in arriving at his decision: "If due consideration is given to the measurement and form of the hymenal ring and the nature of the hymeneal membrane with its characteristic extensibility, can there be excluded, in this particular case, even the slightest penetration on one occasion of the male organ into the vagina with an accompanying partial semination?"

Usually, by conducting a vaginal examination, doctors can differentiate between a virgin and a woman who has had some sexual experience. For, in the cases, where even the minimum penetration, described above, has taken place, there will be some evidence remaining for the examiner to detect: e.g. carunculae myrtiformes, tears, tears and fissures of the hymeneal membrane, definite relaxation or stretching of the hymeneal ring etc. If the doctor finds these present and they cannot be accounted for or explained in any of the ways mentioned above, then he must conclude that the marriage in question had been properly consummated. If, on the other hand, the examining physician finds a hymen which is completely intact and absolutely integral and a hymenal ring which is snug and tight and shows no evidence of ever having been stretched, then he will be justified in judging that the marriage had never been properly consummated and in so reporting to the Tribunal. It is true that in some rare and exceptional instances, sufficient penetration could have taken place without in any way rupturing the hymeneal membrane or without stretching the hymeneal ring to the point where there is definite evidence of a real relaxation. This possibility merely points up the fact that the doctor's report is not entirely conclusive and by itself would not be sufficient to establish the fact of non-consummation with the moral certitude demanded and required by the various Roman Congregations.

There would seem to be definite evidence of non-consummation in the cases, admitted rare indeed, where the hymeneal orifice was so small or where a condition of vaginismus was so severe or where there was such disproportion between the size of the male organ and the female introitus that the minimum penetration could not possibly have occurred.

In this analysis, it is clear that all of the emphasis has been placed on the question of penetration without any consideration of the factor of semination. It is true, as was stated above, that a marriage remains unconsommated, if the minimum of semination has not occurred, even if minimum or maximum penetration has been definitely established. But this is theoretical and has little, if any, practical value since it is nigh impossible to prove that sufficient semination has not taken place, especially if we recall that once penetration has been established, minimum semination is presumed. The only seeming exception to this rigid conclusion would appear to be instances where, in the man, both testes are entirely absent, or completely undeveloped or absolutely atrophied and thus cannot manufacture male sperm or where a double vasectomy had been performed prior to the marriage and had persisted throughout the entire duration of the marriage, so that the sperm, which had been manufactured, could not be transmitted. Verification of these facts could not only be had by having the husband submit to a corporal inspection and in cases, where surgery had intervened, to receive copies of hospital records and medical reports.

When the examination has been completed, each doctor should make a written report including the date and place of examination, the method of examination used (digital or by instrument), all of the anatomical and physiological facts observed, and the judgment as to consummation or non-consummation; the judgment alone is not sufficient. The report should, then, be filed with the Tribunal officials as soon as possible, and, at a later date, each doctor will be invited to testify under oath in accordance with questions prepared by the Defender of the Bond. These questions will be based on the written report that each doctor had submitted. The matron or nurse will be asked to report on whether or not the rules of modesty were followed throughout the entirety of the examination.

In the event that the doctors, designated for the examination, should disagree as to the anatomical and physiological facts which they observed or as to their final conclusion, the presiding judge can decree that the doctors review each other's report in an effort to explain the apparent contradiction. If the case warrants it, he can even permit these same two
parties. This last is most important. o

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If there are manifest contradictions in the testimonies of the parties,

This is most difficult to realize except in cases where the persons
did not live together after the marriage ceremony or where there is clear proof and indication that no attacks at

The animadversions of the Defender of the Bond will be directed

towards proving the consummation of the marriage in keeping with the legal

not something which can be demanded as a right protected by the virtue

of justice.

When all the above has been completed, the case is typed in several

copies, translated into either French, Italian or Latin and transmitted to

the proper Congregation in Rome. There, it is studied by a board of

reviewers, who order the entire case to be printed, if they deem that it

merits further consideration. Having been printed, the case is filed in its

proper place and is not considered until all of the cases, which preceded it,
have been settled. At the proper time, the case is formally studied and a
recommendation is made to the Holy Father. In a private audience with
the Cardinal members of the respective Congregations, the Roman Pontiff
will personally give his decision. If it is in favor of a dissolution, this is

granted and has effect from the very moment when it is officially announced

by the Pope.

The papal judgment, be it favorable or unfavorable, is then forwarded,
in the form of a rescript, to the local Bishop who originally presented the
case and he is directed to promulgate the decision to the respective parties.

If the previous marriage has been dissolved, this fact is to be noted on their
baptismal records, if both are Catholics, and on the marriage record. The

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The welfare of souls and the good of the Church constitute the operating spirit of the Diocesan Tribunal—not the ability of persons to pay.

Conclusions:

1) The minimum, which is required and suffices for true consummation is to be found between the two extremes of mere vulvar penetration, on the one hand, and complete penetration of the entire male organ, on the other. There must be verified a true entrance through the hymenal membrane and into the vaginal canal, so that part of the male organ can be truly said to be enveloped by the vagina.

2) Actual coitus is not always a certain and indubitable sign that a marriage has been properly consummated.

3) Once the marriage ceremony has taken place and the spouses have cohabited, then it is presumed in law that proper and true consummation has taken place. This is a simple presumption which will yield to proof to the contrary but the entire burden of proof falls upon the one who alleges non-consummation.

4) Usually, by conducting a vaginal examination, doctors can differentiate between a virgin and a woman who has had some sexual experience. In most cases, when even the minimum penetration has taken place, there will be some evidence remaining for the examiner to detect, e.g. carunculae myxiformes, pores and fissures of the hymenal membrane, definite relaxation or stretching of the hymenal ring, etc. If the doctor finds these present and they cannot be accounted for or explained, then he must conclude that the marriage in question had been properly consummated.

If, on the other hand, the examining physician finds a hymen which is completely intact and absolutely integral and a hymenal ring which is snug and tight and shows no evidence of ever having been stretched, then he will be justified in judging that the marriage had never been properly consummated. It is true that in some rare and exceptional instances, sufficient penetration could have taken place without in any way impairing the hymenal membrane, or without stretching the hymenal ring to the point where there is definite evidence of a real relaxation.

(1) Matt. 19, 1-6; Mark 10, 1-12; Luke 16, 18; 1 Cor. 7, 10-11; 1 Cor. 5, 5; Rom. 1, 24.

(2) D.C. 1124.

(3) Canon 1129.

(4) Canon 1125.

(5) Decretals S. Benedicti Rota—July 20, 1890—November 10, 1891.


(9) C.C.C. No. 2, M. D., De Hucy, Supreme.—May 15, 1928 and March 27, 1939.


Instruction of S.C. Decretal Officis—June 12, 1942.

**Insurancitis**

by Albert S. Murphey, M. D.

Guild of St. Luke of Boston

**THIS HIGHLY CONTAGIOUS** and spiritually malignant disease has assumed almost epidemic proportions among the general public. It is the loss of the natural immunity of Catholics that has allowed them also to fall prey to this fashionable disease.

To some, keeping the Sixth and Ninth Commandments constitute the major part of good Catholic living. These same people righteously proclaim their innocence of breaking the Seventh Commandment in that they do not embezzle from the bank nor cheat on their income tax. How often they fail to appreciate, however, that the falsification of insurance forms, the exaggeration of injuries, and the immoral use of veteran and other government installations is just as reprehensible. Every year millions of dollars are improperly obtained from such sources by various forms of cheating, lying, and subterfuge.

The suffering clause that "everyone is doing it" does not minimize the deception. With this attitude of receiving something for nothing now infiltrating our whole moral structure, the medical profession has not escaped.

One of the older forms of insurancitis encountered is that precipitated by a collision of cars. The sensitivity of the occupants to the disease seems to be directly proportional to the ability of the other party to pay. While compulsory liability insurance may protect the bodily welfare of the truly physically injured, it definitely tends to weaken the moral fiber of those with chronic insurancitis. What are we as doctors, primarily, and as Catholic doctors, especially, doing to uphold the immunity against this insidious disease? Truly fake automobile claims have largely disappeared following cleanup a few years ago. However, it has now become almost fashionable to engage in the sincere claim. Unfortunately, some of our profession are not averse to engaging in this charade, either for a financial consideration or in the mistaken philosophy that they are helping a friend or protecting a patient. While this former reasoning is professionally unethical, the latter is just as morally unethical. We can ignore, for our present purposes, the distressing practical consequences of increased insurance rates which inevitably result, and against which our conspirators proclaim the loudest. It is well