

# Precision and Certitude: Laws Governing Laws



**BY SR. PATRICIA SMITH, OSF, Ph.D., J.C.D.**

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**C**atholic health care administrators, in addition to dealing with numerous regulations imposed by civil law, are bound by canon law. For the most part, they are aware of church requirements and are familiar with the relevant canons pertaining to their ministry, particularly those found in Book V of the Code of Canon Law, "Temporal Goods." Those that are sponsored by religious institutes might likewise be familiar with Canons 634-640, which stipulate application of some norms of Book V to religious institutes.

However, like civil law, canon law requires further expertise. It is usually not sufficient to look up a law in the Code of Canon Law or to read a legislative document issued by the Vatican, the United States Conference of Catholic Bishops or the local diocesan bishop. It is equally important that one be grounded in proper interpretation of the law.

Book I of the Code of Canon Law contains general norms that govern the nature and application of ecclesiastical laws and processes. Canons 7-34, in particular, provide insight into the nature and interpretation of laws. Knowledge of these canons enables one to look at the law in a broader context. They make clear that all laws are not created equal. They also provide a lens to further understanding canons in the code and in other legislative texts issued by the Vatican, the United States Conference of Catholic Bishops or the diocesan bishop. An illustration of the importance of these "laws governing laws" is exemplified in Canon 10: "Only those laws must be considered invalidating or disqualifying which expressly establish that an act is null or that a person is unqualified."

Every ecclesiastical law pertains to liceity (lawfulness); it is illicit/unlawful to act contrary to any law. However, some laws also deal with validity. In canon law, an act might be illicit, i.e., not in accord with the law, but at the same time, the act performed could be valid. The act, although not lawful, nonetheless is effective. Canon 10 states that an invalidating law renders the act per-

formed null and void; the action performed does not exist in the eyes of the church. For example, Canon 1283 concerns the administration of goods. It states that before assuming their duty, administrators must take an oath that they will administer well and faithfully before the proper authority. However, if one assumes a given role without taking this oath, the appointment and acts of that administrator would still be valid.

On the other hand, most health care administrators are familiar with Canon 1292, §2, which treats the alienation of goods whose value exceeds the limits set by the United States Conference of Catholic Bishops. Without the permission of the Holy See, the act of alienating such property or goods would be illicit; it is also invalid in ecclesiastical law.

Canon 10 also speaks of incapacitating laws, or laws that pertain to who is capable of performing certain acts. Such laws render certain persons incapable of validly performing some act. For example, Canon 171 deals with elections. It lists those who are incapable of voting. It then asserts that while the election would be valid — provided the vote of the person incapable of voting did not make a difference — the vote of the person would be null.

The aim of Canon 10 is to help assure juridic certainty. Nonetheless, it poses some difficulties in determining whether the law affects the validity of

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the act. The canon states that a law must “expressly” state that it concerns validity in some way. The word “expressly” has unique canonical implications. It can mean that validity is stated in the canon either explicitly or implicitly. Those canons that explicitly indicate that they concern validity are evident.

However, those where validity is implicitly stated are often difficult to determine. While some clues indicate whether a law pertains to validity, no clear-cut assurance exists in other cases. It is then that some of the other “laws pertaining to laws” in Book I of the code come into play. For example, Canon 17 states that laws must be understood “with the proper meaning of the words considered in their text and context.” Laws in a similar book, title or chapter are related and need to be considered in a common framework. Often the context can provide a clearer understanding of a particular law.

Canon 17 also states that if there is uncertainty regarding a law, one should look to parallel laws (laws that are similar in other areas of the code), to the purpose underlying the law, or to what the legislator intended when establishing the law. These are tasks that usually require canonical expertise.

Canon law is based on Roman law, a philosophy different from Anglo-Saxon based law. Even so, like our legal system, it can be complex. The precision and certitude we expect from law is not always evident. However, with proper research, it can be discovered. ■



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## A Shared Statement of Identity For the Catholic Health Ministry

**W**e are the people of Catholic health care, a ministry of the church continuing Jesus' mission of love and healing today. As provider, employer, advocate, citizen—bringing together people of diverse faiths and backgrounds—our ministry is an enduring sign of health care rooted in our belief that every person is a treasure, every life a sacred gift, every human being a unity of body, mind, and spirit.

We work to bring alive the Gospel vision of justice and peace. We answer God's call to foster healing, act with compassion, and promote wellness for all persons and communities, with special attention to our neighbors who are poor, underserved, and most vulnerable. By our service, we strive to transform hurt into hope. 🕊

As the church's ministry of health care, we commit to:

- Promote and Defend Human Dignity
- Attend to the Whole Person
- Care for Poor and Vulnerable Persons
- Promote the Common Good
- Act on Behalf of Justice
- Steward Resources
- Act in Communion with the Church

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