

## DELICTS OF FINANCIAL MALFEASANCE AND PENALTIES IN LIGHT OF *CIC* 1983 AND *CCEO*

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### Abstract

This study examines delicts of financial malfeasance and their corresponding penalties, as legislated in the revised Book VI of *CIC* 1983 and the revised canons of *CCEO*. Recognising the Church's inherent right to temporal goods (cf. c. 1254 of *CIC* 1983; c. 1007 of *CCEO*), this analysis focuses on identifying and interpreting specific canons pertaining to the abuse of this right. The paper systematically compares the juridical prescription of both Codes. A key finding is that the revised legislation for financial delicts mandates preceptive, *ferendae sententiae* stringent penalties and introduces a non-negotiable obligation for the offender to repair the harm caused, a requirement absent in previous canons. The comprehensive examination encompasses various delicts, including but not limited to the alienation and administration of temporal goods without proper consent or consultation, overcharging practices, clerical or religious individuals engaging in financial misconduct, unauthorised management of secular property, bribery, and simony pertaining to sacraments and sacramentals. Additionally, the analysis addresses the improper

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accumulation of profit from mass offerings, delicts involving the abuse of ecclesiastical power, as well as office or function violations committed either by act or omission with malice or culpable negligence, considering both revised canons of *CIC* 1983 and *CCEO* through Apostolic Constitution *Pascite gregem Dei* and Apostolic Letter *Vocare peccatores*.

**Keywords:** Delict, Financial Malfeasance, Alienation, Administration, Prescription.

### Introduction

In the realm of ecclesiastical governance, the imperative to uphold the integrity of financial administration is underscored by a well-known Latin adage: "*Radix omnium malorum est cupiditas*," which translates to "the love of money is the root of all evil." Originating from the biblical text of 1 Timothy (6:10), this phrase encapsulates the complexities surrounding the Church's engagement with temporal goods. The Church needs temporal goods. That is precisely why, c. 1254 of *CIC* 1983 (cf. c. 1007 of *CCEO*) prescribes:

§1 The catholic Church has the inherent right, independently of any secular power, to acquire, retain, administer and alienate temporal goods, in pursuit of its proper objectives.

§2 The proper objectives are principally the regulation of divine worship, the provision of fitting support for the clergy and other ministers, and the carrying out of works of sacred apostolate and of charity, especially for the needy.

When we refer to the Catholic Church, we mean the universal Church, the Apostolic See, particular Churches, and all other public and private juridical entities (cf. c. 1255 of *CIC* 1983; c. 1009 §1 of *CCEO*), and the ownership belongs to this juridical person and not to the administrator of the juridical person (cf. c. 1256 of *CIC* 1983; c. 1008 §2 of *CCEO*). The principal purposes of Church property are:

- I. To order divine worship
- II. To care for the decent support of the clergy and other ministries; and
- III. To exercise the works of the sacred apostolate and of charity, especially towards the needy (cf. c. 1254 of *CIC* 1983; c. 1007 of *CCEO*)

Therefore, it is evident that financial resources and ecclesiastical goods are essential for operational functionality within the Church. However, an excessive attachment to or love for such resources can lead to deleterious consequences. The principle of these aforesaid

proper purposes or objectives of the Church's goods is "a key factor in the configuration of the Church's patrimony and in the orientation of its financial activity."<sup>1</sup>

### 1. Current Scenario and the Pressing Call

Violations occur when ecclesiastical authorities, whether superiors, administrators, or juridical representatives, engage in the acquisition, retention, administration, or alienation of these goods outside of the aforementioned proper objectives mentioned in c. 1254 of *CIC* 1983 and c. 1007 of *CCEO* and without following the other canonical prescriptions about ecclesiastical/temporal goods. These acts constitute delicts of financial malfeasance. Unfortunately, it is said that financial malfeasance within the Catholic Church currently ranks as the second-most critical scandal, surpassed only by sexual misconduct. This corrosive issue has a global reach, permeating every level of administration in the Church. The numerous incidents of financial malfeasance recently brought to light by the media represent only a fraction of the problem. Many more incidents are likely to go unreported, with some concealed to prevent scandal among the faithful, while others may involve compromises for financial gain. Understanding the nature of such detestable financial abuses in the secular world is challenging enough, but it becomes even more difficult to accept when they occur within the Church administration. The recent proliferation of financial malfeasance across the Church has elevated this concern to critical importance. This crisis directly precipitated the elaboration of specific canonical delicts to address financial malfeasance, including, but not limited to, financial embezzlement, misappropriation of funds, theft, bribery, mass trafficking, overcharging and simony, in the revised Book VI on Penal Sanctions in the Church. It is this concern that we will address in this article from the perspective of the penal law.

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<sup>1</sup> Cf. Velasio De Paolis, "Dimensione ecclesiale dei beni temporali destinati a un fine ecclesiale," *Periodica* 84 (1995) 77-103; López Alarcon, "Introduction to Book V of the Code," in Ángel Marzoa - Jorge Miras - Rafael Rodríguez-Ocaña (eds), *Exegetical Commentary on the Code of Canon Law*, IV/2 (Montréal: Wilson & Lafleur, 2004) 14; Anthony Ekpo, "Ecclesiastical Goods at the Service of Ecclesial Communion," *Studia Canonica* 57 (2023) 235; Anthony Joseph, "Administration of Temporal Goods in Religious Congregations: Law and Praxis," in Merlin Rengith Ambrose (ed.), *Canon Law for Consecrated Life* (Bengaluru: Conference of Catholic Bishops of India, 2026) 224.

## 2. Revised Penal Law in Book VI

On 1 June 2021, the Holy See announced the Apostolic Constitution of Pope Francis, entitled "*Pascite gregem Dei*"<sup>2</sup> ("Tend the Flock of God" – 1 Peter 5: 2), which involved a comprehensive revision of Book VI of the *CIC* 1983. In fact, the Apostolic Constitution, which is dated 23 May 2025, the Solemnity of Pentecost, announced that the revised legislation would become effective on 8 December 2021, on the Solemnity of the Immaculate Conception of the Blessed Virgin Mary.<sup>3</sup> The penal norms of *CCEO*, in its Title XXVII "Penal Sanctions in the Church", were also modified by the Apostolic Letter *Motu proprio Vocare peccatores* on 20 March 2023.<sup>4</sup> One notable aspect of the revised penal law is its emphasis on financial integrity and responsibility, the lack of which can lead to penalties for offenders. The revised law aims to safeguard the temporal goods of the Church and deter acts of financial malfeasance, allegations of which appear increasingly prevalent.<sup>5</sup>

The shortest Book V – cc. 1254-1310 of *CIC* 1983 and Title XXIII – cc. 1007-1054 of *CCEO* deal with the administration of temporal goods and outline how these are to be dealt with, in a manner of good stewardship (cf. c. 1284 of *CIC* 1983; cc. 1020 §§1-2 and 1028 of *CCEO*) and accountability (cf. c. 1287 of *CIC* 1983; c. 1030 of *CCEO*). Given the extent and monetary value of ecclesiastical possessions at local, diocesan and universal levels, there was surprisingly little in the Code in terms of penalties related to mismanagement. Only one penal c. 1377 of *CIC* 1983 and c. 1449 of *CCEO*, and rather feeble in tone, specifically related to temporal goods, existed, and even that prescribed only a "just penalty" ("*iusta poena puniatur*") in *CIC* 1983, an appropriate penalty ("*congrua poena puniatur*") in *CCEO* for anyone who alienates ecclesiastical goods without the required permission.<sup>6</sup>

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<sup>2</sup> Cf. Francis, Apostolic Constitution *Pascite gregem Dei* (23.05.2021), *Communicationes* 53 (2021) 9-65.

<sup>3</sup> Cf. Juan Ignacio Arrieta, "A Presentation of the New Penal System of Canon Law," *The Jurist* 77 (2021) 245-267.

<sup>4</sup> Cf. Francis, Apostolic Letter *Motu Proprio Vocare peccatores* (20.03.2023), in [https://www.vatican.va/content/francesco/la/motu\\_proprio/documents/202303-20motu-proprio-vocare-peccatores.html](https://www.vatican.va/content/francesco/la/motu_proprio/documents/202303-20motu-proprio-vocare-peccatores.html) (accessed on 28 October 2025); For the English text, Sebastian Payyappilly (ed.), *A Compendium of Revised Norms of Corpus Iuris Canonici* (Bengaluru, Dharmaram Publications, 2023) 36-59.

<sup>5</sup> Cf. John Antony Renken, "Delicts of Financial Malfeasance in the Revised Penal Law," *Studies in Church Law* 16 (2021) 15.

<sup>6</sup> Old c. 1377 of *CIC* 1983: "A person who without the prescribed permission alienates ecclesiastical goods, is to be punished with a just penalty." Old c. 1449 of

However, given recent scandals, allegations of malfeasance and misappropriation of funds, money laundering, hidden off-balance-sheet funds, and real estate sold for less than market value, the revised Book VI included many canons addressing various types of financial malfeasance. The revised Penal Sanctions in the Church clarify additional financial delicts and impose more specific and stricter penalties for the delicts of financial malfeasance.

In the revised Penal Law in Book VI, three new financial delicts are included:

- i) Unlawful administration and alienation of ecclesiastical goods (cf. c. 1376 of *CIC* 1983; c. 1449 of *CCEO*)
- ii) Overcharging (cf. c. 1377 §2 of *CIC* 1983; c. 1463 §2 of *CCEO*)
- iii) Various financial misdeeds or unauthorised management of secular property – c. 285 §4 of *CIC* 1983 (cf. c. 1393 §2 of *CIC* 1983; c. 1446 §2 of *CCEO*).

Furthermore, three financial delicts, previously codified in the old Book VI, have been subjected to substantive modifications. Specifically, these delicts include:

- i) Bribery (cf. c. 1377 §1 of *CIC* 1983; c. 1463 of *CCEO*)
- ii) Simony (cf. c. 1380 of *CIC* 1983; c. 1461 of *CCEO*)
- iii) The unlawful profit through mass offerings (cf. c. 1383 of *CIC* 1983; c. 1449 §1, 3° of *CCEO*).

Furthermore, there is an ancillary delict associated with financial malfeasance that has been incorporated into the legal framework:

- i) Abuse of ecclesiastical office, power or function (cf. c. 1378 of *CIC* 1983; c. 1464 of *CCEO*).

Before engaging in a thorough examination of the canonical delicts specifically pertaining to financial matters, it is essential first to clarify the concept of delicts themselves and the criteria under which an individual may be deemed imputable for their actions, particularly in relation to malice and culpability. The distinction between these two concepts is addressed critically in c. 1376, which delineates the parameters of malice and culpability in the context of delicts.

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*CCEO*: “A person who has alienated ecclesiastical goods without the prescribed consent or permission is to be punished with an appropriate penalty.”

Understanding this foundational framework is vital for a comprehensive analysis of the financial delicts that will follow.

### 3. Notion and Composition of Delict

CIC 1983 does not provide a formal definition of the term "delict." However, the definition of delict in c. 2195 of CIC 1917 remains valid. C. 2195 §1 of CIC 1917 states: "By the term delict in ecclesiastical law is understood an external and morally imputable violation of a law to which a canonical sanction, at least an indeterminate one, is attached."<sup>7</sup> C. 1321 §2 of the revised Book VI (cf. c. 1414 of CCEO) contains the spirit of the afore-mentioned canon, which states that for a delict to take place, there should be an external violation of law or precept (objective element) to which a penalty is attached (juridical element), and there should also be imputability (subjective element) by reason of malice or culpability.<sup>8</sup> Imputable means attributable to the agent who does it, a co-relative of responsibility. Therefore, for a delict to exist or to ascribe or impute a crime to a subject, *i.e.*, to prove one guilty of committing a delict, law requires three elements:

1. Objective Element (*Actus Reus*): This refers to the criminal act due to the external/perceivable violation of law or precept. This externality does not require the act to be publicly known or notorious, but it must be perceptible to the senses,<sup>9</sup> that is, it must occur in the physical world and be capable of being known.
2. Subjective Element (*Mens Rea*): This refers to the criminal/guilty mind due to the imputability through malice (*dolus* - free and deliberate intent to break the law - *deliberata voluntas violandi legem*) or Culpability (*culpa* - grave negligence or omission of due diligence/care - *omissio delibitate diligentiae*).
3. Juridical Element: A penalty is attached for the violation of the law (*Nullum crimen, nulla poena sine lege poenali praevia* - "No delict, no penalty without a previous penal law" - principle of legality). It should be expressly sanctioned in universal or particular law. The Latin phrase *Nulla poena sine lege* is a fundamental concept in penal

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<sup>7</sup> C. 2195 of CIC 1917: "Nomine delicti, iure ecclesiastico, intelligitur externa et moraliter imputabilis legis violatio cui addita sit sanctio canonica saltem indeterminata."

<sup>8</sup> C. 1321 §2: "No one can be punished unless the commission by him or her of an external violation of a law or precept is gravely imputable by reason of malice or of culpability".

<sup>9</sup> Cf. Richard Luke Millette, "An Analysis of the Preliminary Investigation in Light of the Rights of the Accused," *The Jurist* 75 (2015) 129.

law,<sup>10</sup> emphasising that a person cannot be punished unless a law prescribes a specific penalty for the delict. This law must be *prævia* (non-retroactive punishment), *scripta* (non-customary punishment by way of customs or unwritten laws) and *certa* (non-ambiguous punishment).<sup>11</sup>

*Actus reus* will not be *acts reus* if it does not fit perfectly in the description of the law. Even if it fits in the description of the law, one cannot be punished until and unless *mens rea* is proved, *i.e.*, gravely imputable by malice and culpability. One becomes imputable if there are 1) *Douls* (Malice): deliberate intention of breaking the law or precept, or 2) *Culpa* (Culpability): Omission of due care to respect the law/Omission of due diligence/grave negligence.

Therefore, if a person deliberately violates a law or precept, they are bound by the penalty prescribed in the law. All those committing delicts involving financial malfeasance incur a penalty if imputability is proven by malice. However, if the violation was due to the omission of or failure to exercise due diligence (personal culpability – culpable negligence), the person is not punished unless the law or precept provides otherwise. In the canons concerning financial delicts, only in two cc. 1376 §2 and 1378 §2, even those who violate the law due to the omission of due diligence/personal culpability/grave negligence, are also punishable since the law provides otherwise, as mentioned in c. 1321 §3. Accordingly, even if one, through personal culpability, carries

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<sup>10</sup> Cf. Velasio De Paolis, “*Le sanzioni nella Chiesa*,” in Gruppo Italiano Docenti Di Diritto Canonico, *Il diritto nel mistero della Chiesa*, vol. 3, (Roma: Lateran University Press, 1992<sup>2</sup>) 448; Velasio De Paolis – Davide Cito, *Le sanzioni nella Chiesa. Commento al Codice di Diritto Canonico, Libro VI* (Città del Vaticano: Libreria Editrice Vaticana, 2000) 367; Winfried Aymans – Klaus Mörsdorf – Ludger Müller, *Kanonisches Recht. Lehrbuch aufgrund des Codex Iuris Canonici, Band VI. Vermögensrecht, Sanktionsrecht und Prozessrecht* (Paderborn-München-Wien-Zürich: F. Schöningh, 2013) 248-249: “Das System einer Kodifikation geht davon aus, dass der Gesetzgeber im vorhinein jeden möglichen künftigen Fall regelt, damit der Angehörige der Rechtsgemeinschaft jederzeit wissen kann, welches Handeln erlaubt ist und welche nicht, welche rechtswidrige Tat sanktioniert werden kann und welche nicht. In einem solchen System kann eine Sanktion daher nur verhängt werden, wenn sie zuvor durch Sanktionsgesetz oder Sanktionsgebot angedroht worden ist;” Brian T. Austin, “*Nullum crimen, nulla poena sine lege: The Principle of Penal Leality in the Ius vigens*,” *Studia Canonica* 54 (2020) 11-12.

<sup>11</sup> Cf. Andrea D’Auria, “Il principio di legalità nel sistema penale canonico,” in Luigi Sabbarese, *Legalità e pena nel diritto penale canonico* (Città del Vaticano: Urbaniana University Press, 2021) 58-61; Giovanni Fiandaca – Enzo Musco, *Diritto penale. Parte Generale* (Bologna: Zanichelli, 1989) 57-88; Ronny E. Renkins, “Jurisprudence in Penal Cases: Select Themes from the Judicial Doctrine of the Tribunal of the Roman Rota,” in *CLSA Proceedings* 67 (2001) 98.

out acts of administration or alienation without consent or consultation (cf. c. 1376 §2; c. 1449 §2 of *CCEO*), and if one, through culpable negligence, unlawfully and with harm to another or scandal, performs or omits an act of ecclesiastical power or office or function (cf. c. 1378 §2 of *CIC* 1983; c. 1464 §2 of *CCEO*), is to be punished with penalties prescribed in c. 1336 §§2-4 in the first case, and not excluding deprivation of office. Moreover, the obligation to repair the harm pertains to both instances (cf. c. 128 of *CIC* 1983; c. 935 of *CCEO*).

#### 4. Justice in Penalties for the Financial Delicts<sup>12</sup>

Before engaging in a detailed analysis of the specific financial delicts in the revised Book VI, it is essential to briefly examine the defining characteristics of the delicts and their sanctions.

##### 4.1. Repairing the Harm for the Financial Delicts

In the Apostolic Constitution *Pascite Gregem Dei*, Pope Francis notes that canonical sanctions have a reparative and salvific end, and are primarily directed to the good of the faithful by rebuilding justice in the community of the faithful.<sup>13</sup> C. 1341 of *CIC* 1983 (cf. c. 1402 §1 of *CCEO*) is one of the four canons (cf. cc. 1311 §2; 1341, 1343 of *CIC* 1983) in *ius vigens* that directly address all three canonical purposes or ends of the penalties. The revised threefold goals of canonical penalties are ordered as follows: i) the restoration of justice (*restitutio iustitiam*), ii) the reform of the offender (*emendatio rerum*) and iii) repair of scandal (*reparatio scandalum*). Therefore, unlike the old Book VI, where the order of the ends of penalties was i) reparation of the scandal, ii) restoration of justice and iii) reformation of the offender, in the revised Book VI, the restoration of justice gains prominence as the first end of the penalties. This transformation is reflected in the reordering of the threefold purposes of penalties, with justice taking precedence. In light of Pope Francis's Apostolic Constitution *Pascite gregem Dei* and Apostolic Letter given as *Motu proprio Vocare peccatores*, the revision emphasises the obligation of Church leaders to uphold justice, prioritising it in the implementation of penal sanctions. The reordering of the threefold purpose evidences a shift from the

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<sup>12</sup> Cf. Melrin Rengith Ambrose, "Primacy of Justice in the Revised Penal Sanctions in the Church," *Iustitia*, 15 (2024) 308-333.

<sup>13</sup> Cf. Francis, Apostolic Constitution *Pascite gregem Dei* (23.05.2021), 11, §9; English transl. in [https://www.vatican.va/content/francesco/en/apost\\_constitutions/documents/papafrancesco\\_costituzione-ap\\_20210523\\_pascite-gregem-dei.html](https://www.vatican.va/content/francesco/en/apost_constitutions/documents/papafrancesco_costituzione-ap_20210523_pascite-gregem-dei.html) (accessed on 12.10.2025).

offender to the justice owed to the victim, with the victim as the focal point of penal law.

Most of the penalties in these financial delicts<sup>14</sup> aim to restore justice by repairing the harm.<sup>15</sup> The Catechism of the Catholic Church defines justice as the preservation of “our neighbour’s rights and render him[/her] what is his[/her] due” (CCC 2407). The administration of justice involves retribution in the form of a prescribed punishment. This is evidence of a balanced concern for community protection, scandal repair, and compensation. The phrase “without prejudice to repair the harm done” is a clause commonly included in various penal canons addressing financial malfeasance. This inclusion underscores the principle that the pursuit of justice involves not only the imposition of penalties on the offender but also mandates a corresponding obligation of justice towards the offender to rectify the damages inflicted. According to Jorge Miras, restoration of justice means attending to the spiritual and material wounds caused by the delict, eradicating or neutralising their cause and repairing them.<sup>16</sup> It means that the delict provokes a need for the offender to repair the harm they have caused and for the community to help restore the relationships between the offender and their victim that the crime has

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<sup>14</sup> The 2021 amendment to Book VI by the Apostolic Constitution *Pascite gregem Dei* establishes an obligation to remedy harm as articulated in seven canons: cc. 1376 §1; 1376 §2; 1377 §1; 1377 §2; 1378 §1; 1378 §2 and 1393 §2 of *CIC* 1983; Confer the corresponding canons of *CCEO* dealt with below.

<sup>15</sup> For further study on repairing the harm, cf. Costantino Matteo Fabris, “Effettività della pena e riparazione dello scandalo: novità e prospettive di attuazione alla luce della riforma del Libro VI del Codice di diritto canonico,” *Ephemerides Iuris Canonici* 63 (2023) 565-589; Gracia Regojo Bacardí, “Pautas para una concepción canónica del resarcimiento de daños,” *Fidelium Iura* 4 (1994) 107-162; Jan Hendriks, “Canone 128: Riparazione del danno. Obblighi e responsabilità del vescovo diocesano,” *Ius Ecclesiae* 15 (2003) 427-457; Cristian Begus, “L’azione per il risarcimento dei danni,” in Gruppo Italiano Docenti di Diritto Canonico (eds), *Il diritto nel mistero della Chiesa: Prassi amministrativa e procedure speciali*, Vol. 4 (Roma: Lateran University Press, 2014<sup>2</sup>) 443-456; Ilaria Zuanazzi, “De damnorum reparatione. La responsabilità dell’amministrazione ecclesiale a riparare i danni,” in Piero Antonio Bonet – Carlo Gullo (eds), *Lex Propria del Supremo Tribunale della Segnatura Apostolica* (Città del Vaticano, Libreria Editrice Vaticana: 2010) 281-314; Margaret Poll Chalmers, “The Remedy of Harm in Accord with Canon 128,” *Studia Canonica* 38 (2004) 111-154; Domenico Teti, “Il diritto penale nella più recente giurisprudenza rotale: principi generali e fattispecie delittuose,” in Davide Salvatori – Roberto – Palombi – Arianna Catta (eds), *Diritto penale canonico. Dottrina, prassi, e giurisprudenza della Curia Romana*, *Collanan Annales* 15 (Vatican City: Libreria Editrice Vaticana 2023) 715-765.

<sup>16</sup> Cf. Jorge Miras, “Guía para el procedimiento administrativo canónico en materia penal,” *Ius Canonicum* 57 (2017) 324-325.

disrupted.<sup>17</sup> With the exception of c. 1380 on simony and c. 1383 on Mass trafficking, these canons on other delicts require the offender to repair the harm caused by the delict of financial malfeasance. Such repair of harm had not been mentioned in any of these canons in *CIC* 1983. Moreover, c. 1361 §4 states that the remission is not granted until the offender has repaired any harm caused. The offender may be urged to make such reparation or restitution by one of the penalties mentioned in c. 1336 §§2-4.

Also, the power to defer the infliction of a penalty that c. 1344, 1° of *CIC* 1983 and c. 1409 §1, 1° of *CCEO* granted to the judge or the Ordinary is now conditioned on the "necessity of repairing the scandal". Likewise, the power that c. 1345 of *CIC* 1983 gave the judge to refrain from inflicting a penalty, if certain mitigating circumstances (cf. c. 1324 §1, 1°, 2°, 3°, 5°), without prejudice to the provision of c. 1326 §1, 4°, were present, is now subject to the same conditions, "the offender, however, must be punished if there is no other way to provide for the restoration of justice and the repair of any scandal that may have been caused" (cf. c. 1345 of *CIC* 1983).<sup>18</sup>

#### 4.2. Discretionary Penalties to the Determinate Penalties

First, unlike the old Book VI, the revised Book VI sufficiently determines the penal norms, providing clear, precise guidance to those who apply them. The revised norms contain mostly determinate penalties and, as much as possible, eliminate the discretionary power of judges or superiors in imposing a broad range of penalties.<sup>19</sup> Moreover, to ensure uniformity (cf. c. 1316 of *CIC* 1983; c. 1405 §3 of *CCEO*) in the application of penal laws within the Church, the new Book has reduced the scope of discretion previously accorded to the authority, however, without entirely eliminating the necessary discretion for certain types of offences that require the discernment of the Pastor. In the present revised Book VI, the offences are now better specified, and the penalties are now exhaustively listed in c. 1336 of *CIC* 1983 (cf. cc. 1429; 1430 of *CCEO*); In addition, new offences have been introduced in financial and economic matters. New penalties

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<sup>17</sup> Cf. Mitchell N. Berman, "The Justification of Punishment," in Andrei Marmor (ed.), *The Routledge Companion to Philosophy of Law* (New York: Routledge, 2012) 149.

<sup>18</sup> Cf. Juan Ignacio Arrieta, "Il nuovo diritto penale canonico: Motivazioni della riforma, criteri e sintesi dei lavori. Le principali novità del Libro VI *CIC*," in Luigi Sabbarese, *Legalità e pena nel diritto penale canonico* (Città del Vaticano: Urbaniana University Press, 2021) 47.

<sup>19</sup> Cf. Juan Ignacio Arrieta, "Il nuovo diritto penale canonico: Motivazioni della riforma, criteri e sintesi dei lavori. Le principali novità del Libro VI *CIC*," 48-49.

have been envisioned, including fines, compensation for damage, and the deprivation of all or part of ecclesiastical remuneration, in accordance with the regulations established by the individual Bishops' Conferences. Consequently, the ambit of discretionary sanctions for financial malfeasance is restricted and defined by specified penalties.

### 4.3. More Expiatory Penalties

In examining the framework surrounding financial delicts, it is imperative to note that the majority of penalties associated with financial malfeasance are expiatory. This marks a departure from the old canons, which predominantly imposed penalties that were merely just/appropriate/punitive or proportionate to the gravity of the offence. Consequently, a brief analysis of the expiatory penalties delineated in the revised canons, particularly in relation to financial malfeasance, is warranted. This exploration aims to elucidate the underlying principles and implications of such penalties within the context of contemporary juridical standards.

There are two types of penalties (cf. c. 1312): i) medicinal or censures, *i.e.*, excommunication (cf. c. 1331), interdict (cf. c. 1332) and suspension (cf. c. 1333) and ii) expiatory (cf. c. 1336 of *CIC* 1983; c. 1429; 1430 of *CCEO*). Whereas the primary purpose of a medicinal penalty is to reform the offender, the expiatory penalty aims to restore justice and repair the scandal.<sup>20</sup> This lies in doing something for the reparation of a delict. These consist in the privation/deprivation (*privatio*) of some spiritual or temporal good legitimately imposed on a faithful (in the form of order, prohibition, deprivation), always in a manner consistent with the supernatural end of the Church (cf. c. 1312 §2 of *CIC* 1983). Moreover, paying the ransom for the delict is prominently highlighted, as many delicts in the revised Book VI, including those of a financial nature, also envisage more expiatory penalties. Approximately, all the delicts of financial malfeasance envisage expiatory penalties mentioned in c. 1336 §§2-3 of *CIC* 1983 and cc. 1429; 1430 of *CCEO*. Therefore, justice is rendered by expiatory penalties. In the revised Book VI, the chapter on expiatory penalties

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<sup>20</sup> Cf. Thomas J. Green, "Commentary on C. 1312," in John P. Beal - James A. Coriden - Thomas J. Green (eds), *New Commentary on the Code of Canon Law* (Bangalore: Theological Publications in India, 2019) 1534; *Coram* Colagiovanni, 14 June 1994, *Monitor Ecclesiasticus* 122 (1997) 91; Frederick C. Easton, "Commentary on C. 1401 of *CCEO* 1990," in John D. Faris - Jobe Abbass (eds), *A Practical Commentary to the Code of Canons of the Eastern Churches*, Vol. 2 (Chambly: Librairie Wilson & Lafleur inc., 2019) 2519: *CCEO* does not contrast medicinal and expiatory penalties.

has been extensively reworked. The number of expiatory penalties has been moderately increased, and the entire grouping is given a logical rearrangement. Expiatory Penalties are grouped as follows: (cf. c. 1336 §§2-4 of *CIC* 1983; cc. 1429-1430 of *CCEO*)

Order (Prescripts) (cf. c. 1336 §2 of *CIC* 1983; c. 1429 §2 of *CCEO*)

Prohibitions (cf. c. 1336 §3 of *CIC* 1983; c. 1429 § 1 of *CCEO*)

Deprivations (cf. c. 1336 §4 of *CIC* 1983; c. 1430 of *CCEO*)

Order and prohibition impose two kinds of temporary expiatory penalties for delicts of financial malfeasance, sanctioning the offender with one of these penalties for a prescribed or indeterminate period. In contrast, deprivation imposes perpetual expiatory penalties for the delicts committed in the context of financial misconduct.

#### 4.3.1. Order (Prescript)

C. 1336 §2 of *CIC* 1983 and c. 1429 §2 of *CCEO* prescribe the expiatory penalties of order. An Order (*Prescriptiones*) is a specific command/order to do something. There are two penalties in this category. C. 1336 §2 of *CIC* 1983 prescribes:<sup>21</sup>

An Order:

1° An order to reside in a certain place or territory.

2° *to pay a fine or sum of money for the purposes of the Church according to the amounts prescribed by the Bishops' Conferences.* (Italicised portion is new in the revised Book VI).

This expiatory penalty was generally available in *CIC* 1917 (cf. c. 2291, 12°) and specifically available in *CIC* 1983 with regard to advocates and procurators (cf. cc. 1488 §1; 1489 of *CIC* 1983; cc. 1146 §1; 1147 of *CCEO*) and the minister receiving more offerings than what is prescribed by the competent authority (cf. c. 848 of *CIC* 1983).<sup>22</sup> Concerning the expiatory penalty of paying a fine, Complementary Norms to the Code of Canon Law in the CCBI prescribe the following:

It is left to the judgement of the diocesan Bishop in consultation with the finance committee, according to the nature and gravity of the offence, to fix as an expiatory penalty the amount of money to be paid for the offence committed. If necessary, he is to decide on the

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<sup>21</sup> The revised c. 1429 §2 of *CCEO* on order prescribes: "An order can be given: 1° to reside in a certain place or territory; 2° to pay a sum of money for the purposes of the Church, according to the rationale determined by particular law."

<sup>22</sup> No corresponding canon in *CCEO*.

deprivation of all or part of ecclesiastical remuneration as part of the penalty.

#### 4.3.2. Prohibition

The seven prohibitions (*prohibitiones*) of revised c. 1336 §3 of *CIC* 1983 and c. 1429 §1 of *CCEO* substantially resume the provisions of the old Book VI of *CIC* 1983, while slightly extending them and making them more explicit. C. 1336 §3 of *CIC* 1983 prescribes:<sup>23</sup>

Prohibition:

- 1° against residing in a certain place or territory;
- 2° against exercising, *everywhere* or inside or outside a specified place or territory, all or some offices, duties, *ministries* or functions, or only certain tasks attaching to offices or duties;
- 3° *against performing all or some acts of the power of order;*
- 4° *against performing all or some acts of the power of governance;*
- 5° *against exercising any right or privilege or using insignia or titles;*
- 6° *against enjoying an active or passive voice in canonical elections or taking part with a right to vote in ecclesial councils or colleges*
- 7° *against wearing ecclesiastical or religious dress.* (Italicised portion is new in the revised Book VI).

Prohibition against enjoying an active or passive voice in canonical elections or taking part with a right to vote in ecclesial councils or colleges is not something substantially new. This new provision in this no. 6 makes the penalty more explicit, unlike the former canon, which prescribed merely deprivation of the right in c. 1336 §1, 2°). New canon prescribes more expressly what type of right it could be; *e.g.*, presbyteral council (cf. c. 495 of *CIC* 1983; c. 264 of *CCEO*), college of consultors (cf. c. 502 of *CIC* 1983; c. 271 of *CCEO*), etc. Against wearing ecclesiastical or religious dress is expressly mentioned and extended here, which was commonly mentioned (as *insignia*) in the old Book VI. Against wearing ecclesiastical dress (obligatory for clerics, according to the norms of the Bishops' Conference: c. 284 of *CIC* 1983; c. 387 of *CCEO*) or religious dress (envisaged by proper law: c. 669 of *CIC* 1983; cc. 476; 540 of *CCEO*).

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<sup>23</sup> The revised c. 1429 §1 of *CCEO* on prohibitions is aligned with the corresponding stipulations found in the revised Book VI in *CIC* 1983, thereby reflecting a congruence in canonical regulations between the two Codes.

These expiatory penalties of order and prohibitions are termed as temporary expiatory penalties. When the offender violates such a prohibition or order, it will only affect the licitness of acts performed by the officeholder (cf. c. 1338 §5 – "The prohibitions mentioned in c. 1336 §3 are never under the pain of nullity"). If the delict were serious enough, the ecclesiastical authority should judicially deprive the offender of a certain power, office, function, etc.

#### 4.3.3. Deprivation

C. 1336 §4 of *CIC* 1983 and c. 1430 of *CCEO* impose perpetual expiatory penalties of deprivation for the delicts committed regarding the financial misconduct of pastors in parish administration. There are five deprivations which substantially resume the provisions of c. 1336 §1, 2° of the old Book VI in *CIC* 1983 and old c. 1430 of *CCEO*, and while also slightly extending them and making them more explicit (cf. c. 1336 §4, 1-4° of *CIC* 1983; c. 1430 of *CCEO*). C. 1336 §4 of *CIC* 1983 prescribes:<sup>24</sup>

A Deprivation:

1° of all or some offices, duties, ministries or functions, or only of certain functions attaching to offices or duties;

2° of the faculty of hearing confessions or of preaching;

3° of a delegated power of governance;

4° of some right or privilege or insignia or title;

5° of all ecclesiastical remuneration or part of it, in accordance with the guidelines established by the Episcopal Conference, without prejudice to the provision of c. 1350 §1. (Italicised portion is new in the revised Book VI).

C. 1350 §1 prescribes that in imposing penalties on a cleric, except in the case of dismissal from the clerical state, care must always be taken

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<sup>24</sup> The revised c. 1430 of *CCEO* on Privation prescribes: "§1 Penal privations can affect all or some powers, offices, ministries, functions, rights, privileges, faculties, favors, titles, or insignia, as well as only some tasks attached to offices or functions, that are under the power of the authority that establishes the penalty or of the hierarch who initiated the penal trial or imposed the penalty by decree; the same applies regarding penal transfer to another office. §2. Privation of the power of sacred orders is not possible, but only a prohibition against exercising all or some of its acts, in accordance with the norm of common law; likewise, privation of academic degrees is not possible. §3. A privation can also be given: 1° of the faculty of hearing confessions or of preaching; 2° of delegated power of governance; 3° of all or part of ecclesiastical remuneration, as determined according to particular law and without prejudice to the prescript of can. 1410."

that he does not lack what is necessary for his worthy support (*iustitia temporata misericordia*). The term remuneration in the CIC 1983 signifies a payment attached to an office or position (cf. cc. 191 §2; 281 §§1, 3; 418 §2; 531; 1336 §4, 5° of CIC 1983). It does not refer to c. 951 of CIC 1983 (mass offering), c. 668 §3 of CIC 1983 (Religious – pension, grant or insurance), c. 1333 §4 of CIC 1983 (benefits, stipends and pension), c. 1746 of CIC 1983 (pension). Furthermore, none of the revised penal laws on financial malfeasance (cf. cc. 1376, 1377 §§1-2, 1380, 1383, 1393 of CIC 1983) incur a *latae sententiae* penalty, nor do they sanction the offender with perpetual penalty of dismissal from the clerical state (cf. c. 1336 §5 of CIC 1983; c. 1433 of CCEO).

### 5. Prescription (c. 1362 §1 of CIC 1983; c. 1152 of CCEO)

A prescription is a legal method of extinguishing an action. A prescription is a means of acquiring or losing rights or freeing oneself from obligations by the passage of time. Prescription for criminal action refers to the time period during which a penal process can begin.<sup>25</sup> The passage of time causes evidence to be stale, witnesses disappear, facts are harder to verify, memories fade, and, even more dangerously, memories “develop” in both victims and perpetrators. Therefore, a concern for the public good requires that criminal actions be pursued expeditiously or within a specific time in order to administer justice.<sup>26</sup> It serves to protect the rights of the defence and fosters the reliability of evidence in legal proceedings.<sup>27</sup> Therefore, as a rule, the Ordinary/promotor of justice loses the right to institute a criminal action<sup>28</sup> against an offence after the prescribed years have elapsed from the date of the commission of the delict.<sup>29</sup>

The prescription period for criminal action varies according to specific delicts: the shortest and most common period is three years; the lengthier period is seven years; and the longest period is twenty years for delicts in sexual abuse cases mentioned in c. 1398 §1, which can be

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<sup>25</sup> Cf. Velasio de Paolis, “Penal Sanctions, Penal Remedies and Penances in Canon Law,” in P.M. Dugan (ed.), *The Penal Process and the Protection of Rights in Canon Law* (Montréal: Wilson & Lafleur Ltée, 2005) 163.

<sup>26</sup> Cf. Ingrid Mallems, “La prescription pénale dans le nouveau Livre VI du Code de droit canonique de 1983,” in *Revue de Droit Canonique* 73 (2023) 63-83.

<sup>27</sup> Cf. Valere Nkouaya Mbandi, “The Unresolved Question of Canonical Prescription in the Cases of Sexual Abuse,” in 90-95.

<sup>28</sup> Criminal action is by way of judicial penal process (cf. cc. 1721-1728 of CIC 1983; cc. 1472-1482 of CCEO) or extra-judicial process to impose or declare a penalty (cf. cc. 1342; 1720 of CIC 1983; cc. 1402 §3; 1486 of CCEO) in respect of that offence.

<sup>29</sup> Cf. Philip J. Brown, “Prescription and Usefulness of Time,” 224.

derogated in different circumstances by the Dicastery for the Doctrine of the Faith.<sup>30</sup> With the reform of Book VI, though the statute of limitations for crimes, in general, has remained unchanged at 3 years,<sup>31</sup> the statute of limitations for some particularly serious delicts has been extended from five to seven years. Moreover, earlier in this five-year period in the old Book VI of *CIC* 1983, there were only four delicts (cf. c. 1394 - attempted marriage by clerics, c. 1395 - clerical concubinage, c. 1397 - homicide, abduction, imprisonment, mutilation, or gravely wounds a person, and c. 1398 §2 - abortion). But now, after the revision of Book VI, three more delicts of financial malfeasance have been added, including i) c. 1376 of *CIC* 1983 (cf. c. 1449 of *CCEO*) on stealing, alienation, and administration without consent or consultation, ii) c. 1377 of *CIC* 1983 (cf. c. 1463 of *CCEO*) on bribery and overcharging, and iii) c. 1378 of *CIC* 1983 (cf. c. 1464 of *CCEO*) on abuse of ecclesiastical power and office.

## 6. Delicts of Financial Malfeasance

Delicts of financial malfeasance can be grouped into two categories: i) institutional and ii) personal.

### 6.1. Delict of Institutional Financial Malfeasance<sup>32</sup>

Unlike the delicts in the other six canons,<sup>33</sup> the delicts of c. 1376 of *CIC* 1983 and c. 1449 of *CCEO* result in direct damage to Church property through malice (*dolus*) or negligence (*culpa*). It can be said that this

<sup>30</sup> C. 1362 §1. “A criminal action is extinguished by prescription after three years, except for: 1° offences reserved to the Congregation for the Doctrine of the Faith, which are subject to special norms; 2° without prejudice to n. 1, an action arising from any of the offences mentioned in cann. 1376, 1377, 1378, 1393 §1, 1394, 1395, 1397, or 1398 §2, which is extinguished after seven years, or one arising from the offences mentioned in c. 1398 §1, which is extinguished after twenty years; 3° offences not punished by the universal law, where a particular law has prescribed a different period of prescription.”

<sup>31</sup> Cf. Elias Frank, “Preliminary Investigation (cann. 1717-1719),” in Merlin Rengith Ambrose (ed.), *Aggiornamento in Canon Law: Theory and Praxis* (Bengaluru: ATC Publishers, 2024) 45-46.

<sup>32</sup> Cf. Juan Aria – Juan Ignacio Arrieta, “Book VI: Penal Sanctions in the Church,” in Juan Ignacio Arrieta (ed.), *Code of Canon Law Annotated* (Chambly: Librairie Wilson & Lafleur inc., 2022<sup>4</sup>) 1083-1085; Bruno Fabio Pighin, *Il nuovo sistema penale della Chiesa* (Venice: Marcianum Press, 2021) 358-363; Quaderni di Diritto Ecclesiale (ed.), *Aggiornamento al Codice di diritto canonico commentato* (Milan: Ancora Editrice, 2021) 67-68.

<sup>33</sup> Cf. c. 1377 §2 of *CIC* 1983 (cf. c. 1463 §2 of *CCEO*); c. 1393 §2 of *CIC* 1983 (cf. c. 1466 §2 of *CCEO*); c. 1377 §1 of *CIC* 1983 (cf. c. 1463 of *CCEO*); c. 1380 of *CIC* 1983 (cf. c. 1461 of *CCEO*); c. 1383 of *CIC* 1983 (cf. c. 1449 §1 of *CCEO*); c. 1378 of *CIC* 1983 (cf. c. 1464 of *CCEO*).

establishes “delicts of institutional financial malfeasance” to the Church since those who commit financial malfeasance are superiors, administrators and juridical representatives, whereas the other canons establish “delicts of personal financial malfeasance” in the Church. This distinction is significant because the delicts of c. 1376 of *CIC* 1983 (cf. c. 1449 of *CCEO*) are illegitimate acts that have a direct negative impact on the proper and perhaps the continued operation of public juridic persons that offer pastoral services *in nomine Ecclesiae*.<sup>34</sup>

### **6.1.1. Financial Delicts of Administration and Alienation with *Dolus* and *Culpa* (c. 1376 of *CIC* 1983; c. 1449 of *CCEO*)**

C. 1376 of the revised Book VI of *CIC* 1983 and the revised c. 1449<sup>35</sup> of *CCEO* (*Vocare peccatores*) alone specifically addresses seven financial malfeasances in administration and alienation.

C. 1376 stipulates:

§1. The following are to be punished with the penalties mentioned in can. 1336 §§2-4, without prejudice to the obligation of repairing the harm:

1° a person who steals ecclesiastical goods or prevents their proceeds from being received;

2° a person who, without the prescribed consultation, consent, or permission, or without another requirement imposed by law for

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<sup>34</sup> Cf. John Anthony Renken, “Financial Delicts in the Church: Reflections on Financial Malfeasance in the Revised Book VI,” in Merlin Rengith Ambrose (ed.), *Aggiornamento in Canon Law: Theory and Praxis* (Bengaluru: ATC Publishers, 2024) 78.

<sup>35</sup> The revised c. 1449 of *CCEO*: “§1. A person is to be punished with the penalties mentioned in cc. 1429 and 1430, with due regard for the obligation to repair the damage:

1° who steals ecclesiastical goods or prevents their proceeds from being received;

2° who alienates ecclesiastical goods or undertakes an act of administration concerning them without the prescribed consultation, consent, or permission, or without another requirement imposed by law for validity or liceity;

3° who illegitimately makes a profit off of the offerings referenced in c. 715 for the celebration of the Divine Liturgy or for the Liturgy of the Presanctified or for commemorations in the Divine Liturgy.

§2. A person is to be punished with an appropriate penalty, not excluding privation of office, and with due regard for the obligation to repair the damage:

1° who due to his or her seriously culpable omission of due diligence or due to his or her seriously culpable ignorance of a law or precept commits the delict mentioned in §1, n. 2;

2° who has been found to be otherwise seriously negligent in the administration of ecclesiastical goods.” C. 1449 §1, 3° is something new which is not found in c. 1376 of the revised Book VI.

validity or for lawfulness, alienates ecclesiastical goods or carries out an act of administration over them.

§2. The following are to be punished, not excluding by deprivation of office, without prejudice to the obligation of repairing the harm:

1° a person who, through grave personal culpability, commits the offence mentioned in § 1, n. 2;

2° a person who is found to have been otherwise gravely negligent in administering ecclesiastical goods.

The new c. 1376 of *CIC* 1983 (cf. c. 1449 of *CCEO*) also details a far broader set of financial delicts that can lead to the imposition of the penalties, including theft of Church goods or money and making major financial decisions without following the prescribed canonical process of obtaining consent and consultation.

First of all, is this penal canon absolutely new? Partially yes and partially no. This c. 1376 succeeds c. 1377 of the old Book VI of *CIC* 1983 (old c. 1449 of *CCEO*),<sup>36</sup> which had only stated: "A person who, without the prescribed permission, alienates ecclesiastical goods, is to be punished with a just penalty" (*iusta poena puniatur*). C. 1376 has significantly modified the old c. 1377, that it is understood to constitute a new penal law. These revised c. 1376 and c. 1449 of *CCEO* are substantially new, since the corresponding old c. 1377 of the old Book VI of *CIC* 1983 and old c. 1449 of *CCEO* dealt very partially with some of the delicts now set out in new §1, 2° of c. 1376 of *CIC* 1983 and c. 1449 of *CCEO*. The revised c. 1376 of *CIC* 1983 and c. 1449 of *CCEO* expand the range of financial delicts covered in detail. Moreover, the penalties are entirely new as opposed to the just penalty prescribed in the old c. 1377 *CIC* 1983 and c. 1449 of *CCEO*. In the old canons, there was no mention of administration and consultation.

The shortest Book in *CIC* 1983 (Book V of *CIC* 1983) Title XXIII of *CCEO* address the administration of temporal goods to be dealt with, in a manner of good stewardship (cf. c. 1284 of *CIC* 1983; c. 1028 of *CCEO*) and accountability (cf. c. 1287 of *CIC* 1983; c. 1031 of *CCEO*). Given the extent and monetary value of ecclesiastical possessions at local, diocesan and universal levels, there was surprisingly little in the old Book VI and Title XXVII in terms of penalties relating to financial mismanagement. Only one aforementioned canon (cf. old c. 1377 of *CIC* 1983; c. 1449 of *CCEO*), and rather feeble in tone, specifically

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<sup>36</sup> Old c. 1449 of *CCEO*: "A person who has alienated ecclesiastical goods without the prescribed consent or permission is to be punished with an appropriate penalty."

related to temporal goods, existed, and even that prescribed only a “just penalty” for anyone who alienates ecclesiastical goods without the required permission. But given recent scandals, allegations of malfeasance and misappropriation of funds, money laundering, hidden off-balance-sheet funds and real estate sold for less than market value, the Book VI of *CIC* 1983 and Title XXVII of *CCEO* have been revised to include a new canon (cf. c. 1376 of *CIC* 1983; c. 1449 of *CCEO*) to deal with those who steal ecclesiastical goods and who have shown grave negligence in administration and who have not complied with prescriptions mentioned in the Code regarding administration. The revised canon clarifies in detail the penalties that will be imposed on those who administer or alienate ecclesiastical goods without the prescribed consultation, consent, or permission, or without fulfilling another requirement imposed by law for validity or lawfulness.

Most tellingly, to reflect the gravity of these offences, instead of simply imposing a just/appropriate penalty as in the old c. 1377 and c. 1449, the revised c. 1376 of *CIC* 1983 and c. 1449 of *CCEO* impose an expiatory penalty (cf. c. 1336 §§2-4 of *CIC* 1983; cc. 1429 and 1430 of *CCEO*), which includes penalties such as the order to pay a fine, prohibitions on exercising all or some offices or ministries, or deprivation of office etc.

Accordingly, in dealing with the ecclesiastical goods, the revised c. 1376 establishes seven institutional financial delicts. Four acts of financial misconduct constitute delicts if they are committed with malice (*dolus*),<sup>37</sup> and three other if they are committed with negligence (*culpa*).<sup>38</sup>

The four delicts committed with malice are:

1. **Stealing ecclesiastical goods**<sup>39</sup> (cf. §1, 1°). It concerns ecclesiastical goods that are temporal goods that belong to the universal Church, the Apostolic See or a public juridic person (cf. c. 1257 §1 of *CIC* 1983; c. 1009 §2 of *CCEO*).

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<sup>37</sup> Cf. Paolo Gherri, “L’amministrazione invalida o illecita dei beni ecclesiastici (can. 1376 §1, 2°,” *Ius Ecclesiae* 35 (2023) 407-428; Diego Zalbidea, “La enajenación ilegítima: evolución histórica de la formulación del tipo del delito (can. 1376 §1, 2°),” *Ius Ecclesiae* 35 (2023) 385-405.

<sup>38</sup> Cf. Jesús Miñambres, “I delitti amministrativi commessi per ‘grave negligenza’ (can. 1376 §2),” *Ius Ecclesiae* 35 (2023) 429-448.

<sup>39</sup> Cf. Claudio Papale, “Il nuovo delitto di furto (can. 1376 §1, 1°),” *Ius Ecclesiae* 35 (2023) 371-383.

2. **Preventing/impeding the benefits from being derived from the ecclesiastical goods** (cf. §1, 1°). In these two cases, even though, in accordance with c. 2346 of *CIC* 1917, there may be no direct intention to appropriate the goods, they are delicts. If the act is carried out by someone who holds an ecclesiastical administrative office (peculation/embezzlement), this would constitute an aggravating circumstance (cf. c. 1326 §1, 2° of *CIC* 1983; c. 1416 of *CCEO*). Ecclesiastical goods are temporal goods that belong to the universal Church, the Apostolic See, the Public juridical person (cf. c. 1257 §1 of *CIC* 1983; c. 1009 §2 of *CCEO*). Ecclesiastical goods do not belong to physical persons, including the administrator of a public juridical person or private juridical persons.<sup>40</sup> Dicastery for Institutes of Consecrated Life and Society of Apostolic Life, in its Instruction, *Economy at the Service of the Charism and Mission* (2018), states that every ecclesiastical good is either stable patrimony or non-stable patrimony.<sup>41</sup>
3. **Performing an act of alienation**<sup>42</sup> of ecclesiastical goods **without a prescribed consultation, consent or permission**, or without fulfilling another requirement of law imposed for validity or liceity of the act (cf. cc. 638 §3; 1291-1294 of *CIC* 1983; cc. 1036-1038 of *CCEO*).
4. **Performing an act of administration**<sup>43</sup> of ecclesiastical goods **without a prescribed consultation, consent or permission**, or without fulfilling another requirement of law imposed for validity or liceity of the act (cf. cc. 1277; 1281; 1295 of *CIC* 1983; cc. 263 §4; 1024; 1042 of *CCEO*).

In the last two, this is independent of whether there is any personal enrichment on the part of the offender, which would constitute a second offence (cf. c. 1376 §1, 1°).

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<sup>40</sup> Cf. John Anthony Renken. *The Penal Law of the Roman Catholic Church: Substantive Law* (Ottawa: Faculty of Canon Law, Saint Paul University, 2024) 330.

<sup>41</sup> Cf. Dicastery for Institutes of Consecrated Life and Society of Apostolic Life, Instruction, *Economy at the Service of the Charism and Mission* (Vatican City: Libreria Editrice Vaticana, 2018) 65-68.

<sup>42</sup> To alienate means to transfer ownership to another, to lose ownership. Cf. John Antony Renken, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada* (Staten Island: St Pauls House, 2009) 18.

<sup>43</sup> To administer means to help ecclesiastical goods bear fruit, and use them for their proper purposes while maintaining ownership. Cf. Pontifical Council for Legislative Texts, Nota *La funzione dell'autorità sui beni ecclesiastici* (12 February 2004), in *Communicationes* 36 (2004) 26.

The core principles aim to promote co-responsibility in *communio* rather than mutual collaboration through consultation and consent, reflecting synodality and against centralised authority in finance. The term collaboration connotes the idea of participating without actually being responsible, while co-responsibility conveys the notion of carrying out a task responsibly.<sup>44</sup> Therefore, it is against the exclusive or absolute power vested in someone over matters of major importance in finance. Even Pope Leo XIV's newly promulgated Apostolic Letter, issued as a *Motu proprio Coniuncta cura*<sup>45</sup> ("joined care/united concern") on 6 October 2025, envisions this principle, repealing the exclusive competence granted to the Vatican Bank over asset management. There is a shift from "centralisation to collaboration".

C. 1376 §1 of *CIC* 1983 and c. 1449 of *CCEO* punish those who steal ecclesiastical goods or hinder or impede the use of ecclesiastical goods so that their benefits are not realised. The canons also establish the delicts committed by administrators of public juridic persons who, deliberately or negligently, fail to obtain the prescribed consultation, consent, or permission in acts of administration and alienation constituting the act illicitly or invalidly. One alienates or performs an act of administration illicitly or invalidly by not consulting or getting the consent from those organs of synodality meant for the

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<sup>44</sup> Cf. Cecilia Agule, "Co-Responsibility of the Christ's Faithful in the Mission of the Church: The Role of the Laity in the Light of Can. 204 §1," in Armand P. Bosso – Ernest B.O. Okonkwo (eds), *Quis custodiet ipsos custodes: Studi in onore di Giacomo Incitti* (Città del Vaticano: Urbaniana University Press, 2021) 185.

<sup>45</sup> Cf. [https://www.vatican.va/content/leo-xiv/it/apost\\_letters/documents/20250929-coniuncta-cura.html](https://www.vatican.va/content/leo-xiv/it/apost_letters/documents/20250929-coniuncta-cura.html): The law-setting *Motu proprio*, "*Coniuncta cura*", says the Administration of the Patrimony of the Apostolic See (APSA) should continue to act through the Vatican Bank for investments generally. But it will now also have the flexibility to involve financial bodies and intermediaries from outside the Vatican if this is deemed more efficient or appropriate. This highlights the principle of "co-responsibility in *communio*" as requiring the consolidation of various provisions that have arisen over time, as well as the clear definition of "the roles and responsibilities" of the various institutions of the Holy See, "enabling everyone to converge in a dynamic of mutual collaboration." In practical terms, *Coniuncta cura* establishes a more nuanced architecture of governance: one that maintains accountability but diffuses decision-making through cooperative mechanisms. Transparency, once framed mainly as control, is now envisioned as participation. Pope Leo XIV restructures Vatican finances under one principle: shared responsibility. The Apostolic Letter takes immediate effect. It represents not only a legal adjustment but a reorientation: the economy of the Church, Pope Leo XIV implies, must rediscover its true vocation, *i.e.*, to be an instrument of communion rather than a terrain of dominance. (accessed on 01 November 2025)

safeguarding of diocesan and parish or any juridical person's property, and enhancing effective synodality in safeguarding Church property<sup>46</sup> as envisaged by the Code. The prescriptions for consultation, consent, and permission for administration and alienation are provided for in cc. 1277; 1292 of *CIC* 1983 and cc. 263 §4; 1036 §1 of *CCEO*. Primarily, the diocesan finance council and the college of consultors<sup>47</sup> exercise a consultative and consensual vote in acts of administration and alienation. This consultation and consent enable the person to act validly and lawfully.

### Acts of Administration

Acts of administration have an indispensable relationship between the Church and Church property. Acts of administration essentially refer to actions taken to protect Church property, to help bear fruit, and to utilise it for its proper purposes.<sup>48</sup> It is this relationship that determines the life and progress of any public juridic person. Whenever a skilful and managerial administration is exercised in a public juridic person, it clearly reflects the progress of the Church's mission in that institution. For this reason, *CIC* 1983 has allocated 17 canons (cf. cc. 1273-1289) and *CCEO* 12 canons (cf. cc. 1022-1033), each addressing various aspects of Church property administration.

*Ad normam iuris* c. 1277 of *CIC* 1983, in administration, for the acts of administration of major importance (fixed by the diocese), the diocesan Bishop must consult the finance committee and the college of consultors. They are acts of administration that are more important in light of the economic condition of the diocese. They are the "non-routine" acts of diocesan administration. Furthermore, for extraordinary administration (twenty lakhs and above, as fixed by the CCBI and approved by Dicastery for Evangelisation on 16 January

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<sup>46</sup> Cf. John Anthony Renken, "Organs of Synodality and the Revised Penal Law: Effective Means to Safeguard Church Property," *Studia Canonica* 57 (2023) 571.

<sup>47</sup> To know more about these bodies, cf. Lennoxie N. Lusabe, "Evolution of Participative Structures within the Particular Church since the Time of Vatican II," *Studia Canonica* 52 (2018) 159-203.

<sup>48</sup> Cf. Lawrence Rasaian, "Financial Malfeasance of Pastors. Penalties and Remedies (cf. c. 1376)," *Studia Canonica* 57 (2023) 520; John Anthony Renken, "Acts of Extraordinary Administration of Ecclesiastical Goods in Book V of the *CIC*," *Studia Canonica* 49 (2015) 578; John Anthony Renken, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada* (Ottawa: St Paul University, 2009) 18.

2023),<sup>49</sup> the diocesan Bishop requires the consent of the finance committee and the college of consultors.

Donations or bequests that entail recurring, long-term obligations (of over twenty years) are also to be considered acts of extraordinary administration, as prescribed by the CCBI and approved by the Dicastery for Evangelisation on 10 January 2023.<sup>50</sup>

### Acts of Alienation

Alienation means transfer of ownership. According to c. 1292 §1 of *CIC* 1983, (cf. cc. 1036; 1038 of *CCEO*) in alienation, when the amount of the goods to be alienated is between the minimum and maximum (*i.e.*, between twenty lakhs and three crores, fixed by the CCBI since 16 January 2023), the diocesan Bishop can validly act with the consent of the finance committee, the college of consultors and any interested parties. According to c. 1292 §2, for the valid alienation of the goods whose value exceeds the maximum sum (*i.e.*, three crores and above), or for alienation of something given to the Church by reason of vow, or for the alienation of objects which are precious by reason of their artistic or historical significance, and according to c. 1190 of *CIC* 1983 and cc. 887; 888 of *CCEO*, for the alienation of distinguished relics held in great veneration by the people and for the images which are greatly venerated in any Church by the people,<sup>51</sup> additional permission of the Holy See is required.

This consensual and consultative vote highlights the significance of synodality. The organs of synodality, such as the financial committee or the college of consultors, may be required to issue a consensual vote (*i.e.*, the organ decides to allow the superior to take the decision validly) or consultative (*i.e.*, the organ offers its advice to the superior to take a decision validly). This is not to be carried out *pro forma*. Instead, they must be informed precisely both about the economic situation of the juridical person whose goods it is proposed to alienate and about alienations which have already taken place (cf. c. 1292 §4). The active engagement of these organs is an exercise of effective synodality that helps to ensure the safeguarding of the Church property.

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<sup>49</sup> Cf. Conference of Catholic Bishops of India, *Complementary Norms to the Code of Canon Law* (Bengaluru: Conference of Catholic Bishops of India, 2024) 28-31.

<sup>50</sup> Cf. Conference of Catholic Bishops of India, *Complementary Norms to the Code of Canon Law*, 22.

<sup>51</sup> Cf. John Antony Renken, "Delicts of Financial Malfeasance in the Revised Penal Law," *Studies in Church Law* 16 (2021) 21.

### Contracts (Loan/Mortgage)<sup>52</sup>

According to c. 1295 of *CIC* 1983 and c. 1042 of *CCEO*, the aforementioned provisions of alienation (cf. cc. 1291-1294; 741 §1; 638 §3 of *CIC* 1983; cc. 1035-1041 of *CCEO*) are applicable and must be observed in any transactions that could adversely affect the patrimonial conditions of the juridical person. A threatening contract is a distinct type of administration carried out by administrators that falls outside the realms of alienation, regular administration or extraordinary administration. It is threatening because the patrimonial condition of the juridical person could be adversely affected. In simpler terms, it is a critical form of administration where the very act itself poses a significant risk or potential threat to the patrimonial condition of a public juridic person,<sup>53</sup> such as granting an easement, usufruct,<sup>54</sup> a protected lease, a mortgage<sup>55</sup> and turning over the administration of goods, especially if they are transferred in perpetuity.<sup>56</sup> While alienation involves the transfer of property ownership, a threatening contract does not transfer ownership but is deemed to threaten it through the transaction. To ensure safe and protective administration, administrators must seek aid from civil law.<sup>57</sup> Therefore, to permit administrators to enter a contract which can worsen the patrimonial condition of a public juridic person subject to Bishop's authority, or to enter a contract himself if it involves diocesan goods: when these goods belong to stable patrimony whose value is beyond the minimum amount established by the Bishops' Conference, the college of consultors and finance committee and those concerned must also give their consensual vote.

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<sup>52</sup> Cf. John Antony Renken, "Delicts of Financial Malfeasance in the Revised Penal Law," 20.

<sup>53</sup> Cf. Robert T. Kennedy, "The Temporal Goods of the Church," in John P. Beal – James A. Coriden – Thomas J. Green (eds), *New Commentary on the Code of Canon Law*, 1503; John Anthony Renken, "Contracts Threatening Stable Patrimony: The Discipline and Application of Canon 1295," *Studia canonica* 45 (2011) 507.

<sup>54</sup> Cf. "Usufruct" is the temporary right of a person or entity to use the property of another and can include the right to derive income from the property.

<sup>55</sup> Cf. *Coram* Grazioli, 29 September 1931, *SRRDec* 23 (1931) 345.

<sup>56</sup> Cf. *Coram* Rossetti, 05 May 1922, *SRRDec* 14 (1922), 137. Pope Paul VI considers a number of acts to be equivalent to alienation, such as granting security, mortgages, long-and short-term leases, and contracting debts that exceed the amount established by the Episcopal Conferences; cf. Paul VI, *Motu proprio Pastorale munus* (30 November 1963), no. 32, in *AAS* 56 (1964) 10; English transl. *CLD*, 6 (1963-1967) 375.

<sup>57</sup> Cf. Francis G. Morrissey, "The Alienation of Temporal Goods in Contemporary Practice," *Studia Canonica* 29 (1995) 311.

However, in some cases, it may require some of the processes of alienation and extraordinary administration.<sup>58</sup> This principle is effectively implemented in the property transactions of religious institutes (cf. cc. 638 §3; 741 §1; 718 of *CIC* 1983). Additionally, the Code mandates that superiors seek permission from the competent Apostolic See regarding transactions of this type.<sup>59</sup>

### **Lease<sup>60</sup>**

Written permission from the diocesan Bishop must be obtained for every act of leasing (cf. c. 1297 of *CIC* 1983).<sup>61</sup> The diocesan Bishop has to consult the college of consultors and the finance committee separately if the value of the property to be leased is below the minimum sum (*i.e.*, below twenty lakhs) approved in connection with c. 1292 §1; if the value of the property is above the minimum sum (*i.e.*, twenty lakhs and above), he has to obtain the consent of the college of consultors and the finance committee. The lease document should always be drafted in the form of a contract that is valid under civil law. It is recommended that every diocesan Bishop, with the help of the finance committee, determine the criteria for leasing, draw up a list of properties that may be leased, and specify which among these may be leased on a long-term basis or on a short-term basis.

### **Other Requirements Imposed by Law: (cc. 1292 §4; 1293 of *CIC* 1983 & cc. 1609; 1610 of *CCEO*)**

Other requirements imposed by law are the consent of the interested parties; those who must give advice about or consent to the alienation of goods are not to provide this advice or consent until they have first been informed precisely both about the economic situation of the juridical person whose goods it is proposed to alienate and about alienations which have already taken place. To alienate goods whose value exceeds the determined minimum sum, it is also required that

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<sup>58</sup> Cf. Federico R. Anzar Gil, "Actos de administración ordinaria y extraordinaria: normas canónicas," *Revista española de derecho canonica* 57 (2000) 66-67; Francis G. Morrissey, "The Alienation of Temporal Goods in Contemporary Practice," *Studia canonica* 29 (1995) 113; John Anthony Renken, "Contracts Threatening Stable Patrimony: The Discipline and Application of Canon 1295," *Studia canonica* 45 (2011) 513; John Anthony Renken, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, 280-284.

<sup>59</sup> Cf. Daniel J. Ward, "Temporal Goods," in Canon Law Society of America, *Procedural Handbook for Institutes of Consecrated Life and Societies of Apostolic Life* (Washington: CLSA, 2002) 203.

<sup>60</sup> Cf. John Antony Renken, "Delicts of Financial Malfeasance in the Revised Penal Law," 20.

<sup>61</sup> No corresponding canon in *CCEO*.

there be: A just reason, such as urgent necessity, evident advantage, or a religious, charitable or other grave pastoral reason; an evaluation in writing by experts of the goods to be alienated. Usually, goods must not be alienated for a price lower than the valuation.

### Penalty

If all that has been discussed, *i.e.*, stealing, preventing the proceeds from the ecclesiastical goods, if one alienates or carries out an act of administration without the afore-mentioned consultation or consent as prescribed in the law, they become delicts. For these delicts mentioned in c. 1376 §1 of CIC 1983 (cf. c. 1449 §1 of CCEO), the penalties are expiatory penalties considered in the c. 1336 §§2-4 of CIC 1983 (cf. cc. 1429-1430 of CCEO), *i.e.*, order, prohibition and deprivation, without prejudice to the obligation of repairing the harm. Most tellingly, to reflect the gravity of these offences, instead of simply imposing a just penalty as in the old c. 1377, the revised c. 1376 imposes expiatory penalty (cf. c. 1336 §§2-4), which includes penalties such as paying a fine, prohibitions on exercising all or some offices or ministries, or deprivation of office.

#### 6.1.2. The Three Delicts Committed with Negligence (c. 1376 §2 of CIC 1983; c. 1449 §2 of CCEO)

As discussed earlier, c. 1321 §2 of CIC 1983 (cf. c. 1414 of CCEO) states that no one is punished unless an external violation of law or precept, committed by the person, is gravely imputable by reason of malice (*dolus*) or negligence (*culpa*). C. 1321 §3 adds: "If, however, the violation was due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise." C. 1376 §2 of CIC 1983 (cf. c. 1449 §2 of CCEO) on institutional financial malfeasance explicitly states that even the omission of due diligence (*ex omissione debitae diligentiae*) is punishable with penalties, including deprivation of office. Here, the personal culpability, *i.e.*, grave negligence or omission of due diligence, is explicitly envisaged by the law itself. Therefore, the delict is punishable by the penalties prescribed in the law.

C. 1376 §2 of CIC 1983 (cf. c. 1449 §2 of CCEO) implies:

1. C. 1376 §2, 1° - Through grave personal culpability, performing an act of alienation of ecclesiastical goods of a parish without the prescribed consultation, consent, or permission or without fulfilling another requirement of law imposed for validity or liceity (cf. cc. 1291-1294 of CIC 1983; cc. 1036-1038 of CCEO).

2. C. 1376 §2, 1° - Through grave personal culpability, performing an act of administration of ecclesiastical goods of a parish without the prescribed consultation, consent, or permission, or without fulfilling another requirement of law imposed for validity or liceity (cf. cc. 1277; 1281; 1295 of *CIC* 1983; cc. 263 §4; 1024; 1042 of *CCEO*).
3. C. 1376 §2, 2° - For being otherwise gravely negligent in administering ecclesiastical goods. This refers to the delict of administering ecclesiastical goods in a gravely negligent manner (cf. cc. 1282; 1284 of *CIC* 1983; cc. 1020 §§1-2; 1028 of *CCEO*). Such grave negligence can involve acts of acquisition, retention, administration, or alienation.

Interestingly, c. 1376 of *CIC* 1983 (cf. c. 1449 §2 of *CCEO*) does not establish the delict of an administrator of a public juridic person performing acts of acquisition of temporal goods, or acts of retention of ecclesiastical goods, without the prescribed consultation, consent, or permission or without another requirement imposed by law for validity or liceity.<sup>62</sup>

### Penalty

Unlike the previous paragraph on malice, where expiatory penalties (cf. c. 1336 §§2-4 of *CIC* 1983; cc. 1429-1430 of *CCEO*) were envisaged, the penalties for the above-mentioned delicts committed with personal culpability/grave negligence (*culpa*) according to c. 1376 §2 of *CIC* 1983 and c. 1449 §2 of *CCEO* are indeterminate, preceptive, *ferendae sententiae*, not excluding the expiatory penalty of deprivation of office,<sup>63</sup> and will, therefore, be proportionate to the harm caused as prescribed in c. 1349 of *CIC* 1983 (cf. c. 1409 §2 of *CCEO*) which states, “if a penalty is indeterminate, and if the law does not provide otherwise, the judge in determining the penalties is to choose those which are proportionate to the scandal caused and the gravity of the harm; he is not, however, to impose graver penalties, unless the seriousness of the case really demands it. He may not impose penalties which are perpetual.” Though this is the general principle, in this case, the canon envisages deprivation of office as a penalty, if necessary.

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<sup>62</sup> Arguably, an administrator who performs such acts of acquisition or acts of retention commits the delict of c. 1378 involving abuse (§1) or negligence (§2) of an ecclesiastical power, office or function.

<sup>63</sup> Cf. Valere Nkouaya Mbandi, “The Revised Version of Book VI of the *CIC* 1983: Major Changes and Issues not Addressed,” *Studies in Church Law* 16 (2021) 56-58; Lawrence Rasaan, “Financial Malfeasance of Pastors: Penalties and Remedies (cf. c. 1376),” *Studia Canonica* 57 (2023) 540-548.

For all these delicts, the penal law adds, apart from penalties, that the offender has "the obligation to repair harm" caused by the delict (cf. c. 128 of *CIC* 1983; c. 935 of *CCEO*).<sup>64</sup> It is restoring the situation which existed before the damage was caused. For example, an object that was illegitimately possessed is returned, or a right or duty that was denied is acknowledged. Reparation is satisfaction. This could be financial or moral. Often, restitution and reparation are connected. It is worth noting that in Roman law, the term *damnum reparatio* was used to describe the process of compensating the injured party for the economic value of the damaged goods.<sup>65</sup> For an offence to be committed, it is not sufficient that the act creates the potential possibility that the property of an ecclesiastical juridical person may deteriorate, but through a specific criminal act, material damage has been inflicted on it.<sup>66</sup> The Dicastery for the Legislative Texts, with reference to c. 1361 §4, indicates that reparation of the harm can take two forms: 1) *Reparatio*: effective redress of the material harm caused. 2) *Restitutio*: restoration of property to its state before the harm. The use of the disjunctive 'or' between *restitutio* and *reparatio* indicates the choice of type of repair.<sup>67</sup> In addition to that, the alienation of such goods without the observance of juridical requirements (consent/permission) established *ad validitatem* (for validity) or *ad licitatem* (for lawfulness) is equally punished, even in the case of having acted not only with malice (*dolus*) but also with grave negligence (*culpa*) (cf. c. 1376 §2, 1°).

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<sup>64</sup> Cf. X5.36.9 in Friedberg, II, col. 880: "Si culpa tua datum est Damnum vel iniuria, seu aliis irrogantibus opem forte tulisti, aut haec imperitia tua sive negligentia evenerunt: iure super his satisfacere te oportet, nec ignorantia te excusat, si scire debuisti, ex facto tuo iniuriam verisimiliter posse contingere vel iacturam." For further study on the repair of damages, cf. Maria D'Arienzo, *L'obbligo di riparazione del danno in diritto canonico. Percorsi di ricerca* (Cosenza, Pellegrini, 2014) 58-91; Fernand De Visscher, "Les origines de l'obligation 'ex delicto'," *Revue Historique de Droit Français et Étranger* 7 (1928) 335-386; Francisca Pérez-Madrid, "El precepto penal, una vía para prevenir el delito y reparar el escándalo," *Ius Canonicum* 61 (2021) 99-137; Paweł Kaleta, "The Obligation of Repairing the Harm for a Property Offence in the 1983 Code of Canon Law," *Roczniki Nauk Prawnych* 34 (2024) 55-64.

<sup>65</sup> Cf. Ilaria Zuanazzi, "La responsabilità giuridica dell'ufficio di governo nell'ordinamento canonico," *Ius Canonicum* 59 (2019) 521.

<sup>66</sup> Cf. Piotr Majer, "Odpowiedzialność za szkody wynikłe z nielegalnych aktów administracyjnych, [in:] Organizacja i funkcjonowanie administracji w Kościele," Józefa. Krukowski - Wiesława Kraiński - Mirosława Sitarz (eds), *Organizacja i funkcjonowanie administracji w Kościele* (Toruń: Nicolaus Copernicus University Press, 2011) 225-226.

<sup>67</sup> Cf. Dicastery for Legislative Texts, *Le sanzioni penali nella Chiesa. Sussidio applicativo del Libro VI del Codice di Diritto Canonico* (Città del Vaticano, 2023) 130.

## **The Prescription**

The prescription period to prosecute these delicts is seven years (cf. c. 1362 §1, 2° of *CIC* 1983; c. 1152 of *CCEO*). In the old canon, it was three years. The increase from the previous three years underscores the legislator's commitment to accountability and the safeguarding of ecclesiastical patrimony.<sup>68</sup>

### **6.2. Delicts of "Personal" Financial Malfeasance**

The revised Book VI encompasses seven additional delicts pertaining to "Personal" financial malfeasance.<sup>69</sup> Among these, two delicts, specifically i) overcharging and ii) other financial improprieties, are newly incorporated in this edition. Furthermore, three of the existing delicts, i) bribery, ii) simony for sacraments, and iii) illegitimate profit from mass offerings, feature modified penalties compared to those prescribed in the previous iteration of Book VI. Additionally, two other delicts, i) delicts of abuse of ecclesiastical office, power or functions, ii) due to culpable negligence, performing or omitting an act of ecclesiastical power or office or function, are closely associated with financial malfeasance.

All result in illegitimate advantage to individuals, but they do not necessarily or always result in immediate harm to the safeguarding of Church property. Though these delicts identify behaviours of Catholics that may cause scandal to some and even harm to the safeguarding of the Church, they are of a more "personal" nature inasmuch as they exhibit acts of self-centred and illegitimate behaviour by persons who have responsibilities in the Church.

#### **6.2.1. Delict of Overcharging for Services (c. 1377 §2 of *CIC* 1983; c. 1463 §2 of *CCEO*)**

Paragraph 2 of c. 1377 did not exist in the old Book VI. C. 1377 §2 which is newly added in the revised Book VI states: "A person who in the exercise of an office or function requests an offering beyond that which has been established, or additional sums, or something for his or her own benefit, is to be punished with an appropriate monetary fine or with other penalties, not excluding deprivation of office, without prejudice to the obligation of repairing the harm." This is a new juridical provision that applies to offerings made in celebration

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<sup>68</sup> Cf. John Antony Renken, "Delicts of Financial Malfeasance in the Revised Penal Law," 17-21.

<sup>69</sup> Cf. John Anthony Renken, "Financial Delicts in the Church: Reflections on Financial Malfeasance in the Revised Book VI," 78.

of sacraments and sacramentals. In fact, c. 848 of *CIC* 1983 prohibits requesting more offerings than what is determined by the competent authority.

This newly added delict in c. 1377 §2 (cf. c. 1463 §2 of *CCEO*), punishes those who request an offering beyond that which has been established or additional sums or other personal profit from their office or function. This provision was already there in c. 2408 of *CIC* 1917. C. 2408 of *CIC* 1917 states:

Those increasing the usual taxes legitimately approved according to the norm of Canon 1507, or requiring anything above them, are to be coerced with grave monetary fines, and recidivists are suspended from office or removed according to the gravity of the fault, besides being bound by the obligation of restoring whatever was unjustly received.

This penal law holds significance due to the fact that many liturgical and non-liturgical services within the Church are assigned fixed fees by competent authorities such as diocesan Bishops or the Provincial Bishops' Council. Examples of such functions related to liturgical services include i) offerings (*stips*) for Mass celebrations (cf. c. 952 §1 of *CIC* 1983; c. 1013 §1 of *CCEO*), ii) fees (*taxae*) for acts of executive power involving granting a favour (e.g., a dispensation, privilege, etc.) or executing a rescript from the Apostolic See (cf. c. 1264, 1° of *CIC* 1983; c. 1013 §1 of *CCEO*), and iii) offerings (*oblaciones*) on the occasion of the administration of sacraments and sacramentals (cf. c. 1264, 2° of *CIC* 1983; c. 1013 §1 of *CCEO*).<sup>70</sup> A violation of this law occurs when an office holder, while performing ecclesiastical duties, demands an amount exceeding the established norm set by competent ecclesiastical bodies.

Similarly, within the context of tribunal proceedings, individuals serving as procurators, advocates, experts, interpreters, or judges are entitled to receive fixed fees (*honoraria*) for their services (cf. c. 1649 §1, 2° of *CIC* 1983; c. 1335, 2° of *CCEO*). Additionally, each tribunal is allocated fixed fees from the concerned parties to cover various administrative and judicial expenses (*expensae iudiciales*). It is mandatory to disclose these expenses to the parties before commencing their trial (cf. c. 1464 of *CIC* 1983; c. 1123 of *CCEO*). Any demand for compensation or fees beyond the established fixed

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<sup>70</sup> Cf. John Anthony Renken, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, 112-120.

amounts by individuals performing tribunal duties constitutes a violation of c. 1377 §2 (overcharging), and is considered a delict. Moreover, c. 1488 §1 of *CIC* 1983 and c. 1146 of *CCEO* explicitly prohibit procurators and advocates from entering into agreements that seek “excessive profit/immoderate payment” or a stake in the subject matter of the dispute. Such agreements are classified as delicts under c. 1377 §2. C. 1488 (cf. c. 1146 of *CCEO*) states that they can be suspended and fined by the judge for this misbehaviour. If this is not the first offence, the Bishop in charge of the tribunal can remove them from the office.

Moreover, individuals involved in parish administration, including pastors (*parochus*), catechists, ministers, or volunteers, demanding fees beyond the fixed amount for their ministry, also commit a delict under c. 1377 §2.<sup>71</sup> In all cases, to establish the commission of the delict as described in c. 1377 §2, several conditions must be met. Firstly, the individual involved must hold an ecclesiastical office (*officium*) or perform a function (*munus*). Secondly, the law must have established fixed rates for the execution of these functions. Thirdly, there must be a request for an additional offering, or an expression of a desire for personal profit.<sup>72</sup>

In c. 1377 §2, unlike §1 on bribery, where the initiative is taken by someone who is not the office holder, the initiative is taken by the office holder who uses his office to obtain personal advantages in exchange for the performance of official acts which are legitimate, and, therefore, excludes complicity (the rule punishes only the office holder, regardless of the acceptance of the requests suffered by the other, *i.e.*, it does not matter if he got what he asked for or not). This unlawful conduct consists of an abuse of one’s office towards someone who requests a legitimate service and includes:

i) Requesting offerings beyond what has been fixed by the competent authority (cf. c. 848 – for the administration of the sacraments, the minister may not ask for anything beyond the offerings which are determined by the competent authority, and he must always ensure that the needy are not deprived of the help of the sacraments by reason of poverty);

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<sup>71</sup> Cf. John Antony Renken, “Delicts of Financial Malfeasance in the Revised Penal Law,” 23.

<sup>72</sup> Cf. John Antony Renken, “Delicts of Financial Malfeasance in the Revised Penal Law,” 23.

- ii) The request for an additional sum;
- iii) Anything else (favours, advantages, opportunities) that generates profit directly for the person asking for it.

### Penalty

The penalty for this delict is a i) determinate, preceptive, *ferendae sententiae* expiatory penalty of appropriate monetary fine (cf. c. 1336 §2, 2°); or ii) other indeterminate, preceptive, *ferendae sententiae* penalties, not excluding deprivation of office (cf. c. 1336 §4, 1°). The canon prescribes that the delinquent has the obligation of repairing the harm caused by the delict. However, *ad normam iuris* c. 1463 §2 of CCEO, the delinquent is to be punished with an appropriate monetary penalty or with other penalties, not excluding privation of office, with due regard for the obligation to repair the damage. Therefore, both Codes envisage the reparation of the harm apart from the penalties imposed.

### Prescription

This delict is also bound by the prescription of a seven-year period in both Codes (cf. c. 1362 §1, 2° of CIC 1983; c. 1152 §2, 2° of CCEO).

### 6.2.2. Delicts of Financial Improprieties by Clerics or Religious (c. 1393 §2 of CIC 1983; c. 1466 §2 of CCEO)

Delicts of financial improprieties perpetrated by Clerics or Religious are a) Performing Other Financial Misdemeanors or b) Unauthorised Management of "Secular Property" (c. 1393 §2 of CIC 1983; c. 1466 §2 of CCEO), which is newly incorporated after the revision of penal sanctions. This new canon on financial improprieties, established by Pope Francis, addresses the misconduct of clerics or religious individuals who commit delicts involving financial malfeasance (other than those mentioned in cc. 1376; 1377, 1380; 1383 of CIC 1983)<sup>73</sup> or engage in prohibited financial activities. They are encouraged to cultivate simplicity in their way of life and to refrain from all pursuits that might bear the semblance of vanity. Anything that hinders the pursuit of holiness and consecration must be diligently removed from their lives (cf. c. 282 of CIC 1983; c. 385 §1 of CCEO). Involvement in financial management or the administration of secular property could potentially divert one from the loftier goals of consecrated life. Consequently, clerics and religious are strongly advised to exercise caution in such matters and to avoid them whenever possible.

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<sup>73</sup> Cf. Juan Ignacio Arrieta, "A Presentation of the New Penal System of Canon Law," *The Jurist* 77 (2021) 261.

However, recognising that certain situations may necessitate their participation, the ecclesiastical law emphasises the importance of proper guidance and oversight in such cases.

C. 1393 §2 of *CIC* 1983 (cf. c. 1466 §2<sup>74</sup> of *CCEO*) is new to the revised Book VI. It did not exist in the old Book VI of *CIC* 1983. The new c. 1393 §2 of *CIC* 1983 states:

A cleric or religious who apart from the cases already foreseen by the law, commits an offence in a financial matter, or gravely violates the stipulations contained in can. 285 §4, is to be punished with the penalties mentioned in can. 1336 §§2-4, without prejudice to the obligation of repairing the harm.

The two delicts involve a cleric or religious who i) commits a delict involving finances, in addition to the other delicts envisioned by law; or ii) violates gravely the prescriptions listed in c. 285 §4. C. 1392 §2 establishes the delict of a cleric or religious violating the prescriptions of c. 285 §4.

C. 285 §4 prescribes:

Without the permission of their local ordinary, they (clerics) may not undertake the administration of goods (*gestio bonorum*) belonging to lay people or secular offices involving the obligation to render an account. They are forbidden to act as surety, even with their own goods, without consulting their proper Ordinary. They are not to sign promissory notes involving the payment of money but do not state the reason for the payment.

Some types of conduct are unbecoming to clerics by their very nature; some are qualified as unbecoming according to the circumstances of time and place. Primarily, this norm (cf. c. 285 §4 of *CIC* 1983; c. 385 §3 of *CCEO*) is more explicit when it forbids the following activities to be undertaken unless the Ordinary permits. The understanding of c. 285 §4 is as follows:

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<sup>74</sup> The revised c. 1466 of *CCEO*: §2 "A cleric, religious, or member of a society of common life in the manner of religious who, aside from the cases foreseen by law, commits a delict in a financial matter or seriously violates the prescriptions enumerated in can. 385 §3 is to be punished with an appropriate penalty, with due regard for the obligation to repair the damage." C. 385 §3 of *CCEO* states: "A cleric is forbidden to post bond, even from his own goods, unless he has consulted his own eparchial bishop, or as the case may be, his major superior."

**Without the "Permission" of their Ordinary, if a Cleric or Religious**

i) Administration/Management of goods (money or property) belonging to lay people. Those attached to financial matters or responsibilities, such as the post of treasurer or administrator of goods belonging to lay people. However, there can be an exception: as an elder brother, one can obtain permission if there were to be loss or grave danger, and therefore, with the permission of the Ordinary, one can do so. One needs permission, hence, to be a guardian of children, an executor of a will, and a trustee of funds. The priest can be allowed to serve as the executor of his parents' will.

ii) Undertaking any secular office entailing an obligation to render accounts, without the permission of their proper ordinary, *e.g.*, acting as trustee (a person or member of a board given control or powers of administration of property in trust with a legal obligation to administer it solely for the purposes specified).

Here, the Ordinary's permission is required in these circumstances described above. Why is it restricted? Because if there is a loss, the cleric or religious person has to pay for it. If he/she is unable, the Church, the Institute, or the Society may have to bear the loss.

**Without the "Consultation" of their Ordinary, If a Cleric or Religious**

Acting as surety<sup>75</sup> even with their own goods. The cleric or religious guarantees the debt as the surety, or as the guarantor, even with their own goods, without consulting their own proper Ordinary. One cannot be surety for someone taking a loan without consulting their Ordinary. Here, permission is not required; instead, consultation is required. Yet it is assumed that the prudent advice of the Ordinary would normally be accepted. The consultation for the promissory notes is an addition to the c. 137 of *CIC* 1917,<sup>76</sup> however, this makes explicit something already contained in the principle. In the afore-mentioned three cases, the Ordinary is in a better position to judge *in situ* what is unworthy of the priestly status.

**A Cleric or Religious "Cannot" Sign the Promissory Note**

A cleric or religious cannot sign promissory notes. A promissory note is a financial instrument that contains a written promise by one party (*the*

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<sup>75</sup> The surety is the guarantee of the debts of one party by another. A surety is a person or organisation that agrees to pay a debt if the borrower is unable to make the payments.

<sup>76</sup> C. 137 of *CIC* 1917: "Clerics are prohibited from posting bonds, even out of their own goods if they have not consulted the local Ordinary".

*note's issuer or maker*) to pay another party (*the note's payee*) a definite sum of money, either on demand or at a specified future date, etc., which involves payment of money but does not state the reason for the payment.

C. 285 §4 does not pertain to permanent deacons unless particular law establishes otherwise (cf. c. 288). *CCEO* does not have a corresponding canon in this regard. C. 672 of *CIC* 1983 and c. 427 of *CCEO* prescribe that all religious, clerical and lay, are bound by c. 285 §4. It adds that in lay institutes of pontifical right, the proper major superior can grant the permission mentioned in c. 285 §4.<sup>77</sup>

### Penalty

The penalty for this delict is a semi-determinate, preceptive, *ferendae sententiae* expiatory penalty from c. 1336 §§2-4. The canon says that the offender has “the obligation to repair the harm” caused by the delict.<sup>78</sup> The usage of the term “gravely” (*graviter*) expresses the aggravating imputability explicitly present in the criminal action of the perpetrator (cf. c. 1321 §§3-4). However, the penalty in the revised *CCEO* after *Vocare peccatores* differs, as it envisages only an appropriate penalty, which is indeterminate; therefore, c. 1409 §2 of *CCEO* is to be applied to interpret the “appropriate penalty.”

### Prescription

The prescription period for the prosecution of these delicts is three years in *CIC* 1983, according to c. 1362 §1 of *CIC* 1983. Whereas, according to the revised c. 1152 §2, 2° of *CCEO*, the prescription is seven years. This is a significant difference between the Code of the Latin Church and that of the canons of the Eastern Churches.

## 7. Delicts of Financial Malfeasance with the Revised Penalties

In the revised penal norms, the delicts related to bribery, simony, and the illegitimate use of Mass offerings are more clearly defined, and the associated penalties are more robustly enforced with significant modifications. The revision emphasises the necessity of applying penal measures to restore justice, correct the offender, and repair the scandal.

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<sup>77</sup> Cf. José Luis Sánchez-Girón Renedo, “El nuevo derecho penal de la Iglesia,” *Estudios Eclesiásticos* 96 (2021) 669.

<sup>78</sup> Cf. Matteo Carni, “La riparazione del danno da parte del delinquente e l’eventuale responsabilità civile ex delicto dell’ente di appartenenza,” *Ius Ecclesiae* 35 (2023) 449-472.

## 7.1. Delict of Bribery (c. 1377 §1 of CIC 1983; c. 1463 §1 of CCEO)

C. 1377 §1 of CIC 1983 (cf. c. 1463 of CCEO) states:

A person who gives or promises something so that someone who exercises an office or *function* in the Church would unlawfully act or fail to act is to be punished according to the provision of *can. 1336 §§2-4*; likewise, the person who accepts such gifts or promises is to be punished according to the gravity of the offence, not excluding by deprivation of office, without prejudice to the obligation of repairing the harm.

The old c. 1386 of CIC 1983 stated: "A person who gives or promises something so that someone who exercises an office in the Church would unlawfully act or fail to act, is to be punished with a just penalty; likewise, the person who accepts such gifts or promises." The revised canon punishes bribery and the consequent corruption of a person who exercises an office (*officium*) or *function* (*munus* – other assignments in ecclesial structure) in the Church in such a way that s/he unlawfully acts or fails to act in discharging that function or office. Bribery involves an act intended to persuade another to do or to omit something illegitimately in return for some form of recompense.<sup>79</sup> Hence, the indispensable element of bribery is the malicious intent to corrupt, which may be manifested in various ways; for example, anyone who offers something that ought not to be offered, implicitly or explicitly, intends to corrupt. Corruption cannot occur without the involvement of two parties.

**Active Bribery:** On the part of the person who gives or promises to pay in any way to obtain an unlawful act or failure to act (*i.e.*, with an intention that he or she should act or omit something unlawfully in exercising it). The offence is committed even though the attempt is ineffective, *i.e.*, there is corruption if a person makes a promise, even if he does not keep it up, regardless of whether the unlawful act or failure to act occurs. This is a typical example of an attempted offence. In this case, only the corruptor commits the offence.

**Passive Bribery:** On the part of the person who allows himself to be corrupted by accepting gifts or promises. A person holding an office or function accepts a gift or promise in return for doing or omitting something illegitimately. If another person consents to the corrupted gifts or promises, he or she commits the offence, and there is passive

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<sup>79</sup> Cf. John Anthony Renken, "Delicts of Financial Malfeasance in the Revised Penal Law," 22. For the historical development of the concept of bribery, cf. John T. Noonan, "Bribery," *Notre Dame Journal of Law, Ethics and Public Policy* 2 (1987) 741-752.

corruption. There is also corruption even if the person accepting does not carry out the unlawful act he agreed to perform or omit.<sup>80</sup>

In the context of CCEO in Title XXIV and CIC 1983, three canons of the Book VII on Processes, specifically in Part I regarding “Trials in General”, are relevant to the examination of this delict. Within this framework, two of the canons impose prohibitive measures, while the third canon outlines a penal consequence. This tripartite structure serves to delineate the legal parameters and responsibilities associated with the delict in question. They are: i) C. 1456 of CIC 1983 and c. 1114 of CCEO: The judge and all who work in the tribunal are forbidden to accept any gifts on the occasion of a trial (prohibitive); ii) C. 1488 §1 of CIC 1983 and c. 1146 of CCEO: The procurator and the advocate are forbidden to influence a suit by bribery, seek immoderate payment, or bargain with the successful party for a share of the matter in dispute (prohibitive); iii) C. 1489 of CIC 1983 and c. 1147 of CCEO: Advocates or procurators who betray their office because of gifts or promises or any other considerations are to be suspended from the exercise of their profession and are to be fined or punished with other suitable penalties (penal).<sup>81</sup>

The delict is considered to occur when, even if a promise is made, the gift is not accepted, yet the intended action is achieved; when a gift is accepted, but the intended action is not carried out; or when the intended action is executed, but the desired outcome is not realised.<sup>82</sup> The delict is deemed not to occur when a gift, not previously promised, is given only after the illegitimate action or omission is accomplished.<sup>83</sup>

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<sup>80</sup> Cf. Angelo Giuseppe Urru, *Punire per salvare: Il sistema penale nella Chiesa* (Monopoli: VivereIn, 2002) 234-235.

<sup>81</sup> Cf. Artt. 75 and 111 of Instruction *Dignitas Connubii*; Pontifical Council for Legislative Texts, Instruction to be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage *Dignitas connubii* (25 January 2005) (Vatican City: Libreria Editrice Vaticana, 2005).

<sup>82</sup> Cf. Antonio Calabrese, “Commentary on CC. 1380-1383,” in Ángel Marzoa – Jorge Miras – Rafael Rodríguez-Ocaña (eds), *Exegetical Commentary on the Code of Canon Law*, Vol. 4/1 (Montréal: Wilson & Lafleur, 2004) 512; Luigi Chiappetta, *Il Codice di diritto canonico: Commento giuridico-pastorale*, 3<sup>rd</sup> ed., Vol. 3 (Bologna: Edizione Dehoniane, 2011) 718; John Anthony Renken, “Penal Law and Financial Malfeasance,” 25, 51-53; Brian T. Austin, “The Revised Book VI, Part II Selected Norms and Commentary,” *The Jurist* 78 (2022) 42-43; Juan Gabriel Arias – Juan Ignacio Arrieta, “Book VI: Penal Sanctions in the Church,” in Juan Ignacio Arrieta (ed.), *Code of Canon Law Annotated* (Chambly: Librairie Wilson & Lafleur inc., 2022<sup>4</sup>) 1085-1086; Bruno Fabio Pighin, *Il nuovo Sistema penale della Chiesa*, Facoltà di Diritto Canonico San Pio X, Manuali 15 (Venice: Marianum Press, 2021) 363-366.

<sup>83</sup> Cf. John Anthony Renken, *The Penal Law of the Roman Catholic Church: Commentary on Canons 1211-1299 and 1717-1731 and Other Sources of Penal Law* (Ottawa:

## Penalty

Previously, in the old c. 1386 of *CIC* 1983 and c. 1463 of *CCEO*, it was merely a "just penalty" or "appropriate penalty" for both the one who gives or promises and the one who receives, *i.e.*, for both active and passive bribery. However, the penalty differs in the revised c. 1377 §1 of *CIC* 1983, whereas the c. 1463 §1 of *CCEO* retains the same "appropriate penalty". This is the significant difference between *CIC* and *CCEO*.

1) In *CIC* 1983, for the active bribery (one who gives and promises) – The penalty is semi-determinate, preceptive, *ferendae sententiae* expiatory penalties mentioned in c. 1336 §§2-4 (order, prohibition or deprivation).

2) In *CIC* 1983, "For the passive bribery" (one who accepts) – The penalty is an indeterminate, preceptive, *ferendae sententiae* penalty, according to the gravity of the delict, not excluding the expiatory penalty of deprivation of office (cf. c. 1336 §4, 1° of *CIC* 1983; c. 1430 §1 of *CCEO*). Additionally, only in the case of "passive bribery" is there an obligation to repair the harm, *i.e.*, to pay a fine and return what was received. Therefore, in the revised c. 1377, the obligation to repair the harm applies only to "passive bribery". However, the revised c. 1463 §2 of *CCEO* imposes the obligation to repair the harm for both "active and passive bribery." It makes sense because the bribe given by someone would have caused the damage, and that harm also needs to be repaired. The final clause, "obligation to repair the harm," included in the revised text, serves the intentional purpose of reinforcing the virtue of justice in rendering a judgment. This concept is not new in the Church legislation, as it has been reintroduced to the current text from c. 2407 of *CIC* 1917.<sup>84</sup>

## Prescription

This delict is bound by the prescription of a seven-year period (cf. c. 1362 §1, 2° of *CIC* 1983; c. 1152 §2, 2° of *CCEO*). In the old canons, the prescription was three years.

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Faculty of Canon Law, Saint Paul University, 2015) 301; John Anthony Renken, "Delicts of Financial Malfeasance in the Revised Penal Law," 27.

<sup>84</sup> C. 2407 of *CIC* 1917: "Those giving gifts or inducements to Curial officials or administrators of any ecclesiastical sort, [or] judges, advocates, or procurators, in order to tempt them to action or omission contrary to their office, shall be struck with congruent penalties and will be compelled to repair the damages, if there are any."

## 7.2. Delicts of Simony for Sacraments (c. 1380 of CIC 1983; c. 1461 of CCEO)

C. 1380 (cf. c. 1461 of CCEO, which is not revised by *Voccare peccatores*) on the delicts of simony<sup>85</sup> for sacraments modifies the same c. 1380 of the old Book VI by envisaging new penalties for persons who celebrate or receive sacraments through simony. Here, only the penalties are modified; in the old Book VI, only medicinal penalties/censure of interdict or suspension were envisaged; in the revised Book VI, even expiatory penalties mentioned in c. 1336 §§2-4 (order, prohibitions and deprivation) are also included along with the existing censure of interdict and suspension.<sup>86</sup> The term “simony” is defined as “an explicit or implicit and externally manifest agreement whereby one party deliberately agrees to confer a sacrament on another in exchange for some temporal, e.g., money or property. Put simply, it involves the buying or selling of spiritual elements (CCC 2121). Hence, the simoniacal celebration or reception of the sacrament, which is the concern of c. 1380 of CIC 1983 and c. 1461 of CCEO, is to sell or buy the sacrament for a price (*pro pretio temporali*), whatever its concrete expression, i.e., money, a patrimonial asset, or the granting of a favour. The delict of simony, according to c. 1380, is the deliberate sale or purchase of a sacrament in exchange for temporal goods.<sup>87</sup> Moreover, according to c. 149 of CIC 1983 and c. 946 of CCEO, the provision of an office made as a result of simony is invalid by virtue of law itself.<sup>88</sup> C. 1380 concerns only simony related to sacraments; it does

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<sup>85</sup> Simony takes its name from Simon Magus, who offered the Apostles money in exchange for the power to give the Holy Spirit. Peter answered him, “Your silver perish with you, because you thought you could obtain the gift of God with money” (Acts 8: 20).

<sup>86</sup> The revised c. 1380 states: “A person who, through simony, celebrates or receives a sacrament is to be punished with an interdict or suspension or the penalties mentioned in c. 1336 §§ 2-4.” Old c. 1380 stated: “A person who, through simony, celebrates or receives a sacrament, is to be punished with an interdict or suspension.”

<sup>87</sup> Cf. Juan Ignacio Arrieta, “Part II Particular Offences and the Penalties Established for them,” in Juan Ignacio Arrieta (ed.), *Code of Canon Law Annotated*, 1089-1090. The act of simony was condemned in several places in CIC 1917, cc. 727; 728; 729; and 730; G. Arendt - Felix M. Capello, “De dimoniae poenis latae sententiae,” *Periodica*, 18 (1929) 161-166; Raymon Ryder, *Simony*, Canon Law Studies 65 (Washington: The Catholic University of America, 1931) 25-31; John A. Abbo - Jerome D. Hannan, *The Sacred Canons*, Vol. 1, (St. Louis, Mo., B. Herder, 1952) 728; Antonio Calabrese, *Diritto penale canonico* (Vatican City: Libreria Editrice Vaticana, 2006<sup>3</sup>) 291; John Anthony Renken, *The Penal Law of the Roman Catholic Church*, 274-275.

<sup>88</sup> Simony is also the buying or selling of an ecclesiastical office or ecclesiastical preferment/promotion at a temporal price. Simony can cause significant damage to the Church by the designation of unworthy ministers or sacred objects being entrusted to unworthy or incapable ministers. Current ecclesiastical law prohibits the

not pertain to simony concerning the acquisition of favours or ecclesiastical offices.<sup>89</sup>

C. 1380 of *CIC* 1983 (cf. c. 1461 of *CCEO*) establishes two delicts:

- i) the delict of administering a sacrament through simony; and
- ii) the delict of receiving a sacrament through simony.

The canon effectually includes both the person celebrating a sacrament and those who receive it. Therefore, it means an agreement whereby one party deliberately agrees to confer a sacrament on another in exchange for some temporal good, *i.e.*, money or property. If the person celebrating the sacrament makes an agreement with the one receiving it, both of them commit the offence. If the former made an agreement with a third party, the latter does not commit the offence since he or she does not receive the sacrament. Neither does the one who receives it if h/she is unaware of the agreement,<sup>90</sup> *e.g.*, If 'A' makes an agreement with 'C' to administer the sacrament to 'B'. Here, C does not commit the offence because 'C' does not receive the sacrament and 'B' also does not commit the offence if h/she is unaware of the agreement. The delict is consummated when the sacrament is administered, *i.e.*, with the final act of execution. It is committed upon the completion of the sacramental action. If the agreement does not properly concern a sacrament, the offence mentioned in c. 1377 of *CIC* 1983 and c. 1463 of *CCEO* may be committed. Importantly, it does not apply to the giving and receiving of legitimate offerings for the celebration of Mass (cf. cc. 945-958 of *CIC* 1983; c. 715 of *CCEO*) or for sacraments and sacramentals (cf. c. 1264 of *CIC* 1983; c. 1013 §1 of *CCEO*); these permissible offerings are governed by the norms of the Code.<sup>91</sup>

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provision of ecclesiastical offices by simony to the extent of making it null and void *ipso iure* (cf. c. 149 §3 of *CIC* 1983; cc. 945 §2; 946 of *CCEO*); the resignation from an office for simony is null and void *ipso iure* (cf. c. 188 of *CIC* 1983; c. 968 of *CCEO*).

<sup>89</sup> Cf. Angelo G. Urru, "Incidenza della simonia nel codice annuale," in Angelo G. Urru (ed.), *Miscellanea in onore del José Manuel Castaño, O.P.* (Rome: Millennium, 1997) 103-117.

<sup>90</sup> Cf. Juan Arias – Juan Ignacio Arrieta, "Commentary on C. 1380," in Juan Ignacio Arrieta (ed.), *Code of Canon Law Annotated*, 1089.

<sup>91</sup> Cf. Francis Ndzegeha Ndey, *The Implication of the Canons on Mass Offerings in Particular Law and Custom with Special Reference to the Dioceses of Cameroon*, Doctoral Thesis (Ottawa: Faculty of Canon Law, Saint Paul University, 2019) 74-142; John Anthony Renken, "Penal Law and Financial Malfeasance," 47-48; John Anthony Renken, *The Penal Law of the Roman Catholic Church*, 275; Antonio Calabrese, *Diritto penale canonico*, 292.

In the context of ecclesiastical law, particular emphasis must be placed on the sacrament of marriage. According to established canon law principles, should an instance of simony arise involving the officiant, *i.e.*, one who assists the marriage (*assistens*) and the baptised spouses, it is crucial to note that the officiant (*assistens*) is not culpable for the delict of simony. In the Latin Church, it is the spouses who, rather than the officiant, are the ones who celebrate and receive the sacrament of marriage. Therefore, the Catholic spouses, not the *assistens*, commit the delict if they celebrate the sacrament through simony.<sup>92</sup> Should the Catholic spouse engage in a marriage tainted by simony with the non-baptised, only the Catholic spouse would incur a delict, as the non-Catholic baptised individual is not governed by Catholic penal law. Furthermore, in cases where the marriage involves a Catholic spouse and a non-baptised individual, it follows that no delict is incurred by either party, given that such a marriage does not constitute a sacramental union as defined by Church law.<sup>93</sup> This analysis is grounded in the provisions outlined in c. 1055 §2 *CIC* 1983 and c. 776 of *CCEO*.

### Penalty

The penalty for either delict in c. 1380 of *CIC* 1983 is the semi-determinate, preceptive, *ferendae sententiae* censure of interdict (cf. c. 1332 of *CIC* 1983) or suspension (cf. c. 1333 of *CIC* 1983);<sup>94</sup> or alternatively, a semi-determinate, preceptive, *ferendae sententiae* expiatory penalty from c. 1336 §§2-4 of *CIC* 1983 (order, prohibition and deprivation). These penalties c. 1336 §§2-4 were added in the revised Book VI. If censure of interdict or suspension has been imposed, the delinquent's withdrawal from contumacy is necessary for the remission of these medicinal penalties as they aim at one's conversion (cf. c. 1358 of *CIC* 1983). In c. 1461 of *CCEO*, a person who has administered or received other sacraments through simony is to be punished with an appropriate penalty, not excluding a major excommunication. Therefore, in *CIC*, both censure of interdict and suspension and expiatory penalties are envisaged, whereas in *CCEO*, only appropriate penalties and major excommunication are envisaged. This is a significant penal difference between *CIC* and *CCEO*.

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<sup>92</sup> Cf. Luigi Chiappetta, *Il Codice di diritto canonico: Commento giuridico-pastorale*, 714; Antonio Calabrese, "Commentary on C. 1380," in *Exegetical Commentary on the Code of Canon Law*, IV/1, 506-507.

<sup>93</sup> Cf. John Anthony Renken, *The Penal Law of the Roman Catholic Church: Substantive Law*, 368.

<sup>94</sup> According to old c. 1333, the censure of suspension affected only clerics, but after the revision of Book VI, it affects non-clerics who exercise the power of governance or an ecclesiastical office.

## Prescription

The prescription period for the prosecution of these delicts is three years (cf. c. 1362 §1 of *CIC* 1983; c. 1152 §2 of *CCEO*).

### 7.3. Delicts of Illegitimate Profit from Mass Offerings (c. 1383 of *CIC* 1983; c. 1449 §1, 3° of *CCEO*)<sup>95</sup>

The revised c. 1383 of *CIC* 1983 (cf. c. 1449 §1, 3° of *CCEO*) establishes the delict of making an illegitimate profit from a Mass offering. The revised c. 1383 of *CIC* 1983 states, "A person who unlawfully traffics in Mass offerings is to be punished with a censure or with the penalties mentioned in c. 1336 §§ 2-4." The old c. 1385 stated: "A person who trafficks for profit in Mass offerings is to be punished with a censure or other just penalty." Hence, the change in the canon pertains only to the penalties. C. 1449 §1, 3° of *CCEO* states that a person, who illegitimately makes a profit off of the offerings mentioned in c. 715 for the celebration of the Divine Liturgy or for the Liturgy of the Presanctified or for commemorations in the Divine Liturgy, is to be punished with the penalties mentioned in cc. 1429 and 1430 of *CCEO*, with due regard for the obligation to repair the damage. This provision for penalising those who illegitimately profit from the offerings for the celebration of the mass did not exist in the old Title XXVII of *CCEO*; it is newly added to the revised Title XXVII on Penal Sanctions in the Church of *CCEO* by *Motu proprio Vocare peccatores*. The offence concerns only Mass offerings, which in the Church receive a particular juridical protection. The discipline of this canon on Mass trafficking applies to everyone who collects Mass offerings.<sup>96</sup>

C. 947 of *CIC* 1983 states that even the semblance of trafficking or trading is to be entirely avoided from Mass offerings. This c. 1383 makes it an offence to profit unlawfully from them, either by trafficking in them or by failing to fulfil the prescriptions of cc. 948 and 955, the Decree on Mass Offerings of the then Congregation for the Clergy *Mos iugiter obtinuit*<sup>97</sup>

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<sup>95</sup> Cf. Augustine Mendonca, "Unlawful Use of Money Offered for the Celebration of Mass!," *Canon Law Society of Great Britain and Ireland Newsletter* 173 (2013) 38-42; Alfredo Raya, "Trarre profitto illegittimo dall'elemosina della Messa (can. 1385)," *Quaderni di Diritto Ecclesiale* 15 (2002) 315-324.

<sup>96</sup> Cf. Marino Mosconi, "Commentary on CC. 1311-1399," in *Quaderni di Diritto Ecclesiale, Codice di diritto canonico, Commentato*, 6<sup>th</sup> ed., (Milan: Ancora, 2022) 1132.

<sup>97</sup> Cf. Congregation for the Clergy, Decree on Stipends Accepted by Priests for the Celebration of Mass *Mos iugiter* (22 February 1991), AAS 83 (1991) 443-446; English transl. in *CLD*, 13, 527-530.

(22 February 1991) or the Decree of the Dicastery for the Clergy on the Discipline of Mass Intentions *Secundum probatum*<sup>98</sup> (13 April 2025).

According to c. 952 §§1-3 of *CIC* 1983, demanding a larger sum than the offering fixed by the Provincial Bishops' Council or even refusing to celebrate the holy Mass because of the lesser offering. A voluntarily made offering is a different situation. According to c. 948 of *CIC* 1983, a priest must celebrate separate holy Masses for the intentions of those for each of whom an offering has been made and accepted. According to c. 951 §1 of *CIC* 1983, a priest who celebrates a number of Masses on the same day may apply each Mass for the intention for which an offering was made, subject however to the rule that, apart from Christmas Day, he may retain for himself the offering for only one Mass; the others he is to transmit to purposes prescribed by the Ordinary, while allowing for some compensation on the ground of an extrinsic title. According to c. 951 §2 of *CIC* 1983, a priest who on the same day concelebrates another Mass may not under any title accept an offering for that Mass. According to c. 953, no one may accept more offerings for Masses to be celebrated by himself than he can discharge within a year. According to c. 955 of *CIC* 1983, when intending to transfer to others the celebration of Masses to be applied, failing to transfer the entire offering received, unless the amount in excess was given as a personal gift. Failing to adhere to those mandatory disciplines outlined in cc. 945-958 of *CIC* 1983 is reported to constitute a violation of c. 1383, resulting in the imposition of the prescribed penalty. It should be noted that the Code of Canon Law for the Eastern Churches (*CCEO*) does not contain provisions that parallel those found in the Latin Code of Canon Law.

The Decree *Secundum Probatum* (SP) on Mass offerings reiterates many of these concerns and adds a few more concerns, further emphasising the teachings of the Decree *Mos iugiter* (MI). There are many abuses which

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<sup>98</sup> Cf. Dicastery for the Clergy, A Note on the Decree on the Discipline of Mass Intentions *Secundum probatum* (13 April 2025), in <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2025/04/13/0251/00475.html> (accessed on 01 December 2025); Merlin Rengith Ambrose, "Mass Intentions! What is New?," *The New Leader*, 138/10 (2025) 23.

are prohibited by this decree.<sup>99</sup> It is also worth noting that the mass offerings are not subject to the diocesan tax.<sup>100</sup>

### Penalty

The penalty is semi-determinate, preceptive, *ferendae sententiae* censure; a semi-determinate, preceptive, *ferendae sententiae* censure, i.e., excommunication, interdict or suspension, prescribed in cc. 1331-1333 of CIC 1983 or semi-determinate, preceptive, *ferendae sententiae* expiatory penalties prescribed in c. 1336 §§2-4 of CIC 1983. In the old c. 1385 of CIC 1983, only censure or other "just penalty" was envisaged; but now, even expiatory penalties, mentioned in c. 1336 §§2-4, can also be imposed as an alternative to censure. However, the option for imposing a "just penalty" is abrogated. According to c. 1449 §1 of CCEO, a person is to be punished with the penalties mentioned in cc. 1429 and 1430 of CCEO, with due regard for the obligation to repair the damage. Therefore, the

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<sup>99</sup> i) While the general rule remains that "separate Masses must be applied for the intentions of those for whom an individual offering, even if small, has been made and accepted" (cf. c. 948 of CIC 1983), an exception was introduced with the Decree *Mos iugiter* by the then Congregation for the Clergy. This exception permits the celebration of two "collective," or "pluri-intentional" or "multi-intentional" Masses per week (art. 2 §§1-2, *MI*; art. 1 §1, *SP*), provided that the faithful are explicitly informed beforehand that a multi-intentional Mass will be offered at a specific time on particular days. This allows the faithful to choose either to unite their intention with others or to request an individual Mass at another time. ii) In practice, however, this regulation from the Roman Dicastery has not been widely known or followed by those who receive intentions and celebrate Mass. In many places, collective Masses have been celebrated daily, thereby contravening the discipline outlined in c. 945 §1 of CIC 1983 and the Decree *Mos iugiter*. That is why the decree issued many conditions, on the one hand, to guarantee justice, that is, the preservation of the word given to the offerors and, on the other, to combat the danger, or even the appearance, of "trade" with sacred things (Introduction to Decree *Secundum probatum*). The Decree *Secundum probatum* establishes, first of all, that it is up to the provincial council to decide on the possibility of "collective mass" intentions. *Secundum probatum* states that only if, and only if, the donors of the offering have been duly informed and have freely expressed their agreement (and explicit consent, i.e., it cannot be presumed), may several offerings be collected for a single celebration of Mass, and that this celebration should not be daily, to avoid the creation of a common practice and to maintain the character of exceptionality (art. 1, *SP*). In this mass, the celebrant is permitted to retain the offering of a single intention (art. 3, *SP*). According to art. 4 §2, collecting offerings for a simple commemoration/recollection/remembrance of the intention merely during the celebration of the Word or only at certain moments of the Eucharistic celebration. Simply reading aloud the donor's name or intention is not sufficient; the celebrant must actually apply the Mass to the donor's intention. Furthermore, the Decree states that it is gravely illicit to accept an offering for a mere commemoration (art. 4 §3).

<sup>100</sup> Cf. Pontifical Council for Legislative Texts, Decree on Recourse Against a General Decree Which Establishes a Diocesan *Tributum* (8 February 2000), *Communicationes* 32 (2000) 23.

penalties envisaged in *CCEO* are prohibitions, orders and privations. Censure is not envisaged in *CCEO*.

### Prescription

The statute of limitations for the prosecution of this delict is established at three years in accordance with the revised c. 1362 §1 of *CIC* 1983. However, under the provisions of the revised c. 1152 §2 of *CCEO*, the prescription period after *Motu proprio Vocare peccatores* is extended to seven years.

### 8. Delict of Abuse of Ecclesiastical Power, Office or Function (c. 1378 of *CIC* 1983; c. 1464 of *CCEO*)

Attention should also be given to c. 1378 of *CIC* 1983 and c. 1464 of *CCEO*, which establish the more “general” and “broad” delicts of ecclesiastical power, office or function. C. 1378 of *CIC* 1983 is placed at the end of Title II, “Delicts against Church Authorities and the Exercise of Duties” in the revised Book VI (2021). It essentially retains the previous regulations prescribed in c. 1389 of the old Book VI in *CIC* 1983. While not expressly pertaining to finance or financial management within the current juridical framework, the provisions herein may encompass the activities of ecclesiastical authorities who are unavoidably involved in financial considerations. In the old Book VI of *CIC* 1983 and Title XXVII of *CCEO*, these canons (cf. c. 1378 of *CIC* 1983; c. 1464 of *CCEO*) played a significant role in judging financial misconduct within the Church. However, with the revisions to Book VI by *Pascite gregem Dei*, new canons regarding specific financial misdeeds have been introduced, and existing canons have been elaborated upon, thereby attenuating the critical role previously attributed to c. 1378 of *CIC* 1983 and c. 1464 of *CCEO* in matters of financial misconduct.

C. 1378 of *CIC* 1983 and c. 1464 of *CCEO* consist of two laws: i) §1 addresses the malicious abuse (*dolus*) of ecclesiastical power, office, or function; and ii) §2 focuses on the culpable negligence (*culpa*) in the exercise of ecclesiastical power, office, or function. Both laws introduce several new significant elements. The obligation to repair any damage caused is now newly added and made explicitly mandatory, regardless of whether the abuse is rooted in *dolus* or *culpa*. The consistent use of terms such as power (*potestas*), office (*officium*), and function (*munus*) in both laws mentioned in c. 1378 of the revised Book VI (2021) is clear, eliminating the word ministry (*ministerium*) that was used in the second paragraph of c. 1389 of the old Book VI.

However, the word "ministry"<sup>101</sup> is retained in both paragraphs of the revised c. 1464 of *CCEO*. Additionally, the provision regarding culpable negligence in c. 1378 §2 of the revised Book VI of the *CIC* 1983 now applies to the perpetrator even if the action causes only scandal, not necessarily harm to another. In c. 1389 of the old Book VI, the person was liable to punishment only when harm to another was accomplished, and the scandal was not envisaged. But, in the revised c. 1464 §2 of *CCEO*, the application to scandal is not found.<sup>102</sup>

The first penal law outlined in c. 1378 §1 of *CIC* 1983 and c. 1464 §1 of *CCEO* addresses the misuse of ecclesiastical power, office, or function, specifically when this abuse is driven by deliberate and free intent (malice - *dolus*). The revised law is stated as follows:

Can. 1378 §1: One who, in addition to the cases already envisioned in law, abuses an ecclesiastical power, office, or function is to be punished according to the gravity of the act or omission, not excluding their privation, without prejudice to the obligation to repair harm.

The above-mentioned penal law establishes a broad offence related to any misuse of power, office, or function within the Church. It specifies that this abuse must be deliberate (*dolus*) and pertain to the exercise of ecclesiastical power (*potestas*), office (*officium*), or functions (*munus*) that are not covered elsewhere in the penal regulations of the Code (e.g., refusing to transfer the ownership of Church property to a juridic person when civil law so permit; when refusing to present mandated financial reports to the local Ordinary; when not getting required permission in performing acts of extraordinary acquisition or acts of extraordinary retention, when parish priest using parish fund for his personal use, etc). This abuse is driven by *dolus*, which refers to a deliberate intention or willful desire to violate a law or precept (cf. c. 1321 §3 of *CIC* 1983; c. 1414 §2 of *CCEO*). It is clear that the individuals responsible for such abuses are physical persons who hold legitimate roles or ministries within the Church. In the course of carrying out their hierarchical duties, they misuse their authority or privilege.

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<sup>101</sup> By "ministry", the legislator intends to encompass administration of the sacraments and preaching of the word of God, which are specially susceptible to negligence; Cf. John Anthony Renken, *The Penal Law of the Roman Catholic Church: Substantive Law*, 330.

<sup>102</sup> Cf. Francisco José Regordán Barbero, "El superior religioso y el abuso de potestad como prevaricación (can. 1389). Una reflexión desde el derecho administrativo canonico," in *Commentarium pro Religiosis et Missionariis* 95 (2014) 7-29.

In the old c. 1389 §1 of Book VI, only the abuse of “ecclesiastical power” (*potestas*) or “ecclesiastical function” (*munus*) was mentioned. However, the current legislation has expanded this to include “ecclesiastical office” (*officium*) as well. *Potestas* is typically designated through specific canonical provisions, providing specific power to a particular individual. On the other hand, *munus* may not necessarily be designated by a canonical provision; it can encompass any form of service rendered by an individual beyond a canonical provision.<sup>103</sup> *Officium*, in this context, refers to any function that is stably established by divine or ecclesiastical ordinance and is exercised for a spiritual purpose (cf. c. 145 §1). Essentially, it is a function established in a stable manner for a spiritual purpose.<sup>104</sup>

When the law uses the phrase “abuse of ecclesiastical power, office, or function,” its intention is to include all baptised members of Christ’s faithful, whether ordained or non-ordained, who are engaged in various ways in advancing the mission of the Church. Furthermore, this penal law states (§1) that the offence can be punished in either case: “*pro actus vel omissionis gravitate puniatur*,” meaning it can be punished according to the gravity of the act or omission. In other words, the abuse of ecclesiastical power, office, or function can involve either a deliberate violation of one’s duties in carrying out an office, ministry, or function, or a willful neglect of these responsibilities when required.<sup>105</sup> Abuse is defined as the improper exercise of authority or power by an ecclesiastical leader, which may infringe upon the rights and well-being of individuals and ecclesiastical goods under their jurisdiction.<sup>106</sup>

In §2, the term “*ex culpabili negligentia*” refers to the fact that someone commits this offence through culpable negligence. To constitute an act as a canonical delict, three essential elements must be present:

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<sup>103</sup> For a detailed understanding of the notions of *potestas* and *munus* cf. Lorenzo Cavalaglio, “*potestas*” and “*munus*” in Contemporary Canon Law,” in *Apollinaris* 88 (2015) 197-213.

<sup>104</sup> Cf. For further understanding of the notion of ecclesiastical office, cf. John M. Huels, “Towards Refining the Notion of ‘Office’ in Canon Law,” *The Jurist* 70 (2010) 396-433; Peter Slack, “Ecclesiastical Office: Some Observations and Issues,” *The Canonist* 6 (2015) 85-100.

<sup>105</sup> Cf. William H. Woestman, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, 2<sup>nd</sup> ed. (Ottawa: Saint Paul University, 2003) 132-134.

<sup>106</sup> Cf. Juan Alberto Pequeño Marcia, *El abuso de potestad del ordinario del lugar en la Iglesia particular: Configuración del delito a la luz del nuevo c. 1378 §1*, Doctoral Dissertation (México: Universidad Pontificia de México, 2022).

objective, subjective, and juridical.<sup>107</sup> When an individual intentionally, *i.e.*, with malice, violates a penal law or penal precept, they are subject to penalties for committing that offence. On the other hand, "*culpa*" signifies the violation of the law or precept through the omission of due diligence (*omissio delibitate diligentiae*) or "culpable/criminal negligence" (cf. c. 1321 §3). In this case, a person commits the same delicts by failing to exercise the necessary due diligence.<sup>108</sup> Generally, *dolus* is the requirement to establish penal imputability, while *culpa* does not lead to such imputability unless the law prescribes otherwise.<sup>109</sup> Here, in c. 1378 §2, the law prescribes otherwise, and therefore, those who abuse ecclesiastical power or office or function even out of culpable negligence are to be punished. In accordance with c. 1321 §3, an individual who perpetrates a delict due to *culpa* (culpable negligence) shall not incur punishment unless a specific law or precept dictates otherwise. This provision represents the second instance in the penal sanctions of *CIC* 1983, aside from c. 1376 §2 of *CIC* 1983; c. 1446 §2, 1° of *CCEO*, in which canon prescribes an exception to this rule concerning penal sanctions. Consequently, an individual who abuses their power, office, or function through culpable negligence shall be subject to penal repercussions, as stipulated in c. 1378 §2 of *CIC* 1983, which provides for such punitive measures mentioned in c. 1336 §§2-4.

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<sup>107</sup> An objective element (that is, an external violation of a penal law or precept); a subjective element (that is, a grave imputability for the violation by reason of malice (*dolus*) or culpability (*culpa*)); and a legal or juridical element (that is, a canonical penalty attached to the penal law or penal precept for the violation of the law. Cf. Velasio De Paolis, *De sanctionibus in Ecclesia. Adnotationes in Codicem: Liber V* (Rome: Pontificia Universitas Gregoriana, 1986) 40; John Anthony Renken, *The Penal Law of the Roman Catholic Church*, 72-73; Fernando Della Rocca, *Manual of Canon Law*, trans. by Anselm Thatcher (Milwaukee: The Bruce Publishing Company, 1961) 491-501.

<sup>108</sup> Cf. Antonio Calabrese, *Diritto penale canonico*, 43-50; *Communicationes*, 8 (1977) 175-177. For further reflections on *dolus* and *culpa*, Cf. Andrea D'Auria, *Inganno, frode, deliberazione. Il dolo nell'attuale Codice di diritto canonico*, Percorsi Culturali 4 (Rome: Urbaniana University Press, 2004); Francisco Javier Urrutia, "Dolus in iure canonico," *Periodica* 79 (1990) 267-292; John Anthony Renken, *The Penal Law of Roman Catholic Church*, 70-78.

<sup>109</sup> This provision is not envisaged in c. 1414 of *CCEO*. C. 1414 prescribes: "§1. Each person is considered innocent until the contrary is proven. §2. A person is only subject to penalties who has violated a penal law or penal precept, either deliberately or by seriously culpable omission of due diligence or by seriously culpable ignorance of the law or precept. §3. When an external violation of a penal law or penal precept has occurred, it is presumed that it was deliberately done until the contrary is proven. Concerning other laws or precepts, the same is presumed only if the law or precept is violated again after a penal warning.

## Penalty

In c. 1378 §1 of *CIC* 1983, for the malicious abuse (*dolus*) of ecclesiastical power, office, or function, the penalties are to be envisaged according to the gravity of the act or omission, not excluding by deprivation of the power or office or function without prejudice to the obligation of repairing the harm. The penalty is semi-determinate, preceptive, *ferendae sententiae*. There is a greater option given to the discretionary faculty of the one who punishes. In c. 1464 §1 of *CCEO*, the perpetrator is to be punished with an appropriate penalty, not excluding privation of them, unless another penalty has been established by law or precept for such an abuse, with due regard for the obligation to repair the damage.

In *CIC* 1983, for the culpable negligence (cf. c. 1378 §2), expiatory penalties (cf. c. 1336 §§2-4 – order, prohibitions and deprivations) are prescribed, however, without prejudice to the obligation of repairing the harm. In contrast, c. 1464 §2 of *CCEO* prescribes only a lesser “appropriate penalty” for a similar delict perpetrated by culpable negligence, while similarly retaining the obligation to repair the harm inflicted. This distinction (cf. c. 1464 §2 of *CCEO*) represents a significant divergence between the two codes and should be interpreted in accordance with the principles set forth in c. 1409 §2 of *CCEO*.<sup>110</sup>

## Prescription

Furthermore, actions arising from delicts established by the revised c. 1378 of *CIC* 1983 and c. 1464 of *CCEO* are subject to prescription of seven years (cf. c. 1362, §1, 2° of *CIC* 1983; c. 1152 §2, 2° of *CCEO*).<sup>111</sup> In the old canons, this was previously three years before the revision.

## Conclusion

The Church possesses ecclesiastical goods to support its mission and fulfil its essential functions within the community. Those individuals entrusted with the management of these goods carry a significant fiduciary responsibility. Their role is to acquire, retain, oversee, and responsibly dispose of these assets while adhering to applicable laws.

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<sup>110</sup> C. 1409 §2 of *CCEO*: “If a penalty is indeterminate and the law does not provide otherwise, the judge in determining the penalties is to choose those which are proportionate to the scandal that was caused and to the gravity of the damage; however, he cannot impose the penalties enumerated in c. 1402, §3.”

<sup>111</sup> Cf. Brian. T. Austin, “The Revised Book VI Part II Selected Norms and Commentary,” 44-45; John Anthony Renken, *The Penal Law of the Roman Catholic Church*, 317-318.

Acting as caretakers or stewards of the Church's property, they hold no ownership rights over it; instead, they are entrusted to safeguard and enhance these resources for the greater good. When these guardians of Church property violate their public trust through acts of financial misconduct, it can lead to serious repercussions, including scandal and harm to the entire community. Such violations undermine the foundational principles of stewardship and can have far-reaching implications for the Church's integrity and reputation. This article seeks to explore the mechanisms by which these scandals and the resulting harms come into existence and to reiterate the crucial provisions of the Church's penal system designed to address these offences effectively.

All the delicts in these canons require preceptive (non-facultative), *ferendae sententiae* penalties. Except for c. 1380 of *CIC* 1983 and c. 1461 of *CCEO* on Simony and c. 1383 of *CIC* 1383 on trafficking in Mass offerings, all other canons on financial malfeasance require the offender to repair the harm caused. Such repair of harm had not been mentioned in any of these canons in the old canons of *CIC* 1983 and *CCEO*. The Church, in the Catechism of the Catholic Church, affirms that any offence against justice and truth entails the obligation of repairing the harm, even if its author has been forgiven (CCC 2487). It is also unsurprising that Pope Francis, in promulgating the revised Book VI of the 1983 Code of Canon Law, introduced the "obligation of repairing the harm" into the canonical legal order. It should be noted that the reparation of the harm is not a form of additional penalty imposed on the offender in addition to the obligatory expiatory penalties. Moreover, most of the penalties envisaged in the revised canons are expiatory penalties, which signify that the penal rigour has been increased in the revised Book VI and Title of XXVII. Moreover, the newly revised penal law has extended the prescription period so that delinquents do not go unpunished due to a short prescription period, and has ensured the possibility of pursuing disciplinary action for the violation of delicts. For this reason, the provisions of c. 1362 of *CIC* 1983 and c. 1152 of *CCEO* have modified the prescription period by extending the time limit.

Another relevant Latin phrase is "*Corruptio optimi pessima*," which means "corruption of the best is the worst". This phrase suggests that when something of high quality or integrity is corrupted, the consequences are the most severe. It can be applied to corruption in politics, business, or religious institutions.