

The Vow of Poverty and Its Civil Law Implications

Romaeus W. O'Brien, O. Carm.

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>



Part of the [Catholic Studies Commons](#), [Civil Rights and Discrimination Commons](#), [First Amendment Commons](#), and the [Religion Law Commons](#)

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

THE VOW OF POVERTY AND ITS CIVIL LAW IMPLICATIONS[†]

ROMAEUS W. O'BRIEN, O. CARM.*

THE RELIGIOUS STATE is a juridical status of persons in the Church in which the members profess the public vows of poverty, chastity, and obedience. In virtue of positive legislation of the Church these public vows are essentially necessary but they are not ends in themselves. They are mere means whereby the individual is assisted in his pursuit of perfection by the observance of the evangelical counsels. One of these, the vow of poverty, aims at the acquisition of the virtue of poverty and a spirit of detachment from temporal goods. Although this virtue and spirit should motivate and influence the life of every religious, the actual occasions on which the vow of poverty calls for the observance of precise formalities of law by the subject are not too frequent. Nevertheless, the proper fulfillment of these demands creates situations where canon and civil law should be examined in relationship to one another so that the latter can be utilized for the better fulfillment of the canons. This is the specific area with which this paper is concerned. The questions to be examined are not offered as an exhaustive compilation. Rather it is hoped that they will illustrate the possible relationship of canon and civil law in matters pertinent to the vow of poverty and that they will be of service in the solution of actual problems when they arise. When civil law is called upon to reinforce canonical prescriptions, as it is in these cases, it is understood to be an area for one competent in questions of civil law to work towards the fulfillment of the canonical regulations.

Some preliminary facts should be recalled before turning to a consideration of particular problems. In the first place, the vow of poverty itself should be understood. It is a promise made to God by which a religious,

[†] Reprinted with permission from 21 *THE JURIST* 435 (1961).

* Member of the faculty of the Catholic University of America, Associate Editor of *THE JURIST*.

desirous of striving after supernatural perfection, binds himself in accordance with the particular law of an institute not to accept, use, or dispose of temporal goods without permission of the lawful superior.¹

The canonical restrictions placed upon the conduct of an individual by the vow of poverty extend only as far as ownership or rights derived from it are involved. Consequently, the religious retains reasonable discretionary power in certain instances where at first appearance the vow of poverty seems to apply. Thus, for example, he may refuse to accept a gift whenever he judges that its refusal can be justified by his own particular law and the virtue of piety. Or again, he may, in similar circumstances, channel a possible gift away from himself without violation of the vow or virtue of poverty. This may be done since the vow of poverty does not oblige one to accept everything that is offered to him. Prior to his acceptance of gifts, there is no question of ownership on his part; it is the exercise of acts of ownership which is regulated by the vow.

The historical evolution of religious law recognizes a distinction between a solemn and a simple vow of poverty. They do not differ intrinsically, but ecclesiastical law treats them differently. The solemn vow is generally professed in the older orders where the individual surrenders the right of ownership at solemn profession, while the simple vow is characteristic of religious congregations where this right is retained by the individual. Both vows, however, effectively restrict the individual's right to use and to administer property. Under the

simple vow, the religious retains the radical right of ownership of property already possessed as well as the right to acquire property. On the other hand, the religious who professes the solemn vow of poverty surrenders his natural right to possessions so that he no longer retains a patrimony or the right to acquire one.²

The subject of the property of religious is treated in six canons of the Code. Even a hasty perusal of them indicates how the law wishes a religious to disassociate himself permanently from preoccupation with personal possessions from the time of his entrance into religious life. At the same time, the law realistically provides for the protection of one's patrimony so that it will be kept intact in case necessity or other considerations should dictate a return to the world. Thus canon 568 states that the novice may not renounce his possessions after entering the novitiate. He must appoint an administrator to care for them,³ and, if he is a novice in a religious congregation, he is to make a will⁴ which cannot be arbitrarily changed.⁵ Furthermore, the patrimony cannot be disposed of or encumbered by the religious in a congregation without special permission.⁶ Thus the canons cover the entire life of the religious in relation to his personal possessions. In addition, the law considers him to be incorporated into a new family by religious profession and, consequently, whatever he acquires as a religious is acquired by the institute.⁷

¹ Pius IX, litt. ap. *Quam maxima*, 13 Nov. 1847; *Normae*, art. 113; Beste, *Introductio in Codicem* (Collegeville, Minn.: St. John's Abbey Press, 1956), ad can. 479, III.

² Beste, *loc. cit.*; Wernz-Vidal, *De Religiosis* (Romae: Apud Aedes Universitatis Gregorianae, 1933), nn. 327-330.

³ Can. 569, § 1.

⁴ Can. 569, § 3.

⁵ Can. 580, § 3.

⁶ Can. 580, § 3; 583, 1°.

⁷ Can. 580, § 2.

The canons also distinguish between the rights of those with a simple vow and the rights of those with a solemn vow. Personal acquisitions are still possible for the former, but they must be incorporated into his patrimonial goods⁸ and ultimately disposed of by will⁹ if the religious perseveres in his vocation. Since the solemnly professed religious renounces the right of ownership, the law allows him to dispose freely of his patrimonial goods in the two months before solemn profession.¹⁰

In the framework of these preliminary points of law certain problems involving the application of civil and canon law remain to be considered. Both laws are concerned with these matters, namely, the appointment of an administrator for temporal goods, the formulation of a last will, the renunciation of property before solemn vows, the acceptance of legacies, and contracts for personal services.

Appointment of an Administrator and Designation of Use for Interest and Usufruct

In the course of the novitiate, a novice is to appoint an administrator for his patrimony and, also, to arrange for the disposition of the interest or income from his estate.¹¹ Both actions are to be quasi-permanent so that a subsequent change is only permissible for a good reason and with the authorization of the general superior.¹² In making these prescriptions, however, the canon allows broad discretionary authority to the individual in so far as the choice, manner of appointment, and instructions to the administrator are con-

cerned. In allowing such freedom, it seems only reasonable to expect that the canon will be observed in such a way that the civil law will insure its fulfillment when a notable sum is involved.

No specific value is established in the law whereby one can determine that a particular amount of possessions is to be considered patrimony. A refinement of the concept is nevertheless possible in the light of the purpose of the patrimony: it is intended to be a means of support for the religious if he fails to persevere in his vocation. It follows that a sum suitable for this purpose should be considered patrimony. Thus, for example, an amount of money regarded as a suitable charitable subsidy under canon 643, § 2, for a religious returning to the world can be taken as a norm for determining what value constitutes patrimony. Such a sum should, therefore, be turned over to an administrator.

Although the law does not prescribe how an administrator is to be appointed, there is greater need for this to be accomplished in accordance with the regulations of civil law as the value of a patrimony increases. Informal agreements with a friend, a member of the family, or the community itself may be acceptable when the patrimony is of minor value, but when its value is notable, informality should not be tolerated. The purpose of the law is twofold: the preservation of the temporal possessions of the religious and the elimination of future preoccupation regarding his possessions. Reasonable efforts necessary, therefore, to reinforce the canon with the statutes of civil law are clearly indicated whenever the value of the patrimony is notable.

In referring to a patrimony as notable,

⁸ Can. 580, § 1.

⁹ Can. 569, § 3.

¹⁰ Can. 581, § 1.

¹¹ Can. 569, § 1.

¹² Can. 580, § 3.

the term *notable* is not employed in the comparatively restricted meaning adopted by authors in matters of justice.¹³ Rather, it is used in the sense in which it would characterize an estate that would be considered *notable* in the world today, due consideration being given to current economic conditions. Thus "the reasonable man" of civil lawyers might consider as notable an estate valued at \$5,000 since it would be capable of producing at normal interest rates an annual yield of considerable value to him. Less arbitrary, perhaps, and certainly more persuasive to the canonist, is a norm drawn from the decree of the Sacred Congregation of Religious regarding alienation of religious assets. For the United States of America, the value of \$5,000 was established as a limit beyond which alienation could not be made without an apostolic indult.¹⁴ The reason for requiring the indult is the safeguarding of the assets of religious institutes. If assets appraised at \$5,000 in value are considered in such a way as to require the additional safeguard of an apostolic indult, it is logical to conclude that the easily available protection of civil law should be enlisted when it is a question of the appointment of an administrator over a personal estate of identical value of a religious. The purpose of such a requirement is to afford an added assurance by civil authorities that the preservation of the patrimony required by canon law will be accomplished.

¹³ Jone-Adelman, *Moral Theology* (Westminster: Newman Press, 1956), p. 218; Fanfani, *De Iure Religiosorum* (Rovigo: Instituto Padano di Arti Graphice, 1949), p. 177; Choupin, *Nature et obligations de l'état religieux* (Paris: Beauchesne, 1927), p. 248.

¹⁴ S.C. de Rel., Notification, 29 Jan. 1953 — Bouscaren, *The Canon Law Digest*, Vol. IV (Milwaukee: Bruce Publishing Co., 1958), p. 203.

The subject is free in his choice of an administrator.¹⁵ It may be advantageous in some respects for the community to be chosen to fill this role, provided the freedom of choice of the subject is respected and the patrimony placed in no jeopardy. A minimum requirement in such circumstances would be that the responsibility of the community be undertaken under the authority of the major superior.

The legal instrument to be recommended for the transfer of administration is the trust. When this is established with a bank or trust company as trustee, state law regulates the character of the investments of such trusts. In addition, the possibility of a conflict of interests between the community and the subject is eliminated, while the need for supervision and direction of the trustee is eliminated. Finally, there is no need for concern that a new trustee may some day have to be chosen in the event of the trustee's death, since the trustee, when it is a bank or trust company, is considered to be established in *perpetuum*. Because of the comparative ease with which such a civilly acceptable instrument can be arranged, it certainly can be said that canon 569, § 1, is best satisfied in this way.

Stipulations concerning interest and revenues accruing to the patrimony should be incorporated into the trust. The trust itself should be revocable in accordance with the conditions of canon 580, § 3, on the possibility of the lawful return of the subject to the world.

It would be reasonable for an institute to establish a statute or law requiring all patrimonies to be erected as trusts. Such a law would be a *lex praeter codicem*.

If the religious has no patrimony, the

¹⁵ Abbo-Hannan, *The Sacred Canons*, Vol. I (St. Louis: The Herder Book Co., 1952), ad can. 569.

above formalities would be idle transactions. On the other hand, canon 569, § 2, considers the possibility of a simply professed religious acquiring a patrimony at a later date; in such an eventuality, the above remarks would then be applicable, since the dispositions of canon 569, § 1, are then to be put into effect.

The Novice and the Will of Canon 569, § 3

In the course of his novitiate a novice in a religious congregation is to make a will,¹⁶ to which a certain finality is attached, for it may be changed only in accordance with the formalities of canon 583, 2°. This will should be conformable with the statutes of civil law in order to safeguard the testator's intentions.¹⁷

Authors formerly considered the will required in this canon as something necessary, even though it was not recognized by civil law because the subject was not capable before civil law of making a will.¹⁸ Thus, for example, a morally binding will might fall short of the requirements of civil law because the testator had not attained the age required by civil law for making a valid will.¹⁹ Thus a novice may frequently

have been called upon to make a will during his fifteenth year. Such a will would not have been recognized in many of the states because of the testator's age. In those states it would have required an amendment by codicil, or would need to have been rewritten when the subject attained the age required by civil law in order to be recognized at civil law.

Canon 569, § 3, remains unchanged today, but recent responses and jurisprudence indicate a clear and notable departure from the jurisprudence of the past in this matter.²⁰ The current practice indicates a new approach to canon 569, § 3, in regard to those who lack testamentary capacity before the civil law.²¹ Gutierrez, of the Sacred Congregation of Religious, states that at present the Congregation regards the will prescribed in canon 569, § 3, as a *civily valid will*.²² Thus a novice who lacks testamentary capacity before the civil law or one who is excused from making a civily valid will at the time²³ has no

of reason. Although the consent of the parent or guardian is necessary for a minor's will, it is a requisite for liceity alone (*vide* Hannan, *The Canon Law of Wills* [Philadelphia: The Dolphin Press, 1935], nn. 513 and following).

²⁰ It seems warranted to observe that the present practice of the Sacred Congregation of Religious in this matter appears to support the suggestions made above that the aid of civil law should be enlisted in matters which touch upon civil as well as canon law whenever that aid is conducive to the proper fulfillment of the canon.

²¹ *Vide* Bouscaren-O'Connor, *Canon Law Digest, Supplement* (Milwaukee: Bruce Publishing Co., 1959), ad can. 569; Gutierrez, *Commentarium pro Religiosis*, XXXVII (1958), 56-68.

²² Gutierrez, *loc. cit.*

²³ A serious inconvenience, such as a notable or unwarranted expense, could be an excusing cause in so far as the fulfillment of the canon at the prescribed time is concerned. It seems that the judgment of the gravity of the excusing cause in such a case would not be that of the subject but, rather, that of the proper major superior upon

¹⁶ Can. 569, § 3.

¹⁷ Canon 1513, § 2, prescribes that wills which are made in favor of the Church should be made in such a way that they are protected by civil law whenever this is possible. This is a requirement to insure the fulfillment of the testator's intentions, and it seems quite reasonable to apply it to cases where a religious makes a will.

¹⁸ Vermeersch-Creusen, *Epitome Iuris Canonici*, Vol. I (Mechliniae-Romae: H. Dessain, 1949), p. 530, n. 716; Bouscaren-Ellis, *Canon Law, A Text and Commentary* (Milwaukee: Bruce Publishing Co., 1946), p. 270; Beste, *Introductio in Codicem*, ad can. 570; Abbo-Hannan, *The Sacred Canons*, I, ad can. 569, § 3.

¹⁹ A comparison of canons 89 and 1513 reveals that the canonical age for a valid will is the age

obligation to make a will until he can do so validly before civil law or until the excusing cause ceases. He must, however, do so as soon as possible after he acquires testamentary capacity or the excusing cause ceases. In the meanwhile, there is no obligation to make a civilly invalid will since such a will is also invalid canonically, unless it is made in favor of pious causes.

This new practice in regard to canon 569, § 3, is to be commended highly, and it is hoped that it will be formulated into positive law because it applies to a "gray area" which has been the source of problems in the past.

A notable exception to the application of the concept of a *civilly valid will* to canon 569, § 3, remains with regard to wills made in favor of pious causes. A novice who lacks testamentary capacity before the civil law may still make a will in favor of such causes, and it is canonically valid and binding in conscience.²⁴ Obviously, such a will should later be ratified before civil law when that can be accomplished.²⁵

It should be noted that the present practice does not have retroactive force and, therefore, wills made in the past by those who lacked testamentary capacity at civil law were nevertheless valid canonically. Later, when civil law ratification was necessary, it was a necessary formality to be performed but the dispositions of the canonically valid will were not to be changed without fulfilling the formalities of canon 583, 2°. Consequently, if a religious desires

today to ratify before civil law a will made in the past and, at the same time, contemplates a change of beneficiaries in the will, canon 583, 2°, would apply.

Two further observations seem called for in this consideration of the will of canon 569, § 3.

The will is prescribed for those in a religious congregation but the law does not apply to candidates for a religious order, even though they make profession of simple vows for a period of years before surrendering their right of ownership with solemn profession. Nevertheless, if a candidate to a religious order possesses a notable patrimony and is capable of making a civilly valid will, it is to be recommended that he do so as a prudential measure to protect the disposition of his estate. Even before solemn vows, after he has disposed of his possessions in accordance with canon 581, a will in favor of his order is to be recommended as a means of protecting civilly the rights acquired by the order over all the possessions a religious will acquire after his solemn profession.

Finally, it is sometimes stated that unforeseen acquisitions of the future may not be disposed of here and now in a will. This is a misconception which lacks foundation in civil or canon law. Indeed, the novice in a religious congregation is directed to do this very thing by canon 569, § 3. Civil law certainly has no quarrel with this procedure. The will recognized by civil law regards the estate not as it is today but, rather, as it will be at the time of the death of the testator. In many states, statutes exist to the effect that all goods which will be acquired in the future are implicitly included under a will. If there be any doubt about the matter, a residual clause may always be inserted to cover such goods.

whom the responsibility of seeing to the fulfillment of canon 569, § 3, rests. In either case, the law remains while the obligation to fulfill it is merely suspended.

²⁴ Can. 1513, § 2; Bouscaren-O'Connor, *loc. cit.*

²⁵ Can. 1513, § 2.

Renunciation of Possessions before Solemn Profession

Within the sixty-day period prior to solemn profession a religious is to dispose of his possessions in view of the renunciation of ownership implicit in his solemn vow of poverty.²⁶ In disposing of his possessions, he may also renounce anything of value which he foresees with a reasonable degree of certitude as coming to him personally. After solemn profession, all acquisitions made by him belong to the institute or to the Holy See, since he lacks the right of ownership.²⁷ Even though the subject and his heirs are morally obligated to see to the fulfillment of this Church law, an effective instrument at civil law should be formulated to protect the interests of the institute with regard to future acquisitions by the subject.

Among the instruments of civil law whereby the canonical renunciation of possessions can be rendered effective, a contractual agreement between the person and the institute is highly recommended. A bilateral contract between the subject and the institute can be entered into whereby ownership of all goods possessed now or at any future date by the religious are ceded in consideration for the temporal care and support of the person by the institute until the person's death. As proof of consideration on the part of the institute, the contract should specify that the institute will provide for the person's burial, as well as expenses connected with it. A clause of this type may not be especially pleasing to the delicate sensibilities of some individuals, but its inclusion is urged as a proof of the

consideration given by the institute for the acquisition from the subject of rights of such possible magnitude.

A bilateral contract or memorandum of agreement between the institute and the religious can be arranged by one competent in civil law. Much is to be said in favor of this instrument, even though present good will and a moral obligation to fulfill the conditions of the canon argue against the necessity of adopting the instrument. The contract provides assurance at civil law that the canon will be fulfilled. It is enforceable and it practically nullifies past or future wills which might be presented against the acquired rights of the institute. A previous will can have no practical effect in so far as the contract already disposes before the testator's death of possessions he may have acquired. A will postdating the contract cannot be sustained, since a bilateral contract may not be abrogated unilaterally through a will. The contract, therefore, is superior to a will for effecting the transfer of dominion to the institute since it is immediately operative and enforceable. It should be adopted instead of waiting until necessity demands the formulation of deeds of conveyance for newly acquired possessions. The latter procedure may require repeated actions and may sometimes be impossible when, for example, a religious is incapacitated. With the contract, therefore, a maximum of assurance for the fulfillment of canon 581 is achieved with a minimum of civil formalities.²⁸

²⁸ An example of the type of agreement is offered here with the understanding that adaptations necessary because of the civil law of the area should be incorporated into it by one competent in civil law.

MEMORANDUM OF AGREEMENT

This agreement entered into this day
of , 19 , by and between

²⁶ Can. 581; O'Brien, "The Renunciation of Possessions before Solemn Profession," *THE JURIST*, XX (1960), 127-158.

²⁷ Can. 582, 2°.

In relation to the subject of renunciation of possessions before solemn profession, reference should be made to the possibility of a conditional renunciation of possessions.²⁹ Perhaps a candidate for solemn vows possesses a notable patrimony and hesitates to renounce it absolutely in accordance with canon 581. Fearing that he may find it necessary to withdraw from religious life at a future date, he may wish to renounce his patrimony in such a way that recovery of it will be possible in that eventuality. Such a renunciation is readily possible at civil law through the instrumentality of a revocable trust. The desire for a similar canonical expedient is by no means new and was considered by older canonists under the title of conditional renunciation. In the nineteenth century the Holy See opposed and rejected the measure on several occasions and its exclusion under canon 581 is definite. Even though it seems desirable and equitable in a particular case, this type of renunciation is not consonant

(N.N.) and (Name of institute as civilly incorporated) :

Witnessed that the parties to this agreement, in consideration for temporal care and support, necessary medical care and expenses, and proper burial services, to be rendered by the (corporation) to me for as long as I remain a member of the said corporation, I, (N.N.) hereby GRANT, SELL, ASSIGN, AND SET OVER to the (corporation), a corporation organized and existing under and by virtue of the laws of (the State of . . .) for (e.g., educational and religious) purposes, and its successors and assigns, all of my property, of every kind and nature wheresoever situated, of which I am now possessed or to which I may hereafter become entitled, through purchase, gift, devise, or inheritance or in any other manner, and to be used by said (corporation) for such purposes as in its discretion it may deem best.

In witness whereof, the parties hereto have hereunto set their hands this day of , 19 , in this agreement first above written.

(N.N. of party)
(Seal) (N.N. of representative of corporation)

²⁹ For a more extensive treatment of this subject, *vide* O'Brien, *loc. cit.*

with the concept of a solemn vow of poverty nor can it be tolerated without authorization of the Holy See.

The Acceptance of Legacies

A legacy may be defined as "a testamentary disposition, contained in a will, making a donation bequeathed by a competent testator, to be executed after his death by his heir or some other person designated by him, at the demand of the legatee or of the law."³⁰ Or, again, it is "a devise or bequest in the nature of an offer and vests in the donee only on his acceptance thereof."³¹ A legacy, therefore, partakes of the nature of an offer which is considered as taking place at the death of the testator. Prior to the death of the testator, the legacy should be classified as "a record of a future offer of a gift." But if a religious is not obliged to accept a gift from a living donor, he should *a fortiori* be permitted to dissuade a donor from making the future offer of a gift. Even though he thereby accomplishes his own exclusion as a legatee, he does not act contrary to his vow of poverty. The liceity of his action must be determined in accordance with other standards. Accordingly, he must decide whether his action can be reconciled with the virtue of poverty as well as with the virtue of piety towards his community, and whether it is in keeping with the particular law of his institute. Certainly his action of bringing about his own exclusion as a legatee is permissible at civil law since the latter even permits him to reject the legacy. Thus, in the absence of particular legislation, it appears that a religious relying upon his own judgment may law-

³⁰ Hannan, *The Canon Law of Wills*, n. 83, footnote 86.

³¹ 96 C.J.S., *Wills*, 1148.

fully refuse a legacy during the testator's lifetime or dissuade him from naming him a legatee.

The entire question of legacies in relation to the vow of poverty and the rights of religious in specific instances is by no means clear in the works of the authors who discuss wills or legacies. None of them considers legacies in the light of the civil law of the United States. It appears to the writer, however, that a similar conclusion can be drawn in regard to the rejection of a legacy by a religious, even when it becomes known only after the death of the testator, unless particular law prohibits such a refusal on the part of the legatee. A legacy, as it is understood in the United States today, is like the offer of a gift on the part of the testator with the offer becoming effective at the moment of death of the testator. It would be very strange indeed if a testator, while still alive, lacked the authority to oblige a religious to accept a gift and, nevertheless, could oblige him morally to do so after his death through the simple expedient of naming him a legatee. This is particularly true when the civil law instrument itself lacks this binding force. Although civil law distinguishes legacies of land from other bequests in so far as vesting and particular formalities are concerned, it ultimately concedes the legatee a right to accept or reject a legacy.

Canonists differ regarding the vesting of an inheritance and the question whether acceptance is required. Wernz holds that the legatee becomes the owner at the death of the testator.³² Vermeersch-Creusen,³³

Cocchi,³⁴ and Vromant³⁵ demand acceptance as a condition for the inheritance to vest. Hannan believes this position to be preferable.³⁶ In so far as a legatee with a vow of poverty is concerned, this opinion is more reasonable in regard to his rights.

Again, the right of a religious to reject a legacy can be urged on the basis of the testator's intention and purpose when he makes a legacy. He utilizes this instrument in the light of his understanding of it in our civil law. For him, the legacy is a recorded offer of a gift which is to be effective after his death. The testator, therefore, stands before the law as one who intends to confer a gift upon a legatee through the legacy. Ownership does not pass, however, through the mere offer of a gift. At the death of the testator, the ownership of the gift is sequestered in the custody of the law and can be accepted or rejected as any other gift. Even when a portion of an estate devolves by operation of law upon an individual, it still remains within his capacity to accept or reject it. Although the civil law might consider ownership of a devise (land grant) as vesting immediately, the legatee still has the right to accept or reject it. In view of this reasoning, it appears that a legatee who is a religious may — in the absence of particular legislation — accept or reject a legacy *before* or *after* the death of a testator, provided he has placed no action indicative of acceptance. His action of rejection is not an act of ownership and, therefore, is permissible despite his vow of poverty.

If acceptance is once indicated, the reli-

³² Wernz, *Ius Decretalium*, Vol. III (ed. altera; Romae-Prati, 1908), p. 286.

³³ *Epitome Iuris Canonici*, Vol. II (Mechliniae-Romae, 1940), n. 834.

³⁴ *Commentarium in Codicem Iuris Canonici ad Usus Scholarum*, Lib. III (Romae: Marietti, 1932), p. 295, n. 189.

³⁵ *De Bonis Ecclesiae Temporalibus* (3d ed.; Brussels, 1953), pp. 138-139.

³⁶ *The Canon Law of Wills*, n. 84.

gious legatee must be considered as having acquired the legacy. He is then restricted in his actions regarding the legacy, since he is obliged by the vow of poverty and its regulations. Thus, a simply professed religious must obey the laws governing patrimony if the legacy comes to him as a person rather than as a religious. If it is acquired by him in his status as a religious, the ownership is acquired by the institute.³⁷ On the other hand, if the legatee is solemnly professed, the legacy is acquired for the institute; his civilly recognized contract with the institute will insure the protection of its rights.

Contracts for Personal Services

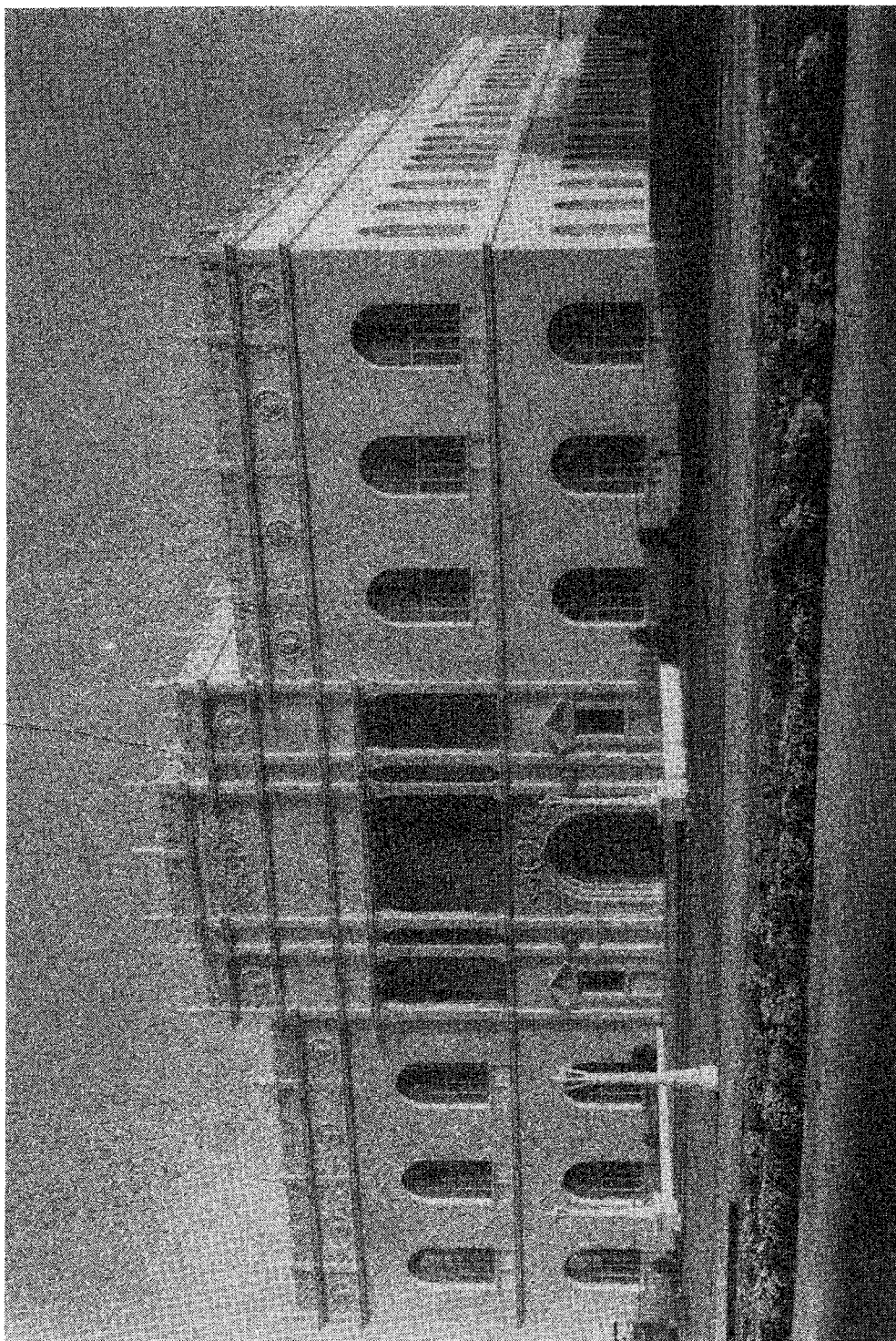
As a means of protecting a religious institute from possible claims for remuneration to a former member, an agreement

³⁷ Can. 580, §2.

recognized by civil law should be formulated between the institute and each member whereby the member releases the institute from any such claims in the future. Such an agreement should be recommended in all religious institutes as a protection from future law suits against the institute.

A contractual agreement was mentioned above as a suitable instrument whereby a candidate for solemn vows is enabled to turn over all future acquisitions to his institute in consideration for his support and temporal care. A similar agreement can be established in the form of a civilly recognized instrument whereby the religious, in consideration for his support and temporal care in the institute, waives all claims for salary or compensation at any future date. In this way, possible legal difficulties in the future will be forestalled.





University of San Diego School of Law