THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

INSTITUTE OF CANON LAW

Aggregated to the Faculty of Canon Law, Pontifical Urbaniana University, Rome

THE ROLE OF THE ORDINARY AS THE EXECUTOR OF ALL PIOUS WILLS WHETHER *MORTIS CAUSA* OR *INTER VIVOS,* PURSUANT TO CANON 1301, WITH REFERENCE TO THE ARCHDIOCESE OF MOMBASA, KENYA

A Thesis Submitted to the Institute of Canon Law in Partial Fulfillment of the Requirements for the Licentiate Degree in Canon Law

BY

REV. FR. JOHNSON THOYA IHA

JUNE, 2025

NAIROBI-KENYA

DECLARATION

TITLE OF THE THSIS:

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I, the undersigned, declare that this thesis is my original work and has never been submitted to any institution for academic award. All sources used are duly acknowledged.

NAME: REV. FR. JOHNSON THOYA IHA

Signature: 

Date: …….

This Thesis has been submitted with approval as the 1st Supervisor

NAME: REV. DR. JOHN MARTIN OWOR

Signature: 

Date: ……..

This Thesis has been submitted with my approval as the 2nd Supervisor

NAME: REV. PROF. FABIEN LONEMA

Signature: 

Date: ……

DEDICATION

With unwavering commitment to scholarly inquiry, I dedicate this academic research to the Christ's faithful of the Archdioceses of Mombasa.

ACKNOWLEDGEMENTS

I express my deepest gratitude to God the Creator, whose grace and guidance have enabled me to complete this scientific work.

I am sincerely thankful to my parents for their enduring love and support throughout my academic journey.

I wish to express my profound appreciation to His Grace, Archbishop Martin Kivuva Musonde, for granting me the opportunity and providing the financial support necessary for my studies in Canon Law at the Institute of Canon Law, Catholic University of Eastern Africa. I am equally grateful to the Very Rev. Fr. Armogast Mdawida, Vicar General of the Archdiocese of Mombasa, for his support and the confidence he placed in me.

I am particularly indebted to my supervisors, Rev. Dr. John Martin Owor and Rev. Prof. Fabien Lonema, whose scholarly expertise and dedicated guidance were instrumental in the completion of this work. I also extend my heartfelt thanks to all the lecturers of the Institute of Canon Law for their generous academic contributions.

Finally, I warmly thank my classmates and friends for their genuine friendship and unwavering encouragement throughout this journey.

ABBREVIATIONS

AAS	*Acta Apostolicae Sedis*
AA. VV	Auctores Varii (Various Authors)
Acts	Acts of the Apostles
ADN	Archdiocese of Nairobi
Art.	Article
Arts.	Articles
CAM	Catholic Archdiocese of Mombasa
Can.	Canon
Cann.	Canons
CCEO/1990	*Codex Canonum Ecclesiarum Orientalium* (1990 Code of Canons of the Eastern Churches)
CEI	*Conferenza Episcopale Italiana*
Cf.	Confer
CIC/1983	*Codex Iuris Canonici* (1983 Code of Canon Law)
CIC/1917	*Codex Iuris Canonici* (1917 Code of Canon Law)
Chr.	Chronicles
Cor.	Corithians
ed.	Editor
eds.	Editors

et al.	and others
Gn.	Genesis
IBC	Italian Bishop's Conference
Jn.	John
KCCB	Kenya Conference of Catholic Bishops
Lk.	Luke
Mk.	Mark
Mt.	Matthew
n.	Number
nn.	Numbers
p.	Page
PFAC	Parish Finance Advisory Council
pp.	Pages
Sm.	Samuel
Thes.	Thessalonians
USCCB	United States Conference of Catholic Bishops
Vol.	Volume
Vols.	Volumes

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GENERAL INTODUCTION

The Catholic Church, as a community of believers operating in the world, has as its ultimate end, the salvation of souls. To achieve this end, the Church possesses various means, one of which is the ability to acquire and utilize temporal goods.[1]

There are several ways through which the Church acquires temporal goods, one of which is through pious wills or pious dispositions, made either *inter vivos* or *mortis causa*.[2]

In order to ensure the faithful administration of these gifts, the Code of Canon Law prescribes specific canonical regulations. Legitimately accepted wills of the faithful are to be fulfilled with the greatest care, most diligently, especially regarding their administration and distribution. In such cases, the ordinary is considered the canonical executor.[3]

This study examines the role of the ordinary as executor of all pious wills, taking into account the juridical-historical development of pious wills, their legal frameworks, both canonical and civil, and the application of the universal norms on pious wills within the Catholic

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[1] Temporal goods are material goods of this world, such as money, land, buildings, furnishings, liturgical vessels and vestments, works of art, vehicles, and other categories of real and personal property, including securities and entitlements. These goods—whether tangible or intangible—are distinct from spiritual goods, such as grace, salvation, and the like. They are described as belonging to the Church because they are used in service of its mission—that is, they are instrumental in carrying out the Church's work. (Cf. C.J. WOODALL, *A Passion for Justice. An Introduction Guide to the Code of Canon Law,* Gracewing, Leominster 2011, p. 439); Cf. P.M. DUGAN, P. GARGARO, *Canon Law Books. A Simple Dictionary of Canon Law,* Canon Law Books, Inc., Philadelphia 2012, p. 49.

[2] A pious disposition is the giving of money or of movable or immovable goods to the Church either as gift referred to as an act *inter vivos* that is a present donation, or a bequest, an act *mortis causa* that is a donation effective at the death of a person. (Cf. D.J. WARD, "Trust Management under the New Code of Canon Law," in *The Jurist*, 44 (1984), p. 135); Cf. J.A. RENKEN, *Church Property. A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, St. Paul University, Ottawa 2009, p. 297.

[3] Cf. B. LUCAS *et al*., (eds.), *Church Administration Handbook*, St. Paul's Publications, Canberra 2008, p. 204; Cf. S.O. SHERIDIAN, "Endowments and Pious Wills. To Rebuild the Church," in *The Jurist*, 72 (2012), pp. 130-163; Cf. J.A. CORIDEN, *An Introduction to Canon Law*, Revised, Paulist Press, New York 2004, p. 179; Cf. CIC/1983, Can.1301 § 1: *The Code of Canon Law,* New Revised English Translation, prepared by THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND IN ASSOCIATION WITH THE CANONL LAW SOCIETY OF AUSTRALIA AND NEWZEALAMD and THE CANADIAN CANON LAW SOCIETY, Theological Publications, Bangalore 1997. (All References to the canons of the 1983 Code will be styled CIC/1983, Can. for Canon and Cann. for Canons followed by the Canon number).

Archdiocese of Mombasa. It explores the scope of the Archbishop's authority in the execution of pious wills in the Archdiocese, highlights both strengths and weaknesses, incorporates insights from other ecclesiastical jurisdictions, and ultimately proposes recommendations.

This study is therefore an effort to encourage diocesan bishops and other ordinaries to revisit the universal norms on the execution of pious wills and to contextualize them within their respective particular Churches, with the aim of preventing conflicts and promoting harmony among Christ's faithful.

1. Background of the Problem

The law prescribes that the Ordinary is the executor of all pious wills, whether *mortis causa* or *inter vivos*. He has the duty to exercise vigilance and even to carry out visitations so that pious wills may be fulfilled (can. 1301 §§1–2). Furthermore, the law stipulates that anything contrary to this right of the Ordinary attached to a last will and testament is to be considered non-existent (can. 1301 §3).

Despite this legal clarity, there appears to be limited understanding among Christ's faithful in the Archdiocese of Mombasa regarding the canonical provisions on the ownership and purpose of pious wills. There have been cases where goods donated for pious purposes were registered under the name of the Church administrator rather than that of the Church itself, thereby diverting them from their intended use: for instance, a pastor registering a piece of land or a car donated by the faithful under his personal name. Such situations have repeatedly raised concerns about transparency and accountability in the execution of pious wills by the diocesan bishop. This issue was identified by the researcher during his pastoral ministry.

In some instances, a donor may give, for example, a piece of land to the Church, only for their relatives to return after the donor's death and claim ownership. Similarly, there have been

cases where the relatives of a deceased priest have approached the Archdiocese, demanding possession of a car or other properties, including books that the priest used during his lifetime.

The Archbishop of Mombasa has made efforts to address these problems, but such efforts have yielded limited success. The gravity and recurrence of these concerns have prompted the researcher to undertake an academic investigation aimed at uncovering the root causes of the problem and assessing the extent to which the Ordinary has acted in accordance with canon law.

2. Purpose of the Thesis

The purpose of this research is to undertake a thorough study on pious wills, with particular focus on the crucial role of the diocesan bishop as the executor of all pious wills in relation to other possible executors. It is hoped that this study will assist diocesan bishops in Kenya in re-evaluating their vigilance role and thus promote proper discipline in the administration of pious wills, thereby fostering harmony among the People of God.

3. Rationale of the Thesis

At this particular time, the present research is considered opportune due to the evident gap in canonical understanding concerning the ownership, purpose, and execution of pious wills by the diocesan bishop. Various studies on the role of bishops have been published by canon lawyers, particularly focusing on endowments, donations, and donor intent. However, little attention has been paid to the specific question of the diocesan bishop’s role in the execution of pious wills according to universal law. This study, therefore, intends to contribute to bringing order and harmony in diocesan administration in this area. It is a modest attempt to fill this gap and may hopefully open new avenues for further research on the execution of pious wills not only in the Archdiocese of Mombasa but also throughout Africa and beyond.

4. Central Question of the Investigation

The central question of the investigation of this thesis is: To what extent has the Archbishop of Mombasa effectively exercised his authority in the execution of pious wills?

5. Working Hypotheses

Perhaps if the diocesan bishop had a more adequate understanding of canonical and civil law provisions regarding the execution of pious wills, he would better contextualize universal norms to concrete realities within his archdiocese.

If the diocesan bishop were to establish structures such as committees comprising experts in canon and civil law, he might be better positioned to address the numerous issues arising from the execution of pious wills.

It is also possible that, by sending priests for studies in canon and civil law, the diocesan bishop would be better equipped to exercise his legislative competence as required by universal law.

Finally, the initiation of a diocesan synod might help resolve many of the questions related to the discipline and execution of pious wills.

6. Methodology

This study employs three methodological approaches: the historico-juridical method, the exegetico-analytical method, and the prospective method.

The historico-juridical method explores the canonical development of the concept of pious wills by tracing their juridical history. This includes an examination of relevant texts beginning with the Scriptures, followed by the writings of the Church Fathers, the teachings of the ecumenical councils, the *Corpus Iuris Canonici* (including the 1917 Code), the Second

Vatican Council, post-conciliar documents, the 1983 Code of Canon Law, and legislation subsequent to the 1983 Code.

The exegetico-analytical method is employed to analyze canonical legislation in order to uncover its intended meaning and to assess its coherence with the teachings of the Church's Magisterium. This method seeks to discern the mind of the legislator concerning the role of the diocesan bishop in the execution of pious wills.

The prospective method is used to offer constructive canonical recommendations regarding the role of the diocesan bishop in the execution of pious wills, specifically within the context of the Archdiocese of Mombasa.

7. Structure of the Thesis

This work is organized into three chapters:

Chapter One: The Juridical-Historical Development of Pious Wills

This chapter presents the historical origins and ecclesial purpose of pious wills. It covers successive historical periods, beginning with the early Church as found in the Scriptures, followed by the Patristic era through the writings of the Church Fathers, the contributions of Emperor Constantine, various Church councils, the Second Vatican Council, post-conciliar documents, the 1983 Code of Canon Law, and relevant subsequent legislation.

Chapter Two: The Role of the Ordinary over Pious Wills in Accordance with CIC/1983, Can. 1301

The second chapter examines the sources and juridical development of canon 1301, with attention to its formation and current expression in the 1983 Code. The chapter includes a textual analysis of canon 1301, with particular focus on its second and third paragraphs, and explores its

relationship with other relevant canons in the 1983 Code and the 1990 Code of Canons of the Eastern Churches.

Chapter Three: Application of Universal Norms on Pious Wills in the Archdiocese of Mombasa

This chapter addresses the pastoral implementation of the canonical norms on the execution of pious wills within the Archdiocese of Mombasa. It evaluates strengths and weaknesses in the understanding and execution of pious wills. A brief historical overview of the Archdiocese is provided. The chapter further reviews canonical legislation on pious wills from episcopal conferences such as the Kenya Conference of Catholic Bishops, the Italian Episcopal Conference, and the United States Conference of Catholic Bishops. It also examines regulations from other ecclesiastical entities, including the Archdiocese of Nairobi and the Capuchin Constitutions of 1968. Finally, the chapter addresses challenges surrounding the execution of pious wills and proposes recommendations aimed at ensuring their proper administration in accordance with universal law.

CHAPTER ONE

THE JURIDICAL-HISTORICAL DEVELOPMENT OF PIOUS WILLS

Introduction

Since the time of Christ, the Church, just like any other society acquired temporal goods for her mission, which is, divine worship, provision of fitting support for the clergy and other ministers and the carrying out of the works of sacred apostolate and charity especially to the needy.[4]

While pious wills or pious dispositions is one of the ways in which the Church acquires temporal goods for her mission, this section endeavours to trace the historical antecedents and the evolution of the concept of pious wills or pious dispositions in the Church, right from the Old Testament upto the time of the celebration of the Second Vatican Council and to the present legislation.

1.1 Scriptural Foundations of Pious wills

The specific legal terms *inter vivos* and *mortis causa* are not explicitly mentioned in the Scriptures. Neither does the term "pious will" or "pious disposition" appear in the biblical texts. Nevertheless, the principles of giving, stewardship, and care for the poor are emphasized throughout the entire Bible. Several biblical figures also demonstrate acts of faithful giving, responsible stewardship, and commitment to the mission of the Church.

This section, therefore, explores the principles related to pious wills as they can be traced in both the Old and the New Testament.

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[4] Cf. CIC/1983, Can. 1254 §§ 1, 2; Cf. B. LUCAS *et al., Church Administration Handbook*, p. 200.

1.1.1 The Old Testament

The Old Testament does not explicitly use the term "pious wills or pious dispositions." It however contains narratives and principles related to bequests, offerings and dedications. This section delves into the notions related to pious wills.

1.1.1.1 The Tithe (Gn.14:20)

Genesis 14:20 captures a moment of gratitude and acknowledgment of divine intervention in the aftermath of a battle: Abraham gives a tenth of everything. This act of tithing reflects Abraham's faith, as he honors God and acknowledges His role in the victory. The text also affirms Melchizedek's priesthood and the legitimacy of his service to God Most High. This gesture can be seen as an early example of pious giving. [5]

1.1.1.2 Contribution to the Construction of a Temple (1st Chr. 29:1-9)

This passage offers a valuable lesson about generosity rooted in devotion to God. King David contributed generously to the construction of the temple, encouraging others to do the same, recognizing that it is not merely for human purposes but dedicated to the Lord God. His deep affection for the house of God motivated him to give generously and sacrificially. This act was an expression of love for God and serves as a precedent for pious wills.

1.1.1.3 Dedication to the Lord's Service (1st Sm. 1:11)

This verse captures Hannah's deep yearning for a child and her commitment to dedicate her child to God if He grants her request. Hannah's vow is an expression of faith, as she promises something of great personal value, her son, in return for God's favor. This act of consecration is akin to a pious will.

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[5] Cf. R.C. BRODERICK, *The Catholic Encyclopedia*, Thomas Nelson Inc., Publishers, Nashville 1975, p. 16.

1.1.2 The New Testament Church

In his teaching, Jesus called His followers to a sacrificial way of life and their generous alms were to provide for the needs of the Church, the ministers of the gospel and the poor. He directed his apostles to be unstinting in their charity (Lk 6:29-30) and in turn, they would be supported by those whom they ministered (Lk 10:4-7). This section presents a notion of the understanding of pious wills in the time of Christ as well as the apostolic Church.

1.1.2.1 The Common Purse (Jn. 12:6; 13:29)

These passages indicate that Jesus Christ Himself and the Twelve shared a common purse, which was entrusted to Judas. The allusion in John's Gospel that it was from the common purse that the Last Supper was prepared may point to the practical need for offerings to provide the setting for worship. The funds from the common purse were used both for their own needs and for the needs of the poor.[6] It was a purse for pious wills.

1.1.2.2 Selfless Giving for Divine Worship (Mk 12:41-44, Mt. 6:19-21, 2 Cor. 8:1-4; 2 Cor. 9:1-7)

The passage from Mark 12:41–44 provides a valuable insight into sacrificial giving and the heart behind offerings. A destitute widow approached the treasury and put in two small copper coins. Jesus called His disciples and made a surprising statement: "This poor widow has put in more than all the other contributors to the treasury" (Mk 12:43). Jesus is not necessarily calling people to give all their money; rather, He highlights the heart and intention behind the giving.

[6] Cf. F. LONEMA, "Importance of Temporal Goods in the Mission of the Church," in *The African Journal of Canon Law Studies,* 2 (2014), p. 90; Cf. G.J. ROCHE, "The Poor and Temporal Goods in Book V of the Code," in *The Jurist,* 55 (1995), p. 299.

In Matthew 6:19–21, Jesus encourages storing up treasures in heaven rather than on earth, emphasizing selfless giving and its eternal impact. Similarly, St. Paul exhorts the Christians of Macedonia (2 Cor. 8:1–4) and Achaia (2 Cor. 9:1–7) to contribute generously in support of their suffering brethren in Jerusalem.[7] And so, these passages leave no doubt that Christ and the apostles encouraged pious wills.

1.1.2.3 Facilitating Works of Sacred Apostolate and Charity (Acts 2:44-47; 4:34-35)

These texts describe the early Christian community in Jerusalem, who, after Pentecost, pooled all their resources so that distribution could be made to each individual according to his or her needs. The selection of the seven deacons in Acts 6:1–6, whose responsibility was to distribute food to the Hellenistic widows, offers a glimpse into the early administration of charitable resources. It suggests that the apostles were initially responsible for managing the pious offerings of the Church in Jerusalem before appointing deacons to relieve them of this burden.

Robert C. Broderick contends that the early Church adopted a hierarchical structure with a collegial makeup, indicating the presence of organized leadership. The Didache also attests to this notion. This structure is further illustrated in Acts 5:1–11 and 2 Corinthians 8:19–20. As substantial funds began to flow in support of missionary work from the Christian faithful, St.

[7] St. Paul's practical preoccupation is bound up with what is the Church's very *raison d´être*, to preach the Gospel to all the nations of the world (Cf. Mt. 28:19). His evident desire to involve all Christians in the missionary endeavor explains his delight that the Macedonians, though poor, wished to be part of that work. St. Paul also asked the Corinthians to give not just themselves, but of their resources, not from their necessities but from their surplus, to meet the need of other Churches, to do so freely and generously, with an understanding of and participation in the Church's mission and of the communion between the Churches. (Cf. C.J. WOODALL, *A Passion for Justice. An Introduction Guide to the Code of Canon Law*, pp. 439-440); J.E. LYNCH states that, "St. Paul in Christological context develops *koinonia* to its fullest extent. *Koinonia* serves to designate the two constitutive relations comprising the essence of the Church: Communion with God and communion of believers with one another. In Christ, Christians possess all things in common both spiritual and material…the primitive Christian Church of Jerusalem seemed to be characterized by community of faith, hope, a union of mind, and the concrete expression of this union was a sharing of goods." (J.E. LYNCH, "The Limits of *Communio* in the Pre-Constantinian Church," in J.H. PROVOST, *The Church as Communion*, Canon Law Society of America, Washington, DC 1984, p. 169).

Paul was keenly aware of the potential for abuse and malpractice. To avoid scandal and accusations of mismanagement, he appointed Titus as his assistant.

This example reveals a Church striving to be transparent, open, and accountable in the use of gifts and resources donated by the faithful. It stands as an early affirmation of good stewardship in the handling of pious wills.

1.1.2.4 Support for the Clergy (2 Thes. 3:7-9; 2 Cor. 11:7-11; 1 Cor.9:13-14)

These passages show that while St. Paul was appealing for funds to support missionary work, he not only emphasized his duty to preach the Gospel but also affirmed his right, as an Apostle, to receive remuneration from the Church for his ministry, a right he chose to forego. He writes: "Do you not know that those who perform the temple services eat what belongs to the temple, and those who minister at the altar share in the sacrificial offerings? In the same way, the Lord ordered that those who preach the Gospel should live by the Gospel" (1 Cor. 9:13–14).[8] This text conveys the responsibility of the Christian faithful to sustain the Church and its pastors in their mission of spreading the Gospel, fostering divine worship, and carrying out works of the apostolate.

1.2 The Writings of the Early Fathers of the Church

The Fathers of the Church,[9] through their theological reflections and pastoral leadership, offer a direct and authentic insight into the life, sentiments, aspirations, and ideas of the first

[8] Cf. C.J. WOODALL, *A Passion for Justice. An Introduction Guide to the Code of Canon Law,* p. 440; Cf. A. EKPO, *Temporal Goods. A Canonical Examination of Administrative Acts Concerning their Ownership and Management,* Wilson & Lafleur, Montréal 2021, pp. 81-82.

[9] The Fathers of the Church, also Apostolic Fathers, refer to the writers and bishops of the early Christian centuries who either had direct contact with the Apostles or were sufficiently close to them and the influence of the Apostles' teaching impacted their teaching. Sometimes they are referred to as *Latin* or *Greek* Fathers because of their locations and areas of operation, but Christendom. While divided into two great parts, they were one in thought. At first the title was conferred only on the heads of Churches, that is, the bishops who were responsible for both discipline and doctrine. Later, it was conferred on those who were defenders of the faith and notable for the

Christian communities. They laid the groundwork for the legal and ethical principles governing pious wills and the administration of Church assets. In their writings, they expressed a clear commitment to promoting good stewardship and ecclesial communion. This section examines the historical antecedents of pious wills and their administration as found in the writings and teachings of Justin Martyr, Tertullian, Cyprian of Carthage, Clement of Alexandria, John Chrysostom, Saint Basil the Great, Saint Ambrose of Milan, and Saint Augustine of Hippo, whose contributions significantly shaped the understanding and eventual legislation concerning pious wills.

1.2.1 Justin the Martyr

Around A.D. 150, Justin Martyr offered one of the earliest descriptions of ecclesial charity, noting that the "president" of the assembly, understood to be the bishop, was entrusted with receiving and distributing the offerings of the faithful. These funds were used to support orphans, widows, prisoners, travelers, and the poor.[10] This early account reflects a model of episcopal stewardship that is analogous to the later practice of executing pious wills, whereby the bishop assumed responsibility for ensuring the faithful administration of goods intended for religious and charitable purposes.

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purity of their doctrinal teachings. Thus, the title of Father of the Church connotes orthodoxy and is extended to include many early writers of the Church. The period of Patristic Church may be divided into four stages: (1) The time of the Apostolic Fathers, from the earliest writings down to the last half of the second Century; (2) The time of the school of Alexandria, from the end of the second century to A.D. 315; (3) The golden age, from the Council of Nicaea (325) to A.D. 444; (4) The decline, from A.D.450 to A.D.750. (Cf. R.C. BRODERICK, *The Catholic Encyclopedia*, pp. 217-218); Cf. M. AQUILINA, *The Fathers of the Church. An Introduction to the First Christian Teachers*, Our Sunday Visitor Publishing Division, Huntington 1999, p. 52. "The Fathers unite in themselves the enduring characteristics of holy life, wisdom and antiquity." (P.F. BEATRICE, *Introduction to The Fathers of the Church*, Edizione Instituto San Gaetano, Vincenza 1983, p. 11); Cf. J.A. CORIDEN, *An Introduction to Canon Law*, Revised edition, Paulist Press, New York 2004, p. 33; Cf. B.E. FERME, *Introduction to the History of the Sources of Canon Law. The Ancient Law up to the Decretum of Gratian*, Wilson & Lafleur Ltée, Montréal 2007, p. 22.

[10] Cf. P.F. BEATRICE, *Introduction to the Fathers of the Church*, p. 69.

1.2.2 Tertullian (AD 160- AD 240)

In an address to the Roman governors who were then directing severe persecutions against Christians, Tertullian offers a vivid description of the attitude of the early Church toward such trials. He explains that each Christian gave a small donation, voluntarily, and only if able, to support and bury the poor, to provide for boys and girls without means or parents, for the elderly confined to their homes, for victims of shipwreck, and for those condemned to labour in the mines. This testifies to the early Church's generous and organized charity, motivated by supernatural faith and a deep sense of solidarity with their suffering brethren.[11]

1.2.3 Saint Cyprian of Carthage

Saint Cyprian (c. 200-258), a bishop of Carthage, born to a wealthy family, a successful lawyer, gave all his fortune to the poor when he accepted Christianity. He considered Tertullian as his master in theology but looked at Jesus as his master of charity.[12] He condemned bishops who used Church property for their private interests.[13] This means, supreme authority over Church's property rested with the bishop, akin to bishop's role in execution of pious wills.

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[11] *Tertullian*, *Apologeticus*, Chapter 39: "Though we have our treasure-chest, it is not made up of purchase-money, as of a religion that has its price. On the monthly day, if he likes, each puts in a small donation—but only if it be his pleasure, and only if he be able; for there is no compulsion; all is voluntary. These gifts are, as it were, piety's deposit fund. For they are not taken thence and spent on feasts, drinking-bouts, and eating-houses, but to support and bury poor people, to supply the wants of boys and girls destitute of means and parents, and of old persons confined to the house… and any who have suffered shipwreck; and if there happen to be any in the mines, or banished to the islands, or shut up in the prisons…" (Cf. *ANF*, Vol. 3, ed. Alexander Roberts & James Donaldson).

[12] Cf. M. AQUILINA, *The Fathers of the Church. An Introduction to the First Christian Teachers*, p. 96.

[13] CYPRIANUS, *De Lapsis,* 6.

1.2.4 Clement of Alexandria[14]

In the discussions which troubled the Christian community of his time concerning property ownership and possessions, Pier Franco Beatrice notes that:

> Clement…opposed the rigorist position which maintained the absolute necessity of abandoning all riches in order to obtain salvation. He interpreted the gospel account of the rich young man as an invitation to interior detachment from the desire for riches, the longing for possessions. Earthly goods, considered in themselves are neither good nor bad but are morally neutral, like any other instrument. Their value depends on use...[15]

Clément's contribution to the understanding of riches and poverty is significant for grasping the concept of pious wills**.** He emphasizes that each person, according to his or her means, can contribute to the mission of Christ.

1.2.5 Saint John Chrysostom[16]

Saint John Chrysostom known for his eloquent preaching addressed ethical dimensions of wealth and property. Pier Franco Beatrice contends:

> Chrysostom…expressed his lofty vision of the priestly mission in the memorable pages *On the Priesthood* a step that brought him into conflict with that part of the clergy (bishops and priests)…who were ill-disposed to tolerate his undertaking for reform in the Church and his blazing ascetical invective against luxury and against the insatiable thirst for power…[17]

John Chrysostom encouraged wealthy Christians to allocate their resources for the benefit of the Church and the poor, insisting that material wealth was entrusted by God for the purpose

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[14] "Clement was Greek by birth and lived intensely with all the cultural and religious experiences offered by classical paganism. After his conversion to Christianity, he desired to place his philosophical knowledge and admirable erudition at the service of a considerable work of evangelization of the surrounding pagan world at Alexandria, with special attention to the wealthy upper class of Alexandrian society." (P.F. BEATRICE, *Introduction to the Fathers of the Church*, p. 109).

[15] P.F. BEATRICE, *Introduction to the Fathers of the Church*, p. 113.

[16] "He was born into a wealthy Christian family at Antioch, the third city of the empire after Rome and Alexandria. After a brief but intense monastic experience, he was ordained a priest in Antioch (386-397), where the bishop Flavian, conferred on him the responsibility for preaching. This assignment was exceptional for an age when the ministry of preaching was normally reserved to the bishops. A similar privilege is known in antiquity only for such giants as Origen and Augustine. (P.F. BEATRICE, *Introduction to the Fathers of the Church,* p. 315).

[17] P.F. BEATRICE, *Introduction to the Fathers of the Church,* p. 317.

of serving others. Through his powerful sermons and pastoral writings, he strongly advocated for almsgiving and charitable bequests,[18] thus shaping the early Christian understanding of pious wills as acts of faith and justice.

1.2.6 Saint Basil the Great[19]

Basil, a bishop and monastic leader, strongly advocated for the establishment of pious foundations. In his treatises on social justice he emphasized the importance of using Church resources for the welfare of the poor and the broader community. Paul Zielinski observes:

> Flowing from the Acts of the Apostles and the pastoral letters, monasticism, especially as organized by St. Basil, gave impetus to the charitable works of the Church in the 4th and 5th centuries. The hospital (*hospitum* or *hospitale*), originally a guest house for the poor, was in existence long before the middle of the 4th century. Since it is known that pious foundations had their origin in the Eastern part of the Roman Empire, it is tempting to make a connection between the rise of monasticism and the origin and development of pious foundations.[20]

Basil's teachings shed light on the origins of pious foundations, which can be seen as a form of pious wills,[21] aimed at sustaining charitable works within the life of the Church.

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[18] *John Chrysostom, Homilies on the Acts of the Apostles*, Homily 11; and *Homilies on Matthew*, Homily 50: "The rich are not the owners of their wealth, but stewards of what belongs to the common good." Chrysostom repeatedly emphasized that wealth should be shared with the poor and that charity, particularly through the Church, was a sacred duty. See also *On Wealth and Poverty*, trans. Catharine P. Roth (Crestwood, NY: St. Vladimir's Seminary Press, 1984).

[19] "Holiness was the greatest in St. Basil the Great (329-379). As a bishop, he was an effective and efficient administrator; but more, he was a just judge, a milder father. Turning to the gospel, he read that the way to perfection is to sell all one's goods, give to the poor, and follow Christ. In this passage, Basil discerned his monastic vocation. He took up the hermit's life by the Iris River in Pontus. Basil gained a reputation for holiness, wisdom and the ability to teach. Many Christians came to Pontus seeking his counsel. Some stayed on as his disciples and soon Basil found that he had founded a monastery. Named bishop of Caesarea in 370, he again took up the role of a founder, this time establishing hospitals, poorhouses and hostels." (M. AQUILINA, *The Fathers of the Church. An Introduction to the First Christian Teachers*, pp. 128-129).

[20] P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," in *Studia Canonica*, 19 (1985), p. 122.

[21] "Las fundaciones pías son una forma típica y especial de las pías voluntades y más específicamente de las causas pías. Participan, por consiguiente, de los elementos comunes que configuran las voluntades pías, a saber: causa pía, intención religiosa y piedad del disponente; pueden constituirse bien por un acto entre vivos, bien por disposición testamentaria (Can. 1299 § 2); y las pueden realizar todos aquellos que, por derecho natural y canónico, tienen capacidad para disponer de sus bienes (Can. 1299 § 1). Tienen una Antigua tradición y raigambre en la Iglesa

1.2.7 Saint Ambrose of Milan[22]

Saint Ambrose, a bishop and theologian, emphasized both the spiritual significance of almsgiving and the proper administration of Church property. Pier Franco Beatrice notes:

> Ambrose was a sensitive commentator on the grave social malaise of his time. He did not hesitate to attack from the pulpit the arrogance and murderous injustice of the rich in terms more scathing. He used the story of Naboth, the victim of King Ahab's oppression, to exemplify their violence. In Ambrose, the social apostolate was joined to a fervid missionary spirit…[23]

Thus, it can be said that his writings significantly influenced the development of ecclesiastical law concerning pious wills.

1.2.8 Saint Augustine of Hippo[24]

Saint Augustine, a theologian and bishop, addressed the concept of pious wills within the broader framework of Christian ethics and ecclesiastical law. He emphasized the importance of charity and almsgiving as essential expressions of Christian love. He taught that offering

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y desde siempre la legislación canónica les ha prestado una atención especial." (F.R. AZNAR GIL, *La administración de los bienes temporales de la Iglesia,* Publicaciones Universidad Pontificia Salamanca, Salamanca 1993, p.223).

[22] Ambrose was born at Trier in Gaul around 339-340. He was destined naturally for an administrative career and after having completed the studies required by his high social rank, he became a governor of Northern Italy with his seat at Milan. It was in the city, after the death of Arian bishop Auxentius, that Ambrose was elected bishop by popular acclaim on December 7, 374, without even having been baptized yet. He immediately set to study Sacred Scripture and the Fathers under the direction of the priest Simplicianus in order to acquire the religious education which he was lacking up to that point. (Cf. P.F. BEATRICE, *Introduction to The Fathers of the Church,* p. 256).

[23] P.F. BEATRICE, *Introduction to the Fathers of the Church,* pp. 257-258.

[24] Augustine was born in 354 at Thagaste in Numidia (Modern Algeria). In spite of the fact that his mother, Saint Monica, was a fervent Catholic, the nineteen-year-old Augustine turned to Manichaeism in search for a religious truth able to respond to his enquiries. Having not found any satisfaction and so, out of disillusionment, he gave himself up to complete skepticism. He chased after justified acclaim from Carthage to Rome and finally to Milan in his search for truth and success in life. It's Saint Ambrose in Milan who succeeded in charming St. Augustine by his preaching and illuminating for him the way towards his decisive conversion to Catholicism. After a period of retreat and meditation, Augustine was baptized by Ambrose at Ester Vigil in 387. After conversion, he journeyed back to Africa and his reputation became so good that Valerian the bishop of Hippo ordained him a priest and entrusted him with the ministry of preaching. In 396, Augustine succeeded Valerian as bishop and remained at Hippo until his death in 430 during the Vandal siege of the city. (Cf. P.F. BEATRICE, *Introduction to the Fathers of the Church,* p. 286); Cf. M. AQUILINA, *The Fathers of the Church. An Introduction to the First Christian Teachers,* p. 178.

donations to the Church, what is, in fact, due to God, was indispensable.[25] Such donations were fundamental for the administration of divine worship, the support of the clergy, and the unhindered mission of the Church. Augustine also maintained that ecclesiastical goods were intended to secure the Church's independence and sustain its sacred ministry for the salvation of souls.[26] Thus, St. Augustine's writings offer a substantial contribution to the theological and juridical understanding of pious wills and their appropriate use within the life of the Church.

1.3 The Contributions of Emperor Constantine on Pious Wills

Emperor Constantine issued the Edict of Milan in 313 A.D., which aimed at granting religious liberty and freedom of conscience, allowing individuals to adopt and practice the faith of their choice. The edict established religious tolerance for Christians and other belief systems, and it mandated the restoration of previously confiscated properties, including churches, to Christian communities. The edict stated: "And since the said Christians are known to have possessed not those places only whereto they used to assemble, but others also belonging to their Church and not to individuals, we compromise them all under the… law, so that you will order them to be restored without doubtfulness or dispute to the said Christians, that is to their corporations and assemblies."[27]

With this edict, a new chapter was opened for the Church: it was recognized as a legal corporation under Roman law, with the capacity to receive and own property. Consequently, Church goods acquired the status of ecclesiastical goods, thus gaining juridical recognition.

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[25] *Augustine, Sermon 354, 2*: "It is not from human generosity, but from divine right, that what is given to the Church is due to God."

[26] *Augustine, De Catechizandis Rudibus*, 26.50: "The offerings of the faithful are necessary for the celebration of the sacraments, the sustenance of ministers, and the exercise of charity."

[27] *Edict of Milan*, 313 A.D., as cited in various historical sources such as Lactantius, *De Mortibus Persecutorum*, and Eusebius, *Historia Ecclesiastica*, Book 10.

Local churches, understood as associations of persons, were conferred juridical personality under Roman law. In this context of acknowledgment and support for ecclesiastical activities and institutions, it is worth noting that Roman legal terminology included forms such as *venerabilis domus, venerabilia loca, religiosissima loca*, and *piae causae*. These categories played a pivotal role in the development of the ecclesiastical juridical person.

This development meant that Christians, under the protection of *piae causae,* could create wills reflecting their religious convictions without fear of legal impediment or state interference. Roman legislation on wills and donations was to have a profound and lasting influence on both the Western and Eastern branches of the Roman Empire.

1.4 The Ecumenical Councils on Pious Wills

This section discusses a few of the Church's ecumenical councils that had a direct influence on the legislation and understanding of pious wills.

1.4.1 The Council of Antioch

The Council of Antioch was held in 341 A.D. under the leadership of Eusebius, on the occasion of the dedication of the *Golden Church* at Antioch. For many centuries, twenty-five canons have been attributed to this council. Canon 25 granted the bishop authority over the possessions of the Church, allowing him to use what was necessary for his personal sustenance and for the exercise of hospitality. However, the canon explicitly forbade the bishop from diverting Church revenues for the benefit of his own family or private purposes.[28]

[28] *Council of Antioch*, Canon 25, in *The Seven Ecumenical Councils*, ed. Henry R. Percival, *Nicene and Post-Nicene Fathers*, Second Series, Vol. 14 (Grand Rapids: Eerdmans, 1956), pp. 108-121.

This canon provides an early indication of the principles underlying pious wills and their intended uses, namely, the support of the clergy and the assistance of those in need.[29]

1.4.2 The Council of Chalcedon

The Council of Chalcedon was held in 451 to address the Eutychian and Nestorian heresies. In its fourteenth session, held on October 31, twenty-eight canons were established. Canon three forbade any ecclesiastic or monk from undertaking the management or stewardship of the property of others or involving himself in secular affairs. However, an exception was granted: with the bishop's consent, ecclesiastics or monks could care for the property of orphans, widows, and other afflicted persons.[30] This canon highlights the vigilant role of the bishop in the administration of pious wills.

Moreover, Canon four required bishops to oversee the conduct of monks within their dioceses, imposing excommunication on offenders.[31] The Council of Chalcedon is thus significant for laying down some of the earliest ecclesiastical legislation regarding the regulation and protection of pious wills and charitable assets.

1.4.3 The Third Council of Rome (502)

The Third Council of Rome, convened in 502 under Pope Symmachus (498–514), provided significant guidance on the alienation of *de bonis ecclesiae temporalibus* (temporal goods of the Church). It established that a bishop alone could not validly alienate ecclesiastical property without first consulting the bishops of the province and the metropolitan. The bishop was not to act against their collective judgment.

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[29] For a discussion of the connection between episcopal stewardship and early charitable endowments, see G.J. ROCHE, "The Poor and the Temporal Goods in Book V of the Code," p. 308.

[30] Cf. N.P. TANNER, (ed.), *Decrees of the Ecumenical Councils*, Vol. 1, Sheed & Ward and Georgetown University Press, London 1990, pp. 84–85.

[31] Cf. N.P. TANNER, (ed.), *Decrees of Ecumenical Councils*, Vol. 1, p. 85.

Canon 4 of the Council explicitly forbade the alienation of ecclesiastical real estate without proper permission, under penalty of excommunication, and declared any such act invalid. Canon 5 emphasized that temporal goods offered to the Church by the faithful, whether as tithes, first fruits, or other offerings, were to be used for the support of divine worship, both for the living and the dead. It also affirmed the bishop's particular responsibility for the prudent administration of these goods.[32]

This Council laid down foundational juridical principles concerning the administration of pious wills, especially regarding extraordinary acts of administration involving Church property.

1.4.4 The Second Lateran Council (A.D. 1139)

The Second Lateran Council was convoked in 1139 by Pope Innocent II to address various pressing issues in the Church, including tournaments, benefices, usury, Church tithes, and clerical celibacy. It also aimed to condemn the schism created by the election of Anacletus II as a rival pope and to counter the influence of Arnold of Brescia and his followers.

Arnold of Brescia was a radical religious reformer known for his fierce criticism of clerical wealth and corruption, and for his opposition to the temporal power of the papacy. His proposals to reform the clergy and eliminate the Church's temporal authority led Pope Innocent II to condemn him as a schismatic during the Council in 1139.

The Council promulgated thirty canons. Canon 10 specifically addressed the issue of Church tithes, declaring that laypersons who had taken possession of Church tithes were to restore them to the bishop under penalty of excommunication. It warned that such individuals

[32] Cf. N.P TANNER, (ed.), *Decrees of the Ecumenical Councils*. Vol. 1, pp. 102–104.

were guilty of sacrilege and liable to eternal damnation.[33] This canon thus reaffirmed the Church's inherent right to own and administer property, a principle closely related to the protection of pious wills and the faithful stewardship of ecclesiastical good.

1.4.5 The Council of Constance (AD 1414-1418)

The Council of Constance was convened by Pope John XXIII in response to a summons issued by Emperor Sigismund. It was officially opened on the Feast of All Saints, 1 November 1414. One of its primary objectives was to resolve the Western Schism, which had afflicted the Church for nearly thirty years due to multiple claimants to the papacy. A second major objective was to examine and address the heretical teachings of John Wycliffe and Jan Hus.

During the interval between the first and second sessions, Jan Hus was deceitfully arrested and imprisoned, despite being granted safe conduct. He had taught, among other things, that the Church could not legitimately possess temporal goods and that the laity had the right to dispossess the Church of such property.[34] When Hus refused to recant his teachings, the Council condemned him as a heretic, defrocked him, and ordered his execution by burning on 6 July 1415.[35]

The Council of Constance marked a turning point in the affirmation of papal and ecclesiastical authority, reinforcing the Gregorian Reform movement, a process already well underway by the early 14th century. In this context, the Council upheld the Church's inherent right to own and defend temporal goods, including those received through pious wills and charitable donations.

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[33] Cf. N.P. TANNER, (ed.), *Decrees of the Ecumenical Councils*, Vol. 1, pp. 191–192.

[34] Cf. F. OAKLEY, *The Conciliarist Tradition: Constitutionalism in the Catholic Church 1300–1870*, Oxford University Press, Oxford 2003, pp. 76–78.

[35] Cf. N.P. TANNER, (ed.), *Decrees of the Ecumenical Councils*, Vol. 1, pp. 410–412.

1.4.6 The Council of Trent-1545-1563

The Council of Trent was convened in response to the divisions within the Church caused by Protestant reformers who opposed the hierarchical structure and doctrinal teachings of the Catholic Church. Its primary aims were to reject doctrinal errors, strengthen the Church's official teaching, restore ecclesial unity, reform the Roman Curia, and renew ecclesiastical discipline.

Although the Council did not explicitly address the topic of pious wills as a separate theme, it treated the matter implicitly within its decrees on episcopal governance and the administration of Church goods. The Council emphasized the bishop's role as the principal agent of reform, requiring him to conduct regular pastoral visitations throughout his diocese. He was to examine what the clergy were teaching and how the faithful were responding, ensuring the proper transmission and reception of doctrine.

The Council held that the primary purpose of ecclesiastical goods was to support divine worship, both for the living and the dead. It mandated that bishops provide adequately for the sustenance of parish priests, even when the income from benefices, tithes, or donations was insufficient for the proper functioning of the parish. At the same time, the Council strictly prohibited the alienation of ecclesiastical goods in ways that would harm the interests of the parish or diocese.

Further, the Council prescribed that the dean oversee ecclesiastical goods every third month, and required either episcopal or papal authorization for acts such as the foreclosure of mortgages or the organization of charitable distributions for the poor.[36] These measures reflect

[36] Cf. N.P. TANNER, (ed.), *Decrees of the Ecumenical Councils*, Vol. 2, Sheed & Ward and Georgetown University Press, London 1990, pp. 681–682, 690–692.

the Council's deep concern for accountability and proper governance in the acquisition, use, and protection of Church property, concerns that clearly extend to the management of pious wills.[37]

In this regard, the Council of Trent exerted a foundational influence on the discipline surrounding the administration of ecclesiastical goods, laying the groundwork for later canonical regulations on pious wills and charitable offerings.

1.5 *Corpus Iuris Canonici*[38]

The *Corpus Iuris Canonici* is a collection of five legal compilations that shaped the development of Canon in the Church before the 1917 Code of Canon Law. It's a compilation of *Decretum Gratiani*, *Liber extra*, *Liber Sextus, Clementinae,* and the *Extravagantes*, that is *Extravagantes Ioahannis XXII* and *Extravagantes Communes.*[39] This section explores the views of *Decretum Gratiani,* and *Liber Sextus* which had great influence in the understanding of pious wills.

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[37] Cf. J.W. O'MALLEY, *Trent: What Happened at the Council*, MA: Harvard University Press, Cambridge 2013, pp. 191–195.

[38] The term *Corpus Iuris Canonici* refers to the complete body of canonical collections that formed the foundation of canon law in the Latin Church. The name was applied quite early, sometimes even to Gratian's *Decretum*. Although little is known about Gratian himself—the compiler of the *Decretum Gratiani*—historical sources suggest that he was probably born at the end of the 11th century in Chiusi, Tuscany, and died in Bologna around 1160. He was both a theologian and a canonist, and he taught in Bologna. Between 1130 and 1140, in the Monastery of Saints Nabor and Felix in Bologna, Gratian compiled and harmonized previous canonical sources, thereby laying the foundation for later canonical collections. Among these was the *Decretals of Gregory IX*, also known as *Liber Extra*, promulgated in 1234, which compiled papal decretals addressing a wide range of ecclesiastical legal matters. This was followed in 1298 by the *Liber Sextus*, issued by Pope Boniface VIII as a supplement to *Liber Extra*, containing additional decretals on Church governance. In 1317, Pope Clement V issued the *Clementinae*, a further collection that included legislation on papal elections, clerical discipline, and the crusades. Subsequently, two groups of decretals not included in the earlier collections were gathered under the name *Extravagantes*: the *Extravagantes Ioannis XXII*, issued by Pope John XXII, and the *Extravagantes Communes*, consisting of decretals by various other popes. In 1582, Pope Gregory XIII published an official edition in Rome that combined these five collections into a single volume. While this publication did not initially bear a unified title, Gregory referred to it as the *Corpus Iuris Canonici*. The title was formally used for the first time in the Frankfurt edition of 1586. (Cf. C.V. DE WIEL, *History of Canon Law,* Peeters Press, Louvain 1991, pp. 110-112).

[39] Cf. C.V. DE WIEL, *History of Canon Law*, p. 112.

1.5.1 The *Decretum Gratiani*

The *Decretum Gratiani* is a compilation of codified scriptural texts, canons from ecumenical and local councils, papal decrees, penitential and patristic writings, pseudo-apostolic literature, and rediscovered Roman legal principles. Compiled in the 12th century by the jurist Gratian, this monumental work laid the foundational framework for what would later become the *Corpus Iuris Canonici*, the body of canon law that governed the Church until the promulgation of the 1917 Code.

A key principle articulated in the *Decretum* is that the Church and the Apostolic See possess, by natural right, the freedom and independence from secular authority to acquire, manage, and even alienate temporal goods to fulfill their spiritual mission. This includes not only the universal Church but also individual ecclesiastical juridical persons, provided that the conditions required by law for validity are observed.[40] This principle is fundamental to the Church's capacity to receive and administer pious wills, which are acts of devotion wherein the faithful donate property to the Church for religious or charitable purposes, especially after death.

Furthermore, the *Decretum Gratiani*, drawing on the authority of the Church Fathers, underscores the claim of the poor on the goods of the Church, linking the administration of ecclesiastical property directly to the service of charity and divine worship. Most significantly, it reaffirms Canon 5 of the Council of Rome (502), which stated that temporal goods offered to the Church, whether as tithes, first fruits, or other forms of donation, were to be directed toward the support of divine worship for both the living and the dead. The *Decretum* also emphasizes that bishops bear a special responsibility in overseeing these goods.[41]

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[40] Gratian, *Decretum*, *Distinctiones* 96, c.10; see also *Corpus Iuris Canonici*, ed. Emil Friedberg (Leipzig: Tauchnitz, 1879), vol. 1.

[41] Cf. N.P. TANNER, (ed.), *Decrees of the Ecumenical Councils*, Vol. 1, pp. 102–104; and J.T. NOONAN JR., *The Church and the Poor in the Middle Ages*, University of California Press, Berkeley 1974, pp. 45–47.

In this way, the *Decretum Gratiani* affirms the Church's enduring right to own, manage, and protect temporal goods in view of her salvific mission. This includes the legal and moral duty to safeguard donations given by the faithful, particularly through pious wills: for liturgical, charitable, and pastoral purposes.

1.5.2 The *Liber Sextus*

The *Liber Sextus* is a collection of '*extravagant*' decretals compiled by Boniface VIII (1294-1303). It is a supplement to the *Corpus Iurici Canonici* of the time[42] or *Decretum Gratiani*.

[42] It is worth to note that *Liber Sextus* came in after *quinque Compilationes Antiquae* (1191-1226). In the 12th century, the prestige and power of the Popes steadily increased as a result of Gregorian Reforms. The Popes were asked to resolve problems in every domain of the society. The interventions of the Popes took place by means of decretals, which often had great juridical value. The text not retained in *Decretum Gratiani* and more recent ones were called *Capitula extravagantia* or the *Extra Decretum.* They were considered not to be part of the Decretum itself but an additional *paleae* called *collectiones capitulorum*, or *collectiones decretalium.* There were five collections in number, that is, *compilatio prima, compilatio secunda, compilatio tertia, compilatio quarta* and *compilatio quinta* all forming *Quinque compilationes antiquae.* With *Decretum Gratiani* and *quinque compilationes antiquae,* scholars had a readily available set of texts that comprised the positive law of the Church of that time. However, six different collections had to be consulted and although they offered enormous information, they overlapped and even contradicted each other. All these complicated the teaching and application of the law. Therefore, Pope Gregory IX (1227-1241) decided to have a new, uniform and simplified compilation that contained only the laws in force. He appointed Raymond of Penaforte, a Dominican and professor in civil and Canon law in Bologna to do the compilation. Raymond based himself on the *quinque Compilationes Antiquae, Canones Apstolorum*, documents of ecumenical councils, writings of fathers and ecclesiastical writers, compilations of Germanic and Roman civil law. He structured his work in a logical order and on 5 September 1234, Gregory IX promulgated the new collection in his bull *Rex pacificus.* It became the first official publication of canon law and remained the most important collection until the 1917 Code. The work did not have a title at its promulgation and so it was generally called the *Decretales Gregorii IX* or *Codex Gregorianus*. Other titles included *Liber Sextus* as a continuation of the *Quinque Compilationes antiquae,* or the *Liber Extravagantium* or in short, the *Liber Extra*, as a supplement to the *Corpus Iuris Canonici* of the time or the *Decretum Gratiani.* (Cf. C.V. DE WIEL, *History of Canon Law*, pp. 103-112). C.G. HERBERMANN *et al.*, (eds.), holds that, *Liber Sextus Decretalium*, like the Decretals of Gregory IX, comprises five books, subdivided into titles and chapters. It contained in addition eight rules of law borrowed from the Roman law and that, it abrogated all previous general laws enacted from the publication of the Decretals of the Gregory IX till the ascension of Boniface VIII on 5 September 1234 to 24 December 1294. This implies *Liber Sextus* became a supplement to *Decretun Gratiani.* (Cf. C.G. HERBEMANN *et al.*, (eds.), *The Catholic Encyclopedia,* Vol. 10, p. 227).

The *Liber Sextus* categorizes ecclesiastical temporal goods into various types, based on their nature and purpose. These include corporeal and non-corporeal aggregates, that is, aggregates of persons or of things, as well as movable and immovable goods, such as houses or land.

It also distinguishes sacred goods, which have been consecrated or blessed for divine worship, from profane goods, which have not received such designation. Another category includes precious goods, which possess value due to certain qualities, such as: artistic merit, historical significance, or association with sacred acts or persons. Lastly, it identifies secular or religious goods, referring to those that belong either to the Holy See or to its institutional and organizational subdivisions.[43]

The *Liber Sextus* thus offers an important insight into the Church's recognition that it may possess different categories of goods. It implies the necessity of identifying pious wills, that is, goods that bear the characteristics of a pious cause, are motivated by a supernatural intention, and are grounded in pietas (devout generosity toward God and the Church), as distinct from goods given for merely philanthropic or secular purposes.

1.6 The 1917 Code Legislation on Pious Wills

The 1917 Code of Canon Law upheld the principles articulated in Gratian's *Decretum* and the decisions of the Council of Trent, particularly regarding the administration of pious donations. It affirmed that all funds donated or bequeathed for religious or charitable purposes within a diocese are subject to the supervision of the local ordinary. In fact, Canon 1519 of the 1917 Code explicitly affirmed the local Ordinary to sedulously be vigilant about the administration of all ecclesiastical goods that were in his territory that had not been taken from

[43] Cf. S.A. SZUROMI, "An Historical Sketch of Principal Developments in the Canon Law on Temporal Goods," p. 542.

his jurisdiction. He was to carry out the vigilance role through publication of opportune special instructions within the limits of common law.[44]

Can. 535 of the 1917 Code, further elaborated that, in every monastery of nuns, even exempt ones, an account of administration, demanded without charge, was to be given at least once a year, or more often, if so prescribed in their constitutions,[45] by the Superioress to the local Ordinary, and likewise to the regular Superior if the monastery was subject to him.[46]

Furthermore, if the account of administration was not approved by the Ordinary, he was to apply appropriate remedies, including, if necessary, the removal of the administrators. However, if the monastery in question was subject to a regular superior, the Ordinary was first to inform the superior regarding the necessary actions to be taken. If the superior failed to act, the Ordinary was to intervene directly.

In the case of other religious institutes of women, an account of the administration of goods forming part of an endowment was to be submitted to the local Ordinary during his

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[44] *Codex Iuris Canonici,* P II X Pontificis Maximi iussu digestus, Benedicti XV Papae, auctoritate Promulgates, romae 1917, in *AAS,* 9(1917), pp. 3-521; *The 1917 Pio-Benedictine Code of Canon Law,* in English translation with Extensive apparatus by PETERS, E.N., Ignatius Press, San Francisco 2001. (All references to the Canons of the 1917 Code will be styled CIC/1917, and Can. for Canon and Cann. For Canons followed by the Canon numbers).

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[45] CIC/1917, Can. 532 had held that, § 1: "The goods of religious institutes or provinces or houses are to be administered according to the norm of the constitution." § 2: "Besides superiors, other officials who in the constitutions are designated for this within the limits of their duties can incur expenses and validly perform juridic acts of ordinary administration." CIC/1917, Can. 533 also did shed more light when it contended that, § 1: "The prescriptions of Can. 532 § 1, is to be observed for investments of money, but the previous consent of the local Ordinary must be obtained by: 1° Superiors of nuns and religious institutes of diocesan right for any sort of investment, indeed, if the monastery of nuns is subject to a regular Superior, his consent is also necessary; 2° The Superioress in a religious congregation of pontifical right, if the investment consists of a dowry of a professed, according to the norm of Can. 549; 3° The Superior and Superioress of a religious congregation's house if the funds have been left to the house by will or for the support of the cult of God taking place there; 4° Any religious, even though a member of a regular order, if the money has been given to a parish or mission or a religious on behalf of a parish or mission."

[46] S.A. SZUROMI, notes that, an exception was made in favour of exempt or clerical organization. That, religious Ordinaries of such exempt or clerical organizations had the obligation to ensure that the will of donors on donations and bequests made in favour of their religious houses or Churches was accomplished. (Cf. S.A. SZUROMI, "An Historical Sketch of Principle Development in Canon Law on Temporal Goods," p. 542). CIC/1917, Can. 615 affirmed that, "Religious, not excluding novices, whether men or women, with their houses and Churches, excepting those nuns who are not subject to regular Superiors, are exempt from the jurisdiction of the local Ordinary, except in those cases expressed in law."

canonical visitation, or even more frequently if he deemed it necessary. Moreover, the local Ordinary was always required to take cognizance of the economic situation of any religious house of diocesan right, as well as of the administration of foundations and legacies entrusted to such communities.[47]

This contribution is important in understanding the legislation on pious wills in the context of the religious institutes.

1.7 The Second Vatican Council on Pious Wills

The Second Vatican Council[48] does not explicitly mention the terms *pious will* or *pious disposition*. However, the Council Fathers affirmed that all created material realities are to be considered temporal goods. They grounded this teaching in the biblical account of creation: "God looked at everything he had made, and he found it very good" (Gen 1:31). Thus, the ultimate origin of all goods lies in the creative act of God Himself, who brought all things into existence.

Human beings were entrusted with the stewardship of these created goods (cf. Gen 1:26–30; 2:19–20). In doing so, God established a covenant with humanity, a relationship of communion, entrusting man with the care, use, and responsible management of creation in accordance with divine intention.[49]

The notion of pious wills in the context of the Second Vatican Council can be understood within the broader framework of the Council's ecclesiology, which presents the Church as the

[47] Cf. CIC/1917, Can. 535 § 1, 1°, 2°, § 2, § 3, 1°, 2°.

[48] The Second Vatican Council was opened by Pope John XXIII on September 11th, 1962 until the close of the first session on December 8th 1962, following the death of Pope John XXIII. After Pope John's death, it was reconvened by Pope Paul VI, in three additional sessions: September 29th to December 4th 1963; September 14th to November 21st 1964; September 14th to its solemn closing December 8th 1965. It promulgated 16 documents. (Cf. R.C. BRODERIC, *The Catholic Encyclopedia*, p. 182).

[49] Cf. F. LONEMA, "Importance of Temporal Goods in the Mission of the Church," p. 88.

People of God and as a communion.[50] The Council emphasizes principles such as the common good, solidarity, human dignity, good stewardship, and the preferential option for the poor. These principles are reflected in the Church's mission and inform the purpose of acquiring temporal goods, calling the Christian faithful to contribute generously to pious causes. This section examines the Council's contribution to the understanding and regulation of pious wills.

1.7.1 The Decree on the Ministry and Life of Priests *Presbyterorum Ordinis*

This Decree links Church property to its proper use. It calls priests just like the bishop to manage temporal goods for the purposes to which the teaching of Christ and direction of the Church allow them, that is for divine worship, works of apostolate, decent support of the clergy and helping those in need. It also calls for experienced lay men to assist in the management of ecclesiastical goods.[51] The council abolished the benefice system[52] and recommended the formation of a diocesan fund.[53]

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[50] Vatican II draws its teaching on the characteristics of the Church or people of God from the sixteenth and seventeenth century theologian, Berlarmine (1542-1621), who had written: "The one and true Church is the community of men brought together by profession of the same faith and conjoined in the communion of the same sacraments under the legitimate pastors and especially the Vicar of Christ on earth, the Roman Pontiff." (A. DULLES, *Models of the Church,* Doubleday and Company, New York 1978, p. 20). "In omni quidem tempore et in omni gente Deo acceptus est quicumque timet Eum et operator iustitiam (Cf. Acts 10:35). Placult tamen Deo homines non singilatim, quavis mutual connexione seclusa, sanctficare et salvare, sed cos in populum constituere, quiin veritate Ipsum agnosceret Ipsique sancta serviret" (Dogmatic Constitution on the Church *Lumen Gentium*, 21 November 1964, n. 9, in *AAS*, 57 (1965), PP. 12-13). (Here after cited as *Lumen Gentium)*. J.E. LYNCH, States that, "the Second Vatican Council adopted a very ancient terminology when it spoke of the Church as *communion.* The conciliar fathers were seeking a model of the Church inspired by the Scripture rather than one with a social or political provenance. The perspective of *communio* profoundly illumines the relationship of the individual Christian with the local community as well as the bond uniting the particular Church with the universal Church." (J.E. LYNCH, "The Limits of Communio in the Pre-Constantinian Church," in J.H. PROVOST (ed.), *The Church as Mission*, p.159); Cf. G.J. ROCHE, " The Poor and The Temporal Goods in Book V of the Code," p. 300. C.J.M. ERRÁZURIZ also notes that, "La comunión en la fe, como toda la realidad de la comunión ecclesial, es intrínsecamente jerárquica." (C.J.M. ERRÁZURIZ, "Derechos y Deberes del fiel en Relación con la Palabra de Dios: Presupuestos Fundamentales," in *Ius Canonicum,* 40 (2000), p. 25).

[51] "Sacerdotes enim, quippe quorum dominus sit 'pars et hereditas' (Num.18:20), bonis temporalibus uti debent tantummodo eos in fines, ad quos iuxta Christi Domini doctrinam Ecclesiaeque ordinationem eadem destinari licet. Bona ecclesiastica proprie dicta, secundum rei naturam, ad normam legum ecclesiasticarum, sacerdotes, adiuvantibus quatenus fieri possit peritis laicis, moderentur atque cadem destnent sempereos in fines ad quos prosequendos Ecclesiae licet bona temporalia possidere, videlicet ad cultum divinum ordinandum, ad honestam cleri sustentationem procurandam , necnon ad opera sacri apostolates vel caritatis, praesertim ecclesiasiastici officii sibi comparant, salvo iure particulari. Presbyteri, non secus ac Episcopi, adhibeant imprimis ad suam honestam

1.7.2 Decree on the Apostolate of the Laity *Apostolicam Actuositatem*

This decree underlines the aspect of charity which is one of the justification for the Church to acquire property.[54] In particular, the council calls for a commitment on the part of the laity to assist,[55] through financial or personal assistance in missionary activity of the Church.[56]

1.7.3 Pastoral Constitution of the Church in the Modern World *Gaudium et Spes*

This document refers to the mission of the Church and explains how, care for the needy forms an integral part of that mission. The Council exhorts the entire People of God, under the guidance and example of the bishops, to alleviate the hardships of the times within the limits of their means, giving generously, according to the ancient custom of the Church, not only from what is superfluous, but even from what is necessary.

The Council Fathers further emphasized that in the acquisition and use of temporal goods for its religious mission, the Church must always bear in mind that "the spirit of poverty and charity is the glory and witness of the Church of Christ."[57]

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sustentationem et ad officiorum propii status adimpletionem; quae vero supersint, in bonum Ecclesiae vel in opera caritatis destinare velint. Itaque officium ecclesiasticum ne quaestui habeant neve reditus ab eo provenientes in propriae rei familiaris amplificationem impendant. Quare sacerdotes, nequaquam divitiis cor apponentes, omnem cupidtatem semper vitent et ab omnispecie mercaturae sedulo abstineant." (Decree on the Ministry and life of Priests *Prebysterorum Ordinis,* 7 December 1965, n. 1, in *AAS,* 58 (1966), P. 1017-1018). (Hereafter cited as *Presbyterorum Ordinis)*.

[52] *Presbyterorum Ordinis,* n. 20.

[53] *Presbyterorum Ordinis*, n. 21.

[54] "Actio caritavita hodie omnes omnino homines et universas necessitates complecti potest et debet. Ubicumque versantur qui cibo potuque, vestitu, domo, medicinis, opera, instructione, facultatibus ad vitam vere humanamducendam necessariis carent, aerumnis vel infirma valetudine cruciantur, exlium vel carcerem patiuntur, ibi cos christiana caritas debetquarere et invenire, impensa cura solari et praestitis auxiliis sublevare."(*Apostolicam Actuositatem,* n. 8, p. 845).

[55] J.I. ARRIETA notes that, "Para llevar a cabo su misión ecclesial en medio del mundo, el laico necesita una formación." (J.I. ARRIETA, "Formacion y Espiritualidad de los Laicos" in *Ius Canonicum,* 27 (1987), p.85).

[56] "Ita de necessitatibus populi Dei in toto orbe terrarium disperse solliciti sint. Imprimis sua reddant opera missionalia, auxilia materialia vel etiam personalia praestandato. Officium et honorenim est christianorum Deo restituere partem bonorumquae ab Eo accipiunt."(*Apostolicam Actuositatem,* n.10, p. 847).

[57] *Gaudium et Spes*, no. 88.

1.7.4 The Declaration on Religious Freedom *Dignitatis Humanae*

This declaration affirms that religious freedom is a right inherent to the dignity of the human person**.** It states that individuals are free to exercise and pursue religious beliefs and practices within civil society. This principle implies that, like any other lawful society, the Church has the right to acquire and possess property in order to fulfill its objectives, namely, divine worship**,** the support of the clergy**,** and assistance to the needy. It also affirms that the faithful have the right to freely donate goods for pious causes**.**

1.8 Pre-1983 Documents on Pious Wills

This section deals with the documents on Pious Wills before the 1983 Code of Canon law.

1.8.1 The Development of the People *Populorum Progressio*[58]

The document notes that, it is legitimate to have the necessary goods which one has worked for, that is, private property. It however warns that, the acquiring of temporal goods can lead to greed, the insatiable desire for more, leading to opposition and disunity between the poor and the rich and so loss of souls.[59] The document calls the modern man to find himself anew by

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[58] "Following the promulgation of the Pastoral Constitution on the Church in the Modern World (*Gaudium et Spes*) of Vatican II, Pope Paul VI published in 1967 his encyclical *Populorum Progressio* which was a formulation of the social doctrine of that Constitution. It set forth boldly and clearly for the world the crucial issue of the exercise of social justice. It demonstrated that in the economic world of our time, good morality is not only good economics but is supportive of good society in general, and stressed the dignity of the human person and his rights." (R.C. BRODERICK, *The Catholic Encyclopedia*, p. 483)

[59] "Terrestrium bonorum adeptio homines perducere potest ad immoderatam cupiditatem, ad copiosiores usque opes appetendas, ad voluntatem potentiae suae adaugendae. Singulorum hominum, familiarum, nationumque

embracing higher values of love and friendship, of prayer and contemplation in the use of earthly goods.[60] The document also highlights works of missionaries who built not only Churches but also hostels, hospitals, schools and universities, teaching the local populations the means of deriving the best advantages from their natural resources.[61] This implies, they used pious wills in line with the donor's intention, which is a fundamental rule when it comes to accepting donations in the Church.

1.9 Pious Wills According to 1983 Code of Canon Law

The 1983 Codex Iuris Canonici acknowledges that, from its very inception, the Church has acquired, administered, and distributed temporal goods for piae causae, namely, for divine worship, the sustenance of the clergy, and works of the apostolate and charity.[62] In like manner, the faithful have the right to donate temporal goods to the Church either through an act *inter vivos* (among the living) or *mortis causa* (in view of death), in accordance with both canon and civil law.[63]

Since the Church developed in close interaction with Roman civil law, the Codex also recognizes the importance of observing civil legal formalities in dispositions of *mortis causa* in favor of the Church. Canon 1299 §1 affirms that those who are capable under natural and ecclesiastical law of freely disposing of their goods may bequeath them to pious causes either

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avaritia non minus tenuiores quam locupletiores afficere potest, et utrosque ad materialismum, quem dicunt, impellere, animos opprimentem." (PAUL VI, Encyclical Letter on the Development of the People *Populorum Progressio*, 26 March 1967, n.18, in *AAS*, 59 (1967), p. 266). (Hereafter cited as *Populorum Progressio).*

[60] Cf. *Populorum Progressio*, n. 20, p. 267.

[61] "Catholici enim Missionales una cum sacris aedibus, domos hospitals, valetudinaria, scholas, studiorumque universitates eo locorum exstruenda curaverunt. Cumque iidem autochthones docerent qui bus modis maximas utilitates e suae terrae opibus caperent, eos propterea ab alienigen arumcupiditate saepe tutos fecerunt."(Populorum *Progressio*, n. 12, pp. 262-263).

[62] Cf. CIC/1983, Can. 1254 §2.

[63] Cf. CIC/1983, Can. 1261 §1.

inter vivos or *mortis causa.*[64] Moreover, canon 1299 §2 states that the formalities of civil law are to be observed as far as possible in such donations, and if these formalities have been omitted, canon 1299 §2 still directs that the heirs be reminded of their moral duty to fulfill the donor's intention.[65]

Since pious donations are governed by both canonical and moral obligations, the Codex insists that the intention of the donor be carefully safeguarded. Canon 1300 declares: "Intentiones fidelium qui bona temporalia ad pias causas donant aut legant, legitime acceptae, sedulo adimplendae sunt etiam quoad modum administrationis et usum bonorum."[66] This canon reflects a long-standing tradition in patristic literature, in which the Fathers of the Church emphasized the ethical use of pious offerings and legacies.

To ensure that these intentions are effectively carried out, the Codex establishes that the diocesan bishop (the Ordinary) is the executor of all pious wills, whether *mortis causa* or *inter vivos*, unless another executor has been lawfully appointed.[67]

1.10 Legislation on Pious Wills after the 1983 Code of Canon Law

This section treats the documents on pious wills promulgated after the 1983 Code.

1.10.1 The Directory on Pastoral Ministry of Bishops *Apostolorum Successores*

The Directory on the Pastoral Ministry of Bishops, *Apostolorum Successores*, highlights that the bishop is an integral part of a network of relationships within the diocese. His basic episcopal functions include fostering the unity of faith, leading worship, and resolving questions of Church order, all for the purpose of promoting a more effective mission. The Directory

[64] Cf. CIC/1983, Can. 1299 §1.
[65] Cf. CIC/1983, Cann. 1299 §2, 1301 §2.
[66] Cf. CIC/1983, Can. 1300.
[67] Cf. CIC/1983, Can. 1301 §1.

emphasizes episcopal oversight of temporalities for evangelization, catechetical, and charitable purposes, while also stressing Gospel simplicity.

It calls for the organization of temporalities in accordance with norms from the Holy See and Episcopal Conferences, monitoring the temporal administration of subordinate entities, implementing pious wills, and ensuring that the purposes of Church goods are fulfilled. The Directory also urges the faithful to be educated in a spirit of participation and cooperation concerning temporal goods. Among other functions, it provides guidance on the bishop's responsibility in managing pious wills.

1.10.2 The Post-Synodal Apostolic Exhortation *Pastores Gregis*

The document exhorts bishops to exercise, with untiring generosity, a spirit of communion in the use of the Church's goods, demonstrating fraternal solidarity with those who suffer. It asserts that, in the spirit of sharing and simplicity of life, the bishop should administer the Church's goods like a "good head of a household," ensuring that they are used for the Church's specific purposes: the worship of God, the support of her ministers, apostolic works, and charitable outreach to the poor. In other words, bishops are called to ensure that pious wills are directed toward their intended purpose, serving the divine mission of the Church.

1.10.3 The Encyclical Letter God is Love *Deus Caritas Est*

This Encyclical letter links evangelization with works of charity, noting that, in conformity with the episcopal structure of the Church, bishops, successors of the apostles, bear the primary responsibility for carrying out, within the particular Churches, the program set forth in the Acts of the Apostles (2:42–44). The Church, as God's family, must be a place where help is both given and received, while also preparing its members to serve those beyond its

boundaries who are in need. In other words, the document calls for the cultivation of a Good Samaritan spirit.

1.10.4 The Motu Proprio *Fidelis Dispensator et Prudens*

Since his Pontificate on 13th March 2013 till his passing on, on 21st April 2025, Pope Francis also dealt with the question of pious wills in the context of finances in the Roman Curia[68] and the Vatican City State. He issued a number of Motu Proprios among which are *Fidelis Dispensatory et Prudens* and *I beni Temporali* in an effort to bring reforms.[69]

The Motu Proprio *Fidelis Dispensator et Prudens* was issued on 24th February 2014.[70] The title taken from (Lk 12:42) translates to 'faithful steward and wise,' reflecting the notion of

[68] The Roman Curia, is at the service of the Roman Pontiff. Thus, Christus Dominus Contends, "In exercenda suprema, plena et immediate potestate in universam Ecclesiam, Romanus Pontifex utitur Romanae Curiae Dicasteriis, quae proinde nomine et in auctoritate illius munus suum explent in bonum Ecclesiarum et in servitium Sacrorum Pastorum." (SECOND VATICAN COUNCIL, Decree *Christus Dominus*, 28 October 1965, n. 9, in *AAS*, 58 (1966), p. 676). K. MARTENS Contends that, "Le terme 'curie' vient du droit romain, étant utilisé pour désigner l'une des trente divisions du people romain créées par Romulus, c'est-à-dire trois tribus de dix curies. La signification a changé peu à peu pour désigner une assemblée législative: d'abord le bâtiment où était situé le siège de l'assemblée, et plus tard, l'assemblée elle-même, c'est-à-dire le Sénat romain. Dans l'histoire, le terme, 'curie' a été également utilisée pour indiquer un tribunal dans le palais royal, ou la cour royale elle-même, ou un tribunal. À present, le terme 'curie' désigne l'organization de la cour pontificale ou romaine, tout comme la curie diocésaine." (K. MARTENS, "La Réforme de la Curie romaine au Service de la Nouvelle Évangelisation," in *Studia Canonica*, 50 (2016), p. 297).

[69] J.I. ARRIETA notes that, "Ridimensionare, la Curia è stata una della richieste più ripetute. Ciò si tradurrebbe nel ridurre la sua organizzazione, evitare eventuali duplicità di strutture e accorpare organismi, pensiero che va oltre il perimetro stretto della Curia e prende in considerazione l'insieme di entità dipendenti dalla Santa Sede." (J.I.ARRIETA, "Presupposti Organizzativi della Riforma della Curia Romana," in *Ius Ecclesiae*, 27 (2015), p. 43).

[70] The Motu Proprio was issued after the recommendations of the rigorous reviews conducted by the Pontifical Commission for Reference on the organization of the economic-administrative structure of the Holy See (COSEA), were considered and endorsed by both the Council of 8 Cardinals established to advice the Holy Father and the committee of 15 Cardinals which oversees the financial affairs of the Holy See. (Cf. FRANCIS, *Fidelis Dispensatory et Prudens*, 24 February 2014, in *L'Oservatore Romano*, (English ed.), n. 9 (2335), (28 February 2014), p. 5. (Here after cited as *Fidelis Dispensatiory et prudens).* B.E. FERME notes that, "Alla luce di ciò, il Cardinale Pelle, in qualità di Prefetto della SpE, ha selezionato un ristretto gruppo di lavoro per preparare gli Statuti. ll primo incontro si è tenuto nel mese di marzo del 2014; ad esso hanno partecipato quattro membri provenienti rispettivamente dal Consiglio per l'Economia, la Segreteria di Stato e la Segnatura, oltre a un avvocato esparto in diritto civile e ecclesiastico, con una significativa esperienza nell'ambito della Curia Romana. Una prima bozza inziale degli Statuti, di carattere generale, è stata preparata per essere presentata alla prima riunione del Consiglio del maggio 2014. In questa sede sono state effettuate importanti osservazioni sugli Statuti e, in seguito a ciò, sono stati aggiunti due nuovi membri, entrambi della Segreteria di Stato, all'originario gruppo di lavoro. Dopo ulteriori tre mesi di lavoro sugli Statuti, altri tre componenti si sono uniti al sopramenzionato gruppo: due dell'APSA e uno

care for pious wills. The Motu Proprio established a framework for coordinating the economic and administrative affairs of the Holy See and Vatican State by creating a council for the economy with the task to oversee the administrative, financial structures and activities of the Roman curia and the institutions linked to it.[71] It also introduced the secretariat for the economy[72] and the office of the auditor general to perform audits of the institutions under the council's oversight.[73] The motu proprio is akin to careful execution of pious wills.

1.10.5 The Motu Proprio *I beni Temporali*[74]

This *Motu Proprio*, issued on July 4, 2016, addresses competencies in economic and financial matters. It emphasizes the Church's responsibility to ensure that the administration of her economic resources is directed toward her fundamental aims: divine worship, just compensation for the clergy, apostolic works, and charitable activities, especially for the poor. The *Motu Proprio* distinguishes between the direct management of the Holy See's patrimony and the oversight of that management. Specifically, the Administration of the Patrimony of the Apostolic See is tasked with managing assets and finances, while the Secretariat for the

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della SpE, In altre parole, nei mesi finali di lavoro preparatorio sugli Statuti, il gruppo era composto da 9 persone." (B.E. FEREME, "Fidelis Dispensator et Prudens: Gli Statuti," in *Ius Missionale,* 9 (2015), p. 39).

[71] "The Council for the Economy is established as an entity having oversight for the administrative and financial structures and activities of the dicasteries of the Roman Curia, the institutions linked to the Holy See, and the Vatican State." (*Fidelis Dispensator et Prudens*, in *L'Osservatore Romano*, n. 9 (2335), p. 5).

[72] It was established as a Dicastery of the Roman Curia in conformity with the Apostolic Constitution Pastor Bonus and is directly responsible to the Holy Father and is competent for the economic control and vigilance over the dicasteries of the Roman Curia, the institutions linked to the Holy See and the Vatican City State. (Cf. *Fidelis Dispensatory et Prudens*, in L'Osservatore *Romano*, n 9 (2335), p. 5.).

[73] An auditor is appointed by the Holy Father and is empowered to conduct audits in the Dicasteries of the Roman Curia, the institutions linked to the Holy See and the Vatican City State. (Cf. *Fidelis Dispensatory et Prudens*, in *L'Osservatore Romano*, n.9 (2335), p. 5

[74] This legislation document was intended to continue on the path begun with the Motu Proprio *Fidelis Dispensator et Prudens*. The document responds to the need for further definition of the relationship between the administration of the patrimony of the Apostolic See and the Secretariat for the Economy. The reform at the base of this Motu Proprio is that of ensuring a clear and unequivocal distinction between control and vigilance on one hand and administration of assets on the other. (Cf. FRANCIS, Motu Proprio *I beni Temporary*, 4 July 2016, in *L'Oservatore Romano*, (English Ed.), n. 28 (2455), (15 July 2016), p. 5 July 2016). (Hereafter cited as *I beni Temporali).*

Economy is responsible for oversight and control of administrative and financial activities.[75] This motu proprio is also akin to execution of pious wills.

1.10.6 The Apostolic Constitution *Praedicate Evangelium*

Pope Francis, in an effort to bring more reforms in the Roman Curia and Vatican City State, came up with the Apostolic Constitution *Praedicate evangelium* issued on 19 March 2022.[76] The constitution also deals with pious wills in the context of economic and financial matters affirming what had been laid down in the Motu Proprio *I beni Temporali*. Thus, under the institutions of finance, there is the council for the economy which is the body responsible for supervising the administration and financial structures and activities of the Roman Curia.[77]

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[75] Cf. *I beni Temporali*, in *L'Osservatore Romano,* n. 28 (2455), p. 5.

[76] This Apostolic Constitution *Praedicate Evangelium* abrogated the apostolic constitution of Pope John Paul II *Pastor Bonus*, 28 June 1988, in *AAS* 80 (1988), pp. 841-930. It is worth to note that, Pastor Bonus dealt implicitly with the question of pious wills administration under the Title *Administratio Patrimonii Sedis Apostolicae* (Art. 171-179) and not in *Organisismi Economici* as is entitled now in *Praedicate Evangelium* (Art.205-227). The council was composed of two sections that are ordinary and extraordinary (Cf. Art. 173). The ordinary Section administered the properties entrusted to its care, calling in the advice of experts if needed; examining matters concerning the juridical and economic status of the employees of the Holy See, supervising institutions under its fiscal responsibility, providing all that is required to carry out the ordinary business and specific aim of the Dicasteries. It maintained a record of income and expenditure, preparing the accounts of the money received and paid out for past years, drawing up estimates for the year to come (Art. 174). The Extraordinary section administered its own moveable goods entrusted to it by other institutions of the Holy See (Art. 175). In Art. 176, the prefecture for economic affairs of the Holy See had the function of supervising and governing the temporal goods of the administrations that were dependent on the Holy See, or of which the Holy See was in charge. It also studied the reports on patrimonial and economic status of the Holy See, as well as statements of income and expenditure for the previous years of the administrations mentioned in Art.176, by inspecting books and documents, if needed. It compiled the Holy See's consolidated financial statement of the previous year's expenditures as well as the consolidated estimates of the next year's expenditures, and submitted these at specific times to higher authority for approval. The prefecture also supervised financial undertakings of the administrations and expressed its opinion concerning projects of major importance. (Cf. JOHN PAUL II, Apostolic Constitution *Pastor Bonus*, 28 June 1988, nn. 171-179, in *AAS*, 80 (1988), pp. 906-908. Translation into English by C.C. F KELLY *et al.*, Saint Paul University, Ottawa 1999, pp. 53-54). Now, Pope Francis, starting with his Motu Proprio *Fidelis Dispensatory et Prudes*, established the Council for the Economy, secretariat for the economy and office of the Auditor General. With motu Proprio *I beni Temporali*, he further detailed the amendments, previously decreed and with *Praedicate Evangelium*, he abrogated Pastor Bonus. His intention was to delineate the respective spheres of activities in the Roman Curia and particularly separating the direct management of the Apostolic See's patrimony from the control and vigilance over the activity of management. Thus with *Praedicate Evangelium* he came up with institutions of finance in which there is the Council of Economy, The Secretariat of the Economy, the administration of the Patrimony of the Apostolic See, the office of the auditor general, the commission for confidential matters and the committee for investments. (Cf. *Praedicate Evangelium*, Art. nn.205-227, in *AAS*, 114 (2022), pp. 444-448).

[77] "Al Consiglio per l'economia compete la vigilanza sulle strutture e le attivá amministrativa e finanziarie delle Istituzioni curiali e degli Uffici, delle Istituzioni collegate con la Santa Sede o che fanno riferimento ad essa

The Secretariat for the Economy functions as a papal secretariat for economic and financial matters. It monitors and keeps vigil in administrative, economic and financial matters in regard to the curial institutions entrusted to its oversight and supervision and proposes and ensures any corrective measures.[78]

Conclusion

This chapter has explored the history and evolution of the concept of pious wills. It has shown how, in the Old Testament, people donated their resources out of faith to fulfill God's purpose. During the time of Christ, the Apostles shared a common purse to support their mission, with Judas entrusted as its keeper. In the early Church, Christians generously donated both to support the Apostles and to aid those in need. Over the centuries, the Church has been able to carry out its objectives of divine worship, supporting the clergy and other ministers, and engaging in works of apostolate and charity through pious wills. As a divine institution founded by Christ, and as an organized society, the Church has consistently defended the right to own property and has continually encouraged the faithful to donate generously. It's also clear that donations have been mishandled and at times become a source of division in the Church. As such, this Chapter endeavored to give a direction through the writings of the Fathers of the Church, various Councils, and the Church documents that pious wills are for the mission of the Church and not one's own glorification. Accordingly, to avoid conflicts, the chapter has also

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indicati nell'elenco allegato al proprio Statuto." (FRANCIS, Apostolic Constitution On the Roman Curia and its Service to the Church in the World *Praedicate Evangelium*, 19 March 2022, Art.205 §1 in *AAS*, 114 (2022), p. 442).

[78] "La Segreteria per l'economia svolge la funzione di Segreteria papale per le materie economiche e finanziarie. Esercita il controllo e la vigilanza in materia amministrativa, economica e finanziaria sulle Istituzioni curiali, gli Uffici e le Istituzioni collegate con la Santa Sede o che fanno riferimento ad essa indicate nell'elenco allegato allo Statuto del Consiglio per l'economia." (*Praedicate Evangelium*, Art. 212 §§ 1-2, p. 444).

brought in, the aspect of the ordinary as the executor of all pious wills whether *mortis causa* or *inter vivos.*

CHAPTER TWO

THE ROLE OF THE ORDINARY OVER THE PIOUS WILLS IN ACCORDANCE WITH CIC/1983, CAN. 1301

Introduction

This chapter traces the sources of Canon 1301 and the process of its development leading up to its final formulation in the 1983 Code of Canon Law. It also provides an analysis of the canon to gain a deeper understanding of its proper meaning in accordance with the mind of the legislator. Furthermore, the chapter offers a juridical study of Canon 1301 in relation to other relevant canons in the 1983 Code of Canon Law (CIC/1983) and in the Code of Canons of the Eastern Churches (1990).

2.1 Sources of Canon 1301

Can. 1301 of the 1983 Code has got three close linked paragraphs just like Can 1515 of the 1917 Code, its source and predecessor. As such, to have a clear understanding of the Ordinary as the executor of all pious wills and also to discover how Can.1301 was informed by Can 1515, a careful consideration of the three paragraphs of Can 1515 is necessary.

2.1.1 Sources of Canon 1301 § 1: The Role of Ordinaries in Executing Pious Wills (CIC/1917, Can. 1515 § 1)

Canon 1515 §1 of the 1917 Code states: *"Ordinaries are the executors of all pious wills, whether by will or between living persons."*[79]

[79]CIC/1917, Can. 1515 §1: "Ordinarii omnium piarum voluntatum tam mortis causa quam inter vivos exsecutores sunt."

According to Jean-Claude Périsset, the function of the executor dates back to the 7th century, when the bishop was charged with enforcing the will of testators against negligent heirs or those who refused to transmit goods intended for the Church. At that time, the natural executor of a legacy was the heir, whom the testator instructed to allocate part of the estate to another beneficiary.[80]

By the 12th century,[81] bishops frequently reported to the Popes that executors of wills were failing to apply the money or goods of the deceased to the pious purposes specified in the will.[82] The Popes consistently replied that, in such cases, the bishop should remind the executors of their duties and do what he could to compel them to fulfill their obligations. If, after due warning, the executors failed to act, typically within a year, the bishop was to take over the execution of the will himself.[83]

In 1234, several of these papal replies were incorporated into the official *Decretales Gregorii IX*[84] and promulgated as general law. The principle became obligatory throughout the

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[80] Cf. J.-C. PERISSET, *Les biens temporels de l'Église, Commentaire des Canons 1254-1310,* Éditions Tardy, Paris 1996, p. 235.

[81] B. FERME, affirms that, "The executor's right to be passive and active representative of the testator met long and effective resistance from royal courts, the common law maintaining several limitations over his rights and duties. But by 1285, it had come to admit the essentials of the executor as the representative of the deceased, and practically the division of labor between the heir and executor meant that the latter had nothing to do with the dead man's land, the former had nothing to do with his chattels. An even greater development of his role was in ecclesiastical courts, and the executor became the central and characteristic figure in the execution of English last testament."(B. FERME, "The testamentary Executor in Lyndwood's *Provinciale*," in *The Jurist*, 49 (1989), p. 633).

[82]In the Roman law, all or most of the witnesses were obliged to attend the opening of a will. They acknowledged the seals, after which the will was opened and read in public at the Basilica or the Forum, in the magistrate's presence. With regard to interpretation of a will, erasures could be considered as signs of an intention to revoke, and the testator's language had to be construed in its ordinary sense. Where the literally sense conflicted with the testator's known intention, the intention prevailed. (Cf. P. ZIELINSKI, Pious Wills and Mass Stipends in Relation to Canons 1299-1310," p. 132).

[83] Cf. P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," p. 129.

[84] Starting in 13th century, in the absence of the testamentary designated executor, the bishop was charged with the execution. With respect to goods left for pious causes, Gregory IX ordered the bishops to be the executors of those testaments, and required them to fulfill their obligation even if the deceased prohibited a bishop from intervening. The bishop thus became the legal executor of testaments for pious causes with the function of substituting where there was no testamentary executor or if there were an executor or executors with function of inspector. This innate and eminent role was confirmed by Tredentine Council (sess. XXII, ch. VIII and IX, *de reformation).* (Cf. J.M.VÁZQUEZ GARCÍA-PEÑUELA, "De Piis Voluntatibus in Genere et de Piis

universal Church,[85] was reiterated by the Council of Trent, and was ultimately codified in the 1917 Code as Canon 1515 §1, though without explicit mention of the one-year rule.[86]

2.2 Sources of Canon 1301 § 2: The Supervisory Role of Ordinaries in the Fulfillment of Pious Wills (CIC/1917, Can. 1515 § 2)

Canon 1515 §2 of the 1917 Code states: *"Ordinaries can and must guard this right even by visitation in order that pious wills be fulfilled, and other delegated executors must render an accounting to them upon the completion of their duty."*[87]

The mention of "other delegated executors" should be understood in light of English secular law during the late Middle Ages, where multiple types of executors existed, each with a distinct role. Durantis identifies three categories of executors: the testamentary, appointed by the testator himself; the legitimate, who was the ordinary; and the *executor dativus*, appointed by the ordinary in specific cases, such as when the testator died intestate or when the testamentary executor was unwilling or unable to assume the responsibility.

Building on Durantis, Lyndwood, when discussing the possibility of a religious being appointed administrator by the ordinary, refers to such a figure as an *executor dativus*.[88] This

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Fundationibus," in Á. MARZOA *et al.*, (eds.), *Exegetical Commentary on the Code of Canon Law*, Vol. IV/1, Wilson & Lafleur, Montréal 2004, p. 157).

[85] B.E. FERME, Contends that, in countries of the written law, the estate of the deceased devolved upon his intestate or his testamentary heirs, who were answerable to his creditors and legates. The two texts which are the foundation of the law of executorship according to civil law were Cod. 1.3.28 (1. *Nulli*, Cod. *De episcopis et clerici*) and 49 (1. *Si quis ad declinandam*). By the first, a legacy or *fideicommissum* for the redemption of captives was not to fail for uncertainty, but the person, if any, designated by the testator was to be entitled to exact bequest in order to carry out the testator's intentions. If no person were named, the bishop of the testator's place of origin could recover the sum, and was to record the amount which he had received *apud acta*, and within one year to render account of the number of captives redeemed and how much he expended for each. A novel expressly applied the same rule to bequests for the poor and used a language which could be taken to entitle the bishop to intervene in enforcing pious disposition. It further provided that if the person whom the testator had named should neglect to act after two admonitions, he should lose any benefit to which he was entitled under the will, and the bishop was to recover all that had been left to pious causes to carry out the testator's intentions. In his default, the metropolitan could do so. (Cf. B.E. FERME, "The Testamentary Executor in Lyndwood's *Provinciale,"* p. 635.)

[86] Cf. P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," p. 129.

[87] CIC/1917, Can. 1515 § 2: "Hoc ex iure Ordinarii vigilare possunt, ac debent, etiam per visitationem, ut piae voluntates impleantur, et alii exsecutores delegati debent, perfuncti munere, illis reddere rationem."

concept appears to have influenced the present understanding of administrators of pious donations.

It was also common for a testator to appoint, alongside executors, *overseers* or *supervisors* of the will. These were not considered executors under English secular law and were not required to obtain probate. In such cases, the ordinary had the responsibility of overseeing the executor's administration.[89]

2.3 Sources of Canon 1301 § 3: Invalidity of Testamentary Clauses Contrary to Episcopal Rights (CIC/1917, Can. 1515 § 3)

CIC/1917, Can. 1515 § 3 states: *"Clauses attached to last wills that are contrary to the right of the Ordinaries are considered as not even added."*[90] This provision addresses the question of whether a testator, by an express clause in their will, could exempt the executor from the obligation to render an account or from the duty to inventory the estate. Of these two issues, the former was more open to debate than the latter.

B. Ferme argues that such a clause would imply that the Ordinary had the discretion to comply with the testator's direction and refrain from requiring an account. This, in turn, would subject the executor's conduct to stricter scrutiny than in cases where no such clause existed.

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[88] B.E. FERME, "The Testamentary Executor in Lyndwood's *Provinciale,"* p. 638; W.A. SHUMAKER-G.F. LONGSDORF, enlightens more on the concept of an executor although holding similar views as Durantis and Lyndwoods. They define an executor as one to whom another man commits by his last will the execution of that will and testament. They also note that, the word 'executor' taken in its broadest sense has three acceptations: that is, *Executor a lege constitutus* who was the ordinary of the diocese; *Executor ab episcopo constitutus* or *executor dativus* who was the administrator to and intestate and *Executor a testator constitutus* or *Executor testamentarius* that is he who is usually meant when the term 'executor' is used. (Cf. W.A. SHUMAKER,-G.F. LONGSDORF, *The Cyclopedic Law Dictionary, Defining Terms and Phrases of American Jurisprudence, of Ancient and Modern Common Law, International Law, Civil Law, The French and Spanish Law, and other Juridical Systems with an Exhaustive Collection of Legal Maxims,* 3rd ed., Callaghan and Company, Chicago 1940, p. 415).

[89] Cf. B.E. FERME, "The Testamentary Executor in Lyndwood's *Provinciale,"* p. 645.

[90] CIC/1917, Can. 1515 § 3 "Clausulae huic Ordinariourum iuri contrarie, ultimis voluntatibus adiectae, tanquam non appositae habeantur."

Ferme further contends that allowing such clauses would contravene public law and could encourage corrupt practices on the part of executors.[91]

Paul Zielinski similarly observes that such a provision would be absurd. Since the Council of Trent, various responses from the Congregation of the Council had emphasized that clauses in wills contrary to the rights of the bishop were to be regarded *tamquam non appositae,*[92] that is, as if they had not been added. It is therefore evident that the legislator of the 1917 Code was influenced by this historical background, which culminated in the formulation of Can. 1515 § 3.

This historical background appears to have influenced the current Code's development of norms on transparency and accountability, particularly the principle that the Ordinary's judgment prevails in the administration of ecclesiastical goods. Jean-Claude Périsset observes that such a norm reinforces the principle of *ecclesiality*, that, anyone who disposes of goods in favour of the Church must not disregard the Church's hierarchical structure.[93]

2.4 Formation of Can. 1301

Since the Second Vatican Council,[94] much time and energy have been dedicated to the revision of the 1917 Code of Canon Law.[95] In this context, Principle 5 of the principles for the

[91] Cf. B.E. FERME, "The Testamentary Executor in Lyndwood's *Provinciale*," pp. 673-674.
[92] Cf. P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," p. 130.
[93] Cf. J.-C. PERISSET, *Les biens temporels de l'Église, Commentaire des Canons 1254-1310,* p. 235.
[94] In the Conciliar period (1963-1965), there were several meetings of consulters and two plenary sessions of the cardinal members of the commission. In, (1966-1973), the work of the study groups began with the following Schemata being sent to the consultative bodies: Administrative procedure (1977); the document revising the discipline of sanctions or penalties in Latin Church (1973). A third plenary session of the cardinal members of the commission was held in 1968. In 1973-1978, the work of the study groups continued and Schemata among which was Book V: The Patrimonial Law of the Church (1977) were prepared and sent to various consultative bodies. A fourth plenary session of the cardinal members of the commission was held in 1977. (Cf. J. FOX, "A General Synthesis of the Work of the Pontifical Commission for the Revision of the Code of Canon Law," in *The Jurist,* 48 (1988), p. 801).
[95] "Como es bien sabido, la codificación de las leyes de la Iglesia latina, promovida por San Pío X, culminó en 1917 con la promulgación por Benedicto XV del Código de Derecho Canonico, que entró en vigor el 19 de mayo de 1918 el 29 de junio 1959, Juan XXIII en su encíclica Ad Petri Cathedram, el Romano Pontífice escribe, 'Y

revision of the 1917 Code, approved by the 1967 Synod, addressed the ecclesial principle of subsidiarity.[96] This principle was considered particularly relevant to the law on temporal goods[97] during the revision process.[98] Therefore, after examining the sources of Canon 1301, this section

además, como os anunciasimos, tenemos intención de celebra un Concilio Ecuménico y sínodo Romano, y asimismo de preparer un Código de derecho canónico, acomodado a las actuals necesidades, y publicar un nuevo Código del mismo tipo para la Iglesia a de rito Oriental.'" (V.C. GÓMEZ-IGLESIAS, "La Pontificicia Commissio Codici Iuris Canonici Recognoscendo en los Años del Concilio Ecumenico Vaticano II: El Plan de Revisión de las Leyes de la Iglesia," in *Ius Canonicum,* 42 (2002), pp. 110-111), C.R.M. REDAELLI also notes that, "The process of shaping the 1917 Code has been studied in depth in its various phases: the first efforts at new collections of sources of law after the Council of Trent, the emergence of a request for codification at Vatican I, the subsequent debate in canonical circles with elaboration of private attempts at codification and finally the genuine and proper efforts at codification." (C.R.M. REDAELLI, "The Adoption of the Principle of Codification: Ecclesiological Significance with Special Reference to Reception," in *The Jurist,* 57 (1997), p. 253); J.A. CORIDEN contends that, the 1917 Code utilized an ancient secular outline, employed by the Emperor Justinian in his *Institutiones* of Roman Law issued in the year 533. Accordingly, its outline is: General Norms, Persons, Things, Processes and finally Crimes and penalties. The subject of our study, that is Can. 1301 § 1 is derived from Canon 1515 § 1 of the 1917 Code, placed in the sixth part (On Temporal goods of the Church), title 27 (On acquiring temporal goods) of the 1917 code. It necessarily follows that Roman law had great influence on the legislation of temporal goods and so Can.1301 § 1 can also be understood within the context of Roman Civil law. (Cf. J.A. CORIDEN, "Highlights of the Revised Code," in *The Jurist,* 44 (1984), pp. 28-29); J.A. ALESAMDRO states that, "John XXIII opened the windows of the Church to much needed renewal and reform. On 25 January 1959, at St. Paul's Outside the Walls, he announced three tasks: to convoke a second council of the Vatican, to convoke a synod for the Diocese of Rome, and to establish a commission to revise the Code of Canon Law." (J.A. ALESANDRO, "One Hundred Years since the 1917 Code of Canon Law," in *Studia Canonica* 51 (2017) p. 376).

[96] Cf. *Communicationes* 1 (1969), pp. 80-81; Cf. J.J. MYERS, "Book V: The Temporal Goods of the Church (Cann. 1254-1310)," in J.A. CORIDEN *et al.,* (eds.), *The Code of Canon Law. A Text and Commentary,* commissioned by the CANON LAW SOCIETY OF AMERICA, Paulist Press, New York 1985, p. 859.

[97] It's worthy to note that, the draft of the original Schema was entitled, 'The temporal goods of the Church.' Its revision process was held in nine sessions starting from January 23-27, 1967 to April 20-22, 1970 from which after the synthesis of the 9 sessions (Cf. *Communicationes* 5 (1973), pp. 94-103), a letter was done on November 15, 1977 forwarding the Schema to those consulted (Cf. *Communicationes* 9 (1977), pp. 227-228). The introduction of the 1977 Schema was done (Cf. *Communicationes* 9 (1977), pp. 269-273) and its revision started. That is revision of the 1977 Schema, Book V: Patrimonial Law of the Church (The title had changed from temporal goods to patrimonial law of the Church in the sixth session held on January 20-25 1969). (Cf. J. FOX, "A General Synthesis of the Work of the Pontifical Commission for the Revision of the Code of Canon Law," pp. 828-829); J.J. MYERS also affirms to this fact, that, "Within the Pontifical Commission for the Reform of the Code of Canon Law a special *Coetus* or Committee was formed to consider the Church's patrimonial law. This Committee met on nine occasions from January 1967 until April 1970. From these meetings emerged a draft of fifty-seven canons. These canons were circulated in the Church for comments in 1977. The committee received eighty responses. In June and November 1979 it examined the responses and made some significant changes while reworking the Canons. The results of its efforts were presented as Canons 1205 of the 1980 draft Code which are now incorporated with a few changes as Canons 1254-1310 of the 1983 Code…Unlike the 1977 draft, the title of part VI of Book III of the 1917 Code remained for Book V of the revised Code because it was more traditional and also, the term *patrimony* suggested a vast wealth (J.J MYERS, "Book V: The Temporal Goods of the Church (Cann. 1254-1310)," in J.A. CORIDEN *et al.,* (eds.), *The Code of Canon Law. A Text and Commentary,* p. 859); Cf. *Communicationes* 12 (1980), p. 394.

[98] One part of principle 5 reads: "Momentum harum peculiarium legislationum in novo Codice Iuris Canonici accuratius esset describendum praesertim in re administrativa temporali, cum regimen bonorum temporalium iuxta leges propriae nationis magna ex parte ordinary debet." (*Communicationes* 1 (1969), p. 81); Cf.

traces the different stages of the Canon's formation up to its present form in the 1983 Code, taking into account the influence of the principle of subsidiarity.[99]

2.4.1 First Draft: *Patrimoniali* 47

Canon 1301 finds its first draft in *Patrimoniali*, Canon 47. The first paragraph states: "Ordinaries are the executors of all pious wills, whether made *mortis causa* or *inter vivos*."[100] The wording of this Canon is substantially the same as that of Canon 1515 §1 of the 1917 Code.

It is worth noting that the revision of the 1977 Schema Book V: *The Patrimonial Law of the Church*, took place in two sessions; June 17–23, 1979,[101] and November 12–16, 1979.[102] In particular, the second session dealt with the revisions of Canons 22–57, of which Canon 47 was part.[103]

In the discussions on Canon 47 of *Patrimoniali*, it was initially proposed that the faculty mentioned in paragraph one be granted only to the local ordinary. However, the consultors agreed that the norm should also apply to religious ordinaries.[104]

Some consultors noted that the norm in paragraph one seemed overly burdensome for ordinaries, as it appeared to require them to personally fulfill the mandate. It was therefore

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Communicationes 9 (1977), pp. 269-273 on Praenotanda to original Schema; Cf. *Communicationes* 12 (1980), pp. 388-435 on reports of June 17-23, 1979 and November 12-16, 1979 meetings on revision of the original Schema.

[99] According to T.J. Green, one can view the principle of subsidiarity in two general ways, that is, in terms of distinctly Church legislation or in terms of civil law whose canonization by Church law or whose appropriate observance may be stressed in the Canons. While T.J. Green in his article 'Subsidiarity during Code Revision' focusses exclusively on distinctly ecclesiastical authorities particularly diocesan bishops and episcopal conferences in their mutual interactions, this work shall bring in, the contributions of civil law as an important aspect in the application of the principle of subsidiarity in the legislation on pious wills. (Cf. T.J. GREEN, "Subsidiarity During the Code Revision Process: Some Initial Reflections," in *The Jurist*, 48 (1988), p. 785).

[100] *Patrimoniali*, Can. 47 § 1: "Ordinarii omnium piarum voluntatum tam mortis causa quam inter vivos exsecutores sunt", *Communicationes*, 12 (1980), p. 429.

[101] Cf. *Communicationes* 12 (1980), pp. 388-414.

[102] Cf. *Communicationes* 12 (1980), pp. 414-435.

[103] Cf. J. FOX, "A General Synthesis of the Work of Pontifical Commission for the Revision of the Code of Canon Law," p. 828.

[104] "Suggestum est ut facultas de qua in § 1 tribuatur tantum Ordinario loci. Consultoribus vero place tut normam § 1 valeat etiam pro Ordinariis religiosorum," in *Communicationes*, 12 (1980), p. 429.

clarified that the norm was intended to affirm a general principle: the ordinary is to act as overseer of the fulfillment of pious wills and to ensure their execution when no other executor is available. In this sense, the burden on the bishop was merely supervisory and thus not considered onerous.[105]

One consultor, seeking to clarify the nature of this general principle, proposed the expression "are born executors" (*exsecutores nati sunt*) be included in paragraph one. However, another consultor, supported by others, objected, arguing that this expression was new to canon law and unnecessary.[106] Another suggestion was made to omit paragraph one entirely, asserting that the ordinary's duty of supervision would suffice. This was rejected on the basis that English civil law, which generally required a testamentary executor, was not universally applicable.[107]

From this discussion, it becomes clear that paragraph one of *Patrimoniali* 47, phrased in the plural: *"Ordinarii omnium piarum voluntatum tam mortis causa quam inter vivos exsecutores sunt,"* was intended to apply both to diocesan bishops and to religious ordinaries, who would possess the faculty to execute pious wills.[108]

Patrimoniali 47 §2 retained wording substantially identical to that of Canon 1515 §2 of the 1917 Code: *"Hoc ex iure Ordinarii vigilare possunt, ac debent, etiam per visitationem, ut piae voluntates impleantur, et alii exsecutores debent, perfuncti munere, illis reddere*

[105] Cf. *Communicationes,* 12 (1980), p. 429.
[106] Cf. *Communicationes,* 12 (1980), p. 429.
[107] Cf. P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," p. 128.
[108] It is important to note that, on 25 July 1926, the Pontifical Commission for Authentic Interpretation of the Code of Canon law gave an elaboration on the role of the ordinary in the regulation of pious wills in parishes entrusted to religious institutes in line with the 1917 Code. It was held that, investments of money obtained by the superiors of religious congregation's house, if the funds had been left to the house by will or for the support of the cult of God taking place there, consent from the local ordinary was to be sought. This means, the diocesan bishop was to be the executor of all wills and not the ordinary of the institute. Now, in the revision process of the 1917, the ordinary of the religious was given the faculty to be an executor of pious wills within his jurisdiction. (Cf. CODICES CANONES AUTHRNTICE INTERPRETANDOS, *Responsa ad Proposita Dubia,* 25 July 1926, in *AAS,* 18 (1926), p. 393).

rationem."[109] In light of the interpretation of §1, the phrase "other delegated executors" in §2 refers to those delegated by, and accountable to, either the local ordinary or the religious ordinary.

Similarly, paragraph three of *Patrimoniali* 47: *"Clausulae huic Ordinariorum iuri contrariae, ultimis voluntatibus adiectae, tamquam non appositae habeantur,"*[110] which also closely follows Canon 1515 §3, must be understood as applying equally to both local and religious ordinaries.

2.4.2 1980 Schema Codicis 1252

Between 1979 and 1980, the task of revising the earlier drafts was undertaken by special study groups. From their work, the Schema of the Code of Canon Law (1980) was prepared and subsequently sent to the members of the Pontifical Commission. *Patrimoniali* Canon 47 became Canon 1252 of the 1980 *Schema Codicis*,[111] with a few changes in the wording across all three paragraphs.

In paragraph one, *Ordinarius* replaced *Ordinarii*, and *exsecutor est* replaced *exsecutores sunt*, thereby rendering the paragraph in the singular: "Ordinarius omnium piarum voluntatum tam mortis causa quam inter vivos exsecutor est."[112] This translates as: "The ordinary is the executor of all pious wills, whether *mortis causa* or *inter vivos*."

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[109] *Communicationes*, 12 (1980), p. 429; CIC/1917, Can. 1515 § 2 the predecessor of Patrimoniali 47 §2 reads, "Ordinaries can and must guard this right even by visitation in order that pious wills be fulfilled, and other delegated executors must render an accounting to them upon completion of their duty."

[110] *Communicationes*, 12 (1980), p. 429; CIC/1917, Can. 1515 § 2 the predecessor of Patrimoniali 47§ 3 read, "Clauses attached to last wills that are contrary to the right of Ordinaries are considered as if not even added."

[111] Cf. J. FOX, "A General Synthesis of the work of the Pontifical Commission for the Revision of the Code of Canon Law," p. 802.

[112] PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Codicis Iuris Canonici. Iuxta Animadversiones S.R.E.Cardinalium, Episcoporum Coferentiarum, Dicasteriorum Curiae Romanae, Universtatum Facultatumque Ecclesiasticarum necnon Superiorum Institutorum Vitae Consecratae Reconitum (Paribus Commissionis Reservatum)*, Libreria Editrice Vaticana, Vatican 1980, p. 279.(Hereafter cited as Schema Codicis Iuris Canonici 1980).

In paragraph two, the following changes were made to render the paragraph in singular form: *Ordinarius* replaced *Ordinarii*, *potest* replaced *possunt*, *debet* replaced *debent*, and *illi* replaced *illis*. The revised paragraph reads: "Hoc ex iure Ordinarius vigilare potest ac debet etiam per visitationem, ut piae voluntates impleantur, et alii exsecutores debent, perfuncti munere, illi reddere rationem."[113] This may be translated as: "By this right, the ordinary can and must oversee this, even through visitation, so that pious wills are fulfilled; and other executors, having completed their task, must render an account to him."

Paragraph three was likewise revised into singular form. *Ordinarii* (genitive singular) replaced *Ordinariorum* (genitive plural), resulting in the text: "Clausulae huic Ordinarii iuri contrariae, ultimis voluntatibus adiectae, tamquam non appositae habeantur."[114] This is rendered as: "Any clause contrary to this right of the ordinary, which is added to a last will, is to be regarded as non-existent."

2.4.3 1982 *Schema Codicis* 1301

The final *Schema* of the Code of Canon Law, dated March 25, 1982, was completed and presented to Pope John Paul II on April 22, 1982. A final revision of the *Schema* was undertaken by a small group of selected experts in collaboration with the Pope. Canon 1252 of the 1980 *Schema Codicis* became Canon 1301 in the 1982 *Schema Codicis*.[115]

Paragraph one retained the wording of Canon 1252 §1 of the 1980 *Schema Codicis*.[116] However, in paragraph two, the conjunction *eique* replaced *et*, while the words *debent* and *illi* were removed. In their place, the term *tenentur* was introduced and placed after the word

[113] *Schema Codicis Iuris Canonici 1980*, p. 279.
[114] *Schema Codicis Iuris Canonici 1980*, p. 279.
[115] Cf. J. FOX, "A General Synthesis of the Work of the Pontifical Commission for the Revision of the Code of Canon Law," p. 802.
[116] Can.1252 § 1 of the 1980 Schema Codicis Iuris Canonici read: "Ordinarius omnium piarum voluntatum tam mortis causa quam inter vivos exsecutor est." (*Schema Codicis Iuris Canonici 1980*, p. 279).

rationem. The revised paragraph read: *"Hoc ex iure Ordinarius vigilare potest ac debet, etiam per visitationem, ut piae voluntates impleantur, eique alii exsecutores, perfuncti munere, reddere rationem tenentur."*[117] This translates as: "By this right, the ordinary can and must watch over this, even by visitation, so that pious wills are fulfilled, and other executors are bound to render an account to him, having fulfilled their duties." Paragraph three remained unchanged from Canon 1252 of the 1980 *Schema Codicis*.[118]

2.4.4 The Promulgated Text of Canon 1301

On January 25, 1983, the Code of Canon Law was promulgated. Canon 1301 reads:

"§1 Ordinarius omnium piarum voluntatum tam mortis causa quam inter vivos exsecutor est.

§ 2 Hoc ex iure Ordinarius vigilare potest ac debet, etiam per visitationem, ut piae voluntates impleantur, eique ceteri exsecutores, perfuncti munere, reddere rationem tenentur.

§3 Clausulae huic Orinarii iuri contrariae, ultimis voluntatibus adiectae, tamquam non appositae habeantur."[119]

2.5 Textual Analysis of Canon 1301

Using the rule of interpretation of ecclesiastical laws provided in Canon 17, an analysis of the proper meaning of the words of Canon 1301 is undertaken according to both the text and the context,[120] in order to achieve a clearer and more accurate understanding of its content.

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[117] PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Codex Iuris Canonici. Schema Novissimum Iuxta Placita Patrum Commissionis Emendatum Atque Summo Pontifici Praesentatum*, Typis Polyglottis Vaticanis, Vatican 1982, p. 227. (Hereafter cited as Codex Iuris Canonici, Schema Novissimum 1982).

[118] Cf. *Schema Codicis Iuris Canonici 1980*, p. 279.

[119] IOANNES PAULUS PP. II, *Codex Iuris Canonici*, in *AAS* 75 Pars II (1983), p. 224. English translation: "§ 1 The Ordinary is the executor of all pious dispositions whether made *mortis causa* or *inter vivos*. § 2 By this right the Ordinary can and must ensure, even by making a visitation, that pious dispositions are fulfilled. Other executors are to render him an account when they have finished their task. §3 Any clause contrary to this right of the Ordinary which is added to a last will, is to be regarded as non-existent."

Canon 1301 is situated within Title IV: Pious Dispositions in General and Pious Foundations, found in Book V of the 1983 Code of Canon Law. The canon addresses the role of the ordinary as the executor of all pious wills, whether *mortis causa* or *inter vivos*.

For the purpose of this analysis, the following key elements are examined: pious wills and the role of the Ordinary in the context of the execution of such wills.

2.5.1 The Concept of Pious wills

The concept of pious wills or pious dispositions is deeply rooted in the canonical tradition. However, neither the current Code nor the previous one provides a formal definition of this concept. Its present formulation has emerged through doctrinal reflection and canonical jurisprudence. This is evident in the long-standing practices of the Church, such as almsgiving, fundraising, offering gifts to the Church, and establishing trusts and foundations to support various apostolic works. These are not new phenomena. From the earliest days of the Church, the Christian faithful contributed to its needs, as seen in Acts 2:42–47.[121] To sustain its worship and charitable activities, the Church, from its inception, acquired, administered, and distributed property for *pia causa*.[122]

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[120] CIC/1983, Can. 17 reads: "Leges ecclesiasticae intellegendae sunt secundum propriam verborum significationem in textu et contextu consideratam; quae si dubia et obscura manserit, ad locos parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum."

[121] Cf. K.E. MCKENNA *et al.*, (eds.), *Church Finance Handbook*, Canon Law Society of America, Washington, DC 1999, p. 65.

[122] Gifts to charitable institutions (foundations), such as orphanages, hospitals, poor houses, alms houses for the elderly (Cf. L.D. BREACH, *The Civil Law Influence on the Evolution of Testamentary Succession*, Master of Law Thesis, University of Canterbury, Christchurch 2013, p. 9); D. J. Ward defines a pious cause as a pious donation given for purposes of religion and charity. (Cf. D.J. WARD, "Trust Management under the New Code of Canon Law," in *The Jurist*, 44 (1984), p. 135); Cf. CIC/1983, Can. 114 2§ 2 where pious causes are defined as: works of piety, of the apostolate, or of charity, whether spiritual or temporal. R.T. Kennedy describes pious cause as "any endeavor undertaken for supernatural motive." (R.T. KENNEDY, "Pious Wills in General and Pious Foundation," in J.P. BEAL *et al.*, (ed.), *New Commentary on the Code of Canon Law,* Paulist Press, New York 2000, p. 1509).

The expression "pious wills" refers to any kind of disposition of goods made through an act *inter vivos* or *mortis causa*, in favor of a pious cause.[123] This means a cause motivated by supernatural intentions, even if implicit, directed toward goals of piety or charity, as indicated in Canon 1254 §2 of the 1983 Code of Canon Law.[124]

Jean-Claude Périsset explains that the canonical constitution of pious wills involves three essential elements. First, the donor's intention must be founded on a spiritual or supernatural motive. Second, the purpose of the offering or gift should be directed toward religious or charitable works. Third, the recipient of the goods must be a public juridical person who acts in the name of the Church, as described in Canon 116 §1.[125]

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[123] Cf. F.R. AZNAR GIL, *La administración de los bienes temporales de la Iglesia*, Publicaciones Universidad Pontificia Salamanca, Salamanca 1993, p. 202; See also V. De Paolis who notes: "Si può definire pia voluntà qualsiasi disposizione, sia con un atto inter vivos o con un atto mortis causa, in favore di una causa pia, ossia per un fine proprio della Chiesa, ossia soprannaturale. Si tratta pertanto di un atto di volontà, con il quale si dispone di propri beni…Tale volontà si dice pia perché nasce da un motive religioso soprannaturale; I beni vengono dati per un fine soprannaturale, religiosa, proprio della Chiesa: se il fine non fosse soprannaturale la vontà non potrebbe essere definite propriamente pia,mossa cioè da un motive religioso." (V. DE PAOLIS, *I beni temporali della Chiesa*, Edizioni Dehoniane, Bologna 1995, p.224); J.P Schouppe also contends: "…per pie voluntà si intendono, da una parte, i negozi con i quali le persone che ne hanno la capacità a norma del diritto dispongono liberamente dei loro beni a favore della Chiesa per il consengumento dei suoi fini propri (Cf. Can. 2), sia atti tra vivisia atticon efficacia velevole in caso di morte. Oltre a questa dimensione─che si potrebbe denominare in fieri─delle pie voluntà, vi è anche una dimensione in facto esse constituita dagli stessi beni distinati alla Chiesa e dalle stesse instituzioni a cui sono stati integrati. Entrambi sono ritenuti cause pie." (J.P. SCHOUPPE, *Elementi di diritto patrimoniale canonico*, Giuffrè Editore, Milano 1997, pp.82-83).

[124] CIC/1983, Can. 1254 § 2 reads: "These 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 the sacred apostolate and of charity, especially for the needy." P. Gherri also contends that, in order for one to speak of a 'pious will', it is necessary for there to be an asset structurally connected to the specific will that a person other than its original owner realizes through it some beneficial or cultic activity, whether determinate or indeterminate. (Cf. P. GHERRI, "Pie Voluntà, e Pie Fondazioni: Uno Sguardo ad una Prassi di Curia Spesso Disattesa," in *Periodica*, 105 (2016), p. 599).

[125] Cf. J.-C. PERISSET, *Les biens temporels de l'Église, Commentaire des Canons 1254-1310*, p. 227; P. GHERRI also sheds more light on the definition and essential elements of pious wills when he contends that, "Le pie voluntà si definiscono tradizionalmente come disposizioni di beni temporali in favore di una causa pia, posti in essere da un soggetto sia con atto *inter vivos* sia con atto *mortis causa*. Gli elementi essenziali della pia voluntà sono: la causa pia, in cui favore si rivolge la pia voluntà; l'intenzione soprannaturale (inerente all'ambito religioso), in virtù della quale si compie la disposizione dei beni…; la pietà del disponente." (P. GHERRI, "Pie Voluntà e Pie Fondazioni: Uno Sguardo ad una Prassi di Curia Spesso Disattesa," p. 595); For more reading on the elements of pious wills, Cf. also F.R. AZNAR GIL, *La administración de los bienes temporales de la Iglesia*, Publicaciones Universidad Pontificia Salamanca, Salamanca 1993, p. 218.

The terms *mortis causa* and *inter vivos* are legal expressions borrowed from Roman law,[126] referring to two types of gift transfers,[127] those made in anticipation of death and those made during a person's lifetime. Based on Roman law, Ronny Jenkins defines gifts as things that are given freely, without legal obligation or duty, and offered voluntarily.[128] Initially, Roman law was cautious about transfers made without compensation, leading to questions about whether the transferred item had truly passed into the ownership of the recipient. This concern led to the development of legal procedures to ensure the proper and final transfer of ownership.[129]

As a result, Roman law came to recognize certain essential elements of a gift: the transfer of an interest in a thing, the gratuitous and voluntary nature of the transfer, and the subjective intention to make such a gift. The canonical system adopted this understanding, recognizing that a gift is essentially a gratuitous transfer that involves legally acknowledged elements.[130]

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[126] In his analysis of the two terms and basing himself on Can. 1299, P. Gherri notes: "Chi è in grado di disporre liberamente dei propri beni per Diritto naturale e canonico, può lasciarli per causa pie sia con atto tra vivi sia con atto valevole in caso di morte: è questo il fondamento di un'attivitá, insieme spirituale e patrimoniale, che ha trovato espressione lungo I secoli in tutti gli Ordinamenti giurdici di matrice romanistico-giustinianea tanto da essere contemplato anche a livello civilistico in molti Stati contemporanei, oltre che configurarsi come Istituto giuridico tripico all'interno dell'Ordinamento canonico." (P.GHERRI, "Pie Voluntà e Pie Fondazioni: Uno Sguardo ad una Prassi di Curia Spesso Disattesa," pp. 594-595).

[127] "Los Cann. 1299-1302 regulan diversos aspectos concernientes a un tema que, tradicionalmente, ha tenido mucha importancia en la historia de la Iglesia: la adquisición de bienes temporalis para la Iglesia mediante las pias fidelium voluntates. El Can. 1299 § 1. Equivalente al Can 1513 anterior, establece una doble forma de disposición de los bienes: por un acto *inter vivos* y *mortis causa*." (F.R. AZNAR GIL, *La administración de los bienes temporales de la Iglesia,* p. 201.)

[128] The definition of a gift, as Ronny explains, appears to be consistent with its Latin root *donatio*, which means the transfer of title to property to someone who receives it without payment. It refers to an act by which the owner of a thing voluntarily transfers both the title and possession to another person without any compensation or consideration. In its literal meaning, the term *donatio* has, over time, acquired a more limited usage, particularly in reference to the conveyance of estates in tail. Various types of *donatio* were recognized, including: *donatio simplex et pura*, a simple and pure gift made without compulsion or consideration; *donatio absoluta et larga*, an absolute and generous gift; *donatio conditionalis*, a conditional gift; and *donatio stricta et coarctata*, a restricted gift, such as one involving an estate in tail. (Cf. W.A. SHUMAKER, - G.F. LONGSDORF, *The Cyclopedic Law Dictionary,* p. 358).

[129] R.E. JENKINS, Gifts, "Donations and Donor intent in the Canon Law of the Catholic Church," p. 79.

[130] Cf. R.E. JENKINS, "Gifts, Donations and Donor Intent in the Canon Law of the Catholic Church," p. 78.

From a canonical perspective, Canon 1299 §1 stipulates that certain persons[131] have the right to dispose of goods for pious causes for the benefit of the Church.[132]

[131] CIC/1983, Can. 96 states: "By baptism one is incorporated into the Church of Christ and is constituted a person in it, with the duties and rights which, in accordance with each one's status, are proper to Christians, insofar as they are in ecclesiastical communion and unless a lawful issued sanction intervenes." The Code also acknowledges the status of moral persons and juridic persons in the Church. Canon 113 envisions other types of persons recognized by Canon law. CIC/1983, Can. 113 § 1states: "The Catholic Church and the Apostolic See have the status of a moral person by divine disposition." In § 2, it states: "In the Church, besides physical persons, there are also juridical persons, that is, in Canon law subjects of obligations and rights which accord with their nature." "Although Canon 1299 does not limit its application to physical persons, it would seem to be more likely that moral persons and juridical persons would be engaged in pious causes, although that would not necessarily preclude them from supporting other causes as well." (S.O. SHERIDAN, "Endowments and Pious Wills: To Rebuilt the Church," in *The Jurist,* 72 (2012), p.134); Cf. L.J. SPITERI, *Canon Law Explained. A Handbook for Laymen,* Sophia institute Press, Vatican City 1997, pp. 11-12. With regard to capacity, V. DE PAOLIS states: "Il Can. 1299 § 1 stabilisce che capacità di disporre in favor delle causa pie si regge solo sul diritto natural e sul diritto caninico."(V. DE PAOLIS, *I beni temporali della Chiesa,* p. 226). F. FALCHI, focusing on the physical persons, notes that, traditionally, the following are incapable under the natural law to offer goods: *infans* ((child under seven years), the *amens* (insane person), and the *usu rationis destitutus* (one lacking the use of reason). Canon law also poses limitation on religious who, according to the nature of their institute, have entirely renounced their possessions (Cf. Can. 668). However, not belonging to the Catholic Church does not prevent *pietas* nor does it eliminate the capacity to dispose of goods *ad causas pias.* (Cf. F. FALCHI, "Pía Voluntad," in J. OTADUY *et al., Diccionario General De Derecho Canonico,* Vol. 6, Thomson Reuters, Navarra 2012, p. 218); F.R AZNA GIL sheds more light on the aspect of capacity to donate temporal goods when he contends that, "El ius disponendi de los bienes temporales propios por última voluntad, por derecho natural compete a cada persona humana: por lo que no es de extrañar que en todos los pueblos la última voluntad de la persona humana se tenga como santa e inviolable. Por las consecuencias sociales derivadas de este acto, las legislaciones positivas, respetando este derecho natural, pueden regular diferentes aspectos concernientes tanto a la capacidad de testamentary como a las formalidades que debe reunir este acto." (F.R. AZNAR GIL, *La administración de los bienes temporales de la Iglesia,* p. 204). Jean-Claude Perriset also contends: "La libre disposition des biens est d'abord celle du droit naturel, dont les cann. 98 et 99 rappellent les conditions pour les personnes physiques. Outre les normes directement relatives à l'agir humain, d'une pleine connaissance et d'une libre volonté, il convient de rappeler ici certaines exigences du droit naturel pour celui qui veut disposer de ses biens, comme l'obligation d'assures l'avenir matériel de sa propre famille ou de soutenir ses propres parents. La libre disposition est aussi canonique, en raison de la nécessité d'observer les normes propres de l'Eglise lorsqu'il s'agit d'actions la concernant directement. La capacité naturelle de libre disposition peut être modifiée par la condition d'un sujet dans l'Eglise ; par exemple le religieux profès ne jouit plus de la libre disposition de ses biens (Can. 668 §§ 1, e et 5). Quant à la personne mineure, le canon 98 § 2 pose le principe qu'elle peut être exempte de la puissance paternelle ou de tutelle par la loi divine ou le droit canonique. Ce principe trouve son application pour le vœu, dont est capable celui qui a un usage suffisant de la raison (Can. 1191 § 2), et donc même pour l'offrande de biens, dont la personne mineure aurait la libre disposition, restant cependant soumise à la puissance des parents et tuteurs pour l'exercice de ses droits. Outre la capacité juridique du donateur, il faut aussi considérer celle du bénéficiaire." (J.-C. PERISSET, *Les biens temporels de l'Église, Commentaire des Canons 1254-1310,* p. 230). For more reading on the capacity of giving and receiving, Cf. also J.P. SCHOUPPE, *Elementi di diritto patrimoniale canonico,* p. 87.

[132] R.L. KEALLY notes: "Another significant source of revenue for a diocese is that of wills and bequests. Canon 1299 is exactly the same as the parallel Canon in the 1917 Code, Can. 1513, except for a stylistic change for greater clarity. It asserts the right of individual to bequeath goods for religious or charitable purposes. The Canon is directed against civil limitations on such bequests." (R. L. KEALY, Taxation, Assessments and Extraordinary Collections," in K.E. MCKENNA, *Church Finance Handbook,* p. 87).

The canon notes that there are essentially two ways in which goods may be given for pious causes: either by *actus inter vivos* or *actus mortis causa*.[133]

Paul Zielinski defines an *actus inter vivos* as the ownership of property irrevocably transferred to a pious cause without any reference to the donor's death. In contrast, he defines *actus mortis causa* as the delivery of property to another in contemplation of the donor's imminent death, with the condition that the gift does not become absolute until the donor dies.[134]

In his analysis of the terms *donatio inter vivos* and *donatio mortis causa*, Vromant, as cited by Zielinski, introduces additional important concepts related to pious wills, namely *testamentum* and *legatum*, and emphasizes the importance of distinguishing these terms clearly to avoid confusion. Accordingly, Vromant explains that *donatio mortis causa* occupies a position between *donatio inter vivos* and *testamentum*, and is characterized by three elements: it is a contract accepted by the donee; it remains revocable until the death of the donor; and the item is promised to the donee so that, upon the donor's death, the donee can either claim the item or at least obtain a *ius ad rem* (a right to the thing). *Testamentum* means "last will," and differs from

[133] CIC/1983, Can. 1299 § 1 States: "Qui ex iure naturae et canonico libere valet de suis bonis statuere, potest ad causas pias, sive per actum inter vivos sive per actum mortis causa, bona relinquere."; C.J. Woodall affirms that gifts may be made to parishes or pious foundations *'inter vivos'* (between living people or while the donor is still alive) or *'mortis causa'* (on account of death); which could mean upon death or prior to and approaching death, perhaps without a formal will. (Cf. C.J. WOODALL, *A Passion for Justice. An Introductory Guide to the Code of Canon Law*, p. 451).

[134] Cf. P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," pp. 123-124; Cf. F.R. AZNAR GIL, *La administración de los bienes temporales de la Iglesia*, p. 201; S.O Sheridan sheds more light on these terms when he notes: "The act *inter vivos* involves the situation where a person makes a gift or donation to pious cause while the person is still living coupled with the transfer of ownership rights that also occurs during the donor's lifetime. A gift entails 'the voluntary transfer of property to another without compensation.' More specifically, 'an *inter vivos* is, 'a gift of personal property made during the donor's lifetime and delivered to the donee with the intention of irrevocably surrendering control over the property.' In contrast, an act *mortis causa* may be accomplished through two alternative processes: a gift given in contemplation of death or through a last will and testament. The last will and testament is fairly well known concept. It is 'the most recent will of a deceased; the instrument ultimately fixing the disposition of real and personal property at the testator's death. The gift in contemplation of death, also referred to as gift *mortis causa* or a *donatio mortis causa*, is a somewhat lesser known concept. It is a gift made in contemplation of the donor's imminent death. The three essentials are; the gift must be made with a view to the donor's present illness or peril, the donor must actually die from the illness or peril without ever recovering and there must be a delivery. Capable persons can use any of these instruments for supporting a pious cause." (S.O. SHERIDAN, "Endowments and Pious Wills: To Rebuild the Church," p. 135).

donatio mortis causa because no contract is involved, nor is it required that any acceptance occur during the testator's lifetime. *Legatum* refers to a legacy or bequest, that is, a portion of an inheritance. It is a testamentary disposition by which the deceased leaves a gift or a share of the inheritance to someone other than the heir. Upon the testator's death, the legatee can claim the item from the heir and also acquires a *ius ad rem.*[135]

In analyzing the distinctive legal elements of these instruments, Sheridan holds views similar to those of Vromant, though he does not explicitly address the aspect of *legatum.*[136] Thus, in a general sense, the Code collectively refers to pious wills as any donations made either through an *act inter vivos* or an *act mortis causa*, whether by last will and testament or as a

[135] Cf. P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," p. 124; Cf. S.O. SHERIDAN, "Endowments and Pious Wills: To Rebuild the Church," pp. 136-142; Cf. F.R. AZNAR GIL, *La administración de los bienes temporales de la Iglesia,* p. 203.

[136] In his analysis of the instruments of pious wills, Sheridan defines a gift *inter vivos* as a gift given during the donor's lifetime. It is a contract (cf. Can. 1290) that must comply with civil legal requirements, and the capacity of the donor must be considered (cf. Can. 668). He further asserts that there must be both delivery and acceptance of the gift, and that once the gift is accepted, it becomes irrevocable. Finally, he maintains that there must be a just cause for a gift to a juridical person to be refused (cf. Can. 1267 §2). Regarding last wills and testaments, Sheridan explains that in this type of instrument, the final disposition of goods occurs only after the death of the donor. Unlike a gift *inter vivos*, a last will and testament is not a contract. Although civil law formalities must be observed, delivery and acceptance are not required. Moreover, he emphasizes that until the donor's death, the gift remains revocable, meaning that ownership is not transferred until death. In his description of *donatio mortis causa,* Sheridan states that the disposition of goods is made in anticipation of imminent death and that it constitutes a contract. He further notes that the gift remains revocable until the donor's death, and that delivery and acceptance must occur prior to death. Ownership, he concludes, is transferred only upon the donor's death. (Cf. S.O. SHERIDAN, "Endowments and Pious Wills: To Rebuild the Church," p. 138)

donatio mortis causa in favor of the Church.[137] In all cases, the donor's or testator's unequivocally expressed will must be fulfilled.[138]

The Second Vatican Council affirmed that the Church, like all institutions, must make use of material means insofar as her mission requires.[139] In line with this, Canon 1254 §1 echoes that the Church possesses the inherent right, independent of any secular power, to acquire, retain, administer, and alienate temporal goods for the fulfillment of her proper objectives.[140] This right finds its justification in natural law,[141] positive law,[142] and historical praxis.[143]

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[137] V. DE PAOLIS notes: "Tale atto dispositivo puo̓ essere inter vivos, se ha efficacia prima della morte del disponente stesso; mortis causa, se la sua efficacia è legata alla morte del disponente: in quest'ultimo caso si dice anche ultima volontaà, in quanto con la morte non è più possible modificarla. Le ultime voluntà possono assumere diverse forme: donazione mortis causa, testament, legat, fiducia, ecc. (V. DE PAOLIS, *I beni temporali della Chiesa*, p. 224) P. Vere and M. Trueman further affirms: "In the same measure that any charitable organization can be a beneficiary in last will and testament, a Catholic diocese, parish or other association can be named. However, rather than place monies into the general fund of a diocese or parish, Canon law allows for establishment of pious foundations. Pious simply refers to the fact that, the gift will be used to accomplish some aspect of Church's ministry, and foundation means that the assets will create a stable base from which to continue funding that ministry." (P. VERE,-M. TRUEMAN, *Surprised by Canon Law. More Questions Catholics Ask About Canon Law*, Vol. 2, St. Anthony Messenger Press, Cincinnati 2007, p. 62).

[138] F.R. AZNA GIL talks of the piety of the disposer an element which is discussed in some cases, for example in the case of an atheist. He personally notes: "Personalmente entiendo qua si la donació se hace a una institución erigida o aprobada por laIglesia,la disposición se presume juridicamente 'pía' por ser ecclesiástica, es decir por caer bajo la potestad de la Iglesia." (F.R. AZNAR GIL, *La administración de los bienes temporales de la Iglesia*, p. 219).

[139] Cf. *Gaudium et Spes*, n. 76.

[140] "The claim is rooted in centuries of conflicts between the Catholic Church and civil governments which, at various times and in various ways, have sought to deprive the Church of its material possessions. Restrictions on acquisitions, excessive taxation, forced alienations, and the outright seizure of Church lands and revenues have, since the middle ages, evoked strong reactions from bishops, local and ecumenical councils, and popes. The severity of deprivations left little room for moderation in papal and conciliar pronouncements condemning the confiscations and insisting upon freedom of the Church from the jurisdiction of civil authorities in regard to temporalities." (R.T. KENNEDY, "Book V: The Temporal Goods of the Church (Cann. 1254-1310)," in J.P. BEAL *et al.*, (eds.), *New Commentary on the Code of Canon Law*, p. 1453); J. J. Coughlin, also states: "The phrase reflects the long experience of the Church with governments hostile to the Church's property rights. However, according to the Church's teaching, the state regulates private property for common good. Consistent with state regulation, the Church controls its own property for its mission, which transcends the common good." (J.J. COUGHLIN, *Canon Law. A Comparative Study with Anglo-American Theory*, Oxford University Press, New York 2011, p. 97).

[141] Natural law theory has its foundation on the Church, that just like any other human society, the Church has a right to acquire and dispose of property in pursuit of its legitimate ends. (Cf. J.J MYERS, "Book V: Temporal Goods of the Church (Cann. 1254-1310) in J.A. CORIDEN *et al.* (eds.), *The Code of Canon Law. A Text and Commentary*, p. 860).

[142] Cf. CIC/1983, Can. 1259; Cf. C.J WOODALL, *A Passion for Justice. An Introduction Guide to the Code of Canon Law*, p. 447.

[143] Jesus and the Twelve together kept a common purse and Judas was in charge. (Cf. G.J. ROCHE, "The Temporal Goods in Book V of the Code," p. 299); J.J. Myers also contends: "The Church has in fact owned and administered property from the earliest times. The New Testament gives evidence of common funds used for the

Canon 113 states that the universal Church and the Apostolic See are "moral persons" by divine ordinance and, therefore, do not require recognition or intervention from any external authority to come into existence.[144] This implies that no human power can lawfully impede the Church's efforts to acquire or manage temporal goods.

While the Church asserts her right to hold and use property for her mission independently of civil authority, she also acknowledges that civil authorities have the right and duty to establish laws for the protection of property. Canon 1299 §2 requires that, where possible, the formalities of civil law in *actus mortis causa* arrangements should be observed.[145] This represents both a canonization of civil law[146] and an application of the principle of subsidiarity. Failure to observe civil law can lead to prolonged litigation,[147] and the donor's intentions may be frustrated if they are not legally recognized in civil law.[148]

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poor. Even before Constantine's Edict of Milan (313), the Church owned and administered some properties." (J.J. MYERS, "Book V: The Temporal Goods of the Church (Cann.1254-1310), in J.A. CORIDEN *et al.*, (eds.), *The Code of Canon Law. A Text and Commentary*, p. 860); S. A. Szuromi also notes: "Since the time of the transference of the residence of the Roman Emperor to Constantinople, Papal power became the decisive factor in Rome. Moreover, wealthy families bequeathed significant land to the Church, primarily in the area or Rome but also in Southern Italy, Gaul, Dalmatia and in Africa." (S.A. SZUROMI, "A Historical Sketch of Principal Developments in Canon Law on Temporal Goods," p. 535).

[144] The Code uses the term 'moral person' as distinct from 'juridical person' because a moral person will provide itself with the necessary 'juridical persons' to carry out its mission. (Cf. F.G. MORRISEY, "Acquiring Temporal Goods for the Church's Mission," in *The Jurist* 56 (1996), p. 591); J. J. Myers elaborates: "Juridical persons include the diocese and archdiocese, Dicasteries of the Roman Curia, parishes, religious communities, seminaries, universities, colleges, hospitals, orphanages and other groups established by competent Church authorities. Some of these, e.g., colleges, hospitals, and orphanages, may not have a distinct juridical personality in Canon law, but may function as part of superior juridical personality such as a province of a religious community." (J.J. MYERS, "Book V: The Temporal Goods of the Church (Cann.1254-1310)," in J.A. CORIDEN *et al.*, (eds.), *The Code of Canon Law. A Text and Commentary*, p. 862).

[145] V. De Paolis notes: "Una disposizione in favore delle causa pie è un atto giurdico, che, per essere efficace, deve rispondere alle esigenze di ogni atto giurdico, sia per quanto riguarda gli elementi essenziali che lo costituiscono, sia per labilità delle persone, sia per le solennità e I requisiti (Cf. Can. 124). La disposizione in favore delle causa pie, sia mortis causa che inter vivos, è, in un senso lato,un patto, un contratto, per il quale il Can. 1290 ha recepito il diritto civile, anche per ciò che riguarda la forma." (V. DE PAOLIS, *I beni temporali della Chiesa*, pp. 227-228).

[146] CIC/1983, Can. 22: "Leges civiles ad quasi us Ecclesiae remittit, in iure canonico iisdem cum effectibus serventur, quatenus iuri divino non sint contrariae et nisi aliud iure canonico caveatur."

[147] V. De Paolis adds: "Il Can. 1299 § 2 ha per oggetto solo le solennità che il diritto civile richiede per le disposizioni mortis causa. Tali somenità vanno osservate: esse hanno una funzione positive, in quanto vogliono evitare dubbi, incertenze e quindi litigi tra gli erendi. L'obbligo tittavia non è assoluto; è solo una norma prudenziale

Daniel Ward emphasizes that civil law is necessary not only for the legality of transferring money or property but also for tax-related matters.[149] This perspective is supported by Canons 1282,[150] 1284,[151] and 1290,[152] which reflect the importance of referring to civil or secular law in the administration of ecclesiastical goods.

Brian Lucas argues that the Church functions within many different legal systems. Due to the diverse circumstances across nations, universal law often defers to particular and proper law, and to civil law where appropriate.[153] This position is also implicitly held by Francesco Falchi, who notes that the current universal law on pious wills is the result of a historical development that incorporates long-standing principles of Roman Rota jurisprudence, elements from the Second Vatican Council, and respect for the role of particular law.[154]

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che va osservata si fieri possit." (V. DE PAOLIS, *I beni temporali della Chiesa,* p.228); Cf. also, F.G. MORRISEY, "Acquiring Temporal Goods for the Church's Mission," p. 593.

[148] Cf. C.J. WOODALL, *A Passion for Justice. An Introductory Guide to the Code of Canon Law,* pp. 451-452; Brian Lucas affirms that civil law structures do not always conform to canonical reality but are seen at Canon law as means to protect ownership, not as a means of doing away with it. (Cf. B. LUCAS *et al., Church Administration Handbook,* St. Paul's Publications, Canberra 2008, p. 201).

[149] D.J. WARD, "Trust Management under the New Code of Canon Law," in *The Jurist,* 44 (1984), p. 136. In matters of Church financing and tax systems in Spain, A.V.D.R. Villanueva notes: "La denominda 'financiación indirecta' de la Iglesia se basa en dos normas, el Acuerdo sobre Asuntos Económicos (AAE), de 3 enero de 1979, y la Ley 49/2002, de 23 de diciembre, de régimen fiscal de las entidades sin fines lucrativos y de los incentivos fiscales al mecenazgo. El AAE contempla un régimen de beneficios fiscales propio y autónomo que se aplica con independencia de los beneficios concedidos por el ordenamiento interno. Por su parte,la Ley 49/2002 establece un régimen tributario especial para las entidades sin ánimo de lucro, cuya applicación se extiende a las asociaciones y demás entidades ecclesiásticas, según lo previsto en el propio Acuerdo. El Acuerdo sobre Asuntos Económicos es,por tanto, la piedra angular del régimen tributario applicable al conjunto de la Iglesia española." (A.V.D.R. VILLANUEVA, "El Sistema Tributario y la Financiacion de la Iglesia en España," in *Ius Canonicum,* 48 (2008), p. 69).

[150] Cf. CIC/1983, Can. 1282: "Omnes, sive clerici sive laici, qui legitimo titulo partes habent in administratione bonorum ecclesiasticorum, munere sua admplere tenentur nomine Ecclesiae, ad normam iuris."

[151] CIC/1983, Can. 1284 § 1: "Omnes administratores diligentia boni patris familias suum munus implore tenentur. § 2: Exinde debent: 2° curare ut proprietas bonorum ecclesiasticorum modis civiliter validis in tuto ponatur; 3° praescripta servare iuris tam canonici quam civilis, aut quae a fundatore vel donatore vel legitima auctoritate imposita sint, ac praesertim cavere ne ex legum civilium inobservantia damnum Ecclesiae obveniat".

[152] CIC/1983, Can. 1290: "Quae ius civile in territorio statuit de contractibus tam in genere,quam in specie et de solutionibus, eadem iure canonico quoad res potestati regiminis Ecclesiae subiectas iisdem cum effectibus serventur, nisi iuri divino contraria sint aut aliud iure canonico caveatur, et firmo praescripto Can. 1547."

[153] Cf. B. LUCAS *et al, Church Administration Handbook,* pp. 199-200.

[154] Cf. F. FALCHI, "Pía Voluntad," in J. OTADUY *et al., Diccionario General De Derecho Canonico,* Vol. 6, p. 218.

Therefore, in matters related to pious wills, one must take into account not only universal canon law, but also the civil law of the country,[155] the particular law of the diocese, and, where applicable, the proper law of the religious institute.

2.5.1.1 The Purpose of Pious Wills

Joseph Pokusa observes that the Church holds and administers temporal goods to serve the mission entrusted to it by the Lord. Accordingly, Church property never belongs to any individual person as personal property; rather, it always belongs to some juridic person and is of concern to the community. The canonical norms, therefore, structure the Church's administration of property to facilitate its mission.[156]

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[155] It's evident that the civil law in some countries might or might not recognize the fourfold right that the Church claims for herself as put in Can. 1254 § 1. Cases in point include for instance, the French law of separation of 1905 and its present constitution which allows money to be raised only for purposes of cult while German state has Church taxes (*Kirchensteur)* for Church purposes and in Britain various forms of fundraising and covenant are permitted. (Cf. C.J. WOODALL, *A Passion for Justice. An Introductory Guide to the Code of Canon Law*, p. 449). On the other hand, countries such as the United States of America, Canada and Australia, the church as such does not have civil recognition in regard to property right; rather it acquires such through establishment of corporations and similar entities. That when a corporation is established in secular law, in the mind of the civil legislator it will be the corporation which owns, retains, administers and alienates its temporal goods and not the 'Catholic Church' as such. The Church on the other hand considers such corporations as means of protecting its ownership but not 'owners' of the goods in question. (Cf. MORRISEY, "Acquiring Temporal Goods for Church's Mission," p. 592); P. Zielniski also states: "The Catholic Church has no legal existence under English Law as an owner of property, other than that of religious, to be vested in a diocesan trust." (P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," p. 133). S.O. Sheridan notes: "…it is essential for Canonists to recognize that each of the instruments…under the umbrella of pious wills is subject to the provisions of civil law. For instance, state law dealing with estate planning and administration, federal law dealing with taxes, law that address the valid establishment and administration of pious wills." (S.O. SHEDIDAN, "Endowments and Pious Wills: To Rebuild the Church," p. 160).

[156] J.W. POKUSA, "Background for the Law on Temporal Goods," in K.E. MCKENNA, *Church Finance Handbook*, p. XV); G. J. Roche sheds further light on the question of Church property ownership. He notes that the issue of who owns Church property was one that medieval canonists grappled with. While canonists accepted that the Christian faithful could lawfully own private property, they did not accept that the property of the Church itself could be considered the private property of either the bishop or any cleric. This gave rise to a fundamental question: if Church property was not the private property of the bishop, then who owned it? It is not clear how this question was answered during patristic times. Although it is evident that after the Edict of Milan in 313 the Church could legally hold property, the actual juridical status of such property remained uncertain. To whom did Church property belong? Various answers were proposed: it was said to belong to God, to the poor, to clerics, to the saints, or to Church buildings. In their attempt to address such questions, the medieval canonists adapted and refined the Roman concept of corporate law. Through this effort, they gradually developed a coherent system that laid the foundation both for modern corporate law and for the present canonical concept of the juridic person. (Cf. G.J. ROCHE, "The Poor and temporal Goods in Book V of the Code," pp. 322-323).

This observation implies that the goods of the Church possess a sacred character because they are intended for the mission of the Lord, who has entrusted them to the Church.[157] Jean-Claude Perisset supports this view, noting that the goods given to the Church are sacred not only because of their destination, as indicated in canon 1254 §2, but also because of their origin, namely the will of the donor, which may even arise from a vow, as stated in canon 1192 §3.[158]

This sacred origin and purpose of Church goods imposes a serious obligation on every diocesan bishop and religious superior to organize their administration on sound technical lines, so that the goods may be used effectively for the purposes for which they were intended.[159] It is in this context that the role of the Ordinary as the canonical executor of all pious wills is considered in the following section.

2.5.2 The Concept of the Ordinary in the 1983 Code

The 1983 Code of Canon Law defines the term "Ordinary" as referring, apart from the Roman Pontiff, to diocesan bishops and all those who, even temporarily, are placed in charge of a particular Church or a community equivalent to it, according to canon 368. It also refers to those who in these entities possess general ordinary executive power, such as vicars general and episcopal vicars. For their own members, the term also includes major superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right, provided they have at least ordinary executive power.[160]

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[157] J.P. Schouppe notes: "Qualora si riscoprisse la dimensione di servizio, lo spirito di distacco dai beni terrestri e gli intenti di transparenza nella loro amministrazione, come il papa Francesco ci invita in modo convincente, il governo ecclesiale è strettamente unito alla missione affidata da Cristo, ossia è necessariamente strumentale all'evangelizzazione e alla salus animarum." (J.P. SCHOUPPE, "Diritti Fondamentali dei Fedeli in Rapporto alla Partecipazione al Governo dei beni Temporali," in *Ius Ecclesiae,* 26 (2014), p. 398).

[158] Cf. J.-C. PERISSET, *Les biens temporels de l'Église, Commentaire des Canons 1254-1310,* Éditions Tardy, Paris 1996, p. 227.

[159] Cf. G. PICOTTI, "Dioceses and their Economic Life," in F. ARINZE *et al., The Bishop and his Ministry,* Urbaniana University Press, Vatican City 1998, p. 338; Cf. CIC/1983, Can. 1254 §2.

[160] Cf. CIC/1983, Can. 134 § 1.

Commenting on the list of Ordinaries outlined in canon 134, Paul Zielinski notes that the list is taxative, meaning that no one not explicitly mentioned can be considered an Ordinary. For example, a major superior of a secular institute, even if it is clerical according to canon 588 §2 and even if he has the faculty of incardinating clerics under canon 266 §3, is not an Ordinary. Because of a lack of coordination in the Code, canon 134 §1 does not include the *praelatus personalis,* even though canon 295 §1 does constitute him as an Ordinary. With respect to secular institutes, the Apostolic See may designate the major superior as an Ordinary, since the Holy See is not bound by the taxative listing of the Code.[161]

The term "Ordinary" thus includes, apart from the Roman Pontiff, diocesan bishops, major superiors of clerical religious institutes and clerical societies of apostolic life of pontifical right, territorial prelates, territorial abbots, vicars apostolic, apostolic prefects, apostolic administrators, vicars general, and episcopal vicars. Furthermore, the Apostolic See may designate as Ordinary the major superior of a secular institute, since it is not restricted by the listing in the Code.

2.5.2.1 The Ordinary Responsible for the Execution of Pious Wills

The executor of a pious will is the person responsible for ensuring the implementation of the donor's or testator's intentions. Canon law provides that the Ordinary is the executor of all pious wills, whether they are *mortis causa* or *inter vivos*.

Paul Zielinski explains that, according to canon 1302 §§1–2, there are three possible Ordinaries responsible for the execution of pious wills. First, if the goods are destined for a particular place, such as a specific diocese, locality, or pious cause located there, the Ordinary is the Ordinary of that place. This includes the diocesan bishop, the vicar general, or the episcopal

[161] Cf. P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," p. 132.

vicar if the matter falls within his mandate, such as a vicar for charities or pious causes. Second, if the goods are not tied to a specific place, the competent Ordinary is not the one governing the place but rather the Ordinary of the trustee. In clerical institutes of pontifical right and in clerical societies of apostolic life of pontifical right, the Ordinary of the members is the major superior. According to canon 620, this includes not only the general and the provincial superiors, but also the vicar general and vicar provincial. If the trustee is not a member of such an institute, his *Ordinarius proprius* is the Ordinary of the place where he has domicile or quasi-domicile, as stated in canon 107 §1. A religious or member of a society of apostolic life acquires domicile and quasi-domicile according to canon 103. In all such cases, the competent Ordinary is the diocesan bishop or the vicar general, and potentially the episcopal vicar, if the trustee falls under his delegated jurisdiction. For example, the episcopal vicar for religious or for a particular language or ritual group, such as Polish or Ukrainian, may qualify. In every case involving an episcopal vicar, the extent of his competence depends on the terms of his mandate.[162]

John A. Renken concurs with this interpretation. He maintains that the competent Ordinary charged with overseeing the execution of a pious will is the one with jurisdiction over the beneficiary entity, regardless of the donor's place of residence or death.[163] This suggests that those who possess general ordinary executive power, such as vicars general and episcopal

[162] Cf. P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," pp. 131-132; O. Sheridan contends that if a member of a religious institute or a society of apostolic life is appointed as the trustee of a pious trust, it is important to evaluate the donor's intention. This evaluation should determine whether the donor intended the pious trust to benefit the diocese or one of its apostolic works, or whether the intention was to benefit the institute or society itself, or one of its specific apostolic endeavors. Clarifying this intent helps to prevent potential conflicts between the diocesan bishop and religious institutes operating within his diocese. (Cf. S.O. SHERIDAN, "Endowments and Pious Wills: To Rebuild the Church," pp.150-151); Cf. D.J. WARD, "Trust Management under the New Code of Canon Law," p. 136; J. A. Renken also notes that for religious who do not have a religious Ordinary, their Ordinary is the local Ordinary. (Cf. J.A. RENKEN, *Church Property,* Alba House, New York 2009, p. 304); For more reading Cf. also J.-C. PERISSET, *Les biens temporels de l'Église, Commentaire des Canons 1254-1310,* p. 240; Cf. V. DE PAOLIS, *I beni temporali della Chiesa,* p. 230.

[163] Cf. J.A. RENKEN, *Church Property,* p. 304.

vicars,[164] may not, strictly speaking, qualify as executors of pious wills unless specifically mandated by the diocesan bishop. Because they do not possess jurisdiction over an entity like a diocese, they lack legislative authority and must act in the bishop's name. The same principle applies to officials of the Holy See, such as apostolic prefects, who govern in the name of the Roman Pontiff.

Gerald Sheehy further explains that one of the Ordinary's duties in executing pious wills is visitation, which includes requesting relevant documents and reviewing them. He notes that the Ordinary can fulfill this responsibility by issuing specific directives.[165] This role of requesting accountability and issuing directives presupposes that the Ordinary possesses legislative power. Therefore, the Pope, diocesan bishops, and major superiors of clerical religious institutes and clerical societies of apostolic life of pontifical right, within their respective jurisdictions, qualify as the Ordinaries responsible for the execution of pious wills.

2.5.2.2 The "Other Executors"

According to Sheridan, the mention of "other executors" in can. 1301 §2 affirms that the duties of an executor fall under the prerogative of executive power.[166] Consequently, the Ordinary may delegate this power to another person, such as the pastor of a parish that stands to

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[164] "In riferimento all'ufficio stesso, e non alla natura e all'origine della potestà, si è visto che la normative canonica distingue la potestà in propria e vicaria. E` propria quando è esercitata dal titolare dell'ufficio a nome proprio, in quanto essa è annessa ad un ufficio di per se stesso autonomo (per esempio il Romano Pontefice e I vescovi diocesani); è vicaria, se è esercitats a nome di altri, per il fatto che è annesa ad un ufficio subordinato ad altro ufficio, in modo tale da formare con quest'ultimo un'unità, ed è quest il caso del vicario generale ed episcopale." (G.S. SARTORI, "I Vicari del Vescovo e l'esercizio della 'Vicarietà' nella Chiesa Particolare," in *Quaderni di Diritto Ecclesiale,* 18 (2005), p. 25).

[165] Cf. G. SHEEHY *et al.*, (eds.), *The Code of Canon Law, Letter & Spirit. A Practical Guide to the Code of Canon Law*, Veritas, Dublin 1995, p. 740.

[166] "Executive authority is part of governing authority. This authority may be ordinary or delegated. Ordinary authority according to Can. 131, is that which is invested in a particular office. Delegated authority, on the other hand, is that which is granted personally to individual; in other words, the individual does not receive the authority from the fact of holding a particular office but from a specific act of delegation." (M.R. MOODIE, "The Administrator and the Law: Authority and its Exercise in the Code," in *The Jurist,* 46 (1986), p. 60).

benefit from a pious will. Beyond these executors delegated by the Ordinary,[167] Daniel Ward introduces another category of "other executors": the civil executors. He contends: "The canonical executor need not be the actual administrator of the disposition, but he or she does have supervisory powers. Presumably, the supervisory power would be to seek enforcement of the disposition by the civil executor or trustee in the civil courts, since the Ordinary is the principal representative of the recipient of the gift or bequest."[168]

This highlights a different dimension of "other executors." In this same line, Brian Lucas adds: "The Ordinary is obliged to respect the role of those appointed as executors in civil law."[169] This suggests that the term "other executors" includes both those delegated by the Ordinary, such as a parish priest who stands to benefit from a pious will, and those appointed in civil law by the testator.[170] In either case, the Ordinary must be informed and receive an account of all matters related to pious wills.

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[167] Cf. S.O. SHERIDAN, "Endowments and Pious Wills: To Rebuild the Church," pp.149-150; R.T. KENNEDY, affirms that, "The ordinary does not have the primary responsibility to implement the terms of every pious will. Primary responsibility belongs to the 'other executors' referred to in paragraph two; it is they who have been designated by the donor or testators to fulfil pious will. In accord with canonical tradition, the term 'executor' is applied to the ordinary in the sense of one who, as part of executive governance, has the right and duty to see that the laws of the Church are faithful observed and in regard to temporal goods, that no abuses enter into the management or distribution of resources which have been placed in service of one or more of the goals proper to the Church." (R.T. KENNEDY, "Book V: The Temporal Goods of the Church (Cann. 1254-1310), in J.P. BEAL *et al* (eds.), *New Commentary on the Code of Canon Law,* p. 1513).

[168] D.J. WARD, "Trust Management under the New Code of Canon Law," p. 136; T. J. Green sheds more light on the place of the bishop in the temporal goods of the Church. He states, "The bishop is the administrator only of properly diocesan goods since he immediately governs the diocese. For there is a close link between the one who governs a given juridic person like a diocese and the one who administers its temporal goods. The bishop however, is also a supervisor who is bound to exercise vigilance over the administration of the goods of the juridic persons subject to him such as parishes. Among his key concerns here is assuring the use of such goods for the Church purposes. He is to see to it that no abuses occur in the administration of such goods while setting the proper administrative tone in the diocese, i.e., an atmosphere of transparence and accountability." (T.J. GREEN, "The Players in the Church's Temporal Goods World," p. 55).

[169] B. LUCAS *et al., Church Administration Handbook,* p. 218.

[170] J.P. Schouppe makes an important contribution on the notion of the executor(s) when he contends that: "La resposabilità dell'esecuzione delle liberalità *ex officio* al l'Ordinario svolge la sua missione per così dire 'di amministrazione in termedia', ossia escercita il diritto-dovere di vigilanza nei confronti degli esecutori designati. In forza di questo dovere, l'Ordinario ha il diritto di visita e gli altri esecutori, terminato il loro compito, devono rendergliene conto (Cf. Can. 1301 § 2). In caso di negligenza da parte di un esecutore, l'Ordinario deve urgere l'esecuzione." (J.P. SCHOUPPE, *Elementi di diritto patrimoniale canonico,* p. 97).

Commenting on testamentary executors, Paul Zielinski states:

> The Ordinary should be informed by the testamentary executors of all provisions in wills made in favor of *causae piae*. These would include all bequests for Masses, for parochial or charitable purposes. Once the executors have fulfilled their duty of executing the will, they must send a report to the Ordinary. The Ordinary has the right to conduct any investigations he deems necessary to ensure that the *voluntas pia* has been properly carried out. This includes the right to inspect the text of the will and any other relevant documents, as well as the right of visitation for the same purpose. In the case of a difference of opinion on the interpretation of a pious bequest, the Ordinary's judgment prevails over that of the testamentary executors. If the executors fail to implement the testator's wishes within a reasonable time, the Ordinary may deprive them of their office and undertake the execution of the will himself.[171]

Zielinski's observation suggests that the Ordinary's role is not merely to assist the executor appointed by the testator, but to ensure that the donor's intent is fulfilled. His reflection also touches on the principle of subsidiarity. The reference to a "reasonable time" for implementation may imply that the duration for executing the will lies within the Ordinary's discretion. However, García-Peñuela argues that, since the Code does not specify a timeframe for the execution of pious dispositions, the executor should carry out this task either within the period stipulated by the testator or in accordance with the provisions of civil law governing testamentary executors.[172]

2.6 Related Norms on Pious Wills within the 1983 Code

Since pious wills are legal dispositions for religious or charitable purposes, the code further provides related norms on legal protection of such goods against misuse or neglect by the executors. As such, the following sections delves into the norms related to pious wills and particularly, their safeguard.

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[171] P. ZIELINSKI, "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," p. 130.

[172] Cf. J.M VÁZQUEZ GARCÍA-PENUELA, "De Piis Voluntatibus in Genere et de Piis Fundationibus," in Á. MARZOA *et al.*, (eds.), *Exegetical Commentary on the Code of Canon Law,* IV/1, p. 159.

2.6.1 The Pastoral Presence of the Bishop as a Guarantee of Ecclesial Stewardship (Canons 395-397)

Canons 395–397 emphasize the obligation of the diocesan bishop to reside in his diocese and to personally visit the institutions and faithful under his care. Canon 395 §1 obliges the bishop to reside in his diocese unless legitimately impeded, while canon 396 §1 mandates that he must carry out a pastoral visitation of the entire diocese at least every five years. Canon 397 §1 further clarifies that such visitation extends to persons, Catholic institutions, and sacred places within the bishop's jurisdiction.

These canons directly reinforce the duty expressed in canon 1301, which designates the Ordinary as the executor of all pious wills and requires him to exercise vigilance in their fulfillment. The practical means of such vigilance include visitation and demanding accountability from other executors. Therefore, the pastoral visitations required by canons 396–397 are not merely administrative but are also essential mechanisms by which the Ordinary ensures the proper use of ecclesiastical goods donated for pious causes.

In essence, the bishop's obligation to reside and personally visit his diocese provides the physical and pastoral presence necessary to fulfill his canonical responsibilities as executor of pious wills. His proximity to the faithful and ecclesiastical entities enables effective supervision, safeguarding the donor's intent and the Church's temporal goods for their sacred purpose.

2.6.2 Accountability in the Administration of Ecclesiastical Goods (Canon 1287 § 1)

Canon 1287 §1 obliges administrators of ecclesiastical goods who are not subject to the religious vow of poverty to render an account of their administration to the Ordinary annually. This norm reflects a fundamental principle of ecclesial governance: transparent stewardship of Church property in service of the Church's mission and the intentions of donors.

In light of this, the canon supports the Ordinary's broader responsibility to exercise vigilance over the administration of pious foundations and donations, particularly those stemming from pious wills. The requirement to receive and review annual reports equips the Ordinary with the practical means to ensure that ecclesiastical goods, especially those donated for pious causes, are being managed according to the donor's intent and the Church's canonical norms.

Therefore, canon 1287 §1 complements and strengthens the Ordinary's supervisory role by formalizing a process of accountability. It ensures that administrators remain not only faithful to the Church's mission but also subject to ecclesiastical oversight, thus safeguarding the spiritual and temporal purposes for which such goods were entrusted to the Church.

2.6.3 Jurisdiction over Disputes Involving Acts of Administration (Canon 1413, 2°)

Canon 1413, 2° provides that a person can be brought to trial before the tribunal of the place where an obligation originated or is to be fulfilled, particularly in cases involving acts of administration. This principle is especially relevant in matters concerning the administration of goods given for pious causes, such as donations or bequests to the Church.

In relation to the Ordinary's duty to ensure the faithful execution of pious dispositions, this canon offers a legal mechanism to resolve disputes when an executor, administrator, or trustee fails to fulfill the donor's intent. If an executor neglects or mismanages a pious donation, the Ordinary may, in accordance with this norm, seek recourse before the competent ecclesiastical tribunal in the place where the obligation is to be carried out.

Thus, canon 1413, 2° reinforces the Church's legal framework for ensuring that acts of administration tied to spiritual and charitable purposes are respected and can be judicially

defended. It safeguards both the rights of the Church and the will of the donor, ensuring ecclesiastical goods serve their intended sacred use.

2.7 Related Canons on Pious Wills in the Code of Canons of the Eastern Churches[173]

By way of comparison,[174] there is no strict legal parity between the execution of pious wills in the *Code of Canon Law* (1983) and the *Code of Canons of the Eastern Churches* (1990).

The faithful of the Eastern Catholic Churches *sui iuris* enjoy the same freedom as those of the Latin Church to dispose of their goods for pious causes,[175] either through pious wills in general or specifically through pious foundations. The Eastern Code requires that, in the case of such wills, especially testaments, the prescriptions of civil law be observed. However, even when the donor fails to observe all the formalities required by civil law, the moral obligation remains with the heirs to carry out the donor's wishes.[176] Once the Church lawfully accepts such a donation, it assumes the moral responsibility to fulfill the donor's intention.[177]

In the Eastern tradition, the hierarch is the direct executor of all pious wills, whether by an act *mortis causa* or *inter vivos*. The hierarch is required to exercise vigilance over the fulfillment of these wills, to demand an account from subordinate executors, and, if necessary, to conduct visitations to verify their proper execution.[178]

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[173] Cf. G. NEDUNGATT,-G. RUYSSEN, (eds.), *A Guide to the Eastern Code. A Commentary on the Code of Canons of the Eastern Churches,* Pontificio Instituto Orientale, Rome 2002, pp. 859-860.

[174] J.B. Díaz notes: "La celebración el año 2001 del decino de la entrada en vigor del *Codex Canonum Ecclesiarum Orientalium* fue ocasión una vez más de trabajos de investigación sobre el nuevo Derecho de las Iglesias orientales católicas, en los cuales debía volver a pesar la sugerencia del propio le gislador en presentación del códogo el 25 de octubre de 1990 de que 'se promueva un adecuado studio comparative de los códigos.'" (J.B. DÍAZ, "El Latín Del CCEO., (Resultados De Una Comparacion Con El CIC)," in *Ius Canonicum,* 42 (2002), p. 161).

[175] *Codex Canonum Ecclesiarum Orientalium,* Auctoritate IOANNIS PAULI PP. II Promulgatus, October 18, 1990, in *AAS*, 82 (1990), pp. 1045-1363; Cf. CCEO/1990, Can. 1007, Latin-English ed., Canon Law Society of America, Washington, DC 2001. (Here after styled as CCEO/1990 followed by the Canon number).

[176] Cf. CCEO/1990, Can. 1043.

[177] Cf. CCEO/1990, Can. 1044.

[178] Cf. CCEO/1990, Can. 1045.

Ecclesiastical goods may also be given in trust. In such cases, the person who receives these goods on behalf of the Church is required to inform his or her hierarch. If the donor explicitly and absolutely prohibits the trustee from informing the hierarch, then the person must refuse the trusteeship. The hierarch must ensure, on the one hand, that the goods held in trust are securely managed, and on the other hand, that any revenues generated are used in accordance with the donor's will. The hierarch is to demand a regular accounting from the trustee and, if needed, personally verify the proper execution of the trust through visitation.[179]

Despite the similarities, there is no full legal equivalence between the two Codes. Notably, the Eastern Code does not explicitly address the transfer, reduction, moderation, or commutation of Mass obligations or other pious dispositions for a just and necessary cause, provisions which are well developed in the Latin Code. This omission may reflect a deliberate decision to leave such matters to the competence of the individual *sui iuris* Churches. Additionally, the principle of subsidiarity is not as clearly articulated in the Eastern Code as it is in the Latin Code, where the concept of delegation and structured oversight is more fully developed.[180]

Conclusion

Like any other society, the Church has never been immune to legal disputes concerning property, whether originating internally or externally. This chapter has examined the legal

[179] Cf. CCEO/1990, Can. 1046.

[180] For further reading on the relationship between the Eastern and Latin Code on pious wills and their execution, Cf. J. ABBASS, "Alienating Ecclesiastical Goods in the Eastern Catholic Churches," in *Folia Canonica*, 5 (2002), pp. 125-147; Cf. J. ABBASS, "Establishment of Autonomous and Non-Autonomous Foundations," in *Roman Replies and CLSA Advisory Opinions 2004*, Canon Law Society of America, Washington 2004, pp. 162-163; Cf. J. ABBASS, "The Interrelationship of the Latin and Eastern Codes," in *The Jurist*, 58 (1998), pp. 1-40; Cf. R. METZ, "Temporal Goods in the Church (Cann. 1007-1054)," in G. NEDUNGAT, (ed.), *A Guide to the Eastern Code*, Pontificio Instituto Orientale, Rome 2002, pp. 689-712; Cf. J. ABBAS, "The Temporal Goods of the Church: A Comparative Study of the Eastern and Latin Codes of Canon Law," in *Periodica*, 83 (1994), pp. 669-714.

framework governing the transfer of gifts and the role of the Ordinary in the execution of pious wills, with particular attention to the principle of subsidiarity. It has also identified the Ordinary responsible for such execution, tracing the origin and development of his role, while outlining the legal requirements attached to it. As such, this chapter offers both insight and a call to the Christian faithful to appreciate the existence of canonical norms that serve to resolve legal conflicts in the Church, especially those concerning donations made *mortis causa* or *inter vivos*.

CHAPTER THREE

APPLICATION OF THE NORM OF CANON 1301 ON PIOUS WILLS IN THE ARCHDIOCESE OF MOMBASA

Introduction

As explained in Chapter One, pious wills, whether *inter vivos* or *mortis causa*, constitute one of the means by which the Church acquires temporal goods in support of her divine mission. According to universal norms, such donations require compliance with both canonical and civil law by all stakeholders involved, as stated in Chapter Two.[181]

This chapter seeks to examine the extent to which particular law conforms to the requirements of universal law. It provides a historical overview of the Catholic Archdiocese of Mombasa and evaluates how the universal norms on pious wills have been adapted within the Archdiocese.

The chapter considers documents with specific legal character,[182] including diocesan policies, episcopal conference decisions, constitutions of religious institutes, statutes, and relevant civil law provisions concerning the topic under study. It concludes with a critique of the canon under consideration, comparing findings from particular law with the universal law of the

[181] "This is a good example of the realization in practice of the 1917 Code revision principle five on subsidiarity, which means here greater latitude for lower level legislators or administrators in shaping Church policy on temporalities especially in keeping with local civil law…"(T.J. GREEN, "The Players in the Church's Temporal Goods World," p. 56).

[182] "In the Vatican II Church, particular law has many forms of expression: legislation in the strict sense, hopeful not too excessive, as well as practical guidelines, directories, constitutions, or statutes for Church consultative bodies, and policies hammered out on the diocesan level..." (B.F. GRIFFIN, "Subsidiarity and the Church Lawyer," in J.H. PROVOST, (ed.), *Code, Community, Ministry. Selected Studies for the Parish Minister Introducing the Revised Code of Canon Law,* Canon Law Society of America, Washington, DC, 1983, p. 47). Cf. also, J. LOSADA, "Subsidiarity from an Ecclesiologist's Point of View," in *The Jurist,* 48 (1988), p. 351.

Church. Based on this analysis, the chapter offers recommendations on how best the subject matter may be addressed for the good of the Church and future generations.

3.1 A Brief Overview of the Catholic Archdiocese of Mombasa

The Archdiocese of Mombasa was once part of the Archdiocese of Nairobi. By a decree dated 8 May 1955 from the Congregation for the Propagation of the Faith (now the Dicastery for the Evangelization of Peoples),[183] certain territories were separated from the Archdiocese of Nairobi, namely, the coastal region and the islands popularly known as Zanzibar and Pemba, to constitute the Diocese of Mombasa and Zanzibar. It was bordered to the north and west by the Central Province (a territory belonging to the Church of Nairobi), to the east by the Indian Ocean, and to the south by the territory of Tanganyika. The episcopal see was situated in the city of Mombasa, where the appointed prelate was mandated to establish the Cathedral. The new diocese was made a suffragan of the Archdiocese of Nairobi. The decree further specified that the *episcopal table*, as it was called, was to be constituted by goods allocated to the new see from the division of property, as prescribed in Canon 1500 of the 1917 Code of Canon Law.[184] Venerable Brother James Robert Knox was appointed Head of the Apostolic Delegation and given the authority to execute the decree.[185]

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[183] "The creation, suppression and delimitation of Catholic jurisdictions in mission territories have been the charge of the Sacred Congregation of the Propagation of the Faith since 1622. In that year Pope Gregory XV issued the bull *Inscrutabilii Divinae,* which instituted this congregation to regulate the missionary activity of the Catholic Church world-wide." (L.M. NJOROGE, *Beyond Century of Endeavour. A History of the Catholic Church in Kenya,* Paulines Publications Africa, Nairobi 2022, p.254).

[184] CIC/1917, Can. 1500: "The territorial division of an ecclesiastical moral person such that one part of it is united to another moral person or a distinct moral person is to be erected from the disconnected part must be done in due proportion to goodness and equity, so that the common goods that were destined for the use of the whole territory, and the alienations that were contracted for the whole territory, (are fairly divided) by the ecclesiastical authority in charge of the division, with due regard for the intentions of donors and founders, legitimate acquired rights, and particular laws by which the moral person is regulated."

[185] Cf. SACRA CONGREGATIO DE PROPAGANDA FIDE, Decree *Nairobiensis (Mombasaensis et Zanzibarensis)*, 8 May 1955, in *AAS*, 47 (1955), pp. 661-663.

On 12 December 1964, another decree from the Sacred Congregation for the Propagation of the Faith ordered the dismemberment of the diocese. It stated that, for the better pastoral care of souls on the islands of Zanzibar and Pemba, these territories would henceforth be entrusted to the care of an Apostolic Administrator. Thus, the islands were separated from the Diocese of Mombasa-Zanzibar, and the diocese was henceforth called simply the Diocese of Mombasa.[186]

On 25 October 1967, the same Congregation issued a third decree adjusting the boundaries of the Diocese of Mombasa and the Archdiocese of Nairobi to better organize missionary activity. The civil district of Taita was fully assigned to the Diocese of Mombasa, aligning ecclesiastical boundaries with the civil boundaries of the districts of Machakos and Taita.[187]

On 9 December 1976, the Apostolic Prefecture of Garissa was established from parts of the Diocese of Mombasa and the Diocese of Meru.[188] On 3 February 1984, Pope John Paul II elevated the prefecture to the Diocese of Garissa.[189] On 21 May 1990, the Diocese of Mombasa was elevated to the status of Metropolitan Archdiocese, with Garissa as a suffragan see.[190] On 2 June 2000, the Diocese of Malindi was created from the southern part of the Diocese of Garissa and the northern part of the Archdiocese of Mombasa. Consequently, Malindi became another suffragan see of the Archdiocese of Mombasa.[191]

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[186] Cf. SACRA CONGREGATIO DE PROPAGANDA, Decree *Mombasaensis et Zanzimbarensis*, 12 December 1964, in *AAS*, 57 (1965), p. 336.

[187] Cf. SACRA CONGREGATIO DE PROPAGANDA FIDE, Decree *Mombasaensis-Nairobiensis. De Mutatione Finium* in *AAS*, 59 (1967), p. 1065.

[188] Cf. PAULUS, Decree, *Garissae. In Kenya, Nova Praefectura Apostolica Conditur, (Garissae) Nomine,* 9 December 1976, in *AAS*, 69 (1977), pp. 137-138.

[189] Cf. IOANNES PAULUS, Constitutiones Apostolicae *Garissaen. Praefectura Apostolica Garissaensis, in Kenya, ad Gradum Dioecesis Tollitur,* 3 February 1984, in *AAS* 76 (1984), pp. 435-436.

[190] Cf. SACRA CONGREGATIO DE PROPAGANDA, Decree *Mombasaensis et Zanzimbarensis*, 12 December 1964, in *AAS*, 57 (1965), p. 336.

[191] Cf. IOANNES PAULUS, Decree *Malindiensis. In Kenia Nova Conditur Dioecesis Malindiensis*, 2 June 2000, in *AAS*, 92 (2000), pp. 773-774.

Today, the Catholic Archdiocese of Mombasa encompasses the coastal counties of Kilifi, Kwale, Mombasa, and Taita Taveta. It covers an area of 30,432 square kilometers with an estimated population of 3 million, of whom approximately 400,000 are Catholic faithful.[192] These faithful support the Church's mission largely through pious donations, whether *inter vivos* or *mortis causa*.[193] As such, the administration of these donations calls for integrity and accountability. The role of the ordinary as the executor of all pious wills, therefore, remains indispensable.[194]

Having presented the historical background of the Archdiocese of Mombasa, it is now appropriate to turn to its legislation on pious wills.

3.2 The Legislation of the Archdiocese of Mombasa on Pious Wills

The legislation on pious wills in the Archdiocese of Mombasa is set forth in the *Diocesan Policy Document* (2021),[195] which was approved by the Archbishop on 21 July 2021.[196] This document outlines the sources of offerings and donations, along with the structures established for their administration. It places particular emphasis on transparency and accountability for those entrusted with managing these resources.

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[192] Cf. MOMBASA (ARCHDIOCESE), <https://www.catholic-hierarchy.org/diocese/dmomb.html>, (31 August 30, 2024).

[193] "Canonists should keep in mind that when we talk about pious wills, we are considering the instruments-gift, gift in anticipation of death, last will and testament-that a donor has chosen to use as a tool for the benefit of a pious cause. Once the goods of the donor are transferred through the applicable instrument, they are held in trust for the benefit of the intended beneficiary. The goods are typically directed into a pious trust, as addressed in Can. 1302, and further identified in Can. 1303 as either an autonomous pious foundation or as a non-autonomous pious foundation. While the church calls these instruments a pious trust, the civil law would likely refer to them as charitable trust, which as such, is subject to its own requirements as well as the oversight of the Attorney General of the state in which the trust is located. (S.O. SHERIDAN, "Endowments and Pious Wills: To Rebuild the Church," p. 161).

[194] Cf. CIC/1983, Can. 1301 § 1.

[195] "The object of the finance policy is to safeguard the integrity of financial data and information whereas the regulations cum procedures and provisos are to guide financial transactions, accounting processes, record keeping and reporting based on international financial reporting standards (IFRS) within the Archdiocese, Parishes, Outstations and affiliated institutions, that is, Church owned/run schools, health facilities and incorporated entities such as Tsavo Children's Village." (CATHOLIC ARCHDIOCESE OF MOMBASA, *Diocesan Policy Document (2021)*, Basic Black Images, Nairobi 2021, p. 1). (Here after cited as CAM, *Diocesan Policy Document (2021)*.

[196] Cf. CAM, *Diocesan Policy Document (2021)*, p. 28.

3.2.1 Diocesan Policy Document (2021) on Sources of Offerings and Donations

Regarding the sources of offerings and donations, the policy highlights that the Archdiocese of Mombasa engages in identifiable income-generating activities such as farming and the operation of institutions. In addition, other sources of income include tithes (*zaka*), offerings (*sadaka*) from the faithful, and donations.[197] This underscores that the faithful themselves are the primary sources of pious wills, namely, offerings and donations given for pious causes.[198]

3.2.1.1 Reception of Donations and Offerings for Pious Causes

The reception of donations and offerings is a regular and established practice in the Archdiocese of Mombasa. According to the universal norms of the Church, such contributions are generally intended to support the Church's mission. The 2021 policy document specifies that all contributions, particularly offerings and donations in the form of money, must be deposited into designated bank accounts of the parish or the diocese, depending on the intention expressed either by the donor or, in its absence, by the Church itself.

In this framework, offerings (*sadaka*) and tithes (*zaka*) are to be deposited in the pastoral account of the parish and used to cover salaries, priests' allowances, the upkeep of the rectory, fuel and vehicle repairs, and other related parish expenses. Contributions collected during

[197] Cf. CAM, *Diocesan Policy Document (2021)*, p. 8.

[198] Y.J. Attila provides insight into donations by the faithful when he states : "En considérant le salut des hommes (cf. can. 1752), miséreux ou riches, l'Église, en matière de dons et de sacrements, ne force jamais les fidèles, mais les exhorte à ne pas oublier leurs obligations intrinsèques envers les communautés besogneuses. Enfin, dans le domaine des participations financières des fidèles, les dons restent des offrandes volontaires, et la spontanéité prouve ainsi le geste fraternel, qui est sans contrainte extérieure. Par conséquent, ces oblats des fidèles pour les besoins des autres membres de la famille divine ne sont jamais des taxes fiscales ou parafiscales que chaque fidèle, comme dans un État civil, doit payer, sous peine d'amende ou de sanction pénale. Cette liberté des fidèles est clairement exprimée par les canons 1261 et 1299." (Y.J. ATTILA, *"La Communion et la Redistribution dans les Territoires de Mission,"* p. 137. In fact, in the recent *Catechism of the Catholic Church*, whereas the other five precepts are explicitly listed as such, a sixth one is added, though without a formal label, which states that the faithful are to support their clergy according to their ability. (Cf. *The Catechism of the Catholic Church*, Revised edition, Paulines Publications Africa, Nairobi 1999, nn. 2042-2043, p. 438.

fundraising event to be placed in the development account, where they are allocated to support parish or diocesan development projects and investments. Donations from ecclesial groups, such as associations (*Mashirika*) and Small Christian Communities (*Jumuiya*), are deposited into a restricted account and reserved specifically for the spiritual benefit of their members. Meanwhile, revenues generated by institutions like schools, dispensaries, and other parish or diocesan projects are to be deposited into separate accounts designated for the operation and maintenance of those projects.[199]

This financial structure reflects the intent of Canon 1254 § 2, which emphasizes that ecclesiastical goods are to serve the Church's mission and must be administered under the vigilance of the Ordinary.

3.2.1.2 The Understanding of Pious Wills and Pious Causes in the Archdiocese of Mombasa

The diocesan policy document of 2021 also articulates a clear understanding of pious wills, particularly in the context of their administration. It draws on Canons 1282,[200] 1283,[201] and

[199] Cf. CAM, *Diocesan Policy Document (2021),* pp. 10-11.

[200] CIC/1983, Can. 1282: "All persons, whether clerics or laity, who lawfully take part in the administration of ecclesiastical goods, are bound to fulfil their duties in the name of the Church, in accordance with the law."

[201] CIC/1983, Can. 1283: "Before administrators undertake their duties: 1°, They must take an oath, in the presence of the Ordinary or his delegate, that they will well and truly perform their office; 2° They are to draw up a clear and accurate inventory, to be signed by themselves, of any immovable goods, of those movable goods which are precious or in any way of cultural value, and of any other goods, with a description and an estimate of their value; and they are to review any inventory already drawn up; 3° one copy of this inventory is to be kept in the administration office and another in the curial archive; any change which takes place in the property is to be noted on both copies." M. RIVELLA commenting on Can. 1283, 1° states: "II Can. 1283, 1°, fissa in capo agli amministratori di beni ecclesiastici, prima che assumano il loro compito, l'obbligo di impregnarsi con giuramento ad amministrare bene e fedelmente. È l'unico caso, nell'ambito patrimoniale, in cui il Codice chiede al fedele di sanzionare un impegno mediante un giuramento, che ha natura promissoria, cioè invoca la testimonianza di Dio per confermare qualcosa che avverrà in futuro, rendendolo garante della fermezza con cui si intende mantenere quanto promesso." (M. RIVELLA, "Commento a un Canone. II Giuramento degli Amministratori di Beni Ecclesiastici (Can. 1283, 1°)", in *Quaderni di Diritto Ecclesiale,* 26 (2013), p. 482). M. RIVELLA further states: "Al giuramento, che deve essere reso di persona e non per procura (Cf. Can. 1199 § 2) davanti all'ordinario (Cf. Can. 134 § 1) o a un suo delegato (Cf. Cann. 131 § 1 e 137), sono tenuti gli amministratori delle persone giurdiche pubbliche, chierici o laici. Nella fase di revisione del Codiche fu proposto di estendere l'obbligo del giuramento anche agli amministratori delle persone giuridiche private. Tale opzione, tuttavia, non fu accolta. II canone, pertanto, deve leggersi alla luce del principio generale sancito nel (Can. 1257 § 2)." (M. RIVELLA, "Commento a un Canone. II Giuramento degli Amministratori di Beni Ecclesiastici (Can. 1283, 1°)," p. 484).

1284 [202] as the juridical foundation for its specific norms. [203] The policy emphasizes the responsible administration of donor funds, including projects and assets acquired through such donations. It calls for meticulous financial management, including the maintenance of accurate and transparent financial records, the prudent use and safekeeping of assets, and the sound registration and monitoring of investments. Furthermore, it stresses compliance with relevant civil law obligations, such as tax regulations.[204]

These administrative requirements are designed to ensure integrity and accountability on the part of those who manage ecclesiastical goods, thereby safeguarding the intentions of donors and serving the good of the Church.

3.2.1.3 Donor-Funded Projects and Assets Acquired through Donor Funds

The Diocesan Policy Document (2021) prescribes that projects are to be managed in accordance with the standing policies and procedures of the archdiocese or parish, unless otherwise stipulated in the donor project contract. In cases where the terms of the project contract are inconsistent with the policies and procedures of the archdiocese or parish, the latter shall prevail.[205]

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[202] CIC/1983, Can. 1284 § 1: "All administrators are to perform their duties with the diligence of a good householder. § 2. Therefore they must: 1° Be vigilant that no goods placed in their care in any way perish or suffer damage; to this end they are, to the extent necessary, to arrange insurance contracts; 2° Ensure that the ownership of ecclesiastical goods is safeguarded in ways which are valid in civil law; 3° Observe the provisions of canon and civil law, and the stipulations of the founder or donor or lawful authority; they are to take special care that damage will not be suffered by the Church through the non-observance of the civil law; 4° Seek accurately and at the proper time the income and produce of the goods, guard them securely and expend them in accordance with the wishes of the founder or lawful norms; 5° At the proper time pay the interest which is due by reason of a loan or mortgage, and take care that in due time the capital is repaid; 6° With the consent of the Ordinary, make use, for the purposes of the juridical person, of money which is surplus after payment of expenses and which can be profitably invested; 7° Keep accurate records of income and expenditure; 9° Keep in order and preserve in a fitting and secure archive the documents and records establishing the rights of the Church or institute to its goods; where conveniently possible, place authentic copies in the archive of the Curia."

[203] Cf. CAM, *Diocesan Policy Document (2021),* pp. 1-2.

[204] Cf. CAM, *Diocesan Policy Document (2021),* pp. 1-27.

[205] Cf. CAM, *Diocesan Policy Document (2021),* p. 16.

This norm reflects the contractual nature of donations and aims to prevent legal disputes between donors and administrators. It also echoes the universal norms on pious wills, which call upon the diocesan bishop to exercise vigilance in the administration of pious dispositions.

3.3 Oversight Role of the Archbishop of Mombasa over Pious Wills within His Jurisdiction

According to universal norms, four corporate institutions or administrative bodies within the diocesan curia (cf. canons 469–494) assist the bishop in fulfilling his responsibilities. These are: the diocesan finance council,[206] the presbyteral council,[207] the council of consultors,[208] and the diocesan pastoral council.[209] Pope Francis has emphasized that these four bodies, along with the diocesan synod, the parish pastoral council, and the parish finance council, constitute the seven participative structures within a particular Church.[210]

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[206] "The administration of a diocese needs financial resources and has inherent difficulties with expenditures and acquisitions. Church law ascertains that the financial fate does not rest solely in the hands of one person, namely the diocesan bishop. Church law makes it mandatory for a diocese to have a finance council. According to Can. 492, the finance council is to be composed of at least three members, lay or clergy, or both, with expertise in either financial or legal matters…the diocesan bishop in consultation with the finance council, is to determine what constitutes ordinary and extra ordinary acts of administration in the diocese. However, the limit of expenditure and acquisition in any given diocese is to be set by the competent conference of bishops. It should be noted that this law applies not only to expenditure but also to acquisition." (L.J. SPITERI, *Canon Law Explained. A Handbook for Laymen*, Sophia Institute Press, Manchester 2013, pp. 55-56).

[207] "A presbyteral council is, from its name, a consultative body of priests with their diocesan bishop as its head. It's composed in such a way that the diverse ministries undertaken by both secular and regular (religious) clergy in the diocese are reflected in its members." (L.J. SPITERI, *Canon Law Explained. A Handbook for Laymen*, p. 50).

[208] "The college of consulters plays a very special role in diocesan affairs. The diocesan bishop should listen to its advice especially in matters that pertain to the governance of the entire diocese. On the other hand, there are instances when the diocesan bishop is required to procure the consent of the college of consulters. The code is specific as to when the diocesan bishop is required to consult or to procure the consent of the college in order that his actions may be valid. For example, the bishop must seek the advice of the college before hiring or firing the diocesan fiscal officer. But the diocesan bishop is bound to seek the consent of the college for alienating certain Church property or risks worsening the diocesan patrimony or in matters of extraordinary administration. Thus, the deliberation of this college carry lots of weight." (L.J. SPITERI, *Canon Law Explained. A Handbook for Laymen,* p. 52)

[209] The diocesan pastoral council is a new set up in the 1983 code. The code does not dictate the establishment of such a council but strongly encourages it. This council falls entirely under the authority of the diocesan bishop, who alone may convoke it. It is a strictly diocesan structure and serves as a vehicle for pastoral study, evaluation process and proposal to improve the pastoral ministry in parishes. It is strictly a consultative body. (Cf. L.J. SPITERI, *Canon Law Explained. A Handbook for Laymen,* p. 58); Cf. P. VERE.,-M. TRUEMAN, *Surprised by Canon Law. 150 Questions Catholics ask about Canon Law,* p. 40.

[210] Cf. FRANCIS, Apostolic Exhortation *Evangelii Gaudium,* n. 26, 24 November 2013, Libreria Editrice Vaticana, Vatican City, 2013.

These participative bodies may all be viewed as administrative agents. For the purposes of this study, particular focus will be given to the finance administrator, the finance council, the presbyteral council, the council of consultors, parish pastors, the parish finance advisory council, and the diocesan treasurer. However, before discussing these administrative agents in detail, it is appropriate to examine the concepts of *vigilance* and *commutation of wills*, which are prerogatives of the diocesan bishop.

3.3.1 Vigilance

To ensure ethical stewardship, transparency, and alignment with donors' intentions in the management of pious wills, the Archbishop of Mombasa has mandated the diocesan finance office to coordinate and account for all donor-funded projects, in accordance with project contracts and donor requirements.[211]

3.3.2 Commutation of Pious Wills

Commutation refers to the modification of the terms of a pious will due to the impracticality or impossibility of fulfilling the donor's original intention. According to universal law, a bishop may, for just and necessary reasons, reduce, moderate, commute, or diminish the obligations of a will provided the donor has explicitly granted him this power.[212] The Diocesan Policy Document (2021) states that in order to alter the terms of a donation, the Archdiocese of Mombasa must obtain written approval from the donor agency if the assets are to be used for

[211] Cf. CAM, *Diocesan Policy Document (2021)*, p. 16.

[212] Cf. CIC/1983, Can. 1310 §§ 1-2. A. FARRELLY states: "Can.1310 § 2, addresses the situation where the fulfillment of the obligation of a bequest for some pious cause becomes impossible. Diminished income from the bequest or some other reason beyond the control of the administrator is cited as the cause. The law prescribes that the Ordinary consults the interested parties and finance council beforehand. The interested parties could be the administrators of the public juridic person in whose favour the bequest was made, if it was not made to the diocese as such, the family of the testator, or the person obliged to carry out the obligation. The finance council's advice as regards the civil law requirements and implications of such a proposal would be vital." (A. FARRELLY, The Diocesan Finance Council: Functions and Duties According to the Code of Canon Law," p. 159).

purposes other than those originally intended.[213] This policy on commutation is essential for ensuring that the donor's intent is respected, a duty that the local ordinary is obliged to uphold.

3.3.3 Administrative Agents Assisting the Bishop in the Proper Management of Pious Wills

Administrative agents involved in the management of ecclesiastical goods[214] must be understood in light of the roles assigned to them by Church law in relation to the juridic person.[215] In the context of a public juridic person, canon law distinguishes between the legal representative,[216] the administrator,[217] and the superior. Sometimes, a single individual may hold more than one of these roles. For example, the diocesan bishop is both the superior of the diocesan finance officer and the pastor of any parish within his jurisdiction. He also acts as the legal representative of the diocese and is responsible for the administration of its temporal goods,

[213] Cf. CAM, *Diocesan Policy Document (2021),* p. 15-16.

[214] Commenting on Pious wills which are a part of ecclesiastical goods, P. Gherri explains that the particular destination of goods intended for worship or charity gives them a distinct character within Canon Law. He observes that this specificity also imposes a particular mandate on the competent Ordinary, whom Canon 1301 designates as the legal executor of pious wishes. According to Gherri, this operational area is closely linked to the activity of the Curia, as it pertains to specific responsibilities of the Ordinary, understood as duties of his office, and falls within the domain of canonical administrative law. (P. GHERRI, "Pie Volontà e Pie Fondazioni: Uno Sguardo ad una Prassi di Curia Spesso Disattesa," pp. 597-598). According to the universal norms, a diocesan curia is composed of those institutions and persons who assist the bishop in the governance of the entire diocese, especially in guiding pastoral action, managing diocesan administration, and exercising judicial power (cf. Can. 469). The Fathers of the Second Vatican Council stated: "The diocesan curia should be so organized that it becomes a suitable instrument for the bishop not only for administering the diocese, but also for carrying out works of the apostolate." (SECOND VATICAN ECUMENICAL COUNCIL, Decree on the Pastoral Office of Bishops in the Church *Christus Dominus*, 28 October 1965, n. 27, in *AAS*, 58 (1966), p. 687). The *Directory for the Pastoral Ministry of Bishops*, *Apostolorum Successores*, also states: "As soon as a bishop is appointed, it is important that he acquaint himself with the workings of the curia and administrative practices, and that he adopt them, as far as possible, in order to expedite the work of the diocese." (CONGREGATION FOR BISHOPS, Directory for Pastoral Ministry of Bishops *Apostolorum Successores*, 22 February 2004, n. 176, Libreria Editrice, Vatican City 2004). In a way, the involvement of other members apart from the diocesan bishop in the duties of his office through the Diocesan Curia, is a good application of the principle of subsidiarity which the Catechism of the Catholic Church elaborates, "…a community of higher order should not interfere in the internal life of a community of lower order, depriving the latter of its functions, but rather should support it in case of need and help to co-ordinate its activity with the activities of the rest of society, always with a view to the common good." (*The Catechism of the Catholic Church,* n. 1883).

[215] Cf. J.A. RENKEN, "The Principles Guiding the Care of Church Property," in *The Jurist,* 68 (2008), pp. 136-177.

[216] Cf. CIC/1983, Can. 118.

[217] Cf. CIC/1983, Can. 1279 § 1.

though not in an *immediate* sense.[218] For instance, the parish priest is both the legal representative and the administrator of parochial goods,[219] though his superior remains the diocesan bishop.[220]

With this understanding of the different administrative roles, the following section will examine both individual and collective administrative agents who support the archbishop in fulfilling his administrative duties.

3.3.3.1 The Finance Administrator

At the diocesan level, the Catholic Archdiocese of Mombasa has a finance office headed by a finance administrator.[221] This administrator is responsible for financial planning, budgeting, monitoring expenditures, overseeing the use and maintenance of assets, keeping records of financial transactions, and providing financial reports.

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[218]Cf. CIC/1983, Can. 392 § 3; Cf. J.A. RENKEN, "Penal Law and Financial Malfeasance," in *Studia Canonica*, 42 (2008), p. 8.

[219] Cf. CIC/1983, Can. 532.

[220] Cf. CIC/1983, Can. 515 § 1; Cf. J.A. RENKEN, "The Principles Guiding the Care of Church Property," in *The Jurist,* 68 (2008), pp.136-177; CIC/1983, Can. 1287 § 1 asserts that, "Where ecclesiastical goods of any kind are not lawfully withdrawn from the power of governance of the diocesan bishop, their administrators, both clerical and laity are bound to submit each year to the local Ordinary an account of their administration, which he is to pass on to his finance committee for examination. Any contrary custom is reprobated." R. KENNEDY notes that, the bishop's power of governance does not extend to temporal goods owned by religious institute of pontifical right. However, when it comes to works of apostolate, religious institutes whether of diocesan right or pontifical right are subject to the diocesan bishop. (Cf. R.T. KENNEDY, "Book V: The Temporal Goods of the Church (Cann. 1254-1310," in J.P. BEAL *et al.*, (eds.), *New Commentary on the Code of Canon Law,* p. 1490); Cf. CIC/1983, Can. 678 § 1.

[221] A. Farrelly explains that the local Church, like the universal Church, requires material and financial resources in order to better fulfill its spiritual mission. He notes that the diocesan bishop holds full responsibility for the administration of ecclesiastical goods. However, Farrelly observes that the bishop cannot manage this task alone, especially in large and wealthy dioceses. For this reason, it is understandable that common law provides him with an economic affairs council. He further points out that numerous canons in the Code, particularly in Book V, deal with the administration of temporal goods. (Cf. A. FARRELLY, "The Diocesan Finance Council: Functions and Duties according to the Code of Canon Law," in *Studia Canonica* 23 (1989), pp. 149-150).

3.3.3.2 The Finance Council

Universal law mandates that each diocese establish a finance council, to be presided over by the diocesan bishop or his delegate,[222] with the purpose of assisting him in the administration of temporal goods.

Accordingly, the Diocesan Policy Document (2021) has it:

> The Archdiocese finance office (headed by Finance Administrator) shall be responsible for financial planning, budgeting, oversight over expenditure, asset use and maintenance, keeping record of financial transactions and financial reporting…with honesty and integrity as the hallmark of finance personnel, it is expected that available resources will be deployed with high sense of responsibility to carry out planned activities and expenditure…promptly submit returns to facilitate timely reporting.[223]

3.3.3.3 The Presbyteral Council

According to the Dogmatic Constitution on the Church, *Lumen Gentium*, the presbyteral council forms part of the presbyterium and assists the bishop in the governance and pastoral care of the diocese, fostering unity and collaboration between the bishop and his priests.[224] In its composition, half of the members are elected by the presbyterate (priests of the diocese), while the other members are either *ex officio* (by virtue of their office) or appointed by the bishop. It is

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[222] Adrian Farrelly explains that the diocesan finance council, as prescribed in Canon 494, is an essential part of diocesan organization. He notes that the council is composed of members of the Christian faithful, men or women, whether clergy, religious, or lay, who possess expertise in financial and legal matters. This council is meant to assist the diocesan bishop in managing the material goods of the diocese. While the bishop is free to draw on their expertise as he deems appropriate, Farrelly points out that in certain cases, the law obliges him to consult the council before taking action. (Cf. A. FARRELLY, "The Diocesan Finance Council: Functions and Duties According to the Code of Canon Law," in *Studia Canonica* 23 (1989), pp. 149-150). "The mission of the Church is to proclaim the gospel and work toward salvation of souls. The Church has acquired material goods to assist in these tasks. The assets of a diocese can grow quite large, and good business and financial decisions need to be made on a day to day basis. Aware of the fact that not all bishops or vicar generals have the wherewithal to make solid financial decisions, the law requires that in each diocese a finance committee is to be established." (P. VERE-M. TRUEMAN, *Surprised by Canon Law. 150 Questions Catholics ask about Canon Law,* pp. 39-40).

[223] *Diocesan Policy Document (*2021), p. 2. "Every juridical person, public or private, must have a finance council, which is composed of at least two individuals, neither of whom can be the administrator (Can. 1280). The finance council serves as a review board to advice the administrator." (P. VERE - M. TRUEMA, *Surprised by Canon Law. More Questions Catholics ask about Canon Law,* Vol. 2, p. 59).

[224] Cf. *Lumen Gentium*, n. 28.

a consultative body[225] through which the bishop seeks counsel on significant matters, such as the establishment or modification of parishes and financial decisions. The diocesan policy document (2021) does not address the role of the presbyteral council in matters concerning donations and offerings. Indeed, this structure is not particularly vibrant in the Archdiocese.

3.3.3.4 Council of Consultors

The Council of Consultors is another consultative body composed of 6 to 12 priests, presided over by the diocesan bishop. Members serve a term of five years.[226] The council advises the bishop on important matters, especially those relating to diocesan administration. It must be consulted in acts of extraordinary administration, such as the alienation of Church property. While the diocesan Policy Document states that any expenditure exceeding two million must be approved by the Archbishop,[227] suggesting an act of extraordinary administration, it does not explicitly require consultation with the Council of Consultors. However, given that the Archdiocese has a vibrant council, such consultations may be presumed.

3.3.3.5 The Parochial Pastors

The diocesan policy document (2021) quotes Can. 532 verbatim: "In all juridical matters, the parish priest acts in the person of the parish, in accordance with the law. He is to ensure that the parish goods are administered in accordance with Cann. 1281–1288."[228] Thus, parochial pastors are not the owners of ecclesiastical goods but administrators or custodians of Church property. They are called to ensure that donations and offerings are managed in accordance with canon law.

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[225] Cf. CIC/1983, Can. 495.
[226] Cf. CIC/1983, Can. 502.
[227] Cf. *Diocesan Policy Document (2021),* p. 10.
[228] *Diocesan Policy Document (2021),* p. 1; CIC/1983, Can. 532.

3.3.3.6 The Parish Finance Advisory Council and the Treasurer

At the parish level, the policy document (2021) stipulates that there shall be a Parish Finance Advisory Council (PFAC), and the parish treasurer is to assume the demanding responsibility of financial planning, budgeting, expenditure oversight, asset management and maintenance, record keeping of financial transactions, and reporting.[229] This highlights that the responsibility of financial administration involves not only pastors but also the laity.[230]

3.4 The Finance Policy on Administration of Pious Wills and Fulfilment of Pious Causes

Ecclesiastical goods are to be administered in such a way that the Church effectively fulfill her mission.[231] Accordingly, this section outlines the norms to be observed by the administrative agents directly responsible for the execution of pious wills in the Archdiocese of Mombasa,[232] as stipulated in the diocesan policy document (2021).

3.4.1 Financial Record-Keeping and Accountability

To ensure proper accounting by the finance officer, all affiliated institutions must maintain accurate records of finances, fixed assets, and other financial transactions.[233] The

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[229] Cf. CAM, *Finance Policy 2021*, p. 2; L.J. Spiteri notes: "Church law ascertains that the financial fate does not rest solely in the hands of one person, namely the diocesan bishop. Church law makes it mandatory for a diocese to have a finance council… composed of at least three members, lay or clergy, or both, with expertise in either financial or legal matters." (L.J. SPITERI, *Canon Law Explained. A Handbook for Laymen*, Sophia Press, Manchester 2013, pp. 55-56). The Mombasa Archdiocesan Finance Policy affirms the norms of Can 537 that, "In each parish, there is to be a finance council which is governed, in addition to universal law, by norms issued by the diocesan bishop and in which the Christian faithful, selected according to these same norms, are to assist the pastor in the administration of the goods of the parish, without prejudice to the prescript of Can. 532." (CAM, *Finance Policy 2021*, p. 1).

[230] The Second Vatican Council Decree on the Apostolate to the lay People *Apostolicam Actuositatem* insists that the action of the laity is so necessary that without them, the apostolate of the pastors will frequently be unable to obtain its full effect. By their expert assistance, they increase the efficacy of the care of souls as well as the administration of the goods of the Church (Cf. *Apostolicam Actuositatem* n.10).

[231] Cf. CIC/1983, Can. 1254 § 2.

[232] R.R. Hammer gives an important insight pertaining to the work of a minister by virtue of his office. He notes, "In general, a minister will have the authority to do those things specifically authorized in his employment contract, in the Church's constitution and bylaws, or by specific delegation of authority from church board of trustees." (R.R. HAMMAR, *Pastor, Church and Law,* Gospel Publishing House, Springfield 1983, p. 45).

[233] Cf. CAM, *Diocesan Policy Document (2021),* p. 23.

diocesan policy document (2021) stipulates that all monies received, regardless of form, by the parish or diocese must be securely kept and properly accounted for. These funds must be banked intact within 24 hours.

A serialized receipt, approved or supplied by the Archdiocesan Finance Office, must be issued for every income received, serving as both acknowledgment and a record for accounting purposes. All receipts must be entered into the cashbook. When deposits are made (cash, cheques, money orders, postal orders), a duplicate of the bank pay-in slip must be filed in the bank slips file for record-keeping and auditing purposes.

Unless otherwise requested by the donor and approved by the Archdiocese or parish, donations must be deposited in the general account of the Archdiocese or parish. However, in the accounting process, donor funds must be tracked separately through distinct ledger accounts, in accordance with terms agreed upon between the Archdiocese and the donor.[234] For legal compliance, historical preservation, auditing, verification, administration, and data protection, all receipts must be archived for at least seven years.[235]

This requirement of maintaining proper books of accounts is essential to financial accountability and transparency, reflecting the oversight role of the Archbishop.

[234] Cf. CAM, *Diocesan Policy Document (2021)*, p. 19. This is a good application of Can. 1300 which states: "The intentions of the faithful who give or leave goods to pious causes, whether by an act *inter vivos* or by an act *mortis causa*, once lawfully accepted are to be most careful observed, even in the manner of the administration and the expending of the goods, without prejudice to the provisions of Can. 1301 § 3." The Norm is also a good application of Can 1290 which states, "Without prejudice to Can. 1547, whatever the local civil law decrees about contracts, both generally and specifically, and about the voiding of contracts, is to be observed regarding matters which are subjects to the power of governance of the Church, and with the same effect, provided that the civil law is not contrary to divine law, and that canon law does not provide otherwise."

[235] Cf. CAM, *Diocesan Policy Document (2021)*, p. 8.

3.4.2 Bank Accounts and Signatories

The Archdiocese has a policy regarding the operation of bank accounts. Each parish or diocesan entity must maintain the following types of accounts: a pastoral account (as previously mentioned), a development account, a restricted account, and other necessary separate accounts.

Authorized signatories include the Archbishop, the parish priest, the parish chairperson, the parish secretary, and the parish treasurer. Regarding signing authority, the Archbishop may sign alone, or the parish priest may sign jointly with any two of the remaining signatories.[236] This norm illustrates the diocesan bishop's oversight of pious wills, as he may unilaterally authorize bank transactions within the Archdiocese.[237]

3.4.3 Production of Financial Reports

The Archdiocesan Finance Administrator and the Parish Pastoral Council Treasurer are responsible for supervising the preparation and submission of financial reports, including bank reconciliations, cash flow statements, income and expenditure reports, balance sheets, and donor programmatic or project reports. These reports must be presented to the Archdiocesan management team (composed of commission heads) and the Parish Finance Advisory Council (PFAC) at the end of each month.

The PFAC is to examine the parish's receipts and expenditures and submit a consolidated financial report to the Archbishop or Archdiocesan Finance Council for the full financial year (January to December), broken down quarterly: January–March, April–June, July–September, and October–December. This must be submitted by 30 April of the following year.

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[236] Cf. CAM, *Diocesan Policy Document (2021)*, pp. 10-11.
[237] Cf. CIC/1983, Can. 1301 § 1.

To facilitate the annual closing of accounts, all financial transactions must be finalized by 15 December each year, or by another date specified by the Archbishop or Archdiocesan Finance Council.[238]

The requirement that all financial reports be submitted to the Archbishop or Finance Council aligns with Canon 1301 §§1–2, which affirms that the bishop is the executor of all pious wills and that other executors are to render him an account upon completion of their task.

3.4.4 Investment of Endowment Capital

The Archdiocese must seek expert advice on investments, particularly regarding risk and returns, and obtain the Archbishop's authorization for any major investment ventures.[239] All investments must be registered. The Archbishop and the Archdiocesan Finance Administrator are responsible for evaluating the investment portfolio and presenting performance reports to the Archdiocesan Finance Council for their information, review, and decisions.[240]

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[238] Cf. CAM, *Diocesan Policy Document (2021)*, pp. 23-24. A. Farrelly notes: "The finance council has a particular mandate from the law: to examine the annual reports sent to the bishop (Cf. Can. 1287 § 1), and also to examine the report prepared by the diocesan finance officer of the receipts and expenditures of the diocese at the end of each year (Cf. Cann. 493 and 494 § 4). The Code leaves the manner in which the various reports are made to the discretion of the diocesan bishop…The diocesan bishop is bound to render an account to the faithful concerning the goods given to the diocese (Cf. Can. 1287 § 2). The report is mandatory; the manner of composition and presentation is left to diocesan regulation. Faithful fulfillment of such requirements does much to prevent scandals that are so damaging to the credibility of the Church and the effectiveness of its mission. In all likelihood, the bishop would assign the task of preparation of this report to the finance officer who in turn would submit it to the finance council for consideration." (A. FARRELLY, "The Diocesan Finance Council: Functions and Duties According to the Code of Canon Law," p. 158).

[239] CIC/1983, Can. 1287 § 2: "Administrators are to render accounts to the faithful concerning the goods which the faithful have given to the church, in accordance with the norms to be laid down by particular law." R.T. Kennedy notes: "During the revision process, unsuccessful effort were made to expand the scope of this report to include an account not just of offerings from the faithful but of all financial holdings of the public juridical person, including returns on investments, sales of property, and other sources of income. Such a broad scope, while considering praiseworthy in certain circumstances, was judged to be unwise in circumstances where the faithful may not be sufficiently educated in the propriety of the Church's possession of material goods…" (R.T. KENNEDY, "Book V: The Temporal Goods of the Church (Cann.1254-1310)," in J.P. BEAL *et al.*, (eds.), *New Commentary on the Code of Canon Law*, p.1490).

[240] Cf. CAM, *Diocesan Policy Document (2021)*, p. 18. "The safekeeping and proper investment of money or goods belonging to an endowment require consultation with the finance council (Cf. Can. 1305). As with Can. 1547 of the former Code, this canon allows for the establishment of common fund comprised of all the goods of the separate foundations. The revenues take care of the obligations. Profits and losses are equitably distributed and so the respective endowments enjoy greater security. The council would be well advised to adopt as part of its

The requirement for episcopal authorization of major investments, along with proper documentation, confirms the bishop's oversight role in managing goods derived from pious wills.

3.4.5 Maintenance, Use, and Custody of Physical Assets

All donated fixed assets must be labeled with a clear description including: the item name, manufacturer's serial number or identification number, donor stock number, source of the equipment (including award number), title ownership (whether vested in the donor or recipient), acquisition date, cost, location, and condition.

All original legal documents, such as title deeds and motor vehicle logbooks, must be held by the Archbishop or the relevant Archdiocesan office. The Archdiocesan Finance Administrator and/or PFAC must ensure that fixed assets are adequately insured[241] and regularly maintained. A physical inventory must be conducted at least once per financial year.[242]

The policy that all original documents remain under the custody of the Archbishop further affirms his canonical oversight over pious wills and ensures protection of ecclesiastical ownership.

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operating procedures, guidelines or policies to direct its advisory opinions, thereby injecting consistency into its deliberations." (A. FARRELLY, "The Diocesan Finance Council: Functions and Duties According to the Code of Canon Law," p. 159).

[241] The aspect of insurance coverage is captured by Can.1284, 1° which the Archdiocesan finance policy captures well. "All administrators are bound to fulfil their function with diligence of a good house holder in accordance with Can.1284 by, 1° exercising vigilance so that the goods entrusted to their care are in no way lost or damaged, taking out insurance policies for this purpose in so far as necessary." (CAM, *Diocesan Policy Document (2021),* pp. 1-2).

[242] Cf. CAM, *Diocesan Policy Document (2021),* pp. 15-16.

3.5 Supplementary Norms from Episcopal Conferences

Bishops have historically emphasized collaboration and unity to promote the common good of both individual dioceses and the universal Church.[243] Episcopal Conferences are a manifestation of hierarchical communion through which bishops, united under the Roman Pontiff, exercise joint pastoral and administrative authority.[244]

According to Canon 455 §1, episcopal conferences have legislative power and may issue general decrees.[245] In this regard, the following sections analyze relevant legislative norms on pious dispositions as found in the particular law of the Kenya Conference of Catholic Bishops (KCCB), the Italian Episcopal Conference (CEI/IBC), and the United States Conference of Catholic Bishops (USCCB).

3.5.1 Kenya Conference of Catholic Bishops (KCCB)

The KCCB was officially established on 7 December 1976, with statutes approved by the Holy See. It addresses pastoral and administrative matters through the Plenary Assembly**,** Permanent Council**,** General Secretariat, and Episcopal Commissions. The General Secretariat serves as the administrative hub and coordinates programs, including the Office of Finance and Administration.[246]

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[243] Cf. *Christus Dominus,* n. 36.

[244] "II Concilio Vaticano II ha introdotto, non senza qualche equivoco, una nozione di communion con la specifica qualifica di gerarchica, per sottolineare la particolare unione che i pastori, in forza dell'ordine episcopale hanno tra di loro e con il Papa. Si è cominciato a parlare pertanto di una communione gerarchica." (P.V. PINTO, (ed.), *Commento alla Pastor Bonus e alle Norme sussidiare della Curia Romana,* Libreria Editrice Vaticana, Vaticano 2003, p. 6); Cf. *Lumen Gentium,* n. 21.

[245] Cf. *Christus Dominus,* n. 38 [4]) which also holds that, the Conference of bishops can issue general decrees but limited to matters for which arrangements is made by the universal law (common law), by special mandate of the Apostolic See or at the request of the Conference itself. In those cases, the Conference general decrees which are properly laws, in order to be validly issued, they must be supported, in plenary meeting, by at least two thirds of favorable votes to be counted on the number of the voting members who are present. In order to obtain force of law, those decrees need legitimate promulgation after the prior revision and approval of the Holy See.

[246] Cf. KENYA CONFERENCE OF CATHOLIC BISHOPS, *Finance Policy and Procedures Manual,* Revised 2021, General Secretariat, Nairobi 2021, p. 3. (Here after cited as KCCB, Finance *Manual (2021).*

This office is staffed by the Finance Manager, the Council of Economic Affairs, and the Secretariat for the Economy. The Finance Manager is tasked with maintaining accurate records of finances, fixed assets, and transactions, as well as preparing donor reports and bank reconciliations. Monthly management accounts are presented to the Council of Economic Affairs, while quarterly reports go to the Secretariat for the Economy and eventually to the Permanent Council. The Permanent Council submits these to the Plenary Assembly.[247]

Thus, the oversight of pious dispositions ultimately falls to the Plenary Assembly but relies on the Finance and Administration Office, which serves as the administrative agent.

3.5.2 Italian Episcopal Conference (CEI)

Established on 1 August 1954, the Italian Episcopal Conference (CEI) operates through the General Assembly**,** Permanent Episcopal Council**,** Presidency**,** General Secretariat**,** Episcopal Commissions, and Administrative Councils.[248] It functions closely with the Roman Pontiff**,** who, as Bishop of Rome,[249] is also the supreme steward of ecclesiastical temporal goods.[250]

In a spirit of solidarity with developing nations, the CEI established an ad hoc committee (approved on 27 March 2015)[251] to evaluate and support missionary projects. Funding is extended to national episcopal conferences, dioceses with missionary initiatives, Catholic charities, religious institutes, associations, and apostolic movements.[252]

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[247] Cf. KCCB, *Finance Manual (2021)*, p. 15.

[248] Cf. L. BIANCO, "Conferenza Episcopale Italiana (CEI)," in C.C. SALVADOR *et al.*, (eds.), *Nuovo Dizionario di Dirrito Canonico*, Edizioni San Paolo, Milano 1993, pp. 257-261.

[249] L. Bianco affirms: "La piu̓ importante e signficativa peculiarità delle CEI è la sua speciale relazione con il papa. Tra tutte le conferenze episcopali la CEI è la piu̓ vicina, per vari titoli, alla Sede Apostolica e cio̓ constituisce una caratteristica unica della sua fisionomia. Lo statuto ricorda che ' il particolare legame che unisce la Chiesa in Italia al papa, vescovo di Roma e primate d'Italia, qualifica in maniera peculiar la comunione della Conferenza con il Romano Pontefice' (art. 4, 2)."

[250] Cf. CIC/1983, Can. 1273.

[251] ITALIAN BISHOPS' CONFERENCE, *Regulations on Project Financing*, Conferenza Episcopale Italiana, Rome 2015, p. 1. (Here after cited as IBC, *Regulation of Project Financing)*.

[252] Cf. IBC, *Regulations on Project Financing*, Art. 4.

Eligible projects include literacy and adult education, vocational training, women's empowerment, refugee support, and education in healthcare, agriculture, cooperative initiatives, and entrepreneurship.[253]

The Secretary-General, in collaboration with the ad hoc committee, reviews all project applications. Upon approval, a letter is issued detailing the funding process.[254] Applicants must then submit detailed expense reports, and the CEI Secretariat monitors compliance with all project guidelines.[255]

This process illustrates the oversight function of the General Secretariat in managing donations. Moreover, it aligns with Canon 1285, which permits administrators to make donations for pious causes within the bounds of ordinary administration. As the supreme administrator of temporal goods, the Roman Pontiff may authorize both ordinary and extraordinary acts of administration.

3.5.3 Legislation from United States Conference of Catholic Bishops (USCCB)

The Conference is an assembly of the hierarchy of the United States and the U.S. Virgin Islands, who jointly exercise certain pastoral functions on behalf of the Christian faithful in their territory.[256] It operates through a Plenary Assembly, an Administrative Committee (Permanent Council), an Executive Committee, other standing and ad hoc committees as deemed necessary by the Conference, and a General Secretariat.[257]

In fulfilling its administrative and supervisory role over temporal goods, the Conference draws inspiration from Scripture, particularly the teaching of the Apostle Peter: "As each has

[253] Cf. IBC, *Regulation on Project Financing,* Art. 10.
[254] Cf. IBC, *Regulations on Project Financing,* Art. 12.
[255] Cf. IBC, *Regulations on Project Financing,* Art. 14.
[256] UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, USCCB Statutes, Bylaws, Committee Handbook, and Regulations Regarding Statements and Publications, 28 November 2000, Art. 2. (Hereafter cited as *USCCB Statutes*).
[257] Cf. *USCCB Statutes*, Art. 3.

received a gift, use it to serve one another as good stewards of God's varied grace" (1 Pt. 4:10). [258] The Conference promotes principles of stewardship in its investment practices, emphasizing ethical and socially responsible investing that protects life, promotes human dignity, acts justly, enhances the common good and cares for the environment.[259]

Thus, the Conference ensures responsible financial stewardship over its economic resources, including pious dispositions, placing the human person and the environment at the center of its priorities.

3.6 Insights from the Legislation of other Ecclesiastical Entities

Having examined the understanding and legislation on pious dispositions from the Archdiocese of Mombasa, as well as from various conferences of Catholic bishops, highlighting their compliance with the universal norms on pious wills, it is appropriate, before analyzing the shortcomings in the Archdiocese of Mombasa's observance of these norms and offering corresponding recommendations, to consider other ecclesiastical entities in order to gain further insight.

Accordingly, the following section explores the legislation on pious dispositions in the Archdiocese of Nairobi and the Order of Friars Minor Capuchin.

[258] Cf. THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Socially Responsible Investment Guidelines*, Confraternity of Christian Doctrine, Inc., Washington, DC 2021, p.1. (Here after cited as USCCB, *Socially Responsible Investment Guidelines*).

[259] Cf. USCCB, *Socially Responsible Investment Guidelines,* pp. 2-3.

3.6.1 The Archdiocese of Nairobi Policy on Pious Wills

The Archdiocese of Nairobi (ADN) was established in 1953 and has since grown into a vibrant Catholic community of approximately 2.9 million faithful. It comprises 114 parishes organized into 14 deaneries, covering an area of 3,721 square kilometers.[260]

The concept of pious wills within the Archdiocese is articulated in the *Financial Management* document approved by the Archbishop on 15 August 2009.[261] This document references various forms of donations, including free-will offerings, restricted gifts,[262] designated funds,[263] and endowed gifts.[264]

A second key document reflecting the notion of pious wills is the *Finance Policy and Procedures Manual* (2021). It emphasizes the diocesan bishop's oversight role regarding pious dispositions and outlines core values related to stewardship.[265]

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[260] THE ARCHDIOCESE OF NAIROBI SECRETARIAT, *Finance Policy and Procedures Manual,* Archdiocese of Nairobi Secretariat, Nairobi 2021, p. 1. (Here after cited as, ADN SECRETARIAT, *Finance Policy and Procedures Manual*).

[261] THE ARCHDIOCESE OF NAIROBI, *Financial Management in the Parishes of the Archdiocese of Nairobi,* 2nd Edition, Archdiocese of Nairobi Secretariat, Nairobi 2011, p. 4. (Here after Cited as ADN, *Financial Management in the Parishes of the Archdiocese of Nairobi)*.

[262] "Parishes must honour the wishes of a donor's intended gift. A bookkeeper has the ability to set aside the donor's gift in a restricted cash account on the General ledger. The money does not have to be deposited in to a separate bank account. The restriction is released when the gift is used for its intended purpose." (ADN, *Financial Management in the Parishes of the Archdiocese of Nairobi,* p. 15).

[263] "A parish can exercise the right to set aside ordinary income for a specified purpose. The designation of funds can be reserved if the need arises. For example, the parish wants to designate income generated from a harambee for expansion of the parish hall. Two years later, the church roof collapses and the only funds available are those designated for the parish hall expansion. The parish can undersign the funds and use them to repair the church roof." (ADN, *Financial Management in Parishes of the Archdiocese of Nairobi,* p.15). This is akin to commutation of pious wills. (Cf. Can. 1310 § 1).

[264] "Before a parish receives an endowed gift from an individual, it should contact the Archdiocese. The Archdiocese will ensure that the funds are placed in a restricted fund and that the proceeds of the endowment are applied according to the donor's wishes. Parishes should not take on the obligation of managing an endowment." (ADN, *Financial Management in Parishes of the Archdiocese of Nairobi,* p. 15).

[265] The Archdiocese and Procedures manual contends that, Stewardship refers to effectively improving and utilizing resources entrusted to the Archdiocese. The manual further goes ahead to quote the biblical basis of stewardship. That is, Mathew 25:14-30: "It will be as when a man who was going on a journey called his servants and entrusted his possessions to them. To one he gave five talents; to another two; to a third one-to each according to his ability…"and Luke 16:10 "the person who is trustworthy in very small matters is also trustworthy in great ones; and the person who is dishonest in very small matters is also dishonest in great ones." (Cf. ADN SECRETARIAT, *Finance Policy and Procedures Manual,* p. 2).

That is, honesty and integrity are to be upheld by all administrators of ecclesiastical goods.[266] The document emphasizes that the Local Ordinary is the proper pastor of the Archdiocese, assisted by the Auxiliary Bishop. At that level, the Archdiocesan Curia, or Secretariat, serves as the principal instrument at the bishop's disposal for the governance of the diocese. The Curia is responsible for ongoing vigilance and for ensuring discipline and proper practice in governance and administration within the local Church,[267] through its various departments. Among these is the Diocesan Finance Council, which assists the Local Ordinary in coordinating administrative matters,[268] particularly concerning temporal goods.

At the parish level, financial management is entrusted to the parish priest, in consultation with the Parish Finance Council.[269] This council is responsible for examining an annual report detailing the receipts and expenditures of the previous year.

Each parish is required to submit quarterly financial reports, to cover: January–March, April–June, July–September, and October–December, as well as an annual financial report to the

[266] The Archdiocese of Nairobi, Finance and Procedures Manual gives the biblical basis of upholding honesty and integrity. The manual quotes Phil. 4:8, that is, "…whatever is true, whatever is honorable, whatever is just, whatever is pure, whatever is lovely, and whatever is gracious." The manual further quotes 2 Cor. 41-2 that is, "therefore seeing we have this ministry as we have received mercy we faint not but have renounced hidden things of dishonesty…" (Cf. ADN SECRETARIAT, *Finance Policy and Procedures Manual.* p. 2).

[267] Cf. CIC/1983, Can. 469.

[268] As regards to the administrative activity, Can. 473 §2 indicates the convenience of appointing a moderator or administrator Head of the Curia who, under the authority of the Bishop, will foster, coordinate and be acquainted with all activities. The moderator shall undertake the internal management of the Curia, enhance labour relations and ensure efficiency in service delivery in the Curia. (Cf. ADN SECRETARIAT, *Finance Police and Procedures*, p. 3).

[269] In a letter accompanying the document "Financial Management of Parishes in the Archdiocese of Nairobi", addressed to all the priests, religious and laity of the Archdiocese of Nairobi dated 15th August, 2009, the Archbishop of Nairobi, John Cardinal Njue stated: "Canon law specifically places the responsibility for the administration of parish goods with the parish priest (Can.532) and requires that each parish has a financial council to help the Parish Priest with this administrative responsibility (Can.537). Full compliance with Canon Law requires that, the parish finance council be actively engaged in a consultative capacity with the Parish Priest regarding the financial matters of the parish and any institution within the parish which legally belongs to the Archdiocese such as a school or a dispensary." (ADN, *Financial Management in the Archdiocese of Nairobi,* p. 2); J.E. Lynch notes: "The universal Church is rendered present through its vast network of parishes throughout the world. The parish is not merely a copy of a human organization; it is, in miniature, that unique communion called the Church, from which no one is excluded." (J.E. LYNCH, "The Parochial Ministry in the New Code of Canon Law," in *The Jurist,* 42 (1982), p. 383). Speaking of particular Churches, the Second Vatican council in *Lumen Gentium* notes that, "It is in these and formed out of them (*in quibus et ex quibus*) that the one and unique Catholic Church exists" (*Lumen Gentium,* n. 23).

diocesan curia. Quarterly reports must be submitted no later than the last day of the month following the end of the quarter. The annual report must be submitted by April 30 of the year following the reporting period. The Parish Finance Council is responsible for ensuring that accurate and timely reports are submitted to the diocesan curia.[270]

3.6.2 The Order of Friars Minor Capuchin (*Ordo Fratrum Minorum Capuccinorum*)

The Capuchins are an autonomous branch of the First Franciscan Order of religious men, founded in 1525 by Matteo da Bascio, a Franciscan friar from Italy. He believed that the Franciscans of his time were not living according to the ideals of St. Francis of Assisi. Inspired by a desire to return to a literal observance of St. Francis's Rule, Matteo and his followers adopted a lifestyle marked by austerity, poverty, and simplicity.[271]

As a religious institute,[272] the Order of Friars Minor Capuchin is, in accordance with Canon 634 §1, by law a juridical person, and thus has the capacity to acquire, possess, administer, and alienate temporal goods, unless this capacity is excluded or limited by its constitutions. The 1968 Capuchin Constitution[273] implicitly captures the notion of pious wills when it states:

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[270] Cf. ADN, *Financial Management in the Archdiocese of Nairobi*, p. 8.

[271] Cf. CAPUCHIN FRANCISCANS, *Who Are WE*? <https://www.capuchins.org>, (3 February 2025).

[272] "Within the Code's Book, 'The People of God,' religious institutes are situated in the part entitled, 'Institutes of Consecrated Life and Society of Apostolic Life.' As institutes of Consecrated Life they are regulated by the common norms (Cann. 573-606) and specifically as religious institutes, by Cann. 607-709…These institutes, involve a permanent life commitment, freely undertaken by an individual in response to a sensed call from God. Each institute, according to its own character and spirit, has a particular role in the life and mission of the Church." (S. HOLLAND, "The New Code and Religious," in *The Jurist,* 44 (1984), pp.67-68). CIC/1983, Can. 607 § 2 defines a religious institute as, "…a society in which, in accordance with their own law, the members pronounce public vows and live a fraternal life in common."

[273] A Constitution is a proper law of a religious institute. Can.587 indicates that proper law is made up of fundamental Code-very frequently called constitutions-and of various other supplementary Codes or collections of statutes. The fundamental Code or constitution, and often supplementary documents as well are of critical importance in understanding the life and organization of religious institutes. (Cf. S. HOLLAND, "The New Code and Religious," p. 69). The revised constitutions of the order, approved by the special general chapter held in 1968, were published and promulgated 'experimentally' in the same year. The constitutions were reviewed over and over again in 1970 and 1974. From 1968 up to date, documents of the Holy See have appeared, that is, decrees, decisions and replies to questions which brought about some change in the constitutions and so having been drafted in

> Let us not claim as our own even our gifts of nature and grace, but rather strive to use them entirely to benefit the people of God. We should use the things of this world with a sense of gratitude and, with a sincere and generous heart, share them with those in need. In this way, we bear witness to those greedy for material pleasures that true happiness is not found in the unrestricted use of things, but in using them responsibly.[274]

In a spirit of solidarity with the poor, the Constitution emphasizes the communal use of goods entrusted to the fraternities, whether money, houses, or land.[275] The sharing of goods is to be practiced by individual fraternities within a province, and by provinces within the Order, as needs arise.[276]

Regarding the administration of goods, the religious institute appoints business managers who are qualified for their office. These administrators discharge their duties under the direction and supervision of their respective superiors, in accordance with the norms of canon law and the directives of both the general and provincial definitory. They are required to give an account of their administration to the major superiors[277] and ensure compliance with all relevant legal provisions.[278]

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conformity with the pontifical documents and the decisions of the chapters held in 1970 and 1974, the constitutions were published and promulgated for a second time, (Cf. P. RYWALSKI, The Capuchin Constitutions of 1968, 16 April 1977, <https://www.capdox.capuchin.org.au/legislation/the-capuchin-constitutions-of-1968/#Toc492316672>, (3 February 2025). (Here after cited as *Capuchin Constitutions of 1968,* followed by Chapter, Article (Art.) and number (n).

[274] *Capuchin Constitutions of 1968*, Chapter IV, Art.1, n. 46.

[275] Cf. *Capuchin Constitutions of 1968,* Chapter IV, Art. 1, n. 47.

[276] Cf. *Capuchin Constitutions*, Chapter IV, Art. 2, n. 53.

[277] All local business managers and guardians shall give an accurate account of their administration to the Major Superiors, the local councils and the local chapter; this shall be done at the time and in the manner laid down by the Major Superiors. On the occasion of the annual report the Ministers Provincial, in a document signed by their definitories, shall give the Ministers General a reliable account of the economic condition of the province. In this way it needs can be provided for properly and the observance of poverty be supervised effectively. At the General Chapter the Minister General shall report on the economic condition of the order, in a manner determined by the General Chapter. The same shall be done by the other Major Superiors at their respective chapters. As far as possible the administration of temporal goods should be entrusted to lay people, particularly when there is a question of those social and charitable works in which the friars should have only the spiritual direction. (Cf. *Capuchin Constitutions of 1968*, Chapter IV, Art. 5, n.62).

[278] Superiors personally or through others may perform civil acts regarding temporal goods insofar as may be necessary for the brothers or for the works entrusted to them. The Major Superiors should specify the physical and moral persons in whose name the goods entrusted to brothers are registered before civil law, in compliance with the norms given by the provincial definitory, Superiors may make use of insurance policies or forms of social

3.7 Conformity of the Particular Law of the Archdiocese of Mombasa to the Norm of Can. 1301

The previous section addressed the particular norms promulgated by the diocesan bishop of Mombasa. It also incorporated insights from the Kenya Conference of Catholic Bishops (KCCB), the Italian Bishops' Conference (IBC), the United States Conference of Catholic Bishops (USCCB), as well as legislation from the Archdiocese of Nairobi and the Capuchin Constitutions.

The section demonstrated that, across all the aforementioned entities, there is substantial conformity between the particular and universal norms on pious wills. In particular, the Archdiocese of Mombasa has consistently operated within the framework of both canon and civil law in the acquisition[279] and administration of pious wills,[280] thereby promoting justice, peace, and charity within society.

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security where such is prescribed by ecclesiastical or civil authority for everybody or for certain professions, or where such things are commonly used by the poor of the region. (*Capuchin Constitution*, Chapter IV, Art. 2, n. 52). In terms of taxation, P.E CAMPBELL notes that, "The question of who is tax exempt and for what, is often asked, whether it be applied to the religious institute or to the individual religious. Regarding the religious institute, it should be an entity recognized under federal, and in most instances, state laws as tax exempt on income it receives within parameters. This tax exemption for catholic entities is usually demonstrated by the listing in the official catholic directory and the group ruling issued to the United States Catholic Conference." (P.E. CAMPBELL, "The New Code of Canon Law and Religious: Some Civil Law Considerations," in *The Jurist*, 44 (1984), p. 86). Now, even though, P.E. CAMPBELL focusses on the civil law of the United States of American, it's obligatory upon every religious institute, and particularly, the administrators of pious wills, to be conversant with the civil law of the country to which they are working. For instance, F. MORRISEY notes, "Au Canada (sauf au Québec) et aux États-Unis (sauf en Louisiane), le driot n'est pas fondé sur des lois codifiées, comme l'est le droit canonique, mais sur la common law, alimentée surtout par la jurisprudence, à la recherché de vérité, d'équite et de justice." (F.G. MORRISEY, "Canon Law Meets Civil Law," in *Studia Canonica*, 32 (1998), p. 183).

[279] Cf. CIC/1983, Can. 1262.

[280] On 26 August 2011, the registered trustees of the catholic diocese of Mombasa (plaintiffs), instituted a suit against Prudence Wakio & 101 others (defendants) over a parcel of land known as L. R. NUMBER 15031/169 TAITA DISTRICT that, the plaintiff was entitled to exclusive and unimpeded right of possession and occupation of the said parcel of land and that the plaintiff was praying for judgment against the defendants who were wrongful in occupation of the suit property and are accordingly, trespassers on the same and that the defendants, their agents, servants as well as any other parties whom the defendants or any of them have permitted to occupy any part of the suit property should vacate and deliver vacant possession of the suit property to the plaintiff company. In a counterclaim, the defendant prayed that the plaintiff's suit be dismissed with cost and judgment entered against the plaintiff for a declaration that the defendants were the legal owners of approximately ten acres of the suit property known as 15031/169 Taita District to the exclusion of the Plaintiff or any other party, that the defendants had acquired title to approximately ten acres of the suit property known as LR Number 15031/169 Taita by way of

3.7.1 Concerning Shortcomings

The law provides that all who take part in the administration of ecclesiastical goods by legitimate title are bound to carry out their responsibilities in the name of the Church.[281] Furthermore, the law stipulates that donations made by the faithful for a specific purpose may only be used for that intended purpose.[282]

However, in the Archdiocese of Mombasa, there have been instances where some members of the Christian faithful donated land to the Church through their pastors for pious causes, only for the pastors to register such properties in their own names or in the names of their relatives.[283] This often led to legal disputes, particularly after the pastor's death, involving efforts to reclaim and re-register the property in the name of the Church.[284] Such actions suggest that

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adverse possession and an order for entry of their names on the register and that a permanent injunction should be issued restraining the Plaintiff, its agents, servants and/or anybody acting through it or on their behalf from trespassing on the approximately ten acres of the suit property known as LR Number 15031/169 Taita District. The case was heard on 15 March 2021 by Hon Justice C.K. YANO who dismissed the counterclaim and that the defendant was ordered to vacate and deliver vacant possession of the suit property, Land reference No. 15031/169 to the plaintiff within 30 days from the date of service of the decree and if the defendant fails to comply then the plaintiff was entitled to an order of eviction for the forcible removal of the defendants, their agents and/ or servants from Land Reference No. 15031/169 upon application. That, the plaintiff was also awarded Ksh.500, 000/= as general damages for trespass together with interest at court rates from the date of judgment until payment in full (Cf. REPUBLIC OF KENYA IN THE ENVIRONMENT AND LAND COURT AT MOMBASA, ELC CASE NO. 500 0F 2011).

[281] Cf. CIC/1983, Can. 1282.

[282] Cf. CIC/1983, Can. 1267 §§ 1-3.

[283] The CONGREGATION FOR CLERY on The Gift of Priestly Vocation once remarked that, "The allure of Power and riches: this may take the form of attachment to a position, obsession with marking out space exclusively for oneself, clericarism, emergency of hunger for power or the desire for wealth, with the consequent lack of openness to the will of God, to the needs of the people entrusted to his care, or to the request of the bishop. Fraternal correction may help in such circumstances, or even a reproof or some other approach suggested by pastoral concern, unless the behavior constitutes a delict that calls for the imposition of penalties." (CONGREGATION FOR THE CLERGY, on The Gift of the Priestly Vocation, New *Ratio Fundamentalis Institutionis Sacerdatolis*, n. 84 (d), Libreria Editrice Vaticana, Vatican City 2015.

[284] Commenting on ownership of ecclesiastical goods in relation to the oath taken by administrators before undertaking their duty of administering Church property, M. RIVELLA states: "È opportuno soffermarsi sulle ragioni che giustificano questa norma singolare: chi presta un giuramento si impegna davanti a Dio, chiamandolo a testimone della verità di quanto afferma (nel caso di un giuramento assertorio) o della fermezza dell'impegno che intende assumere (nel caso di un giuramento promissorio). Si tratta, dunque, di un atto dinatura religiosa, che non solo esige la fede in chi lo compie, ma evidenzia la rilevanza davanti a Dio di Ciò che è oggetto del giuramento. Assumere I'amministrazione di beni ecclesiastici non è un atto di indole meramente tecnico-economica, sebbene esiga competenze specifiche in material. Esso richiede, infatti, piena co nsapevolezza del fatto che tali beni appartengono allaChiesa-realtà a un tempo divina e umana-e della loro finalizzazione esclusiva agli scopi che le sono propri e la caratterizzano. In secondo luogo,il giuramento ricorda agli amministratori che essi non sono I

some pastors mistakenly view Church property as their personal possession, an error that reflects a failure in administrative practice, not a flaw in the particular law itself.

Secondly, the Archdiocese has encountered cases where land or other goods were donated for religious purposes, but after the donor's death, some of the donor's relatives attempted to reclaim the property.[285] This issue often stems from a misunderstanding among the faithful regarding the nature and purpose of pious donations.

Additionally, experience shows that when a priest dies, some of his relatives may approach the diocesan bishop to claim personal items such as the priest's car or books, under the

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padroni del patrimonio loro affidato, ma piuttosto I custodi di beni di cui devono rendere conto davanti a Dio, all'autorità competente e all'intera communità ecclesiale." (M. RIVELLA, "Commento a un Canone. II Giuramento Degli Amministratori di Beni Ecllesiastici." (Can. 1283, 1°)", p. 483).

[285] On 26 November 2020, at the Environment and Land Court in Malindi, Elvis Shume Mzungu, Mcdenton Gambo and Benjamin Runya (Plaintiffs) through their lawyer Tonia Mwania instituted a suit against Board of management, Dindiri Primary School management and Dindiri Catholic Church (Defendants), over a piece of land in which they stated that, they were descendants of Mtenzi Mwakizigwa who was the owner of the land measuring approximately 12 Acres situated in Kilifi county and that they were born on the said land and had lived there on all their lives and even burying their deceased relatives. That in about the year 1950, their grandfather Mtenzi Mwakizigwa donated land measuring 6 acres to the 1st defendant (Board of management, Dindiri Primary School) and not more than half an acre to the 2nd defendant (Dindiri Catholic Church). The plaintiffs further stated that, the defendants occupied the land they had been given and life continued without any issue until 2019 or there about when the defendants started claiming that they were given 12 acres and 4 acres respectively and so began trespassing on the said land thus prompting the plaintiff to institute a suit against them. Now, on 1 October 2020, Shem Ndaro Hennzi in his replying affidavit, and working under the 1st defendant as the head teacher on his own behalf and also on behalf of the 2nd defendant with the authority of Board of management of the 1st defendant held that, around 1953 Kusa Sadi donated to the 1st defendant 12 acres through oral agreement for building a school. Later around 1982, when the 1st defendant wanted to build a Church, residence for Church servants and a dispensary, the defendants met with the family of the plaintiffs since they had replaced the donor's family and other elders to affirm the oral agreement donating the 12 Acres. Mtenzi Mwakizigwa, the grandfather of the plaintiffs acknowledged the oral agreement donating the 12 acres to the first defendant and a written agreement was made to that effect between Mtenzi Mwakizigwa and defendants. Shem Ndaro Hennzi further held that he also knows of a meeting held on 29 January 2019 to resolve the dispute between the parties. That the meeting was presided over by the County Commissioner who ruled that the disputed part belonged to the 1st defendant. (Cf. REPUBLIC OF KENYA IN THE ENVIRONMENT AND LAND COURT AT MALINDI, ELC SUIT NO. E3 OF 2020). Now in minutes of a meeting held on 29 January 2019, pertaining the said disputed land and in particular the disputed 4 acres of land donated to the Catholic Church, Mr Daniel Mwatata held that, he was present when the piece of land was donated to Fr Ghodino (now deceased) by his grandfather Mtenzi Mwakizibwa and that, the Church wasn't given 4 acres. Questioned by the a County commissioner of the size of the land donated to the Church, Mwatata held that, they did not talk of the size of the area but it was held that, the Church was to occupy any size of the land then, in building its structures. (Cf. MINUTES OF THE SECOND MEETING ON RESOLVING SCHOOL LAND DISPUTE HELD ON 29/01/2019 AT DINDIRI PRIMARY SCHOOL, p. 2).

impression that these belongings were privately owned.[286] This reveals a broader issue related to the lack of clear wills and personal property disposition, an area not adequately addressed in the diocesan policy document of 2021.

These challenges merit thoughtful reflection. Consequently, the following section will offer appropriate canonical recommendations.

3.8 Canonical Recommendations

With regard to legal reforms, this section proposes several key recommendations concerning the executory role of the diocesan bishop in relation to pious wills. First, it emphasizes the importance of pastoral visitation by the local ordinary to ensure the proper administration and fulfillment of pious donations. It also underscores the necessity for administrators of temporal goods to draft a personal will and to clearly distinguish between Church property and personal property. Furthermore, it recommends that all stakeholders involved in the administration of pious wills receive appropriate formation in both canon and civil law, to enhance their understanding and compliance with legal and ecclesial requirements.

3.8.1 Pastoral Visitation by the Local Ordinary

In accordance with Canon 396, a bishop is obliged to visit every part of his diocese at least once every five years, either personally or, if legitimately impeded, through a coadjutor bishop, auxiliary bishop, vicar general, or episcopal vicar. The purpose of the visitation is to

[286] A. Zambon notes: "La tematica del testament del presbitero è poco affrontata nell'ambito del diritto canonico, quasi fosse un aspetto secondario che poco riguarda la vita e il ministero e il sacerdotale. Talora, tuttavia, le cronache locali riportano situazione di persone che si trovano a ricevere in eredità, da un loro parente presbitero, un bene mobile o immobile, anche di notevole valore, e talvolta inaspettato, che può essere motivo di litigio o di dissapori, oltre che di scandalo per la comunità Cristiana ove il defunto ha vissuto il suo ministrero. Un'amministrazione di beni ecclesiastici non attenta, inoltre, può portare a confondere la titolarità dei beni, con il rischio che eventuali beni di proprietà di enti ecclesiastici possano essere destinati a eredi che li usano impropriamente, per finalità diverse da quelle proprie dei beni ecclesiastici, ossia il culto divino, il sostentamento del clero, le opera di carità e di apostolato (Cf. Can. 1254 § 2). " (A. ZAMBON, "II Testamento del Presbitero," in *Quaderni di Diritto Ecllesiale,* 26 (2013), p. 431).

ascertain and promote the spiritual and temporal well-being of the faithful, as well as to foster open communication and collaboration among the clergy, religious communities, and Church institutions within the diocese.[287]

During the visitation, the bishop is to visit parishes, religious houses, schools, charitable institutions, and other ecclesiastical organizations.[288] He has both the right and the duty to inspect the books and records of these entities, including administrative and financial documentation. This occasion provides an opportune moment to inquire into matters of transparency, accountability, registration of Church property, and the proper management of Church resources. It is also a fitting time to ensure that the intentions of donors, especially those expressed in pious wills, are being faithfully fulfilled.[289]

Moreover, the bishop may identify lawful beneficiaries in cases where disputes over donations have arisen, and issue warnings to juridic persons, such as parishes and religious institutes, not to accept mere verbal pious wills, but rather to insist on written documentation recognized by civil law. He can also offer catechesis distinguishing between *inter vivos* donations, which are irrevocable, and *mortis causa* donations, which remain revocable until the donor's death.

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[287] J.A RENKEN elaborates the aspect of episcopal visitation when he contends that, "Can. 396 § 1 obliges the diocesan bishop to visit the diocese annually, either in whole or part, such that at least every five years he should have visited the whole diocese. He is to make this visitation either personally or, if he is legitimately impeded, through another, specifically, through the coadjutor bishop, an auxiliary bishop, a vicar general, an episcopal vicar or another presbyter. The visitation is an occasion for the diocesan bishop to know the faithful entrusted to his care and see the various institutions, places and things present in the diocese. He can visit members and houses of religious institutes of pontifical right only in cases expressed by law. He can also visit secular societies. (Cf. Cann. 710-730). Can. 683 § 1 notes that, at the time of his pastoral visitation and also in cases of necessity, the diocesan bishop can visit the specific works entrusted to religious, that is, their Churches and Oratories which the faithful habitually attend, schools and other works of religion and charity. He cannot however visit those schools which are open exclusively to an institute's own members. Can. 806 § 1 gives the diocesan bishop the right to watch over and visit the catholic schools of the diocese even those directed by religious. He is however not to interfere with the autonomy of the religious regarding the internal direction of their schools." (J.A. RENKEN, "Particular Churches and their Groupings (Cann. 368-572)," in J.P. BEAL *et al.*, (eds.), *New Commentary on the Code of Canon Law,* p. 533).

[288] Cf. CIC/1983, Can. 397.

[289] Cf. CIC/1983, Can. 1300.

If such visitations are conducted in the spirit of a synodal Church,[290] many of these issues could be effectively addressed, and potential conflicts prevented.

3.8.2 The Necessity of a Will and the Distinction Between Personal and Church Property

The current Code of Canon Law does not explicitly address the relationship between a diocesan priest's will, the exercise of his ministry, and the administration of goods, particularly the distinction between personal and ecclesiastical property. Nonetheless, it is essential to communicate clearly to the relatives of a deceased priest that assets belonging to the Church, especially those donated for specific purposes, are not personal property and cannot be claimed by family members.

Every priest is advised to prepare a will regarding his personal property and to update it regularly, in order to prevent disputes among relatives after his death. In addition, dioceses should consider developing clear policies that define the distinction between personal property and Church property.[291] These policies should be based on valid legal agreements that reflect the

[290] "The term 'Synod' (σύνοδος) comes from two Greek words: σύν (with) and δδός́ (path, road, way) synodality means simply and literally, profoundly and truly, that we accompany each other on the journey. It identifies our Christian 'life' (*modus essendi*) and "mission" (*modus agenda)*. This "mission" is expressed most commonly and constantly in our routine interactions as missionary disciples. Less routinely, it is expressed in formally established ecclesiastical structures at various levels of the Church (for our purposes, dioceses and parishes)." (J.A. RENKEN, "The Management of Church Property in Synodal Church: Towards Eliminating Financial Misconduct," in *Studia Canonica,* 52 (2018), pp. 595-596). "The bishop is to share his apostolic burdens with others. Ecclesial decision making is a complex reality requiring sensitivity to cultural, social, spiritual and psychological concerns; coping with this complexity is too heavy a burden for any one person, however graced." (T.J. GREEN, "The 2004 Directory on the Ministry of Bishops: Reflections on Episcopal Governance in a Time of Crisis," p. 124); Cf. FRANCIS, On Synodality. Communion, Participation and Mission, 26 October 2024, Libreria Editrice Vaticana, Vatican City 2024; Cf. CONGREGATION FOR BISHOPS AND CONGREGATION FOR RELIGIOUS, Directives for Mutual Relations between Bishops and Religious in the Church *Mutuae Relationes,* 14 May 1978, in *AAS*, 70 (1978), pp. 473-506.

[291] A. Zambon notes: "…nel corso della storia,la preoccupazione della Chiesa perché il presbitero destini I suoi beni, con il testamento, in modo retto, unita alla raccomandazione di non arricchire I familiari con I beni provenienti dalla Chiesa e di conservare uno stile di vita semplice e sobrio. In particolare, emergono tre preoccupazioni peculiari: la necessaria distinzione tra I beni personali e i beni della Chiesa, la possibile diversa natura dei beni di proprietà o in uso dei chierici, la necessità, improntata al consiglio evangelico della povertà, che il sacerdote conduca uno stile di vita onesto e sobrio." (A. ZAMBON, "II testamento del presbitero," p. 431). A. Zambon further notes: "La questione della possibilità o necessità di fare testamento é collegata anzitutto all'esigenza che il patrimonio ecclesiastico non subisca detrimento. Questo comporta, come presupposto, che siano bene

donors' intentions and the designated recipients. In this way, the personal belongings of a deceased priest can be appropriately returned to his family, while Church property remains under the rightful administration of the diocese.

3.8.3 Canon/Civil Law Education on Pious Wills

The Archdiocese can also provide comprehensive training to all stakeholders[292] on the relevant canons related to the acquisition and administration of Church property, as well as the civil law Provisions governing the acquisition and management of temporal goods, particularly pious wills.[293] This training can be conducted through seminars and workshops at the parish, deanery, and diocesan levels, as well as by sponsoring priests for further studies.[294]

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identificati I beni di proprietà della Chiesa, e che questi siano distinti dai beni personali. Per tale scopo sono importanti due avvertenze, aprima vista superflue o scontale, nel contesto di una accorta amministrazione dei beni, ma che non sempre sono acquisite pacificamente. Anzitutto, é importante che I beni siano correttamente intestati, nel rispetto della legislazione civile, evitando soluzioni provisorie o non chiare. Particolare attenzione va data all'intestazione di depositi quali conti correnti, depositi bancari, titoli di stato, con una precise distinzione tra quanto riguarda la persona fisica del sacerdote e quanto invece la persona giuridica di cui si é legali rappresentanti." (A. ZAMBON, "II testamento del presbitero," p. 433).

[292] This should have its foundation on the unity and dignity of the baptismal vocation which precedes any differentiations in ministry. In fact, the Second Vatican Council reiterated that, "Though they differ from one another in essence and not in decree, the common priesthood of the faithful and the ministerial priesthood or hierarchical priesthood are nonetheless interrelated: each of them in its own special way in a participation in the priesthood of Christ." (*Lumen Gentium*, n. 10, in *AAS,* 57 (1965), p. 14). J.A RENKEN notes that, "The effective exercise of synodality requires the firm faith that the Holy Spirit bestows diverse but complementary gifts upon the missionary disciples… for the individual and for the common good." (J.A. RENKEN, "The Management of Church Property a Synodal Church: Towards Eliminating Financial Misconduct," p. 598). In his Post-Synodal Apostolic Exhortation on Africa's Commitment, Pope Benedict notes that, "The permanent formation programs offered to lay people, above all to political or economic leaders, must insist on conversion as a necessary condition for the transformation of the world. It is fitting that they should begin with prayer and continue with a catechesis that will lead to concrete action. The creation of structures, if truly needed, will come later; since they can never replace the power of prayer." (BENEDICT XVI, Post-Synodal Apostolic Exhortation on Africa's Commitment *Africae Munus*, 19 November 2011, n. 103, Libreria Editrice Vaticana, Vatican City 2011).

[293] On oversight role by the bishops on temporal goods which also entails training of all the stakeholders involved, J.A. RENKEN notes some recommendations proposed by the USCCB Accounting Practices Committee and supported by the bishop's Committee on Budget and Finance in a memorandum to all the bishops in the episcopal conference dated March 23, 2007. Among the recommendations proposed were: more active involvement and accountability of parish finance councils and training for its members, diocesan policies on conflict of interest, parish internal control questionnaires, internal audits of parishes, creation of a 'best practices manual' on parish finances and financial training for seminarians. (Cf. J.A. RENKEN, "Penal Law and Financial Malfeasance," pp. 5-6). For more reading on pious wills and the oversight role of the Ordinaries, Cf. P. GRANFIELD, "The Church Local and Universal: Realization of Communion," in *The Jurist,* 49 (1989), pp. 449-471; T.J. GREEN, "Pastoral Governance Role of the Diocesan Bishop: Foundations, Scope and Limitations," in *The Jurist,* 49 (1989), pp. 472-506; H.B. MORRISON, "The Archbishops Claim: The History of the Legal Claim of Catholic Church before the

Conclusion

This chapter has examined the exercise of the legislative power of the diocesan bishop of the Catholic Archdiocese of Mombasa. From the discussion, it has been established that the Archbishop of Mombasa, in his legislative activities, has demonstrated a commendable conformity of particular law with universal principles. However, some weaknesses were identified regarding the observance of universal legal norms on pious wills as they have been particularized.

Among the challenges noted were: the inability of some administrators of pious wills to distinguish between Church property and personal property, evident in the registration of Church property under individual names rather than in the name of the Church, and disputes arising from the donor's relatives after the donor's death, in attempts to reclaim donated property. These weaknesses serve as indicators to the diocesan bishop of the need to continue working toward

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Federal Courts to the Property of the California Missions," in *The Jurist*, 47 (1987), pp. 394-422; J.A. RENKEN, "Pope Francis and Participative Bodies in the Church: Canonical Reflections," in *Studia Canonica*, 48 (2014), pp. 203-233; J.A. RENKEN, "The Statutes of a Parish," in *Studia Canonica*, 44 (2010), pp. 99-148; F. HANSEN, "The Threefold Power of Governance," in *Studia Canonica*, 48 (2014), pp. 373-410; CONGREGATION FOR THE CLERGY, *Instruction on Pastoral Conversion of the Parish Community in the Service of the Evangelizing Mission on the Church*, 20 July 2020, Libreria Editrice Vaticana, Vatican City 2020; Cf. R.C. BECKER, "Problems of Ecclesiastical and Religious Organizations," in *The Jurist*, 44 (1984), pp. 48-65; Cf. S.L. HOLLAND, "The Code and Essential Elements," in *The Jurist*, 44 (1984), pp. 304-338; CONGREGATION FOR INSTITUTES OF CONCECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, Economy at the Service of Charism and Mission *Boni Dispensatores Multiformis Gratiae Dei*, 8 March 2018, Libreria Edtrice Vaticana, Vatican City 2018; CONGREGATION FOR INSTITUTES OF CONCECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, Circular Letter on Guidelines for Administration of the Assets in Institutes of Consecrated Life and Societies of Apostolic Life *De Administratione bonorum in Institutis Vitae Consacratae et Societatibus Vitae Apostolicae*, 2 August 2014, Libreria Editrice Vaticana, Vatican City 2014; CATHOLIC ARCHDIOCESE OF MOMBASA (CAM), *Policy Guidelines 2020 On Code of Conduct*, Basic Black Images, Nairobi 2020; CAM, *Policy Guidelines on Combating Fraud*, Basic Black Images, Nairobi 2020; CAM, *Policy Guidelines on Whistle-Blowing*, Basic Black Images, Nairobi 2020; THE CATHOLIC ARCHDIOCESE OF LILONGWE, *Finance-Self-Reliance Policy*, Likuni Press & Publishing House, Lilongwe 2020; DIOCESE OF MANGOCHI, *Strategic Plan for the Diocese of Mangochi April 2017-2022*, Montfort Media Press, Balaka 2017.

[294] Cf. EPISCOPAL CONFERENCE OF MALAWI-ECM (Now changed to MALAWI CONFERENCE OF CATHOLIC BISHOPS (MCCB), Guidelines for Priestly Formation in Malawi *Ratio Nationalis Institutionis Sacerdotalis*, Montfort Media Press, Balaka 2021.

greater harmony between particular and universal law, especially in the exercise of his role of vigilance.

The chapter has also considered norms from episcopal conferences and other ecclesiastical entities, which likewise show conformity with universal legislation on pious wills. Finally, it has proposed areas for future legislation, recommending pastoral visitations by the diocesan bishop, the necessity for drafting personal wills, the development of a policy to clearly distinguish between Church and personal property by administrators of temporal goods, and the provision of canon and civil law education for all stakeholders involved in the administration of pious wills.

GENERAL CONCLUSION

The present study has examined the role of the ordinary as the executor of all pious wills whether *inter vivos* or *mortis causa.* Given the historical significance of the matter, it was necessary to explore the origins and evolution of the pious wills in the first chapter. Accordingly, the study has demonstrated that, from Old Testament times to the present day, people motivated by pious causes, supernatural motives and *pietas,* have contributed generously in support of the Church's mission.

The chapter has also emphasized that, the Church has an inherent right to own property, a right it has defended for centuries through various councils. Consequently, to uphold the sanctity of such donations and ensure that they serve their intended purpose, the chapter has demonstrated how bishops throughout history have taken a supervisory role in safeguarding the faithful fulfillment of donors' intentions thus, serving as guardians of pious wills.

In the second chapter, the study has identified the source of Can. 1301, which is its predecessor, Can. 1515 of the 1917 Code of canon law. The chapter has also examined the development of the canon as well as its analysis. From this, it has been deduced that, the executor of pious wills in canon law is not the same as the executor of pious wills in civil jurisdictions.

Secondly, it has also been deduced that, pious wills, whether *mortis causa* or *inter vivos* are governed by various legal provisions, particularly in canon law and civil law. Therefore, administrators of pious wills should be well-versed in both canon and civil law provisions relevant to their jurisdiction to avoid legal disputes between donors and the Church. The chapter has also examined other related canons pertaining to the subject of study within the 1983 code of

canon law and the 1990 code of canons. In comparing the two codes, it was deduced that, there is no strict legal parity in the execution of pious wills.

The third chapter has examined the application of the universal norms on pious wills by the Archdiocese of Mombasa, highlighting the adaptability of the canonical regulations in its 2021 Policy Document. The chapter has deduced that, the Local Ordinary of the Archdiocese of Mombasa has implemented the universal norms in ways that align with its unique pastoral and administrative needs, ensuring that pious dispositions are honored. The chapter has also delved into the weakness in the implementation of the execution of pious wills, among which were: administrators of pious wills registering the pious wills in their own name and not the name of the Church, relatives of donors coming back to claim possession of the properties donated particularly after the donor's death. The chapter also ventured into insights from conferences of bishops and other ecclesiastical entities before proposing recommendations among which were: pastoral visitation by the local ordinary so to be able to discover the various challenges and so prudently carry out his vigilance role, taking priests for studies (canon and civil law) so that they may be able to comply with the legal provision, proper communications to relatives of deceased priest that, Church property is not a private property as well as encouraging priests to write their wills and so avoid many disputes that will rise after their death.

Finally, in all that has been done in this study, it would be unfair to claim that this thesis has exhausted the study of Can. 1301on the role of the Ordinary as the executor of all pious wills whether *inter vivos* or *mortis causa.* This study is only a modesty effort to establish the extent to which a particular Church (Archdiocese of Mombasa) has successful harmonized its application of the universal law. Undoubtedly, a lot more is still yet to be done in the way of further research

and study particularly with regard to the role of the Ordinary in the execution of pious wills.

BIBLIOGRAPHY

1. Canonical Sources

Codex Iuris Canonici, auctoritate Ioannis PAULI PP. II, promulgatus, 25 January 1983, in *AAS*, 75 (1983-II), pp. 1-317.

Codex Iuris Canonici, PII X Pontificis M. iussu digestus Benedicti Papae XV Auctoritate Promulgatus, 27 Maii 1917, Romae 1917, in *AAS*, 9 (1917), par. II, pp. 3-521.

Codex Canonum Ecclesiarum Orientalium, Auctoritate Ioannis Pauli PP. II Promulgatus, 18 Octobris 1990, in *AAS*, 82 (1990), pp. 1033-1363.

Codicis Iuris Canonici Fontes, a cura de P. GASPARRI and J. SERÉDI, 9 Volumes, Typis Polyglottis Vaticanis, Romae 1923-1939.

RICHTERIR, A.L., (ed..), "Decretum Magistri Gratiani," in *Corpus Iuris Canonici,* editio Lipsiensis Secunda, Akidimische Druck U. Verlagsanstalt, Graz 1959, pp. 684-695.

The 1917 Pio-Benedictine Code of Canon Law, English Translation with Extensive Scholarly Apparatus by PETERS, E.N., Ignatius Press, San Francisco 2001.

PONTIFICIA COMMISSIO AD CODICES CANONES AUTHENTICE INTERPRETANDOS, *Responsa ad Proposita Dubia*,25 Iul 1926,in *AAS*, 18 (1926), p. 396.

PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, in *Communicationes,* 1 (1969), p. 81.

_____, *Communicationes,* 5 (1973), pp. 94-103.

_____, *Communicationes,* 9 (1977), pp. 227-228.

_____, *Communicationes,* 9 (1977), pp. 269-273.

_____, *Communicationes,* 12 (1980), pp. 388-435.

_____, *Communicationes,* 15 (1983), pp. 9-16, 25-41.

_____, *Communicationes,* 15 (1983), pp. 131-134.

_____, *Schema Codicis Iuris Canonici. Iuxta Animadversiones S.R.E.Cardinalium, Episcoporum Coferentiarum, Dicasteriorum Curiae Romanae, Universtatum Facultatumque Ecclesiasticarum necnon Superiorum Institutorum Vitae Consecratae Reconitum (Paribus Commissionis Reservatum),* Libreria Editrice Vaticana, Vatican 1980, p. 279.

_____, *Codex Iuris Canonici. Schema Novissimum Iuxta Placita Patrum Commissionis Emendatum Atque Summo Pontifici Praesentatum,* Typis Polyglottis Vaticanis, Vatican 1982, p. 227.

_____, *Promulgazione e Presentazione Ufficiale Del Codice Di Diritto Canonico,* Tipografia Poliglotta Vaticana, Citttà Del Vaticano 1983, pp. 11-39.

2. Bible

The African Bible, ZINKURATIRE, V. *et al.*, (eds.), Paulines Publications Africa, Nairobi 1999.

3. Conciliar Documents

SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen Gentium*, 21 November 1964, in *AAS*, (1965), pp. 5-75.

_____, Decree on the Pastoral Office of Bishops *Christus Dominus*, 28 October 1965, in *AAS*, 58 (1966), pp. 673-701.

_____, Decree on the Apostolate of Lay People *Apostolicam Actuositatem*, 18 November 1965, in *AAS*, 58 (1966), pp. 837-864.

_____, Decree on the Life and Ministry of Priests *Presbyterorum Ordinis*, 7 December 1965, in *AAS*, 56 (1964), pp. 991-1024.

_____, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, 7 December 1965, in *AAS*, 58 (1966), pp. 1025-1120.

_____, Declaration on Religious Liberty *Dignitatis Humanae*, 7 December 1965, in *AAS*, 58 (1966), pp. 929-941.

4. Papal Sources

BENEDICT XVI, Encyclical Letter God is Love *Deus Caritas Est*, in *AAS*, 98 (2006), pp. 217-252.

_____, Post-Synodal Apostolic Exhortation on Africa's Commitment *Africae Munus*, 19 November 2011, Libreria Editrice Vativana, Vatican City 2011.

FRANCIS PP, Motu Proprio *Fidelis Dispensator et Prudens*, 24 February, 2014 in *L'Oservatore Romano*, (English ed.), n. 9 (2335), (28 February 2014).

_____, Motu Proprio *I beni temporali*, 4 July 2016, in *L'Oservatore Romano* (English ed.), n. 28 (2455), (15 July 2016).

_____, Apostolic Letter Motu Proprio on Transparence in Management of Public Finances *La Fedeltà*, 26 April 2021, in *AAS*, 113 (2021), pp. 441-444.

_____, Apostolic Constitution on the Roman Curia and its Services to the Church in the World *Praedicate Evangelium*, Paulines Publications Africa, Nairobi 2022.

_____, On *Synodality, Communion, Participation and Mission*, 26 October 2024, Libreria Editrice Vaticana, Vatican City 2024.

JOHN PAUL II, *Constitutiones Apostolicae Garissaen. Praefectura Apostolica Garissaensis*, in Kenya ad Gradum Diocesis Tollitur, 3 February 1984, in *AAS,* 76 (1984), pp. 435-436.

_____, Decree *Mombasaensis. Nova Provincia Ecclesiastica in Kenia Constituitur Mombasaensis Nomine*, 21 May 1990, in *AAS,* 82 (1990), pp. 1370-1371.

_____, Decree *Malindiensis. In Kenya Nova Conditur Diocesis Malindiensis*, 2 June 2000, in *AAS*, 92 (2000), pp. 773-774.

_____, Apostolic Constitution on Sacred Disciplinary Laws *Sacra Disciplinae Leges*, 25 January 1983, in *AAS*, 75 (1983), pp. 6-14.

_____, Apostolic Constitution on the Good Shepherd *Pastor Bonus*, 28 June 1988, in *AAS*, 80 (1988), pp. 841-930.

_____, Post-Synodal Apostolic Exhortation on the Bishop. Servant of the Gospel of Jesus Christ for the Hope of the World *Pastores Gregis*, 16 October 2003, in *AAS*, 96 (2004), pp. 825-924.

_____, Post-Synodal Apostolic Exhortation on the Church in Africa *Ecclesia in Africa*, 14 September 1995, in *AAS*, 88 (1996), pp. 5-82.

PAUL VI, Encyclical Letter on the Development of the People, *Populorum Progressio*, 26 March 1967, in *AAS,* 59 (1967), pp. 257-299.

_____, Decree Garrisae, In Kenya, *Nova Praefectura Apostolica Conditur (Garissae) Nomine,* 9 December 1976, in *AAS*, 69 (1977), pp. 137-138.

_____, Apostolic Letter Motu Proprio Establishing the Synod of Bishops for the Universal Church *Apostolica Sollicitudo*, 15 September 1965, in *AAS*, 57 (1965), pp.775-780.

PIUS XII, *Constitutiones Apostolicae de Africa Britannica. In Kenia, Uganda, Tanganica Regioonibus Catholicum Ordo Episcocorum Constitituitur*, in *AAS,* 45 (1953), pp. 706-707.

5. Curial Documents

CONGREGATION FOR INSTITUTES OF CONCECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, Economy at the Service of Charism and Mission *Boni Dispensatores Multiformis Gratiae Dei*, Libreria Editrice Vaticana, Vatican City 2018.

_____, Circular Letter on Guidelines for Administration of Assets in Institutes of Concecrated Life and Societies of Apostolic Life, *De Administratione Bonorum in Institutis Vitae Consacratae et Societatibus Vitae Apostolicae,* 2 August 2014, Libreria Editrice Vaticana, Vatican City 2014.

CONGREGATION FOR BISHOPS, Directory on the Pastoral Ministry of Bishops *Ecclesiae Imago,* 22 February 1973, Typis Polyglottis Vaticanis, Roma 1973.

_____, Directory for Pastoral Ministry of Bishops *Apostolorum Successores*, 22 February 2004, Libreria Editrice Vatican City, 2004.

CONGREGATION FOR BISHOPS AND CONGREGATION FOR RELIGIOUS, Directives for the Mutual Relations between Bishops and Religious in the Church *Mutuae Relationes*, 14 May 1978, in *AAS,* 70 (1978) pp. 473-506.

CONGREGATION FOR THE CLERGY, On the Gift of Priestly Vocation *New Ratio Fundamentalis Institutionis Sacerdotalis,* Libreria Editrice Vaticana, Vatican City 2015.

_____,Instruction on *Pastoral Conversion of the Parish Community in the Service of Evangelizing Mission on the Church*, 20 July 2020, Libreria Editrice Vaticana, Vatican City 2020.

SACRA CONGREGATIO DE PROPAGANDA FIDE Decree *Nairobiensis (Mombasaensis et Nairobiensis),* 8 May 1955, in *AAS,* 47 (1955), pp. 661-663.

_____, Decree *Mombasaensis-Nairobiensis, De Mutatione Finium*, in *AAS,* 59 (1967), p. 1065.

6. Documents of Particular Law and Episcopal Conference

CATHOLIC ARCHDIOCESE OF MOMBASA (CAM), *Finance Policy 2021,* Basic Black Images, Nairobi 2021.

_____, *Policy Guidelines 2020 on Code of Conduct,* Basic Black Images, Nairobi 2020.

_____, *Policy Guidelines on Combating Fraud,* Basic Black Images, Nairobi 2020.

ITALIAN BISHOP'S CONFERENCE, *Regulations on Project Financing,* Conferenza Episcopale Italiana, Rome 2015.

THE ARCHDIOCESE OF NAIROBI SECRETARIAT, *Finance Policy and Procedures Manual*, Archdiocese of Nairobi Secretariat, Nairobi 2021.

_____, *Financial Management in the Parishes of the Archdiocese of Nairobi,* 2nd ed. Archdiocese of Nairobi Secretariat, Nairobi 2021.

THE KENYA EPISCOPAL CONFERENCE (Today called KENYA CONFERENCE OF CATHOLIC BISHOPS), *General Guidelines on Priestly Discipline and Rule of Life*, Paulines Publications Africa, Nairobi 2010.

THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Socially Responsible Investment Guidelines,* Confraternity of Christian Doctrine, Inc., Washington, DC 2021.

VICESECRETRÍA PARA ASUNTOS ECONÓMICOS DE LA CONFERENCIA EPISCOPAL ESPAÑOLA, "Nota Sobre Disposiciones Testamentaris de los Sacerdotes a Favor de la Diócesis a que Pertenecen," in *Noviembre 1984, BOA Mdrid-Alcalá, 98 (1984),* pp. 848-850.

7. Dictionaries and Encyclopedias

BRODERICK, R.C., *The Catholic Encyclopedia*. Our Sunday Visitor Inc., Huntington 1975.

BURKE, J., *A Dictionary of Canon Law. An African Inculturated Edition,* Paulines Publications, Nairobi 2010.

HERBERMANN, C.G. *et al.,* (eds.), *The Catholic Encyclopedia.* An International work of Reference on the Constitution, Doctrine, Discipline and History of Catholic Church, Vol. IX, The Encyclopedia Press, Inc., New York 1913.

OTADUY, J. *et al.*, *Diccionario General de Derecho Canonico*, Vol. 6, Thomson Reuters, Navarra 2012.

SALVADOR, C.C. *et al.,* (eds.), *Nuovo Dizionario di Diritto Canonico*, San Paolo, Milano 1993.

SHUMAKER, W.A.,-G.F. LONGSDORF, *The Cyclopedic Law Dictionary, Defining Terms and Phrases of America Jurisprudence, of Ancient and Modern Common Law, International Law, Civil Law, The French and Spanish Law, and other Juridical Systems with an Exclusive Collection of Legal Maxims,* 3rd ed., Callaghan and Company, Chicago 1940.

WILLIAM, A.E. -A. THOMAS, *A Catholic Dictionary,* St. Louis Mo, London 1917.

8. Commentaries

BEAL, J.P. *et al.,* (eds.), *New Commentary on the Code of Canon Law,* Paulist Press, New York 2000.

BEAL, J.A. *et al.*, (eds.), *New Commentary on the Code of Canon Law*, Theological Publications in India, Bangalore 2013.

CAPARROS, E. *et al.*, (eds.), *Code of Canon Law Annotated*, Wilson & Lafleur Ltée, Montréal 2004.

CHIAPPETTA, L., *Il Codice di Diritto Canonico. Commento Giuridico-Pastorale.* 2nd vol., Edizioni Dehoniane, Napoli 1987.

CORIDEN, J.A. *et al*., (eds.), *The Code of Canon Law. A Text and Commentary*, Paulist Press, New York 1985.

COPPOLA, R., *Le pie volontà*, en P. V**.** PINTO (a cura di), *Commento al Codice dei Canoni delle Chiese Orientali*, Libreria Editrice Vaticana, Città del Vaticano 2001.

MARZOA, A. *et al.*, (eds.), *Comentario Exegetico al Codico de Derecho Canonico*, Vol. 8 EUNSA, Pamplona 1997.

_____, (ed.), *Exegetical Commentary on the Code of Canon Law*, Vol. 5, Wilson & Lafleur Ltée, Montréal 2004.

PÉRISSET, J.C., *Les Biens Temporels de l'Eglise. Commentaries des Canons 1254-1310*, Editions Tardy, Paris 1996.

PINTO, P.V. *et al.*, (eds.), *Commento al Codice di Diritto Canonico.* 2nd ed., Libreria Editrice Vaticana, Città del Vaticano 2001.

RENKEN, J.A., *Church Property. A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, St. Paul University, Ottawa 2009.

SHEEHY, G. *et al.*, (eds.), *The Code of Canon Law, Letter & Spirit. A Practical Guide to the Code of Canon Law*, Veritas, Dublin 1995.

VORGRIMLER, H., (ed.), *Commentary on the Documents of Vatican II*. Herder and Herder, Vol.5, New York 1966-1969.

WILLIAM, A.E.,-A. THOMAS, *A Catholic Dictionary,* St. Louis Mo, London 1917.

VÁZQUEZ GARCÍA-PEÑUELA, J.M., *sub cc. 1299-1310*, en Comentario Exegético**,** IV/1, Instituto Martin de Azpilicueta, Universidad de Navarra and Ediciones Universidad de Navarra, S.A., Pamplona 1996.

9. Books

AA, VV., *I Beni Temporali della Chiesa. Studi Giuridici*, Libreria Editrice Vaticana, Città del Vaticano 1999.

ABBO, J.A. - J.D. HANNAN, *The Sacred Canons. A concise Presentation of Current Disciplinary Norms of the Church,* Vol. II, Herder Book Co., London 1995.

AGAR, DE. J.M., *A Handbook on Canon Law,* Wilson & Lafleur Ltée, Montréal 1999.

ALBERIGO, G., *Conciliorum Oecumenicorum Decreta,* Editio Tertia, Instituto per Scienze Religiose, Bologna 1972.

AQUILINA, M., *The Fathers of the Church. An Introduction to the First Christian Teachers,* Our Sunday Visitor Publishing Division, Huntington 1999.

AVILA, C., *Ownership. Early Christian Teaching,* Orbis Books, New York 1983.

AZNAR, G., *La Administracion de los Biens Temporales de la Iglesia. Legislacion Universal y Particular Espagnola,* Universidad Pontificia de Salamanca, Salamanca 1984.

BALVO, C., *The Administration of Temporal Goods and Diocesan Finance Councils,* Pontificia Università Gregoriana, Rome 1984.

_____, *La administración de los bienes temporales de la Iglesia,* Publicaciones Universidad Pontificia Salamanca, Salamanca 1993.

BEATRICE, P.F., *Introduction to the Fathers of the Church,* Edizione Instituto San Gaetano, Vincenza 1983.

BEGUS, C., *Diritto Patrimoniale Canonico,* Lateran University Press, Cittàdel Vaticano 2007.

BELLITTO, C.M., *A History of the Twenty-One Church Councils from Nicaea to Vatican II,* Paulist Press, New York 2002.

CHEMNITS, M., *Examination of the Council of Trent, Part I,* Concordia Publishing House, London 1971.

CLERICI, L.A., (ed.), *A Reader in Early Patristic Period Writings. A Selection of Early Christian Orders, Instructions and Descriptions of Liturgical and Sacramental Life,* Paulines Publications Africa, Nairobi 2014.

CONWAY, J.D., *Times and Decision. Story of the Councils,* Fides Publishers Association, Notre dame 1962.

CORIDEN, J.A., *An Introduction to Canon Law,* Revised edition, Paulist Press, New York 2004.

COUGHLIN, J.J., *Canon Law. A Comparative Study with Anglo-American Legal Theory,* Oxford University Press, New York 2011.

DE ARVIZU Y GALARRAGA, F., *La Disposición Mortis Causa en el Derecho Español de la Alta Edad Media,* Ediciones Universidad de Navarra, Pamplona 1977.

DE PAOLIS, V. *et al., Non Per Denaro il Sostegno Economico alla Chiesa,* Edizioni Dehoniane Bologna, Bologna 2000.

_____, *De Bonis Ecclesiae Temporalis. Adnotations in Codicem Liber V,* Pontificia Universitas Gregoriana, Romae 1986.

_____, *I Beni Temporali della Chiesa,* Edizioni Dehoniane Bologna, Bologna 1995.

DE WIEL, C.V., *History of Canon Law,* Peeters Press, Louvain 1991.

DULLES, A., *Models of the Church,* Doubleday and Company, New York 1978.

DI PAOLA, S., *Donatio Mortis Causa,* Giuffrè, Messina 1950.

EKPO, A.O., *Temporal Goods. A Canonical Examination of Administrative Acts Concerning their Ownership and Management,* Wilson & Lafleur, Montréal 2021.

FALTIN, D., *De Obligatione Impendendi Fructus Beneficii Superflous Pro Pauperibus aut Piis Causis,* Pontificia Universitas Lateranensis, Roma 1963.

FERME, B.E., *Introduction to the History of the Sources of Canon Law. The Ancient Law up to the Decretum of Gratian,* Wilson & Lafleur Ltée, Montréal 2007.

FORCHIELLI, G., *Il Diritto Patrimoniale della Chiesa,* Corbaccio, Padova 1935.

FUNK, F.X., *Manual of Church History,* Vol.1, B. Header, London 1910.

GIACON, B.A., *L'amministrazione dei Beni Ecclesiatici e Reliogisi,* Edizioni Messaggrero, Padova 1960.

GIRASOLI, N., *Significato Ecclesiale dei Beni Trmporali Della Chiesa,* Pontificiae Universitatis Gregorianae, Roma 1990.

HAMMAR, R.R., *Pastor, Church and Law, Gospel Publishing House,* Springfield 1983.

HANNAN, J.A., *The Canon Law of Wills. An Historical Synopsis and Commentary,* The Dolphin Press, Philadelphia 1935.

HANNAN, J.D., *The Canon Law of Wills,* The Catholic University of America Press, Washington 1934.

HUGHES, P., *The Church in Crisis. History of General Councils 325-1870,* Hanover House A Division of Doubleday & Company, Inc., New York 1961.

JEDIN, H., *A History of the Councils of Trent,* Vol. 1, Thomas Nelson and Son's Ltd, New York 1957.

KEALY, R., *Diocesan Financial Support, Its History and Canonical Status,* Pontificia Universtas Gregoriana, Roma 1986.

_____, *Ecumenical Councils of the Church. An Historical Outline,* Header, London 1960.

LANDON, E.H., *A Manual of Councils of the Holy Church, New and Revised Edition,* Vol. 1, John Grant, Edinburgh 1909.

LIGHTFOOT, J.B., *The Apostolic Fathers,* 2nd ed., Macmillan and Co., London 1897.

LITZMANN, H., *The Era of the Church Fathers. A History of the Early Church,* Vol. IV, Lutherworth Press, London 1951.

LOBINA, G., *Parroci e Parrocchie,* Libreria Editrice Leonian, Roma 1979.

LUCAS, B. *et al., Church Administration Handbook*, St. Paul's Publications, Canberra 2008.

LUNT, W.E., *Papal Revenues in the Middle Ages,* Vol. I, Columbia University Press, Baltimore 1934.

_____, *Papal Revenues in the Middle Ages,* Columbia University Press, Vol. II, Baltimore 1934.

MALDONADO, J., -FERNÁNDEZ DEL TORCO, *Herencias en Favor del alma en Derecho Español,* Revista de Derecho Privado, Madrid 1944.

MARCHESI, M., *Come Amministrare la Parrocchia,* Edizioni Dehoniane Bologna, Bologna 1989.

MCKENNA, K.E., *A Concise Guide to Canon Law. A Practical Handbook for Pastoral Ministries,* Ave Maria Press, Notre-Dame 2000.

MURGA, J.L., *Donaciones y Testamentos in Bonum Animae en el Derecho Romano Tardío,* Ediciones Universad de Navarra, Pamplona 1968.

MURPHY, J.L., *The Councils of the Church,* The Bruce Publishing Company, Milwaukee 1959.

NJOROGE, L.M., *Beyond Century of Endeavour. A History of the Catholic Church in Kenya,* Paulines Publications Africa, Nairobi 2022.

OAKLEY, F., *The Conciliarist Tradition: Constitutionalism in the Catholic Church 1300-1870,* Oxford University Press, Oxford 2003.

O'MALLEY, J.W., *Trent: What Happened at the Council,* MA: Havard University Press, Cambridge 2013.

PETERS, E.N., *Incrementa in Progressu 1983 Codicis Iuris Canonici,* Wilson & Lafleur Limitée, Montréal 2005.

PIÑERO CARRION, M.J., *El Dinero de la Iglesia en que se Gasta, Quien lo da, Como se administra,* Universidad de Salamanca, Sevile 1980.

PISTOCCHI, M., *De Bonis Ecclesiae Temporalibus*, Marietti, Torino 1932.

RENKEN, J.A., *Church Property,* Alba House, New York 2009.

ROVERA., *Il Testamento nella Spritualità del Sacerdote* , Centro Ambrosiano di Documentazione e Studi Religiosi, Milano 1975.

_____, *Contributo al Rinnovamento Delle Strutture Economiche Delle Chiesa*, Sine Nomine, Milano 1971.

SABBARESE, L., *Canon Law. An Overview*, Urbaniana University Press, Roma 2017.

SCHOUPPE, J.P., *Elementi di diritto patrimoniale canonico,* Giuffrè Editore, Milano 1997.

SHROEDER, H.J., *Canons and Decrees of the Council of Trent. Original Text with English Translation,* B. Hearder Book Co., London 1941.

SPITERI, L.J., *The Code in the Hands of the Laity. Canon Law for Everyone,* Alba House, New York 1997.

_____, *Canon Law Explained. A Handbook for Laymen,* Sophia Press, Manichester, 2013.

STRATHMORE UNIVERSITY., *C.P.A, Certified Public Accounts. Introduction to Law,* 2nd edition, Strathmore University, Nairobi 2009.

TANNER, N.P., (ed.), *Decrees of Ecumenical Councils. Nicaea to Trent,* Vol. 1, Georgetown University Press, Washington, DC 1990.

_____, *Decrees of the Ecumenical Councils. Trent to Vatican II,* Vol. 2, Sheed & Waed and Georgetown University Press, London 1990.

_____, *Was the Church too Democratic? Councils, Collegiality and Church's Future,* Dharmaram Publications, Bangalore 2003.

TRASERRA CUNILLERA, J., *Las Fundaciones Pias Autonomas,* Publicationes de la Facultad de Teologia, Barcelona 1985.

VERE, P., -M. TRUEMAN, *Surprised by Canon Law. More Questions Catholics Ask about Canon Law,* Vol. 2, St. Anthony Messenger Press, Cincinnati 2007.

VIOLARDO, G., *De Bonis Ecclesiae Temporalibus*, Pontificium Institutum Utriusque Iuris, Roma 1954.

VROMANT, G., *De bonis Ecclesiae temporalibus,* Editions de Scheut, Parigi 1953.

WERNZ, F.X., -P. VIDAL, *Ius canonicum,* IV**,** *De rebus,* II, Apud Aedes Universitatis Gregoriane, Romae 1935.

WINROTH, A., *The Making of Gratian's Decretum, Cambridge University Press,* Cambridge 2000.

WOODALL, C.J., *A Passion for Justice. An Introductory Guide to the Code of Canon Law*, Greenwing, Leominster 2021.

10. Articles

ABBAS, J., "The Interrelationship of the Latin and Eastern Codes," in *The Jurist,* 58 (1988), pp. 1-40.

_____, "The Temporal Goods of the Church: A Comparative Study of Eastern and Latin Codes of Canon Law," in *Periodica,* 83 (1994), pp. 669-714.

_____, "Alienating Ecclesiastical Goods in the Eastern Catholic Churches," in *Folia Canonica,* 5 (2002), pp. 125-147.

ADAMI, F.E., "I Controlli Canonici e Civili Sull'amministrazione dei Beni Temporali Ecclesiastici," in *Monitor Ecclesiasticus,* 111 (1986), pp.69-85.

ALESANDRO, J.A., "One Hundred Years since the 1917 Code of Canon Law," in *Studia Canonica,* 51/2 (2017), pp. 357-389.

ANDRÉS, D.J., "El Testamento de los Religiosos: Una Obligación Canónica polo attendida y Practicada," in *Commentarium Pro Religiosis,* 72 (1991), pp. 261-287.

ARRIETA, J.I., "Presupposti Organizzativi della Riforma della Curia Romana," in *Ius Ecclesiae,* 27 (2015), pp. 37-59.

ATTILA, Y.J., "La Communion et la Redistribution des Biens Ecclésiastiques dans les Territoires de Mission," in *Ius Missionale,* 4 (2010), pp. 121-157.

BASSET, W.W., "Relating Canon and Civil Law," in *The Jurist,* 44 (1984), pp. 3-18.

BECKER, R.C., "Problems of Ecclesiastical and Religious Organizations," in *The Jurist,* 44 (1984), pp. 48-65.

BIANCO, L., "Conferenza Episcopale Italiana (CEI)," in C.C. SALVADOR *et al.*, (eds.), *Nuovo Dizionari di Dirrito Canonico,* Edizioni San Paolo, Milano 1993, pp. 257-261.

CAMPBELL, P.E., "The New Code of Canon Law and Religious: Some Civil Law Considerations," in *The Jurist,* 44 (1984), pp. 81-109.

CAFARDI, N.P., "Alienation of Church Property," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* Canon Law Society of America, Washington, DC 1999, pp. 247-266.

COCCOPALMERIO, F., "De Paroechiae Peronalitate Iuridica a Codice 1917 Usque ad Codicem 1983," in *Periodica,* 74 (1985), pp. 325-388.

COLOMBO, M., "L'Instituto per il Sostentamento del Clero e Problemi Connessi," in *Monitor Ecclesiasticus,* 111 (1986), pp. 87-108.

CORIDEN, J.A., "Highlights of the Revised Code," in *The Jurist,* 44 (1984), pp. 28-40.

DE AGAR, J. M., "Ecclesia Y Polis," in *Ius Canonicum,* 48 (2008), pp. 399-413.

DE ANGELIS, A., "Note per l'amministrazione dei Beni Parrocchiali," in *Orientamenti Pastorali*, 32 (1984), pp. 4-5, 113-126.

_____, "I Consigli per gli Affari Economuci: Statuti e Indicazioni Applicative," in *Monitor Ecclesiasticus,* 111 (1986), pp. 57-68.

DE PAOLIS, V., "Alcune Osservazioni sulla Nozione di Amministrazione dei Beni Temporali della Chiesa," in *Periodica,* 88 (1999), pp. 91-140.

_____, "De Bonis Ecclesiae Temporalibus in Novo Codice Iuris Canonici," in *Periodica,* 73 (1984), pp. 113-151.

_____, "I Beni Temporali nel Codice di Dirittto Canonico," in *Monitor Ecclesiasticus,* 111 (1986), pp. 9-30.

_____, "Schema Canonum Libri V. De Iure Patrimoniali Ecclesiae," in *Periodica*, 68 (1979), pp. 673-713.

DINARDO, L.A., "The Inventory of Property," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 151-163.

DUGGAN, A.J., "Conciliar Law 1123-1215, The Legislation of the Four Lateran Councils," in W. HARTMAN,-K. PENKINGTON, (eds.), *The History of Medieval Canon Law in the Classical Period, 1140-1234. From Gratian to the Decretals of Pope Gregory IX*, The Catholic University of America Press, Washington DC 2008, pp. 318-366.

DUGGAN, C., "Decretal Collections from Gratian's *Decretum* to the *Compilationes Antiquae*. The Making of the New Case Law," in W. HARTMAN,- K. PENNINGTON, (eds.), *The History of Medieval Canon Law in the Classical Period,* pp. 246-292.

DUGAN, P.M., "Pious Foundations," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 267-278.

DUSIL, S., "The Emerging Jurisprudence, the Second Lateran Council of 1139 and the Development of Canonical Impediments," in M. H. EICHBAUER, -D. SUMMERLIN, (eds.), *The Use of Canon Law in Ecclesiastical Administration 1000-1234,* Brill 2019, pp. 140-158.

EASTON, F.C., "The Diocesan Finance Officer," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 125-134.

ERRÁZURIZ, C.J.M., "Derechos Y Deberes del Fiel en Relacion con la Palabra de Dios: Presupuestos Fundamentales," in *Ius Canonicum,* 40 (2000), pp. 13-33.

FARIS, J.D., "The Code of Canons of the Eastern Churches and Temporal Goods," in K. E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 29-44.

FALCHI, F., "Le pie volontà," in VV.AA., *I beni temporali della Chiesa,* Libreria Editrice Vaticana, Città del Vaticano 1999, pp. 223-250.

_____, "Pía Voluntad y Pías Fundaciones," in *Digesto Pubblicito,* 11 (1996), pp. 254-263.

FARRELY, A., "The Diocesan Finance Council: Functions and Duties according to the Code of Canon Law," in *Studia Canonica,* 23 (1989), pp. 149-166.

FERME, B., "The Testamentary Executor in Lyndwoods Provinciale," in *The Jurist,* 49 (1989), pp. 632-678.

FERME, B.E., "Fidelis Dispensator et Prudens: Gli Statuti," in *Ius Mssionale,* 9 (2015), pp. 35-58.

FITZSIMMONS, E.J., "Mass Offerings and Stole Fees," in K.E. MCKENNA *et al., (*eds.), *Church Finance Handbook,* pp. 97-109.

FRANK, J.A., "Insurance and Ecclesiastical Goods," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 215-222.

FOX, J., "A General Synthesis of the Work of the Pontifical Commission for the Revision of the Code of Canon Law," in *The Jurist,* 48 (1988), pp. 800-840.

GHERI, P., "Pie Voluntà e Pie Fondazioni. Uno Sguardo ad Una Prassi di Curia Spesso Disattesa," in *Perodica,* 105 (2016), pp. 593-621.

GRANFIELD, P., "The Church Local and Universal. Realization of Communion," in *The Jurist,* 49 (1989), pp. 449-471.

GREEN, T.J., "Subsidiarity during the Code Revision Process. Some initial Reflections," in *The Jurist,* 48 (1988), pp. 771-799.

_____, "Pastoral Governance Role of the Diocesan Bishop. Foundations, Scope and Limitations," in *The Jurist,* 49 (1989), pp. 472-506

_____, "The 2004 Directory on the Ministry of Bishops. Reflection on Episcopal Governance in Times of Crisis," in *Studia Canonica*, 41/1 (2007), pp. 117-152.

_____, "The Players in the Church's Temporal Goods World," in *The Jurist,* 72 (2012), pp. 53-75.

GRIFFIN, B.F., "Subsidiarity and the Church Lawyer," in J.H. PROVOST, (ed.), *Code, Community, Ministry. Selected Studies for the Parish Minister Introducing the Revised Code of Canon Law,* Canon Law Society of America, Washington, DC 1983, p. 47.

GÓMEZ-IGLESIAS, V.C., "La Pontificia Commissio *Codici Iuris Canonici Regnoscendo* en los Anõs del Concilio-Ecumenico Vaticano II: El Plan de Revision de la Leyes de la Iglesia," in *Ius Canonicum,* 42 (2002), pp. 109-133.

HAIGHT, R.D., "The Established Church as Mission: The Relation of the Church to the Modern World," in J.H. PROVOST, *The Church as Mission, Canon Law Society of America,* Washington, DC 1984, pp. 4-39.

HANSEN, F., "The Three Fold Power of Governance," in *Studia Canonica,* 48 (2014), pp. 373-410.

HITE, J., "Church Law on Property and Contracts," in *The Jurist,* 44 (1984), pp. 117-133.

_____, "The Temporal Goods of Religious Institutes," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 45-52.

HOEFLICH,-M.H.,-J.M. GRABHAER, "The Establishment of Normative Texts. The Beginning of *Ius Commune*," in W. HARTMANN,-K. PENINGTON (eds.), *The History of Medieval Canon Law in the Classical Period,* pp. 1-21.

HOLLAND, S.L., "The Code and Essential Elements," in *The Jurist,* 44 (1984), pp. 304-338.

_____, "The New Code and Religious," in *The Jurist,* 44 (1984), pp. 67-80.

HUBER, M.P., "Ecclesiastical Financial Administrators," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 113-124.

JENKINS, R.E., "Gifts, Donations and Donor Intent in the Canon Law of the Catholic Church," in *The Jurist,* 72 (2012), pp.76-109.

KEALY, R.L., "Taxation, Assessments and Extraordinary Collections," in K.E., MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 77-90.

KUNDEREWICZ., "La Dottrina dei Padri della Chiesa sulle Disposizioni Testamentarie e Donazioni per opere di Beneficenza," in *Prawo Kanoniczne,* 25 (1982), pp. 309-323.

LANDAU, P., "Gratian and Decretum Gratiani," in W. HARTMANN, -K. PENINGTON (eds.), *The History of Medieval Canon Law in Classical Period,* pp. 22-54.

LE TOURNEAU, D., "L'adhésion au Magistère Ecclésiastique," in *Studia Canonica,* 46/1 (2012), pp. 51-74

LONEMA, F., "Importance of Temporal Goods in the Mission of the Church," in *The African Journal of Canon Law Studies,* 2 (2014), pp. 86-102.

LOSADA, J., "Subsidiarity from Ecclesiologist's Point of View," in *The Jurist,* 48 (1988), pp. 350-354.

LYNCH, J.E., "Limits of *Communio* in the Pre-Constantinian Church," in J.H. PROVOST, *The Church as Communio,* Canon Law Society of America, Washington, DC 1984, pp. 159-190.

_____, "The Parochial Ministry in the New Code of Canon Law," in *The Jurist*, 42 (1982), pp. 383-421.

MARTENS, K., "La Réforme de la Curie Romaine au Service de la Nouvelle Evangélisation," in *Studia Canonica*, 50/2 (2016), pp. 291-322.

MAXIMINUS, S., "Maximinus and the Christians in A.D 312. A New Latin Inscription," in *Journal of Roman Studies,* 78 (1988), pp. 111-116.

MCDONOUGH, E., "Addressing Irregularities in the Administration of Church Property," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 223-246.

MCDONOUGH, K.M., "The Diocesan and Pastoral Finance Council," in K.E.MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 135-150.

MOODIE, M.R., "The Administrator and the Law. Authority and its Exercise in the Code," in *The Jurist*, 46 (1986), pp. 43-69.

MÖSDORF, K., "Decree on the Bishops' Pastoral Office in the Church," in VORGRIMLER, H., *et al*., (eds.), *Commentary on the Documents of Vatican II,* Herder and Herder, New York 1968, pp. 165-271.

MORRISEY, F.G., "Acquiring Temporal Goods for Church Mission," in *The Jurist* 56 (1996), pp. 586-603.

_____, "Canon Law Meets Civil Law," in *Studia Canonica,* 32 (1998), pp. 183-202.

_____, "Basic Concepts and Principles," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 3-16.

MORRISON, H.B., "The Archbishop's Claim: The History of the Legal Claim of Catholic Church before the Federal Courts to the Property of the California Missions," in *The Jurist*, 47 (1987), pp. 394-422.

MURGA, J.L., "El Testamento en Favor de Jesucristo y de los Santos en el Derecho Romano Postclásico y Justinianeo," in *Anuario de Historia de Derecho Español,* 35 (1965), pp. 357-420.

NAZ, R., "Legs Pieux," in *Deway Decimal Classification,* 6 (1955), pp. 393-399.

OLIVER, R.W., "Temporal Goods and the Suppression/Merger of Parishes," in *The Jurist*, 72 (2012), pp. 164-177.

PAPROCKI, T.J,-R.B. SAUDIS., "Annual Report to the Diocesan Bishop," in K.E MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 175-206.

PERRY, J.N., "Support for the Church," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 63-90.

PICOTTI, C.F., "Dioceses and their Economic Life," in F. ARINZE *et al*., *The Bishop and his Ministry,* Urbaniana University Press, Vatican City 1998, pp. 337-346.

POKUSA, J.W., "Introduction to a Church Finance Handbook," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook*, pp. vii-xvii.

PROVOST, J.H., "Diocesan Administration. Reflection on Recent Developments," in *The Jurist*, 41 (1981), pp. 81-104.

RADAELI, C.R.M., "The Adoption of the Principle of Codification: Ecclesiological Significance with Special Reference to Reception," in *The Jurist,* 57 (1997), pp. 249-278.

_____, "L'enciclica di Benedetto XVI *Deus Caritas Est* e il Diritto Canonico," in *Quaderni di Diritto Ecclesiae*, 19 (2006), pp. 337-349.

RENKEN, J.A., "Principles Guiding the Care of Church Property," in *The Jurist,* 68 (2008), pp. 136-177.

_____, "Penal Law and Financial Malfeasance," in *Studia Canonica,* 42 (2008), pp. 5-57.

_____, "The Stable Patrimony of Public Juridic Persons," in *The Jurist*, 70 (2010), pp. 131-162.

_____, "The Statutes of a Parish," in *Studia Canonica,* 44 (2010), pp. 99-148.

_____, "Pope Francis and Participative Bodies in the Church: Canonical Reflections," in *Studia Canonica*, 48 (2014), pp. 203-233.

_____, "The Management of Church Property in a Synodal Church. Towards Eliminating Financial Misconduct," in *Studia Canonica*, 52 (2018), pp. 593-626.

_____, "Particular Churches and the Groupings (Cann. 368-572)," in J.P. BEAL *et al.,* (eds.), *New Commentary on the Code of Canon Law,* pp. 501-559.

RIVELLA, M., "Commento ad un Canone. II Giuramento degli Ammministratori di Beni Ecclesiastici (Can. 1283, 1°)," in *Quaderni di Diritto Ecclesiale,* 26 (2013), pp. 482-485.

ROCHE, G.J., "The Poor and Temporal Goods in Book V of the Code," in *The Jurist*, 55 (1995), pp. 299-348.

ROVERA, V., "De Structuris Oeconomicis in Ecclesia Renovandis," in *Periodica,* 65 (1971), pp. 197-250.

RUBIO, J.J., "La Ejacución de los Testamentos ad Pias Causas en la Legislación Civil y Canónica Vigente," in *Revista General de Legislación y Jurisprudencia,* 1 (1984), pp. 5-14.

_____, "Disposiciones Testamentaris ad Pias Causas Mediante Comisario," in *Revista General de Legislación y Jurisprudencia,* 93 (1986), pp. 231-244.

_____, "Las Formalidades en los Nogocios Pietas Causa en la Legislación Civil y Canonico," in *Ius Canonicum,* 29 (1989), pp. 349-356.

_____, "El Favor Iuris de las Causas Pías ante la Intangibilidad de la Legítima en el Derecho Común e Hispano," in *Apollinaris,* 62 (1989), pp. 69-84.

SARTORI, G.S., "I Vicari del Vescovo e l'esercizio della 'Vicarietà' nella Chiesa Particolare," in *Quaderni di Diritto Ecclesiale,* 18 (2005), pp. 6-30.

SCHOUPPE, J.P., "Diritti Fondamentali dei Fideli in Rapporto alla Partecipazione al Governo dei Beni Temporali," in *Ius Ecclesiae,* 26 (2014), pp. 397-413.

SHERIDAN, S.O., "Endowments and Pious Wills. To Rebuild the Church," in *The Jurist,* 72 (2012), pp. 130-163.

SOLER, C., "La Libertad Religiosa en la Declaration Conciliar. *Dignitatis Hum*anae," in *Ius Canonicum,* 33 (1993), pp. 13-30.

SZUROMI, S.A., "An Historical Sketch of Principal Developments in the Canon Law on Temporal Goods," in *Studia Canonica,* 50 (2016), pp. 531-544.

TERRERO, A.R., "La Obligatoriedad de los Testamentos Informes para Causas pías en el Ordenamiento Civil y Canónico," in *Salmanticensis,* 9 (1962), pp. 565-588.

_____, "Legislación actual Sobre Herencias y Legados Píos (1889 a 1960)," in *Anuario de Derecho Civil,* (1962), pp. 365-408.

THOMAS, R.R., "Financial Reports to the Faithful," in K.E. MCKENNA *et al.,* (eds.), *Church Finance Handbook,* pp. 165-174.

UGGE, B., "II Direttoria per il Ministero Pastorale dei Vescovi 'Apostolorum Successores' a Confronto con Direttoria Ecclesiae Imago," in *Quaderni di Diritto Ecclesiale,* 23 (2010), pp. 388-407.

VILLANUELA, A.V.D.R., "Ei Sistema Tributario y la Financiacion de la Iglesia en España," in *Ius Canonicum,* 48 (2008), pp. 69-87.

VISIOLI, M., "La Carità Quale Principio Condtitutivo del Diritto Ecclesiale," in *Quaderni di Diritto Ecclesiale*, 24 (2011), pp. 35-50.

WARD, D.J., "Trust Management under the New Code of Canon Law," in *The Jurist*, 44 (1984), pp. 134-142.

ZAMBON, A., "II testamento del presbitero," in *Quaderni di Diritto Ecclesiale,* 26 (2013), pp. 431-451.

ZIELINSKI, P., "Pious Wills and Mass Stipends in Relation to Canons 1299-1310," in *Studia Canonica,* 19 (1985), pp. 115-154.

11. Internet Sources

CAPUCHIN FRANCISCANS, *Who Are WE*, <https://www.capuchins.org>, (3 February 2025).Mombasa (Archdiocese), <https://www.catholic-hierarchy.org/diocese/dmomb.html>, (31 August 30, 2024).

RYWALSKI, P., The Capuchin Constitutions of 1968, 16 April 1977, https://www.capdox.capuchin.org.au/legislation/the-capuchin-constitutions-of 1968/#Toc492316672>, (3 February 2025).

TAXDON, "Taxation of Churches in Kenya,"< https://www.taxdon.co.ke/taxation-of- not-for-profit-organizations-in-Kenya/>, (28 January 2025).

12. Theses

BREACH, L.D., *The Civil Law Influence on the Evolution of Testamentary Succession,* Master of Law Thesis, University of Canterbury, Christchurch 2013.

EGBUNA, M.P., *The Right to Acquire, Possess, Administer and Alienate Ecclesiastical Goods in Religious Institutes,* Dissertatio ad Doctoratum in Facilitate Iuris Canonici Pontificiae Unierstatis Gregorianae, Roma 1993.

GIRASOLIN, N., *Significato Ecclesiale dei Beni Temporali della Chiesa,* Doctoral Dissertation, Rome 1984.

LOHMULLER, M.N., *The Promulgation of Law*, Thesis, The Catholic University of America Press, Washington, DC 1947.