



ISSN: 2941-430X

The error of quality: what constitutes a quality? – C. 1097 § 2 CIC/83

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Zusammenfassung: *Der Beitrag analysiert den sogenannten Eigenschaftsirrtum nach c. 1097 § 2 CIC/1983 im katholischen Kirchenrecht. Im Fokus steht die Frage, was eine „Eigenschaft“ im Sinne des Canons ist und unter welchen Voraussetzungen ihr Irrtum zur Nichtigkeit einer Ehe führen kann. Die Untersuchung umfasst kirchenrechtliche, historische und profane Perspektiven sowie die Rechtsprechung der Rota Romana und deutscher Diözesengerichte. Dabei zeigt sich: Der Begriff der „Eigenschaft“ bleibt in der Rechtsprechung und Literatur weitgehend undefiniert. Als Eigenschaften gelten dauerhaft zuordenbare Merkmale physischer, psychischer, sozialer oder moralischer Natur – sofern sie direkt und hauptsächlich angestrebt wurden.*

Abstract: *This article analyses the concept of error of quality according to c. 1097 § 2 Code/1983. It focuses on the question of what constitutes a ‘quality’ within the meaning of the canon and under what conditions an error in this regard can lead to the nullity of a marriage. The study covers canonical, historical and secular perspectives as well as the case law of the Rota Romana and German diocesan courts. It shows that the term ‘quality’ remains largely undefined in case law and literature. Qualities are considered to be permanently assignable characteristics of a physical, psychological, social or moral nature – provided that they were directly and primarily sought after.*

Schlagwörter: Eigenschaftsirrtum, c. 1097 § 2 CIC/1983, Eherecht, Ehenichtigkeit

Keywords: error of quality, c. 1097 § 2 Code/1983, marriage law, nullity

This is an AI supported longer abstract. We therefore ask you to consider this abstract as a reading aid only.

This article examines the canonical ground for nullity of marriage found in Canon 1097 §2 Code/1983, which states: “Error concerning a quality of the person does not render a marriage invalid even if it is the cause for the contract, unless this quality is directly and principally intended.” The author investigates the key question: what constitutes a “quality” in the sense of this canon, and whether such a characteristic can truly nullify the marital bond.

Starting from the familiar and colloquial expression, “Had I known that, I would never have married you,” the author explores the many ways in which individuals may base their marital consent on certain assumptions or expectations about the other person’s traits. These may

range from moral qualities (honesty, religiosity) to physical conditions (fertility, gender identity) or social features (wealth, education). The central question arises: When does a mistaken belief about one of these features invalidate a marriage according to canon law?

Historical and Legal Foundations

The author first traces the origins of Canon 1097 §2 back to Canon 1083 §2°1 CIC/1917, where such errors were treated under the rubric of error about the person. The present formulation reflects developments influenced by Alphonsus Liguori and the personalist understanding of marriage emphasized by the Second Vatican Council. Liguori's influence is clear in the jurisprudence, especially the concept that an individual might only consent to marry under the assumption that the partner possesses a particular trait (e.g., virginity), which, if lacking, would constitute a defect in the consent.

The 1983 Codex revision incorporated this broader perspective, with the distinction between error about the person (Canon 1097 §1) and error about a quality (Canon 1097 §2) being clarified. Notably, while the canon references “quality,” it provides no definition thereof.

Challenges in Defining “Quality” (Eigenschaft)

The article emphasizes that no authoritative legal definition of “quality” exists—neither in canon law nor in secular legal systems. A comparative look at the German Civil Code (BGB §119) reveals similar ambiguity, though it mentions characteristics seen as “essential in legal transactions.” The article extracts common criteria from both canon and civil law: qualities must typically be enduring, essential to the person, and identity-forming.

Citing secular definitions, a “quality” is generally understood as a long-term, defining attribute—physical, moral, psychological, or social—that is not easily changeable. Yet, the article notes that changeability has become more fluid (e.g., gender identity or reliability), calling into question the criterion of durability.

Jurisprudential Developments – Rota and Diocesan Courts

The article reviews significant decisions by the Rota Romana and German diocesan tribunals, illustrating how courts have interpreted Canon 1097 §2 in concrete cases:

Coram Stankiewicz (1983) reaffirmed Liguori's view that a quality must be a *sine qua non* for the marriage, i.e., if absent, the individual would not have consented. It emphasized the connection between quality and individuality, supporting the idea that such qualities constitute part of what makes someone "this" person.

Coram Palestro (1991) and Coram Erlebach (2013) addressed cases where fertility was the sought-after quality, and the marriage was annulled when it was proven to be directly and principally intended.

Coram Pinto (2012) dealt with the absence of proof regarding the intention behind seeking a certain quality, illustrating the evidentiary threshold required.

Coram Caberletti accepted piety as a possible quality under the canon, although the annulment was based on a different ground.

Across these rulings, the courts often referred to qualities as physical, psychological, moral, religious, legal, or social, yet rarely provided a systematic definition. The article critiques this judicial practice, noting that such broad categories risk making nearly any trait an "annullable" quality, depending solely on the claimant's subjective intent.

German Diocesan Jurisprudence

In Germany, the error about a quality is rarely used. In 2022 and 2023, only five cases were recorded, and in none was the marriage annulled on this basis. Three notable cases are discussed:

A 2015–2016 case (Aachen/Cologne) concerned infertility, but the claim failed due to insufficient evidence. The courts nonetheless accepted infertility as a possible quality.

A 2023 Cologne case involved transgender identity. The claimant sought to annul the marriage on the basis that the partner no longer identified as female. The tribunal concluded that “being a woman” is not a quality that must be explicitly stated in consent, as it is generally presumed. The annulment was not granted under c. 1097 §2.

A 2023 Trier case involved the traits “pious, Catholic, and moral.” The court found that these traits were present in the spouse, and the error was about their sufficiency for a good marriage—not their presence per se. Again, the court accepted them as qualities under the canon.

From these cases, the article derives that a quality:

Must have relative permanence,

May be subjective or objective,

Must not be presumed as “self-evident”, and

Can pertain to personality or moral attributes.

Scientific Discourse on the Canon

The scholarly literature presents two major interpretative strands:

Unlimited Approach: Authors like Lüdicke and Wolf argue that any characteristic the marrying party directly and principally intends can qualify, regardless of social plausibility. Lüdicke stresses that the quality individualizes the spouse, and courts should not impose objectivity or external rationality.

Restrictive Approach: Other scholars, including Burke and Grichting, caution against broad definitions. They argue that elevating incidental characteristics to the level of marital consent contradicts the personalist concept of marriage (i.e., the full self-gift of persons) and weakens the notion of genuine consent.

Hennessy, in *The Jurist*, notes that Canon 1098 does restrict deception to qualities likely to disturb the marital partnership, whereas Canon 1097 §2 does not—implying intentional breadth.

Case Studies: Virginité and Transgender Identity

Two concrete examples are discussed to test the framework:

Virginité: A case from Ireland denied virginité as a canonical quality. The author disputes this, citing theological sources and the catechism to argue that virginité, defined as absence of consensual sexual experience, could indeed be such a quality—particularly when shown to be central to the claimant's marital intention.

Transsexuality: In the German Cologne case, the court implicitly accepted “not being trans” as a potential quality. However, the annulment failed due to lack of proof of intent. The author affirms that in a binary gender model assumed by Catholic doctrine, trans identity may be seen as a distinguishable quality that could be directly and principally sought or avoided.

These examples illustrate the importance of precise formulation and documentation in determining whether a quality was sufficiently intended.

Conclusion

The article concludes that no exhaustive definition of “quality” exists under Canon 1097 §2. Nonetheless, case law and literature suggest that a quality:

- Must adhere to the person for a significant duration,
- May include physical, psychological, social, moral, or legal traits,
- Must be individualizing, and
- Must be directly and principally intended by the spouse.

Critically, there is tension between the personalist theology of marriage and the concept of conditional consent implied by this canon. This tension prompts the question of whether Canon 1097 §2 is a suitable ground for nullity at all or whether its use should be more strictly defined.

Ultimately, the article argues that nearly any attribute may qualify as a “quality” if it plays a central role in the party's decision to marry, but mere disappointment or surprise is never

sufficient. The legitimacy of invoking Canon 1097 §2 hinges on clear, demonstrable intent—and not on post-hoc regret.