



## Canon Law

Notes, Commentary, Discussion, Papers & Bibliography

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# Property Ownership and Control

## Orientation

In the matter of civil and canonical ownership and control of property, differing opinions may be offered by attorneys and canonists. This webcast will address these issues and provide clarity to leaders and business and finance personnel regarding these issues, namely:

1. Ownership and control of an institute's charitable trust and alienation concerns when the trustees of an institute's charitable trust are not leadership or membership of an institute.
2. Ownership and control of real property dedicated to a ministry and alienation concerns when an institute transfers its assets to a sponsored ministry.
3. Canonical ownership of the assets of sponsored ministries.

The workshop will set out the principles of ownership of temporal goods under canon law and ownership of assets under civil law. It will then use case studies to help show how one can plan for the preferred ownership and control of ministries and assets in three different scenarios.

## Property and Ownership in Canon law

- Book V
  - Can. 1254 §1 The catholic Church has the inherent right, independently of any secular power, to acquire, retain, administer and alienate temporal goods, in pursuit of its proper objectives.
  - Can. 1255 The universal Church, as well as the Apostolic See, particular Churches and all other public and private juridical persons are capable of acquiring, retaining, administering and alienating temporal goods, in accordance with the law.
  - Can. 1256 Under the supreme authority of the Roman Pontiff, ownership of goods belongs to that juridical person which has lawfully acquired them.
  - Can. 1257 §1 All temporal goods belonging to the universal Church, to the Apostolic See or to other public juridical persons in the Church, are ecclesiastical goods and are regulated by the canons which follow, as well as by their own statutes.
  - Good stewardship
  - Ordinary Administration
  - Extraordinary Administration
- Juridic Personality
  - Canon 634 §1 Since they are by virtue of the law juridical persons, institutes, provinces and houses have the capacity to acquire, possess, administer and alienate temporal goods, unless this capacity is excluded or limited in the constitutions.
- Temporal goods & ownership by religious are exercised though the applicable civil law.
  - Canon 1259 The Church may acquire temporal goods in any way in which, by either natural or positive law, it is lawful for others to do this.
  - Canon 1290 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 goods which are subject 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.
  - Acquire - Temporal goods are legitimately acquired when a juridic person acquires the rights of ownership in those goods through physical possession or civil legal title.
  - Retain and Administer - Temporal goods are retained when a juridic person retains sufficient civil control to exercise its canonical responsibilities, e.g. through titles in real property or reserve powers.

- Alienation - Temporal goods are alienated when a juridic person relinquishes civil control sufficient to exercise its canonical responsibilities, e.g. through sale, gift or release of reserve powers.

## Property and Ownership in Civil Law

- Real and personal property, financial assets, and intellectual property
  - Physical Possession
  - Deed or title
  - Ownership of financial accounts
- Corporations
  - Nonprofit corporations are not owned, but are administered in the public interest.
- Property and ownership by religious
  - Institute Corporation is administered by canonical leadership
  - Corporation owns the goods of the institute
  - Ministry Corporations have powers reserved to canonical leadership,
    - 4 Ps: People, Property, Paper, Purpose
    - Sufficient to exercise canonical responsibilities
  - Trust is administered by the institute, or has powers reserved to the institute

## Sisters of Blessed Serenity

- Public Juridic Person
- Corporation
- Trust
- Academy of Holy Tranquility

## Case One

- Charitable Trust for Sisters
  - Established 1993
  - Leadership team serve as trustees
  - Considering non-sister trustees
  - Trust is a fiduciary instrument
  - Property held by Trustees for the Beneficiaries
- Alienation
  - Not good or bad
  - Should be deliberately chosen
- Canonical ownership
  - Mechanism for maintaining control
  - No if control remains:
    - 4Ps people, paper, property, purpose
  - No if trustee discretion is limited:
    - 2Ps paper and purpose
    - Clear dissolution clause distributes remainder
- Alienation has occurred if the institute relinquishes civil control sufficient to exercise its canonical responsibilities.

## Case Two

\* Academy of Holy Tranquility founded 1914

- Academy campus land and buildings were transferred from the Sisters to the Academy in 1964
- Scenario 1
- Control remains: 4Ps people, paper, property, purpose
- Canonically campus belongs to the Sisters
- Scenario 2
- There is not sufficient control to retain canonical stewardship
- Indicia - could the Sisters prevent alienation?

- Demonstrated in Articles, Bylaws, Sponsorship agreement

## Case Three

\* Academy of Holy Tranquility bought an adjacent plot to expand the campus in 2003

- Scenario 1
  - Control remains: 4Ps people, paper, property, purpose
  - Canonically both original and expanded campus belong to Sisters
- Scenario 2
  - There is not sufficient control to retain canonical stewardship
  - Indicia - could Sisters prevent alienation
- Demonstrated in Articles, Bylaws, Sponsorship agreement

## Case Four

- Sisters of Blessed Serenity
  - Coming to completion
  - Nominate Sister Charity as commissary and she is appointed.
  - Who acts for the community?
    - Canonically
    - Civilly