

THE NATIONAL CATHOLIC BIOETHICS CENTER



PROBLEMATIC MARITAL ISSUES

PREPARED BY THE ETHICISTS OF THE NCBC
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“A valid marriage . . . is called *ratum et consummatum* if the spouses have performed between themselves in a human fashion a conjugal act which is suitable in itself for the procreation of offspring, to which marriage is ordered by its nature and by which the spouses become one flesh.”

— Can. 1061 §1, 1983 Code of Canon Law

“When the marital act of sexual intercourse is not able to attain its procreative purpose, assistance that does not separate the unitive and procreative ends of the act, and does not substitute for the marital act itself, may be used to help married couples conceive.”
— USCCB, *Ethical and Religious Directives for Catholic Health Care Services*, 5th ed. (2009), n. 38.

❖ SUMMARY ❖

Because of the increasing number of discordant couples in which one spouse has HIV, or because of surgical advances that spare some nerve function during male genital surgery, or because of medical advances that address impotency related to advancing age, bioethical questions arise for married couples concerning their rights to marital acts, which are non-masturbatory.

The conjugal acts to which spouses have a right are those for which there is the current or some future potential, even with medical intervention, for the completion of an act that consists of penile erection, penetration, and deposit of semen (sperm is not required) by the husband into the wife’s vagina.

Canon Law and the Nature of the Conjugal Act to Which a Married Couple Has a Right

The 1917 Code of Canon Law defined the object of marital consent as “the perpetual and exclusive right to the body ordered to acts per se apt for the generation of offspring” (can. 1081 §2). The 1983 revision of the Code defines what constitutes consummation of a valid marriage, that is, “if the spouses have performed between themselves in a human fashion a conjugal act which is suitable in itself for the procreation of offspring, to which marriage is ordered by its nature and by which the spouses become one flesh” (can. 1061 §1). Canonical tradition provides more detail as to what constitutes consummation of marriage: “The conjugal act that consummates a marriage requires that the man’s penis penetrate the woman’s vagina at least partially and deposit semen in the vagina” (Beal et al., 1364).

This provides guidance not just to what constitutes consummation of a valid marriage, but what has been the understanding of the conjugal rights that can be claimed by the married couple. Thus, whether the nature of the conjugal act is defined in terms of the right to the body which one exchanges with a spouse or in terms of the act by which marriage is consummated, tradition clearly indicates that such a conjugal act requires the deposit of semen into the vagina. Methods to achieve this end do not constitute masturbation.

❖ FAQ ❖

Question 1. Are genital acts between a married couple that result in the vaginal deposit of semen but not sperm (e.g., post-vasectomy) morally illicit?

Reply: No, they are not morally illicit. The Congregation for the Doctrine of the Faith (CDF), in its “Decree regarding Cases in which Impotence Renders Marriage Null,” responded in the negative to the question of “whether the conjugal

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act necessarily requires the ejaculation of semen produced in the testicles.” However, what is produced in the testicles is sperm. Thus, the presence of sperm in the semen is not required. That does not negate the grave evil of a contraceptive vasectomy, and a need for recourse to the sacrament of Penance. However, because of the difficulty in effectively reversing such a procedure, a reversal is not morally obligatory.

Question 2. Are genital acts between a married couple that do not achieve erection, penetration, and vaginal deposit of sperm because of impotency resulting from advancing age or surgical intervention, such as a radical prostatectomy, considered masturbatory, and are they thus morally illicit?

Reply: They may not be masturbatory and could be licit under certain circumstances. The CDF responded in the affirmative to “whether impotence, which renders matrimony invalid, consists in the incapacity, antecedent and *perpetual*, whether absolute or relative, of performing conjugal copula” (emphasis added).

- In terms of impotency: With the advent of pharmaceuticals and mechanical devices to treat impotency, the answer to the question of whether “perpetual incapacity” exists is much less certain. It may take repeated attempts over time for such couples to perform “in a human fashion a conjugal act which is suitable in itself for the procreation of offspring” (c. 1061 §1). When the intention is toward this end, and medical assistance is being sought to achieve this end, acts that result in one or both spouses achieving orgasm without a deposit of semen into the vagina are not, in and of themselves, masturbatory.
- In terms of post-prostatectomy presence of ejaculate: Essentially, for a great number of men, all that can be ejaculated after a radical prostatectomy is the pre-ejaculate mucus lubricant from the urethral glands, if there is any ejaculate at all. If erection and penetration are attained, it continues to be possible that the small percentage (considered to be less than 1 percent) of what some say constitutes semen from the urethral glands is ejaculated into the vagina, even if the ejaculation is never experienced as such. Because of the wife’s own vaginal lubrication, spouses may never know if such a deposit occurred. The important point is that the possibility exists, the genital act itself is thus ordered toward it, and the act is morally licit.

Question 3. Are genital sexual acts of a discordant married couple (in which one spouse is HIV positive) that include the use of a condom to prevent the spread of infection and thus prevent the deposit of semen morally illicit?

Reply: Yes, they are illicit. *Humane vitae* states that excluded from the rights of married couple “is any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation—whether as an end or *as a means*.” It continues, “Though it is true that sometimes it is lawful to tolerate a lesser moral evil in order to avoid a greater evil or in order to promote a greater good,” it is never lawful, even for the gravest reasons, to do evil that good may come of it—in other words, to intend directly something which of its very nature contradicts the moral order, and which must therefore be judged unworthy of man, even though the intention is to protect or promote the welfare of an individual, of a family or of society in general” (n. 14, emphasis added).

❖ RESOURCES ❖

1917 Code of Canon Law (*Codex iuris canonici*), in *New Commentary on the Code of Canon Law*, by John P. Beal, James A. Coriden, and Thomas J. Green (Mahwah, NJ: Paulist Press, 2000).

1983 Code, in *Code of Canon Law: Latin-English Edition* (Washington, DC: Canon Law Society of America, 1999).

Congregation for the Doctrine of the Faith, Decree regarding Cases in which Impotence Renders Marriage Null (May 13, 1977), Vatican website.

Paul VI, *Humanae vitae* (July 25, 1968), Vatican website.