

An Outline of Liturgical Law (a lá Morrisey, Orsy, and Huels)

The function of canon law is to provide harmony and unity in the external life of the church as a reflection of its Spirit-guided inner unity. As part of canon law, liturgical law shares this purpose by ensuring the unity and authenticity of Catholic worship within and among the many local churches. “Unity” does not imply a rigid uniformity in ritual detail but refers to the desirable and necessary ordering of the essential structures, spirit, and character of the Roman liturgy. The purpose of liturgical law must always be seen in the light of the role of liturgy itself, namely, to build up the body of Christ through Spirit-filled celebrations of the saving mysteries. The deepest purpose of liturgical law, therefore, is to promote effective experiences of worship that are always fresh, living expressions of the manifold cultures of the local churches.

John M. Huels, *Liturgical Law: An Introduction*, Washington, DC : The Pastoral Press, 1987, p. 2

SOURCES

Papal	Conciliar	Curial	The Rites Themselves	Diocesan Bishops	Conferences of Bishops
Apostolic Constitution <i>Institutio</i> (“Instruction”) <i>Motu Proprio</i> The Code of Canon Law (portions of Book IV and Book III)	Dogmatic Constitution on the Sacred Liturgy	General Decrees (authorized by the Pope) Executory Decrees [e.g. ,Directories] (not law per se but binding) Instructions	<i>Prænotanda</i> [Introductions] [give theological background, major disciplinary rules] Rubrics SAME BINDING FORCE AS THE CANONS OF THE CODE	Laws/Norms [must be promulgated as such] Guidelines Corrections of Abuses Dispensations	two-thirds vote, confirmation by the Holy See

KINDS

Theological Statements (appear toward the beginning of a text)	Juridic Norms
	<p>PRECEPTIVE (obligatory; all negative commands [except #5 below] are stronger than positive commands)</p> <p>most imperious</p> <p style="text-align: center;">↑</p> <p style="text-align: center;">↓</p> <p>mild command</p> <p>1. Strong Commands (in the negative: <i>nefas est</i> = “it is absolutely prohibited”) 2. Present Indicative = “must be done” (in the negative: <i>vetitum est</i> = “it is prohibited”; <i>non licet</i> = “it is not allowed”; <i>non potest</i> = “may not,” “cannot”; <i>not debet</i> = “must not”) 3. To be + gerundive = necessity, obligation 4. Indicative command = specific regulation 5. Present or jussive subjunctive = the general rule (translated “should” or “is to [do such and such]”; in the negative: “are not to be . . .”) 6. Exhortations</p> <p>DISCRETIONARY OR FACULTATIVE NORMS (permit options from which one <u>must</u> choose) RECOMMENDATIONS (not obligatory; express an ideal or preferred manner of acting but leave it to the subject to decide whether to observe this ideal) STATEMENTS OF RIGHTS (1. preceptive [the right cannot be denied] but also 2. non-preceptive [the right does not have to be exercised]; expressed as <i>potest</i> = “may,” <i>permittitur</i> = “is permitted,” <i>integrum est</i> = “is at liberty,” and <i>licet</i> = “is lawful”) STATEMENTS OF CAPABILITIES (rights are not involved)</p>

INTERPRETATION

Liturgical law is subject to a broad interpretation (“stretches the meaning of the text to allow the most favorable interpretation without going beyond the meaning of the law” except “where the values underlying the law would be harmed”) in its (1) legal, historical, theological, and cultural context, (2) immediate context, (3) relations within the same book or rite, and (4) relation to other similar books and rites, according to custom which is (1) in accord with the law, (2) apart from the law, (3) contrary to the law, and (4) a factual custom. [Customs #2 and #3 do not easily become recognized as legitimate by canon law.]

The sources for this outline are (1) Francis G. Morrisey, “Papal and Curial Pronouncements: Their Canonical Significance in Light of the 1983 Code of Canon Law” (*The Jurist* 50 [1990] 102–125), (2) Ladislav Orsy, “The Interpreter and His Art” (*The Jurist* 40 [1980] 27–56), (3) John Huels, “The Interpretation of Liturgical Law,” *One Table, Many Laws* (Collegeville: Liturgical, 1986), 17–36, (4) John Huels, *Liturgical Law: An Introduction* (Washington: Pastoral, 1987), and (5) John Huels, *Liturgy and Law: Liturgical Law in the System of Roman Catholic Canon Law* (Quebec: Wilson & Lafleur, 2006).