CHAPTER NINE

MARRIAGE DISPUTES IN THE CONSISTORIAL COURT
OF FREISING IN THE LATE MIDDLE AGES

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Introduction

This chapter discusses the marriage disputes handled by the consistory court of the diocese of Freising in southern Germany in the late Middle Ages, during the years 1462 and 1463. Despite the limited number of sample years, the main conclusions of this study can be extended to the whole late Middle Ages because the content of the court records in Freising does not vary significantly over the years.

Causes Handled by the Court of Freising in 1462 and 1463

The court of Freising handled around 150–250 disputes of various types each year. In Freising all different types of suits are recorded in

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1 The records of the consistory court of Freising form a rich and—for some reason—until now a sparsely exploited source. The series of records of the court of Freising, entitled Liber actorum consistorii capituli Frisingen, consist of register volumes, each of which contains documentation from court actions handled during one calendar year. The records are nowadays preserved partly in the Bayerisches Hauptstaatsarchiv and partly in the Archiv des Erzbistums München und Freising because of the division of ecclesiastical archives during the secularization. For more about the court records of Freising, see Klaus Lindner, Courtship and the Courts: Marriage and Law in Southern Germany 1350–1550 (Cambridge, Mass., 1988).

2 Munich, Bayerisches Hauptstaatsarchiv, HL Freising 93 (1462) and 94 (1463) (hereafter simply referred to as HL Freising). I have limited the study to these years because this article is a side-product of a larger research project entitled “The Apostolic Penitentiary and Local Church” concerning the pontificate of Pius II (1458–64) of which only the records of these two years have survived. I also wish to express my gratitude to the Academy of Finland for financing this project.

3 I have compared the cases in the other surviving late medieval records of the court of Freising. Obviously, the number of various types of cases varies from year to year so that the proportions and numbers presented in this article cannot be generalized to all years. However, the procedure before the court and the classification of the cases remain the same throughout the whole medieval period, which makes the main results of the cases in the court of Freising applicable to the whole Late Middle Ages.
the same register, and no separate register series for marriage disputes exists, unlike the court of Regensburg, for example. There is a corpus of 410 disputes from the sample years 1462 and 1463, of which 326 concern relationships between men and women as well as the results of these relationships, their offspring. The rest of the causes deal with debts, the execution of wills, and other litigation mostly related to economic matters.

All cases recorded in the court books of Freising are instance causes, i.e., litigation initiated by the plaintiffs themselves. The *ex officio* causes, begun by the ecclesiastical authorities instead, are not found. In this respect, the court of Freising follows the same pattern as the courts of York and Paris, where office cases were very rare, while at the courts of Ely, Cambrai, and Brussels, these were more frequent.

The corpus of 326 marriage disputes can be classified into different categories according to the type of cause. In Table 1 below, I have followed the classical division of cases into main types of cause used by other scholars, i.e. “Marriage enforcements,” “Miscellaneous marriage cases,” and “Dissolutions of unions.” Furthermore, I have included the causes for receiving compensation for deflowering and/or child support, which include similar aspects to some of the marriage enforcement causes, in the body of this essay. These three main categories are divided into sub-categories according to how the cases were defined in the Freising court records. Since the concepts used by the court differ slightly from the concepts generally used, I have preferred to conserve the original Latin terminology used in the court records, similar to

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5 In the documents, this is typically expressed as follows: “In eadem <causa> partes sponte comparuerunt…”

6 On the other courts, see Charles Donahue Jr., *Law, Marriage, and Society in the Later Middle Ages: Arguments About Marriage in Five Courts* (Cambridge, 2007), pp. 392 and 618.