CHAPTER 12
RULES ON STATUS IN GENERAL

SYNOPSIS OF THE RULES ON STATUS IN GENERAL

FACTUAL SITUATION	*POINT OF CONTACT*
(1) Beginning of personality of natural persons	(1) National law of the child (Art. 15, NCC)
(2) Ways and effects of emancipation	(2) National law (Art. 15, NCC)
(3) Age of majority	(3) National law (Art. 15, NCC)
(4) Use of names and surnames	(4) National law (Art. 15, NCC)
(5) Use of titles of nobility	(5) National law (Art. 15, NCC)
(6) Absence	(6) National law (Art. 15, NCC)
(7) Presumptions of death and survivorship	(7) *Lex fori*

What is the Philippine rule on status?

- In general, the status of a person depends on his national law.
- Art. 15 of the NCC: Laws relating to family rights and duties, or to the legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.
- Although literally, Art. 15 is a one-sided conflicts rule, it has been construed by the SC to be all-side, and therefore, the nationality rule here applies to ALL nationals.

Beginning of Personality of Natural Persons

- Art. 40 of the NCC: Birth determines personality but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born later with the conditions specified in the following article.
- Art. 41 of the NCC: For civil purposes, the fetus is considered born if it is alive at the time it is completely delivered from the mother's womb. However, if the fetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within 24 hours after its complete delivery from the maternal womb.
- Personality does not begin at birth, it begins at conception. This is called *presumptive personality*. It is, however, essential that birth should occur later.
- If the conditions in Art. 41 are not complied with, the birth and the death of the child will not be recorded in the Civil Registry.
- Note that the law says the fetus is considered born only for *civil purposes*, which are *beneficial* or *favorable*.
- Arts. 40 and 41 of the NCC apply only to Filipino babies. If the child be a foreigner, the beginning of its personality depends upon its national law.

Ways and Effects of Emancipation

Emancipation takes place by way of:

(1) marriage of the minor
(2) attainment of the age of minority
(3) parental concession
(4) judicial concession

Age of Majority

Art. 234 of the FC: Emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of eighteen years.

Use of Names and Surnames

STATUS	*SURNAME*
Legitimate children	Surname of the father
Adopted child	Surname of the adopter
Legitimated children	Surname of the father
Child conceived before the decree annulling a voidable marriage	Surname of the father
Illegitimate children	Unless recognized also by the father, the surname of the mother
Married woman	(1) Her maiden name and surname and add her husband's surname; or (2) Her maiden name and her husband's surname; or (3) Her husband's full name, but prefixing a word indicating that she is his wife, such as "Mrs."

Titles of Nobility

- The right to use a title of nobility depends upon the national law of the individual concerned.
- Under our Constitution, such titles of royalty or nobility are not allowed.

Absence

- Absence, being the legal status of a person who disappears from his domicile, his whereabouts being unknown, is naturally governed by the national law.

CHAPTER 13
MARRIAGE AS A CONTRACT

Definition of Marriage
It is a union of one man with one woman or the reciprocal blessings of a domestic home life, and for the birth, rearing, and education of children.

Three Aspects of Marriage
(1) It is a contract;
(2) It is also a union, a status, a legal relation; and
(3) It is an institution.

Definition of Marriage under the Family Code
Art. 1: Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law or the establishment of conjugal and family life. It is the foundation of the family and inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.

SYNOPSIS OF THE RULES ON MARRIAGE AS A CONTRACT

FACTUAL SITUATION	*POINT OF CONTACT*
(1) If celebrated abroad	
(a) Between Filipinos	(a) *Lex loci celebrationis* without prejudice to the exceptions under Arts. 26, 35 (1), (4), (5) and (6), 36, 37, and 38 of the Family Code (bigamous, polygamous, and incestuous marriages and consular marriages)
(b) Between foreigners	(b) *Lex loci celebrationis* except if the marriage is: 1. highly immoral (like bigamous and polygamous marriages) 2. or UNIVERSALLY considered INCESTUOUS (like between brothers and sisters and between ascendants and descendants)
(c) Mixed	(c) Apply (1-b) – to uphold the validity of the marriage
(2) if celebrated in the Philippines	
(a) Between foreigners	(a) National law (Art. 21, FC)
(b) Mixed	(b) National law of the Filipino (otherwise public policy may be militated against)
(3) marriage by proxy (NOTE: a marriage by proxy is considered as celebrated where the proxy appears)	(3) *Lex loci celebrationis* (with prejudice to the foregoing rules)

Marriage as a Contract in General
- Generally, marriage has two kinds of requisites: the *formal* and *essential* requisites.
- Under the Family Code, formalities do NOT affect the validity of the marriage (i.e. if a judge solemnizes the marriage, the ceremony must be in open court – refer to Arts. 7 and 8, FC).
- However, there are so called formalities which are now considered as ESSENTIAL requisites under our law (i.e. marriage license except in marriages of exception character – refer to Art. 3, FC).

Three Theories on Formal Requisites in Marriage in Conflict of Laws
(1) The Compulsary/Imperative Rule
- It is imperative for the parties to follow the formalities of the place of celebration (*lex loci celebrationis* – the law of the place of celebration; or *lex regit actum* – the law of the place where the act was done or performed).
- This seems to be the rule we follow here (Art. 17, par. 1, NCC).

(2) The Optional Rule
- Here, the parties may follow either the *lex loci celebrationis* or their national law.
- This rule is followed in most counties.

(4) The Ecclesiastical/Modified?Religious Rule
- Here, the formalities of both the *lex loci celebrationis* and the national law of the parties (imposing religious requirements) must be complied with.

Substantial or Essential Requisites
Under Art. 3 of the FC, the substantial or essential requisites of Filipinos who marry in the Philippines are as follows:
(1) Legal capacity of the contracting parties;
(2) The consent on the contracting parties, freely given;

(3) Authority of the person solemnizing the marriage; and
(4) A marriage license, except in a marriage of exceptional character.

Is common-law marriage valid here in the Philippines? In no case would common-law marriage between Filipinos in the Philippines be considered as valid, for solemnization must be before the proper officer.

However, common-law marriage between foreigners (relationship began abroad) in the Philippines would be valid provided that such is also valid according to their national law and according to the laws of the place where the relationship began.

Marriages Celebrated Abroad Between Filipinos

- Art. 26 of the FC: All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5), and (6), 36, 37, and 38. Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse, capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.
- In this article, we follow the rule of *lex loci celebrationis*.
- However, there are several exceptions (i.e. bigamous, polygamous, or incestuous marriage) caused by our nationality theory.
- If a marriage in a foreign country between Filipinos is celebrated or performed inside the Philippine consulate abroad, it is as if the marriage had been celebrated not in a foreign country, but right here in the Philippines.

Example
If a Filipino step-brother marries his Filipino step-sister in California, and the marriage is considered valid there, will their marriage be recognized in the Philippines?

- Yes. The marriage will be considered as valid here for the reason that it is not bigamous, polygamous, or incestuous.
- If this marriage had been performed inside the Philippines consulate in San Francisco by our consul or vice-consul, the marriage will be deemed to have taken place in the Philippines, and will therefore be considered void.

Marriage Celebrated Abroad Between Foreigners
If marriage between foreigners is validly celebrated abroad, the same shall be recognized as valid here, provided it is not highly immoral and provided it is not universally considered incestuous.

Two Kinds of Universally Considered Incestuous Marriages

1. Those between ascendants and descendants (whether the relationship be legitimate or illegitimate);
2. Those between brothers and sisters (whether of the full or half blood, and whether the relationship be legitimate or illegitimate).
    - Marriage between American first cousins will be recognized valid here if valid in the place of celebration because it is neither immoral or universally considered incestuous.

Mixed Marriages Celebrated Abroad

- By mixed marriages in this discussion, it is mean that which were celebrated between Filipinos on the one hand and aliens or foreigners upon the other hand.
- Paras: If by one law the marriage is valid, and by another law the marriage is void, that which will uphold the validity of the marriage should be followed.

Marriages Celebrated in the Philippines Between Foreigners

- Should foreigners decided to marry in this country, their capacity to marry shall be governed by their national law.
- Art. 21 of the FC: When either or both of the contracting parties are citizens of a foreign country, it shall be necessary for them before a marriage license can be obtained, to submit a certificate of legal capacity to contract marriage, issued by their respective diplomatic or consular officials. Stateless persons or refugees from other countries shall, in lieu of the certificate of legal capacity herein required, submit an affidavit stating the circumstances showing such capacity to contract marriage.
- However, even if allowed by their respective national laws, and even if they are armed with the needed certificate of legal capacity, still foreigners will not be allowed to get married if the marriage will be highly immoral or if it will be considered incestuous.

Mixed Marriages in the Philippines
If a Filipino marries in the Philippines an American, it is believed that the national law of the Filipino should be followed otherwise our public policy on this point may be militated against.

Marriages by Proxy
A marriage by proxy is one where one of the parties is merely represented at the ceremony by a friend or delegate. The rule on such a marriage is:

(a) If performed in the Philippines – the marriage is void because physical presence of both parties is required under Art. 6 of the FC. The rule applies, however, only in the case of Filipinos and in mixed marriages.

(b) If performed abroad, whether between Filipinos or foreigners or mixed – the controlling rule is *lex loci celebrationis*, subject to the exceptions already discussed and subject further to special provisions as may be found in special laws. What is important is that it is permitted by law of the place where the proxy acted.

Contract of Marriage v. Ordinary Contracts

ORDINARY CONTRACT	*MARRIAGE CONTRACT*
Mere contract	Also an inviolable social institution
The agreements entered into usually depend on the stipulations agreed upon by the contracting parties unless those stipulations violate the law, public polity, public order, good customs or good morals.	The nature and the consequences as well as the incidents, are governed by the law – except with reference to marriage settlements. In marriage therefore, as a general rule, stipulations are of no value.
Age requirement in ordinary contract is age of majority	Age requirements vary
May end thru the express provision of the law, thru expiration of the term for which the contract was agreed upon, thru fulfillment of the purpose for which the contract was entered into, and even thru mutual agreement	Only death or annulment or legal causes dissolves the contract
Substantial or intrinsic validity of an ordinary contract is usually resolved by an inquiry into the law intended by the parties (*lex loci voluntatis* or *lex loci intentionem*)	Validity of a marriage contract is verified generally by a reference to the *lex celebrationis*

Marriage Contract v. Ordinary Contracts

ORDINARY CONTRACT	*MARRIAGE CONTRACT*
There is no requirement that ordinary contracts be entered into by persons of opposite sex.	Can be contracted only by and between persons of opposite sex.
A person may enter into as many ordinary contracts as he can.	Marriage is invalid, as a general rule, if one of the parties had previously entered into a similar contract with one who is still living.
Parties are free to mutually withdraw from the contract.	Parties to a marriage contract cannot mutually withdraw from the relationship if and when they please.
Primarily regulated by the terms and	Regulated by law.
The cause for dissolution of a contract different from those provided by law in marriage.	The cause for dissolution of the marriage different from those of an ordinary contract.

Marriage as a Contract and as an Institution

- In a sense, it is a contract because of the element of mutual consent, which is characteristic of all contracts.
- It is the characteristic of permanence of marriage that distinguishes marriage from a purely consensual contract.
- Marriage as a relationship creating status, in whose preservation society has a vital and enduring interest.
- Sec. 1, Art. XV, 1987 Constitution: The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.
- Sec. 2, Art. XV, 1987 Constitution: Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.
- As a status, marriage is a creature of the law and may be destroyed only in the manner specified by law.
- The status, once created, is treated in law as a *res*, a thing which has legal existence independent of the control of the parties to it and which has a situs assigned to it by law
- Since the effect of marriage is to confer the status of legitimacy upon children born in wedlock and as it gives rise to relations of consanguinity and affinity, it is correctly described as an institution intimately related to the public policy of the State and cannot therefore be abrogated by mere agreement of the parties.

Meaning of Marriage

- The definition in Art. 1 of FC views marriage as a sacrament. It is the result of the influence of Christianity. Under this definition, polygamous unions are excluded and insofar as Philippine nationals are concerned, absolute divorce is not recognized.
- In Conflict of Laws, however, marriage is and should be defined in broader terms than those in which it is understood in internal Philippine law.
- There are marriages contracted in other legal systems that do not exactly conform to our notion of marriage; to deny validity to them in all cases would create chaos in many domestic relationships.
- Furthermore, where the question at issue in a given case is neither the celebration of marriage nor the cohabitation of spouses in the forum, the moral standards of the forum are not infringed by conceding validity to

the incidents of a foreign marriage. The existence of a foreign marriage may be only a consideration preliminary to the decision of the case involving succession, tax law, or some other matter not immediately affecting the mores of the forum.

Marriage Problems in Conflicts of Laws; Policy Considerations

- Two principal problems regarding marriage in the field of Private International Law:
  (1) The problem of what law governs the creation of the marriage relation; and
  (2) The problem of recognition of the marriage and protection to be given the relation and incidents arising from the marriage relation in States other than that in which the relationship was created.
- It is necessary to keep in mind the distinction between formal validity of the marriage contract, on the one hand, and its substantive validity on the other.
- Policy considerations that should affect the choice of governing law:
  (1) Element of predictability;
  (2) To sustain marriages entered into good faith;
  (3) Marriage is a matter of public concern and all States have rules stating how marriages may be contracted and prohibiting certain marriages.
- The rule, therefore, is that the forum, when confronted by a marriage deemed particularly offensive to its own standards, will strike down a marriage validly contracted in other jurisdictions, if, in the circumstances of the case, it is against its own norms of public policy or morality.

Formal Validity

- The law of the place where a marriage is celebrated governs its formal validity.
- This is in consequence of the maxim *locus regit actum*, the place governs the act.
- If valid by the law of the place of celebration, the *lex loci celebrationis*, it is also valid in other places, though by the law of the latter other formalities are required.
- Formal validity refers to the external conduct required by the parties or of the solemnizing officers essential to the formation of a legally valid marriage.
- Articles 2 and 3 of the FC specify which of the requirements of marriage essential and which are formal.
- In Conflict of Laws, the distinction between formal validity and substantive validity has not been very clear.

Philippine Law on Formal Validity

- Philippine law adheres to the imperative rule; a marriage formally valid where celebrated is valid elsewhere.
- When the parties choose a place as the *loci celebrationis* of their marriage, they are considered to have subjected all questions of form to the law of that place, and if valid there it should be considered valid everywhere.
- There is a necessity of proving the content of the foreign law under which a marriage was celebrated and the fact of conformity of said marriage to the requirements of said foreign law. In the absence of proof of foreign law, the presumption is that it is the same as Philippine internal law.

Marriage on Board a Vessel on the High Seas

- Since the nation whose flag the ship is flying has jurisdiction over the ship, the rule is that compliance with this law is required for a marriage to be validly contracted.

Substantive Validity

- Each legal system has its own concept of what are matters of substance as distinguished from matters of form.
- Art. 2 of the FC prescribes two essential requisites to marriage:
  (1) legal capacity of the parties who must be a male and a female;
  (2) consent freely given in the presence of the solemnizing officer.
- Two competing principles as to the law that should govern the substantive validity of marriage:
  (1) *Lex loci celebrationis* – the law of the place of celebration of the marriage;
  (2) Personal law of the contracting parties – either the law of their domicile or nationality, depending on the theory followed by the particular State.
- Second Restatement: A marriage which satisfies the requirements of the State where the marriage was contracted will everywhere be recognized as valid unless it violates the strong public policy of another State which has the most significant relationship to the spouses and the marriage at the time of the marriage.

Philippine Law on Substantive Validity

- *With reference to marriages celebrated abroad*, Philippine law primarily refers to the law of the place of celebration.
- Exceptions to the general rule expressed in the formula "valid where celebrated, valid everywhere:
  (1) In case of Filipino nationals who marry abroad before

Philippine consular or diplomatic officials. In such a case, regardless of what the place of celebration prescribes, the substantive validity of the marriage is to be determined by Philippine law.

(2) In case of marriages that are prohibited under Philippine law (saving clause of Art. 26, FC).

- As a general rule, a marriage should be upheld if valid according to the law of the place of celebration, unless the marriage itself or the enjoyment of the incidents of the marital relationship would offend the strongly-held notions of decency and morality of a State that has a close relationship to the contracting parties.
- *With reference to marriage contracted in the Philippines*, the national law of the particular alien concerned, insofar as the capacity to contract marriage is concerned, is decisive.
- Citizens of a foreign country are required to obtain a certificate of legal capacity to contract marriage before a marriage license is issued.
- In these cases, the Government of the alien, through its diplomatic or consular officials, shall decide the question of whether the individual can marry in the Philippines.
- Philippine law on substantive validity does not exclusively adhere to the *lex loci celebrationis* rule. It is a combination of that rule, in respect of marriages celebrated abroad, and of the personal law, insofar as capacity to marry is concerned, in respect of marriages in the Philippines.

CHAPTER 14
MARRIAGE AS A STATUS

SYNOPSIS OR RULES FOR MARRIAGE AS A STATUS

FACTUAL SITUATION	*POINT OF CONTACT*
(1) Personal rights and obligations between husband and wife (mutual fidelity, cohabitation, respect, assistance and support; right of wife to use husband's name; duty to follow husband's residence)	(1) National law of the husband *Effect of subsequent change of nationality:* (a) If both will have a new common nationality – the new one. (b) If only one will change – the last common nationality. (c) If there never was any common nationality – the national law of the husband at the time of the marriage.
(2) Property relations between husband and wife	(2) National law of the husband, without prejudice to what the Civil Code provides concerning REAL property located in the Philippines (Art. 80, NCC) *Effect of subsequent change of nationality:* No effect. This is the doctrine of Immutability in the Matrimonial Property Regime.

Personal Rights and Obligations

- Marriage as a status carries with it implications in two fields:
  1. the realm of personal rights and obligations of the spouses; and
  2. the realm of property relations.
- Personal relations between spouses under Philippine law are governed by the national law of the parties (Art. 15, NCC).
- The national law of the husband is usually given preference.

Scope of Personal Relations Between the Husband and the Wife

Personal rights and obligations between the husband and the wife, all of which are generally governed by the national law of the husband, but subject to the

principles of characterization and to the exceptions to the application of the proper law, include:

(1) Mutual fidelity, cohabitation, and respect;
(2) Mutual assistance and support;
(3) Right of the wife to use the husband's name; and
(4) Duty of the wife to follow the husband to his residence or domicile.

Duty to Live Together

(a) There is a duty and a right to live together: cohabitation or consortium.
(b) The wife may establish a separate residence or domicile in the following cases:
    (1) If the husband continually indulges in illicit relations with others.
    (2) If the husband is immoderate or barbaric in his demands for sexual intercourse.
    (3) If the husband grossly insults her or maltreats her**.**
    (4) If she has been virtually driven out of their home of her husband and she is threatened with violence if she should return.
    (5) If the husband continually gambles and refuses to support the family.
    (6) If the court exempts her because the husband lives abroad.
(c) If the wife refuses unjustifiably to live with her husband, the court will admonish but not order her to return; and even if an order is made, contempt proceedings against the wife will not proper in case of disobedience. The remedy here for the husband is to refuse to grant support.
(d) The court cannot order a wife to have sexual intercourse with the husband. Similarly, it cannot also compel a husband to carnally posses the wife.
(e) Damages are recoverable from a stranger if he:
    (1) injures the wife and deprives the husband of "consortium."
    (2) Tries to interfere with the domicile home life of the spouses.

Duty to Observe Mutual Respect and Fidelity

If according to the national law of the husband, he may brutally treat his wife, the same cannot be given cognizance under our law otherwise our policy would be offended.

If the spouses' national law, however, permits infidelity to be a ground for legal separation or disinheritance for or unworthiness in matters of succession, the same will be recognized as valid here.

Rules on Procedure

To enforce rights granted by the husband's national law, resort is had to the *lex fori*, hence should suits be litigated in the Philippines our procedural rules will have to be followed.

Property Relations Between the Husband and the Wife

- Art. 80 of the FC is our conflicts rule on the subject of property relations between the husband and the wife.
- Art. 80: In the absence of a contrary stipulation in a marriage settlement, the property relations of the spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence.

  This rule shall not apply:
    (1) Where both spouses are aliens;
    (2) With respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and
    (3) With respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situated in a foreign country whose laws require different formalities for its extrinsic validity.
- The law chooses the matrimonial property regime under the national law of the husband, instead of the wife. This is true even if both the spouses are foreigners of different nationalities.

The Matrimonial Property Regimes

(a) Absolute Community Regime
    - almost all the properties of the marriage are owned in common by the husband and the wife
(b) Relative Community Regime / Conjugal Partnership of Gains / Ganancial System / System of Community Acquests
    - everything earned during the marriage belongs to the conjugal partnership
(c) Complete Separation of Property Regimes / System of Separation of Goods
    - each owns his or her earnings
(d) Dotal or Dowry System
    - the wife before marriage delivers a dowry or property to the husband to help out the marriage obligations, but later, when the marriage is dissolved, the property or its value must be returned
(e) Complete Absorption or Administration by the Husband
    - the husband owns all the properties of the marriage but he is liable for all the debts

(f) Marital Administration System
- each spouse still owns his or her property, but the husband administers all the properties

** *In the Philippines, the general rule is the absolute community regime.*

Family Code Vis-à-vis Corporation Code
- Sec. 10 of the Corporation Code requires from a married woman the marital consent of her husband to become an incorporator.
- If the wife were to exercise an ordinary occupation or profession, the FC provides the she no longer needs the consent of the husband. Thus, in case the wife will need money to be a subscriber or incorporator and if the money she uses will be community or conjugal funds, the husband is required to give his consent. If the money is her exclusive or separate property, she does not need her husband's consent.
- If spouses owned shares of stock before they got married and they failed to agree on what property regime to adopt, the shares of stock they used to own individually would have to be deemed as community property, now governed by the rules of co-ownership under Art. 90 of the FC. Given such situation, it would be now necessary to require proof of consent by the other spouse to vote such shares even if the shares appear in the name of one spouse alone.
- Art. 52 of the FC which requires that the judgment of annulment or of absolutely nullity of the marriage, the partition and distribution of the properties of the spouses, and the delivery of the children's presumptive legitimes be recorded in the appropriate civil registry or registries of properties must be taken in conjunction with Sec. 53 of the Corporation Code. Thus, any transfer of stocks in relation to Art. 52 of the FC must also be registered in the books of the corporation to be valid and binding against third persons.

Example
An American, whose national law follows the system of complete separation of property, marries a Filipino woman, whose national law provides, in the absence of contrary stipulation in a marriage settlement, the absolute community regime shall apply. The husband as a technical consultant in an engineering project of the Philippines earns the sum of Php 4M which he used to purchase a house in the Philippines. Who owns the house?
- The husband is the exclusive owner of the house. Art. 80 of the Family Code, it is clear that their matrimonial property relationship shall be governed by the complete separation of property regime. In other words, under Art. 80, it is the national law of the husband that designates the matrimonial property regime to be enforced.

NOTE: Art. 80 of the FC does not refer to the system of marital property relationship; it refers to such things as the alienation, or disposition of the properties concerned. Similarly, the husband will not be allowed generally to donate the house in favor of his wife during the existence of the marriage. This is because insofar as capacity to alienate or encumber real property in the Philippines is concerned, it is not the national law that controls. What governs the transaction is the *lex situs*. This is also true with reference to formalities required in the alienation.

Immutability of Matrimonial Property Regime Doctrine
The *doctrine of immutability* insofar as the matrimonial regime is concerned is this: regardless of change of nationality on the part of the husband or of the wife or of both, the original property relations regime at the state of the marriage remains.

The reasons for the doctrine are as follows:
(a) marital peace in property relationship shall be more or less guaranteed;
(b) the spouses will not be able to prejudice creditors, who in turn cannot jeopardized the interests of the spouses;
(c) even the spouses may protect themselves from each other.

Immutability of the Regime v. Mutability of the Law
While subsequent change of nationality does not affect the original property regime (*doctrine of immutability in the marital property relationship*), it cannot be denied that when the law of the original nationality itself changes the marital regime, the property relationship has to change accordingly (*doctrine of mutability insofar as the law itself is concerned*).

Thus, in the previous example, if subsequent legislation in America alters the system for example to conjugal partnership regime, this latter regime must control. However, properties already acquired prior to the effectivity of the new law shall still be governed by the original system – complete separation of property regime. Otherwise, a person may deprived of his property without due process of law.

Personal Relations
- In cases where the husband and wife never had any common nationality, the law of the husband as of the time of the marriage shall govern. However, where the national law of the husband will violate the public policy of the forum, his personal law will be disregarded.
- The Hague Convention on Marriage Relations of 1905, after stating that as a general principle, the rights and duties of the spouses on their personal relations to each other are governed by their national law,

adds: "However, these rights and duties cannot be enforced except by the means permitted under the law of the country where the enforcement is sought."

- In short, the forms of action, judgment, and execution are controlled by the *lex fori*, but no cause of action is permitted in the forum which is not also recognized by the national law. On the other hand, though an action is permitted or recognized by the national law, the *lex fori* is competent to bar an action that does not fit in the local system or to refuse a method of enforcement not permitted by its procedure.

Property Relations

- Aside from those given by Paras, here are the other systems of property relations:
  (1) System of Coverture – the woman's property, except in certain cases, passes to the husband, who also acquires ownership of the property which accrues to her during the marriage.
  (2) Community of Movables and of Acquests – everything belonging to either spouse, except immovables not acquired ruing the marriage as income or profit, passes to the conjugal partnership.

Philippine Conflicts Rule on Property Relations of Spouses

- Art. 80 of the FC, which applies to marriages contracted from 3 August 1988 onwards is the Philippine conflicts rule on property relations.
- Art. 80 applies to Filipino spouses, in line with the nationality principle embodied in Art. 15 of the NCC.
- When we speak of property relations, not of personal relations, the place of celebration of the marriage or even the residence of the spouse may have secondary relevance; what is more important as the point of contact is the place where the property is situated, especially with respect to immovables. Under all known legal systems, immovables are usually governed by the *lex rei sitae*.
- Thus, Art. 16 of the NCC must be read into any interpretation of Art. 80 of the FC.
- Marriages before 3 August 1988 are subject to the conjugal partnership of gains.
- With respect to marriages of Filipino spouses from 3 August 1988 onward, the property relations of Filipino spouses are subject to the Family Code, which adopts the system of absolute community.

CHAPTER 15
ANNULMENT OF A VOIDABLE MARRIAGE AND DECLARATION OF NULLITY OF A VOID MARRIAGE

SYNOPSIS OF CONFLICTS RULES

FACTUAL SITUATION	*POINT OF CONTACT*
Grounds for annulment (if the marriage is merely voidable) and grounds for declaration of nullity (if the marriage is void *ab initio*)	The law alleged to have been violated: in other words, it is the law of the place of celebration (*lex loci celebrationis*) subject to certain exceptions that furnishes the grounds

Proper Courts

The proper court to annul the marriage or to declare it null and void is the court of the country of which the parties are nationals or domiciliaries.

Since we follow the nationality theory, our courts have jurisdiction to take cognizance of annulment and nullity suits where the litigants are Filipinos, or where they are domiciliaries of the Philippines.

Annulment v. Declaration of Nullity of a Void Marriage

VOIDABLLE MARRIAGE	*VOID AB INITIO MARRIAGE*
Remedy: Annulment	Remedy: Ordinarily, there is no need of a declaration of nullity – since there is nothing to annul. But if a party wants to obtain damages because of a void marriage, the only way to obtain said damages would be by asking the proper court to declare the marriage null and void.

Grounds for Annulment or Declaration of Nullity

- In Conflict of Laws, the grounds for the annulment of a marriage alleged to be voidable and the grounds for the declaration of nullity of a marriage alleged to be null and void are the grounds provided for by the law alleged to have been violated.
- In general, it is the law of the place of the celebration (*lex loci celebrationis*), subject to certain exceptions, that furnishes the grounds.
- Generally, if a marriage is valid where celebrated, it is valid the forum subject to designated exceptions. By necessary implication we may say: if a marriage is voidable where celebrated, it shall also be voidable in

our country and if a marriage is void where celebrated, it is also void in this country.

NOTE: In so far as the grounds for annulment or nullity are concerned it is NOT the national law that governs; it is the *lex loci celebrationis*, subject to certain exceptions. While it is true that under Art. 15 of the NCC, status shall be governed by the national law, still in this problem, it is the *very existence of the status* that it is in issue, and the marriage contract is as we have seen not governed by Art. 15 but by Art. 26. Upon the other hand, the grounds for legal separation are those indicated in the national law of the parties concerned, and not those in the place of celebration of the marriage. On this point, Art. 15 of the NCC, will apply because a suit or legal separation necessarily admits the validity of the marriage.

Church Annulments and Declarations of Nullity
They are only for religious purposes and are not binding on the civil laws and courts of our country, unless amendments to our Family Code are made.

Annulment
Two important questions with which Private International Law is concerned with reference to annulment:

(a) what court has jurisdiction to declare that a marriage is annulled?
(b) what law governs the annulment of marriage?

Jurisdiction to annul must always be distinguished from the law that determines the cause or ground for annulment.

Jurisdiction to Annul

- The regularly competent court that has jurisdiction to annul a marriage is that of the domicile of the parties.
- This is because it is the State of the domicile, more than any other State, that has the greatest interest in the domestic relations of the contracting parties.
- In practically all civil law countries following the nationality principle, nationals of the forum are permitted to sue for annulment irrespective of their domicile.
- Where the wife was a national of the forum before marriage, jurisdiction is likewise assumed for one or two reasons:
  (1) protection of its own national; and
  (2) the added justification that if the marriage is declared void, there is no possible change of nationality as a result of the marriage and the court is therefore competent.

Governing Law on Annulment or Nullity

- The general rule is that the law that governs the formal or substantive validity of the contract of marriage also governs the questions as to whether there is a valid cause for annulment.
- With reference to the substantive or intrinsic validity of the marriage, our conflicts rule distinguishes between marriages performed abroad and those performed in the Philippines.
- Marriages performed abroad and valid there, shall be considered valid in the Philippines, subject to certain exception.
- Insofar as marriages celebrated in the Philippines are concerned, there is no difficulty where the contracting parties are both Filipino nationals.
- Where the contracting parties are aliens, or where one is an alien and the other is a national, the national law of the alien determines whether he possesses the capacity to marry.
- Whether the parties have different national laws, each of the two laws must be consulted in order to determine the consequences of failure to comply with the requirement imposed by each.
- On all other matters of substance not concerned with the capacity to marry, aliens marrying in the Philippines are governed by Philippine internal law, the *lex loci celebrationis*; this law decides whether on such other matters, there is sufficient ground for annulment.

CHAPTER 16
ABSOLUTE DIVORCE

SYNOPSIS OF RULES FOR ABSOLUTE DIVORCE

FACTUAL SITUATION	*POINT OF CONTACT*
(1) If sought in the Philippines (whether by Filipinos or by foreigners)	(1) *Lex fori* (therefore, will not be granted) Exception: Moslem divorces
(2) If obtained abroad: (a) Between Filipinos	(2) (a) National law (therefore, not valid here even if valid abroad; and this is true regardless of the cause of divorce)
(b) Between foreigners	(b) National law (if valid in the State granting it, and valid according to the national law of the parties, will also be valid here)
(c) Mixed	(c) Apply (a) and (b) respectively.

Absolute Divorce v. Annulment

ABSOLUTE DIVORCE	*ANNULMENT*
Dissolves the marriage and relieves the spouses from their marital obligations	Its legal effect is to declare that the marriage never existed
Presupposes a validly existing marriage	Ends a marriage which though considered valid in the interim, nonetheless, is defective
Granted for causes subsequent to the marriage ceremony	Causes exist at the very time the marriage is entered into

Kinds of Divorce

ABSOLUTE DIVORCE (divorce *a vinculo matrimoniee*)	*RELATIVE DIVORCE* (divorce *a mensa et thoro*)
Marital ties are dissolved	Separation from bed and board or legal separation. Where parties remain married, although this time, they are allowed to live separately from each other.

Rules for Today for Absolute Divorce

FACTUAL SITUATION	*POINT OF CONTACT*
(1) If the divorce suit is brought here in the Philippines: (a) Between Filipinos (b) Between foreigners (c) Between a Filipino and a foreigner	(1) (a) It will not prosper (b) It will not prosper (c) It will not prosper
(2) If the action is brought in a foreign court: (a) Between Filipinos	(2) (a) The divorce decree on any ground will not be recognized here even if allowed by said foreign court.
(b) Between foreigners	(b) The foreign decree of absolute divorce will be recognized as valid here only if the following two conditions concur: i) The foreign court must have had jurisdiction to grant the absolute divorce; ii) The divorce must be recognized as valid by the NATIONAL law of the parties. NOTE: In case of change of citizenship , such as for instance by naturalization, it is the citizenship at the time of the divorce that controls.
(c) Between a Filipino and a foreigner	(c) When the foreigner does not become a Filipino or when the Filipino does not become a foreigner by virtue of the marriage, the rule is to deny the validity of the divorce since to rule otherwise would be unjust to the Filipino.

Manila Surety and Fidelity Co. v. Teodoro

- FACTS: The conjugal partnership of a husband and wife was dissolved upon their joint petition in Manila Juvenile Domestic Relations Court. Husband obtained an absolute divorce decree in Nevada and married a in Hongkong another girl.

- HELD: The divorce decree cannot be considered valid here, hence the subsequent marriage is void and bigamous. The dissolution of the conjugal partnership did not dissolve the marriage bonds.
- Although the subsequent marriage is void, Art. 147 of the FC (relating to co-ownership or to quasi conjugal assets) cannot apply to the fruits of husband's private properties, since they were not acquired thru the couple's work or industry, nor are they wages and salaries.
- See Art. 144, NCC and Art. 147.

Example 1
- A Filipino couple when to Las Vegas where they obtained a divorce decree on account of the wife's adultery. Will the divorce decree be recognized in the Philippines?
    - No, because the divorce is contrary to an important public policy of the forum.

Example 2
- American couple married in the US. Wife obtained a valid divorce in the US. If she should come to the Philippines, will she be allowed to get married here?
    - Yes, provided she can get a certificate of legal capacity to contract marriage here.
    - The divorce will be recognized as valid here because it is valid in accordance with her national law and it is valid in the place which granted the same.

Example 3
- A Filipina married H, a national of X. Under the laws of X, the wife acquired husband's nationality. Moreover, she expressly renounced her Philippine citizenship. Later, the couple obtained a decree of absolute divorce, which was valid in country X. Upon the wife's return to the Philippines, will she be allowed to marry again here?
    - Yes, because by virtue of her acquisition of foreign citizenship in addition to her repudiation on renouncing of Philippine citizenship, the rules on foreigners govern the validity of the divorce. As her divorce is considered valid in country X, her divorce should be recognized in our courts.

Example 4
- A and B, Filipino citizens, married in Manila. B, the wife then committed an act of adultery. Thus, A abandoned her.
- B went to Nevada and obtained a final decree of divorce on the ground of abandonment. Thereafter she married C, an American.
- A, having learned of the divorce, married D in Hongkong and cohabited with her in Manila.
- 2 years later, B divorced C. She then learned of the marriage of A to D and immediately filed an action for concubinage.
    - The Reno divorce decree cannot be recognized as valid here in the Philippines because the couple's status is governed by the Philippine law and because our prohibitory laws on persons cannot be rendered nugatory and ineffective by a contrary foreign decree or judgment.
    - The marriage of A to D, while considered as valid there, cannot be considered as valid here, because if is a bigamous marriage, as determined by Philippine law.
    - Insofar as the criminal aspects of the case are concerned, A cannot be prosecuted for bigamy as the crime, if any, was committed in Hongkong, and thus outside the jurisdiction of the Philippines. We follow the principle of territoriality, as a rule, insofar as crimes are concerned.

Prevailing Rule Today on Marriages Celebrated Abroad and Effect of Foreign Divorce
- See Art. 26, FC.
- General Rule: If valid where celebrated, it is also valid here. This is the doctrine of *lex loci celebrationis*, the law of the place of celebration.
- Exceptions: Those prohibited under Articles. 35 (1, 4, 5, and 6), 36, 37, and 38.
- See Arts. 35-38, FC.
- Rule: If void where celebrated, the marriage shall be considered as void in the Philippines.
- Rule: If voidable where celebrated, the marriage would also be voidable here in the Philippines, without prejudice, to the exception under Art. 26.

Requirements to Prove a Foreign Marriage
(a) the existence of the pertinent provision of the foreign marriage law; and
(b) the celebration or performance of the marriage in accordance with said law.

The foreign law is not of judicial notice and it must, therefore, be proved as a fact.

Imelda Manalaysay Pilapil v. Hon. Ibay-Somera, Hon. Victor, and Erich Ekkerhand Geiling
- FACTS: F, Filipina, married G, German in Germany. They had a child. About 3 years after the marriage, G initiated divorce proceedings

against F in Germany. F, on the other hand, filed an action for legal separation, support and separation of property in RTC Manila.

- Later, the divorce decree was promulgated in Germany on the ground of failure of marriage. More than five months later, G filed two complaints for adultery in Manila alleging that while G was still married to F, F had an affair with W and with another man named J.
- F filed a motion quash which was later denied. When arraigned, F entered a plea of not guilty.
- F filed special civil action for certiorari and prohibition seeking the annulment of the order of the lower court denying her motion to quash.
- It is F's argument that the court is without jurisdiction to try and decide the charge of adultery, which is a private offense that cannot be prosecuted *de officio*, since the purported complainant, a foreigner, does not qualify as an offended spouse having obtained a final divorce decree under his national law prior to his filing the criminal complaint.
- HELD: The petition is meritorious. Art. 344 for the RPC provides that the crime of adultery cannot be prosecuted except upon a sworn written complaint filed by the offended spouse. Compliance with this rule is a jurisdiction, and not merely a formal, requirement.
- The law specifically provides that in prosecutions for adultery and concubinage the person who can legally file the complaint should be the offended spouse, and nobody else.
- Corollary to such exclusive grant of power to the offended spouse to institute the action, it necessarily follows that such initiator must have the status, capacity or legal representation to do so at the time of the filing of the criminal action.
- Art. 344 of the RPC presupposes that the marital relationship is still subsisting at the time of the institution of the criminal action for adultery. It would be absurd if his capacity to bring the action would be determined by his status before or subsequent to the commencement thereof, where such capacity or status existed prior to but ceased before, or was acquired subsequent to but did not exist at the time of the institution of the case.
- Considering also Art. 26 of the FC, the SC held that F, being no longer the husband of F, had no legal standing to commence the adultery case under the imposture that he was the offended spouse at the time he filed the suit.

Rules on Absolute Divorce Prior to the New Civil Code and the Family Code

- The Divorce Law which became effective of 11 Marcy 1917 allowed only absolute divorce on the grounds of:
  (1) adultery on the part of the wife; or
  (2) concubinage on the part of the husband.
- Absolute divorce of Filipino couples obtained in foreign countries were considered valid here only if the court had jurisdiction and if the ground was one of the two grounds provided under Philippine Divorce Law.

NOTE: *Please refer to the book of Paras for the discussion of absolute divorce under other old Philippine laws.*

Divorce

- Only Filipino couples, as a general rule, are covered by the policy against absolute divorces.
- Aliens may obtain divorces abroad which may be recognized in the Philippines, provided they are valid according to their national law.

Philippine Conflicts Rule on Divorce

- As long as they are Filipino citizens, they cannot obtain a divorce decree abroad which would be recognized in the Philippines.
- Art. 26, FC: Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse, capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

Recognition of Foreign Divorces Under the Present Law

- Filipino couples cannot obtain absolute divorces abroad which will be entitled to recognition in the Philippines.
- Where the absolute divorce decree involves alien spouses, the prevailing rule in jurisdictions following the nationality principle is to recognize the decree, if valid by their national law, in spite of the fact that internal municipal law may not recognize absolute divorce but only legal separation.
- Where the alien spouses have different nationalities, what national law will provide the test of whether the divorce obtained is valid or not? German law and practice hold that a decree concerning two foreigners is recognized as valid if rendered at the marital domicile and recognized by the national law of the husband.
- In marriages where one of the spouses is a national of the Philippines, recognition of divorce will depend on several factors, i.e. whether the Filipino spouse acquires the nationality of the foreign spouse; whether it was the foreign spouse or the Filipino spouse who obtained divorce (see examples of Paras or Salonga).

CHAPTER 17
LEGAL SEPARATION

SYNOPSIS OF CONFLICTS RULES

FACTUAL SITUATION	*POINT OF CONTACT*
(1) Grounds for legal separation: (a) Adultery (b) Concubinage (c) Attempt by one spouse against the life of the other	(1) National law of the parties (a) If of the same or common nationality – the common national law governs (b) If of different nationalities – the grounds given by BOTH national laws should ALL be considered proper grounds NOTE: Residence requirement if suit is brought in the Philippines: (a) If cause occurred in the Philippines – NO residence requirement (b) If cause occurred outside the Philippines – one year residence is required in our country (Art. 99, NCC)

Legal Separation v. Absolute Divorce

LEGAL SEPARATION	*ABSOLUTE DIVORCE*
Does not sever the marriage bonds	Dissolves the marriage hence the parties allowed to remarry
Reconciliation prevents a suit for legal separation or rescinds one already granted	Reconciliation does not revive a marriage already dissolved by a decree granting absolute divorce

Legal Separation v. Annulment of Marriage

LEGAL SEPARATION	*ANNULMENT OF MARRIAGE*
Can be granted for causes arising AFTER the celebration of the marriage	Requires causes existing PRIOR TO or AT THE TIME the wedding takes place
Grounds are those given by the national law of the parties concerned, inasmuch as this is purely a question of status, the validity of the marriage being presumed or admitted	Generally, the grounds are those given by the *lex loci celebrationis*, inasmuch as annulment questions the very existence of that status

Grounds for Legal Separation

- The grounds are those given by the national law of the spouses.
- If the nationality of the husband and the wife be different, the grounds enumerated under the national law of the husband PLUS the grounds given by the national law of the wife constitute all the available grounds for granting them legal separation.
- Foreigner may sue for legal separation in the Philippines even if they did not get married here; the grounds of course will be those given by their national law.
- Art. 55, FC provides for the grounds for legal separation.
- Art. 56, FC provides for the grounds for denial for petition for legal separation.

Residence Requirments

- See Art. 99, NCC.
- Thus, if the cause took place in the Philippines – there is NO residence requirement.
- If the cause took place outside the Philippines, the law requires a residence here of one year.
- The one-year residence requisite should suspend the running of the prescriptive perioed.
- The requirement in Art. 99 is jurisdictional.

Pastor Tenchavez v. Vicente Escano

- FACTS: H and W, both Filipino, were married in the Philippines. W obtained an absolute divorce from her husband from Nevada. She then married an American. Both reside in US and W later acquired American citizenship.
- Later, H initiated legal separation proceedings in the Philippines.
- ISSUE: Will the legal separation proceedings and relief for damages prosper?
- HELD: Yes, because W technically committed adultery, her divorce not being recognized here in the Philippines.
- The change from Philippine to American citizenship is immaterial for the change was made AFTER the grant of absolute divorce. What is important is the citizenship at the time of the grant of the divorce.

Doctrines from Tenchaves Case

(1) A foreign divorce between Filipino citizens sought and decreed after the effectivity of the NCC is NOT entitled to recognition as a valid decree in this country;

(2) Neither is the marriage contracted with another party by the "divorced" consort subsequent to the foreign decree of divorce, entitled to validity in the Philippines;
(3) The remarriage of the "divorced" spouse and cohabitation with a person other than her lawful spouse entitled the latter to obtain a decree of legal separation;
(4) The desertion and obtaining of an invalid divorce decree by one entitles the other to recover lawful damages;
(5) An action for alienation of affections against the parents of one consort will not prosper in the absence of proof of malice and unworthy motives on their part;
(6) A valid marriage remains subsisting under Philippine laws despite the decree of absolute divorce from a foreign court; and
(7) To grant effectivity to such foreign divorce would be to patently violate the declared policy of the State as enunciated in the third paragraph of Art. 17 of the NCC.

Defenses in Legal Separation

(a) Condonation
- This means forgiveness, express or implied.
- To constitute valid defense, it must be free, voluntary and not induced by duress or fraud.
- Sleeping together after full knowledge of the offense is condonation.
- Each sexual intercourse of the wife outside the marriage is a separate act of adultery. Therefore, condonation of one act does not necessarily imply condonation of the others.
- Where the wife left the conjugal home after her adulterous acts were discovered, the fact that the husband did not actively search for her is not condonation.

(b) Consent
- It may be express or implied.
- It must not be clouded by fraud, duress, or even mistake.
- Consent is PRIOR to the act; condonation comes AFTER.

(c) Connivance

(d) Recrimination or Mutual Guilt
- Recrimination is a charge made by an accused against the accuser; in particular, a countercharge of adultery or concubinage made by one charged with the same offense in a suit for legal separation, against the person who has charged him or her.
- When both parties are in *pari delicto*, there is no offended spouse who deserves to bring the action.

(e) Collusion
- This is an agreement whereby one party will pretend to have committed the ground relied upon.
- A legal separation obtained through collusion is void.
- The law requires proof, not a mere stipulation of facts or a confession of judgment. The proof may be either direct or circumstantial.

(f) Prescription (Art. 57, FC)
- Although prescripti on should ordinarily be alleged, this is not so in legal separation or annulment proceedings. Therefore, the court even by itself can take cognizance of prescription of the cause of action because the case involves public interest.

People v. Schneckenburger
- FACT: H, husband, who was an alien consul in Manila, and his wife entered into a mutual agreement whereby each could carnally live with others, without interference from either. The husband then lived with another woman. W, wife, filed a case for concubinage. H presented in defense the prior agreement or consent.
- HELD: H is not guilty. The SC held that it did not legalize the agreement. But because the girl had previously given her consent, she is now undeserving of sympathy.

Ocampo v. Florenciano
- FACTS: W, wife, left the conjugal home after H, husband, discovered that W was having illicit relations with A. Later, H against caught his wife having carnal knowledge with N. H told W he was filing suit for legal separation. W agreed on condition that she would not be charged criminally. When the Prosecutor outside of court asked W why she failed to file an answer, she replied that she was in conformity with the legal separation. RTC and CA denied the legal separation on the ground that there was confession on judgment.
- HELD: The legal separation should be granted, in view of the presence of other evidence. Here, there was only an extrajudicial admission and not confession of judgment. Also, the SC considered that there is evidence of adultery independently of the statement made by W to the Prosecutor. What the law prohibits is a judgment based on exclusively or mainly on the confession of judgment.

Effect of Death During the Pendency of the Case

If one party dies during the pendency of the cases, the same should be dismissed since the action is purely a personal one. This is true even if there would have been effects of property fights if a decree of legal separation had been granted.

Legal Separation

- Legal separation may be claimed only by the innocent spouses, provided there has been non-condonation of or consent to the adultery or concubinage.
- Where both spouses are offenders, a legal separation cannot be claimed by either of them. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition.
- Alien spouses may also apply for such relief in Philippine courts. There is no infringement of morality or public policy involved.
- But since Philippine rules on conflict of Laws follow the nationality principle on family rights and duties, status, condition, and legal capacity, the following provisions of the Hague Convention relating to relative divorce and legal separation are relevant:
  - Art. 1. Married persons may apply for divorce provided the law of the state to which they belong (national law) and the law of the place where the application is made both permit divorce.

    The same applies to separation from bed and board.

  - Art. 2. Divorce may be granted only if obtainable in the particular case under both the national law of the spouses and the law of the place where the application is made, though on difference grounds.
- Civil law countries take into account the position of the national law of the spouses, with regard to the following points:
  (1) Jurisdiction in the case of aliens is not assumed unless the national law of the parties is willing to recognize this jurisdiction;
  (2) Divorce is not granted, unless it is agreeable to the internal aw of the national State of the parties.
- In short, separation from bed and board depends upon the approval of such an institution by the national law of the parties. The Hague Convention relating to Divorce and Separation provides that the system of law last common to each of the spouses shall be considered as the national law.

CHAPTER 18
PATERNITY AND FILIATION, ADOPTION, GUARDIANSHIP AND FUNERALS

Paternity/Maternity vs. Filiation

Paternity/Maternity		Filiation
Father/Mother	**Relation Of**	Child
Child	**Relation To**	Father/Mother

What are the Conflict Rules on Paternity and Filiation?

1. To determine whether child is legitimate – national law of the father
2. Then the rules that govern the relationship and duties between parent and child depends on whether child is determined
   a. Legitimate – use national law of father
   b. Illegitimate – use national law of mother

When should be the decisive time to determine such applicable law?
Time of child's birth

Why are presumptions of legitimacy governed by the law of the male parent rather than the law of the forum?
Because presumptions of legitimacy are not rules of evidence but rather rules of substantive law

Under Philippine law, what are the rights of legitimate children?

1. Bear surnames of the father and mother
2. Receive support from parents
3. Legitime and other successional rights

What is Legitimation?
Remedy or process by means of which those who in fact were not born in wedlock, and should therefore be ordinarily considered illegitimate children, are by fiction and upon compliance with certain requirements, regarded by the law as legitimate

Requisites for Legitimation

1. Child must be conceived and born outside wedlock of parents who at the time of the conception of the child were NOT disqualified by any impediment to marry each other
2. There must be a subsequent valid marriage

Kinds of Legitimation

1. Legitimation per subsequens matrimonium – recognition of the child by the father
2. Legitimatio per rescriptum principis – recognition by conduct of public repute of the parent

To what time does legitimation relate back to?

1. In the Philippines – birth of the child
2. Other countries – time of legitimation

What is the Doctrine of Immutability of Status?

Theory that the status of a child (i.e. legitimacy) is NOT affected by the subsequent change of nationality of the parents, however, the rights and obligations of parents and child will be determined by the NEW nationality

How does the Doctrine of Immutability of Status relate to legitimation?

1. Legitimation – not affected by change of nationality
2. Rights and duties of parents and child – affected by change of nationality

What is Adoption?

Process of making a child whether related or not to the adopter, possess in general the rights accorded to a legitimate child

What are the Conflict Rules on Adoption?

1. To determine whether status of adoption is created – national law of adopter
2. BUT compliance with procedural requisites – Philippine law IF adoption takes place in the Philippines

What is the 'Principle of Cumulation'?

Principle whereby courts should satisfy the substantive requirements of both the national law of the adopted person (i.e. Philippine law requires written consent of natural parents) and the national law of the adopting spouses

Who may not adopt under Philippine Law?

1. Guardian with respect to ward prior to approval of the final accounts rendered upon termination of the guardianship
2. Any person convicted of a crime involving moral turpitude
3. An alien EXCEPT
    a. Former Filipino citizen who seeks to adopt a relative by consanguinity
    b. One who seeks to adopt the legitimate child of his/her Filipino spouse
    c. One who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative by consanguinity of the latter (Article 184, Family Code)
4. An alien with whose government the Republic of the Philippines has no diplomatic relations (Article 187 No 2, Family Code)

What if a former Filipino citizen married to an alien spouse wishes to adopt her minor brother?

It is not allowed despite Article 184 (3a) because law mandates joint adoption by husband AND wife and since the spouse is an alien and does not fall under any of the exceptions provided for in Article 184, they cannot validly adopt the brother of the former Filipino citizen (People v Judge Tolentino)

Is an alien not under the exceptions laid out in Article 184 absolutely prohibited from adopting a Filipino child?

No, he may still adopt in accordance with the rules on intercounty adoption

If an alien adopts a Filipino child, what rule governs the rights and duties of the adopter and the adopted?

National law of the adopter

Will the adopted non-Filipino child acquire the Filipino citizenship of his Filipino adopter?

No, for the following reasons

1. While the adopted child has the rights of a legitimate child, citizenship is not a right
2. Even if citizenship were a right, it is not enumerated as one of the rights of legitimate children
3. Acquisition of citizenship partakes the character of naturalization and is not regulated by the Civil Code but by special laws (Ching Leng v Galang)

What law governs the successional rights of the adopted child?

National law of the deceased

What are the successional rights of the adopted child?

1. Heir of his adopting parents
2. Intestate heir of his natural parents and blood relatives

Are foreign decrees concerning adoption recognized in the Philippines?

There is nothing to prevent our tribunals from recognizing such as long as

1. The court granting the same was vested with jurisdiction
2. The judgment is meritorious and arrived at impartially
3. No collusion or extrinsic fraud (Sec 50 Rule 39, Rules of Court)

How should be give effect to a foreign decree of adoption?

Same effect as the national law of the adopter would have given it because adoption is a status UNLESS said effect comes under any of the exceptions to the application to foreign law

Guardianship

Kinds	Court Who Appoints
Guardian over the Person	Where ward domiciled
Guardian over the Property	Where properties may be found
General Guardians	Where ward domiciled AND where properties may be found

What are the Philippine rules on the petition for appointment of guardians?

1. If the ward is a resident – relative, friend or other person on behalf of the resident minor or incompetent or the minor himself if 14 years of age or over
2. If the ward is a non-resident (but has estate in the Philippines) – relative, friend, any one interested in his estate

What are 'incidents of funerals'?

Funeral expenses

What law governs the incidents of funerals?

Law of the country where the body is to be buried

What are the Philippine rules on Funerals?

1. Duty to make arrangements for funerals are on persons obliged to support the deceased while still alive (Art 305, Civil Code)
2. Funeral should be within social position of deceased (Art 306, Civil Code)
3. Pompous and elaborate funeral of a criminal on whom death penalty was inflicted is prohibited (Art 85, RPC)

CHAPTER 19
REAL AND PERSONAL PROPERTIES

What law governs real properties?

GENERAL RULE	
Concerned With	**Law**
Real property (formalities, capacity of parties and intrinsic validity)	Where property is situated
EXCEPTIONS	
Concerned With	**Law**
Succession rights to real property	National law of deceased
Capacity to succeed in inheritance problems	National law of deceased
Contracts involving real property but not really dealing with title thereto	Proper law of the contract (lex voluntatis or lex loci intention)
Validity of contracts where real property is given by way of security (i.e. mortgage contract) — Principal contract (loan)	Proper law of the contract (lex voluntatis or lex loci intention)
Validity of contracts where real property is given by way of security (i.e. mortgage contract) — Accessory contract (mortgage)	Where property is situated

When does lex situs govern real properties?

GENERAL RULE	
Concerned With	**Law**
Capacity to take and transfer immovables*	Where property situated
Formalities of conveyance*	
Essential validity and effect of transfer*	
Interpretation and effect of conveyance	
Validity and effect of mortgages and other encumbrances*	Where property mortgaged situated (not law where principal contract executed)
Marital interest in land	Where property situated
Equitable interests in land	

EXCEPTIONS	
Concerned With	**Law**
Succession*	National law of deceased
Issue is not effect of transaction but rights and liabilities of parties between themselves*	Proper law of the contract
Validity and effect of principal contract (i.e. contract of loan with mortgage)*	Proper law of the principal contract governs the principal contract
Validity of a contract of transfer (as distinguished from the validity of the transfer of land which is determined by lex situs)	Proper law of the contract

*Same as Paras

What law governs personal properties?

Old rule

Mobilia sequuntur personam (movable property follows the law of the owner)

Present rule

General - Lex situs or where personal property is situated

Exception - Lies in the difference between personal properties (chose in possession and chose in action)

Reasons for Applying Lex Situs to Movables

1. Since personal property has no fixed situs, an artificial one must be created
2. The new rule is simple
3. The new rule is more stable

Defects of Applying Lex Situs to Movables

1. Too inflexible and oversimplified
2. Lumps different kinds of personal properties together

What is a Chose?

It is a thing, an article of personal property

Kinds of Choses

1. Choses in possession – tangibles

2. Choses in Action – intangibles (i.e. shares of stock, franchises and copyrights)

What is a Chose in Possession?
Person thing of which one has possession

Laws that Govern Chose in Possesion

Chose in Possession		Law
General rule		Where chose in possession situated
Exceptions		Same as those provided for in real properties
Transportation that usually moves	Vessels	Law of the flag or place of registry
	Others	Law of the depot (storage place for supplies) or resting place
Goods in Transit	Loss, destruction, deterioration	Law of the destination
	Validity and effect of seizure of goods	Where seized (locus regit actum) because this is their temporary situs
	Disposition or alienation of goods	Proper law of the contract (lex voluntatis or lex loci intention) because there is a contract

What is a Chose in Action?
The right bringing an action or right to recover a debt or money including:

1. Right of proceeding to procure payment of money or
   Right to recover personal chattel or money or
   Right to recover personal chattel or money by action
2. Personal right not reduced to possession but recoverable by a suit at law
3. Right to personal things of which the owner merely a right of action for their possession (and not the possession itself)
4. Personal chattels not in possession
   All property in action which depends entirely on contracts
5. Right to receive or recover a debt, demand or damages on a cause of action ex contractu or for a tort or omission

Laws that Govern Chose in Action

Chose in Action	Law that Governs
Recover of debts or involuntary assignment of debts (garnishment)	Place where debtor may effectively be served with summons
Validity and effectiveness of voluntary assignment of a debt	Proper law of the contract (lex voluntatis or lex loci intention) *Other Theories*: National law of the debtor or creditor Domicile of the debtor or creditor *Lex loci celebrationis* *Lex loci solutionis*
Situs of a debt for purposes of taxation	Domicile of creditor
Purposes of administrating debts	Place where assets of debtor are actually situated
Negotiability or non-negotiability of an instrument (bill of exchange)	Law embodied in the instrument (i.e. Philippine cheque = Philippine law)
Validity of transfer, delivery or negotiation of instrument	Law of the situs of the instrument at the time of the transfer, delivery or negotiation
Effect on a corporation of the sale of corporate shares	Place of incorporation
Effect between parties of the sale of corporate shares	Proper law of the contract (lex voluntatis or lex loci intention)
Taxation on dividends	Place of incorporation
Franchises	Law of place that granted them
Goodwill and taxation of business	Where business is carried
Patents, copyright, trademarks and tradenames	State that granted or recognized them

Illustration: Taxes and Customs

1. If paid – chose in possession
2. If unpaid – chose in action

CHAPTER 20
WILLS, SUCCESSION AND ADMINISTRATION

What is the Extrinsic Validity of Wills?
Those which refer to requirements such as writing, of attesting witnesses and of acknowledgment

What are the conflict rules on the Extrinsic Validity of Wills?

Testator	Where	Followed Law	Basis
Alien	Abroad	Lex nationalii Lex domicilii	Article 816, CC
		Lex celebrationis	Art 17 par 1, CC
Alien	Philippines	Lex nationalii Lex loci celebrationis	Art 817, CC
Filipino	Abroad	Lex nationalii Lex celebrationis	Art 815, CC
Filipino	Philippines	Lex nationalii	Civil Code

What are the conflict rules on the Extrinsic Validity of Joint Wills?

Testator	Where	Validity	Basis
Alien	Abroad	Valid if valid according to lex nationalii or lex domicilii or lex celebrationis	Art 816 and 817
Alien	Philippines	Void	Public policy
Filipino	Abroad	Void in the Philippines even if valid in place where executed	Art 819, Civil Code
Filipino	Philippines	Void	Civil Code

What does the intrinsic validity of wills include?
1. Order of succession
2. Amount of successional rights
3. Intrinsic validity of provisions

What law governs the intrinsic validity of wills?
Lex nationalii REGARDLESS of location and nature of property and NOTWITHSTANDING the fact that testator provided otherwise

Miciano vs Brimo
- Testator's will provide that even if were a Turk, he wanted his estate to be disposed of in accordance with Philippine laws
- Because of this, testator's brother was deprived of his legacy
- SC: condition is contrary to law
- "Impossible conditions and those contrary to law or good customs shall be considered as not imposed and shall in no manner prejudice the heir, even if the testator should otherwise provide" (Art 873, CC)
- Condition provided by testator is against Art 16 which insist on the application of deceased's national law
- Hence, the condition should not be followed

Theories on the Proper Law for the Transmission of Successional Rights
1. Unitary or Single System – one law governs transmission of both real and personal property
2. Split or Scission System – one law governs real property while the other governs personal property

Which theory does the Philippines follow?
Unitary system because only the national law of the deceased that governs whatever may be the nature of the property and regardless of the country wherein said property may be found

What is the basis of the adherence to the Unitary System?
Real property as well as personal property is subject to the law of the country where it is situated.

However, intestate and testamentary succession, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country where said property may be found (Art 16, CC)

Is the national law of the decedent followed despite its being contrary to our own laws?
Yes, whatever public policy or good customs may be involved in our system of legitimes, Congress has not intended to extend the same to succession of foreign nationals for it has specifically chosen to leave, inter alia, the amount of

successional rights, to the decedent's national law and specific provisions must prevail over general ones (Bellis vs Bellis)

What law governs Capacity to Succeed?
Capacity to succeed is governed by the law of the nation of the decedent (Art 1039, CC)

What are the conflict rules on Revocation of Wills?

Testator	Where Revoked	Followed Law	Basis
Non-resident of the Philippines	Philippines	Philippines	Art 829, CC
Resident of the Philippines	Philippines	Philippines	Art 829, CC
Non-resident of the Philippines	Abroad	Lex celebrationis Lex domicilii	Art 829, CC
Resident of the Philippines	Abroad	Lex domicilii (Philippine law) Lex loci actus of the revocation (where revoked)	Not provided for by Art 829 but can be under Art 17 par 1, CC

Note: In revocation, domicile is important

What law governs the Interpretation of the Words of a Will?
1. Rules of construction referred to in the will
2. In default thereof, national law of deceased

What is the effect of the change of nationality of the testator?
1. With reference to extrinsic validity – nationality at time will was executed should control
2. With reference to intrinsic validity, order of succession and successional rights – nationality at moment of death should control (Art 777, CC)

What are Caduciary Rights?
Right of the state to claim through escheat proceedings properties of decedents who are not survived by any heirs

What law governs Caduciary Rights?
Conflict rules should be abandoned such as Art 16 par 2 which directs the application of the national law of the deceased and properties should go to the government (i.e. if Turkish woman dies in the Philippines leaving property here, Philippine Government should get the properties)

What is Probate?
The act of proving before a competent court the due execution of a will possessed of testamentary capacity, as well as the approval thereof by the said court

What are the conflict rules on Wills Executed Abroad?
Regardless of whether probated or not abroad (place where executed), still have to be probated here because foreign judgments do not have automatic extraterritorial effect BUT there is no need to prove all over again the due execution of the will, it being enough to ask the Philippine court for the enforcement of the foreign judgment on probate abroad

What is the Administration of Estate?
Duties of the representatives of the deceased person in bringing the estate of the deceased into a position in which he may safely distribute the balance or residue after payment of debts to the persons beneficially entitled

Who are the persons in charge of administration of the estate?
1. Executor – one appointed in the will (given letters testamentary)
2. Administrator – one appointed by the court if there is no will (given letters of administration)
3. Administrator with a will annexed - one appointed by the court if there is a will but does not name an executor or named one but the latter is incompetent or unwilling

Who cannot serve as executors or administrators?
1. Minors
2. Non-residents of the Philippines
3. Persons in the opinion of the Court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude (Rule 78 Sec 1, ROC)

What are the principal duties of an executor or administrator?
1. To file a bond
2. To make within 3 months a true and complete inventory
3. To administer the estate
4. To collect all accounts receivable and to pay all debts and taxes
5. To pay allowances to the surviving spouse and children
6. To maintain in tenable repair the houses and other structures and fences belonging to the estate
7. To prepare a project of partition
8. To render a true and just account of his administration within 1 year and at any other time when required by the Court
9. To perform all orders of the Court required of him

What is an Auto-Contract?
Contract whereby an executor or administrator of an estate appoints himself as agent of the said estate, this is VOID

Kinds of Administrators
1. Domiciliary or Principal – administrator in state where testator was domiciled at the time of his death
2. Ancillary – administrator in other states

What law governs Administrartion?
Lex fori NOT national law

What is a Trust?
Fiduciary relationship concerning property which obliges the person holding it to deal with the property for the benefit of another

Who has legal title in the property in trust?
Trustee or holder NOT the guardian, administrator or executor

Kinds of Trust
1. Express – created by parties or intention of testator
2. Implied – created by operation of law (Art 1441, CC)

How can an Express Trust be created?
1. Act mortis causa – will
2. Act inter vivos – writing, deed or meeting of minds

As long as the trust is in writing because "no express trust concerning an immovable or any interest therein may be proved by parol evidence" (Art 1443, CC) BUT this is only for enforceability and not for validity

How can an Express Trust be terminated?
1. Mutual agreement
2. Expiration of term of the trust
3. Fulfillment of the resolutory condition
4. Rescission or annulment
5. Loss of the subject matter of the trust (physical loss or legal impossibility)
6. Order of the court (as when purpose of the trust is frustrated)
7. Merger
8. Accomplishment of the purpose of the trust

What law governs the validity (extrinsic and intrinsic) of trusts?
Lex fori

CHAPTER 21
OBLIGATIONS AND CONTRACTS

What is an Obligation?
Juridical relation whereby a person (called a creditor) may demand from another called a debtor the observance of a determined conduct (the giving, doing or not doing) and in case of breach, may demand satisfaction from the assets of the latter

What is a Contract?
Meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service (Art 1305, CC)

What is Form?
External side of the making of the contract, the means of signifying consent, the expression as opossed to the content of the legal declarations

What law governs the Formal or Extrinsic Validity of contracts?
General Rule
"The forms and solemnities of contracts, wills and other public instruments shall be governed by the laws of the country in which they are executed" (Art 17, CC), in other words the LEX LOCI CELEBRATIONIS

What are the reasons for applying lex loci celebrationis?
1. Sovereignty - an obligation originates in a territory of a sovereign and therefore depends on the conditions imposed there
2. Voluntary submission – parties by entering into a contract deemed to have voluntary submitted themselves to the law of the place where the contract was formally executed
3. Business expedience and convenience

Is the application compulsory?
Old rule: Yes
New rule (Second Restatement): No, formalities of contract governed by law chosen by parties and place where contract executed
Philippine rule:
Optional approach when re: formal validity of wills (Art 816, CC)
Compulsory approach when contracts (Insular Government vs Frank)

What is the place of execution when a contract is entered into by overseas telephone or by exchange of cablegrams?
Contract is presumed to have been entered into the place where the offer was made (Art 1319 par 2, CC)

Exceptions
1. If involves sale of property – lex situs
2. If contract is celebrated in a foreign country but within the premises of the Philippine embassy or consulate in said foreign state (consular contracts) – Philippine law through the principle of exterritoriality

Exterritoriality vs Extraterritoriality

Exterritoriality		**Extraterritoriality**
Virtue by which foreign persons and their things are exempted from the jurisdiction of a State on the theory that they form an extension of the territory of their own state	**Definition**	Exemption of foreign persons from laws and jurisdictions of the state in which they presently reside, an exemption which can exist only by virtue of a treaty stipulation to this effect
Exemption of persons and things	**Scope**	Exemption of persons only
Premised on international custom	**Source**	Exist only because of a treaty

What is Capacity?
Power of a party to bind himself effectively by contract

What law governs the Capacity of the Parties (to contract)?
General Rule
National law (Art 15, CC)

Exception
1. Alienation and encumbering of properties (real and personal) – lex situs (Art 16 par 1, CC)
2. Contract entered into in the Philippines – Philippine law
3. Performance in the Philippines AND public policy on matter will be jeopardized – Philippine law

What is Essential or Intrinsic Validity?
Nature, content and effects of the contract

What law governs the Intrinsic Validity of contracts?
Lex contractus (proper law of the contract) which is either agreed upon by the parties (Lex loci voluntatis) or intended by them expressly or impliedly (lex loci intentionis)

What law governs the Intrinsic Validity of contracts?
Second Reinstatement of 1969
The essential validity of a contract is to be determined by the law chosen by the parties, and in the absence thereof, by the law of the State which has the most significant relationship to the parties or transaction

Philippine Law
Same as Second Reinstatement but with additional limitation --- not against the law, morals or public policy of the forum (Philippines)

Can the parties select a law which is not where the contract is executed or celebrated (no connection to transaction)?
Yes, PROVIDED the choice of law is not just in the spirit of adventure or to provide mental exercise for the judge
For example the place of execution and celebration have unknown legal systems, it is possible for them to use the law of a place generally known

Is there an instance when the law selected by the parties is not to be followed?
Yes, if the law which the parties select declares the said contract as void and if the law which the parties select contravenes public policy

Pakistan International Airlines vs Ople
Stipulation in employment contract of 2 Filipina stewardesses which specifies the law of Pakistan as the applicable law of the agreement and lays the venue for the settlement of any dispute arising out of the agreement only in the courts of Pakistan
SC: Stipulation void being contrary to Philippine labor laws, thus, Philippines is still the proper forum for resolution of disputes between the parties

Note: Same ruling applies to adhesion contracts

Factors to Determine Implied Agreement of Parties (as to the law to be applied)

1. Law having most substantial connection with the transaction
2. Nationality and domicile of parties
3. Law most favorable for the effectivity of the contract

How can the parties be said to impliedly agree to a law to be applied?
When the contract does not refer to any law but contains legal expressions peculiar to a particular law

What is the 'Center of Gravity' or 'Grouping of Contracts' Approach?
Applies the law where the transaction has its center of gravity or the most important connection

Factors to Determine State Having Most Substantial Connection with the Transaction

1. Place of negotiation
2. Place of contracting
3. Location of subject matter
4. Place of performance
5. Domicile, residence, nationality, place of incorporation and place of business of the parties

Note: When the place of negotiation and performance are in the same State, the law of this State is usually applied

What are the limitations in choosing the law to govern a contract?

1. May be made expressly or impliedly
2. May choose more than one law but one law must govern a different element of the transaction
3. Cannot select a law that has no connection with the transaction
4. If selected law changes, it is the law as changed that will apply
5. While parties may stipulate on proper law, they cannot stipulate on jurisdiction of courts

What if under the law selected the contract is legal but in the place of performance it is illegal?
The contract is still legal

Other Theories on What Should Govern Intrinsic Validity

Theory	Advantages	Defects
1. Theory of Lex Loci Celebrationis	Place of execution easily ascertained	-Makes possible the evasion of national law -Place of contracting may have very little substantial connection with the transaction
2. Theory of Lex Nationalii		-Lex Nationalii may not be easily determined -Investigation of Lex Nationalii may be time consuming -Nationality of parties may be different
3. Theory of Lex Loci Solutionis	Inherent and natural connection of the place of performance with the contract itself	-May be different places of performance -Place of performance may not have been previously fixed

What is the Theory of Prof Minor?
Different laws govern different parts of the contract

1. Perfection – lex loci celebrationis (where celebrated)
2. Sufficiency and validity of cause or consideration – lex loci considerationis (where consideration located)
3. Questions of performance – lex loci solutionis (place of performance)

Illustration
X and Y entered into a contract in Madrid Spain
X would construct for Y an apartment in Manila
Consideration is Y's house and lot in San Francisco
What laws would govern…
Perfection – Spanish law (lex loci celebrationis)
Sufficiency and validity of cause or consideration – California law (lex loci considerationis)
Questions of performance – Philippine law (lex loci solutionis)
But validity of contract in general will be governed by Philippine law (lex situs)

What are the conflict rules for Specific Contracts?

Specific Contract	Extrinsic Validity	Capacity of Parties	Intrinsic Validity	Others
Sales and Barter	Lex situs			
Lease of Property	Lex situs			
Lease of Services	Lex loci celebrationis	National law	Lex voluntatis or lex loci intentionis	n/a
Contract of Common Carriage of Goods	Fixed situs of carrier (depot or resting place)			Liability for loss, destruction or deterioration of goods in transitu - Law of destination
Contract of Agency	Lex loci celebrationis (unless the agency deals with conveyance or encumbering property in which case lex situs applies)	National law of the praties (unless the agency deals with conveyance or encumbering property in which case lex situs applies)	Lex loci voluntatis or lex loci intentionis (unless the agency deals with conveyance or encumbering property in which case lex situs applies)	n/a
Simple Loan (Mutuum)	Lex loci celebrationis	National law	Lex loci voluntatis or lex loci intentionis	
Commodatum	Lex situs			
Pledge, Chattel, Real Mortgage and Anti-chresis	Lex situs			
Guaranty and Suretyship	Lex loci celebrationis	National law	Lex loci voluntatis or lex loci intentionis	

What are the conflict rules for Specific Contracts?

1. Money Deposits – place of the banking or financing institution
2. Contracts with Arbitration and Choice-of-Forum Clauses – what provision provides HOWEVER if its effect is to oust the jurisdiction of the local courts, it is unenforceable
3. Air Transportation Contracts – Warsaw Convention

CHAPTER 22
TORTS (QUASI-DELICTS)

SYNOPSIS OF CONFLICTS RULES

FACTUAL SITUATION	*POINT OF CONTACT*
Liability and damages for torts in general NOTE: The *locus delicti* (place of commission of torts) is faced by the problem of characterization. In *civil law* countries, the *locus delicti* is generally *where the act began*; in *common law* countries, it is where the *act first became effective*.	*Lex loci delicti commissi* (law of the place where the *delict* was committed) NOTE: Liability for foreign torts may be enforced in the Philippines if: (c) the tort is not penal in character (d) if the enforcement of the tortious liability will not contravene our public policy (e) if our judicial machinery is adequate for such enforcement

Definition of Tort
It is a legal wrong committed upon another's person or property independent of a contract.

Article 20, NCC
Article 20 of the Civil Code: Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

This article embraces two concepts of tort:
1. Spanish Tort
   - based on *culpa aquiliana* or negligence
   - Art. 2176, NCC: Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done.
2. American Tort
   - based on malice and willful intent

Reasons for the Lex Loci Delicti Commissi Rule
1. The state where the social disturbance occurred has the primary duty to redress the wrong, and to determine the effects of the injury;
2. The law of said state must be presumed to have been foremost in the mind of the parties concerned; thus, they acted with knowledge of the resultant consequences under said law.

Characterization of the Locus Delicti
1. Civil Law Theory
   - the *locus delicti* is where the act began
   - this is because rules on tort are intended to regulate human conduct; hence a person who willfully or negligently acts contrary to social norms must be held liable for any injury caused.
2. Common Law Theory
   - the *locus delicti* is where the tortious act first became effective
   - the reason is until there is produced some effect, some result, no injury to wrong has really been committed, despite the disregard of human norms.
   - The law on torts seeks to give protection and redress; without injury, there is no necessity for judicial intervention and relief.
3. Dr. Rabel's Theory
   - the *locus delicti* is the place which has the most substantial or essential connection with the act

SPECIAL RULES
1. If the tort is committed aboard a *public* vessel, whether on the high seas or in foreign territorial waters, the country to which the vessel belongs is the *locus delicti*; the law of the flag is thus the *lex loci delicti commissi*.
2. If the tort takes place aboard a *private* or *merchant* vessel on the *high seas*, the law of the flag is likewise the *lex loci delicti commissi.*
3. If the tort concerns property, whether real or personal, the *lex situs* is usually also the *lex loci delicti commissi.*
4. Maritime Torts
   (a) If the colliding vessels are of the same state, or carry the same flag, said law is the *lex loci delicti commissi.*
   (b) If the vessels come from different states, whose laws however, on the matter are identical, said laws constitute the *lex loci delicti commissi.*
   (c) If the vessels come from different states with different laws, the *lex loci delicti commissi* is the general maritime law as understood and applied by the forum where the case is tried.

Enforceability of Foreign Torts in the Philippines
In the Philippines, foreign torts may properly be the subject of suits provided following conditions are present, aside from the requisite that our courts must have jurisdiction over the case:
1. The foreign tort must not be penal in character;
2. The enforcement of the tortious liability will not contravene our public policy; and

3. Our judicial machinery must be adequate for such enforcement.

Application by Philippine Courts of the Proper Lex Loci Delicti Commissi

Once our tribunals find themselves confronted with the properly proved and pleaded *lex loci delicti commissi*, sad law will now be used to govern, among other things, the following points:

1. The proper prescriptive period;
   Sec. 48 of the Code of Civil Procedure: If, by laws of the state or country where the cause of action arose, the action is barred, it is also barred in the Philippine Islands.
2. The proper parties;
3. Whether or not the act is considered the proximate cause of the injury;
4. The measure of damages, except punitive ones;
5. The burden of proof and the defenses that may be interposed.

Definition of Tort

- Tort, which is a common law term, has no exact equivalent in civil law.
- Roman law used the term "quasi-delict" to cover cases where, although there was no intention nor fault, liability was imposed on grounds of expedience.
- In many civil law countries, the term "delict" is usually confined to intentional injuries.
- Quasi-delict refers to injury caused by negligence.
- In Anglo-American law, there is no such distinction. The term tort covers both (1) intentional and negligent injury and (2) strict liability.
- Philippine law on torts represents the blending of civil and Anglo-American concepts.
- See Arts. 19-21, 2176, 2180, and 2187 of the NCC.

Two-Fold Purpose of Tort Rules

(1) To deter other wrongdoers; and
(2) To compensate the injured persons.

Place of Wrong

- The traditional rule was simply the recognition by the forum that where all the elements of a tortious act occurred in one State, the law of the latter should logically be referred to for the purpose of determining the existence and consequences of the tort.
- However, due to the complexities of present-day society, the damage or harm complained of may result from a series of acts or events transpiring in different states. Determining the place of wrong may be quite difficult to answer.
- The civil law rule, considers the *locus delicti* as the place where the alleged tortious conduct was carried out by the defendant.
- Under the traidional American rule, the wrong is considered done in the place where the injury is sustained. This rule is in line with the vested rights theory. The inured person acquired a vested right only when a cause of action arises; such cause of action is born only when injury is sustained. Hence, the tort must be localized at the place of the last event.

Modern Theories and Rules on Tort Liability

(1) The German rule of elective concurrence
(2) The "State of the most significant relationship" rule
(3) State-interest analysis
(4) Caver's Principles of Preference

German Rule

- Tort is committed in both the place where the actor engages in his conduct and in the place where the effects of his conduct occur.
- Under this approach, "a place of tort is assumed to be wherever an essential part of the tort has been committed."

State of the Most Significant Relationship Rule

- The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties.
- In deterermining the State which has the most significant relationship, the following contacts are to be taken into account:
  (a) the place where the injury occurred;
  (b) the place where the conduct causing the injury occurred;
  (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and
  (d) the place where the relationship, if any, between the parties is centered.
- The Second Restatement lays down separate rules for different torts and for different issues in tort; the identity of the State of the most significant relationship depends upon the nature of the tort and upon the particular issue.
- The place of injury is of particular importance in cases of personal injuries and of injuries to tangible things, in false imprisonment, malicious prosecution, and abuse of process.
- The principal location of the defendant's conduct may have the greater weight in cases of fraudulent representation, or of unfair competition.
- In situations involving multi-state publication of matter that injures the

plaintiff's reputation, his place of business may be the most important contact in determining the applicable law.

State-Interest Analysis

- All relevant and governmental concerns of a state in an issue, not only as a sovereign in a set of facts or an entity but **as a repository of justice**, must be considered by a court of law in determining which law to apply.
- The first step in the analysis is to separate false or spurious conflicts from true conflicts. There is a false conflict when two or more States – having some connection with the event or the parties – have tort rules pointing to different results, but upon analysis of the purposes underlying the divergent rules, it becomes apparent that the purpose of only one of them would be advanced by its application in the case.
- Where the forum can assert an interest in the application of its law, the forums should apply its own internal law.
- Where the forum is a disinterested forum, the court should generally dismiss the case on the ground of *forum non conveniens*.
- Criticisms on the State-Interest Analysis
    (1) The forum may be led to exaggerate its own policies and interests in order to justify application of its own law to conflicts problems.
    (2) Its terminology is unfortunate.
    (3) In the absence of choice-of-law rules, how ill courts be guided in the resolution of genuine conflicts cases?

Caver's Principles of Preference

- When a State has no statutory provision as to the law that should regulate the question of tort liability in conflicts cases, its courts should be guided by certain rules in determining which of the conflicting rules should apply to an alleged tort.
- Four suggested principles:
    (1) Where the liability laws of the State of injury set a higher standard or conduct or of financial protection against injury than do the laws of the State where the person causing the injury has acted or has his home, the laws of the State of injury should determine the standard and the protection applicable to the case, at least where the person injured was not so related to the person causing the injury that the question should be relegated to the law governing their relationship.
    (2) Where the liability of the laws of the state in which the defendant acted and caused injury set a lower standard of conduct or of financial protection that do the laws of the home State of the injured person, the laws of the State of conduct *and* injury should determine the standard of conduct or protection applicable to the case, at lease where the injured person was not so related to the defendant that the question should be relegated to the laws governing their relationship.
    (3) Where the State in which a defendant has acted has established special controls, including the sanction of civil liability, over conduct of the kind in which the defendant was engaged when he caused a foreseeable injury to the plaintiff in another State, the plaintiff, though having no relationship to the defendant, should be accorded the benefit of the special standard of conduct and of financial protection in the State of the defendant's conduct, even though the State of injury had imposed no such controls or sanctions.
    (4) Where the law of a State in which a relationship has its seat has imposed a standard of conduct or of financial protection on one party to that relationship for the benefit of the other party which is higher than the like standard imposed by the State of injury, the law of the former State should determine the standard of conduct or financial protection applicable to the case for he benefit of the party protected by the State's law.

Philippine Conflicts Rule on Tort Liability

- We do not have any codal or statutory provision regarding tort liability which is affected by the laws of two or more States.
- If the Philippines has an interest other than as a forum, and if our internal law on torts is in conflict with the law of another State, a Philippine court should resolve the conflict by the following method:
    (1) First, ascertain and weigh the purpose underlying the tort law of the forum as applied to the particular case.
    (2) Second, examine and weigh the interests of the other State. If Philippine courts finds that the Philippines has a substantial connection with the parties or the operative facts and that our internal law on tort embodies a social or economic policy which will be advanced by its application to the case, it should not hesitate to apply the law of the forum. Otherwise, it should apply the law of the other State.

Enforcement of Claim for Foreign Tort

- As a general rule, an action for a foreign tort may be brought in any place where the defendant may be served with process or is subject to suit.
- In Anglo-American law, there is one tort action that is considered local,

so that recovery is not allowed outside the State where the wrong occurred. This constitutes an exception to the general rule and involves "action for trespass to foreign realty."

Tort Liability Arising from Acts of Official Torture

- There now exists an international consensus that recognizes basic human rights and obligations owed by all governments to their citizens.
- Official torture is now prohibited by the law of the nations.

CHAPTER 23
CRIMES

SYNOPSIS OF CONFLICTS RULES

FACTUAL SITUATION	*POINT OF CONTACT*
Essential elements of a crime and penalties therefore	Generally were committed (*locus regit actum*) *Theories as to What Court has Jurisdiction* (a) Territorial theory – where the crime was committed (b) Nationality or Personal theory – country of which the criminal is a citizen or a subject (c) Protective theory – any state whose national interests may be jeopardized has jurisdiction so that it may protect itself (d) Real theory – any state whose penal code has been violated has jurisdiction, whether the crime was committed inside or outside its territory (e) Cosmopolitan or Universality theory – the state where the criminal is found or which has his custody has jurisdiction (f) Passive Personality theory – the state of which the victim is a citizen or subject has jurisdiction NOTE: In the Philippines, we follow the *territorial theory* in general; by way of exception, Art. 2 of the RPC stresses the *protective theory*.
The *locus delicti* certain crimes: (a) Frustrated and consummated homicide, murder, infanticide, and parricide (b) attempted homicide, murder, infanticide, and	 (a) where the victim was injured (not where the aggressor wielded his weapon (b) where the intent victim was (not where the aggressor was situated) –

parricide	so long as weapon or the bullet either touched him or fell inside the territory where he was
(c) bigamy	(c) where the illegal marriage was performed
(d) theft and robbery	(d) where the property was unlawfully taken from the victim (not the place to which the criminal went after the commission of the crime)
(e) estafa or swindling though false representations	(e) where the object of the crime was received (not where the false representations were made)
(f) conspiracy to commit treason, rebellion, or sedition	(f) where the conspiracy was formed (not where the overt act of treason, rebellion or sedition was committed)
NOTE: Other conspiracies are *not* penalized by our laws.	
(g) libel	(g) where published or circulated
(h) continuing offense	(h) any place where the offense begins, exists or continues
(i) complex crimes	(i) any place where any of the essential elements of the crime took place

Definition of Crimes

- Crime – an act or omission punishable by law
- Felony – transgression against our Revised Penal Code
- Offense – transgression against a special law
- Infraction – transgression against a local or municipal ordinance

Crimes v. Torts

Crimes	Torts	Similarities
Offenses against the state	Violate private rights	Both are unlawful acts requiring redress
Prosecuted in the name of the state	Instituted in the name of the aggrieved party	Crimes require criminal intent for offenses of deceit and malice; torts based on malice (American concept of tort) fundamentally insist on intent
Requires proof of guilt beyond reasonable doubt	Mere preponderance of evidence would suffice to obtain judgment for the plaintiff	Crimes *mala prohibita* and crimes of negligence or imprudence do not necessitate criminal intent; torts based on negligence or *culpa aquiliana* or *quasi-delicts* cannot be premised on intent
Purposes: punishment, reformation, exemplarity and deterrence	Purposes: civil indemnification	Both crimes and torts, governed as they are by *lex loci delicti*, have their respective defenses

Characterization

Whether an act is a tort or a crime depends on the characterization accorded the actuation in the sate where it is committed. In the Philippines, certain acts may be BOTH torts and crimes.

Theories as to What Tribunal has Jurisdiction to Take Cognizance of Criminal Cases (Theories on Extra-Territorial Competence)

1. Territorial Theory
2. Nationality or Personal Theory
3. Protective Theory
4. Real Theory
5. Cosmopolitan or Universality Theory
6. Passive Personality Theory

TERRITORIAL THEORY

- Under this theory, the state where the crime was committed has jurisdiction to try the case; the penal code it will apply will be its own; the penalties to be meted out will also depend on its own law.
- In general, it is the theory that is adhered to in the Philippines.
- In some countries, the territorial principle includes:
  - (a) Subjective Territorial Principle – the state has jurisdiction to prosecute crimes *begun* within the state but *completed* abroad.
  - (b) Objective Territorial Principle – the state can prosecute offenses *begun* abroad but completed in its territory.

NATIONALITY THEORY/PERSONAL THEORY/ACTIVE NATIONALITY PRINCIPLE

- Under this theory, it is the country of which the criminal is a citizen or a subject has jurisdiction to try him for the offense he is supposed to have

committed, whether the effectuation of the act be inside or outside its territory, provided that the act is a crime under his country's penal law.
- According to this theory, penal laws follow a citizen or subject wherever he may be and wherever the crime was committed, even if this be outside of the territorial jurisdiction of his own native land.

PROTECTIVE THEORY
- Under this theory, any state whose national interests may be jeopardized has jurisdiction over criminal offenses, even if committed outside of its territory, and in some cases, even if committed by an alien in order that it may protect itself.
- By way of exception, this principle finds support in Art. 2 of the RPC.

REAL THEORY/ECLECTIC THEORY
- Under this theory, any state whose penal code has been transgressed upon has jurisdiction to bring to justice the perpetrators of the offense, whether the crime was committed inside or outside of its own territory.
- It demands authority over ALL crimes committed against a state's penal statutes so long as any *substantial* contact is made with the state.
- Examples: piracy, slavery, drug trafficking, immoral traffic in women and children, war crimes

COSMOPOLITAN/UNIVERSALITY THEORY
- Any state where the criminal is found or which has custody over him is vested with jurisdiction to try him for the crime he is alleged to have committed – unless extradition is possible.

PASSIVE PERSONALITY/PASSIVE NATIONALITY THEORY
- Under this theory, the state of which the victim is a citizen or subject has jurisdiction.
- Reason: A wrong having been inflicted on its citizen or subject, a state is duty bound to seek justice by criminally prosecuting the offender.

Philippine Theory in Criminal Law
- As a general rule, the Philippines follows the territorial theory.
- By way of exception, the Philippines also occasionally make use of the protective theory.
- Philippines' penal legislation is considered to be endowed with the principle of *generality* – that is, regardless of the nationality of the criminal, we consider him subject to our criminal processes.
- Art. 14 of the NCC: Penal laws and those of public security and safety shall be obligatory upon all who live and sojourn in Philippine territory, subject to the principles of public international law and to treaty stipulations.
- Art. 2 of the RPC: Except as provided in the treatises and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere; its interior waters and maritime zone, but also outside of its jurisdiction, against those who:
  (1) Should commit an offense while on a Philippine ship or airship;
  (2) Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;
  (3) Should be liable for acts connected with the introduction into these Islands of the obligations mentioned in the preceding number;
  (4) While being public officers or employees, should commit an offense in the exercise of their official functions;
  (5) Should commit any of the crimes against national security.

Crimes Committed Aboard Public Vessels
- Whether the crime committed aboard a public vessel took place on the high seas or within our territorial waters, the country whose flag the vessel carries has jurisdiction on the theory that the vessel in an extension of the territory of the said state.

Crimes Committed Aboard Private or Merchant Vessels
- If the crime committed aboard a private or merchant vessel occurred on the *high seas*, the country of the flag of the vessel has jurisdiction.
- If the crime aboard a private or merchant vessel o f a foreign state took place *inside* Philippine territorial waters – two theories have generally been used to determine the question of jurisdiction: the English rule (which emphasizes territorial principle) and the French rule (which stresses the nationality theory).

  (a) The English Rule – Here the territory where the crime was committed will have jurisdiction except:
    (1) in matters relating to the internal order and discipline in the vessel; and
    (2) those which affect solely the ship and its occupants as minor or petty criminal offense by members of the crew.
  (b) The French Rule – Here, the state whose flag is flown by the vessel, would have jurisdiction EXCEPT if the crime affects the peace, order, security, and safety of the territory.

CHAPTER 24
JURIDICAL PERSONS

What is a Corporation?
Artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incident to its existence (Sec 2, Corporation Code)

Advantages of Doing Business Through a Corporation
1. Limitation of individual liability of shareholders
2. Transferability of shares
3. Capacity to act as a legal unit, to hold and own property, to contract, to sue and be sued as a separate entity
4. Continuity of existence
5. Centralized management and standardized methods of organization and financing

Theories on the Personal or Governing Law of a Corporation
1. Law of the Place of Incorporation
2. Law of the Place or Center of Management
3. Law of the Place of Exploitation

What is the Law of the Place of Incorporation?
Personal law of a private corporation is governed by the law of the place of incorporation premised on the idea that a corporation is merely a creature of the law under which it was organized and without such law granting existence, it would be a non-entity

What is the defect of the Law of the Place of Incorporation?
Makes possible the evasion of many responsibilities by the simple expedient of a company organizing in one state and performing its corporation functions in another

Who follows the Law of the Place of Incorporation?
England, United States, Russia, German and in a modified way, the Philippines

What is the Law of the Place or Center of Management?
Personal law of a private corporation is governed by the place where officers of the corporation exercise the functions of management and control (through board meetings)

Where is usually the Place or Center of Management?
1. Where technical work is done
2. Where headquarters or its chief executive office is

What is the defect of the Law of the Place or Center of Management?
Difficulty may arise when the board meets in different states which of course may be cured by express reference to its AOI or by-laws

Who follows the Law of the Place or Center of Management?
Almost all civil all countries

What is the Law of the Place of Exploitation?
Personal law of a private corporation is governed by the law of the place principally affected by its activities

What are the defects of the Law of the Place of Exploitation?
1. Corporation may have its enterprise scattered in all parts of the world
2. Physical acts are not as important as the decisions arrived at board meetings

Why is important to determine the personal law of a corporation?
1. Apply protectionist economic restrictions
2. Define an enemy corporation
3. Qualify an enterprise for economic assistance, exemptions, incentives or subsidies or for national treatment
4. Entitle it to diplomatic protection

What is the theory followed in the Philippines?
<u>General Rule</u>
Law of Place of Incorporation based on "For the purposes of this Code, a foreign corporation is one formed, organized or existing under any laws other than those of the Philippines and whose laws allow Filipino citizens and corporations to do business in its own country or state (Sec 123, Corporation Code)

<u>Exception</u>
1. For Constitutional Purposes (natural resources, media, retail)
2. For Wartime Purposes

What does the personal law of a corporation govern?

1. Requisites for the formation of the corporation (but not pre-corporation contracts such as those entered into by promoters preliminary to the incorporation of the company)
2. Kinds of stocks allowed
3. Transfer of stocks
4. Issuance, amount, and legality of dividends
5. Powers and duties of members, stockholders and officers

What law governs the validity of corporate acts?
Law of the place of incorporation AND law of the place of performance

What corporate acts can a corporation engage in?
General Rule
Any activity

Exceptions
1. Prohibited by law or statute (i.e. Constitution)
2. Against public policy
3. Extraordinary or special franchise (i.e. public utilities)
4. Not authorized by place of incorporation

What is required of foreign corporations in order to be able to 'transact business' in the Philippines?
License

What is the effect if the foreign corporation enters into a contract in the Philippines without the required license?
Contract is still valid but unenforceable

What law governs a corporation's right to sue and amenability to court processes?
Lex fori

What is the Philippine law on a foreign corporation's right to sue and amenability to court processes?
1. If doing business – must have license to sue
2. If not doing business – can sue without license
3. If sues merely on isolated acts – can sue without license
4. If transacts business outside Philippines – can sue without license

What does a foreign corporation need to sue in the Philippines?
General Rule
Needs a license to sue

Exceptions
1. Isolated transactions
2. Protection of intellectual property (trademarks, unfair competition, etc)
3. Transactions made and executed outside of the Philippines
4. Mere counterclaim

When is a foreign corporation 'doing business'?
When it transacts therein in some substantial part of its ordinary business which is continuous in character as distinguished by merely casual or occasional transactions

Transaction	Doing Business
First time transports merchandise to the Philippines although previously its vessel had been chartered to transport rice to the Philippines	No
Foreign corporation which owns the controlling interest of a domestic corporation (even when it tries to sell its own shares here in the Philippines)	No
Resident agent of foreign corporation entered into contract of sale of goods cif Pacific Coast (contract consummated in US)	No
Foreign corporation sells its goods in the Philippines through a resident merchant on commission basis	No
Foreign corporation sells its goods in the Philippines through an exclusive distributing agent	Yes
Foreign corporation sells its goods in the Philippines through a resident agent whose business is to solicit orders and sell the corporate goods forwarded to it by the corporation for delivery to the buyers	Yes
Foreign corporation issues marine	Yes

policies abroad to cover Philippine-bound cargo, makes policies payable in the Philippines, and appoints and keeps an agent here	
Foreign corporation takes part of bidding in the Philippines	No

Who determines whether a foreign corporation is doing business?
Law of forum

What did ma'am say about 'doing business' in the Philippines?
Doing business is determined not by the frequency of transaction but relation to the corporation's principal business or the corporation's intention to do it again

When is a foreign corporation doing business?
1. Soliciting orders
2. Service contracts
3. Opening offices (whether liaison or branches)
4. Appointing representatives or distributors
   Operating under full control of a foreign corporation
   Domiciled in the Philippines
   Stay in the Philippines for a period or periods totaling 180 days
5. Participating in management, supervision or control of any domestic business in the Philippines
6. Other act or acts that imply a continuity of commercial dealings or arrangements (Foreign Insvestments Act of 1991)

When is a foreign corporation NOT doing business?
1. Mere investment as a shareholder by a foreign entity in domestic corporations
2. Having a nominee director to represent its interests in such corporation
3. Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account
4. Publication of a general advertisement through any print or media
5. Maintaining a stock of goods in the Philippines solely for the purpose of having another entity process it in the Philippines
6. Consignment of a foreign entity of equipment with a local company used for processing foods for export
7. Collecting information in the Philippines
8. Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis

Can the court acquire jurisdiction over foreign corporations notwithstanding the absence of a license or a resident agent?
Yes, because if the defendant is a foreign corporation, or a non-resident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or if there be no such agent, on the government official designated by law to that effect, or on any of its offcers or agents within the Philippines (Rule 14 Sec 14, ROC)

What is the reason for this rule?
Jurisdiction depends on reasonableness in relation to the suit and activities or contacts with the forum and not on the absence or presence of license

Ways a Foreign Corporation May Be Subjected to Jurisdiction
1. License
2. Consent
3. Ownership of property in the State
4. Activities within or having an effect within a State

What law governs the dissolution of a corporation?
Law of place of incorporation

Where is the domicile of the corporation?
Place where its legal representation is established or where it exercises its principal functions (Art 51, CC)

Why is the determination of domicile important?
Purpose of determining the basis of assessment

When is a receiver appointed?
When there is a need to preserve the property of a private corporation or sequester it for the benefit of creditors

Who appoints the receiver?
State where corporation was incorporated

What is a Partnership?
Contract whereby two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves, or in order to exercise a profession (Art 1767, CC)

What law governs partnerships?
Law of the place where it was created

Where is the domicile of the partnership?
Place where its legal representation is established or where it exercises its principal functions (Art 51, CC)

When is a receiver appointed?
When there is a need to preserve the property of a private corporation or sequester it for the benefit of creditors

Who appoints the receiver?
State where corporation was incorporated

**Note: Same as corporations*

What are Foundations?
Combinations of capital, independent of individuals and organized principally for charitable, medical or educational purposes (non-profit purposes)

What law governs foundations?
Law of the place from which it is administered

What are Multinational Corporations?
Clusters of corporation with separate entities controlled by one corporation usually in a developed country

Can you sue the mother corporation for acts of local corporations?
According to ma'am, first determine whether mother corporation and local corporation are really separate entitles (pierce corporate veil)
If they are separate entities, you cannot sue BUT if they are just one entity (same payroll, same advertising), you can sue the mother corporation provided you acquire jurisdiction over the latter

How are Juridical Persons taxed?
1. Domestic and resident foreign – all sources
2. Licensed non-resident – sources in the Philippines only

What is Domestication?
Process whereby a state effects a change in the status of the foreign corporation, at least in legal effect

Does obtaining a license convert a foreign corporation into a domestic corporation?
No, it only becomes a domesticated corporation

Recognition of Foreign Business Association vs Granting of License
In recognition, the State merely admits the fact of legal personality of a business corporation but does NOT admit or involve the right of said business to do or transact business in the said State
In granting of license, the State permits the business corporation to do or transact business in the said State

Theories of Recognition
1. Territorial – no legal existence beyond sovereignty where it was created
2. International – has legal existence beyond sovereignty where it was created
3. (No name) - restricts admission of foreign corporations by imposing comprehensive examination, supervision and control of foreign enterprises

CHAPTER 4
THE NATURE AND PROOF OF FOREIGN JUDGMENTS

Nature of Foreign Judgments

- A foreign judgment does not itself have any extra-territorial application. For a foreign judgment to be made effective in our country, it is imperative that it be proved in accordance with our prescribe rules on the matter.

Recognition of Foreign Judgments v. Enforcement of Foreign Judgments

- For both recognition and enforcement, proof of the foreign judgment has to be presented.
- The requisites or conditions for the recognition or enforcement of foreign judgments must be present.

Recognition of Foreign Judgments	Enforcement of Foreign Judgments
It means that our courts will allow said foreign judgment to be presented as a defense to local litigation (the defense of *res adjudicate*).	Enforcement exists when a plaintiff wants the courts to positively carry out and make effective in the Philippines a foreign judgment.
It involves merely the sense of justice.	It implies a direct act of sovereignty.
It does not require either action or a special proceeding.	It necessitates a separate action or proceeding brought precisely to make the foreign judgment effective.
It may exist without foreign judgment.	It necessarily carries with it recognition.

Recognition of Foreign Judgments	Enforcement of Foreign Judgments
Given the same effect it has in the State where it was rendered with respect to the parties, the subject matter of the action and the issues involved	In addition to being recognized, a party is given affirmative relief to which the judgment entitles him
Extending the res judicata effect of a judgment obtained in one State to another State	
Does not necessarily imply recognition	Implies recognition

Basis of Recognition of Foreign Judgments

1. Comity and reciprocity
2. Legal obligation (vested rights)
3. Res judicata

Reasons why not all foreign judgments can be recognized or enforced in our country

1. The requisite proof thereof may not be adequate;
2. They may contravene our established public policies;
3. They may contradict one another;
4. In some countries, the administration of justice may be shockingly corrupt.

Requisites of a Valid Foreign Judgment Recognizable in the Philippines

1. Judgment in a judicial or quasi judicial action in a proper judicial proceeding before a court with jurisdiction
2. Valid and binding
3. Constitutes res judicata
4. State which rendered judgment practices reciprocity
5. If judgment consists of money, it must be fixed
6. Not contrary to public policy
7. Not obtained through fraud or collusion

Conditions and requisites before foreign judgments may be enforced and recognized in the Philippines

1. There must be proof of foreign judgment.
2. The judgment must be on a civil or commercial matter.
   - If it involves criminal, revenue, administrative, or remedial matter, the same would fall under the exceptions to the application of foreign law.
3. There must be no lack of jurisdiction, no want of notice, no collusion, no fraud, no clear mistake of law or fact.
   - Fraud here means extrinsic fraud (fraud based on facts not controverted or resolved in the case where the judgment was rendered.
4. The judgment must not contravene a sound and established public policy of the forum.
5. The judgment must be *res judicata* in the state that rendered it.
   - The requisites for *res judicata*:

a. The judgment must be final.
b. The court rendering the judgment must have jurisdiction over the subject matter and over the parties.
c. The judgment must be on the merits.
d. There must be identity of parties, of subject matter, and of cause of action (except to the cause of action, the real cause of action is now the recognition or enforcement of the foreign judgment on the original cause of action.

Effect of Failure to Plead or Prove Foreign Law

1. Court has alternative to dismiss the case.
2. Presumption of identity or similarity arises, namely that foreign law is the same as the domestic law (also called **Processual Presumption**).
3. Presumption arises that party acquiesced in having their controversy determined by the law of the forum.

Provisions of the Rules of Court on foreign judgments

- Rule 39, Section 50. Effect of foreign judgments. The effect of judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment is as follows:
    a. In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing;
    b. In case of judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.