

## INTRODUCTION<sup>1</sup>

**Definition of Law-** Law is an ordinance of reason promulgated by a competent authority for the common good of the body politic. [St. Thomas Aquinas]

Ergo, in his *magnum opus*, *Summa Theologica*, he wrote-

### Question 90- The Essence of Law

#### First Article

#### Whether law is something pertaining to reason?

We proceed thus to the First Article:

**Objection 1.** It would seem that law is not something pertaining to reason. For the Apostle says (Rom. vii. 23): see another law in my members, etc. But nothing pertaining to reason is in the members; since the reason does not make use of a bodily organ. Therefore law is not something pertaining to reason.

**Obj. 2.** Further, in the reason there is nothing else but power, habit, and act. But law is not the power itself of reason. In like manner, neither is it a habit of reason: because the habits of reason are the intellectual virtues of which we have spoken above (Q. LVII.) . Nor again is it an act of reason: because then law would cease, when the act of reason ceases, for instance, while we are asleep. Therefore law is nothing pertaining to reason.

**Obj. 3.** Further, the law moves those who are subject to it to act aright. But it belongs properly to the will to move to act, as is evident from what has been said above (Q. IX., A. i). Therefore law pertains, not to the reason, but to the will; according to the words of the Jurist (Lib. i. ff., De Const. Prin. leg.i.): Whatsoever please the sovereign, has force of law. On the contrary, it belongs to the law to command and to forbid. But it belongs to reason to command, as stated above (Q. XVII., A. i). Therefore law is something pertaining to reason.

**I answer that,** Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting: for *lex* (law) is derived from *ligare* (to bind), because it binds one to act. Now the rule and measure of human acts is the reason, which is the first principle of human acts, as is evident from what has been stated above (Q. I., A. i ad 3); since it belongs to the reason to direct to the end, which is the first principle in all matters of action, according to the Philosopher (Pbys. ii.). Now that which is the principle in any genus, is the rule and measure of that genus: for instance, unity in the genus of numbers, and the first movement in the genus of movements. Consequently it follows that law is something pertaining to reason.

**Reply Obj. 1.** Since law is a kind of rule and measure, it may be in something in two ways. First, as in that which measures and rules: and since this is proper to reason, it follows that, in this way, law is in the reason alone. Secondly, as in that which is measured and ruled. In this way, law is in all those things that are inclined to

something by reason of some law: so that any inclination arising from a law, may be called a law, not essentially but by participation as it were. And thus the inclination of the members to concupiscence is called the law of the members.

**Reply Obj. 2.** Just as, in external action, we may consider the work and the work done, for instance the work of building and the house built; so in the acts of reason, we may consider the act itself of reason, i.e., to understand and to reason, and something produced by this act. With regard to the speculative reason, this is first of all the definition; secondly, the proposition; thirdly, the syllogism or argument. And since also the practical reason makes use of a syllogism in respect of the work to be done, as stated above (Q. XIII., A. 3; Q. LXXVL, A. i) and as the Philosopher teaches (Ethic, vii. 3); hence we find in the practical reason something that holds the same position in regard to operations, as, in the speculative intellect, the proposition holds in regard to conclusions. Suchlike universal propositions of the practical intellect that are directed to actions have the nature of law. And these propositions are sometimes under our actual consideration, while sometimes they are retained in the reason by means of a habit.

**Reply Obj. 3.** Reason has its power of moving from the will, as stated above (Q. XVII., A. i) : for it is due to the fact that one wills the end, that the reason issues its commands as regards things ordained to the end. But in order that the volition of what is commanded may have the nature of law, it needs to be in accord with some rule of reason. And in this sense is to be understood the saying that the will of the sovereign has the force of law; otherwise the sovereign's will would savour of lawlessness rather than of law. [St. Thomas Aquinas, *Summa Theologica*]

Briefly, law pertains to reason, since law is the rule and measure of acts. However, to be more closer to home, reason is the measure of human acts. It is reason that directs an act to an end. Therefore, every act that is directed by reason (which in itself is the rule and measure) is the law of the genus which performed such act.

Therefore, killing is so reprehensible, illegal & immoral in the genus of man, since the primordial rule of human life as dictated by reason is survival. It would be against reason (the rule and measure of human acts) to unreasonably deprive a person of his precious life.

And to be precise, **Article III, Section 1 of the Philippine Constitution** provides: "No person shall be deprived of life, liberty, or property **without due process of law**, nor shall any person be denied the equal protection of the laws.

That is in Philosophy and now back to civil law!

**Law has two concepts, namely-**

**Derecho** – general or abstract concept of law

**Ley** – specific or material concept of law

<sup>1</sup> From SLU Reviewer and Professor Balane's Lecture Notes on Civil Law.

**Derecho:**

- ⊕ Science of moral rules
- ⊕ Founded on rational nature of man
- ⊕ Demandable and reciprocal
- ⊕ **Purpose:** govern the free activity of man for the realization of the individual and social ends

**Ley:**

- ⊕ A rule of human conduct
- ⊕ Promulgated by legitimate authority
- ⊕ Considered as obligatory and for general observance
- ⊕ **Purpose:** govern the relations of persons in society
- ⊕ It is founded upon the concepts of order, coexistence, and liberty

**Derecho divisions of law:** divine law and human law

**Ley divisions of law:** mandatory, prohibitory and permissive

**Civil law:**

- Mass of precepts
- Determines and regulates the relations of assistance, authority and obedience existing:
  - ⊙ Among members of a family
  - ⊙ Among members of a society
- Purpose: protection of private interest, family relations and property rights.

**Civil code:**

- Collection of legal provisions
- Regulates the private relations and determines the respective rights and obligations of the members of civil society
- With reference to persons, things and civil acts

**Language:** English text shall prevail in the interpretation; Spanish terms shall be interpreted according to their original sources.

**EFFECT AND APPLICATION OF LAWS**

Of course, reason would tell that a law which prohibits, prescribes, limits and defines the right of a person **must have a date of effectivity and must be made known to the people [publication]**, otherwise it becomes oppressive and whimsical.

Thus, in **Lara v. del Rosario**: The Civil Code of the Philippines took effect on Aug. 30, 1950. This date is exactly one year after the Official Gazette publishing the Code was released for circulation, the said release having been made on Aug. 30, 1949.

Corollary to the mandate that laws must have an effectivity date, Article 2 of the Civil Code provides-

**Effectivity of laws:** Laws shall take effect after 15 days following the completion of their publication in the Official Gazette, or in a newspaper of general circulation, unless otherwise provided (as amended by E.O. 200).

Clearly then, effectivity date is not only sufficient for the binding application of the law. It is the publication of the law which makes it binding and operative.

In **Tanada v. Tuvera** the phrase "unless otherwise provided..." refers to the date of effectivity and not to the requirement of publication, which cannot in any event be omitted; *publication is indispensable*.

Omission of publication would offend DUE PROCESS insofar as it would deny the public the knowledge of the laws that are supposed to govern them; Section 6 of the Bill of Rights recognizes "the right of the people to information on matters of public concern" is instructive.

The term "laws" should refer to ALL LAWS and not only to those of general application; Presidential Decrees and Executive Orders, Administrative rules and regulations must also be published if their purpose is to ENFORCE or IMPLEMENT EXISTING LAW including even those naming a public place after a favored individual or exempting him from certain prohibitions or requirements.

The circulars issued by the MONETARY BOARD must be published if they are meant not merely to interpret but to "FILL IN THE DETAILS" of the Central Bank Act.

**Interpretative regulations and those merely internal in nature**, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called Letters of Instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.

The **charter of a city** must be published notwithstanding that it applies to only a portion of the national territory and directly affects only the inhabitants of that place.

**PUBLICATION MUST BE IN FULL** or it is no publication at all since its purpose is to inform the public of the contents of the laws.

**Note:** before publication, cannot apply the law whether penal or civil. Why? How can you be bound if you don't know the law.

**Bar 1990: Effectivity of Laws-** After a devastating storm causing widespread destruction in four Central Luzon provinces, the executive and legislative branches of the government agreed to enact a special law appropriating P1 billion for purposes of relief and rehabilitation for the provinces. In view of the urgent nature of the legislative enactment, it is provided in its effectivity clause that it shall take effect upon approval and after completion of publication in the Official Gazette and a newspaper of general circulation in the Philippines. The law was passed by the Congress on July 1, 1990. Signed into law by the President on July 3, 1990, and published in such newspaper of general circulation on July 7, 1990 and in the Official Gazette on July 10, 1990.

**SUGGESTED ANSWER:**

- a. **As to the publication of said legislative enactment, is there sufficient observance or**

**compliance with the requirements for a valid publication? Explain your answer.**

Yes, there is sufficient compliance. The law itself prescribes the requisites of publication for its effectivity, and all requisites have been complied with. (Article 2, Civil Code)

**b. When did the law take effect? Explain your answer.**

The law takes effect upon compliance with all the conditions for effectivity, and the last condition was complied with on July 10, 1990. Hence, the law became effective on that date.

**c. Can the executive branch start releasing and disbursing funds appropriated by the said law the day following its approval? Explain your answer.**

No. It was not yet effective when it was approved by Congress on July 1, 1990 and approved by the President on July 3, 1990. The other requisites for its effectivity were not yet complete at the time.

**PUBLICATION AND IGNORANCE OF THE LAW**

**Article 3** clearly provides that- "ignorance of the law excuses no one from compliance therewith"- if you want to be classic then in latin- *ignorantia legis neminem non excusat*.

**Why the rule?** This is a necessary rule for all civilized society. Otherwise it would be impossible to enforce the law. This is reasonable since it is very hard to determine whether or not a person really does not know the law, and without this rule there would be anarchy. To remedy the situation, the law sacrifices occasional harshness to prevent universal anarchy!

Moreover, per **Article 7, paragraph 1**- the violation of a law is not justified even if:

1. No one follows the law, e.g. nonpayment of taxes;
2. There is a custom to the contrary.

**Ergo**, these arguments do not hold water..."I do not know that there was a law punishing swindling"... "I did not follow the law, since everybody is not following the law"... I did not follow the law since my act is Valid according to our customs".

**Note: Article 3 applies only to ignorance of Philippine law.** It does not apply to foreign law. In Private International Law and Evidence- foreign laws must be alleged and proven even if it is applicable. Otherwise, the courts will presume the foreign law to be the same as Philippine.

Thus, **Processual presumption** arises if the foreign law is not properly alleged and proved; the presumption is that it is the same as our law.

**Laws covered by Article 3:** All domestic laws, mandatory or prohibitive, not to permissive or suppletory laws, and whether substantive or remedial.

**Mitigation of the Effects of Article 3**

Ignorance of fact eliminates criminal intent as long as there is no negligence; Ignorance of law is not an excuse for complying with the law.

**Purpose:** on grounds of expediency, policy, and necessity, to prevent evasion of the law.

**BAR 1996: Ignorance of the Law vs. Mistake of Fact-** Is there any difference in their legal effect between ignorance of the law and ignorance or mistake of fact?

**Suggested answer:** Yes, there is a difference. While ignorance of the law is not an excuse for not complying with it, ignorance of fact eliminates criminal intent as long as there is no negligence. In addition, mistake on a doubtful or difficult question of law may be the basis of good faith (Art. 526 NCC). Mistake of fact may, furthermore, vitiate consent in a contract and make it voidable (Art. 1390 NCC).

**Alternative answer:** Yes. Ignorance of the law differs in legal effect from Ignorance or mistake of fact. The former does not excuse a party from the legal consequences of his conduct while the latter does constitute an excuse and is a legal defense.

**PRINCIPLES IN LAW-MAKING**

**ARTICLE 4**

**General rule:** Laws shall have no retroactive effect.

**Exceptions:**

1. If the statute itself provide for retroactivity
  - Exception to the exception:
    - a. Ex post facto laws.
    - b. Laws which impair the obligations and contracts.
2. Remedial, as there is no vested right in procedural laws.
3. If the statute is penal in nature; provided it is favorable to the accused; provided further that the accused is not a habitual delinquent
4. Laws that are emergency and authorized by the police power of the state
5. Curative laws
6. If a substantive right be declared for the first time, unless vested rights are impaired.
7. Interpretative laws

**Vested Right:** A right or interest in property that has become fixed and established that it is no longer open to controversy.

**ARTICLE 5**

**General rule:** Acts executed against the provisions of mandatory or prohibitory laws shall be void.

**Exceptions:** When the law itself authorizes their validity, such as-

1. When the law makes the act merely voidable.
2. When the law makes the act valid but subjects the wrongdoer to criminal responsibility.
3. When the law makes the act itself void but recognizes legal effects flowing therefrom.
4. When the law itself makes certain acts valid although generally void.

**Mandatory Law-** one which prescribes some element as a requirement [i.e. wills must be written; forms of donations].

**Prohibitory Laws-** one which forbids something.

#### **ARTICLE 6**

If a person was given a right, he can waive such right. However, there can only be a waiver of right and not waiver of obligations. For example, a creditor can waive the loan but the debtor cannot waive his obligation.

There is no form required for a waiver since a waiver is optional. You can waive by mere inaction, refusing to collect a debt for example is a form of waiver.

However, for a waiver to be valid, these elements must be present:

1. Existence of a right
2. Knowledge of the existence of the right
3. An intention to relinquish the right
4. The waiver must not be contrary to law, public order, public policy, morals or good customs, or prejudicial to others with a right recognized by law.

**General rule:** Rights can be waived.

**Exception:** When the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.

**Rights which cannot be waived:**

- natural rights
- alleged rights (future rights)
- those which renunciation would infringe public policy
- those which renunciation is prejudicial to a third person with a right recognized by law

**Waiver:** intentional or voluntary relinquishment of a known right or such conduct as warrants an inference of the relinquishment of such right.

**Right:** the power or privilege given to one person and as a rule demandable of another.

**Elements of rights:**

1. Subject (persons) – active (one who has the right) and passive (bound to suffer the consequence of the enforcement of the right).
2. Object (things and services).
3. Efficient cause (the fact which gives rise to the legal relation).

**Kinds of rights:**

- **political** (participation of persons in the government of the state)
- **civil rights** - includes:
  1. human (rights intended to protect the human personality)
  2. family (the person as a member of a family)
  3. patrimonial (tend to the economic satisfaction of men and measurable pecuniarily)
  4. real (enforceable against the whole world)
  5. Personal (enforceable against a particular individual).

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**BAR 2004-** B. DON, an American businessman, secured parental consent for the employment of five minors to play certain roles in two movies he was producing at home in Makati. They worked at odd hours of the day and night, but always accompanied by parents or other adults. The producer paid the children talent fees at rates better than adult wages. But a social worker, DEB, reported to OSWD that these children often missed going to school. They sometimes drank wine, aside from being exposed to drugs. In some scenes, they were filmed naked or in revealing costumes. In his defense, DON contended all these were part of artistic freedom and cultural creativity. None of the parents complained, said DON. He also said they signed a contract containing a waiver of their right to file any complaint in any office or tribunal concerning the working conditions of their children acting in the movies. Is the waiver valid and binding? Why or why not? Explain. (5%)

**SUGGESTED ANSWER:** The waiver is not valid. Although the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, they may not do so if such are contrary to law, morals, good customs, public order, or public policy (Article 1306, Civil Code). The parents' waiver to file a complaint concerning the working children acting in the movies is in violation of the Family Code and Labor laws. Thus, the waiver is invalid and not binding. The Child Labor Law is a mandatory and prohibitory law and the rights of the child cannot be waived as it is contrary to law and public policy.

#### **ARTICLE 7**

It is a principle that congress cannot enact irrevocable laws. Thus, Article 7 is a sound provision since time moves forward and obsolescence of a law sets in when it no longer address the needs of society.

Only subsequent law can repeal prior laws and not vice versa, either through:

1. A repealing clause [express repeal]
2. Incompatibility of the subsequent and prior laws [implied repeal].

**Supremacy of the Constitution/Hierarchy of laws:**

When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.

Relative to repeal is the enactment of **General Law** and **special law**.

As a rule, if the general law was enacted prior to the special law, the latter is considered the exception to the general law.

However, if the general law was enacted after the special law, the latter remains unless:

1. There is an express declaration to the contrary.
2. There is a clear, necessary and irreconcilable conflict.
3. The subsequent general law covers the whole subject and is clearly intended to replace the special law on the matter.

In the case that the general law treats a particular matter in specific, while the special law treats such matter in general, the former will prevail.

Moreover, repeal is not the only mode where a law ceases since there are laws which, without any repeal, cease to have effect because they **lapse by their own terms**. A law may expressly provide that it shall be effective only for a fixed period.

**Effects of Repeal:** The law first repealed shall not be revived unless so expressly provided. But if the prior law was repealed, not expressly but by implication, the repeal of the repealing law will revive the prior law, unless the language of the last law provides otherwise.

**Implied repeals:** not favored. **Requisites:** the laws cover the same subject matter and the latter is repugnant to the earlier.

## INTERPRETATION OF A LAW

### ARTICLE 8

Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

Note, however, that only Supreme Court decisions establish jurisprudence; decisions of other judicial or quasi-judicial bodies are merely persuasive.

**Stare decisis:** Adherence to judicial precedents; it requires courts to follow the rule established in a decision; it is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument, and when another case involving the same point at issue arises, it should be decided in the same manner.

This principle, however, does not mean blind adherence. The duty of the Court is to abandon any doctrine found to be in violation of the law in force.

This provision taken from common law. Under the Civil Law tradition, the court merely applies the law. However since the Philippine legal system is a combination of civil law and common law, courts apply statutes as well as resort to the doctrine of precedent.

### ARTICLE 9

**Duty of the court to decide:** no judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of laws.

### ARTICLE 10

**Statutory construction:** In case of doubt in the interpretation or application of laws, it is presumed that the law-making body intended right and justice to prevail.

**What if the law is silent?** The court should render a decision based on justice as stated in Article 10.

### ARTICLE 11

Since laws are enacted for the purpose of preserving the harmonious relationship of people, it follows that **customs which are contrary to law, public order or public policy shall not be countenanced**.

**What if customs are not contrary to law?** The custom would be countenanced. However, this does not mean that the custom would have obligatory force.

Ergo, a **custom must be proved as a fact according to the rules of evidence** [Article 12].

**Custom:** a rule of human conduct established by repeated acts, and uniformly observed or practiced as a rule of society.

#### Requisites:

1. Proven as a fact, according to the rules of evidence (Art.12); there is no judicial notice of custom.
2. It must not be contrary to law, public order or public policy. Otherwise, it shall not be countenanced (Art. 11).
3. There must be a number of repeated acts.
4. The repeated acts must have been uniformly performed.
5. There must be a juridical intention to make a rule of social conduct.

Although the law does not specify the cases when custom is relevant in litigation. But in case custom is relevant, it should be proven.

Commentators say that custom is important in cases involving negligence. For example, if a kalesa in Manila is by custom supposed to have rattan baskets to prevent people from slipping, if a person slips because there is no rattan basket, then he can sue for negligence.

### ARTICLE 13

Since the law looks forward it is but proper to divide time into segments. This is crucial in enforcing one's rights since the law provides for the extinguishment of an obligation. Thus,

Article 13 has been superseded by Executive Order No. 292 [Revised Administrative Code].

**Section 31- Legal Periods.** Year shall be understood to be twelve calendar months; month of thirty days, unless it refers to a specific calendar month in which case it shall

be computed according to the number of days the specific month contains; day, to a day of twenty-four hours; and night from sunset to sunrise.

**Under E.O. 292-** a year is equivalent to 12 calendar months and not 365 days. Leap year is not considered.

**Computation of periods:** the first day shall be excluded, and last day included, unless the latter is a Sunday or a legal holiday, in which event, the time shall run until the end of the next day which is neither a Sunday or a legal holiday.

When the act and the period are CONTRACTUAL, the act must be done on the last day, even if the latter is a Sunday or a legal holiday.

## SCOPE OF APPLICATION

### ARTICLE 14

It is a principle of law that a law applies only to the territorial jurisdiction of the authority who had enacted it, save for some [territoriality], and applies also to all its people save for some who are immune from the application of such law [generality].

Thus, penal laws and those of public security and safety shall be obligatory upon all who live or sojourn in the Philippine territory, subject to the principles of public international law and to treaty stipulations [Article 14].

**Principle of Territoriality:** Penal laws and those of public security and safety shall be enforceable throughout the territorial jurisdiction of the Philippines, subject to the principles of public international law and to treaty stipulation.

**General rule:** Criminal laws apply only in Philippine territory.

**Exception: extraterritoriality principle-** criminal laws applies to the following even if they are outside the territorial jurisdiction of the Philippines against those who:

1. Commit an offense while on a Philippine ship or airship.
2. 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 and securities mentioned in the preceding number.
4. While being public officers or employees, should commit an offense in the exercise of their functions; or
5. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this code.- ex: piracy.

**Principle of Generality:** Penal laws and those of public security and safety shall be obligatory upon all who live or sojourn in Philippine territory, subject to the principles of public international law and to treaty stipulation.

**General rule:** criminal laws apply to everyone in the territory [citizens and aliens].

**Exceptions:** in these instances, all the Philippine government can do is expel them-

- a. Treaty stipulations which exempt some persons within the jurisdiction of Philippine courts.
- b. Heads of states, ambassadors and members of the diplomatic envoy.

**Note:** the immunity of a consul is limited, hence if the is not immunity from penal laws of the receiving state in the treaty, then they are subject to the penal laws of our country.

## ARTICLE 15

Under **Article 15** the Philippines follows the nationality theory. Thus laws relating to **family rights** and **duties**, or to the **status**, condition and **legal capacity** of persons are binding upon citizens of the Philippines, even though living abroad.

Also, **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 maybe the nature of the property and regardless of the country wherein said property may be found (Art. 16, par.2).

The national law of the decedent regardless of the location of the property shall govern. Thus, the national law of the decedent determines who will succeed.

In **Miciano vs. Brimo**, the SC said that the will of a foreigner containing the condition that the law of the Philippines should govern regarding the distribution of the properties is invalid.

In **Aznar vs. Garcia**, what was involved was the renvoi doctrine. In this case, the decedent was a citizen of California who resided in the Philippines. The problem was that under Philippine law, the national law of the decedent shall govern. On the other hand, under California law, the law of the state where the decedent has his domicile shall govern. The SC accepted the referral by California law and applied Philippine law [single renvoi].

**Status:** the sum total of a person's rights, duties, and capacities.

### Characteristics of status:

- a. It is inalienable.
- b. It is imprescriptible.
- c. It cannot be the object of compromise.
- d. The action to claim it cannot be renounced.
- e. The rights arising from it cannot be exercised by creditors.

**Nationality/personal theory:** the status and capacity of an individual are generally governed by the law of his nationality.

**Domiciliary Theory-** the personal laws of a person are determined by his domicile.

**Problem:** what if the decedent is a Filipino domiciled in a foreign country which follows the domiciliary theory? According to Professor Balane, one way to resolve the situation is this- Philippine Law should govern with respect to properties in the Philippines while the law of the domicile should govern with respect to properties located in the state of domicile.

### ARTICLE 16

**Lex rei sitae:** Real property as well as personal property is subject to the law of the country where it is situated.

In contracts where the real property is given as security, the principal contract shall be governed by the **proper law of the contract**, but the accessory contract shall be governed by this article.

**Lex loci voluntatis/intentionis:** proper law of the contract

**Mobilia sequuntur personam:** "Movable property follows the national law of the owner." This rule has been modified by the present article.

### ARTICLE 17

**Lex loci celebrations:** principle which applies the law of the place where the contract was executed as far as the formalities and solemnities (extrinsic validity) are concerned.

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.

**Exterritoriality:** When the acts referred to are executed before the diplomatic or consular officials of the Republic of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution.

**Note:** prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

#### Persons

	Filipino	Non-Filipino
Family rights, duties, status, legal capacity	Lex nationalis [Phil law]	Lex nationalis.  Every foreign law must be alleged and proved, otherwise apply processual presumption.

#### Property

	Filipino	Non-Filipino
Real and personal	<b>Gen. Rule-</b> lex rei sitae	Lex rei sitae

properties	Exception: if the property under dispute is part of the hereditary estate and it involves [1] order of succession [2] amount of successional rights [3] intrinsic validity of testamentary provisions [4] capacity of heirs, apply national law of the decedent.	
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#### Contracts

Extrinsic Validity	Intrinsic Validity
Lex loci celebrationis	Lex voluntatis/ Lex intentionis Law of the forum where the controversy was filed.

#### BAR 1998- Arts 15, 16 & 17

Juan is a Filipino citizen residing in Tokyo, Japan. State what laws govern:

#### SUGGESTED ANSWER:

- 1. His capacity to contract marriage in Japan, [1%]** - Juan's capacity to contract marriage is governed by Philippine law -i.e., the Family Code – pursuant to Art. 15, Civil Code, which provides that our laws relating to, among others, legal capacity of persons are binding upon citizens of the Philippines even though living abroad.
- 2. His successional rights as regards his deceased Filipino father's property in Texas, U.S.A. [1%]** - By way of exception to the general rule of lex rei sitae prescribed by the first paragraph of Art. 16. Civil Code, a person's successional rights are governed by the national law of the decedent (2nd par. Art. 16). Since Juan's deceased father was a Filipino citizen, Philippine law governs Juan's successional rights.

**ANOTHER ANSWER:** Juan's successional rights are governed by Philippine law, pursuant to Article 1039 and the second paragraph of Article 16, both of the Civil Code. Article 1039, Civil Code, provides that capacity to succeed shall be governed by the "law of the nation" of the decedent, i.e., his national law. Article 16 provides in paragraph two that the amount of successional rights, order of succession, and intrinsic validity of testamentary succession shall be governed by the "national law" of the decedent who is identified as a Filipino in the present problem.

- 3. The extrinsic validity of the last will and testament which Juan executed while sojourning in Switzerland. [2%]** - The extrinsic validity of Juan's will is governed by (a) Swiss law, it being the law where the will was made (Art. 17. 1st

par. Civil Code), or (b) Philippine law, by implication from the provisions of Art. 816, Civil Code, which allows even an alien who is abroad to make a will in conformity with our Civil Code.

- 4. The intrinsic validity of said will. (1%)** - The intrinsic validity of his will is governed by Philippine law, it being his national law. (Art. 16, Civil Code).

**BAR 2002- Arts 15, 16, 17-** Felipe and Felisa, both Filipino citizens, were married in Malolos, Bulacan on June 1, 1950. In 1960 Felipe went to the United States, becoming a U.S. citizen in 1975. In 1980 they obtained a divorce from Felisa, who was duly notified of the proceedings. The divorce decree became final under California Law. Coming back to the Philippines in 1982, Felipe married Sagundina, a Filipino Citizen. In 2001, Felipe, then domiciled in Los Angeles, California, died, leaving one child by Felisa, and another one by Sagundina. He left a will which he left his estate to Sagundina and his two children and nothing to Felisa. Sagundina files a petition for the probate of Felipe's will. Felisa questions the intrinsic validity of the will, arguing that her marriage to Felipe subsisted despite the divorce obtained by Felipe because said divorce is not recognized in the Philippines. For this reason, she claims that the properties and that Sagundina has no successional rights.

**SUGGESTED ANSWER:**

- a. Is the divorce secured by Felipe in California recognizable and valid in the Philippines? How does it affect Felipe's marriage to Felisa? Explain. (2%).**

**(1)** The divorce secured by Felipe in California is recognizable and valid in the Philippines because he was no longer a Filipino at that time he secured it, Aliens may obtain divorces abroad which may be recognized in the Philippines provided that they are valid according to their national law (Van Dorn V. Romillo, Jr., 139 SCRA 139 [1985]; Quita v. Court of Appeals, 300 SCRA 406 [1998]; Llorente v. Court of Appeals, 345 SCRA 595 [2000]).

**(2)** With respect to Felipe the divorce is valid, but with respect to Felisa it is not. The divorce will not capacitate Felisa to remarry because she and Felipe were both Filipinos at the time of their marriage. However, in DOJ Opinion No. 134 series of 1993, Felisa is allowed to remarry because the injustice sought to be corrected by Article 26 also obtains in her case.

- b. What law governs the formalities of the will? Explain. (1%)** - The foreigner who executes his will in the Philippines may observed the formalities described in:

1. The Law of the country of which he is a citizen under Article 817 of the New Civil Code, or
2. The law of the Philippines being the law of the place of execution under Article 17 of the New Civil Code.

- c. Will Philippine law govern the intrinsic validity of the will? Explain. (2%)** - Philippine law will not govern the intrinsic validity of the will. Article 16 of

the New Civil Code provides that intrinsic validity of testamentary provisions shall be governed by the National Law of the person whose succession is under consideration. California law will govern the intrinsic validity of the will.

**BAR 1995- Capacity to Contract** - What law governs the capacity of the Japanese to sell the land? Explain your answer and give its legal basis.

**SUGGESTED ANSWER:** Japanese law governs the capacity of the Japanese to sell the land being his personal law on the basis of an interpretation of Art. 15, NCC.

**ALTERNATIVE ANSWERS;**

- a. Since capacity to contract is governed by the personal law of an individual, the Japanese seller's capacity should be governed either by his national law (Japanese law) or by the law of his domicile, depending upon whether Japan follows the nationality or domiciliary theory of personal law for its citizens.
- b. Philippine law governs the capacity of the Japanese owner in selling the land. While as a general rule capacity of concerning transactions involving property is an exception. Under Article 16 of the NCC the capacity of persons in transactions involving title to property is governed by the law of the country where the property is situated. Since the property is in the Philippines, Philippine law governs the capacity of the seller.

**BAR 1991- Capacity to Succeed** - Jacob, a Swiss national, married Lourdes, a Filipina, in Berne, Switzerland. Three years later, the couple decided to reside in the Philippines. Jacob subsequently acquired several properties in the Philippines with the money he inherited from his parents. Forty years later. Jacob died intestate, and is survived by several legitimate children and duly recognized illegitimate daughter Jane, all residing in the Philippines.

**SUGGESTED ANSWERS:**

- a. Suppose that Swiss law does not allow illegitimate children to inherit, can Jane, who is a recognized illegitimate child, inherit part of the properties of Jacob under Philippine law?**

Yes. As stated in the problem. Swiss law does not allow illegitimate children to inherit. Hence, Jane cannot inherit the property of Jacob under Philippine law.

- b. Assuming that Jacob executed a will leaving certain properties to Jane as her legitimate in accordance with the law of succession in the Philippines, will such testamentary disposition be valid?**

The testamentary disposition will not be valid if it would contravene Swiss law; otherwise, the disposition would be valid. Unless the Swiss law is proved, it would be presumed to be the same as that of



Philippine law under the *Doctrine of Processual Presumption*.

**BAR 1996- Contracts Contrary to Public Policy -**

Alma was hired as a domestic helper in Hongkong by the Dragon Services, Ltd., through its local agent. She executed a standard employment contract designed by the Philippine Overseas Workers Administration (POEA) for overseas Filipino workers. It provided for her employment for one year at a salary of US\$1,000.00 a month. It was submitted to and approved by the POEA. However, when she arrived in Hongkong, she was asked to sign another contract by Dragon Services, Ltd. which reduced her salary to only US\$600.00 a month. Having no other choice, Alma signed the contract but when she returned to the Philippines, she demanded payment of the salary differential of US\$400.00 a month. Both Dragon Services, Ltd. and its local agent claimed that the second contract is valid under the laws of Hongkong, and therefore binding on Alma. Is their claim correct? Explain.

**SUGGESTED ANSWER:** Their claim is not correct. A contract is the law between the parties but the law can disregard the contract if it is contrary to public policy. The provisions of the 1987 Constitution on the protection of labor and on social justice (Sec. 10. Art II) embody a public policy of the Philippines. Since the application of Hongkong law in this case is in violation of that public policy, the application shall be disregarded by Court of Appeals (G.R No. 104235, Nov. 10, 1993) the our Courts. (Cadalín v. POEA. 238 SCRA 762)

**ALTERNATIVE ANSWERS;**

- a. Their claim is not correct. Assuming that the second contract is binding under Hongkong law, such second contract is invalid under Philippine law which recognizes as valid only the first contract. Since the case is being litigated in the Philippines, the Philippine Court as the forum will not enforce any foreign claim obnoxious to the forum's public policy. There is a strong public policy enshrined in our Constitution on the protection of labor. Therefore, the second contract shall be disregarded and the first contract will be enforced. (Cadalín v. POEA, 238 SCRA 762).
- b. No, their claim is not correct. The second contract executed in Hongkong, partakes of the nature of a waiver that is contrary to Philippine law and the public policy governing Filipino overseas workers. Art. 17, provides that our prohibitive laws concerning persons, their acts, or their property or which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or conventions agreed upon in a foreign country. Besides, Alma's consent to the second contract was vitiated by undue influence, being virtually helpless and under financial distress in a foreign country, as indicated by the given fact that she signed because she had no choice. Therefore, the defendants claim that the contract is valid under Hongkong law should be rejected since under the *DOCTRINE OF PROCESSUAL PRESUMPTION* a foreign law is deemed similar or identical to Philippine law in the

absence of proof to the contrary, and such is not mentioned in the problem as having been adduced.

**BAR 1995- Contracts of Carriage-**

On 8 December 1991 Vanessa purchased from the Manila office of Euro-Aire an airline ticket for its Flight No. 710 from Dallas to Chicago on 16 January 1992. Her flight reservation was confirmed. On her scheduled departure Vanessa checked in on time at the Dallas airport. However, at the check-in counter she discovered that she was waitlisted with some other passengers because of intentional overbooking, a Euro-Aire policy and practice. Euro-Aire admitted that Vanessa was not advised of such policy when she purchased her plane ticket. Vanessa was only able to fly two days later by taking another airline. Vanessa sued Euro-Aire in Manila for breach of contract and damages. Euro-Aire claimed that it cannot be held liable for damages because its practice of overbooking passengers was allowed by the U.S. Code of Federal Regulations. Vanessa on the other hand contended that assuming that the U.S. Code of Federal Regulations allowed Intentional overbooking, the airline company cannot invoke the U.S. Code on the ground that the ticket was purchased in Manila, hence, Philippine law should apply, under which Vanessa can recover damages for breach of contract of carriage. Decide. Discuss fully.

**SUGGESTED ANSWER:** Vanessa can recover damages under Philippine law for breach of contract of carriage, Philippine law should govern as the law of the place where the plane tickets were bought and the contract of carriage was executed. In *Zalamea v. Court of Appeals* (G.R No. 104235, Nov. 10, 1993) Supreme Court applied Philippine law in recovery of damages for breach of contract of carriage for the reason that it is the law of the place where the contract was executed.

**ALTERNATIVE ANSWER:** If the violation of the contract was attended with bad faith, there is a ground to recover moral damages. But since there was a federal regulation which was the basis of the act complained of, the airline cannot be in bad faith. Hence, only actual damages can be recovered. The same is true with regards to exemplary damages.

**BAR 1991- Labor Contracts**

- A. The Japan Air Lines (JAL), a foreigner corporation licensed to do business in the Philippines, executed in Manila a contract of employment with Maritess Guapa under which the latter was hired as a stewardess on the aircraft flying the Manila-Japan-Manila route. The contract specifically provides that (1) the duration of the contract shall be two (2) years, (2) notwithstanding the above duration, JAL may terminate the agreement at any time by giving her notice in writing ten (10) days in advance, and (3) the contract shall be construed as governed under and by the laws of Japan and only the court in Tokyo, Japan shall have the jurisdiction to consider any matter arising from or relating to the contract. JAL dismissed Maritess on the fourth month of her employment without giving her due notice. Maritess then filed a complaint with the Labor Arbiter for reinstatement, backwages and damages. The lawyer of JAL contends that neither the Labor Arbiter nor any other agency or

court in the Philippines has jurisdiction over the case in view of the above provision (3) of the contract which Maritess voluntarily signed. The contract is the law between her and JAL. Decide the issue.

- B.** Where under a State's own conflicts rule that domestic law of another State should apply, may the courts of the former nevertheless refuse to apply the latter? If so, under what circumstance?

**SUGGESTED ANSWER:**

- A.** Labor Legislations are generally intended as expressions of public policy on employer-employee relations. The contract therefore, between Japan Air Lines (JAL) and Maritess may apply only to the extent that its provisions are not inconsistent with Philippine labor laws intended particularly to protect employees.

Under the circumstances, the dismissal of Maritess without complying with Philippine Labor law would be invalid and any stipulation in the contract to the contrary is considered void. Since the law of the forum in this case is the Philippine law the issues should-be resolved in accordance with Philippine law.

- B.** The third paragraph of Art. 17 of the Civil Code provides that: "Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country." Accordingly, a state's own conflict of laws rule may, exceptionally be inapplicable, given public policy considerations by the law of the forum. Going into the specific provisions of the contract in question, I would rule as follows:
1. The duration of the contract is not opposed to Philippine law and it can therefore be valid as stipulated;
  2. The second provision to the effect that notwithstanding duration, Japan Air Lines (JAL) may terminate her employment is invalid, being inconsistent with our Labor laws;
  3. That the contract shall be construed as governed under and by the laws of Japan and only the courts of Tokyo, Japan shall have jurisdiction, is invalid as clearly opposed to the aforecited third paragraph of Arts. 17 and 1700 of the Civil Code, which provides: "Art? 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects."

**ALTERNATIVE ANSWER;**

- A.** When a contract has a foreign element such as in the factual setting stated in the problem where one of the parties is a foreign corporation, the contract can be sustained as valid particularly the stipulation expressing that the contract is governed by the laws of the foreign country. Given this generally accepted

principle of international law, the contract between Maritess and JAL is valid and it should therefore be enforced.

**BAR 1992- Laws Governing Marriages.** - In 1989, Maris, a Filipino citizen, married her boss Johnson, an American citizen, in Tokyo in a wedding ceremony celebrated according to Japanese laws. One year later, Johnson returned to his native Nevada, and he validly obtained in that state an absolute divorce from his wife Maris. After Maris received the final judgment of divorce, she married her childhood sweetheart Pedro, also a Filipino citizen, in a religious ceremony in Cebu City, celebrated according to the formalities of Philippine law. Pedro later left for the United States and became naturalized as an American citizen. Maris followed Pedro to the United States, and after a serious quarrel, Maris filed a suit and obtained a divorce decree issued by the court in the state of Maryland. Maris then returned to the Philippines and in a civil ceremony celebrated in Cebu City according to the formalities of Philippine law, she married her former classmate Vincent likewise a Filipino citizen. a) Was the marriage of Maris and Johnson valid when celebrated? Does their marriage still validly exist now? Reasons.

**SUGGESTED ANSWER:**

- a.** The marriage of Mans and Johnson was valid when celebrated because all marriages solemnized outside the Philippines (Tokyo) in accordance with the laws in force in the country where they are solemnized (Japan), and valid there as such, are also valid in the Philippines.
- b.** Their marriage no longer validly subsists, because it has been dissolved by the absolute divorce validly obtained by Johnson which capacitated Maris to remarry (Art. 26. Family Code).

**BAR 1995- Sale of Real Property** - While in Afghanistan, Japanese by the name of Sato sold to Ramoncito, a Filipino, a parcel of land situated in the Philippines which Sato inherited from his Filipino mother. What law governs the formality in the execution of the contract of sale? Explain your answer and give its legal basis.

**SUGGESTED ANSWER:** Under Art. 16 par. 1, NCC, real property is subject to the law of the country where it is situated. Since the property is situated in the Philippines, Philippine law applies. The rule of *lex rei sitae* in Article 16 prevails over *lex loci contractu* in Article 17 of the NCC.

**ALTERNATIVE ANSWER:** Afghanistan law governs the formal requirements of the contract since the execution is in Afghanistan. Art. 17 of the Civil Code provides that 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. However, if the contract was executed before the diplomatic or consular officials of the Republic of the Philippines in Afghanistan, Philippine law shall apply.

**BAR 1993- Wills executed abroad-** A, a Filipino, executed a will in Kuwait while there as a contract worker.

Assume that under the laws of Kuwait, it is enough that the testator affix his signature to the presence of two witnesses and that the will need not be acknowledged before a notary public. May the will be probated in the Philippines?

**SUGGESTED ANSWER:** Yes. Under Articles 815 and 17 of the Civil Code, the formality of the execution of a will is governed by the law of the place of execution. If the will was executed with the formalities prescribed by the laws of Kuwait and valid there as such, the will is valid and may be probated in the Philippines.

**BAR 2003- Laws Governing Marriage** - Gene and Jane, Filipino, met and got married in England while both were taking up post-graduate courses there. A few years after their graduation, they decided to annul their marriage. Jane filed an action to annul her marriage to Gene in England on the ground of latter's sterility, a ground for annulment of marriage in England. The English court decreed the marriage annulled. Returning to the Philippines, Gene asked you whether or not he would be free to marry his former girlfriend. What would your legal advice be? 5%

**SUGGESTED ANSWER:** No, Gene is not free to marry his former girlfriend. His marriage to Jane is valid according to the forms and solemnities of British law, is valid here (Article 17, 1st par., NCC). However, since Gene and Jane are still Filipinos although living in England, the dissolution of their marriage is still governed by Philippine law (Article 15, NCC). Since, sterility is not one of the grounds for the annulment of a marriage under Article 45 of the Family Code, the annulment of Gene's marriage to Jane on that ground is not valid in the Philippines (Article 17, NCC)

**ALTERNATIVE ANSWER:** Yes, Gene is free to marry his girlfriend because his marriage was validly annulled in England. The issue of whether or not a marriage is voidable, including the grounds therefore, is governed by the law of the place where the marriage was solemnized (lex loci celebrationis). Hence, even if sterility is not a ground to annul the marriage under the Philippine law, the marriage is nevertheless voidable because sterility makes the marriage voidable under English law. Therefore, annulment of the marriage in England is valid in the Philippines.

**HUMAN RELATIONS**

**ARTICLE 19**

**Abuse of right:** Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

**Elements of abuse of right:**

1. Legal right.
2. Exercise of such right in bad faith.
3. Intent to prejudice others.

**Pre-contractual abuse:** an offeror who, in abuse of right, withdraws his offer without a valid reason, after the

offeree in good faith has *incurred expenses* preparatory to entering into the contract, is liable for damages.

For the cause of action to arise, the complaining party must suffer prejudice such as pecuniary loss.

**ARTICLE 20**

**Civil liability for delict:** Every person who, contrary to law, willfully [dolo] or negligently [culpa] causes damage to another shall indemnify the latter for the same.

**Civil liability for quasi-delict:** Also, whoever by act or omission causes damage to another, there being fault or negligence, but no pre-existing contractual relation between the parties, is obliged to pay for the damage done [Art. 2176].

**ARTICLE 21**

**Contra bonus mores:** Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

**Misconduct:** implies a wrongful intention and not merely error in judgment.

Relative to this provision is the **Breach of promise to marry-**

As a **general rule:** Not an actionable wrong

However by way of **Exception** breach of promise to marry becomes an actionable wrong if:

**1. When there has been sexual intercourse:**

- a. The aggrieved party may ask the other to RECOGNIZE THE CHILD, should there be one, and PROVIDE SUPPORT to said child.
- b. Sue for MORAL DAMAGES, if there be criminal or moral seduction, but not if the intercourse was due to mutual lust; if the cause be the promise to marry, and the effect be the carnal knowledge, there is criminal or moral seduction.
- c. Sue for ACTUAL DAMAGES, should there be any, such as the expenses for the wedding preparations.

**2. When there was no sexual intercourse:**

- a. Sue for MORAL DAMAGES in case there has been a deliberate desire to inflict loss or injury or there has been an evident abuse of right.
- b. Sue for ACTUAL DAMAGES, should there be any, such as the expenses for the wedding preparations.

Article 20	Article 21
The act is contrary to law	The act is contrary to morals, good customs or public policy
The act is done either	The act is done willfully

## ARTICLE 22

**Unjust enrichment:** Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

**Requisites of *accion in rem verso*** [action for restitution of the thing]:

1. One party must be enriched.
2. The other party suffered loss.
3. There must be a causal relation between the parties.
4. The enrichment must not be justifiable; otherwise, there can be no recovery.
5. There must be no other way to recover such as those based on contract, quasi-contract or quasi-delict.
6. The indemnity cannot exceed the loss or enrichment, whichever is less.

In an ***accion in rem verso***, mistake of payment need not be alleged because there is a positive act, either by way of dolo or culpa, done by the offender party to the prejudice of the offended party. Rather, alleged only the wrongful acts.

While in ***solutio indebite***, mistake of payment must be alleged since there is no positive act done to induce the complaining party to pay by mistake.

The incapacity of the defendant to enter into contracts does not bar the *accion in rem verso*, so long as he has been unjustly enriched.

The indemnity does not include **unrealized profits** because defendant's enrichment is the limit of his liability.

## ARTICLE 23

**Basis:** *nemo cum alterius detrimento locupletari potest.* - No person can enrich himself at the expense of another.

**Duty to indemnify even without fault:** Even when an act or event causing damage to another's property was not due to the fault or negligence of the defendant, the latter shall be liable for indemnity if through the act or event, he was benefited.

**Illustration:** A fire ensued in the village of A, B, C. The house of B and C are behind the house of A. To prevent the fire from spreading the firemen need to destroy the house of A. What is the liability of B and C?

They are liable to pay for the construction of the house of A because they benefited from its destruction. If the house of A was not demolished by the firemen, the fire would have gotten their respective houses.

## ARTICLE 24

**Protection of the underdog:** In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence,

ignorance, indigence, mental weakness, tender age of other handicap, the courts must be vigilant for his protection.

**Parens patriae:** literally means father or parent of his country; it is the sovereign power of the state in safeguarding the rights of person under disability; it is the obligation to minimize the risk to those who, because of their disability, are as yet unable to take care of themselves, in case where the law is to be applied strictly.

## ARTICLE 25

Thoughtless extravagance in expenses for pleasure or display during a period of acute public want or emergency may be stopped by order of the courts at the instance of any government or private charitable institution.

**Note:** damages cannot be demanded as an alternative relief.

## ARTICLE 26

This is based on the alienation of affections.

**Rights protected:** Every person shall respect the personal dignity, personality, privacy, peace of mind, personal security, family relations, and social intercourse.

**Remedies in case of violation:** damages; prevention; other relief.

**Prohibited acts:**

1. *Prying into the privacy* of another's residence.
2. *Meddling with or disturbing* the private life or family relations of another.
3. *Intriguing to cause another to be alienated* from his friends.
4. *Vexing or humiliating another* on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.
5. Other similar acts.

**Elements of alienation of affection between spouses:**

1. Wrongful conduct of the defendant.
2. Loss of affection or consortium.
3. Causal connection between such conduct and loss.

**Note:** A stranger would be liable irrespective of his good motives, if he interferes with family relations, whereas a parent or close relative would not be liable unless there is malice proven by the plaintiff. A distant relative could escape liability if he proves good faith and honest motives.

The right to privacy is limited whenever the circumstances show a reasonable interest on the part of the public in the conduct or affairs of persons who have become public characters.

Also, the right to privacy is limited by the privilege similar to that of "fair comment" in the law of defamation.

**CASE: Conception vs. CA** [G.R. No. 120706; January 31, 2000]

**Facts:** This case is a result of defamatory remarks made by petitioner Rodrigo Conception against private respondent Nestor Nicolas. Rodrigo angrily accosted Nestor at the latter's apartment and accused him of conducting an adulterous relationship with Florence, his sister-in-law. He shouted, "Hoy Nestor, kabit ka ni Bing! . . . Binigyan ka pa pala ni Bing Concepcion ng P100,000.00 para umakyat ng Baguio. Pagkaakyat mo at ng asawa mo doon ay bababa ka uli para magkasarinan kayo ni Bing."

Nestor explained that he and Bing are business partners but Rodrigo did not believe and continued to spread rumors that Rodrigo and Bing are lovers. The acts of Rodrigo resulted to the severance of business ties between Bing and Rodrigo. It also affected the business of the spouses Nicolas. Allem began to doubt Nestor's affection to her.

A case was filed in court. Moral, exemplary damages and attorney's fees were awarded. Petitioner questioned the decision since it has no legal basis, neither Art. 26 nor Art. 1219 is applicable.

**Issue:** Whether or not the damages awarded made by the court is proper.

**Held:** Yes, the award of damages is proper. The Supreme Court ratiocinated: nothing provide enough basis in law for the award of damages by the Court of Appeals in favor of respondents. We reject petitioner's posture that no legal provision supports such award, the incident complained of neither falling under Art. 2219 nor Art. 26 of the Civil Code. It does not need further elucidation that *the incident charged of petitioner was no less than an invasion on the right of respondent Nestor as a person. The philosophy behind Art. 26 underscores the necessity for its inclusion in our civil law. The Code Commission stressed in no uncertain terms that the human personality must be exalted. The sacredness of human personality is a concomitant consideration of every plan for human amelioration. The touchstone of every system of law, of the culture and civilization of every country, is how far it dignifies man. If the statutes insufficiently protect a person from being unjustly humiliated, in short, if human personality is not exalted — then the laws are indeed defective. Thus, under this article, the rights of persons are amply protected, and damages are provided for violations of a person's dignity, personality, privacy and peace of mind.*

Moreover, the enumerations in Article 26 and 1219 are not exclusive but are merely examples and do not preclude other similar or analogous acts. Damages therefore are allowable for actions against a person's dignity, such as profane, insulting, humiliating, scandalous or abusive language.

#### ARTICLE 27

Note that for article 27 to apply, the act complained of and which cause damages to the complainant must be a ministerial duty and not a discretionary duty.

**Ministerial duty-** refers to duties which an authority must do without exercising his discretion.

**Example-** is the enforcement of an ordinance- A mayor must enforce an ordinance even if he thinks that it is unconstitutional, because it is his ministerial duty to enforce ordinances, otherwise he can be compelled by *mandamus*.

In contrast to a **discretionary duty**, wherein the person in authority is exercising his wisdom and intelligence. You compel an authority to perform a discretionary duty, since he is given the right to do it or not base on his discretion.

**Non-feasance:** Any person suffering material or moral loss because a public servant or employee refuse or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.

#### Requisites:

1. The defendant is a public official charged with the performance of official duties.
2. There is a violation of an official duty in favor of an individual.
3. There is willfulness or negligence in the violation of such official duty.
4. There is injury to the individual.

**Excuses for non-performance:** impossibility of performance; contributory negligence of the plaintiff; ministerial officer with no discretion where the law places on him the imperative duty of obeying the order of a superior.

**Good faith or absence of malice** is not a defense for non-performance.

#### ARTICLE 28

**Prohibited competition:** Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or high-handed method shall give rise to right of action by the person who thereby suffers damages.

**Characteristics:** it must involve an injury to a competitor or trade rival, and it must involve acts which are characterized as "contrary to good conscience" or unlawful.

**Cutthroat competition:** when a person starts an opposing place of business, not for the sake of profit to himself, but regardless of loss, and for the sole purpose of driving his competitor out of business so that later on, he can take advantage of the effects of his malevolent purpose.

#### ARTICLE 29

**Civil action not barred by acquittal:** When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond

reasonable doubt, a civil action for damages for the same act or omission may be instituted.

**Reason:** difference in the proceedings and the quantum of evidence needed.

**Criminal case-** the quantum of evidence is proof beyond reasonable doubt.

**Civil case-** the quantum of evidence is only preponderance of evidence. This means that whoever had proven his claim as supported by evidence, thus the scale of justice tilted towards him is entitled of his prayer.

Parameters	Criminal action	Civil action
Parties involved	State v. defendant	Offended party v. defendant
Rules involved	Criminal procedure/penal code	Civil procedure/civil code
Quantum of evidence	Proof beyond reasonable doubt	Preponderance of evidence
Purpose	For punishment of the offender	For reparation of damages

**Filing of bond:** Upon motion of the defendant, the court may require the plaintiff to file a bond, to answer for damages in case the complaint should be found to be malicious.

**Duty of the court:** if in a criminal case, the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.

**Republic v. Patanao:** Tax liability is not a mere civil liability arising from a crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged.

**Civil action barred by acquittal:** whenever the accused has been found to be not the author of an act, or that that supposed act attributed to the accused did not exist, this findings, resulting in an acquittal, would bar a civil action for damages against the accuse.

Also, a separate civil action may be brought to demand civil liability arising from a criminal offense even if no criminal proceeding is instituted [Art. 30].

Furthermore, a civil action may also be brought even if no independent civil action and criminal action have been instituted [Art. 35].

### ARTICLE 30

[Civil action even if there is no criminal action instituted]

When a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of.

### ARTICLE 31

**Independent civil action:** When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.

**Instances when the law grants independent civil action:**

1. Art. 32 (breach of constitutional and other rights)
2. Art. 33 (in their generic sense: defamation; fraud; physical injuries)
3. Art. 34 (refusal or failure of a city/municipal police to give protection)
4. Art. 2177 (culpa-aquiliana)

### ARTICLE 32 (breach of constitutional rights)

- ✓ See codal provision for enumeration

It is not necessary that the defendant should have acted with malice/bad faith to be liable.

**Limited liability:** The responsibility herein set forth is not demandable from a judge.

**Exception:** Unless his act or omission constitutes a violation of the Penal Code or other penal laws [see Art. 204 – 207 of the Revised Penal Code].

### ARTICLE 33

In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party.

### ARTICLE 34

**Primary liability:** When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such police officer shall be primarily liable for damages.

**Subsidiary liability:** The city or municipal government shall be subsidiarily responsible therefore.

The defense of exercise of due diligence in the selection and supervision of its employees, as provided under Art. 2180, cannot be used as this is available only to private employers.

### ARTICLE 35

**Civil action even if there is no independent civil action and criminal action instituted**

When a person, claiming to be injured by a criminal offense, charges another with the same, for which no independent civil action is granted in this Code or any special law, but the court finds no reasonable grounds to believe that a crime has been committed, or the prosecutor refuses or fails to institute criminal proceedings, the complainant may bring a civil action for damages against the alleged offender.

**Effect of filing of information:** If during the pendency of the civil action, an information should be presented by the prosecutor, the civil action shall be suspended until the termination of the criminal proceedings.

**Filing of bond:** Upon motion of the defendant, the court may require the plaintiff to file a bond, to answer for damages in case the complaint should be found to be malicious.

**ARTICLE 36**

**Prejudicial question:** One which must be decided before any criminal prosecution may be instituted or may proceed, because a decision therein is vital to the judgment in the criminal case.

**Elements:**

1. The previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action.
2. The resolution of such issue determines whether or not the criminal action may proceed.

**CIVIL PERSONALITY**

**Civil personality:** the aptitude of being the subject, active or passive, of rights and obligations.

**ARTICLE 37**

**Juridical capacity**

- The fitness to be the subject of legal relations.
- There are no degrees of juridical capacity. Juridical capacity is the same in every person. No one has more juridical capacity than others.
- It is inherent in natural persons. On the other hand, it arises in artificial persons when such artificial persons are created.

**Capacity to act**

- The power to do acts with legal effect; it can be acquired and may be lost. It can be restricted, modified, and limited.

**Capacity to act** is best presented by a spectrum-



Nobody has 100% capacity to act. The law imposes restrictions on capacity to act. As long as one has contractual capacity [a.k.a. full civil capacity] one is near 100% capacity to act.

**Capacidad plena civil** or **full civil capacity** is not really 100% but close to it. With contractual capacity, one is generally able to perform contracts and dispose property.

Nobody has 0% capacity to act. Infants are close to 0% but still have capacity to act. For example, even fetus has the right to succeed and also have the right to the integrity of body. Aliens cannot own colleges or broadcast media but can own other things such as cars or stocks.

Juridical capacity	Capacity to act
Passive	Active
Inherent	Acquired
Lost only through death	Lost through death and other means
Can exist even without capacity to act	Always exist with juridical capacity
Unlimited/cannot be restricted	Limited/can be restricted by circumstances

**ARTICLE 38**

**Restrictions on capacity to act:** Minority, insanity or imbecility, the state of being deaf-mute, prodigality, and civil interdiction are mere restrictions on capacity to act, and do not exempt the incapacitated person from certain obligations, as when the latter arise from his acts or from property relations, such as easements.

- ❖ A minor cannot enter into contracts, but he may be estopped from disavowing his contract if he has misled the other party as to his age.
- ❖ Generally, a deaf-mute can make a valid will so long as its contents can be made known to him. But when the deaf-mute does not know how to read and write, he cannot give consent to contracts.
- ❖ Civil interdiction is an accessory penalty; it shall deprive the offender of the rights of parental authority, or guardianship, either as to the person or property of any ward, of marital authority, of the right to manage his property, and the right to dispose of such property by any act inter vivos.

**ARTICLE 39**

**Limitations or modifications on capacity to act:** age, insanity, imbecility, the state of being deaf-mute, penalty, prodigality, family relations, alienage, absence, insolvency and trusteeship. Capacity to act is not limited on account of religious belief or political opinion.

A married woman, 18 years of age or over, is qualified for all acts of civil life, except in cases specified by law.

The restrictions provided in Articles 38 and 39 do not exempt incapacitated persons from certain obligations.

Under **Article 1156**, these are the 5 sources of obligations:

1. Law
2. Contract
3. Delict
4. Quasi-delict
5. Quasi-contract

Articles 38 and 39 prevent incapacitated person from incurring contractual obligations only!

Thus, even though an insane person cannot be thrown in

jail for a criminal act, the insane person is still civilly liable –delict as a source of obligation. Also an incapacitated person must still pay income tax if he earns an income- law as a source of obligation.

**Does an incapacitated person acquire rights?**

Yes, although Articles 38 and 39 does not mention it, incapacitated persons may acquire rights. For example they have the right to accept donations or to succeed.

**PERSONS**

**NATURAL PERSONS**

**Principles:**

1. For personality to be acquired one must be born.
2. Once birth occurs, personality for favorable purposes retroacts to the moment of conception.

**ARTICLE 40**

**Determinant:** birth determines personality.

**Presumptive personality:** *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 Art. 41.

The personality, therefore, has 2 characteristics: it is essentially **limited** [since it has a beginning and end] and it is **provisional or conditional** [a person must be born in order to have a personality].

**Actual personality:** personality begins at birth.

**"The conceived child shall be considered born for all purposes that are favorable to it"-** an example of a case where upon birth occurs personality retroacts to the moment of conception is in case of succession since it is favorable to the child. On the other hand, if the purpose is for paying taxes, personality does not retroact since it is unfavorable to the child.

**Illustration:** Sophia is 6 months pregnant. Hermeneuien, a friend of hers donated 1M to her child. Two weeks after the donation Sophia gave birth, however the child died within 20 hours therefrom.

Is the fetus subject of donation? Is the fetus entitled to the donation?

Yes, the fetus can be the subject of donation since the law provides that *the conceived child shall be considered born for all purposes that are favorable to it*. Donation is favorable to the child hence he is considered born for that purpose.

However, the child is not entitled to the donation since his intra-uterine life is less than 7 months and he did not survive at least 24 hours from the moment of birth. The child was never born and did not have personality. Thus, there was no donee in this case, since for one to be a donee, one must have a legal personality, one must be born, but the child was never born.

**ARTICLE 41**

**Ordinary birth:** with an intra-uterine life of at least seven months. For civil purposes, the fetus is considered born if it is alive at the time it is completely delivered from the mother's womb.

**Extra-ordinary birth:** with an intra-uterine life of less than seven months. For civil purposes, it is not deemed born if it dies within 24 hours after its complete delivery from the maternal womb.

**General rule:** to be born, it is enough that the fetus is alive when the umbilical cord is cut.

**Exception:** if the intra-uterine is less than 7 months, it must live for at least 24 hours, before it is considered born. [Note that there is no distinction as to how the child dies-whether natural, accidental- what is material is it is not considered born if it dies within 23 hours from birth.]

**Case: Geluz vs. CA [July 20, 1961]**

**Facts:** Nestor Lazo's wife obtained an abortion from petitioner Geluz for 3 times. Lazo hinged his claim for damages against petitioner on the third abortion. The RTC and CA upheld the claim of Lazo, basing their decision on initial paragraph of Article 2206 of the Civil Code, which provides that-

**Art. 2206.** The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

**Issue:** whether or not Lazo can recover damages against Geluz.

**Held:** No, the court ruled that **an action for pecuniary damages on account of personal injury or death pertains primarily to the one injured**, it is easy to see that **if no action for such damages could be instituted on behalf of the unborn child on account of the injuries it received, no such right of action could derivatively accrue to its parents**



or heirs. In fact, even if a cause of action did accrue on behalf of the unborn child, the same was extinguished by its pre-natal death, since no transmission to anyone can take place from one that lacked juridical personality (or juridical capacity as distinguished from capacity to act). It is no answer to invoke the provisional personality of a conceived child (*conceptus pro nato habetur*) under Article 40 of the Civil Code, because that same article expressly limits such provisional personality by imposing the condition that the child should be subsequently born alive: "provided it be born later with the condition specified in the following article". In the present case, there is no dispute that the child was dead when separated from its mother's womb.

Moreover, this is not to say that the parents are not entitled to collect any damages at all. But such damages must be those inflicted directly upon them, as distinguished from the injury or violation of the rights of the deceased, his right to life and physical integrity. Because the parents cannot expect either help, support or services from an unborn child, they would normally be limited to moral damages for the illegal arrest of the normal development of the *spes hominis* that was the foetus, i.e., on account of distress and anguish attendant to its loss, and the disappointment of their parental expectations (Civ. Code Art. 2217), as well as to exemplary damages, if the circumstances should warrant them (Art. 2230). But in the case before us, both the trial court and the Court of Appeals have not found any basis for an award of moral damages, evidently because the appellee's indifference to the previous abortions of his wife, also caused by the appellant herein, clearly indicates that he was unconcerned with the frustration of his parental hopes and affections. The lower court expressly found, and the majority opinion of the Court of Appeals did not contradict it, that the appellee was aware of the second abortion; and the probabilities are that he was likewise aware of the first. Yet despite the suspicious repetition of the event, he appeared to have taken no steps to investigate or pinpoint the causes thereof, and secure the punishment of the responsible practitioner. Even after learning of the third abortion, the appellee does not seem to have taken interest in the administrative and criminal cases against the appellant. His only concern appears to have been directed at obtaining from the doctor a large money payment, since he sued for P50, 000.00 damages and P3, 000.00 attorney's fees, an "indemnity" claim that, under the circumstances of record, was clearly exaggerated.

#### ARTICLE 42

**Extinction of civil personality:** Civil personality is extinguished by death.

**Effect of death upon civil personality is determined by:** law, contract or will.

The estate of a deceased is a person that may continue the personality of the deceased for the purpose of settling debts.

The fact of death is important because it affects civil personality and legal relations. The main effect of death is

readily seen in succession. Death is also relevant to labor law and insurance.

#### ARTICLE 43

Article 43 contemplates a situation where two people who are called to succeed each other died.

**The rule-** if there is a doubt, as between 2 or more persons who are called to succeed each other, as to which of them died first, whoever alleges the death of one prior to the other, shall prove the same. [*Presumption*] in the absence of proof, it is presumed that they died at the same time, [*Effect of presumption*] there shall be no transmission of rights from one to the other.

Relative to **Article 43 is Rule 131 of the Rules of Court-**

**Section 3. Disputable Presumptions-** the following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

**jj.** That except for purposes of succession, when two persons perish in the same calamity, such as wreck, battle, or conflagration, and it is not shown who died first, and there are not particular circumstances from which it can be inferred, the survivorship is determined from the probabilities resulting from the strength and age of the sexes, according to the following rules:

1. If both were under the age of fifteen years, the older is deemed to have survived;
2. If both were above the age of sixty, the younger is deemed to have survived.
3. If one is under fifteen and the other above sixty, the former is deemed to have survived;
4. If both be over fifteen and under sixty, and the sex be different, the male is deemed to have survived; if the sex be same, the older.
5. If one be under fifteen or over sixty, and the other between those ages, the latter is deemed to have survived.

**In short- The Rules of Court shall apply where:**

1. The issue does not involve succession but something else [i.e. insurance, suspensive conditions]; and
2. The persons perish in the same calamity.

**Article 43 shall apply where:**

1. The case involves succession; and
2. The persons do not perish in the same calamity.

**What if succession is involved and the persons perish in the same calamity?** Most commentators say Article 43 will prevail.

**Note:** If the conditions in the Rules of Court or Article 43 do not concur, do not apply either.

**BAR 1998-** Jaime, who is 65, and his son, Willy, who is 25, died in a plane crash. There is no proof as to who died first. Jaime's only surviving heir is his wife, Julia, who is also Willy's mother. Willy's surviving heirs are his mother, Julia and his wife, Wilma.

1. In the settlement of Jaime's estate, can Wilma successfully claim that her late husband, Willy had a hereditary share since he was much younger than his father and, therefore, should be presumed to have survived longer? [3%]
2. Suppose Jaime had a life insurance policy with his wife, Julia, and his son, Willy, as the beneficiaries. Can Wilma successfully claim that one-half of the proceeds should belong to Willy's estate? [2%]

**SUGGESTED ANSWER:**

1. No, Wilma cannot successfully claim that Willy had a hereditary share in his father's estate. Under Art. 43, Civil Code, two persons "who are called to succeed each other" are presumed to have died at the same time, in the absence of proof as to which of them died first. This presumption of simultaneous death applies in cases involving the question of succession as between the two who died, who in this case are mutual heirs, being father and son.
2. Yes, Wilma can invoke the presumption of survivorship and claim that one-half of the proceeds should belong to Willy's estate, under Sec. 3 (jj) par. 5 Rule 131, Rules of Court, as the dispute does not involve succession. Under this presumption, the person between the ages of 15 and 60 years is deemed to have survived one whose age was over 60 at the time of their deaths. The estate of Willy endowed with juridical personality stands in place and stead of Willy, as beneficiary.

**BAR 1999** - Mr. and Mrs. Cruz, who are childless, met with a serious motor vehicle accident with Mr. Cruz at the wheel and Mrs. Cruz seated beside him, resulting in the instant death of Mr. Cruz. Mrs. Cruz was still alive when help came but she also died on the way to the hospital. The couple acquired properties worth One Million (P1, 000,000.00) Pesos during their marriage, which are being claimed by the parents of both spouses in equal shares.

- (a) Is the claim of both sets of parents valid and why? (3%)
- (b) Suppose in the preceding question, both Mr. and Mrs. Cruz were already dead when help came, so that no-body could say who died ahead of the other, would your answer be the same to the question as to who are entitled to the properties of the deceased couple? (2%)

**SUGGESTED ANSWER:**

- a. No, the claim of both parents is not valid. When Mr. Cruz died, he was succeeded by his wife and his parents as his intestate heirs who will share his estate equally. His estate was 0.5 Million pesos which is his half share in community property. The wife, will, therefore, inherit 0.25 Million Pesos and his parents will inherit 0.25 Million Pesos. When Mrs. Cruz died, she was succeeded by her parents as her intestate heirs. They will inherit all of her estate consisting of her 0.5 Million half share in the absolute community and her 0.25 Million inheritance from her husband, or a total of 0.750 Million Pesos. In sum, the parents of Mr. Cruz will

inherit 250,000 Pesos while the parents of Mrs. Cruz will inherit 750,000 Pesos.

- b. This being a case of succession, in the absence of proof as to the time of death of each of the spouses, it is presumed they died at the same time and no transmission of rights from one to the other is deemed to have taken place. Therefore, each of them is deemed to have an estate valued at P500, 000 or one-half of their conjugal property of P1 million. Their respective parents will thus inherit the entire P1 Million in equal shares, of P500, 000 per set of parents.

**JURIDICAL PERSONS**

**ARTICLES 44 & 45**

**Kinds of juridical persons:**

1. *The State and its political subdivisions;* governed by the laws creating or recognizing them [Art. 45].
2. *Juridical persons for public interest or purpose, created by law;* their personality begins as soon as they have been constituted according to law; governed by the laws creating or recognizing them [Art. 45];
3. *Juridical persons for private interest or purpose;* their personality begins from the moment a certificate of incorporation is granted and issued by the SEC; Regulated by laws of general application on the subject [Art. 45].

**In case of dissolution,** their property and other assets shall be disposed of in pursuance of law or the charter creating them. If nothing has been specified on this point, the property and other assets shall be applied to similar purposes for the benefit of the LGUs which during the existence of the institution derived the principal benefits from the same [Art. 47].

Partnerships and associations for private interest or purpose are governed by the provisions of this Code concerning partnerships. [Art. 45];

In case of dissolution, see the Corporation Code.

Juridical Person	Governing Law
State	Constitution- defines its organization and limits its rights vis-à-vis citizens.
Political subdivision	Charter
Public Corporation	Charter
Private Corporation	Corporation Code, Articles of Incorporation and By-laws
Partnerships	Stipulations of the parties and suppletorily by the general provisions on partnership.

**ARTICLE 46**

**Rights and obligation of a juridical person:** Juridical persons may acquire and possess property of all kinds, as well as incur obligations and bring civil or criminal actions,

in conformity with the laws and regulations of their organization.

☺☺☺ **Articles 48 and 49 were amended by the 1987 Constitution on Citizenship.**

**DOMICILE**

**Domicile:** place of a person’s habitual residence; that place where a person has certain settled, fixed, legal relations because:

**Elements of domicile:**

1. Physical presence in a fixed place.
2. Intention to remain permanently.

**KINDS OF DOMICILE**

1. **Domicile of Origin** - Domicile of parents of a person at the time he was born.

In case of a foundling, his domicile is the country where he was found.

2. **Domicile by Operation of Law** - It is assigned to him by the law after birth on account of a legal disability (constructive domicile/domicile by operation of law).
3. **Domicile of Choice** - Domicile chosen by a person, changing his domicile of origin.

**Elements:**

- a. Person has legal capacity
- b. Intent to abandon present domicile
- c. Physical presence in the new domicile
- d. Choose a place abiding *animus manende* [intent to remain] and *animus revertendi* [intent to return]

Intention without physical presence or physical presence without intention will not suffice for the acquisition of domicile, but will be sufficient for the retention of an existing domicile.

**ARTICLE 50**

**Domiciliary theory:** the personal laws of a person are determined by his domicile.

**Domicile of natural persons:** for the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is the place of their habitual residence.

<b>Domicile</b>	<b>Residence</b>
more or less permanent	more or less temporary
a person can have generally only one domicile	a person can have several places of residence
denotes a fixed permanent residence to which when absent, one has the intention of returning	denotes a place of abode
domicile is residence coupled with the intention to remain for an unlimited time	residence is not domicile

**ARTICLE 51**

**Domicile of juridical persons:** The domicile of juridical persons is-

1. *the place provided for in the law creating or recognizing them or in their articles of agreement;* when the law creating or recognizing them, or any other provision does not fix the domicile of juridical persons, the same shall be understood to be
2. *The place where their legal representation is established or where they exercise their principal functions.*

**FAMILY CODE**

**Effectivity:** August 03, 1988

**BAR 2000- Family Code; Retroactive Application; Vested Rights** - On April 15, 1980, Rene and Angelina were married to each other without a marriage settlement. In 1985, they acquired a parcel of land in Quezon City. On June 1, 1990, when Angelina was away in Baguio, Rene sold the said lot to Marcelo. Is the sale void or voidable? (2%)

**SUGGESTED ANSWER:** The sale is void. Since the sale was executed in 1990, the Family Code is the law applicable. Under Article 124 of the FC, the sale of a conjugal property by a spouse without the consent of the other is void.

**ALTERNATIVE ANSWER:** The sale is voidable. The provisions of the Family Code may apply retroactively but only if such application will not impair vested rights. When Rene and Angelina got married in 1980, the law that governed their property relations was the New Civil Code. Under the NCC, as interpreted by the Supreme Court in *Heirs of Felipe v. Aldon, 100 SCRA 628 and reiterated in Heirs of Ayuste v. Malabonga, G.R No, 118784, 2 September 1999*, the sale executed by the husband without the consent of the wife is voidable. The husband has already acquired a vested right on the voidable nature of dispositions made without the consent of the wife. Hence, Article 124 of the Family Code which makes the sale void does not apply.

**Marriage:** a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life.

**Purpose of marriage:** the establishment of conjugal and family life. Also, it can be only for COMPANIONSHIP, as when the parties past the age of procreation and still get married.

**Aspects of marriage:**

1. **As a CONTRACT,** marriage differs from other contracts:

Generally in contracts, the parties are free to enter into contractual stipulations. However, in a marriage the parties are generally not free to enter into contractual stipulations. **All the consequences of marriage are determined by law. The only area in which the parties**

may stipulate is with regard to property relations as long as these stipulations are not contrary to law. In fact, the parties are not limited to the 3 major regimes of property relations in the Family Code.

Marriage	Ordinary contracts
Only a man and a woman can enter into the contract of marriage.	Any person with capacity can enter into contracts
Dissolved by the death of the other party, unless annulled or declared null and void.	Terminated through any other legal causes
Cannot be dissolved by mutual agreement	Can be dissolved by mutual agreement
The rights and duties of the parties, and the nature, consequences and incidents are governed by law and not subject to stipulation, except in marriage settlements where the parties may fix their property relations to a certain extent.	The agreement of the parties has the force and effect of law between them.
Breach of the obligations of husband and wife does not give rise to an action for damages, but the law prescribes penal and civil sanctions therefore.	Breach of ordinary contract gives rise to an action for damages.
The purpose of marriage is for the establishment of conjugal and family life or for companionship.	For other purposes.
It is a special contract; the foundation of the family and an inviolable social institution.	Ordinary contract.

## 2. As a STATUS:

- Marriage is no longer just a contract but an inviolable social institution, which is the foundation of the family, and shall be protected by the State.
- Being an institution of public order or policy, its nature, consequences, and incidents are governed by law and not subject to stipulation except in marriage settlements where the parties may fix their property relations to a certain extent.
- It carries with it implications in 2 fields: *the realm of personal rights and obligations of the spouses, and the realm of property relations.*

## REQUISITES OF MARRIAGE

### ESSENTIAL REQUISITES:

#### 1. **Legal capacity of the contracting parties who must be a male and a female.**

*Legal capacity includes:*

- a. **Age** – any male or female of the age of 18 years or upwards not under any of the impediments mentioned in Articles 37 and 38, may contract marriage.
- b. **Gender** – must be a male and a female.

- c. **No legal impediment:** incestuous marriages (Art. 37); void marriages by reason of public policy (Art. 38).

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 SHOWING SUCH CAPACITY TO CONTRACT.

The legal capacity of a foreigner to marry, as determined by the law of the country of which he is a citizen, is recognized by our laws. This is in accordance with the nationality theory under Art. 15 of the Civil Code.

Under Art. 35(1): a marriage contracted by any party below 18 years of age **even** with the consent of parents or guardians shall be void ab initio.

#### 2. **Consent freely given in the presence of the solemnizing officer.**

**Freely given:** the consent is real and not vitiated or rendered defective by any of the vices of consent.

Hence, the marriage may be annulled if the consent of either party was obtained by fraud, (Art. 45, par. 3), or if the consent of either party was obtained by force, intimidation or undue influence (Art. 45, par. 4).

### FORMAL REQUISITES OF MARRIAGE:

1. **Authority of the solemnizing officer-** In the Philippines marriage can be solemnized by:
  - a. Members of the judiciary.
  - b. Any priest or minister of any church or religious.
  - c. Any ship captain or airplane.
  - d. Any military commander of a unit.
  - e. Any consul-general, consul, or vice-consul.
  - f. Incumbent Mayor of a city/municipality (see sec. 444 and 445 of the Local Government Code).

Hence, the marriage shall be void if it shall be solemnized by any person not legally authorized to perform marriages, *UNLESS such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so.*

#### **Consul-general as a solemnizing officer:**

Marriages between Filipino citizens abroad may be solemnized by a consul-general, consul or vice-consul of the Philippines.

The issuance of the marriage license and the duties of the local civil registrar and of the solemnizing

officer with regard to the celebration of marriage shall be performed by the consular official.

**Requisites for authority of a priest to solemnize marriage:**

- a. He must be registered in the office of the Civil Registrar General (not the local civil registrar).
- b. He must have written authority to solemnize marriages given by his church or religious sect.
- c. He must act within the limits of such authority.
- d. Both or one of the parties to the marriage must belong to his church or sect.

**2. A valid marriage license except in the cases provided for in Articles 27, 28, 31 – 34.**

**Where to apply?** A marriage license shall be issued by the LCRegistrar of the city or municipality where either contracting party habitually resides.

**Enforceability of the license:** The license shall be valid in any part of the Philippines for a period of 120 days from the date of issue, and shall be deemed automatically cancelled at the expiration of said period if the contracting parties have not made use of it.

A marriage solemnized without a license shall be void ab initio.

**MARRIAGES EXEMPT FROM MARRIAGE LICENSE [EXTRAORDINARY MARRIAGE]:**

- a. **Art. 27:** marriage in articulo mortis; remains valid even if the ailing party subsequently survives.
- b. **Art. 28:** marriage in remote places (no means of transportation to personally appear to the LCR).
- c. **Art. 31:** marriage in articulo mortis between passengers or crew while the ship is at sea or the plane is at flight, and during stopovers at ports of call.
- d. **Art. 32:** marriages in articulo mortis between persons within the zone of military operation, whether members of the armed forces or civilians.
- e. **Art. 33:** Marriages among Muslims or among members of the ethnic cultural communities provided that they are solemnized in accordance with their customs, rites or practices.
- f. **Ratification of marital cohabitation: Art. 34:** marriage of a man and a woman who have lived together as husband and wife for at least 5 years, during which, the parties have no legal impediment to marry each other.

- g. Marriages solemnized outside the Philippines where no marriage license is required by the country where it is solemnized.

**Requisites of ratification of marital cohabitation:**

1. The contracting parties must have been living together as husband and wife for at least 5 years before the marriage.
2. The parties must have no legal impediment to marry each other.
3. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths.
4. The necessary affidavit of the person solemnizing the marriage.

**3. A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than 2 witnesses.**

**Form** – No prescribed form or religious rite for the solemnization of the marriage is required. It shall be necessary, however, for the contracting parties to appear personally before the solemnizing officer and DECLARE in the presence of not less than 2 witnesses of legal age that they take each other as husband and wife. This declaration shall be contained in the **marriage certificate** which shall be signed and attested to.

In case of a marriage in *articulo mortis*, when the party at the point of death is unable to sign the marriage certificate, it shall be sufficient for one of the witnesses to the marriage to write the name of said party, which fact shall be attested by the solemnizing officer.

Since it is neither an essential nor a formal requisite, an unsigned or unattested marriage certificate does not invalidate the marriage.

**Where the marriage should be solemnized?** The marriage shall be solemnized publicly, and not elsewhere:

1. In the chambers of the judge
2. In open court
3. In the church, chapel or temple
4. In the office of the consul-general, consul or vice consul, and not elsewhere
5. Except in cases of marriages contracted at the point of death or in remote places
6. Where both of the parties request in which case the marriage may be solemnized at a house or place designated by them.
7. 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 void foreign marriages.

**Marriage by proxy:**

- a. If performed here in the Philippines, the marriage is void because physical presence of both parties is required.
- b. If performed abroad, whether between Filipinos or foreigners or mixed, and **valid there as such**, the marriage should be considered valid in the Philippines as mentioned under Art. 26.

**EFFECTS OF ABSENCE OR DEFECT IN THE REQUISITES**

**Absence:** The absence of essential or formal requisites shall render the marriage void ab initio, except as stated in Article 35(2).

**Article 35(2)** – good faith on both or either of the parties of the solemnizing officer’s authority to solemnize marriage.

**Defect:** A defect in any of the essential requisites shall render the marriage voidable as provided in Art. 45.

**Irregularity:** An irregularity in the formal requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally or administratively liable.

**Illustration:**

A marriage solemnized by a judge outside his territorial jurisdiction is valid but opens the judge to sanctions.

A marriage contracted by a party who is 18 – 21 years old without parental consent is voidable.

**DUTIES OF THE LOCAL CIVIL REGISTRAR**

- 1. Receive the **application** for marriage license.
- 2. Require the presentation of original **birth/baptismal certificates** which shall be duly attested by the persons having custody of the originals (these certificates need not be sworn to, because the signature and official title of the person issuing the certificate shall be sufficient proof of its authenticity, and shall be exempt from the documentary stamp tax).

The presentation of this certificate shall not be required -

- if the parents of the contracting parties appear personally before the local civil registrar concerned and swear to the correctness of the lawful age of said parties, as stated in the application
- Or when the local civil registrar shall, by merely looking at the applicants upon their personally appearing before him, be convinced that either or both of them have the required age.

In case either of the contracting parties has been previously married, the applicant shall be required to furnish, instead of this certificate, the **death certificate** of the deceased spouse or the **judicial decree** of annulment or declaration of nullity of his or her previous marriage. In case of default, an affidavit for such matter shall suffice.

**Parental consent:** In case either or both of the contracting parties are between the ages of 18 and 21, they shall, in addition to the certificate, exhibit to the local civil registrar, the written consent to their marriage of their father, mother, or guardian.

⚡ **Parental advice:** Any contracting party between the age of 21 and 25 shall be obliged to ask their parents or guardian for advice upon the intended marriage. Such advice shall be attached to the application for marriage license.

⚡ **Marriage counseling:** In cases where parental consent or advice is needed, the party concerned shall, in addition to the requirements, attach a certificate issued by a priest authorize to solemnize marriage or a marriage counselor duly accredited by the proper government agency to the effect that the contracting parties have undergone marriage counseling.

⚡ *Failure to attach suspends the issuance of marriage license for 3 months from filing of application.*

- 3. In case of default to present such birth certificates, such party may furnish in lieu thereof his current **residence certificate** or an **affidavit** for such matter. Such instrument shall contain the sworn declaration of 2 witnesses of lawful age.
- 4. The local civil registrar shall prepare a **notice** which shall contain the full names and residences of the applicants for a marriage license and other data given in the application. The notice shall be posted for 10 consecutive days. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local civil registrar thereon.
- 5. In case of any **impediment** known to the local civil registrar or brought to his attention, he shall note down the particulars thereof and his findings thereon in the application for a marriage license, but shall nonetheless issue said license after the completion of the period of publication, unless ordered otherwise by a competent court at his own instance or that of any interested party. No filing fee shall be charged for the petition nor a corresponding bond required for the issuance of the order.
- 6. The local civil registrar shall require the **payment of the fees** prescribed by law or regulation before the issuance of the marriage license. No other sum shall be collected in the nature of a fee or tax of any kind for the issuance of said license. It shall, however, be issued free of charge to indigent parties, that is, those who have no visible means of income or whose

income is insufficient for their subsistence, a fact established by their affidavit or by their oath before the local civil registrar.

7. It shall be the duty of the local civil registrar to **prepare the documents** required and to **administer oaths** to all interested parties without any charge in both cases. The documents and affidavits filed in connection with the applications for marriage licenses shall be exempt from documentary stamp tax.
8. The local civil registrar concerned shall **enter all applications** for marriage licenses filed with him in a registry book strictly in the order in which the same are received.
9. Proper **receipts** shall be issued by the LCR to the solemnizing officer transmitting copies of the marriage certificate.

**Parental consent:** Such consent shall be manifested in writing by the interested party, who personally appears before the proper local civil registrar, or by an affidavit for such matter.

**Parental advice:** If they do not obtain such advice, or if it be unfavorable, the marriage license shall not be issued till after 3 months following the completion of the publication of the application therefore. Such advice shall be attached to the application for marriage license.

**Marriage counseling:** Failure to attach said certificate of marriage counseling shall suspend the issuance of the marriage license for a period of 3 months from the completion of the publication of the application. Issuance of the marriage license within the prohibited period shall subject the issuing officer to administrative sanctions but shall not affect the validity of the marriage.

Both parties must be present during the marriage counseling even if only one needs it.

#### **DUTIES OF THE SOLEMNIZING OFFICER**

1. To **prepare marriage certificate:** one for the contracting parties; 2 for the LCR who must receive it within 15 days after the celebration of the marriage; one for the solemnizing officer.
2. In the cases provided under Art. 27 (marriage in articulo mortis) and 28 (marriage in remote places), the solemnizing officer shall state in an **affidavit** executed before the local civil registrar or any other person legally authorized to administer oaths that the marriage was performed under such circumstances stated in said articles, and that the officer took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of a legal impediment to the marriage.

The affidavit of the solemnizing officer required by this article takes the place of the marriage license and constitutes an assurance that the parties are of the proper ages and that there is no impediment to their marriage.

3. The original of the **affidavit** required above, together with a legible copy of the **marriage contract**, shall be sent by the person solemnizing the marriage to the LCR of the place where it was performed within the period of 30 days after the performance of the marriage.
4. For marriages involving ratification of marital cohabitation, the solemnizing officer shall **state under oath** that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage.

#### **MARRIAGES CELEBRATED ABROAD**

##### **ARTICLE 26**

**Outside marriages:** Marriages solemnized in a foreign country in accordance with the laws of that foreign country shall be valid in the Philippines.

**Exceptions:** - Philippine law applies

- a. Either or both parties did not have the legal capacity to get married.
- b. The marriage is immoral being bigamous or polygamous.
- c. Consent of one party is lacking because of mistake as to the identity of the other.
- d. One of the parties is psychologically incapacitated at the time of the marriage.
- e. Incestuous marriage.
- f. Void marriages by reason of public policy.
- g. Subsequent marriages which are considered void due to lack of recording under Art. 53.

**Exception to the exception:** Those marriages celebrated abroad wherein Philippines law applies and gives an exception. E.g. those marriages where marriage license is not needed such as those marriages celebrated in *articulo mortis*. [this covers Art 27, 28 & 31]

**Capacity to remarry [EO 227]:** 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.**

**However, it be noted that it is the Filipino spouse that should avail of this privilege in the Philippines and not the alien spouse.**

**Inapplicability of EO 227:**

- a. A divorce obtained by a Filipino abroad from his or her Filipino spouse, which divorce is void because divorce is not allowed in this country, and a Filipino is governed by his national law wherever he goes.

This is in consonance with **Article 17 of the Civil Code**- "prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country."

- b. A divorce obtained by a former Filipino who had been naturalized in another country, after his naturalization, as it might open the door to rich Filipino's obtaining naturalization abroad for no other reason than to be able to divorce their Filipino spouses.

**REMARKS:** Of course not all marriages entered into by the contracting parties are valid under the law. Some marriages for some reason are considered invalid since their reasons are against reason itself. Its invalidity maybe hinged on relationship [you cannot marry your sister], public policy and public morals [you cannot marry your adopted daughter] and lacks the requirements provided by law for validity of a marriage.

## VOID AND VOIDABLE MARRIAGES

### VOID MARRIAGES DUE TO ABSENCE OF ESSENTIAL AND FORMAL REQUISITES

1. Between **minors** [below 18 years old] even with consent of parents.
2. Solemnized by **unauthorized officer**, except there is good faith on one or both of the parties, believing that the latter is authorized to solemnized marriage.
3. Solemnized **without marriage license**, except under Art. 27, 28, 31 – 34 [marriages exempt from marriage license].
4. **Bigamous/polygamous**, except under **Art. 41-** *A marriage contracted by any person during the subsistence of a previous marriage in cases where the prior spouse had **been declared judicially absent**.*
5. **Mistake of identity** – the mistake here is with regard to the physical identity of one of the parties and not with regard merely to the character, health, rank, fortune, or chastity of one party to the marriage. This is tantamount to absence or lack of consent which makes the marriage void.
6. **Subsequent marriages without complying requirements as stated under Art. 53-** *Parties in a previous marriage may marry again after complying with the requirement of recording of the judgment of annulment or of absolute nullity of the previous marriage, the partition and distribution of the properties of the spouses, and the delivery of the children's presumptive legitimes with the appropriate civil registry and registry of property.*
7. **Art. 36:** Those contracted by a party who at the time of the celebration of marriage was **psychologically incapacitated** to comply with the marital obligations *even if such incapacity becomes manifest only after its solemnization.*

**Psychological incapacity:** the condition of a person *who does not have the mind, will, and heart for the*

### **performance of essential marital/parental obligations** as provided below –

1. **Art. 68:** the husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.
2. **Art. 220:** parental authority over the person of their unemancipated children.
3. **Art. 225:** parental authority over the property of their unemancipated children.

### **General characteristics of psychological incapacity:**

- a. **Gravity:** if the subject cannot carry out the normal and ordinary duties of marriage and family, shouldered by any average couple existing under ordinary circumstances of life and work.
- b. **Antecedence:** if the roots of the trouble can be traced to the history of the subject before the marriage although its overt manifestations appear only after the wedding.
- c. **Incurability:** if treatments required exceed the ordinary means of the subject, or involve time and expense beyond the reach of the subject.

### **Guidelines/requisites for psychological incapacity [Republic v. Molina]:**

- a. The **burden of proof** to show the nullity of the marriage belong to the plaintiff, and any doubt must be resolved in favor of the existence of the marriage and against its nullity.
- b. The root cause of the psychological incapacity must be:
  1. **Medically or clinically identified**
  2. **Alleged in the complaint**
  3. **Sufficiently proven by experts**
  4. **Clearly explained in the decision**
- c. The incapacity must be **proven to be existing at the time of the celebration of the marriage** although the manifestation need not be perceivable at such time.
- d. The incapacity must also be shown to be **medically or clinically permanent or incurable**, although the incurability may be relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex.
- e. The incapacity must be **relevant to the assumption of marriage obligations** and not to those unrelated to marriage like the exercise of a profession or employment in a job.
- f. Such **illness must be grave enough to bring about the disability** of the party to assume the essential obligations of marriage.



- g. The **essential marital obligations** must be those embraced by Arts. 68 –71 and Arts. 220 - 225 of the Family Code, with regard to parents and children. Such **non-compliance** must also be stated in the petition, proven by evidence, and included in the text of the decision.
- h. **Interpretations given by the NAMT of the Catholic Church**, while not controlling, should be given great respect by our courts.
- i. The trial court must order the fiscal and the **Solicitor general** to appear as counsel for the State. No decision shall be handed down unless the Solicitor general issues a certification, which will be quoted in the decision, briefly stating his reasons for his agreement or opposition to the petition. The Solicitor General and the fiscal shall submit such certification to the court within 15 days from the date the case is submitted for resolution.

**VOID MARRIAGES [INCESTUOUS MARRIAGES]-**  
Void, whether the relationship between the parties be legitimate or illegitimate.

1. Between ascendants and descendants of any degree.
2. Between brothers and sisters, whether of the full or half-blood.

**VOID MARRIAGES [BY REASON OF PUBLIC POLICY – RELATIONSHIP]**

1. Between collateral blood relatives, whether legitimate or illegitimate, up to the 4<sup>th</sup> civil degree.
2. Between step-parents and step-children.
3. Between parents-in-law and children-in-law.
4. Between the adopting parent and the adopted child.
5. Between the surviving spouse of the adopting parent and the adopted child.
6. Between the surviving spouse of the adopted child and the adopter.
7. Between an adopted child and a legitimate child of the adopter.
8. Between adopted children of the same adopter.
9. Between parties where one, with the intention to marry the other, killed that other person's spouse, or his or her own spouse: in this case, there is no need for conviction of the guilty party.

**Other relationships which are not impediments to marriage:**

1. Brother-in-law and sister-in-law
2. Stepbrother and stepsister
3. Guardian and ward
4. Adopted and illegitimate child of the adopter
5. Adopted son of the husband, and adopted daughter of the wife
6. After legal separation, the guilty parties to adultery or concubinage.

**Imprescriptibility of action:** the action or defense for the declaration of absolute nullity of a marriage shall not prescribe. **[RA 8533-approved February 23, 1998]**

**LEGAL PERSONALITY TO FILE ANNULMENT**

**Who has the legal personality to file annulment of marriage?**

- ⊕ It depends on the law during the celebration of the marriage.
- ⊕ If the marriage was celebrated during the effectivity of the Civil Code, then persons affected by the marriage can file the annulment. These persons are limited to the aggrieved spouse and children, either legitimate or illegitimate.
- ⊕ If the marriage was celebrated during the effectivity of the Family Code, AM No. 02-11-10-SC, effective March 4, 2003 shall govern.

**Note:** if the marriage was celebrated under the Family Code the children cannot assail the validity of the marriage in a petition for annulment of marriage. However they can question the validity of the marriage during the settlement of estate of their parents.

**A.M. No. 02-11-10-SC March 4, 2003**

**RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES**

**Section 1. Scope** - This Rule shall govern petitions for declaration of absolute nullity of void marriages and annulment of voidable marriages under the Family Code of the Philippines.

The Rules of Court shall apply suppletorily.

**Section 2. Petition for declaration of absolute nullity of void marriages.**

**(a) Who may file.** - A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife. (n)

**(b) Where to file.** - The petition shall be filed in the Family Court.

**(c) Imprescriptibility of action or defense.** - An Action or defense for the declaration of absolute nullity of void marriage shall not prescribe.

**(d) What to allege.** - A petition under Article 36 of Family Code shall specially allege the complete facts showing the either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriages at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged.

**Section 3. Petition for annulment of voidable marriages.** -

**(a) Who may file.** - The following persons may file a petition for annulment of voidable marriage based on any of the grounds under article 45 of the Family Code and within the period herein indicated:

(1) The contracting party whose parent, or guardian, or person exercising substitute parental authority did not give his or her consent, within five years after attaining the age of twenty-one unless, after attaining the age of twenty-one, such party freely cohabited with the other as husband or wife; or the parent, guardian or person having legal charge of the contracting party, at any time before such party has reached the age of twenty-one;

(2) The sane spouse who had no knowledge of the other's insanity; or by any relative, guardian, or person having legal charge of the insane, at any time before the death of either party; or by the insane spouse during the a lucid interval or after regaining sanity, provided that the petitioner, after coming to reason, has not freely cohabited with the other as husband or wife;

(3) The injured party whose consent was obtained by fraud, within five years after the discovery of the fraud, provided that said party, with full knowledge of the facts constituting the fraud, has not freely cohabited with the other as husband or wife;

(4) The injured party whose consent was obtained by force, intimidation, or undue influence, within five years from the time the force intimidation, or undue influence disappeared or ceased, provided that the force, intimidation, or undue influence having disappeared or ceased, said party has not thereafter freely cohabited with the other as husband or wife;

(5) The injured party where the other spouse is physically incapable of consummating the marriage with the other and such incapability continues and appears to be incurable, within five years after the celebration of marriage; and

(6) The injured party where the other party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable, within five years after the celebration of marriage.

**(b) Where to file.** - The petition shall be filed in the Family Court.

**Section 4. Venue.** - The Petition shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing. Or in the case of non-resident respondent, where he may be found in the Philippines, at the election of the petitioner.

**Section 5. Contents and form of petition.** - (1) The petition shall allege the complete facts constituting the cause of action.

(2) It shall state the names and ages of the common children of the parties and specify the regime governing their property relations, as well as the properties involved. If there is no adequate provision in a written agreement between the parties, the petitioner may apply for a provisional order for spousal support, the custody and support of common children, visitation rights,

administration of community or conjugal property, and other matters similarly requiring urgent action.

(3) It must be verified and accompanied celebration of marriage. (b) Where to file.-The petition shall be filed in the Family Court.

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(3) it must be verified and accompanied by a certification against forum shopping. The verification and certification must be signed personally by me petitioner. No petition may be filed solely by counsel or through an attorney-in-fact.

If the petitioner is in a foreign country, the verification and certification against forum shopping shall be authenticated by the duly authorized officer of the Philippine embassy or legation, consul general, consul or vice-consul or consular agent in said country.

(4) It shall be filed in six copies. The petitioner shall serve a copy of the petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor, within five days from the date of its filing and submit to the court proof of such service within the same period.

Failure to comply with any of the preceding requirements may be a ground for immediate dismissal of the petition.

**Section 6. Summons.** - The service of summons shall be governed by Rule 14 of the Rules of Court and by the following rules:

(1) Where the respondent cannot be located at his given address or his whereabouts are unknown and cannot be ascertained by diligent inquiry, service of summons may, by leave of court, be effected upon him by publication once a week for two consecutive weeks in a newspaper of general circulation in the Philippines and in such places as the court may order In addition, a copy of the summons shall be served on the respondent at his last known address by registered mail or any other means the court may deem sufficient.

(2) The summons to be published shall be contained in an order of the court with the following data: (a) title of the case; (b) docket number; (c) nature of the petition;

(d) principal grounds of the petition and the reliefs prayed for; and (e) a directive for the respondent to answer within thirty days from the last issue of publication.

**Section 7. Motion to dismiss.** - No motion to dismiss the petition shall be allowed except on the ground of lack of jurisdiction over the subject matter or over the parties; provided, however, that any other ground that might warrant a dismissal of the case may be raised as an affirmative defense in an answer.

**Section 8. Answer.** - (1) The respondent shall file his answer within fifteen days from service of summons, or within thirty days from the last issue of publication in case of service of summons by publication. The answer must be verified by the respondent himself and not by counsel or attorney-in-fact.

(2) If the respondent fails to file an answer, the court shall not declare him or her in default.

(3) Where no answer is filed or if the answer does not tender an issue, the court shall order the public prosecutor to investigate whether collusion exists between the parties.

**Section 9. Investigation report of public prosecutor.** - (1) Within one month after receipt of the court order mentioned in paragraph (3) of Section 8 above, the public prosecutor shall submit a report to the court stating whether the parties are in collusion and serve copies thereof on the parties and their respective counsels, if any.

(2) If the public prosecutor finds that collusion exists, he shall state the on the finding of collusion within ten days from receipt of a copy of a report. The court shall set the report for hearing and if convinced that the parties are in collusion, it shall dismiss the petition.

(3) If the public prosecutor reports that no collusion exists, the court shall set the case for pre-trial. It shall be the duty of the public prosecutor to appear for the State at the pre-trial.

**Section 10. Social worker.** - The court may require a social worker to conduct a case study and submit the corresponding report at least three days before the pre-trial. The court may also require a case study at any stage of the case whenever necessary.

**Section 11. Pre-trial.** -

(1) *Pre-trial mandatory.* - A pre-trial is mandatory. On motion or *motu proprio*, the court shall set the pre-trial after the last pleading has been served and filed, or upon receipt of the report of the public prosecutor that no collusion exists between the parties.

(2) *Notice of pre-trial.* - (a) The notice of pre-trial shall contain:

- (1) the date of pre-trial conference; and
- (2) an order directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure the receipt thereof by the adverse

party at least three days before the date of pre-trial.

(b) The notice shall be served separately on the parties and their respective counsels as well as on the public prosecutor. It shall be their duty to appear personally at the pre-trial.

(c) Notice of pre-trial shall be sent to the respondent even if he fails to file an answer. In case of summons by publication and the respondent failed to file his answer, notice of pre-trial shall be sent to respondent at his last known address.

**Section 12. Contents of pre-trial brief.** - The pre-trial brief shall contain the following:

(a) A statement of the willingness of the parties to enter into agreements as may be allowed by law, indicating the desired terms thereof;

(b) A concise statement of their respective claims together with the applicable laws and authorities;

(c) Admitted facts and proposed stipulations of facts, as well as the disputed factual and legal issues;

(d) All the evidence to be presented, including expert opinion, if any, briefly stating or describing the nature and purpose thereof;

(e) The number and names of the witnesses and their respective affidavits; and

(f) Such other matters as the court may require.

Failure to file the pre-trial brief or to comply with its required contents shall have the same effect as failure to appear at the pre-trial under the succeeding paragraphs.

**Section 13. Effect of failure to appear at the pre-trial.** -

(a) If the petitioner fails to appear personally, the case shall be dismissed unless his counsel or a duly authorized representative appears in court and proves a valid excuse for the non-appearance of the petitioner.

(b) If the respondent has filed his answer but fails to appear, the court shall proceed with the pre-trial and require the public prosecutor to investigate the non-appearance of the respondent and submit within fifteen days thereafter a report to the court stating whether his non-appearance is due to any collusion between the parties. If there is no collusion, the court shall require the public prosecutor to intervene for the State during the trial on the merits to prevent suppression or fabrication of evidence.

**Section 14. Pre-trial conference.** -At the pre-trial conference, the court:

(a) May refer the issues to a mediator who shall assist the parties in reaching an agreement on matters not prohibited by law.

The mediator shall render a report within one month from referral which, for good reasons, the court may extend for a period not exceeding one month.

(b) In case mediation is not availed of or where it fails, the court shall proceed with the pre-trial conference, on which occasion it shall consider the advisability of receiving expert testimony and such other makers as may aid in the prompt disposition of the petition.

**Section 15. Pre-trial order.** - (a) The proceedings in the pre-trial shall be recorded. Upon termination of the pre-trial, the court shall Issue a pre-trial order which shall recite in detail the matters taken up In the conference, the action taken thereon, the amendments allowed on the pleadings, and except as to the ground of declaration of nullity or annulment, the agreements or admissions made by the parties on any of the matters considered, including any provisional order that may be necessary or agreed upon by the parties.

(b) Should the action proceed to trial, the order shall contain a recital of the following;

- (1) Facts undisputed, admitted, and those which need not be proved subject to Section 16 of this Rule;
- (2) Factual and legal issues to be litigated;
- (3) Evidence, including objects and documents, that have been marked and will be presented;
- (4) Names of witnesses who will be presented and their testimonies in the form of affidavits; and
- (5) Schedule of the presentation of evidence.

(c) The pre-trial order shall also contain a directive to the public prosecutor to appear for the State and take steps to prevent collusion between the parties at any stage of the proceedings and fabrication or suppression of evidence during the trial on the merits.

(d) The parties shall not be allowed to raise issues or present witnesses and evidence other than those stated in the pre-trial order.

The order shall control the trial of the case, unless modified by the court to prevent manifest injustice.

(e) The parties shall have five days from receipt of the pre-trial order to propose corrections or modifications.

**Section 16. Prohibited compromise.** - The court shall not allow compromise on prohibited matters, such as the following:

- (a) The civil status of persons;
- (b) The validity of a marriage or of a legal separation;
- (c) Any ground for legal separation;
- (d) Future support;
- (e) The jurisdiction of courts; and
- (f) Future legitime.

**Section 17. Trial.** - (1) The presiding judge shall personally conduct the trial of the case. No delegation of the reception of evidence to a commissioner shall be allowed except as to matters involving property relations of the spouses.

(2) The grounds for declaration of absolute nullity or annulment of marriage must be proved. No judgment on the pleadings, summary judgment, or confession of judgment shall be allowed.

(3) The court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring a party to testify in open court would not enhance the ascertainment of truth; would cause to the party psychological harm or inability to effectively communicate due to embarrassment, fear, or timidity; would violate the right of a party to privacy; or would be offensive to decency or public morals.

(4) No copy shall be taken nor any examination or perusal of the records of the case or parts thereof be made by any person other than a party or counsel of a party, except by order of the court.

**Section 18. Memoranda.** - The court may require the parties and the public prosecutor, in consultation with the Office of the Solicitor General, to file their respective memoranda support of their claims within fifteen days from the date the trial is terminated. It may require the Office of the Solicitor General to file its own memorandum if the case is of significant interest to the State. No other pleadings or papers may be submitted without leave of court. After the lapse of the period herein provided, the case will be considered submitted for decision, with or without the memoranda.

**Section 19. Decision.** - (1) If the court renders a decision granting the petition, it shall declare therein that the decree of absolute nullity or decree of annulment shall be issued by the court only after compliance with Article 50 and 51 of the Family Code as implemented under the Rule on Liquidation, Partition and Distribution of Properties.

(2) The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail. If the respondent summoned by publication failed to appear in the action, the dispositive part of the decision shall be published once in a newspaper of general circulation.

(3) The decision becomes final upon the expiration of fifteen days from notice to the parties. Entry of judgment shall be made if no motion for reconsideration or new trial, or appeal is filed by any of the parties the public prosecutor, or the Solicitor General.

(4) Upon the finality of the decision, the court shall forthwith issue the corresponding decree if the parties have no properties.

If the parties have properties, the court shall observe the procedure prescribed in Section 21 of this Rule.

The entry of judgment shall be registered in the Civil Registry where the marriage was recorded and In the Civil Registry where the Family Court granting the petition for declaration of absolute nullity or annulment of marriage is located.

**Section 20. Appeal.** -

(1) *Pre-condition.* - No appeal from the decision shall be allowed unless the appellant has filed a motion for

reconsideration or new trial within fifteen days from notice of judgment.

(2) *Notice of appeal.* - An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within fifteen days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal on the adverse parties.

**Section 21.** *Liquidation, partition and distribution, custody, support of common children and delivery of their presumptive legitimes.* - Upon entry of the judgment granting the petition, or, in case of appeal, upon receipt of the entry of judgment of the appellate court granting the petition, the Family Court, on motion of either party, shall proceed with the liquidation, partition and distribution of the properties of the spouses, including custody, support of common children and delivery of their presumptive legitimes pursuant to Articles 50 and 51 of the Family Code unless such matters had been adjudicated in previous judicial proceedings.

**Section 22.** *Issuance of Decree of Declaration of Absolute Nullity or Annulment of Marriage.*" (a) The court shall issue the Decree after;

(1) Registration of the entry of judgment granting the petition for declaration of nullity or annulment of marriage in the Civil Registry where the marriage was celebrated and in the Civil Registry of the place where the Family Court is located;

(2) Registration of the approved partition and distribution of the properties of the spouses, in the proper Register of Deeds where the real properties are located; and

(3) The delivery of the children's presumptive legitimes in cash, property, or sound securities.

(b) The court shall quote in the Decree the dispositive portion of the judgment entered and attach to the Decree the approved deed of partition.

Except in the case of children under Articles 36 and 53 of the Family Code, the court shall order the Local Civil Registrar to issue an amended birth certificate indicating the new civil status of the children affected.

**Section 23.** *Registration and publication of the decree; decree as best evidence.* - (a) The prevailing party shall cause the registration of the Decree in the Civil Registry where the marriage was registered, the Civil Registry of the place where the Family Court is situated, and in the National Census and Statistics Office. He shall report to the court compliance with this requirement within thirty days from receipt of the copy of the Decree.

(b) In case service of summons was made by publication, the parties shall cause the publication of the Decree once in a newspaper of general circulation.

(c) The registered Decree shall be the best evidence to prove the declaration of absolute nullity or annulment of marriage and shall serve as notice to third persons

concerning the properties of petitioner and respondent as well as the properties or presumptive legitimes delivered to their common children.

**Section 24.** *Effect of death of a party; duty of the Family Court or Appellate Court.* - (a) In case a party dies at any stage of the proceedings before the entry of judgment, the court shall order the case closed and terminated, without prejudice to the settlement of the estate in proper proceedings in the regular courts.

(b) If the party dies after the entry of judgment of nullity or annulment, the judgment shall be binding upon the parties and their successors in interest in the settlement of the estate in the regular courts.

**Section 25.** *Effectivity.* - This Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.

#### **WHAT SHALL A PERSON DO IN ORDER TO CONTRACT A SUBSEQUENT MARRIAGE?**

**There are two options-**

**First option:** kill your spouse in a clandestine manner, since death terminates marital tie.☺☺☺

**Second option-** avail the remedies provided by law.

#### **1. File a petition for declaration of nullity of marriage, pursuant to Article 41.**

**Article 41-** "A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only 2 years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute summary proceedings as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse."

**Judicial declaration of nullity of marriage before remarriage:** the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the bases solely of a final judgment declaring such previous marriage void.

#### **2. Register the decision declaring the nullity of marriage in the civil registry per Article 52 & 53.**

**Art. 52:** "the judgment of annulment of absolute nullity of the marriage, the partition and distribution of the properties of the spouses, and the delivery of

the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect third persons.

**Article 53-** "either of the former spouses may marry again after complying with the requirements of the immediately preceding Article [52]; otherwise, the subsequent marriage shall be null and void.

**BAR 2006- Marriage; Void Marriages** - Gigi and Ric, Catholics, got married when they were 18 years old. Their marriage was solemnized on August 2, 1989 by Ric's uncle, a Baptist Minister, in Calamba, Laguna. He overlooked the fact that his license to solemnize marriage expired the month before and that the parties do not belong to his congregation. After 5 years of married life and blessed with 2 children, the spouses developed irreconcilable differences, so they parted ways. While separated, Ric fell in love with Juliet, a 16 year-old sophomore in a local college and a Seventh-Day Adventist. They decided to get married with the consent of Juliet's parents. She presented to him a birth certificate showing she is 18 years old. Ric never doubted her age much less the authenticity of her birth certificate. They got married in a Catholic church in Manila. A year after, Juliet gave birth to twins, Aissa and Aretha.

**(1) What is the status of the marriage between Gigi and Ric — valid, voidable or void? Explain. (2.5%)**

**SUGGESTED ANSWER:** Even if the Minister's license expired, the marriage is valid if either or both Gigi and Ric believed in good faith that he had the legal authority to solemnize marriage. While the authority of the solemnizing officer is a formal requisite of marriage, and at least one of the parties must belong to the solemnizing officer's church, the law provides that the good faith of the parties cures the defect in the lack of authority of the solemnizing officer (*Art. 35 par. 2, Family Code; Sempio-Diy, p. 34; Rabuya, The Law on Persons and Family Relations, p. 208*). The absence of parental consent despite their having married at the age of 18 is deemed cured by their continued cohabitation beyond the age of 21. At this point, their marriage is valid (See Art. 45, Family Code).

**(2) What is the status of the marriage between Ric and Juliet — valid, voidable or void? (2.5%)**

**SUGGESTED ANSWER:** The marriage between Juliet and Ric is void. First of all, the marriage is a bigamous marriage not falling under Article 41 [Art. 35(4) Family Code], A subsisting marriage constitutes a legal impediment to remarriage. Secondly, Juliet is below eighteen years of age. The marriage is void even if consented to by her parents [Art. 35(1), Family Code]. The fact that Ric was not aware of her real age is immaterial.

**(3) Suppose Ric himself procured the falsified birth certificate to persuade Juliet to marry him despite her minority and assured her that everything is in order. He did not divulge to her his prior marriage with Gigi. What action, if any, can Juliet take against him? Explain. (2.5%)**

**SUGGESTED ANSWER:** Juliet can file an action for the declaration of nullity of the marriage on the ground that he willfully caused loss or injury to her in a manner that is contrary to morals, good customs and public policy [Art. 21, New Civil Code]. She may also bring criminal actions for seduction, falsification, illegal marriage and bigamy against Ric.

**(4) If you were the counsel for Gigi, what action/s will you take to enforce and protect her interests? Explain. (2.5%)**

**SUGGESTED ANSWER:** I would file an action to declare the marriage between Juliet and Ric null and void ab initio and for Ric's share in the co-ownership of that marriage to be forfeited in favor and considered part of the absolute community in the marriage between Gigi and Ric [Arts. 148 & 147, Family Code]. I would also file an action for damages against Ric on the grounds that his acts constitute an abuse of right and they are contrary to law and morals, causing damages to Gigi (See Arts 19, 20, 21, New Civil Code).

## BIGAMOUS MARRIAGE

**VOID - BIGAMOUS MARRIAGE:** a marriage contracted by any person during the subsistence of a previous marriage shall be void.

**VALID – BIGAMOUS MARRIAGE:** Unless before the celebration of the subsequent marriage, the prior spouse had been absent for 4 consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth under Art. 391 of the Civil Code, an absence of only 2 years shall be sufficient.

For the purpose of contracting the subsequent marriage, the spouse present must institute a summary proceeding for the declaration of presumptive death of the absentee, without prejudice to the **effect of reappearance** of the absent spouse.

This marriage although bigamous is valid and its existence depends on the re-appearance of the absentee spouse. Note that the second marriage only is terminated upon the recording of the affidavit of re-appearance of the absentee spouse, and not the re-appearance itself. Thus, even if the absentee spouse re-appeared but no affidavit of re-appearance was executed and recorded in the appropriate registry, then the second marriage is not terminated.

*This provision is intended to protect the present spouse from a criminal prosecution for bigamy because with the judicial declaration that the missing spouse is presumptively dead, the good faith of the present spouse in contracting a second marriage is already established.*

**Effects of reappearance/termination of the subsequent marriage:**

1. The **subsequent marriage** shall be automatically terminated by the recording of the affidavit of

reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void ab initio.

2. The **children** of the subsequent marriage conceived prior to its termination shall be considered legitimate and their custody and support in case of dispute shall be decided by the court in a proper proceeding.
3. The **regime of property** of the subsequent marriage shall be dissolved and liquidated, but if either spouse contracted said marriage in **bad faith**, his or her share of the net profits of the property regime shall be forfeited in favor of the common children or, if there be none, the children of the guilty spouse by a previous marriage, or in default of children, the innocent spouse.
4. **Donations** by reason marriage shall remain valid, except that if the donee contracted the marriage in bad faith, such donations made to said donee are revoked by operation of law.

If **both spouses** of the subsequent marriage acted in bad faith, said marriage shall be void ab initio and all donations by reason of marriage and **testamentary dispositions** made by one in favor of the other are revoked by operation of law.

5. The innocent spouse may revoke the designation of the other spouse who acted in bad faith as a beneficiary in any **insurance policy**, even if such designation be stipulated as irrevocable.
6. The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by **testate and intestate succession**.

**Recording:** The partition and distribution of the properties of the spouses shall be **recorded** in the appropriate civil registry and registry of property; otherwise, the same shall not affect 3<sup>rd</sup> persons.

**BAR 2006- Marriage; Non-Bigamous Marriages-** Marvin, a Filipino, and Shelley, an American, both residents of California, decided to get married in their local parish. Two years after their marriage, Shelley obtained a divorce in California. While in Boracay, Marvin met Manel, a Filipina, who was vacationing there. Marvin fell in love with her. After a brief courtship and complying with all the requirements, they got married in Hongkong to avoid publicity, it being Marvin's second marriage. Is his marriage to Manel valid? Explain. (5%)

**SUGGESTED ANSWER:** Yes. The marriage will not fall under Art. 35(4) of the Family Code on bigamous marriages, provided that Shelley obtained an absolute divorce, capacitating her to remarry under her national law. Consequently, the marriage between Marvin and Manel may be valid as long as it was solemnized and valid in accordance with the laws of Hongkong [Art. 26, paragraphs 1 and 2, Family Code].

## VOIDABLE MARRIAGES

**REMARKS:** Basta voidable marriages it has something to do with the consent of the contracting parties, either there was a vitiated consent or no consent at all.

### Grounds for the annulment of marriage:

1. The marriage may be annulled for the reason that the party in whose behalf it is sought to have the marriage annulled was 18 years of age or over but below 21, and the marriage was solemnized **without the consent of the parents**, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of 21, such party freely cohabited with the other and both lived together as husband and wife.

**Party to file annulment:** Parent/ guardian- before the party age 18-21 reach the age of 21; Spouse [18-21 y.o.] - Within 5 years after reaching the age of 21.

2. That either party was of **unsound mind**, unless such party, after coming to reason, freely cohabited with the other as husband and wife.

**Party & prescription:** Sane spouse/relatives of the insane spouse- annulment of marriage may be filed anytime during the lifetime of the insane spouse; Insane spouse- during lucid interval.

3. That the consent of either party was obtained by **fraud**, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife.

**Party & prescription:** aggrieved spouse, within five years after the discovery of the fraud.

### Fraud constitutes:

- a. Non-disclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude.
- b. Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband.
- c. Concealment of a STD, regardless of its nature, existing at the time of the marriage.
- d. Concealment of drug addiction, habitual alcoholism, homosexuality or lesbianism, existing at the time of the marriage.

No other misrepresentation or deceit as to character, health, rank, fortune, or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage.

4. That the consent of either party was obtained by **force, intimidation, or undue influence**, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife.

**Party & prescription:** aggrieved spouse, within 5 years from the cessation of the violence of intimidation.

There is **violence** when in order to wrest consent, serious or irresistible force is employed.

There is **intimidation** when one of the contracting parties is compelled by a reasonable and well-grounded fear of imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent.

There is **undue influence** when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice.

**Reverential fear:** fear of causing distress, disappointment, or anger on the part of one whom a person has been conditioned to revere, respect, or obey out of a special debt of gratitude.

5. That either party was **physically incapable** of consummating the marriage with the other and such incapacity continues and appears to be incurable.

**Requisites for physical incapacity:**

- a. That the incapacity exists at the time of the celebration of the marriage.
- b. That such incapacity continues to the time when the case for annulment is being tried.
- c. That it appears to be incurable.
- d. It must be unknown to the other contracting party.

**Party & prescription:** aggrieved spouse, within 5 years from the celebration of the marriage.

The physical incapacity referred to by law as a ground for annulment of marriage is **impotence**, or that physical condition of the husband or the wife in which sexual intercourse with a normal person of the opposite sex is impossible.

**Impotence** is the lack of power to copulate, the absence of the functional capacity for the sexual act, and not merely sterility: a pathological condition which negates reproduction.

**Absolute impotency:** lack of power to copulate with anyone.

**Relative impotency:** physical incapability of one party to consummate the marriage with the other.

Only the potent spouse can file the action for annulment; **if both spouses are impotent**, the marriage cannot be annulled because

neither spouse is aggrieved by the other.

**Doctrine of triennial cohabitation:** if the wife remains a virgin after living together with her husband for 3 years, the presumption is that the husband is impotent, and he will have to overcome this presumption.

6. That either party was afflicted with a **STD** found to be serious and appears to be incurable.

**Party & prescription:** within 5 years from the date of celebration of the marriage.

Art. 45 (6)	Art. 46 (3)
One party is afflicted with a STD found to be serious and appears to be incurable	One party is afflicted with a STD regardless of its nature
The disease is present at the time of the marriage	The disease is present at the time of the marriage
Concealment is immaterial; the disease may be known to the other party	There is concealment

**Nevertheless, Article 45 provides for the extinguishment of the action for annulment of marriage through **ratification by cohabitation**.**

**DUTIES OF THE PROSECUTOR:** In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed. No judgment shall be based upon a stipulation of facts or confession of judgment.

**Rationale:** The reason for the duty is because marriage is not just a contract between the parties but a social institution, in the preservation of which, the State is interested.

**EFFECTS OF DECREE OF ANNULMENT/NULLITY OF MARRIAGE**

- The **regime of property** of the subsequent marriage shall be dissolved and liquidated, but if either spouse contracted said marriage in **bad faith**, his or her share of the net profits of the property regime shall be forfeited in favor of the common children or, if there be none, the children of the guilty spouse by a previous marriage, or in default of children, the innocent spouse.
- **Donations** by reason marriage shall remain valid, except that if the donee contracted the marriage in **bad faith**, such donations made to said donee are revoked by operation of law.

Art. 44: if **both spouses** of the subsequent marriage acted in **bad faith**, said marriage shall be void ab initio and all donations by reason of marriage and



testamentary dispositions made by one in favor of the other are revoked by operation of law.

- The innocent spouse may revoke the designation of the other spouse who acted in bad faith as a beneficiary in any **insurance policy**, even if such designation be stipulated as irrevocable.
- The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by **testate and intestate succession**.
- **Children** conceived or born before the judgment of annulment or absolute nullity of the marriage under Art. 36 (psychological incapacity) has become final and executory, shall be considered legitimate. Children conceived or born of the subsequent marriage under Art. 53 (recording of the judgment) shall likewise be legitimate.

*The final judgment of annulment/nullity of marriage shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of their presumptive legitimes.*

**Recording:** The partition and distribution of the properties of the spouses shall be **recorded** in the appropriate civil registry and registry of property; otherwise, the same shall not affect 3<sup>rd</sup> persons.

**Notice to creditors:** - All creditors of the spouses as well as of the property regime shall be notified of the proceedings for liquidation.

**Conjugal dwelling:** in the partition, the conjugal dwelling and the lot on which it is situated shall be adjudicated in accordance with the provisions of Art. 102 and 129 (see codal provision for the procedure for the liquidation of absolute community/conjugal partnership assets and liabilities).

Unless otherwise agreed upon by the parties, in the partition of the properties, the **conjugal dwelling** and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of 7 years are deemed to have chosen the mother, unless the Court has decided otherwise. In case there is no such majority, the Court shall decide, taking in to consideration the best interests of said children.

#### **DIFFERENCE BETWEEN VOID AND VOIDABLE MARRIAGES**

Parameters	Void marriages	Voidable marriages
Nature	Inexistent from time of performance	Valid until annulled by a competent court
Susceptibility of convalidation	Cannot be validated	Can be convalidated either by free cohabitation or

		prescription
Effect on property	No community property; only co-ownership	Absolute community exists unless other system is agreed upon in marriage settlement
Effect on children	Children are illegitimate under Art. 165 (subject to exceptions)	Children are legitimate if conceived before decree of annulment (see Art. 54)
How marriage may be impugned	a. may be attacked directly or collaterally. But for the purpose of remarriage, there must be a judicial declaration of nullity. b. can still be impugned even after death of parties.	a. cannot be collaterally attacked. Only directly (there must be a decree of annulment) b. can no longer be impugned after death of one of the parties.

#### **Who has the personality to file nullity or annulment of void or voidable marriages?**

It depends on the governing law when the marriage was celebrated-

**Marriage was celebrated during the effectivity of Civil Code-** husband or wife, children [whether legitimate or illegitimate of the same marriage or previous marriage.]

**Marriage celebrated during the effectivity of the Family Code-** per **A.M. No. 02-11-10-SC**, a petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife.

**What to allege?** A petition under Article 36 of Family Code shall specially allege the complete facts showing the either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriages at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged.

**BAR 1993- Marriage; Annulment; Judicial Declaration-** Maria and Luis, both Filipinos, were married by a Catholic priest in Lourdes Church, Quezon City in 1976, Luis was drunk on the day of his wedding. In fact, he slumped at the altar soon after the ceremony. After marriage, Luis never had a steady job because he was drunk most of the time. Finally, he could not get employed at all because of drunkenness. Hence, it was Maria who had to earn a living to support herself and her child

begotten with Luis. In 1986, Maria filed a petition in the church matrimonial court in Quezon City to annul her marriage with Luis on the ground of psychological incapacity to comply with his marital obligation. Her petition was granted by the church matrimonial court. 1) Can Maria now get married legally to another man under Philippine laws after her marriage to Luis was annulled by the church matrimonial court? Explain. 2) What must Maria do to enable her to get married lawfully to another man under Philippine laws?

**SUGGESTED ANSWER:**

- 1) No, Maria cannot validly contract a subsequent marriage without a court declaration of nullity of the first marriage. The law does not recognize the church declaration of nullity of a marriage.
- 2) To enable Maria to get married lawfully to another man. She must obtain a judicial declaration of nullity of the prior marriage under Article 36 Family Code.

**DIVORCE**

**General rule:** divorce is not allowed in Philippine law. Thus, if two Filipinos obtained a divorce abroad, the judgment is not valid per Article 15 and 17 paragraph 3 of the Civil Code.

**EXCEPTION:** if a Filipino is married to an alien. However, it must be the alien spouse who should ask for the divorce under his national law and not the Filipino spouse.

**ARTICLE 26 PARAGRAPH 2 OF THE FAMILY CODE-** 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 have capacity to remarry under Philippine law.

This presupposes that the parties in the marriage are Filipino and an alien. However pursuant to an opinion of the DOJ, Filipinos who later on are naturalized and asked for divorce according to their national law may avail of Article 26, provided that the divorce is valid under their national law.

**BAR 1999- MARRIAGE; DIVORCE DECREES; FILIPINO SPOUSES BECOMING ALIEN-** Ben and Eva were both Filipino citizens at the time of their marriage in 1967, When their marriage turned sour, Ben went to a small country in Europe, got himself naturalized there, and then divorced Eva in accordance with the law of that country, Later, he returned to the Philippines with his new wife. Eva now wants to know what action or actions she can file against Ben. She also wants to know if she can likewise marry again. What advice can you give her? {5%}

**SUGGESTED ANSWER:** Considering that Art. 26(2nd par.) contemplates a divorce between a foreigner and a Filipino, who had such respective nationalities at the time of their marriage, the divorce in Europe will not capacitate the Filipino wife to remarry. The advice we can give her is either to file a petition for legal separation, on the ground of sexual infidelity and of contracting a bigamous marriage abroad, or to file a petition to dissolve the conjugal

partnership or absolute community of property as the case maybe.

**ALTERNATIVE ANSWER:** Eva may file an action for legal separation on the grounds of sexual infidelity of her husband and the contracting by her husband of a bigamous marriage abroad. She may remarry. While a strict interpretation of Article 26 of the Family Code would capacitate a Filipino spouse to remarry only when the other spouse was a foreigner at the time of the marriage, the DOJ has issued an opinion (Opinion 134 s. of 1993) that the same injustice sought to be cured by Article 26 is present in the case of spouses who were both Filipino at the time of the marriage but one became an alien subsequently. Said injustice is the anomaly of Eva remaining married to her husband who is no longer married to her. Hence, said Opinion makes Article 26 applicable to her case and the divorce obtained abroad by her former Filipino husband would capacitate her to remarry. To contract a subsequent marriage, all she needs to do is present to the civil registrar the decree of divorce when she applies for a marriage license under Article 13 of the Family Code.

**BAR 1996- MARRIAGE; DIVORCE DECREES; FILIPINO SPOUSES BECOMING ALIEN-** Flor and Virgilio were married to each other in Roxas City in 1980. In 1984, Flor was offered a teaching Job in Canada, which she accepted. In 1989, she applied for and was granted Canadian citizenship. The following year, she sued for divorce from Virgilio in a Canadian court. After Virgilio was served with summons, the Canadian court tried the case and decreed the divorce. Shortly thereafter, Flor married a Canadian. Can Virgilio marry again in the Philippines? Explain.

**SUGGESTED ANSWER:** No, Virgilio cannot validly remarry. His case is not covered by Article 26 of the Family Code, For said Article to be applicable, the spouse who filed for divorce must be a foreigner at the time of the marriage. Since both of them were Filipinos at the time of the marriage, the divorce obtained by Flor did not capacitate Virgilio to remarry. The fact that Flor was already an alien at the time she obtained the divorce does not give Virgilio the capacity to remarry under Philippine Law.

**ALTERNATIVE ANSWERS:**

**a)** Yes, Virgilio can validly remarry. Art. 26 of the FC, merely States the alien spouse without taking into consideration his or her nationality at the time of the marriage. While his case is not covered by the letter of Article 26 FC, it is, however, covered by the spirit of said Article, the injustice to the Filipino spouse sought to be cured by said Article is present in this case. (Department of Justice Opinion No. 134 Series of 1993).

**b)** Although the marriage originally involved Filipino citizens, it eventually became a marriage between an alien and a Filipino after Flor became a Canadian citizen. Thus, the divorce decree was one obtained by an alien spouse married to a Filipino. Although nothing is said about whether such divorce did capacitate Flor to remarry, that fact may as well be assumed since the problem states that she married a Canadian shortly after obtaining the

divorce. Hence, Virgillo can marry again under Philippine law, pursuant to Art. 26. FC which applies because Flor was already an alien at the time of the divorce.

**BAR 2005- MARRIAGE; DIVORCE DECREES; FILIATION OF CHILDREN-** In 1985, Sonny and Lulu, both Filipino citizens, were married in the Philippines. In 1987, they separated, and Sonny went to Canada, where he obtained a divorce in the same year. He then married another Filipina, Auring, in Canada on January 1, 1988. They had two sons, James and John. In 1990, after failing to hear from Sonny, Lulu married Tirso, by whom she had a daughter, Verna. In 1991, Sonny visited the Philippines where he succumbed to heart attack.

**a) Discuss the effect of the divorce obtained by Sonny and Lulu in Canada. (2%)**

**SUGGESTED ANSWER:** The divorce is not valid. Philippine law does not provide for absolute divorce. Philippine courts cannot grant it. A marriage between two (2) Filipinos cannot be dissolved by a divorce obtained abroad. (*Garcia v. Redo, G.R. No. 138322, October 2, 2001*). Philippine laws apply to Sonny and Lulu. Under Article 15 of the New Civil Code, laws relating to family rights and duties, status, and capacity of persons are binding upon citizens of the Philippines wherever they may be. Thus, the marriage of Sonny and Lulu is still valid and subsisting.

**b) Explain the status of the marriage between Sonny and Auring. (2%)**

**SUGGESTED ANSWER:** Since the decree of divorce obtained by Lulu and Sony in Canada is not recognized here in the Philippines, the marriage between Sonny and Auring is void. (Art. 35, Family Code) Any marriage subsequently contracted during the lifetime of the first spouse shall be illegal and void, subject only to the exception in the cases of absence or where the prior marriage was dissolved or annulled. (*Ninal v. Bayadog, G.R. No. 133778, March 14, 2000*) The marriage of Sonny and Auring does not fall within the exception.

**c) Explain the status of the marriage between Lulu and Tirso. (2%)**

**SUGGESTED ANSWER:** The marriage of Lulu and Tirso is also void. Mere absence of the spouse does not give rise to a right of the present spouse to remarry. Article 41 of the Family Code provides for a valid bigamous marriage only where a spouse has been absent for four consecutive years before the second marriage and the present spouse had a well-founded belief that the absent spouse is already dead. (*Republic v. Nolasco, G.R. No. 94053, March 17, 1993*)

**d) Explain the respective filiation of James, John and Verna. (2%)**

**SUGGESTED ANSWER:** James, John and Verna are illegitimate children since their parents are not validly married. Under Article 165 of the Family Code, children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this Code.

**e) Who are the heirs of Sonny? Explain. (2%)**

**Suggested answer:** Sonny's heirs include James, John, and Lulu. Article 887 of the Civil Code provides that the compulsory heirs of the deceased are among others, his widow and his illegitimate children. The widow referred to in Article 887 is the legal wife of the deceased. Lulu is still a compulsory heir of Sonny because the divorce obtained by Sonny in Canada cannot be recognized in the Philippines. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. (Art. 176, Family Code)

**LEGAL SEPARATION**

**Legal separation** is otherwise known as a *mensa et thoro* [translated as- separation from bed and board]. It is valid under Philippine law since the marital tie between the husband and wife is not severed. Their separation only is in terms of bed and board.

The primordial purpose of legal separation is separation in bed and board and not to be used for the purpose of separation of property being a mere incidental effect thereof.

In contrast to *Avinculum Matrimonii* which literally means severance of marital tie. This is otherwise known as absolute divorce. This is not valid since it is contrary to Philippine public policy and law.

**Primordial consideration - Cooling-off period:** an action for legal separation shall in no case be tried before 6 months shall have elapsed since the filing of the petition.

No legal separation may be decreed unless the court has taken steps toward the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation is highly improbable.

**Prescriptive period:** an action for legal separation shall be filed within 5 years from the time of the occurrence of the cause.

**GROUND FORS FOR LEGAL SEPARATION:**

1. **Repeated** physical violence or grossly abusive conduct.
2. Physical violence or moral pressure.
3. Attempt or connivance to corrupt or induce to engage in prostitution.
4. Final judgment of imprisonment of more than 6 years: even if subsequently judicially pardoned.
5. Drug addiction or habitual alcoholism.
6. Lesbianism or homosexuality.
7. Subsequent bigamous marriage.
8. Sexual infidelity or perversion.
9. Attempt against the life: no need for criminal conviction.
10. Abandonment without justifiable cause for more than 1 year.

**First ground-** the key words are 'repeated' and 'grossly'. Hence the physical violence must be repeated and gross.

**Second ground-** there must be **undue pressure** since some pressure is expected in every marriage. It must go beyond what is permissible.

**Fifth ground-** the drug addiction can occur after marriage. Article 55 does not talk of concealment of drug addiction unlike Article 46 (4).

**Eight ground-** under the Family Code, both men and women need only commit one act of sexual infidelity to fall under 55 (8). In *Gandionco vs. Penaranda*, the SC said that a criminal conviction of concubinage is not necessary, only preponderance of evidence. In fact, a civil action for legal separation based on concubinage may proceed ahead of or simultaneously with a criminal action.

**Ninth ground-** there is no need for conviction.

**Tenth ground- *Requisites of abandonment:*** A spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without any intention of returning. The spouse who has left the conjugal dwelling for a period of 3 months or has failed within the same period to give any information as to his or her whereabouts shall be prima facie evidence presumed to have no intention of returning to the conjugal dwelling.

**DEFENSES AGAINST LEGAL SEPARATION:** these grounds bars the institution of a petition for legal separation-

1. Condonation: express or implied, as in sexual intercourse after knowledge of ground.
2. Consent
3. Connivance
4. Mutual guilt
5. Collusion
6. Prescription
7. Death of either party during the pendency of the case [*Lapuz-Sy vs. Eufemio*].
8. Reconciliation of the spouses during the pendency of the case [Article 66 (1)].

In *Lapuz-Sy vs. Eufemio*, the lawyer wanted to proceed with legal separation despite of the death of one of the parties. The SC denied it since the primary purpose of legal separation is bed and board separation while the effect on the property is merely incidental.

Note that the effect of filing a Petition for Legal separation is different from the effects of a Decree of Legal Separation.

#### EFFECTS OF **FILING** A PETITION FOR LEGAL SEPARATION

1. Spouses can live separately from each other;
2. The administration of the common properties [ACP, CPG, etc.] shall be given by the court to either of the spouses or to a 3<sup>rd</sup> person as is best for the interests of the community.
3. In the absence of a written agreement of the spouses, the court shall provide for the support between the spouses and the custody and support of the common children, taking into account the welfare of the children and their choice of the parent with whom they wish to remain.

4. When the consent of 1 spouse to any transaction of the other is required by law, judicial authorization shall be necessary, unless such spouse voluntarily gives such consent.

#### EFFECTS OF A **DECREE** OF LEGAL SEPARATION:

1. The spouses are entitled to **live separately**, but *the marriage bonds shall not be severed*.
2. The **property regime shall be dissolved** and liquidated but the offending party shall have no right to any share of the net profits earned by the property regime, and shall be forfeited in accordance with Art. 43 (2): this is included in effects of reappearance under Art. 42.
3. The **custody of the minor children** shall be awarded to the innocent spouse.

**Art. 213:** in case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over 7 years of age, unless the parent chosen is unfit. No child under 7 years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise.

4. The offending spouse shall be disqualified from inheriting from the innocent spouse by **intestate succession**. Provisions in favor of the offending spouse made in the **will** of the innocent spouse shall be revoked by operation of law.

If, however, the offended spouse executes another will in favor of the offending spouse after the decree of legal separation, the will shall be valid, since the primordial consideration is the intention of the testator.

*The conviction of the wife of adultery does not disqualify her to inherit from the offended husband, if there is no decree of legal separation between them. Accordingly, the guilty spouse shall not be disqualified from inheriting unless the innocent spouse files a case for legal separation. [Bakit ganun- because these are the effects of a decree of annulment, kay pag walang decree of annulment, wala ding effect 😊😊😊]*

5. **Art. 64:** the innocent spouse may revoke the **donation propter nuptias** [donations made before the celebration of the marriage] made by him or her in favor of the offending spouse, as well as the designation of the guilty party as a beneficiary in any **insurance policy**, even if such designation be stipulated as irrevocable.

The revocation shall be recorded in the registry of property. Alienations, liens and encumbrances registered in good faith before the recording of the revocation shall be respected. *The revocation of the insurance policy shall take effect upon written notification to the insured.*

*The action to revoke donation must be brought within 5 years from the time the decree of legal separation has become final.*

6. Cessation of the obligation of mutual support [Article 198].
7. The wife shall continue using her name and surname employed before legal separation.

One way of overcoming the effects of a decree of legal separation is the reconciliation between the spouses. The reconciliation must be in the nature that the spouses will resume their life as a husband and wife.

### **RECONCILIATION**

**Reconciliation:** if the spouses should reconcile, the corresponding joint manifestation under oath duly signed by them shall be filed with the Court in the same proceeding for legal separation.

Note that is not the reconciliation which produces the effects in Article 66 [enumerated below]. Rather it is the ***filing of the joint manifestation of reconciliation.***

#### **EFFECTS OF RECONCILIATION:**

1. The **legal separation proceedings**, if still pending, shall thereby be terminated in whatever stage.
2. The **final decree of legal separation** shall be set aside, but the separation of property and any forfeiture of the share of the guilty spouse already effected shall subsist, unless the spouses agree to revive their former property regime.

***The agreement to revive the former property regime shall be executed under oath and shall specify:***

- a. The properties to be contributed anew to the restored regime.
- b. Those to be retained as separated properties of each spouse.
- c. The names of all their known creditors, addresses and corresponding credits.

The agreement of revival and the motion for its approval shall be filed with the Court in the same proceeding for legal separation, with copies of both furnished to the creditors named therein. After due hearing, the Court shall take measures to protect the interest of creditors and such order shall be recorded in the proper registry of property.

**Notice to creditors:** The recording of the order in the registries of property shall not prejudice any creditor not listed or not notified, unless the debtor-spouse has sufficient separate property to satisfy the creditor's claim.

In other words, the revival of the old property regime between the parties is without prejudice to vested rights already acquired by creditors prior to such revival. In effect, a legal lien is created in favor of unsecured creditors. Thus-

- a. Contractual lienholders retain their liens.
- b. Creditors without liens are given a legal lien.
- c. In case of insufficiency of property to settle the debts, the future shares of debtor-spouse in the property regime will answer his personal obligations.

**Who has the legal personality to file a Petition for Legal Separation?** Aggrieved wife or husband only, since this is purely personal question.

**Why not the guilty spouse?** Because of the clean hands doctrine- 'you must go to court with clean hands and an offender of the law cannot profit from his wrong doings.'

### **LEGAL REMEDY REGARDING COMMUNAL PROPERTY IN CASE OF LEGAL SEPARATION**

**Remedy of present spouse:** when a husband and wife are separated in fact, or one has abandoned the other, and one of them seeks judicial authorization for a transaction where the consent of the other spouse is required by law but such consent is withheld or cannot be obtained, a verified petition may be filed in court alleging the foregoing facts.

**No collateral attack:** claims for damages by either spouse, except costs of the proceedings, may be litigated only in a separate action.

**Court jurisdiction:** Jurisdiction over the petition shall be exercised by the proper court authorized to hear family cases, if one exists, or in the RTC or its equivalent sitting in the place where either of the spouse resides.

**Notice to spouses:** upon the filing of the petition, the court shall notify the other spouse, whose consent to the transaction is required, of said petition, ordering said spouse to show cause why the petition should not be granted. The notice shall be accompanied by a copy of the petition and shall be served at the last known address of the spouse concerned.

**Preliminary conference:** a preliminary conference shall be conducted by the judge personally without the parties being assisted by counsel.

**Effect of non-appearance:** the court shall inquire into the reason for his failure to appear, and shall require such appearance, if possible.

**Ex-parte:** if, despite all efforts, the attendance of the non-consenting spouse is not secured, the Court may proceed ex parte. In any case, the judge shall endeavor to protect the interests of the non-appearing spouse.

**Procedure and evidence:** if the petition is not resolved at the initial conference, said petition shall be decided in a summary hearing on the basis of affidavits, documentary evidence or oral testimonies at the sound discretion of the court, unless oral testimony is needed.

**Finality of judgment:** the judgment of the Court shall be immediately final and executory. At any rate, an appeal

by certiorari to the Supreme Court may lie in the presence of abuse of discretion amounting to lack of jurisdiction.

**Applicability to administration of exclusive property of the abandoning spouse:** The petition for judicial authority to administer or encumber specific separate property of the abandoning spouse and to use the fruits or proceeds thereof for the support of the family shall also be governed by these rules.

**BAR 2006- Marriage; Legal Separation; Mutual guilt-** Saul, a married man, had an adulterous relation with Tessie. In one of the trysts, Saul's wife, Cecile, caught them in flagrante. Armed with a gun, Cecile shot Saul in a fit of extreme jealousy, nearly killing him. Four (4) years after the incident, Saul filed an action for legal separation against Cecile on the ground that she attempted to kill him.

**(1) If you were Saul's counsel, how will you argue his case? (2.5%)**

**SUGGESTED ANSWER:** As the counsel of Saul, I will argue that an attempt by the wife against the life of the husband is one of the grounds enumerated by the Family Code for legal separation and there is no need for criminal conviction for the ground to be invoked (Art. 55, par. 9, Family Code).

**(2) If you were the lawyer of Cecile, what will be your defense? (2.5%)**

**SUGGESTED ANSWER:** As the counsel of Cecile, I will invoke the adultery of Saul. Mutual guilt is a ground for the dismissal of an action for legal separation (Art. 56, par. 4, Family Code). The rule is anchored on a well-established principle that one must come to court with clean hands.

**(3) If you were the judge, how will you decide the case? (5%)**

**SUGGESTED ANSWER:** If I were the judge, I will dismiss the action on the ground of mutual guilt of the parties. The Philippine Constitution protects marriage as an inviolable social institution (Art. XV, Sec. 2, 1987 Constitution). An action for legal separation involves public interest and no such decree should be issued if any legal obstacle thereto appears on record. This is in line with the policy that in case of doubt, the court shall uphold the validity and sanctity of marriage (*Brown v. Yambao, G.R. No. L-10699, October 18, 1957*).

## RIGHTS AND OBLIGATIONS OF HUSBAND AND WIFE

### RIGHTS AND OBLIGATIONS BETWEEN HUSBAND AND WIFE

**Personal obligations between the spouses:** the husband and wife are obliged to *live together, observe mutual love, respect and fidelity, and render mutual help and support.*

- I. The wife has the **duty to live** with her husband, but she may refuse to do so in certain cases:
- If the place chosen by the husband as family residence is dangerous to her life.
  - If the husband subjects her to maltreatment or abusive conduct or insults, making common life impossible.
  - If the husband compels her to live with his parents, but she cannot get along with her mother-in-law and they have constant quarrels.
  - Where the husband continuously carried illicit relations for 10 years with different women and treated his wife roughly and without consideration.
  - Where the husband spent his time in gambling, giving no money, and at the same time insulting his wife and laying hands on her.
  - If the husband has no fixed residence and lives a vagabond life as a tramp.
  - When the husband is carrying on a shameful business at home.
  - If the husband is immoderate or barbaric in his demands for sexual intercourse.

If the wife abandons the conjugal home without justifiable cause, can the husband compel her to come home under the pain of contempt of court?

*No, because cohabitation is a purely personal obligation, and to compel the wife to comply with such obligation would be a violation of her personal liberty which is guaranteed by the Constitution.*

However, the husband has the following remedies:

- To withhold support from the wife.
- To recover moral damages from the wife.
- To ask the Court to counsel his wife.
- To ask the Court to admonish his wife to return, but she cannot be held in contempt in case of non-performance; also, no mandamus or injunction will lie.
- To ask the court for other relief.

II. **Live together:** the duty to live together includes cohabitation or consortium and sexual intercourse.

III. **Mutual love, respect and fidelity:** these duties are personal to the spouses and go into their intimate relations, so that they must be performed voluntarily by them. Accordingly, some consequences of the duties are the following:

- The unfaithful spouse may be charged criminally with adultery or concubinage.
- Sexual infidelity and perversion are also grounds for legal separation, and so is repeated physical violence or grossly abusive conduct directed against a spouse by the other, which shows lack of love and respect for the former.
- Both spouses now administer the family property, and they also have joint parental authority over their minor children, both over their persons and property.

- d. If one spouse commits acts which tend to bring danger, dishonor, or injury to the other, the aggrieved spouse may apply to the Court for relief.

**IV. Mutual help and support:** The spouses are jointly responsible for the support of the family and the management of the household. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income fruits, such obligations shall be satisfied from their separate properties.

- **Includes support *pendente lite*.**

**V. To fix family domicile:** the husband and wife shall fix the family domicile. In case of disagreement, the Court shall decide.

**Separate domicile:** the court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons from the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

- a. If the place chosen by the husband as family residence is dangerous to her life.
- b. If the husband subjects her to maltreatment or abusive conduct or insults, making common life impossible.
- c. If the husband compels her to live with his parents, but she cannot get along with her mother-in-law and they have constant quarrels.
- d. Where the husband continuously carried illicit relations for 10 years with different women and treated his wife roughly and without consideration.
- e. Where the husband spent his time in gambling, giving no money, and at the same time insulting his wife and laying hands on her.
- f. If the husband has no fixed residence and lives a vagabond life as a tramp.
- g. When the husband is carrying on a shameful business at home.
- h. If the husband is immoderate or barbaric in his demands for sexual intercourse.

**Relief against breach of duties:** when one of the spouses neglects his or her duties to the conjugal union or commit acts which tend to bring danger, dishonor or injury to the other or to the family, the aggrieved party may apply to the Court for relief.

The injury contemplated is not economic or financial injury but physical, moral, emotional or psychological injury.

#### **EXERCISE OF PROFESSION/BUSINESS**

**General rule:** either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious and moral grounds.

**Exception:** in case of disagreement, the Court shall decide whether or not:

- a. The objection is proper.
- b. Benefit has accrued to the family prior to the objection thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the community property. If benefit accrued thereafter, such obligation shall be enforced against the separate property of the spouse who has not obtained consent.

The foregoing provisions shall not prejudice the rights of *creditors who acted in good faith*.

**Creditors in good faith:** those who have no knowledge of the objection or no knowledge of absence of consent.

The profession, occupation, business, or activity of either spouse must be legitimate; that is, lawful, honest, moral.

This is important especially if such spouse obtained a loan or other liabilities that may be charged against the ACP or CPG.

#### **RIGHTS AND OBLIGATIONS OF HUSBAND AND WIFE TO THEIR CHILDREN**

**I. To support their children**

- Includes support *pendente lite*.

**Art. 194.** Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work.

**Common children-** support shall be charged from the community property. If the community property is insufficient the exclusive and personal property of the spouses is liable.

**Illegitimate spouses of either spouse-** support must be borne by the spouse having illegitimate children. If he or she has no property the support will be taken from the community property. However such amount will be deducted from the share of such spouse upon dissolution of the community property.

**II. To exercise parental Authority**

**III. To deliver the presumptive legitimes of their children.**

## DELIVERY OF PRESUMPTIVE LEGITIMES

**Delivery of presumptive legitimes:** The final judgment in of annulment/nullity of marriage shall provide for the delivery of the children's presumptive legitimes.

The value of the presumptive legitimes of all common children, computed as of the date of the final judgment of the trial court, shall be delivered in **cash, property or sound securities**, unless the parties, by mutual agreement judicially approved, had already provided for such matters.

The children or their guardian, or the trustee of their property, may ask for the **enforcement** of the judgment regarding the delivery of the presumptive legitimes.

The delivery of the presumptive legitimes shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as **advances** on their legitime.

**Recording:** The delivery of the children's presumptive legitimes shall be **recorded** in the appropriate civil registry and registry of property; otherwise, the same shall not affect 3<sup>rd</sup> persons.

**BAR 1999- Presumptive Legitime** - What do you understand by "presumptive legitime", in what case or cases must the parent deliver such legitime to the children, and what are the legal effects in each case if the parent fails to do so? (5%)

**SUGGESTED ANSWER:** PRESUMPTIVE LEGITIME is not defined in the law. Its definition must have been taken from Act 2710, the Old Divorce Law, which required the delivery to the legitimate children of "the equivalent of what would have been due to them as their legal portion if said spouse had died intestate immediately after the dissolution of the community of property." As used in the Family Code, presumptive legitime is understood as the equivalent of the legitimate children's legitimes assuming that the spouses had died immediately after the dissolution of the community of property.

Presumptive legitime is required to be delivered to the common children of the spouses when the marriage is annulled or declared void ab initio and possibly, when the conjugal partnership or absolute community is dissolved as in the case of legal separation. **Failure of the parents to deliver the presumptive legitime will make their subsequent marriage null and void under Article 53 of the Family Code.**

### SUPPORT PENDENTE LITE:

- During the pendency of the **action on annulment of marriage or declaration of absolute nullity of marriage**, the Court shall provide for the support of the spouses and the custody and support of their common children. The court shall give paramount consideration to the moral and material welfare of said children and their choice of the parent with

whom they wish to remain. It shall also provide for appropriate visitation rights of the other parent.

- During the pendency of the **action for legal separation**, the provisions of Art. 49 shall likewise apply to the support of the spouses and the custody and support of the common children.
- From the common mass of property, support shall be given to the surviving spouse and to the children **during the liquidation of the inventoried property** and until what belongs to them is delivered. But from this shall be deducted that amount received for support which exceeds the fruits or rents pertaining to them.
- Once the separation of property has been decreed, the absolute community or the conjugal partnership of gains shall be liquidated in accordance with the Code. **During the pendency of the proceedings for separation of property**, the absolute community or the conjugal partnership shall pay for the support of the spouses and their children.
- **During the proceedings for legal separation or for annulment of marriage, and for declaration of nullity of marriage**, the spouses and their children shall be supported from the property regime. After the final judgment granting the petition, the obligation of mutual support between the spouses ceases. However, in cases of legal separation, the Court may order that the guilty spouse shall give support to the innocent one.

## PROPERTY RELATIONS BETWEEN SPOUSES

This is one important part of marriage. This is to protect the spouses. Thus the-

**Governing law on property relations:** the property relations between husband and wife shall be governed in the following order:

- a. By marriage settlements executed before the marriage.
- b. By the provisions of this Code.
- c. By the local custom.

In case the future spouses agree in the marriage settlements that the regime of conjugal partnership shall govern their property relations during their marriage, the provisions of the Civil Code on CPG shall be of supplementary application.

**However**, in the absence of a contrary stipulation in the marriage settlements, 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.

In these instances the aforementioned 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.

3. With respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situated in a foreign country whose laws required different formalities for their extrinsic validity.

Thus, in the absence of marriage settlement or the property regime is void, ACP [absolute community property] is the regime of property relations of the spouses.

**Marriage settlement:** ante-nuptial agreement means the contract entered into by a man and a woman who intend or plan to get married fixing the property regime that will govern their present and future properties during their marriage.

The future spouses may, in the marriage settlements, agree upon the regime of absolute community property, conjugal partnership of gains, complete separation of property or any other regime. In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community property shall govern.

#### **Requisites of marriage settlement:**

1. The marriage settlements and any modification thereof shall be in **writing**, signed by the parties and executed before the celebration of the marriage. They shall not prejudice 3<sup>rd</sup> persons unless they are registered in the LCR where the marriage contract is recorded as well as in the proper registries of property.
2. A minor who according to law may contract marriage may also execute his or her marriage settlement, but they shall be valid only if the persons designated in Art.14 to give consent, are made parties to the agreement.
3. For the validity of any marriage settlement executed by a person upon whom a sentence of civil interdiction has been pronounced or who is subject to any other disability, it shall be indispensable for the guardian appointed by a competent court to be made a party thereto.
4. Must be made **before** the celebration of the marriage and even modification also be made before the wedding, except conversion into the complete separation of property regime, which would be allowed provided there is judicial approval and no prejudice to creditors.
5. Must not contain provisions contrary to law, good morals, good customs, public order, and public policy; or against the dignity of either spouse.
6. Must generally confine itself only to **property relations**.

#### **MODIFICATIONS IN THE MARRIAGE SETTLEMENT**

**General Rule:** all modifications to the marriage settlement must be made before the marriage is celebrated.

Moreover, any modification thereof shall be in **writing**, signed by the parties and executed before the celebration of the marriage. They shall not prejudice 3<sup>rd</sup> persons unless they are registered in the LCR where the marriage contract is recorded as well as in the proper registries of property.

**Exceptions:** in this instances the is a valid modification of marriage settlement even after the celebration of marriage since it springs from the effect of a court order-

1. **Legal separation-** in such an instance the property regime is dissolved.
2. Revival of the former property regime upon reconciliation, if the spouses agree Article 66 (2)- the reconciliation referred to in the preceding Articles shall have the following consequences xxx (2)

**Effects of non-celebration of marriage:** Of course it follows that everything stipulated in the settlements or contracts referred to in consideration of a future marriage, including donations between the prospective spouses made therein, shall be rendered void if the marriage does not take place.

*However, stipulations that do not depend upon the celebration of the marriage shall be valid.*

#### **DONATIONS & MARRIAGE**

Donations between husband and wife may be divided into two kinds: first, donations that are made before the celebration of the marriage; and second donations made during the subsistence of marriage.

#### **FIRST KIND: DONATIONS BEFORE THE CELEBRATION OF MARRIAGE.**

##### **General Principles:**

1. If the property regime agreed by the future spouses is ACP, then they cannot donate to each other. Why the prohibition? Since ACP contemplates that all properties of the future spouses shall be owned by them in common, it would be useless donating to each other, if in the end they are they owners.
2. If the future spouses agree upon a regime other than the absolute community of property [ACP], they cannot donate to each other in their marriage settlements more than 1/5 of their present property. Any excess shall be considered void.

**Donation propter nuptias:** donations by reason of marriage are those which are made before its celebration, in consideration of the same, and in favor of one or both of the future spouses.

##### **Requisites:**

1. Must be made before the celebration of the marriage.
2. Must be made in consideration of the marriage.
3. Must be made in favor of one or both of the future spouses.
4. Both or one of the future spouses is not suffering from civil interdiction or disability which any affect the donation; if he is he must be assisted by his/her guardian.

Donation propter nuptias	Ordinary donations
Does not require express acceptance	Express acceptance is necessary
May be made by minors	Cannot be made by minors
May include future property	Cannot include future property
If present property is donated and property regime is not absolute community, limited to 1/5	No limit to donation of present property provided legitimes are not impaired
Grounds for revocation are found in Art. 86	Grounds for revocation are found in law on donations

**DONATION OF FUTURE PROPERTY:** while donations of future property are not allowed in ordinary donations, they are allowed in donations propter nuptias. Donations propter nuptias of future property shall be governed by the provisions on testamentary succession and the formalities of wills. Hence, they are revocable, unlike in donations of present properties in the marriage settlements which cannot be revoked except if the marriage does not take place, since marriage settlements cannot be modified much less revoked after the marriage.

*However, it is noteworthy that donations of future property shall be governed by the provisions on the testamentary succession and the formalities of wills.*

**Can a property with an encumbrance be donated?**

Yes, since the donor is still the owner, and as such he has the capacity to dispose such property by way of donation.

However, Donations by reason of marriage of property subject to encumbrance shall be valid. In case of foreclosure of the encumbrance and the property is sold for less than the total amount of the obligation secured, the donee shall not be liable for the deficiency. If the property is sold for more than the total amount of said obligation, the donee shall be entitled to the excess.

**Revocation of donation propter nuptias** - a donation by reason of marriage may be revoked by the donor:

1. If the marriage is not celebrated or judicially declared void except donations made in the marriage settlements which do not depend for their validity the celebration of marriage - (no prescriptive period; revoked by operation of law).
2. When the marriage takes place without the consent of parents or guardian as required by law - (Art. 1146, par. 1: not founded upon a contract. Hence, 4 years prescriptive period).
3. When the marriage is annulled, and the donee acted in bad faith - (Art. 1146, par. 1: not founded

upon a contract. Hence, 4 years prescriptive period).

4. Upon legal separation, the donee being the guilty spouse - (prescriptive period: 5 years from the time the decree of legal separation becomes final).
5. If it is with a resolutive condition and the condition is complied with - (see Art. 1144 – 1145: on written or oral donation).
6. When the donee has committed an act of ingratitude - (see Art. 765; prescriptive period: 1 year from donor's knowledge of the fact of ingratitude).

**Manner of revocation of Donation Propter Nuptias.**

1. If the donation was executed in the marriage settlement- it is automatically revoked, upon the commission of the ground which gives rise to the revocation.
2. If the donation was executed in a different instrument- then a positive act of the donor revoking the donation is needed.

**SECOND KIND: DONATIONS MADE DURING THE SUBSISTENCE OF THE MARRIAGE.**

This rule on donation applies to-

- a. husband and wife and
- b. to those persons living together as husband and wife without a valid marriage

**1. Donations between husband and wife.**

**General rule:** every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void.

**Exception:** moderate gifts and designation as a beneficiary in an insurance policy, which the spouses may give each other on the occasion of any family rejoicing.

**Reasons for prohibition:**

- a. To prevent the weaker spouse from being influenced by the stronger spouse, whether by abuse of affection or by threats or violence.
- b. To protect creditors.
- c. To prevent an indirect modification of the marriage settlement during the marriage.

**Who may question validity of donation?** Only a person prejudiced thereby, like the donor or his heirs, and creditors.

**2. Donations made to third persons by either of the spouses.**

**General rule:** neither spouse may donate any community property without the consent of the other.

**Exception:** however, either spouse may, without the consent of the other, make moderate donations from

the community property for charity or on occasions of family rejoicing or family distress [Article 98].

**BAR 1995- PROPERTY RELATIONS; MARRIAGE SETTLEMENTS** - On 10 September 1988 Kevin, a 26-year old businessman, married Karla, a winsome lass of 18. Without the knowledge of their parents or legal guardians, Kevin and Karla entered into an ante-nuptial contract the day before their marriage stipulating that conjugal partnership of gains shall govern their marriage. At the time of their marriage Kevin's estate was worth 50 Million while Karla's was valued at 2 Million. A month after their marriage Kevin died in a freak helicopter accident. He left no will, no debts, no obligations. Surviving Kevin, aside from Karla, are his only relatives: his brother Luis and first cousin Lilia.

**SUGGESTED ANSWER:**

**1) What property Relations governed the marriage of Kevin and Karla? Explain.** - Since the marriage settlement was entered into without the consent and without the participation of the parents (they did not sign the document), the marriage settlement is invalid applying Art. 78, F.C. which provides that a minor who according to law may contract marriage may also enter together, into marriage settlements but they shall be valid only if the person who may give consent to the marriage are made parties to the agreement. (Karla was still a minor at the time the marriage settlement was executed in September 1988 because the law, R.A. 6809, reducing the age of majority to 18 years took effect on 18 December 1989). The marriage settlement being void, the property Relations governing the marriage is, therefore, absolute community of property, under Art. 75 of the FC.

**2) Determine the value of the estate of Kevin,** - All the properties which Kevin and Karla owned at the time of marriage became community property which shall be divided equally between them at dissolution. Since Kevin owned 50 Million and Karla. 2 Million, at the time of the marriage, 52 Million constituted their community property. Upon the death of Kevin, the community was dissolved and half of the 52 Million or 26 Million is his share in the community. This 26 Million therefore is his estate.

**3) Who are Kevin's heirs?** Karla and Luis are the Intestate heirs of Kevin.

**4) How much is each of Kevin's heirs entitled to inherit?** They are entitled to share the estate equally under Article 1001 of the NCC. Therefore. Karla gets 13 Million and Luis gets 13 Million.

**BAR 1991- PROPERTY RELATIONS; MARRIAGE SETTLEMENTS** - Bar Candidates Patricio Mahigugmaon and Rowena Amor decided to marry each other before the last day of the 1991 Bar Examinations. They agreed to execute a Marriage Settlement. Rowena herself prepared the document in her own handwriting. They agreed on the following: (1) a conjugal partnership of gains; (2) each donates to the other fifty percent (50%) of his/her present property, (3) Rowena shall administer the conjugal partnership property; and (4) neither may bring an action

for the annulment or declaration of nullity of their marriage. Both signed the agreement in the presence of two (2) witnesses. They did not, however, acknowledge it before a notary public.

**SUGGESTED ANSWER:**

**A. As to form, is the Marriage Settlement valid? May it be registered in the registry of property? If not, what steps must be taken to make it registerable?** Yes, it is valid as to form because it is in writing. No, it cannot be registered in the registry of property because it is not a public document. To make it registerable, it must be reformed and has to be notarized.

**B. Are the stipulations valid?** Stipulations (1) and (3) are valid because they are not contrary to law. Stipulation (4) is void because it is contrary to law. Stipulation (2) is valid up to 1/5 of their respective present properties but void as to the excess (Art 84, Family Code).

**C. If the Marriage Settlement is valid as to form and the above stipulations are likewise valid, does it now follow that said Marriage Settlement is valid and enforceable?** No. on September 15, 1991, the marriage settlement is not yet valid and enforceable until the celebration of the marriage, to take place before the last day of the 1991 bar Examinations.

**PROPERTY REGIMES**

**General Principles:**

- 1. *Either spouse may dispose by will of his or her interest in the community property [Article 97].*** – note that the disposition is in the form of a will, meaning the disposition will take effect only after the death of the donor spouse and upon probate of such will.
- 2. *Neither of the spouses may sell the common property without the consent of the other. If one spouse is declared as the sole administrator of the ACP or CPG, court permission is required before he/she can dispose a common property.***

**Problem:** Husband sees that selling a common property will bring gargantuan profit to the family. The wife disputes the same and never gave her consent for the sale. Husband goes to the RTC to compel the wife to give consent. Will the action prosper?

No, it is a rule that court cannot dip its fingers on purely contractual relations unless such contract is contrary to law, public policy and public morals and its jurisdiction is invoked. The case of the husband and wife arose from pure contractual relations which is not contrary to law, public policy, and public morals, hence the court cannot meddle, for the court to do otherwise would be acting in excess of its jurisdiction amounting to grave abuse of discretion, hence correctible by higher courts.

**How is the regime of property created?**

- 1.** It is agreed by the parties [if agreed by the parties, it is either CPG or Complete Separation of property or other valid modes].

2. If there is not stipulation, then ACP governs the property regime of the marriage.

### **ABSOLUTE COMMUNITY PROPERTY**

**Commencement of the regime:** The ACP between spouses shall commence at the precise moment that the marriage is celebrated. *Any stipulation, express or implied, for the commencement of the community regime at any other time shall be void.*

**May the husband or wife waives his or her rights, interest, share or effects in the ACP?** No waiver during the marriage cannot be made except in case of judicial separation of property.

When the waiver takes place upon a judicial separation of property, or after the marriage has been dissolved or annulled, the same shall appear in a public instrument and shall be recorded in the LCR and registry of property.

**Right of creditors of the debtor spouse in case there is a waiver:** The creditors of the spouse who made such waiver may petition the Court to rescind the waiver to the extent of the amount sufficient to cover the amount of their credits.

**What Constitutes ACP? GENERAL RULE:** Article 93- property acquired during the marriage is presumed to belong to the community; unless it is proved that it is one of those excluded therefrom.

**PROPERTIES EXCLUDED IN THE ACP:** Article 92- the following shall be excluded from the community property

- a. Property acquired during the marriage by gratuitous title by either spouse, and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator or grantor that they shall form part of the community property;
- b. Property for personal and exclusive use of either spouse. However, jewelry shall form part of the community property.
- c. Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as the income, if any, of such property.

### **CONJUGAL PARTNERSHIP OF GAINS**

**Concept of CPG:** Under the regime of conjugal partnership of gains, the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance, and, upon dissolution of the marriage or of the partnership, the net gains or benefits obtained by either or both spouses shall be divided equally between them, unless otherwise agreed in the marriage settlements.

**Commencement:** The CPG between spouses shall commence at the precise moment that the marriage is celebrated. *Any stipulation, express or implied, for the*

*commencement of the community regime at any other time shall be void.*

**May the husband or wife waive his or her rights, interest, share or effects in the CPG?** No waiver during the marriage can be made except in case of judicial separation of property.

When the waiver takes place upon a judicial separation of property, or after the marriage has been dissolved or annulled, the same shall appear in a public instrument and shall be recorded in the LCR and registry of property.

**Right of creditors of the debtor spouse in case there is a waiver:** The creditors of the spouse who made such waiver may petition the Court to rescind the waiver to the extent of the amount sufficient to cover the amount of their credits.

### **What property constitutes CPG?**

**Art. 116.** All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved. (160a)

**Art. 117.** The following are conjugal partnership properties:

1. Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;
2. Those obtained from the labor, industry, work or profession of either or both of the spouses;
3. The fruits, natural, industrial, or civil, due or received during the marriage from the common property, as well as the net fruits from the exclusive property of each spouse;
4. The share of either spouse in the hidden treasure which the law awards to the finder or owner of the property where the treasure is found;
5. Those acquired through occupation such as fishing or hunting;
6. Livestock existing upon the dissolution of the partnership in excess of the number of each kind brought to the marriage by either spouse; and
7. Those which are acquired by chance, such as winnings from gambling or betting. However, losses therefrom shall be borne exclusively by the loser-spouse.

**Properties which do not belong to the CPG:** The following shall be the exclusive property of each spouse:

1. That which is brought to the marriage as his or her own;

2. That which each acquires during the marriage by gratuitous title;
3. That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the spouses; and

**Art. 118.** Property bought on installments paid partly from exclusive funds of either or both spouses and partly from conjugal funds belongs to the buyer or buyers if full ownership was vested before the marriage and to the conjugal partnership if such ownership was vested during the marriage. In either case, any amount advanced by the partnership or by either or both spouses shall be reimbursed by the owner or owners upon liquidation of the partnership. (n)

**Art. 119.** Whenever an amount or credit payable within a period of time belongs to one of the spouses, the sums which may be collected during the marriage in partial payments or by installments on the principal shall be the exclusive property of the spouse. However, interests falling due during the marriage on the principal shall belong to the conjugal partnership. (156a, 157a)

**Illustration:** Husbands exclusively owns a lot. The lot was mortgaged. It was redeemed during the marriage using the funds of the community property. Who owns the lot? The husband since the lot belongs to his exclusive and personal property. The fact that the funds used to redeem the lot comes from the community property does not make the lot belong to it. The husband is obligated to return the amount used for redemption.

This covers, pacto de retro sales, and others.

4. That which is purchased with exclusive money of the wife or of the husband. (148a)

#### **POWERS OF SPOUSE OVER HIS/HER PERSONAL PROPERTIES:**

- a) Art. 110. The spouses retain the ownership, possession, administration and enjoyment of their exclusive properties.

Either spouse may, during the marriage, transfer the administration of his or her exclusive property to the other by means of a public instrument, which shall be recorded in the registry of property of the place the property is located.

- b) Art. 111. A spouse of age may mortgage, encumber, alienate or otherwise dispose of his or her exclusive property, without the consent of the other spouse, and appear alone in court to litigate with regard to the same.
- c) Art. 112. The alienation of any exclusive property of a spouse administered by the other automatically terminates the administration over such property and the proceeds of the alienation shall be turned over to the owner-spouse.

#### **RULES ON DONATIONS GIVEN TO SPOUSES:**

**Art. 113.** Property donated or left by will to the spouses, jointly and with designation of determinate shares, shall pertain to the donee-spouses as his or her own exclusive property, and in the absence of designation, share and share alike, without prejudice to the right of accretion when proper.

**Art. 114.** If the donations are onerous, the amount of the charges shall be borne by the exclusive property of the donee spouse, whenever they have been advanced by the conjugal partnership of gains.

#### **SPECIFIC PROVISIONS ON EXCLUSIVE PROPERTIES UNDER CPG**

**POEA of exclusive property:** The spouses retain the ownership, possession, administration, and enjoyment of their exclusive properties.

- ❖ As part of her administration of her paraphernal property, the wife can collect its gross rentals and pay her administration expenses therefrom, because only net fruits of her property are conjugal and which she should turn over to the conjugal partnership.
- ❖ The wife cannot be restrained by injunction from selling her paraphernal property even if the sale would deprive the conjugal partnership of its fruits, since she is the owner of that property.
- ❖ The wife can alienate her paraphernal property without the husband's consent even if she has transferred its administration to her husband since she is still the owner thereof.

**Ownership of improvements made on the exclusive property:** the ownership of improvements, whether for utility or adornment, made on the separate property of the spouses at the expense of the partnership or through the acts or efforts of either or both spouses shall pertain to the conjugal partnership, or to the original owner-spouse, subject to the following rules:

- ☞ If the value of the property before the improvement is greater, the whole thing belongs to the owner-spouse, subject to reimbursement of conjugal partnership; if the value of the property before improvement is lesser, the whole thing belongs to the conjugal partnership, subject to reimbursement.

**When is ownership vested?** In either case the ownership of the entire property shall be vested upon the reimbursement, which shall be made at the time of the liquidation of the conjugal partnership.

**Transfer of administration:** Either spouse may, during the marriage, transfer the administration of his or her exclusive property to the other by means of a public instrument, which shall be recorded in the registry of property of the place where the property is located

However, the alienation of any exclusive property of a spouse administered by the other automatically terminates

the administration over such property and the proceeds of the alienation shall be turned over to the owner-spouse.

Furthermore, the administration of all classes of exclusive property of either spouse may be transferred by the court to the other spouse:

- a. When one spouse becomes the guardian of the other.
- b. When one spouse is judicially declared an absentee.
- c. When one spouse is sentenced to a penalty which carries with it civil interdiction.
- d. When one spouse becomes a fugitive from justice or is in hiding as an accused in a criminal case.

*If the other spouse is not qualified by reason of incompetence, conflict of interest, or any other just cause, the court shall appoint a suitable person to be the administrator.*

**Disposition:** A spouse of age may mortgage, encumber, alienate or otherwise dispose of his or her exclusive property, without the consent of the other spouse, and appear alone in court to litigate with regard to the same.

**PROVISION ON RETIREMENT BENEFITS:** Retirement benefits, pensions, annuities, gratuities, usufructs, and other similar benefits shall be governed by the rules on gratuitous or onerous acquisition as may be proper in each case.

**If retirement pay is gratuitously given-** separate property.

**Premiums for the retirement pay was paid by the employee-** part of the ACP or CPG.

#### **SPECIAL RULES ON LIFE INSURANCE**

Since a contract of insurance in onerous in character, if the beneficiary is the insured himself or his estate, the character of the proceeds will depend on the character of the premiums paid:

- a. If the premiums were paid with conjugal funds, the proceeds are conjugal.
- b. If the premiums were paid with separate funds, the proceeds are separate.
- c. If the premiums were paid partly with conjugal funds, and partly with separate funds, the proceeds will be partly conjugal and partly separate.

*Tolentino believes, however, that we should follow the rule in Louisiana that if the policy of the insurance was taken out when the insured was still single, the proceeds thereof should go to the insured's separate estate even if the premiums were paid out of conjugal funds, but the conjugal partnership should be refunded by the insured the amounts that it had paid as premiums.*

**If the other spouse is the beneficiary:**

- a. An insurance taken by one spouse on his own life and with the other spouse as beneficiary belongs to the latter even if the premiums are paid out of conjugal funds, but the beneficiary-spouse, who is deemed a donee of the premiums paid, must return

one-half of the premiums to the conjugal partnership.

- b. When the spouses are jointly insured in a single policy, the proceeds to be paid to the surviving spouse, the survivor gets the insurance proceeds even if no obligation to return any part of the premiums to the conjugal partnership, because there is deemed to be reciprocal donations thereof, which in effect constitute aleatory onerous contracts.
- c. When the insurance is taken by a third person with a spouse as beneficiary, the latter owns the insurance proceeds as it is deemed a gift to him or her.
- d. If the insurance is taken by the wife on the life of the husband or vice versa and the premiums are paid out of conjugal funds, the proceeds are conjugal property.
- e. If the beneficiary is somebody other than the insured or his estate, the beneficiary is the owner of the insurance indemnity regardless of whether or not the premiums were paid out of the insured's separate property or the conjugal funds.
- f. If the insured made his estate as the beneficiary and the premiums were paid by conjugal funds, the proceeds of the insurance constitute conjugal property.

#### **CHARGES UPON AND OBLIGATIONS OF THE ACP OR CPG**

The ACP or CPG shall be liable for:

3. The support of the spouses, their common children, and legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;
4. All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the community, or by both spouses, or by one spouse with the consent of the other;
5. Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited;
6. All taxes, liens, charges and expenses, including major or minor repairs, upon the community property;
7. All taxes and expenses for mere preservation made during marriage upon the separate property of either spouse used by the family;
8. Expenses to enable either spouse to commence or complete a professional or vocational course, or other activity for self-improvement;
9. Ante-nuptial debts of either spouse insofar as they have redounded to the benefit of the family;

10. The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement;
11. Ante-nuptial debts of either spouse other than those falling under paragraph (7) of this Article, the support of illegitimate children of either spouse, and liabilities incurred by either spouse by reason of a crime or a quasi-delict, in case of absence or insufficiency of the exclusive property of the debtor-spouse, the payment of which shall be considered as advances to be deducted from the share of the debtor-spouse upon liquidation of the community; and
12. Expenses of litigation between the spouses unless the suit is found to be groundless.

**Note:** If the community property is insufficient to cover the foregoing liabilities, except those falling under paragraph (9), the spouses shall be solidarily liable for the unpaid balance with their separate properties.

**OTHER OBLIGATIONS CHARGEABLE TO THE ACP:**

The absolute community of property shall be liable for the support for illegitimate children; civil liabilities arising from delict or tort of either spouse in case of absence or insufficiency of the exclusive property of the debtor-spouse – but the payment shall be considered as advances deductible from the share of the debtor-spouse upon liquidation of the community.

**DEBTS/ OBLIGATIONS NOT CHARGEABLE TO THE ACP:**

Per Article 95- whatever may be lost during the marriage in any game of chance, betting, sweepstakes, or any other kind of gambling, whether permitted or prohibited by law, shall be borne by the loser and shall not be charged to the community **but any winnings therefrom shall form part of the community property.**

**MANAGEMENT, ADMINISTRATION & ENJOYMENT OF ACP OR CPG**

**General Rule:** the administration and enjoyment of the ACP shall belong to both spouses jointly.

- *In case of disagreement:* the husband’s decision shall prevail, subject to recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

**Exception:** If one spouse is incapacitated or otherwise unable to participate in the administration of the common properties. The other spouse may assume sole powers of administration.

**Sale or encumbrance of a property included in ACP:**

The written consent of either spouse is needed, and in case of the incapacity of the other spouse and the other spouse was appointed as administrator, authority of the court is needed.

Note that the powers of administration of the administrator spouse do not include **disposition or encumbrance without authority of the court or the written consent of the other spouse.** In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

**Donation of property belonging to the ACP-** Neither spouse may donate any community property without the consent of the other.

However, either spouse may without the consent of the other, make moderate donations from the community property for charity or on occasions of family rejoicing or family distress.

**No consent of either spouse or the court needed:** either spouse may dispose by will of his or her interest in the community property.

**Why the rule?** The disposition takes effect only after the death of the testator spouse since the disposition is in the form of a will.

**DISSOLUTION OF ACP OR CPG**

The ACP terminates-

1. Upon the death of either spouse;
2. When there is a decree of legal separation;
3. When the marriage is annulled or declared void; or
4. In case of judicial separation of property during the marriage.

**Effect of Legal Separation to the ACP:** the separation in fact between husband and wife shall not affect the regime of absolute community except that:

1. The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported;
2. When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding;
3. In the absence of sufficient community property, the separate property of both spouses shall be solidarily liable for the support of the family. The spouse present shall, upon proper petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share.

**Effects of Abandonment to the ACP:** If a spouse without just cause abandons the other or fails to comply with his or her **obligations to the family** [refers to marital, parental or property relations], the aggrieved spouse may petition the court for receivership, for judicial separation of property or for authority to be the sole

administrator of the absolute community, subject to such precautionary conditions as the court may impose.

**When is there abandonment?** A spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without intention of returning. The spouse who has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be prima facie presumed to have no intention of returning to the conjugal dwelling.

#### **LIQUIDATION OF THE ACP OR CPG**

Upon dissolution of the absolute community regime, the following procedure shall apply:

1. An inventory shall be prepared, listing separately all the properties of the absolute community and the exclusive properties of each spouse.
2. The debts and obligations of the absolute community shall be paid out of its assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties in accordance with the provisions of the second paragraph of Article 94.
3. Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.
4. The net remainder of the properties of the absolute community shall constitute its net assets, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements, or unless there has been a voluntary waiver of such share provided in this Code. For purpose of computing the net profits subject to forfeiture in accordance with Articles 43, No. (2) and 63, No. (2), the said profits shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution.
5. The presumptive legitimes of the common children shall be delivered upon partition, in accordance with Article 51.
6. Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children.

**When to will the liquidation of ACP done if the dissolution of the marriage is by reason of death of one spouse?** Upon the termination of the marriage by death, the community property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the community property either judicially or extra-judicially within six months from the death of the deceased spouse. If upon the lapse of the six months period, no liquidation is made, any disposition or encumbrance involving the community property of the terminated marriage shall be void.

Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.

#### **EFFECT OF DISSOLUTION OF ACP OR CPG:**

- a. After dissolution, the provisions on complete separation of property shall apply.
- b. Each spouse shall own, dispose, possess, administer and enjoy his or her own separate estate, without the need of the consent of the other. To each spouse shall belong all earnings from his or her profession, business or industry and all fruits, natural, industrial or civil, due or received during the marriage from his or her separate property.
- c. Both spouses shall bear the family expenses in proportion to their income, or in case of insufficiency or default thereon, to the current market value of their separate properties. The liability of the spouses to creditors for family expense shall be solidary.

**Recording:** the petition for separation of property and the final judgment granting the same shall be recorded in the proper registry of property.

**Rights of Creditors:** the separation of property shall not prejudice the rights previously acquired by creditors.

#### **BAR 1998- PROPERTY RELATIONS; CONJUGAL PARTNERSHIP OF GAINS-**

In 1970, Bob and Issa got married without executing a marriage settlement. In 1975, Bob inherited from his father a residential lot upon which, in 1981, he constructed a two-room bungalow with savings from his own earnings. At that time, the lot was worth P800,000.00 while the house, when finished cost P600,000.00. In 1989 Bob died, survived only by his wife, Issa and his mother, Sofia. Assuming that the relative values of both assets remained at the same proportion:

#### **SUGGESTED ANSWER:**

**1. State whether Sofia can rightfully claim that the house and lot are not conjugal but exclusive property of her deceased son. [3%]** - Since Bob and Sofia got married in 1970, then the law that governs is the New Civil Code (Persons), in which case, the property relations that should be applied as regards the property of the spouses is the system of relative community or conjugal partnership of gains (Article 119, Civil Code). By conjugal partnership of gains, the husband and the wife place in a common fund the fruits of their separate property and the income from their work or industry



(Article 142, Civil Code). In this instance, the lot inherited by Bob in 1975 is his own separate property, he having acquired the same by lucrative title (par. 2, Art. 148, Civil Code). However, the house constructed from his own savings in 1981 during the subsistence of his marriage with Issa is conjugal property and not exclusive property in accordance with the principle of "reverse accession" provided for in Art. 158, Civil Code.

**ANOTHER ANSWER:**

**1.** Sofia, being her deceased son's legal heir concurring with his surviving spouse (Arts. 985, 986 and 997, Civil Code), may rightfully claim that the house and lot are not conjugal but belong to the hereditary estate of Bob. The value of the land being more than the cost of the improvement (Art. 120, Family Code).

**2. Will your answer be the same if Bob died before August 3, 1988? [2%]** - Yes, the answer would still be the same. Since Bob and Issa contracted their marriage way back in 1970, then the property relations that will govern is still the relative community or conjugal partnership of gains (Article 119, Civil Code). It will not matter if Bob died before or after August 3, 1988 (effectivity date of the Family Code), what matters is the date when the marriage was contracted. As Bob and Issa contracted their marriage way back in 1970. The property relation that governs them is still the conjugal partnership of gains. (Art. 158, Civil Code)

**ANOTHER ANSWER: 2.** If Bob died before August 3, 1988 which is the date the Family Code took effect, the answer will not be the same. Art. 158. Civil Code, would then apply. The land would then be deemed conjugal, along with the house, since conjugal funds were used in constructing it. The husband's estate would be entitled to a reimbursement of the value of the land from conjugal partnership funds.

**BAR 1994- PROPERTY RELATIONS; ABSOLUTE COMMUNITY** - Paulita left the conjugal home because of the excessive drinking of her husband, Alberto. Paulita, out of her own endeavor, was able to buy a parcel of land which she was able to register under her name with the addendum "widow." She also acquired stocks in a listed corporation registered in her name. Paulita sold the parcel of land to Rafael, who first examined the original of the transfer certificate of title. **1) Has Alberto the right to share in the shares of stock acquired by Paulita? 2) Can Alberto recover the land from Rafael?**

**a)** Yes. The Family Code provides that all property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be absolute community property unless the contrary is proved.

**b)** Yes. The shares are presumed to be absolute community property having been acquired during the marriage despite the fact that those shares were registered only in her name. Alberto's right to claim his share will only arise, however, at dissolution.

**c)** The presumption is still that the shares of stock are owned in common. Hence, they will form part of the absolute community or the conjugal partnership depending on what the property Relations is.

**d)** Since Paulita acquired the shares of stock by onerous title during the marriage, these are part of the conjugal or absolute community property, as the case maybe (depending on whether the marriage was celebrated prior to. or after, the effectivity of the Family Code). Her physical separation from her husband did not dissolve the community of property. Hence, the husband has a right to share in the shares of stock.

**2) a)** Under a community of property, whether absolute or relative, the disposition of property belonging to such community is void if done by just one spouse without the consent of the other or authority of the proper court. However, the land was registered in the name of Paulita as "widow". Hence, the buyer has the right to rely upon what appears in the record of the Register of Deeds and should, consequently, be protected. Alberto cannot recover the land from Rafael but would have the right of recourse against his wife

**b)** The parcel of land is absolute community property having been acquired during the marriage and through Paulita's industry despite the registration being only in the name of Paulita. The land being community property, its sale to Rafael without the consent of Alberto is void. However, since the land is registered in the name of Paulita as widow, there is nothing in the title which would raise a suspicion for Rafael to make inquiry. He, therefore, is an innocent purchaser for value from whom the land may no longer be recovered.

**c)** No. Rafael is an innocent purchaser in good faith who, upon relying on the correctness of the certificate of title, acquires rights which are to be protected by the courts. Under the established principles of land registration law, the presumption is that the transferee of registered land is not aware of any defect in the title of the property he purchased. (*See Tojonera v. Court of Appeals, 103 SCRA 467*). Moreover, the person dealing with registered land may safely rely on the correctness of its certificate of title and the law will in no way oblige him to go behind the certificate to determine the condition of the property. [*Director of Lands v. Abache, et al. 73 Phil. 606*]. No strong considerations of public policy have been presented which would lead the Court to reverse the established and sound doctrine that the buyer in good faith of a registered parcel of land does not have to look beyond the Torrens Title and search for any hidden defect or inchoate right which may later invalidate or diminish his right to what he purchased. (*Lopez v. Court of Appeals. 189 SCRA 271*)

**d)** The parcel of land is absolute community property having been acquired during the marriage and through Paulita's industry despite registration only in the name of Paulita. The land being community property, its sale to Rafael without the consent of Alberto is void.

**JUDICIAL SEPARATION OF PROPERTY**

In the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place except by judicial order. Such judicial separation of property may either be voluntary or for sufficient cause.

The spouses may jointly file a verified petition with the court for the **voluntary dissolution** of the absolute community or the conjugal partnership of gains, and for the separation of their common properties.

**Notice to creditors:** All the creditors of the absolute community or of the conjugal partnership of gains, as well as the personal creditors of the spouse, shall be listed in the petition and notified of the filing thereof. The court shall take measures to protect the creditors and other persons with pecuniary interest.

**Grounds for judicial separation of property:**

- a. The spouse of the petitioner has been sentenced to a penalty which carries civil interdiction.
- b. The spouse of the petitioner has been judicially declared an absentee.

**Who is an absent spouse?** The prior spouse had been absent for 4 consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth under Art. 391 of the Civil Code, an absence of only 2 years shall be sufficient.

- c. The loss of parental authority of the spouse of petitioner has been decreed by the court.
- d. The spouse of the petitioner has abandoned the latter or failed to comply with his or her obligations to the family as provided for in Art. 101.

**Abandonment:** if a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property or for authority to be the sole administrator of the absolute community, subject to such precautionary conditions as the court may impose.

- e. The spouse granted the power of administration in the marriage settlements has abused that power.
- f. At the time of the petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable.
- g. Voluntary dissolution of the ACP or CPG: Conversion to separation of property.

*In cases provided for in a, b, and c, the presentation of the final judgment against the guilty or absent spouse shall be enough basis for the grant of the decree of judicial separation of property.*

**SPECIFIC PROVISIONS ON REGIME OF SEPARATION OF PROPERTY**

**Supplemental:** should the future spouses agree in the marriage settlements that their property relations during marriage shall be governed by the regime of separation of property; the provisions of the Code shall be supplementary.

**Kinds:** separation of property may refer to present or future property or both. It may be total or partial. In the latter case, the property not agreed upon as separate shall pertain to the absolute community.

*In separation of property, the spouses shall be solidarily liable; In ACP or CPG, the spouses shall be solidarily liable to family expenses in case of insufficiency of the ACP or CPG.*

**PROPERTY REGIME OF UNIONS WITHOUT MARRIAGE**

**Article 147-** presupposes that the parties had no legal impediment to marry each other but they cohabited as husband and wife.

Applies to Article 36, cohabitation, and valid-bigamous marriage.

“When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage (except bigamous marriage), *their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership. [Prove your contribution].*

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. A party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former’s efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts inter vivos of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share

shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation."

**Article 148-** applicable to a cohabitation wherein there exist a legal impediment between the parties to marry each other- it includes bigamous marriages.

In cases of cohabitation not falling under the preceding Article, *only properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal.* The same rule and presumptions shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding article.

The foregoing rules on forfeiture shall apply even if both parties are in bad faith.

#### **BAR 1997- PROPERTY RELATIONS; UNIONS WITHOUT MARRIAGE**

- Luis and Rizza, both 26 years of age and single, live exclusively with each other as husband and wife without the benefit of marriage, Luis is gainfully employed, Rizza is not employed, stays at home, and takes charge of the household chores. After living together for a little over twenty years, Luis was able to save from his salary earnings during that period the amount of P200, 000.00 presently deposited in a bank. A house and lot worth P500, 000.00 was recently purchased for the same amount by the couple. Of the P500.000.00 used by the common-law spouses to purchase the property, P200.000.00 had come from the sale of palay harvested from the hacienda owned by Luis and P300,000.00 from the rentals of a building belonging to Rizza. In fine, the sum of P500.000.00 had been part of the fruits received during the period of cohabitation from their separate property, a car worth P100.000.00 being used by the common-law spouses, was donated Just months ago to Rizza by her parents. Luis and Rizza now decide to terminate their cohabitation, and they ask you to give them your legal advice on the following:

#### **SUGGESTED ANSWER:**

**(a) How, under the law should the bank deposit of P200, 000.00 the house and lot valued at P500.000.00 and the car worth P100.000.00 be allocated to them?** Art. 147 of the Family Code provides in part that when a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules of coownership. In the absence of proof to the contrary, properties acquired while they lived

together shall be presumed to have been obtained by their Joint efforts, worker Industry, and shall be owned by them in equal shares. A party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household. Thus: 1) the wages and salaries of Luis in the amount of P200, 000.00 shall be divided equally between Luis and Rizza. 2) the house and lot valued at P500.000.00 having been acquired by both of them through work or industry shall be divided between them in proportion to their respective contribution, in consonance with the rules on co-ownership. Hence, Luis gets 2\5 while Rizza gets 3\5 of P500.000.00. 3) the car worth P100,000.00 shall be exclusively owned by Rizza, the same having been donated to her by her parents.

#### **(b) What would your answer be (to the above question) had Luis and Rizza been living together all the time, ie., since twenty years ago, under a valid marriage?**

The property relations between Luis and Rizza, their marriage having been celebrated 20 years ago (under the Civil Code) shall be governed by the conjugal partnership of gains, under which the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance, and upon dissolution of the marriage or of the partnership, the net gains or benefits obtained by either or both spouse shall be divided equally between them (Art. 142. Civil Code). Thus: 1) The salary of Luis deposited in the bank in the amount of P200.000.00 and the house and lot valued at P500, 000.00 shall be divided equally between Luis and Rizza. 2) However, the car worth P100.000,00 donated to Rizza by her parents shall be considered to her own paraphernal property, having been acquired by lucrative title (par. 2, Art. 148, Civil Code).

#### **BAR 2000- PROPERTY RELATIONS; UNIONS WITHOUT MARRIAGE**

- For five years since 1989, Tony, a bank Vice-president, and Susan, an entertainer, lived together as husband and wife without the benefit of marriage although they were capacitated to marry each other. Since Tony's salary was more than enough for their needs, Susan stopped working and merely "kept house". During that period, Tony was able to buy a lot and house in a plush subdivision. However, after five years, Tony and Susan decided to separate.

#### **SUGGESTED ANSWER:**

##### **a) Who will be entitled to the house and lot? (3%)**

- Tony and Susan are entitled to the house and lot as co-owners in equal shares. Under Article 147 of the Family Code, when a man and a woman who are capacitated to marry each other lived exclusively with each other as husband and wife, the property acquired during their cohabitation are presumed to have been obtained by their joint efforts, work or industry and shall be owned by them in equal shares. This is true even though the efforts of one of them consisted merely in his or her care and maintenance of the family and of the household.

##### **b) Would it make any difference if Tony could not marry Susan because he was previously married to**

**Alice from whom he is legally separated? (2%)** - Yes, it would make a difference. Under Article 148 of the Family Code, when the parties to the cohabitation could not marry each other because of an impediment, only those properties acquired by both of them through their actual joint contribution of money, property, or Industry shall be owned by them in common in proportion to their respective contributions. The efforts of one of the parties in maintaining the family and household are not considered adequate contribution in the acquisition of the properties. Since Susan did not contribute to the acquisition of the house and lot, she has no share therein. If Tony cohabited with Susan after his legal separation from Alice, the house and lot is his exclusive property. If he cohabited with Susan before his legal separation from Alice, the house and lot belongs to his community or partnership with Alice.

**BAR 2000- PROPERTY RELATIONS; OBLIGATIONS; BENEFIT OF THE FAMILY.-** As finance officer of K and Co., Victorino arranged a loan of P5 Million from PNB for the corporation. However, he was required by the bank to sign a Continuing Surety Agreement to secure the repayment of the loan. The corporation failed to pay the loan, and the bank obtained a judgment against it and Victorino, jointly and severally. To enforce the judgment, the sheriff levied on a farm owned by the conjugal partnership of Victorino and his wife Elsa. Is the levy proper or not? (3%)

**SUGGESTED ANSWER:** The levy is not proper there being no showing that the surety agreement executed by the husband redounded to the benefit of the family. An obligation contracted by the husband alone is chargeable against the conjugal partnership only when it was contracted for the benefit of the family. When the obligation was contracted on behalf of the family business the law presumes that such obligation will redound to the benefit of the family. However, when the obligation was to guarantee the debt of a third party, as in the problem, the obligation is presumed for the benefit of the third party, not the family. Hence, for the obligation under the surety agreement to be chargeable against the partnership it must be proven that the family was benefited and that the benefit was a direct result of such agreement, (*Ayala Investment v. Ching, 286 SCRA 272*)

**THE FAMILY**

**Concept:** The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect.

**Scope:** family relations include those:

- a. Between husband and wife
- b. Between parents and children
- c. Among brothers and sisters, whether of the full or half-blood.

**Note:** if a sister-in-laws, brother-in-laws, or any stranger is made part of the complaint, then there is no need to comply with the foregoing rules.

**Note further:** the suit contemplated by the law is a controversial or adversarial action, and not settlement of estate.

**Conflict in the family:** no suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed [Article 151].

**Exception:** This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

- a. Civil status of persons.
- b. Validity of a marriage or a legal separation.
- c. Any ground for legal separation.
- d. Future support.
- e. Jurisdiction of courts.
- f. Future legitimes.
- g. When a stranger is involved.

**THE FAMILY HOME**

**Concept:** The family home is the dwelling house where the husband and wife and their family reside, and the land on which it is situated.

**Who constitute?** The family home may be constituted jointly by the husband and the wife or by an unmarried head of a family. Also, under Art. 161: a person may constitute, or be the beneficiary of, only one family home.

**When is it constituted?** The family home is deemed constituted on a house and lot from the time it is occupied as a family residence.

**Duration:** From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such.

Also, the family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of 10 years or for as long as there is a minor beneficiary and the heirs cannot partition the same unless the court finds compelling reasons therefore. This rule shall apply regardless of whoever owns the property or constituted the family home.

Thus a family **cannot be extra-judicially** portioned, unless after the lapse of ten years from the death of mother or father.

Judicial partition- you should convince the court that there is reason to do the same.

**Where is it constituted?** The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent. It may also be constituted by an unmarried head of a family on his or her own property. Nevertheless, property that is the subject of a conditional sale on installments where ownership is

reserved by the vendor only to guarantee payment of the purchase price may be constituted as a family home.

**How much?** The actual value of the family home shall not exceed, at the time of its constitution, the amount of P300,000.00 in urban areas, and P200,000.00 in rural areas or such amounts as may be fixed by law. In any event, if the value of the currency changes, the value most favorable for the constitution of a family home shall be the basis of evaluation.

**Urban areas:** include chartered cities and municipalities whose annual income at least equals that legally required for chartered cities. All others are deemed rural areas.

**Privilege:** The family home is exempt from execution, forced sale or attachment, except as may be provided and to the extent of the value allowed by law.

**Exceptions:** the family home may be levied upon

- a. For non-payment of taxes.
- b. For debts incurred prior to the constitution of the family home.
- c. For debts secured by mortgages on the premises before or after such constitution.
- d. For debts due to laborers, mechanics, architects, builders, material men, and others who have rendered service or furnished materials for the construction of the building.
- e. When a creditor whose claim is not among those mentioned from a – d obtains a judgment in his favor, and he has reasonable grounds to believe that the family home is actually worth more than the maximum amount fixed herein, he may apply to the court which rendered the judgment for an order directing the sale of the property under execution. The court shall so order if it finds that the actual value of the family home exceeds the maximum amount allowed by law as of the time of its constitution. If the increased actual value exceeds the maximum allowed and results from subsequent voluntary improvements introduced by the person or persons constituting the family home, by the owner or owners of the property, or by any of the beneficiaries, the same rule and procedure shall apply.

At the execution sale, no bid below the value allowed for a family home shall be considered. The proceeds shall be applied first to the amount fixed by law, and then to the liabilities under the judgment and the costs. The excess, if any, shall be delivered to the judgment debtor.

#### **Who are the beneficiaries?**

- a. The husband and wife, or an unmarried person who is the head of family.
- b. Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home

and who depend upon the head of the family for legal support.

- c. A person may be the beneficiary of only one family home.

**Disposition of the family home** – the family home may be sold, alienated, donated, assigned or encumbered by the owner or owners thereof with the written consent of the person constituting the same, the latter's spouse, and a majority of the beneficiaries of legal age. In case of conflict, the court shall decide.

**Applicability to existing residences:** the provisions of this chapter shall also govern existing family residences insofar as said provisions are applicable.

## **PATERNITY AND FILIATION**

**Paternity-** means the relationship or status of a person with respect to his or her child. Paternity includes maternity.

**Filiation-** means the status of a person with respect to his or her parents.

Paternity and filiation then implies relationship.

### **2 types of Filiation**

#### **1. Natural**

- a. Legitimate
  - i) Legitimate proper [Article 164]
  - ii) Legitimated [Article 167-172]
  - iii) Those conceived through artificial insemination.
- b. Illegitimate [Articles 165, 175, 176]

#### **2. Adoption**

1. RA 9552 [domestic Adoption Act & RA 8043 [Inter-country Adoption Act]

### **LEGITIMATE CHILDREN:**

- a. Children conceived or born during the marriage of the parents are legitimate.
- b. Children conceived as **a result of artificial insemination** of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that these requisites concur-
  1. Authorization or ratification of the insemination by both husband and wife. [Note: authorization occurs before the insemination; ratification happens after the insemination].
  2. The authorization or ratification must be in writing.
  3. The instrument must be executed and signed before the child's birth by both the husband and wife.
  4. The instrument must be recorded in the civil registry together with the birth certificate of the child.

### THREE TYPES OF LEGITIMATE CHILDREN

1. Legitimate proper
2. Legitimated
3. Adopted.

#### What if the mother declared against the illegitimacy of the child?

**Article 167-** *the child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.*

Despite the declaration of the mother that the child is illegitimate or that she has been declared adulteress, the presumption of legitimacy still stands. This is so because in many instances, the woman wouldn't know who the father of the child is if she had multiple partners. Also, there are instances wherein a woman whose marriage turned sour will declare in such order to hurt the pride of her husband.

#### BAR 2006- Paternity & Filiation; Artificial Insemination; Formalities-

Ed and Beth have been married for 20 years without children. Desirous to have a baby, they consulted Dr. Jun Canlas, a prominent medical specialist on human fertility. He advised Beth to undergo artificial insemination. It was found that Ed's sperm count was inadequate to induce pregnancy. Hence, the couple looked for a willing donor. Andy, the brother of Ed, readily consented to donate his sperm. After a series of tests, Andy's sperm was medically introduced into Beth's ovary. She became pregnant and 9 months later, gave birth to a baby boy, named Alvin.

#### (1) Who is the Father of Alvin? Explain. (2.5%)

**SUGGESTED ANSWER:** Andy is the biological father of Alvin being the source of the sperm. Andy is the legal father of Alvin because there was neither consent nor ratification to the artificial insemination. Under the law, children conceived by artificial insemination are legitimate children of the spouses, provided, that both of them authorized or ratified the insemination in a written instrument executed and signed by both of them before the birth of the child (Art. 164, Family Code).

#### (2) What are the requirements, if any, in order for Ed to establish his paternity over Alvin. (2.5%)

**SUGGESTED ANSWER:** The following are the requirements for Ed to establish his paternity over Alvin:

2. The artificial insemination has been authorized or ratified by the spouses in a written instrument executed and signed by them before the birth of the child; and
3. The written instrument is recorded in the civil registry together with the birth certificate of the child (Art. 164, 2nd paragraph, Family Code).

#### BAR 2004- Paternity & Filiation; Common-Law Union-

RN and DM, without any impediment to marry each other, had been living together without benefit of church blessings. Their common-law union resulted in the birth of ZMN. Two years later, they got married in a civil ceremony. Could ZMN be legitimated? Reason. (5%)

**SUGGESTED ANSWER:** ZMN was legitimated by the subsequent marriage of RN and DM because at the time he was conceived, RN and DM could have validly married each other. Under the Family Code children conceived and born outside of wedlock of parents who, at the time of the former's conception, were not disqualified by any impediment to marry each other are legitimated by the subsequent marriage of the parents.

#### ILLEGITIMATE CHILDREN:

**General Rule:** Children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this code.

#### Exceptions:

- a. Children of voidable marriages
- b. Children of void marriages in two instances
  - i) Children conceived of a marriage void under Article 36, before final judgment was rendered annulling the marriage.
  - ii) Children conceived of a marriage under Article 53.

#### TWO TYPES OF ILLEGITIMATE CHILDREN

1. Children of parents disqualified to marry each other at conception and marriage.
2. Children of parents qualified to marry each other—only this kind can be legitimated by subsequent marriage.

#### PROOFS OF FILIATION

**Legitimate children:** The filiation of legitimate children is established by any of the following:

1. The record of birth appearing in the civil register or a final judgment.
2. An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

**In the absence of the foregoing evidence,** the legitimate filiation shall be proved by:

1. The open and continuous possession of the status of a legitimate child.
2. Any other means allowed by the Rules of Court and special laws.

**Note:** mere use of endearment is not admissible as proof of filiation; the admission must expressly indicate filiation and paternity between the presumptive father and the child.

**When to file an action to claim legitimacy?** The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of 5 years within which to institute the action. The action already commenced by the child shall survive notwithstanding the death of either or both of the parties.

**Illegitimate children:** Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action to claim illegitimate filiation must be brought during the lifetime of the alleged parent.

**When to file an action to claim illegitimate filiation?** The action to claim illegitimate filiation may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of 5 years within which to institute the action. The action already commenced by the child shall survive notwithstanding the death of either or both of the parties.

**DNA Testing to Prove Filiation:**

**99%-** presumption that he is the father

**Below 99%-** child must produce additional evidence to prove that the putative father is the real father.

**No relation-** conclusive presumption.

**The weight and probative value of DNA results depends on the observance of certain requirements known as the Vallejo Guidelines. To wit:**

- a. How the samples ( both evidence and reference) were collected
- b. How they were handled
- c. The possibility of contamination of the samples
- d. The procedure followed in analyzing the samples
- e. Whether the proper standards and procedures were followed in conducting the test.
- f. The qualification of the analyst who conducted the test

**Note:** DNA testing cannot be used to impugn legitimacy of children conceived through artificial insemination.

**ACTION TO IMPUGN LEGITIMACY**

**Who has the legal personality to impugn the legitimacy of a child?**

**General rule:** only the husband during his lifetime can impugn the legitimacy of the child.

**Exception:** the heirs of the husband in the following cases:

1. If the husband should *die before the expiration of the period fixed for bringing his action.*
2. If he should *die after the filing of the compliant without having desisted therefrom* or
3. If the *child was born after the death of the husband.*

**Note:** children cannot impugn their status.

**When to impugn the legitimacy of a child?**

- a. 1 year from **knowledge** of the birth or its **recording in the civil register**, if the husband or in a proper case, any of his heirs, should **reside** in the city or municipality where the birth took place or recorded.
- b. 2 years from **knowledge** of the birth or its **recording in the civil register**, if the husband, or

in a proper case, any of his heirs, **do not reside** in the city or municipality where the birth took place or recorded.

- c. 3 years from **knowledge** of the birth or its **recording in the civil register**, if the husband or in a proper case, any of his heirs, **live abroad**.

**In case of substitution-** the heirs of the husband must follow the foregoing prescriptive periods.

**Note:** if the birth of the child has been concealed or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of the registration of the birth, whichever is earlier.

**GROUND TO IMPUGN LEGITIMACY**

1. That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days, which immediately preceded the birth of the child because of:
  - Φ The physical incapacity of the husband to have sexual intercourse with his wife.
  - Φ The fact that the husband and wife were living separately in such a way that sexual intercourse was not possible.
  - Φ Serious illness of the husband, which absolutely prevented sexual intercourse.
2. That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the 2<sup>nd</sup> paragraph of Art. 164 (on artificial insemination).
3. That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.

**PRESUMPTION OF FILIATION-** If the marriage is terminated and the mother contracted another marriage within 300 days after such termination of the former marriage, these rules shall govern in the absence of proof to the contrary.

- **Child of first marriage-** a child born before 180 days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within 300 days after the termination of the former marriage.

**Requisites:**

- a. The mother must have married again within 300 days from the termination of her first marriage.
- b. The child was born within the same 300 days after the termination of the former marriage of its mother.
- c. The child was born before 180 days after the solemnization of its mother's 2<sup>nd</sup> marriage.

- **Child of the 2<sup>nd</sup> marriage-** a child born after 180 days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the 300 days after the termination of the former marriage.

**Requisites:**

- a. The mother must have married again within 300 days from the termination of the marriage.
- b. The child was born within the same 300 days after the termination of its mother's first marriage
- c. The child was born after 180 days following the solemnization of its mother's second marriage.

**What 'first marriage' is contemplated supra?** The first marriage must be terminated either by death or annulment. Thus it does not refer to a marriage under Article 42 since the terms of this Article provide that the first marriage is terminated. Under Article 42, it is the 2<sup>nd</sup> marriage which is terminated.

**Burden of proof:** The legitimacy or illegitimacy of a child born after 300 days following the termination of the marriage shall be proved by whoever alleges such legitimacy or illegitimacy.

**CLAIM OF LEGITIMACY BY THE CHILD:**

Proof	parties
Birth certificate or Admission of putative father in a public instrument.	Child, heirs of the child, against the putative father and his heirs.
Continuous possession of status or other means allowed by the rules.	Filed by the child and his heirs against the putative father only.

**RIGHTS OF CHILDREN**

**LEGITIMATE CHILDREN:**

1. To bear the surnames of the father and the mother, in conformity with the provisions of the civil code on surnames.

***If there was a legal separation, can the wife drop the surname of husband and order the common children to use her surname?*** No, because the status of children is fixed by law and not by the whims and caprices of the husband and wife.

2. To receive support from their parents, their ascendants, and in proper cases, their brothers and sisters, in conformity with the provisions of this Code on Support.
3. To be entitled to the legitime and other successional rights granted to them by the Civil Code.

**ILLEGITIMATE CHILDREN:**

1. Shall use the surname of the mother

2. Whether recognized or not shall be under the parental authority of their mother,
3. Shall be entitled to support in conformity with this Code.
4. The legitime of each illegitimate child shall consist of 1/2 of the legitime of a legitimate child.

**RA**

1. Father had recognized the illegitimate child either in the record of birth or sworn affidavit submitted in the LCR. The affiant should contain his permission to use his surname.
2. The mother of the illegitimate child shall also give his consent.

LCR, without judicial approval issue substitute a birth certificate.

**LEGITIMATED CHILDREN**

**Legitimation:** legitimation shall take place by a subsequent valid marriage between parents. The annulment of a voidable marriage shall not affect the legitimation.

**Concept:** only children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other maybe legitimated.

**Requisites:**

1. Time of conception, parents are free to marry each other, the only impediment is their minority
2. The child was born out of wedlock.
3. Parents subsequently marry each other, and the marriage is valid. Thus if the marriage is void, then the effects of legitimation will not take place.

***The parents must submit an affidavit of legitimation submitted to the LCR where the child was registered.***

**Retroactivity:** The effects of legitimation shall retroact to the time of the child's birth.

**Effect of death of children before marriage:** The legitimation of children who died before the celebration of the marriage shall benefit their descendants.

**Action to impugn legitimation:** Legitimation may be impugned only by those who are prejudiced in their rights, within 5 years from the time their cause of action accrues.

**Rights:** legitimated children shall enjoy the same rights as legitimate children.

**Legitimated children shall have the right:**

1. To bear the surnames of the father and the mother, in conformity with the provisions of the civil code on surnames.



2. To receive support from their parents, their ascendants, and in proper cases, their brothers and sisters, in conformity with the provisions of this Code on Support.
3. To be entitled to the legitime and other successional rights granted to them by the Civil Code.

**BAR 2005- Paternity & Filiation; Recognition of illegitimate Child** - Steve was married to Linda, with whom he had a daughter, Tintin. Steve fathered a son with Dina, his secretary of 20 years, whom Dina named Joey, born on September 20, 1981. Joey's birth certificate did not indicate the father's name. Steve died on August 13, 1993, while Linda died on December 3, 1993, leaving their legitimate daughter, Tintin, as sole heir. On May 16, 1994, Dina filed a case on behalf of Joey, praying that the latter be declared an acknowledged illegitimate son of Steve and that Joey be given his share in Steve's estate, which is now being solely held by Tintin. Tintin put up the defense that an action for recognition shall only be filed during the lifetime of the presumed parents and that the exceptions under Article 285 of the Civil Code do not apply to him since the said article has been repealed by the Family Code. In any case, according to Tintin, Joey's birth certificate does not show that Steve is his father.

**a) Does Joey have a cause of action against Tintin for recognition and partition? Explain. (2%)**

**SUGGESTED ANSWER:** No, Joey does not have a cause of action against Tintin for recognition and partition. Under Article 175 of the Family Code, as a general rule, an action for compulsory recognition of an illegitimate child can be brought at any time during the lifetime of the child. However, if the action is based on "open and continuous possession of the status of an illegitimate child, the same can be filed during the lifetime of the putative father." In the present case, the action for compulsory recognition was filed by Joey's mother, Dina, on May 16, 1994, after the death of Steve, the putative father. The action will prosper if Joey can present his birth certificate that bears the signature of his putative father. However, the facts clearly state that the birth certificate of Joey did not indicate the father's name. A birth certificate not signed by the alleged father cannot be taken as a record of birth to prove recognition of the child, nor can said birth certificate be taken as recognition in a public instrument. (*Reyes v. Court of Appeals, G.R. No. 39537, March 19, 1985*) Consequently, the action filed by Joey's mother has already prescribed.

**b) Are the defenses set up by Tintin tenable? Explain. (2%)**

**Suggested answer:** Yes, the defenses of Tintin are tenable. In *Tayag v. Court of Appeals (G.R. No. 95229, June 9, 1992)*, a complaint to compel recognition of an illegitimate child was brought before effectivity of the Family Code by the mother of a minor child based on "open and continuous possession of the status of an illegitimate child." The Supreme Court held that the right of action of the minor child has been vested by the filing of the complaint in court under the regime of the Civil

Code and prior to the effectivity of the Family Code. The ruling in *Tayag v. Court of Appeals* finds no application in the instant case. Although the child was born before the effectivity of the Family Code, the complaint was filed after its effectivity. Hence, Article 175 of the Family Code should apply and not Article 285 of the Civil Code.

**c) Supposing that Joey died during the pendency of the action, should the action be dismissed? Explain. (2%)**

**SUGGESTED ANSWER:** If Joey died during the pendency of the action, the action should still be dismissed because the right of Joey or his heirs to file the action has already prescribed. (Art. 175, Family Code).

## ADOPTION

### RA 8552 [Domestic Adoption Act]

**Definition:** the process of making a child, whether related or not to the adopter, possess in general, the rights accorded to a legitimate child.

**Simulation of birth:** the tampering of the civil registry making it appear in the birth records that a certain child was born to a person who is not his biological mother, causing such child to lose his true identity and status.

#### Who may adopt?

##### 1. A Filipino citizen who:

- a) Of legal age
- b) Good moral character.
- c) In possession of full civil capacity and legal rights.
- d) Emotionally and psychologically capable in caring for children.
- e) Has not been convicted of any crime involving moral turpitude.
- f) 16 years difference between the age of the adopter and adoptee (may be waived when the adopter is the biological parent of the adoptee, or is the spouse of the adoptee's parent)
- g) Who is in a position to support and care for his children in keeping with the means of the family.

##### 2. Any alien who:

- a) Possesses all the above qualifications
- b) Has been certified by his diplomatic or consular office or any appropriate government agency that he has the legal capacity to adopt in his country (☺)
- c) Has been living in the Philippines for at least 3 continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered (☺)
- d) His government allows the adoptee to enter his country as his adopted son or daughter
- e) His country has diplomatic relations with the Philippines

(☺) Waivable in the following cases:

- A former Filipino citizen who seeks to adopt a relative within the 4<sup>th</sup> degree of consanguinity or affinity.
- One who seeks to adopt the legitimate son/daughter of his/her Filipino spouse.
- One who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the 4<sup>th</sup> degree of consanguinity or affinity of the Filipino spouse.

**3. The guardian with respect to the ward** after the termination of the guardianship and clearance of his/her financial accountabilities.

**JOINT ADOPTION OF HUSBAND AND WIFE:** The husband and wife shall jointly adopt (joint parental authority shall be exercised), except in the following cases:

1. If one spouse seeks to adopt his/her own illegitimate son/daughter of the other.
2. If one spouse seeks to adopt his/her own illegitimate son/daughter; provided that the other spouse has signified his/her consent thereto.
3. If one spouses are legally separated from each other.

#### WHO MAY BE ADOPTED?

- a. Below 18 years of age who has been judicially or administratively declared available for adoption.

**Involuntary committed child:** one whose parents, known or unknown, has been permanently and judicially deprived of parental authority due to abandonment; substantial, continuous, or repeated neglect; abuse; or incompetence to discharge parental responsibilities.

**Abandoned child:** refers to one who has no proper parental care or guardianship or whose parent has deserted him for a period of at least 6 continuous months and has been judicially declared as such.

- b. The legitimate son/daughter of one spouse by the other spouse.
- c. An illegitimate son/daughter by a qualified adopter to improve his/her status to that of legitimacy.
- d. A person of legal age, if, prior to the adoption, said person has been consistently considered and treated by the adopter as his/her own child since minority.
- e. A child whose adoption has been previously rescinded.
- f. A child whose biological or adoptive parents have died. Provided that no proceedings shall be ***initiated within 6 months from the time of death of said parents.***

**The petition for adoption must allege all the qualification of the adopter and attached the consent of those persons who should give consent to the adoption.**

**The petition for adoption continues even if the adopter dies.**

#### Whose consent is necessary to the adoption?

- a. The adoptee, if 10 years of age or over.
- b. The biological parents of the child, if known, or the legal guardian, or the proper government instrumentality which has legal custody of the child.
- c. The legitimate and adopted sons/daughters, 10 years of age or over, of the adopter and adoptee, if any.
- d. The illegitimate sons/daughters, 10 years of age or over, of the adopter if living with said adopter and the latter's spouse, if any.
- e. The spouse, if any, of the person adopting or to be adopted.
- f. If the child is committed to the DSWD, then only the DSWD can give consent.

#### EFFECTS OF ADOPTION:

1. **Parental authority** – all legal ties between the biological parent and the adoptee shall be severed and the same shall then be vested on the adopter.
2. **Legitimacy** – the adoptee shall be considered the legitimate son/daughter of the adopter for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination.

The adopted can use the surname of the adopting parents. If the adopting parent is single, then the adopted child will have no middle name.

**Example:** Juan Santos, married to Juana. They have 3 children. At age 35, Juan was adopted by Santi Cruz. What surname will Juan and his wife and children use?

Juan- surname will be change to Cruz

Wife and Children- surname will remain as Santos, because they were not adopted by Santi Cruz.

Remedy of wife and children- petition for change of name.

3. **Succession** – the adopter and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation.

#### RESCISSION OF ADOPTION:

1. Repeated physical and verbal maltreatment by the adopter despite having undergone counseling despite having undergone counseling.
2. Attempt on the life of the adoptee.
3. Sexual assault or violence.
4. Abandonment and failure to comply with parental obligations.

**Who can rescind adoption?** The adopted only.

**What about the adopter?** The adoption shall not be subject to rescission by the adopter but they may disinherit the adoptee.

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**BAR 1995- Paternity & Filiation; Proofs; Limitations; Adopted Child-** Abraham died intestate on 7 January 1994 survived by his son Braulio. Abraham's older son Carlos died on 14 February 1990. Danilo who claims to be an adulterous child of Carlos intervenes in the proceedings for the settlement of the estate of Abraham in representation of Carlos. Danilo was legally adopted on 17 March 1970 by Carlos with the consent of the latter's wife.

**SUGGESTED ANSWER:**

**1. Under the Family Code, how may an illegitimate filiation be proved? Explain-** Under Art. 172 in relation to Art. 173 and Art. 175 of the FC, the filiation of illegitimate children may be established in the same way and by the same evidence as legitimate children. Art. 172 provides that the filiation of legitimate children is established by any of the following: (1) the record of birth appearing in the civil register or a final Judgment; or (2) an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned. In the absence of the foregoing evidence, the legitimate filiation shall be proved by: (1) the open and continuous possession of the status of a legitimate child; or (2) any other means allowed by the Rules of Court and special laws.

**2. As lawyer for Danilo, do you have to prove Danilo's illegitimate filiation? Explain -** No. Since Danilo has already been adopted by Carlos, he ceased to be an illegitimate child. An adopted child acquires all the rights of a legitimate child under Art. 189 of the FC.

**3. Can Danilo inherit from Abraham in representation of his father Carlos? Explain.-** No, he cannot. Danilo cannot represent Carlos as the latter's adopted child in the inheritance of Abraham because adoption did not make Danilo a legitimate grandchild of Abraham. Adoption is personal between Carlos and Danilo. He cannot also represent Carlos as the latter's illegitimate child because in such case he is barred by Art. 992 of the NCC from inheriting from his illegitimate grandfather Abraham.

**ALTERNATIVE ANSWER: (3)** An adopted child's successional rights do not include the right to represent his deceased adopter in the inheritance of the latter's legitimate parent, in view of Art. 973 which provides that in order that representation may take place, the representative must himself be capable of succeeding the decedent. Adoption by itself did not render Danilo an heir

of the adopter's legitimate parent. Neither does his being a grandchild of Abraham render him an heir of the latter because as an illegitimate child of Carlos, who was a legitimate child of Abraham, Danilo is incapable of succeeding Abraham under Art. 992 of the Code.

**BAR 2005- Inter-Country Adoption-** Hans Berber, a German national, and his Filipino wife, Rhoda, are permanent residents of Canada. They desire so much to adopt Magno, an 8-year old orphaned boy and a baptismal godson of Rhoda. Since the accidental death of Magno's parents in 2004, he has been staying with his aunt who, however, could hardly afford to feed her own family. Unfortunately, Hans and Rhoda cannot come to the Philippines to adopt Magno although they possess all the qualifications as adoptive parents.

Is there a possibility for them to adopt Magno? How should they go about it? (5%)

**SUGGESTED ANSWER:** Yes, it is possible for Hans and Rhoda to adopt Magno. Republic Act No. 8043 or the Inter-Country Adoption Act, allows aliens or Filipinos permanently residing abroad to apply for inter-country adoption of a Filipino child. The law however requires that only legally free child, or one who has been voluntarily or involuntarily committed to the DSWD or any of its accredited agencies, may be subject of inter-country adoption. The law further requires that aside from possessing all the qualifications, the adoptive parents must come from a country where the Philippines has diplomatic relations and that the government maintains a similarly accredited agency and that adoption is allowed under the national law of the alien. Moreover, it must be further shown that all possibilities for a domestic adoption have been exhausted and the inter-country adoption is best for the interest of the child.

Hans and Rhoda have to file an application to adopt Magno, either with the Regional Trial Court having jurisdiction over Magno or with the Inter-Country Adoption Board in Canada. Hans and Rhoda will then undergo trial custody for six (6) months from the time of placement. It is only after the lapse of the trial custody that the decree of adoption can be issued.

**BAR 1994- Parental Authority; Rescission of Adoption -** In 1975, Carol begot a daughter Bing, out of wedlock. When Bing was ten years old, Carol gave her consent for Bing's legal adoption by Norma and Manuel, which was granted by the court in 1990. In 1991, Carol learned that Norma and Manuel were engaged in a call-girl-ring that catered to tourists. Some of the girls lived with Norma and Manuel. Carol got Bing back, who in the first place wanted to return to her natural mother.

**SUGGESTED ANSWER:**

**1) Who has a better right to the custody of Bing, Carol or Norma?**

**a)** It depends on whether or not Bing was at least 18 years old at the time Carol asserts the prerogative to take custody of Bing. If she was at least 18 years old, then she is no longer under parental authority and neither Carol nor Norma can assert the prerogative to take custody. However, if she was less than 18 years old, then Norma

has a better right since the adoption by Norma of Bing terminates the parental authority of Carol over Bing.

**b)** The natural mother, Carol, should have the better right in light of the principle that the child's welfare is the paramount consideration in custody rights. Obviously, Bing's continued stay in her adopting parents' house, where interaction with the call girls is inevitable, would be detrimental to her moral and spiritual development. This could be the reason for Bing's expressed desire to return to her natural mother. It should be noted, however, that Bing is no longer a minor, being 19 years of age now. It is doubtful that a court can still resolve the question of custody over one who is sui juris and not otherwise incapacitated.

## **2) Aside from taking physical custody of Bing, what legal actions can Carol take to protect Bing?**

**a)** On the assumption that Bing is still a minor or otherwise incapacitated, Carol may petition the proper court for resolution or rescission of the decree of adoption on the ground that the adopting parents have exposed, or are exposing, the child to corrupt influence, tantamount to giving her corrupting orders or examples. She can also ask for the revesting in her of parental authority over Bing. If However, Bing is already 19 years of age and therefore no longer a minor, it is not Carol but Bing herself who can petition the court for judicial rescission of the adoption, provided she can show a ground for disinheritance of an ascendant.

**b)** Carol may file an action to deprive Norma of parental authority under Article 231 of the Family Code or file an action for the rescission of the adoption under Article 191 in relation to Article 231 (2) of the Family Code.

## **SUPPORT**

**Essence of support:** demandable when needed, but payable only when demanded.

**Object/scope of legal support** – support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The **education** of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority.

**Transportation** shall include expenses in going to and from school, or to and from place of work.

### **Kinds of support:**

- a.** As to amount:
  - Natural (bare necessities of life)
  - Civil (in accordance with financial standing)
- b.** As to source of obligations:
  - Legal (from provision of law)
  - Voluntary (from agreement or from provision of a will)

**c.** Special kind (alimony pendente lite)

**Subjects of support** – the following are obliged to support each other to the whole extent set forth under Art. 194:

- a.** The spouses
- b.** Legitimate ascendants and descendants
- c.** Parents and their legitimate children and the legitimate and illegitimate children of the latter
- d.** Parents and their illegitimate children and the legitimate and illegitimate children of the latter
- e.** Legitimate brothers and sisters, whether of full or half-blood
- f.** Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth, **except** only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence.

**Demandability and performance of support** – the obligation to give support shall be demandable from the time the person who has a right to receive the same needs it for maintenance, but it shall not be paid except from the date of judicial or extrajudicial demand.

Support pendente lite may be claimed in accordance with the Rules of Court.

Payment shall be made within the first 5 days of each corresponding month, or when the recipient dies, his heirs shall not be obliged to return what he has received in advance.

**SOURCES OF SUPPORT:** For the support of the legitimate ascendants; descendants, whether legitimate or illegitimate; and brothers and sisters, whether legitimately or illegitimately related, only the separate property of the person obliged to give support shall be answerable provided that in case the obligor has no separate property, the absolute community or the conjugal partnership, if financially capable, shall advance the support, which shall be deducted from the share of the spouse obliged upon the liquidation of the absolute community or of the conjugal partnership.

### **Support from others:**

**From stranger** – When, without the knowledge of the person obliged to give support, it is given by a stranger, the latter shall have the right to claim the same from the former, unless it appears that he gave it without intention of being reimbursed.

**From a third person** – When the person obliged to support another unjustly refuses or fails to give support when urgently needed by the latter, any third person may furnish support to the needy individual, with right of reimbursement from the person obliged to give support. This Article shall particularly apply when the father or mother of a child under the age of majority unjustly refuses to support or fails to give support to the child when urgently needed.

**Contractual support** – In case of contractual support or that given by will, the excess in amount beyond that required for legal support shall be subject to levy on attachment or execution.

Furthermore, contractual support shall be subject to adjustment whenever modification is necessary due to changes in circumstances manifestly beyond the contemplation of the parties.

**Exemption from execution** – The right to give support as well as any money or property obtained as such support shall not be levied upon on attachment or execution.

Per the rules of court the support for 3 months is the one that is exempt from attachment and execution.

**Amount of support** – The amount of support, in the cases referred to in Art. 195 and 196, shall be in proportion to the resources or means of the giver and to the necessities of the recipient.

**Form/Option in giving support** – the person obliged to give support shall have the option to fulfill the obligation either by paying the allowance fixed, or by receiving and maintaining in the family dwelling the person who has a right to receive support. The latter alternative cannot be availed of in case there is a moral or legal obstacle thereto.

**Ratio of support:** wherever two or more persons are giving support, they shall bear the same proportionately based on their financial ability.

**Order of support** – Whenever 2 or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:

- a. The spouse
- b. The descendants in the nearest degree
- c. The ascendants in the nearest degree
- d. The brothers and sisters

**Divisions in giving and receiving of support** – When the obligation to give support falls upon 2 or more persons, the payment of the same shall be divided between them in proportion to the resources of each.

However, in case of urgent need and by special circumstances, the judge may order only one of them to furnish the support provisionally, without prejudice to his right to claim from the other obligors the share due from them.

When 2 or more recipients at the same time claim support from one and the same person legally obliged to give it, should the latter not have sufficient means to satisfy all claims, the order established in the preceding article shall be followed, unless the concurrent obliges should be the spouse and a child subject to parental authority, in which case the child shall be preferred.

**Piecemeal support** – Support shall be reduced or increased proportionately, according to the reduction or increase of the necessities of the recipient and the

resources or means of the person obliged to furnish the same.

## PARENTAL AUTHORITY

**Concept** – Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing of such children for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.

**Nature** – Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law.

Parental authority cannot be subject of contractual stipulation.

**Exceptions** - Waivable in the following cases:

- a. When there is guardianship approved by the court;
- b. When there is adoption approved by the court;
- c. When there is emancipation by concession;
- d. When there is a surrender of the child to an orphan asylum.

**Joint parental authority** – The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

Children shall always observe respect and reverence towards their parents and are obliged to obey them as long as the children are under parental authority.

**Continuous exercise of parental authority** – In case of absence or death of either parent, the parent present shall continue exercising parental authority. The remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children.

**Parental authority in case of separation** – In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

**No child under 7 years of age** shall be separated from the mother, unless the court finds compelling reasons to order otherwise.

**Filial privilege** – No descendant shall be compelled, in a criminal case, to testify against his parents and grandparents, except when such testimony is indispensable in a crime against the descendant or by one parent against the other.

**Under the Rules on Evidence:** *"No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants (Rule*

130, sec. 25). "Thereupon, should a conflict arise between this provision and civil code provision, the latter prevails, since a procedural rule cannot impair substantive law.

### **SUBSTITUTE PARENTAL AUTHORITY**

**Order of substitute:** in default [**death or unwilling or incapacitated**] of parents or a judicially appointed guardian, the following persons shall exercise substitute parental authority over the child in the order indicated:

1. The surviving grandparent: in case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned under Art. 213, shall exercise the authority.
2. The oldest brother or sister, over 21 years of age, unless unfit or disqualified.
3. The child's actual custodian, over 21 years of age, unless unfit or disqualified.

Whenever the appointment of a judicial guardian over the property of the child becomes necessary, the same order of preference shall be observed.

**Parental Authority & custody over illegitimate children:** whether recognized or not, parental authority is solely and exclusively vested to the mother, except there are grounds not to grant the same, such as when the mother lives a promiscuous life.

**Parental authority for Foundlings:** In case of foundlings, abandoned, neglected or abused children and other children similarly situated, parental authority shall be entrusted in summary judicial proceedings to heads of children's homes, orphanages and similar institutions duly accredited by the proper government agency.

### **EFFECTS OF PARENTAL AUTHORITY**

**UPON PERSON-** the parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:

1. To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
2. To give them love and affection, advice and counsel, companionship and understanding;
3. To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interests in civic affairs and inspire in them compliance with the duties of citizenship;
4. To enhance, protect, preserve and maintain their physical and mental health at all times;
5. To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;

6. To represent them in all matters affecting their interests;
7. To demand from them respect as may be required under the circumstances; and
8. To perform such other duties as are imposed by law upon parents and guardians.

**Disciplinary measures:** The parents or, in their absence or incapacity, the individual, entity or institution exercising parental authority, may petition the proper court of the place where the child resides, for an order providing for disciplinary measures over the child. The child shall be entitled to the assistance of counsel, either of his choice or appointed by the court, and a summary hearing shall be conducted wherein the petitioner and the child shall be heard.

However, if in the same proceeding the court finds the petitioner at fault, irrespective of the merits of the petition, or when the circumstances so warrant, the court may also order the deprivation or suspension of parental authority or adopt such other measures as it may deem just and proper.

The measures referred to in the preceding article may include the commitment of the child for not more than 30 days in entities or institutions engaged in child care or in children's homes duly accredited by the proper government agency.

The parent exercising parental authority shall not interfere with the care of the child whenever committed but shall provide for his support. Upon proper petition or at its own instance, the court may terminate the commitment of the child whenever just and proper.

**UPON PROPERTY:** The father and mother shall jointly exercise legal guardianship over the property of their unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

Where the marked value of the property or the annual income of the child exceeds P50,000, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than 10% of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

**Appointment of guardian over the property:** The courts may appoint a guardian of the child's property, or a guardian ad litem when the best interests of the child so requires.

**Disposition of the property of an unemancipated child:** The property of the unemancipated child earned or acquired with his work or industry or by onerous or gratuitous title shall belong to the child in ownership and shall be devoted exclusively to the latter's support and education, unless the title or transfer provides otherwise.

The right of the parents over the fruits and income of the child's property shall be limited primarily to the child's

support and secondarily to the collective daily needs of the family.

**ADMINISTRATION OF THE CHILD OF THE PARENT'S PROPERTY:** If the parents entrust the management or administration of any of their properties to an unemancipated child, the net proceeds of such property shall belong to the owner. The child shall be given a reasonably monthly allowance in an amount not less than that which the owner would have been paid if the administrator were a stranger, unless the owner, grants the entire proceeds to the child. *In any case, the proceeds thus given in whole or in part shall not be charged to the child's legitime.*

#### **LIABILITIES**

- Those given the special parental authority shall be principally and solidarily liable for damages caused by the acts or omissions of the unemancipated minor.
- The parents, judicial guardians or the persons exercising substitute parental authority over said minor shall be subsidiarily liable.
- The respective liabilities shall not apply if it is proved that they exercised the proper diligence required under the particular circumstances.
- All other cases not covered by this and the preceding articles shall be governed by the provisions on quasi-delicts.
- Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated **children living in their company and under their parental authority** subject to the appropriate defenses provided by law [*defense of diligentissimi pater familias*].
- In no case shall the school administrator, teacher or individual engaged in child care exercising special parental authority inflict **corporal punishment** upon the child.

#### **TERMINATION OF PARENTAL AUTHORITY**

**Permanent:** Parental authority terminates permanently:

- a. Upon the death of the parents
- b. Upon the death of the child
- c. Upon emancipation of the child
- d. If the person exercising parental authority has subjected the child or allowed him to be subjected to sexual abuse, such person shall be permanently deprived by the court of such authority.

**Temporary:** Unless subsequently revived by a final judgment, parental authority also terminates:

- a. Upon adoption of the child
- b. Upon appointment of a general guardian
- c. Upon judicial declaration of abandonment of the child in a case filed for the purpose
- d. Upon final judgment of a competent court divesting the party concerned of parental authority

- e. Upon judicial declaration of absence or incapacity of the person exercising parental authority.

#### **SUSPENSION OF PARENTAL AUTHORITY**

Parental authority is suspended upon conviction of the parent or the person exercising the same of a crime which carries with it the penalty of civil interdiction. The authority is automatically reinstated upon service of the penalty or upon pardon or amnesty of the offender.

Also, the court in an action filed for the purpose or in a related case may also suspend parental authority if the parent or the person exercising the same:

- a. Treats the child with excessive harshness or cruelty
- b. Gives the child corrupting orders, counsel or example
- c. Compels the child to beg
- d. Subjects the child or allows him to be subjected to acts of lasciviousness

The grounds enumerated above are deemed to include cases which have resulted from culpable negligence of the parent or the person exercising parental authority.

If the degree of seriousness so warrants, or the welfare of the child so demands, the court shall deprive the guilty party of parental authority or adopt such other measures as may be proper under the circumstances.

The suspension or deprivation may be revoked and the parental authority revived in a case filed for the purpose or in the same proceeding if the court finds that the cause therefore has ceased and will not be repeated.

#### **EMANCIPATION**

**R.A. 6809** - Emancipation shall terminate parental authority over the person and property of the child who shall then be qualified and responsible for all acts of civil life, save the exception established by existing laws in special cases.

Contracting marriage shall required parental consent until the age of 21.

Emancipation takes place by attainment of majority. Unless otherwise provided, majority commences at the age of 18 years.

#### **SPECIAL PARENTAL AUTHORITY**

The **school, its administrators and teachers, or the individual, entity or institution engaged in child care** shall have special parental authority and responsibility over the minor child while under their **supervision, instruction or custody.**

The teachers stand in loco parentis over the minor in such instances. It means that they exercise effective control and influence over the child.

Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution.

**Thus** determine if the act of the child was done within the school time or after.

**If after** - see if the school has effective control and influence over the child, school and teacher is liable.

**For children who are not minors [18 but 21 and below]** – apply Civil Code.

**BAR 2004- Parental Authority; Substitute vs. Special** - Distinguish briefly but clearly between: Substitute parental authority and special parental authority.

**Suggested answer:** In substitute parental authority, the parents lose their parental authority in favor of the substitute who acquires it to the exclusion of the parents. In special parental authority, the parents or anyone exercising parental authority does not lose parental authority. Those who are charged with special parental authority exercise such authority only during the time that the child is in their custody or supervision. Substitute parental authority displaces parental authority while special parental authority concurs with parental authority.

**BAR 2006- Parental Authority; Child under 7 years of age** - Under Article 213 of the Family Code, no child under 7 years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise.

**(1) Explain the rationale of this provision. (2.5%)**

**Suggested answer:** The rationale of the 2nd paragraph of Article 213 of the Family Code is to avoid the tragedy of a mother who sees her baby torn away from her. It is said that the maternal affection and care during the early years of the child are generally needed by the child more than paternal care (*Hontiveros v. IAC, G.R. No. 64982, October 23, 1984; Tolentino, Commentaries and Jurisprudence on the Civil Code, Volume One, pp. 718-719*). The general rule is that a child below 7 years old shall not be separated from his mother due to his basic need for her loving care (*Espiritu v. C.A., G.R. No. 115640, March 15, 1995*).

**(2) Give at least 3 examples of "compelling reasons" which justify the taking away from the mother's custody of her child under 7 years of age. (2.5%)**

**Suggested answer:**

- a. The mother is insane (*Sempio-Diy, Handbook on the Family Code of the Philippines, pp. 296-297*);
- b. The mother is sick with a disease that is communicable and might endanger the health and life of the child;
- c. The mother has been maltreating the child;
- d. The mother is engaged in prostitution;
- e. The mother is engaged in adulterous relationship;
- f. The mother is a drug addict;
- g. The mother is a habitual drunk or an alcoholic;

**BAR 2006- Parental Authority; Substitute Parental Authority; Liability of Teachers** - If during class hours,

while the teacher was chatting with other teachers in the school corridor, a 7 year old male pupil stabs the eye of another boy with a ball pen during a fight, causing permanent blindness to the victim, who could be liable for damages for the boy's injury: the teacher, the school authorities, or the guilty boy's parents? Explain.

**Suggested answer:** The school, its administrators, and teachers have special parental authority and responsibility over the minor child while under their supervision, instruction or custody (Article 218, FC). They are principally and solidarily liable for the damages caused by the acts or omissions of the unemancipated minor unless they exercised the proper diligence required under the circumstances (Article 219, FC). In the problem, the TEACHER and the SCHOOL AUTHORITIES are liable for the blindness of the victim, because the student who causes it was under their special parental authority and they were negligent. They were negligent because they were chatting in the corridor during the class period when the stabbing incident occurred. The incident could have been prevented had the teacher been inside the classroom at that time. The guilty boy's PARENTS are subsidiarily liable under Article 219 of the Family Code.

**FUNERAL**

**FIRST NAME AND SURNAME**

**ABSENCE**

**LOCAL CIVIL REGISTER**