

PREFACE

The third edition of this book was inspired by the authors' desire to help prepare the law students in their quest to become members of the legal profession. It contains not only the most recent laws pertaining to Family Law, but also the most recent and relevant decisions of the Supreme Court. It has been designed in a very simple way so that the reader will easily understand the law and jurisprudence cited. Undoubtedly, it will help not only law students but bar candidates, lawyers, judges, and laymen as well.

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DEDICATION

This simple work is warmly and sincerely dedicated to the couple who gave me life, my departed parents, Guillerma Soriano and Andres V. Albano. To my loving wife, Lilian A. Albano as well as her departed parents, Juan R. Ahorro and Manuela N. Gozar. To our “pogi the first” Vinci. And to our precious grandson, the sheer sight of whom takes away all our stress, Sean Vincent DR. Albano.

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For my ever supportive wife Sheila del Rosario Albano and to the apple of the eyes, our first-born, Sean Vincent DR. Albano, this book is affectionately dedicated.

ED VINCENT A. ALBANO, JR.

This humble endeavor is wholeheartedly dedicated to my dearest husband, Engr. Carlo Magno P. Pua, whose patience for me is beyond measure.

MYLA KHRISTABELLE A. ALBANO-PUA

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THE CIVIL CODE

R.A. No. 386

Preliminary Title

Chapter 1

Effect and Application of Laws

Article 1. This Act shall be known as the “Civil Code of the Philippines.” (n)

Concept of Law.

Law, in its general sense (*derecho*), is defined as the science of moral laws based on the rational nature of man, which governs his free activity for the realization of his individual and social ends, and which by its very nature is demandable and reciprocal. (1 Sanchez Roman 3). In its specific sense (*ley*), it is defined as a rule of conduct, just, obligatory, promulgated by legitimate authority, and of common observance and benefit. (*Ibid.*).

Concept of Civil Law.

Civil law is defined as the mass of precepts which determines and regulates those relations of assistance, authority and obedience existing among members of a family as well as among members of a society for the protection of private interests. (1 Sanchez Roman 70).

Concept of Civil Code.

A Civil Code is defined as a collection of laws, which regulates the private relations of the members of civil society, determining the respective rights and obligations, with reference to persons, things and civil acts. (1 Tolentino, Civil Code, p. 10, 1974 ed.).

Sources of the Philippine Civil Code.

The sources of the Civil Code of the Philippines are the following:

- (1) Civil Code of Spain of 1889;
- (2) Codes and laws of other countries, such as Spain, the various States of the United States of America, like California and Louisiana, France, Argentina, Mexico, Switzerland, England and Italy;
- (3) Judicial decisions of the Supreme Court of the Philippines, of the U.S.A., Spain and other countries;
- (4) Philippine laws or statutes such as the Code of Civil Procedure (Act No. 190), the Rules of Court, the Marriage Law (Act No. 3613), The Divorce Law (Act No. 2710), the Family Code (E.O. No. 229, as amended by E.O. No. 227), and the Inter-Country Adoption Law (R.A. No. 8043);
- (5) Works of jurists and commentators of various nations;
- (6) Filipino customs and traditions; and
- (7) The Code Commission itself. (See: Report of the Code Commission, pp. 2-3).

Article 2. Laws shall take effect after fifteen days following the completion of their publication either in the *Official Gazette* or in a newspaper of general circulation in the Philippines unless it is otherwise provided. This Code shall take effect one year after such publication. (As amended by E.O. No. 200). (1a)

Rules on effectivity of laws.

From a reading of the provisions of Article 2 of the New Civil Code, as amended by Executive Order No. 200, a law shall take effect on the sixteenth day. This is so because in counting a period, the first day shall be excluded and the last day shall be included. (Art. 13, NCC).

Under E.O. No. 200, a law can now take effect if published in a newspaper of general circulation. This is a departure from the old rule. The reason for the law is that, newspapers could better perform the function of communicating the laws to the people as they are easily available, have a wider readership and come out regularly. (*Tañada vs. Tuvera*, December 29, 1986).

The phrase “*unless otherwise provided*” means not the publication, but it refers to the date of effectivity. The phrase does not dispense with publication. So, if a law provides that it shall take effect immediately, there is still a need for its publication. It can likewise provide that it shall take effect one year after its publication.

The requirement of publication goes into the due process clause. For, it would amount to lack of due process if a law would take effect without it being published. Once published the people are presumed to have knowledge of the law, even if they have not read it. Presumptive knowledge is sufficient. Actual knowledge is not necessary for as long as the people comply with it as a rule of conduct.

Publication is indispensable in every case, but the legislature may in its discretion provide that the usual fifteen-day period shall be shortened or extended. For example, the Civil Code did not become effective after fifteen days from its publication in the Official Gazette but “*one year after its publication.*” The general rule did not apply because it was “*otherwise provided.*” (Tañada vs. Tuvera, G.R. No. 63915, 29 December 86). But while the law may shorten the period, the requirement of publication is still indispensable. Thus, the law may provide that it shall take effect after five (5) days following the completion of its publication.

The publication clause cannot be dispensed with. The omission would offend due process insofar as it denies the public knowledge of the law that is supposed to govern it. If the legislature could validly provide that a law shall become effective immediately upon its approval even if it is not published (or after an unreasonable short time after publication), persons not aware of it would be prejudiced. They could be so, not because they failed to comply with it, but simply because they did not know that it exists. This is true not only of penal laws but also of non-penal laws, like a law on prescription which must also be communicated to the persons they may affect before they can begin to operate. (Tañada vs. Tuvera, G.R. No. 63915, 29 December 86). But internal rules of certain offices do not need to be published as required by the law. It is enough that they are circularized within the office concerned.

All statutes, including those of local application and private laws shall be published as a condition for their effectivity, which shall begin fifteen days after publication, unless the legislature fixes a different effectivity date. (Tañada vs. Tuvera, G.R. No. 63915, 29 December 86).

Covered by these rules are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers, whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation. (Tañada vs. Tuvera, G.R. No. 63915, 29 December 86).

Rules on interpretative regulations.

Interpretative regulations and those merely internal, *i.e.*, those that regulate only the administrative agency's personnel and not the public, need not be published. Neither are the so-called letter of instructions issued by administrative superiors concerning their duties. (Tañada vs. Tuvera, G.R. No. 63915, 29 December 86).

The Office of the Ombudsman and the Department of Justice entered into an internal arrangement outlining the authority of the prosecutors of the DOJ and the Office of the Ombudsman in the conduct of preliminary investigation. Senator Gregorio Honasan and others were charged with violation of Article 134-A of the Revised Penal Code for the offense of "*coup d'etat*." The Panel of Investigators of the DOJ sent a subpoena to the Senator for Preliminary Investigation. He contended that the Ombudsman has jurisdiction to conduct the preliminary investigation because he is a public officer with a salary Grade 31 so the case falls exclusively within the jurisdiction of the Sandiganbayan. The DOJ contended that pursuant to OMB-DOJ Joint Circular No. 95-001 the DOJ has jurisdiction although concurrent with the Office of the Ombudsman. He contended that the Circular is ineffective because it was not published. In brushing aside his contention, the Supreme Court said:

"Petitioner's contention that OMB-DOJ Joint Circular No. 95-001 is ineffective on the ground that it was not published is not plausible. We agree with and adopt the Ombudsman's dissertation on the matter, to wit:

Petitioner appears to be of the belief, although NOT founded on a proper reading and application of jurisprudence, that OMB-DOJ Joint Circular No. 95-001, an internal arrangement between the DOJ and the Office of the Ombudsman, has to be published.

As early as 1954, the Honorable Court has already laid down the rule in the case of *People vs. Que Po Lay*, 94

Phil. 640 (1954) that only circulars and regulations which prescribed a penalty for its violation should be published before becoming effective, this, on the general principle and theory that before the public is bound by its contents, especially its penal provision, a law, regulation or circular must first be published and the people officially and specifically informed of said contents and its penalties, said precedent, to date, has to yet been modified or reversed. OMB-DOJ Joint Circular No. 95-001 DOES NOT contain any penal provision or prescribe a mandatory act or prohibit any, under pain of penalty.

What is more, in the case of *Tañada vs. Tuvera*, 146 SCRA 453 (1986), the Honorable Court ruled that:

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 superior concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.

OMB-DOJ Joint Circular No. 95-001 is merely an internal circular between the DOJ and the Office of the Ombudsman, outlining authority and responsibilities among prosecutors of the DOJ and of the Office of the Ombudsman in the conduct of preliminary investigation. OMB-DOJ Joint Circular No. 95-001 DOES NOT regulate the conduct of persons or the public, in general.

Accordingly, there is no merit to petitioner's submission that OMB-DOJ Joint Circular No. 95-001 has to be published." (Gregorio Honasan II, G.R. No. 159747, April 13, 2004).

Publication must be in full.

The 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. (*Tañada vs. Tuvera*, G.R. No. 63915, 29 December 86).

No need to publish Supreme Court decisions.

In *Roy vs. CA*, G.R. No. 80718, January 29, 1988, a question was raised before the Supreme Court whether there is a need to

publish decisions of the Court in the Official Gazette. The Supreme Court said that there is no law that requires the publication of Supreme Court decisions in the Official Gazette before they can be binding and as a condition to their becoming effective. It is the bounden duty of a lawyer in active law practice to keep abreast of decisions of the Supreme Court particularly where issues have been clarified, consistently reiterated, and published in the advance reports of the Supreme Court Reports Annotated (SCRA), the Supreme Court Advanced Decisions (SCAD) and law journals.

Thus, one may not cogently contend that the rule enunciated in the *Habaluyas* case (that a motion for extension of time to file motion for reconsideration does not stay the running of the appeal period) should not be applied, owing to the non-publication of the *Habaluyas* decision in the Official Gazette as of the time the subject decision of the Court of Appeals was promulgated.

Unpublished presidential issuances ordered published in Official Gazette.

Article 2 of the New Civil Code provides that laws shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette, unless otherwise provided. This has been amended by Executive Order No. 200 to the end that laws may become effective after 15 days following the completion of their publication in the Official Gazette or in any newspaper of general circulation in the Philippines, unless it is otherwise provided.

One of the controversial cases in 1985 was *Tañada, et al. vs. Tuvera, et al.* (G.R. No. L-63915, April 24, 1985, 136 SCRA 27). There, petitioners sought a writ of *mandamus* to compel respondent officials to publish in the Official Gazette various presidential decrees, letters of implementation and administrative orders. Respondent officials contended, *inter alia*, that publication in the Official Gazette is not a *sine qua non* requirement for the effectivity of laws where the laws themselves provided for their own effectivity, invoking Art. 2 of the New Civil Code which states that laws shall take effect after fifteen days following the completion of their publication in the Official Gazette “*unless it is otherwise provided.*” The High Court, in the majority opinion penned by Justice Venicio Escolin, said that respondents’ argument “*is logically correct only insofar as it equates the effectivity of laws with the fact of publication,*” but considered in the light of other statutes such as Sec. 1 of Commonwealth Act No.

638 (which provides that there shall be published in the Official Gazette [1] all important legislative acts and resolutions of a public nature x x x; [2] all executive and administrative orders and proclamations, etc.), the conclusion is easily reached that said Article 2 of the Civil Code “*does not preclude the requirement of publication in the Official Gazette, even if the law itself provides for the date of its effectivity.*” The clear object of Sec. 1, C.A. No. 638, is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens. Without such notice and publication, there would be no case for the application of the maxim “*ignorantia legis non excusat.*” It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice. Hence, the Court ordered respondents “*to publish in the Official Gazette all unpublished presidential issuances which are of general application, and unless so published, presidential issuances have no force and effect.*”

Effectivity of the Civil Code.

In a series of cases, the Supreme Court said that the Civil Code of the Philippines took effect on August 30, 1950, one year after its publication in the Official Gazette as required by Article 2 of the Civil Code. (See: *Lara vs. Del Rosario*, 94 Phil. 778; *Raymundo vs. Peñas*, 96 Phil. 311; *Camporedondo vs. Aznar*, 102 Phil. 1055).

Such decisions of the Supreme Court on the effectivity of the Civil Code have been criticized in that what the law provides is that the Civil Code of the Philippines shall take effect one year after the completion of its publication in the Official Gazette. Records show that it was published in the June 1949 Supplement of the Official Gazette to which its Editor certified that the supplement containing its publication was released for circulation on August 30, 1949. It has been said that if the basis for computing the one-year period is the date of publication, the effectivity is June 30, 1950. But if the date to be reckoned with is the date of release for circulation of the Supplement which contained the publication, then, the effectivity is August 30, 1950. It must be noted that in the above-cited cases, the Supreme Court said that the Civil Code took effect on August 30, 1950, one year after the release of the supplement for circulation. The Family Code likewise took effect on August 3, 1988, one year after its publication.

Article 3. Ignorance of the law excuses no one from compliance therewith. (2)

Basis of Rule.

This rule of law is based upon the assumption that evasion of the law would be facilitated and the successful administration of justice defeated if persons accused of crimes could successfully plead ignorance of the illegality of their acts. (20 Am. Jur. 209, 210).

This rule applies in criminal as well as in civil cases. If ignorance of the law is a valid excuse for its non-performance or compliance, then, it would be very easy for a person to escape scot-free from liability for the commission of a wrong. The reason is founded on public policy.

Why the law proscribes ignorance of law as defense.

If ignorance of the law is a valid defense, then, anyone can evade criminal and civil liability by claiming that he does not know the law. It would create a chaotic society. It would invite deception, promote criminality.

It must, however, be remembered that mistakes in the application or interpretation of difficult or doubtful provisions of law may be the basis of good faith. (Articles 526, 2155, NCC).

Ignorance of the law must not, however, be confused with mistake of facts. Ignorance of fact may excuse a party from the legal consequences of his acts or conduct, but not ignorance of the law.

Presumption of knowledge of law.

Everyone is conclusively presumed to know the law. (U.S. vs. De la Torre, 42 Phil. 62). As explained earlier, even if the people have no actual knowledge of the law they are presumed to know it after the publication.

Foundation of law.

Being a general principle, founded not only on expediency and policy but on necessity, there is no ground why Article 3, should be relaxed. If the rule were otherwise, the effect would involve and perplex the courts with questions incapable of any just solution and would embarrass it with inquiries almost interminable. (Zulueta vs. Zulueta, 1 Phil. 254).

Principle and rule of knowledge of the law applied.

It is an express legal rule that ignorance of the law is not an excuse for failure to comply therewith nor does it excuse anyone from compliance thereto. (U.S. vs. Gray, 8 Phil. 506). Thus, the allegation of the defendant that he was not acquainted with the provisions of the Municipal Code as to the residence required of an elector cannot be sustained, nor does it constitute an exemption, inasmuch as, according to this article, ignorance of the law does not excuse a person from compliance therewith. (U.S. vs. Deloso, 11 Phil. 180). Likewise, ignorance of the existence of the prohibitory provisions of the Opium Law is no excuse for the unlawful possession of opium. (U.S. vs. Chimo Que-Quenco, 12 Phil. 449).

These rulings, however, do not alter the presumption that a person is innocent of crime or wrong until the contrary is proved since this presumption is applicable in criminal as well as in civil cases. (Sociedad Dalisay vs. Delos Reyes, 55 Phil. 452). In civil cases particularly, the defendant is presumed to be innocent of the wrong charged until the contrary is proved by preponderance of evidence. Thus, fraud is not presumed unless facts are proved from which fraud may be inferred legally or logically. (Gana vs. Sheriff, 36 Phil. 236; De Roda vs. Lalk, et al., 48 Phil. 104). And the presumption of innocence includes that of good faith, fair dealing and honesty. (Jacinto vs. Arellano, 48 Phil. 570; Benedicto vs. F.M. Yap Tico & Co., 46 Phil. 753; Lao vs. Lee Tim, 46 Phil. 739).

Rule applies to local laws; foreign laws should be specifically pleaded.

The provisions of this article refer only to laws of the Philippines. For generally there is and there should be no conclusive presumption of knowledge of foreign laws. (Phil. Mfg. Co. vs. Union Ins. Society of Canton, 42 Phil. 845; Adong vs. Cheong Seng Gee, 43 Phil. 43; Lim vs. Col. of Customs, 36 Phil. 472). Courts will not take judicial notice of foreign laws; nor if the laws of the United States Congress nor of the various states of American Union; said laws must be proved like any other matter of fact. (Ching Huat vs. Co Heong, L-1211, January 30, 1247). Thus, with respect to foreign laws, ignorance of fact can be a good defense. The reason for the rule is that, foreign laws do not prove themselves in the Philippines. They must be proven as facts according to the rules of evidence. (Garcia vs. Recio, G.R. No. 138322, October 2, 2002; Republic vs. Orbecido III, G.R. No. 154380, October 5, 2005).

Ignorance of law distinguished from ignorance of fact.

A principle on which all the courts agree is that ignorance of the law is not an excuse for a criminal act. The fact that a person honestly believes that he has a right to do what the law declares to be illegal will not affect the criminality of the act. (U.S. vs. Balint, 258 U.S. 250, 66 L. ed. 604, 42 S. Ct., 301). An intention of the accused to keep within the law, but to get as near the line as possible, will not help him if in fact he violates the law. It merely means that he misconceived the law. (Horing vs. Dist. of Colombia, 254 U.S. 135, 41 S. Ct. 53). On the otherhand, since criminal intention is of the essence of crime, if the intent is dependent on a knowledge of particular acts, a want of such knowledge, not the result of carelessness or negligence, relieves the act of criminality. (Gordon vs. State, 52 Ala. 308, 33 Am. Rep. 575). This rule based on another rule of the common law, of a very general application, to the effect that there can be no crime when the criminal mind or intent is wanting; and therefore, when that is dependent on a knowledge of particular facts, ignorance or mistake as to these facts, honest and real, not superinduced by the fault or negligence of the party doing the wrongful act, absolves from criminal responsibility. (Dotson vs. State, 62 Ala. 141, 34 Am. Rep. 2).

When presumption of knowledge of fact irrebuttable.

Under the rule of notice in connection with the sale of lands covered by Land Registration Law and by Torrens Title, it is conclusively presumed that the purchaser has examined every instrument of record affecting his title. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith. (Legarda vs. Saleeby, 31 Phil. 590). The rule that all persons must take notice of what the public record contains is just as obligatory upon all persons as the rule that all men must know the law; that no one can plead ignorance of the law, nor does ignorance of the procedural law excuse anyone. (Zulueta vs. Zulueta, 1 Phil. 254).

Article 4. Laws shall have no retroactive effect, unless the contrary is provided. (3)

Concept of retroactive or retrospective law.

A retroactive or retrospective law is one which looks backward or contemplates the past; one which is made to affect acts or transac-

tions occurring before it came into effect, or rights already accrued, and which imparts to them characteristics, or ascribes to them effects, which were not inherent in their nature in the contemplation of law as it stood at the time of their occurrence. (Black on Interpretation of Laws, 380). Although this is the generally accepted definition of the term (*Keith vs. Guedry*, 114 S.W. 392; *Merrill vs. Sherburne*, 1 N.H. 199, 8 Am. December 52), used by and in courts in a wide and general sense; however, in discussions concerning the constitutional validity of particular statutes, and in relation to constitutional prohibitions against the enactment of retrospective law generally, the term is taken in a somewhat narrower sense, and is applied to laws which take away or impair the obligation of contracts, or which create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past. (*Sturges vs. Carter*, 114 U.S. 511, 5 Sup. Ct. 1014, 29 L. ed. 240). But a statute cannot properly be called retrospective merely because a part of the requisites for its operation may be drawn from a time antecedent to its passage (*Queen vs. Inhabitants of St. Mary*, 12 Q. B. 120), nor because its operation may in a given case depend on an occurrence anterior to that date. (*In re Scott*, 126 Fed. 981). Thus, for example, an act is not retrospective to the event on which it is to operate, although, in the particular case, the relation of husband and wife existed before the taking effect of the act. (*Noel vs. Ewing*, 9 Ind. 37). Nor can this term be applied to a statute, though it acts on past transactions, or an existing state of facts, if it gives to persons concerned an opportunity to comply with its directions before its penalties attach. (*State ex rel. Hickman vs. Tontine Mercantile Co.*, 184 Mo. 82 S.W. 1075). On the other hand, a prospective interpretation denies to the statute any applicability to such facts and causes as shall arise after its passage. (Black Interpretation of Law 381).

Prospective operation of laws.

It is a rule of statutory construction that all statutes are to be considered as having only a prospective operation, unless the purpose and intention of the lawmaking body give them a retrospective effect is expressly declared or is necessarily implied from the language used. (*Ancayas vs. Jacosalem*, 24 Phil. 220). The universally accepted rule is that a Constitution, as any other statute, has no retroactive effect except when it so expressly provides, and the Constitution of the Philippines certainly does not do so, much less if it affects vested rights. (*Espiritu vs. San Miguel Brewery, et al.*, 63 Phil.

615). In case of doubt in this regard, the doubt must be resolved against the retrospective effect. (In *Re Riosa*, 39 Phil. 23).

Usury laws prospectively construed; consideration of prior occurrences permitted.

Usury laws, ordinarily, are to be construed prospectively and not retrospectively. Nevertheless, the courts may look into prior occurrences in order to understand the particular fact which is claimed to be a violation of the law, and in order to ascertain the criminal intent. (*U.S. vs. Tan Quineo Chua*, 39 Phil. 552).

Exceptions to the rule of prospectivity.

The rule that laws have no retroactive effect is subject to certain exceptions or modifications among which are:

1. **Penal laws favorable to the accused.** — Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of the Penal Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same. And the provisions of this article (Art. 22 of the Revised Penal Code), are applicable even to special laws which provide more favorable conditions to the accused. Thus, for example, if a special law provides that a certain offense also penalized under a special law (violation of the Election Law) prescribes in two years, this prescriptive law will be applicable even to those offenders who committed the crime prior to its promulgation. (*U.S. vs. Soliman*, 36 Phil. 5). In a case in which the law which prescribes a penalty for the commission of a certain crime is repealed and the new law provides a new and different penalty for the commission of that crime, the penalty which should be imposed upon the person who committed the crime prior to promulgation of the repealing law is that which is more favorable to the offender. (*People vs. Moran*, 44 Phil. 387). It may be recalled that in accordance with the provisions of the old Penal Code, seduction was a private crime and only the aggrieved party or her representative was entitled to prosecute or pardon the offender. However, Act No. 1773 amending this provision of the old Code made this crime a public crime which can be prosecuted by the government. In a certain case, it was held that the acts having been committed while the old law was still in force and the latter being more favorable to the defendant than Act 1773, the crime should be governed by the provisions of the Penal Code,

the right of remission or pardon on the part of the offended party available under the Penal Code but expressly forbidden under the amendment, being in the opinion of the court favorable to the offending party. (U.S. vs. Hocbo, 12 Phil. 304; U.S. vs. Cuna, 12 Phil. 241; U.S. vs. Tonga, 15 Phil. 43). The rule, however, of retroactivity of penal laws if they favor the accused is not applicable when the later law expressly provides that its provisions should not be applicable to pending actions or to existing causes of action. (Tavera vs. Valdez, 1 Phil. 468). Neither the Constitution nor the statutes, except penal laws favorable to the accused, have retroactive effect in the sense of annulling or modifying vested rights, or altering contractual obligations. (China Ins. & Surety Co., Inc. vs. Judge of the CFI Manila, et al., 63 Phil. 320).

Penal laws, therefore, cannot be made retroactive with respect to a crime, or other offense, unless they are favorable to the person accused. And a statute ought not to receive a construction making it act retrospectively, unless the words used are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the Congress or Legislature cannot be otherwise satisfied. (Segobia vs. Noel, 47 Phil. 543).

2. **Remedial and procedural statutes.** — Laws have no retroactive effect except when they refer to a matter of procedure or is passed for the sake of convenience, and does not affect substantial rights. (Aguillon vs. Dir. of Lands, 17 Phil. 506; Montilla vs. Agustinian Corp., 24 Phil. 220). Except in case of remedial statutes and those which relate to procedure in the courts, it is a general rule that acts of the Legislature or of Congress will not be construed as to make them operate retrospectively, unless the lawmaking body has explicitly declared its intention that they should so operate, or unless such intention appears by necessary implications from the nature and words of the act so clearly as to leave no room for a reasonable doubt on the subject. The reason for this rule is the general tendency to regard retrospective laws as dangerous to liberty and private rights, on account of their liability to unsettle vested rights to disturb the legal effect of prior transactions. Having in mind this reason it was thus held in a case that laws procedural in nature may operate retrospectively. (Guevarra vs. Laico, 64 Phil. 144). Likewise, it was held that statutes making changes in remedies or procedure are within the discretion of the Legislature or the Congress and are valid as long as they do not infringe vested rights. (Concepcion vs. Garcia, 54 Phil. 81). An amendatory statute increasing the rate of

retirement pensions for teachers does not operate to augment pensions granted prior to its enactment. (*Derkum vs. Pension and Investment Board*, 62 Phil. 171).

3. **Special express mandate of law.** — When a new act expressly provides that it shall have retroactive effect, and no constitutional question is involved, then the law is given its retroactive or retrospective effect. (*Gov't. of the Phil. vs. Standard Oil Co.*, 20 Phil. 30). It is also given a retroactive effect when that effect is necessarily implied from its language or is necessarily intended. For instance, Commonwealth Act No. 682, commonly known as the People's Court Act, passed on September 25, 1945, and purposely intended and aimed at giving a speedy public trial of political offenders who were detained by the Commander-in-Chief of the Armed Forces of the United States in the Philippines. It is clear that said Act is to look back and take effect upon persons and acts that took place three years before its passage. So also is the act that created the International Court of Justice that tried war criminals at Nuremberg.

4. **Statutes creating new rights.** — The principle that a new law shall not have any retroactive effect only governs the rights arising from acts done under the rule of the former laws but if the right be declared for the first time by subsequent law it shall take effect from that time even though it has arisen from acts subject to the former law, provided that it does not prejudice another acquired right of the same origin. It is well known that hereditary rights are not born nor does the will produce any effect except from the moment of the death of the person whose inheritance is concerned. (*Bona vs. Briones*, 38 Phil. 276).

If a right is created for the first time, like proof of filiation by way of "*open and continuous possession of the status of an illegitimate child*" which was not present in the Civil Code, yet, it was incorporated in Article 172 of the Family Code, such law can be given retroactive effect. The condition is that, it must not impair vested rights. (*Castro vs. CA*, G.R. Nos. 50974-75, May 31, 1989).

5. **Curative statutes.** — The term "*curative statutes*," refer to those which undertake to cure errors and irregularities in judicial or administrative proceedings, and which are designed to give effect to contracts and other transactions between private parties which otherwise would fail of producing their intended consequences by reason of some statutory disability or the failure to comply with some

technical requirement. (Mc Surely vs. Mc Grew 140 Iowa, 163, 118 N.W. 415). Thus, it is seen that curative statutes are necessarily retroactive. Curative statutes, whether relating to judicial or administrative action, or to the transaction of private parties, are intended to operate upon past facts or acts, and are therefore necessarily retrospective. Such statutes can be applied only in cases where the particular defect, omission, or irregularity to be cured is of such a nature that the legislature might competently have dispensed with it or rendered it immaterial in advance; and they must be so restricted as not to transgress any positive provisions of the constitution or interfere with vested rights of third persons. (Black on Interpretation of Laws, 418).

Constitutional considerations on *ex post facto* law and on a bill of attainder.

An *ex post facto* law is one which makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action; or which aggravates a crime, or makes it greater than it was when committed or which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or which alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender. A Bill of Attainder is a legislative act which convicts persons of and punishes them, for, crimes without judicial trial. It declares the blood of such persons corrupted and devoid of all heritable quality. Attainder is extinction of civil rights and capacities which takes place whenever a person who has committed treason or felony receives sentence of death for his crime. The effect of attainder upon a felon is, in general terms, that all his estates, real and personal, is forfeited, that his blood is corrupted, so that nothing passes by inheritance to, from or through him.

If a retrospective statute is in the nature of an *ex post facto* law or a bill of attainder, or if it impairs the obligation of contracts or divests vested rights, or if all retrospective laws are specifically forbidden by the constitution of a particular state, such an act will be unconstitutional and void, but not otherwise. If giving to a statute a retrospective operative would make it conflict with the constitution, in one or any of the ways above-mentioned, such will be avoided, if possible, by construction. Hence both bills of attainder and *ex post facto* laws are specifically prohibited by our constitution. They are

both included in the category of retrospective laws. However, it should be noted that a bill of attainder or an *ex post facto law* is always retrospective; but not all retrospective laws are bills of attainder or *ex post facto laws*. (Black on Interpretation of Laws, 382).

Statutes impairing vested rights.

When the effect of giving to a statute a retrospective construction would be to make it destroy or impair vested rights, such construction will be avoided, and the statute will be held to apply to future acts and cases only, provided, that this can be done by any reasonable interpretation of the language used by the legislature. The courts uniformly refuse to give to statutes a retrospective operation, whereby rights previously vested will be injuriously affected unless compelled to doubt that such was the intention of the legislature. (*Chew Heong vs. U.S.*, 112 U.S. 536). The rule is that a statute affecting rights and liabilities should not be so construed as to act upon those already existing, and it is the result of the decisions that although the words of a statute are so general and broad in their literal extent as to comprehend existing cases, they must yet be so construed as be applicable only to such as may thereafter arise, unless the intention to embrace all is clearly expressed. (*In re Protestant Episcopal Public School*, 58 Barb. [N.Y.], 161). Thus, again, a statute providing for the forfeiture of that part of an estate whereon waste is committed by the tenant for life cannot be construed to affect life estates existing at the time of its enactment. (*Kent vs. Bently*, 3 Ohio December 173).

Statutes imposing penalties and liabilities.

A statute imposing a new penalty or forfeiture, or a new liability or disability, or creating a new right of action, will not be construed as having a retrospective operation, if such consequences can fairly be avoided by interpretation. (*61 Right vs. Southern Ry. Co.*, [C.C.] 80 Fed. 260). So, also, a revenue act imposing penalties upon delinquent taxpayers should not be so construed as to affect persons who became delinquent before the statute took effect. (*Bartruff vs. Remy*, 15 Iowa 257).

Prospectivity of laws is the general rule.

As a general rule, laws shall have prospective effects only. There are, however, certain exceptions, such as:

- a) when the law provides for its retroactivity;

- b) when the law is penal in nature and which is favorable to the accused who is not a habitual delinquent or recidivist;
- c) when the law is procedural in nature;
- d) when it creates new substantive rights;
- e) when the law is curative in nature;
- f) when it is interpretative of other laws.

Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retrospective in that sense and to that extent. (Mun. Gov't. of Coron vs. Cariño, G.R. No. 65894, September 24, 1987). This is so because there is no vested right in the rules of procedure.

In *Oriental Assurance Corp. vs. Solidbank Corp.*, G.R. No. 139882, August 16, 2000, the Supreme Court once again said the generally accepted rule that procedural rules are applicable retroactively. While under the old Rules, the payment of the docket fee was not required upon the filing of the notice of appeal, the present rule requires such payment. (Sec. 4, Rule 41). This rule is retroactive even if the case was governed by the old rule. If there is no payment of the same, the case can be dismissed pursuant to Rule 50, Sec. 1 of the Rules of Court.

It was contended that the retroactive effect of the Rules would impair vested rights under the old Rules as the old rule merely required the payment of the docket fee within 15 days from receipt of the notice from the CA clerk of court that the record on appeal has been received.

It was ruled that the retroactive effect or application of procedural rules to pending cases is undoubtedly well settled. (People vs. Sumilang, 77 Phil. 764; Alday vs. Camilon, 120 SCRA 521; Lim Law vs. Olympic Sawmill Co., 129 SCRA 439; Bernardo vs. CA, 168 SCRA 439; Duremdes vs. Commission on Elections, 178 SCRA 746; Ocampo vs. CA, 180 SCRA 27, People's Financing Corp. vs. CA, 192 SCRA 34; Aris [Phils.], Inc. vs. NLRC, 200 SCRA 246; Asset Privatization Trust vs. CA, 229 SCRA 627; Del Rosario vs. CA, 241 SCRA 519; Diu vs. CA, 251 SCRA 472).

Note however, that the Supreme Court has time and again warned that in case of non-payment of the docket fees upon the perfection of the appeal should not be a cause for outright dismissal of the appeal. The party concerned should be given an opportunity to

pay. If he does not comply with the order of the Court, that is the time when the appeal can be dismissed. The reason is that non-payment of the docket fee is not a jurisdictional defect. (*Sun Insurance vs. Asuncion*, 170 SCRA 275).

Prospectivity of doctrinal rulings.

In a prosecution for illegal possession of firearms, the accused admitted he had no license or permit but claimed to be entitled to exoneration because he had an appointment as secret agent from the PC provincial commander, said appointment expressly authorizing him to possess and carry the firearm. He contended he was entitled to acquittal because at the time he possessed the firearm (1964) the doctrine then in force was that laid down in *People vs. Macarandang* (1959), 106 Phil. 713, and *People vs. Lucero* (1958), 103 Phil. 500. The trial court convicted him, on the ground that this doctrine had been abandoned in the 1967 case of *People vs. Mapa* (20 SCRA 1164).

Held:

When a doctrine laid down by the Supreme Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. This is especially true in the construction and application of criminal laws where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society. Accused was acquitted. (*People vs. Jabinal*, G.R. No. L-30061, February 27, 1974).

Family Code is retroactive.

If the law provides for its retroactivity, it retroacts but whether it be substantive or procedural, if it is given effect, the condition is that it must not impair vested rights. One such law that provides for its retroactivity is the Family Code, but it expressly provides that its provisions are retroactive provided that no vested rights are impaired. (Art. 256, Family Code; *Tayag vs. CA*, June 9, 1992; *Rep. vs. CA*, et al., G.R. No. 92326, January 24, 1992).

Penal laws when retroactive; requisites; example.

If the law is penal in nature, it can be given retroactive effect provided that the same is favorable to the accused who is not a ha-

bitual delinquent or a recidivist. So that even if the law is penal in character, but it is not favorable to the accused, it cannot be given retroactive effect.

Illustration:

Let us assume that X committed an offense punishable by *reclusion perpetua* at the time it was committed. During the trial, a law was passed increasing the penalty of such offense to death. In case he is convicted after trial, the court cannot impose the penalty of death because the law is not favorable to him as it increased the penalty.

But if it were the reverse, where at the time of the commission of the offense, the imposable penalty was death, and during the trial, it was reduced to only *reclusion perpetua*, then it can be retroactive because the law is favorable to the accused.

But again, even if it is penal in nature and favorable to the accused, still there is another condition for its retroactivity, that is, he must not be a habitual delinquent or a recidivist. If he is, then, the law is not retroactive. In sum, for a penal law to have retroactive effect, it must be favorable to the accused and the latter must not be a habitual delinquent or a recidivist. The elements must concur.

Retroactivity of penal laws.

In *People vs. Patalin, et al.*, G.R. No. 125539, July 27, 1999, 109 SCAD 734, accused were charged with the crime of robbery with multiple rape in 1984. In 1987, when the 1987 Constitution suspended the imposition of the death penalty, the trial has not yet been finished, hence, it was overtaken by the Death Penalty Law effective January 1, 1994. If the accused are convicted, can the death penalty be imposed upon them?

The Supreme Court said No and went on to say that before the 1987 Constitution, death penalty as a capital punishment could be imposed on certain heinous crimes like robbery with rape. (Art. 294, Revised Penal Code). From 1987, however, until the passage of the death penalty law or on January 1, 1994, the imposition of death penalty was suspended. In the case of the three convicts, an issue

came up regarding the imposition of death penalty because when they committed the crime in 1984, the death penalty was still in our statute books; but the trial of their case was overtaken by the 1987 Constitution and then later on by the new death penalty law. So, when judgment was finally rendered finding them guilty, the death penalty had been suspended and then reimposed again. The issue they raised therefore was: Can the Court impose the death penalty on them?

Of course No. Article 22 of the Revised Penal Code provides that penal laws shall have a retroactive effect only insofar as they favor a person guilty of a felony who is not a habitual criminal, although at the time of the publication of such a law a final sentence has been pronounced and the convict is serving the same.

A statute is penal when it imposes punishment for an offense committed against the State. The provision of the Constitution on the abolition of the death penalty is penal in character since it deals with the penalty to be imposed for capital crimes. This provision may be given retroactive effect during three possible stages of a criminal prosecution: (a) when the crime has been committed and the prosecution begins; (b) when sentence has been passed but the service has not begun; and (c) when the sentence is being carried out.

So there is no doubt that the abolition of the death penalty by the 1987 Constitution retroactively affected and benefited the convicts. Perforce, the subsequent reimposition of the death penalty will not affect them. The framers of the Constitution themselves state that the law to be passed by Congress reimposing death penalty can only have prospective application.

There is no question that a person has no vested right in any rule of law which entitles him to insist that it shall remain unchanged or repealed, nor in any mission to legislate on a particular matter. However, a subsequent statute cannot be applied retroactively as to impair a right that accrued under the old law. Clearly, the convicts' right to be benefited by the abolition of the death penalty in the 1987 Constitution accrued or attached by virtue of Art. 22 of the Revised Penal Code. (People vs. Patalin, et al., G.R. No. 125639, July 27, 1999, 109 SCAD 734).

Article 5. Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. (4a)

As a rule, acts executed against mandatory or prohibitory laws are void, except when the law itself allows their validity. Marriage laws are mandatory and prohibitory, such that if the marriage is contracted where one of the parties is psychologically incapacitated to perform the duties to the marriage bond, the marriage is void (Art. 36, Family Code); but the law recognizes as legitimate, a child born or conceived out of such marriage, provided that the child is conceived or born prior to the declaration of nullity of the marriage. (Art. 54, Family Code). If a married woman marries before the lapse of 300 days after the death of her husband, the marriage is valid, but the Revised Penal Code penalizes her.

In the case of *DBP vs. CA*, 65 SCAD 82, 249 SCRA 331, October 16, 1995, the Supreme Court said that the buyer of a parcel of land that is considered as non-disposable land of the public domain did not acquire a valid title over the land, but recognized certain effects of the same, in that when the buyer asked for reimbursement of what was paid to the DBP, the value of the fruits gathered from the land was deducted from the amount reimbursed. This is a recognition of a right, even if no title was transmitted in favor of the buyer. And, the reduction of the amount reimbursed is in conformity with the rule that no one shall enrich himself at the expense of another.

It is well-settled doctrine that a statute requiring rendition of judgment within a specified time is generally construed to be merely directory, so that non-compliance with them does not invalidate the judgment on the theory that if the statute had intended such result it would have clearly indicated it. (*Marcos vs. COMELEC*, et al., 64 SCAD 358, 248 SCRA 300). An example is the Constitutional provision requiring courts to render judgments within a certain period. The Constitution says:

“Sec. 15. All cases or matters filed after the effectivity of the Constitution must be decided or resolved within 24 months from date of submission for the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.

Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or

the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.

Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay.” (Art. VIII).

But a closer look into such constitutional provision does not make a judgment rendered beyond the reglamentary period void. However, the judge who does not comply with the prescribed periods can be subject to administrative sanctions. But still, the judgment is valid.

Hence, such law can be considered directory. In *Marcelino vs. Cruz*, it was said that the difference between a mandatory and directory provision is often determined on the ground of expediency, the reason being that less injury results to the general public by disregarding than enforcing the letter of the law.

Article 6. Rights may be waived, unless 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. (4a)

Waiver defined.

It is the relinquishment or refusal of a known right with both knowledge of its existence and an intention to relinquish it. (*Portland & F.R. Co. vs. Spillman*, 23 Or. 587; 32 Pac. 689).

When is there a waiver.

In practice, it is required of everyone to take advantage of his rights at a proper time; and neglecting to do so will be considered as a waiver. Thus, failure of counsel, either in brief or oral argument, to allude to an assignment of error, is a waiver thereof. (*American Fibre-Chamois Co. vs. Febre Co.*, 72 Fed. 508, 18 C.C. A. 662). In contracts, if after knowledge of a supposed fraud, surprise, or mistake, a party performs the agreement in part, he will be considered as having waived the objection. (*Bro. P.C. 289; 11 B.L.D. 3418*). If

with the knowledge of the existence of the insurance, contrary to the terms of the contract, the defendant insurance company elects to continue the policy in force, its action amounts to a waiver of the right of cancellation. (*Gonzales Lao vs. Yek Tong Lim Fire, et. Co.*, 55 Phil. 386). There are matters of procedure which under the Rules of Court are matters that are waivable or fall within the discretion of the courts. For instance, venue of actions may be waived. (*Manila Railroad vs. Atty. Gen.*, 20 Phil. 253). Rules of evidence which merely protect the parties during trials may be waived by them. Thus, a contract of insurance requiring the testimony of an eyewitness as the only evidence admissible concerning the death of the insured person is valid. Likewise, a contract waiving the privilege against the disclosure of confidential communications made by a patient to a physician is valid. The right of the accused to a preliminary investigation is a personal one and may be waived, expressly or by implication. The right of the accused to be present at certain stages of the proceedings may be waived; so also may his right to the assistance of counsel. (*U.S. vs. Goleng*, 21 Phil. 426; *U.S. vs. Kilayco*, 31 Phil. 371; *U.S. vs. Escalante*, 36 Phil. 743).

Scope of waiver.

When a constitutional provision is designed for the protection solely of the property rights of the citizen, it is competent for him to waive the protection, and to consent to such action as would be invalid if taken against his will. In criminal cases this doctrine can be true only to a very limited extent. (*Cooley, Const. Lim.* 219). The right of waiver while extending to almost all descriptions of contractual, statutory, and constitutional privileges is nevertheless subject to control of public policy, which cannot be contravened by any conduct or agreement of the parties. Accordingly, all agreements will be held void which seeks to waive objections to acts or defenses illegal at law (*Boutelle vs. Melendy*, 19 N.H. 196; 49 Am. December 152; *Rosler vs. Rheen*, 72 Pa. 54), or which are forbidden on the ground of morality or public policy. (*Green vs. Watson*, 75 Ga. 471, 473; Am. Rep. 479).

Waiver distinguished from ratification.

Ratification is the adoption of a contract made on one's behalf by some one whom he did not authorize, which relates back to the execution of the contract and renders it obligatory from the outset. Waiver is the renunciation of some rule which invalidates the con-

tract, but which, having been introduced, for the benefit of the contracting party, may be dispensed with at his pleasure. (Reid vs. Field, 83 Va. 26, S.E. 395). Waiver, being mixed question of law and fact, it is the duty of the court to define the law applicable to waiver, but it is the province of the court or the jury to say whether the facts of a particular case constitute waiver. (Nickerson vs. Nickerson, 80 Me. 100, 12 Astl. 880).

Thus, if a minor enters into a contract, the same can be ratified by the parents or guardians. Such act of the parents or guardians shall cleanse the contract of its defect from the commencement of the contract of the minor. (Art. 1396, NCC).

General rule and exceptions on waiver of rights.

The general rule is that rights may be waived. But this rule is not absolute. It admits of two exceptions, such as:

- a) When the waiver is contrary to law, public order, public policy, morals, good customs; and
- b) When the waiver is prejudicial to a third person with a right recognized by law.

An example of a waiver of right which is contrary to public policy and morals is the situation in *Cui vs. Arellano University*, L-15127, May 30, 1961. A student was granted scholarship but agreed not to transfer to another school, unless he would refund all benefits he derived out of his scholarship. The Supreme Court said that this is void.

The ruling in *Cui vs. Arellano University* is consistent with Article 1306 of the Civil Code where the parties to a contract are given the liberty to stipulate on its terms and conditions, provided the same are not contrary to law, public policy, public order, morals and good customs. Furthermore, Article 1409 of the Civil Code states that contracts whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy are void.

Future inheritance.

Waiver of future inheritance is void. That is contrary to law. This is especially so if the waiver or repudiation is intended to prejudice creditors. Hence, under Article 1052 of the Civil Code, if an heir repudiates inheritance to the prejudice of his own creditors, the lat-

ter may petition the court to authorize them to accept it in the name of the heir. The acceptance is to the extent of their credit.

Political rights.

Political rights cannot be the subject of waiver. If a candidate for mayor agrees to split his term of office with the vice-mayor to prevent the latter from running against him, that contract is void by reason of public policy. In fact, the Constitution says that a public office is a public trust. It is not a property. It is beyond the commerce of man, hence, it cannot be the object of a contract, otherwise, it is void *ab initio*.

Waiver contrary to law.

In *Leal vs. IAC*, G.R. No. 65425, November 5, 1986, a contract of sale with right to repurchase was entered into by the parties with a prohibition against selling the property to any other person except the heirs of the vendor *a retro*. This was held to be void because it is contrary to law. It amounts to a perpetual restriction on the right of ownership.

What was declared void however, was the stipulation prohibiting the sale to any other person, not the whole contract itself.

In the case of *Gatchalian vs. Delim, et al.*, G.R. No. 56487, October 21, 1991, the Supreme Court declared as void the waiver of the right of the injured passengers to prosecute the civil and criminal aspects of the liability of the carrier and the driver in a vehicular accident causing injuries to them in consideration of a measly sum of money. It was held to be contrary to public policy. The same ruling was enunciated in *Carmelcraft Corp. vs. NLRC*, G.R. Nos. 90634-35, June 6, 1990, when there was a waiver of claims by workers for a measly sum of money. In *Cui vs. Arellano Univ.*, 2 SCRA 205, it was also said that the waiver of the right to transfer to another school by a scholar was contrary to public policy.

In a contract of lease, it provided that the lease shall begin in crop year 1968-1969 up to and including crop year 1973-1974, with an option of another five years on the part of the lessee to extend. It was contended that to construe the provision in the contract literally would leave the extension of the period exclusively to the lessee which is contrary to the principle of mutuality in contracts. The Supreme Court, in *Cañete vs. San Antonio Agro-Industrial Dev. Corp.*, 113 SCRA 723, held that there is nothing illegal or contrary to public

policy in such a stipulation. Jurisprudence and experience do not and cannot sustain such view. The parties to a contract are free to deprive themselves of certain rights and waive them, if there is any such existing law, as long as such renunciation is not violative of public policy or any contrary legal impediment. (Art. 6, NCC; see also *Pleasantville Dev. Corp. vs. CA*, G.R. No. 79688, February 1, 1996, 67 SCAD 594).

Waiver of Rights.

In *Sanchez, et al. vs. CA, et al.*, G.R. No. 108947, September 29, 1997, 87 SCAD 463, there was a waiver contained in the compromise constituting a relinquishment of a right to properties owned by the decedent which were not known.

In contesting the validity of such waiver, it was contended that the same is contrary to morals, law, public policy.

In upholding the validity of such waiver, the Supreme Court said that the assailed waiver pertained to their hereditary right to properties belonging to the decedent's estate which were not included in the inventory of the estate's properties. It also covered their right to other properties originally belonging to the spouses Juan Sanchez and Maria Villafranca Sanchez which have been transferred to other persons. In addition, the parties agreed in the compromise to confirm and ratify said transfers. The waiver is valid because the parties waived a known and existing interest — their hereditary right which was already vested in them by reason of the death of their father. Article 777 of the Civil Code provides that: "(t)he rights to the succession are transmitted from the moment of the death of the decedent." Hence, there is no legal obstacle to an heir's waiver of his/her hereditary share "even if the actual extent of such share is not determined until the subsequent liquidation of the estate. (*De Borja vs. Vda. de Borja*, 46 SCRA 577). At any rate, such waiver is consistent with the intent and letter of the law advocating compromise as a vehicle for the settlement of civil disputes. (*Republic vs. Sandiganbayan*, 44 SCAD 698, 226 SCRA 314).

There is really nothing contrary to law, public policy and morals if a person waives such hereditary right for as long as it has already been vested upon him by the death of the source of such right, the decedent. What is void is when a person waives or renounces a future inheritance because such right is merely inchoate. Thus, Article 905 of the Civil Code expressly prohibits it when it says that:

“Every renunciation or compromise as regards a future legitime between the person owing it and his compulsory heirs is void, and the latter may claim the same upon the death of the former; but they must bring to collation whatever they may have received by virtue of the renunciation or compromise.” (816)

Along the same line, Article 1347 of the Civil Code prohibits a person from entering into a contract pertaining his future inheritance. It provides that “all things which are not outside the commerce of men, including future things, may be the object of a contract. All rights which are not intransmissible may also be the object of contracts. No contract may be entered into upon future inheritance except in cases expressly authorized by law.”

Along the same vein, the Supreme Court rejected the contention of the defendant in *Valenzuela Hardwood and Industrial Supply, Inc. vs. CA, et al.*, G.R. No. 102316, June 30, 1997, 84 SCAD 105, where in a charter party contract, the owner of the cargo waived the right to recover damages from the shipowner and ship agent for the acts or conduct of the captain. More specifically, the contract provided that the owners shall not be liable for loss, split, short-landing, breakages and any kind of damage to the cargo. The plaintiff contended that the waiver was contrary to Articles 586 and 587 of the Code of Commerce.

In rejecting such plea, the Court said that Article 6 of the Civil Code provides that: “rights maybe waived, unless the waiver is contrary to law, public policy, public order, morals, or good customs or prejudicial to a person with a right recognized by law.” As a general rule, patrimonial rights may be waived as opposed to rights to personality and family rights which may not be made the subject of waiver. (See Article 2035, NCC). Being patently and undoubtedly patrimonial, petitioner’s right conferred under said articles may be waived. This, the petitioner did by acceding to the contractual stipulation that it is solely responsible for any damage to the cargo, thereby exempting the private carrier from any responsibility for loss or damage thereto. Furthermore, the contract of private carriage binds petitioner and private respondent alone, it is not imbued with public policy considerations for the general public or third persons are not affected thereby.

Petitioners likewise argued that the stipulation subject of this controversy is void for being contrary to Arts. 1170 and 1173 of the Civil Code which read:

“Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

x x x

x x x

x x x

Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of Arts. 1171 and 2201, paragraph 2, shall apply.”

If the law does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required. The articles are applicable only to the obligor in respect of the cargo for this obligation to bear the loss was shifted to petitioner by virtue of the charter party. This shifting of responsibility, as earlier observed is not void. The provisions cited by petitioner are therefore, inapplicable to the present case. It would have been different if carrier were a public carrier, not a private carrier.

Moreover, the 2nd paragraph of Art. 1173 of the Civil Code which prescribes the standard of diligence to be observed in the event the law or the contract does not prescribe the degree of diligence is inapplicable. In the instant case, Art. 362 of the Code of Commerce provides the standard of ordinary diligence for the carriage of goods by a carrier. The standard of diligence under this statutory provision may, however, be modified in a contract of private carriage as the petitioner and private respondent had done in their charter party.

Note that in the earlier cases of *Cañete vs. San Antonio Industrial Dev. Corp.*, 113 SCRA 723 and *Pleasantville Dev. Corp. vs. CA*, G.R. No. 79688, February 1, 1996, 67 SCAD 594, it was ruled that the parties to a contract are free to deprive themselves of certain rights and waive them, if any such exist in law, as long as such renunciation is not violative of public policy or any contrary legal impediment.

Article 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.

When the court declares 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. (5a)

Preliminary consideration.

As can be well discerned the first paragraph of this amended provision is not only similar to but also identical with article 5 of the old Civil Code. However, two other paragraphs are introduced and added. The first of these gives supremacy to the Constitution over an ordinary law or legislation; the second asserts the supremacy of the law and the Constitution over administrative or executive acts. Reasoning out the innovation, the Code Commission said: “Though this is an undisputed theory, it is wise to formulate it as a clear-cut legal provision by way of a constant reminder to not a few public officials. The disregard of this principle is one of the main sources of abuse of power by administrative officials.” (See Report of the Code Commission, p. 78).

Repealing acts; their effects.

The repeal of a statute shall not affect or impair any act done, right vested, duty imposed, penalty accrued, or proceeding commenced before the taking effect of the repealing act. Repealing acts are valid, and create a new rule of construction which is binding on the courts, and which must be applied in all cases except where it is evident that the effect would be to defeat the plain and manifest purpose of the Legislature or Congress in the repealing statute. (Black on Interpretation of Laws, 421). Most repealing statutes are curative.

Kinds of repeal.

They are express and implied; express, when it is contained in the subsequent act; implied, when the subsequent law is inconsistent with the former.

Repeals by implication; requisites.

In order that a later statute may repeal an earlier one by implication, the two statutes must relate to the same subject matter and be repugnant to each other. Where two statutes can be applied to the same subject matter at the same time without interfering with each other or where there lies no incompatibility between the two or

where they are not repugnant to each other, then the earlier statute is not repealed by the later. (*Calderon vs. Santisimo Rosario*, 28 Phil. 164). Submitted to this Ordinance No. 12 of the Municipality of San Fernando, La Union, adopted under the authority of paragraphs (r) and (s) of Section 39 of Act No. 82, is not conflict with the provisions of Act 1147. The objects of the two are different and distinct in that the object of Act No. 1147 is to protect the rights of owners of large cattle in their ownership, whereas that of Ordinance No. 12 is to secure pure food for the inhabitants of the municipality, thereby protecting their health and comfort. A municipality, under proper charter authority, may adopt ordinances upon subjects already covered by the general law of the State, so long as the ordinance and the general law are not repugnant with each other. (*U.S. vs. Chan Tienco*, 25 Phil. 89). It results therefore, that in this as in the above case, there is no repeal by implication.

Repeals by implication not favored.

Repeals by implication are not favored. And where two statutes cover, in whole or in part, the same subject matter, and are not absolutely irreconcilable, the duty of the court — no purpose to repeal being clearly expressed or indicated — is, if possible, to give effect to both. (*Licauco & Co. vs. Dir. of Agriculture*, 44 Phil. 138).

Irreconcilable repugnancy must be shown.

A prior legislative Act will not be impliedly repealed by a later Act unless there is a plain, unavoidable and irreconcilable repugnancy between the two; if both acts can by any reasonable construction stand together, both will be sustained. (*Licauco & Co. vs. Dir. of Agriculture*, 44 Phil. 138).

Instances of repeals by implication.

When a law prescribes the penalty for an act committed under certain circumstances, and a later statute differently penalizes the same act committed in the same manner, the later law must be taken to repeal the earlier, although the subsequent statute contains no specific repealing clause. While the repeal of penal statutes by implication is not favored if the two laws can consistently stand together, yet, in penal as well as in other statutes, repeal by implication necessarily results in case of repugnancy or essential inconsistency between two successive statutes, or in any case when the legislature evidently manifests his intention that the later shall super-

sede the earlier. (U.S. vs. Reyes, 10 Phil. 423). Act 2710 of the Philippine Legislature declaring divorces shall operate to dissolve the bonds of matrimony and defining the conditions under which divorces may be granted has the effect of abrogating the limited divorce formerly recognized in these Islands. The circumstance that a statute that is inconsistent with prior laws and parts of laws inconsistent therewith does not prevent it from operating by implication to repeal such inconsistent laws. (Garcia vs. Ruason, 40 Phil. 943).

Distinction between repealing effect of affirmative and negative laws.

There is a clear distinction between affirmative and negative statutes in regard to their repealing effects upon prior legislation, which may be expressed by saying that while an affirmative statute does not impliedly repeal the prior law unless an intention to effect the repeal is manifest, a negative statute repeals all conflicting provisions unless the contrary intention is disclosed. (Garcia vs. Tuason, 40 Phil. 943).

Dominating influence of special over a general provision.

Where there is in the same statute a particular enactment, and also a general one, which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment. (Licauco and Co. vs. Dir. of Agriculture, 44 Phil. 138). Thus, a subsequent general statute dealing specifically and in detail with the same subject matter unless there is a clear and necessary conflict between the two. (Ynchausti & Co. vs. Col. of Customs, 36 Phil. 178). The reason why a general law will not repeal a special law or charter is because in passing a special charter the attention of the legislature is directed to the facts and circumstances which the act or charter is intended to meet. The legislature considers and makes provision for all the circumstances of a particular case. The legislature having specially considered all of the facts and circumstances in a particular case in granting a special charter, it will not be considered that the legislature, by adopting a general law without any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act or charter. (Manila Railroad Co. vs. Rafferty, 40 Phil. 224; Compañía General vs. Col. of Customs, 46 Phil. 8).

Repeal of repealing law; revival.

When a law which expressly repeals a prior law is itself repealed, the law first repealed shall not be thereby revived unless expressly so provided," but this provision does not change or modify the rule which prescribes that when a law which repeals a prior law, not expressly but by implication, is itself repealed, the repeal of the repealing law revives the prior law, unless the language of the repealing statute provides otherwise. (U.S. vs. Soliman, 36 Phil. 5). (*Ibid.*)

As a rule, laws are repealed only by subsequent ones. The law, as a rule, does not allow implied repeal.

The mere fact that a law is not observed does not mean its repeal. Senator Tolentino opined that since laws are promulgated by competent authority of the state, they can cease to have effect only through the will of the State; the Statute may lapse by its own terms, or it may be repealed by the legislative department, or declared unconstitutional by the judicial branch. Only the State can abrogate its own acts. Hence, as long as a law remains in the Statute books, its legal force and effect subsists, notwithstanding any practice or usage to the contrary.

An example of a law that lapsed by its own terms is the Rental Law (C.A. No. 689, as amended by R.A. No. 66). Prior to R.A. No. 8533, approved February 23, 1998, it can be said that Article 39 of the Family Code fills in the same category, insofar as it provides that if a marriage was contracted before the effectivity of the Family Code, the period to have it declared void on the ground of psychological incapacity is 10 years after the effectivity of the Family Code. If a party does not file an action to declare such marriage void within that period, the action shall prescribe. After the lapse of 10 years after effectivity of the Family Code, the said provision of the law shall cease to be operative.

A law may be repealed expressly when a new law is enacted containing a provision expressly repealing an existing law. It may also be repealed impliedly as when there is a conflict between the old and the new law such that the observance of one excludes that of the other. The implied repeal, operates without any declaration of repeal in the subsequent law. If there is implied repeal, it is required that the laws must cover the same subject matter and the subsequent law must be repugnant to the earlier law, hence; the Supreme Court in *Calderon vs. Santisimo Rosario*, 28 Phil. 164; *U.S. vs. Chan Tienco*, 25 Phil. 89, said that where the two laws merely apply to the

same subject matter but there is no incompatibility between them, and they can both stand together, one does not impliedly repeal the other.

An example of an implied repeal is when a new law imposes a penalty lower than that provided for in the existing law. (U.S. vs. Reyes, 10 Phil. 423). If Congress enacts a law providing that the highest penalty for a heinous offense is merely *reclusion perpetua*, then, there is an implied repeal of the existing law that imposes the death penalty.

If there is a conflict between a general and a special law, both of which include or cover the same subject, the special law must be deemed an exception to the general law. (Lichauco vs. Apostol, 44 Phil. 138). In a series of cases, it has been uniformly held that a subsequent general statute will not be held to repeal a prior special one, unless there is a clear and necessary conflict between the two (Ynchausti vs. Stanley, 36 Phil. 78; Manila Railroad Co. vs. Rafferty, 40 Phil. 224), for implied repeals are not favored. If the laws can by reasonable construction stand together, both will be sustained. (Lichauco vs. Apostol, *supra*; Compañía General de Tabacos vs. Collector of Customs, 46 Phil. 8).

In case of an express repeal of a law, the repeal of the repealing law does not revive the old law, except if provided expressly. But the rule is that, if the repeal is implied, the repeal of the repealing law revives the old law, unless the law otherwise provides.

Article 8. Judicial decisions applying and interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. (n)

Contemporaneous interpretations.

Contemporaneous interpretations of laws form part of the law as of the time of their enactment. They assume the authority as the statutes themselves. They are what the laws mean. They merely establish the contemporaneous legislative intent that the construed laws purport to carry into effect. (Floresca vs. Philex Mining, L-30642, June 30, 1985). Of course, the judicial decisions referred to by law are decisions of the Supreme Court, not the lower courts.

The principle of contemporaneous construction of a statute by the executive officers of the government, whose duty is to execute it,

is entitled to great respect. It ordinarily controls the construction of the law by the courts, unless such interpretation is clearly erroneous. (Philippine Global Communications, Inc. vs. Judge Relova, G.R. No. 60548, 10 November 86; *In re Allen*, 2 Phil. 630; Government of the Philippines vs. Municipality of Binalonan, 32 Phil. 634; Philippine Association of Free Labor Unions vs. Bureau of Labor Relations, 72 SCRA 396).

Administrative interpretation of laws.

Administrative regulations adopted under a legislative authority by a particular department must be in harmony with the law and should be for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself cannot be extended. (*Shell Philippines vs. CB*, G.R. No. L-51353, June 27, 1988).

If conflict exists between the basic law and a rule or regulation issued to implement it, the basic law prevails. Said rule or regulation cannot go beyond the terms and provisions of the basic law. Rules that subvert the statute cannot be sanctioned. Except for constitutional officials who can trace their competence to act to the fundamental law itself, a public official must locate in the statute relied upon a grant of power before he can exercise it. Department Seal may not be permitted to outrun the authority conferred by statute. (*Tayug Rural Bank vs. Central Bank*, G.R. No. 46158, 28 November 86; *People vs. Lim*, 108 Phil. 1091; *University of Sto. Tomas vs. Board of Tax Appeals*, 93 Phil. 376; *Del Mar vs. Phil. Veterans Administration*, 52 SCRA 340; *Radio Communications of the Philippines, Inc. vs. Santiago*, 58 SCRA 493).

When promulgated pursuant to the procedure or authority conferred upon the administrative agency by law, the rules and regulations partake of the nature of a statute, and compliance with it may be enforced by a penal sanction provided by law. Conversely, an administrative agency cannot impose a penalty not so provided in the law authorizing the promulgation of the rules and regulations, much less one that is applied retroactively. (*Tayug Rural Bank vs. Central Bank*, G.R. No. 46158, 28 November 86).

Intention of law is formed in its spirit.

The study of law is not an exact science with definite fields of black and white and unbending rules and rigid dogmas. The beauty of this discipline is the *“penumbra” shading gradually from one ex-*

treme to another, that gives rise to those honest differences of opinion among the brotherhood as to its correct interpretation. Honest differences are allowed and are inevitable, but the law does not permit (and much less does equity) stilted readings to suit one's motives, especially if they are less than noble. (Royal Lines, Inc. vs. Court of Appeals, G.R. No. 27239, 20 August 86). In *People vs. Salas, et al.*, G.R. No. 66469, July 29, 1986, it was said that a too little reading of the law is apt to constrict rather than fulfill its purpose and defeat the intention of its authors. That intention is usually found not in "*the letter that killeth but in the spirit that giveth life*," which is not really that evanescent or elusive. Judges must look beyond and not be bound by the language of the law, seeking to discover by their own lights the reason and the rhyme for its enactment. That they may properly apply it according to its ends, they need and must use not only learning but also vision. (People vs. Salas, et al., G.R. No. 66469, 29 July 1986).

Legislative intent is important.

It must also be stated that in the interpretation of a statute, legislative intent must be ascertained from a consideration of the statute as a whole. The particular words, clauses, and phrases should not be treated as detached and isolated expression, but the whole and every part of the statute must be construed as to harmonize and give effect to all its provision wherever possible. (Summit Guaranty and Ins. Co., Inc. vs. Arnaldo, G.R. No. L-48546, February 29, 1988; Phil. Global Com. vs. Relova, G.R. No. 60548, November 10, 1986).

Whenever the Supreme Court lays down a principle, it becomes a part of the law forming part of the contemporaneous interpretation of the law as of the time of its enactment. Once that doctrine is laid down, it is almost always followed. This is so because the doctrine of *stare decisis* enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. (Fong Choy vs. Rep., 25 SCRA 24). However, there are times when the Supreme Court would abandon certain doctrines depending upon the conditions, as the doctrine does not require blind adherence to precedents. If the doctrine is now contrary to law, then the Court is duty bound to abandon it. (Lam Swee Sang vs. Commonwealth, 73 Phil. 309). A classic example of such an abandonment is in the case of *Tan vs. Barrios*, G.R. Nos. 85481-82, October 18, 1990. In the earlier cases of *Olaguer vs. The Military Commission*, and *Cruz vs. Enrile*, the Supreme Court laid

down the rule that the Military Tribunals during Martial Law had no jurisdiction to try civilians. So, it said the proceedings and the decisions were void for lack of jurisdiction. When charged again for the same offense, the accused invoked double jeopardy. The Supreme Court said that *Olaguer* and *Cruz* were jurisprudential errors, abandoned the principle, and said that those who have already been tried and convicted, or acquitted, or served their sentence, or pardoned, can no longer be charged all over again for the same offense; otherwise, they would be put in double jeopardy.

Kinds of interpretation.

Lieber, in his work on Hermeneutics, gives the following classification of the different kinds of interpretation:

1. “Close” interpretation is adopted if just reasons connected with the character and formation of the text induce us to take the words in their narrowest meaning. This species of interpretation is also generally called “literal.”

2. “Extensive” interpretation, called also “liberal” interpretation, adopts a more comprehensive signification of the words.

3. “Extravagant” interpretation is that which substitutes a meaning evidently beyond the true one. It is therefore not genuine interpretation.

4. “Free” or unrestricted, interpretation proceeds simply in the general principles of interpretation in good faith, not bound by any specific or superior principle.

5. “Limited” or restricted, interpretation is when we are influenced by other principles than the strictly hermeneutic ones.

6. “Predestined” interpretation takes place if the interpreter, laboring under a strong bias of mind, makes the text subservient to his preconceived views or desires. This includes “Artful” interpretation, by which the interpreter seeks to give meaning to the text other than the one he knows to have been intended. (Lieber, *Hermeneutics*, pp. 54-60).

Interpretation – the office of the judiciary.

As between the three departments of government, the office of construing and interpreting the written laws belongs to the judiciary ultimately, although the executive and legislative departments may

be required, by necessity, to put their own construction upon the laws in advance of their exposition by the courts.

When there arises a necessity for construing or interpreting the written laws, in order to discover their application to a given case or state of facts, the question of the meaning and intention of the legislature in this regard is a question of law, and as such it must be solved by the court; it is not for the determination of the jury.

Decision or judgment defined.

A judgment is the law's last word in a judicial controversy. It is the conclusion of the law upon the matters contained in the record, or the application of the law to the pleadings and to the facts, as they appear from the evidence in the cases and as found by the court, admitted by the parties or as deemed to exist upon their default in a course of judicial proceedings. (*Zaner vs. Thrower*, 155 Cal. 199 Pac. 371).

Presumption against injustice.

It is presumed that the Congress never intends to do injustice. Rather it is presumed that it shall do right and give justice. If a statute is doubtful or ambiguous, or fairly open to more than one construction that construction should be adopted which will avoid denial of right and justice. Thus, it was held in a number of cases that in construing statutes, it is not reasonable to presume that the legislature intended to violate a settled principle of natural justice or to destroy a vested right of property. Courts, therefore, in construing statutes, will always endeavor to give such interpretation to the language used as to make it consistent with reason and justice. (*Peirce vs. City of Bangor*, 105 Me. 413, 74 Atl. 1039; *Plum vs. City of Kansas*, 101 Mo. 525, 14 S.W. 657, 10 L.R.A. 371). For example, to quote from a decision in Missouri, "although the constitution may not require notice to be given of the taking of private property for public use, yet when the legislature prescribes a mode by which private property may be taken for such purpose, we will, out of respect to it, suppose that it did not contemplate a violation of that great rule, recognized and enforced in all civil governments, that no one shall be injuriously affected in his rights by a judgment or decree resulting from a proceeding of which he had no notice and against which he could make no defense." (*City of Boonville vs. Ormrod's Adm'r.*, 26 Mo. 193). And on the general principle of avoiding injustice and absurdity, any construction should be rejected, if escape from it were possible, which

enabled a person to defeat or impair the obligation of his contract by his own act, or otherwise to profit by his own wrong.” (Maxwell, *Interp.*, 2nd ed., 249). For example, a statute relating to corporations required an annual report to be made by every company organized under its provisions, and provided that, in case of failure to make such report, the trustees should be jointly and severally liable “for all the debts of the company then existing and for all that shall be contracted before such report shall be made.” This language was broad enough to include debts due from the corporation to individual trustees. But it was held that “the fundamental rule, which lies at the very foundation of all law, that no person, by his own transgression, can create a cause of action in his own favor against another, must be applied to trustees of these corporations,” and that debts of that nature were not within the provisions of the statute. (*Briggs vs. Easterly*, 62 Barb. [N.Y.] 51).

Article 9. No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws. (6)

A judge should not refrain from rendering a judgment just because there is no law that governs a particular case. In the absence however of a law, the customs, and traditions of the place can be applied, but they must be proved as facts according to the rules of evidence. In *Chua Jan vs. Bernas*, 34 Phil. 631, it was said that even if the judge is not acquainted with the rules regarding cockfighting, this does not justify him in dismissing the case. The rule however is inapplicable to criminal cases, for if there is no law that penalizes an act, the same is not punishable under the maxim *nullum crimen nulla poena sine lege*. Even if the law is obscure, it can still be applied and the rules of statutory construction can aid the court.

How about if the law is unjust? The rule is *dura lex sed lex*. It is the duty of the court to apply it and not to tamper with it. In *Go vs. Anti-Chinese League*, 84 Phil. 468, it was held that it is the sworn duty of the judge to apply the law without fear or favor, to follow its mandate and not to tamper with it. The court cannot adopt a policy different from that of the law. What the law grants, the court cannot deny. But if the law is unjust or harsh, the Court may apply a soft hand in recommending executive clemency to an accused who was convicted. But it cannot refrain from applying the law. (See Art. 5, RPC). If the court tampers with the law and refuses to apply the policy it laid down, then, it is usurping the power of the Congress in

declaring what the law is. In essence, it would be violating the principle of separation of powers.

Judge is duty bound to apply the law.

In *People vs. Veneracion*, 65 SCAD 10, 249 SCRA 247, October 12, 1995, a judge, despite finding that the accused was guilty of Rape with Homicide, refused to impose the death penalty because of his religious convictions. The Supreme Court said that the judge had no other alternative except to impose the death penalty. It said:

“Obedience to the rule of law forms the bedrock of our system of justice. If judges, under the guise of religious or political beliefs were allowed to roam unrestricted beyond boundaries within which they are required by law to exercise the duties of their office, then law becomes meaningless. *A government of laws, not of men* excludes the exercise of broad discretionary powers by those acting under its authority. Under this system, judges are guided by the Rule of Law, and ought ‘to protect and enforce it without fear or favor, resist encroachments by governments, political parties (Act of Athens [1955]), or even the interference of their own personal beliefs.’”

In the case at bench, respondent judge, after weighing the evidence of the prosecution and the defendant at trial found the accused guilty beyond reasonable doubt of the crime of Rape with Homicide. Since the law in force at the time of the commission of the crime for which respondent judge found the accused guilty was Republic Act No. 7659, he was bound by its provisions.

Clearly, under the law, the penalty imposable for the crime of Rape with Homicide is not *Reclusion Perpetua* but Death. While Republic Act 7659 punishes cases of ordinary rape with penalty of *Reclusion Perpetua*, it allows judges the discretion — depending on the existence of circumstances modifying the offense committed — to impose the penalty of either *Reclusion Perpetua* only in the three instances. The law plainly and unequivocally provides that “[W]hen by reason or on the occasion of rape, a homicide is committed, the penalty shall be *death*. The provision leaves no room for the exercise of discretion on the part of the trial judge to impose a penalty under the circumstances described, other than a sentence of death.

We are aware of the trial judge’s misgivings in imposing the death sentence because of his religious convictions. While this Court

sympathizes with his predicament, it is its bounden duty to emphasize that a court of law is no place for a protracted debate on the morality or propriety of the sentence, where the law itself provides for the sentence of death as a penalty in specific and well-defined instances. The discomfort faced by those forced by law to impose the death penalty is an ancient one, but it is a matter upon which judges have no choice. Courts are not concerned with the wisdom, efficacy or morality of laws. In *People vs. Limaco*, we held that:

‘When. . . private opinions not only form part of their decision but constitute a decisive factor in arriving at a conclusion and determination of a case or the penalty imposed, resulting in an illegality and reversible error, then we are constrained to state our opinion, not only to correct the error but for the guidance of the courts. We have no quarrel with the trial judge or with anyone else, layman or jurist as to the wisdom or folly of the death penalty. Today, there are quite a number of people who honestly believe that the supreme penalty is either morally wrong or unwise or ineffective. However, *as long as that penalty remains in the statute books, and as long as our criminal law provides for its imposition in certain cases, it is the duty of judicial officers to respect and apply the law regardless of their private opinions.* It is a well-settled rule that the courts are not concerned with the wisdom, efficacy or morality of laws. That question falls exclusively within the province of the Legislature which enacts them and the Chief Executive who approves or vetoes them. The only function of the judiciary is to interpret the laws and if not in disharmony with the Constitution, to apply them. And for the guidance of the members of the judiciary, we feel it incumbent upon us to state that while they, as citizens or as judges, may regard a certain law as harsh, unwise or morally wrong, and may recommend to the authority or department concerned, its amendment, modification, or repeal, still, as long as said law is in force, they must apply it and give it effect as decreed by the law-making body. (88 Phil. 35).’

Article 10. In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail. (n)

Note that in the report of the Code Commission, it was said that: “*though the foregoing is also an unquestioned rule, yet, it is necessary to embody it in the Code, so that it may tip the scales in favor of right and justice when the law is doubtful or obscure.* It will strengthen the determination of the courts to avoid an injustice which may apparently be authorized by some way of interpreting the law.” (Report of the Code Commission, p. 78).

When the law is clear, it must be applied, even if it is harsh or unjust, for the judge cannot change the mandate of the law.

It has been said that equity is an attribute of justice and there can be no justice if the application of the law is not made with equity. Equity may correct and modify the bare written law, sometimes limiting its excessive generality, and at times extending it to supply deficiencies. Its mission is to temper the rigor of positive law as Justinian said, equity is justice sweetened with mercy; its purpose, therefore is to seek and follow the intention of the legislator rather than the bare legal provision, to adapt the rigid precept of law to the social life. (1 Valverde 211). In *Cesario Ursua vs. CA, et al.*, G.R. No. 112170, April 10, 1996, 70 SCAD 123, it was said by the Supreme Court that time and again we have declared that statutes are to be considered in the light of the purposes to be achieved and the evils sought to be remedied. Thus, in construing a statute, the reason for its enactment should be kept in mind and the statute should be construed with reference to the intended scope and purpose. (People vs. Purisima, 86 SCRA 542). The court may consider the spirit and reason of the statute, where a literal meaning would lead to absurdity, contradiction, injustice or would defeat the clear purpose of the lawmakers. (People vs. Manantan, 5 SCRA 684).

Presumption that Legislature or Congress intended right and justice.

In construing a doubtful or ambiguous statute, the courts will presume that it was the intention of the lawmaking body to enact a valid, sensible, and just law, one that intends right and justice to prevail. Thus, it was held that it would not be consistent with the respect which one department of the government owes another, nor with the good of the state, for the courts to impute to the legislature any intention to exceed the rightful limits of its power, to violate the restraints which the Constitution imposes upon it, to disregard the principles of sound public policy, or to make a law leading to absurd, unjust, inconvenient, or impossible results, or calculated to defeat

its own object. On the contrary, it is bounden duty of the judicial tribunals to assume that the lawmaking power has kept with integrity, good faith, and wisdom. Consequently, if the words of the law are doubtful or ambiguous, or if the statute is susceptible of more than one construction, the courts will lean in favor of that interpretation which will reconcile the enactment with the limitations of legislative power and with the dictates of justice and expediency. (*Dekelt vs. People*, 44 Colo. 525, 99 Pac. 330; *Lake Shore & M.S. Ry. Co. vs. Cincinnati, W. & M., Ry. Co.*, 116 Ind. 578, 19 n. E. 440). If the law is ascertained to be constitutionally valid, or if the question of its constitutionality is not raised, and the only doubt is as to its proper construction, the courts may listen to arguments drawn from considerations of public policy, or reason, justice and propriety, and be guided thereby in deciding in favor of one or the other two permissible interpretations. (Black, *Const. Law* [3rd Ed.], 70, *Black Inter. of Laws* 105).

Liberal construction of adoption statutes in favor of adoption.

It is settled rule that adoption statutes, being humane and salutary, should be liberally construed to carry out the beneficent purposes of adoption. (*Rep. vs. CA, et al.*, 205 SCRA 356). The interests and welfare of the adopted child are of primary and paramount consideration, hence, every reasonable intendment should be sustained to promote and fulfill these noble and compassionate objectives of the law. (*Bobanovic, et al. vs. Montes, et al.*, 142 SCRA 485).

Lastly, Article 10 of the New Civil Code provides that:

“In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.”

This provision, according to the Code Commission, “is necessary so that it may tip the scales in favor of right and justice when the law is doubtful or obscure. It will strengthen the determination of the courts to avoid an injustice which may apparently be authorized by some way of interpreting the law.”

Hence, since there is no law prohibiting an illegitimate child adopted by her natural father, like Stephanie, to use, as middle name her mother’s surname, there is no reason why she should not be allowed to do so. (In the Matter of the Adoption of Stephanie Nathy Astorga Garcia, Honorato Catindig, Petitioner, G.R. No. 148311, March 31, 2005 [*Gutierrez, J.*]).

Article 11. Customs which are contrary to law, public order or public policy shall not be countenanced. (n)

Article 12. A custom must be proved as a fact, according to the rules of evidence. (n)

Custom is the juridical rule which results from a constant and continued uniform practice by the members of a social community, with respect to a particular state of facts, and observed with a conviction that it is juridically obligatory. (1 Tolentino, Civil Code, p. 38, 1974 ed.). But custom must be proven as a fact, according to the rules of evidence. (Art. 12, New Civil Code). In order that a custom may be considered as a source of a right, the following requisites must be proven:

- (1) plurality of acts;
- (2) uniformity of acts;
- (3) general practice by the great mass of the people of the country or community;
- (4) general conviction that it is the proper rule of conduct;
- (5) continued practice for a long period of time; and
- (6) conformity with law, morals and public policy. (1 Manresa 82).

Hence, in *Martinez vs. Van Buskirk*, 18 Phil. 79, it was said that a *cochero* who was helping a passenger unload his cargo and left the horse unattended to, was not held to be negligent, even if the horse galloped away, as a result of which the *caretela* caused injuries to a pedestrian. It was held that, that was the custom of the place.

Note however, that while customs may be applied in lieu of a law, the same cannot be done if they are contrary to law, public order or public policy, for the latter cannot be countenanced.

Customs should not be against public policy.

It is presumed that the legislature or Congress intends its enactments to accord with the principles of sound policy and the interests of public morality, not to violate them; and due weight should be given to this presumption in the construction of a doubtful or ambiguous statute. (Black, Interpretation of Laws, 134; Aircardi vs. State, 19 Wall. 635, 22 L. Ed. 215). What is said of laws in this re-

gard can very well be said of customs with the same truth and effect. It must always be supposed that the Congress, in adopting this provision concerning customs, designs to favor and foster, rather than to contravene, that public policy which is based upon the principles of natural justice, good morals, and the settled wisdom of the law as applied to the ordinary affairs of life. For instance, there seems to be a custom in Moroland where sultan or a datu is permitted, in certain cases, to be a judge in his own cause, or to determine his right to an office by reason of blood or kinship. (Commonwealth vs. McCloskey, 2 Rawle [Pa.] 369; Day vs. Savadge, Hob. 85; Queen vs. Owens, 2 El. & El. 86). It results, therefore, that if a custom to be repugnant to public policy, public order, or law it ought to be restrained so that it may comport with those principles. Nor should custom be allowed or permitted which disturbs public order or which tends to incite rebellion against constituted authorities or resistance against public commands duly issued and legally promulgated. While the courts should be ever vigilant to protect the rights and customs of the people, they nevertheless should be equally vigilant that customs destructive of the public order or subversive of public policy and morality be curbed rather than sanctioned. (Garcia & Alba, Civil Code of the Phils. p. 34, 1950 Ed.).

Article 13. When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded and the last day included. (7a)

The law says that in the computation of a period, the first day shall be excluded and the last day shall be included.

Illustration:

A filed a suit at the RTC, Manila, against B. Summons was served upon B on September 1, 1996. In computing the 15-day period to file a responsive pleading, September 1, 1996 should not be included. The 15-day period should be computed from September 2, because in the computa-

tion of a period, the first day shall be excluded and the last day shall be included. The reason for the law is that you can no longer complete a whole day on September 1, 1996.

Article 14. 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 stipulations. (8a)

The law makes obligatory penal laws and those of public safety and security upon all people who live or sojourn on Philippine territory. So, even if an American citizen is a mere tourist in the Philippines, he is liable for a crime if he commits one on Philippine territory.

Illustration:

Rudy is an American citizen. He is having his vacation in Manila. He raped Jane inside a motel. He can be charged with rape and be made liable. He cannot invoke his being a foreigner because everybody who sojourns on Philippine territory is bound by Philippine penal laws and those of public safety.

But suppose Rudy is an American ambassador, the rule would be different, because the obligatory force of Philippine penal laws and those of public safety is subject to accepted principles of international law and treaty stipulations. It is a well-accepted principle of international law that ambassadors are granted diplomatic immunities. The remedy against him is not criminal prosecution, but for him to be recalled by his government on the ground that he is a *persona non grata*. Thus, under the principle of extraterritoriality, there are foreigners who are exempted from the operation of Philippine laws, like when the offense is committed by a foreign sovereign or diplomatic representatives while on Philippine territory; or when the crime is committed inside a public or armed vessel of a foreign country. But a merchant vessel is not covered by the principle of extraterritoriality, for the moment it enters the Philippines, it subjects itself to the laws of our country; hence, if an offense is committed within said vessel

while on Philippine territory or post, the offense constituting a breach of public order, the same is triable here. (*People vs. Bull*, 15 Phil. 7; *U.S. vs. Wong Cheng*, 46 Phil. 729; *U.S. vs. Look Chaw*, 18 Phil. 573)

Exterritoriality — is that fiction in international law by virtue of which certain foreign persons and their things are exempted from the jurisdiction of a state on the theory that they form an extension of the territory of their own state. This is based on practice without treaty stipulations.

Extraterritoriality — is the exemption of foreign persons from laws and jurisdiction of a state in which they presently reside, an exemption which can only exist by virtue of a treaty stipulation to this effect.

Offenses committed on board a vessel of foreign registry.

Certain definite and well-established principles of international law govern the prosecution of offenses committed on board war or merchant vessels. In a leading case, Chief Justice Marshall said: "The implied license under which vessels enter a friendly port may reasonably be construed as containing exemption from jurisdiction of the sovereign within whose territory she claims the rights of hospitality. The principle was accepted by the Geneva Arbitration Tribunal, which announced that the privilege of extraterritoriality accorded to vessels of war has been admitted in the law of nations; not as an absolute right, but solely, as a proceeding founded on the principle of courtesy and mutual deference between nations." (2 Moore, Int. Law Dig., Secs. 252; 254; Hall, Int. Law, Sec. 55; Taylor, Int. Law, Sec. 256).

Thus, in the Philippines, "such vessels are therefore permitted during times of peace to come and go freely. Local officials exercise but little control over the actions, and offense committed by their crews are justiciable by their own officers acting under the laws to which they primarily owe their allegiance. This limitation upon the general principle of territorial sovereignty is based entirely upon comity and convenience, and finds its justification in the fact that experience shows that such vessels are generally careful to respect local laws and regulations which are essential to the health, order, and well-being of the port." (*U.S. vs. Bull*, 15 Phil. 7).

Conflicting theories on territoriality and extraterritoriality.

The degree of exemption from local jurisdiction of merchant vessels of foreign registry is predicated upon two well known theories namely, the French theory and the English theory. The first emphasizes nationality and holds that the matters happening on board the merchant vessel which do not concern the tranquility of the port or persons foreign to the crew, are justiciable only by the courts of the country to which the vessel belongs. The second theory, on the other hand, emphasizes the principle of territoriality, that is, it maintains that as soon as merchant vessels enter the ports of a foreign state, they become subject to local jurisdiction on all points in which the interests of the country are touched. (U.S. vs. Bull, 15 Phil. 7; People vs. Cheng, 46 Phil. 729). The view taken by the United States in this respect holds that when a merchant vessel enters a foreign port, it is subject to the jurisdiction of local authorities, unless the local sovereignty has by act of acquiescence or through treaty arrangements consented to waive a portion of such jurisdiction. Accordingly, in a case (U.S. vs. Kiekelman, 92 U.S. 520), the Court held that merchant vessels of one country visiting the ports of another for the purpose of trade, subject themselves to the laws which govern the ports they visit, so long as they remain; and this as well in war as in peace, unless otherwise provided by treaty. (U.S. vs. bull, 15 Phil. 7; People vs. Cheng, 46 Phil. 729).

Rule in this jurisdiction.

The English theory as qualified by the American theory obtains in this jurisdiction. Thus, where the master of a Norwegian vessel failed to provide suitable means for securing animals while transporting them therein from the port of Formosa through the high seas, and these forbidden conditions punishable under our laws continued when the vessel enters our territorial waters, the offense is subject to local jurisdiction and triable in our courts. (U.S. vs. Bull, 15 Phil. 7). Similarly, the offense of smoking opium on board a foreign merchant vessel at anchor within Philippine waters constitutes a breach of public order here established and a serious violation of the policy of the Legislature in the enactment of the law, and, as such, justiciable in our courts. (U.S. vs. Cheng, 46 Phil. 729). Likewise, although the mere possession of a thing of prohibited use in the Philippines on board of foreign vessel in transit through any of its ports does not, as a general rule, constitute an offense triable in our courts, such vessel, by fiction of law, being regarded as an exten-

sion of the nationality of the country whose flag it flies, the same rule does not apply where the prohibited article is landed on Philippine soil, for then, the act constitutes an open violation of the laws of this country. (U.S. vs. Look Chow, 18 Phil. 573). But an offense, as theft, committed on board an army transport, or any foreign merchant vessel, while the vessel is navigating on the high seas, is not triable in the Philippine courts. (U.S. vs. Fowler, 1 Phil. 614).

Article 15. 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. (9a)

Wherever a Filipino is, Philippine law shall govern him with respect to his family rights and duties, status, condition, and legal capacity. This is true even if he is living abroad.

If A and B, both Filipino citizens, are married but they are living abroad, the law that governs them with respect to their family rights and duties, status, condition and legal capacity is Philippine law. So that, the mandate under Article 68 of the Family Code that the husband and wife are obliged to live together, love one another, help, support and observe mutual respect and fidelity would still apply. Suppose in Sweden, where they are living, the law allows them to live separately and maintain other partners, the same cannot apply to them, because what governs their relationship is Philippine law. Or, if in Sweden, there is no obligation to support one another, still the law cannot apply, because under Philippine law, they are obliged to support one another.

Let us say that A, in the problem above, left his spouse in the Philippines and went to Hawaii. After five (5) years, he divorced his spouse. Such a divorce decree is void and cannot be recognized in the Philippines because of our adherence to the nationality theory that Philippine law governs the family rights and duties, status, condition of Filipino citizens. Definitely, a divorce decree obtained abroad would affect the status and condition of A and B. Furthermore, the divorce decree is contrary to public policy, especially with the provisions of Article 17 of the Civil Code, where the law says that such a declaration of public policy cannot be rendered ineffective by a judgment promulgated in a foreign country.

But let us say that A is an American citizen and B is a Filipina. They went to the USA where A is a national. A divorced B. The di-

voiced decree is valid and B can even get married now in view of Article 26, paragraph 2 of the Family Code, which provides that if there is a mixed marriage and the foreigner obtains a divorce decree against the Filipino capacitating the foreigner to remarry under his national law, then, the Filipino shall also be capacitated to remarry in the Philippines. This law has equalized the unfair situation in the Civil Code where regardless of whether the marriage was mixed or not, if the foreigner divorced the Filipino, the latter could not remarry.

To trace the history of Article 26, paragraph 2 of the Family Code, the case of *Van Dorn vs. Romillo, Jr.*, 139 SCRA 139, is relevant. In this case, the Supreme Court recognized the effects of a foreign divorce, saying, that after the foreigner divorced the Filipino wife, the marriage bond was severed, and that there was no longer any duty to love, and to live, support and no more right of inheritance.

Absolute divorce decree granted by U.S. court, between Filipina wife and American husband, held binding upon the latter.

Case:

**Alice Reyes Van Dorn vs. Hon. Manuel V.
Romillo, Jr., et al.
L-68470, October 8, 1985, 139 SCRA 139**

Facts:

Alice Reyes, a Filipina, married Richard Upton, an American, in Hongkong in 1972. They established residence in the Philippines and had two children. In 1982, the wife sued for divorce in Nevada, U.S.A., on the ground of incompatibility. She later married one Theodore Van Dorn in Nevada. In 1983, Upton sued her before the Regional Trial Court, Branch CXV, in Pasay City, asking that she be ordered to render an accounting of her business known as the Galeon Shop, in Ermita, Manila, which Upton alleged to be a conjugal property. He also prayed that he be declared with right to manage the conjugal property. The defendant wife moved to dismiss the complaint on the ground that the cause of action was barred by a previous judgment in the divorce proceedings wherein he had acknowledged that the couple had “*no community property.*” From a denial of that motion, she went to the Supreme Court on a petition for *certiorari* and prohibition.

Held:

The pivotal fact in this case is the Nevada divorce of the parties. The Nevada court had jurisdiction over the parties. There can be no question as to the validity of that Nevada divorce in any of the States of the United States. The decree is binding on Upton as an American citizen; hence, he cannot sue petitioner, as her husband, in any State of the Union. While it is true that owing to the nationality principle under Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorce, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. In this case, the divorce in Nevada released Upton from the marriage from the standards of American law. Thus, pursuant to his national law, he is no longer the husband of petitioner. He would have no standing to sue in the case below as petitioner's husband entitled to exercise control over conjugal assets. He is also estopped by his own representation before the Nevada court from asserting his right over the alleged conjugal property. To maintain, as private respondent does, that under our laws petitioner has to be considered still married to him and still subject to a wife's obligations under Article 109, *et seq.*, of the Civil Code, cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served.

It must be observed that for Article 26, paragraph 2 of the Family Code to apply, the following requisites must be present:

1. the marriage must be originally a mixed marriage;
2. the foreigner should be the one to initiate the divorce petition, and if granted, it should capacitate him under his national law to remarry.

If all these requisites are present, then, the Filipino can also be capacitated to remarry. However, if the Filipino was the one who initiated the petition for divorce, and it was granted, thus capacitating the foreigner-spouse to remarry, the law is inapplicable and the Filipino cannot remarry. This is so because of the strict interpretation and application of our marriage laws. The general rule in Article 15, of the Civil Code would apply.

Or, let us say that A and B, both Filipino citizens, are married. A went abroad and later on embraced American citizenship and divorced B. Can B remarry in the Philippines? The answer is, *No*. Article 26, paragraph 2 of the Family Code does not apply; Article 15 of the Civil Code applies. This situation is a return to the old unfair situation in the Civil Code, prior to *Van Dorn vs. Romillo* and the Family Code, for what governs the status, condition and legal capacity of B is Philippine law. Something must be done with this situation as it is unfair, because A can now get married without fear of being prosecuted under Philippine laws since he is beyond the reach of the obligatory force of our penal laws. Furthermore, he is no longer governed by Philippine laws since he is now an American citizen. Yet, B is left hanging as she is still considered married from the viewpoint of Philippine laws. Only a legislative enactment can remedy the situation. Or, even if we are to assume that A and B are residing in the U.S.A., still, B cannot marry, because what governs his legal capacity and status is Philippine law. This is so even if the laws of the USA would say that after their divorce, B can get married. The nationality principle would still apply.

Note that *Van Dorn vs. Romillo* was treated as an exceptional situation which triggered the adoption of Article 26(2) of the Family Code, erasing the unfair situation in the Civil Code.

Divorce obtained abroad by Filipinos.

A Filipino wife remains the lawful wife of the Filipino husband despite a decree of divorce obtained abroad by the wife. Hence, the wife is entitled to inherit from the husband as the latter's surviving spouse despite the fact that she was the one who divorced him. However, if the wife was already a foreigner at the time of the divorce, she ceases to be the lawful wife of the Filipino husband and loses her right to inherit from him as his surviving spouse. (*Quita vs. Dandan*, G.R. No. 124862, 22 December 1998, 101 SCAD 892). The reason for the rule is that, such divorce between Filipino citizens abroad even if valid where it was obtained, is void and inexistent.

Divorce; its recognition in the Philippines.

A divorce decree obtained in a foreign country may be recognized in the Philippines.

A divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national

law of the foreigner. However, the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proved. Our courts do not take judicial notice of foreign laws and judgments; hence, like any other facts, both the divorce decree and the national law of the alien must be alleged and proven according to our law on evidence. (*Grace Garcia vs. Rederick A. Recio*, G.R. No. 138322, October 2, 2002).

Case:

Garcia vs. Recio
G.R. No. 138322, October 2, 2002

Facts:

Rederick Recio, a Filipino, got married to Editha Samson, an Australian citizen, but the marriage was dissolved by a divorce decree on May 18, 1989 issued by an Australian family court. On June 26, 1992, Rederick became an Australian citizen and got married to Grace on January 12, 1994. They lived separately without judicial decree. On March 3, 1998, she filed a complaint for declaration of nullity of her marriage with Rederick on the ground of bigamy stating that prior to the marriage, she did not know that her husband had a previous marriage. On July 7, 1998, he was able to obtain a decree of divorce from her, hence, he prayed in his answer to the complaint that it be dismissed on the ground that it stated no cause of action. The court dismissed the case on the basis of the divorce which dissolved the marriage and recognized in the Philippines. Before the Supreme Court, she raised the following issues:

1. Whether the divorce between Editha Samson and himself was proven;
2. Whether his legal capacity to marry her was proven.

Reiterating jurisprudential rules earlier laid down, the Supreme Court —

Held:

(1) No, Philippine law does not provide for absolute divorce; hence, our courts cannot grant it. A marriage between two Filipinos cannot be dissolved even by a divorce obtained abroad, because of Articles 15 and 17 of the Civil Code. (*Tenchavez vs. Escano*, 15 SCRA 355; *Barretto Gonzalez vs. Gonzalez*, 58 Phil. 67). In mixed marriages involving a Filipino and a foreigner, Article 26 of the Family Code

allows the former to contract a subsequent marriage in case the divorce is “validly obtained abroad by the alien spouse capacitating him or her to remarry.” (Van Dorn vs. Romillo, Jr., 139 SCRA 139; Pilapil vs. Ibay-Somera, 174 SCRA 653). A divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws. (Van Dorn vs. Romillo, *supra.*). The same must be proved as a fact according to the rules of evidence.

Therefore, before a foreign divorce decree can be recognized by our courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it. Presentation solely of the divorce decree is insufficient. (Garcia vs. Recio, *supra.*).

Necessity to prove legal capacity.

(2) If a foreigner who was divorced seeks to obtain a marriage license in the Philippines, it is incumbent upon him to prove his legal capacity. If the marriage was dissolved by reason of divorce, he has to file a sworn statement as to how the marriage was dissolved (Art. 11, FC) and furnish the local civil registrar with the judgment (Art. 13, FC) and must register the same with the local civil registrar to bind third persons. (Art. 52). Before a foreign judgment is given presumptive evidentiary value, the document must first be presented and admitted in evidence. A divorce obtained abroad is proven by the divorce decree itself. Indeed the best evidence of a judgment is the judgment itself. (Rule 130, Sec. 3, Rules of Court). The decree purports to be a written act or record of an act of an official body or tribunal of a foreign country. (Sec. 19, Rule 130).

Under Sections 24 and 25 of Rule 132, on the other hand, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer having legal custody of the document. If the record is not kept in the Philippines, such copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office. (Garcia vs. Recio, *supra.*).

Our courts do not take judicial notice of foreign laws.

It is well-settled in our jurisdiction that our courts cannot take judicial notice of foreign laws. (Wildvalley Shipping Co., Ltd. vs. CA,

G.R. No. 119602, October 6, 2000). Like any other facts, they must be alleged and proved. Australian marital laws are not among those matters that judges are supposed to know by reason of their judicial function. (*Delos Angeles vs. Cabahug*, 106 Phil. 839). The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative. (*Garcia vs. Recio*, *supra.*).

Proof of legal capacity. Concept and kinds of divorce.

In its strict legal sense, divorce means the legal dissolution of a lawful union for a cause arising after marriage. But divorces are of different types. The two basic ones are (1) absolute divorce or *a vinculo matrimonii* and (2) limited divorce or *a mensa et thoro*. The first kind terminates the marriage, while the second suspends it and leaves the bond in full force. If what is presented is a decree *nisi* or an interlocutory decree — a conditional or provisional judgment of divorce, it is in effect the same as a separation from bed and board, although an absolute divorce may follow after the lapse of the prescribed period during which no reconciliation is effected. (*Garcia vs. Recio*, *supra.*).

Reason why foreign divorce is not recognized in the Philippines.

Being contrary to law and morals, it is a rule in the Philippines that foreign divorces are not recognized by our laws. In fact, laws and determinations in a foreign country are not binding in the Philippines even if they are valid therein. Of course, if such divorce is obtained by Filipinos abroad, the said rule applies. If it is obtained by foreigners and valid under their national laws, the same can be given legal effect in the Philippines subject to the conditions cited above.

In *Van Dorn vs. Romillo, Jr.* (139 SCRA 139), it was held that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces, the same being considered contrary to our concept of public policy and morality. In the same case, it was said that aliens may obtain divorces abroad, provided they are valid according to their national law.

Citing this landmark case (*Van Dorn vs. Romillo*), it was said that once proven that the spouse was no longer Filipino citizen when

he obtained the divorce from the other spouse, former spouse could “very well lose her right to inherit” from him.

In *Pilapil vs. Ibay-Somera* (174 SCRA 653), the Court recognized the divorce obtained by the respondent in his country and said that due to the divorce decree, he can no longer prosecute his wife for adultery as the marriage bond has already been severed. (Llorente vs. CA, G.R. No. 124371, November 23, 2000).

The two cases cited above are the predecessors of Article 26(2) of the Family Code which expressly recognize the effects of foreign divorces subject to the conditions that the marriage must have been mixed from its inception and not thereafter; that it was the foreigner who initiated the complaint for divorce; and the decree capacitated the foreigner to remarry under his/her national law. If commenced by the Filipino, then, Article 26(2) does not apply because of the restrictive nature of Philippine law on marriage.

Effect of foreign divorce.

In *Paula Llorente vs. CA*, G.R. No. 124371, November 23, 2000, Lorenzo and Paula Llorente were married in Nabua, Camarines Sur. Lorenzo was enlisted to the US Army and became an American citizen. His wife was left in the Philippines but when he came back, he found out that she was “living-in” with his brother. He went back to the USA and filed a petition for divorce which was granted. It became final and executory. When he came back to the Philippines, he married Alicia with whom he had children. He executed a will bequeathing all his properties to his wife Alicia and their children. When his will was submitted to probate, Paula filed a petition for the issuance of letters testamentary in her favor contending that she is the surviving spouse; that various properties were acquired during their marriage and that his will encroached on her legitime and 1/2 shares in the conjugal property. The petition was given due course. The RTC declared one of the children of Lorenzo as only an illegitimate child entitling her to 1/3 of the estate and 1/3 of the free portion. The CA modified the decision declaring Alicia as a co-owner of whatever properties she and the deceased husband may have acquired during their converture.

Question:

Is Alicia entitled to inherit? Why?

Answer:

Yes, because it is clear from his will that he intended to bequeath his properties to his second wife and children. His wishes cannot be frustrated since he was a foreigner, not covered by Philippine Laws on family rights and duties, status, condition and legal capacity. As to who inherits from him is governed by foreign law, his national law.

Question:

Is the divorce decree obtained by Lorenzo valid? Why?

Answer:

Yes, owing to the nationality principle embodied in Article 15, NCC which covers only Philippine nationals. Such policy covers foreign divorces which are valid in the Philippines even though obtained abroad, provided they are valid according to their national law. (*Van Dorn vs. Romillo, Jr.*, 139 SCRA 139). And since the man was no longer a Filipino citizen when he obtained the divorce, the former wife lost her right to inherit. (*Quita vs. CA*, 300 SCRA 406).

Effect of foreign divorce obtained while action for nullity of the marriage is pending.**Case:**

Roehr vs. Rodriguez, et al.
G.R. No. 142820, June 20, 2003
(Quisumbing, J.)

Facts:

Wolfgang O. Roehr, a German citizen married Carmen Rodriguez, a Filipina in 1980 in Germany. They begot two children. In 1996, Carmen filed an action for declaration of nullity of their marriage. A motion to dismiss was denied but in 1997 while a second motion to dismiss was pending, Wolfgang obtained a decree of divorce in Germany and granted parental custody over their children to him.

An order granting the Motion to Dismiss was issued because of the dissolution of the marriage. A motion was filed asking that the case be set for hearing for the purpose of determining the issues of custody of children and the distribution of their properties. It was

opposed on the ground that there was nothing to be done anymore as the marital tie of the spouses had already been severed by the divorce decree and that the decree has already been recognized by the court in its order. The lower Court issued an order partially setting aside the former order for the purpose of tackling the issues of property relations of the spouses as well as support and custody of their children. This order was questioned on the basis of the contention that the divorce decree obtained in Germany had already severed the marital relations of the parties, hence, nothing can be done anymore. Is the contention proper? Why?

Held:

No. In *Garcia v. Recio*, 366 SCRA 437 (2001), *Van Dorn v. Romillo, Jr.*, 139 SCRA 139 (1985) and *Llorente v. Court of Appeals*, 345 SCRA 592 (2000), it has been consistently held that a divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. Relevant to the present case is *Pilapil v. Ibay-Somera*, 174 SCRA 653 (1989), where the Court specifically recognized the validity of a divorce obtained by a German citizen in his country, the Federal Republic of Germany. It was held in *Pilapil* that a foreign divorce and its legal effects may be recognized in the Philippines insofar as respondent is concerned in view of the nationality principle in our civil law on the status of persons.

In this case, the divorce decree issued by the German court dated December 16, 1997 has not been challenged by either of the parties. In fact, save for the issue of parental custody, even the trial court recognized said decree to be valid and binding, thereby endowing private respondent the capacity to remarry. Thus, the present controversy mainly relates to the award of the custody of their two children, Carolynne and Alexandra Kristine, to petitioner.

As a general rule, divorce decrees obtained by foreigners in other countries are recognizable in our jurisdiction, but the legal effects thereof, *e.g.*, on custody, care and support of the children, must still be determined by our courts. Before our courts can give the effect of *res judicata* to a foreign judgment, such as the award of custody to petitioner by the German court, it must be shown that the parties opposed to the judgment had been given ample opportunity to do so on grounds allowed under Rule 39, Section 50 of the Rules of Court (now Rule 39, Section 48, 1997 Rules of Civil Procedure), to wit:

SEC. 50. Effect of foreign judgments. — The effect of a judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment is as follows:

(a) *In case of a judgment upon a specific thing, the judgment is conclusive upon the title to the thing;*

(b) *In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.*

It is essential that there should be an opportunity to challenge the foreign judgment, in order for the court in this jurisdiction to give effect to it. Our Rules of Court clearly provide that with respect to actions *in personam*, as distinguished from actions *in rem*, a foreign judgment merely constitutes *prima facie* evidence of the justness of the claim of a party and, as such, is subject to proof to the contrary.

In the present case, it cannot be said that private respondent was given the opportunity to challenge the judgment of the German court so that there is basis for declaring that judgment as *res judicata* with regard to the rights of petitioner to have parental custody of their two children. The proceedings in the German court were summary. As to what was the extent of private respondent's participation in the proceedings in the German court, the records remain unclear. The divorce decree itself states that neither has she commented on the proceedings nor has she given her opinion to the Social Services Office. Unlike petitioner who was represented by two lawyers, private respondent had no counsel to assist her in said proceedings. More importantly, the divorce judgment was issued to petitioner by virtue of the German Civil Code provision to the effect that when a couple lived separately for three years, the marriage is deemed irrefutably dissolved. The decree did not touch on the issue as to who the offending spouse was. Absent any finding that private respondent is unfit to obtain custody of the children, the trial court was correct in setting the issue for hearing to determine the issue of parental custody, care, support and education mindful of the best interests of the children. This is in consonance with the provisions in the Child and Youth Welfare Code that the child's welfare is always the paramount consideration in all questions concerning his care and custody.

On the matter of property relations, petitioner asserted that public respondent exceeded the bounds of its jurisdiction when it claimed cognizance of the issue concerning property relations between petitioner and private respondent. Private respondent herself has admitted in Par. 14 of her petition for declaration of nullity of marriage dated August 26, 1996 filed with the RTC of Makati, subject of this case, that: “petitioner and respondent have not acquired any conjugal or community property nor have they incurred any debts during the marriage.” Herein petitioner did not contest this averment. Basic is the rule that a court shall grant relief warranted by the allegations and the proof. Given the factual admission by the parties in their pleadings that there is no property to be accounted for, respondent judge has no basis to assert jurisdiction in this case to resolve a matter no longer deemed in controversy.

In sum, it can be said that respondent judge may proceed to determine the issue regarding the custody of the two children born of the union between petitioner and private respondent. Private respondent erred, however, in claiming cognizance to settle the matter of property relations of the parties, which is not an issue.

Foreign judgments contrary to public order, morals.

Litigants cannot compel the courts to approve of their own actions or permit the personal relations of the citizens of these Islands to be affected by decrees of divorce of foreign courts in a manner which our government believes is contrary to public order and good morals. (*Barreto vs. Gonzales*, 58 Phil. 67).

Article 16. Real property as well as personal property is subject to the law of the country where it is situated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found. (10a)

There is no dispute that real and personal properties are governed by the law of the place where they are situated. This is a restatement of the principle of *lex rei sitae*.

There are four aspects of succession which are governed by the law of the person whose succession is under consideration, and they are:

- (1) the order of succession;
- (2) the amount of successional rights;
- (3) the intrinsic validity of the will (Art. 16, New Civil Code); and
- (4) the legal capacity to succeed. (Art. 1039, New Civil Code).

Under the nationality principle, all these aspects of succession are governed by the national law of the person whose succession is under consideration.

Nationality theory applied.

Case:

Testate Estate of Bohanan vs. Bohanan, et al. 106 Phil. 997

Facts:

This is an appeal from the decision of the lower court dismissing the objections filed by the oppositors, the wife and the two children of the deceased, to the project of partition submitted by the executor, Phil. Trust Co., and approving the said project of partition.

The testator was born in Nebraska, had properties in California, and had a temporary, although long, residence in the Philippines. In his will executed in Manila, he stated that he had selected as his domicile and permanent residence, the State of Nevada, and therefore at the time of his death, he was a citizen of that state. In his will, he disposed so much of his properties in favor of his grandson, his brother and his sister, leaving only a small amount of legacy to his children and none to his wife. The same was questioned by the surviving wife and the surviving children regarding the validity of the testamentary provisions disposing of the estate, claiming that they have been deprived of their legitime under Philippine law, which is the law of the forum. With respect to the wife, a decree of divorce was issued between the testator and the wife after being married for 13 years; thereafter, the wife married another man whereby this marriage was subsisting at the time of the death of the testator.

Issue:

Whether or not the testamentary dispositions, especially those for the children, which are short of the legitimes given them by the Civil Code of the Philippines are VALID.

Held:

Article 10 of the Old Civil Code, now Article 16 of the New Civil Code, provides that the validity of testamentary dispositions are to be governed by the national law of the person whose succession is in question. In the case at bar, the testator was a citizen of the State of Nevada. Since the laws of said state allow the testator to dispose of all his property according to his will, his testamentary dispositions depriving his wife and children of what should be their legitimes under the laws of the Philippines, should be respected and the project of partition made in accordance with his testamentary dispositions should be approved.

Case:**Bellis vs. Bellis**
20 SCRA 358**Facts:**

Amos G. Bellis was a citizen and resident of Texas at the time of his death. Before he died, he had made two wills, one disposing of his Texas properties, the other disposing of his Philippine properties. In both wills, his recognized illegitimate children were not given anything. Texas has no conflict rule governing successional rights. Furthermore, under Texas Law, there are no compulsory heirs and therefore no legitimes. The illegitimate children opposed the wills on the ground that they have been deprived of their legitimes to which they should be entitled, if Philippine law were to apply.

Held:

Said children are not entitled to their legitimes for under Texas Law (which is the national law of the deceased), there are no legitimes. The *renvoi doctrine* cannot be applied. Said doctrine is usually pertinent where the decedent is a national of one country, and a domiciliary of another. A provision in a foreigner's will to the effect that his properties shall be distributed in accordance with Philippine law and not with his national law, is illegal and void for his national law, in this regard, cannot be ignored.

Note:

Under Article 16, New Civil Code, the order of succession, the amount of successional rights, and the intrinsic validity of the will shall be governed by the national law of the person whose succession is under consideration. Under Art. 1039, NCC, the capacity to succeed shall be governed by the national law of the decedent.

When the domiciliary theory applies.

In *Aznar vs. Garcia*, 7 SCRA 95, a citizen of California, USA, was domiciled in the Philippines. He died, survived by two (2) acknowledged natural children. In his will, he left an estate worth P500,000.00 to one of his children and P3,000.00 to the other. Under his national law, however, the disposition of his estate or any question as to the validity of testamentary provisions shall be governed by his domiciliary law. The child who was given only P3,000.00 questioned the validity of the disposition in favor of the other. The Supreme Court held for the child who was given P3,000.00 only. It was said that while Article 16 of the Civil Code states that the intrinsic validity of testamentary provisions shall be governed by the decedent's national law, nevertheless, the Civil Code of California declares that the decedent's domiciliary law shall govern. Hence, the question shall be referred back to the decedent's domicile.

Concept of renvoi.

Renvoi means referring back. Senator Salonga asked the following question on *renvoi*: When the conflicts rule of the forum refers a matter to a foreign law for decision, is the reference to the corresponding conflicts rule of the foreign law, or is the reference to the purely internal rules of the foreign system a case in *renvoi*? Justice Desiderio Jurado likewise gave an example of an application of the principle of *renvoi* as follows:

Example:

A and B, both Filipino citizens, are married. They have five (5) legitimate children. They are all living in California. A executed a will instituting B as his sole heir, thereby depriving the children of their shares in the estate. This cannot be done by A because it is violative of the order of succession, for the legitimate children are the first in the order of succession. And since the legitimate children are deprived and totally omitted in the will, it also

goes into the intrinsic validity of the will as there is preterition. (Art. 854, New Civil Code). It is also violative of the rule that governs the amount of successional rights of the legitimate children, since the law provides that their legitime is 1/2 of the estate, B, getting only a share equal to that of a legitimate child. (Art. 892, New Civil Code).

In all these circumstances, the national law of A governs, that even if American law says that A can give all his estate to anyone, still his national law would govern.

Article 17. 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.

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.

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. (11a)

Performance and enforcement.

While matters pertaining to the due execution of contracts are regulated according to the law of the place of their execution, on the other hand, matters connected with the performance of contracts are regulated by the law in force at the place of performance. Remedies, such as the bringing of suit, admissibility of evidence, and the statute of limitations, depend upon the law of the place where the action is brought. (Gov't. of Phil. vs. Frank, 13 Phil. 236).

The law is an application of the principle of *lex loci celebrationis*. If a Filipino executes a contract abroad, the forms and solemnities of the same may be governed by the law of the place where the same is executed.

Illustration:

A Filipino while in Hawaii executed a will instituting his heirs and disposing of his properties to them. There

were only two (2) witnesses to the will who did not sign the same in the presence of A and of one another. Instead, the will was signed in three (3) different places. Let us assume that the laws in Hawaii would allow the signing of the will not in the presence of the testator and the witnesses and still the will is valid under such laws. The will is valid in the Philippines because the solemnities of contracts or wills may be governed by the laws of the country where they are executed.

But if the will was executed before the Philippine consul of Hawaii, then, the forms and solemnities under Philippine law shall govern. In this case, there must be three (3) instrumental witnesses and that the will must be signed by the testator in the presence of the three (3) witnesses and the three witnesses must sign it in the presence of the testator and of one another, otherwise, the will is void.

Effects of laws, etc. on prohibitive laws concerning persons in the Philippines.

Article 17 of the Civil Code says that if there is a law or determination or judgment in a foreign country, the same shall not render ineffective prohibitive laws concerning persons, their property or acts of Filipinos.

Example:

A and B are Filipino citizens. They are married. While vacationing in Las Vegas, Nevada, they divorced each other. The divorce decree cannot be valid in the Philippines as it is contrary to public policy and morals. While it may be valid in Nevada, it is void in the Philippines and hence, it cannot render ineffective Philippine law that says that what governs the family rights and duties, status, condition and legal capacity of the Filipinos is Philippine law.

Or, if A and B would agree to separate properties extrajudicially and the agreement is valid in Nevada, that is void in the Philippines, because the spouses cannot have separation of properties during the marriage without judicial order. (Art. 134, Family Code).

Or, if A and B agree to maintain live-in partners, the agreement is void as it is contrary to morals. Even if the agreement is valid in Nevada, the same is void in the Philippines since it is contrary to morals.

Doctrine of *Lex Loci Contractus*.

If an airline ticket is purchased in the Philippines, and rewritten abroad, the liability of the airline company in case of breach the contract is governed by Philippine Law. This is the doctrine of *lex loci contractus*.

According to the doctrine, as a general rule, the law of the place where a contract is made or entered into governs with respect to its nature and validity, obligation and interpretation.

In *Zalamea vs. Court of Appeals*, 228 SCRA 23, the Court applied the doctrine of *lex loci contractus*. According to the doctrine, as a general rule, the law of the place where a contract is made and entered into governs with respect to its nature and validity, obligation and interpretation. This has been said to be the rule even though the place where the contract was made is different from the place where it is to be performed, and particularly so, if the place of the making and the place of performance are the same. Hence, the court should apply the law of the place where the airline ticket was issued, when the passengers are residents and nationals of the forum and the ticket is issued in such State by the defendant airline. (*United Airlines, Inc. vs. CA*, April 20, 2001, 357 SCRA 99).

Article 18. In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code. (16a)

Chapter 2

Human Relations

Article 19. 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.

Article 19 of the Civil Code is a statement of principle that supplements but does not supplant a specific provision of law. (*Capitle, et al. vs. Vda. de Gaban, et al.*, G.R. No. 146890, June 8, 2004).

Definition of Terms.

Right. Every well-grounded claim on others is called a right, and, since the social character of man gives the element of mutuality to each claim, every right conveys along with it the idea of obligation. (2 B.L.D., 2960).

Duty. A human action which is exactly conformable to the laws which requires us to obey them. A moral obligation or responsibility. It differs from a legal obligation, because a duty cannot always be enforced by the law; it is our duty, for example, to be temperate in eating, but we are under no legal obligation to be so; we ought to love our neighbors, but no law obliges us to love our neighbors. (1 B.L.D., 962).

Justice. The constant and perpetual disposition to render to every man his due. (Justinian, Inst. b. 1, tit. 1; Co. 2d Inst. 56.). The conformity of our actions and our will to the law. (Teullier, Droit Civ. Fr. Tit. prel. n. 5.).

Good Faith. An honest intention to abstain from taking any unconscientious advantage of another, even though the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious. (Wood v. Conrad, 2, S. D. 334, 50 M.W., 95.).

Coverage of the law.

The foregoing rule pervades the entire legal system, and renders it impossible that a person who suffers damage because another has violated some legal provision, should find himself without relief. (Report of the Code Commission, p. 39). It is a sound and just principle that where one wrongfully or negligently does an act which in its consequences is injurious to another, he is liable for the damage caused by such wrongful act. This rule applies to artificial, as well as to natural, persons. It is submitted that to warrant the recovery of damages in any case, there must be a right of action for a wrong inflicted by the defendant and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action. (Civil Code of the Phils., *Commentaries and Jurisprudence*, Alba and Garcia, 1950 ed., p. 52).

That is why, if the injury was self-inflicted, there can be no recovery of damages. It would be a case of damage without injury.

Necessity for the law.

It has been said that since law is the mode of regulating conduct by means of sanctions imposed by a politically organized society, and since law prescribes rather than describes, the codifiers, in formulating these new provisions have seen fit to indicate the range of allowable conduct among the citizens of the Philippines and they have done it in an imperative mode, form, and content. This imperative character it possesses by virtue of its sanctions, which are threats of consequences in case of disobedience. It is not, however, the normative aspect of this provision that gives it a unique character. It is the fact that the sanction or the punishment of these violations is applied exclusively by organized political government, for this draws the line of distinction between law on the one hand, and religion, morals, and customs, on the other.

There can be no definiteness and certainty of the intention of these provisions unless they are so written, for after all, the Latin maxim *lex scripta dura lex* holds true, unlike moral precepts which, if not written into the law, however sublime and noble in purpose, are nevertheless shifting and fluid, lacking in precision, definiteness and pains and penalties in case of violation. (Civil Code of the Phils., *Commentaries and Jurisprudence*, Garcia and Alba, 1950 ed., pp. 51-52).

Standards of Human Conduct are set forth by law.

In the exercise of a right and in the performance of an obligation, there are norms of conduct that a person must observe. It is not because a person invokes his rights that he can do anything, even to the prejudice and disadvantage of another. The same rule applies in case he performs his duties. Article 19 of the Civil Code, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are: (1) to act with justice; (2) to give everyone his due; (3) to observe honesty and good faith. The law, therefore, recognizes the primordial limitation on all rights: that in their exercise, the norms of human conduct set forth in Article 19, New Civil Code must be observed. For, a right although by itself legal because it is recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which

the wrongdoer must be held responsible. (Albenson Enterprises Corp., et al. vs. CA, et al., G.R. No. 88694, January 11, 1993).

In this case of Albenson Enterprises Corp., petitioners contended that the civil case filed was one for malicious prosecution. They asserted that the absence of malice on their part absolved them from any liability. On the other hand, private respondent contended that he anchored the case on Articles 19, 20 and 21 of the Civil Code. The Supreme Court, however, said that in which way it was founded, the petitioners are not liable. It justified the holding by saying that:

“Article 19, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one’s rights but also in the performance of one’s duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes the primordial limitation on all rights: that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. Although the requirements of each provision is different, these three (3) articles are all related to each other. As the eminent Civilist Senator Arturo Tolentino puts it: ‘With this article (Article 21), combined with Articles 19 and 20, the scope of our law on civil wrongs has been very greatly broadened; it has become much more supple and adaptable than the Anglo-American law on torts. It is now difficult to conceive of any malevolent exercise of a right which could not be checked by the application of these articles.’” (Tolentino, 1 Civil Code of the Philippines, 1974 ed.).

“There is, however, no hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked. The question of whether or not the principle of abuse of rights has been violated, resulting in damages under Articles 20 and 21 or other applicable provision of law, depends on the circumstances

of each case.” (Globe Mackay Cable and Radio Corporation vs. Court of Appeals, 176 SCRA 778 [1989]).

“The elements of an abuse of right under Article 19 are the following: (1) There is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another. Article 20 speaks of the general sanction for all other provisions of law which do not especially provide for their own sanction. (Tolentino, *supra*, p. 71). Thus, anyone who, whether willfully or negligently, in the exercise of his legal right or duty, causes damage to another, shall indemnify his victim for injuries suffered thereby. Article 21 deals with acts *contra bonos mores*, and has the following elements: 1) There is an act which is legal; 2) but which is contrary to morals, good custom, public order, or public policy; 3) and it is done with intent to injure.

“Thus, under any of these three (3) provisions of law, an act which causes injury to another may be made the basis for an award of damages.”

There is a common element under Articles 19 and 21, and that is, the act must be intentional. However, Article 20 does not distinguish, the act may be done either “willfully,” or “negligently.” The trial court as well as the respondent appellate court mistakenly lumped these three (3) articles together, and cited the same as the bases for the award of damages in the civil complaint filed against petitioners, thus:

“With the foregoing legal provisions (Articles 19, 20, and 21) in focus, there is not much difficulty in ascertaining the means by which appellants’ first assigned error should be resolved, given the admitted fact that when there was an attempt to collect the amount of P2,575.00, the defendants were explicitly warned that plaintiff Eugenio S. Baltao is not the Eugenio Baltao defendants had been dealing with. When the defendants nevertheless insisted and persisted in filing a case — a criminal case no less — against plaintiff, said defendants ran afoul of the legal provisions (Articles 19, 20, and 21 of the Civil Code) cited by the lower court and heretofore quoted.”

“Assuming, *arguendo*, that all the three (3) articles, together and not independently of each one, could be val-

idly made the bases for an award of damages based on the principle of 'abuse of right,' under the circumstances, we see no cogent reason for such an award of damages to be made in favor of private respondent."

"Certainly, petitioners could not be said to have violated the aforesaid principle of abuse of right. What prompted petitioners to file the case for violation of Batas Pambansa Bilang 22 against private respondent was their failure to collect the amount of P2,575.00 due on a bounced check which they honestly believed was issued to them by private respondent. Petitioners had conducted inquiries regarding the origin of the check, and yielded the following results: from the records of the Securities and Exchange Commission, it was discovered that the President of Guaranteed (the recipient of the unpaid mild steel plates), was one 'Eugenio S. Baltao'; an inquiry with the Ministry of Trade and Industry revealed that E.L. Woodworks, against whose account the check was drawn, was registered in the name of one 'Eugenio S. Baltao.'"

Case:

A complaint was filed seeking to compel the bank to pay the value of checks issued to her by Thomson as it refused to pay the same despite repeated directives of the drawer to recognize the check he issued. The bank filed a motion to dismiss alleging that the complaint failed to state a cause of action under Section 189 of the Negotiable Instruments Law, a check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies it. Is the contention correct? Why?

Held:

No.

The bank can be held liable for damages because it was not a suit on the value of the check itself, but for how it acted in relation to the claim for payment. The allegations in the complaint that the gross inaction of the bank on Thomson's instructions, as well as its evident failure to inform her of the reason are insouciance on its part. (Platinum Tours & Travel, Inc. vs. Panlilio, 411 SCRA 142 [2003]; Herrera vs. Bollos, 374 SCRA 107 [2002]).

The complaint was anchored on Article 19, NCC. The law speaks of the fundamental principle of law and human conduct that a 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. It sets the standard which may be observed not only in the exercise of one's right but also in the performance of one's duties. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But a right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. A person should be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith; but not when he acts with negligence or abuse. There is an abuse of right when it is exercised for the only purpose of prejudicing or injuring another. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another. (*HSBC vs. Catalan*, G.R. No. 159590; *HSBC International Trustee, Ltd. vs. Catalan*, G.R. No. 159591, October 18, 2004).

Case:

There was a contract whereby Valenzona was hired as coach of the Alaska Basketball Team in the PBA for a period of two (2) years. Paragraph 3 of the contract provided that "If at anytime during the contract, the Coach, in the sole opinion of the Corporation, fails to exhibit sufficient skill or competitive ability to coach the team, the Corporation may terminate this contract." During his stint as head coach, the team placed third in both Open and All Filipino PBA Conferences in 1988. He was later on served with notice that the management was terminating his services. But six (6) years thereafter, he filed a complaint for damages asking for payment of his compensation arising from the arbitrary and unilateral termination of his employment. The RTC dismissed the case for lack of cause of action, although he challenged paragraph 3 of the contract as lacking the element of mutuality. The RTC upheld the validity of the contract. On appeal, the CA reversed the decision holding that the complainant Valenzona was fully aware of entering into a bad bargain.

Is paragraph 3 of the contract is violative of the principle of mutuality of contracts? Explain.

Held:

The assailed condition clearly transgressed the principle of mutuality of contracts hence, it is null and void. It leaves the determination of whether Valenzona failed to exhibit sufficient skill or competitive ability to coach Alaska team solely to the opinion of GF Equity. Whether Valenzona indeed failed to exhibit the required skill or competitive ability depended exclusively on the judgment of GF Equity. In other words, GF Equity was given an unbridled prerogative to pre-terminate the contract irrespective of the soundness, fairness or reasonableness, or even lack of basis of its opinion.

To sustain the validity of the assailed paragraph would open the gate for arbitrarily and illegal dismissals, for void contractual stipulations would be used as justification therefor.

Q — Was there abuse of right in the pre-termination of the contract? Explain.

Held:

Yes. Since the pre-termination of the contract was anchored on an illegal ground, hence, contrary to law, and GF Equity negligently failed to provide legal basis for such pre-termination, *e.g.*, that Valenzona breached the contract by failing to discharge his duties thereunder, GF Equity failed to exercise in a legitimate manner its right to pre-terminate the contract, thereby abusing the right of Valenzona to thus entitle him to damages under Article 19 in relation to Article 20 of the Civil Code the latter of which provides that every person who, contrary to law, willfully or negligently causes damages to another, shall indemnify the latter for the same. (GF Equity, Inc. vs. Arturo Valenzona, G.R. No. 156841, June 30, 2005).

Exercise of right must be in good faith.

One standard laid down by law in the exercise of one's right is good faith, for no one has a license to injure the rights of others, even on the pretext of exercising one's rights. Good faith can be defined as an honest intention to abstain from taking any unconscientious advantage of another, even though the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious. (Wood vs. Conrad, 2, S.D. 334, 50 M.W., 95).

Case:**Velayo, etc. vs. Shell Co. of the Phils., et al.
L-7817, October 31, 1956****Facts:**

The CALI (Commercial Airlines, Inc.) knew it did not have sufficient assets to pay off its creditors who agreed that they would be contented with a *pro rata* division of the assets, including a C-54 plane, still in California. One of the creditors, the Shell Company, took advantage of the information and made a telegraphic assignment of its credit in favor of a sister Shell Company in the U.S., which then promptly attached the plane in California, thus depriving the other creditors of its value.

Question:

Can Shell Company in the Philippines be made liable to pay for damages to the other creditors?

Held:

Yes, because it did not show good faith and honesty, invoking – Article 19 of the New Civil Code, which provides that, “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.”

For every right, there is a right to be respected.

When one says that he has a right to a thing he means that it is right that he should have that thing. Under this rule of law, or rather under this rule of right, a man in the use of his right over the thing he owns or possesses should so act as not to do injustice to others and should exercise his right with due respect to others' rights observing at the same time honesty and keeping faith with his fellowmen. In the performance of this man's duties it should not be overlooked that in this complex world of affairs no force acts together apart from other forces because reaction and interaction are in constant operation. That being so and considering that duties rest mainly upon expediency while obligations poise upon justice, it follows that duties being partly related to public policy and partly related to private right should be governed both by the law of conscience and by the law of expedience. This simply means that strict legalism is

not alone the law; for there is beside it or above it the law of justice and equity. One, therefore, should, in the performance of his duties, strive to bring a measure of humanity into the law. (Civil Code of the Phils., *Commentaries and Jurisprudence*, Alba and Garcia, 1950 ed., pp. 50-51).

Principle of abuse of right.

It is beyond denial that a person has the right to exercise his rights, but in so doing, he must be mindful of the rights of other people. Hence, if he exercises his rights and causes damage to another, he can be liable for damages. An example is the right of Meralco to cut electric connections of people who do not pay their electric bills. In *Meralco vs. CA*, L-39019, January 22, 1988, the Supreme Court observed that Meralco cut the electric connections of one customer without complying with the 48-hour notice before doing so. The Supreme Court, in holding the electric company liable for damages, said that it must give a 48-hour notice to its customers before cutting the latter's electric supply even if they failed to pay their bills. Electricity becomes a necessity to most people, justifying the exercise by the State of its regulatory powers over the business of supplying electric service to the public. Before disconnecting service to the delinquent customers, prior written notice of at least 48 hours is required under PSC regulations. Failure to give such notice amounts to a tort. The Supreme Court further said that disconnection of electricity without prior notice constitutes breach of contract. It was said that:

“x x x petitioner's act in disconnecting respondent Ongsip's gas service without prior notice constitutes breach of contract amounting to an independent tort. The prematurity of the action is indicative of an intent to cause additional mental and moral suffering to private respondent. This is a clear violation of Article 21 of the Civil Code which provides that 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 damages. This is reiterated by paragraph 10 of Article 2219 of the Code. Moreover, the award of moral damages is sanctioned by Article 2220 which provides that 'willfull injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule

applies to breaches of contract where the defendant acted fraudulently or in bad faith.” (Manila Gas Corp. vs. CA, 100 SCRA 602).

Whether default in the payment of electric bills is a ground to defeat or nullify the claim for damages in case of disconnection of electric supply, the Supreme Court said:

“Likewise, we find no merit in petitioners’ contention that being in arrears in the payment of their bills, the private respondents are not entitled to moral damages under the doctrine that ‘he who comes to court in demand of equity, must come with clean hands.’ We rejected this argument in the Manila Gas Corporation case, *supra*, wherein we held that respondents’ default in the payment of his bills ‘cannot be utilized by petitioner to defeat or nullify the claim for damages.’ At most, this circumstance can be considered as a mitigating factor in ascertaining the amount of damages to which respondent x x x is entitled.”

Requirements for liability.

To be liable under the law, the following requisites must be met:

- (1) the party claiming damages must have sustained the loss;
- (2) the party against whom they are claimed must be chargeable or guilty of the wrong complained of;
- (3) the loss must be the natural and proximate consequence of the wrong;
- (4) the wrong complained of must be contrary to law and the act or omission causing the damage should either be willful or a direct or proximate result of negligence.

In the absence of compliance with the above requirements, it would result in no right of recovery for damages, or what is known as damage without injury.

In *SEA Com. Co., Inc. vs. CA, et al.*, G.R. No. 122823, November 25, 1999, 116 SCAD 198 (*J., Reyes*), SEACOM appointed JILL as the exclusive dealer of its farm machineries in Iloilo and Capiz. During the existence of the exclusive dealership agreement, it sold 24 units of machineries to a customer in Iloilo. Is it liable to JILL? State the basis of its liability. This question arose because the latter sued the former for damages.

The Supreme Court ruled in the affirmative because SEA Commercial Corporation, Inc., abused its right.

Under Art. 19, NCC, every person must, in the exercise of his rights and in the performance of his obligations, act with justice, give everyone his due and observe honesty and good faith.

When SEACOM directly dealt with a customer in Iloilo despite the exclusive dealership agreement, it acted in bad faith, thus, causing damage to JILL. SEACOM may not exercise its right unjustly, or in a manner that is not in keeping with honesty or good faith, as what it did, otherwise, it opens itself to liability for abuse of right.

Elements of abuse of right.

The elements of right under Art. 19 are the following: (1) the existence of a legal right or duty; (2) which is exercised in bad faith, and (3) for the sole intent of prejudicing or injuring another. Article 20 speaks of the general sanction for all other provisions of law which do not especially provide for their own sanction; while Article 21 deals with acts *contra bonus mores*, and has the following elements: (1) there is an act which is legal; (2) but which is contrary to morals, good custom, public order, or public policy; and (3) and it is done with intent to injure.

Verily then, malice or bad faith is at the core of Articles 19, 20 and 21. Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. Such must be substantiated by evidence.

In another case, however, a party was exonerated from liability as there was no adequate proof it was inspired by malice or bad faith. It was honestly convinced of the merits of its cause after it had undergone serious negotiations culminating in its formal submission of a draft contract. Settled is the rule that the adverse result of an action does not *per se* make the action wrongful and subject the actor to damages, for the law could not have meant to impose a penalty on the right to litigate. If damages result from a person's exercise of rights, it is *damnum absque injuria*. (*ABS-CBN vs. Republic Broadcasting Corporation, et al.*, G.R. No. 128690, January 21, 1999, 102 SCAD 459).

Abuse of right; test.

In *Barons Marketing Corp. vs. CA, et al.*, G.R. No. 126486, February 9, 1998, 91 SCAD 509, the petitioner and private respon-

dent had business transactions. When the obligation became due and demandable, the creditor-plaintiff demanded full payment, but the debtor offered to pay on installment basis which the creditor refused to accept. In his action for damages on the ground of abuse of right, the debtor contended that the creditor abused its right when it refused to accept the offer to pay on installment. Whether there is abuse of right or not.

Held:

No, because the creditor's right to institute action for collection and claim full payment is beyond cavil. (*Melendrez vs. Lavarias*, 9 SCRA 548). In fact, the creditor cannot be compelled partially to receive the prestation in which the obligation consists unless there is an express stipulation to that effect. Neither may the debtor be required to make partial payment. (Art. 1248, NCC). In short, prestation must be performed in one act, not in part.

Article 19 of the Civil Code prescribes a primordial limitation on all rights by setting certain standards that must be observed in the exercise thereof. (*Globe Mackay Cable and Radio Corp. vs. CA*, 176 SCRA 778).

There is no abuse of right if a creditor refuses to accept partial payment. To constitute an abuse of right, the defendant must act with bad faith to prejudice the plaintiff. Citing *Tolentino*, the Supreme Court said:

“Modern jurisprudence does not permit acts which, although not unlawful, are anti-social. There is undoubtedly an abuse of right when it is exercised for the only purpose of prejudicing or injuring another. When the objective of the actor is illegitimate, the illicit act cannot be concealed under the guise of exercising a right. The principle does not permit acts which, without utility or legitimate purpose cause damage to another, because they violate the concept of social solidarity which considers law as rational and just. Hence, every abnormal exercise of a right, contrary to its socio-economic purpose, is an abuse that will give rise to liability. The exercise of a right must be in accordance with the purpose for which it was established, and must not be with the intention to injure another. Ultimately, however, and in practice, courts, in the sound exercise of their discretion, will have to determine all the facts and circumstances when the exercise of a right is unjust, or when there has been an abuse of right.”

The question, therefore, is whether the creditor intended to prejudice or injure the debtor when it rejected his offer and filed the action for collection.

No. It is an elementary rule in this jurisdiction that good faith is presumed and that the burden of proving bad faith rests upon the party alleging the same. (*Ford Phils. vs. CA*, G.R. No. 99039, February 3, 1997, 78 SCAD 689).

Since there was no abuse of right, the creditor cannot be liable for damages.

Public officer may be liable for his wrongdoing under Article 19.

The occupancy of a public office is not a license or a justification to do wrong. For in fact, a public office is a public trust. Hence, it has been said in *Chavez vs. Sandiganbayan* that the occupancy of a high public office cannot be used as a cloak against wrongdoing; hence, the Supreme Court said that a public officer can be sued in his individual capacity for his wrongdoing. In *Shauf vs. CA*, G.R. No. 90314, November 27, 1990, it was said that the doctrine of immunity from suit will not apply and may not be invoked where the public official is sued in his private and personal capacity as an ordinary citizen. A public official may be liable in his personal private capacity for whatever damages he may have caused by his act done with malice and in bad faith, or beyond the scope of his authority or jurisdiction. In *Meneses vs. CA, et al.*, 62 SCAD 660, 246 SCRA 162 (July 14, 1995), a public officer was held liable for damages in his private capacity. Justifying the ruling, the Supreme Court said that a public official is by law not immune from damages in his personal capacity for acts done in bad faith. (*Vidad vs. RTC of Negros Oriental, Branch 42*, 45 SCAD 371, 227 SCRA 271).

Civil liability despite acquittal; bad faith of defendant.

In *David Llorente vs. Sandiganbayan, et al.*, G.R. No. 85464, October 3, 1991, Atty. Llorente disallowed the clearance of one applicant, but approved the clearances of two (2) others, although they were equally situated. He was sued for violation of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019, Sec. 3[e]), for having wilfully and unlawfully refused to issue clearance to complainant Herminigildo Curio, resulting in his deprivation to receive his gratuity benefits, he, having been forced to resign, and secure employ-

ment with other offices to his damage and prejudice and that of public service. He was acquitted by the SB on the ground that there was lack of evidence of bad faith on his part, but he was guilty of abuse of right and as a public officer, he was liable for damages suffered by the aggrieved party (Art. 27), hence, this petition.

Held:

One of the elements of Sec. 3(e) of R.A. No. 3019 is that the officer must have acted with evident bad faith. Petitioner did not really act with evident bad faith because he was merely acting within the bounds of the law in refusing to issue clearance to Curio although the practice was that the clearance was approved, and then the amount of the unsettled obligation was deducted from the gratuity benefits of the employee. But he acted with bad faith, for which he must be held liable for damages. He had no valid reason to “go legal” all of a sudden with respect to Mr. Curio, since he had cleared three employees who, as the Sandiganbayan found, “were all similarly circumstanced in that they all had pending obligations when, their clearances were filed for consideration, warranting similar official action. He unjustly discriminated against Mr. Curio.

It is the essence of Article 19 of the Civil Code, under which the petitioner was made to pay damages, together with Article 27, that the performance of duty be done with justice and good faith. In the case of *Velayo vs. Shell Co. of the Philippines*, 120 Phil. 187, the defendant was held liable under Article 19 for disposing of its property — a perfectly legal act — in order to escape the reach of a creditor. In two fairly more recent cases, *Sevilla vs. Court of Appeals* (160 SCRA 171) and *Valenzuela vs. Court of Appeals* (191 SCRA 1), it was held that a principal is liable under Article 19 in terminating the agency — again, a legal act — when terminating the agency would deprive the agent of his legitimate business.

Case:**Globe Mackay Cable & Radio Corp. vs. CA, et al.
G.R. No. 81262, August 25, 1989****Facts:**

Restituto Tobias was employed by petitioner as purchasing agent and administrative assistant to the engineering operations manager. Fictitious purchases were discovered and the same were attributed

to Tobias. Hendry, the Executive Vice-President and General Manager, confronted him by stating that he was the number one suspect and ordered him to take a one week leave, not to communicate with the office, to leave his table drawers open, and to leave the office keys.

When he returned to work, Hendry again went to him and called him a “crook” and a “swindler.” He was ordered to take a lie detector test. He was also ordered to submit specimen signatures for examination by the police. Examinations were conducted, but they were proven to be negative. When a private investigator was hired, he reported that Tobias was guilty but recommended further investigation. He was subsequently suspended. In spite of the reports, Tobias was sued for estafa thru falsification of commercial documents, only to be amended to estafa. All the six (6) criminal cases were dismissed. When he was terminated, he applied for a job with Retelco, but Hendry without Retelco asking for it, wrote a letter to the latter stating that Tobias was dismissed by Globe Mackay due to dishonesty.

Tobias filed a case of damages anchored on alleged unlawful, malicious, oppressive and abusive acts of petitioners. The lower court rendered judgment in his favor. The Court of Appeals affirmed the judgment *in toto*, hence, this appeal.

Petitioners contended that they cannot be liable for damages in the lawful exercise of their right to dismiss the respondent.

Respondent contended that because of the abusive manner in dismissing him and the inhuman treatment he got from them, they are liable for damages. Rule on the contentions.

Held:

Under Article 19, NCC, 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.

This article, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one’s rights but also in the performance of one’s duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise the norms of human conduct set forth in Article 19 must be observed. A right though by itself legal because recognized or granted by law as such, may nevertheless become the

source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible.

While Article 19 of the New Civil Code does not provide for the remedy of an aggrieved party, an action may be based on Article 20 which provides that every person who contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

So that even if the dismissal of Tobias was an exercise of Globe's right, Article 21, New Civil Code also provides for a remedy. It provides:

“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.”

Firmness and the resolve to uncover the truth would also be expected from such employer. But the high-handed treatment accorded Tobias by petitioners was certainly uncalled for. The imputation of guilt without basis and the pattern of harassment transgressed the standards of human conduct set forth in Article 19, New Civil Code. The right of the employer to dismiss an employee should not be confused with the manner in which the right is exercised and the effects flowing therefrom. If the dismissal is done abusively, then the employer is liable for damages to the employee. (*Quisaba vs. Sta. Ines-Melale Veneer and Plywood, Inc.*, G.R. No. L-38088, August 30, 1974, 58 SCRA 771). The circumstances in this case clearly indicate that petitioners failed to exercise in a legitimate manner their right to dismiss Tobias, hence, they are liable for damages under Article 21, New Civil Code.

Calling Tobias a “crook” and a “swindler” as well as saying “You Filipinos cannot be trusted”; the sending of a letter to Retelco stating that Tobias was dismissed due to dishonesty were tortious acts committed by Hendry and Globe Mackay. They are therefore liable under Article 2176, New Civil Code.

Abuse of Right.

If a tenant has failed to pay his rentals, the landlord cannot padlock the premises because nobody should take the law into his

own hands. Every person must, in the exercise of his right, act with justice, give everyone his due and observe honesty and good faith. (Article 19, New Civil Code). This is actually an abuse of right which the law abhors. Hence, in *Velayo vs. Shell*, 100 Phil. 186, the Supreme Court said that if a group of creditors agreed to share the proceeds of the sale of a property of an insolvent debtor, but upon knowing the identity of such property, a creditor filed a suit and attached the same, he is liable pursuant to Article 19 of the New Civil Code. He did not exercise his right in good faith.

It has been held that if an employer retrenches his employees and later on hires other persons to perform the same duties as those retrenched, he can be held liable for damages. Retrenchment to prevent losses is concededly a just cause for termination of employment and the decision to resort to such move or not is a management prerogative. However, a person must, in the exercise of his rights and performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. So that if the termination of employees was done in bad faith, as when, after the termination of employees, another set of employees are hired, the employer can be held liable for damages under Article 19, New Civil Code. (AHS Phil. Employees Union vs. NLRC, et al., G.R. No. L-73721, March 30, 1987).

Case:

**Relosa, et al. vs. Pellosis, et al.
G.R. No. 138964, August 9, 2001**

Facts:

A lease contract was entered into where the lessee has been in possession of the premises for more than 20 years. The lessee constructed a house on the land leased. The lessor sold the land to another who after obtaining a title, filed a petition for condemnation of the house. After due hearing, the Office of the Building Official issued a resolution ordering the demolition of the house of the lessee. She was served with a copy of the resolution on December 7, 1989 and the following day, the new owner hired workers to commence the demolition. It was stopped due to the intervention of police officers, but during the pendency of the appeal, she again hired workers to demolish the house. An action for damages was filed but it was dismissed. The CA reversed the order and made the defendant liable

for damages. On appeal, it was contended that she cannot be made liable because the order of condemnation was eventually upheld by the Department of Public Works where the house was considered dangerous and could be abated to avoid danger to the public. In holding the defendant liable for damages, the Supreme Court —

Held:

The defendant is liable for damages because she abused her right. Under the law, 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. (Article 19, NCC). This provision in our law is not just a declaration of principle for it can in itself constitute, when unduly ignored or violated, a valid source of a cause of action or defense.

It is true that there was a condemnation order which was eventually affirmed by the Department of Public Works, but five (5) days after the defendant received a copy of the order which has not yet become final and executory, she caused the precipitate demolition of the plaintiff's house. The fact that the order was eventually affirmed by the Department is of no moment. The act of obtaining an order of demolition is not condemnable but implementing it unmindful of the plaintiff's right to contest is utterly indefensible.

A right is a power, privilege, or immunity guaranteed under a constitution, statute or decisional law, or recognized as a result of long usage (Black's Law Dictionary, 6th Ed., p. 1324), constitutive of a legally enforceable claim of one person against another.

The defendant might verily be the owner of the land, with the right to enjoy (Article 428, NCC), and to exclude any person from the enjoyment and disposal thereof (Article 429, NCC), but the exercise of these rights is not without limitations. The abuse of rights rule established in Article 19 of the Civil Code requires every person to act with justice, to give everyone his due, and to observe honesty and good faith. (Albenson Enterprises Corporation vs. CA, 217 SCRA 16). When a right is exercised in a manner which discards these norms resulting in damage to another, a legal wrong is committed for which the actor can be held accountable. In this instance, the issue is not so much about the existence of the right or validity of the order of demolition as the question of whether or not petitioners have acted in conformity with, and not in disregard of, the standards set by Article 19 of the Civil Code.

Lawyer was held liable for abuse of right.

Case:

Amonoy vs. Sps. Jose Gutierrez and Angela Fornilda G.R. No. 140420, February 15, 2001

Facts:

There was a special proceeding for the settlement of the estate of the deceased Julio Cantolos. The petitioner was the counsel for the respondents. His attorney's fees were secured by a mortgage over two lots adjudicated to the clients. After the court declared the proceedings closed, the attorney's fees were not paid, hence, there was foreclosure of the mortgage. The properties were sold at public auction where petitioner was the highest bidder. Respondents filed a suit to annul the judgment but it was dismissed, hence, a writ of possession over the lots was issued and upon motion, orders of demolition of the improvements were issued. In the meantime, the Supreme Court in *Fornilda vs. Br. 164, RTC*, G.R. No. 72306, decided nullifying the orders of demolition, but by that time, the respondents' house has already been destroyed, hence, the respondents filed a suit for damages against petitioner which was dismissed by the RTC but which was reversed by the CA holding him liable for damages. Petitioner contended on appeal that he is not liable because he was merely acting in accordance with the Writ of Demolition issued by the RTC. In short, he invoked the principle of *damnum absque injuria*.

Held:

The petitioner is liable for damages, because there was an 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.

Although the acts of petitioner may have been legally justified at the outset, their continuation after the issuance of the TRO amounted to an insidious abuse of his right. Indubitably, his actions were tainted with bad faith. Had he not insisted on completing the demolition, respondents would not have suffered the loss that engendered the suit before the RTC. Verily, his act constituted not only an abuse of a right, but an invalid exercise of a right that had been suspended when he received the TRO from the Court on June 4, 1986.

By then, he was no longer entitled to proceed with the demolition, hence, he is liable for damages.

The exercise of a right ends when the right disappears and it disappears when it is abused, especially to the prejudice of others. The mask of a right without the spirit of justice which gives it life, is repugnant to the modern concept of social law. It cannot be said that a person exercises a right when he unnecessarily prejudices another. Over and above the specific precepts of positive law are the supreme norms of justice; and he who violates them violates the law. For this reason, it is not permissible to abuse one's rights to prejudice others. (*Amonoy vs. Sps. Jose Gutierrez and Angela Fornilda*, G.R. No. 140421, February 15, 2001).

Petitioner cannot invoke the principle of *damnum absque injuria*

Petitioner cannot invoke *damnum absque injuria*, a principle premised on the valid exercise of a right. (*Globe Mackay Cable and Radio Corp. vs. CA*, 176 SCRA 778). Anything less or beyond such exercise will not give rise to the legal protection that the principle accords. And when damage or prejudice to another is occasioned thereby, liability cannot be obscured, much less abated.

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

The principle in Article 20 of the New Civil Code is founded on the basic rule that every person who is criminally liable shall also be civilly liable. (Art. 100, RPC). This is true whether the act is intentional or unintentional as when a person kills another or when a person is hit by a vehicle driven by another without the intention of hitting the victim. It is implemented specifically by Article 2176 of the Civil Code which says that whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. In *Banal vs. Tadeo, Jr.*, G.R. Nos. 78911-25, December 11, 1987, the Supreme Court held that regardless of whether or not a special law so provides, indemnification of the offended party may be on account of the damage, loss or injury directly suffered as a consequence of the wrongful act of another. The indemnity which a person is sentenced to pay forms an integral part of the penalty imposed by law for the commission of the crime.

Case:**Occena vs. Icamina
G.R. No. 82146, January 22, 1990****Facts:**

Respondent was found guilty of slight oral defamation and sentenced to a fine of P50.00, with subsidiary imprisonment in case of insolvency, but no civil liability arising from the felonious act of the accused was adjudged.

Held:

This is erroneous. As a general rule, a person who is found to be criminally liable offends two (2) entities: the state or society in which he lives and the individual.

Case:**Banal vs. Tadeo, Jr.
156 SCRA 325****Facts:**

Fifteen separate informations for violation of B.P. Blg. 22 were filed against respondent Rosario Claudio, to which she pleaded not guilty upon arraignment.

The respondent Court issued an order rejecting the appearance of Atty. Bustos as private prosecutor on the ground that the charge is for violation of B.P. Blg. 22 which does not provide for any civil liability or indemnity and hence, it is not a crime against property but public order. The respondent argued that it is the state and the public that are the principal complainants and, therefore, no civil indemnity is provided for by B.P. Blg. 22 for which a private party or prosecutor may intervene.

On the other hand, the petitioner, relying on the legal axiom that "Every man criminally liable is also civilly liable," contended that indemnity may be recovered from the offender regardless of whether or not B.P. Blg. 22 so provides.

Held:

Every person who contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

What gives rise to the civil liability is really the obligation and the moral duty of everyone to repair or make whole the damage caused to another by reason of his own act or omission, done intentionally or negligently. Regardless, therefore, of whether or not a special law so provides, indemnification of the offended party may be had on account of the damage, or loss or injury directly suffered.

In the aforecited case of *Banal vs. Tadeo, Jr.*, the Supreme Court cited the basis of civil liability arising from crime and said:

“Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that ‘Every man criminally liable is also civilly liable.’ (Art. 100, The Revised Penal Code). Underlying this legal principle is the traditional theory that when a person commits a crime he offends two entities namely: (1) the society in which he lives in or the political entity called the State whose law he had violated; and (2) the individual member of that society whose person, right, honor, chastity or property was actually or directly injured or damaged by the same punishable act or omission. However, this rather broad and general provision is among the most complex and controversial topics in criminal procedure. It can be misleading in its implications especially where the same act or omission may be treated as a crime in one instance and as a tort in another or where the law allows a separate civil action to proceed independently of the course of the criminal prosecution with which it is intimately intertwined. Many legal scholars treat as a misconception or fallacy the generally accepted notion that the civil liability actually arises from the crime when, in the ultimate analysis, it does not. While an act or omission is felonious because it is punishable by law, it gives rise to civil liability not so much because it is a crime but because it caused damage to another. Viewing things pragmatically, we can readily see that what gives rise to the civil liability is really the obligation and the moral duty of everyone to repair or make whole the damage caused to another by reason of his own act or omission, done intentionally or negligently, whether or not the same be punishable by law. In other words, criminal liability will give rise to civil liability only if the same felonious act or omission results in damage or injury to another and is the direct and proximate cause

thereof. Damage or injury to another is evidently the foundation of a civil action. Such is not the case in criminal actions for, to be criminally liable, it is enough that the act or omission complained of is punishable, regardless of whether or not a special law so provides, indemnification of the offended party may be had on account of the damage, loss or injury directly suffered as a consequence of the wrongful act of another. The indemnity which a person is sentenced to pay forms an integral part of the penalty imposed by law for the commission of a crime. (Quemuel vs. Court of Appeals, 22 SCRA 44, citing Bagtas vs. Director of Prisons, 84 Phil. 692). Every crime gives rise to a penal or criminal action for the punishment of the guilty party, and also to civil action for the restitution of the thing, repair of the damage, and indemnification for the losses.”

The private party who suffered the offenses committed cannot be disregarded. This is so because of the private interest of the offended party, hence, the Supreme Court explained that:

“Indeed, one cannot disregard the private party in the case at bar who suffered the offenses committed against her. Not only the State but the petitioner too is entitled to relief as a member of the public which the law seeks to protect. She was assured that the checks were good when she parted with money, property or services. She suffered with the State when the checks bounced. In *Lozano vs. Hon. Martinez* (G.R. No. 63419, December 18, 1986) and the cases consolidated therewith, we held that: ‘The effects of a worthless check transcend the private interests of the parties directly involved in the transaction and touch the interests of the community at large.’ Yet, we too recognized the wrong done to the private party defrauded when we stated therein that ‘the mischief it creates is not only a wrong to the payee or the holder, but also an injury to the public.’ Civil liability to the offended private party cannot thus be denied. The payee of the check is entitled to receive the payment of money for which the worthless check was issued. Having been caused the damage, she is entitled to recompense.”

Case:**University of the East vs. Jader
G.R. No. 132344, February 7, 2000****Facts:**

A suit for damages was filed against UE when he was not able to take the 1988 bar examinations arising from the school's negligence. He was included in the list of candidates for graduation even before verifying the result of his removal examination. He was informed later that he failed. The school contended that it never led him to believe that he completed the requirements for a Bachelor of Laws degree when his name was included in the tentative list of graduating students. The trial court held the school liable for damages. It was affirmed with modification by the CA. On appeal, the school contended that it had no liability considering that the student's negligence in failing to verify from his professor the result of his removal examination was the proximate and immediate cause of the alleged damages. On appeal the Supreme Court

Held:

The appeal is without merit.

When a student is enrolled in any educational or learning institution, a contract of education is entered into between said institution and the student. The professors, teachers or instructors hired by the school are considered merely as agents and administrators tasked to perform the school's commitment under the contract. Since the contracting parties are the school and the student, the latter is not duty-bound to deal with the former's agents, such as the professors with respect to the status or result of his grades, although nothing prevents either professors or students from sharing with each other such information. The Court takes judicial notice of the traditional practice in educational institutions wherein the professor directly furnishes his/her students their grades. It is the contractual obligation of the school to timely inform and furnish sufficient notice and information to each and every student as to whether he or she had already complied with all the requirements for the conferment of a degree or whether they would be included among those who will graduate. Although commencement exercises are but a formal ceremony, it nonetheless is not an ordinary occasion, since such ceremony is the educational institution's way of announcing to the whole

world that the students included in the list of those who will be conferred a degree during baccalaureate ceremony have satisfied all the requirements for such degree. Prior or subsequent to the ceremony, the school had the obligation to promptly inform the student of any problem involving the latter's grades and performance and, also, most importantly, of the procedures to remedy the same.

The school, in belatedly informing the student of the result of the removal examination, particularly at a time when he had already commenced preparing for the bar exams, cannot be said to have acted in good faith. Absence of good faith must be sufficiently established for a successful prosecution by the aggrieved party in a suit for abuse of right under Article 19 of the Civil Code. Good faith connotes an honest intention to abstain from taking undue advantage of another, even though the forms and technicalities of the law, together with the absence of all information or belief of facts, would render the transaction unconscientious. It is the school that has access to those information and it is only the school that can compel its professors to act and comply with its rules, regulations and policies with respect to the computation and the prompt submission of grades. Students do not exercise control, much less influence, over the way an educational institution should run its affairs, particularly in disciplining its professors and teachers and ensuring their compliance with the school's rules and orders. Being the party that hired them, it is the school that exercises exclusive control over the professors with respect to the submission of reports involving the students' standing. Exclusive control means that no other person or entity had control over the instrumentality which caused the damage or injury.

The college dean is the senior officer responsible for the operation of an academic program, enforcement of rules and regulations, and the supervision of faculty and student services. He must see to it that his own professors and teachers, regardless of their status or position outside of the university, must comply with the rules set by the latter. The negligent act of a professor who fails to observe the rules of the school, for instance by not promptly submitting a student's grade, is not only imputable to the professor but is an act of the school, being his employer.

Considering further, that the institution of learning involved herein is a university which is engaged in legal education, it should have practiced what it inculcates in its students, more specifically the principle of good dealings enshrined in Articles 19 and 20 of the Civil Code which state:

“Art. 19. 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.”

“Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.”

Article 19 was intended to expand the concept of torts by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to provide specifically in statutory law. In civilized society, men must be able to assume that others will do them no intended injury — that others will commit no internal aggressions upon them; that their fellowmen, when they act affirmatively will do so with due care which the ordinary understanding and moral sense of the community exacts and that those with whom they deal in the general course of society will act in good faith. The ultimate thing in the theory of liability is justifiable reliance under conditions of civilized society. Schools and professors cannot just take students for granted and be indifferent to them, for without the latter, the former are useless.

Educational institutions are duty-bound to inform the students of their academic status and not wait for the latter to inquire from the former. The conscious indifference of a person to the rights or welfare of the person/persons who may be affected by his act or omission can support a claim for damages. Want of care to the conscious disregard of civil obligations coupled with a conscious knowledge of the cause naturally calculated to produce them would make the erring party liable. Petitioner ought to have known that time was of the essence in the performance of its obligations to inform respondent of his grade. It cannot feign ignorance that respondent will not prepare himself for the bar exams since that is precisely the immediate concern after graduation of an LL.B. graduate. It failed to act seasonably. Petitioner cannot just give out its student's grades at any time because a student has to comply with certain deadlines set by the Supreme Court on the submission of requirements for taking the bar. Petitioner's liability arose from its failure to promptly inform respondent and in misleading the latter into believing that he had satisfied all requirements for the course.

Petitioner cannot pass on its blame to the professors to justify its own negligence that led to the delayed relay of information to respondent. When one of two innocent parties must suffer, he through

whose agency the loss occurred must bear it. The modern tendency is to grant indemnity for damages in cases where there is abuse of right, even when the act is not illicit. If mere fault or negligence in one's acts can make him liable for damages for injury caused thereby, with more reason should abuse or bad faith make him liable. A person should be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith, but not when he acts with negligence or abuse.

Role of the Student.

However, while petitioner was guilty of negligence and thus liable to respondent for the latter's actual damages, respondent should not have been awarded moral damages. The respondent did not suffer shock, trauma and pain when he was informed that he could not graduate and will not be allowed to take the bar examinations. At the very least, it behooved on respondent to verify for himself whether he has completed all necessary requirements to be eligible for the bar examinations. As senior law student, respondent should have been responsible enough to ensure that all his affairs, specifically those pertaining to his academic achievement, are in order. Given these considerations, respondent could not have suffered untold embarrassment in attending the graduation rites, enrolling in the bar review classes and not being able to take the bar exams. If respondent was indeed humiliated by his failure to take the bar, he brought this upon himself by not verifying if he has satisfied all the requirements including his school records, before preparing himself for the bar examinations does not only entail a mental preparation on the subjects thereof; there are also prerequisites or documentation and submission of requirements which the prospective examinee must meet.

When Meralco may cut electric connection.

Case:

**Sps. Quisumbing vs. Meralco
G.R. No. 142943, April 3, 2002**

Facts:

An action for damages was filed by the plaintiffs alleging that defendant acted capriciously and in a malevolent manner in discon-

necting their power supply which was done without due process and without due regard for their rights, feelings, peace of mind, social and business reputation.

On the other hand, it was shown by defendant that there was an inspection of their meter with the consent of the owners and the inspection was witnessed by their secretary. It was found to be tampered, hence, it was brought to the laboratory for examination after it was detached. It was found out that it was tampered but it was reconnected later. Hence, they were asked to pay P178,875.01 representing the differential billing. The RTC held that the plaintiffs should have been given time to dispute the alleged tampering and held the defendant liable. The CA overturned the RTC decision holding that the defendant acted in good faith when it disconnected the electric service. Before the Supreme Court, the basic issue raised was:

Whether Meralco observed the requisites of law when it disconnected the electrical supply of the plaintiffs.

Held:

No. Under the law, the Manila Electric Company (Meralco) may immediately disconnect electric service on the ground of alleged meter tampering, but only if the discovery of the cause is personally witnessed and attested to by an officer of the law or by a duly authorized representative of the Energy Regulatory Board. If there is no government representative, the *prima facie* authority to disconnect granted to Meralco by R.A. 7832 cannot apply.

Meralco cannot find solace in the fact that petitioners' secretary was present at the time the inspection was made. The law clearly states that for the *prima facie* evidence to apply, the discovery "must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB). Had the law intended the presence of the owner or his/her representative to suffice, then it should have said so. Embedded in our jurisprudence is the rule that courts may not construe a statute that is free from doubt. Where the law is clear and unambiguous, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed. (*Resins, Inc. vs. Auditor General*, 25 SCRA 754).

The presence of government agents who may authorize immediate disconnection goes into the essence of due process. Meralco cannot be the prosecutor and judge in imposing the penalty of dis-

connection due to alleged meter tampering. That would not sit well in a democratic society. After all Meralco is a monopoly that derives its power from the government. Clothing it with unilateral authority to disconnect would be equivalent to giving it a license to tyrannize its helpless customers.

Meralco cannot rely on the contractual right to disconnect if there is non-payment of bills.

Meralco cannot rely on its contractual right to disconnect, which has requisites before disconnection may be made. An adjusted bill shall be prepared, and only upon failure to pay may the company disconnect or discontinue service. This is also true in regard to the provisions of Revised Order No. 1 of the former Public Service Commission which requires a 48-hour written notice before a disconnection may be justified. There must be compliance with these rules.

Liability even in case of acquittal.

A person who committed an offense may be liable criminally and civilly. This is so because of the twin responsibilities of an accused. However, if he is acquitted and the acquittal is beyond reasonable doubt, he can still be held civilly liable. The principle is based on Article 100 of the Revised Penal Code which states that, every person criminally liable for a felony is also civilly liable. The rule, however, is not absolute. While civil liability accompanies criminal liability, generally, by express provision of the penal law there may be civil liability incurred by the performance of a wrongful act even when the perpetrator is exempt from criminal punishment, like those governed by the Revised Penal Code. (U.S. vs. Baggay, 20 Phil. 142). Those governed by Article 332 of the Revised Penal Code have no criminal liability but they may be civilly liable. There are also offenses, which by their very nature, civil liability does not result or attach by their commission like the *mala prohibita* cases, examples of which are illegal possession of firearms, ammunitions and explosives; crimes against national security like treason, violation of neutrality, rebellion; and crimes against public order like evasion of service of sentence.

The liability of an accused even in case of acquittal is justified by the fact that aside from crimes, there are other sources of obligations like quasi-delicts, contracts, law and quasi-contracts. (Art. 1157, New Civil Code). Furthermore, there is a difference between the quantum of evidence in proving the criminal liability of an accused,

that is proof beyond reasonable doubt as distinguished from the mere preponderance of evidence in proving the civil liability of the defendant. The evidence presented might have been insufficient to prove the guilt of the accused, but it may be preponderant enough to establish the civil liability of the defendant.

Case:

**Castro, et al. vs. Mendoza, et al.
 44 SCAD 995, 226 SCRA 611**

Facts:

Pio Castro purchased construction materials from Victor Felipe on several occasions. Deliveries were made, but there were no payments each time deliveries were made. Demands were made for the payment until Haniel Castro, son of Pio, issued seven (7) checks in payment of such purchases. The checks bounced when presented for payment but despite demands, the Castros did not pay, hence, the filing of an estafa case against the Castros. The accused were convicted, hence, they appealed, contending that the factual settings gave rise to a civil, not criminal liability.

Held:

The contention of the accused is correct. Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Republic Act No. 4885, for which the petitioners have been charged and convicted, penalizes estafa when committed, among other things:

“2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x x x x x x

“(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. x x x.”

The essential requirements of the above offense are that: (1) a check is drawn or postdated in payment of an obligation contracted at the time the check was issued; (2) there are no funds sufficient to cover the check; and (3) the payee sustains damage thereby.

In *People vs. Sabio, et al.*, G.R. No. L-45490; *Tan Tao Liap vs. Court of Appeals*, G.R. No. L-45711; and *Lagua vs. Cusi, Jr.*, G.R. No. L-42971, 86 SCRA 568 (1978), jointly decided by this Court *en banc*, reiterated in *People vs. Tugbang*, 196 SCRA 341 (1991), we held:

“x x x (W)hat is significant to note is that the time or occasion for the commission of the false pretense or fraudulent act has not at all been changed by the amendment (R.A. No. 4885). The false pretense or fraudulent act must be executed prior to or simultaneously with the commission of the fraud. Thus, under Article 315, paragraph 2(d) of the Revised Penal Code, as amended by Republic Act No. 4885, the following are the elements of estafa: (1) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack or insufficiency of funds to cover the check; and (3) damage to the payee thereof. Now, it is asked: Is there deceit and damage when a bad check is issued in payment of a pre-existing obligation? It is clear that under the law, the false pretense or fraudulent act must be executed prior to or simultaneously with the commission of the fraud. To defraud is to deprive some right, interest, or property by deceitful device. In the issuance of a check as payment for a pre-existing debt, the drawer derives no material benefit in return as its consideration had long been delivered to him before the check was issued. In short, the issuance of the check was not a means to obtain a valuable consideration from the payee. Deceit, to constitute estafa, should be the efficient cause of the defraudation. Since an obligation has already been contracted, it cannot be said that the payee parted with his property or that the drawer has obtained something of value as a result of the postdating or issuance of the bad check in payment of a pre-existing obligation.”

Finally, considering the absence of an express provision in the law, the post-dating or issuance of a bad check in payment of a pre-existing obligation cannot be penalized as estafa by means of deceit; otherwise, the legislature could have easily worded the amendatory act to that effect. Since the language of the law is plain and unambiguous, we find no justification in entering into further inquiries for the purpose of ascertaining the legislative intent. Moreover, laws that impose criminal liability are strictly construed. The rule, there-

fore, that the issuance of a bouncing check in payment of a pre-existing obligation does not constitute estafa has not at all been altered by the amendatory act.

Evidently, the law penalizes the issuance of a check only if it were itself the immediate consideration for the reciprocal receipt of benefits. In other words, the check must be issued concurrently with, and in exchange for, a material gain to make it a punishable offense under Article 315, paragraph 2(d) of the Revised Penal Code. In the issuance of a check to pay a pre-existing obligation, as in the instant case, the drawer derives no such contemporary gain in return since the obligation sought to be settled is already incurred and outstanding before the check is issued.

Felipe, by continuing to still effect sales and deliveries to the petitioners even without promptly getting paid, for all intents and purposes, had sold on credit, the amounts due, thus turning them into simple money obligations. Batas Pambansa Blg. 22, which now penalizes the mere issuance of a check by a drawer knowing that it will not be honored, cannot obviously apply retroactively to the petitioners.

The case of *Castro vs. Mendoza* is a classic illustration of the fact that even if a person may not be found guilty, he may still be held civilly liable. This is to emphasize the fact that there are various sources of obligations. Take note of the defense in *Castro vs. Mendoza* that the factual settings gave rise to a civil, not criminal, liability. This is so because the checks were not issued simultaneously with the delivery of the construction materials. They were issued subsequent thereto. The law requires that in this type of estafa, the false pretense or fraudulent act must be executed prior to or simultaneously with the commission of the fraud. Hence, the Supreme Court said that in the issuance of a check as payment for a pre-existing debt, the drawer derives no material benefit in return as its consideration had long been delivered to him before the check was issued. In short, the issuance of the check was not a means to obtain a valuable consideration from the payee.

The defense that the factual settings gave rise to a civil, rather than criminal liability is even an unequivocal act of admitting liability. It is just like saying, yes, I admit I issued the check, but I am not criminally liable because it was done in payment of a pre-existing obligation. Such a defense is a complete defense in a criminal case for estafa, but the legal and logical consequence is the admission of

liability. So, in acquitting the accused, as it was done in *Castro vs. Mendoza*, the Court had to hold the accused civilly liable.

In still another case, despite the dismissal of the criminal case by the fiscal, the accused was held civilly liable in another proceeding.

Case:

**Caiña vs. People
G.R. No. 78777, September 2, 1992**

Facts:

The accused questioned the award of damages by the MTC while acquitting him of the charge of reckless imprudence resulting in serious physical injuries. The RTC deleted it but later reinstated in a motion for reconsideration. Pertinent portion of the decision of the MTC shows:

“The prosecution failed to show a clear and convincing evidence of such recklessness, negligence and imprudence. Prosecution witness Rene Abas stated that the speed of the jeep of the accused was on a regular speed, or not so fast, or just the very speed the jeep can run.”

Held:

It can be gleaned therefore from the decision that the act from which civil liability might arise does not exist.

It is noted by the Court that in the dispositive portion of the decision of the Municipal Trial Court, the accused's (petitioner in this case) acquittal was based on the ground that his guilt was not proved beyond reasonable doubt, making it possible for Dolores Perez to prove and recover damages. (See Article 29, Civil Code). However, from a reading of the decision of the Municipal Trial Court, there is a clear showing that the act from which civil liability might arise does not exist. Civil liability is then extinguished. (See *Padilla vs. Court of Appeals*, 129 SCRA 558 [1984]).

The aforementioned decision is an example of a situation where if the accused is acquitted, there may be no civil liability if there is a pronouncement that there is no basis upon which the civil liability may arise. Suppose the accused is acquitted on the ground of alibi.

Can he be held civilly liable? The answer is in the negative. The justification was made by the Supreme Court in *People vs. Badeo, et al.*, G.R. No. 72990, November 21, 1991, where no less than Chief Justice Marcelo B. Fernan wrote the *ponencia* for the Supreme Court and said:

“Anent Esperidion Badeo’s civil liability, we find that there is no basis for its imposition in view of the absence of a clear showing that he committed the crime imputed to him. (citing *Padilla vs. CA*, 129 SCRA 558 [1984]). Esperidion could not have been at the scene of the crime because the *kaingin* area where he had been staying since January 7, 1983, until he was fetched by his wife on March 22, 1985, was a good five-hour hike away through a trail. Alibi is generally considered a weak defense, but it assumes importance where the evidence for the prosecution is weak and betrays concreteness on the question of whether or not the accused committed the crime.” (citing *People vs. Padilla*, 177 SCRA 129 [1989]; *People vs. Delmendo*, 109 SCRA 350 [1981]; *People vs. Hizon*, 163 SCRA 760 [1988]).

The same rule applies if the accused has been charged of treason, rebellion, or other security offenses. There is no civil liability because there is no specific person who can claim to have been offended. Hence, whether the accused is convicted or acquitted, there is no civil liability.

In still another situation, if a check is paid for a pre-existing obligation, and it bounces, the accused can be acquitted, but the court may award civil liability for the complainant because such a defense of a pre-existing obligation is a clear admission of liability; thus, he can be made liable despite his acquittal. If the rule were otherwise, then it would result in absurdity and unfairness where even if there is judicial admission of liability, still the court would not hold him civilly liable. The law could not have intended absurdity and unfairness to happen, such that it would allow a person to wait in ambush in the criminal prosecution, admit his civil liability and deny his criminal liability, then the court would make him free. This would defeat the provision of Article 100 of the Revised Penal Code that every person who is criminally liable shall also be civilly liable. The law does not say, every person who is criminally “convicted” shall also be civilly liable. Mere liability is sufficient; conviction is not necessary. This is in recognition of the constitutional guarantee that a person is presumed innocent, unless the contrary is proved.

No civil liability if defense of alibi is proven; reason.

In *People vs. Badeo, et al.*, G.R. No. 72990, November 21, 1991, an accused was acquitted on the ground of alibi. Can he be held civilly liable?

Held:

No. Chief Justice Marcelo B. Fernan in his *ponencia* said:

“Anent Esperidion Badeo’s civil liability, we find that there is no basis for its imposition in view of the absence of a clear showing that he committed the crime imputed to him. (citing *Padilla vs. CA*, 129 SCRA 558 [1984]). Esperidion could not have been at the scene of the crime because the *kaingin* area where he had been staying since January 7, 1983 until he was fetched by his wife on March 22, 1985 was a good five-hour hike away through a trail. Alibi is generally considered a weak defense but it assumes importance where the evidence for the prosecution is weak and betrays concreteness on the question of whether or not the accused committed the crime.” (citing *People vs. Padilla*, 177 SCRA 129 [1989]; *People vs. Delmendo*, 109 SCRA 350 [1981]; *People vs. Hizon*, 163 SCRA 760 [1988]).

Note that if one is acquitted on the ground of alibi, it is as if the court made the pronouncement that the accused did not commit the offense because he could not have been at the scene of the offense at the time of its commission. There is therefore, no basis for his civil liability.

Dismissal of criminal case by fiscal; accused still liable for damages.

It is a well-settled rule that every person criminally liable shall also be civilly liable. In *Conrado Bunag, Jr. vs. CA, et al.*, G.R. No. 101749, July 10, 1992, a case of forcible abduction with rape was dismissed by the fiscal’s office of Pasay City. One of the issues raised was the effect of the said dismissal on the liability of the accused for damages. The Supreme Court:

Held:

In the instant case, the dismissal of the complaint for forcible abduction with rape was by mere resolution of the fiscal at the prelimi-

nary investigation stage. There is no declaration in the final judgment that the fact from which the civil case might arise did not exist. Consequently, the dismissal did not in any way affect the right of herein private respondent to institute a civil action arising from the offense because such preliminary dismissal of the penal action did not carry with it the extinction of the civil action.

The reason most often given for this holding is that the two proceedings involved are not between the same parties. Furthermore, it has long been emphasized, with continuing validity up to now, that there are different rules as to the competency of witnesses, and the quantum of evidence in criminal and civil proceedings. In a criminal action, the State must prove its case by evidence which shows the guilt of the accused beyond reasonable doubt, while in a civil action, it is sufficient for the plaintiff to sustain his cause by preponderance of evidence only. (*Ocampo vs. Jenkins, et al.*, 14 Phil. 681). Thus, in *Rillon, et al. vs. Rillon*, we stressed that it is not now necessary that a criminal prosecution for rape be first instituted and prosecuted to final judgment before a civil action based on said offense in favor of the offended woman can likewise be instituted and prosecuted to final judgment.

In *People vs. Badeo, et al.*, G.R. No. 72990, November 21, 1991, it was ruled that:

“As every crime gives rise to a penal or criminal action for the punishment of the guilty party, and also to a civil action for the restitution of the thing, repair of the damage and indemnification for the losses (*Banal vs. Tadeo, Jr.*, 156 SCRA 325, citing *U.S. vs. Bernardo*, 19 Phil. 265), whether the particular act or omission is done intentionally or negligently or whether or not punishable by law (*Occena vs. Icamina*, 181 SCRA 328 [1990]), subsequent decisions of the SC held that while the criminal liability of an appellant is extinguished by his death, his civil liability subsists.” (*People vs. Tirol*, 102 SCRA 558; *People vs. Pancho*, 145 SCRA 323; *People vs. Salcedo*, 151 SCRA 220).

In such case, the heirs of the deceased appellant are substituted as parties in the criminal case and his estate shall answer for his civil liability. (*People vs. Sendaydiego*, 81 SCRA 120 [1978]).

Telegraph company is liable for acts of its employees in connection with a libelous telegram.

Case:

**RCPI vs. Court of Appeals
143 SCRA 657**

Facts:

A message was sent to the respondent Loreto Dionela wherein libelous or defamatory words were included on the message transmitted. Private respondent filed an action for breach of contract and negligence directly against the corporation. The lower court ruled in favor of the private respondent. The Court of Appeals affirmed such decision but modified it by reducing the amount of damages awarded. Hence, this petition.

Whether petitioner is directly liable for the acts of its employees.

Held:

The telegraph corporation is directly liable for the acts of its employees for it failed to take precautionary or necessary steps in order to prevent such humiliating incident and Articles 19 and 20 of the New Civil Code were invoked by the private respondent, and not on the subsidiary liability of the employer in Art. 1161 of the same Code. The doctrine of "*Res Ipsa Loquitur*" is proper since negligence is hard to substantiate in some cases. The case at bar is one of impression that the defamatory words speak for themselves and call for an award of damages.

No recovery of damages in case of self-inflicted injury.

For liability to attach under the law, injury must have been inflicted by one person on another. If it was self-inflicted, then, he is not entitled to damages, as it would be considered as *damnum absque injuria*.

Case:

**Garciano vs. CA, et al.
G.R. No. 96126, August 10, 1992**

Facts:

Petitioner was hired as a teacher at Immaculate Conception Institute in the Island of Camotes. Before the school year ended in

1982, she went on an indefinite leave as her daughter brought her to Australia. The application for leave was approved. On June 1, 1982, a letter was sent to her husband that the founder of the school, Fr. Joseph Wiertz, as concurred in by the president of the Parents Teachers Association and the faculty, have decided to terminate her services because of the absence of a written contract and that it was difficult to look for a substitute. When she returned to the Philippines, she made inquiries from the school, and on July 7, 1982, the Board of Directors signed a letter reinstating her, and asked her to return to her work. She refused, but instead, she filed a complaint for damages. The lower court decided for her, awarding damages, but the Court of Appeals reversed the decision. The Supreme Court on appeal —

Held:

The board of directors of the Immaculate Conception Institute, which alone possesses the authority to hire and fire teachers and other employees of the school, did not dismiss the petitioner. It in fact directed her to report for work.

The petitioner, however, refused to go back to work, hence, the CA said that, it would appear, therefore, that appellee had voluntarily desisted from her teaching job in the school and has no right to recover damages from defendants-appellants.

The Supreme Court further said:

“Liability for damages under Articles 19, 20 and 21 of the Civil Code arises only from unlawful, willful or negligent acts that are contrary to law, or morals, good customs or public policy. Said articles provide:

Art. 19. 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.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. 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.”

The Court of Appeals was correct in finding that petitioner's discontinuance from teaching was her own choice. While the respondents admittedly wanted her service terminated, they actually did nothing to physically prevent her from reassuming her post, as ordered by the school's Board of Directors. That the school principal and Fr. Wiertz disagreed with the Board's decision to retain her, and some teachers allegedly threatened to resign *en masse*, even if true, did not make them liable to her for damages. They were simply exercising their right of free speech or their right to dissent from the Board's decision. Their acts were not contrary to law, morals, good customs or public policy. They did not "illegally dismiss" her for the Board's decision to retain her prevailed. She was ordered to report for work on July 5, 1982, but she did not comply with that order. Consequently, whatever loss she may have incurred in the form of lost earnings was self-inflicted. *Volenti non fit injuria*.

With respect to petitioner's claim for moral damages, the right to recover them under Article 21 is based on equity, and he who comes to court to demand equity, must come with clean hands. Article 21 should be construed as granting the right to recover damages to injured persons who are not themselves at fault. (*Mabutas vs. Calapan Electric Co.* [C.A.], 50 OG 5828, cited in Padilla, Civil Code Annotated, Vol. 1, 1975 Ed., p. 87). Moral damages are recoverable only if the case falls under Article 2219 in relation to Article 21 (*Flordelis vs. Mar*, 114 SCRA 41). In the case at bar, petitioner is not without fault. *Firstly*, she went on an indefinite leave of absence and failed to report back in time for the regular opening of classes. *Secondly*, for reasons known to herself alone, she refused to sign a written contract of employment. Lastly, she ignored the Board of Director's order for her to report for duty on July 5, 1982.

The trial court's award of exemplary damages to her was not justified for she is not entitled to moral, temperate or compensatory damages. (Art. 2234, Civil Code).

In sum, the Court of Appeals correctly set aside the damages awarded by the trial court to the petitioner for they did not have any legal or factual basis.

The reason for the ruling in *Garciano vs. CA*, is very evident. It is based on the principle of *damnum absque injuria*.

Article 21. 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.

Recovery of damages even without positive law.

There is a marked distinction between Articles 20 and 21 of the Civil Code, for while the recovery under the former is based on law, the latter is not based on law. Be that as it may, if the loss or injury was due to a willful act or omission and the same is contrary to morals, public policy, or good customs, liability would still attach upon the violator. It cannot be justly denied that laws have sprung up from the fountain of morals and good customs. Grotius, one of the foremost legal philosophers and writers in the middle ages had the same conception as our codifiers when he said that law is nothing but “a rule of moral action obliging to that which is right.” Neither could it be denied that custom is another method of regulating human conduct which presents much the same problem in relation to law as does morals. In fact it is said from good authority that mankind has been governed by customs longer than it has lived under the reign of law.

This particular provision was adopted, it is supposed, with the intention to bring into the realm of law certain good Philippine customs, morals, and traditions, especially those that concern family and personal relations. This article seems to be the reflection of the Filipino peoples’ concept of a well-ordered community and a synthesis of their culture. In the language of the Commission, this insertion is justified when it says, “the amalgam has been developed throughout the past generation, and its manifestation in the New Civil Code is therefore natural and unforced.” (Report of the Code Commission, p. 4; cited in Civil Code of the Phils., *Commentaries and Jurisprudence*, Alba and Garcia, 1950 ed., pp. 56-57).

To justify an award for moral and exemplary damages under Article 19 to 21 of the Civil Code (on human relations), the claimants must establish the other party’s malice or bad faith by clear and convincing evidence. (*Solidbank Corp. vs. Mindanao Ferroalloy Corp., et al.*, G.R. No. 153535, July 25, 2005).

How the law was justified.

The codifiers of the Civil Code justified Article 21 by giving an example, thus:

“A’ seduces the nineteen-year-old daughter of ‘X.’ A promise of marriage either has not been made, or cannot be proved. The girl becomes pregnant. Under the present

laws, there is no crime, as the girl is above eighteen years of age. Neither can any civil action for breach of promise of marriage be filed. Therefore, though a grievous moral wrong has been committed, and though the girl and her family have suffered incalculable moral damage, she and her parents cannot bring any action for damages. But under this article, she and her parents would have such a right of action.”

But it is always said that every good law draws its breath of life from morals, hence, the Code Commission asked: “would not this article obliterate the boundary line between morality and law? The answer is that, in the last analysis, every good law draws its breath of life from morals, from those principles which are written with words of fire in the conscience of man. If this premise is admitted, then the rule is a prudent earnest of justice in the face of the impossibility of enumerating, one by one, all wrongs which cause damage. When it is reflected that while codes of law and statutes have changed from age to age, the conscience of man has remained fixed to its ancient moorings, one cannot but feel that it is safe and salutary to transmute, as far as may be, moral norms into legal rules, thus imparting to every legal system that enduring quality which ought to be one of its superlative attributes.” (Report of the Code Commission, p. 40.)

Case:

Pe, et al. vs. Pe
5 SCRA 200

Facts:

An action for damages was filed by the parents, brothers and sisters of an unmarried woman against a married man who frequently visited her on the pretext that he wanted her to teach him how to pray the rosary. They fell in love with each other and conducted clandestine trysts. The relationship was prohibited by plaintiffs, but suddenly the woman disappeared. An action was filed based on Article 21 of the Civil Code, but it was dismissed by the lower court. Plaintiffs appealed.

Held:

The circumstances under which defendant tried to win Lolita's affection cannot lead to any other conclusion than that it was he who,

thru an ingenious scheme or trickery, seduced the latter to the extent of making her fall in love with him. This is shown by the fact that defendant frequented the house of Lolita on the pretext that he wanted her to teach him how to pray the rosary. Because of the frequency of his visits to the latter's family (he was allowed free access because he was a collateral relative and was considered as a member of a family), the two eventually fell in love with each other and conducted clandestine love affairs. Defendant continued his love affairs with Lolita until she disappeared from the parental home. Indeed, no other conclusion can be drawn from this chain of events than that defendant not only deliberately, but through a clever strategy, succeeded in winning the affection and love of Lolita to the extent of having illicit relations with her. The wrong he has caused her and her family is indeed immeasurable considering the fact that he is a married man. Verily, he has committed an injury to Lolita's family in a manner contrary to morals, good customs and public policy as contemplated in Article 21 of the New Civil Code.

Breach of promise to marry; when damages can be recovered.

By itself, breach of promise to marry is not an actionable wrong. There must be an act independent of such breach in order that it may give rise to liability. (*Hermosisima vs. CA*, 109 Phil. 629; *Tanjanco vs. CA*, 18 SCRA 994). There is no law that allows it. In fact, the intent of Congress is against it. To be actionable, there must be some act independent of the breach of promise to marry such as:

- 1) Carnal knowledge:
 - a) if it constitutes seduction as defined by the Penal Code, moral damages under Art. 2219(3), NCC, may be recovered;
 - b) if it constitutes tort, damages under Arts. 21 and 2219(10), NCC, may be recovered;
 - c) if the woman becomes pregnant and delivers, compensatory damages may be recovered;
 - d) if money was advanced and property was given to the defendant, plaintiff can recover the money and property. No one shall enrich himself at the expense of another.
- 2) If there was no carnal knowledge, but the act resulted in a tort, moral damages may be recovered. The rule is also

true if money or property were advanced, in which case the same may be recovered.

The case of *Bunag, Jr. vs. CA, et al.*, G.R. No. 101749, July 10, 1992, started as a criminal case but was dismissed by the City Fiscal's Office, Pasay City. It appeared that in the afternoon of September 8, 1973, the petitioner invited his former girlfriend for a *merienda* while on her way to school but instead of having *merienda* at Aristocrat Restaurant, he brought her to a motel where he raped her. Thereafter, the woman was brought to the house of his grandmother in Parañaque and lived there for 21 days as husband and wife. The following day, the father of the petitioner promised that they would get married and even applied for a marriage license. Petitioner left and never returned, so the woman went home to her parents. She filed a suit for damages for breach of promise to marry. The lower court ruled for the plaintiff and against the petitioner, but absolved his father. That portion absolving petitioner's father was appealed. Petitioner likewise appealed. The CA dismissed both appeals.

Held:

It is true that in this jurisdiction, we adhere to the time-honored rule that an action for breach of promise to marry has no standing in the civil law, apart from the right to recover money or property advanced by the plaintiff upon the faith of such promise. (*De Jesus vs. Syquia*, 58 Phil. 866). Generally, therefore, a breach of promise to marry *per se* is not actionable, except where the plaintiff has actually incurred expenses for the wedding and the necessary incidents thereof.

However, the award of moral damages is allowed in cases specified in or analogous to those provided in Article 2219 of the Civil Code. Correlatively, under Article 21 of said Code, in relation to paragraph 10 of said Article 2219, any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for moral damages. (*Ford vs. CA*, 186 SCRA 21 [1990]). Article 21 was adopted to remedy the countless gaps in the statutes which leave so many victims of moral wrongs helpless even though they have actually suffered material and moral injury, and is intended to vouchsafe adequate legal remedy for that untold number of moral wrongs which it is impossible for human foresight to specifically provide for in the statutes. (*Globe Mackay Cable and Radio Corp., et al. vs. CA, et al.*, 176 SCRA 778).

The act of the defendant in promising to marry plaintiff to escape criminal liability, only to thereafter renege on such promise after cohabiting with her for twenty-one days, irremissibly constitute acts contrary to morals and good customs. These are grossly insensate and reprehensible transgressions which indisputably warrant and abundantly justify the award of moral and exemplary damages, pursuant to Article 21 in relation to paragraphs 3 and 10, Article 2219, and Articles 2229 and 2234 of the Civil Code.

Petitioner would, however, belabor the fact that said damages were awarded by the trial court on the basis of a finding that he is guilty of forcible abduction with rape, despite the prior dismissal of the complaint therefor filed by private respondent with the Pasay City Fiscal's Office.

Generally, the basis of civil liability from crime is the fundamental postulate of our law that every person criminally liable for a felony is also civilly liable. In other words, criminal liability will give rise to civil liability *ex delicto* only if the same felonious act or omission results in damage or injury to another and is the direct and proximate cause thereof. (Calalang, et al. vs. IAC, et al., 194 SCRA 514). Hence, extinction of the penal action does not carry with it the extinction of civil liability unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. (Faraon, et al. vs. Prieta, 24 SCRA 582).

Breach of promise to marry; when actionable; defense of *pari delicto*.

In *Gashem Shookat Baksh vs. CA and Marilou Gonzales*, G.R. No. 97336, February 19, 1993, petitioner courted Marilou Gonzales, who also fell in love with him. He promised and proposed to marry her and they agreed to get married after the school semester, then visited the girl's parents to secure their approval to the marriage. On August 20, 1987, petitioner forced her to live with him at his apartment. She was a virgin at that time but later on, his attitude towards her became different to the extent of maltreating her thus, she sustained injuries. At the confrontation before the representative of the barangay chairman, he repudiated their agreement to marry and worse, he was already married to someone living in Bacolod City.

In his answer, he denied having proposed marriage to Marilou; that he never sought the approval of her parents to the marriage. He

further alleged that he never forced her to live with him and maltreated her. After trial, he was held liable for damages, requiring him to pay P20,000.00 as moral damages and P3,000.00 as attorney's fees.

The decision is anchored on the trial court's findings and conclusions that: (a) petitioner and private respondent were lovers, (b) private respondent is not a woman of loose morals or questionable virtue who readily submits to sexual advances, (c) petitioner, through machinations, deceit, and false pretenses, promised to marry private respondent, (d) because of his persuasive promise to marry her, she allowed herself to be deflowered by him, (e) by reason of that deceitful promise, private respondent and her parents — in accordance with Filipino customs and traditions — made some preparations for the wedding that was to be held at the end of October 1987 by looking for pigs and chickens, inviting friends and relatives and contracting sponsors, (f) petitioner did not fulfill his promise to marry her, and (g) such acts of the petitioner, who is a foreigner and who has abused Philippine hospitality, have offended our sense of morality, good customs, culture and traditions. The trial court gave full credit to the private respondent's testimony because, *inter alia*, she would not have had the temerity and courage to come to court and expose her honor and reputation to public scrutiny and ridicule if her claim was false. The lower court's decision was affirmed by the CA, hence, this petition.

The basic issues raised were:

- (1) Whether he was liable for damages for breach of promise to marry;
- (2) Whether Marilou was in *pari delicto*, hence, he should not be liable.

Held:

The existing rule is that a breach of promise to marry *per se* is not an actionable wrong. (*Hermosisima vs. CA*, 109 Phil. 629 [1960]; *Estopa vs. Piansay, Jr.*, 109 Phil. 640 [1960]).

It is petitioner's thesis that said Article 21 is not applicable because he had not committed any moral wrong or injury or violated any good custom or public policy; he has not professed love or proposed marriage to the private respondent; and he has never maltreated her. He criticizes the trial court for liberally invoking Filipino customs, traditions and culture and ignoring the fact that since

he is a foreigner, he is not conversant with such Filipino customs, traditions and culture. As an Iranian Moslem, he is not familiar with Catholic and Christian ways. He stresses that even if he had made a promise to marry, the subsequent failure to fulfill the same is excusable or tolerable because of his Moslem upbringing; he then alludes to the Muslim Code which purportedly allows a Muslim to take four (4) wives and concludes that on the basis thereof, the trial court erred in ruling that he does not possess good moral character. Moreover, his controversial “common law wife” is now his legal wife as their marriage had been solemnized in civil ceremonies in the Iranian Embassy. As to his unlawful cohabitation with the private respondent, petitioner claims that even if responsibility could be pinned on him for the live-in relationship, the private respondent should also be faulted for consenting to an illicit arrangement. Finally, petitioner asseverates that even if it was to be assumed *arguendo* that he had professed his love to the private respondent and had also promised to marry her, such acts would not be actionable in view of the special circumstances of the case. The mere breach of promise is not actionable. (citing *Wassmer vs. Velez*, 12 SCRA 648; *Hermosisima vs. CA*, 109 Phil. 629; *Estopa vs. Piansay, Jr.*, 109 Phil. 640).

It was further said that where a man’s promise to marry is in fact the proximate cause of the acceptance of his love by a woman and his representation to fulfill that promise thereafter becomes the proximate cause of the giving of herself unto him in a sexual congress, proof that he had, in reality, no intention of marrying her and that the promise was only a subtle scheme or deceptive device to entice or inveigle her to accept him and to obtain her consent to the sexual act, could justify the award of damages pursuant to Article 21 not because of such promise to marry but because of the fraud and deceit behind it and the willful injury to her honor and reputation which followed thereafter. It is essential, however, that such injury should have been committed in a manner contrary to morals, good customs or public policy.

In the instant case, the SC said respondent Court found that it was the petitioner’s “fraudulent and deceptive protestations of love for and promise to marry plaintiff that made her surrender her virtue and womanhood to him, and to live with him on the honest and sincere belief that he would keep said promise, and it was likewise these fraud and deception on appellant’s part that made plaintiff’s parents agree to their daughter living-in with him preparatory to their supposed marriage. In short, the private respondent surren-

dered her virginity, the cherished possession of every single Filipina, not because of lust, but because of moral seduction — the kind illustrated by the Code Commission in its example earlier adverted to. The petitioner could not be held liable for criminal seduction punished under either Article 337 or Article 338 of the Revised Penal Code because the private respondent was above eighteen (18) years of age at the time of the seduction.

Prior decisions of this Court clearly suggest that Article 21 may be applied in a breach of promise to marry where the woman is a victim of moral seduction. Thus, in *Hermosisima vs. Court of Appeals*, this Court allowed recovery of damages to the woman because:

“x x x we find ourselves unable to say that petitioner is morally guilty of seduction, not only because he is approximately ten (10) years younger than the complainant — who was around thirty-six (36) years of age, and as highly enlightened as a former high school teacher and a life insurance agent are supposed to be — when she became intimate with petitioner, then a mere apprentice pilot, but also because the court of first instance found that, complainant ‘surrendered herself’ to petitioner because, ‘overwhelmed by her love’ for him, she ‘wanted to bind’ him ‘by having a fruit of their engagement even before they had the benefit of clergy.’”

In *Tanjanco vs. Court of Appeals*, while this Court likewise hinted at possible recovery if there had been moral seduction, recovery was eventually denied because we were not convinced that such seduction existed. The following enlightening disquisition and conclusion were made in the said case:

“The Court of Appeals seems to have overlooked that the example set forth in the Code Commission’s memorandum refers to a tort upon a minor who had been seduced. The essential feature is seduction, that in law is more than mere sexual intercourse, or a breach of a promise of marriage, it connotes essentially the idea of deceit, enticement, superior power or abuse of confidence on the part of the seducer to which the woman has yielded. (U.S. vs. Buenaventura, 27 Phil. 121; U.S. vs. Arlante, 9 Phil. 595).

“It has been ruled in the *Buenaventura* case (*supra*), that —

“To constitute seduction, there must in all cases be some sufficient promise or inducement and the woman must yield because of the promise or other inducement. If she consents merely from carnal lust, and the intercourse is from mutual desire, there is no seduction. (43 Cent. Dig. tit Seduction, par. 56). She must be induced to depart from the path of virtue by the use of some species of arts, persuasions and wiles, which are calculated to have and do have that effect, and which result in her ultimately submitting her reason to the sexual embraces of her seducer.” (27 Phil. 121).

“And in American Jurisprudence, we find:

‘On the other hand, in an action by the woman, the enticement, persuasion or deception is the essence of the injury; and a mere proof of intercourse is insufficient to warrant a recovery.’

‘Accordingly, it is not seduction where the willingness arises out of sexual desire or curiosity of the female, and the defendant merely affords her the needed opportunity for the commission of the act. It has been emphasized that to allow a recovery in all such cases would tend to the demoralization of the female sex, and would be a reward for unchastity by which a class of adventuresses would be swift to profit.’ (47 Am. Jr. 662).

‘Over and above the partisan allegations, the facts stand out that for one whole year, from 1958 to 1959, the plaintiff-appellee, a woman of adult age, maintained intimate sexual relations with appellant, with repeated acts of intercourse. Such conduct is incompatible with the idea of seduction. Plainly, there is here voluntariness and mutual passion; for had the appellant been deceived, had she surrendered exclusively because of the deceit, artful persuasions, and wiles of the defendant, she would not have again yielded to his embraces, much less for one year, without promises of marriage, and would have cut short all sexual relations upon finding that the defendant did not intend to fulfill his promise. Hence, we conclude that no case is made under Article 21 of the Civil Code, and no other cause of action being alleged, no error was committed by the Court of First Instance in dismissing the complaint.”

In his annotations on the Civil Code, Associate Justice Edgardo L. Paras, who recently retired from this Court, opined that in a breach

of promise to marry where there had been carnal knowledge, moral damages may be recovered:

“x x x if there be criminal or moral seduction, but not if the intercourse was due to mutual lust. (*Hermosisima vs. Court of Appeals*, L-14628, September 30, 1960; *Estopa vs. Piansay, Jr.*, L-14733, September 30, 1960; *Batarra vs. Marcos*, 7 Phil. 156; *Beatriz Galang vs. Court of Appeals, et al.*, L-17248, January 29, 1962). (In other words, if the CAUSE be the promise to marry, and the EFFECT be the carnal knowledge, there is a chance that there was criminal or moral seduction; hence, recovery of moral damages will prosper. If it be the other way around, there can be no recovery of moral damages, because here mutual lust has intervened). x x x.”

Senator Arturo M. Tolentino is also of the same persuasion:

“It is submitted that the rule in *Batarra vs. Marcos*, 7 Phil. 156, still subsists, notwithstanding the incorporation of the present article (Art. 21, NCC) in the Code. The example given by the Code Commission is correct, if there was seduction, not necessarily in the legal sense, but in the vulgar sense of deception. But when the sexual act is accomplished without any deceit or qualifying circumstance of abuse of authority or influence, but the woman, already of age, has knowingly given herself to a man, it cannot be said that there is an injury which can be the basis for indemnity.

“But so long as there is fraud, which is characterized by wilfulness (*sic*), the action lies. The court, however, must weigh the degree of fraud, if it is sufficient to deceive the woman under the circumstances, because an act which would deceive a girl sixteen years of age may not constitute deceit as to an experienced woman thirty years of age. But so long as there is a wrongful act and a resulting injury, there should be civil liability, even if the act is not punishable under the criminal law, and there should have been an acquittal or dismissal of the criminal case for that reason.”

We are unable to agree with the petitioner's alternative proposition to the effect that granting, for argument's sake, that he did promise to marry the private respondent, the latter is nevertheless also at fault. According to him, both parties are in *pari delicto*; hence, pursuant to Article 1412(1) of the Civil Code and the doctrine laid

down in *Batarra vs. Marcos*, the private respondent cannot recover damages from the petitioner. The latter even goes as far as stating that if the private respondent had sustained any injury or damage in their relationship, it is, primarily because of her own doing, for:

“x x x She is also interested in the petitioner as the latter will become a doctor sooner or later. Take notice that she is a plain high school graduate and a mere employee. . . . (Annex ‘C’) or a waitress (TSN, p. 51, January 25, 1988) in a luncheonette, and without a doubt, is in need of a man who can give her economic security. Her family is in dire need of financial assistance. (TSN, pp. 51-53, May 18, 1988). And this predicament prompted her to accept a proposition that may have been offered by the petitioner.”

These statements reveal the true character and motive of the petitioner. It is clear that he harbors a condescending, if not sarcastic, regard for the private respondent on account of the latter’s ignoble birth, inferior educational background, poverty and, as perceived by him, dishonorable employment. Obviously then, from the very beginning, he was not at all moved by good faith and an honest motive. Marrying with a woman so circumstanced could not have even remotely occurred to him. Thus, his profession of love and promise to marry were empty words directly intended to fool, dupe, entice, beguile and deceive the poor woman into believing that indeed, he loved her and would want her to be his life’s partner. It was nothing but pure lust which he wanted satisfied by a Filipina who honestly believed that by accepting his offer of love and proposal of marriage, she would be able to enjoy a life of ease and security. Petitioner clearly violated the Filipino’s consent of morality and so brazenly defied the traditional respect Filipinos have for their women. It can even be said that the petitioner committed such deplorable acts in blatant disregard of Article 19 of the Civil Code which directs every person to act with justice, give everyone his due and observe honesty and good faith in the exercise of his rights and in the performance of his obligations.

No foreigner must be allowed to make a mockery of our laws, customs and traditions.

The *pari delicto* rule does not apply in this case, for while indeed, the private respondent may not have been impelled by the purest of intentions, she eventually submitted to the petitioner in sexual congress not out of lust, but because of moral seduction. In

fact, it is apparent that she had qualms of conscience about the entire episode, for as soon as she found out that the petitioner was not going to marry her after all, she left him. She is not, therefore, in *pari delicto* with the petitioner. *Pari delicto* means, "in equal fault; in a similar offense or crime; equal in guilt or in legal fault." (Black's Law Dictionary, Fifth ed., 1004). At most, it could be conceded that she is merely in *delicto*.

"Equity often interferes for the relief of the less guilty of the parties, where his transgression has been brought about by the imposition or undue influence of the party on whom the burden of the original wrong principally rests, or where his consent to the transaction was itself procured by fraud." (34 Am. Jur. 2d. 401).

In *Mangayao vs. Lasud*, 11 SCRA 158, We declared:

"Appellants likewise stress that both parties being at fault, there should be no action by one against the other. (Art. 1412, New Civil Code). This rule, however, has been interpreted as applicable only where the fault on both sides is, more or less, equivalent. It does not apply where one party is literate or intelligent and the other one is not. (cf. *Bough vs. Cantiveros*, 40 Phil. 209)."

We should stress, however, that while We find for the private respondent, let it not be said that this Court condones the deplorable behavior of her parents in letting her and the petitioner stay together in the same room in their house after giving approval to their marriage. It is the solemn duty of parents to protect the honor of their daughters and infuse upon them the higher values of morality and dignity.

When not a case of breach of promise to marry.

In *Wassmer vs. Velez*, 12 SCRA 648, Francisco Velez and Beatriz Wassmer formally set their wedding on September 4, 1954. On September 2, 1954, however, he left a note for his bride-to-be postponing the marriage because his mother was opposed to the wedding. Since then, he has never been heard of. Wassmer filed a suit for damages.

Held:

Surely this is not a case of breach of promise to marry. As stated, mere breach of promise to marry is not an actionable wrong. But to

formally set a wedding and go through all the preparations and publicity, only to walk out of it when the matrimony is about to be solemnized, is quite different. This is palpably and unjustifiably contrary to good customs for which defendant must be held answerable in damages in accordance with Article 21.

No breach of promise to marry.

In *Tanjanco vs. CA*, 18 SCRA 994, Apolonio Tanjanco courted Araceli Santos. They were both of adult age. In consideration of defendant's promise of marriage, plaintiff consented and acceded to defendant's pleas for carnal knowledge, as a consequence of which, the plaintiff conceived a child. To avoid embarrassment, she resigned from her job. A suit for damages for breach of promise to marry was filed by the plaintiff when defendant refused to marry and support her and her baby.

Held:

The facts stand out that for one whole year, from 1958 to 1959, the plaintiff, a woman of adult age, maintained intimate sexual relations with defendant, with repeated acts of intercourse. Such conduct is incompatible with the idea of seduction. Plainly, there is here voluntariness and mutual passion; for had the plaintiff been deceived, had she surrendered exclusively because of deceit, artful persuasions, and wiles of the defendant, she would not have again yielded to his embraces, much less for one year, without exacting early fulfillment of the alleged promise of marriage, and would have cut short all sexual relations upon finding that defendant did not intend to fulfill his promise. Hence, we conclude that no case is made under Article 21 of the Civil Code. There can be no possible basis, therefore, for an award of moral damages.

In *U.S. vs. Buenaventura*, 27 Phil. 121, it was said that:

“To constitute seduction, there must in all cases be some sufficient promise or inducement and the woman must yield because of the promise or other inducement. If she consents merely from carnal lust, and the intercourse is from mutual desire, there is no seduction. She must be induced to depart from the path of virtue by the use of some species of arts, persuasions and wiles, which are calculated to have and do have that effect, and which result in her ultimately submitting her person to the sexual

embraces of her seducer. (See also U.S. vs. Arlante, 9 Phil. 595).”

Article 21, applied.

In *Loreta Serrano vs. CA, et al.*, L-45125, April 22, 1991, petitioner bought some pieces of jewelry. When she needed money, she instructed her secretary to pledge the same, but the latter absconded with the amount and the pawn ticket. The pawnshop ticket stipulated that it was redeemable on presentation by the bearer. Three months later, Gloria and Amalia informed the former owner that a pawnshop ticket was being offered for sale and told her that the ticket probably covered jewelry once owned by her and pawned by one Josefina Rocco. Necita then informed Loreta, hence, she went to the pawnshop and verified that the missing jewelry was pledged there and told the owner not to permit anyone to redeem the jewelry. The owner agreed but allowed the redemption. An action for damages was filed where the trial court decided for the plaintiff. The CA reversed the decision, stating that there was no negligence on the part of the pawnshop owner.

Held:

Having been notified by petitioner and the police that the jewelry pawned to it was either stolen or involved in an embezzlement of the proceeds of the pledge, private respondent pawnbroker became duty-bound to hold the things pledged and to give notice to petitioner and the police of any effort to redeem them. Such a duty was imposed by Article 21 of the Civil Code which provides:

“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.”

The circumstance that the pawn ticket stated that the pawn was redeemable by the bearer, did not dissolve that duty. The pawn ticket was not a negotiable instrument under the Negotiable Instruments Law nor a negotiable document of title under Articles 1507, *et. seq.* of the Civil Code. If the third person Tomasa de Leon, who redeemed the things pledged a day after petitioner and the police had notified Long Life, claimed to be the owner thereof, the prudent recourse of the pawnbroker was to file an interpleader suit, impleading both petitioner and Tomasa de Leon. The respondent pawnbro-

ker was, of course, entitled to demand payment of the loan extended on the security of the pledge before surrendering the jewelry, upon the assumption that it had given the loan in good faith and was not a “fence” for stolen articles and had not conspired with the faithless Josefina Rocco or with Tomasa de Leon. Respondent pawnbroker acted in reckless disregard of that duty in the instant case and must bear the consequences, without prejudice to its right to recover damages from Josefina Rocco.

Forcible taking of franchise is violative of Art. 21, NCC.

In *Cogeo-Cubao Operators and Drivers Assn. vs. CA, et al.*, G.R. No 100727, March 18, 1992, private respondent was granted a franchise to operate jeepneys. Petitioner, however, formed a human barricade and assumed the dispatching of passenger jeepneys, hence, this suit for damages.

The Supreme Court said that a certificate of public convenience is included in the term “property” which represents the right and authority to operate its facilities for public service, which cannot be taken or interfered with without due process of law. The act of petitioner in forcibly taking over the operation of the jeepney service in the Cogeo-Cubao route without any authorization from the PSC is in violation of the corporation’s right to operate its services. Article 21 of the NCC governs the situation in the case at bar, hence, the SC said:

“It is clear from the facts of this case that petitioner formed a barricade and forcibly took over the motor units and personnel of the respondent corporation. This paralyzed the usual activities and earnings of the latter during the period of ten days and violated the right of respondent Lungsod Corp. to conduct its operations thru its authorized officers. Article 21 of the Civil Code provides that any person who wilfully 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. The provision covers a situation where a person has a legal right which was violated by another in a manner contrary to morals, good customs, or public policy. It presupposes loss or injury, material or otherwise, which one may suffer as a result of such violation.” (See also *PCIB vs. CA, et al.*, G.R. No. 97785, March 29, 1996, 69 SCAD 707).

Article 21 applied to justify moral damages awarded to agricultural lessees.

Petitioners obtained a judgment from the Court of Agrarian Relations declaring them as agricultural lessees of the private respondents' land and awarding them moral and exemplary damages for the latter's act of diverting the flow of water from the farm lots in dispute, causing portions of the landholdings to dry up, in an effort to force petitioners to vacate their landholdings. The Court of Appeals modified the judgment by deleting the award for said damages as well as for attorney's fees. On appeal to the Supreme Court, it was held that petitioners were entitled to a measure of moral damages. Art. 2219 of the Civil Code permits the award of moral damages for acts mentioned in Art. 21, which stipulates that "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." Petitioners were denied irrigation water for their farm lots in order to make them vacate their landholdings. The defendants violated petitioners' rights and caused prejudice to the latter by the unjustified diversion of water. Petitioners are also entitled to exemplary damages because the defendants acted in an oppressive manner. (Art. 2232, Civil Code). It follows that they are also entitled to attorney's fees, but the size of the fees, as well as the damages, is subject to the sound discretion of the court. (Magbanua, et al. vs. Hon. Intermediate Appellate Court, et al., L-66870-72, June 29, 1985).

Liability in case a wife deserts her husband.

X and Y are married. Y went to the United States and obtained a decree of divorce. When she came back to the Philippines, she got married to another man. In an action for damages, the Supreme Court held that she is liable. The act is contrary to morals, good customs and public policy. There was failure to comply with her wifely duties, deserting her husband without justifiable reasons. (Tenchavez vs. Escaño, 15 SCRA 355).

The action can also be based on Article 72 of the Family Code since the act of the woman gave dishonor to the family. The law says:

"When one of the spouses neglects his or her duties to the conjugal union or commits 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."

Declaration of nullity of marriage on the ground of psychological incapacity with award of moral damages.**Case:**

There was a complaint for declaration of nullity of marriage filed by Noel Buenaventura against his wife Isabel Singh Buenaventura on the ground of psychological incapacity. After trial, the court declared the marriage void on the ground of psychological incapacity and awarded moral damages citing Articles 2217 and 21 of the Civil Code. Is the award correct? Why?

Held:

No, because the signs of psychological incapacity may become manifest only after the solemnization of the marriage.

It is not correct to consider acts of a spouse after the marriage as proof of his psychological incapacity, and therefore a product of his incapacity or inability to comply with the essential obligations of marriage yet consider these acts as willful and hence as grounds for granting moral damages. It is contradictory to characterize acts as a product of psychological incapacity, and hence beyond the control of the party because of an innate inability, while at the same time considering the same set of acts as willful. By declaring the petitioner as psychologically incapacitated, the possibility of awarding moral damages on the same set of facts was negated. The award of moral damages should be predicated, not on the mere act of entering into the marriage, but on specific evidence that it was done deliberately and with malice by a party who had knowledge of his or her disability and yet willfully concealed the same. No such evidence appears to have been adduced in this case.”

“For the same reason, since psychological incapacity means that one is truly incognitive of the basic marital covenants that one must assume and discharge as a consequence of marriage, it removes the basis for the contention that the petitioner purposely deceived the private respondent. If the private respondent was deceived, it was not due to a willful act on the part of the petitioner. Therefore, the award of moral damages was without basis in law and in fact.” (Noel Buenaventura vs. CA, et al., G.R. Nos. 127358, 127449, March 31, 2005).

When liability arises in case of abuse of right.

The case of *Nikko Hotel Manila Garden, et al. vs. Roberto Reyes, alias "Amay Bisaya,"* G.R. No. 154259, February 28, 2005 is a case of a gate-crasher at a birthday party. It appears that he was at the lobby of the hotel when a friend saw him and allegedly invited him to the party. He carried the basket full of fruits being carried by his friend while they were going up the penthouse of the hotel where the party was being held. When the coordinator saw him, she asked him to just leave the place after eating as he was not invited but he did not. Instead, he shouted at the coordinator. His version was that, in a loud voice, the coordinator shouted at him telling him to leave. He refused as he was allegedly invited by one of the guests who later on denied having invited him. Instead, the guest testified that he carried the basket but warned him not to join as he was not invited, but still he went into the place. He sued the hotel, the coordinator and the guest for damages. The RTC dismissed the complaint due to lack of cause of action. The Court of Appeals reversed, holding that the manner he was asked to leave exposed him to ridicule, thus, held the defendants liable for damages. They appealed, contending that pursuant to the doctrine of *volenti non fit injuria*, they cannot be made liable for damages as he assumed the risk of being asked to leave and being embarrassed and humiliated in the process, as he was a gate-crasher. Is the contention correct? Why?

The doctrine of *volenti non fit injuria* ("to which a person assents is not esteemed in law as injury") refers to self-inflicted injury (Garciano vs. CA, 212 SCRA 436) or to the consent to injury (Servicewide Specialists, Inc. vs. IAC, 174 SCRA 80) which precludes the recovery of damages by one who has knowingly and voluntarily exposed himself to danger, even if he is not negligent in doing so. This doctrine does not find application to the case at bar because even if Reyes assumed the risk of being asked to leave the party, the defendants, under Articles 19 and 21 of the New Civil Code, were still under obligation to treat him fairly in order not to expose him to unnecessary ridicule and shame.

Thus, the threshold issue is whether or not the coordinator acted abusively in asking Roberto Reyes, *a.k.a.* "Amay Bisaya," to leave the party where he was not invited by the celebrant, thus, becoming liable under Articles 19 and 21 of the Civil Code. Parenthetically, and if she were so liable, whether or not Hotel Nikko, as her employer, is solidarily liable with her.

Upon a scrutiny of the evidence, the Supreme Court said that the version of the coordinator was more credible considering that

she has been in the hotel business for 20 years wherein being polite and discreet are virtues to be emulated that she acted politely in asking Reyes to leave. It was held that the coordinator did not abuse her right in asking Reyes to leave the party to which he was not invited, hence, he cannot be made liable under Articles 19 and 21 of the New Civil Code. The employer cannot likewise be liable.

Article 19, known to contain what is commonly referred to as the principle of abuse rights, is not a panacea for all human hurts and social grievances.

When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be responsible. The object of this article, therefore, is to set certain standards which must be observed not only in the exercise of one's right but also in performance of one's duties. These standards are the following: act with justice, give everyone his due and observe honesty and good faith. Its antithesis, necessarily, is any act evincing bad faith or intent to injure. Its elements are the following: (1) there is a legal right or duty; (2) which is exercised in bad faith; and (3) for the sole intent of prejudicing or injuring another. When Article 19 is violated, an action for damages is proper under Articles 20 and 21 of the Civil Code.

Article 21 refers to acts *contra bonus mores* and has the following elements: (1) There is an act which is legal; (2) but which is contrary to morals, good custom, public order, or public policy; and (3) it is done with intent to injure.

A common theme runs through Articles 19 and 21, and that is, the act complained of must be intentional.

The act of the coordinator of approaching Reyes without first verifying from the guest who allegedly invited him cannot give rise to a cause of action predicated on mere rudeness or lack of consideration of one person, which calls not only protection of human dignity but respect of such dignity. Without proof of ill-motive on her part, her act cannot amount to abuse of right. She may be guilty of bad judgment which, if done with good intention, cannot amount to bad faith.

Article 22. 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.

Coverage of the law.

The law was designed to place equity and justice over and above strict legalism or form. The codifiers of the Civil Code said that this law intends to uphold the spirit that giveth life rather than the letter that killeth. It now furnishes a remedy for those wrongs grievances and injustice which originally were not governed by law. In the words of one authority, this remedy may be availed of now to right a wrong that heretofore has been left unpunished or unprovided for; for it is a well-known principle in legislation that a law is intended to furnish a just solution or an equitable settlement to any injustice committed or grievance done. In the language of the codifiers, a question is posed thus: "Does it not redound to the common good that rights which lie deep in the recesses of man's conscience be extracted from this moral bedrock and set into the statutory law?" Furthermore, the codifiers state that: "this task is peculiarly within the scope of codification, which ought to reduce to a minimum the number of cases, where natural justice and positive law are at variance with each other." In other words, the Code Commission has justified this insertion as being in keeping with "modern trends" in legislation and the "progressive principles of law." There is no doubt that the principles of justice and equity not only pervade almost all legal systems but take the mission of the positive law where this is either silent or lacking. It is likewise of wide acceptance, especially among "common law countries," that equity furnishes more adequate remedies than positive law. (Garcia and Alba, *supra*, p. 59).

Illustrations. — A certain property left and temporarily forgotten by the owner is not lost, but is mislaid property, of which the owner is still constructively in possession, although its custody may be in another on whose premises it has been left. Thus, when A left his hat in the business office of B who found A's hat and refused to return the hat to A upon demand, it can be said that B is bound to return A's hat under this provision, because B should not profit by the mere forgetfulness of A, nor should the latter be deprived of his belonging by mere casual or accidental misplacement thereof. It has been held in a case that, where a certain personal property is hidden by its owner who forgot to retake it and then found by another, that thing was not considered a lost property although the finder did not know its owner since the purpose of hiding it was for safekeeping and was not an involuntary parting of possession. (*Sovern vs. Yoren*, 16 Ord. 269, No. Pa. 100, 8 Am. St. Rep. 293). But where articles are accidentally dropped in any public place, public thoroughfare, or street, they are lost in the legal sense. (*Hamaker vs. Blanchard*, 90

Pa. 377, 35 Am. Rep. 664). Likewise, it is not a case of losing where a person puts a package on the seat of a common carrier and forgets to take it with him when he leaves the car (State vs. Courtsol, 89 Conn. 564, 94 A. 973, LRA 1916, 465) or where money is left on a desk in a private apartment of a safe-deposit company (Silcott vs. Louisville Trust Co., 205 Ry. 234) or where hides are placed in a vat for the purpose of tanning and forgotten by the person who put them there. (Livermore vs. White, 74 Mo. 452; 43 Am. Rep. 600). On the other hand, a pocketbook found on the ground under a table in a public amusement place is lost property, because the element of involuntary parting with the possession is present (Hoagland vs. Forest Park Highlands Amusement Co., 170 Mo. 335, 70 S.W. 878, 94 Am. St. Rep. 740) and the same is true as to money found in a crevice or interspaced in a safe. (Durfee vs. Jones, RI 588, 23 Am. Rep. 528).

The law is founded on the principle of placing equity and justice above strict legalism or form. For, it is iniquitous and unconscionable to even think that one who is benefited by an act or event of another should appropriate said benefit without paying the price for the same.

The obligation referred to in the law may arise from quasi-contracts falling under Articles 2164 to 2175 of the Civil Code; or from quasi-delicts or even from acts or omissions punishable by law. The foregoing provisions of law envision the principle that no one shall be unjustly enriched or benefited at the expense of another.

Principle of *solutio indebiti*.

This is the legal basis for the principle that no one shall enrich himself at the expense of another. In the case of *Commissioner of Internal Revenue vs. Fireman's Fund Insurance Co.*, March 9, 1987, the Supreme Court said that the government is not exempt from its application. Hence, the government cannot collect taxes twice on the same transaction; otherwise, it would unduly enrich itself at the expense of the taxpayer.

Suppose a person continues to hold property already sold by him to another, does this not amount to unjust enrichment as when he continues to reap the fruits of such property? Yes, because a person cannot be allowed to unjustly enrich himself at the expense of another by holding on to property no longer belonging to him. (Obaña vs. Court of Appeals, G.R. No. L-36249, March 29, 1985).

There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. Article 22 of the Civil Code provides that “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.” The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another’s expense or damage. (*Car Cool Philippines, Inc. vs. Ushio Realty and Development Corp.*, G.R. No. 138088, January 23, 2006).

Article 23. 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.

What is contemplated by Article 23 is an involuntary act or an act which though unforeseen could not have been avoided. This is based on equity.

The Code Commission gave an example of a situation covered by this rule, thus:

“Without A’s knowledge, a flood drives his cattle to the cultivated highland of B. A’s cattle are saved, but B’s crop is destroyed. True, A was not at fault but he was benefited. It is but right and equitable that he should indemnify B.” (Report of the Code Commission, pp. 41-42).

Article 24. 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 or other handicap, the courts must be vigilant for his protection.

Who are protected by the law?

The law is designed to protect those at a disadvantaged position by reason of moral dependence, ignorance, indigence, mental weakness, tender age and other handicap. It is designed to implement the principle of *parens patriae*, and the courts, as guardians of the rights of the people, are called upon to implement such policy.

Article 24 of the Civil Code is an implementation of the social justice clause in the Constitution. In his message to the National Assembly on February 16, 1938, President Manuel L. Quezon said:

“We are earnestly concerned with social justice. Without a strict application of social justice to all elements of the community, general satisfaction of the people with their government is impossible to achieve. Here, in the just and equitable solution of social problems, is the real test of the efficiency of democracy to meet present-day conditions of society. Social justice involves many and varied questions, such as taxation, wages, land ownership, insurance against accidents, old age, etc... almost alone, the masses have built the Commonwealth by their sacrifices... Now, we are fully prepared to act, and we must act at once, if our people are to continue placing their confidence, for the remedy of the social evils which embitter their life (sic) is entirely in our hands.”

What the protection covers.

The law is explicit in giving protection to one who is at a disadvantaged position in all contractual, property or other relations. Hence, in the case of the *Heirs of John Sycip, et al. vs. CA, et al.*, any transaction involving real properties with Non-Christian Filipinos must be approved by the provincial governor of the place; otherwise, it is void. It is perceived that those who belong to the cultural minorities can be easy prey of the more intelligent people due to the former's ductility. But take note that the law merely gives protection to the illiterates, a classification intended by the legislature, designed to give them ample protection, which can be considered as an implementation of the social justice concept of President Magsaysay, “that those who have less in life should have more in law.”

Courts are bound to protect the rights of the less privileged.

In *Valenzuela vs. Court of Appeals, et al.*, G.R. No. 56168, December 22, 1988, an illiterate old man obtained a loan from a rural bank for P300.00. What was reflected in his record, however, was P5,000.00. In an action for annulment and/or reformation of instrument, the lower court ordered the reformation of the contract to reflect the true intention of the parties. Evidences to support reformation are: (1) receipt signed by the old man (deceased showing that the loan was for P300.00 only); and (2) testimonies of the wife, as well as a companion, that the amount of the loan was only P300.00.

On appeal, the Supreme Court said that this was one of the fraudulent and anomalous transactions of the bank. The bank took advantage of the old man, hence, in the exercise of the Court's duty to protect the rights of people with limited education, it affirmed the lower court's decision, based on Article 24, NCC.

Award of moral damages was also sustained due to the mental anguish, serious anxiety and moral shock suffered by the heirs as a consequence of the fraudulent act of the rural bank.

Law applied in a rape case.

Cognizant of its duty under the law to give protection to the people, the Supreme Court, in *People vs. Casipit*, applied the principle of *parens patriae* in a rape case committed on a girl of tender age by a relative. There are times when rape is very difficult to prove, but in the above-cited case, the Supreme Court applied the principle of *parens patriae* when it said that where a child of tender age is raped especially by a relative, the Court would always have the tendency to rely on her testimony. More specifically, in *People vs. Casipit*, 51 SCAD 482, 232 SCRA 638 (May 31, 1994), the Supreme Court said:

“Where the victims of rape are of tender years, there is a marked receptivity on the part of the courts to lend credence to their version of what transpired, a matter not to be wondered at, since the State, as *parens patriae*, is under obligation to minimize the risk of harm to those who, because of their minority, are not yet able to fully protect themselves.”

Case:

**Heirs of John Z. Sycip, et al.
vs. Court of Appeals, et al.
G.R. No. 76487, November 9, 1990**

Facts:

Melecio Yu and Talinanap Matualaga are married. While they were separated, a certain Alfonso Non approached Melecio and convinced him to sell a parcel of land at P200.00 per hectare which belonged to his wife. He assured Melecio that he could secure his

wife's signature; otherwise, the contract would be void. With such understanding, Melecio signed the document. It turned out that the deed involved the sale of more than 54 hectares in favor of John Sycip.

Can the land be recovered?

Held:

Yes. It is not disputed that the private respondents are Muslims who belong to the cultural minority or non-Christian Filipinos as members of the Maguindanao Tribe. Any transaction involving real property with them is governed by the provisions of Sections 145 and 146 of the Revised Administrative Code of Mindanao and Sulu, Section 120 of the Public Land Act (Commonwealth Act No. 141, as amended) and Republic Act No. 3872, further amending the Public Land Act.

Section 145 of the Revised Administrative Code of Mindanao and Sulu provides that any transaction involving real property with said non-Christian tribes shall bear the approval of the provincial governor wherein the same was executed or of his representative duly authorized in writing for such purpose, endorsed upon it. Section 146 of the same Code considers every contract or agreement made in violation of Section 145 as null and void.

Section 120 of the Public Land Act (Commonwealth Act No. 141) provides that conveyances and encumbrances made by persons belonging to the so-called "non-Christian tribes" shall be valid if the person making the conveyance or encumbrance is able to read and can understand the language in which the instrument of conveyance or encumbrance is written. Conveyances and encumbrances made by illiterate non-Christians shall not be valid unless duly approved by the Commissioner of Mindanao and Sulu.

Republic Act No. 3872 provides that conveyances and encumbrances made by illiterate non-Christian or literate non-Christians, where the instrument of conveyance or encumbrance is in a language not understood by said literate non-Christians, shall not be valid unless duly approved by the Chairman of the Commission on National Integration.

The obvious intent of the statutes is to guard the patrimony of illiterate non-Christians from those who are inclined to prey upon their ignorance or ductility. (*Amarante vs. Court of Appeals*, G.R. No. 76386, October 26, 1987).

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.

Basis of the law.

One authority said:

“One need not stretch his imagination to witness today a continuing carnival of pomp and vanity. The love for display of luxuries, coupled with the glare for vainglories and frivolities, carries with it the corruption of society and the debasement of public morality and decency. Thoughtless and wasteful extravagance not only pollute the general public but emasculate and feminize the strong fibers of civilization and render stunted the good virtues of the righteous. A continued and prolonged obsession in unreasonable and unpardonable excesses will, in the last computation or analysis, bring about not only moral degeneration but also material disintegration equally harmful and destructive to both who indulge in them and those who are under or near such bad and evil influences. One of the main causes of unrest among the poor or among the masses, now and in the past, is the all too often and frequent ostentation of vanity and riches in open disregard of the privation and poverty of the great majority. All this exhibition of pomp and thoughtless waste of money and fortune redound to retard the rapid material and economic advancement of society and gives the youth a deleterious and debasing example and affords the old no reason for justification or jubilation wheresoever and whensoever done. Hence, the necessity of this new rule of law which aims to curb, if not altogether culminate, this wordly vanity of vanities.” (Garcia & Alba, *supra*, pp. 67-68).

Where the law applies.

In order that Article 25 of the Civil Code may apply, there must be a declared public want or emergency. Thoughtless extravagance in expenses for pleasure during such period may cause hatred among the people, especially those adversely affected by such emergency.

Illustration:

After a typhoon which rendered practically everybody homeless in a community, a marriage is celebrated with lavishness where there are people who have practically no food to eat; such act may be prevented by an order of a court at the instance of a government or private charitable institution.

Note that not anyone can ask the courts to prevent such thoughtless extravagance. It must be a government or private charitable institution that should ask for an order.

Actually, this provision of the law is a manifestation of the power of the community to safeguard public welfare under the police power of the state.

Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

- (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.**

The rule emphasizes that a person's dignity, personality, privacy and peace of mind must be respected. This can be traced from the Roman principle that a man's home is his castle and even the king could not enter without his permission.

The Code Commission rationalized the law by saying:

“The sacredness of human personality is a concomitant of every plan for human amelioration. The touchstone of every system of laws, of the culture and civilization of every country, is how far it dignifies man. If in legislation,

inadequate regard is observed for human life and safety; if the laws do not sufficiently forestall human suffering or do not try effectively to curb those factors or influences that wound the noblest sentiments; if the statutes insufficiently protect persons from being unjustly humiliated; in short, if human personality is not properly exalted — then the laws are indeed defective.

x x x

x x x

x x x

“The present laws, criminal and civil, do not adequately cope with the interferences and vexations mentioned in Article 26.

“The privacy of one’s home is an inviolable right. Yet the laws in force do not squarely and effectively protect this right.

x x x

x x x

x x x

“The acts referred to in No. 2 are multifarious, and yet many of them are not within the purview of the laws in force. Alienation of the affection of another’s wife or husband, unless it constitutes adultery or concubinage, is not condemned by the law, much as it may shock society. There are numerous acts, short of criminal unfaithfulness, whereby the husband or wife breaks the marital vows, thus causing untold moral suffering to the other spouse. Why should not these acts be the subject-matter of a civil action for moral damages? In American law they are.

“Again, there is the meddling of so-called friends who poison the mind of one or more members of the family against the other members. In this manner many a happy family is broken up or estranged. Why should not the law try to stop this by creating a civil action for moral damages?

“Of the same nature is that class of acts specified in No. 3; intriguing to cause another to be alienated from his friends.

“Not less serious are the acts mentioned in No. 4; vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect or other personal condition. The penal laws against defamation and unjust vexation are glaringly inadequate.

“Religious freedom does not authorize anyone to heap obloquy and disrepute upon another by reason of the latter’s religion.

“Not a few of the rich people treat the poor with contempt because of the latter’s lowly station in life. To a certain extent this is inevitable, from the nature of the social make-up, but there ought to be a limit somewhere, even when the penal laws against defamation and unjust vexation are not transgressed. In a democracy, such a limit must be established. The courts will recognize it in each case. Social equity is not sought by the legal provision under consideration, but due regard for decency and propriety.

“Place of birth, physical defect and other personal conditions are too often the pretext of humiliation cast upon persons. Such tampering with human personality, even though the penal laws are not violated, should be the cause of a civil action.” (Report of the Code Commission, pp. 32-34).

Case:

**St. Louis Realty Corporation vs.
Court of Appeals
133 SCRA 179**

Facts:

St. Louis Realty caused to be published with the permission of Arcadio S. Arcadio (but without permission of Doctor Aramil) in the issue of the Sunday Times of December 15, 1968, an advertisement with the heading “WHERE THE HEART IS.” Below that heading was the photograph of the residence of Doctor Aramil and the Arcadio family and then below the photograph was the following write-up:

“Home is where the heart is. And the hearts of MR. AND MRS. ARCADIO S. ARCADIO and their family had been captured by BROOKSIDE HILLS. They used to rent a small 2-bedroom house in a cramped neighborhood, sadly inadequate and unwholesome for the needs of a large family. They dream(ed) of a more pleasant place, free from the din and dust of city life, yet near all facilities. Plans took shape when they heard of BROOKSIDE HILLS. With thrift

and determination, they bought a lot and built their dream house for P31,000. The Arcadios are now part of the friendly, thriving community of BROOKSIDE HILLS a beautiful first-class subdivision planned for wholesome family living.”

The same advertisement appeared in the Sunday Times dated January 5, 1969. Doctor Aramil, a neuro-psychiatrist and a member of the faculty of U.E. Ramon Magsaysay Memorial Hospital, noticed the mistake. On that same date, he wrote St. Louis Realty a letter of protest.

The trial court awarded Aramil P8,000 as actual damages, P20,000 as moral damages and P2,000 as attorney’s fees. St. Louis Realty appealed to the Court of Appeals. The Appellate Court affirmed that judgment.

Held:

In this appeal, St. Louis Realty contends that the Appellate Court ignored certain facts and resorted to surmises and conjectures. This contention is unwarranted. The Appellate Court adopted the facts found by the trial court. Those factual findings are binding on this Court.

St. Louis Realty also contends that the decision is contrary to law and that the case was decided in a way not in conformity with the rulings of this Court. It argues that the case is not covered by Article 26 which provides that “every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons.” “Prying into the privacy of another’s residence” and “meddling with or disturbing the private life or family relations of another” and “similar acts,” “though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief.”

The damages fixed by Judge Leuterio are sanctioned by Articles 2200, 2208 and 2219 of the Civil Code. Article 2219 allows moral damages for acts and actions mentioned in Article 26. As lengthily explained by Justice Gatmaitan, the acts and omissions of the firm fall under Article 26.

St. Louis Realty’s employee was grossly negligent in mixing up the Aramil and Arcadio residences in a widely-circulated publication like the Sunday Times. To suit its purpose, it never made any writ-

ten apology and explanation of the mixup. It just contented itself with a cavalier “rectification.”

Persons, who know the residence of Doctor Aramil, were confused by the distorted, lingering impression that he was renting his residence from Arcadio or that Arcadio had leased it from him. Either way, his private life was mistakenly and unnecessarily exposed. He suffered diminution of income and mental anguish.

Article 27. Any person suffering material or moral loss because a public servant or employee refuses 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.

The official duty referred to in the law must be a ministerial duty, not a discretionary function. The duty of a fiscal to file a case after preliminary investigation is discretionary. Hence, his refusal to prosecute a case after preliminary investigation because he finds no sufficient evidence to establish a *prima facie* case is not a refusal without just cause to perform an official duty. (Zulueta vs. Nicolas, 102 Phil. 944; Javellana vs. Tayo, 6 SCRA 1042).

If the duty of the officer is essentially discretionary, like the power to appoint, there is no liability for non-feasance since discretion may involve the non-performance of an act.

This article presupposes that a person actually suffers a material or a moral loss on account of the unreasonable refusal or neglect of a public servant or employee to perform his official duty without a just cause therefor. In other words, there must be a willful or illegal act or omission by a public servant in the performance of his official duty, by reason of which a person suffers thereby either a material or a moral loss.

Analysis.

There must necessarily be a wrong committed independent of a contract and that this wrong constitutes a breach of duty which this provision, as distinguished from a mere contract, has imposed upon a public servant, *i.e.*, a tax collector. The public servant’s civil liability must be determined by his own conduct and not merely by his mental state of mind or that of the taxpayer’s. Likewise, his conduct should be accompanied by a material or a moral loss suffered, that is,

his refusal or neglect in the performance of his official duty gives rise to the loss suffered, for otherwise, an action may not lie. It is necessary, therefore, that the damage consisting either of a material or a moral loss must result in some injury to the taxpayer concerned and that said loss is the direct result of the breach of a public duty owing to the public servant or employee against whom a complaint for damages is lodged. It is well to remember in this connection, that a wrong without damage, or *injuria absque damno*, does not constitute a good cause of action under this provision. There is a general rule that a person injured through the act or omission of another in violation of law is entitled to actual pecuniary compensation for the injury sustained, and this particular provision seems to fall within the general rule. It is not alone that there must be an invasion of the plaintiff's right resulting in a material or a moral loss to himself but that the loss should result directly or indirectly from either the neglect or the refusal to perform a specific duty; in other words, not alone must there be the breach of a legal duty by a public servant or employee sought to be charged or held liable, but the right of the taxpayer must have been infringed as a result thereby. As a necessary consequence, the exaction of the obligation due the public servant should be proved along with the material or moral loss suffered by the person seeking relief therefrom. It seems that a mere intention to do wrong not connected with the infringement of a legal right cannot be made the subject of an action under this provision of law, for the intention to do wrong must be accompanied with the doing or accomplishment of the act intended. (Garcia and Alba, *Civil Code of the Phils., Commentaries and Jurisprudence*, 1950 ed., pp. 74-75).

Neglect of duty.

Where duties are imposed upon an individual officer, questions of liability for neglect, corresponding to the questions which arise when official duty fails in performance, are of frequent occurrence. Thus, it was held in a case that where the duty imposed is obviously meant to be a duty to the public, and also to individuals, and the penalty is made payable to the State or to the individual, the right of an individual injured to maintain an action on the case of breach of duty owing to him will be unquestionable. (3 Cooley on Torts, p. 352).

General principles governing redress for neglect.

The term "neglect" implies the absence of care, prudence, and forethought as under circumstances duly required should be given or

exercised; and although the terms slight negligence, ordinary negligence, and gross negligence are frequently employed to characterize particular conduct, yet the terms themselves have no distinctive meaning or importance in law and only imply that there has been culpable neglect under circumstances calling for different degrees of care; any injurious neglect of duty being actionable. Thus, it was held in a case that the law imposes on those who follow certain callings in life exceptional obligations, requiring in some cases a care and caution far beyond what is required generally; also that in case of official and other statutory duties, as this one, an individual may bring suit for failure in performance whenever it appears that they were imposed for his advantage or protection. (Cooley on Torts, p. 364).

Case:**Ledesma vs. Court of Appeals
G.R. No. L-54598, April 15, 1988****Facts:**

Some students of a state college formed an organization named Student Leadership Club. Delmo was elected treasurer. In that capacity, she extended loans from the club funds to some students. The college president, claiming that extending loans was against school rules, wrote Delmo informing her that she was being dropped from the membership of the club and that she would not be a candidate for any award from the school. Delmo appealed to the Bureau of Public Schools. The Bureau directed the college president not to deprive Delmo of any award if she is entitled to it. On April 27, 1966, the President received the Director's decision. On the same day, he received a telegram "airmail records Delmo missent that office." The Bureau Director asked for the return only of the records, but the President allegedly mistook the telegram as ordering him to also send the decision back. So he returned by mail all the records plus the decision to the Director.

The next day, the President received from the Bureau Director a telegram telling him to give a copy of the decision to Delmo. The President in turn sent a telegram to the Bureau Director telling him that he had returned the decision and that he had not retained a copy.

On May 3, the day of graduation, the President again received another telegram from the Director, ordering him not to deprive

Delmo of any honors due her. As it was impossible by this time to include Delmo's name in the program as one of the honor students, the President let her graduate as a plain student instead of being awarded the latin honor for *magna cum laude*.

Held:

Under Art. 27 of the Civil Code, any person suffering material or moral loss because a public servant or employee refuses 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.

Thus, the President of the state college was held liable for damages under Article 27 of the Civil Code for failure to graduate a student with honors, on account of said official's neglect of duty and callousness.

Undoubtedly, Delmo went through a painful ordeal brought about by the petitioner's neglect of duty and callousness. Thus, moral damages under Article 27 of the Civil Code are but proper. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of defendant's wrongful act or omission.

Exemplary damages are also in order. The rationale behind exemplary or corrective damages is, as the name implies, to provide an example or correction for the public good.

Article 28. 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 a right of action by the person who thereby suffers damage.

Unfair competition in itself is a crime punishable under Article 189 of the Revised Penal Code. While competition in business is healthy because it tends to improve one's products, yet if one uses force, intimidation, deceit, machination or any other unjust, oppressive or high-handed method to deprive others of legitimate earnings, then that act may give rise to an action for damages.

Where a person drives away his competitors in business by preventing them from selling their goods inspite of their licenses

to engage in that business in a place, that person is liable for damages and the action may be filed independently of the criminal prosecution.

Evils of capitalistic world.

This being a new provision, there is enough justification and reasonable necessity to elucidate its meaning, concept, and implications, hence the following comments: In a democratic form of government like ours, free enterprise and fair competition are of the essence. In actuality, however, free enterprise is stifled, if not altogether supplanted, by rich enterprises of the rich, by the rich, and for the rich. Monopolies have not only enriched the rich but have impoverished and pauperised the poor and the paupers. They are the worst deterrent, if not obstacle, to the fair distribution of wealth and surpluses of a community, or of a nation, or of the world. These monopolies and trusts are not altogether brought about in a sudden, but have grown and spread throughout the length and breadth of the capitalistic world on account of the pernicious and evil effects of unfair competition and cut-throat rivalries in commerce, business, trade and other gainful occupations and undertakings. It is this reason, we suppose, that has prompted the Code Commission to insert a regulatory, if not a repressive, measure as contemplated in this article. (Garcia and Alba, *Civil of Code of the Phils., Commentaries and Jurisprudence*, 1950 ed., p. 77).

Article 29. 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. Such action requires only a preponderance of evidence. 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.

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.

The law clearly allows the filing of a civil action even if the accused is acquitted beyond reasonable doubt. The reason for this is

that the evidence required in proving the criminal liability of an accused is different from the degree of proof necessary in a civil case. This rule also shows the independent character of the liability of the accused under the Penal Code.

Case:

**Urbano vs. Intermediate Appellate Court
G.R. No. 72964, January 7, 1988**

Facts:

A vehicular accident happened one morning resulting in the filing of an information for damage to property with physical injuries thru reckless imprudence. Accused was acquitted because his guilt has not been proved beyond reasonable doubt. A civil action for damages based on tort was filed, but the same was dismissed for lack of reservation by the complainant.

Held:

It is a well-settled doctrine that a person, while not criminally liable, may still be civilly liable. The judgment of acquittal extinguishes the civil liability of the accused only when it includes a declaration that the facts from which the civil liability might arise did not exist. (*Padilla vs. CA*, 129 SCRA 558; *People vs. Ligon, et al.*, G.R. No. 74041, July 29, 1987). The ruling is based on Article 29, NCC, which provides that 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. Such action requires only a preponderance of evidence.

The reason for the provision of Article 29 of the Civil Code, which provides that the acquittal of the accused on the ground that his guilt has not been proved beyond reasonable doubt does not necessarily exempt him from civil liability for the same act or omission, has been explained by the Code Commission as follows:

“The old rule that the acquittal of the accused in a criminal case also releases him from civil liability is one of the most serious flaws in the Philippine legal system. It

has given rise to numberless instances of miscarriages of justice, where the acquittal was due to a reasonable doubt in the mind of the court as to the guilt of the accused. The reasoning followed is that inasmuch as the civil responsibility is derived from the criminal offense, when the latter is not proved, civil liability cannot be demanded.

“This is one of those cases where confused thinking leads to unfortunate and deplorable consequences. Such reasoning fails to draw a clear line or demarcation between criminal liability and civil responsibility, and to determine the logical result of the distinction. The two liabilities are separate and distinct from each other. One affects the social order and the other, private rights. One is for the punishment or correction of the offender while the other is for reparation of damages suffered by the aggrieved.

“The two responsibilities are so different from each other that Article 1813 of the present Spanish Civil Code reads thus: ‘There may be a compromise upon the civil action arising from a crime; but the public action for the imposition of the legal penalty shall not thereby be extinguished.’ It is just and proper that, for the purpose of the imprisonment of or fine upon the accused, the offense should be proved beyond reasonable doubt. But for the purpose of indemnifying the complaining party, why should the offense also be proved beyond reasonable doubt? Is not the invasion or violation of every private right to be proved only by a preponderance of evidence? Is the right of the aggrieved person any less private because the wrongful act is also punishable by the criminal law?” (Report of the Code Commission, p. 45. See also: *People vs. Ligon*, G.R. No. 74041, July 29, 1987).

Additionally, the provisions of Rule 111, Sec. 2(c) of the Rules of Court state that “extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. x x x”

A person who is acquitted beyond reasonable doubt may be held civilly liable in the same judgment of acquittal.

Case:**Padilla vs. Court of Appeals
129 SCRA 558****Facts:**

The petitioners, by means of threats, force and violence, prevented Antonio Vergara and his family to close their stall, under lease from the municipal government, located at the public market of Jose Panganiban, Camarines Norte; and by subsequently forcibly opening the door of said stall and thereafter demolishing and destroying said stall and the furniture therein by axes and other massive instruments, and carrying away the goods, wares, and merchandise in order to abate what they considered as nuisance *per se*.

After trial, the Court of First Instance of Camarines Norte rendered a decision finding the accused guilty beyond reasonable doubt of the crime of grave coercion and imposed upon them an imprisonment of five months and one day; to pay a fine of P500.00 each; to pay actual and compensatory damages in the amount of P10,000.00; moral damages in the amount of P30,000.00; and another P10,000.00 for exemplary damages, jointly and severally, and all the accessory penalties provided for by law; and to pay the proportionate costs of the proceedings.

The petitioners appealed the judgment of conviction to the Court of Appeals contending that the trial court's finding of grave coercion was not supported by the evidence and that the town mayor had the power to order the clearance of market premises and the removal of complainants' stall because the municipality had enacted municipal ordinances pursuant to which the market stall was a nuisance. The petitioners questioned the imposition of prison terms and challenged the order to pay fines, actual and compensatory damages, moral damages, exemplary damages, and the costs of the suit.

The Court of Appeals modified the judgment appealed from in the sense that the appellants were acquitted on the ground of reasonable doubt but ordered the appellants to pay jointly and severally complainants the amount of P9,600.00 as actual damages.

Petitioners filed a petition for certiorari to the Supreme Court to review the decision of the Court of Appeals contending that the acquittal of the defendants-appellants as to criminal liability results in the extinction of their civil liability.

Issue:

Is civil liability extinguished where acquittal is based on reasonable doubt that the accused is guilty of the crime charged?

Held:

Article 29 of the Civil Code provides that:

“When the accused in the 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. Such action requires only a preponderance of evidence. 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.

“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.”

There appear to be no sound reasons to require a separate civil action to still be filed considering that the facts to be proved in the civil case have already been established in the criminal proceedings where the accused was acquitted. Due process has been accorded the accused. To require a separate civil action simply because the accused was acquitted would mean needless clogging of court dockets and unnecessary duplication of litigation with all its attendant loss of time, effort, and more, on the part of all concerned.

The petitioners were acquitted not because they did not commit the acts stated in the charge against them. There is no dispute over the forcible opening of the market stall, its demolition with axes and other instruments, and the carting away of the merchandise. The defense that they did so in order to abate what they considered a nuisance *per se* is untenable. The Vergaras have been paying rentals for the premises to the government which allowed them to lease the stall. It is therefore far-fetched to say that the stall was a nuisance *per se* which could be summarily abated. The petitioners were acquitted because the acts they committed were denominated coercion when they properly constituted some other offense such as threat or malicious mischief.

Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil action might arise did not exist.

Extinction of the criminal liability does not necessarily carry with it the civil liability.

In *Ruiz vs. Ucol, et al.*, G.R. No. L-45404, August 7, 1987, the administrative charge filed by Ruiz against Ucol was dismissed. He, however, filed a criminal complaint for libel on alleged libelous portions of Ucol's answer. He entered his appearance and participated in the criminal prosecution. When Ucol was acquitted on reasonable doubt, he filed a separate civil action for damages. Hence, Ucol filed a motion to dismiss which was granted. Ruiz went to the Supreme Court on *certiorari* where he based his contention on the following:

“ART. 29. 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 x x x.” (NCC).

“Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.” (RULE 111, Sec. 2[c], Rules of Court).

Held:

The right of Ruiz under the above provisions to file the civil action for damages based on the same facts upon which he instituted the libel case is not without limitation.

The case filed by Ruiz showed a pure pattern of harassment. In fact, the answer of Ucol in the administrative case did not contain libelous statements.

Just because the accused was acquitted because his guilt was not proven beyond reasonable doubt, it does not follow that he is free from civil liability. While the guilt of the accused in a criminal prosecution must be established beyond reasonable doubt, only a preponderance of evidence is required in civil cases. The judgment of acquittal extinguishes the civil liability of the accused only when it

includes a declaration that the facts from which the civil liability might arise did not exist. (citing *Padilla vs. C.A.*, 129 SCRA 558).

The reason for the provisions of Article 29 of the Civil Code, which provide that the acquittal of the accused on the ground that his guilt has not been proved beyond reasonable doubt does not preclude a civil action for damages for the same act or omission, is that the two liabilities are separate and distinct from each other. One is for the punishment or correction of the offender while the other is for reparation of damages suffered by the aggrieved party. The two responsibilities are different from each other. (*People vs. Ligon*, L-74041, July 29, 1987).

So that if a person is charged of an offense and he gets acquitted, and there is a pronouncement in the judgment of acquittal that there is no basis upon which the civil liability may exist, then, a separate civil action may no longer prosper.

Article 30. 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.

A civil action to enforce the civil liability of the accused arising from the crime charged as a felony may be filed ahead of the criminal action. In that case, the plaintiff is required to prove his case by preponderance of evidence. The law allows the filing of a civil action; but the moment a criminal action is filed, the civil action is suspended. Thus, Rule 111, Section 2(a) of the Rules of Court provides that:

“Whenever the offended party shall have instituted the civil action as provided for in the first paragraph of Section 1 hereof before the filing of the criminal action and the criminal action is subsequently commenced, the pending civil action shall be suspended, in whatever stage before final judgment it may be found, until final judgment in the criminal action has been rendered. However, if no final judgment has been rendered by the trial court in the civil action, the same may be consolidated with the criminal action upon application with the court trying the criminal action. If the application is granted, the evidence presented and admitted in the civil action shall be deemed

automatically reproduced in the criminal action, without prejudice to the admission of additional evidence that any party may wish to present. In case of consolidation, both the criminal and the civil actions shall be tried and decided jointly.”

Law recognizes an alternative and separate action.

In *People vs. Bayotas*, 55 SCAD 140, 236 SCRA 239 (September 2, 1994), it was observed that what Article 30 recognizes is an alternative and separate civil action which may be brought to demand civil liability arising from a criminal offense independently of any criminal action. In the event that no criminal proceedings are instituted during the pendency of said civil case, the quantum of evidence needed to prove the criminal act will have to be that which is compatible with civil liability, and that is, preponderance of evidence and not proof beyond reasonable doubt.

It must be remembered that if the accused dies during the proceedings or on appeal, there is extinguishment of the criminal liability and the civil liability arising from the crime charged as a felony. In the case of *People vs. Sendaydiego*, 81 SCRA 120, the Supreme Court held that claims for civil liability *ex delicto* survive the death of the accused, thereby *ipso facto* treating the civil action impliedly instituted with the criminal, as one filed under Article 30, as though no criminal proceedings had been filed but merely a separate civil action. The Supreme Court observed that the ruling had the effect of converting such claims from one which is dependent on the outcome of the criminal action to an entirely new and separate one, the prosecution of which does not necessitate the filing of criminal proceedings. One would have had to be put to pinpoint the statutory authority for such a transformation. It is to be borne in mind that in recovering such civil liability *ex delicto*, the same has perforce to be determined in the criminal action, rooted as it is in the court's pronouncement of the guilt or the innocence of the accused. This is but to render fealty to the intentment of Article 100 of the Revised Penal Code which provides that “every person criminally liable for a felony is also civilly liable.” In such cases, extinction of the criminal action due to death of the accused pending appeal inevitably signifies the concomitant extinction of the civil liability. *Mors Omnia Solvi*. Death dissolves all things. (See *People vs. Bayotas*, 55 SCAD 140, 236 SCRA 239).

In a nutshell, what is contemplated in Article 30 of the Civil Code is the institution of a separate civil action that does not draw its life from a criminal proceeding. Surely, it will take more than just a summary judicial pronouncement to authorize the conversion of said civil action to an independent one such as that contemplated under Article 30, for the rule is that, the civil action for recovery of civil liability *ex delicto* cannot be treated as a separate civil action under Article 30 of the Civil Code. For, to do so would effect the re-opening of the criminal action already extinguished.

Doctrine in Bayotas reiterated.

What was said in *Bayotas* was that the death of the accused extinguished the criminal liability of the accused and the civil liability arising from the crime charged as a felony. It was reiterated in *Mansion Biscuit Corp., et al. vs. CA, et al.*, G.R. No. 94713, November 23, 1995, 65 SCAD 604.

Facts:

Sometime in 1981, Ty Teck Suan, as President of Edward Ty Brothers Corporation ordered numerous cartons of nutria-wafer biscuits from Mansion Biscuit Corporation. Checks were paid, but the same were dishonored when presented for payment. Ty and Siy Gin, a co-signer of the checks were sued for violation of B.P. Blg. 22. Ty was convicted, but on appeal, he died. One basic issue was whether the civil liability can be enforced against Ty's heirs.

Held:

No. The civil liability for non-payment of the nutria-wafer biscuits delivered by Mansion Biscuit to Edward Ty Brothers Corporation cannot be enforced against the private respondents because the said civil liability was not the personal liability of Ty Teck Suan to Mansion Biscuit Corp. Rather, it was the contractual liability of Edward Ty Brothers Corp., of which Ty Teck Suan was president, to Mansion Biscuit Corp. This is borne out by the records of the case as it reveal that the checks were issued "in payment of the cartons of nutria-wafer biscuits purchased from Mansion Biscuit Corp., represented by Ang Cho Hong, president thereof, by Edward Ty Brothers Corp. thru said Ty Teck Suan." Moreover, petitioner himself admitted that the contract was executed by and between Edward Ty Brothers Corp. and Mansion Biscuit Corp.

It is quite obvious therefore that Ty Teck Suan did not purchase the biscuits for himself but for the Corporation. The issue of the civil liability of Edward Ty Brothers Corp. to Mansion Biscuit Corp. arising from the contract of purchase and sale between them could not have been and was not litigated and resolved in the criminal case inasmuch as they were not parties thereto. A separate civil action must be instituted by Mansion Biscuit Corp. against Edward Ty Bros. Corp. to enforce the contract between them.

Even if the liability were tortious, the same must be addressed still against Edward Ty Bros. Corp. for the established facts show that the postdated checks were issued by the accused not in payment of his personal obligations but of the corporation's. Moreover, the fraud allegedly committed by the accused was merely incidental to the contractual obligation, not an independent act which could serve as a source of obligation.

The law speaks of a civil action arising from the act or omission complained of. It does not refer to a civil action which is based on other sources of obligations like contracts, quasi-contracts, delicts and quasi-delicts.

Article 31. 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.

This article refers to a civil action which is no longer based on the criminal liability of the defendant, but on an obligation arising from other sources, like law, contracts, quasi-contracts and quasi-delicts. (Art. 1157, NCC). Under the law, irrespective of the result of the criminal prosecution, an independent civil action could still be filed. The reason for this is that the basis of the civil action is no longer the criminal liability of the defendant, but another source, may be a quasi-delict or tort.

The rule in Article 31 emphasizes further the individuality of the civil action arising from a crime and that from a quasi-delict under Article 2177. The reason is that the evidence in the criminal case may not be sufficient for a civil liability, where mere preponderance of evidence is sufficient. Moreover, the basis of liability is subsidiary to the criminal punishment; while in *culpa aquiliana*, the liability is primary.

Application of Article 31.

An example of a case falling under Article 31 is a civil action to recover the proceeds of sale of goods covered by a trust receipt. Such civil action can proceed independently of the criminal action for violation of the trust receipt law. (South City Homes, Inc. vs. BA Finance, G.R. No. 135462, 7 December 2001; Prudential Bank vs. NLRC, 321 Phil. 798 [1995]; Prudential Bank vs. Intermediate Appellate Court, G.R. No. 74886, 8 December 1992, 216 SCRA 257). In such case, the validity of the contract, on which the civil action is based, is not at issue. What is at issue is the violation of an obligation arising from a valid contract — the trust receipt.

However, when the civil action is based on a purported contract that is assailed as illegal *per se*, as when the execution of the contract is alleged to violate the Anti-Graft and Corrupt Practices Act, Article 31 does not apply. In such a situation, the contract if proven illegal cannot create any valid obligation that can be the basis of a cause of action in a civil case. Under Article 1409 of the Civil Code, a contract “whose cause, object or purpose is contrary to law,” or a contract that is “expressly prohibited or declared void by law,” is void from the very beginning. No party to such void contract can claim any right under such contract or enforce any of its provisions.

Under Section 3(g) of the Anti-Graft and Corrupt Practices Act, entering into a contract that is manifestly and grossly disadvantageous to the government is “declared to be unlawful.” If the act of entering into the contract is assailed as a crime in itself, then the issue of whether the contract is illegal must be first resolved before any civil action based on the contract can proceed. Only the Sandiganbayan has the jurisdiction to decide whether the act of entering into such contract is a crime, where the salary grade of one of the accused is grade 27 or higher, as in Criminal Cases Nos. 16889-16900 filed with the Sandiganbayan.

Article 31 speaks of a civil action “based on an obligation not arising from the act x x x complained of as a felony.” This clearly means that the obligation must arise from an act not constituting a crime. In the instant case, the act purporting to create the obligation is assailed as a crime in itself. That act, which is prohibited by law, is the entering into dredging contracts that are manifestly and grossly disadvantageous to the government. A contract executed against the provisions of prohibitory laws is void. If the dredging contracts are declared illegal, then no valid obligation can arise from such con-

tracts. Consequently, no civil action based on such contracts can proceed independently of the criminal action.

In contrast, where the civil action is based on a contract that can remain valid even if its violation may constitute a crime, the civil action can proceed independently. Thus, in estafa thru violation of the trust receipt law, the violation of the trust receipt constitutes a crime. However, the trust receipt itself remains valid, allowing a civil action based on the trust receipt to proceed independently of the criminal case.

Clearly, NIC's civil case before the Malabon trial court does not fall under Article 31 of the Civil Code. This calls then for the application of the second paragraph of Section 2 of Rule 111 which states that "if the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage it may be found before judgment on the merits." Consequently, the civil case for collection pending in the Malabon trial court must be suspended until after the termination of the criminal cases filed with the Sandiganbayan.

The suspension of the civil case for collection of sum of money will avoid the possibility of conflicting decisions between the Sandiganbayan and the Malabon trial court on the validity of NIC's dredging contracts. If the Sandiganbayan declares the dredging contracts illegal and void *ab initio*, and such declaration becomes final, the NIC's civil case for collection of sum of money will have no legal leg to stand on. However, if the Sandiganbayan finds the dredging contracts valid, then NIC's collection case before the Malabon trial court can then proceed to trial. (Republic vs. CA, et al., G.R. No. 116463, June 30, 2003).

Article 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

- (1) Freedom of religion;**
- (2) Freedom of speech;**
- (3) Freedom to write for the press or to maintain a periodical publication;**
- (4) Freedom from arbitrary or illegal detention;**

- (5) Freedom of suffrage;
- (6) The right against deprivation of property without due process of law;
- (7) The right to a just compensation when private property is taken for public use;
- (8) The right to the equal protection of the laws;
- (9) The right to be secure in one's person, house, papers and effects against unreasonable searches and seizures;
- (10) The liberty of abode and of changing the same;
- (11) The privacy of communication and correspondence;
- (12) The right to become a member of associations or societies for purposes not contrary to law;
- (13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;
- (14) The right to be free from involuntary servitude in any form;
- (15) The right of the accused against excessive bail;
- (16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
- (17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
- (18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and
- (19) Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil

action shall proceed independently of any criminal prosecution (if the latter be instituted) and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

Article 32 of the New Civil Code enumerates basic constitutional rights of citizens. Violation of the same may give rise to criminal and civil liability. In fact, even if the act that violates this Article does not amount to a crime, still a person may be held civilly liable. Such civil action shall be proved only by preponderance of evidence.

Case:

**Aberca, et al. vs. Ver, et al.
G.R. No. L-69866, April 15, 1988**

Facts:

Several persons were arrested and detained without charges during the period of martial law. When they were released by President Aquino, they filed a suit for damages based on Article 32, NCC. Can respondents be held liable for damages?

Held:

The purpose of Article 32 of the Civil Code is to provide a sanction to the deeply cherished rights and freedoms enshrined in the Constitution. Its message is clear. No man may seek to violate those sacred rights with impunity. In times of great upheaval or of social and political stress, when the temptation is strongest to yield to the law of force rather than the force of law, it is to remind ourselves that certain basic rights and liberties are immutable and cannot be sacrificed to the transient needs or imperious demands of the ruling power. The rule of law must prevail, or else liberty will perish.

Our commitment to democratic principles and to the rule of law compels us to reject the view which reduces law to nothing but the expression of the will of the predominant power in the community. Democracy cannot be a reign of progress, of liberty, of justice, unless the law is respected by him who makes it and by him for whom it is

made. Now this respect implies a maximum of faith, a minimum of idealism. On going to the bottom of the matter, we discover that life demands of us a certain residuum of sentiment which is not derived from reason, but which reason nevertheless controls.

Article 32 of the Civil Code which renders any public officer or employee or any public individual liable for damages for violating the Constitutional rights and liberties of another, as enumerated therein, does not exempt military officers and officials from responsibility. Only judges are excluded from liability under said article, provided their acts or omissions do not constitute a violation of the Penal Code or other penal statutes.

Military authorities are not restrained from pursuing their assigned task or carrying out their mission with vigor. Theirs is the duty to protect the Republic from its enemies, whether of the left or of the right, or from within or without, seeking to destroy or subvert our democratic institutions and imperil their very existence. But when they carry out this task and mission, they must observe the constitutional and legal limitations; otherwise, the very fabric of our faith will start to unravel. In the battle of competing ideologies, the struggle for the mind is just as vital as the struggle of arms. The linchpin in that psychological struggle is faith in the rule of law. Once that faith is lost or compromised, the struggle may well be abandoned.

The suspension of the privilege of the writ of *habeas corpus* does not destroy petitioners' right and cause of action for damages for illegal arrest and detention and other violations of their constitutional rights. The suspension does not validate an otherwise illegal arrest or detention. What is suspended is merely the right of the individual to seek release from detention through the writ of *habeas corpus* as a speedy means of obtaining his liberty.

The civil action that may be filed in the *above-cited* provision of Article 32, NCC must have been reserved in view of Rule 111, Section 1, of the Rules of Court which provides that:

“When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

“Such civil action includes recovery of indemnity under the Revised Penal Code, and the damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Phil-

ippines arising from the same act or omission of the accused.

x x x

x x x

x x x.”

The rule is founded on the principle that the filing of the criminal carries with it the filing of the civil. If no reservation, waiver, or prior institution of the civil action is made, the plaintiff will then prosecute the civil aspect of the act of the accused in the same criminal proceedings.

In spite of the fact that the complainant can file a separate civil action, he cannot, however, recover damages twice for the same act or omission. (Rule 111, Sec. 1, par. 5, Rules of Court; Article 2177, NCC).

Case:

**Padua, et al. vs. Robles, et al.
G.R. No. L-40486, August 29, 1975**

Facts:

The negligence of the taxi driver resulted in the death of a boy for which he was prosecuted criminally. Civil action was filed against the driver and the owner of the car. In the civil case, the owner was not held liable while the driver was found to be negligent; hence, he was held liable. In the criminal case, the driver was convicted, but the court did not fix the sum due; it merely made reference to his liability in the civil case. During the execution period, the judgment was not satisfied because of the insolvency of the driver; hence, the plaintiffs sued the employer to enforce his subsidiary liability under the Revised Penal Code. The owner interposed *res judicata*.

Can the employer be held liable?

Held:

Yes. By making reference to the award in the civil case, the court has made clear its intention to adopt the same adjudication and award in the criminal case.

Liability for unreasonable search and seizure; moral and exemplary damages.

In *MHP Garments, Inc., et al. vs. CA, et al.*, G.R. No. 86720, September 2, 1994, 55 SCAD 129, it was said that:

“The constitutional protection of our people against unreasonable search and seizure is not merely a pleasing platitude. It vouchsafes our right to privacy and dignity against undesirable intrusions committed by any public officer or private individual. An infringement of this right justifies an award for damages.”

The facts would show that on October 25, 1983, at about 10:30 a.m., petitioner de Guzman, Captain Renato M. Penafiel, and two (2) other constabulary men of the Reaction Force Battalion, Sikatuna Village, Diliman, Quezon City, went to the stores of respondents at the Marikina Public Market. Without any warrant, they seized the boy and girl scouts’ pants, dresses, and suits on display at respondents’ stalls. The seizure caused a commotion and embarrassed private respondents. Receipts were issued for the seized items. The items were then turned over by Captain Penafiel to petitioner Corporation for safekeeping.

A criminal complaint for unfair competition was filed, but it was later on dismissed after petitioner de Guzman exacted P3,000.00 from respondent Lugatiman in order that the case may be dropped; the things seized were ordered returned; not all were returned. An action for sum of money with damages was filed holding the petitioners liable. On appeal, the CA affirmed the decision.

One basic issue raised was whether petitioners can be liable for damages. It was petitioners’ contention that their only participation was to report the alleged illegal activity of the respondents.

Held:

Petitioners are liable. In the earlier case of *Lim vs. Ponce de Leon*, 66 SCRA 299 (1975), it has been held that a public officer or employee or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages.

“x x x”

“(a) The right to be secure in one’s person, house, papers and effects against unreasonable searches and seizures.”

The indemnity shall include moral damages. Exemplary damages may also be adjudged.

Article 2219 also provides that moral damages may be recovered in cases of illegal search.

The SC further said:

“The very nature of Article 32 is that the wrong may be civil or criminal. It is not necessary therefore that there should be malice or bad faith. To make such a requisite would defeat the main purpose of Article 32 which is the effective protection of individual rights. Public officials in the past have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties. Precisely, the object of the Article is to put an end to official abuse by plea of the good faith. In the United States this remedy is in the nature of a tort.”

In the subsequent case of *Aberca vs. Ver*, 160 SCRA 590 (1988), the Court *En Banc* explained the liability of persons indirectly responsible, *viz.*:

“The decisive factor in this case, in our view, is the language of Article 32. The law speaks of an officer or employee or person ‘*directly or indirectly*’ responsible for the violation of the constitutional rights and liberties of another. Thus, it is not the actor alone (*i.e.*, the one directly responsible) who must answer for damages under Article 32; the person responsible has also to answer for the damages or injury caused to the aggrieved party.”

x x x

x x x

x x x

“While it would certainly be too naive to expect that violators of human rights would easily be deterred by the prospect of facing damage suits, it should nonetheless be made clear in no uncertain terms that Article 32 of the Civil Code makes the persons who are directly, *as well as indirectly*, responsible for the transgression, joint tortfeasors.”

x x x

x x x

x x x

“Neither can it be said that only those shown to have participated ‘directly’ should be held liable. Article 32 of the Civil Code encompasses within the ambit of its provisions those directly, *as well as indirectly responsible for its violations*.” (emphasis supplied)

Applying the aforecited provisions and leading cases, the respondent court correctly granted damages to private respondents. Petitioners were indirectly involved in transgressing the right of private respondents against unreasonable search and seizure.

Needless to state, the wantonness of the wrongful seizure justifies the award of exemplary damages. (Art. 2229, New Civil Code).

Responsibility under Article 32, when demandable from a judge.

As a rule, the responsibility under Article 32 of the Civil Code is not demandable from a judge. This is based on the principle of presumption of good faith in the performance of one's duties and functions. There are, however, exceptions where a judge may be held liable, as governed by the Revised Penal Code, like:

(1) **Art. 204. Knowingly rendering unjust judgment.** Any judge who shall knowingly render an unjust judgment in any case submitted to him for decision, shall be punished by *prision mayor*, and perpetual absolute disqualification.

(2) **Art. 205. Judgment rendered through negligence.** Any judge who, by reason of inexcusable negligence or ignorance, shall render a manifestly unjust judgment in any case submitted to him for decision shall be punished by *arresto mayor* and temporary special disqualification.

(3) **Art. 206. Unjust interlocutory order.** Any judge who shall knowingly render an unjust interlocutory order or decree shall suffer the penalty of *arresto mayor* in its minimum period and suspension; but if he shall have acted by reason of inexcusable negligence or ignorance and the interlocutory order or decree be manifestly unjust, the penalty shall be suspension.

(4) **Art. 207. Malicious delay in the administration of justice.** The penalty of *prision correccional* in its minimum period shall be imposed upon any judge guilty of malicious delay in the administration of justice.

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. Such civil action shall proceed independently of the criminal prosecution, shall require only a preponderance of evidence.

Reason for the law.

The right to file an independent civil action is granted by the law. It was explained thus:

“The underlying purpose of the principles under consideration is to allow the citizen to enforce his rights in a private action brought by him, regardless of the action of the State attorney. It is not conducive to civic spirit and to individual self-reliance and initiative to habituate the citizens to depend upon the government for the vindication of their own private rights. It is true that in many of the cases referred to in the provisions cited, a criminal prosecution is proper, but it should be remembered that while the State is the complainant in the criminal case, the injured individual is the one most concerned because it is he who has suffered directly. He should be permitted to demand reparation for the wrong which peculiarly affects him.”

“In England and the United States, the individual may bring an action in tort for assault and battery, false imprisonment, libel and slander, deceit, trespass, malicious prosecution, and other acts which also fall within the criminal statutes. This independent civil action is in keeping with the spirit of individual initiative and the intense awareness of one’s individual rights in those countries.”

“Something of the same sense of self-reliance in the enforcement of one’s rights is sought to be nurtured by the Project of Civil Code. Freedom and Civil Courage thrive best in such an atmosphere, rather than under paternalistic system of law. (Report of the Code Commission, pages 46-47).

Concept of physical injuries.

The term “*physical injuries*” is used in the foregoing article in its generic sense and has been interpreted to include death. It was held in *Carandang vs. Santiago and Valenton*, 97 Phil. 94, that the term “physical injuries” should be understood to mean bodily injury, not the crime of physical injuries.

In *Marcelo Jervoso, et al. vs. People and CA*, G.R. No. 89306, September 13, 1990, the Supreme Court also said that the term “physical injuries” in Article 33 is used in a generic sense. It includes

consummated, frustrated or attempted homicide. (*Madeja vs. Caro*, 126 SCRA 293).

No need to reserve independent civil action.

While Article 33 of the New Civil Code clearly provides that an action for damages in case of fraud, physical injuries and defamation may proceed independently of the criminal prosecution, the Rules of Court, however, require that the action be reserved. Rule 111, Section 1, of the Rules of Court provides:

*“Section 1. **Institution of criminal and civil actions.** — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged is deemed instituted with the criminal action, unless the offended party waives the civil action or reserves his right to institute it separately or institutes the civil action prior to the criminal action.*

“The Reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.”

*“Section 2. **Independent civil action.** — In the cases provided for in Article 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.”*

*“Section 3. **When civil action may proceed independently.** — In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.”*

The foundation of Article 33, NCC, is Article 100 of the Revised Penal Code, which provides that every person who is criminally li-

able shall also be civilly liable. There is no more need to reserve the right to prosecute the civil action under Articles 32, 33, 34 and 2176 of the Civil Code, while the Rules of Court require the reservation, what is reserved is the right to file a civil action to enforce the civil liability arising from the crime charged as a felony, otherwise, it is deemed filed with the criminal action.

Purpose of reservation of civil action.

Case:

**Yakult Phils., et al. vs. CA
G.R. No. 91856, October 5, 1990**

Facts:

Roy Camaso was sideswiped by a motorcycle owned by Yakult Phils. and driven by Larry Salvado resulting in physical injuries. He was charged with reckless imprudence resulting to physical injuries on January 6, 1983. On October 19, 1984, a complaint for damages was filed against Salvado and Yakult, where they were held solidarily liable. It was contended by Yakult that the civil action could not be filed independently of the criminal action because there was no reservation of the right to file it.

Held:

Although the separate civil action was filed without previous reservation in the criminal case, nevertheless, since it was instituted before the prosecution presented evidence in the criminal action, and the judge handling the criminal case was informed thereof, then the actual filing of the civil action is even far better than a compliance with the requirement of an express reservation that should be made by the offended party before the prosecution presents its evidence.

The purpose of this rule requiring reservation is to prevent the offended party from recovering damages twice for the same act or omission.

Independent civil action; when deemed not barred despite intervention by private prosecutor.

The 1986 case of *Zenaida Cruz Reyes vs. Hon. Judge Alicia Sempio-Diy, et al.*, L-71914, January 29, 1986, 141 SCRA 208, gave

the Supreme Court a chance to reiterate its ruling in *Meneses vs. Luat*, 12 SCRA 454 that an offended party is not deemed to have waived his right to file an independent civil action for damages by the mere appearance of a private prosecutor in the criminal action which is suddenly terminated by a conviction of the accused on a plea of guilty upon arraignment.

Cristina Malicsi was charged with the crime of intriguing against honor before the Metropolitan Trial Court. A private prosecutor entered his appearance on behalf of Zenaida Cruz Reyes, the offended party. But Malicsi pleaded guilty when arraigned and was promptly convicted and sentenced to pay a fine of P50.00. Consequently, Reyes was unable to present evidence to prove damages. Nor was she able to reserve her right to file a separate civil action for damages. She subsequently filed a civil suit for damages against Malicsi and her husband, arising from the defamatory words uttered by Cristina Malicsi which was the subject of the criminal case. The Regional Trial Court, relying on *Roa vs. De la Cruz*, 107 Phil. 8, dismissed the civil action for damages on the ground that the decision in the criminal action, which did not award any damages, barred the civil action on *res judicata*. On appeal, the Supreme Court set aside the order of dismissal, holding that it was not the *Roa* case but *Meneses vs. Luat*, *supra*, which controlled. In *Roa*, a full-blown hearing participated in by a private prosecutor resulted in a judgment of conviction for slight slander with no damages awarded owing to the failure of the offended party to present evidence to support her claim for damages. The court said that she had only herself or her counsel to blame and that the decision was *res judicata* on her subsequent civil action for damages. On the other hand, in *Meneses*, the criminal case did not proceed to trial as the accused pleaded guilty when arraigned — as in the case at bar. Hence, it was there held that the mere appearance of private counsel in representation of the offended party did not constitute such active intervention as could only import an intention to press a claim for damages in the same action. Because the accused had pleaded guilty upon arraignment, there was no chance for the aggrieved party to present evidence in support of her claim for damages and to enter a reservation in the record to file a separate civil action.

In *Reyes vs. Sempio-Diy*, *supra*, the High Court also held that the failure of petitioner to make a reservation to file a separate civil action did not foreclose her right to file said separate claim for damages, for under Art. 33 of the Civil Code, there is no requirement

that as a condition to the filing of a separate civil action a reservation be first made in the criminal case. Such reservation is not necessary.

Outcome of criminal case is inconsequential.

The outcome or result of the criminal case, whether an acquittal or conviction, is inconsequential and will be of no moment in a civil action for damages based on Article 33 of the Civil Code. (*Diong Bi Chu vs. CA*, 192 SCRA 554 [1990]). It must, however, be observed that the civil liability may still be pursued in a separate civil action but it must be predicated on a source of obligation other than a delict, except when by statutory provision an independent civil action is authorized such as, to exemplify, in the instance enumerated in Article 33 of the Civil Code. Hence, as said in *People vs. Bayotas*, the claim for civil liability survives notwithstanding the death of the accused, if the same may also be predicated on a source of obligation other than a delict. It was emphasized in *Bayotas* that:

“Conversely, such civil liability is not extinguished and survives the deceased offender where it also arises simultaneously from, or exists as a consequence, or by reason of a contract, as in *Torrijos*; or from law, as stated in *Torrijos* and in the concurring opinion in *Sendaydiego*; such as in reference to the Civil Code; or from a quasi-contract; or is authorized by law to be pursued in an independent civil action, as in *Belamala*. Of course, without these exceptions, it would be unfair and inequitable to deprive the victim of his property or recovery of damages therefor, as would have been the fate of the second vendee in *Torrijos*, or the provincial government in *Sendaydiego*.”

Article 34. 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 peace officer shall be primarily liable for damages and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.

A person is being held-up. A police officer refused to help him despite pleas for help or protection, as a consequence of which the personal belongings of the person were taken. Such police officer is

liable primarily for damages and the city or municipality is liable subsidiarily.

If the act of a police officer constitutes a crime, any civil action that may be filed shall be independent of any criminal proceedings. Preponderance of evidence shall be sufficient to support a decision in such action.

The reason why a police officer is liable in case he refuses to give help or protection to anyone whose life or property is in danger is that he is usually the person to whom people turn to for protection. To the people, the policeman is the external symbol of the government's power and authority. (See Jarencio on *Torts and Damages*, 1979 ed., p. 208).

Article 35. 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 justice of the peace finds no reasonable grounds to believe that a crime has been committed, or the prosecuting attorney refuses or fails to institute criminal proceedings, the complainant may bring a civil action for damages against the alleged offender. Such civil action may be supported by a preponderance of evidence. Upon the defendant's motion, the court may require the plaintiff to file a bond to indemnify the defendant in case the complaint should be found to be malicious.

If during the pendency of the civil action, an information should be presented by the prosecuting attorney, the civil action shall be suspended until the termination of the criminal proceedings.

Article 36. Prejudicial questions, which must be decided before any criminal prosecution may be instituted or may proceed, shall be governed by the Rules of Court which the Supreme Court shall promulgate and which shall not be in conflict with the provisions of this Code.

Concept of prejudicial question.

A prejudicial question is a question which arises in a case, the resolution of which is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal. (People vs. Aragon, 94 Phil. 357; Zapanta vs. Montesa, 4 SCRA 510;

Jimenez vs. Averia, 22 SCRA 1380). It is a question of a purely civil character but connected in such a manner to the crime on which the criminal case is based that it is determinative of the guilt or innocence of the accused. (De Leon vs. Mabanag, 70 Phil. 202).

Elements of prejudicial question.

The Rules of Court provide for the elements of prejudicial question, to wit: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed. (Rule III, Sec. 7, Rules of Court).

A civil case, to be considered prejudicial to a criminal action as to cause the suspension of the latter, pending its determination, must not only involve the same facts upon which the criminal prosecution would be based, but also that the resolution of the issue or issues in the civil case would necessarily be determinative of the guilt or innocence of the accused. (Mendiola vs. Macadaeg, 1 SCRA 593; Benitez vs. Concepcion, Jr., 2 SCRA 178).

Action for the nullity of marriage is not a prejudicial question to a concubinage case.

In *Meynardo Beltran vs. People, et al.*, G.R. No. 137567, June 20, 2000, Meynardo filed a complaint for nullity of his marriage with his wife on the ground of psychological incapacity. The wife filed a complaint for concubinage against the husband. In the meantime, the man filed a motion to suspend the criminal case on the ground of a prejudicial question. He contended that there was a possibility that two conflicting decisions might result, where the court may declare the marriage valid and thus, dismiss the complaint and acquit the accused because of the invalidity of the marriage on the ground of psychological incapacity. The Supreme Court brushed aside such contention and —

Held:

The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: 1. the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and 2. the resolution of such issue

determines whether or not the criminal action may proceed. (Carlos vs. CA, 268 SCRA 25).

The pendency of the case for declaration of nullity of petitioner's marriage is not a prejudicial question to the concubinage case. For a civil case to be considered prejudicial to a criminal action as to cause the suspension of the latter pending the final determination of the civil case, it must appear not only that the said civil case involves the same facts upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the aforesaid civil action, the guilt or innocence of the accused would necessarily be determined.

Article 40 of the Family Code provides:

“The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.”

In *Domingo vs. CA*, 226 SCRA 572, it was said that the import of said provision is that for purposes of remarriage, the only legally acceptable basis for declaring a previous marriage an absolute nullity is a final judgment declaring such previous marriage void, whereas, for purposes other than marriage, other evidence is acceptable. The pertinent portions of said decision read:

“x x x Undoubtedly, one can conceive of other instances where a party might well invoke the absolute nullity of a previous marriage for purposes other than remarriage, such as in case of an action for liquidation, partition, distribution and separation of property between the erstwhile spouses, as well as an action for the custody and support of their common children and the delivery of the latters' presumptive legitimes. In such cases, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity. These need not be limited solely to an earlier final judgment of a court declaring such previous marriage void.”

So that in a case of concubinage, the accused need not present a final judgment declaring his marriage void for he can adduce evidence in the criminal case of nullity of his marriage other than proof of a final judgment declaring his marriage void. (See also *Mercado vs. Tan*, G.R. No. 137110, August 1, 2000, 337 SCRA 112).

With regard to his argument that he could be acquitted of the charge of concubinage should his marriage be declared null and void, suffice it to state that even a subsequent pronouncement that his marriage is void from the beginning is not a defense.

Analogous to this case is that of *Landicho vs. Relova*, 22 SCRA 731, cited in *Donato vs. Luna*, 160 SCRA 441 where it was held:

“x x x Assuming that the first marriage was null and void on the ground alleged by petitioner, that fact would not be material to the outcome of the criminal case. Parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of the competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration of nullity of the first marriage, the accused assumes the risk of being prosecuted for bigamy.”

The parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of the competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists for all intents and purposes. Therefore, he who cohabits with a woman not his wife before the judicial declaration of nullity of the marriage assumes the risk of being prosecuted for concubinage. The clear cut rule therefore is that the pendency of a civil action for nullity of marriage does not pose a prejudicial question in a criminal case for concubinage.

Case:

Zapanta vs. Montesa
G.R. No. L-14534, February 28, 1962

Facts:

While the marriage between A and B was still subsisting, A got married to C. B filed a criminal action for bigamy against A. In the meantime, A filed an action for annulment of marriage on the grounds of force, intimidation, fraud, etc. He further moved for the suspension of the criminal action on the ground of prejudicial question.

Held:

There was really a prejudicial question, as the resolution of the

action for annulment of marriage with B was determinative of the guilt or innocence of the accused in the criminal case.

Case:

People vs. Aragon
94 Phil. 357

Facts:

A forced B to marry him. B filed an action for annulment of marriage on the ground of force or intimidation. During the pendency of the annulment case, A married C; hence, A was charged with bigamy. A filed a motion to suspend the criminal action on the ground of prejudicial question.

Held:

The motion is not proper. If the cause for the invalidity of the marriage is due to his own malfeasance, he cannot avail of it to defeat the criminal case. He who comes to court must do so with clean hands. In this case, it was A who forced B to marry him; hence, he created the cause for the invalidity of the marriage.

Case:

Landicho vs. Relova
22 SCRA 731

Facts:

A and B are married. During the existence of their marriage, A married C. B filed a complaint for bigamy against A. C, in the meantime, filed an action for annulment of marriage. In his answer, A filed a third-party claim for annulment of marriage against B and moved for the suspension of the criminal action on the ground of prejudicial question.

Held:

A should not decide the validity of the marriage. Let the court decide it. If it is not declared void or annulled, the presumption is that it is valid. Anyone who contracts a second marriage runs the risk of being prosecuted for bigamy.

Case:**Donato vs. Luna
G.R. No. 53642, April 15, 1988****Facts:**

X and Y are married. During the existence of the first marriage, X married Z. A bigamy case was filed by the second wife. In the meantime, Z filed an action for annulment of marriage on the ground of fraud. X filed an answer contending that the marriage is void because it was solemnized without a marriage license and that his consent was obtained by force and intimidation, and at the same time moved for the suspension of the criminal action on the ground of prejudicial question.

Held:

A prejudicial question usually comes into play in a situation where a civil action and a criminal action may proceed, because however the issue raised in the civil case is resolved would be determinative *juris et jure* of the guilt or innocence of the accused in the criminal case.

The case here does not show a prejudicial question. It was the second wife who filed the action on the ground of deceit. The reliance on *Landicho vs. Relova*, 22 SCRA 731, is not proper.

The mere fact that there are actions to annul the marriages entered into by the accused in a bigamy case does not mean that prejudicial questions are automatically raised in civil actions as to warrant the suspension of the criminal case. In order that the case of annulment of marriage be considered a prejudicial question to the bigamy case against the accused, it must be shown that the petitioner's consent to such marriage was obtained by means of duress, force and intimidation so that his act in the second marriage was involuntary and cannot be the basis of his conviction for the crime of bigamy. The situation in the present case is markedly different. At the time the petitioner was indicted for bigamy on February 27, 1963, the fact that two marriages had been contracted appeared to be indisputable. And it was the second spouse, not the petitioner, who filed the action for nullity on the ground of force, threats and intimidation. And it was only on June 15, 1963 that petitioner, as defendant in the civil action, filed a third-party complaint against the first spouse, alleging that his marriage with her

should be declared null and void on the ground of force, threats and intimidation. Assuming that the first marriage was null and void on the ground alleged by petitioner, such fact would not be material to the outcome of the criminal case. Parties to the marriage should not be permitted to judge for themselves its nullity for the same must be submitted to the judgment of the competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration, the presumption is that the marriage exists. Therefore, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy. The lower court therefore has not abused, much less gravely abused, its discretion in failing to suspend the hearing as sought by petitioner.

Case:

Quiambao vs. Osorio
G.R. No. L-48157, March 16, 1988

Facts:

In a forcible entry case, it was alleged that the private respondents are the legitimate possessors of a parcel of land by virtue of the agreement to sell executed in their favor by the former Land Tenure Administration, now the Department of Agrarian Reform. Allegedly, petitioners surreptitiously and with force and intimidation entered the premises. A motion to dismiss was filed but it was denied. In their answer, they alleged that respondents' prior possession has already been cancelled. They alleged the existence of an administrative case before the Land Tenure Administration and contended that the administrative case was determinative of the issue in the ejectment case.

Held:

The doctrine of prejudicial question comes into play generally in a situation where civil and criminal actions are both pending and the issues involved in both cases are similar or so closely related that an issue must be preemptively resolved in the civil case before the criminal action can proceed.

Technically, prejudicial question does not exist in this case. But because of the intimate correlation between the two cases, stemming from the fact that the right of private respondents to eject petitioner

from the disputed property depends primarily on the resolution of the pending administrative case. For while respondents may have prior possession, the same has been terminated, suspended or cancelled. Whether or not, private respondents can continue to exercise their right of possession is but a necessary logical consequence of the issue involved in the pending administrative case assailing the validity of the cancellation, and the subsequent award of the disputed portion to petitioners. If the cancellation is voided, then private respondents would have the right to eject petitioner from the disputed area. (See *Fortich-Celdran, et al. vs. Celdran, et al.*, 19 SCRA 502).

Prejudicial question; its concept.

Case:

Fortich-Celdran, et al. vs. Celdran, et al. 19 SCRA 502

Facts:

This is a suit for annulment of an extra-judicial partition of properties and for accounting filed with the CFI of Cebu, on February 3, 1954.

Plaintiffs were the children of the deceased, Pedro Celdran, Sr., from the first marriage. Defendants were Josefa Celdran, spouse of the deceased by the second marriage, and the seven children. When the defendants answered on May 28, 1954, Ignacio Celdran withdrew as one of the plaintiffs, alleging that it was falsified.

On March 6, 1959, the parties had an amicable settlement, except Ignacio Celdran, recognizing as valid the above extrajudicial partition. The court held that the extrajudicial partition is valid for being satisfied by Ignacio, upon receipt of P10,000.00 plus two (2) residential lots. Ignacio appealed to the CA.

On March 22, 1963, at the instance of Ignacio, an information for falsification of public documents was filed by the City Fiscal of Ozamis in the CFI, Ozamis. Accused were the children of Pedro, Sr. by the first marriage.

Issue:

May the proceedings in the criminal case on the ground of prejudicial question be suspended, for the reason that the alleged falsifi-

cation of document of withdrawal (of Ignacio) is at issue in the Civil case pending in the Court of Appeals?

Held:

The High Court held that the action poses a prejudicial question to the criminal prosecution for alleged falsification. The authenticity of the document (motion to withdraw) was assailed in the same civil action. The resolution in the civil case will, in a sense, be determinative of the guilt or innocence of the accused in the criminal suit pending in another tribunal. As such, it is a prejudicial question which should be first decided before the prosecution can proceed in the criminal case.

Prejudicial question is one that arises in a case the resolution of which is a logical antecedent to the issue involved therein, and the cognizance of which pertains to another tribunal; it is determinative of the case before the court and jurisdiction to pass upon the same is lodged in another tribunal.

The decision of the Court of Appeals was affirmed. The administrative case filed by Ignacio Celdran against S. Catane for forgery of document was held in abeyance by the High Court. (See also Yap vs. Paras, et al., G.R. No. 101236, January 30, 1992).

Test to determine existence of prejudicial question.

In *Juliana Yap vs. Martin Paras and Judge Alfredo Barcelona, Sr.*, G.R. No. 101236, January 30, 1992, the facts show that on October 31, 1971, Paras sold to Yap his share in the intestate estate of their parents for P300.00, the sale being evidenced by a private document. On May 2, 1990, Paras sold the same to Santiago Saya-ang for P5,000.00, evidenced by a notarized deed of sale. When Yap learned of the second sale, she filed a complaint for estafa against Paras and Saya-ang. She also filed a complaint for nullification of the deed of sale with the RTC. After preliminary investigation, a case of estafa was filed with the Court. Before arraignment, the judge dismissed *motu proprio* the criminal case on the ground that the criminal case was a prejudicial question to a civil case, citing *Ras vs. Rasul*, 100 SCRA 125. A motion for reconsideration was filed, but it was denied, hence, this petition.

Held:

It is the issue in the civil action that is prejudicial to the continuation of the criminal action, not the criminal action that is prejudi-

cial to the civil action. For a civil case to be considered prejudicial to a criminal action as to cause the suspension of the criminal action pending the determination of the civil action, it must appear not only that the civil case involves the same facts upon which the criminal prosecution is based, but also that the resolution of the issues raised in said civil action would be necessarily determinative of the guilt or innocence of the accused. (See also *Tuanda, et al. vs. SB, et al.*, G.R. No. 110544, October 17, 1995, 65 SCAD 94).

As to whether the court can *motu proprio* dismiss the criminal action, the SC said that the Rules of Court plainly say that the suspension may be made only upon petition and not at the instance of the judge alone, and it also says suspension, and not dismissal.

In the *Ras* case, there was a motion to suspend the criminal action on the ground that the defense in the civil case (forgery of his signature in the first deed of sale) had to be threshed out first. Resolution of that question would necessarily resolve the guilt or innocence of the accused in the criminal case. By contrast, there was no motion for suspension in the case at bar; and no less importantly, the respondent judge had not been informed of the defense Paras was raising in the civil action. Judge Barcelona could not have ascertained then if the issue raised in the civil action would determine the guilt or innocence of the accused in the criminal case.

It is worth remarking that not every defense raised in the civil action will raise a prejudicial question to justify suspension of the criminal action. The defense must involve an issue similar or intimately related to the same issue raised in the criminal action and its resolution should determine whether or not the latter action may proceed.

An action for rescission of a contract is not prejudicial in an action based on B.P. Blg. 22.

In *Umali, et al. vs. IAC, et al.*, G.R. No. 63198, June 21, 1990, petitioners purchased a parcel of land from Sps. Edano on installment basis. By agreement, a deed of absolute sale was executed even if there was no complete payment. The checks issued as payment, however, bounced, hence, the criminal cases. In the meantime, the Sps. Edano filed a complaint for rescission and/or annulment of the sale. Petitioners moved for the suspension of the criminal cases on the ground of prejudicial question.

Held:

No. The two (2) elements of a prejudicial question are:

- (a) The civil action involves an issue similar or intimately related to the issue raised in the criminal action;
- (b) The resolution of such issue in the civil action determines whether or not the criminal action may proceed. (Sec. 5, Rule 111, Rules of Court).

The issue in the civil case for rescission and/or annulment of the sale is not determinative of the guilt or innocence of the accused; hence, there is no prejudicial question.

The basis of the argument was that the respondents sold the land with misrepresentation; that it is free from all liens and encumbrances and that it is not tenanted.

Partition case is a prejudicial question to a criminal case for violation of P.D. No. 772.**Facts:**

A, B and C are the heirs of X and Y who left a parcel of land. A was able to obtain a title over the land, so B and C filed an action for declaration of nullity of the title and partition. Then, they occupied a portion of the land without A's knowledge and consent; hence, they were sued for violation of P.D. No. 772, otherwise known as the Anti-Squatting Law. Before they were arraigned, they moved to suspend the criminal action on the ground of prejudicial question. Rule on the motion.

Held:

The motion should be granted on the ground of a prejudicial question.

A prejudicial question is a question in a civil case which is based on a fact distinct and separate from the crime but so intimately connected with it that its resolution is determinative of the guilt or innocence of the person accused of the crime.

In the criminal case, the question is whether B and C occupied a piece of land not belonging to them but to A and against the latter's will. Whether or not the land they occupied belongs to them is the issue in the civil case they previously filed for the nullity of A's title

and for partition. The resolution, therefore, of this question would necessarily be determinative of B and C's criminal liability for squatting. In other words, whatever may be the ultimate resolution will be determinative of the guilt or innocence of B and C in the criminal case. Surely, if B and C are co-owners of the lot in question, they cannot be found guilty of squatting because they are very much entitled to the use and occupation of the land as A. Ownership is thus the pivotal question. Since this is the question in the civil case, the proceedings in the criminal case must in the meantime be suspended. (*Apa, et al. vs. Fernandez, et al.*, G.R. No. 112381, March 20, 1995, 59 SCAD 759).

In *Alano vs. CA, et al.*, G.R. No. 111244, October 15, 1997, 89 SCAD 792, the doctrine of prejudicial question was once again reviewed. In this case there was a prosecution for estafa because the owner sold the property twice. There was also a civil action for the annulment of the second sale on the ground that it was sold to them earlier. The defense of the owner was that he never sold it before and that his signature was forged, hence, there was no second sale. Under these facts, may prejudicial question be raised to cause the suspension of the criminal proceedings?

Held:

Yes, the Supreme Court ruled, saying that the doctrine of prejudicial question comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because however the issue raised in the civil action is resolved would be determinative of the guilt or innocence of the accused in the criminal action. (*Flordelis vs. Castillo*, 58 SCRA 301; *Donato vs. Luna*, 16 SCRA 40). In other words, if both civil and criminal cases have similar issues or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided the other element or characteristic is satisfied. (*Benitez vs. Concepcion, Jr.*, 2 SCRA 178; *Ras vs. Rasul*, 100 SCRA 125).

It was observed, however, that the signature of the seller was admitted during the pre-trial of the criminal case. He, likewise, admitted his signatures in 23 vouchers evidencing payments. He even wrote the other party offering to refund whatever fund was paid.

There was no question that a stipulation of facts by the parties in a criminal case is recognized as declaration constituting judicial

admissions, hence, binding upon the parties and by virtue of which the prosecution dispensed with the introduction of additional evidence and the defense waived the right to contest or dispute the veracity of the statement contained in the exhibit. (People vs. Bocar, 27 SCRA 512).

Accordingly, the stipulation of facts stated in the pre-trial order amounts to an admission by the petitioner resulting in the waiver of his right to present evidence as guaranteed under the Constitution, this right maybe waived expressly or impliedly.

Since the suspension of the criminal case due to a prejudicial question is only a procedural matter, the same is subject to a waiver by virtue of a prior act of the accused. After all, the doctrine of waiver is made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right and without detriment to the community at large. (People vs. Donalo, 198 SCRA 130).

Petitioner's admission in the stipulation of facts during the pre-trial of the criminal case amounts to a waiver of his defense of forgery in the civil case. Hence, there is no reason to nullify such waiver, it being not contrary to law, public order, public policy, morals, good customs or prejudicial to a third person with rights recognized by law. (Art. 6, NCC). Furthermore, it must be emphasized that the pre-trial order was signed by the petitioner himself. As such, the rule that no proof need be offered as to any facts admitted at pre-trial hearing applies. (Afable, et al. vs. Ruiz, et al., 56 O.G. 3767; Permanent Concrete Products, Inc. vs. Teodoro, 26 SCRA 339; Munasque vs. CA, 139 SCRA 533).

Annulment of a certificate of sale not a prejudicial question in a petition for the issuance of a writ of possession.

A prejudicial question arises when one case is criminal and the other is a civil case, never if both are civil. In *Spouses Vicente and Demetria Yu v. PCIB*, G.R. No. 147902, March 17, 2006, the Supreme Court ruled as far from novel the issue of whether a civil case for annulment of a certificate of title is a prejudicial question to a petition for the issuance of a writ of possession. This cannot be so since the issuance of a writ of possession is a ministerial function of the court once the right of redemption has lapsed. It cannot even be enjoined even if there is a pending action for declaration of nullity of the mortgage and the foreclosure proceedings. The writ of posses-

sion can even be issued with a prejudice to the pending annulment case.

It was ruled in *Palang vs. Vestil*, G.R. No. 148595, July 12, 2004, 434 SCRA 139 that a complaint for annulment of extrajudicial case is a civil case and the petition for the issuance of a writ of possession is but an incident in the land registration case and therefore, no prejudicial question can arise from the existence of the two actions. In *Manalo v. CA*, 419 Phil. 215 (2001), it was said:

“At any rate, it taxes our imagination why the questions raised in Case No. 98-0868 must be considered determinative of Case No. 9011. The basic issue in the former is whether the respondent, as the purchaser in the extrajudicial foreclosure proceedings, may be compelled to have the property repurchased or resold to a mortgagor’s successor-in-interest (petitioner); while that in the latter is merely whether the respondent, as the purchaser in the extrajudicial foreclosure proceedings, is entitled to a writ of possession after the statutory period for redemption has expired. The two cases, assuming both are pending, can proceed separately and take their own direction independent of each other.”

Book I

PERSONS

Title I

CIVIL PERSONALITY

Chapter 1

General Provisions

Article 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost. (n)

Concepts.

- (1) Juridical capacity is the fitness to be the subject of legal relations. It is inherent in every natural person.
- (2) Capacity to act is the power to do acts with legal effect. It may be acquired and it may also be lost. It is acquired upon the attainment of the age of majority.
- (3) Person is a physical or legal being susceptible of rights and obligations or of being the subject of legal relations.
- (4) Right is the power which a person has to demand from another a prestation or the power to do or not to do, or to demand something.

Elements of a right.

There are three (3) basic elements of a right. They are:

(1) **Subject.** Rights exist in favor of persons. Every right involves two persons, one who may demand its enforcement, being consequently designated as the active subject, and the other must suffer or obey such enforcement and is therefore called the passive subject. The former has a right; the latter owes a duty. (S.R.I. 41).

(2) **Object.** Rights are exercised over things, or services, for the satisfaction of human wants, physical or spiritual. Things and services constitute the object of rights. (S.R.I. 43).

(3) **Efficient cause.** This is the tie that binds the subject and the object together. It produces all legal relations. It springs mainly from acts of violation. (S.R.I. 44).

Illustration:

A and B entered into a contract of sale over A's car where they agreed to buy and sell the same for P400,000.00. A and B are the passive and active subjects. The car is the object and the price is the efficient cause.

Estate of decedent is a person.

The estate of a decedent is considered by law as a person, hence, it has been held in *Limjoco vs. Intestate Estate of Pedro Fragante*, L-770, April 27, 1948, that as the estate of a decedent is in law regarded as a person, a forgery committed after the death of the man whose name purports to be signed to the instrument may be prosecuted as with intent to defraud the estate. Along the same line, it was held in *Suiliong & Co. vs. Chio-Tayson*, 12 Phil. 13, that it is the estate or the mass of property, rights and assets left by the decedent, instead of the heirs directly, that become vested and charged with his rights and obligations which survive after his demise.

In *Florendo, et al. vs. Hon. Perpetua Coloma, et al.*, 129 SCRA 304, the petitioners challenged the proceedings in an ejectment suit pending before the Court of Appeals after the death of the plaintiff-appellant Adelaida Salidon. They were of the opinion that since there was no legal representative substituted for her after her death, the appellate court lost its jurisdiction over the case and consequently, the proceedings in the said court are null and void. The Supreme

Court did not agree with the argument. It said that there is no dispute that an ejectment suit survives the death of a party. The supervening death of plaintiff-appellant did not extinguish her civil personality. (*Republic vs. Bagtas*, 6 SCRA 262; *Vda. de Haberer vs. CA*, 104 SCRA 534).

Juridical capacity distinguished from capacity to act.

The first term as defined in this article is the fitness of man to be the subject of legal relations. Capacity to act, on the other hand, is the power to do acts with juridical effect. The first is an inherent and ineffaceable attribute of man; it attaches to him by the mere fact of his being a man and is lost only through death. The second, that is capacity to act, is acquired and may be lost. The former can exist without the latter, but the existence of the latter always implies that of the former. The union of these two is the full civil capacity. (*Sanchez Roman*, 112-113; 1 *Vaverde*, 212).

Article 38. Minority, insanity or imbecility, the state of being a 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. (32a)

There are persons who have restricted capacity to act, like minors, insanes, imbeciles, deaf-mutes, prodigals, or those under civil interdiction. Such conditions merely restrict their capacity to act. They, however, have juridical capacity and are susceptible of rights and even of obligations, when the same arise from their acts or from property relations. These persons are not exempted from their obligations. Their parents or guardians may still be liable.

Article 39. The following circumstances, among others, modify or limit capacity to act: age, insanity, imbecility, the state of being a deaf-mute, penalty, prodigality, family relations, alienage, absence, insolvency and trusteeship. The consequences of these circumstances are governed in this Code, other codes, the Rules of Court, and in special laws. Capacity to act is not limited on account of religious belief or political opinion.

A married woman, twenty-one years of age or over, is qualified for all acts of civil life, except in cases specified by law.
(n)

The law enumerates certain circumstances that limit or modify capacity to act of some persons. These incapacitated persons may incur liability when these obligations arise from their acts or property relations.

Age.

The age of majority is now 18 years. (R.A. No. 6809). As a rule, a minor may not give consent to a contract, but look at Article 1403 of the Civil Code which provides that one of the classes of unenforceable contracts is where both parties to the same are incompetent to give consent. The contract can, however, be cleansed of its defect if their parents or guardians would ratify the same. (Art. 1407, New Civil Code). Or, if one of the parties to a contract is incapable of giving consent, the contract is voidable. (Art. 1390, New Civil Code). But if the parents or guardian of said incompetent ratify the same, it is cleansed of its defect from the moment of the signing or perfection of the contract of the minor. (Art. 1396, New Civil Code).

Illustration:

A and B are both minors. A sold his car to B for P400,000.00. A delivered it and B paid. The contract is unenforceable, but if the parents or guardians of A and B would ratify it, then, it is cleansed of its defect from the moment of perfection of the contract; not from the ratification.

A, a minor sold his car to B, a person of age. B paid A and A delivered the car to B. This contract is voidable, but it can be ratified by the parents or guardians of A.

In both cases, there is restriction of capacity to act, yet the law recognizes effects of the said contracts.

In *Mercado and Mercado vs. Espiritu*, 37 Phil. 215, minors stated that they were of legal age when they entered into a contract of sale. The truth is that they were not of age. They could not be permitted to excuse themselves from the fulfillment of their obligation. This is so because of the principle of estoppel. (*Bambalan vs. Maramba and Muerong*, 51 Phil. 417). In the same manner, the minor in *Uy Soo Lim vs. Tan Unchuan*, 38 Phil. 552, did not ask for annulment of his contract upon attainment of majority age. The Supreme Court said that

knowing his rights, he should have promptly disaffirmed his contract after attaining the age of majority but instead, permitted the other party to continue making payments.

Sickness.

An insane or demented person or a deaf-mute who does not know how to read and write may not give consent to a contract. (Art. 1327[2], New Civil Code).

In *Standard Oil Co. vs. Codina Arenas*, 19 Phil. 363, the Supreme Court agreed with the trial court that monomania of wealth does not really imply that a person is not capable of executing a contract. The Supreme Court said that in our present knowledge of the state of mental alienation, such certainly has not yet been reached as to warrant the conclusion, in a judicial decision, that he who suffers the monomania of wealth, believing himself to be very wealthy when he is not, is really insane and it is to be presumed, in the absence of a judicial declaration, that he acts under the influence of a perturbed mind, or that his mind is deranged when he executes an onerous contract. Capacity to act must be supposed to attach to a person who has not previously been declared incapable, and such capacity is presumed to continue so long as the contrary be not proved, that is, at the moment of his acting he was incapable, crazy, insane, or out of his mind. It was said that it was necessary to show that such monomania was habitual and constituted a veritable mental perturbation in the patient; that the contract executed by him was the result of such monomania and not the effect of any other cause and that monomania existed on the date when the contract was executed.

Penalty.

In the commission of certain offenses, accessory penalties are imposed by law, like perpetual or temporary disqualification to hold office, suspension from public office, curtailment of the right to vote or be voted for and the right to exercise a profession or calling, or even civil interdiction.

Civil interdiction deprives the offender during the time of his sentence of the rights of parental authority and guardianship, either as to 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 or conveyance *inter vivos*. (Art. 34, Revised Penal Code). A person under civil interdiction cannot therefore make a

donation *inter vivos*, but he can make a will as the latter shall take effect after death.

A person under civil interdiction is subject to guardianship (Rule 93, Sec. 2, Rules of Court); he may be disinherited if he is a child or descendant, legitimate or illegitimate. (Art. 919[8], New Civil Code). It may also be a ground for separation of properties during the marriage (Art. 135, Family Code); it may cause the termination of agency. (Art. 1919, Civil Code).

Prodigality.

It has been held that the acts of prodigality must show a morbid state of mind and a disposition to spend, waste, and lessen the estate to such an extent as is likely to expose the family to want of support, or to deprive the compulsory heirs of their legitime. (Martinez vs. Martinez, 1 Phil. 182). Prodigals are subject to guardianship. (Rule 93, Sec. 2, Rules of Court)

A spendthrift is a person who, by excessive drinking, gambling, idleness, or debauchery of any kind shall so spend, waste or lessen his estate as to expose himself or his family to want or suffering, or expose the town to charge or expense for the support of himself and his family.

Alienage.

Aliens cannot acquire land in the Philippines. The 1987 Constitution provides that save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain. (Sec. 7, Art. XII, 1987 Constitution). The rule cited above is not however absolute as the Constitution further provides that notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law. (Sec. 8, Art. XII, 1987 Constitution). The limitation provided by law is that if such former natural-born citizen acquires land in Metro Manila, he can do so but not exceeding 5,000 square meters. If outside, the limit is three (3) hectares. It can be acquired for all purposes.

Aliens cannot practice their professions in the Philippines, as the 1987 Constitution says that the practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases pro-

vided by law. (Sec. 14, Art. XII). They cannot also operate public utilities. (Art. XII, Sec. 11). In the case of *Cheesman vs. CA*, it was said that if a foreigner marries a Filipino and out of conjugal funds, a private land is acquired by them, the same cannot form part of their community of property because the foreigner is disqualified from acquiring lands in the Philippines. Note that this may be harsh, but that is the law. *Dura lex sed lex*.

Absence.

Under Article 381 of the Civil Code, when a person disappears from his domicile, his whereabouts being unknown, he is considered as absent. The court can appoint an administrator at the instance of an interested person, a relative or a friend. His continued absence can even result in the presumption of his death (Art. 390, NCC); hence, his successional rights may be opened. It must be recalled that the presumption of death is not conclusive, for he may be alive and can still dispose of his properties. In fact, under Article 389 of the Civil Code, if someone can prove that he acquired title over his properties under administration, the administration would cease.

Insolvency and Trusteeship.

If one has been declared insolvent, he cannot just dispose of his properties existing at the time of the commencement of the proceedings for insolvency. No payments of property or credit can be made to him. (Secs. 18 and 24, Act No. 1956).

Family Relations.

A husband and wife cannot donate to one another. The prohibition, extends to common-law relationship. (Art. 87, Family Code). The reason is public policy; the possibility that one may exert undue influence over the other. They cannot also, as a rule, sell to one another, except in cases where they are governed by the complete separation of property regime or when there is separation of properties during the marriage. (Art. 1490, New Civil Code). Husband and wife cannot also enter into a universal partnership of all properties. (Art. 1782, NCC). The law also declares as void marriages among relatives in the direct line, whether legitimate or illegitimate (Art. 37, Family Code); or those in the collateral line up to the fourth civil degree of consanguinity by reason of public policy. (Art. 38, Family Code).

Deaf-Mute.

A person who is blind or deaf or dumb cannot be a witness in a will. (Art. 820, New Civil Code). But a deaf-mute may execute a will (Art. 807, New Civil Code) or a blind person can execute a will. (Art. 808, New Civil Code).

Political or religious belief.

These two things do not affect capacity to act. In fact, under the 1987 Constitution, no religious test shall be required for the exercise of civil or political rights. (Art. III, Sec. 5, 1987 Constitution).

The last paragraph of Article 39 of the Civil Code has been repealed by the Family Code and R.A. No. 6809. The age of majority now is 18 years.

Chapter 2**Natural Persons**

Article 40. Birth determines personality; but the conceived child shall be considered born for all purposes that are favorable to it, provided, it be born later with the conditions specified in the following article. (29a)

Person defined.

In a juridical sense, by "person" is meant any being, physical or moral, real or juridical and legal, susceptible of rights and obligations, or of being the subject of legal relations. (2 Sanchez Roman 110). The term person is more extensive than the term man or human being. (1 Falcon, 103) Falcon maintains that there is no difference between person and man and defines "person" as "man and all associations formed by man." (1 Falcon 103). The term "person" includes entities which have no physical existence such as corporations and associations. (People vs. Com.'rs. of Taxes, 23 N.Y. 242).

Persons are the subject of rights and duties.

Persons are the subject of rights and duties; and, as a subject of a right, the person is the object of the correlative duty, and conversely. The subject of a right has been called by Professor Holland, the person of inherence; subject of a duty, the person incidence. "Entitled" and "bound" are the terms in common use in English and for

most purposes they are adequate. Every full citizen is a person; other human beings, namely, subjects, who are not citizens, may be persons. A person is such, not because he is human, but because rights and duties are ascribed to him. The person is the legal subject or substance of which the rights and duties are attributes. An individual human being considered as having such attributes is what lawyers call a natural person. (Pollock, *First Book Jurispr.* 110; Gray, *Nature & Sources of Law*, Ch. II).

Birth determines personality.

It must be noted that personality is determined by birth. Without it, there is no human being; there is no natural person fit to be the subject of legal relations. But a conceived child may be considered born for purposes favorable to it. The following laws provide for favorable situations for an unborn fetus:

- (1) *Donations made to conceived and unborn children may be accepted by those who would legally represent them if they are already born. (Art. 742, Civil Code).*
- (2) *Every donation inter vivos, made by a person having no children or descendants, legitimate or legitimated by a subsequent marriage, or illegitimate, may be revoked or reduced as provided in the next article, by the happening of any of these events:*
 - 1) *If the donor, after the donation, should have legitimate or legitimated or illegitimate children, even though they be posthumous.*
x x x x x x x (Art. 760, New Civil Code).
 - 3) *The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious. (Art. 854, New Civil Code).*

Persons classified.

Persons are of two classes, namely: (1) human beings or men, called natural persons, and (2) associations and corporations having legal existence, called juridical or artificial persons.

Personality and capacity not identical.

Personality and capacity are intimately related, but are not identical. Personality is the aptitude to be the subject of rights and of obligations. It is a product of capacity in law, a necessary derivation from its existence, and is the external manifestation of that capacity.

Personality, its general and specific sense.

Personality in a general sense cannot be limited, because it is the consequence of juridical capacity, which in turn is merely a consequence of human nature. On the other hand, personality, in a specific sense, or personality for specific and concrete rights, may suffer limitations because it is merely the result of capacity to act. (2 Sanchez Roman 114-117).

Precautions.

The purpose of this provisions is to prevent simulation of birth for hereditary or successional rights. The fraudulent intention may be attained or facilitated either when the father has died or was absent for a considerable time. (1 Manresa, 6th ed., 267).

Objective sought.

The law fixes the intra-uterine life of a fetus with three objects in view, namely:

1. to assure its existence;
2. to facilitate and protect its free development; and
3. to give or accord to him certain rights in law. (1 Manresa, 6th ed. 267).

It must be remembered that even an unborn fetus has rights protected by law.

Attributes of *nasciturus* not mere expectancy.

The rights attributed to *nasciturus* or conceived but yet unborn child is not a mere expectancy nor merely a technical term given to this juridical figure, but are rights properly called *derechos en estado de pendencia*. (1 Manresa, 6th ed. 271). Accordingly, the birth of a child under conditions contemplated by Article 41, does not determine those rights already existing (*que ya existian de antemano*), for

they already constituted a state or condition that has declaratory effects. Thus, a letter addresses to the priest who was to baptize his child (Cesar Syquia), wherein he recognized said child as his, stating follows:

“Saturday, 1:30 p.m.
February 14, 1931

“Rev. Father,

“The baby due in June is mine and I should like for my name to be given to it.

“Cesar Syquia”

was held sufficient evidence and basis for an action for the compulsory acknowledgment of the child by the defendant after its birth by virtue of the provisions of Article 40 of this Civil Code. (De Jesus vs. Syquia, 58 Phil. 866).

Article 41. For civil purposes, the fetus is considered born if it is alive at the time it is completely delivered from the mother’s womb. However, if the fetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within twenty-four hours after its complete delivery from the maternal womb. (30a)

The fetus is considered born after its complete separation from the maternal womb, that is, the cutting of the umbilical cord.

It has been said that the second sentence in the law avoids an abortion of a six-month fetus from being considered as birth. If the child is already seven months, it is already well-formed and may live. It may have grown up to maturity; hence, he may now be viable.

The provisions of Articles 40 and 41 of the Civil Code have cross reference to the law on succession, for under Article 1025 of the Civil Code, the law says that in order to be capacitated to inherit, the heir, devisee or legatee must be living at the moment the succession opens, except in case of representation, when it is proper.

A child already conceived at the time of the death of the decedent is capable of succeeding provided it be born later under the conditions prescribed in Article 41.

Illustration:

A executed a will instituting the fetus inside B's womb. At the time of the child's birth, he had an intra-uterine life of 8 months. In order to succeed, he must be considered born; and if he is born alive, he succeeds and he would transmit successional rights to his heirs if he should die after his birth. Note that the fetus can be considered born for purposes of the institution in the will because it is favorable to it. But the taking of the property is conditioned on his birth.

Suppose the child had an intra-uterine life of 6-1/2 months or less than 7 months, he must have to live for at least 24 hours from the complete separation from the maternal womb, otherwise, if he dies within 24 hours from his complete separation from the maternal womb; then, he would not inherit and transmit successional rights to his heirs. The reason is that, he did not comply with the requirement of Article 41. The child here did not have juridical capacity.

Suppose A and B are married. They have a son C, who is married to D, and they have a son E. A executed a will instituting C, but the latter predeceased his father, A. E can inherit by right of representation.

Note that no less than the Constitution affords protection to the unborn, when it says that the State recognizes the sanctity of the family and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. (Art. II, Sec. 12, 1987 Constitution).

Article 42. Civil personality is extinguished by death.

The effect of death upon the rights and obligations of the deceased is determined by law, by contract and by will. (32a)

Death defined.

The cessation of life. The ceasing to exist. (Philip, Sleep & Death, Dean, med. Jur., 413).

Civil death defined.

Civil death is the state of a person who, though possessing a natural life has lost all his civil rights, and as to them, is considered as dead. A person convicted and attained of felony and sentenced to the state prison for life is, in the state of New York, in consequence of the act of 29th of March, 1799, and by virtues of the conviction and sentence of imprisonment for life, to be considered as civilly dead. (Platner vs. Sherwood, 6 Johns, Ch. [N.Y.] 118).

The law refers to physical death and not presumed death. In case of presumed death, the person is merely presumed dead because of his absence. But in case of reappearance, he can recover his properties or the price thereof if they have been distributed.

The second paragraph in the law recognizes the fact that some rights and obligations survive the death of a person. It must be recalled that the rights to succession are transmitted from the moment of the death of the decedent. (Art. 777, New Civil Code). Upon the moment of death, there is dissolution of the absolute community of properties and the conjugal partnership. (Arts. 99 and 126, Family Code). In case of death, there is extinguishment of parental authority, hence; substitute parental authority shall be exercised. (Arts. 214 and 220, Family Code). If a person constitutes another as an agent, the death of the principal or the agent extinguishes the agency. (Art. 1919, New Civil Code). If penalty has been imposed upon a person, his death extinguishes such penalty (Art. 89, Revised Penal Code); but this is without prejudice to the liability of the estate in case the obligation arose out of other sources of obligations. (People vs. Bayotas, *supra*).

In spite of the fact that the law provides that death extinguishes civil personality, it has been said that the estate of a decedent is in law regarded as a person (Limjoco vs. Intestate Estate of Pedro Fragante, L-770, April 27, 1948); that the supervening death of a person does not extinguish his civil personality. (Florendo, Jr. vs. Coloma, et al., 129 SCRA 304; Republic vs. Bagtas, 6 SCRA 262; Vda. de Haberer vs. CA, 104 SCRA 534).

Article 43. If there is a doubt, as between two 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; in the absence of proof, it is presumed that they died at the same time and there shall be no transmission of rights from one to the other. (33)

There must be a showing that there is death by positive evidence. However, it can be done by mere circumstantial evidence. In *Joaquin vs. Navarro*, 93 Phil. 257, where the death of the mother and her son occurred during the massacre of civilians in February 1945 and at the time when Manila was being bombarded during the war, the Supreme Court uphold the ruling of the trial court which was reversed by the Court of Appeals that, from the evidence presented the son died ahead of the mother.

The law is applicable in a situation where two persons are called upon to succeed each other.

Illustration:

A and B, father and son, died on the same day but the exact hours of their death cannot be ascertained. Then, it is presumed that they died at the same time and there shall be no transmission of rights, one in favor of another.

However, if it can be established that A died ahead of B, then, B can inherit from A, but since he is already dead, his heirs can represent him.

There is a similar presumption in Rule 131, Section 3, paragraph (jj) of the Rules of Court, which provides:

“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 no 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 15 years, the older is presumed to have survived;
- 2) If both were above the age of 60, the younger is deemed to have survived;
- 3) If one is under 15 and the other above 60, the former is deemed to have survived;
- 4) If both be over 15 and under 60, and the sex be different, the male is deemed to have survived; if the sex be the same, the older;
- 5) If one be under 15 or over 60, and the other between those ages, the latter is deemed to have survived.”

Chapter 3

Juridical Persons

Article 44. The following are juridical persons:

- 1) The State and its political subdivisions;**
- 2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;**
- 3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member. (35a)**

A juridical person is an abstract being, formed for the realization of collective purposes, to which the law has granted capacity for rights and obligations.

The law classifies juridical persons into three:

- 1) the state and its political subdivisions;
- 2) entities for public interests or purposes;
- 3) entities for private interests or purposes. (Art. 44, New Civil Code).

A corporation is an artificial being created by operation of law having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence. In a series of cases, the Supreme Court held that the term person in the Constitution includes corporations. (Smith, Bell & Co. vs. Natividad, 40 Phil. 136). In *Barlin vs. Ramirez, et al.*, 7 Phil. 41; *Roman Catholic Church vs. Placer*, 11 Phil. 315, the Supreme Court said that the Roman Catholic Church is recognized as a juridical person. In fact, the Roman Catholic Church as a corporation sole can even acquire lands in the Philippines.

Corporations may be public or private. Public corporations are those formed or organized for the government or the State. Private corporations are those formed for some private purposes, benefit, aim or end. Public corporations are intended or organized for the general good or welfare. Private corporations may also be classified into stock and non-stock. Stock corporations are those which have a capital stock

divided into shares and are authorized to distribute to the holders of such shares dividends or allotments of the surplus on the basis of the shares held. All other private corporations are non-stock corporations.

Article 45. Juridical persons mentioned in Nos. 1 and 2 of the preceding article are governed by the laws creating or recognizing them.

Private corporations are regulated by laws of general application on the subject.

Partnerships and associations for private interest or purpose are governed by the provisions of this Code concerning partnerships. (36 and 37a)

The law states the laws that govern juridical persons. The State is governed by the Constitution. Local government units like provinces, cities and municipalities are governed by the Local Government Code as well as the charters creating them. Private corporations or partnerships are governed by the Corporation Code and the Civil Code.

Article 46. 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 organizations. (38a)

Juridical persons may acquire properties. They may enter into contracts. Without such capacity, they cannot fulfill or attain their aims. They may sue or be sued but they cannot be prosecuted criminally. The officers may however, be prosecuted criminally.

Article 47. Upon the dissolution of corporations, institutions and other entities for public interest or purpose mentioned in No. 2 of Article 44, 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 region, province, city or municipality which during the existence of the institution derived the principal benefits from the same. (39a)

Title II

CITIZENSHIP AND DOMICILE

Article 48. The following are citizens of the Philippines:

- 1) Those who were citizens of the Philippines at the time of the adoption of the Constitution of the Philippines;**
- 2) Those born in the Philippines of foreign parents who, before the adoption of said Constitution, had been elected to public office in the Philippines;**
- 3) Those whose fathers are citizens of the Philippines;**
- 4) Those whose mothers are citizens of the Philippines and upon reaching the age of majority, elect Philippine citizenship;**
- 5) Those who are naturalized in accordance with law. (n)**

Article 49. Naturalization and the loss and reacquisition of citizenship of the Philippines are governed by special laws. (n)

Citizenship is the membership in a political community which is more or less permanent in nature.

Citizenship is membership in a democratic or political community, while nationality is membership in any political community whether monarchical, autocratic or democratic. Citizenship follows the exercise of civil and political rights, while nationality does not necessarily carry with it the exercise of political rights. A person can be a citizen of one country and a national of another.

There are three (3) modes of acquiring citizenship:

- 1) *Jus Sanguinis*, meaning by blood; as when a child is born of parents who are both Filipinos, wherever he may be born.

- 2) *Jus Soli*, which means by place of birth. So that if a Filipino couple gives birth to a child in a place which adheres to the principle of *jus soli*, then the child is a citizen of such place, like the USA which recognizes the principle of *jus soli*.
- 3) Naturalization, which is an artificial means or process, whether judicial or administrative, by which a state places the imprint of a native citizen wherein it adopts an alien and gives him the imprint and endowment of a citizen of that country.

Whether there can be a judicial declaration that a person is a Filipino citizen, the Supreme Court in *Yung Uan Chu vs. Republic*, G.R. No. 34973, April 14, 1988, said No. He has to apply for naturalization and adduce evidence of his qualifications. But if a person who claims to be a Filipino is being compelled to register as an alien, his remedy is to go to court and file a petition for injunction and prove therein that he is a Filipino. (*Lim vs. Dela Rosa*, L-17790, March 31, 1964). On the other hand, if a person is being deported but he claims to be a Filipino and can prove it, he cannot be deported because you cannot deport a Filipino.

The first group of citizens enumerated in the Constitution constitute the largest group, as they comprise those who were citizens of the Philippines on February 2, 1987, or at the time of the adoption of the 1987 Constitution. Included are the following:

- 1) Those who were citizens under the provisions of the Philippine Bill of 1902 and the Jones Law of 1916;
- 2) Those who were naturalized as Filipinos prior to the adoption of the 1935 Constitution;
- 3) Those who have been declared as Filipino citizens by final judgment;
- 4) Those who had elected Philippine citizenship;
- 5) Those born in the Philippines of foreign parents and had been elected to public office before the adoption of the 1935 Constitution.

Under the Jones Law of 1916 and the Philippine Bill of 1902, the following Spanish subjects became citizens of the Philippines under the conditions set forth therein:

“The Jones Law and the Philippine Bill both provided that “all inhabitants of the Philippine Islands who were Spanish subjects on the 11th day of April, 1899, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed in Paris, December Tenth, 1898, and except such others as have since become citizens of some other country.”

Pursuant to such laws, and under the doctrine laid down in *Palanca vs. Republic*, 45 O.G. 5th Supp. 204, even a naturalized subject of Spain who was an inhabitant of the Philippines on April 11, 1899, was held to be a Filipino citizen and being so at the time of the adoption of the Constitution, he is also a Filipino citizen under the Constitution. In *Commissioner vs. Dela Rosa*, 197 SCRA 853, the Supreme Court restrained and prohibited the deportation of William Gatchalian, who was the son of Santiago Gatchalian, a Filipino citizen, because his father being a Filipino, William Gatchalian is also a Filipino. The Constitution does not make any distinction anymore, that if the father or mother of a person is a Filipino, he is also a Filipino. Such that, even if a child was born in the USA; hence, an American Citizen under American Laws, he is still a Filipino from the point of view of Philippine laws because of the principle that the Philippines is not bound by the laws and determinations of foreign countries. He cannot be considered as having dual citizenship because of the aforesaid principle, for, he is only a Filipino. He can only be considered as possessing dual citizenship from the point of view of a third state.

If a person is born prior to January 17, 1973, of Filipino mother, and upon reaching the age of majority, he elects Philippine citizenship, he is a Filipino citizen. This law refers to those born under the old Constitution (1935 and 1973 Constitutions). The mother must be a Filipino and the father must be a foreigner, because if the father is a Filipino, then, the rule is inapplicable. During the minority of the child, he is a foreigner, that is why, he is given the privilege or right to elect Philippine citizenship within a reasonable period of time upon reaching the age of majority. As a matter of fact, when such child elects Philippine citizenship, the effect even retroacts to the date of his birth because the Constitution says that those who elect Philippine

citizenship in accordance with paragraph 3, Section 1 of Article III of the Constitution shall be deemed natural born citizens. (Sec. 2, Art. IV, 1987 Constitution). Election of Philippine citizenship can be expressed in a statement signed and sworn to by the party concerned before any official who is authorized to administer an oath. The statement must be filed with the nearest Local Civil Registry. The statement must be accompanied by an Oath of Allegiance to the Constitution and the Government of the Philippines. (Sec. 1, CA 625).

The election of Filipino citizenship must be made within three (3) years from reaching the age of majority (Sec. of Justice's Opinion, S. 1948), except if there is a justifiable reason for the delay, as when the party thought all along that he was already a Filipino. (Cuenco vs. Sec. of Justice, 5 SCRA 108). But there can be acquisition of citizenship under the doctrine of implied election by having exercised the right of suffrage when he came of age. That was a positive act of election of Philippine citizenship. In the case of *In Re: Florencio Mallare*, 59 SCRA 45, he participated in elections and campaigned for certain candidates. These are sufficient to show his preference for Philippine citizenship. (Opinion No. 328, S. 1940, Secretary of Justice).

As said elsewhere, naturalization is a matter of privilege. It requires that certain qualifications of the applicant be met, because the right to determine the rules on admission to citizenship by naturalization is an aspect of sovereignty. Naturalization affects public interest. In *Go vs. Republic*, 13 SCRA 548; *Republic vs. Uy Piek Tuy*, 29 SCRA 75, it was held that no alien has the slightest right to naturalization unless all statutory requirements are complied with.

Qualifications of an alien before he can be naturalized.

An applicant for naturalization must have the following qualifications:

- 1) Age. He must be at least 21 years of age at the date of the election;
- 2) Residence for 10 years or more in the Philippines;
- 3) Good moral character in that he should have conducted himself in an irreproachable manner during his stay;
- 4) Property qualification. He must have some lucrative trade, profession or calling;

- 5) Education. He must be able to speak, write English or Spanish or a principal dialect. He must have enrolled his children in a recognized school in the Philippines which teaches Philippine history, civics and government.

How the 10-year residence requirement is reduced.

The 10-year residence requirement for an applicant for naturalization may be reduced if:

- 1) he was born in the Philippines;
- 2) he is married to a Filipino;
- 3) he served in the government or held an office;
- 4) he has served as a teacher in a private or public school not limited to children of any nationality in any branch of education;
- 5) he made a useful investment or industry in the Philippines.

Disqualifications.

An alien who files a petition for naturalization may be disqualified when he:

- 1) is opposed to organized government;
- 2) is a believer in violence as a means to expose an idea;
- 3) is a polygamist or believer in polygamy;
- 4) has been convicted of a crime involving moral turpitude;
- 5) has an incurable disease;
- 6) has not mingled socially with Filipinos or he has not embraced Filipino cultures, ideals and customs;
- 7) is a citizen of a country with which the Philippines is at war during the time of such war;
- 8) is a citizen or national of a country which does not grant same naturalization to Filipinos. (no reciprocity).

The declaration of the intention to file a petition for naturalization is not, however, absolute. There are exceptions, like:

- 1) When he was born in the Philippines and received his primary and secondary education in the Philippines;

- 2) When he resided in the Philippines for 30 years;
- 3) When he is the widow or child of the applicant who died before approval of the application.

If one who is not exempted from filing the required declaration of intention files an invalid declaration, he can be denaturalized. The reason is obvious. Naturalization is a matter of privilege.

For the applicant who has met the 30-year residence requirement to be exempt from filing a declaration of intention, his residence must be actual residence, not legal residence. (*Tan vs. Republic*, 7 SCRA 526; *Cua Sun Ke vs. Republic*, G.R. No. 29674, April 8, 1988).

Concept of derivative naturalization.

It is one which says that if the husband of an alien woman is naturalized, the wife follows the Filipino citizenship of the husband provided she does not possess any of the disqualifications. (*Moy Ya Lim Yao vs. Comm. of Immigration*, 41 SCRA 292 [1971]). The law does not require that the woman should possess the qualifications of becoming a Filipino. If she falls under the principle, she must file a petition for cancellation of her alien certificate of registration, alleging that she is not disqualified from acquiring Philippine citizenship under Section 4 of the Naturalization Law. The petition must be accompanied by an affidavit of the petitioner and her husband that she does not belong to the group of disqualified persons and that she must file the petition with the Bureau of Immigration.

Commonwealth Act No. 63 enumerates the modes by which Philippine citizenship may be lost, like:

- 1) naturalization in a foreign country;
- 2) express renunciation of citizenship;
- 3) subscribing to an oath of allegiance to support the constitution or laws of a foreign country.

So that, in *Frivaldo vs. COMELEC, et al.*, G.R. No. 87193, June 23, 1989; *Labo vs. COMELEC, et al.*, G.R. No. 86564, August 1, 1989, it was said that the mere filing of his certificate of candidacy did not restore to him his Filipino citizenship. The Supreme Court said:

“This country of ours, for all its difficulties and limitations, is like a jealous and possessive mother. Once re-

jected, it is not quick to welcome back with eager arms its prodigal, repentant children. The returning of his loyalty must show, by express and unequivocal act, the renewal of his loyalty and love.”

For a Filipino who lost his Filipino citizenship to reacquire it, there must be direct act of Congress or naturalization or repatriation.

Article 50. For the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is the place of their habitual residence. (40a)

Domicile is the place of a person’s habitual residence. It is that place where he has his true, fixed permanent home and principal establishment, and to which place, he has, whenever he is absent, the intention of returning, and from which he has no present intention of moving. (*Ong Huan Tin vs. Republic*, 19 SCRA 966). There are therefore, two elements of domicile, such as (1) the fact of residing or physical presence in a fixed place; (2) the intention to remain permanently or *animus manendi*.

The Family Code has already dispensed with the rule that the domicile of a married woman may be fixed by the husband. Under Article 69 of the Family Code, the husband and wife shall fix the family domicile and in case of disagreement, the court shall decide. But the court may exempt one spouse from living with the other: (1) if the latter should live abroad; or (2) if there are other valid and compelling reasons for the exemption. Article 69 of the Family Code abrogated the inequality between husband and wife where the husband under the old law fixed or dictated the domicile of the wife. It was a gender-based discrimination and not rationally related to the objective of family solidarity.

It must be noted that in *Caasi vs. C.A.*, 191 SCRA 229 (1990), it was ruled that a person’s immigration to the U.S., with the intention to live there permanently as evidenced by his application for an immigrant’s visa, constitutes an abandonment of his domicile and residence in the Philippines. It was further said that the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain, *i.e.*, his domicile, is that to which the Constitution refers when it speaks of residence for the purposes of election law. The manifest purpose of this deviation from the usual conceptions of residence in law, as explained in *Gallego vs. Vera*, 73

Phil. 453, is to exclude strangers or newcomers unfamiliar with the conditions and needs of the community from taking advantage of favorable circumstances existing in that community for electoral gain.

In matters of domicile, a minor follows the domicile of his parents. In the case of *Imelda Marcos vs. COMELEC, et al.*, 64 SCAD 358, 248 SCRA 300, September 18, 1995, it was said that domicile once acquired is retained until a new one is gained. In spite of her having been born in Manila, Tacloban, Leyte was her domicile of origin by operation of law. This was not established only when she reached the age of 18 years old, but when her father brought his family back to Leyte. And, domicile is not easily lost. To successfully effect a change of domicile, one must demonstrate: (1) an actual removal or an actual change of domicile; (2) a *bona fide* intention of abandoning the former place of residence and establishing a new one; (3) acts which correspond with the purpose.

Case:

**Imelda R. Marcos vs. COMELEC, et al.
248 SCRA 300, 64 SCAD 358**

Facts:

Imelda R. Marcos filed her certificate of candidacy for the position of Representative of the First District of Leyte stating, among others, that her residence in the place was seven (7) months. Cong. Cirilo Roy Montejo, another candidate, filed a Petition for Cancellation and Disqualification with the COMELEC contending, among others, that she failed to comply with the 1-year residence requirement under the Constitution. An order was issued by the COMELEC disqualifying Imelda and cancelling her certificate of candidacy. She filed an Amended Corrected Certificate of Candidacy, changing the "seven months" to "since childhood." It was denied because it was filed out of time. In an *en banc* resolution, the COMELEC declared her as qualified to run and allowed her proclamation should it appear that she's the winner. In another resolution on the same day, it directed that the proclamation be suspended in the event that she obtained the highest number of votes; hence, she went to the Supreme Court.

Issue:

Whether or not Imelda Marcos was a resident of the First District of Leyte for a period of one year at the time of the election on May 9, 1995.

Held:

Yes.

The Supreme Court said:

“While the COMELEC seems to be in agreement with the general proposition that for purposes of election law, residence is synonymous with domicile, the Resolution reveals a tendency to substitute or mistake the concept of domicile for actual residence, a conception not intended for the purpose of determining a candidate’s qualifications for election to the House of Representatives as required by the 1987 Constitution. As it was residence, for the purpose of meeting the qualification for an elective position, has a settled meaning in our jurisdiction.

“Article 50 of the Civil Code decrees that ‘for the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is their place of habitual residence.’ In *Ong Huan Tin vs. Republic*, 19 SCRA 966; *Corre vs. Corre*, 100 Phil. 321, this Court took the concept of domicile to mean an individual’s ‘permanent home,’ ‘a place to which, whenever absent for business or for pleasure, one intends to return, and depends on facts and circumstances in the sense that they disclose intent.’ Based on the foregoing, domicile includes the twin elements of ‘the fact of residing or physical presence in a fixed place’ and *animus manendi*, or the intention of returning there permanently.

“Residence, in its ordinary conception, implies the factual relationship of an individual to a certain place. It is the physical presence of a person in a given area, community or country. The essential distinction between residence and domicile in law is that residence involves the intent to leave when the purpose for which the resident has taken up his abode ends. One may seek a place for purposes such as pleasure, business, or health. If a person’s intent be to remain, it becomes his domicile; if his intent is to leave as soon as his purpose is established, it is residence. (*Uytengsu vs. Republic*, 95 Phil. 890). It is thus, quite perfectly normal for an individual to have different residences in various places. However, a person can only have a single domicile, unless, for various reasons, he

successfully abandons his domicile in favor of another domicile of choice. In *Uytengsu vs. Republic (supra)*, we laid this distinction quite clearly:

“There is a difference between domicile and residence. ‘Residence’ is used to indicate a place of abode, whether permanent or temporary; ‘domicile’ denotes a fixed permanent residence to which, when absent, one has the intention of returning. A man may have a residence in one place and a domicile in another. Residence is not domicile, but domicile is residence coupled with the intention to remain for an unlimited time. A man can have but one domicile for the same purpose at anytime, but he may have numerous places of residence. His place of residence is generally his place of domicile, but it is not by any means necessarily so since no length of residence without intention of remaining will constitute domicile.

“For political purposes, the concepts of residence and domicile are dictated by the peculiar criteria of political laws. As these concepts have evolved in our election law, what has clearly and unequivocally emerged is the fact that residence for election purposes is used synonymously with domicile.”

In *Nuval vs. Guray*, 52 Phil. 645, the Court held that “the term residence ... is synonymous with domicile which imports not only intention to reside in a fixed place, but also personal presence in that place, coupled with conduct indicative of such intention.” *Larena vs. Teves*, 61 Phil. 36, reiterated the same doctrine in a case involving the qualifications of the respondent therein to the post of Municipal President of Dumaguete, Negros Oriental. *Faypon vs. Quirino*, 96 Phil. 294, held that the absence from residence to pursue studies or practice a profession or registration as a voter other than in the place where one is elected does not constitute loss of residence. (*Ujano vs. Republic*, 17 SCRA 147). So settled is the concept (of domicile) in our election law that in these and other election law cases, this Court has stated that the mere absence of an individual from his permanent residence without the intention to abandon it does not result in a loss or change of domicile.

The deliberations of the 1987 Constitution on the residence qualification for certain elective positions have placed beyond doubt the principle that when the Constitution speaks of “residence” in election law, it actually means only “domicile.”

x x x

x x x

x x x

On the matter of Imelda's domicile, the Supreme Court had this to say:

“In support of its asseveration that petitioner's domicile could not possibly be in the First District of Leyte, the Second Division of the COMELEC, in its assailed Resolution of April 24, 1995, maintains that “except for the time when (petitioner) studied and worked for some years after graduation in Tacloban City, she continuously lived in Manila.” The Resolution additionally cites certain facts as indicative of the fact that petitioner's domicile ought to be any place where she lived in the last few decades except Tacloban, Leyte. First, according to the Resolution, petitioner, in 1959, resided in San Juan, Metro Manila where she was also a registered voter. Then, in 1965, following the election of her husband to the Philippine presidency, she lived in San Miguel, Manila, where she registered as a voter in 1978 and thereafter, she served as a member of the Batasang Pambansa and Governor of Metro Manila. ‘She could not, have served these positions if she had not been a resident of Metro Manila,’ the COMELEC stressed. Here is where the confusion lies.

“We have stated, many times in the past, that an individual does not lose his domicile even if he has lived and maintained residences in different places. Residence, it bears repeating, implies a factual relationship to a given place for various purposes. The absence from legal residence or domicile to pursue a profession, to study or to do other things of a temporary or semi-permanent nature does not constitute loss of residence. Thus, the assertion by the COMELEC that ‘she could not have been a resident of Tacloban City since childhood up to the time she filed her certificate of candidacy because she became a resident of many places,’ flies in the face of settled jurisprudence in which this Court carefully made distinctions between (actual) residence and domicile for election law purposes.” In *Larena vs. Teves*, 61 Phil. 36, we stressed:

“This court is of the opinion and so holds that a person who has his own house wherein he lives with his fam-

ily in a municipality without having ever had the intention of abandoning it, and without having lived either alone or with his family in another municipality, has his residence in the former municipality, notwithstanding his having registered as an elector in the other municipality in question and having been a candidate for various insular and provincial positions, stating every time that he is a resident of the latter municipality.”

“More significantly, in *Faypon vs. Quirino*, 96 Phil. 294, we explained that:

‘A citizen may leave the place of his birth to look for *greener pastures*, as the saying goes, to improve his lot, and that, of course includes study in other places, practice of his vocation, or engaging in business. When an election is to be held, the citizen who left his birthplace to improve his lot may desire to return to his native town to cast his ballot but for professional or business reasons, or for any other reason, he may not absent himself from his professional or business activities; so there he registers himself as voter as he has the qualifications to be one and is not willing to give up or lose the opportunity to choose the officials who are to run the government especially in national elections. Despite such registration, the *animus revertendi* to his home, to his domicile or residence of origin has not forsaken him. This may be the explanation why the registration of a voter in a place other than his residence of origin has not been deemed sufficient to constitute abandonment or loss of such residence. It finds justification in the natural desire and longing of every person to return to his place of birth. This strong feeling of attachment to the place of one’s birth must be overcome by positive proof of abandonment for another.’

“From the foregoing, it can be concluded that in its above-cited statements supporting its proposition that petitioner was ineligible to run for the position of Representative of the First District of Leyte, the COMELEC was obviously referring to petitioner’s various places of (actual) residence, not her domicile. In doing so, it not only ignored settled jurisprudence on residence in election law and the deliberations of the constitutional commission but also the provisions of the Omnibus Election Code (B.P. Blg. 881) which provide that any person who transfers residence to another city, municipality or

TITLE II – CITIZENSHIP AND DOMICILE

country solely by reason of his occupation; profession; employment in private or public service; educational activities; work in military or naval reservations; service in the army, navy or air force; the constabulary or national police force; or confinement or detention in government institutions in accordance with law shall not be deemed to have lost his original residence.”

What is undeniable, however, are the following set of facts which establish the fact of petitioner’s domicile, which we lift verbatim from the COMELEC’s Second Division’s assailed Resolution, thus:

“In or about 1938 when respondent was a little over 8 years old, she established her domicile in Tacloban, Leyte (Tacloban City). She studied in the Holy Infant Academy in Tacloban from 1938 to 1949 when she graduated from high school. She pursued her college studies in St. Paul’s College, now Divine World University in Tacloban, where she earned her degree in Education. Thereafter, she taught in the Leyte Chinese School, still in Tacloban City. In 1952, she married ex-President Ferdinand E. Marcos when he was still a congressman of Ilocos Norte and registered there as a voter. When her husband was elected Senator of the Republic in 1959, she and her husband lived together in San Juan, Rizal where she registered as a voter. In 1965, when her husband was elected President of the Republic of the Philippines, she lived with him in Malacañang Palace and registered as a voter in San Miguel, Manila.”

“In February 1986 (she claimed that) she and her family were abducted and kidnapped to Honolulu, Hawaii. In November 1991, she came home to Manila. In 1992, respondent ran for election as President of the Philippines and filed her Certificate of Candidacy wherein she indicated that she is a resident and registered voter of San Juan, Metro Manila.”

“Applying the principles discussed to the facts found by COMELEC, what is inescapable is that petitioner held various residences for different purposes during the past four decades. None of these purposes unequivocally *point to an intention to abandon her domicile of origin in Tacloban, Leyte*. Moreover, while petitioner was born in Manila, as a minor she naturally followed the domicile of her parents. She grew up in Tacloban, reached her

adulthood there and eventually established residence in different parts of the country for various reasons. Even during her husband's presidency, at the height of the Marcos Regime's powers, petitioner kept her close ties to her domicile of origin by establishing residences in Tacloban, celebrating her birthdays and other important personal milestones in her home province, instituting well-publicized projects for the benefit of her province and hometown, and establishing a political power base where her siblings and close relatives held positions of power either through the ballot or by appointment, always with either her influence or consent. These well-publicized ties to her domicile of origin are parts of the history and lore of the quarter century of Marcos power in our country. Either they were entirely ignored in the COMELEC's Resolutions, or the majority of the COMELEC did not know what the rest of the country always knew: the fact of petitioner's domicile in Tacloban, Leyte.

"Private respondent in his Comment, contended that Tacloban was not petitioner's domicile of origin because she did not live there until she was eight years of age. He avers that after leaving the place in 1952, she 'abandoned her residency (sic) therein for many years and . . . (could not) re-establish her domicile in said place by merely expressing her intention to live there again. We do not agree."

"First, a minor follows the domicile of his parents. As domicile, once acquired is retained until a new one is gained, it follows that in spite of the fact of petitioner's being born in Manila, Tacloban, Leyte was her *domicile of origin by operation of law*. This domicile was not established only when she reached the age of eight years old, when her father brought his family back to Leyte contrary to private respondent's averments."

"Second, domicile of origin is not easily lost. To successfully effect a change of domicile, one must demonstrate (18 Am. Jur. 219-220):

1. An actual removal or an actual change of domicile;
2. A *bona fide* intention of abandoning the former place of residence and establishing a new one; and
3. Acts which correspond with the purpose. (See also Aquino vs. COMELEC, 64 SCAD 457, 248 SCRA 400).

“In the absence of clear and positive proof based on these criteria, the residence of origin should be deemed to continue. Only with evidence showing concurrence of all three requirements can the presumption of continuity of residence be rebutted, for a change of residence requires an actual and deliberate abandonment, and one cannot have two legal residences at the same time. (20 Am. Jur. 71). In the case at bench, the evidence adduced by private respondent plainly lacks the degree of persuasiveness required to convince this court that an abandonment of domicile of origin in favor of a domicile of choice indeed occurred. To effect an abandonment requires the voluntary act of relinquishing petitioner’s former domicile with an intent to supplant the former domicile with one of her own choosing (*domicilium voluntarium*).”

“In this connection, it cannot be correctly argued that petitioner lost her domicile of origin by operation of law as a result of her marriage to the late President Ferdinand E. Marcos in 1952. For there is a clearly established distinction between the Civil Code concepts of ‘domicile’ and ‘residence.’ The presumption that the wife automatically gains the husband’s domicile by operation of law upon ‘residence’ in Article 110 of the Civil Code because the Civil Code is one area where the two concepts are well-delineated. Dr. Arturo Tolentino, writing on this specific area explains:

‘In the Civil Code, there is an obvious difference between domicile and residence. Both terms imply relations between a person and a place; but in residence, the relation is one of fact while in domicile it is legal or juridical, independent of the necessity of physical presence. (Tolentino, *Commentaries and Jurisprudence on the Civil Code*, 1987 ed.)’

“Article 110 of the Civil Code provides:

Article 110. The husband shall fix the residence of the family. But the court may exempt the wife from living with the husband if he should live abroad unless in the service of the Republic.

“A survey of jurisprudence relating to Article 110 or to the concepts of domicile or residence as they affect the female spouse upon marriage yields nothing which would suggest that the female spouse automatically loses her domicile of origin in favor of the husband’s choice of residence upon marriage.

“Article 110 is a virtual restatement of Article 58 of the Spanish Civil Code of 1889 which states:

‘La Mujer esta obligada a seguir a su marido donde quiera que fije su residencia. Los Tribunales, Sin embargo, podran conjusta causa eximirin de esta obligacion cuando el mahido transenda su residencia a ultramar o’ a pais extranjero.’

“Note the use of the phrase ‘*donde quiera su fije de residencia*’ in the aforementioned article, which means wherever (the husband) wishes to establish residence. This part of the article clearly contemplates only actual residence because it refers to a positive act of fixing a family home or residence. Moreover, this interpretation is further strengthened by the phrase ‘*cuando el marido translade su residencia*’ in the same provision which means, ‘when the husband shall transfer his residence,’ referring to another positive act of relocating the family to another home or place of actual residence. The article obviously cannot be understood to refer to domicile which is a fixed, fairly-permanent concept when it plainly connotes the possibility of transferring from one place to another not only once, but as often as the husband may deem fit to move his family, a circumstance more consistent with the concept of actual residence.

“The right of the husband to fix the actual residence is in harmony with the intention of the law to strengthen and unify the family, recognizing the fact that the husband and the wife bring into the marriage different domiciles (of origin). This difference could, for the sake of family unity, be reconciled only by allowing the husband to fix a single place of actual residence.

“Very significantly, Article 110 of the Civil Code is found under Title V under the heading: RIGHTS AND OBLIGATIONS BETWEEN HUSBAND AND WIFE. Immediately preceding Article 110 is Article 109 which obliges the husband and wife to live together, thus:

‘Article 109. The husband and wife are obligated to live together, observe mutual respect and fidelity and render mutual help and support.’

“The duty to live together can only be fulfilled if the husband and wife are physically together. This takes into account the situations where the couple has many residences (as in the case of petitioner). If the husband has to stay in or transfer to any one of their residences, the wife should necessarily be with him in order that they may ‘live

together.' Hence, it is illogical to conclude that Art. 110 refers to 'domicile' and not to 'residence.' Otherwise, we shall be faced with a situation where the wife is left in the domicile while the husband, for professional or other reasons, stays in one of their (various) residences. As Dr. Tolentino further explains:

'Residence and Domicile. — Whether the word *residence* as used with reference to particular matters is synonymous with 'domicile' is a question of some difficulty, and the ultimate decision must be made from a consideration of the purpose and intent with which the word is used. Sometimes, they are used synonymously; at other times, they are distinguished from one another.

x x x

'Residence in the civil law is a material fact, referring to the physical presence of a person in a place. A person can have two or more residences, such as a country residence and a city residence. Residence is acquired by living in a place; on the other hand, domicile can exist without actually living in the place. The important thing for domicile is that, once residence has been established in one place, there be an intention to stay there permanently, even if residences is also established in some other place.' (Tolentino, 1 Commentaries and Jurisprudence on the Civil Code, 220 [1987]).

"In fact, even the matter of a common residence between the husband and the wife during the marriage is not an iron-clad principle. In cases applying the Civil Code on the question of a common matrimonial residence, our jurisprudence has recognized certain situations where the spouses could not be compelled to live with each other such that the wife is either allowed to maintain a residence different from that of her husband or, for obviously practical reasons, revert to her original domicile (apart from being allowed to opt for a new one). In *De La Viña vs. Villareal*, 41 Phil. 13, this Court held that "[a] married woman may acquire a residence or domicile separate from that of her husband during the existence of the marriage where the husband has given cause for divorce." Note that the Court allowed the wife either to obtain a new residence or to choose a new domicile in such an event. In instances where the wife actually opts, under the Civil Code, to live separately from her husband either by taking a new residence or reverting to her domicile

of origin, the Court has held that the wife could not be compelled to live with her husband on pain of contempt. In *Arroyo vs. Vazquez de Arroyo*, 42 Phil. 54, the Court held that:

“Upon examination of the authorities, we are convinced that it is not within the province of the courts of this country to attempt to compel one of the spouses to cohabit with, and render conjugal rights to, the other. Of course, where the property rights of one of the pair are invaded, an action for restitution of such rights can be maintained. But we are disinclined to sanction the doctrine that an order, enforceable by process of contempt, may be entered to compel the restitution of the purely personal right of consortium. At best, such an order can be effective for no other purpose than to compel the spouses to live under the same roof; and the experience of those countries where the courts of justice have assumed to compel the cohabitation of married people shows that the policy of the practice is extremely questionable. Thus in England, formerly the Ecclesiastical Court entertained suits for the restitution of conjugal rights at the instance of either husband or wife; and if the facts were found to warrant it, that court would make a mandatory decree, enforceable by process of contempt in case of disobedience, requiring the delinquent party to live with the other and render conjugal rights. Yet this practice was sometimes criticized even by the judges who felt bound to enforce such orders, and in *Weldon vs. Weldon* (P.D. No. 52), decided in 1883, Sir James Hannen, President in the Probate, Divorce and Admiralty Division of the High Court of Justice, expressed his regret that the English law on the subject was not the same as that which prevailed in Scotland, where a decree of adherence, equivalent to the decree for the restitution of conjugal rights in England, could be obtained by the injured spouse, but could not be enforced by imprisonment. Accordingly, in obedience to the growing sentiment against the practice, the Matrimonial Causes Act (1884) abolished the remedy of imprisonment; though a decree for the restitution of conjugal rights can still be procured, and in case of disobedience may serve in appropriate cases as the basis of an order for the periodical payment of a stipend in the character of alimony.”

“In the voluminous jurisprudence of the United States, only one court, so far as we can discover, has even attempted to make a preemptory order requiring one of the spouses to live with the other; and that was in a case where a wife was ordered to follow and live with her husband, who had changed his domicile to the City of New Orleans. The decision referred to (*Bahn vs. Darby*, 36 La. Ann., 70) was based on a provision of the Civil Code of Louisiana similar to Article 56 of the Spanish Civil Code. It was decided many years ago, and the doctrine evidently has not been fruitful even in the State of Louisiana. In other states of the American Union the idea of enforcing cohabitation by process of contempt is rejected. (21 Cyc., 1148).”

“In a decision of January 2, 1909, the Supreme Court of Spain appears to have affirmed an order of the *Audiencia Territorial de Valladolid* requiring a wife to return to the marital domicile, and in the alternative, upon her failure to do so, to make a particular disposition of certain money and effects then in her possession and to deliver to her husband, as administrator of the ganancial property, all income, rents, and interest which might accrue to her from the property which she had brought to the marriage. (113 Jur. Civ., pp. 1, 11). But it does not appear that this order for the return of the wife to the marital domicile was sanctioned by any other penalty than the consequences that would be visited upon her in respect to the use and control of her property; and it does not appear that her disobedience to that order would necessarily have been followed by imprisonment for contempt.”

“Parenthetically, when Petitioner was married to then Congressman Marcos, in 1954, petitioner was obliged — by virtue of Article 110 of the Civil Code — to follow her husband’s actual place of residence fixed by him. The problem here is that at that time, Mr. Marcos had several places of residence, among which were San Juan, Rizal and Batac, Ilocos Norte. There is no showing which of these places Mr. Marcos did fix, as his family’s residence. But assuming that Mr. Marcos had fixed any of these places as the conjugal residence, what petitioner gained upon marriage was actual residence. She did not lose her domicile of origin.”

“On the other hand, the common law concept of ‘matrimonial domicile’ appears to have been incorporated, as a result of our jurisprudential experiences after the drafting of the Civil Code of 1950, into the New Family Code. To underscore the difference between the intentions of the Civil Code and the Family Code drafters, the term ‘residence’ has been supplanted by the term domicile in an entirely new provision (Art. 69) distinctly different in meaning and spirit from that found in Article 110. The provision recognizes revolutionary changes in the concept of women’s rights in the intervening years by making the choice of domicile a product of mutual agreement between the spouses.”

“Without as much belaboring the point, the term residence may mean one thing in civil law (or under the Civil Code) and quite another thing in political law. What stands clear is that insofar as the Civil Code is concerned — affecting the rights and obligations of husband and wife — the term residence should only be interpreted to mean “actual residence.” The inescapable conclusion derived from this ambiguous civil law delineation therefore, is that when petitioner married the former President in 1954, she kept her domicile of origin and merely gained a new home, not a *domicilium necessarium*.”

“Even assuming for the sake of argument that petitioner gained a new ‘domicile’ after her marriage and only acquired a right to choose a new one after her husband died, petitioner’s acts following her return to the country clearly indicate that she not only impliedly but expressly chose her domicile of origin (assuming this was lost by operation of law) as her domicile. This ‘choice’ was unequivocally expressed in her letters to the Chairman of the PCGG when petitioner sought the PCGG’s permission to ‘rehabilitate (our) ancestral house in Tacloban and farm in Olot, Leyte. . . to make them livable for the Marcos family to have a home in our homeland.’ Furthermore, petitioner obtained her residence certificate in 1992 in Tacloban, Leyte, while living in her brother’s house, an act which supports the domiciliary intention clearly manifested in her letters to the PCGG Chairman. She could not have gone straight to her home in San Juan, as it was in a state of disrepair, having been previously looted by vandals. Her ‘homes’ and ‘residences’ following her arrival in various parts of Metro Manila merely qualified as temporary or ‘actual residences,’ not domicile. Moreover, and proceeding from our discussion pointing out specific situations where the female spouse either reverts to her domicile of origin or chooses a new one during the subsistence of the marriage, it would be highly illogical for us to

assume that she cannot regain her original domicile upon the death of her husband absent a positive act of selecting a new one where situations exist within the subsistence of the marriage itself where the wife gains a domicile different from her husband.

“In the light of all the principles relating to residence and domicile enunciated by this court up to this point, we are persuaded that the facts established by the parties weigh heavily in favor of a conclusion supporting petitioner’s claim of legal residence or domicile in the First District of Leyte.”

Article 51. 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 the place where their legal representation is established or where they exercise their principal functions. (41a)

The law contemplates a situation where a juridical person is created by law, but the law does not state its domicile. A private corporation, for example may have been established by law, but its domicile has not been fixed. It is understood that its domicile is the place where its legal representation is made or where it exercises its principal functions. So that, if it exercises its principal functions in Manila, that is its domicile.

FAMILY CODE OF THE PHILIPPINES

On July 26, 1987, President Corazon C. Aquino signed into law Executive Order No. 209 otherwise known as the “Family Code of the Philippines.” Some of the reasons for the law are enunciated in the whereases of the same, thus:

“WHEREAS, almost four decades have passed since the adoption of the Civil Code of the Philippines;

WHEREAS, experience under said Code as well as pervasive changes and developments have necessitated revision of its provisions on marriage and family relations to bring them closer to Filipino customs, values and ideals and reflect contemporary trends and conditions;

WHEREAS, there is a need to implement policies embodied in the new Constitution that strengthen marriage and the family as basic social institutions and ensure equality between men and women.”

On July 17, 1987, the President signed Executive Order No. 277 amending Article 26, 36 and 39 of the law. Then, RA 6809 was passed by Congress on October 20, 1989 amending pertinent portions of the law especially lowering the age of majority from 21 to 18.

RA 8552 was later on enacted amending the provisions of the law on adoption. Later on, RA 8533 amended Article 40 of the law eliminating the period within which to file an action to declare a void marriage void. There were subsequent laws enacted like RA 9552 allowing illegitimate children to carry the surname of their parents under certain conditions.

The Family Code took effect on August 3, 1988.

Title I

MARRIAGE

Chapter 1

Requisites of Marriage

Article 1. Marriage is 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. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this code. (52a)

Concept of Marriage.

As a status, it is the civil status of one man and one woman legally united for life, with rights and duties which for the establishment of families and multiplication and education of the species are, or from time to time, may thereafter be assigned by law to matrimony. (Bishop, Marriage, Divorce and Separation, Sec. 11).

As an act, it is an act by which a man and a woman unite for life, with the intent to discharge towards society and one another those duties which result from the relation of husband and wife. (Schoule, Law of Dom. Rels., par. 11).

Nature of marriage.

Marriage is not like an ordinary contract, that if there is no performance of one's duties, an ordinary contract can be the subject of rescission; in marriage, there is no such rescission. In marriage, the remedy of an aggrieved spouse in case one of the spouses fails to perform his duties, to the extent of bringing dishonor or discredit to the family is to ask for damages. In ordinary contracts, the remedy is to ask for specific performance or rescission with damages in both cases. Or, if one of the spouses leaves the conjugal dwelling, the other spouse may not compel the other to return to the same since the act of living together is a personal act which cannot be compelled by processes of the court.

Marriage is a permanent union. The parties cannot fix a period for its efficacy to be ineffective after a few years, especially so that its nature, consequences and incidents are not subject to stipulations of the parties — for they are governed by law. Its permanent character has been taken from the well-accepted rule that, “What God has put together, no man shall put asunder.”

The parties, however, may enter into an ante-nuptial agreement as to what property relationship shall govern them during the marriage. But this agreement shall pertain to their properties alone, and not on the incidents and consequences as well as their marital relationship. Once the parties are married, they cannot agree that after a few years, they will consider the marriage void since it is not for them to decide for themselves the validity of their marriage. They cannot agree that they will separate, that there will be no love, no respect, no obligation to support and no fidelity, for all of these things are all incidents of marriage. In fact, there are obligations imposed upon them by law especially so that the Family Code provides that the husband and wife are obliged to live together, “observe mutual love, respect and fidelity, and render mutual help and support.” (Art. 68, Family Code). To emphasize the importance of marriage to society, the Supreme Court considered as an act of immorality, the act of a judge of cohabiting with another woman despite the existence of a previous valid or existing marriage. In fact, even if the first spouse has already abandoned him, he cannot just cohabit with another woman, or get married with her without having the first marriage annulled or declared void, for to do so would be making a mockery of the inviolability of the marriage as a basic social institution. (MTJ-92-716, October 18, 1995; see also *Atienza vs. Brillantes, Jr.*, A.M. No. MTJ-92-706, March 29, 1995, 60 SCAD 119).

In *Goitia vs. Campos Rueda*, 35 Phil. 252, no less than the Supreme Court ruled that marriage partakes of the nature of an ordinary contract. But it is something more than a mere contract. It is a new relation, the rights, duties and obligations of which rest not upon the agreement of the parties but upon general law which defines and prescribes those rights, duties and obligations. Marriage is an institution, in the maintenance of which in its purity the public policy is deeply interested. In *Ramirez vs. Gmur*, 42 Phil. 855, it was said that marriage is an institution in the maintenance of which in its purity, the public is deeply interested, for it is the foundation of the family and of society, without which there could be neither civilization nor progress. Bishop, in his comments on Marriage, Divorce and Separation, said that the civil status of one man and one woman,

legally united for life, with rights and duties which for the establishment of families and the multiplication and education of species are, or from time to time may thereafter be assigned by law to matrimony.

Well-entrenched is the rule that a husband is not merely a man who has contracted marriage -- he is a partner who has solemnly sworn to love and respect his wife and remain faithful to her until death. (*Narag vs. Narag*, 291 SCRA 451 [1998]).

Mail-Order Bride.

To emphasize the importance of marriage as a social institution and a relationship, Congress enacted RA 6955 penalizing any person, natural or judicial, association, club or any entity who may commit any of the following acts:

1. To establish or carry on a business which has for its purpose the matching of Filipino women for marriage to foreign nationals either on a mail-order basis or through personal introduction;
2. To advertise, publish, print or distribute or cause the advertisement, publication, printing or distribution of any brochure, flier, or any propaganda material calculated to promote the prohibited acts in the preceding paragraph;
3. To solicit, enlist or in any manner attract or induce any Filipino women to become a member in a club or association whose objective is to match women for marriage to foreign nationals whether on a mail-order basis or through personal introduction for a fee;
4. To use the postal service to promote the prohibited acts in subparagraph 1. (Republic Act No. 6955, Section 2, June 13, 1990).

Presumption of marriage for man and woman deporting themselves to be married.

In *Maria del Rosario Mariategui, et al. vs. CA, et al.*, G.R. No. 57062, January 24, 1992, it appeared that Lupo Mariategui contracted 3 marriages. With his first wife, he begot four children; second wife, a daughter; third wife, three children. At the time of his death, he left properties which he acquired when still unmarried. On December

2, 1967, the children in the first and second marriages executed an extrajudicial partition over Lot 163. A title was later on issued under their names.

On April 23, 1973, the children in the third marriage filed a complaint claiming that Lot No. 163 and Lots Nos. 669, 1343 and 154 were owned by their father, hence, the adjudication of Lot No. 163 in favor of the other heirs deprived them of their share. They prayed for partition. The defendants moved for dismissal contending that the complaint was one of recognition of natural children. It was denied. On February 16, 1977, the complaint and counterclaim were dismissed on the theory that:

“The plaintiffs’ right to inherit depends upon the acknowledgment or recognition of their continuous enjoyment and possession of status of children of their supposed father. The evidence failed to sustain such premise, and it is clear that this action cannot be sustained.”

On appeal, the CA declared all the children and descendants of Lupo as entitled to equal shares. A motion for reconsideration was filed, but it was denied, hence, this petition.

Held:

Lupo Mariategui and Felipa Velasco were alleged to have been lawfully married on or about 1930. This fact has been based on the declaration communicated by Lupo Mariategui to Jacinto who testified that “when (his) father was still living, he was able to mention to (him) that he and (his) mother were able to get married before a Justice of the Peace of Taguig, Rizal.” The spouses deposed themselves as husband and wife, and were known in the community to be such. Although no marriage certificate was introduced to this effect, no evidence was likewise offered to controvert these facts. Moreover, the mere fact that no record of the marriage exists does not invalidate the marriage, provided all requisites for its validity are present. (People vs. Borromeo, 133 SCRA 106 [1984]).

Under these circumstances, a marriage may be presumed to have taken place between Lupo and Felipa. The laws presume that a man and a woman, deposing themselves as husband and wife, have entered into a lawful contract of marriage; that a child born in lawful wedlock, there being no divorce, absolute or from bed and board is legitimate; and that things have happened according to the ordinary

course of nature and the ordinary habits of life. (Section 3[aa], [bb], [cc], Rule 131, Rules of Court; *Corpus vs. Corpus*, 85 SCRA 567 [1978]; *Suarnaba vs. Workmen's Compensation*, 85 SCRA 502 [1978]; *Alavado vs. City Gov't. of Tacloban*, 139 SCRA 230 [1985]; *Reyes vs. Court of Appeals*, 135 SCRA 439 [1985]). In fact, in *Rivera vs. IAC*, 182 SCRA 322, it was said that Adelaido's failure to present his parents' marriage certificate is not fatal to his case as he can still rely on the presumption of marriage.

Courts look upon the presumption of marriage with great favor as it is founded on the following rationale:

“The basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony. Persons dwelling together in apparent matrimony are presumed, in the absence of any counter-presumption or evidence special to that case, to be in fact married. The reason is that such is the common order of society and if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and of law x x x.” (*Adong vs. Cheong Seng Gee*, 43 Phil. 43 [1922]; quoted in *Alavado vs. City Government of Tacloban*, 139 SCRA 230 [1985]; See also *Abadilla vs. Tabiliran, Jr.*, 65 SCAD 197, 249 SCRA 447, October 25, 1995, citing Justice Malcolm).

So much so that once a man and a woman have lived as husband and wife and such relationship is not denied or contradicted, the presumption of their being married must be admitted as a fact. (*Alavado vs. City Gov't. of Tacloban*, 139 SCRA 230).

The Civil Code provides for the manner under which legitimate filiation may be proven. However, considering the effectivity of the Family Code of the Philippines, the case at bar must be decided under a new, if not entirely dissimilar, set of rules because the parties have been overtaken by events, to use the popular phrase. (*Uyguangco vs. Court of Appeals*, G.R. No. 76873, October 26, 1989). Thus, under Title VI of the Family Code, there are only two classes of children — legitimate and illegitimate. The fine distinctions among various types of illegitimate children have been eliminated. (*Castro vs. Court of Appeals*, 173 SCRA 656 [1989]).

Article 172 of the said Code provides that the filiation of legitimate children may be established by the record of birth appearing in the civil register or a final judgment; or by the open and continuous possession of the status of a legitimate child.

Evidence on record proves the legitimate filiation of the private respondents. Jacinto's birth certificate is a record of birth referred to in the said article. Again, no evidence which tends to disprove facts contained therein was adduced before the lower court. In the case of the two other private respondents, Julian and Paulina, they may not have presented in evidence any of the documents required by Article 172 but they continuously enjoyed the status of children of Lupo Mariategui in the same manner as their brother Jacinto.

While the trial court found Jacinto's testimonies to be inconsequential and lacking in substance as to certain dates and names of relatives with whom their family resided, these are but minor details. The hanging fact is that for a considerable length of time and despite the death of Felipa in 1941, the private respondents and Lupo lived together until Lupo's death in 1953. It should be noted that even the trial court mentioned in its decision the admission made in the affidavit of Crescenciana Mariategui Abas, one of the petitioners herein, that "x x x Jacinto, Julian and Paulina Mariategui *ay pawang mga kapatid ko sa ama* x x x." (Exh. M, Record on Appeal, pp. 65-66).

In view of the foregoing, there can be no other conclusion than that private respondents are legitimate children and heirs of Lupo Mariategui and therefore, the time limitation prescribed in Article 285, New Civil Code, for filing an action for recognition is inapplicable to this case.

Speaking of the term "spouses," the Supreme Court, in *Eugenio, Sr. vs. Velez*, 185 SCRA 425, said that it refers to married couples and not to common-law spouses.

Testimonial Evidence to Prove Marriage.

The case of *Leoncia and Gaudioso Balogbog vs. CA, et al.*, G.R. No. 83598, March 7, 1997, 80 SCAD 229, is a mere reiteration of the rule on presumption of marriage although there was a failure to present the marriage certificate. But there were testimonies to show that a marriage was celebrated. It has been held that evidence consisting of the testimonies of witnesses can be competent to prove the marriage. Indeed, although a marriage contract is primary evidence, the failure to present it is not proof that marriage did not

take place. Other evidence may be presented to prove marriage. (U.S. vs. Memoracion, 34 Phil. 633; People vs. Borromeo, 133 SCRA 106). An exchange of vows can be presumed to have been made from the testimonies of the witness who states that the wedding took place, since the very purpose of having a wedding is to exchange vows of marital commitment. It would be indeed unusual to have a wedding without an exchange of vows and quite unnatural for people not to notice its absence. (See also People vs. Ignacio, 81 SCAD 138, 270 SCRA 455, where there was a presumption of marriage).

How a marriage may be proven.

Marriage may be proven by the marriage certificate which is the best evidence. Any competent and relevant evidence can also prove it. Testimony by one of the parties to the marriage or by one of the witnesses to the marriage, has been held to be admissible to prove the fact of marriage. The person who officiated the solemnization is also competent to testify as an eyewitness to the fact of marriage (Pugeda vs. Trias, 4 SCRA 849). In *Balogbog vs. CA* (269 SCRA 259), it was held that although a marriage contract is considered primary evidence of marriage, the failure to present it is not proof that no marriage took place. Other evidence may be presented to prove marriage. Testimonial evidence to prove the fact of marriage is allowed. In *Trinidad vs. CA* (289 SCRA 188), where because of the destruction of the marriage contract, testimonial evidence was accepted in its place. (Vda. de Jacob vs. CA, G.R. No. 135216, August 19, 1999).

Presumption of marriage.

In *Reyes vs. CA, et al.*, G.R. No. 124099, October 30, 1997, 88 SCAD 632, the Supreme Court further emphasized the presumption of marriage when a man who executed a will instituted his wife. His illegitimate children contested such portion of the will contending that their father never got married during his lifetime. They wanted the woman to produce her marriage certificate with their father and when she could not do so, they contended that the woman could not be instituted as one of the heirs of their father. In brushing aside their contention, the Supreme Court said that there is a presumption of marriage. It can be proven by evidence *aliunde*. This is especially so that the man instituted the wife which was even considered by the Court as a declaration against interest. In a very eloquent language, the Court said that a will can be considered as the testator

talking. That is, if the will is submitted to probate, it is as if the testator is at the witness stand talking and admitting that he was married to the woman whom he instituted as his wife.

Marriage can be proven by evidence *aliunde*, that despite the fact that the marriage certificate cannot be presented which is the best evidence of the same, yet, it can be shown by testimonies of the sponsors, by the public and the fact that there was baptism of children, to mention some among the many proofs of marriage. The solemnizing officer can even be brought to court to testify that in fact, he solemnized the marriage of the spouses.

Characteristics of Marriage.

To emphasize how society treats and considers the importance of marriage, the Supreme Court said that marriage is not just an adventure but a lifetime commitment. Hence, it was said in *Santos vs. CA, et al.*, G.R. No. 112019, January 4, 1995, 58 SCAD 17, that:

“We should continue to be reminded that innate in our society, then enshrined in our Civil Code, and even now still indelible in Article 1 of the Family Code, is that

—

“Marriage is 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. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.”

“*Our Constitution is no less emphatic:*

‘Section 12. The State recognizes the sanctity of the family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.’

‘Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall

strengthen its solidarity and actively promote its total development.'

'Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.' (Article XV, 1987 Constitution).

'The above provisions express so well and so distinctly the basic nucleus of our laws on marriage and the family, and they are no doubt the tenets we still hold on to.' (Santos vs. CA, et al., G.R. No. 112019, January 4, 1995, 58 SCAD 17).

Such protection is manifest from the strict interpretation of Philippine marriage laws, such that in case of legal separation, annulment and declaration of nullity of marriage, the State is represented by the prosecutors to prevent the presentation of fabricated evidence or collusion between the parties.

Along the same vein, the Supreme Court, in *Republic vs. Nolasco*, 220 SCRA 20 (March 17, 1993), said that spouses should not be allowed, by the mere simple expedient that one of them left the conjugal home and never to return again to circumvent the laws on marriage which is not an ordinary but a special contract of permanent union. The Supreme Court in this case considered as not serious efforts to look for a missing wife the acts of simply asking friends or neighbors the whereabouts of his wife and sending a letter to her former place of work and when there was no answer he asked the court to declare her as presumptively dead. They were considered as merely sketchy acts of looking for the missing spouse. It was said that such acts do not warrant the declaration of presumptive death, for the law seeks to preserve the marriage instead of wrecking it.

Article 2. No marriage shall be valid, unless these essential requisites are present:

- (1) Legal capacity of the contracting parties who must be a male and a female; and**
- (2) Consent freely given in the presence of the solemnizing officer. (53a)**

Article 3. The formal requisites of marriage are:

- (1) Authority of the solemnizing officer;**

(2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and

(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 two witnesses of legal age. (53a, 55a)

Article 4. The absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Article 35(2).

A defect in any of the essential requisites shall render the marriage voidable as provided in Article 45.

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 and administratively liable. (n)

Legal Capacity.

Legal capacity means that the parties must have attained the age requirement and that there should be no legal impediment to marry each other. The minimum marriageable age is 18.

So that if a man and a woman at the age of seventeen (17) marry each other with the consent of their parents, the marriage is void because they must be eighteen (18) years of age as required by Article 5 of the Family Code. They have no legal capacity.

In the same manner, if one of them has an existing valid marriage, the marriage is void since the married party could not have had the legal capacity to contract a second marriage because of the legal impediment to marry a second time. In fact, even if the marriage referred to above is void, a subsequent marriage cannot be contracted before the declaration of nullity of the previous marriage. (Art. 40, Family Code). This is so because even a void marriage is now a legal impediment to remarry because the law now requires that even void marriage has yet to be declared void in a final judgment before a person may remarry.

The concept of legal capacity here refers to the age of the parties to the marriage as well as a situation where there should be no pre-existing marriage of either or both parties to the marriage or what is known as legal impediment.

The minimum marriageable age is 18 years (Article 5, Family Code), so that if a party or both of them is/are below this age would contract marriage, even with the consent of their parents, as well as all the other requisites of marriage, the same would still be void because of lack of capacity. Even if the marriage is celebrated abroad and valid there as such, the same would still be void since the law that determines the validity of the marriage of the Filipino is his/her national law. (Art. 15, New Civil Code; Arts. 26[par. 1], 35[1], Family Code).

Illustration:

A, a man at the age of 40 and B, only 16 years of age, and both Filipinos, met in Hongkong where B was working as an overseas Filipino worker. They fell in love with one another and decided to get married with all the other requisites of marriage. The marriage is void because of lack of capacity of B, as she was below the age of 18 at the time of the marriage. Even if the marriage is valid in Hongkong, the same is still void in the Philippines because the law that determines the legal capacity of B is Philippine law as it is binding upon her even if she is living abroad. (Art. 15, New Civil Code). While it is true that her marriage with A is valid in Hongkong, it is still void, for again the Family Code provides all marriages solemnized outside of 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 under Article 35(1). The law makes reference to Article 35(1) which declares as void marriages of Filipino citizens if anyone or both of them is/are below 18 years even with the consent of their parents or guardians. This void marriage cannot even be made valid by cohabitation, for a void marriage is void. It cannot be cured by subsequent cohabitation. There is nothing that would prevent the spouses from renewing their marriage vows by getting married again. The marriage would then be valid if in the meantime, they have already reached 18 or so. But this subsequent marriage is not going to validate the previous void marriage. It does not cleanse the defect of the previous one.

One question may be asked: If A and B above would beget children, what is the status of the latter? They are

illegitimates because they were born out of a void marriage. In fact, they cannot even be legitimated by the subsequent marriage of A and B. The remedy of A and B to elevate them to the status of legitimate children is to adopt them, for even the parents can adopt their illegitimate children. (Art. 185, Family Code).

Void marriage as a legal impediment to remarry.

One question has been asked: If there is a prior existing marriage of A and B, but it is void, can anyone of them just get married?

The authors say NO. This is so because of the present rule that there is a need to have a void marriage to be declared void. In fact, Article 39 of the Family Code provides that the action or defense for the declaration of absolute nullity of a marriage shall not prescribe. Furthermore, the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. (Art. 40, Family Code). It is therefore clear that even if a marriage is void, it must be declared void first because the parties cannot decide for themselves the invalidity of their marriage. In *Donato vs. Luna*, G.R. No. 53642, April 15, 1988, it was ruled that assuming that the first marriage was null and void on the ground alleged by the petitioner, the fact would not be material to the outcome of the criminal case. Parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of the competent courts and only when the nullity is so declared can it be held as void. So long as there is no such declaration, the presumption is that the marriage exists. Therefore, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy. (See also *Weigel vs. Sempio-Diy*, 143 SCRA 499; *Atienza vs. Brillantes, Jr.*, A.M. No. MTJ-92-706, March 29, 1995, 60 SCAD 119; *Mercado vs. Tan*).

Since there is a need for a prior declaration of nullity of a void marriage, that void marriage can be considered a legal impediment to contract a subsequent marriage because of the presumption of its validity prior to its declaration of nullity.

Legal Impediment.

The rule that if there is an existing marriage, there can be no subsequent valid marriage is not an absolute rule. For under Article

41 of the Family Code, if one of the spouses has been absent from the conjugal dwelling for two (2) or four (4) years, depending upon the circumstances of the absence, the present spouse may marry again, but he has to file a summary action for the declaration of presumptive death of the absent spouse. If there is a judgment declaring the absent spouse presumptively dead, the present spouse can marry again. The present spouse must not know the whereabouts of the absent spouse. After the declaration of presumptive death, the present spouse becomes capacitated to remarry, but the first marriage is still existing, unless it has been declared void or annulled in a previous proceeding.

In the above-cited situation, while there was a prior marriage, the present spouse can remarry under peculiar circumstances, that is, were it not for the absence of the spouse and the declaration of presumptive death, the present spouse could not have been capacitated to contract a valid subsequent marriage. But what the law recognizes as a valid marriage is the marriage of the present spouse who does not know the whereabouts of the absent spouse, for if he/she knows, then the marriage is void and bigamous.

Consent of the parties.

The consent referred to by law as a pre-requisite of a valid marriage is the consent of the parties, not their parents. For, if there is no consent at all, the marriage is void. If there is vitiation of consent by fraud, intimidation, etc., then the marriage is only voidable; it is valid but it can be annulled. If there is no consent of the parents, the marriage is only voidable until it is annulled.

Authority of Solemnizing Officer.

The law (Art. 7, Family Code) enumerates the authorities who can solemnize marriages. Justices of the Supreme Court, the Court of Appeals, the Sandiganbayan can solemnize marriages all over the Philippines because their jurisdiction covers the whole country. But a judge of the Regional Trial Court and Municipal or Metropolitan Trial Court judges can only solemnize marriages within their territorial jurisdiction. That is, if we have to look into the literal provisions of the law. But the Supreme Court has liberalized the law, saying that if a judge solemnized a marriage in a place other than his official station, still it would be valid. The reason that, such solemnization is only a formal requisite. A defect in a formal requisite of marriage does not go into the validity of the marriage. But it affects

the three-fold responsibility of the solemnizing officer, like criminal, civil and administrative responsibility.

Case:

**Arañes vs. Judge Salvador M. Occiano
A.M. No. MTJ-02-1390, April 11, 2002**

Facts:

The MTC Judge of Balatan, Camarines Sur solemnized a marriage in Nabua, Camarines Sur. It was likewise solemnized without a marriage license. After the death of the husband, her right to inherit vast properties left by her husband was not recognized. She asked that the judge be sanctioned. The judge explained that when he discovered that there was no license, he wanted to stop the ceremonies but he was prevailed upon to pursue it as there was already an influx of visitors. So, he continued out of human compassion and that if he reset it, it might aggravate the condition of the man. Was the actuation of the judge proper? Why?

Held:

No. The authority of the regional trial court judges and judges of inferior courts to solemnize marriages is confined in their territorial jurisdiction as defined by the Supreme Court.

The case at bar is not without precedent. In *Navarro vs. Domagtoy*, 259 SCRA 129, a judge held office and had jurisdiction in the Municipal Circuit Trial Court of Sta. Monica-Burgos, Surigao del Norte. However, he solemnized a wedding at his residence in the municipality of Dapa, Surigao del Norte which did not fall within the jurisdictional area of the municipalities of Sta. Monica and Burgos.

A priest who is commissioned and allowed by his local ordinance to marry the faithful is authorized to do so only within the area or diocese or place allowed by his Bishop. An appellate court Justice or a Justice of the Supreme Court has jurisdiction over the entire Philippines to solemnize marriages, regardless of the venue, as long as the requisites of the Family Code are complied with. However, judges who are appointed to specific jurisdictions, may officiate in weddings only within said areas and not beyond. Where a judge solemnizes a marriage outside of his court's jurisdiction, there is a

resultant irregularity in the formal requisite laid down in Article 3, which while it may not affect the validity of the marriage, may subject the officiating official to administrative liability.

While the requirement of authority is prescribed by the law for a marriage to be valid, yet, its defect or infirmity does not go into the validity of the marriage, but it merely affects the liability of the solemnizing officer. The reason is obvious, as authority is only a formal requisite of marriage.

Marriage ceremonious in character.

But let us say that A and B were legally married in 1946 in Dingras, Ilocos Norte. In 1996, they celebrated their golden wedding anniversary in Manila, with Mayor Wilfredo Parado, the Mayor of Dingras, solemnizing the same at the Manila Hotel. Can we consider it valid considering that the mayor has no authority to solemnize the marriage in Manila? The marriage is still valid considering that it is only a marriage ceremonious in character which does not have to comply with the requisites of a valid marriage. It is only a renewal of their marriage vows; a mere ceremony. The rule laid down in *Navarro vs. Domagtoy* does not apply. He cannot even be held liable administratively, civilly and criminally. In this kind of marriage, license is not even necessary.

Marriage license should be existing at the time of the marriage.

One of the requisites of a valid marriage is license. Without license, the marriage is void. It must be exhibited at the time of the celebration of the marriage. If it is issued thereafter, the marriage is void. This is one of the means by which the State intervenes in the formation of the family. It must be recalled that the Constitution recognizes the family as a Basic social institution which is the basis of the society.

The case of *Cosca, et al. vs. Hon. Lucio Palaypayon, Jr., et al.*, A.M. No. MTJ-92-721, September 30, 1994, 55 SCAD 759, arose out of an administrative case filed against the judge (Mun. Court of Tinmabac, Camarines Sur) for solemnizing marriages without marriage licenses. The license numbers were not reflected in the contracts and the judge did not sign the marriage certificates for he allegedly had to wait for the marriage licenses to be submitted by

the parties; hence, the marriage contracts were not filed with the local civil registrar.

In fining the judge for P20,000.00, the Supreme Court said:

“On the charge regarding illegal marriages, the Family Code pertinently provides that the formal requisites of marriage are, *inter alia*, a valid marriage license except in cases provided for therein. (Art. 3[2], Family Code). Complementarily, it declares that the absence of any of the essential or formal requisites shall generally render the marriage void *ab initio* and that, while an irregularity in the formal requisites shall not affect the validity of the marriage, the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable.” (Art. 4, Family Code).

Marriage without license void.

The marriage between Angelina M. Castro and Edwin Cardenas was without the knowledge of their parents. They called it a “secret marriage,” a phrase unknown in law. They did not live together immediately after the marriage, but later on lived for four (4) months; then a child was born.

Problem arose when Angelina wanted to go to the USA. As she was trying to put in order her marital status, it was discovered that there was no marriage license issued prior to the celebration of their marriage. This was supported by a certification by the Local Civil Registrar of Pasig, Metro Manila, that the alleged license cannot be located. The petition for judicial declaration of nullity was denied on the ground that the inability of the certifying official to locate the marriage license is not conclusive to show that there was no marriage license issued.” The Court of Appeals reversed the decision, hence, this petition.

In affirming the Court of Appeals decision, the Supreme Court held:

The Civil Code (now the Family Code) provides that no marriage shall be solemnized without a marriage license first issued by the local civil registrar. Being one of the essential (should be formal) requisites of a valid marriage, absence of a license would render the marriage void *ab initio*. The presentation of the certification of “due search

and inability to find” issued by the Registrar enjoys probative value, he being the officer charged under the law to keep a record of all data relative to the issuance of a marriage license. The subject matter is one of those commonly known as “secret marriages” a legally non-existent phrase but ordinarily used to refer to a civil marriage celebrated without the knowledge of the relatives and/or friends of either or both of the contracting parties.” (Republic vs. CA, et al., G.R. No. 103047, September 2, 1994, 55 SCAD 157).

Issuance of a marriage license an act of State’s intervention.

The law declares as void a marriage contracted without a marriage license. One authority says that the issuance of the marriage license is the most important, perhaps the only act whereby the State intervenes in the formation of families. It is in the issuance of the license that the State determines whether there are impediments in the marriage. Hence, the marriage license should be an important requisite of marriage such that without it, the marriage should be considered void. Another purpose of the marriage license is to prevent hasty marriages which in some cases are bigamous and marriages between minors without parental consent. This purpose is difficult to attain, unless a marriage license is made an essential requisite of marriage. (Capistrano, *Civil Code of the Philippines*, 1950 ed., p. 80; Niñal vs. Bayadog, *supra*.).

In the case of an application for a marriage license, the law requires its publication for a period of ten (10) days in conspicuous places in the locality before the issuance of the marriage license. The purpose here is to give notice to the public, so that if there are interested parties who are aware of any impediment to the prospective marriage of the applicants for a license, they can manifest the same to the local civil registrar who shall note the same in the application that there is an impediment to the marriage. It is also for this purpose that the law requires an open ceremony so that, if during the marriage ceremony, anyone may object to its proceedings if he knows of an impediment to the marriage.

Void marriage for lack of license.

One of the basic requirements for the validity of a marriage is the existence of a license at the time of its celebration. This is so

because the requirement and issuance of marriage license is the state's demonstration of its involvement and participation in every marriage, in the maintenance of which the general public is interested. (Engrace Niñal, et al. vs. Norma Bayadog, G.R. No. 133778, March 14, 2000, citing *Perido vs. Perido*, 63 SCRA 97 [1975]). There are, however exceptions to the rule as when a man and a woman have been living together as husband and wife without the benefit of marriage but without legal impediment to marry each other for a period of five (5) years prior to the day of the celebration of the marriage. But if there was a legal impediment to marry each other during the period of cohabitation, no matter how long it may be, the marriage, if celebrated without a license is void. It is not enough that they have no legal impediment to marry at the time of the celebration of the marriage, it is necessary that during the 5-year period of cohabitation, they did not have any legal impediment to marry. To say otherwise would be to sanction immorality. Let us say for example, that a man lived with a woman but both of them are legally married. The wife of the man died and immediately thereafter, they got married without any license. During their coverture for 5 years, there was legal impediment to marry. But at the time of the celebration of their marriage, there was impediment. To rule that their marriage is valid without license is to sanction immorality. This is not the contemplation of the law. The law never intends to sanction immorality.

Case:

**Engrace Niñal, et al. vs. Norma Bayadog
G.R. No. 133778, March 14, 2000**

Facts:

Pepito Niñal was married to Teodulfa Bellones on September 26, 1974. Out of their marriage were born herein petitioners. Teodulfa was shot by Pepito resulting in her death on April 24, 1985. One year and 8 months thereafter or on December 11, 1986, Pepito and respondent Norma Badayog got married without any marriage license. In lieu thereof, Pepito and Norma executed an affidavit dated December 11, 1986 stating that they had lived together as husband and wife for at least five years and were thus exempt from securing a marriage license. On February 19, 1997, Pepito died in a car accident. After their father's death, petitioners filed a petition for

declaration of nullity of the marriage of Pepito to Norma alleging that the said marriage was void for lack of a marriage license. The case was filed under the assumption that the validity or invalidity of the second marriage would affect petitioner's successional rights. Norma filed a motion to dismiss on the ground that petitioners have no cause of action since they are not among the persons who could file an action for annulment of marriage under Article 47 of the Family Code. The lower court dismissed the action on the ground that petitioners should have filed the action to declare their father's marriage to respondent before his death applying by analogy Article 47 of the Family Code which enumerates the time and the persons who could initiate an action for annulment of marriage.

Not contented with such ruling, petitioners filed a petition for review with the Supreme Court on a pure question of law. But to have a clear view of the case, let us consider the following issues:

1. What law should govern the disposition of the case?
2. What is the significance of the requirement of a marriage license?
3. What is the length and nature of the cohabitation of the spouses who got married without a marriage license?
4. Do the children in the first marriage have the personality to question the validity of their father's second marriage even after his death and what for?

The Supreme Court resolved the foregoing issues and said:

“The two marriages involved herein having been solemnized prior to the effectivity of the Family Code, the applicable law to determine their validity is the Civil Code which was the law in effect at the time of their celebration. (*Tamano vs. Ortiz*, 95 SCAD 436, 291 SCRA 584 [1998]). A valid marriage license is a requisite of marriage under Article 53 of the Civil Code (Now Article 3, Family Code), the absence of which renders the marriage void ab initio pursuant to Article 80(3) (Now Article 4, Family Code) in relation to Article 58. The requirement and issuance of marriage license is the State's demonstration of its involvement and participation in every marriage in the maintenance of which the general public is interested. (*Perido vs. Perido*, 63 SCRA 97 [1975]). This interest proceeds from the constitutional mandate that the State

recognizes the sanctity of family life and affording protection to the family as a basic 'autonomous social institution.' (Sec. 12, Article II, Constitution; *Hernandez vs. CA*, G.R. No. 126010, December 8, 1999, 116 SCAD 815; *Tuazon vs. CA*, 70 SCAD 132, 256 SCRA 158 [1996]). Specifically, the Constitution considers marriage as an 'inviolable social institution,' and is the foundation of family life which shall be protected by the State. (Sec. 2, Art. XV, Constitution). This is why the Family Code considers marriage as 'a special contract of permanent union' (Art. 1, Family Code) and case law considers it 'not just an adventure but a lifetime commitment.'" (*Santos vs. CA*, 58 SCAD 17, 310 Phil. 21).

However, there are several instances recognized by the Civil Code (now the Family Code) wherein a marriage license is dispensed with, one of which is that provided in Article 76 (now Article 34, Family Code), referring to the marriage of a man and a woman who have lived together and exclusively with each other as husband and wife for a continuous and unbroken period of at least five years before the marriage. The rationale why no license is required in such case is to avoid exposing the parties to humiliation, shame and embarrassment concomitant with the scandalous cohabitation of persons outside a valid marriage due to the publication of every applicant's name for a marriage license. The publicity attending the marriage license may discourage such persons from legitimizing their status. (Report of the Code Commission, p. 80). To preserve peace in the family, avoid the peeping and suspicious eye of public exposure and contain the source of gossip arising from the publication of their names, the law deemed it wise to preserve their privacy and exempt them from that requirement.

There is no dispute that the marriage of petitioners' father to respondent Norma was celebrated without any marriage license. In lieu thereof, they executed an affidavit stating that "they have attained the age of majority, and, being unmarried, have lived together as husband and wife for at least five years, and that we now desire to marry each other." The only issue that needs to be resolved pertains to what nature of cohabitation is contemplated under Article 76 of the Civil Code (now Article 34, Family Code) to warrant the counting of the five-year period in order to exempt the future spouses from securing a marriage license. Should it be a cohabitation wherein both parties are capacitated to marry each other during the entire

five-year continuous period or should it be a cohabitation wherein both parties have lived together and exclusively with each other as husband and wife during the entire five-year continuous period regardless of whether there is a legal impediment to their being lawfully married, which impediment may have either disappeared or intervened sometime during the cohabitation period?

Working on the assumption that Pepito and Norma have lived together as husband and wife for five years without the benefit of a cohabitation as “husband and wife” where the only missing factor is the special contract of marriage to validate the union, in other words, the five-year common-law cohabitation period, which is counted back from the date of celebration of marriage, should be a period of legal union had it not been for the absence of the marriage. This five-year period should be the years immediately before the day of the marriage and it should be a period of cohabitation characterized by exclusivity — meaning no third party was involved at any time within the five years and continuity — that is unbroken. Otherwise, if that continuous five-year cohabitation is computed without any distinction as to whether the parties were capacitated to marry each other during the entire five years, then the law would be sanctioning immorality and encouraging parties to have common-law relationships and placing them on the same footing with those who lived faithfully with their spouse. Marriage being a special relationship must be respected as such and its requirements must be strictly observed. The presumption that a man and a woman deporting themselves as husband and wife is based on the approximation of the requirements of the law. The parties should not be afforded any excuse to not comply with every single requirement and later use the same missing element as a pre-conceived escape ground to nullify their marriage. There should be no exemption from securing a marriage license unless the circumstances clearly fall within the ambit of the exception. It should be noted that a license is required in order to notify the public that two persons are about to be united in matrimony and that anyone who is aware or has knowledge of any impediment to the union of the two shall make it known to the local civil registrar. The Civil Code provides:

“Article 63: x x x. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local civil registrar thereof. x x x.

Article 64: Upon being advised of any alleged impediment to the marriage, the local civil registrar shall forth-

with make an investigation, examining persons under oath.
x x x”

This is reiterated in the Family Code thus:

“Article 17 provides in part: x x x. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local civil registrar thereof.
x x x”

Article 18 reads in part: x x x. 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 finding thereon in the application for a marriage license. x x x.”

This is the same reason why our civil law, past or present, absolutely prohibited the concurrence of multiple marriages by the same person during the same period. Thus, any marriage subsequently contracted during the lifetime of the first spouse shall be illegal and void (Article 83, New Civil Code; Art. 41, Family Code), subject only to the exception in cases of absence or where the prior marriage was dissolved or annulled. The Revised Penal Code complements the civil law in that the contracting of two or more marriages and having of extramarital affairs are considered felonies, *i.e.*, bigamy and concubinage and adultery. The law sanctions monogamy.

In this case, at the time of Pepito and respondent’s marriage, it cannot be said that they have lived with each other as husband and wife for at least five years prior to their wedding day. From the time Pepito’s first marriage was dissolved to the time of his marriage with respondent, only about twenty months had elapsed. Even assuming that Pepito and his first wife had separated in fact, and thereafter both Pepito and respondent had started living with each other that has already lasted for five years, the fact remains that their five-year period of cohabitation was not the cohabitation contemplated by law. It should be in the nature of a perfect union that is valid under the law but rendered imperfect only by the absence of the marriage contract. Pepito had a subsisting marriage at the time when he started cohabiting with respondent. It is immaterial that when they lived with each other, Pepito had already been separated in fact from his lawful spouse. The subsistence of the marriage even where there was actual severance of the filial companionship between the

spouses cannot make any cohabitation by either spouse with any third party as being one as “husband and wife.”

Having determined that the second marriage involved in this case is not covered by the exception to the requirement of a marriage license, it is void *ab initio* because of the absence of such element.

Do children from prior marriage have the personality to file a petition to declare their father’s marriage void after his death?

The Supreme Court said, Yes.

Contrary to respondent judge’s ruling, Article 47 of the Family Code cannot be applied even by analogy to petitioners’ action for declaration of nullity of marriage. The second ground for annulment of marriage relied upon by the trial court, which allows “the sane spouse” to file an annulment suit “at any time before the death of either party” is inapplicable. Article 47 pertains to the grounds, periods and persons who can file an annulment suit, not a suit for declaration of nullity of marriage. The Code is silent as to who can file a petition to declare the nullity of a marriage. Voidable and void marriages are not identical. A marriage that is annulable is valid until otherwise declared by a court; whereas a marriage that is void *ab initio* is considered as having never to have taken place (*Suntay vs. Cojuangco*, 101 SCAD 1161, 300 SCRA 760 [1998]) and cannot be the source of rights. The first can be generally ratified or confirmed by free cohabitation or prescription while the other can never be ratified. A voidable marriage cannot be assailed collaterally except in a direct proceeding while a void marriage can be attacked collaterally. Consequently, void marriages can be assailed only during the lifetime of the parties and not after the death of either, in which case the parties and their offspring will be left as if the marriage had been perfectly valid. That is why the action or defense for nullity is imprescriptible, unlike voidable marriages where the action prescribes. Only the parties to a voidable marriage can assail it but any proper interested party may attack a void marriage. Void marriages have no legal effects except those declared by law concerning the properties of the alleged spouses, regarding co-ownership or ownership through actual joint contribution (Articles 148-149, Family Code; Article 144, New Civil Code), and its effect on the children born to such void marriages as provided in Article 50 in relation to Articles 43 and 44 as well as Articles 51, 53 and 54 of the

Family Code. On the contrary, the property regime governing voidable marriage is generally conjugal partnership and the children conceived before its annulment is legitimate.

(Note: With A.M. No. 02-11-10-SC only the parties to the marriage can assail the validity of their marriage).

Contrary to the trial court's ruling, the death of petitioner's father extinguished the alleged marital bond between him and respondent. The conclusion is erroneous and proceeds from a wrong premise that there was a marriage bond that was dissolved between the two. It should be noted that their marriage was void; hence, it is deemed as if it never existed at all and the death of either extinguished nothing.

Jurisprudence under the Civil Code states that no judicial decree is necessary in order to establish the nullity of a marriage. (*Dayat vs. Amante*, 77 SCRA 338; *Weigel vs. Sempio-Diy*, 141 SCRA 499; *People vs. Mendoza*, 95 Phil. 845; *People vs. Aragon*, 100 Phil. 1033). A void marriage does not require a judicial decree to restore the parties to their original rights or to make the marriage void but though no sentence of avoidance be absolutely necessary, yet as well for the sake of good order of society as for the peace of mind of all concerned, it is expedient that the nullity of the marriage should be ascertained and declared by the decree of a court of competent jurisdiction. (35 Am. Jur. 219-220). Under ordinary circumstances, the effect of a void marriage, so far as concerns the conferring of legal rights upon the parties, is as though no marriage had ever taken place. And therefore, being good for no legal purpose, its invalidity can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the husband and the wife, and upon mere proof of the facts rendering such marriage void, it will be disregarded or treated as non-existent by the courts. It is not like a voidable marriage which cannot be collaterally attacked except in direct proceeding instituted during the lifetime of the parties so that on the death of either, the marriage cannot be impeached, and is made good *ab initio*. But Article 40 of the Family Code expressly provides that there must be a judicial declaration of the nullity of a previous marriage, though void, before a party can enter into a second marriage (*Apiag vs. Cantero*, 79 SCAD 327, 268 SCRA 47; *Atienza vs. Judge Brillantes, Jr.*, 312 Phil. 393, 60 SCAD 119) and such absolute nullity can be based only on a final

judgment to that effect. (*Domingo vs. CA*, 44 SCAD 955, 226 SCRA 572). For the same reason, the law makes either the action or defense for the declaration of absolute nullity of marriage imprescriptible. (Art. 39, Family Code as amended by E.O. Nos. 209 and 227, S. 1987 and R.A. No. 8533). Corollarily, if the death of either party would extinguish the cause of action or the ground or defense, then the same cannot be considered imprescriptible.

However, other than for purposes of remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case. This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is other than to remarry. The clause “on the basis of a final judgment declaring such previous marriage void” in Article 40 of the Family Code connotes that such final judgment need not be obtained only for the purpose of remarriage.

Observation:

From a reading of the law and the decision of the Supreme Court in *Niñal vs. Bayadog*, the cohabitation of the spouses in a marriage without a license must be a continuous one, which means that it must be for an uninterrupted period of five (5) years immediately prior to the day of the celebration of the marriage. To illustrate, A and B who are capacitated to marry each other and without any legal impediment to marry one another lived together as husband and wife without the benefit of marriage from 1985 to 1987. They separated. From 1989 to 1991, they decided to live together again without the benefit of marriage and separated again. In 1997 up to now 2001, they are still living together as husband and wife without the benefit of marriage and without any legal impediment to marry one another. The question is whether they can contract marriage without the benefit of a marriage license considering that they have been living together for more than five (5) years.

A and B cannot get married without a marriage license. They do not fall under the exceptional case because while the totality of the period of their cohabitation is for more than five (5) years, yet,

the 5-year period is not continuous. It is a broken period. What the law and jurisprudence require is a continuous and unbroken period of cohabitation, otherwise, if they get married without a license, the marriage would be void *ab initio*. It must be recalled that the type of marriage referred to by law is valid as an exception to the general rule because it is valid inspite of the absence of a marriage license but considering that it is only an exception, the law must be restrictively construed that without complying with the requirements the marriage cannot be considered valid.

Mere non-recording of the marriage would not make it void.

The law requires that a license must first be issued before the celebration of the marriage. Its recording is not a requisite for its validity. In fact, a marriage is valid even without the marriage contract. What is important is that, it was celebrated. The parties need not even have the marriage contract, yet the marriage is still valid. The only purpose of the recording of the marriage is for expediency. Its recording is not a requisite of marriage.

In *Geronimo vs. CA, et al.*, G.R. No. 105540, July 5, 1993, 43 SCAD 311, it was the contention of the petitioner that there was no marriage license obtained by the spouses Esman because the copies of the marriage contract did not state the marriage license number. Is the contention correct?

No. The flaw in such reasoning is all too obvious. This was refuted when respondent presented a copy of the marriage contract on file with the National Archives and Records Section where the marriage license number does appear. The evidence adduced by the petitioner could only serve to prove the non-recording of the marriage license number but certainly not the non-issuance of the license itself.

If the marriage license came after the solemnization of the marriage, the same is void. (*People vs. Lara*, [CA] L-12588-R, February 15, 1955).

However, even if illegally obtained, if there is a marriage license, it is still valid. (*People vs. Babu*, 4506, Supp. No. 5, p. 88).

Marriages of exceptional character.

Not all marriages without marriage licenses are void. The law recognizes the validity of certain marriages even without marriage

license, like, those in Articles 27, 28, 31, 32, 33, 34 of the Family Code.

Defect in essential requisites.

The law makes a cross reference to Article 45 which enumerates the voidable marriages. If there is any vitiating of consent of a party, like fraud, violence, intimidation, undue influence, physical incapacity or affliction with a sexually-transmissible disease or that one has not obtained the consent of the parents, the marriage is voidable. Such defects however may be cured if the parties freely cohabit or if the action has already prescribed because Article 47 of the Family Code prescribes the period of five (5) years as a rule within which the aggrieved party must move for the annulment.

If there is irregularity in the formal requisites, that would only make the party or parties liable criminally, civilly or administratively. An illustration of this situation is where a party connived with the Local Civil Registrar in the issuance of a marriage license without compliance with the 10-day publication requirement of the application for marriage license. While this is an irregularity, the same does not go into the validity of the marriage. If the license was issued one (1) day after it was applied for, the marriage is still valid. The irregularity does not go into the heart of the marriage, or it does not affect its validity, but it can subject the party or even the Local Civil Registrar to criminal, administrative liability, or civil responsibility.

Thus, in the case of *Navarro vs. Judge Domagtoy, supra*, it was ruled that despite the fact that the judge who solemnized the marriage was a resident of a municipality different from the place where he was serving as a judge, and yet solemnized it at his residence, the Supreme Court still upheld the validity of the marriage because the requirement of authority to solemnize marriage is only a formal requisite of marriage, not an essential one. Any defect in any of the formal requisites does not render the marriage void, it is valid but without prejudice to the three-fold responsibility of the judge who solemnized the marriage, like criminal, civil and administrative liability. The judge was fined.

Any act that vitiates consent such as force, intimidation, or fraud does not make the marriage void, but only voidable. But it must be recalled that an action for annulment has to be brought within a certain period of time and by the aggrieved party only. He who used

the act that vitiated the consent of the other cannot later on file an action for annulment of marriage. (People vs. Aragon, 90 Phil. 257).

While a marriage ceremony is required (Art. 6, FC), the law does not prescribe a specific form of ceremony. What the law requires is the personal appearance of the contracting parties before the solemnizing officer where they have to declare that they are taking each other as husband and wife. This is a requirement that affects the validity of the marriage if celebrated in the Philippines because it is not possible to have a “marriage by proxy.” But if a “marriage by proxy” is celebrated abroad and valid there as such it is valid in the Philippines because of the doctrine of *lex loci celebrationis*.

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.

Furthermore, Article 8 of the Family Code requires that the marriage shall be solemnized publicly in the chamber of the judge or in open court, in the church, chapel or temple, or in the office of the consul-general, consul or vice-consul, as the case may be, and not elsewhere, except in remote places in accordance with Article 29 of this Code, or where both of the parties request the solemnizing officer in writing in which case the marriage may be solemnized at a house or place designated by them in a sworn statement to that effect.

Public ceremony is necessary because the state takes active interest in the marriage, it being an inviolable social institution. The public celebration likewise notifies people who may know of any impediment of the parties to marry, for the protection of the innocent party as well as the State.

Article 5. Any male or female of the age of eighteen years (18) or upwards not under any of the impediments mentioned in Articles 37 and 38, may contract marriage. (54a)

Rules on validity of marriage.

The marriage is valid if there is consent of the parents. Without the consent of the parents, the marriage would only be voidable. If it is without the consent of the parties, the marriage is void.

If the parties to a marriage are below the ages of eighteen (18), even with the consent of their parents, the marriage would still be void. This is because they lack the legal capacity to marry.

Note that the impediment referred to in Article 37 of the Family Code pertains to blood relationship between the contracting parties, whether legitimate or illegitimate.

If a grandfather marries a granddaughter, the marriage is void because it is incestuous. This is true even if the relationship is legitimate or illegitimate and no matter how far the relationship is. As long as the relationship is in the direct line, the marriage is void.

The impediments in Article 38 of the Family Code also make the marriage void by reason of public policy.

Filipinos related within the fourth civil degree of consanguinity cannot marry in the Philippines. The marriage is void. Even if they get married outside the Philippines where the marriage is valid there as such, the same is void because of Articles 26 (par. 1) and 38(1) of the Family Code. What determines the capacity to marry is the national law of the Filipino and not the law of the place where the marriage was celebrated. Under Article 15 of the Civil Code, laws relating to family rights and duties and to the status, condition and legal capacity of persons shall be binding upon them even if they are living abroad.

Reason for invalidity if below 18 of age.

The basic reason why the law requires that the parties to a marriage must have attained the age of 18 years is that extreme youth may not lend stability to the marriage and the family. Solidarity of the family is a concern of the State as expressed in the Constitution making it a policy of the State to preserve the family as a basic social institution. Marriages have failed, families have been broken because of extreme irresponsibility of the spouses due to age. So, the law requires some degree of maturity. In fact, the requirement that they must be at least 18 years is a departure from the Civil Code provisions requiring that the woman then must be at least 14 years of age and the man 16 years of age at the time of the marriage. The framers of the Family Code felt that the 14-16 year requirement was too low as the parties were too young.

Illustration:

A and B, both 17 years of age, Filipino citizens, got married. The marriage is void because of lack of capacity to marry. This is true even if the marriage was celebrated abroad where the marriage was valid there as such. The

reason is that, the capacity of Filipino citizens to marry is determined by Philippine law and not the law of the place where the marriage was celebrated. (See Art. 15, New Civil Code).

Suppose A in the problem above was 27 years old and B was only 17 years of age, the marriage would still be void because the law requires that both contracting parties must have legal capacity to contract marriage.

Gender requirement.

The law requires that the parties to a marriage must be a male and a female. This reason is obvious, for two males or two females cannot reproduce. It must be remembered that no less than the law itself says that marriage is 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. (Art. 1, Family Code).

When we speak of “conjugal” and “family life,” we refer to reproduction of children as one of the purposes of marriage. In fact, Bishop, in his commentaries on Marriage, Divorce and Separation said that marriage is for the establishment of families, the multiplication and education of species.

It must be recalled that one of the ends of marriage is the reproduction or rearing of children, that is why, marriage is for the establishment of conjugal and family life. This rule must therefore be considered with Article 68 of the Family Code which mandates among other things that the husband and wife shall “live together.” Living together is not limited to the literal act of living together under one roof. It is not enough that they stay together or sleep together on one bed. Living together must be construed with the end of marriage, that is for the establishment of conjugal and family life. The reproduction of children and rearing the same is basic in marriage. But how can there be reproduction of children as a rule, if there is no consented sex, for marriage is the license to have sex with one’s spouse. Thus, if one spouse refuses to provide sex to the other, such refusal being constant and senseless, it can be said that he/she is refusing to perform his/her essential marital obligation. Senseless and protracted refusal is equivalent to “psychological incapacity,” hence, in *Tsoi vs. CA*, G.R. No. 119190, January 16, 1997, 78 SCAD 57, the Supreme Court declared as void the marriage of a man and a woman when the man refused to provide sex to his wife for a period of ten (10) months despite the marriage.

Article 6. 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 two 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 by the contracting parties and their witnesses and attested by the solemnizing officer.

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 the said party, which fact shall be attested by the solemnizing officer. (55a)

Ceremony in marriage.

The law provides that there are no prescribed forms of ceremony in a marriage. The solemnizing officer may do it as he pleases depending upon how he would perform it. But it is required that the parties must personally appear before him and declare that they take each other as husband and wife. They cannot send somebody else to declare for them that they take each other as husband and wife. It is for this reason that one of the parties cannot execute a special power of attorney for a friend, for the latter to appear for him during the celebration of the marriage.

But while the law requires that there be two (2) witnesses while they declare that they take each other as husband and wife, the absence of such witnesses does not make the marriage void, because it is merely a formal requirement that does not go into the validity of the marriage.

Actual marriage ceremony is necessary.

While the form of ceremony is immaterial, what is important is that, there is actual solemnization of the marriage, otherwise, it would be void even if it is just a formal requisite of marriage. The law says that its total absence makes the marriage void. Hence, in *Morigo vs. People*, G.R. No. 145226, February 6, 2004, it was said that the marriage was void and never existed in the eyes of the law when the parties merely signed the marriage contract without ceremony. Their act of signing without the requisite of marriage ceremony was merely

a private act. There is not even a necessity to have it declared void before a party to said marriage can contract a subsequent marriage.

Proxy marriage.

A proxy marriage in the Philippines is void if celebrated here. This is so because the law requires the personal presence of the parties before the solemnizing officer. Furthermore, the law requires as one of the requisites of a valid marriage that a ceremony should take 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. (Art. 3, Family Code).

But the question is that, if that proxy marriage is celebrated abroad and valid there as such, is it valid in the Philippines? The answer is yes. A scrutiny of Article 26, paragraph 1 of the Family Code says that all marriages solemnized outside of the Philippines in accordance with the laws in force in the country where they were solemnized and valid there as such, shall also be valid in this country, except those prohibited under Arts. 35(1), (4), (5), and (6), 36, 37, 38. So, if the law of the place of celebration/solemnization allows the validity of a proxy marriage, even if it is void in the Philippines, if valid where celebrated, it is valid here. This is so because a careful scrutiny of the law referred to above which enumerates the void marriages even if valid where they were celebrated, does not reveal that if the marriage abroad between two Filipinos was by proxy, it is void in here. In that case, Philippine law recognizes its validity by way of applying the general principle that if valid where celebrated, it is valid here and the rule of *expression unius est exclusio alterius* applies. What the law excludes, it does not include. Finally, this is a reaffirmation of the principle that in case of doubt, the law leans towards the validity of the marriage as a means of preserving it due to the public policy that the State takes interest in the marriage as the foundation of the family and society.

Declaration in a certificate.

After the solemnization of the marriage, the parties are required to sign a marriage certificate with the two (2) witnesses. If the marriage was solemnized under *articulo mortis*, one is unable to sign the certificate, the law makes it sufficient for one of the witnesses to write the name of such party, but such a fact must be attested by the solemnizing officer.

Article 7. Marriage may be solemnized by:

(1) Any incumbent member of the judiciary within the court's jurisdiction;

(2) Any priest, *rabbi*, *imam*, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, acting within the limits of the written authority granted him by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer's church or religious sect;

(3) Any ship captain or airplane chief only in the cases mentioned in Article 31;

(4) Any military commander of a unit to which a chaplain is assigned, in the absence of the latter, during a military operation, likewise only in the cases mentioned in Article 32; or

(5) Any consul-general, consul or vice-consul in the case provided in Art. 10. (56a)

Authority of mayors.

Mayors are now authorized to solemnize marriage. They have been excluded by the Family Code, but they are now authorized by the Local Government Code to solemnize marriages (Sec. 444 [as to municipal mayors] and Sec. 455 [as to city mayors], R.A. No. 7160). A mayor of Manila cannot solemnize a marriage in Pasay City because he has no authority there. His authority can only be exercised in Manila. If he performs the ceremony outside of his territorial jurisdiction, the marriage is void for lack of authority. Even a vice – mayor, acting as mayor; or a member of the Sangguniang Bayan can solemnize marriage because if he is an acting mayor, he can exercise the powers of the mayor.

Illustration:

Dr. Robert Castro, the Vice-Mayor of Dingras, Ilocos Norte was the acting Mayor when Mayor Wilfredo Parado went to Hawaii. As acting mayor, he can exercise the powers of a mayor, including the authority to solemnize marriages.

If both the Mayor and Vice-Mayor are abroad and Mrs. Marjorie Baquiran, the number one member of the Sangguniang Bayan is the acting Mayor, she can likewise

solemnize marriages because she is also performing the duties and functions of a mayor. In all of these cases, the marriages are perfectly valid, as the solemnizing officer is with authority to do so.

Putative marriage is valid.

In *De Cardenas vs. Cardenas*, L-8218, December 15, 1955, the SC held that a person who wants to impugn the validity of the marriage due to the fact that the solemnizing officer had no authority to solemnize, must prove the same.

Note that this case of *Cardenas vs. Cardenas* finds more applicability now, in view of the second paragraph of Article 35 of the Family Code which declares, by way of exception, the validity of marriage solemnized by a person not authorized to solemnize marriage where the parties, or anyone of them, was unaware of the officer's lack of authority. This is otherwise known as a putative marriage, one where the solemnizing office has no authority but the lack of authority is not known to the parties.

In the case of *Navarro vs. Judge Hernando C. Domagtoy*, A.M. No. MTJ-96-1088, July 19, 1996, 72 SCAD 328, the Supreme Court declared as valid a marriage solemnized by a judge outside of his territorial jurisdiction, saying that the authority to marry is a mere formal requirement; hence, if any irregularity exists, it merely subjects the person to administrative, criminal or civil liability. This is true even if the law says within the territorial jurisdiction of the court. Literally, it would seem that a judge cannot solemnize a marriage outside of the territorial jurisdiction of the court, but the Supreme Court in a case ruled that the requirement is only formal. The defect is only a mere irregularity that does not affect the validity of the marriage.

Case:

Rodolfo Navarro vs. Judge Hernando C. Domagtoy
A.M. No. MTJ-96-1088
July 19, 1996, 72 SCAD 328

Facts:

An administrative complaint was filed by Mayor Rodolfo Navarro of Dapa, Surigao del Norte against Judge Domagtoy for

having solemnized the marriage of Floriano Dador Sumaylo and Gemma D. del Rosario outside of his court's jurisdiction. He is a Municipal Circuit Judge of Sta. Monica-Burgos, Surigao del Sur. The wedding was solemnized at his house in Dapa, outside of his territorial jurisdiction. In trying to exculpate himself, he invoked Article 8 of the Family Code that marriage can be solemnized elsewhere if there is a request of the parties.

Held:

The issue involves the solemnization of a marriage ceremony outside the court's jurisdiction, covered by Articles 7 and 8 of the Family Code, thus:

“Art. 7. Marriages may be solemnized by:

(1) Any incumbent member of the judiciary *within the court's jurisdiction;*

x x x

x x x

x x x”

“Art. 8. The marriage shall be solemnized publicly in the chambers of the judge or in open court, in the church, chapel or temple, or in the office of the consul-general, consul, or vice-consul, as the case may be, and not elsewhere, *except in the cases of marriages contracted at the point of death or in remote places in accordance with Article 29 of this Code, or where both parties request the solemnizing officer in writing in which case the marriage may be solemnized at a house or place designated by them in a sworn statement to that effect.*”

Respondent judge points to Article 8 and its exceptions as the justification for his having solemnized the marriage between Floriano Sumaylo and Gemma del Rosario outside of his court's jurisdiction. As the aforequoted provision states, a marriage can be held outside of the judge's chambers or courtroom only in the following instances: (1) at the point of death; (2) in remote places in accordance with Article 29; or (3) upon request of both parties in writing in a sworn written statement to this effect. There is no pretense that neither Sumalo nor del Rosario was at the point of death or in a remote place. Moreover, the written request presented addressed to the respondent judge was made by only one party, Gemma del Rosario.

More importantly, the elementary principle underlying this provision is the authority of the solemnizing judge. Under Article 3,

one of the formal requisites of marriage is the “authority of the solemnizing officer.” Under Article 7, marriage may be solemnized by, among others, “any incumbent member of the judiciary **within the court’s jurisdiction.**” Article 8, which is a directory provision, refers only to the venue of the marriage ceremony and does not alter or qualify the authority of the solemnizing officer as provided in the preceding provision. Non-compliance therewith will not invalidate the marriage.

A priest who is commissioned and allowed by his local ordinary to marry the faithful, is authorized to do so only within the area of the diocese or place allowed by his bishop. An Appellate Court Justice or a Justice of this Court has jurisdiction over the entire Philippines to solemnize marriages, regardless of the venue, as long as the requisites of the law are complied with. However, judges who are appointed to specific jurisdictions, may officiate in weddings only within said area and not beyond. Where a judge solemnizes a marriage outside his court’s jurisdiction, there is a resultant irregularity in the formal requisite laid down in Article 3, which while it may not affect the validity of the marriage, may subject the officiating official to administrative liability. (Article 4, Family Code).

Inasmuch as respondent judge’s jurisdiction covers the municipalities of Sta. Monica and Burgos, he was not clothed with authority to solemnize a marriage in the municipality of Dapa, Surigao del Norte. By citing Article 8 and the exceptions therein as grounds for the exercise of his misplaced authority, respondent judge again demonstrated a lack of understanding of the basic principles of civil law.

Authority of SB Justices to solemnize marriage.

As can be seen from Article 7, Family Code, Justices of the Sandiganbayan and Judges of the Court of Tax Appeals can now solemnize marriages.

Ambassadors cannot solemnize marriages anymore. They are excluded by the law.

The fact that a person is a priest, minister, rabbi, imam does not by itself authorize him to solemnize marriages. He must be authorized by his church or religious sect and duly registered with the civil registrar general. This must be distinguished from the judges and justices, mayors and consuls who are authorized to solemnize

marriages by virtue of their offices. This authority is granted to them by law as an additional function and incidental to their duties as such.

Consuls or consuls-general can solemnize marriages only in the areas where they hold office.

Illustration:

A is the consul-general of the Philippines to Hawaii. He has a residence in Dingras, Ilocos Norte. While vacationing therein, he solemnizes the marriage of X and Y. The marriage cannot be valid because A has no authority to solemnize marriages outside of the place where he holds office.

A military commander can solemnize marriages only in cases of *articulo mortis*.

Illustration:

A, a soldier belongs to a military unit headed by B. While in a place of military operation, A was shot and is at the point of death, so C, his girlfriend requested B to solemnize their marriage. The marriage is valid even without a marriage license because B is authorized to solemnize the marriage under the situation.

If in the problem above, there was a priest or a chaplain assigned and he was even one of the witnesses, the marriage is not valid because the military commander can only have the authority to solemnize the marriage in the absence of the chaplain.

If in the problem above, it was C, the girlfriend of A who was in *articulo mortis*, the military commander can likewise solemnize the marriage in the absence of the chaplain assigned. The rule is so because it does not require that the member of the military alone be in *articulo mortis*. Such marriage is allowed even if a civilian is the one under *articulo mortis*.

But if A, after having been shot was brought to a hospital outside of the military operation, the marriage would be void since the law requires that the marriage

must be made during military operation and within the area of military operation.

The ship captain or airplane chief can solemnize marriages in *articulo mortis*. The authority exists even while the vessel is sailing or the plane is flying, or even in stopovers.

Marriage contracted in good faith.

A question has been asked as to whether a marriage may be valid if solemnized by one who has no authority at all. An example is when a man and a woman, with capacity and no legal impediment to marry, with a marriage license go to the City Hall of Manila. A fixer approaches them and since they are really looking for someone to solemnize their marriage, they are brought to a room where somebody who introduces himself as a judge solemnized their marriage. They do not know the person but they were made to believe that he is a judge, but the truth is, he is not a judge and they relied upon such representation. The question now is, is the marriage valid?

The answer is in the affirmative because it is a marriage contracted in good faith. This is otherwise known as a putative marriage, one which is ordinarily void because it lacks one of the requisites of a valid marriage, that is, the authority of the solemnizing officer, but valid because of the good faith of the parties of the absence of authority of the solemnizing officer. Neither of them can question the validity of the marriage; or if one of them was aware that the solemnizing officer had no authority, he cannot question the validity of the marriage as he was in bad faith. The law does not allow a person to benefit out of his own wrongdoing.

Article 8. The marriage shall be solemnized publicly in the chambers of the judge or in open court, in the church, chapel or temple, or in the office of the consul-general, consul or vice-consul, as the case may be, and not elsewhere, except in cases of marriages contracted at the point of death or in remote places in accordance with Article 29 of this Code, or where both of the parties request the solemnizing officer in writing in which case the marriage may be solemnized at a house or place designated by them in a sworn statement to that effect. (57a)

The law requires a public ceremony of the marriage. This is one way of intervention by the State in order to ensure that if one knows

of a legal impediment to the marriage, then he should manifest it to the solemnizing officer during the celebration. If there is one who manifests such legal impediment, the solemnizing officer would stop the ceremony.

There should be publicity of the marriage because it is of interest to society and in order that any impediment to the marriage may be made known at the very moment of its celebration. However, as publicity is not an essential requisite, a violation of this provision will not render the marriage void. (Capistrano, *Civil Code of the Philippines*, 1950 ed., p. 82).

Even as the law requires that the marriage ceremony be made public as it must be done publicly in the chambers of the judge, or in open court, in the church, chapel or temple, yet, if there is a written request of the parties that it be solemnized elsewhere in a sworn statement, the same can be done. An example is a situation where the parties requested that it be solemnized at a function room of the Manila Hotel, then, it can be solemnized therein. Again, even if there is no such request, or even if it is not in writing or it is not in a sworn statement, still the marriage is valid as such requisite is not an essential one. The total absence of the same does not go into the validity of the marriage.

Let us say for example that the marriage of A and B was solemnized by the mayor at the town plaza without any request and during the period of the political campaign, the marriage is valid provided that all the essential requisites are present. Even if no request was made, it is still valid as the failure to comply with that formal requirement does not affect the validity of the marriage.

Article 9. A marriage license shall be issued by the local civil registrar of the city or municipality where either contracting party habitually resides, except in marriages where no license is required in accordance with Chapter 2 of this Title. (58a)

The law requires that the marriage license shall be issued in the place of habitual residence of the parties. This is a formal requirement that a violation of the same does not render the marriage void. It is merely an irregularity which if committed may result in the liability of the Local Civil Registrar who issued it knowing that the applicants for a marriage license do not reside in the place where they applied for a license.

Illustration:

A and B, both residents of San Pedro, Laguna, applied for and were issued a marriage license in Biñan, Laguna. It appears to be violative of Article 9 of the Family Code, but since it is merely a formal requirement, the marriage would still be valid if celebrated with the use of that license.

There is however, an exception to the rule, that is, when the marriage is one of exceptional character where there is no need for a marriage license.

Article 10. Marriages between Filipino citizens abroad may be solemnized by a consul-general, consul or vice-consul of the Republic 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 said consular official. (75a)

From a reading of the law, the consul-general, consul, or vice-consul acts as a local civil registrar for Filipinos abroad. This is so because the issuance of the marriage license to Filipinos abroad is done by him. He also solemnizes marriages between Filipino citizens abroad.

If the marriage is solemnized by a consul or vice-consul, there is no need for the contracting parties, who are Filipinos, to secure a certificate of legal capacity to marry. The requirement however lies if the marriage is to be solemnized by another person other than the consul or consul-general or vice-consul.

The rule applies only if the marriage is solemnized by a consul and the parties are citizens of the Philippines.

Article 11. Where a marriage license is required, each of the contracting parties shall file separately a sworn application for such license with the proper local civil registrar which shall specify the following:

- (1) Full name of the contracting party;
- (2) Place of birth;
- (3) Age and date of birth;

- (4) **Civil status;**
- (5) **If previously married, how, when and where the previous marriage was dissolved or annulled;**
- (6) **Present residence and citizenship;**
- (7) **Degree of relationship of the contracting parties;**
- (8) **Full name, residence and citizenship of the father;**
- (9) **Full name, residence and citizenship of the mother; and**
- (10) **Full name, residence and citizenship of the guardian or person having charge, in case the contracting party has neither father nor mother and is under the age of twenty-one years.**

The applicants, their parents or guardians shall not be required to exhibit their residence certificates in any formality in connection with the securing of the marriage license. (59a)

Article 12. The local civil registrar, upon receiving such application, shall require the presentation of the original birth certificates, or in default thereof, the baptismal certificates of the contracting parties or copies of such documents duly attested by the persons having custody of the originals. These certificates or certified copies of the documents required by this Article need not be sworn to and shall be exempt from the documentary stamp tax. The signature and official title of the person issuing the certificate shall be sufficient proof of its authenticity.

If either of the contracting parties is unable to produce his birth or baptismal certificate or a certified copy of either because of the destruction or loss of the original, or if it is shown by an affidavit of such party or of any other person that such birth or baptismal certificate has not yet been received though the same has been required of the person having custody thereof at least fifteen days prior to the date of the application, such party may furnish in lieu thereof his current residence certificate or an instrument drawn up and sworn to before the local civil registrar concerned or any public official authorized to administer oaths. Such instrument shall contain the sworn declaration of two witnesses of lawful age, setting forth the full name, residence and citizenship of such contracting party and of his or her parents, if known, and the place and date of birth of such party. The nearest of kin of the contracting parties shall be preferred as witnesses, or, in their default, persons of good reputation in the province or the locality.

The presentation of birth or baptismal 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. (60a)

Article 13. In case either of the contracting parties has been previously married, the applicant shall be required to furnish, instead of the birth or baptismal certificate required in the last preceding article, the death certificate of the deceased spouse or the judicial decree of the absolute divorce, or the judicial decree of annulment or declaration of nullity of his or her previous marriage. In case the death certificate cannot be secured, the party shall make an affidavit setting forth this circumstances and his or her actual civil status and the name and date of death of the deceased spouse. (61a)

The law merely enumerates the contents of an application for a marriage license. More specifically, the law requires the age and civil status of the applicants so that if the applicant is not of age as required by law, or if there is legal impediment as shown by the application, the Local Civil Registrar would still issue the license, but with a notation of the same. It is also required that if there was a previous marriage and it has been annulled or nullified, the applicant concerned must attach it to the application in order to prove his capacity to contract marriage.

The law further requires the presentation of the original of their birth certificates, or if not available, copies attested by the custodian of the same. Such presentation is not necessary if the parents appear before the local civil registrar and swear the correctness of the lawful age of the parties as stated in the application.

If either of the parties was previously married but the spouse is already dead, he/she is merely required to produce the certificate of death of the spouse. If he cannot produce it, he/she may execute an affidavit setting forth his/her actual civil status and the name and date of death of the deceased spouse.

Article 14. In case either or both of the contracting parties, not having been emancipated by a previous marriage, are between the ages of eighteen and twenty-one, they shall, in addition to the

requirements of the preceding articles, exhibit to the local civil registrar, the consent to their marriage of their father, mother, surviving parent or guardian, or persons having legal charge of them, in the order mentioned. Such consent shall be manifested in writing by the interested party, who personally appears before the proper local civil registrar, or in the form of an affidavit made in the presence of two witnesses and attested before any official authorized by law to administer oaths. The personal manifestation shall be recorded in both applications for marriage license, and the affidavit, if one is executed instead, shall be attached to said applications. (61a)

If the parties to the marriage are between the ages of 18 and 21, they must secure the consent of their parents, otherwise it is voidable. (Art. 45[1], Family Code). Such consent in the form of a written instrument by the person concerned who personally appears before the local civil registrar or in the form of an affidavit made in the presence of two witnesses and attested before any official authorized to administer oaths. It is required that such manifestation of consent be attached to the application for marriage license.

The minimum marriageable age now is 18. Both parties must be eighteen at the time of the celebration of the marriage. The law also requires the consent of their parents to be valid. So that, even if the parents consented, if one of the parties or both of them were below the age of eighteen (18) still the marriage is void *ab initio*.

If A and B got married before a person who is not authorized to solemnize marriages but either or both believed in good faith that he could solemnize marriages, the marriage is valid. The law seeks to preserve the marriage bond.

If one of the parties was aware of the lack of authority of the solemnizing officer, he or she could not file an action for declaration of nullity of the marriage. He could not benefit out of his own wrongdoing.

Article 15. Any contracting party between the age of twenty-one and twenty-five shall be obliged to ask their parents or guardian for advice upon the intended marriage. If they do not obtain such advice, or if it be unfavorable, the marriage license shall not be issued till after three months following the completion of the publication of the application therefor. A sworn statement by the contracting parties to the effect that such advice has been sought,

together with the written advice given, if any, shall be attached to the application for marriage license. Should the parents or guardian refuse to give any advice, this fact shall be stated in the sworn statement. (62a)

Under Article 15 of the Family Code, if the parties are between the ages of 21 and 25, they need parental advice. It provides too that if not secured or if unfavorable, the marriage license shall not be issued until after three (3) months following the publication of the application for marriage license. They are also required to state those facts in an affidavit.

If the marriage license is issued without waiting for the lapse of the three-month period, still the marriage is valid, but the party and the public officer effecting such issuance may be subjected to criminal and administrative responsibility.

The parties are also required to attach to their application for a marriage license a certification that they have undergone marriage counseling before a duly accredited agency. Failure to attach it shall cause the suspension of the issuance of the marriage license for a period of three (3) months.

Article 16. In the cases where parental consent or parental advice is needed, the party or parties concerned shall, in addition to the requirements of the preceding articles, attach a certificate issued by a priest, imam or minister authorized to solemnize marriage under Article 7 of this code or a marriage counsellor duly accredited by the proper government agency to the effect that the contracting parties have undergone marriage counseling. Failure to attach said certificate of marriage counseling shall suspend the issuance of the marriage license for a period of three 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.

Should only one of the contracting parties need parental consent or parental advice, the other party must be present at the counseling referred to in the preceding paragraph. (n)

The mere fact that the advice was not given and the marriage was solemnized does not make the marriage void. The formalities required by law must however be complied with.

The issuance of the marriage license even before the lapse of the 90-day period if no advice was granted does not make the marriage void. It is still valid, but criminal, civil or administrative sanctions may be imposed on the officer issuing the license.

Article 17. 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 applications. The notice shall be posted for ten consecutive days on a bulletin board outside the office of the local civil registrar located in a conspicuous place within the building and accessible to the general public. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local civil registrar thereof. The marriage license shall be issued after the completion of the period of publication. (63a)

After the receipt of the application for marriage license, the local civil registrar shall prepare a notice which shall be posted for at least ten (10) days at the bulletin board outside of his office in conspicuous places or even in places accessible to the public. It calls upon anyone who has any knowledge of any legal impediment of either or both of the contracting parties to report to the local civil registrar.

This notice is one of the modes by which the State interferes in the marriage to prevent violations of the marriage law. It is noted, however, that if the local civil registrar does not publish the application and still, he issues the license, the marriage is still valid, because after all, publicity is not an essential requisite of marriage. The said public officer may, however, be held criminally or administratively liable.

Article 18. 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 bond required for the issuance of the order. (64a)

Article 19. The local civil registrar shall require the payment of the fees prescribed by law or regulations 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. (65a)

Note that if the local civil registrar has knowledge of any legal impediment of the parties or if one is brought to his knowledge by anyone, he would just note down the same in the application. However, if there is a court order preventing him from issuing it, then, he would not issue it.

Article 20. The license shall be valid in any part of the Philippines for a period of one hundred twenty 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. The expiry date shall be stamped in bold characters on the face of every license issued. (65a)

The rule prescribes a period within which the parties must use the marriage license. This is mandatory because the law declares the automatic cancellation of the license upon the expiration of the period of one hundred and twenty days from the date of issue.

If the marriage is solemnized after one hundred twenty (120) days from the date of the issuance of such license, the marriage is void for lack of a marriage license. (See Arts. 20 and 3, Family Code).

The law allows the use of the marriage license anywhere in the Philippines. So, if a marriage license was obtained in Manila, it can be used in Ilocos Norte provided that the 120-day period has not yet lapsed.

Article 21. When either or both of the contracting parties are citizens of a foreign country, it shall be necessary for them before a marriage license can be obtained, to submit a certificate of legal capacity to contract marriage, issued by their respective diplomatic or consular officials.

Stateless persons or refugees from other countries shall in lieu of the certificate of legal capacity herein required, submit an affidavit stating the circumstances showing such capacity to contract marriage. (66a)

The reason for the rule is that the capacity of foreigners to marry is determined by their personal law or national law. The certificate will ensure that the foreigner is capacitated to marry.

The rule is that if they are allowed to marry under their national law, the marriage is valid, except —

- 1) immoral, bigamous or polygamous marriages;
- 2) immorally considered incestuous marriages;
 - a) between ascendants and descendants of any degree, legitimate or illegitimate;
 - b) collateral line, between brothers and sisters of the full or half-blood, whether the relationship be legitimate or illegitimate.

The marriage is still valid even without the said certificate of legal capacity. This is not one of the requirements of a valid marriage. It is a mere added requirement before a marriage license is issued. But if it turns out that the foreigner is not really capacitated, then, the marriage is not valid because of lack of capacity. A subsequent issuance of such certificate may be an evidence to declare such marriage void.

If a foreigner is a refugee or a stateless person, then a mere affidavit stating the circumstance of his legal capacity would be sufficient. The reason for the latter is obvious, as no diplomatic or consular official would issue such certificate.

Article 22. The marriage certificate, in which the parties shall declare that they take each other as husband and wife, shall also state:

- (1) The full name, sex and age of each contracting party;**
- (2) Their citizenship, religion and habitual residence;**
- (3) The date and precise time of the celebration of the marriage;**
- (4) That the proper marriage license has been issued according to law, except in marriages provided for in Chapter 2 of this Title;**
- (5) That either or both of the contracting parties have secured parental consent in appropriate cases;**

(6) That either or both of the contracting parties have complied with the legal requirement regarding parental advice in appropriate cases; and

(7) That the parties have entered into a marriage settlement if any, attaching a copy thereof. (67a)

The law merely states the contents of the marriage certificate.

Article 23. It shall be the duty of the person solemnizing the marriage to furnish either of the contracting parties the original of the marriage certificate referred to in Article 6 and to send the duplicate and triplicate copies of the certificate not later than fifteen days after the marriage, to the local civil registrar of the place where the marriage was solemnized. Proper receipts shall be issued by the local civil registrar to the solemnizing officer transmitting copies of the marriage certificate. The solemnizing officer shall retain in his file the quadruplicate copy of the marriage certificate, the original of the marriage license and, in proper cases, the affidavit of the contracting party regarding the solemnization of the marriage in a place other than those mentioned in Article 8. (68a)

Article 24. It shall be the duty of the local civil registrar to prepare the documents required by this Title, and to administer oaths to all interested parties without any charge in both cases. The documents and affidavits filed in connection with applications for marriage licenses shall be exempt from documentary stamp tax. (n)

Article 25. 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. He shall record in said book the names of the applicants, the date on which the marriage license was issued, and such other data as may be necessary. (n)

The solemnizing officer has to give the parties a copy of the marriage certificate. He is required to send a copy of the certificate to the local civil registrar. This is equivalent to registration or recording. But mere non-recording of the marriage does not make it void. It is not one of its essential requisites. A copy of the document can be shown to prove it.

Article 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law. (As amended by E.O. No. 227)

Rules on foreign marriages of Filipinos.

If a marriage is celebrated between Filipino citizens in a foreign country and valid there as such, generally, it is valid in the Philippines. There are however, exceptions to the rule as cited in Articles 35(1, 4, 5, and 6), 36, 37 and 38 of the Family Code.

The second paragraph of Article 26 of the Family Code has cured the injustice under the old principles in the Civil Code for, while before, if a Filipina married a foreigner and the latter obtained a decree of divorce in his own country, the Filipina was still considered married because Article 15 of the Civil Code mandated that she was still married since the law that governed her legal capacity and status was Philippine law. But such an injustice has been cured where the law now allows her to remarry.

Strict application of Rule 26.

The rule as contemplated by the framers of the Family Code is that, the marriage must be a mixed marriage, between a foreigner and a Filipino in order that Article 26, paragraph 2 may apply and that it must have been mixed from the very beginning. If it was mixed after its celebration, the law does not apply. It must be noted that despite such intention of the framers of the Family Code, the Supreme Court ruled otherwise in *Republic vs. Orbecido III*, October 5, 2005 which will be discussed elsewhere. It is also a requirement that it must have been the foreigner who obtained a divorce decree. If it were the Filipino who obtained the divorce decree, the law does not apply.

The rule laid down in paragraph 2 of Article 26 of the Family Code impliedly recognizes the effect of divorce obtained in a foreign country but only in a limited sense. Such a recognition is merely

intended to cure an injustice to a Filipino where after having been divorced by the foreigner spouse, he or she would still be considered married.

The rule in paragraph 2, Article 26 could have been precipitated by the doctrine in *Van Dorn vs. Romillo*, G.R. No. 68470, October 8, 1985. In such case, a Filipina got married to a foreigner and obtained a divorce decree from the courts of the country of her husband. The wife came back to the Philippines, engaged in business and became successful. Later on, the foreigner came to the Philippines and tried to enforce his rights as a husband, as administrator of the conjugal partnership and his rights as an heir.

The Supreme Court ruled out his contentions. It said that while public policy and our concept of morality abhor absolute divorce, because of the nationality principle adhered to under Article 15 of the Civil Code, nonetheless, the absolute divorce obtained abroad may be recognized in the Philippines provided it is valid according to his national law. (*Van Dorn vs. Romillo*). In view of this, the Supreme Court said that an American national who had divorced his Filipina wife cannot justifiably maintain that, under our laws, the Filipina, despite the divorce, has to be considered still married to him and still subject to a wife's obligation.

A Filipina should not be discriminated against in her own country if the ends of justice are to be served. She should not be obliged to live with him, to support him, or to observe respect and fidelity to the ex-husband. The latter should not continue to be one of her heirs with possible rights to the conjugal properties.

Note, however, that this case is an exception to the rule especially so that it was the Filipino who commenced the divorce proceedings.

Unfair situation in the Civil Code remedied.

There was an unfair situation in our law under the Civil Code which the Family Code sought to remedy and which was remedied in *Van Dorn vs. Romillo* and *Pilapil vs. Ibay-Somera*.

Illustration:

X, a Filipina married Y, a foreigner. The foreigner left her and divorced her in his country, capacitating him to marry again under his national law. Under the old law,

whether it was a mixed marriage or not, the Filipino was not capacitated to remarry in case he/she was divorced by the foreigner spouse. This is due to the strict rule in Article 15 of the Civil Code and the principle that a divorce obtained abroad was contrary to morals. This has left the Filipino in an unfair situation, for while the former spouse could remarry, yet, he/she could not. So, the Supreme Court in *Van Dorn and Pilapil* gave recognition to the effects of foreign divorces. The Family Code followed with the conditions that: (1) the marriage must be originally a mixed marriage; (2) the divorce must be obtained by the foreigner capacitating him/her to remarry under his/her national law. So that if the foreigner obtains that divorce, the Filipino is likewise capacitated to remarry.

But let us say that the parties were originally Filipinos, but after a few years one of them became an American citizen and thereafter, he would obtain a divorce decree capacitating him to remarry, the Filipina cannot remarry under Philippine laws because the marriage was not originally a mixed marriage. This is a flaw in Article 26 that the framers of the Family Code failed to foresee or resolve. If it happens, then, we would return to the former unusual and unfair situation where one of the parties is again left hanging. The better situation is that even if the marriage is not originally a mixed marriage, both must be capacitated to remarry in case a divorce is obtained by the foreigner. But the remedy is for Congress to do.

It would seem therefore, that she cannot because Article 26(2) of the Family Code refers only to mixed marriages.

Effect is Filipino obtains divorce against a foreigner spouse.

As can be clearly gleaned from the law, the effects of a foreign divorce are now recognized in the Philippines but subject to certain conditions. One such situation where the effects of a foreign divorce were recognized is in *Pilapil vs. Ibay-Somera, et al.*, G.R. No. 80116, June 30, 1989, where it was said that when the foreigner divorced the Filipina, the marital relationship was severed. She can no longer be prosecuted for adultery if she cohabits with another man. A Filipina should not be discriminated against in her own country.

Case:

**Imelda M. Pilapil vs.
Hon. Corona Somera, et al.
G.R. No. 80116, June 30, 1989**

Facts:

On September 7, 1979, a Filipina married a German national named Erich Geiling. They lived together as husband and wife but later on separated in fact. Three and a half years later, Geiling filed a petition for divorce in Germany which was granted. On January 15, 1986, he filed two (2) complaints for adultery against her because of an affair with a man named William in 1982 and James in 1983. The case was filed in court but a Motion to Quash was filed but which was denied. Hence, a petition was filed before the Supreme Court contending that the complainant cannot be qualified as an offended party since he has already obtained a final divorce under his national law prior to the filing of the case.

Held:

Petition is meritorious. Under Article 344 of the Revised Penal Code, the crime of adultery, as well as four other crimes against chastity, cannot be prosecuted except upon a sworn written complaint filed by the offended spouse. It has long since been established, with unwavering consistency, that compliance with this rule is jurisdictional, and not merely a formal requirement. (People vs. Lingayen, June 10, 1989). While in point of strict law the jurisdiction of the court over the offense is vested upon it by the Judiciary Law, the requirement for a sworn written complaint is just a jurisdictional mandate since it is that complaint which starts the prosecutory proceeding (Valdepeñas vs. People, 16 SCRA 871; People vs. Babasa, 77 SCRA 672) and without which the court cannot exercise its jurisdiction to try the case.

Now, the law specifically provides that in prosecutions for adultery and concubinage the person who can legally file the complaint should be the offended spouse, and nobody else. Unlike the offenses of seduction, abduction, rape and acts of lasciviousness, no provision is made for the prosecution of the crimes of adultery and concubinage by the parents, grandparents or guardians of the offended party. The so-called exclusive and successive rule in the prosecution of the first four offenses above-mentioned do not apply

to adultery and concubinage. It is significant that while the State, as *parens patriae*, was added and vested by the 1985 Rules of Criminal Procedure with the power to initiate the criminal action for the deceased or incapacitated victim in the aforesaid offenses of seduction, abduction, rape and acts of lasciviousness, in default of her parents, grandparents, and guardian, such amendment did not include the crimes of adultery and concubinage. In other words, only the offended spouse, and no other, is authorized by law to initiate the action therefor.

In view of the above, it follows that such initiator must have the status, capacity or legal representation to do so at the time of the filing of the criminal action. This is a familiar and express rule in civil actions; in fact, lack of legal capacity to sue as a ground for a motion to dismiss in civil cases, is determined as of the filing of the complaint or petition.

It is indispensable that the status and capacity of the complainant to commence the action be definitively established and such status or capacity must indubitably exist as of the time he initiates the action. It would be absurd if his capacity to bring the action would be determined by his status before or subsequent to the commencement thereof, where such capacity or status existed prior to but ceased before, or was acquired subsequent to but did not exist at the time of the institution of the case. We would thereby have the anomalous spectacle of a party bringing suit at the very time when he is without legal capacity to do so.

The case of *State vs. Loftus*, 104 NW 906 and 907, applies. In said case, the U.S. Supreme Court said:

“No prosecution for adultery can be commenced except on the complaint of the husband or wife. (Section 4932, Code). Though Loftus was the husband of the defendant when the offense is said to have been committed, he had ceased to be such when the prosecution was begun; and appellant insists that his status was not such as to entitle him to make the complaint. We have reportedly said that the offense is against the unoffended spouse, as well as the State, in explaining the reason for this provision in the statute and we are of the opinion that the offending spouse must be such when the prosecution is commenced.”

In short, the status of the complainant in relation to the accused must be determined as of the time of the filing of the com-

plaint. The complainant must be the offended spouse and by this is meant that the complainant is still married to the accused. Since they are already divorced, he has no more capacity to file such action because said divorce and its effects are recognized in the Philippines insofar as he is concerned. (Recto vs. Harden, 100 Phil. 427; Van Dorn vs. Romillo, et al., 139 SCRA 139).

The private respondent obtained a valid divorce in his country, the Federal Republic of Germany. Said divorce and its legal effects may be recognized in the Philippines insofar as private respondent is concerned (Recto vs. Harden), in view of the nationality principle.

Thus, in the recent case of *Van Dorn vs. Romillo, Jr., et al.*, after a divorce was granted by a United States court between Alice Van Dorn, a Filipina, and her American husband, the latter filed a civil case in a trial court here alleging that her business concern was conjugal property and praying that she be ordered to render an accounting and that the plaintiff be granted the right to manage the business. Rejecting his pretensions, this court perspicuously demonstrated the error of such stance, thus:

“There can be no question as to the validity of that Nevada divorce in any of the states of the United States. The decree is binding on private respondent as an American citizen. For instance, private respondent cannot sue petitioner, as her husband, in any state of the Union.
x x x”

It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces the same being contrary to our concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. x x x

The Supreme Court said further:

“Thus, pursuant to his national law, private respondent is no longer the husband of the petitioner. He would have no standing to sue in the case below as petitioner’s husband who would be entitled to exercise control over conjugal assets. x x x”

Under the same considerations and rationale, private respondent, being no longer the husband of petitioner, had no legal stand-

ing to commence the adultery case under the imposture that he was the offended spouse at the time he filed suit.

The allegation of private respondent that he could not have brought this case before the decree of divorce for lack of knowledge, even if true, is of no legal significance or consequence in this case. When said respondent initiated the divorce proceeding, he obviously knew that there would no longer be a family or marriage vows to protect once a dissolution of the marriage is decreed. Neither would there be a danger of introducing spurious heirs into the family, which is said to be one of the reasons for the particular formulation of our law on adultery (*US vs. Mata*, 18 Phil. 490) since there would henceforth be no spouse relationship to speak of. The severance of the marital bond had the effect of dissociating the former spouses from each other; hence, the actuations of one would not affect or cast obloquy on the other.

The aforesaid case of *United States vs. Mata*, cannot be successfully relied upon by private respondent. In applying Article 433 of the old Penal Code, substantially the same as Article 333 of the Revised Penal Code, which punished adultery “although the marriage be afterwards declared void,” the Court merely stated that “the lawmakers intended to declare adulterous the infidelity of a married woman to her marital vows, even though it should be made to appear that she is entitled to have her marriage contract declared null and void, until and unless she actually secures a formal judicial declaration of nullity x x x,” because such declaration that the marriage is void *ab initio* is equivalent to stating that it never existed. There being no marriage from the beginning, any complaint for adultery filed after said declaration of nullity would no longer have a leg to stand on. Moreover, what was consequently contemplated and within the purview of the decision in said case is the situation where the criminal action for adultery was filed before the termination of the marriage by a judicial declaration of its nullity *ab initio*. The same rule and requisite would necessarily apply where the termination of the marriage was effected, as in this case, by a valid foreign divorce.

Doctrine of *lex loci celebrationis*.

X and Y, both Filipino citizens went to Hongkong. They got married there before a lawyer. Under Hongkong laws the marriage is valid. Is it also valid in the Philippines?

Yes, by way of implication from the provision of Articles 26 and 35(2 and 3), Family Code. If the marriage is valid where it was celebrated, it shall also be valid in the Philippines. This is not one of the marriages declared void in the Philippines by law. Authority to solemnize is only a formal requirement that if valid where it was celebrated, it is valid in the Philippines in view of the doctrine of *lex loci celebrationis*.

Article 26, paragraph 1 of the Family Code makes a cross-reference to Articles 35(1), (4), (5), (6); 36; 37; 38. All these laws refer to void marriages that even if they are valid where they were celebrated, still, they are void in the Philippines in view of the controlling rule that what determines the status, condition and legal capacity of Filipinos is Philippine law. (Art. 15, NCC). If the marriage is void because of lack of legal capacity like when the parties or anyone of them is below 18 years, or if it is bigamous or polygamous, or where there was mistake in the identity of a party, or there was no recording of the documents under Articles 52 and 53 of the Family Code; or if one of the parties is suffering from “psychological incapacity”; or if the parties are related by blood under Article 37, or what is otherwise known as incestuous marriage; or if it is contrary to public policy, the marriage is still void even if valid where celebrated. This is so because the law that determines their validity is Philippine law which binds them even though they are living abroad.

Effect of divorce obtained by a Filipino on the capacity of the Filipino spouse re-marry.

Article 26 of the Family Code has undergone a lot of interpretations, one of which is even contrary to the intention of its framers, but that is the better law. Two decisions were promulgated but are even inconsistent with one another.

The provisions of Article 26 of the Family Code contemplate of a situation where if there is a mixed marriage between a foreigner and a Filipino obtained by the foreigner capacitating him/her to re-marry under his/her national law, the Filipino shall likewise be capacitated to re-marry. This is a solution to the unfair situation in the old law that even if there was a mixed marriage and the foreigner divorced the Filipino, the Filipino was still married from the point of view of Philippine law, owing to the nationality theory. But the rule in Article 26 of the Family Code is restrictive as it requires that the marriage must have been mixed from the very beginning. If it was originally a Filipino marriage, but became mixed after its

celebration and a divorce was obtained by the Filipino, then, they are still married. This is the situation in the case of *Republic vs. Crasus L. Iyoy*, G.R. No. 152577, September 21, 2005. Crasus Iyoy and Fely Ada Rosal-Iyoy got married in Cebu City. They had five children. Fely went to the USA in 1984 where after one year, she sent a letter to her husband requesting him to sign the divorce papers. In 1985, she got married to an American citizen. Crasus filed a complaint to declare their marriage void on the ground of “psychological incapacity” invoking Articles 68, 70 and 72 of the Family Code. It was also alleged that she got married during the existence of their marriage. Fely contended that she is no longer governed by Philippine law considering that she was an American citizen as early as 1988. She alleged that after securing divorce from her husband, she married an American citizen and acquired American citizenship. Hence, she argued that her marriage was valid because now being an American citizen, her status is governed by her present national law. The RTC declared the marriage of Crasus and Fely void. The OSG appealed to the CA which promulgated the following decision, thus:

“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 re-marry, the Filipino spouse shall likewise have capacity to re-marry under Philippine law.”

The rationale behind the second paragraph of the above-quoted provision is to avoid the absurd and unjust situation of a Filipino citizen still being married to his or her alien spouse, although the latter is no longer married to the Filipino spouse because he or she has obtained a divorce abroad. In the case at bench, the defendant has undoubtedly acquired her American husband’s citizenship and thus became an alien as well. This Court cannot see why the benefits of Article 26 aforequoted cannot be extended to a Filipino citizen whose spouse eventually embraces another citizenship and thus becomes herself an alien.

It would be the height of unfairness if, under the circumstances, plaintiff would still be considered as married to defendant, given her total incapacity to honor her marital covenants to the former. To condemn plaintiff to remain shackled in a marriage that in truth and in fact does not exist and to remain married to a spouse who is incapacitated to discharge essential marital covenants, is verily to condemn him to a perpetual disadvantage which this Court finds

abhorrent and will not countenance. Justice dictates that plaintiff be given relief by affirming the trial court's declaration of the nullity of the marriage of the parties."

Not satisfied with the CA's decision, the OSG appealed to the Supreme Court which held that the judgment is not in accord with the provisions of the Family Code. It was expressly —

Held:

According to Article 26, paragraph 2 of the Family Code of the Philippines:

"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 re-marry, the Filipino spouse shall likewise have capacity to re-marry under Philippine law."

As it is worded, Article 26, paragraph 2, refers to a special situation wherein one of the married couples is a foreigner who divorces his or her Filipino spouse. By its plain and literal interpretation, the said provision cannot be applied to the case of respondent Crasus and his wife Fely because at the time Fely obtained her divorce, she was still a Filipino citizen. Although the exact date was not established, Fely herself admitted in her Answer filed before the RTC that she obtained a divorce from respondent Crasus sometime after she left for the United States in 1984, after which she married her American husband in 1985. In the same Answer, she alleged that she had been an American citizen since 1988. At the time she filed for divorce, Fely was still a Filipino citizen, and pursuant to the nationality principle embodied in Article 15 of the Civil Code of the Philippines, she was still bound by Philippine laws on family rights and duties, status, conditions, and legal capacity, even when she was already living abroad. Philippine laws, then and even until now, do not allow and recognize divorce between Filipino spouses. Thus, Fely could not have validly obtained a divorce from Crasus.

Comment:

Admittedly, the situation calls for a review because of the unfair situation where a Filipino is in where a divorce decree is obtained, but still he is considered married by Philippine law. The Filipino is left in the dark where he has no solution at all, except to

commit the crime of adultery or concubinage, while the former Filipino citizen can now re-marry. Be that as it may, the law is the law, especially so that no less than the Constitution seeks to protect the marriage as an inviolable social constitution. Remedial legislation should be made to equalize the situation of the Filipino and the former Filipino, for the Filipino to be capacitated to re-marry once the former spouse obtains a decree of divorce capacitating him/her to re-marry under his/her present national law. This has become an unfair situation which Philippine law has blindly adhered to. The law was never meant to be unfair and unjust. If the law remains this way, then, it would be promoting and sanctioning adultery and concubinage. That could not have been the intent of the framers of the Family Code.

In a series of cases, the Supreme Court has expressed its pity to couples under certain situations like this. Its has always said that while the Court commiserated with respondent Crasus for being continuously shackled to what is now a hopeless and loveless marriage, this is one of those situations where neither law nor society can provide the specific answer to every individual problem. (citing Carating-Siayngco, 441 SCRA 422 [2004]; Dedel vs. CA, et al., 421 SCRA 461 [2004]; Santos vs. CA, 240 SCRA 20 [1995]).

In a span of exactly two weeks, the Supreme Court rendered a judgment holding that even if the marriage becomes mixed after the celebration of the marriage, the former Filipino citizen divorcing the Filipino spouse and getting married again, the Court ruled that the Filipino can get married now. This is the better law although it is not really in accordance with the intention of the framers of the Family Code, for as has been said, the intention of the law is that, it must have been a mixed marriage from the very beginning. The Court gave emphasis to the principle that the law must be interpreted in accordance with the spirit that gives it life, rather than the letter that kills it.

Case:

**Republic vs. Cipriano Obrecido III
G.R. No. 154380, October 5, 2005**

Facts:

In 1981, Cipriano and Lady Miros got married and they were blessed with two children. Lady Miros and one of her children went to the USA, became an American citizen. This was later on learned

by the husband. Then, she divorced him. Again, he learned it from his son. Thereafter, she got married to a certain Innocent Standby. He filed a petition with the RTC for authority to marry invoking paragraph 2 of Article 26 of the Family Code. No opposition was filed, hence, the court granted the same. The OSG representing the Republic filed a motion for reconsideration but it was denied, hence a petition for certiorari was filed with the Supreme Court contending that paragraph 2 of Article 26 of the Family Code is not applicable to Cipriano because it applies only to a valid mixed married, that is a marriage celebrated between a Filipino citizen and an alien. Cipriano on the other hand, contended and admitted that the law is not directly applicable to his case but insisted that when his naturalized wife obtained a divorce decree which capacitated by operation of law to remarry, then, he should likewise be capacitated to remarry. The novel issue which is of first impression is that, given a valid marriage between two Filipino citizens, where one party is naturalized as a foreign citizen and obtained a valid divorce decree capacitating him or her to re-marry, can the Filipino spouse likewise re-marry under Philippine law?

Held:

Yes. Paragraph 2 of Article 26 of the Family Code should be interpreted to include cases involving parties who, at the time of the celebration of the marriage were Filipino citizens, but later on, one of them becomes naturalized as a foreign citizen and obtains a divorce decree. The Filipino spouse should likewise be allowed to remarry as if the other party were a foreigner at the time of the solemnization of the marriage. To rule otherwise would be to sanction absurdity and injustice. Where the interpretation of statute according to its exact and literal import would lead to mischievous results or contravene the clear purpose of the legislature, it should be construed according to its spirit and reason, disregarding as far as necessary the letter of the law. A statute may therefore be extended to cases not within the literal meaning of its terms, so long as they come within its spirit or intent.

If we are to give meaning to legislative intent to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce is no longer married to the Filipino spouse, then the instant case must be deemed as coming within the contemplation of Paragraph 2 of Article 26 of the Family Code.

In order, however that the law may apply, the following requirements must be met, thus:

1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and
2. A valid divorce is obtained abroad by the alien spouse capacitating him or her to re-marry.

The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship at the time a valid divorce is obtained abroad by the alien spouse capacitating the latter to re-marry.

In order that the Filipino may re-marry, it is necessary that the naturalization of his wife be proven. Likewise, before a foreign divorce decree can be recognized by our courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it. (*Garcia vs. Recio*, 366 SCRA 437 [2001]). Such foreign law must also be proved as our courts cannot take judicial notice of foreign laws. Like any other fact, such laws must be alleged and proved. Furthermore, it must also be shown that the divorce decree allows his former wife to re-marry as specifically required in Article 26, otherwise, there would be no evidence sufficient to declare that he is capacitated to enter into another marriage.

Comments:

The language of the decision is clear. It is not sufficient that the spouse has embraced foreign citizenship and that he/she has obtained a decree of divorce. It is necessary that the Filipino spouse has to go to court and prove such facts according to the rules of evidence because foreign laws and judgments do not prove themselves in the Philippines. It must be further shown that with the divorce decree having been obtained by the foreigner, it should capacitate the latter to remarry, for, if not, the Filipino is not likewise capacitated to remarry.

This law is not a perfect law, even with the judgment in *Orbecido*. Why? This is so because it remains to be unfair for the Filipino. The scenario is like this. The former Filipino or even the foreigner spouse obtained a decree of divorce, the effect of which is the severance of the marital relationship. Even with its severance, but the foreigner is not capacitated to remarry under his/her national law, the Filipino is not likewise capacitated to remarry. But the marriage bond has

already been severed but they cannot remarry. It is not the fault of the Filipino that the foreigner is not capacitated to remarry considering that it was he/she who initiated the proceedings for divorce severing the marital relationship. This is unfair to the Filipino who remains to be bonded with a person who is no longer married to him/her. This is inviting the Filipino to commit immoral acts. This law goes beyond the effects of severance of marital relationships in the Philippines pursuant to the Philippine law. Why should Philippine law care for a foreign law's effects? Orbecido did not exactly remedy the unfair situation. There is a need for a legislation to put order to the law. Our view is that, if a foreigner obtains a decree of divorce whether under his law, it capacitates him/her to remarry under his/her law, the Filipino spouse should, under all circumstances, be capacitated to remarry. Philippine law should not be concerned with the capacity of a foreigner. It should only concern itself with the capacity of the Filipino. It is too presumptuous for Philippine law to be concerned and to govern the capacity of a foreigner.

Chapter 2

Marriages Exempt from the License Requirement

Article 27. In case either or both of the contracting parties are at the point of death, the marriage may be solemnized without the necessity of a marriage license and shall remain valid even if the ailing party subsequently survives. (72a)

Article 28. If the residence of either party is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar, the marriage may be solemnized without the necessity of a marriage license. (72a)

Article 29. In the cases provided for in the two preceding articles, 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 in *articulo mortis* or that the residence of either party, specifying the barrio or barangay, is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar and the officer took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of legal impediment to the marriage. (72a)

Article 30. The original of the affidavit required in the last preceding article, together with a legible copy of the marriage contract, shall be sent by the person solemnizing the marriage to the local civil registrar of the municipality where it was performed within the period of thirty (30) days after the performance of the marriage. (73a).

Article 31. A marriage in *articulo mortis* between passengers or crew members may also be solemnized by a ship captain or by an airplane pilot not only while the ship is at sea or the plane is in flight, but also during stopovers at ports of call. (74a)

Article 32. A military commander of a unit, who is a commissioned officer, shall likewise have authority to solemnize marriages in *articulo mortis* between persons within the zone of military operation, whether members of the armed forces or civilians. (74a)

Article 33. Marriages among Muslims or among members of the ethnic cultural communities may be performed validly without the necessity of marriage license, provided they are solemnized in accordance with their customs, rites or practices.(78a)

Article 34. No license shall be necessary for the marriage of a man and a woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage. (76a)

Article 27 of the Family Code speaks of a marriage in *articulo mortis* or at the point of death. If one or both contracting parties are at the point of death, there is no need for a marriage license. The reason is obvious. If there is a need for the license, then, they have yet to apply for the same, have it published for ten (10) days, etc. How can they do these things when they are, or one of them, is at the point of death?

If the party at the point of death survives, the marriage would still be valid. What is important is that, at the time of the celebration of the marriage, one or both of them is at the point of death.

In Article 28 of the Family Code, the law refers to a place which is so far from the office of the local civil registrar that the parties to

the marriage cannot appear before him due to lack of transportation. A person who has the authority to solemnize marriage can solemnize it without the necessity of a marriage license, provided that he must take steps to ascertain the ages and relationship of the parties or that no legal impediment to marry one another exists.

Article 31 of the Family Code contemplates of a situation where the marriage is between passengers or crew members of a plane or vessel, where the ship captain or pilot can solemnize a marriage in *articulo mortis* or at the point of death. In fact, it can be solemnized while the plane is in flight or while the ship is sailing. It can be done at stopovers. It does not require any license.

Article 32 of the Family Code authorizes a military commander who is a commissioned officer to perform the marriage of anyone within the area of military operation if it is under *articulo mortis*. The law does not limit itself to the members of the military. Even civilians are included. So that if a soldier is shot in the area of military operation and the girlfriend would like to marry him while at the point of death, the military commander can solemnize the marriage without a license and still the same would be valid. Suppose that both of them are civilians, the same would be valid because of the use of the phrase “whether members of the armed forces or civilians.”

But let us say that X, a member of the armed forces was injured in an area of military operation, for instance, Mindanao. He was airlifted to Manila where he was confined at the Philippine General Hospital. At one point in time, he was at the point of death. Can a military commander solemnize his marriage with Y, his girlfriend without a marriage license? The answer is no because the law contemplates of a situation where the marriage must be solemnized in the zone of military operation. Such commander does not have the authority outside of it, especially so that such authority is granted to him only under extraordinary circumstances. The marriage is void for lack of a marriage license. But suppose it was the mayor of the City of Manila who solemnized the marriage of X and Y, then the marriage is valid, but this time Article 27 of the Family Code applies, not Article 32.

Article 33 of the Family Code makes valid a marriage of Muslims or members of ethnic cultural minorities even without a marriage license provided that the ceremony is in accordance with their customs, rites and practices. If the marriage is between two (2) Muslims who are residents of Manila and solemnized by a judge of Manila in accordance with Christian rites and practices, there is a need

for a marriage license, otherwise it is void. This is so because the condition for the validity of such a marriage without a license is that the same must be solemnized in accordance with their customs, rites and practices.

Article 34 of the Family Code dispenses with the requirement of a marriage license where the parties have been living together as husband and wife without the benefit of marriage for a period of five (5) years or even more. It further requires that there must be no legal impediment to marry one another during such coverture.

Illustration:

A and B, both without any legal impediment to marry one another have been living together as husband and wife for 6 years. If they get married, then there is no need for a marriage license. In lieu of the license, an affidavit stating that they have been living together for more than 5 years and without any legal impediment to marry one another is sufficient.

But suppose A was only 16 years of age when they started living together and they would decide to get married, a license is required. They are not exempted from the requirement because of an impediment to marry one another.

Or if B was already married to C when he started living with A, but C died on the third year of A and B's cohabitation, still there is a need for a license because of a legal impediment to marry one another during the cohabitation. If there is no license, the marriage is void.

The two preceding articles (Arts. 29 and 30) provide for the duties of the solemnizing officer after the celebration of the marriage in *articulo mortis* and where the spouses were married under a circumstance that they cannot appear before the local civil registrar for their application for a marriage license.

As discussed elsewhere, Article 34 requires that for the marriage of a man and a woman without a marriage license to be valid, they must have lived together and exclusively with each other for a continuous and unbroken period of at least five (5) years before the marriage. It further requires that they must have had no legal impediment to marry one another. The rationale why no license is

required in such case is to avoid exposing the parties to humiliation, shame and embarrassment concomitant with the scandalous cohabitation of persons outside a valid marriage due to the publication of every applicant's name for a marriage license. The publicity attending the marriage may discourage such persons from legitimizing their status. To preserve peace in the family and avoid the peeping and suspicious eye of public exposure and contain the source of gossip arising from the publication of their names, the law deemed it wise to preserve their privacy and exempt them from that requirement. The five-year common-law cohabitation should be a period of legal union had it not been for the absence of the marriage. This five-year period should be the years immediately before the day of the marriage and it should be a cohabitation characterized by exclusivity — meaning no third party was involved at any time within the five years and continuity — that is unbroken. Otherwise, if that continuous five-year cohabitation is computed without any distinction as to whether the parties were capacitated to marry each other during the entire five years, then the law would be sanctioning immorality and encouraging parties to have common-law relationships and placing them on the same footing with those who lived faithfully with their spouses. (*Engrace Niñal vs. Norma Bayadog, supra*).

Legal Ratification of Cohabitation.

In order that there may be legal ratification of marital cohabitation the following requisites must concur:

1. The man and woman must have been living together as husband and wife for at least five years before the marriage;
2. The parties must have no legal impediment to marry each other;
3. The fact of absence of legal impediment between the parties must be present at the time of marriage;
4. The parties must execute an affidavit stating that they have lived together for at least five years;
5. The solemnizing officer must execute a sworn statement that he had ascertained the qualifications of the parties and that he had found no legal impediment to their marriage. (*Borja-Manzano vs. Judge Sanchez, A.M. No. MTJ-00-1329, March 8, 2001, 354 SCRA1*).

In this case, a judge was charged with ignorance of the law for having solemnized a marriage without a license. He did it despite knowledge that the same was void and bigamous as the marriage contract clearly stated that both contracting parties were “separated.” He claimed that he did not know that Manzano was legally married. What he knew was that, the two had been living together as husband and wife for seven years already without the benefit of marriage as shown in their joint affidavit. It was alleged that on the basis of the joint affidavit the judge solemnized the marriage in accordance with Article 34 of the Family Code.

In holding the judge liable, the Supreme Court laid down the aforementioned rules for the application of Article 34 of the Family Code. It was explained that a subsisting previous marriage is a diriment impediment, which would make the subsequent marriage null and void. The fact that the parties to the marriage in question have been living apart from their respective spouses for a long time already is immaterial. Article 63(1) of the Family Code allows spouses who have obtained a decree of legal separation to live separately from each other, but in such a case the marriage bonds are not severed. Elsewise stated, legal separation does not dissolve the marriage tie, much less authorize the parties to remarry. This holds true all the more when the separation is merely *de facto*.

The Court went further and said that the judge cannot take refuge on the Affidavit stating that they had been cohabiting as husband and wife for seven years. Just like separation, free and voluntary cohabitation with another person for at least five years does not sever the tie of a subsisting previous marriage. Marital cohabitation for a long period of time between two individuals who are legally capacitated to marry each other is merely a ground for exemption from marriage license. It could not serve as a justification for a judge to solemnize subsequent marriage vitiated by impediment of a prior existing marriage.

Comment:

In this case of Manzano, the Supreme Court said that the legal impediment between the parties must be present at the time of marriage.

This seems to deliver a message that it is enough that legal impediment be present at the time of the celebration of the marriage. This would sound to be anomalous and it tends to sanction immorality.

In fact, *Niñal vs. Bayadog*, requires that the cohabitation must be for a period of five years prior to the marriage, hence, the requirement of a license is not necessary.

Illustration:

A and B are married, but A abandoned B and his family and cohabited with C for 10 years. On January 1, 2005, B died. On January 2, 2005 A and C got married. During their cohabitation, they were committing two crimes of adultery and concubinage as the case may be. Yet, the Supreme Court now is saying that the marriage is valid even without a marriage license. It true that at the time of the celebration of the marriage, there was no more legal impediment to marry. Yet, their cohabitation was violative of our penal laws. It is believed that the law should be interpreted to mean that during the period of cohabitation with at least five years, there was no legal impediment to marry. This could make the law sound and reasonable, for the law was never intended to be absurd. This observation is founded on the law itself which states that “No license shall be necessary for the marriage of a man and a woman who have live together as husband and wife for at least five years and without any legal impediment to marry each other.” The law does not say that it is enough that the legal impediment be absent at the time of marriage. The language of the law uses the conjunctive “and” which emphasizes the fact that during their cohabitation for at least five years, there should have been no legal impediment to marry one another.

Chapter 3

Void and Voidable Marriages

Article 35. The following marriages shall be void from the beginning:

- (1) Those contracted by any party below eighteen years of age even with the consent of parents or guardians;
- (2) Those 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;

(3) Those solemnized without a license, except those covered by the preceding chapter;

(4) Those bigamous or polygamous marriages not falling under Article 41;

(5) Those contracted through mistake of one contracting party as to the identity of the other;

(6) Those subsequent marriages that are void under Article 53.

Article 35 enumerates the various instances of a void marriage.

(1) **Below 18 years**

One of the requirements of a valid marriage is legal capacity, that without it, the marriage is void. Age is not component of legal capacity. So that, if the parties or anyone of them is below 18 years, even with the consent of the parents, the marriage is void for lack of legal capacity. As said elsewhere, extreme youth of the parties to the marriage may not lend stability to the family.

Illustration:

A and B, both 17 years of age and Filipinos met in Hongkong. They got married with the consent of their parents. The marriage is void for lack of legal capacity. Even if Hongkong laws recognize their marriage as valid, the same would still be void in the Philippines because it is Philippine law that determines their legal capacity. (Article 15, New Civil Code). Furthermore, even if valid where celebrated, Articles 26(paragraph 1) and 35(1) of the Family Code provides that their marriage is void.

(2) **No authority to solemnize marriages**

For purposes of validity of a marriage, the solemnizing officer must be legally authorized to perform or celebrate marriages. Article 7 of the Family Code provides for those authorized to solemnize marriages. The Local Government Code has restored the power or authority of mayors to solemnize marriages. Without such legal authority, the marriage is void.

But the law gives validity to a marriage even if the person solemnizing the marriage is not legally authorized to do so provided that one or both of the contracting parties believed in good faith that the solemnizing officer had such legal authority.

Illustration:

X and Y wanted to have a rush wedding. They went to the City Hall of Manila and talked to A who brought them to B who was introduced as a minister who can solemnize marriages. B solemnized the marriage of X and Y who, in good faith, believed that he could solemnize it, but in truth and in fact, he is not legally authorized as he is not a minister. This is what is known as a marriage contracted in good faith. It is valid even if there is no actual legal authority of B to solemnize the marriage.

The validity of the marriage mentioned above is in line with the public policy that in case of doubt the law and the courts lean towards the validity of the matrimony.

But let us say that X knew that B was not legally authorized to solemnize marriages and yet, he agreed to marry Y. Under such a situation, still the marriage is valid because Y was in good faith. While it appears to be void, such invalidity cannot be invoked by X as against Y because he cannot benefit out of his wrongdoing.

(3) No marriage license

So much discussion has been made on the marriage license as a prerequisite of a valid marriage. Without it, there can be no valid marriage, except those marriages under exceptional circumstances under Articles 27, 28, 31, 32, 33, 34 of the Family Code. In fact a marriage cannot be solemnized now and the license would be produced thereafter. That is void as it was celebrated without a marriage license. Look at the case of *Cosca, et al. vs. Palaypayon, Jr., et al.*, A.M. No. MTJ-92-721, September 30, 1994, 55 SCAD 759, where a judge was fined and reprimanded for having solemnized marriages without licenses at the time of their celebration but the marriage licenses were produced after the marriages were celebrated. The marriages cannot be valid.

(4) Mistake in the identity of the party

If a marriage is contracted through mistake of one of the contracting parties as to the identity of the other, the same is void. The reason is that, it is as if the party who committed that mistake in the identity of the other did not give his/her consent. This marriage used to be only voidable under the Civil Code, but it has been made void by the Family Code.

(5) Subsequent marriage under Article 53

The law makes reference to a situation where there was annulment or a declaration of nullity of marriage. The law requires that these documents, together with the document delivering the presumptive legitime of the compulsory heirs of the parties, be registered in the proper civil registry or registry of property. If they failed to comply with this requirement and one or both of them contracted a subsequent marriage, the same is void. (See Arts. 52 and 53, Family Code). Even if the marriage mentioned above is celebrated abroad and valid there as such, it is void in the Philippines. (Arts. 15, New Civil Code; 26 [par. 1], Family Code).

Article 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. (As amended by E.O. No. 227, dated July 17, 1987).

Requisites of “psychological incapacity.”

The Family Code has not defined the concept of “psychological incapacity.” The only criterion given is the failure of a party to comply with the essential marital obligations of marriage.

To be a ground for declaration of nullity of the marriage, “psychological incapacity” must:

- (a) be serious or grave;
- (b) have existed upon the celebration of or after the marriage;
- (c) be incurable.

“*Psychological incapacity*” is incurable even if it involves time and expenses beyond the means of the victim.

The “*psychological incapacity*” must be present at the time of the marriage. In this case, it is as if the person suffering from “psychological incapacity” did not give consent at all. The same need not be apparent at the time of the marriage. It is sufficient if it becomes manifest after the marriage.

“*Psychological incapacity*” refers to no less than mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage. In the case of *Tsoi vs. CA, et al.*, G.R. No. 119190, January 16, 1997, 78 SCAD 57, however, the Supreme Court said that failure of a spouse to provide sex to the other party is an *indicium* of “psychological incapacity.”

What constitutes “psychological incapacity”?

An issue of first impression was raised in one case because of the ruling of the Court of Appeals that the rules on “psychological incapacity” do not apply if one of the spouses is a foreigner. The ruling was held to be erroneous for the reason that the rules apply regardless of the nationality of one of the spouses. If the rule were otherwise, then, it would be very easy to defeat the purpose of the law. It would result in a mockery of our marriage laws. Finally, it would be sanctioning absurdity and unfairness if we distinguish the application of the rules by making it inapplicable if one of the parties is a foreigner.

In *Republic vs. Lolita Quintero-Hamano*, G.R. No. 149498, May 20, 2004, Corona, *J.*, a woman filed a complaint seeking to nullify her marriage on the ground of “psychological incapacity”. She alleged that her husband, failed to meet his duty to live with, care for and support his family. He abandoned them a month after his marriage. She sent him several letters but he never replied. He made a trip to the Philippines but did not care at all to see his family.

In dismissing the complaint, the Court ruled that the totality of evidence fell short of proving that the man was psychologically incapacitated to assume his marital responsibilities. The man’s act of abandonment was doubtlessly irresponsible but it was never alleged nor proven to be due to some kind of psychological illness. After she testified on how he abandoned them, no other evidence was presented showing that his behavior was caused by a psychological disorder. Although, as a rule, there was no need for an actual medical examination, it would have greatly helped respondent’s case had she

presented evidence that medically or clinically identified his illness. They could have been done through an expert witness. This, respondent did not do.

Abandonment is also a ground for legal separation. (Art. 55[10], Family Code). There was no showing that the case at bar was not just an instance of abandonment in the context of legal separation. Psychological defect cannot be presumed from the mere fact that the husband abandoned his family immediately after the celebration of the marriage. As it has been ruled in *Molina*, it is not enough to prove that a spouse failed to meet his responsibility and duty as a married person; it is essential that it must be shown to be incapable of doing so due to some psychological, not physical, illness. There was no proof of natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates a person from accepting and complying with the obligations essential to marriage.

Rules on “psychological incapacity” apply even if the spouse is a foreigner.

According to the appellate court, the requirements in *Molina* and *Santos* do not apply here because the present case involves a “mixed marriage,” the husband being a Japanese national. In proving “psychological incapacity,” there is no distinction between an alien spouse and a Filipino spouse. Courts should not be lenient in the application of the rules merely because the spouse alleged to be psychologically incapacitated happens to be a foreign national. The medical and clinical rules to determine “psychological incapacity” were formulated on the basis of studies of human behavior in general. Hence, the norms used for determining “psychological incapacity” should apply to any person regardless of nationality.

In *Pesca vs. Pesca*, 356 SCRA 588 (2001), the Court declared that marriage is an inviolable social institution that the State cherishes and protects. The Supreme Court said that while it commiserated with respondent, terminating her marriage to her husband may not necessarily be the fitting denouement.

The Supreme Court furthermore said that it is mindful of the policy of the 1987 Constitution to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family. (Art. III, Sec. 12; Art. XV, Sections 1 and 2 of the 1987 Constitution). Thus, any doubt should be resolved in favor

of the validity of the marriage. (Rep. vs. Dagdag, 351 SCRA 425; Rep. vs. Hernandez, 320 SCRA 76).

How “psychological incapacity” may be established.

“*Psychological incapacity*,” as a ground for declaring the nullity of a marriage, may be established by the totality of evidence presented. There is no requirement, however, that the respondent should be examined by a physician or a psychologist as a condition *sine qua non* for such declaration (Marcos vs. Marcos, G.R. No. 136490, October 19, 2000; Choa vs. Choa, G.R. No. 143376, November 26, 2002).

It is sufficient that the totality of the evidence, even without physician’s examination be present. It is enough that the three basic requirements mandated by the Court in *Santos vs. Court of Appeals* (240 SCRA 20) that it be characterized by (a) gravity (b) juridical antecedence (c) incurability be present. The foregoing guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be “medically or clinically identified.” What is important is the presence of evidence that can adequately establish the party’s psychological condition. For indeed, if the totality of evidence presented is enough to sustain a finding of “psychological incapacity,” then actual medical examination of the person concerned need not be resorted to. (Republic vs. CA & Molina, 268 SCRA 198; Marcos vs. Marcos, *supra.*; Choa vs. Choa, *supra.*).

“Psychological incapacity” as ground for declaration of nullity of marriage may not be equated with divorce or legal separation.

Article 36 of the Family Code is not to be confused with a divorce law that cuts the marital bond at the time the causes therefore manifest themselves. It refers to a serious psychological illness afflicting a party even before the celebration of the marriage. It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. These marital obligations are those provided under Article 68 to 71, 220, 221 and 225 of the Family Code.

Neither is Article 36 to be equated with legal separation, in which the grounds need not be rooted in “psychological incapacity” but on physical violence, moral pressure, moral corruption, civil

interdiction, drug addiction, habitual alcoholism, sexual infidelity, abandonment and the like. (Marcos vs. Marcos, *supra*).

In an action for declaration of nullity, medical examination is not a condition sine qua non to a finding of “psychological incapacity” of the party. The totality of evidence must be enough to establish the incapacity.

Case:

**Choa vs. Choa
G.R. No. 143376, November 26, 2002**

Facts:

Leni Choa and Alfonso Choa were married on March 15, 1981. In 1993, Alfonso filed an action for declaration of nullity of their marriage on the ground of Leni’s alleged “psychological incapacity.” Alfonso claimed that the filing by Leni of a series of charges against him is proof of her “psychological incapacity.” These charges include complaints for perjury, false testimony, concubinage and deportation. Alfonso claimed that the filing and prosecution of these cases clearly showed that his wife wanted not only to put him behind bars, but also to banish him from the country. He contended that this is very abnormal for a wife who, instead of protecting the name and integrity of her husband as the father of her children, had acted to the contrary. He also complained about her lack of attention to their children, immaturity and lack of an intention to procreative sexuality because she used to be on the pill even before they got married. Alfonso presented at the trial an expert witness who testified to prove the “psychological incapacity” of Leni. When Alfonso rested his case, Leni filed a demurrer to evidence alleging that he presented nothing to substantiate the alleged “psychological incapacity.” The trial court denied the demurrer. Alfonso went up to the CA which upheld the trial court. Hence, this proceeding before the Supreme Court.

Issue:

Did Alfonso make out a case of “psychological incapacity”?

Held:

No, he did not. The evidence presented by Alfonso is grossly insufficient to support a finding of “psychological incapacity.” It is

the height of absurdity and inequity to condemn her as psychologically incapacitated to fulfill her marital obligations simply because she filed cases against him. Even if taken as true, the alleged lack of attention to their children, immaturity and lack of an intention of procreative sexuality, singly or collectively, does not constitute “psychological incapacity.” The evidence adduced by respondent merely showed that he and his wife could not get along with each other. Mere showing of irreconcilable differences and conflicting personalities in no wise constitutes “psychological incapacity.” The alleged lack of intention of procreative sexuality is belied by the fact that 2 children were born during the marriage. Most telling is the insufficiency, if not incompetence, of the supposed expert witness who utterly failed to identify the root cause of the alleged “psychological incapacity.” He failed to show that the incapacity, if true, was medically or clinically permanent or incurable. Neither did he testify that it was grave enough to bring about the disability of the party to assume the essential obligations of marriage. Furthermore, the assessment of Leni by the expert witness was based merely on description communicated to him by Alfonso. Since the expert witness had no personal knowledge of the facts he testified to, his testimony may be dismissed as unscientific and unreliable.

Sexual infidelity and abandonment do not constitute “psychological incapacity.”

Case:

**David B. Dedel vs. CA, et al.
G.R. No. 151867, January 29, 2004**

Facts:

A man complained about the sexual infidelity of the wife. Aside from that, he said that during their marriage, she turned out to be an irresponsible and immature wife and mother. She had extramarital affairs with several men; a dentist in the Armed Forces of the Philippines; a Lieutenant in the Presidential Security Command and later a Jordanian national.

She was once confined in the Medical City for treatment by Dr. Lourdes Lapuz, a clinical psychiatrist. He alleged that despite the treatment, she did not stop her illicit relationship with the Jorda-

nian national named Mustafa Ibrahim, whom she married and with whom she had two children. However, when Mustafa Ibrahim left the country, she returned to him bringing along her two children by Ibrahim. He accepted her back and even considered the two illegitimate children as his own. Thereafter, on December 9, 1995, she abandoned him to join Ibrahim in Jordan with their two children. Since then, Sharon, would only return to the country on special occasions.

Finally, giving up all hope of a reconciliation with her, he filed on April 1, 1997 a petition seeking the declaration of nullity of his marriage on the ground of “psychological incapacity,” as defined in Article 36 of the Family Code, before the Regional Trial Court of Makati City, Branch 149. Summons was effected by publication in the *Pilipino Star Ngayon*, a newspaper of general circulation in the country considering that she did not reside and could not be found in the Philippines.

He presented Dr. Natividad A. Dayan, who testified that she conducted a psychological evaluation of petitioner and found him to be conscientious, hardworking, diligent, a perfectionist who wants all tasks and projects completed up to the final detail and who exerts his best in whatever he does.

On the other hand, Dr. Dayan declared his wife as suffering from Anti-Social Personality Disorder exhibited by her blatant display of infidelity; that she committed several indiscretions and had no capacity for remorse, even bringing with her the two children of Mustafa Ibrahim to live with petitioner. Such immaturity and irresponsibility in handling the marriage like her repeated acts of infidelity and abandonment of her family are indications of Anti-Social Personality Disorder amounting to “psychological incapacity” to perform the essential obligations of marriage.

After trial, judgment was rendered declaring the marriage void on the ground of “psychological incapacity” on the part of the wife. The Solicitor General appealed to the CA which reversed the judgment holding that the “psychological incapacity” of the wife was not attended by gravity, juridical antecedence and permanence or incurability, and that the totality of the evidence submitted fell short of proof of “psychological incapacity.” The basic question raised in the Supreme Court on appeal was whether the totality of the evidence presented was enough to sustain the “psychological incapacity” of the wife. Or, otherwise stated, did the aberrant sexual behavior of the wife fall within the term “psychological incapacity.”

Held:

No. In the earlier case of *Santos vs. CA*, 310 Phil. 21 (1995), it was said that:

x x x “psychological incapacity” should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed in Article 68 of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of “psychological incapacity” to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. This psychological condition must exist at the time the marriage is celebrated. The law does not evidently envision, upon the other hand, an inability of the spouse to have sexual relations with the other. This conclusion is implicit under Article 54 of the Family Code which considers children conceived prior to the judicial declaration of nullity of the void marriage to be “legitimate.”

“The other forms of psychoses, if existing at the inception of marriage, like the state of a party being of unsound mind or concealment of drug addiction, habitual alcoholism, homosexuality or lesbianism, merely renders the marriage contract voidable pursuant to Article 46, Family Code. If drug addiction, habitual alcoholism, lesbianism or homosexuality should occur only during the marriage, they become mere grounds for legal separation under Article 55 of the Family Code. These provisions, however, do not necessarily preclude the possibility of these various circumstances being themselves, depending on the degree and severity of the disorder, *indicia* of ‘psychological incapacity’.”

“Until further statutory and jurisprudential parameters are established, every circumstance that may have some bearing on the degree, extent and other conditions of that incapacity must, in every case, be carefully exa-

mined and evaluated so that no precipitate and indiscriminate nullity is peremptorily decreed. The well-considered opinion of psychiatrists, psychologists and persons with expertise in psychological disciplines might be helpful or even desirable.”

The Supreme Court went further and said that the difficulty in resolving the problem lies in the fact that a personality disorder is a very complex and elusive phenomenon which defies easy analysis and definition. In this case, her sexual infidelity can hardly qualify as being mentally or physically ill to such an extent that she could not have known the obligations she was assuming, or knowing them, could not have given a valid assumption thereof. (*Republic vs. Dagdag*, 351 SCRA 425 [2001]). It must appear that her promiscuity did not exist prior to or at the inception of the marriage. What was in fact, disclosed by the records was a blissful marital union at its celebration, later affirmed in church rites, and which produced four children.

Her sexual infidelity or perversion and abandonment do not by themselves constitute “psychological incapacity” within the contemplation of the Family Code. Neither could her emotional immaturity and irresponsibility be equated with “psychological incapacity.” (*Desca vs. Desca*, 356 SCRA 425 [2001]). It must be shown that these acts are manifestations of a *disordered personality* which make her completely unable to discharge the essential obligations of the marital state, not merely due to her youth, immaturity (*Hernandez vs. CA*) or sexual promiscuity.

At best, the circumstances relied upon by petitioner are grounds for legal separation under Article 55 of the Family Code. However, it was pointed out in *Marcos vs. Marcos*, 343 SCRA 755 (2000), that Article 36 of the Family Code is not to be equated with legal separation in which the grounds need not be rooted in “psychological incapacity” but on physical violence, moral pressure, civil interdiction, drug addiction, habitual alcoholism, sexual infidelity, abandonment and the like. In short, the evidence presented by petitioner refers only to grounds for legal separation, not for declaring a marriage void.

It was further said that the trial court has no jurisdiction to dissolve their church marriage. The authority to do so is exclusively lodged with the Ecclesiastical Court of the Roman Catholic Church.

Finally, it was said that the Court cannot deny the grief, frustration and even desperation of petitioner in his present situation. Regrettably, there are circumstances, like in this case, where nei-

ther law or nor society can provide the specific answers to every individual problem. (*Santos vs. CA, supra.*). While it sympathized with his marital predicament, it said, its first and foremost duty is to apply the law no matter how harsh it may be.

The rule has to so because no less than the Constitution seeks to uphold the validity of the marriage as it is the foundation of the family.

Mere abandonment of spouse for four (4) years does not amount to “psychological incapacity.”

Facts:

Leouel Santos married Julia on September 20, 1986. After the marriage, they lived with the latter’s parents, then a baby boy was born. There were frequent interferences by Julia’s parents into their affair, they often quarreled as to when they shall start living independently. On May 18, 1988, Julia left for the USA to work as a nurse despite Leouel’s objections. A few months after her departure, she called him and promised to come home to the Philippines after her contract, but she never did. When he went to the USA on training, he tried to locate her, but to no avail; so, when he came back to the Philippines, he filed an action for declaration of nullity of the marriage on the ground of “psychological incapacity.” Julia, through counsel, filed an answer and denied the claim. The case was dismissed by the Regional Trial Court which was affirmed by the Court of Appeals. Before the Supreme Court, he asserted that there is no love and affection from her because of her failure to communicate with him for three years. Hence, she is suffering from “psychological incapacity.”

Held:

The factual settings in the case in no measure come close to the standards required to declare a nullity the marriage of spouses. This is so because “psychological incapacity” must be characterized by: (a) gravity; (b) juridical antecedence; (c) incurability. The incapacity must be grave or serious such that the party would not be capable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.

It should be obvious, looking at all the foregoing disqualifications, including, and most importantly, the deliberation of the Family Code Revision Committee itself, that the use of the phrase “psychological incapacity” under Article 36 of the Family Code has not been meant to comprehend all such possible cases of psychoses as, likewise mentioned by some ecclesiastical authorities, extremely low intelligence, immaturity and like circumstances (cited in Fr. Artemio Baluma’s “Void and Voidable Marriages in the Family Code and their Parallels in Canon Law,” quoting from the Diagnostic Statistical Manual of Mental Disorder by the American Psychiatric Association; Edward Hudson’s “Handbook II for Marriage Nullity Cases”). Article 36 of the Family Code cannot be taken and construed independently of, but must stand in conjunction with existing precepts in our law on marriage. Thus correlated, “psychological incapacity” should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed by Article 68 of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of “psychological incapacity” to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity and inability to give meaning and significance to the marriage. This psychological condition must exist at the time the marriage is celebrated. The law does not evidently envision, upon the other hand, an inability of the spouse to have sexual relations with the other. This conclusion is implicit under Article 54 of the Family Code which considers children conceived prior to the judicial declaration of nullity of the void marriage to be “legitimate.”

The other form of psychoses, if existing at the time of the inception of marriage, like the state of a party being of unsound mind or concealment of drug addiction, habitual alcoholism, homosexuality or lesbianism merely renders the marriage contract voidable pursuant to Article 46, Family Code. If drug addiction, habitual alcoholism, homosexuality or lesbianism should occur during the marriage, they become mere grounds for legal separation under Article 55 of the Family Code. These provisions of the Code, however, do not necessarily preclude the possibility of these various circumstances being themselves, depending on the degree and severity of the disorder, *indicia* of “psychological incapacity.”

Until further statutory and jurisprudential parameters are established, every circumstance that may have some bearing on the degree, extent, and other conditions of that incapacity must, in every case, be carefully examined and evaluated so that no precipitate and indiscriminate nullity is preemptorily decreed. The well-considered opinions of psychiatrists, psychologists, and persons with expertise in psychological disciplines might be helpful or even desirable.

Marriage is not just an adventure but a lifetime commitment. We should continue to be reminded that innate in our society, then enshrined in our Civil Code, and even now still indelible in Article 1 of the Family Code, is that —

“Marriage is 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. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits of this Code.”

Our Constitution is no less emphatic:

“Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Sec. 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.” (Article XV, 1987 Constitution).

The above provisions express so well and so distinctly the basic nucleus of our laws on marriage and the family, and they are no doubt the tenets we still hold on to. (*Santos vs. CA, et al.*, G.R. No. 112019, January 4, 1995, 58 SCAD 17).

When physical incapacities constitute “psychological incapity.”

The Supreme Court in *Santos vs. CA* said that drug addiction, habitual alcoholism, lesbianism or homosexuality may be *indicia*, depending upon the degree and severity, of “psychological incapity.” These are physical incapacities that may constitute “psychologi-

cal incapacity” depending upon their degree or gravity. If drug addiction is so serious and grave that it would cause failure on the part of the spouse to comply with his/her essential duties to the marriage bond, then, the same can be a ground to declare the marriage void on the ground of “psychological incapacity.” But it must be observed that the degree and gravity of drug addiction is a matter of evidence. There must be proof; otherwise, the courts would still uphold the validity of the marriage by reason of public policy.

The Supreme Court said that until further judicial and legal parameters are established, every circumstance that may have any bearing on the degree, extent and other conditions of incapacity must be carefully examined and evaluated to prevent indiscriminate declaration of nullity of marriage due to “psychological incapacity.” It means simply that “psychological incapacity” may be declared depending upon the circumstance of each case. There can be no absolute standards in gauging whether one is suffering from “psychological incapacity” or not. That is exactly the reason why the framers of the Family Code did not define it so as to give an elbow room for judicial interpretation of the subject. Had they made a limited or definite concept, then, the courts would be bound by the same and would limit their application of the law to what has been defined by the law.

Ten months without sex is enough evidence of serious personality disorders sufficient to declare a marriage void.

In a case, *Tsoi vs. CA, et al.*, G.R. No. 119190, January 16, 1997, 78 SCAD 57, the Supreme Court nullified a marriage on the ground that a union without sex is useless. Love is useless unless it is shared with another. It is the sexual intimacy which brings the spouses’ wholeness and oneness. The plaintiff in this case got married to her husband on May 22, 1988 and spent 10 months without sex with her husband. Her first four nights with her husband, a foreigner, was spent sleeping. They stayed for a few days in Baguio, but nothing likewise happened, as her husband took a long walk and slept on a rocking chair for four days in Baguio. They slept on the same bed and in the same room from May 22, 1988 to March 15, 1989 without sex, thus, she could still claim to be a virgin. On January 19, 1989, they decided to have themselves examined and the results showed that the woman was healthy, normal and still a virgin. The woman said that the man was impotent and was a closet homosexual as she once saw him using an eyebrow pencil and applying the cleansing

cream of his mother. She also said that he married her to get a permanent residency status and put up a front that he was a man. The man testified that he loved the woman and contended that he had no physical or mental disability. He said that the reason why the plaintiff filed the case was that she was afraid that she would be forced to return the jewelry given her by his mother and was in fact afraid of having sex with him. He admitted, however, that he had not had sex with her. The doctor examined his penis and the doctor asked him to masturbate. From the original size of two inches, it lengthened by one inch and one centimeter, but the doctor said that despite this, he can still have sexual intercourse. The Supreme Court said that the 10 months cohabitation without sex was enough proof that he was unwilling despite his claims that he loved his wife, to perform the act. This is indicative of a hopeless situation and of a serious personality disorder.

Expounding further on the issue, the Supreme Court said while it is true that the trial court did not make any findings of facts as to who between the two parties refused to have sexual contact with the other, it said that the fact was that, there was never any coitus between them. At any rate, since the action to declare the marriage void may be filed by either party, *i.e.*, even the psychologically incapacitated, the question of who refuses to have sex with the other becomes immaterial.

The Supreme Court further observed that defendant wanted to impress upon the Court that he tried to have sex with his wife or that the reason for him to have refused to have sex with his wife was not psychological but physical disorder. The Supreme Court said:

“We do not agree. Assuming it to be so, petitioner could have discussed with private respondent or asked her what’s ailing her, and why she balks and avoids him everytime he wanted to have sexual intercourse with her. He never did. At least, there is nothing in the record to show that he had tried to find out or discover what the problem with his wife could be. What he presented in evidence is his doctor’s Medical Report that there is no evidence of his impotency and he is capable of erection. Since it is petitioner’s claim that the reason is not psychological but perhaps a physical disorder on the part of the private respondent, it became incumbent upon him to prove such a claim.”

If a spouse, although physically capable but simply refuses to perform his or her essential marriage obligations, and refusal is senseless and constant, Catholic marriage tribunals attribute the causes to “psychological incapacity” than to stubborn refusal. Senseless and protracted refusal is equivalent to “psychological incapacity.” Thus, the prolonged refusal of the spouse to have sexual intercourse with his or her spouse is considered a sign of “psychological incapacity.” (*Psychological incapacity*, G.T. Veloso, p. 20).

“Evidently, one of the essential marital obligations under the Family Code is: ‘To procreate children based on the universal principle that procreation of children through sexual cooperation is the basic end of marriage.’ Constant non-fulfillment of this obligation will finally destroy the integrity or wholeness of the marriage. In the case at bar, the senseless and protracted refusal of one of the parties to fulfill the above marital obligation is equivalent to ‘psychological incapacity.’”

As aptly stated by the respondent court:

“An examination of the evidence convinces us that the husband’s plea that the wife did not want carnal intercourse with him does not inspire belief. Since he is not physically impotent, but he refrained from sexual intercourse during the entire time (from May 22, 1988 to March 15, 1989) that he occupied the same bed with his wife, purely out of sympathy for her feelings, he deserves to be doubted for not having asserted his rights even though she balked. (Tompkins vs. Tompkins, 111 Atl. 599, cited in I Paras, Civil Code, at p. 330). Besides, if it were true that it is the wife who was suffering from incapacity, the fact that the defendant did not go to court and seek the declaration of nullity weakens his claim. This case was instituted by the wife whose normal expectations of her marriage were frustrated by her husband’s inadequacy. Considering the innate modesty of the Filipino woman, it is hard to believe that she would fabricate testimony against her husband if it were not necessary to put her life in order and put to rest her marital status.

“We are not impressed by defendant’s claim that what the evidence proved is the unwillingness or lack of intention to perform the sexual act, which is not ‘psychological incapacity’, and which can be achieved ‘through proper motivation. After almost ten months of cohabitation, the admission that the husband is unwilling or is reluctant to perform the sexual act with his wife whom he professes to

love very dearly, and who has not posed any insurmountable resistance to his alleged approaches, is indicative of a hopeless situation, and of a serious personality disorder that constitutes 'psychological incapacity' to discharge the basic marital covenants within the contemplation of the Family Code."

"While the law provides that 'the husband and wife must live together, observe mutual love and fidelity, x x x (Article 68, Family Code), it is actually the 'spontaneous, mutual affection between husband and wife and not any legal mandate or court order.' (Cuaderno vs. Cuaderno, 120 Phil. 1298). Love is useless unless it is shared with another. Indeed, no man is an island, the cruelest act of a partner in marriage is to say 'I could not have cared less.' This is so because an ungiven self is an unfulfilled self. The egoist has nothing but himself. In the natural order, it is sexual intimacy which brings spouses wholeness and oneness. Sexual intimacy is a gift and a participation in the mystery of creation. It is a function which enlivens the hope of procreation and ensures the continuation of family relations."

"It appears that there is absence of empathy between petitioner and private respondent. That is a shared feeling which between the husband and wife must be experienced not only by having spontaneous sexual intimacy but a deep sense of spiritual communion. Marital union is a two-way process. An expressive interest in each other's feelings at a time it is needed by the other can go a long way in deepening the marital relationship. Marriage is definitely not for children, but for two consenting adults who views the relationship with love *amor gignit amorem*, respect, sacrifice and a continuing commitment to compromise, conscious of its value as a sublime social institution."

"This Court, finding the gravity of the failed relationship in which the parties found themselves trapped in its mire of unfulfilled vows and unconsummated marital obligations, can do no less but sustain the studied judgment of respondent appellate court."

One question has been asked: If both parties are suffering from "psychological incapacity," and one of them would file a suit to declare the marriage void, can the other party invoke the principle of *in pari delicto* to defeat the action? It is believed that the principle of *in pari delicto* does not apply in a suit for declaration of a marriage void on the ground of "psychological incapacity." For, while the law says "a marriage contracted by any party who, at the time of the celebration was psychologically incapacitated" there is nothing to

prevent the court from declaring the marriage void if both of them are suffering from “psychological incapacity.” If the “psychological incapacity” of only one of the parties is sufficient to warrant a declaration of nullity of the marriage, how much more if both of them are suffering from “psychological incapacity”? In the first, only one is incapacitated to comply with the essential duties to the marriage bond. In the second, none of them can comply with their duties to the bond, so, necessarily and with more reason, the marriage must be put to an end.

Effect of partial “psychological incapacity.”

But let us say that one of the parties was declared as one suffering from “psychological incapacity” and thus, the marriage was declared void, can he/she get married again? The answer is in the affirmative; for there can be partial “psychological incapacity” in relation to a partner, but he/she may not be in relation to another.

Defense of *in pari delicto* is inapplicable in “psychological incapacity” cases.

In *Ramon Velasco vs. Norma Villanueva Velasco*, CA-G.R. No. 36075, February 16, 1995, penned by Justice Jesus M. Elbinias, it was said that the act of the wife of living separately from the husband, maintaining sexual relations with another man, boasting to her husband how physically big and macho her paramour is shows a clear lack of love, respect and fidelity to her husband. The Court of Appeals reversed the Regional Trial Court’s decision denying the action for declaration of nullity of the marriage on the ground of “psychological incapacity.”

Case:

Ramon Velasco vs. Norma V. Velasco
CA-G.R. No. 36075, February 16, 1995

Facts:

The un rebutted testimony of the plaintiff on the sexual attitude of the defendant was that the latter even boasted that her paramour was a better partner in bed; described him as *macho*. He also presented letters of the defendant to her paramour telling him

how she missed him. In fact, the defendant even confirmed the truth about the letters. The lower court held that the defendant was still capable of complying with her duties to the marriage bond, hence, an appeal was made with the Court of Appeals.

The Court of Appeals made the observation that from the judicial admission of the parties, they were psychologically incapacitated but it was worse for the defendant. It was said that:

“The adulterous relationship of the defendant with said Donald Tan was adequately substantiated by copies of the letters written by defendant to said paramour. The originals thereof were presented and testified thereon by the plaintiff on direct examination. Counsel for the defendant did not cross-examine the plaintiff on the authenticity of those letters nor on the fact that those letters were obtained from Donald Tan, the addressee thereof. Neither did the defendant, during her direct examination, by way of rebuttal, deny that those letters were written by her. Thus, the authenticity of those letters were deemed admitted, with or without Donald Tan testifying on them.

“Now, in the lecture delivered by former Justice Ricardo Puno on the Family Code at the UP Law Center on November 19, 1988, he cited as one of the examples of ‘psychological incapacity’ ‘excess sex hunger,’ which is satyriasis in men and nymphomania in women. (Cited in Rufus B. Rodriguez, *The Family Code of the Philippines Annotated*, p. 69, 1992 ed.). In this case, the testimonies on record, the letters defendant wrote to her paramour, Donald Tan, and her boast to the plaintiff that Donald Tan had a bigger physique (and all that it implies), a *macho* and better in bed, show that even if she does not have such excessive hunger as to amount to nymphomania, at least she appears to be close to having it.

“It should be noted that the spouses here have been childless for more than 10 years. They have subjected themselves to medical examinations to know the cause of their childlessness. The plaintiff-husband was found to be sterile due to a low sperm count. The defendant-wife herself has admitted to also being barren. Thus, in his strong desire to have a child, even by adoption, the husband broached the idea to his wife, who acceded, and they agreed to adopt the child born out of wedlock of 19 year-old Yvonne Tan.

“The adoption of Yvonne’s child would have filled the spouses’ filial need, and, if it had, one essential obligation of their marriage would have been complied with. But this did not come to pass. The wife became jealous of Yvonne because her husband had been frequenting Yvonne’s dwelling supposedly to visit the child, but often spending his nights with her. Thus, the wife started spying to discover their places of assignments. She eventually found her husband and Yvonne staying in a beachhouse. Whereupon, she confronted the couple scandalously and called the police to arrest him, who was immediately taken to the police station where the incident was blotted to his embarrassment. She then filed with the Department of Justice an administrative case against him for immorality, only to withdraw the case later when he, to prove that she herself was immoral, submitted original copies she had written to Donald Tan.

“One of the essential moral obligations of the spouses to each other, aside from sexual union, is to procreate children — at least one — and found a family. To our mind, when this couple decided to marry each other, they expected to have children of their own. Their psychological make-up, at least that of the husband, at the time of the celebration of their marriage was one of confident anticipation that they were going to have children, as most couples do. This mental frame of the husband was confirmed by subsequent events, such as his intense desire to have a child to the extent of having himself medically examined for a possible cure and the eventual adoption of Yvonne’s child. From those circumstances, we can infer from the basis of the preponderant evidence on record that, at the time of his marriage, he was not psychologically prepared to accept his incapacity, or that of his wife, to bring children to the world, and psychologically incapable of facing the reality of a childless marriage, although this incapacity only manifested when, obsessed with the desire of having a child, he had himself and his wife medically examined.

“In fact, the wife has admitted that their incapacity to procreate children existed at the time of solemnization of their marriage and has persisted for 10 years up to the time the controversy arose.

“It is on the ground of ‘psychological incapacity,’ therefore, that the husband instituted the action *a quo* seeking to have his marriage to the defendant be declared void.

“That he can file an action for this purpose on such ground and only after years following the celebration of their marriage, as he did, is beyond question. The provisions of Article 36 of the Family Code are clear on the point:

‘A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.’ (As amended by E.O. No. 227, July 17, 1987).

‘Moreover, from the actuations of the wife — living separately in the Imbo apartment away from the conjugal home, maintaining sexual liaison with Donald Tan, revealing in her letters to this paramour how she missed him (implying the need to fill her sexual urges), boasting to her husband how physically big (with the usual sexual insinuation) and *macho* this paramour was — it is clear that she lacks the love, respect and fidelity she owes him, so that, although she may not be psychologically incapacitated in the legal sense contemplated in said Article 36 of the Family Code to be entitled to ask for declaration of the nullity of marriage, her actuations are clearly demonstrative of utter insensibility or inability to give meaning and significance to the marriage.’

“All those, added to the “psychological incapacity” of her husband — and even if such incapacity is to be discounted — are, to our mind, compelling reasons to sever their marriage and to let them go their own way, as they in fact have already done, the husband keeping his adopted child and Yvonne, and the wife marrying someone, *physically big and macho*. To preserve their marriage under those circumstances would be to force the spouses to continue committing immorality during their entire lives while remaining married to each other. This certainly is not the intendment of the law.”

“The action *a quo* was properly instituted. There is no question that, as the party who is psychologically incapacitated, he or his wife may file an action for the declaration of the absolute nullity of the marriage on that ground.”

Note that the decision of the Court of Appeals is justified by the rule enunciated in Article 68 of the Family Code that the husband and the wife are obliged to live together, love one another, support, help and observe mutual respect and fidelity. The situation in the

aforementioned case exactly falls under the law for the woman did not show love and respect for the husband anymore by boasting that her paramour was a bigger and better partner in bed. That is adding insult to injury. What is marriage if there is no love, no respect? Under the circumstances, it is better to put an end to the marriage, rather than preserving it, for there would be no peace in the family. There is no solidarity and sanctity of the family to speak of which the Constitution seeks to preserve.

The Court of Appeals recognized the fact that both spouses were suffering from “psychological incapacity,” but it said it was worse for the wife. In short, even the defense of *in pari delicto* would not defeat an action for declaration of nullity of marriage due to “psychological incapacity.” In ordinary contracts, if there is *in pari delicto*, the court would leave the parties where they are. They are not entitled to the relief they are asking for. But in actions for declaration of nullity of marriage on the ground of “psychological incapacity,” such defense is unavailing. It must be observed that the Supreme Court, in *Antonio A.S. Valdes vs. RTC, Quezon City*, silently agreed with the Regional Trial Court on the *in pari delicto* rule. In this case, the lower court voided the marriage even as it recognized their *in pari delicto*. At any rate, it was not the issue as the main case became final and executory in the lower court. But, an examination of Article 36 of the Family Code shows that if “any party” to the marriage is not capacitated to comply with his or her duties to the marriage bond, then, the marriage can be declared void on the ground of “psychological incapacity.” It is believed that if one of the parties is suffering from “psychological incapacity” the marriage can be declared void, then, with more reason if both of the parties are suffering from “psychological incapacity.” The reason is obvious. What would happen to the family if both parties cannot comply with their essential duties to the marriage bond, like loving, supporting, respecting, helping one another and living together? Then, there would be chaos in the family. Since there is no *in pari delicto* in “psychological incapacity” cases, anyone of the parties or both of them can commence the action to declare the marriage void. Even the one suffering from “psychological incapacity” can commence the action. The reason is that, the law does not make any distinction. When the law does not distinguish, we should not distinguish.

Irreconcilable conflicts do not constitute “psychological incapacity.”

Another development on “psychological incapacity” is the case of *Republic vs. CA, et al.*, G.R. No. 108763, February 13, 1997, 79

SCAD 462, where an action for declaration of nullity of marriage was brought due to irreconcilable differences and conflicting personalities of the parties. It was said that in no wise do these things constitute "psychological incapacity." They were more of difficulties, if not outright refusal or neglect in the performance of some marital obligations. It was said that it is not enough to prove that the parties failed to meet their responsibilities and duties as married persons; it is essential that they must be shown to be incapable of doing so, due to some psychological (not physical) illness. The only evidence adduced showed that she and her husband could not get along with each other. There had been no showing of the gravity of the problem; neither its juridical antecedence nor its incurability. It was shown that after a son was born, the man showed signs of immaturity and irresponsibility as a husband and a father since he preferred to spend more time with his peer and friends on whom he squandered his money; that he depended upon his parents for aid and assistance and was never honest with his wife in regard to their finances, resulting in frequent quarrels between them; when he was relieved from his job, she became the sole breadwinner of the family; that they had intense quarrels, as a result of which their relationship was estranged. She resigned later from her job and went to reside with her parents in Baguio City and since then, he had abandoned them. All these things, she said, showed that her husband was suffering from "psychological incapacity," hence, incapable of complying with essential marital obligations and was a highly immature and habitually quarrelsome individual who thought of himself as a king to be served.

The Supreme Court said that the marriage cannot be nullified on the ground of "psychological incapacity". In doing so, the Court laid down some rules or guidelines in the interpretation of Article 36 of the Family Code, thus —

"The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it 'as the foundation of the nation.' It decrees marriage as legally 'inviolable,' thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be 'protected' by the State.

“The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability, and solidarity.

“The root cause of the ‘psychological incapacity’ must be: (a) medically or clinically identified; (b) alleged in the complaint; (c) sufficiently proven by experts; and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless, such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.”

“The incapacity must be proven to be existing at ‘the time of the celebration’ of the marriage. The evidence must show that the illness was existing when the parties exchanged their ‘I do’s.’ The manifestation of the illness need not be perceivable at such time, but the illness must have attached at such moment, or prior thereto.”

“Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.”

“Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, ‘mild characterological peculiarities, mood changes, occasional emotional outbursts’ cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral ele-

ment in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.”

“The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.”

“Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church of the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

‘The following are incapable of contracting marriage:
Those who are unable to assume the essential obligations of marriage due to causes of psychological nature.’

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence — what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church — while remaining independent, separate and apart from each other — shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

The trial court must order the prosecuting attorney or 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 therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution

of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.

**Jurisprudential evolution on Psychological Incapacity.
The Molina guidelines on “psychological incapacity.”**

In *Republic vs. Molina*, the Supreme Court came up with the following guidelines in the interpretation and application of Article 36 of the Family Code for the guidance of the bench and the bar:

- (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family.
- (2) **The root cause of the “psychological incapacity” must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision.** Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestation and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis* (*Salita vs. Magtolis*, 233 SCRA 100, June 13, 1994), nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.
- (3) The incapacity must be proven to be existing at “the time of the celebration” of the marriage. The evidence must show that the illness was existing when the parties exchanged their “I do’s”. the manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

- (4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illness of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his or her own children as an essential obligation of marriage.
- (5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, “mild characterological peculiarities, mood changes, occasional emotional outbursts” cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.
- (6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligations must also be stated in the petition, proven by evidence and included in the text of the decision.
- (7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church of the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x
- (8) The trial court must order the prosecuting attorney or 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 therein his reasons for his agreement or opposition, as the case may be, to the petition.

The Solicitor General, along with the prosecuting attorney, shall submit to the Court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095. (Republic vs. CA, et al., 268 SCRA 198 [1992]).

The guidelines incorporate the three basic requirements earlier mandated by the Court in Santos: “psychological incapacity” must be characterized by (a) gravity (b) juridical antecedence and (c) incurability.” The foregoing guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be “medically or clinically identified.” What is important is the presence of evidence that can adequately establish the party’s psychological condition. For indeed, if the totality of evidence presented is enough to sustain a finding of “psychological incapacity,” then actual medical examination of the person concerned need not be resorted to. (Marcos vs. Marcos, 343 SCRA 755 [2000]).

Observations: No exact parameters on psychological incapacity.

If one looks very deeply into the decisions of the Supreme Court on “psychological incapacity,” a conclusion can be arrived at and that is, there is no uniform decision on the concept. They even tend to conflict with one another. The reason is obvious. The framers of the law did not intend to put a definition of the term in order to give an elbow room for the courts to determine under what circumstances a person may be suffering from “psychological incapacity.”

“Psychological incapacity” has no exact parameters in law. Even the framers of the Family Code admit it. Cases on “psychological incapacity” have to be decided on a case-to-case basis. So far, since the effectivity of the Family Code which provides for “psychological incapacity” as a ground to nullify a marriage, only two cases have been decided nullifying a marriage on such ground (Chi Ming Tsoi v. CA, 334 Phil. 294 [1997]), definitively declared that a spouse was psychologically incapacitated under Article 36 of the Family Code due to his persistent refusal and failure to provide sex to his wife (Republic v. CA, et al., 335 Phil. 664 [1997]), or otherwise known as the Molina Doctrine has given certain parameters in “psychological incapacity” cases. The Supreme Court in *Leonilo Antonio v. Marie*

Ivonne F. Reyes, G.R. No. 155800, March 10, 2006 (Tinga, *J.*) had the opportunity to trace the history and legal guidelines in understanding Article 36. It was said:

Chi Ming Tsoi v. Court of Appeals, wherein the Court definitively concluded that a spouse was psychologically incapacitated under Article 36.

This state of jurisprudential affairs may have led to the misperception that the remedy afforded by Article 36 of the Family Code is hollow, insofar as the Supreme Court is concerned. Yet what *Molina* and the succeeding cases did ordain was a set of guidelines which, while undoubtedly onerous on the petitioner seeking the declaration of nullity, still leave room for a decree of nullity under the proper circumstances. *Molina* did not foreclose the grant of a decree of nullity under Article 36, even as it raised the bar for its allowance.

Legal Guides to Understanding Article 36

“Article 36 of the Family Code states that “[a] marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. The concept of “psychological incapacity” as a ground for nullity of marriage is novel in our body of laws, although mental incapacity has long been recognized as a ground for the dissolution of a marriage.

The Spanish Civil Code of 1889 prohibited from contracting marriage persons “who are not in the full enjoyment of their reason at the time of contracting marriage.” Marriages with such persons were ordained as void, (Spanish Civil Code [1889]) Art. 101 in the same class as marriages with underage parties and persons already married, among others. A party’s mental capacity was not a ground for divorce under the Divorce Law of 1917, (Act No. 2710 [1917]) but a marriage where “either party was of unsound mind” at the time the Marriage Law of 1929. (Act No. 3613 [1929], Section 30[c]). Divorce on the ground of a spouse’s incurable insanity was permitted under the divorce law enacted during the Japanese occupation. (Executive Order No. 141 [1943], Sec. 2[5]). Upon the enactment of the Civil Code as a voidable marriage, the mental capacity, or lack thereof, of the marrying spouse was not among the grounds for declaring a marriage void *ab initio*. (Art. 80, NCC). Similarly among the mar-

riages classified as voidable under Article 45(2) of the Family Code is one contracted by a party of unsound mind.

Such cause for the annulment of marriage is recognized as a vice of consent, just like any insanity on consent freely given which is one of the essential requisites of a contract. The initial common consensus on “psychological incapacity” under Article 36 of the Family Code was that it did not constitute a specie of vice of consent. Justices Sempio-Diy and Caguioa, both members of the Family Code revision committee that drafted the Code, have opined that “psychological incapacity” is not a vice of consent, and conceded that the spouse may have given free and voluntary consent to a marriage but was nonetheless incapable of fulfilling such rights and obligations. Dr. Tolentino likewise stated in the 1990 edition of his commentaries on the Family Code that this “psychological incapacity” to comply with the essential marital obligations does not affect the consent to the marriage. (A. Tolentino, *Civil Code of the Philippines, Commentaries and Jurisprudence*, 274-275 [1990 ed.]).

There were initial criticisms of this original understanding of Article 36 as phrased by the Family Code committee. Tolentino opined that “psychologically incapacity to comply would not be judicially different from physical incapacity of consummating the marriage, which makes the marriage only voidable under Article 45(5) of the Civil Code x x x [and thus] should have been a cause for annulment of the marriage only.” At the same time, Tolentino noted “[it] would be different if it were “psychological incapacity” to understand the essential marital obligations, because then this would amount to lack of consent to the marriage.” These concerns though were answered., beginning with *Santos v. Court of Appeals*, wherein the Court, through Justice Vitug, acknowledged that “psychological incapacity” should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage.

The notion that “psychological incapacity” pertains to the inability to understand the obligations of marriage, as opposed to a mere inability to comply with them, was further affirmed in the *Molina* case. Therein, the Court through then Justice (now Chief Justice) Panganiban observed that “[t]he evidence [to establish “psychological incapacity”] must convince the Court that the parties, or one of them, was mentally or physically ill to such extent that the person could not have known the obligations he was assuming, or

knowing them, could not have given valid assumption thereto.” Jurisprudence since then has recognized that “psychological incapacity” is a malady so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume.” (*Marcos v. Marcos*, 397 Phil. 840 [2000]).

It might seem that this present understanding of “psychological incapacity” deviates from the literal wording of Article 36 of the Family Code, with its central phrase reading “psychologically incapacitated to comply with the essential marital obligations and marriage.” At the same time, it has been consistently recognized by this Court that the intent of the Family Code committee was to design the law as to allow some resiliency in its application, by avoiding specific examples that would limit the applicability of the provision under the principle of *ejusdem generis*. Rather, the preference of the revision committee was for “the judge to interpret the provision on a case-to-case basis, guided by experience, in the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals which, although not binding on the civil courts, may be given persuasive effect since the provision was taken from Canon Law.” (*Salita v. Magtolis*, G.R. No. 106429, June 13, 1994, 233 SCRA 100).

It was likewise observed in *Republic v. Dagdag*:

“Whether or not ‘psychological incapacity’ exists in a given case calling for annulment (should be nullity) of a marriage depends crucially, more than in any field of the law, on the facts of the case. Each case must be judged, not on the basis of prior assumptions, predilections or generalizations but according to its own facts. In regard to ‘psychological incapacity’ as a ground for annulment of (should be nullity) marriage, it is right to say that no case is on ‘all fours’ with another case. The trial judge must take pains in examining the factual milieu and the Appellate Court must, as much as possible, avoid substituting its own judgment for that of the trial court.” (G.R. No. 109975, February 9, 2001, 351 SCRA 425 citing *Republic v. CA*, 268 SCRA 198 [1997]).

The Court thus acknowledges that the definition of “psychological incapacity,” as intended by the revision committee, was not cast in intractable specifics. Judicial understanding of “psychological incapacity” may be informed by evolving standards, taking into

account the particulars of each case, current trends in psychological and even canonical thought, and experience. It is under the auspices of the deliberate ambiguity of the framers that the Court has developed the *Molina* rules, which have been consistently applied since 1997. *Molina* has proven indubitably useful in providing a unitary framework that guides courts in adjudicating petitions for declaration of nullity under Article 36 of the Family Code. At the same time, the *Molina* guidelines are not set in stone, the clear legislative intent mandating a case-to-case perception of each situation, and *Molina* itself arising from this evolutionary understanding of Article 36 of the Family Code. There is no cause to disavow *Molina* at present, and indeed the disposition of this case shall rely primarily on that precedent. There is need though to emphasize other perspectives as well which should govern the disposition of petitions for declarations of nullity under Article 36 of the Family Code.

Of particular notice has been the situation of the Court, first in *Santos* then in *Molina*, of the considered opinion of Canon Law experts in the interpretation of “psychological incapacity.” This is but unavoidable, considering that the Family Code committee has bluntly acknowledged that the concept of “psychological incapacity” was derived from Canon Law, and as one of the members admitted, enacted as a solution to the problem of marriages already annulled by the Catholic Church but still existent under Civil Law. It would be disingenuous to disregard the influence of Catholic Church doctrine in the formulation and subsequent understanding of Article 36, and the Court has expressly acknowledged that interpretations given by the National Appellate Matrimonial Tribunal of the local Church, while not controlling or decisive, should be given great respect by our courts. Still, it must be emphasized that the Catholic Church is hardly the sole source of influence in the interpretation of Article 36. Even though the concept may have been derived from Canon Law, its incorporation into the Family Code and subsequent judicial interpretation occurred in wholly secular progression. Indeed, while Church thought on “psychological incapacity” is merely persuasive on the trial courts, judicial decisions of this Court interpreting “psychological incapacity” are binding on lower courts.

Now is also an opportune time to comment on another common legal guide utilized in the adjudication of petitions for declaration of nullity under Article 36. All too frequently, this Court and lower courts, in denying petitions of the kind, have favorably cited Sections 1 and 2, Article XV of the Constitution, which respectively state that “[t]he State recognizes the Filipino family as the foundation of

the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development,” and that “marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.” These provisions highlight the importance of the family and the constitutional protection accorded to the institution of marriage.

But the Constitution itself does not establish the parameters of state protection to marriage as a social institution and the foundation of the family. It remains the province of the legislature to define all legal aspects of marriage and prescribe the strategy and the modalities to protect it, based on whatever socio-political influences it deems proper, and subject of course to the qualification that such legislative enactment itself adheres to the Constitution and the Bill of Rights. This being the case, it also falls on the legislature to put into operation the constitutional provisions that protect marriage and the family. This has been accomplished at present through the enactment of the Family Code, which defines marriage and the family, spells out the corresponding legal effects, imposes the limitations that affect married and family life, as well as prescribes the grounds for declaration of nullity is reflective of the constitutional mandate to protect marriage, such action in fact merely enforces a statutory definition of marriage, not a constitutionally ordained decree of what marriage is. Indeed, if circumstances warrant, Sections 1 and 2 of Article XV need not be the only constitutional considerations to be taken into account in resolving a petition for declaration of nullity.

Indeed, Article 36 of the Family Code, in classifying marriages contracted by a psychologically incapacitated person as a nullity, should be deemed as an implement of this constitutional protection of marriage. Given the avowed State interest in promoting marriage as the foundation of the family, which in turn serves as the foundation of the nation, there is a corresponding interest for the State to defend against marriages ill-equipped to promote family life. Void *ab initio* marriages under Article 36 do not further the initiatives of the State concerning marriage and family, as they promote wedlock among persons who, for reasons independent of their will, are not capacitated to understand or comply with the essential obligations of marriage.”

The parameters on psychological capacity have not been defined by the framers of the Family Code. What constitutes it depends upon circumstances of each case. In short, each case gives the Court an opportunity to determine whether the evidence presented would

warrant the declaration of nullity of marriage on the ground of psychological capacity. Such situation arose in a case where the man alleged that the wife cheated him on her true personality, such that, the acts of cheating were so deep that dimmed her capacity to comply with her marital duties. As a prelude in rendering a judgment nullifying the marriage, the Supreme Court said:

“Statistics never lie, but lovers often do, quipped a sage. This sad truth has unsettled many a love transformed into matrimony. Any sort of deception between spouses, no matter the gravity, is always disquieting. Deceit to the depth and breadth unveiled in the following pages, dark and irrational as in the modern *noir* tale, dims any trace, of certitude on the guilty spouse’s capability to fulfill the marital obligations even more.”

Case:

Leonilo Antonio vs. Marie Ivonne F. Reyes
G.R. No. 155800, March 10, 2006
(Tinga, J.)

Facts:

Leonilo and Ivonne got married barely a year after their meeting. They begot three children. Leonilo filed a complaint for declaration of nullity of their marriage on the ground of “psychological incapacity” claiming that Ivonne lied about herself, the people around her, her occupation, income, educational attainment and other events or things, to wit:

1. She concealed the fact that she previously gave birth to an illegitimate son, and instead introduced the boy to petitioner as the adopted child of her family. She only confessed the truth about the boy’s parentage when petitioner learned about it from other sources after their marriage.
2. She fabricated a story that her brother-in-law, Edwin David, attempted to rape and kill her when in fact, no such incident occurred.
3. She misrepresented herself as a psychiatrist to her obstetrician, and told some of her friends that she gradu-

ated with a degree in psychology, when neither was true.

4. She claimed to be a singer or a free-lance voice talent affiliated with Blackgold Recording Company (Blackgold); yet, not a single member of her family ever witnessed her alleged singing activities with the group. In the same vein, she postulated that a luncheon show was held at the Philippine Village Hotel in her honor and even presented an invitation to that effect but he discovered per certification by the Director of Sales of said hotel that no such occasion had taken place.
5. She invented friends named Babes Santos and Via Marquez, and under those names, sent lengthy letters to him claiming to be from Blackgold and touting her as the “number one moneymaker” in the commercial industry worth P12 million. He later found out that she herself was the one who wrote and sent the letters to him when she admitted the truth in one of their quarrels. He likewise realized that Babes Santos and Via Marquez were only figments of her imagination when he discovered they were not known in or connected with Blackgold.
6. She represented herself as a person of greater means, thus, she altered her payslip to make it appear that she earned a higher income. She bought a sala set from a public market but told him that she acquired it from a famous furniture dealer. She spent lavishly on unnecessary items and ended up borrowing money from other people on false pretexts.
7. She exhibited insecurities and jealousies over him to the extent of calling up his officemates to monitor his whereabouts. When he could no longer take her unusual behavior, he separated from her in August 1991. He tried to attempt a reconciliation but since her behavior did not change, he finally left her for good in November 1991.

In support of his petition, he presented Dr. Dante Herrera Abcede (Dr. Abcede), a psychiatrist, and Dr. Arnulfo V. Lopez (Dr. Lopez), a clinical psychologist, who stated, based on the tests they conducted, that he was essentially a normal, introspective, shy and conservative type of person. On the other hand, they observed that her persistent and constant lying to him was abnormal or pathologi-

cal. It undermined the basic relationship that should be based on love, trust and respect. They further asserted that her extreme jealousy was also pathological. It reached the point of paranoia since there was no actual basis for her to suspect that he was having an affair with another woman. They concluded that she was psychologically incapacitated to perform her essential marital obligations.

In opposing the petition, she claimed that she performed her marital obligations by attending to all the needs of her husband. She asserted that there was no truth to the allegation that she fabricated stories, told lies and invented personalities. She presented her version, thus:

1. She concealed her child by another man from petitioner because she was afraid of losing her husband.
2. She told petitioner about David's attempt to rape and kill her because she surmised such intent from David's act of touching her back and ogling her from head to foot.
3. She was actually a BS Banking and Finance graduate and had been teaching psychology at the Pasig Catholic School for two (2) years.
4. She was a free-lance voice talent of Aris de las Alas, an executive producer of Channel 9 and she had done three (3) commercials with McCann Erickson for the advertisement of Coca-cola, Johnson & Johnson, and Traders Royal Bank. She told petitioner she was a Blackgold recording artist although she was not under contract with the company, yet she reported to the Blackgold office after office hours. She claimed that a luncheon show was indeed to be held in her honor at the Philippine Village Hotel on 8 December 1979.
5. She vowed that the letters sent to petitioner were not written by her and the writers thereof were not fictitious. Bea Marquez Recto of the Recto political clan was a resident of the United States while Babes Santos was employed with Saniwares.
6. She admitted that she called up an officemate of her husband but averred that she merely asked the latter in a diplomatic manner if she was the one asking for chocolates from him, and not to monitor her husband whereabouts.

She presented a doctor who made the conclusion based on studies that her regressive behavior, gross neuroticism, psychotic tendencies and poor control of impulses which are signs of disabling trends were not elicited from her, hence, she is not psychologically incapacitated to comply with her duties to the marriage bond.

After trial, the lower court declared her psychologically incapacitated to fulfill her marital duties due to her fantastic ability to invent and fabricate stories and personalities as this enabled her to live in a world of make-believe. This rendered her incapable of giving meaning and significance to her marriage. Before trial, the Metropolitan Tribunal of the Archdiocese of Manila annulled the Catholic marriage of the spouses on the ground of lack of due discretion on the part of the parties. While the case was pending in the CA, the Metropolitan Tribunal's ruling was affirmed by the National Appellate Matrimonial Tribunal which held that it was only Ivonne who was impaired by lack of due discretion. The decision was upheld by the Roman Rota of the Vatican. He alerted the CA of this decision. The CA however ruled that the totality of the evidence was insufficient to declare her psychologically incapacitated. Leonilo appealed to the Supreme Court which relied upon the ruling in *Republic vs. CA* (also known as the *Molina* case), in reversing the CA and declaring her as psychologically incapacitated to comply with her duties to the marriage bond. The Supreme Court —

Held:

First: Leonilo had sufficiently overcome the burden in proving the “psychological incapacity” of his spouse. He presented witnesses to corroborate his allegations on his wife's behavior. He presented witnesses who testified on her aberrant behavior which was tantamount to “psychological incapacity.”

Second: The root cause of her “psychological incapacity” has been medically or clinically identified, and incurable.

Third: Her “psychological incapacity” was established to have clearly existed at the time of and even before the celebration of their marriage. She fabricated friends and put the husband in the dark about the real parentage of her child.

Fourth: The gravity of the “psychological incapacity” is sufficient to prove her disability to assume the essential obligations of marriage.

It is immediately discernible that the parties had shared only a little over a year of cohabitation before the exasperated petitioner

left his wife. Whatever such circumstance speaks of the degree of tolerance of Leonilo, it likewise supports the belief that Ivonne’s “psychological incapacity” was so grave in extent that any prolonged marital life was dubitable.

The lies attributed to her were not adopted as false pretenses to induce Leonilo into marriage with her. They indicate a failure on her part to distinguish truth from fiction or at least abide by the truth. A person unable to distinguish between fantasy and reality would be unable to comprehend the legal nature of the marital bond, much less its psychic meaning and the corresponding obligations to marriage, including parenting. One unable to adhere to reality cannot be expected to adhere as well to any legal or emotional commitments.

Fifth: She is evidently unable to comply with her duties to the marriage bond defined in Articles 68 to 71 of the Family Code more specifically to live together, observe mutual love, respect and fidelity, and render mutual help and support. It is difficult to see an inveterate pathological liar to be able to commit to the basic tenets of relationship between spouses based on love, trust, and respect.

Sixth: The CA failed to consider the fact that their marriage has been nullified by the Catholic church. It deemed it inconsequential, but such act is in contravention of Molina which held that interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church of the Philippines, while not controlling, should be given weight and respect by the courts.

Whether a person declared psychological incapable can still remarry.

A person who has been declared psychologically incapacitated may still remarry.

In *Antonio vs. Reyes*, the Supreme Court even recognized the grave character of the “psychological incapacity” of the woman to the end that the judgment of the Roman Rota of the Vatican appended to its judgment declaring the woman as psychologically incapacitated a restrictive clause to the sentence of nullity prohibiting her from contracting another marriage without the Tribunal’s consent. The restrictive clause states:

“A restrictive clause is herewith attached to this sentence of nullity to the effect that the respondent may not

enter into another marriage without the express consent of this Tribunal, in deference to the sanctity and dignity of the sacrament of matrimony, as well as for the protection of the interided spouse.”

This clearly implies that a person who is psychologically incapacitated may contract marriage again. The reason is that, there is no such thing as absolute “psychological incapacity.” It is only relative, in the sense that one may be incapacitated with respect to one partner, but not necessarily with respect to all.

Article 37. Marriages between the following are incestuous and void from the beginning, whether the relationship between the parties be legitimate or illegitimate:

- (1) Between ascendants and descendants of any degree; and**
- (2) Between brothers and sisters, whether of the full or half blood. (81a)**

Rules on incestuous marriages.

- (1) The law declares void incestuous marriages. There are reasons, like:
 - (a) Science and experience have established beyond cavil that such intermarriages very often result in deficient and degenerate offspring which, occurring to any great extent, would amount to a serious deterioration of the race (Am. Jur. Vol. 35, pp. 256-266);
 - (b) It is abhorrent to the nature of man and not only to civilized men, but also to barbarous and semi-civilized people; and
 - (c) It tends to confuse rights incident to the family relations.
- (2) When the law speaks of incestuous marriages, the same refer to marriages of persons who are closely related by blood in the direct line, whether legitimate or illegitimate. The reason for the invalidity of these marriages is that, incestuous marriages debase the family, violate morals and decency. In the Philippines, such marriages are generally frowned upon by society and there is strong public opin-

ion against legalizing them. (Tolentino, *Civil Code*, Book I, 1974 ed., p. 256).

Hence, if a grandfather marries a granddaughter, the marriage is void because it is incestuous. The same would also be true even if the relationship is illegitimate.

- (3) Brothers and sisters cannot marry; otherwise, the marriage is void. The rule is true whether the relationship is that of full or half blood or legitimate or illegitimate. Even if they get married abroad and it is valid there as such, the same is also void. What determines the capacity of the person to marry is his national law. (See Article 15, New Civil Code). This is especially true because of Article 5 of the New Civil Code which provides that acts executed against the provisions of mandatory or prohibitory laws shall be void.

Article 38. The following marriages shall be void from the beginning for reasons of public policy:

- (1) **Between collateral blood relatives, whether legitimate or illegitimate, up to the fourth civil degree;**
- (2) **Between step-parents and stepchildren;**
- (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; and**
- (9) **Between parties where one, with the intention to marry the other, killed that other person's spouse, or his or her own spouse. (82a)**

The law speaks of void marriages by reason of public policy, as public policy frowns upon those who are closely related by blood or artificial relationship from marrying each other.

Collateral relatives within the fourth civil degree.

Relatives within the fourth civil degree or first cousins cannot legally marry. The marriage is void even if the relationship is legitimate or illegitimate. A marriage of first cousins is not sanctioned by Filipino custom and is, moreover, injurious to the healthy development of the race. (Report of the Code Commission — Civil Code).

Illustration:

X is the legitimate son of A and B. Y is the legitimate daughter of C and D. A and C are brothers. X and Y are legitimate first degree cousins. Under the law, they cannot get married. Otherwise, the marriage is void by reason of public policy.

But suppose the relationship is illegitimate where A is the legitimate son of F and G, and C is the illegitimate daughter of A with another woman. Then A marries T and they have a son D. C marries S and they have daughter E. D and E have an illegitimate relationship, but they are first degree cousins, hence, the law prohibits them from marrying, otherwise, the marriage is void *ab initio*.

Step-parents and stepchildren.

A and B are married. They have a son X. When B died, A married C. Then A died, C and X got married. Definitely, their marriage is void because it is a marriage between a stepmother and a stepson. The invalidity of the marriage is based on morals and good customs. In fact, it is void by reason of public policy.

Parents-in-law and Children-in-law.

A and B are married. They have a son X, who married Y. B and X died. Y and A cannot contract a valid marriage because they are in-laws. Marriage between a parent-in-law and a child-in-law is void by reason of public policy.

Void by reason of adoption.

A and B are married. They adopted X. When A died, B and X wanted to get married. They cannot, otherwise, the marriage is void,

as they have the relationship of adopting parent and adopted child. While the relationship is artificial, yet, the law is founded on public policy as the adopted child has the same rights as that of a legitimate child.

The rule is true even if A in the above-cited example is single. He cannot marry his adopted daughter by reason of public policy.

The rule is likewise applicable if X got married to Y and X would die. A cannot marry Y, the surviving spouse of X, since a surviving spouse of the adopted cannot marry the adopter.

Still, the marriage is void if it is between the legitimate child of A and B and X, because X has been elevated to the status of a legitimate child. So, it is as if X and the legitimate child of A and B are brothers and sisters. Still, that is abhorred by law and public policy.

Suppose A and B adopted X and Y, still, the latter cannot get married because the law prohibits the marriage of both adopted children. They are elevated to the status of legitimates; hence, it is as if they are now brothers and sisters.

Void by reason of intent to kill.

A and B are married. A wants to marry X, so he killed his wife B. Thereafter, A married X. The marriage is void by reason of public policy. It is not only contrary to law, but it is also contrary to public policy to kill another.

The rule is also applicable if, A would kill Y, the spouse of X. The reason is the same.

The law prohibits parties where one, with the intent to marry the other, killed the other person's spouse or his or her own spouse.

If the killing is accidental, the law does not apply and the marriage is valid. However, if the killing is intentional, the marriage is void. To allow such marriage would promote criminality, where it would be easy to eliminate one's spouse and get married with another. It would also promote immorality.

Article 39. The action or defense for the declaration of absolute nullity of a marriage shall not prescribe. (As amended by R.A. No. 8533).

Action to declare a void marriage void is imprescriptible.

If the marriage is void, an action for the declaration of its nullity does not prescribe. A defense based thereon does not also prescribe. This is similar to Article 1410, New Civil Code, where the law says that an action or defense based on the nullity of a contract does not prescribe.

In *Wiegel vs. Judge Sempio-Diy* (143 SCRA 499), it was ruled that a subsequent marriage of one of the spouses of a prior void marriage is itself void if it is contracted before a judicial declaration of nullity of the previous marriage.

Prior to R.A. No. 8533, where the marriage was contracted under the Civil Code, *i.e.*, before the effectivity of the Family Code, an action to declare it void on the ground of “psychological incapacity” of one of the parties prescribes in ten (10) years after the effectivity of the Family Code.

The general rule is that, if a contract is void, there is no use to have it declared void. This used to be the jurisprudential law. (*People vs. Aragon*, 100 Phil. 1033). But later on it was said that even if a marriage is void, there is a need to have it declared void because no one should decide for himself the invalidity of his marriage. A court proceeding should be conducted to have it declared void. Then later on, the rule was reinstated that there is no need for a void marriage to be declared void.

Article 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. (n)

There is a need to have a void marriage declared void; reasons; rules.

It does not follow that if a marriage is void, the spouses can just remarry. This new provision of the law requires that for purposes of remarriage, the previous void marriage must first be declared void. This is actually a reproduction of the doctrine in *Wiegel vs. Sempio-Diy* (143 SCRA 499), where the Supreme Court ruled that even if the marriage is void, there is still a need for the declaration of nullity.

The history of the rule that a void marriage must first be declared void before a party may contract a subsequent marriage can be traced from the old case of *People vs. Aragon*, 100 Phil. 1033, where

it was ruled that where the marriage is void from its performance, no judicial decree is necessary to establish its validity. Later on, the Supreme Court in *Wiegel vs. Sempio-Diy*, 143 SCRA 499, said that there is a need to declare a void marriage void since the parties cannot decide for themselves the invalidity of their marriage. In *Yap vs. Paras*, 145 SCRA 229, the Supreme Court reverted to the Aragon doctrine that there is no need to declare null and void a void marriage. The present law, Article 40 of the Family Code requires that the absolute nullity of a previous marriage be declared as it is solely on the basis of a final judgment declaring such previous marriage void, that a party can remarry.

The rule in Article 40 of the Family Code reaffirms the rule that even if the marriage is void, there has yet to be a judgment declaring it void, for it is solely on the basis of that final judgment that a party can remarry. But remarriage is not the sole purpose of declaration of nullity of a marriage, as it can be declared void for other purposes.

In *Roberto Domingo vs. CA, et al.*, G.R. No. 104818, September 17, 1993, 44 SCAD 955, Delia and Roberto were married. Unkown to Delia, Roberto was previously married to Emerlinda dela Paz; hence, she filed a petition for declaration of nullity of the second marriage as Emerlinda sued them for bigamy. Roberto was unemployed and totally dependent upon Delia as she was working in Saudi Arabia. In one of her vacations, she discovered that he was cohabiting with another woman and that he was disposing their properties without her consent. Roberto filed a Motion to Dismiss on the ground that the petition stated no cause of action it being superfluous and unnecessary, their marriage being void. The motion was denied. Instead of answering, he filed a special civil action for *certiorari* and *mandamus* which the Court of Appeals dismissed.

One issue raised before the SC, was:

Whether or not a petition for judicial declaration of a void marriage is necessary. If in the affirmative, whether the same should be filed only for purposes of remarriage.

Held:

Yes, it is necessary. A declaration of the absolute nullity of a marriage is now explicitly required either as a cause of action or a defense. (Article 39, Family Code). Where the absolute nullity of a previous marriage is sought to be invoked for purposes of contradict-

ing a second marriage, the sole basis acceptable in law for said projected marriage to be free from legal infirmity is a final judgment declaring the previous marriage void. (Article 40, Family Code).

In fact, the requirement for a declaration of absolute nullity of a marriage is also for the protection of the spouse who, believing that his or her marriage is illegal and void, marries again. With the judicial declaration of the nullity of his or her first marriage, the person who marries again cannot be charged with bigamy. (See also *Terre vs. Terre*, 211 SCRA 6 [1992]).

It is the theory of the petitioner that the petition for declaration of nullity of the marriage is for the purpose of remarriage only, such that failure to allege this purpose will warrant the dismissal.

Article 40 of the Family Code provides:

“The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.
(n)”

Crucial to the proper interpretation of Article 40 is the position in the prohibition of the word “solely.” As it is placed, the same shows that it is meant to qualify “final judgment declaring such previous marriage void.” Realizing the need for careful craftsmanship in conveying the precise intent of the Committee members, the provision in question, as it finally emerged, did not state “The absolute nullity of a previous marriage maybe invoked solely for purposes of remarriage,” in which case “solely” would clearly qualify the phrase “for purposes of remarriage.” Had the phraseology been such, the interpretation of petitioner would have been correct and, that is, that the absolute nullity of a previous marriage maybe invoked solely for purposes of remarriage, thus rendering irrelevant the clause “on the basis solely of a final judgment declaring such previous marriage void.”

That Article 40 as finally formulated included the significant clause denotes that such final judgment declaring the previous marriage void need not be obtained only for purpose of remarriage. Undoubtedly, one can conceive of other instances where a party might well invoke the absolute nullity of a previous marriage for purposes other than remarriage, such as in case of an action for liquidation, partition, distribution and separation of property between the erst-

while spouses, as well as an action for the custody and support of their common children and the delivery of the latter's presumptive legitimes. In such cases, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity. These need not be limited solely to an earlier final judgment of a court declaring such previous marriage void. Hence, in the instance where a party who has previously contracted a marriage which remains subsisting desires to enter into another marriage which is legally unassailable, he is required by law to prove that the previous one was an absolute nullity. But this he may do on the basis solely of a final judgment declaring such previous marriage void.

The interpretation of the petitioner is quite restrictive. His position that private respondent's failure to state in the petition that the same is filed to enable her to remarry will result in the dismissal of the petition is untenable. This misconstruction was anticipated by the Code Committee, thus:

“That the law seeks to ensure that a prior marriage is no impediment to a second sought to be contracted by one of the parties may be gleaned from new information required in the Family Code to be included in the application for a marriage license, *viz.*, ‘If previously married, how, when and where the previous marriage was dissolved and annulled.’ ”

Reverting to the case before us, petitioner's interpretation of Article 40 of the Family Code is, undoubtedly, quite restrictive. Thus, his position that private respondent's failure to state in the petition that the same is filed to enable her to remarry will result in the dismissal of S.P. No. 1989-J is untenable. His misconstruction of Article 40 resulting from the misplaced emphasis on the term “solely” was in fact anticipated by the members of the Committee —

“Dean Gupit commented that the word ‘only’ maybe construed to refer to ‘for purposes of remarriage.’ Judge Diy stated that ‘only’ refers to ‘final judgment.’ Justice Puno suggested that they say ‘on the basis only of a final judgment.’ Professor Baviera suggested that they use the legal term ‘solely’ instead of ‘only’ which the Committee approved.”

In the case of *Domingo vs. CA*, there was a mistaken notion that the only or sole purpose of declaration of nullity of a marriage

is for remarriage purposes. The Supreme Court, as can be gleaned from the case cited, answered it in the negative. It can be for other purposes.

Void marriage must be declared void.

The case of *Susan Nicdao Cariño vs. Susan Yee Cariño*, G.R. No. 132529, February 2, 2001 is a case where a policeman married twice. The first marriage was contracted without a marriage license. Then, he contracted another marriage without the first having been declared void. Following earlier rulings, the Supreme Court said that the second marriage is void. Under Article 40 of the Family Code, the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. However, for purposes other than remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to the determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even after the death of the parties thereto, so long as it is essential to the determination of the case. (*Niñal vs. Bayadog*, G.R. No. 133778, March 14, 2000). In such instances, evidence must be adduced.

Necessity of Judicial Declaration of Nullity of Marriage.

The judicial declaration of nullity of marriage is not intended solely for remarriage. It can be declared void for other purposes.

Under Article 40 of the Family Code, the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. Meaning, where the absolute nullity of a previous marriage is sought to be invoked for the purpose of contracting a second marriage, the sole basis acceptable in law, for said projected marriage to be free from legal infirmity, is a final judgment declaring the previous marriage void. For other purposes, such as but not limited to the determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even after the death of the parties thereto and even in a suit not directly instituted to question the validity of said marriage, so long as it is essential to the determination of the case. In such cases,

the marriage may still be declared void. (Niñal, et al. vs. Bayadog, G.R. No. 133738, March 14, 2000). In such instances, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity.

Judicial declaration of nullity of previous void marriage.

Case:

Terre vs. Terre 211 SCRA 6, July 2, 1992

Facts:

Complainant was married to her first cousin. Respondent was a law student and single. He courted her notwithstanding his knowledge that she is married. When complainant explained that nothing will come out of their relationship since she was married, respondent clarified that her marriage was void *ab initio* since she and her first husband were first cousins. Convinced by his explanation and having secured favorable advice from her mother and ex-in-laws, she agreed to marry him. In their marriage license, despite complainant's objection, respondent wrote "single" as her status, explaining that since her marriage was void *ab initio*, there was no need to go to court to declare it as such. A child was born out of their union. Respondent subsequently disappeared. All through their married state up to the time of respondent's disappearance, complainant supported him, in addition to the allowance the latter was getting from his parents. Complainant was unaware of the reason for respondent's disappearance until she found out later that he married a certain H.M. Complainant filed an administrative case for disbarment against respondent who invoked the invalidity of his marriage with the complainant as his defense. Rule on the merit of his defense.

Held:

When the second marriage was entered into, respondent's prior marriage with complainant was subsisting, no judicial action having been initiated or any judicial declaration obtained as to the nullity of such prior marriage of respondent with complainant.

Respondent sought to defend himself by claiming that he had believed in good faith that his prior marriage with complainant was

null and void *ab initio* and that no action for a judicial declaration of nullity was necessary.

The Court considers this claim on the part of the respondent as a spurious defense. In the first place, respondent has not rebutted complainant's evidence as to the basic facts which underscore the bad faith of the respondent. In the second place, that pretended defense is the same argument by which he had inveigled complainant into believing that her prior marriage being incestuous (now contrary to public policy under Article 38, Family Code) and void *ab initio*, she was free to contract a second marriage with the respondent. Respondent, being a lawyer, knew or should have known that such an argument ran counter to the prevailing case law of this Court which holds that for purposes of determining whether a person is legally free to contract a second marriage, a judicial declaration that the first marriage was null and void *ab initio* is essential. (Gomez vs. Lipan, 33 SCRA 615 [1970]; Vda. de Consuegra vs. GSIS, 37 SCRA 316 [1971]; Wiegel vs. Hon. Sempio-Diy, 143 SCRA 499 [1986]). This rule has been cast into statutory form by Article 40 of the Family Code. (E.O. No. 209, dated 6 July 1987). Even if we were to assume, *arguendo* merely, that respondent held that mistaken belief in good faith, the same result will follow. For if we are to hold respondent to his own argument, his first marriage to complainant must be deemed valid, with the result that his second marriage to H.M. must be regarded as bigamous and criminal in character.

Reason for the law.

The reason behind the rule that even if the marriage is void, there is a need to have it declared void is because of the fact that the parties to the marriage cannot decide for themselves the invalidity of their marriage. This is especially so that no less than the Constitution seeks to preserve the sanctity of the marriage, it being the foundation of the family. More specifically, the Constitution provides:

“The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. x x x.” (Art. II, Sec. 12, Constitution).

In *Antonio Valdez vs. RTC, Branch 102, Quezon City, et al.*, G.R. No. 122749, July 31, 1996, 72 SCAD 967, it was said that the

declaration of nullity of a prior marriage is a rule that somehow recognizes the philosophy and an old doctrine that void marriages are inexistent from the very beginning and no judicial decree is necessary to establish their nullity. In now requiring for purposes of remarriage, the declaration of nullity by final judgment of the previously contracted void marriage, the present law aims to do away with any continuing uncertainty on the status of the second marriage.

Note that the general rule is that, if a contract is void, it is non-existent. It creates no rights, it establishes no obligations. But the law treats marriage differently as it says that it is 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. It is the foundation of the family and an inviolable social institution whose nature, consequences and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code. (Article 1, Family Code). While in an ordinary contract, the parties can stipulate on terms and conditions within the bounds of law, morals and public policy (Article 1306, New Civil Code), yet, the parties to a marriage cannot stipulate on terms and conditions for the efficacy of their marriage, as it is the law that determines the same, except that they can stipulate on the kind of property relationship that would govern them during the marriage. While in an ordinary contract, the same is without effect if it is void. In a marriage, the law even recognizes the effects of a void marriage prior to the declaration of their nullity. Article 54 of the Family Code provides:

“Children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory, shall be considered legitimate. Children conceived or born of the subsequent marriage under Article 53 shall likewise be legitimate.”

The aforecited law clearly indicates that a marriage is not an ordinary contract. It should not be treated like an ordinary contract; that for as long as it has not been declared void, there are legal effects which must be recognized.

Void marriage as a legal impediment to “remarry.”

One question has been asked: If there is a prior existing marriage of A and B, but it is void, (a) can anyone of them just get mar-

ried? (b) Is that void marriage a legal impediment to marry once again?

(a) No. This is so because of the present rule that there is a need to have a void marriage declared void. In fact, Art. 39 of the Family Code provides that the action or defense for the declaration of absolute nullity of a previous marriage shall not prescribe. Furthermore, the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. (Art. 40, Family Code). It is therefore clear that even if a marriage is void, it must be declared void first because the parties cannot decide for themselves the invalidity of their marriage. In *Donato vs. Luna*, G.R. No. 53642, April 15, 1988, it was ruled that assuming that the first marriage was null and void on the ground alleged by the petitioner, the fact would not be material to the outcome of the criminal case. Parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of the competent courts and only when the nullity is so declared can it be held as void. So long as there is no such declaration, the presumption is, the marriage exists. Therefore, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy. (See *Al Wiegel vs. Sempio-Diy*, 143 SCRA 499; *Atienza vs. Brillantes, Jr.*, A.M. No. MTJ-92-708, March 29, 1995, 60 SCAD 119).

(b) Yes. Since there is a need for a prior declaration of nullity of a void marriage that void marriage can be considered a legal impediment to contract a subsequent marriage because of the presumption of its validity prior to its declaration of nullity. Furthermore, the absolute nullity of a marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring the previous marriage void. (Art. 40, NCC).

In *Imelda Marbella-Bobis vs. Isagani D. Bobis*, G.R. No. 138509, July 31, 2000, a man contracted a second marriage without his first marriage having been annulled, nullified or terminated. He even contracted a third marriage. In holding that the second and third marriages of the man were void, the Supreme Court held that Article 40 of the Family Code, which was effective at the time of the celebration of the second marriage, requires a prior judicial declaration of nullity of a previous marriage before a party may remarry. The clear implication of this is that it is not for the parties, particularly the accused, to determine the validity or invalidity of the mar-

riage. (citing *Niñal vs. Bayadog*, G.R. No. 133778, March 14, 2000). Whether or not the first marriage was void for lack of license is a matter of defense because there is still no judicial declaration of its nullity at the time the second marriage was contracted. It should be remembered that bigamy case can successfully be prosecuted provided all its elements concur — two of which are a previous marriage and a subsequent marriage which would have been valid had it not been for the existence at the material time of the first marriage. (citing *People vs. Dumpo*, 62 Phil. 246; *Sulu Islamic Association vs. Malik*, 44 SCAD 576, 226 SCRA 193; *Merced vs. Diaz*, 109 Phil. 155).

In *Vincent Paul Mercado vs. Consuelo Tan*, G.R. No. 137110, August 1, 2000, Dr. Mercado got married to Consuelo Tan, but at the time of the marriage, he was already married to Ma. Thelma Oliva. He was charged with the crime of bigamy. During the pendency of the criminal case he filed an action for declaration of nullity of the marriage with Ma. Thelma Oliva. At the time of the second marriage, no decree has been issued for the declaration of nullity of the first marriage. It was only during the pendency of the action for bigamy that he filed the action for declaration of nullity. There was a declaration of nullity of the first marriage later, hence, he contended that it is deemed not to have transpired at all. Is the contention correct? Explain.

Held:

No. A judicial declaration of nullity of a previous marriage is necessary before a subsequent marriage may be celebrated. If the second marriage is celebrated without first obtaining such judicial declaration the violator is guilty of bigamy. This principle applies even if the earlier union is characterized by statute as “void.”

To be sure, jurisprudence regarding the need for a judicial declaration of nullity of the previous marriage has been characterized as “conflicting.” (*Domingo vs. CA*, 226 SCRA 572). In *People vs. Mendoza*, 95 Phil. 845, a bigamy case involving an accused who married three times, the Supreme Court ruled that there was no need for such declaration. In that case, the accused contracted a second marriage during the subsistence of the first. When the first wife died, he married for the third time. The second wife then charged him with bigamy. Acquitting him, the Supreme Court held that the second marriage was *void ab initio* because it had been contracted while the first marriage was still in effect. Since the second mar-

riage was obviously void and illegal, the Supreme Court said that there was no need for a judicial declaration of its nullity. Hence, the accused did not commit bigamy when he married for the third time. This ruling was affirmed by the Supreme Court in *People vs. Aragon*, 100 Phil. 1033, which involved substantially the same facts.

But in subsequent cases, the Supreme Court impressed the need for a judicial declaration of nullity. In *Vda. De Consuegra vs. GSIS*, 37 SCRA 315, Jose Consuegra married for the second time while the first marriage was still subsisting. Upon his death, the Supreme Court awarded one half of the proceeds of his retirement benefits to the first wife and the other half to the second wife and her children, notwithstanding the manifest nullity of the second marriage. The Supreme Court held that “and with respect to the right of the second wife, this Court observes that although the second marriage can be presumed to be *void ab initio* as it was celebrated while the first marriage was still subsisting, still there is need for judicial declaration of such nullity.” (See also *Gomez vs. Lipana*, 33 SCRA 615).

In *Tolentino vs. Paras*, 122 SCRA 525, however, the SC again held that judicial declaration of nullity of a void marriage was not necessary. In that case, a man married twice. In his Death Certificate, his second wife was named as his surviving spouse. The first wife then filed a petition to correct the said entry in the Death Certificate. The SC ruled in favor of the first wife, holding that “the second marriage that he contracted with the second wife during the lifetime of the first spouse is null and void from the beginning and of no force and effect. No judicial decree is necessary to establish the invalidity of a void marriage.”

In *Wiegel vs. Sempio-Diy*, 143 SCRA 499, the SC stressed the need for such declaration. In that case, Karl Heinz Wiegel filed an action for the declaration of nullity of his marriage to Lilia Oliva Wiegel on the ground that the latter had a prior existing marriage. After the pre-trial, Lilia asked that she be allowed to present evidence to prove, among others, that her first husband had previously been married to another woman. In holding that there was no need for such evidence, the Supreme Court ruled: “x x x There is likewise no need of introducing evidence about the existing prior marriage of her first husband at the time they married each other, for then such a marriage though void still needs, according to this Court, a judicial declaration of such fact and for all legal intents and purposes she would still be regarded as a married woman at the time she contracted her marriage with respondent Karl Heinz Wiegel; x x x”

Subsequently, in *Yap vs. CA*, 145 SCRA 229, the Supreme Court reverted to the ruling in *People vs. Mendoza*, holding that there was no need for such declaration of nullity.

In *Domingo vs. CA*, 226 SCRA 572, the issue raised was whether a judicial declaration of nullity was still necessary for the recovery and the separation of properties of erstwhile spouses. Ruling in the affirmative, the SC declared: “The Family Code has settled once and for all the conflicting jurisprudence on the matter. A declaration of the absolute nullity of a marriage is now explicitly required either as a cause of action or a ground for defense; in fact, the requirement for a declaration of absolute nullity of a marriage is also for the protection of the spouse who, believing that his or her marriage is illegal and void, marries again. With the judicial declaration of the nullity of his or her first marriage, the person who marries again cannot be charged with bigamy.”

Unlike *Mendoza* and *Aragon*, *Domingo* as well as the other cases herein cited was not a criminal prosecution for bigamy. Nonetheless, *Domingo* underscored the need for a judicial declaration of nullity of a void marriage on the basis of a new provision of the Family Code, which came into effect several years after the promulgation of *Mendoza* and *Aragon*.

In *Mendoza* and *Aragon*, the Supreme Court relied on Section 29 of Act No. 3613 (Marriage Law), which provided:

“Illegal marriages. – Any marriage subsequently contracted by any person during the lifetime of the first spouse shall be illegal and void from its performance, unless:

- (a) The first marriage was annulled or dissolved;*
- (b) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or the absentee being generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, the marriage as contracted being valid in either case until declared null and void by a competent court.”*

The Supreme Court held in those two cases that the said provision “plainly makes a subsequent marriage contracted by any person during the lifetime of his first spouse illegal and void from its

performance, and no judicial decree is necessary to establish its invalidity, as distinguished from mere annulable marriages.” (People vs. Mendoza, 95 Phil. 845).

The provision appeared in substantially the same form under Article 83 of the 1950 Civil Code and Article 41 of the Family Code. However, Article 40 of the Family Code, a new provision, expressly requires a judicial declaration of nullity of the previous marriage, as follows:

“Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such marriage void.”

In view of this provision, Domingo stressed that a final judgment declaring such marriage void was necessary. Verily, the Family Code and Domingo affirm the earlier ruling in *Wiegel*. Thus, a Civil Law authority and member of the Civil Code Revision Committee has observed:

“Article 40 is also in line with the recent decisions of the Supreme Court that the marriage of a person may be null and void but there is need of a judicial declaration of such fact before that person can marry again; otherwise, the second marriage will also be void. (Wiegel vs. Sempio-Diy, August 19, 1986, 143 SCRA 499, Vda. De Consuegra vs. GSIS, 37 SCRA 315). This provision changes the old rule that where a marriage is illegal and void from its performance, no judicial decree is necessary to establish its validity.” (People vs. Mendoza, 95 Phil. 843; People vs. Aragon, 100 Phil. 1033).

In this light, the statutory mooring of the ruling in *Mendoza* and *Aragon* — that there is no need for a judicial declaration of nullity of a void marriage — has been cast aside by Article 40 of the Family Code. Such declaration is now necessary before one can contract a second marriage. Absent that declaration, one may be charged with and convicted of bigamy.

The present ruling is consistent with the pronouncement in *Terre vs. Terre*, 211 SCRA 6, which involved an administrative complaint against a lawyer for marrying twice. In rejecting the lawyer’s argument that he was free to enter into a second marriage because the first one was *void ab initio*, the SC ruled “for purposes of determining whether a person is legally free to contract a second mar-

riage, a judicial declaration that the first marriage was null and *void ab initio* is essential.” The Supreme Court further noted that the said rule was “cast into statutory form by Article 40 of the Family Code.” Significantly, it observed that the second marriage, contracted without a judicial declaration that the first marriage was void, was “bigamous and criminal in character.”

Moreover, Justice Reyes, an authority in Criminal Law whose earlier work was cited by petitioner, changed his view on the subject in view of Article 40 of the Family Code and wrote that a person must first obtain a judicial declaration of the nullity of a void marriage before contracting a subsequent marriage:

“It is now settled that the fact that the first marriage is void from the beginning is not a defense in a bigamy charge. As with a voidable marriage, there must be a judicial declaration of the nullity of a marriage before contracting the second marriage. Article 40 of the Family Code states that x x x. The Code Commission believes that the parties to a marriage should not be allowed to assume that their marriage is void, even if such is the fact, but must first secure a judicial declaration of nullity of their marriage before they should be allowed to marry again. x x x”

In the instant case, petitioner contracted a second marriage although there was yet no judicial declaration of nullity of his first marriage. In fact, he instituted the petition to have the first marriage declared void only after complainant had filed a letter-complaint charging him with bigamy. By contracting a second marriage while the first was still subsisting, he committed the acts punishable under Article 349 of the Revised Penal Code.

That he subsequently obtained a judicial declaration of the nullity of the first marriage was immaterial. To repeat, the crime had already been consummated by then. Moreover, his view effectively encourages delay in the prosecution of bigamy cases where an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. The Court cannot allow that.

Under the circumstances he was found guilty of the charge against him. (See also *Ofelia Ty vs. CA, et al.*, G.R. No. 127406, November 27, 2000).

Issue of prejudicial question; action for declaration of nullity of marriage not prejudicial in bigamy.

The aforesaid principle was restated because of the issue of prejudicial question that the respondent raised. When he was sued for bigamy, he filed an action for the judicial declaration of absolute nullity of his first marriage on the ground that it was celebrated without a marriage license. He then filed a motion to suspend the proceedings in the bigamy case invoking the pendency of the civil action for nullity of the first marriage. The trial court granted the motion. When the motion for reconsideration was denied, petitioner filed a petition for *certiorari* arguing that respondent should have first obtained a judicial declaration of nullity of his first marriage before entering into the second marriage, inasmuch as the alleged prejudicial question justifying suspension of the bigamy case is no longer a legal truism pursuant to Article 40 of the Family Code. In short, the issue is whether the subsequent filing of a civil action for declaration of nullity of a previous marriage constitutes a prejudicial question to a criminal case for bigamy.

The Supreme Court said that a prejudicial question is one which arises in a case the resolution of which is a logical antecedent of the issue involved therein. It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused. It must appear not only that the civil case involves facts upon which the criminal action is based, but also that the resolution of the issues raised in the civil action would necessarily be determinative of the criminal case. Consequently, the defense must involve an issue similar or intimately related to the same issue raised in the criminal action and its resolution determinative of whether or not the latter action may proceed. Its two essential elements are:

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

A prejudicial question does not conclusively resolve the guilt or innocence of the accused but simply tests the sufficiency of the allegations in the information in order to sustain the further prosecution of the criminal case. A party who raises a prejudicial question is deemed to have hypothetically admitted that all the essential elements of a crime have been adequately alleged in the in-

formation, considering that the prosecution has not yet presented a single evidence on the indictment or may not yet have rested its case. A challenge of the allegations in the information on the ground of prejudicial question is in effect a question of merits of the criminal charge through a non-criminal suit.

Article 40 of the Family Code, which was effective at the time of the celebration of the second marriage, requires a prior judicial declaration of nullity of a previous marriage before a party may remarry. The clear implication of this is that it is not for the parties, particularly the accused, to determine the validity or invalidity of the marriage. Whether or not the first marriage was void for lack of license is a matter of defense because there is still no judicial declaration of its nullity at the time the second marriage was contracted. It should be remembered that bigamy can successfully be prosecuted provided all its elements concur – two of which are a previous marriage and a subsequent marriage which would have been valid had it not been for the existence at the material time of the first marriage.

In this case, it was respondent's clear intent to obtain a judicial declaration of nullity of his first marriage and thereafter to invoke that very same judgment to prevent his prosecution for bigamy. He cannot have his cake and eat it too. Otherwise, all that an adventurous bigamist has to do is to disregard Article 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior declaration of nullity of the first. A party may even enter into a marriage aware of the absence of a requisite – usually the marriage license – and thereafter contract a subsequent marriage without obtaining a declaration of nullity of the first on the assumption that the first marriage is void. Such scenario would render nugatory the provisions on bigamy. As succinctly held in *Landicho vs. Relova*, 22 SCRA 731:

“Parties to a marriage should not be permitted to judge for themselves its nullity, only competent courts having such authority. Prior to such declaration of nullity, the validity of the first marriage is beyond question. A party who contracts a second marriage then assumes the risk of being prosecuted for bigamy.”

Respondent alleged that the first marriage in the case was void for lack of a marriage license. Petitioner, on the other hand, argued that her marriage to respondent was exempt from the requirement

of a marriage license. More specifically, petitioner claimed that prior to their marriage, they had already attained the age of majority and had been living together as husband and wife for at least five (5) years. The issue in this case is limited to the existence of a prejudicial question and the court is not called upon to resolve the validity of the first marriage. Be that as it may, suffice it to state that the Civil Code, under which the first marriage was celebrated, provides that “every intendment of law or fact leans toward the validity of marriage, the indissolubility of the marriage bonds.” (Article 220, New Civil Code). Hence, parties should not be permitted to judge for themselves the nullity of their marriage, for the same must be submitted to the determination of competent courts. Only when the nullity of the marriage is so declared can it be held as void and, so long as there is no such declaration, the presumption is that the marriage exists. (*Landicho vs. Relova*, 22 SCRA 731). No matter how obvious, manifest or patent the absence of an element is the intervention of the courts must always be resorted to. That is why Article 40 of the Family Code requires a “final judgment” which only the courts can render. Thus, as ruled in *Landicho vs. Relova (supra)*. “He who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy,” and in such a case, the criminal case may not be suspended on the ground of the pendency of a civil case for declaration of nullity of marriage is not a prejudicial question. (*Beltran vs. People*, G.R. No. 137567, June 20, 2000).

Ignorance of the existence of Article 40 of the Family Code cannot even be successfully invoked as an excuse. The contracting of a marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment is an act penalized by the Revised Penal Code. The legality of a marriage is a matter of law and every person is presumed to know the law. As respondent did not obtain the judicial declaration of nullity when he entered into the second marriage, why should he be allowed to belatedly obtain that judicial declaration in order to delay his criminal prosecution and subsequently defeat it by his own disobedience of the law? If he wants to raise the nullity of the previous marriage, he can do it as a matter of defense when he presents his evidence during the trial proper of the criminal case.

The burden of proof to show the dissolution of the first marriage before the second marriage was contracted rests upon the defense, but that is a matter that can be raised in the trial of the bigamy

case. In the meantime, it should be stressed that not every defense raised in the civil action may be used as a prejudicial question to obtain the suspension of the criminal action. The lower court, therefore, erred in suspending the criminal case for bigamy. Moreover, when respondent was indicted for bigamy, the fact that he entered into two marriage ceremonies appeared indubitable. It was only after he was sued by petitioner for bigamy that he thought of seeking a judicial declaration of nullity of his first marriage. The obvious intent, therefore, is that respondent merely resorted to the civil action as a potential prejudicial question for the purpose of frustrating or delaying his criminal prosecution. As has been discussed above, this cannot be done.

In the light of Article 40 of the Family Code, respondent, without first having obtained the judicial declaration of nullity of the first marriage, can not be said to have validly entered into the second marriage. Per current jurisprudence, a marriage though void still needs a judicial declaration of such fact before any party can marry again otherwise, the second marriage will also be void. The reason is that, without a judicial declaration of its nullity, the first marriage is presumed to be subsisting. In the case at bar, respondent was, for all legal intents and purposes regarded as a married man at the time he contracted his second marriage with petitioner. Against this legal backdrop, any decision in the civil action for nullity would not erase the fact that respondent entered into a second marriage during the subsistence of a first marriage. Thus, a decision in the civil case is not essential to the determination of the criminal charge. It is, therefore, not a prejudicial question. As stated above, respondent cannot be permitted to use his own malfeasance to defeat the criminal action against him.

Effect of A.M. No. 02-11-10-SC.

The Supreme Court has promulgated the aforesaid circular governing the declaration of absolute nullity of void marriages under the Family Code. Section 2(a) of the same provides that a petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife.

The aforementioned Circular has changed totally the very beautiful and enlightening decision in *Niñal vs. Bayadog*, that any person who has an interest in the estate of the parties to the marriage which is sought to be declared void has the personality to question the validity of such marriage. This circular has made it an exclusive

right of the spouses to have their marriage declared void, a departure from *Niñal vs. Badayog*. This opens the question on the imprescriptibility of the action to declare it void. It can now be said that it prescribes after the death of the parties considering the use of the phrase “solely by the husband or the wife.” The reason for the rule is obvious that the right to question the nullity of a marriage is personal to the husband and wife.

What Article 40 covers.

Article 40 of the Family Code applies only to a situation where the previous marriage suffers from nullity while the second marriage does not. Under Article 40, what requires a judicial declaration of nullity is the previous marriage, not the subsequent marriage. Article 40 does not apply to situation where the first marriage does not suffer from any defect while the second if void. (*Abundo vs. People*, G.R. No. 159218, March 30, 2004).

Validity of second marriage; defense of good faith in a charge for bigamy.

Case:

Lucio Morigo vs. People G.R. No. 145226, February 6, 2004

The defense of good faith was interposed by the accused in a crime of bigamy where he was charged for having married twice. The first marriage was nullified after the celebration of the second marriage. His defense of good faith was anchored on the fact that his wife obtained a divorce decree against him in Canada. He urged that his lack of criminal intent is material to conviction or acquittal. The crime of bigamy, just like other felonies punished under the Revised Penal Code, is *mala in se*, and hence, good faith and lack of criminal intent are allowed as a complete defenses. He stressed that there is a difference between the intent to commit the crime and the intent to perpetrate the act. Hence, it does not necessarily follow that his intention to contract a second marriage is tantamount to an intent to commit bigamy.

The Office of the Solicitor General (OSG) contended that good faith is a convenient but flimsy excuse. The Solicitor General relied

upon the ruling in *Marbella-Bobis vs. Bobis*, 336 SCRA 747, which held that bigamy can be successfully prosecuted provided all the elements concur, stressing that under Article 40 of the Family Code, a judicial declaration of nullity is a must before a party may re-marry. Whether or not the petitioner was aware of said Article 40 is of no account as everyone is presumed to know the law. The OSG countered that accused's contention that he was in good faith because he relied on the divorce decree of the Ontario court is negated by his act of filing a case seeking a judicial declaration of nullity of his marriage to Lucia.

In this case, it was found out that there was no actual marriage ceremony performed between the parties by a solemnizing officer. Instead, what transpired was a mere signing of the marriage contract by the two, without the presence of a solemnizing officer. The trial court thus held that the marriage is void *ab initio*, in accordance with Articles 3 and 4 of the Family Code. This simply means that there was no marriage to begin with and that such declaration of nullity retroacts to the date of the first marriage. In other words, for all intents and purposes, reckoned from the date of the declaration of the first marriage as void *ab initio* to the date of the celebration of the first marriage, the accused was, under the eyes of the law, never married.

The first element of bigamy as a crime requires that the accused must have been legally married. But in this case, legally speaking, the accused was never married. Thus, there is no first marriage to speak of. Under the principle of retroactivity of a marriage being declared void *ab initio*, the two were never married "from the beginning." The contract of marriage is null and it bears no legal effect. Taking this argument to its logical conclusion, for legal purposes, accused was not married to his wife at the time he contracted the second marriage with another woman. The existence and the validity of the first marriage being an essential element of the crime of bigamy, it is but logical that a conviction for said offense cannot be sustained where there is no first marriage to speak of. The accused must perforce be acquitted.

The present case is analogous to but must be distinguished from *Mercado vs. Tan*, 337 SCRA 122. In the latter case, the judicial declaration of nullity of the first marriage was likewise obtained after the second marriage was already celebrated. It was held therein that:

"A judicial declaration of nullity of a previous marriage is necessary before a subsequent one can be legally

contracted. One who enters into a subsequent marriage without first obtaining such judicial declaration is guilty of bigamy. This principle applies in the earlier union if characterized by statutes as 'void'."

It bears stressing though that in *Mercado*, the first marriage was actually solemnized not just once, but twice: first before a judge where a marriage certificate was duly issued and then again six months later before a priest in religious rites. Ostensibly, at least, the first marriage appeared to have transpired, although later declared void *ab initio*.

In this case, however, no marriage ceremony at all was performed by a duly authorized solemnizing officer. The parties merely signed a marriage contract on their own. The mere private act of signing a marriage contract bears no semblance to a valid marriage and thus, needs no judicial declaration of nullity. Such act alone, without more, cannot be deemed to constitute an ostensibly valid marriage for which accused might be held liable for bigamy unless he first secures a judicial declaration of nullity before he contracts a subsequent marriage. (*Lucio Morigo vs. People*, G.R. No. 145226, February 6, 2004, *Quisumbing, J.*).

In a nutshell, what is contemplated by the provisions of Article 40 of the Family Code as the void marriage that must be declared void before a party may contract a subsequent marriage is one that must exist although it is void. For, even if it is void it is a legal impediment to marry, such that if there is no prior declaration of its nullity, a person cannot contract a subsequent marriage, otherwise, he can be charged with and convicted of bigamy.

Observation:

The authors would like to make this observation. In *Mercado vs. Tan*, when the first marriage was contracted, there was no license, hence, void. Yet, the Supreme Court said that there is a need to have it declared void before a second marriage may be contracted, otherwise, the accused may be convicted of the crime of bigamy. In *Morigo vs. People*, there was no ceremony, hence, the marriage should also be void due to absence of one of the formal requisites of marriage. Yet, the Supreme Court said that there is no need to have it declared void as in the eyes of the law, the marriage never existed.

In both marriages, there was absence of one of the formal requirements. Yet, in *Mercado*, it was held that there is a need to have

it declared void before a party can contract a subsequent marriage. Where lies the difference between Mercado and Morigo? We believe there is some inconsistency in the rulings of the Supreme Court which needs a second look by the Honorable Court.

It would appear that the Supreme Court in Morigo is suggesting a return to the old principle in the Civil Code that if the marriage is void, there is no need to have declared void. This is inconsistent with Article 40 of the Family Code. A review of Morigo is necessary to make jurisprudence consistent with the law.

Void marriage must be nullified before contracting a subsequent marriage.

A man contracted marriage even during the existence of his first marriage. He, however, obtained a judicial declaration of nullity of his first marriage after he contracted the second marriage, hence, he contended that he cannot be charged with the crime of bigamy. He likewise contended that the action for annulment or declaration of nullity of his marriage was a prejudicial question to the charge of bigamy. Is the contention proper? Why?

Answer: No. A prejudicial question is one based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. The rationale behind the principle of suspending a criminal case in view of a prejudicial question is to avoid two conflicting decisions. (Te vs. CA, 346 SCRA 327 [2000]; Salvador Abundo, et al. vs. People, G.R. No. 159218, March 30, 2004, Ynares-Santiago, J.).

Under the law, a marriage, even one which is void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding. In this case, even if a party eventually obtained a declaration that his first marriage as void *ab initio*, the point is, both the first and the second marriage were subsisting before the first marriage was annulled.

In what situation is Article 40 of the Family Code applicable?

Article 40 of the Family Code applies only to a situation where the previous marriage suffers from nullity while the second marriage

does not. Under Article 40 of the Family Code, what requires a judicial declaration of nullity is the previous marriage, not the subsequent marriage. Article 40 does not apply to a situation where the first marriage does not suffer from any defect while the second is void. (See also *Tenebro vs. CA, et al.*, G.R. No. 150758, February 18, 2004, 423 SCRA 272).

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 two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding 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. (83a)

Article 42. The subsequent marriage referred to in the preceding Article 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*.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed. (n)

Valid bigamous marriage.

There may be a valid bigamous marriage where a spouse has been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse is already dead. This period has been reduced to two years if in the disappearance of the absent spouse, there is danger of death under the circumstances set forth in Article 391 of the Civil Code.

The mere absence, however, of the spouse does not give rise to a right of the present spouse to remarry. He must first institute a summary proceeding for the declaration of presumptive death of the absentee without prejudice to the effect of reappearance of the absent spouse. The spouse present must not know of the whereabouts of the absent spouse.

Instances of presumptive death.

The New Civil Code provides for the instances when a person is presumed dead, thus:

“Art. 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

- (1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;
- (2) A person in the armed forces who has taken part in war, and has been missing for four years;
- (3) A person who has been in danger of death under other circumstances and his existence has not been known for four years. (n)”

Note that the period of four (4) years has been reduced to two (2) years by the Family Code.

The law says that if the absent spouse reappears or if there is registration of an affidavit of reappearance by any interested person with due notice to the spouses in the civil registry of the residence of the parties, the marriage is automatically terminated.

Marriage that is valid in Art. 41.

It is not the marriage of the absent spouse that is valid. It is the marriage of the present spouse, after complying with the following fundamental requirements, that is valid, thus:

- (1) The absent spouse must have been absent for four or two years under the circumstances provided by law;
- (2) The present spouse must not know the whereabouts of the absent spouse;
- (3) There must be a well-founded belief that the absent spouse is already dead;

- (4) There must be institution of a summary action for the declaration of presumptive death of the absent spouse;
- (5) There must be a final judgment declaring the absent spouse presumptively dead.

Effect of declaration of presumptive death.

Despite the declaration of presumptive death of the absent spouse and the subsequent marriage of the present spouse, the first marriage is not dissolved or terminated. It is still subsisting, except if it has been previously annulled or declared void. Such rule is so because of the fact that the mere registration of an affidavit of reappearance by an interested person, with notice to the spouses in the second marriage, automatically terminates the second marriage without prejudice to the fact of reappearance being judicially determined in case such fact is disputed. So, the present spouse has the right to question or dispute the reappearance of the absent spouse such that if the reappearance is not proven, the termination of the second marriage would have no effect later. It would remain to be valid if the reappearance is not proven. The registration of the affidavit of reappearance is merely a presumptive notice of reappearance which is disputable.

Now, the question is this: Suppose, there is no affidavit of reappearance registered but the absent spouse personally or physically appears, would the second marriage be terminated? The answer is yes. As said above, the registration of an affidavit of reappearance is a mere notice of reappearance, disputable in character. But if the absent spouse appears physically, then, how can the present spouse dispute it? If the mere registration of an affidavit of reappearance terminates the subsequent marriage, then, with more reason if he/she personally reappears. This is akin to a case of a deed of sale registered at the back of the title which is a notice to the whole world or everybody. If it is a mere oral sale and it is with the knowledge of another, a second buyer for that matter, he is also bound even if unregistered because of actual knowledge of the oral sale.

Such automatic termination of the second marriage does not hold true if the previous marriage has already been annulled or declared void.

Prior to the filing of an action for declaration of presumptive death of the absent spouse, it is required that the present spouse must exert serious efforts to locate the absent spouse, not mere scanty or superficial efforts to look for the same.

Case:**Republic vs. Nolasco
G.R. No. 94053, March 17, 1993****Facts:**

Gregorio Nolasco and Janet Monica Parker got married on January 15, 1982. After the celebration of the marriage, he got an employment as a seaman. In January 1983, while working as a seaman, his mother wrote him a letter informing him that his wife gave birth to a boy and told him that Monica left their house in Antique. When he arrived in Manila in November 1983, he tried to look for her sent letters to her house in England and to the bar where she used to work, but all of the letters were sent back. Then, he inquired from her friends about her, but they had no news about Monica. So, he filed a complaint for declaration of presumptive death and/or declaration of nullity of his marriage with Monica. The RTC declared Monica presumptively dead without prejudice to her reappearance. The Republic appealed, contending that he failed to show that there exists a well-founded belief for such declaration. The CA affirmed the RTC's decision, holding that he was able to establish a basis to form a belief that his spouse had already died. The Republic went to the Supreme Court on the theory that there was no well-founded belief that Monica was already dead.

Held:

Nolasco failed to conduct a search for his missing wife with such diligence as to give rise to a well-founded belief that she is already dead.

There are four requisites for the declaration of presumptive death under Article 41 of the Family Code:

- (1) That the absentee spouse has been missing for four consecutive years, or two consecutive years, if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code;
- (2) That the present spouse wishes to remarry;
- (3) That the present spouse has a well-founded belief that the absentee is dead; and
- (4) That the present spouse files a summary proceeding for the declaration of presumptive death of the deceased.”

U.S. vs. Biasbas, 25 Phil. 71 (1913), is instructive as to the diligence required in searching for a missing spouse. In that case, defendant Macario Biasbas was charged with the crime of bigamy. He set up the defense of good faith that his first wife had already died. The Court held that the defendant had not exercised due diligence to ascertain the whereabouts of his first wife, noting that:

“While the defendant testified that he had made inquiries concerning the whereabouts of his wife, he fails to state of whom he made the inquiries. He did not even write the parents of his first wife, who lived in the province of Pampanga, for the purpose of searching information regarding her whereabouts. He admits that he had a suspicion that his first wife was dead. He admits that the only basis of his suspicion was the fact that she had been absent.”

The investigation allegedly conducted by respondent in his attempt to ascertain Janet Monica Parker’s whereabouts is too sketchy to form a basis of a reasonable or a well-founded belief that she was already dead. When he arrived in San Jose, Antique after learning of Janet Monica’s departure, instead of seeking the help of local authorities or the British Embassy, he secured another seaman’s contract and went to London, a vast city of many millions of inhabitants, to look for her there. Respondent’s testimony, however, showed that he confused London with Liverpool and this casts doubts on his supposed efforts to locate his wife in England. There is no analogy between Manila and its neighboring cities, on one hand, and London and Liverpool, on the other. We do not consider that walking into a major city like Liverpool or London with a simple hope of somehow bumping into one particular person there — which is in effect what Nolasco says he did — can be regarded as a reasonably diligent search.

In *Goitia vs. Campos Rueda*, 35 Phil. 252 (1919), it was stressed:

“Marriage is an institution, the maintenance of which in its purity, the public is deeply interested. It is a relationship for life and the parties cannot terminate it at any short period by virtue of any contract they make.”

By the same token, the spouses should not be allowed, by the simple expedient act of agreeing that one of them leave the conjugal abode and never return again, to circumvent the policy of the laws on marriage. The Court notes that respondent even tried to have his marriage annulled before the trial court in the same proceeding.

In *In Re Szatraw*, the Court warned against such collusion between the parties when they find it impossible to dissolve the marital bonds through existing legal means.

While the Court understands the need of respondent's young son, Gerry Nolasco, for maternal care, still, the requirements of the law must prevail. Since respondent failed to satisfy the clear requirement of the law, his petition for judicial declaration of presumptive death must be denied. The law does not view marriage like an ordinary contract. Article 1 of the Family Code emphasizes that:

“Marriage is 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. It is the *foundation of the family* and an *inviolable social institution whose nature, consequences and incidents* are governed by law and *not subject to stipulation*, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.”

In *Arroyo vs. Court of Appeals*, the Court stressed strongly the need to protect:

“x x x the basic social institutions of marriage and the family in the preservation of which the State has the strongest interest; the public policy here involved is of the most fundamental kind. In Article II, Section 12 of the Constitution there is set forth the following basic state policy:

“*The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x.*”

The same sentiment has been expressed in the Family Code of the Philippines in Article 149:

“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.”

In fine, respondent failed to establish that he had the well-founded belief required by law that his absent spouse was already

dead that would sustain the issuance of a court order declaring Janet Monica Parker presumptively dead.

Reduction of the period in the Civil Code.

Under Article 41 of the Family Code, the time required for the presumption to arise has been shortened to four (4) years; however, there is a need for a judicial declaration of presumptive death to enable the spouse present to remarry. Also, Article 41 of the Family Code imposes a stricter standard than the Civil Code: Article 83 of the Civil Code merely requires that there be *no news that such absentee is still alive*; or the absentee is generally *considered to be dead and believed to be so by the spouse present*, or is *presumed dead* under Articles 390 and 391 of the Civil Code. The Family Code, upon the other hand, prescribes a “*well-founded belief*” that the absentee is *already dead* before the petition for declaration of presumptive death can be granted.

Relevance of Art. 390, New Civil Code.

Article 390 of the Civil Code provides:

“Art. 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.

The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened.”

A question may be asked: Suppose A and B are married, but A has been absent from the conjugal dwelling for a period of 8 years without B knowing whether he is still alive, can B get married without going to court and file an action for declaration of presumptive death?

Declaration of presumptive death necessary before the present spouse may get married.

The issue whether the present spouse who does not know the whereabouts of the absent spouse should file a complaint to declare the absent spouse presumptively dead before getting married has been finally resolved. There was a doubt in the Civil Code before

whether there was a need for such a proceeding considering that the Civil Code was silent, yet, the Penal Code requires it. (Art. 349). The Civil Code did not expressly provide for a proceeding for declaration of presumptive death as the presumption arose by operation of law. Hence, there was a divergence of opinions of the authorities in criminal law and in civil law. Whereas before, the present spouse could easily interpose the defense of good faith in case of absence of the other spouse, the Court finally ruled that the basis of good faith in contracting another marriage by the present spouse who had no knowledge of the whereabouts of the absent spouse is the declaration of presumptive death of said absent spouse by a court of competent jurisdiction. Such declaration is a protection on the part of such spouse against charges of bigamy and of the State who seeks to preserve the marriage.

Case:**Eduardo Manuel vs. People
G.R. No. 165842, November 29, 2005****Facts:**

The accused was married but he met a girl at the age of 21, courted her, proposed marriage. He presented his parents to the family of the woman who assured her and her parents that he was single. The woman agreed to marry him on the basis of such representation. After three (3) years of living together, he left the woman who discovered that he was indeed married. She charged him for bigamy where he interposed the defense that he believed in good faith that his first marriage was invalid and that he did not know that he had to go to court to seek for the nullification of his first marriage before marrying her.

His wife was charged with estafa in 1975 and thereafter imprisoned. He visited her in jail after three months and never saw her again. He insisted that he married the second spouse believing that his first marriage was no longer valid because he had not heard from his first spouse for more than 20 years. He was convicted of bigamy with indemnity in the amount of P200,000.00 by way of moral damages, plus costs of suit.

He appealed the decision to the CA. He alleged that he was not criminally liable for bigamy because when he married the complainant he did so in good faith and without any malicious intent. He

maintained that, at the time that he married the complainant, he was of the honest belief that his first marriage no longer subsisted. He insisted that conformably to Article 3 of the Revised Penal Code there must be malice for one to be criminally liable for a felony. He was not motivated by malice in marrying the complainant because he did so only out of his overwhelming desire to have a fruitful marriage. He posited that the trial court should have taken into account Article 390 of the New Civil Code. To support his view the appellant cited the rulings of the Court in *United States vs. Peñalosa*, 1 Phil. 109 (1902) and *Manahan, Jr. vs. CA*, G.R. No. 111656, March 20, 1996, 255 SCRA 202.

The Office of the Solicitor General (OSG) averred that his defense of good faith and reliance on the Court's ruling in *United States vs. Enriquez*, 32 Phil. 202 (1915) were misplaced, what is applicable is Article 41 of the Family Code which amended Article 390 of the Civil Code. Citing the ruling of the Court in *Republic vs. Nolasco*, G.R. No. 9453, March 17, 1993, 220 SCRA 20, the OSG further posited that as provided in Article 41 of the Family Code, there is a need for a judicial declaration of presumptive death of the absent spouse to enable the present spouse to marry. Even assuming that the first marriage was void, the parties thereto should not be permitted to judge for themselves the nullity of the marriage, the matter should be submitted to the proper court for resolution. Moreover, the OSG maintained, the complainant's knowledge of the first marriage would not afford any relief since bigamy is an offense against the State and not just against the private complainant.

The CA rendered judgment affirming the decision of the RTC. It ruled that contrary to the contention of the appellant, Article 41 of the Family Code should apply, before he could lawfully marry the complainant, there should have been a judicial declaration of the first spouse's presumptive death.

On appeal, he averred that when he married the complainant, his first wife had been "absent" for 21 years since 1975; under Article 390 of the Civil Code, she was presumed dead as a matter of law. And, under the first paragraph of Article 390 of the Civil Code, one who has been absent for seven years, whether or not he/she is still alive, shall be presumed dead for all purposes except for succession.

He asserted that the presumptive death of the absent spouse arises by operation of law upon the satisfaction of two requirements: the specified period and the present spouse's reasonable belief that the absentee is dead. He insisted that he was able to prove that he

had not heard from his first wife since 1975 and that he had no knowledge of her whereabouts or whether she was still alive. Hence, under Article 41 of the Family Code, the presumptive death of his first spouse had risen by operation of law as the two requirements of Article 390 of the Civil Code are present. He concluded that he should thus be acquitted of the crime of bigamy.

He further insisted that nowhere under Article 390 of the Civil Code does it require that there must first be a judicial declaration of death before the rule on presumptive death would apply. He finally asserted that the requirement of a judicial declaration of presumptive death under Article 41 of the Family Code is only a requirement for the validity of the subsequent or second marriage. Hence, the issue is that if a spouse has been absent for 21 years without the present spouse knowing the whereabouts of the absent spouse, can the present spouse, on the pretext of good faith, get married without need of judicial declaration of presumptive death?

Held:

No, there must be a judicial declaration of presumptive death of the absent spouse, otherwise, the spouse who contracted the second marriage may be convicted of the crime of bigamy. Article 349 of the Revised Penal Code defines and penalizes a person for bigamy if he contracts a second marriage before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

The reason why bigamy is considered a felony is to preserve and ensure the juridical tie of marriage established by law. The phrase “or before the absent spouse had been declared presumptively dead by means of a judgment rendered in the proper proceedings” was incorporated in the Revised Penal Code because the drafters of the law were of the impression that “in consonance with the civil law which provides for the presumption of death after an absence of a number of years, the judicial declaration of presumed death like annulment of marriage should be a justification for bigamy.”

It was his burden to prove his defense that when he married the complainant in 1996 he was of the well-grounded belief that his first wife was already dead as he had not heard from her for more than 20 years since 1975. He should have adduced in evidence a decision of a competent court declaring the presumptive death of his first wife as required by Article 349 of the Revised Penal Code in relation to Article 41 of the Family Code. Such judicial declaration

also constitutes proof that he acted in good faith and would negate criminal intent on his part when he married the complainant and, as a consequence, he could not be held guilty of bigamy in such case, but he failed to discharge his burden. (Eduardo Manuel vs. People, G.R. No. 165842, November 29, 2005).

Reasons why there is a need for the absent spouse to be declared presumptively dead before the present spouse may contract a subsequent marriage.

The requirement for a judgment of the presumptive death of the absent spouse is for the benefit of the spouse present, as protection from the pains and the consequences of a second marriage, precisely because he/she could be charged and convicted of bigamy if the defense of good faith based on mere testimony is found incredible.

It is also for the benefit of the State. Under Article II, Section 12 of the Constitution, the “State shall protect and strengthen the family as a basic autonomous social institution.” Marriage is a social institution of the highest importance. Public policy, good morals and the interest of society require that the marital relation should be surrounded with every safeguard and its severance only in the manner prescribed and the causes specified by law. The law regulating civil marriages are necessary to serve the interest, safety, good order, comfort or general welfare of the community and the parties can waive nothing essential to the validity of the proceedings. A civil marriage anchors an orderly society by encouraging stable relationships over transient ones; it enhances the welfare of the community. (Eduardo Manuel vs. People, *supra.*).

Article 41, F.C.; when a spouse may be declared presumptively dead.

Case:

**Republic vs. CA, et al.
G.R. No. 159614, December 9, 2005
(Callejo, J.)**

Facts:

On March 29, 2001, Alan B. Alegro filed a petition in the Regional Trial Court (RTC) of Catbalogan Samar, Branch 27, for the declaration of presumptive death of his wife, Rosalia (Lea) A. Julaton.

The evidence showed that he and Lea were married on January 20, 1995 in Catbalogan Samar. On February 6, 1995, Lea arrived home late in the evening and he berated her for being always out of their house. He told her that if she enjoyed the life of a single person, it would be better for her to go back to her parents. Lea did not reply. When he reported for work the following day, Lea was still in the house, but when he arrived home later in the day, Lea was nowhere to be found. Alan thought that Lea merely went to her parents' house in Bliss, Sto. Niño, Catbalogan, Samar. However, Lea did not return to their house anymore.

On February 14, 1995, after his work, he went to the house of Lea's parents to see if she was there, but he was told that she was not there. He also went to the house of Lea's friend, Janette Bautista, at Barangay Canlapwas, but he was informed by Janette's brother-in-law, Nelson Abaenza, that Janette had left for Manila. When Alan went back to the house of his parents-in-law, he learned from his father-in-law that Lea had been to their house but that she left without notice. Alan sought the help of Barangay Captain Juan Magat, who promised to help him locate his wife. He also inquired from his friends of Lea's whereabouts but to no avail.

Alan left for Manila on August 27, 1995 and went to a house in Navotas where Janette, Lea's friend, was staying. When asked where Lea was, Janette told him that she had not seen her. He failed to find out Lea's whereabouts despite his repeated talks with Janette. Alan decided to work as a part-time taxi driver. On his free time, he would look for Lea in the malls but still to no avail. He returned to Catbalogan in 1997 and again looked for his wife but failed.

On June 20, 2001, Alan reported Lea's disappearance to the local police station. The police authorities issued an Alarm Notice on July 4, 2001. Alan also reported Lea's disappearance to the National Bureau of Investigation (NBI) on July 9, 2001.

He filed a petition to declare her presumptively dead. After Alan rested his case, neither the Office of the Provincial Prosecutor nor the Solicitor General adduced evidence in opposition to the petition.

On January 8, 2002, the court rendered judgment granting the petition, declaring Rosalina presumptively death for the purpose of Alan's subsequent marriage under Article 41 of the Family Code of the Philippines, without prejudice to the effect of reappearance of the said absent spouse.

The OSG appealed the decision to the Court of Appeals which affirmed the decision of the RTC. The CA cited the ruling in *Republic v. Nolasco*, G.R. No. 94053, March 31, 1993, 220 SCRA 20.

The OSG filed a petition for review on *certiorari* of the CA's decision alleging that Alan failed to prove that he had a well-founded belief that Lea was already dead, alleging that he failed to exercise reasonable and diligent efforts to locate his wife. Rule on the contention of the Solicitor General.

Held:

The petition is meritorious.

Under the preceding paragraph, the spouse present must institute a summary proceeding 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.

In finding merit to the petition, the Supreme Court ruled that under Article 41 of the Family Code, the spouse present is burdened to prove that his spouse has been absent and that he has a well-founded belief that the absent spouse is already dead before the present spouse may contract a subsequent marriage. The law does not define what is meant by a well-grounded belief.

Belief is a state of mind or condition prompting the doing of an overt act. It may be proved by direct evidence or circumstantial evidence which may tend, even in a slight degree, to elucidate the inquiry or assist to a determination of probability founded in truth.

The belief of the present spouse must be the result of proper and honest to goodness inquiries and efforts to ascertain the whereabouts of the absent spouse and whether the absent spouse is still alive or is already dead. Whether or not the spouse present acted on a well-founded belief of death of the absent spouse depends upon the inquiries to be drawn from a great many circumstances occurring before and after the disappearance of the absent spouse and the nature and extent of the inquiries made by the present spouse. (*Gall vs. Gall*, 69 Sickels 109, 21NE 106 [1889]).

Although testimonial evidence may suffice to prove the well-founded belief of the present spouse that the absent spouse is already dead, in *Republic vs. Nolasco*, the Court warned against collusion between the parties when they find it impossible to dissolve the marital bonds through existing legal means. It is also a maxim that "men readily believe what they wish to be true."

The totality of the evidence showed that he failed to prove that he had well-founded belief before he filed the petition that his spouse was already dead. (*Republic vs. CA, et al., G.R. No. 159614, December 9, 2005, Callejo, J.*)

As in *Republic v. Nolasco*, sketchy efforts to locate the absent spouse would not suffice.

Article 43. The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:

(1) 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;

(2) The absolute community of property or the conjugal partnership, as the case may be, 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 community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or, in default of children, the innocent spouse;

(3) Donations by reason of 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;

(4) The innocent spouse may revoke the designation of the other spouse who acted in bad faith as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable; and

(5) The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession. (n)

The first paragraph of the law recognizes the fact that even if there is a prior existing marriage, children born or conceived of the subsequent marriage are legitimate. It is believed that if the present spouse disputed the reappearance of the absent spouse and the court rendered a judgment of non-appearance, the subsequent marriage would be reinstated as valid and children conceived or born thereafter would be legitimate. This is the effect of the right of the present spouse to dispute the reappearance of the absent spouse. The rule has to be so, otherwise, the right to question would be rendered useless or

nugatory that if it is not proven that the absent spouse really reappeared, then, the second marriage would be left hanging in the air. The law could not have intended unfairness to prevail.

The second paragraph likewise recognizes the validity of the subsequent marriage, in that it recognizes too, the existence of a property relationship in the second marriage. It, however, provides for a sanction against the spouse in the second marriage who contracted it in bad faith, as the latter shall forfeit his share in the net profits of the conjugal partnership or the absolute community of properties. This share shall be forfeited in favor of: (1) their common children; (2) in the absence of the latter, the children of the guilty spouse in the previous marriage; (3) in default of the latter, to the innocent spouse. The reason for the law is very simple. No one shall benefit out of his wrongdoing. The law on forfeiture is absolute in that, even if it was only the spouse in bad faith who was earning, he would still lose his share.

The law speaks of bad faith. This is exemplified by the fact that the said spouse may know the whereabouts of the absent spouse but despite such knowledge, he/she contracted the subsequent marriage. Then, he/she must be penalized by way of the forfeiture.

The last three (3) paragraphs put more emphasis on the effects on one of the parties in the subsequent marriage. For again, it must be said that no one shall benefit out of his own wrongdoing. More specifically, paragraph 3 states that donations by reason of marriage shall remain valid except if the donee acted in bad faith in the marriage. The effect of bad faith is the revocation of the donation by operation of law. The donor need not go to court to effect the revocation of the donation. Furthermore, the effect of revocation is that the property shall be reverted to the donor. An example of bad faith here is the fact that at the time of the second marriage, the said party knew of the whereabouts of the absent spouse. Paragraph 4 gives the innocent spouse in the second marriage the right to revoke the designation of an insurance beneficiary even as the basic principle in insurance law is that, the designation in an insurance policy is not revocable as they may have agreed upon. The bad faith of the beneficiary does not entitle him/her to benefit out of such designation. Under paragraph 5, the disqualification to inherit, the revocable nature of the designation in an insurance policy as well as the donation to the spouse in bad faith is the fact that no one should benefit out of his own wrongdoing, otherwise, he would be enriching himself at the expense of the innocent spouse.

Article 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. (n)

The law makes reference to the subsequent marriage after the declaration of presumptive death of the absent spouse. If the present spouse knew the whereabouts of the absent spouse, yet, he/she filed an action for the declaration of presumptive death of said spouse, then, he/she is in bad faith. If the other spouse in the subsequent marriage connived with the present spouse in the filing of such case or he/she knew of the whereabouts of the absent spouse, then, the said person is in bad faith. The net effect is that the subsequent marriage is void. The law imposes certain sanctions on them, that all donations, as well as testamentary dispositions made by one in favor of the other, are revoked by operation of law. There is not even a need to perform a positive act of revocation. The law itself revokes the same, with the net effect of these donations or testamentary dispositions being rendered void and the properties being reverted to the former owner.

Article 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

(1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardians or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;

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

(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;

(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;

(5) That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or

(6) That either party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable. (85a)

Rules on voidable marriages.

- (1) The law refers to voidable marriages which are valid until they are annulled. They may suffer from some infirmities but they can even be ratified.
- (2) If the marriage was contracted between persons at the ages of eighteen but below twenty-one without the consent of their parents or guardians, the same is merely voidable. An action may be brought to annul it by the party himself/herself whose parents or guardians did not give consent or by the parent or guardian having legal charge of the said party. If it is the party to the marriage who would file the action it must be done by him/her within five (5) years after attaining the age of twenty-one. If it is the parent or guardian who should file it, then, it should be done at any time before the party reaches the age of twenty-one. (Art. 47, Family Code). Note that there is a longer period for the party to go to court and file an action for annulment of his/her marriage, that is, within five (5) years after attaining the age of 21. His parents or guardians have up to the time before he reaches the age of 21.

Such voidable marriages can, however, be cured or cleansed of their defect by the act of the parties of freely cohabiting with one another, after the party whose parents or guardians who did not give consent to the marriage, has reached the age of 21.

It must be noted that even if the marriage was attended by the circumstances above-mentioned, the same is not void. It is only voidable, valid until annulled. In fact, it can be cured by subsequent cohabitation.

Note further that the action to have the marriage annulled must be filed within five (5) years from the discovery of the fraud, or from the time the force, intimidation, or undue influence has disappeared or ceased. (Article 47[3 and 4], Family Code). But the period to file

such action is different in case of insanity, in that, it must be filed at any time before the death of either party, or by the insane spouse during a lucid interval or after regaining sanity. (Art. 47[2], Family Code). It may be filed by the same spouse, who had no knowledge of the insane's insanity or by any relative or guardian or person having charge of the insane. (same)

- (3) Paragraph 5 of Article 45 refers to impotency, which is the incapability of procreation. In here, the incapability must continue to be so and appears to be incurable. Sterility is not contemplated by the law, for even if a person is sterile, he can still perform acts of copulation.

Case:

Sarao vs. Guevarra
G.R. No. 47603
40 O.G. 263 (CA)

Facts:

A and B got married, but coitus was unsuccessful because the wife complained of intense pain. After the first night, every attempt on plaintiff's part to have carnal act with his wife proved a failure. Upon advice of a doctor, and with the plaintiff's consent, an operation was performed in which the uterus and ovaries were removed. This rendered her incapable of procreation; nevertheless, she could copulate. Plaintiff, however, since witnessing the operation of his wife, lost all desires to have access to his wife, hence, he asked for annulment of marriage.

Held:

The annulment cannot be granted. The incapacity for copulation was only temporary. The defect must be lasting to be a ground for annulment. The supervening sterility of the wife is not a ground for annulment because the test of impotence is not the capacity to reproduce, but the capacity to copulate. (See also *Jimenez vs. Republic*, 109 Phil. 273; *Menciano vs. Neri San Jose*, 89 Phil. 63).

Burden of proof in impotency.

It is a rule that he who claims the impotency of another must prove the same. Hence, in *Jimenez vs. Republic*, 109 Phil. 273, it was held that:

“Although the wife’s refusal to be examined or failure to appear in court show indifference on her part yet from such attitude the presumption arising out of the suppression of evidence could not arise or be inferred, because women of this country are by nature coy, bashful, and shy unless compelled to by competent authority. This the court may do without doing violence to and infringing upon her constitutional right. A physical examination in this case is not self-incrimination. She is not charged with any offense. She is not being compelled to be a witness against herself. Impotency being an abnormal condition should not be presumed.”

The presumption is in favor of potency. The lone testimony of the husband that his wife is physically incapable of sexual intercourse is insufficient to tear asunder the ties that have bound them together as husband and wife.

The sexually-transmissible disease must be existing at the time of the marriage and it must be serious and appears to be incurable; otherwise, it is not a ground for annulment of marriage.

When a marriage which is voidable deemed ratified.

Case:

Sison vs. Te Lai Li (CA), 7037-R, May 7, 1952

A voidable marriage was entered into between A and B, with the use of violence or intimidation. When is it considered ratified?

Held:

While it is true that a marriage which is voidable by reason of violence or intimidation is susceptible of ratification by cohabitation, such cohabitation, must be more than living together in the same house or even occupying the same bed. It must be voluntary living together as husband and wife under the same roof, including sexual relations.

When threat or intimidation is a ground for annulment of marriage.

In *Carlos vs. Roxas*, 5 C.A. Rep. 787, it was ruled that to be a ground for annulment of marriage, threat or intimidation must be of such nature to prevent the party upon whom it is employed from acting as a free agent, his will being coerced by fear or compulsion. According to the Civil Code, there is intimidation when one of the contracting parties is compelled, by a reasonable and well-grounded fear of an imminent and grave evil upon his person, to give his consent. (Art. 1335, par. 2). In other words, his mind is so shackled that the will he exercises is not his own but of the person whose command he is unable to resist.

Mere reluctance does not detract from the voluntariness of one's acts. There is a distinction between a case where a person gives his consent reluctantly and even against his good sense and judgment, and where he, in reality, gives no consent at all, as where he executes a contract or performs an act against his will under pressure which he cannot resist. (*Reyes vs. Zaballero*, 89 Phil. 39).

Article 46. Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:

- (1) **Non-disclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude;**
- (2) **Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;**
- (3) **Concealment of a sexually-transmissible disease, regardless of its nature, existing at the time of the marriage; or**
- (4) **Concealment of drug addiction, habitual alcoholism or 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. (86a)

Existence at the time of marriage required.

The grounds for annulment of the marriage under Article 46 must be existing at the time of the marriage because one cannot hide something that was not existing at the time of the marriage. The

law speaks of concealment and non-disclosure, hence, very clearly, the grounds referred to must be already existing at the time of the celebration of the marriage.

The judgment referred to in paragraph 1 of Article 46 must be final, otherwise, it would not constitute a ground for the annulment of the marriage. A crime involving moral turpitude is one where the penalty imposed is more than six (6) years imprisonment. The reason for the law is that, besides the social humiliation and moral suffering endured by the innocent spouse, the guilty one in serving his sentence cannot perform his or her purely personal duties as a spouse.

Purpose of the law in concealment of prior pregnancy.

Paragraph 2 of Article 46 refers only to a woman, the latter having concealed from her spouse the fact of pregnancy by a man other than her husband. The purpose of the law is clear, that is to prevent a stranger from intruding into the successional rights of the husband. Concealment of pre-marital sex by the wife however, is not a ground for legal separation in view of the fact that the law says that no other misrepresentation or deceit as to character or chastity shall constitute such fraud as will give grounds for action for annulment of the marriage. The same rule is applicable to the man who may have hidden from his spouse the fact of pre-marital sex with other women before he got married. What is fraudulent is the concealed pregnancy.

Case:

Aurora A. Anaya vs. Fernando O. Palaroan
G.R. No. L-27930, November 26, 1970

Facts:

The marriage between Aurora Anaya and defendant Fernando Palaroan was celebrated on December 4, 1953. Thereafter, on January 7, 1954, defendant Fernando filed an action for annulment of the marriage on the ground of force or intimidation. The CFI (now RTC) on September 23, 1959, dismissed the case, upholding the validity of the marriage and granted plaintiff's counterclaim.

However, while a counterclaim was being negotiated to settle the judgment, plaintiff herein prayed for the annulment of the

marriage and for moral damages alleging that Fernando had divulged to her the fact that several months prior to the marriage, he had pre-marital relationship with a close relative of his and that the non-divulgement of such to her had definitely wrecked their marriage; that the frank disclosure of it should have precluded her from giving her consent to the marriage and therefore, it constitutes fraud as contemplated in No. 4 of Article 85, New Civil Code in relation to Article 86, New Civil Code. (Now Article 46, Family Code).

Issue:

Whether or not the non-disclosure to a wife by her husband of his pre-marital relationship with another woman is a ground for the annulment of marriage.

Held:

For fraud as a vice of consent in marriage, which may be a cause for its annulment, it is limited exclusively by law in Article 86, New Civil Code (Now Article 46, Family Code), referring to misrepresentation, non-disclosure of a previous conviction involving moral turpitude and concealment of pregnancy.

Further, the intention of Congress to confine the circumstances that constitute fraud to those above enumerated is clearly shown by the interdiction that: “No other misrepresentation or deceit as to character, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage.”

In fact, in *Buccat vs. Buccat*, 72 Phil. 19; *Aquino vs. Delizo*, 109 Phil. 21, it was uniformly ruled that one cannot seek annulment of marriage on the ground of concealment of pregnancy where the woman at the time of the marriage was in an advanced state of family way.

Reason for the law.

If a wife has concealed a pregnancy by a man other than her spouse, it is believed that in her actual present condition, the wife is not fit to take on herself the duties of a chaste and faithful wife. She is incapable of bearing a child to her husband at the time of the marriage. Her concealment of her pregnancy by another man is a fraud going into the essentials of the marriage relation. (Capistrano, *Civil Code of the Phils.*, 1950 ed., p. 101).

Case:**Reynolds vs. Reynolds
3 Allen (85 Marc), 605****Facts:**

It appears that at the time of the marriage on Oct 11, 1956, appellant was only 17 years of age and the respondent was 30 years or over. It was alleged among others, that the man was induced to marry the woman by means of her fraudulent misrepresentations that she was a chaste and virtuous woman; that her friends represented her to him, at her procurement, that she was honest and was a virgin, when in truth she was at the time of the marriage pregnant with a child.

Held:

While marriage by our law is regarded as a purely civil contract, which may well be avoided and set aside on the ground of fraud, it is not to be supposed that every error or mistake into which a person may fall concerning the character or qualities of a wife or a husband, although occasioned by disingenuous or false statements or practices, will afford sufficient reason for annulling an executed contract of marriage. In the absence of force or duress, and where there is no mistake as to the identity of the person, any error or misapprehension as to the personal traits or attributes, or concerning the position or circumstances in life of a party, is deemed wholly immaterial and furnishes no good cause for annulment. Therefore, no misconception as to the character, fortune, health or temper, however brought about, will support an allegation of fraud on which the dissolution of the marriage contract, once executed, can be obtained in a court. These are accidental qualities which do not constitute the essential and material elements on which the marriage relation rests. The law, in the exercise of a wise and sound policy, seeks to render the contract of marriage, when once executed, as far as possible indissoluble. The great object of marriage in a civil and Christian community is to secure the existence and permanency of the family relation and to insure the legitimacy of the offspring. It would tend to defeat this purpose, if error or disappointment in personal qualities or character were allowed to be the basis of proceedings on which to found a dissolution of the marriage tie. The law, therefore, wisely requires that persons who act on representations or belief in regard to such matters should bear the consequences which flow from the contract

into which they have voluntarily entered, after they have been executed, and affords no relief for the result of a “blind credulity, however, it may have been produced.”

But a very different question arises where, as in the case at bar, a marriage is contracted and consummated on the faith of a representation that the woman is chaste and virtuous, and it is afterwards ascertained that this was false but that she was at the time of making it and when she entered into the marriage relation, pregnant with a child by a man other than her husband. The material distinction between such case and a misrepresentation as to the previous chastity of a woman is obvious and palpable. The latter relates only to her character and conduct prior to the contract while the former touches directly her actual and present condition and her fitness to execute the marriage and take on herself the duties of a chaste and faithful wife. It is not going too far to say, that a woman who has not only submitted to the embraces of another man, but who also bears in her womb the fruit of such illicit intercourse, has, during the period of her gestation, incapacitated herself from making and executing a valid contract of marriage with a man who takes her as his wife in ignorance of her condition and on the faith of representations that she is chaste and virtuous. In such a case, the concealment and false statements go directly to the essentials of the marriage contract, and operate as fraud of the gravest character on him with whom she enters into the relation. As has been already stated, one of the leading and most important objects of the institution of marriage under our law is the procreation of children who shall with certainty be known by their parents as the pure offspring of their union. A husband has a right to require that his wife shall not bear to his bed aliens to his blood and lineage. This is implied in the very nature of the contract of marriage. Therefore, a woman who is incapable of bearing a child to her husband at the time of her marriage, by reason of her pregnancy by another man, is unable to perform a very important part of the contract into which she enters and any representation which leads to the belief that she is in a marriageable condition is a false statement of a fact material to this contract, and on well-settled principles, affords grounds for setting it aside and declaring the marriage void.

- (3) The last paragraph of Article 46 clearly provides that fraudulent acts enumerated in the law are exclusive, for no other misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute fraud as will give grounds for the annulment of marriage. Hence, if the man

represented himself to be rich, or a high-ranking official, or a good person, but in truth and in fact he is not, then, such misrepresentation does not constitute a ground for annulment of marriage. If a man happened to have gotten married to a prostitute who knowing her to be so, the mere discovery after the marriage does not give rise to a ground for annulment of marriage. This is so because of the exclusive character of the grounds for the annulment of marriages due to fraud.

What constitutes fraud? The New Civil Code provides:

Art. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. (1269)

Art. 1339. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud. (n)

Art. 1340. The usual exaggerations of trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent. (n)

Art. 1341. A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge. (n)

Art. 1342. Misrepresentation by a third person does not vitiate consent, unless such misrepresentation has created substantial mistake and the same is mutual.

Art. 1343. Misrepresentation made in good faith is not fraudulent but may constitute error. (n)

Art. 1344. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.

Incidental fraud only obliges the person employing it to pay damages. (1270)

Article 47. The action for annulment of marriage must be filed by the following persons and within the periods indicated herein:

(1) For causes mentioned in number 1 of Article 45 by the party whose parent or guardian did not give his or her consent,

within five years after attaining the age of twenty-one; or by the parent or guardian or person having legal charge of the minor, at any time before such party has reached the age of twenty-one;

(2) For causes mentioned in number 2 of Article 45, by the sane spouse, who had no knowledge of the other's insanity; or by any relative or guardian or person having legal charge of the insane, at any time before the death of either party, or by the insane spouse during a lucid interval or after regaining sanity;

(3) For causes mentioned in number 3 of Article 45, by the injured party, within five years after the discovery of the fraud;

(4) For causes mentioned in number 4 of Article 45 by the injured party, within five years from the time the force, intimidation or undue influence disappeared or ceased;

(5) For causes mentioned in numbers 5 and 6 of Article 45, by the injured party, within five years after the marriage. (87a)

The law enumerates the persons who may file an action for the annulment of marriage and the periods within which the action must be filed. If the actions are not filed within the periods prescribed by law, the same would prescribe.

Article 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal 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.

In cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment. (88a)

Reason for the law.

The intention of the law is clear, that is to preserve the marriage. The State has interest in the marriage as the foundation of the family, that is why, it is required that in cases of annulment or declaration of nullity of marriage, the prosecutor or fiscal assigned to the court where the case is pending must appear on behalf of the State to see to it that there would be no collusion between the spouses or see to it that the evidence is not fabricated. This law emphasizes

the fact that marriage is not a mere contract but an inviolable social institution. If the fiscal or prosecutor finds collusion or fabrication of the evidence during the trial, he can move for the dismissal of the case. In fact, the law even prohibits the rendition of judgment based on stipulation of facts or confession of judgement. As said elsewhere, the nature, consequence and incidents of marriage are determined by law and not subject to stipulations.

The requirement that the court shall order the prosecuting attorney to appear is intended to prevent annulment of marriage in cases where no ground therefor really exists. The Court should proceed with the greatest vigilance and care, not only to prevent fraud and collusion by the parties, but also to guard against an honest mistake under which they may be acting. (Capistrano, Civil Code of the Phils., 1950 ed., p. 105).

No default in annulment of marriage.

Well-entrenched in Philippine law is the rule that a party in action for the annulment of marriage cannot be declared in default. This is so because the granting of annulment of marriage or declaration of nullity of the same by default is fraught with danger of collusion. The collusion is suspected when the defendant, despite the service of summons, does not file an answer or contest the action, hence, the duty of the court to order the prosecutor to appear to prevent collusion between the parties and to take care that the evidence to be presented is not fabricated. The reason for the law is obvious from the policy that marriage is not a mere contract, but an inviolable social institution in which the State is virtually interested because the State finds no strong anchor than on good, solid and happy families.

Case:

Tuason vs. CA, et al.
G.R. No. 116607, April 10, 1996
70 SCAD 132

Facts:

A and B got married. During the first 10 years of the marriage, they were a normal and happy couple and begot two children. Due to violent fights, suspected acts of infidelity and drug addiction on

both sides and extreme animosities, B filed a complaint for declaration of nullity of her marriage. She alleged that A was already suffering from “psychological incapacity” at the time of the marriage, incapacitating him to comply with essential marital obligations which have become manifest only after the marriage. A answered and denied all the imputations against him. Instead, he accused B as the one guilty of infidelity and their personal differences started when B did not accord him the respect and dignity due him as a husband. B presented four witnesses, while A participated in the proceedings through counsel. After B rested her case, A moved for the postponement of the hearing for the presentation of his evidence, which was granted. On the scheduled hearing, he again failed to appear. His lawyer did not appear too, hence, the trial court issued an order declaring A as having waived his right to present evidence. The case was decided for B. After the judgment became final due to his failure to appear, and after two (2) months, A filed a petition to set aside the judgment contending that when he failed to appear, the trial court should have ordered the prosecuting officer to intervene for the State and inquired as to the reason for his non-appearance instead of forfeiting his right to present evidence, invoking Article 48 of the Family Code.

Held:

Article 48 of the Family Code is inapplicable. For one, A was not declared in default by the trial court for failure to answer. He filed his answer to the complaint and contested the cause of action alleged by B. He actively participated in the proceedings by filing several pleadings and cross-examining the witnesses of B. It is crystal clear that every stage of the proceeding was characterized by a no-holds-barred contest and not by collusion. The role of the prosecuting attorney or fiscal in the annulment of marriage is to determine whether collusion exists between the parties and take care that the evidence is not suppressed or fabricated. A's vehement opposition to the annulment proceedings negates the conclusion that collusion existed between the parties. Neither was there any allegation by A that evidence was suppressed or fabricated by any of the parties. Hence, the non-intervention of the prosecuting attorney was not fatal to the validity of the proceedings in the trial court. (See also *Pacete vs. Carriaga*, 231 SCRA 321; *Macias vs. Judge Ochotorena*, July 30, 2004).

The Solicitor General is authorized to intervene in proceedings for nullity and annulment of marriages.

No less than the Constitution seeks to preserve the sanctity of the marriage. The reason is that, marriage is the foundation of the family and the family is the foundation of society. That is why, the law on marriage is restrictive. Even if there is no answer of the defendant in actions for declaration of nullity of marriage or annulment thereof or even in legal separation, there is an inherent opponent, the State. That is why, more often than not parties would question the appearance of the State through the Solicitor General in such proceedings. The reason why the State intervenes is to protect its interest in the marriage.

In a case, it was argued that only the prosecuting attorney or fiscal may intervene on behalf the State in proceedings for annulment or nullity of marriage, hence, the Solicitor General has no personality to appear. The Supreme Court brushed aside such contention and ruled:

“That Article 48 does not expressly mention the Solicitor General does not bar him or his Office from intervening in proceedings for annulment or declaration of nullity of marriages. Executive Order No. 292, otherwise known as the Administrative Code of 1987, appoints the Solicitor General as the principal law officer and legal defender of the Government. His Office is tasked to represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers.”

“The intent of Article 48 of the Family Code of the Philippines is to ensure that the interest of the State is represented and protected in proceedings for annulment and declaration of nullity of marriages by preventing collusion between the parties, or the fabrication or suppression of evidence and, bearing in mind that the Solicitor General is the principal law officer and legal defender of the land, then his intervention in such proceedings could only serve and contribute to the realization of such intent, rather than thwart it.”

“Furthermore, the general rule is that only the Solicitor General is authorized to bring or defend actions on behalf of the People of Republic of the Philippines once the case is brought before the Court or the Court of Appeals. (*Metrobank vs. Tonda*, 338 SCRA 254 [2000]). While it is the prosecuting attorney or fiscal who actively participates, on behalf of the State, in a proceeding for annulment or declaration of nullity of marriage before the RTC, the Office of the Solicitor General takes over when the case is elevated to the Court of Appeals or the Supreme Court. Since it shall be eventually responsible for taking the case to the appellate courts when circumstances demand, then it is only reasonable and practical that even while the proceeding is still being held before the RTC, the Office of the Solicitor General can already exercise supervision and control over the conduct of the prosecuting attorney or fiscal therein to better guarantee the protection of the interests of the State.”

In fact, the Court had already recognized and affirmed the role of the Solicitor General in several cases for annulment and declaration of nullity of marriages that were appealed before it, summarized as follows in the case of *Ancheta vs. Ancheta*:

In the case of *Republic vs. CA*, 268 SCRA 198 (1997), the Court laid down the guidelines in the interpretation and application of Article 48 of the Family Code, one of which concerns the role of the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the State:

“The trial court must order the prosecuting attorney or 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 therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.” (*Id.*, at 213).

The Court in the case of *Malcampo-Sin vs. Sin*, 355 SCRA 285 (2001), reiterated its pronouncement in *Republic vs. CA*, *supra.*,

regarding the role of the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the State.

Finally, the issuance of the Court of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, which became effective on March 15, 2003, should dispel any other doubts of respondent Crasus as to the authority of the Solicitor General to file the instant Petition on behalf of the State. The Rule recognizes the authority of the Solicitor General to intervene and take part in the proceedings for annulment and declaration of nullity of marriages before the RTC and on appeal to higher courts. The pertinent provisions of the said Rule are reproduced below —

Sec. 5. *Contents and form of petition.* —

(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.

.....

Sec. 18. *Memorandum.* — The court may require the parties and the public prosecutor, in consultation with the Office of the Solicitor General, to file their respective memoranda in 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.

.....

(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.

(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. (Rep. vs. Crasus Iyoy, G.R. No. 152577, September 21, 2005).

Article 49. During the pendency of the action and in the absence of adequate provisions in a written agreement between the spouses, 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 as provided for in Title IX. It shall also provide for appropriate visitation rights of the other parent. (n)

Rules to be followed in actions for annulment or nullity of marriage.

Article 49 of the Family Code outlines the things that the Court shall do during the pendency of an action for annulment or declaration of nullity of marriage such as:

- (1) provide for the support of the children and the spouse;
- (2) provide for the custody of the common children;
- (3) give paramount consideration to the moral and material welfare of the children and their choice of the parent with whom they want to remain;
- (4) provide for appropriate visitation rights of the other parent.

The provision for support to the spouses is a recognition of the fact that, during the pendency of the action for annulment or declaration of nullity of marriage, the spouses still have the duty to support one another. The provision for the support of the common children is an implementation of the duty of parents to support their children and it is in keeping with the principle that the best interest of the children is of utmost consideration.

As a rule, a child below the age of seven (7) cannot be separated from the mother, except if there is a compelling reason to separate

the child from the mother. (Art. 213, Family Code). However, if the child is seven (7) years old and above, he has a right of choice of the parent with whom he would like to stay with and the court must consider it. But even if the child has chosen one of his parents, if the best interest of the child would be served if the choice is not considered, the court may give the custody of the child to another. This is so because the best interest of the child is of paramount importance.

One compelling reason to separate the child from the mother is the adultery of the mother. In *Cervantes vs. Fajardo*, G.R. No. 79955, January 27, 1989, the Supreme Court ruled that in all cases involving the custody, care, education and property of children, the latter's welfare is paramount. The provision that no mother will be separated from the child under seven years will not apply where the court finds compelling reasons to rule otherwise. One compelling reason to separate the child from the mother is when she has a common-law relationship with another man. The reason is that the common-law relationship of the mother with a married man will not afford the minor child that desirable atmosphere where she can grow and develop with an upright and moral-minded person.

Case:

**Espiritu, et al. vs. CA, et al.
59 SCAD 631, 242 SCRA 362, March 15, 1995**

Visitation Rights.

The law says that the court shall provide for appropriate visitation rights to the other parent. This is true where the custody of the children has been awarded to one of the parents. The parties may even agree on the visitation rights, but in case of disagreement, it is incumbent upon the court to provide for the same in the judgement annulling the marriage or declaring the marriage void.

Article 50. The effects provided for by paragraphs (2), (3), (4) and (5) of Article 43 and by Article 44 shall also apply in the proper cases to marriages which are declared void *ab initio* or annulled by final judgment under Articles 40 and 45.

The final judgment in such cases 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, unless such matters had been adjudicated in previous judicial proceedings.

All creditors of the spouses as well as of the absolute community or the conjugal partnership shall be notified of the proceedings for liquidation.

In the partition, the conjugal dwelling and the lot on which it is situated, shall be adjudicated in accordance with the provisions of Articles 102 and 129.

Issue of custody decided in action for declaration of nullity of marriage.

The import of the aforesaid provisions has been explained in *Eric Jonathan Yu vs. Caroline T. Yu*, G.R. No. 164915, March 10, 2006 where, if there is an action for declaration of nullity of marriage, the issue on the custody is necessarily decided. In fact, it is merely incidental to the main action for the nullity of the marriage, as in fact all incidents of marriage are decided by the court. Of course, the law says that if the custody of a child has been decided ahead, then, that would now be *res judicata*. It cannot be decided again in a different proceeding. The Supreme Court in the said case said:

“By petitioner’s filing of the case for declaration of nullity of marriage before the Pasig RTC he automatically submitted the issue of the custody of Bianca as an incident thereof. After the appellate court subsequently dismissed the *habeas corpus* case, there was no need for petitioner to replead his prayer for custody for, as the above-quoted provisions of the Family Code provide, the custody issue in a declaration of nullity case is deemed pleaded in actions for. The law provides:

‘Sec. 12. *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.” (A.M. No. 02-11-10-SC approved by the SC on March 4, 2003, effective on March 15, 2003).

Since this immediately-quoted provision directs the court taking jurisdiction over a petition for declaration of nullity of marriage to resolve the custody of common children, by mere motion of either party, it could only mean that the filing of a new action is not necessary for the court to consider the issue of custody of a minor.

The only explicit exception to the earlier-quoted second paragraph of Art. 50 of the Family Code is when “such matters had been adjudicated in previous judicial proceedings,” which is not the case here.

Article 51. In said partition, 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.

The delivery of the presumptive legitimes herein prescribed 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. (n)

The law makes a cross reference to Articles 43 and 44 which provide for the effects of a void marriage and a marriage which was terminated by the subsequent recording of an affidavit of reappearance of an interested person where one spouse got married after the absent spouse was declared presumptively dead. It also says that the effects of declaration of nullity or annulment of the marriage by final judgment under Articles 40 and 45 have the same effects as those provided for in Articles 43(2), (3), (4), (5) of the Family Code.

The first paragraph of Article 50 of the Family Code, applying to paragraph (2), (3), (4) and (5) of Article 43 relates only, by its explicit

terms, to voidable marriages and exceptionally to void marriages under Article 40 of the Code. (*Valdes vs. RTC, Branch 102, Quezon City, et al.*, G.R. No. 122749, July 31, 1996, 72 SCAD 967).

In the judgment declaring a marriage void or annulling the marriage, the court shall provide for the following:

- (a) liquidation, partition and distribution of the properties of the spouses;
- (b) custody of the common children;
- (c) support for the common children; and
- (d) delivery of the presumptive legitimes of the children.

But if the foregoing have already been adjudicated in previous judicial proceedings, then, the court rendering the judgment need not provide for the same.

In the proceedings for the liquidation of the community of properties, the creditors shall be notified. This is for the protection of the creditors where they would come forward to present their claims against the absolute community of properties or the conjugal partnership. So that if they can prove their credits, the court would order the payment.

In the partition of the properties, the conjugal dwelling is, as a rule, given to the spouse with whom majority of the children choose to remain. (Art. 102, Family Code). The rule is not absolute, because there can be a contrary agreement between the spouses. It means that even if the majority of the children had chosen the mother, if the spouses agreed that the conjugal dwelling shall be given to the husband, then the agreement must be respected by the court as it is the law between them. (Art. 1159, NCC). In case there is no such majority, the court shall decide, but such decision should take the best interest of the children. (Art. 102, Family Code; See also Art. 129, Family Code).

The presumptive legitime that is to be delivered to the children at the partition of the properties of the spouses may be property or sound securities. If the spouses have already provided for the same in an agreement mutually agreed by the parties, there is no need of such delivery. The value of such presumptive legitime shall be computed as of the date of the final judgment of the trial court. In fact, such requirement of delivery of the presumptive legitime can be enforced by the children or their guardians or trustees. In short, a

motion for execution can be filed to enforce it and a writ of execution can be issued pursuant to the same. If there has already been delivery of the presumptive legitimes of the children, the same is without prejudice to their final legitime after their parents' death, but this shall be deducted from the final legitime as an advance inheritance.

Article 52. The judgment of annulment or 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. (n)

Article 53. Either of the former spouses may marry again after complying with the requirements of the immediately preceding Article; otherwise, the subsequent marriage shall be null and void.

NOTES:

Article 52 requires the registration of the judgment annulling the marriage, or the decree declaring the marriage void, the partition and distribution of the properties of the spouses as well as the delivery of the children's presumptive legitimes in the appropriate civil registry and registries of property. If they do not comply with the requirement of recording, then, the same shall not affect third persons.

One question has been asked: If they did not comply with the requirement of recording in Article 52 of the Family Code and they contracted subsequent marriages, are the marriages valid? It is believed that they are void, as the law says that either of the former spouse may marry again after compliance with the requirements of the provisions of Article 52.

Article 54. Children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory, shall be considered legitimate. Children conceived or born of the subsequent marriage under Article 53 shall likewise be legitimate.

Void marriages that may produce legitimate children.

There are two (2) kinds of marriages referred to in Article 54 of the Family Code that can produce legitimate children prior to their declaration as void marriages. They are:

- (1) those marriages under Article 36 where there is “psychological incapacity”;
- (2) those marriages under Article 53 where the decree annulling or declaring the marriage void, the partition, distribution of properties of the spouses and the delivery of the presumptive legitimes of the children have not been recorded in the proper civil registry or registries of property.

This is so because children conceived or born before the judgment declaring the aforesaid marriages void have become final and executory are legitimate.

Prescinding from said rule, suppose there is a marriage of A and B, which has been declared void by reason of “psychological incapacity.” On appeal, C was conceived or born. The child C, is legitimate because the judgment is not yet final and executory.

The reason for the legitimacy of such children born or conceived as referred to in Articles 54, 36 and 53 of the Family Code is obvious. The children cannot be blamed for the misfortunes or misgivings of their parents. In fact, a child born within wedlock is presumed to be legitimate. Anyone who alleges the illegitimacy of such child has the burden to prove it.

Under Article 36 of the Family Code, a marriage where one of the parties is psychologically incapacitated to perform his/her essential duties to the marriage is void from the very beginning. Under Article 53, the marriage subsequently contracted by any one of the spouses in violation of the rule in Article 52 is void. Both are void marriages, but these two marriages can produce legitimate children provided that they were conceived prior to the judgment that declares them void and that has become final and executory. This law benefits the child born out of the said marriages. In fact, there are only two (2) void marriages that can produce legitimate children, for it cannot be possible for the child of a brother and a sister who get married to be legitimate or the child of a grandfather and a granddaughter who get married to be legitimate. The marriages in Articles 36 and 53 of the Family Code can produce legitimate children because without their defects, they would have been valid unlike the marriage of a brother and a sister which is valid from its inception.

Title II

LEGAL SEPARATION

Article 55. A petition for legal separation may be filed on any of the following grounds:

(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

(2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;

(3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;

(4) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;

(5) Drug addiction or habitual alcoholism of the respondent;

(6) Lesbianism or homosexuality of the respondent;

(7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;

(8) Sexual infidelity or perversion;

(9) Attempt by the respondent against the life of the petitioner; or

(10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

For purposes of this Article, the term “child” shall include a child by nature or by adoption. (97a)

The law enumerates the various grounds for legal separation.

Legal separation is the separation of the spouses from bed and board without severing the marriage bond. In legal separation, the

spouses are only entitled to live separately from one another, unlike in divorce, or declaration of nullity or annulment of marriage, where the marriage bond is severed. In legal separation, the spouses are not free to contract subsequent marriages because they are still married even if already legally separated. If the marriage is declared void or annulled, or where there is divorce, the former spouses can contract subsequent marriages. Divorce is included because of Article 26, paragraph 2 of the Family Code which recognizes the effects of a foreign divorce obtained by the foreigner-spouse in a mixed marriage, capacitating him to marry again under his national law. In fact, in *Van Dorn vs. Romillo*, 139 SCRA 139, and *Pilapil vs. Somera*, the Supreme Court recognized the effects of foreign divorce obtained in Nevada, U.S.A. saying that after the husband of the Filipina obtained a divorce decree under his national law, he is no longer the husband of the Filipina. He would have no more control of the conjugal assets, as the community of properties has already been dissolved. She can no longer be obliged to live with him, observe respect and fidelity and render support. He cannot continue to be one of her heirs with possible rights to conjugal properties. In fact, the Supreme Court was very emphatic when it said that she should not be discriminated against in her own country if the ends of justice are to be served. In *Pilapil vs. Somera*, it was also ruled that once divorce has been obtained, the Filipina can no longer be prosecuted for adultery by her former husband because the marriage bond has already been severed. He has no more personality to sue her.

There are two kinds of divorce namely: (1) absolute divorce or *a vinculo matrimonii*; (2) relative divorce, or *a mensa et thoro*. The former dissolves the marriage tie and the divorcees are free to marry again, while the latter does not dissolve the marriage bond; they are only entitled to live apart from bed and board. The latter one is that which is adopted in the Philippines and is otherwise known as legal separation.

History of the Law on Legal Separation.

During the Spanish regime, only relative divorce provided for by the *Partidas*, was in force. The provisions of the old Civil Code (which took effect on December 8, 1889) on relative divorce were not in force for they were suspended together with the provisions on civil marriage on protest of the church. The *Partidas*, like other municipal laws, were continued in force under the American sovereignty. In

1917, after a long and bitter fight in the Legislature in which the proponents were led by Senate President Quezon and Senator Palma, and the opponents by Speaker Osmeña, the divorce law, Act No. 2710 was passed, alleging absolute divorce with many restrictions and on only one ground to wit, adultery on the part of the wife, or concubinage on the part of the husband, as defined in the Penal Code. This law was construed to have impliedly repealed the relative divorce under the *Partidas*. (Garcia Valdez vs. Soteraña Tuason, 40 Phil. 943). But Chief Justice Avanceña, in a strong dissenting opinion, held that the majority opinion was wrong, and that it deprived the Catholics, who do not believe in absolute divorce, of the only remedy acceptable to them, which is relative divorce.

The Code Commission, in the Project of Civil Code, did not liberalize the divorce law as found in Act No. 2710 because it did not work to provoke a bitter fight over the Code in Congress. It merely reproduced the provisions of Act 2710 and added more restrictions, one of which was that no judgment for divorce shall be granted based on stipulation of facts or on confession of judgment.

The Code Commission also revived relative divorce because absolute divorce was discriminatory in its operation against the Catholics, who constitute the great majority of our population and because it is logical to deny relative divorce, when absolute divorce is allowed. The more includes the less. It was intended that a Catholic, to whom absolute divorce is unthinkable and forbidden by his religion, should be given the right to ask for relative divorce just as he could prior to the divorce law, Act 2710, which in a bad decision by an American Justice (Garcia Valdez vs. Soteraña Tuason, 40 Phil. 943), was construed to have impliedly abrogated the relative divorce under the *Partidas*. The particularly strong dissenting opinion of Chief Justice Avanceña holding that relative divorce remained unaffected by the Divorce Law was, in the judgment of the Code Commission, the better opinion.

However, the Congress, sensitive to the wishes of the Catholic reputation, voted to eliminate absolute divorce from the Project so that only relative divorce was retained in the Code as finally approved. He also changed the term "*relative divorce*" to "*legal separation*" following the suggestion and wishes of the women Catholics, who said that a Catholic woman would not want to be known as a divorcee, but only as legally separated from her husband. (Capistrano, *Civil Code of the Phils.*, 1950 ed.).

Grounds for Legal Separation.

The law now enumerates more grounds for legal separation unlike in Article 97 of the Civil Code where there were only three, like adultery, concubinage and attempt by one against the life of the other.

Adultery and concubinage have been summed up into one ground for legal separation, which is sexual infidelity or perversion. This is so because it is very difficult to prove concubinage or even adultery.

Adultery is committed when a married woman has carnal knowledge with a man other than her husband. Concubinage is committed when a married man performs the following acts: (1) by keeping a mistress in the conjugal dwelling; (2) by cohabiting with her in any other place; (3) having carnal knowledge with a woman other than his wife under scandalous circumstances.

Sexual perversion.

A new ground for legal separation is sexual perversion.

In the case of *Francisco vs. Tayao*, 50 Phil. 42, a basic question was raised before the Supreme Court as to whether or not, the wife can secure a divorce (legal separation) from the husband, where the husband has been convicted of adultery and not of concubinage, although the acts for which he was convicted of adultery may also constitute concubinage. Justice Malcolm, speaking for the Supreme Court in his *ponencia* said:

“What counsel is asking this Court to do is to sit as a trial court to convict the defendant of the crime of concubinage although no prosecution for the same has been instituted by the aggrieved wife and no hearing has been had or judgment rendered in a lower court. This the appellate court cannot do. What counsel also desires this court to do is to add a third cause for divorce to the law and to insert two words in Section 1 of the Divorce Law so that it will read: ‘A petition for divorce can only be filed for adultery on the part of the wife or the husband or concubinage on the part of the husband. This likewise the court cannot do. It would amount to judicial amendment of the law.’”

The foregoing jurisprudential law may no longer be squarely applicable since the law does not distinguish between adultery and concubinage anymore. It now refers to sexual infidelity committed by either spouse.

Attempt upon the life of another.

Attempt by one against the life of the other is still a ground for legal separation. The law requires the intention to kill, so that if it resulted merely in physical injuries on the aggrieved spouse, that would not constitute a ground for legal separation. However, if the act producing physical injuries can be proven to constitute repeated physical violence or grossly abusive conduct directed against the aggrieved spouse, a common child or a child of the plaintiff, the same can be a ground for legal separation. The latter rule may arise when there are repeated acts of one spouse of beating the other without intent to kill but merely resulting in physical injuries. The aggrieved spouse may file an action for legal separation. In fact, such repeated acts of violence are not limited to the other spouse, but even to children.

Attempt to kill is sufficient. There is no need for conviction. However, if there was a mere reckless or imprudent act, where there is no intent to kill, as when one spouse accidentally hit the other while driving their car, the act does not constitute a ground for legal separation. This is so because of the use of the word "*attempt*" which presupposes the existence of intent.

Final judgment.

A final judgment sentencing one of the spouses to imprisonment of more than 6 years, even if pardoned, is a ground for legal separation. This may happen even during the marriage, for if it happened prior to the marriage with the spouse concerned having concealed the same, it would be a ground for annulment of the marriage on the ground of fraud. (Article 46, Family Code). The reason for the law is that the other spouse may suffer social humiliation and moral sufferings.

Drug addiction.

Drug addiction or habitual alcoholism, as grounds for legal separation, may occur during the marriage, for if already existing before the marriage but concealed, then, they may be considered as

fraudulent acts, constituting grounds for annulment of marriage. The same is true with homosexuality or lesbianism. But it must be pointed out that in *Santos vs. CA, et al.*, the Supreme Court said drug addiction, homosexuality or lesbianism, depending upon their gravity, may prevent a spouse from performing the essential duties to the marriage bond, and hence, the said spouse may be declared as one suffering from psychological incapacity, thus, the marriage may be declared void by reason of psychological incapacity.

If one of the spouses contracts a subsequent marriage in the Philippines or elsewhere, the aggrieved party may file an action for legal separation. This is so because by then, the other spouse would no longer be in a position to perform his duties to the marriage. This may also be considered as immorality on the part of the other spouse.

Abandonment by one spouse.

Abandonment by one spouse for more than one year constitutes a ground for legal separation. Abandonment implies a departure by one spouse with the avowed intent never to return, followed by prolonged absence without just cause, and without, in the meantime, providing in the least for one's family although able to do so. There must be absolute cessation of marital relations, duties and rights, with the intention of perpetual separation. As said in *Prima Partosa-Jo vs. CA, et al.*, 216 SCRA 692 (December 18, 1992), this idea is clearly expressed in the provision of the Family Code which states that "*a spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without any intention of returning.*" (Art. 128, Family Code). The term abandonment has been interpreted by the Supreme Court to include the act of rejecting a spouse or totally preventing a spouse from going back to the conjugal dwelling. The Supreme Court in *Partosa-Jo vs. CA* said:

"The record shows that as early as 1942, the private respondent had already rejected the petitioner, whom he denied admission to their conjugal home in Dumaguete City when she returned from Zamboanga. The fact that she was not accepted by Jo demonstrates all too clearly that he had no intention of resuming their conjugal relationship. Moreover, beginning 1968 until the final determination by this Court of the action for support in 1988, the private respondent refused to give financial support to the petitioner."

Conviction is not necessary before legal separation may prosper.

Is conviction necessary before action for legal separation may prosper?

No, said the Supreme Court in *Gandionco vs. Hon. Peñaranda, et al.*, L-72984, November 27, 1987. A decree of legal separation, on the ground of concubinage, may issue upon proof by preponderance of evidence in the action for legal separation. No criminal proceedings or conviction is necessary. The case of *Francisco vs. Tayao*, 50 Phil. 42, is not controlling because it was decided under Act 2710 when absolute divorce was allowed and had for its grounds the same grounds for legal separation under the NCC, with the requirement, under such former law, that the guilt of defendant spouse had to be established by final judgment in a criminal action. The requirement has not been reproduced in the New Civil Code. In fact, such ground can be proven only in a civil case. A criminal action is not needed.

Likewise, support *pendente lite* can be availed of in an action for legal separation and is granted at the discretion of the judge. (*Araneta vs. Concepcion, et al.*, 99 Phil. 709). If petitioner finds the amount of support *pendente lite* ordered as too onerous, he can always file a motion to modify or reduce the same.

Article 56. The petition for legal separation shall be denied on any of the following grounds:

- (1) Where the aggrieved party has condoned the offense or act complained of;**
- (2) Where the aggrieved party has consented to the commission of the offense or act complained of;**
- (3) Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation;**
- (4) Where both parties have given ground for legal separation;**
- (5) Where there is collusion between the parties to obtain the decree of legal separation; or**
- (6) Where the action is barred by prescription. (100a)**

The law provides for the instances when a petition for legal separation may be denied.

Condonation is the forgiveness of a marital offense constituting a ground for legal separation and bars the right to ask for legal separation. But it is on the condition implied by law, when not express, that the wrongdoer shall not again commit the offense and also that he shall thereafter treat the other spouse with conjugal kindness. A breach of the condition will revive the original offense. Condonation may be express or implied. It has been said that condonation comes after the commission of the act constituting a ground for legal separation. Condonation is implied from sexual intercourse after knowledge of the other's infidelity. Such act necessarily implies forgiveness. It is entirely consonant with both reason and justice that if the wife freely consents to sexual intercourse after she has full knowledge of the husband's guilt, her consent should operate as a pardon of his wrong. (*Shakleton vs. Shakleton*, 48 N.J. Eq. 364, 21 Atl. 935).

Consent may come prior to the act of infidelity. In fact, in *People vs. Schneckenburger*, the parties agreed in writing that they would separate and can take other partners. The Supreme Court said that if one of the parties takes another woman, the wife cannot secure a decree of legal separation because of a prior consent to the infidelity.

Connivance is the corrupt consenting by one spouse to an offense by the other, and will bar a suit for legal separation. It is a well-settled rule that if either spouse consents to conduct on the part of the other which would ordinarily constitute ground for legal separation, he will be held to have committed connivance at such conduct, and on the principle of *volenti non fit injuria*, will not be heard to complain of it as a ground for legal separation (divorce). (*Tiffany*, Section 105).

This situation in connivance involves a third person. As has been held by the U.S. Supreme Court, if a man suspected his wife of adultery and laid in wait for her and her paramour at a hotel, and surprised them in the same bed was held not guilty of connivance. He had the right to ascertain the truth of his suspicion. (*Wilson vs. Wilson*, 154 Mass. 194, 12 S.R.A. 524). In *Dennis vs. Dennis*, 68 Conn. 186, 34 S.R.A. 499, the U.S. Supreme Court observed that the plaintiff hired a woman to lure defendant into an act of adultery. There was connivance, it was ruled, saying that connivance is the corrupt consenting of a married party to the conduct of which afterwards a complaint is made. It bars the right of divorce (legal separation) because no injury is received, for what a person has consented to, he cannot set-up as an injury.

If both parties have given rise to a ground for legal separation, none of them can seek a decree of legal separation. This is known as mutual guilt, and the rule is anchored on the basic principle that one shall go to court with clean hands. Or, one cannot benefit out of his own wrongdoing.

Illustration:

A is married to B. A caught B in *flagrante delicto* of having sexual intercourse with X. The following day, B likewise caught A in *flagrante delicto* of having sexual intercourse with Y. Neither of them can go to court to seek for relief because they are both guilty.

The collusion between the parties in an action for legal separation may cause the denial of the action. It is suspected that there is collusion between the parties if the defendant does not file an answer despite service of summons. Hence, it is incumbent upon the court to order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed. (Art. 60, Family Code). The fiscal may conduct an investigation of the parties to determine if there is collusion or not. If he finds that there is, he can recommend the dismissal of the action. If none, then, the case may proceed. He normally reports his findings to the court.

Collusion presupposes an agreement of the husband and wife for one of them to commit, or to appear to commit, or to be represented in court as having committed a breach of matrimonial duty, for the purpose of enabling the other to obtain the legal remedy as for a real injury. (Capistrano, *Civil Code of the Phils.*, 1950 ed., p. 113). It includes an agreement by which evidence of an offense not committed is fabricated, or whereby evidence of a valid defense is suppressed. The agreement, if not expressed, may be implied from the acts of the spouses. (Tiffany, Sec. 110).

An action for legal separation prescribes after five (5) years following the occurrence of the cause for the same. (Article 57, Family Code). So that, if A caught B in *flagrante delicto* of having sexual intercourse with C, his paramour in 1990, she has five (5) years from the occurrence within which to file an action for legal separation. If he fails to do so, the offending spouse B can move for the dismissal of the action on the ground of prescription. The reason for the law is that anyone who is aggrieved must complain within the period

prescribed by law, otherwise, his silence may mean his assent thereto. It has been said that five (5) years is sufficient time for the innocent spouse to find out the infidelity of the other spouse and that any allegation to the contrary must be from one who must have knowingly allowed himself to be deceived and who, for that reason, may not complain as a deceived person. In fact, even if prescription is not alleged in the answer, or even if no answer was filed, if prescription is apparent from the allegations in the complaint, as well as in the evidence, the court can still dismiss the action for legal separation on the ground of prescription.

Having sexual intercourse with one's spouse is condonation of acts constituting ground for legal separation — adultery.

Case:

Bugayong vs. Ginez
100 Phil. 616

Facts:

The petitioner, while far from home, received some information on the acts of infidelity of his wife. So he went home to verify the truthfulness of the alleged infidelity. He sought for his wife and after finding her, convinced her to go with him and live as husband and wife. After two days of living as husband and wife, Benjamin Bugayong tried to extract the truth about his wife's unfaithfulness, but Leonila Ginez instead of answering his query, merely packed up her things and left him. Benjamin Bugayong took that gesture as a confirmation of the imputation.

On November 18, 1952, Benjamin Bugayong filed in the Court of First Instance of Pangasinan an action for legal separation against his wife, Leonila Ginez, who timely filed an answer vehemently denying the averments of the complaint and setting affirmative defenses, and filed a motion to dismiss on the ground that the acts have been condoned.

Issue:

Whether the plaintiff-husband's conduct of sleeping with his wife for two (2) nights despite his alleged belief that his wife has committed acts of infidelity amounted to condonation of her supposed sexual infidelity.

Held:

The court ruled against the plaintiff saying that with the conduct of the latter in sleeping together with his wife despite his belief that his wife has committed acts of infidelity deprives him of any action for legal separation because he actually condoned said sexual infidelity and this comes within the restriction of Art. 56, par. 1 of the Family Code.

Court can take judicial notice of prescription.

A and B are married. In B's action for legal separation, she alleged that in 1982, she discovered that A committed concubinage. The action was filed on November 3, 1991. If you were the judge, would you dismiss the action even if prescription is not alleged in the answer? Why?

Answer:

Yes. In *Brown vs. Yambao*, 102 Phil. 168, it was held that it is true that the wife has not interposed prescription as a defense. Nevertheless, the courts can take cognizance thereof, because actions seeking a decree of legal separation, or annulment of marriage, involve public interest, and it is the policy of our law that no such decree be issued, if any legal obstacles thereto appear upon the record.

If prescription is apparent from the allegations in the complaint for legal separation, the court can dismiss it *motu proprio*. If prescription is not interposed as a defense but becomes manifest after trial, the court may still dismiss the complaint *motu proprio*. This is a means employed by the State to preserve the sanctity of the marriage and the solidarity of the family.

Death of a party abates an action for legal separation.**Case:**

Lapuz-Sy vs. Eufemio
43 SCRA 177

Facts:

This is a petition filed by the heir of the deceased to dismiss the case for legal separation on the ground that the death of the plaintiff

Carmen O. Lapuz-Sy, which occurred during the pendency of the case, abated the cause of action, as well as the action itself.

Issue:

Does the death of the plaintiff before final decree, in an action for legal separation, abate the action? If it does, will abatement also apply if the action involves property rights?

Held:

An action for legal separation which involves nothing more than bed-and-board separation of the spouses is purely personal. The Civil Code of the Philippines recognizes this in its Article 100, by allowing only the innocent spouse to claim legal separation, and in Art. 108, by providing that the spouses can, by their reconciliation, stop or abate the proceedings and even rescind a decree of legal separation already rendered. Being personal in character, it follows that the death of one party to the action causes the death of the action itself – *actio personalis moritur cum persona*.

An action for legal separation is abated by the death of the plaintiff, even if property rights are involved, these rights are mere effects of decree of separation, their source being the decree itself. Without the decree, such rights do not come into existence, so that before the finality of a decree, these claims are merely rights in expectation. If death supervenes during the pendency of the action, no decree can be forthcoming, death producing a more radical and definite separation and the expected consequential rights and claims would necessarily remain unborn.

Adultery as defense against claim for support pending legal separation.

In *Lerma vs. Court of Appeals, et al.* (L-33352, December 20, 1974), where the husband filed a criminal complaint against the wife for adultery and the wife, in retaliation, filed a complaint for legal separation with an urgent petition for *support pendente lite* which the husband opposed, setting up as a defense the adultery charge; and while the legal separation suit was pending, the wife and her paramour were convicted by the trial court in the adultery case but they promptly appealed the conviction to the Court of Appeals. It was held by the Supreme Court (in an appeal concerning the support incident) that the adultery charge was a good defense; that there

was no merit to the suggestion that adultery may be a defense where the support sought is to be taken from the husband's own funds but not where it is to be taken from the conjugal partnership property since such distinction is not material in this case; that the right to separate support or maintenance, even from the conjugal partnership property, presupposes the existence of a justifiable cause for the spouse claiming such right, this being implicit in Art. 104 which states that after the filing of the petition for legal separation, the spouses shall be entitled to live separately; that a petition for legal separation filed in bad faith by a spouse cannot be considered as within the intendment of the law granting separate support; that in a provisional sense at least, as required by Rule 61, Sec. 5, of the Rules of Court, the probable failure of the wife's suit for legal separation could be foreseen since she has been convicted of the adultery although such conviction was still on appeal; and that if legal separation cannot be claimed by her, the filing by her of an action for that purpose should not be permitted to be used as a means of getting support *pendente lite*, since the loss of the substantive right to support in such a situation is incompatible with any claim for support *pendente lite*.

Article 57. An action for legal separation shall be filed within five years from the time of the occurrence of the cause. (102a)

As has been said in the earlier discussion, an action for legal separation may be denied if it has already prescribed as when a person has slumbered on his right to file such action. A spouse may have known a cause for legal separation, but he may have opted to keep quiet; hence, slept on his right to file an action for legal separation. One reason for the prescriptive period is that the law seeks to preserve the marriage as a social institution. For, even if prescription has not been alleged as a defense, but it is shown by the allegations in the complaint as well as the evidence, the Court can still dismiss the action since it can take judicial notice of prescription. The Supreme Court in *Brown vs. Yambao*, 102 Phil. 168, said that actions for legal separation involve public interest and it is the policy of the law that no such decree be issued, if any legal obstacles thereto appear to be on record. It is also in line with the policy that in case of doubt, the court shall lean towards the validity of the marriage and uphold the validity and sanctity of marriage.

Period within which to file an action for legal separation.**Case:****Matubis vs. Praxedes**
109 Phil. 789**Facts:**

Plaintiff and defendant were legally married on January 10, 1943. For failure to agree on how they should live as husband and wife, the couple, on May 30, 1944, agreed to live separately from each other, which status remained unchanged until April 24, 1956 when action was filed for legal separation alleging abandonment and concubinage. Plaintiff, in 1948, condoned and/or consented in writing to the concubinage committed by the defendant husband.

Issue:

Whether the period to bring the action for legal separation has already elapsed and whether legal separation may be granted to an innocent spouse who has consented and/or condoned in writing to the concubinage committed by her husband.

Held:

Art. 102 of the New Civil Code (now Art. 57, FC) provides that an action for legal separation cannot be filed except within one year from and after the date on which the plaintiff became cognizant of the cause and within five years from and after the date when the cause occurred. (Now five [5] years, under Art. 47 of the Family Code).

The plaintiff became aware of the illegal cohabitation of her husband with Asuncion in January 1955. The complaint was filed on April 24, 1956. The present action was, therefore filed out of time and for that reason the action is barred.

Art. 100 of the New Civil Code (now Art. 57, Family Code) provides that separation may be claimed only by the innocent spouse, provided there has been no condonation of or consent to the adultery or concubinage. As shown by evidence, the plaintiff has consented to the commission of concubinage by her husband in writing. This stipulation in writing is an unbridled license she gave her husband to commit concubinage. Having consented to the concubinage, the plaintiff cannot claim legal separation.

Note:

Under Article 57 of the Family Code, the period to file an action for legal separation is now absolutely five (5) years from the time the cause of action occurred.

Article 58. An action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition. (103)

The basic purpose of the law in suspending the trial of an action for legal separation until after the lapse of 6 months since its filing is to give the parties an elbow room to reconcile. (*Araneta vs. Concepcion*, 99 Phil. 709; *Somosa-Ramos vs. Vamenta, Jr., et al.*, 46 SCRA 110). For, if there is reconciliation prior to the trial, the court can dismiss the action. In fact, even after a judgment has been rendered, if the parties manifest that they have already reconciled, the Court in the same proceedings can still set aside the decree of legal separation. It was likewise ruled in *Pacete vs. Carriaga*, 49 SCAD 673, 231 SCRA 321, that legal separation must not be tried before 6 months have elapsed since the filing of the petition.

Purpose of the 6-month suspension period.

Araneta vs. Concepcion, 99 Phil. 709, gives the basic reason for the 6-month suspension period in case of legal separation. The period is evidently intended as a cooling-off period to make a possible reconciliation between the spouses. The healing balm of time may aid in the process. (*Somosa-Ramos vs. Hon. Vamenta, Jr., et al.*, 46 SCRA 110).

However, this period does not have the effect of overriding the other provisions of the Code such as the determination of the custody of the children, the grant of alimony and support *pendente lite*. The hearing of ancillary remedies such as for preliminary injunctions may proceed to prevent, for instance, the husband from disposing conjugal properties designed to injure the interest of the wife. (*Dela Viña vs. Villareal*, 41 Phil. 13).

Article 59. No legal separation may be decreed unless the Court has taken steps towards the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation is highly improbable. (n)

The law seeks to preserve the marriage; hence, to prevent hasty decisions granting legal separation, the courts are obliged to take steps towards reconciliation of the spouses. If the courts are satisfied that reconciliation is highly impossible, then, it can be decreed. It is therefore apparent from the law that reconciliation is to be desired. These steps of the court in trying to reconcile the parties may come in different forms, like talking to them privately, individually or together during the pre-trial conference. Pre-trial conferences done during the period of suspension of the trial proceeding for 6 months are advisable, because the court might be able to reconcile the differences between the parties. Passions may have been high before and at the time of the filing of the action, but time may heal the wounds of the parties; hence, passions may cool off or die out during the period of 6 months or during the scheduled pre-trials.

Article 60. No decree of legal separation shall be based upon a stipulation of facts or a confession of judgment.

In any case, the Court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed. (101a)

No decree of legal separation can be issued on the basis of stipulation of facts or confession of judgment. In fact, even under Article 2035 of the Civil Code, the parties cannot compromise on the ground for legal separation. Such a stipulation or confession may be evidence of connivance, or collusion between the parties. However, if aside from confession of judgment, there is evidence *aliunde* to prove a ground for legal separation, still, it can be granted.

Evidence *aliunde* in legal separation.

Case:

**Jose De Ocampo vs. Serafina Florenciano
G.R. No. L-13553, February 23, 1960**

Facts:

Jose and Serafina were married on April 5, 1938. They begot children who are now living with the plaintiff. In March 1951, plaintiff

discovered on several occasions that his wife was maintaining illicit relations with one Jose Arcalas. So the plaintiff sent her to Manila on June, 1951 to study beauty culture. Again defendant was going out with several men aside from Jose Arcalas. Towards the end of June, 1952, defendant had finished studying her course. She left behind the plaintiff and lived separately. On June 18, 1955, plaintiff surprised his wife in the act of having an illicit relationship with Nelson Orzame. Plaintiff signified his intention of filing a petition for legal separation and defendant conformed, provided she is not charged with adultery in a criminal action. Accordingly, plaintiff filed a case for legal separation on the ground of adultery on July 5, 1955. Defendant, when interrogated by the fiscal, admitted in having sexual relations with Nelson Orzame. Defendant kept silent when the prosecution started and did not attend any hearing. So, the court ordered the fiscal to find out whether there was collusion; the fiscal reported none. The Court of First Instance of Nueva Ecija dismissed the case. The Court of Appeals confirmed, holding there was confession of judgment, plus condonation or consent to the adultery and prescription. Hence, the petition for *certiorari*.

Issue:

Was there confession of judgment, condonation or consent to the adultery and prescription in respect to Art. 100 and Art. 101 of the New Civil Code? (Art. 56 in the New Family Code).

Held:

Where there is evidence of the adultery independently of the defendant's statement agreeing to the legal separation, the decree of separation should be granted, since it would not be based on the confession but upon the evidence presented by the plaintiff. What the law prohibits is a judgment based exclusively on defendant's confession.

Art. 101 of the New Civil Code (Now Art. 56, Family Code) does not exclude as evidence any admission or confession made by the defendant outside the court.

The law further says that in actions for legal separation, the court shall order the prosecuting attorney to investigate to determine the existence or non-existence of collusion between the parties and to take care that the evidence of the parties is not fabricated. As has been said earlier, these steps undertaken by the court is to preserve the marriage and to avoid an improvident act of granting a decree of

legal separation. For, it is a rule, too, that it is only when the court is fully satisfied that there is improbability of reconciliation that the decree may be granted.

No default in an action for legal separation.

Under the law, if the defendant in an action for annulment of marriage or for legal separation fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated. (Rule 9, Rules of Court). The law does not allow default in legal separation. The special proscriptions on actions that can put the integrity of marriage to possible jeopardy are impelled by no less than the State's interest in the marital relation and its avowed intention not to have the matter within the exclusive domain and the vagaries of the parties to alone dictate. (*Pacete vs. Cariaga, Jr.*, 231 SCRA 321; *Macias vs. Judge Ochotorena*, July 30, 2004).

Rationale for intervention of the State in case of legal separation.

In case of non-appearance of a party in a case for legal separation the court orders the prosecuting attorney to conduct an inquiry whether there is collusion or not and to appear so as to prevent presentation of fabricated evidence.

The rationale for the law is founded on public policy. In *Brown vs. Yambao*, 102 Phil. 168, it was said that the policy of Article 101 of the New Civil Code (now Article 60, Family Code), calling for the intervention of the state attorneys in case of uncontested proceedings for legal separation (and of annulment of marriages, under Article 88), is to emphasize that marriage is more than a mere contract; that it is a social institution in which the state is vitally interested, so that its continuation or interruption can not be made to depend upon the parties themselves. (Civil Code, Article 52; *Adong vs. Cheong Gee*, 43 Phil. 31; *Ramirez vs. Gamer*, 42 Phil. 855; *Goitia vs. Campos*, 35 Phil. 252). It is consonant with this policy that the inquiry by the Prosecutor should be allowed to focus upon any relevant matter that may indicate whether the proceedings for separation or annulment are fully justified or not. (*Pacete vs. Cariaga, Jr.*, 231 SCRA 321).

No less than the Constitution seeks to preserve the marriage, it being the foundation of the family.

Article 61. After the filing of the petition for legal separation, the spouses shall be entitled to live separately from each other.

The court, in the absence of a written agreement between the spouses, shall designate either of them or a third person to administer the absolute community or conjugal partnership property. The administrator appointed by the court shall have the same powers and duties as those of a guardian under the Rules of Court. (104a)

The law says that upon the filing of the action for legal separation, the parties shall be entitled to live separately from one another. This is a right that they have, but they can opt to still live together depending upon themselves. But since they have the right to live separately from one another, and from bed and board, one cannot compel the other to have sexual intercourse with the other.

With respect to their properties, they may agree that anyone of them or a third person may administer the same. They may even agree on a joint administration. If there is no agreement, the court may designate either of the spouses or a third person to administer their properties with the same powers and functions of a guardian under the Rules of Court. The designation of one of the spouses as administrator of the properties need not even be formal. It can be implied from the decision of the court denying the other spouse a share in the conjugal partnership.

Case:

**Sabalones vs. CA, et al.
G.R. No. 106169, February 14, 1994
48 SCAD 286**

Facts:

In *Samson T. Sabalones vs. CA, et al.*, G.R. No. 106169, February 14, 1994, 48 SCAD 286, Samson Sabalones and Remedios Gaviola-Sabalones are married with children. After his retirement from the diplomatic service, he came back to the Philippines, but did not go back to his family. Instead, he lived with another woman. While in the service, he left the administration of their properties to his wife. He later on went to court asking for leave to sell their house at Greenhills, San Juan, Metro Manila, but his wife opposed on the ground that the rents therefrom are the only means for her and her

children's support. In her prayer, she asked for a decree of legal separation and order the liquidation of the conjugal properties and forfeiture of her husband's share because of adultery. After trial, a declaration of legal separation was ordered. The decision was appealed. Pending appeal, she asked for an injunction to prevent her husband and his agents from interfering with the administration of their properties at Greenhills and Forbes Park. The CA granted the preliminary injunction which was assailed on the ground that there is joint administration under Art. 124, FC and that the Court failed to appoint an administrator under Article 61, Family Code. What is the effect of the granting of the injunction?

Held:

Pending the appointment of an administrator, the wife may be allowed to continue with the administration of the mass of properties. Under Article 124, Family Code, there is a grant of joint administration, but when an action for legal separation is filed, the court may appoint one of the spouses as administrator or a third person may be appointed, if no formal agreement is entered to that effect.

While it is true that *no formal designation* of the administrator has been made, such designation was implicit in the decision of the trial court in denying the petitioner of any share of the conjugal properties and thus, also disqualifying him as administrator thereof. That designation was in effect approved by the CA when it issued in favor of the respondent wife the preliminary injunction under challenge, which was necessary to protect the interests of the private respondent and her children and prevent the dissipation of the conjugal assets.

Article 62. During the pendency of the action for legal separation, the provisions of Article 49 shall likewise apply to the support of the spouses and the custody and support of the common children. (105a)

The law makes cross-reference to Article 49 of the Family Code which mandates that during the pendency of an action for annulment or declaration of nullity of marriage, the court shall provide for the support of the spouses, and the custody and support of the common children. The court shall also give paramount consideration to the moral and material welfare of the children and their choice of the

parent with whom they wish to remain. All these measures are applicable in cases of legal separation.

The paramount consideration is the welfare of the children. If there is a child below the age of seven (7), he cannot be separated from the mother as a rule because no one in the world can answer for the needs of a child below the age of seven years. But because of her adultery, then the child can be separated. (*Espiritu vs. CA*, G.R. No. 115640, March 15, 1995, 59 SCAD 631). The court then, may award the custody to the father. Or, even if there is a choice of a child seven years old or above, still the court may not respect the same if it is to the best interest of the child that the choice be not respected or recognized. The court is not always bound by such choice. In its discretion, the court may find the chosen parent unfit and award the custody to the other parent, or even to a third person as it deems fit under the circumstances. (*Espiritu vs. CA, et al., supra.*)

Article 63. The decree of legal separation shall have the following effects:

(1) The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

(2) The absolute community or the conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2);

(3) The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code; and

(4) The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law. (106a)

The law enumerates the effects of legal separation.

As to the right to live separately, the same is even a right during the pendency of the action for legal separation. But even if they are living separately from one another, still, they are considered as married, for the rule is that, the marriage bond is not severed. As a

consequence of the right, one cannot be compelled to submit one's self to sexual intercourse with the other.

Legal separation likewise dissolves the absolute community or the conjugal partnership of gains. Then, it shall be liquidated, but the offending spouse shall have no right to any share of the net profits earned by the community of properties. Instead, the share shall be forfeited in favor of the following:

- (1) the common children; or
- (2) if there are no common children, the children of the guilty spouse by a previous marriage; or
- (3) in default of children, the innocent spouse.

The provision of the law depriving the guilty spouse of any share in the profits earned by the community of properties is anchored on moral grounds. If there are no children, either common or of the guilty spouse in a previous marriage, all the net gains of the community of properties shall redound to the innocent spouse. It must be noted, however, that the forfeiture refers only to the net gains of the community of properties, not to the properties themselves.

As a rule, the custody of minor children is awarded to the innocent spouse, except if there is a child below the age of seven. Under Article 213, Family Code such child cannot be separated from the mother except if there is a compelling reason to separate him. As has been discussed earlier, the adultery of the mother is a compelling reason to separate a child from the mother. (*Cervantes vs. Fajardo; Espiritu vs. CA, et al.*, G.R. No. 115640, March 15, 1995, 59 SCAD 631). Such separation from the guilty spouse is based on the principle that he or she is morally unfit to rear the children, while the innocent spouse is morally fit. In case the best interest of the child or minor requires, as where the innocent spouse often travels because of the nature of his/her business or work or profession that he may neglect his/her children, the court may appoint a third person as a guardian for such minors. Let us say that the innocent spouse is a pilot that more often than not, is out of the country. The best interest of the minors would require the appointment of a guardian.

There are minors who may be more than seven years of age and they may have chosen the innocent spouse. But if their choice does not serve their best interest, the court may still appoint a third person, for their choice is not always binding upon the court.

The guilty spouse shall be disqualified from inheriting from the innocent spouse under the law of intestacy. The reason is based on the grounds of unworthiness and indignity. But it must be noted that the disqualification is from intestacy; but not from testacy, hence, if after a decree of legal separation, the innocent spouse would execute a will instituting the guilty spouse as an heir, the institution is valid since the institution is a matter of right of the testator. In fact, such institution can even be considered as a condonation of the act or acts of the guilty spouse. Remember that a will is an act, whereby a person is given the right to control, to a certain degree, the disposition of his estate which is to take effect after his death. (Article 784, New Civil Code).

The law further provides that if prior to the act that gave rise to legal separation, the innocent spouse has already executed a will instituting the guilty spouse, then, such institution is revoked by operation of law. The testator need not even perform a positive act of revocation as it is by operation of law. But be that as it may, if the testator-innocent spouse subsequently executes a will that totally revokes the previous will and institutes the guilty spouse, then, such institution is valid. That is a right on the part of the innocent spouse. Who knows, the wounds might have already healed?

Article 64. After the finality of the decree of legal separation, the innocent spouse may revoke the donations made by him or by her in favor of the offending spouse, as well as the designation of the latter as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable. The revocation of the donations shall be recorded in the registries of property in the places where the properties are located. Alienations, liens and encumbrances registered in good faith before the recording of the complaint for revocation in the registries of property shall be respected. The revocation of or change in the designation of the insurance beneficiary shall take effect upon written notification thereof to the insured.

The action to revoke the donation under this Article must be brought within five years from the time the decree of legal separation has become final. (107a)

The law provides for other effects of legal separation, such as:

- (1) the innocent spouse may revoke donations made by him/her to the offending spouse;

- (2) the innocent spouse may revoke the designation of the guilty spouse as beneficiary in any insurance policy even if such designation is stipulated as irrevocable;

The revocation of the donation must be recorded in the proper registry of property where the property is located. This is to protect the parties against the rights of innocent third persons.

Illustration:

A, prior to his marriage to B, donated real property to the latter. It was registered later under her name, but 10 years after their marriage, B gave rise to a cause for legal separation. A sued for legal separation and it was granted, pronouncing B as the guilty spouse. A revoked the donation but the revocation was not recorded in the registry of property. In the meantime, or after the revocation, B sold the property to C, a buyer in good faith and for value, and obtained a title. The revocation is not effective as against C, the buyer in good faith and for value because of the protection given by the Torrens System to a buyer in good faith and for value. For C need not even look beyond the title of B to determine if there is a defect therein. In fact, Article 64 of the Code says that alienations, liens and encumbrances registered in good faith before the recording of the complaint for revocation is registered in the registries of property shall be respected.

The law further says that the revocation is not by operation of law. There must be an action filed in court to that effect and the law prescribes a period of five years from the time the decree of legal separation has become final. That means that the inaction of the innocent spouse for five years is equivalent to a waiver of his right to revoke the donation as this is a right that can be waived whether impliedly or expressly and the waiver is valid.

On the matter of the revocation of the designation in an insurance policy, the law requires for its effectivity that a written notice be given to the insured.

Article 65. If the spouses should reconcile, a corresponding joint manifestation under oath duly signed by them shall be filed with the court in the same proceeding for legal separation. (n)

Article 66. The reconciliation referred to in the preceding Article shall have the following consequences:

(1) The legal separation proceedings, if still pending, shall thereby be terminated at whatever stage; and

(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 court order containing the foregoing shall be recorded in the proper civil registries. (108a)

Article 67. The agreement to revive the former property regime referred to in the preceding Article shall be executed under oath and shall specify:

(1) The properties to be contributed anew to the restored regime;

(2) Those to be retained as separate properties of each spouse; and

(3) The names of all their known creditors, their addresses and the amounts owing to each.

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, in its order, take measures to protect the interest of creditors and such order shall be recorded in the proper registries of properties.

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 properties to satisfy the creditor's claim. (195a, 108a)

The law allows the court to set aside a judgment or decree of legal separation even beyond the period for perfecting an appeal or even after the judgment has already become final and executory. And this can be done if the parties file a written joint manifestation under oath in the same proceedings. Reconciliation, after the decree of legal separation, rescinds the decree and renders it void. This is logical, as the marriage bond has never been severed. This is a follow-up of the rule that reconciliation of the spouses during the pendency of the

action for legal separation stops the proceedings. It even causes its dismissal.

The setting aside of the decree of legal separation and the forfeiture of the share of the guilty spouse effected as a consequence of the decree shall remain in force, except if the spouses agree to revive their former property regime. If they agree to revive their former property regime, the same must be under oath and must specify:

- (1) the properties to be contributed anew to the restored regime;
- (2) the properties to be retained as separate properties of each spouse; and
- (3) the names of all their creditors, their addresses and the amounts owing to each.

The agreement to revive the former property regime and the motion for its approval shall be filed with the court in the same proceedings for legal separation. The creditors must be furnished as the court shall take measures to protect their interest. The order must be recorded in the proper registry of properties. If a creditor is not listed or notified, he is not supposed to be prejudiced by the recording of the order, unless the debtor-spouse has sufficient separate properties to satisfy the creditor's claim.

Title III

**RIGHTS AND OBLIGATIONS BETWEEN
HUSBAND AND WIFE**

Article 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support. (109a)

When wife may establish separate dwelling.

While the husband and wife are obliged to live together, the wife may establish a separate dwelling under certain circumstances, to *wit*:

- (a) the husband is immoderate or barbaric in his demands for sexual intercourse (*Goitia vs. Campos-Rueda*, 35 Phil. 252);
- (b) gross insult made upon her by the husband; and
- (c) he maltreats her (*Campos-Rueda* case; *Arroyo vs. Vazquez*, 42 Phil. 54).

Living together, a personal act.

If the wife refuses to live with the husband, she cannot be compelled to go back because the act of living together is a personal act which cannot be demandable by a court action. If the wife insists, the husband may not be compelled to support her if her refusal is without just cause. (Art. 100, Family Code).

The obligation to live together, observe mutual love, respect, and fidelity and render mutual help and support are among the essential duties to the marriage bond; otherwise, such party who cannot comply with these basic marital covenants may be declared as one suffering from psychological incapacity. (*Santos vs. CA, et al.*, G.R. No. 112019, January 4, 1995, 58 SCAD 17).

A husband cannot, by mandatory injunction, compel her wife to return to the conjugal dwelling.**Case:****Mariano B. Arroyo vs. Dolores C. Vasquez de Arroyo
42 Phil. 54****Facts:**

Mariano B. Arroyo and Dolores C. Vasquez de Arroyo were united in the bonds of wedlock by marriage in the year 1910. They have lived as man and wife until July 4, 1920 when the wife went away from the common home with the intention of living separately from her husband. After efforts had been made by the husband without avail to induce her to resume marital relations, this action was initiated by him to compel the wife to return to the matrimonial home and live with him as a dutiful wife. The defendant answered, admitting the marriage, and that she had left her husband without his consent. Accordingly, she in turn prayed for affirmative relief consisting of: (1) decree of separation; (2) a liquidation of the conjugal partnership; and (3) an allowance for counsel fees and permanent separate maintenance. Upon hearing the case, the lower court rendered judgment in favor of the defendant. Hence, an appeal to this Court.

Issue:

Whether the plaintiff husband is entitled to a permanent mandatory injunction requiring the defendant wife to return to the conjugal home and live with him as a wife according to the precepts of law and morality.

Held:

Where the wife is forced to leave the marital home because of ill-treatment from her husband, he can be compelled to provide for her separate maintenance, without regard to whether a cause for divorce exists or not. In this case, it is obvious that the cross-complaint filed by the wife is not well-founded and none of the reliefs sought therein can be granted. With regard to the reliefs sought by the husband, the Court said that it is not within the province of the courts of this country to attempt to compel one of the spouses to cohabit with, and render conjugal rights to the other, although the

husband is without a doubt entitled to a judicial declaration that his wife has absented herself without sufficient cause and that she is admonished that it is her duty to return. (See also *Goitia vs. Campos-Rueda*).

The duty to live together can only be fulfilled if the husband and wife are physically together. This takes into account the situation where the couple has many residences. If the husband was to stay in or transfer to any one of their residences, the wife should necessarily be with him in order that they may live together. Hence, it is illogical to conclude that Article 110 of the Civil Code (Now Article 69 of the Family Code) refers to domicile and not to residence. Otherwise, we shall be faced with a situation where the wife is left in the domicile, while the husband, for professional or other reasons, stays in one of their various residences. (*Marcos vs. COMELEC, et al.*, 64 SCAD 358, 248 SCRA 300).

While the obligation of the spouses to live together is mandated by law, the same cannot, however be compelled by any proceeding in court. The reason is that, the act of living together is a mere voluntary act of the spouses. Hence, if one of the spouses leaves the conjugal dwelling, the other spouse cannot go to court and seek for an order to compel such spouse to return. A writ of *habeas corpus* will not even issue to compel a spouse to live with the other.

Case:

**Ilusorio vs. Bildner, et al.
G.R. No. 139789, May 12, 2000**

Facts:

This is a case of a husband refusing to see the wife for private reasons.

Potenciano Ilusorio, a lawyer and a rich businessman was married to Erlinda Kalaw. Out of their coverture, they begot six (6) children. In 1997 upon his arrival from the USA, he stayed in Antipolo City with Erlinda for a period of five (5) months. The children Sylvia and Erlinda alleged that during that time, their mother gave him an overdose of 200 mg. instead of 100 mg. Zoloft, an anti-depressant drug prescribed by his doctor in New York, USA resulting in his deteriorating health. Erlinda filed a petition for guardianship over his person and properties due to his advanced age, frail health, poor

eyesight and impaired judgment. After attending a corporate meeting in Baguio City, he did not return to Antipolo City but lived in Makati. Erlinda, his wife filed a petition for *habeas corpus* with the CA to have custody of her husband alleging that her children refused her demands to see and visit him and prohibited him from returning to Antipolo City. The Court of Appeals, for humanitarian consideration granted her petition for visitation rights. In reversing the CA's decision, the Supreme Court.

Held:

No court is empowered as a judicial authority to compel a husband to live with his wife. Coverture cannot be enforced by compulsion of a writ of *habeas corpus* carried out by sheriffs or by any other mere process. That is a matter beyond judicial authority and is best left to the man and woman's choice.

The evidence shows that there was no actual and effective detention or deprivation of lawyer Potenciano Ilusorio's liberty that would justify the issuance of the writ. The fact that lawyer Potenciano Ilusorio is about 86 years of age, or under medication does not necessarily render him mentally incapacitated. Soundness of mind does not hinge on age or medical condition but on the capacity of the individual to discern his actions, hence, the Court of Appeals concluded that there was no unlawful restraint on his liberty.

The Court of Appeals also observed that lawyer Potenciano Ilusorio did not request the administrator of the Cleveland Condominium not to allow his wife and other children from seeing or visiting him. He made it clear that he did not object to seeing them.

As to lawyer Potenciano Ilusorio's mental state, it was observed that he was of sound and alert mind, having answered all the relevant questions to the satisfaction of the court.

Being of sound mind, he is thus possessed with the capacity to make choices. In this case, the crucial choices revolve on his residence and the people he opted to see or live with. The choices he made may not appeal to some of his family members but these are choices which exclusively belonged to Potenciano. He made it clear before the Court of Appeals that he was not prevented from leaving his house or seeing people. With that declaration, and absent any true restraint on his liberty, there is no reason to reverse the findings of the Court of Appeals that a writ of *habeas corpus* should not be issued.

With his full mental capacity coupled with the right of choice, Potenciano Ilusorio may not be the subject of visitation rights against his free choice. Otherwise, he will be deprived of his right to privacy. Needless to say, this will run against his fundamental constitutional right.

The Court of Appeals exceeded its authority when it awarded visitation rights in a petition for *habeas corpus* where Erlinda never even prayed for such right. The ruling is not consistent with the finding of subject's sanity.

When the Court ordered the grant of visitation rights, it also emphasized that the same shall be enforced under penalty of contempt in case of violation or refusal to comply. Such assertion of raw, naked power is unnecessary.

The Court of Appeals missed the fact that the case did not involve the right of a parent to visit a minor child but the right of a wife to visit a husband. In case the husband refuses to see his wife for private reasons, he is at liberty to do so without threat of any penalty attached to the exercise of his right.

Article 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

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 for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family. (110a)

Fixing family dwelling, a joint act of spouses; exception.

Under the Family Code, the fixing of the family domicile is now a joint act of the husband and wife. Unlike in the Civil Code, the husband was exclusively granted the right to fix the residence of the family.

The law says that the court may exempt one spouse from living with the other if:

- (a) one of the spouses should live abroad; or
- (b) there are other valid and compelling reasons for the exemption.

The law does not specify specific reasons for the exemption. This is to give the courts flexibility in determining the reasons for exempting one spouse from living with the other.

It is the court that exempts the spouse from living with the other upon application of the said spouse. In *Arroyo vs. Vasquez de Arroyo*, 42 Phil. 54, the Supreme Court said that the spouse cannot be ordered to follow the other because living together is a personal act of each spouse.

Example of compelling reason.

One compelling reason for the exemption may be when one spouse goes abroad to work under a contract.

Article 69 of the Family Code has abrogated the inequality between husband and wife in that, they now jointly fix the domicile. (*Marcos vs. COMELEC*, et al., 64 SCAD 358, 248 SCRA 300). And because of this, there is no reason in saying that the wife retains the domicile of her husband. It has been reasoned out that aside from reckoning with the Family Code, we have to consider our Constitution and its firm guarantees of due process and equal protection of the law. It can hardly be doubted that the common law imposition on a married woman of her dead husband's domicile beyond his grave is patently discriminatory to the women. It is a gender-based discrimination and is not rationally related to the objective of promoting family solidarity. When the husband died, Imelda Marcos reacquired her domicile in Tacloban. She cannot be a domiciliary of Batac, Ilocos Norte, as she did not continue it after her husband's death; otherwise, she would have no domicile and that will violate the "universal rule" that no person can be without domicile at any point of time. This stance also restores her right to choose her domicile which was taken away by Article 110 of the Civil Code, but which is now a right recognized by the Family Code and the Constitution.

The common law concept of matrimonial domicile appears to have been incorporated merely as a result of our jurisprudential experience after the drafting of the Civil Code of 1950, into the New Family Code. To underscore the difference between the intentions of the Civil Code and the New Family Code drafters, the term residence has been supplanted by the term domicile in an entirely new provision (Article 69, Family Code) distinctly different in meaning and spirit from that found in Article 110 of the Civil Code. The provision

recognizes revolutionary changes in the concept of women's rights in the intervening years by making the choice of domicile a mutual agreement between the spouses.

Article 70. The spouses are jointly responsible for the support of the family. 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 or fruits, such obligations shall be satisfied from their separate properties. (111a)

Article 71. The management of the household shall be the right and duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70. (115a)

Joint obligation to support the family; source.

As administrators of the absolute community of property or conjugal partnership, the spouses are jointly responsible for the support of the family. (See also Art. 195, Family Code). Such support shall be taken from the following properties in this order:

- a) from the absolute community of property or conjugal partnership;
- b) from the income or fruits of the separate properties of each spouse;
- c) from the separate properties of the spouses.

When separate properties are responsible for support.

Support from the separate properties of each spouse shall be taken only if there is insufficiency or absence of income or fruits of the separate properties of each spouse. Otherwise, support shall be satisfied from the income or fruits of the separate properties of each spouse.

Article 72. When one of the spouses neglects his or her duties to the conjugal union or commits 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. (116a)

This article is intended to afford relief within the conjugal union, without destroying it as in legal separation. It is a maxim of equity that there is no wrong without a remedy. The law has specified the important rights and duties between the husband and wife, and a neglect of duty on the part of either or any act which brings dishonor, danger or material injury upon the other must have the corresponding remedy. This article puts the form and manner of remedy in the sound discretion of the courts. It merely emphasizes that the court may grant relief. (Capistrano, *Civil Code of the Philippines*, 1950 ed., pp. 123-124).

Spouse who gives dishonor to the family is liable for damages.

Case:

Tenchavez vs. Escaño
15 SCRA 355

Facts:

X and Y are married. Y went to the United States and obtained a decree of divorce. When she came back to the Philippines, she got married to another man. In an action for damages, the Supreme Court held that she is liable. The act is contrary to morals, good customs and public policy. There was failure to comply with her wifely duties, deserting her husband without justifiable reasons.

The action can be based on Article 72 of the Family Code since the act of the woman gave dishonor to the family. The law says:

“When one of the spouses neglects his or her duties to the conjugal union or commits 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.”

But the Supreme Court in *Arroyo vs. Arroyo*, 42 Phil. 54, said that it could not compel the wife to comply with her duty to live with the husband and that the only relief it could give is an admonition that it is her duty to return. Well, this is so because the act of living together, while it is an essential duty to the marriage bond is something personal to the spouses which cannot be compelled by any action in court.

Complimentary ending in a letter “*su padre*” is not an indubitable acknowledgment, but mere indication of paternal solitude.

Case:

**Heirs of Raymundo Bañas vs.
Heirs of Bibiano Bañas
134 SCRA 260**

Facts:

The heirs of Raymundo Bañas alleged in their complaint for partition or recovery of hereditary share, fruits and damages against the heirs of the late Bibiano Bañas, that Raymundo Bañas was the acknowledged natural son of Bibiano Bañas and that by descent, they are entitled to a share in the estate of the late Bibiano Bañas. In support of this claim, they presented a handwritten document found by Trinidad Vecino Vda. de Bañas who testified that after the death of her husband in 1962, she discovered a document which established Raymundo’s filiation, among them a document or letter addressed to Raymundo by Bibiana where he stated in the complimentary ending “*su padre.*” The trial court dismissed the action on the ground that the evidence was not sufficient to prove their claim that Raymundo was the acknowledged natural child of Bibiano. Note that there was no dispute that Raymundo was a natural child of Bibiano, but the issue raised before the Supreme Court was on whether he was acknowledged natural child.

Held:

Raymundo was not an acknowledged natural child of Bibiano on the basis of a letter with a complimentary ending “*su padre,*” especially if the full context of the letter is to be taken into consideration. It was not considered as an indubitable acknowledgment of paternity. It is a mere indication of paternal solitude. The Filipinos are known for having close family ties. Extended families are a common set-up among them, sometimes to the extent that strangers are also considered as part of the family. In addition, Filipinos are generally fond of children, so that children of relatives or even of strangers are supported if their parents are not capable to do so. This is a manifestation of the fact that Filipinos are still living in a patriarchal society. (*Gustilo vs. Gustilo*, 14 SCRA 149).

It was argued that the document was an authentic document, the authenticity of which need not be proven. It was ruled that even if it were admitted as a sufficient proof of a valid voluntary recognition, yet, it must be made expressly by the recognizing parent, either in the record of birth, in a will, in a statement before a court of record, or in any authentic writing. It must be precise, express and solemn. (Citing *Pareja vs. Pareja*, 95 Phil. 167).

It was observed that in *Gustilo vs. Gustilo*, *supra*, the evidence was not only a letter with a complimentary ending “*su padre*” but that the child was able to prove that she was living in the company of her illegitimate father; supported by said father; introduced in public gatherings as her daughter; she was considered all along as a member of the family and addressed by her father as “*Inday*,” and received the same treatment from her brothers, sisters and her fostermother. Yet, it was not considered as an act of voluntary acknowledgment. Justice Fred Ruiz Castro made the observation that, it is not common in many Filipino homes that a child who is a perfect stranger to the family but who was taken under similar circumstances, is regarded as a member of the family and called “*hija*” or “*hijo*” by the head of the family. This view follows and coincides with the line of thought of Manresa in his commentaries quoted in *Joaquin vs. Joaquin*, 60 Phil. 395. It was further said that:

“This letter, to recall our previous indications, could probably be a material evidence in a suit to compel recognition. However, it is not by itself a voluntary act of recognition, such as is contemplated in Article 278, which act must be precise and express. (*Pareja vs. Pareja*, L-5824, May 31, 1954). For there may be direct acts of the father which though not constituting voluntary acknowledgment of a natural child, may be used to compel recognition of such.”

The plaintiffs argued that under the rule of incidental acknowledgement, the letter is a sufficient form of recognition, citing *Donado vs. Donado*, 55 Phil. 861, and quoted a portion of the judgment which stated:

“The terms in which the acknowledgment is made are immaterial, and Goyena’s opinion is admissible that, with reference to Article 124 of the Bill of 1851, the law inclines favorably to an acknowledgment made incidentally or in any terms, so long as the intention to acknowledge

sufficiently appears. 'It is enough,' he adds, 'that the testator mention the legatee as his natural child,' who may henceforth demand his right as a natural child, even if the will is revoked."

According to the cases cited above and Manresa's opinion, acknowledgment made in a public or private document need not be direct, but may even incidentally admit that the person whose name appears in the document in question is the subscriber's child.

Plaintiff-appellant went further to cite the case of *Javelona vs. Monteclaro*, 74 Phil. 393; *Apacible vs. Castillo*, 74 Phil. 589, and *Cosio vs. Pili*, 10 Phil. 72. They alleged that based on the above-mentioned and quoted cases, the rule of incidental acknowledgment applies to Exhibit "A" which, therefore, constitutes a sufficient and valid voluntary recognition of Raymundo Bañas and Bibiano Bañas.

The Supreme Court said the contention is not correct. Plaintiffs-appellants have erroneously applied the rule of incidental acknowledgment. They have completely failed to note that all of the authorities they have cited endorse incidental acknowledgment in case of voluntary recognition, if the alleged voluntary recognition were made in a public document. The reason for this is quite simple. Nowhere in these cases can be found any statement that incidental voluntary acknowledgment may be made in private writing, simply because all of these cited cases were decided long before the adoption of the New Civil Code. Under the regime of the Old Civil Code, a voluntary recognition can only be made in a record of birth, will or other public document. (Art. 131). A private writing or document under the Old Civil Code may be considered as an "indubitable writing," which is a ground for compulsory recognition according to Article 135 thereof.

Justice Villa-Real, in the case of *Donado vs. Menendez Donado*, 55 Phil. 861, cited by the plaintiffs-appellants, was referring to both Articles 131 and 135 of the Spanish Civil Code, when he said that, an "acknowledgment made in a public or private document need not be direct, but may even incidentally admit that the person whose name appears in the document in question is the subscriber's child." This statement of Justice Villa-Real was clarified by Justice Bocobo in the case of *Javelona, et al. vs. Monteclaro, et al.*, 74 Phil. 393, 398, 400 — also cited by the plaintiffs-appellants — when he clearly laid down the *ratio regi* of the doctrine of incidental acknowledgment under Article 131 of the Old Civil Code, thus:

“Upon the second point, whether a voluntary acknowledgment may be done incidentally in a public document, a distinction must be made between the two kinds of acknowledgment: (1) voluntary, and (2) compulsory. In the former, recognition may be incidental, but in the latter, it must be direct and express.”

x x x

x x x

x x x

“We adopted the same rule as to Article 131 in the case of *Donado vs. Menendez Donado*, 55 Phil. 861, 872, when we held that an acknowledgment in a document need not be direct, but may even incidentally admit that the person whose name appears in the document is the subscriber’s child.

“The reasons for the above distinction between express recognition in Article 135 and incidental acknowledgment according to Article 131 are not far to seek. In the first place, a *voluntary recognition is made in a public document (Article 131) whereas the indubitable writing in Article 135 is a private document (Article 135)*. (Manresa, vol. 1, p. 579). *The father would ordinarily be more careful about what he says in a public document than in a private writing, so that even an incidental mention of the child as his in a public document deserves full faith and credit.*

“In the second place, in an action in Article 131 (voluntary recognition), the natural child merely asks for a share in the inheritance in virtue of his having been acknowledged as such, and is not trying to compel the father or his heirs to make an acknowledgment, whereas the action based in Article 135 is to compel the father or the heirs to recognize the child. In the former case, acknowledgment has been formally and legally accomplished because the *public character of the document* makes judicial pronouncement unnecessary, while in the latter case, recognition is yet to be ordered by a court because a private writing, lacking the stronger guaranty and higher authenticity of a public document, is not self-executory.”

It is therefore clear that the rule of incidental acknowledgment does not apply to plaintiffs-appellant’s Exhibit “A” since it is not a

public document where a father would ordinarily be more careful about what he says. In fact, Exhibit "A" is merely a short note whereby a 13 year-old boy is being admonished for staying out late and not staying at home studying his school lessons or helping his mother.

Moreover, in Manresa's opinion invoked by plaintiffs-appellants, it is emphasized therein that while the terminology in which the acknowledgment made is immaterial, the *sine qua non* is that the act of recognition must be "*con tal que de ellos aparezca suficientemente la intencion de hacerlo.*" In other words, the intent to recognize must be sufficiently apparent in the document. And as earlier indicated, the complimentary ending "*Su Padre,*" taking into consideration the context of the entire letter, is not an indubitable acknowledgment of paternity, but merely an indication of the paternal concern of one for the well-being of the natural son of his brother who could not support or rear the boy. The intent to recognize, therefore, is not apparent in Exhibit "A."

Article 73. 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.

In case of disagreement, the court shall decide whether or not:

- (1) The objection is proper; and**
- (2) Benefit has accrued to the family prior to the objection or thereafter. If the benefit accrued prior to the objection, the resulting 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. (117a)

Equal rights of man and woman; rules.

The above-quoted provision is a departure from the provisions of Article 117 of the Civil Code where it was only the husband who had the right to object if the wife would engage in or exercise a profession or occupation or business. Now, the wife has been given the same right to object.

If there is a disagreement between the husband and wife, then, the court shall decide whether or not, the objection is proper and

benefit has already accrued to the family, prior to the objection or thereafter. The objecting spouse has to present evidence to prove the justification for the objection and that it has not redounded to the benefit of the family. A spouse cannot just object. There must be a good reason for the objection.

Rules if business benefited family.

There may be questions on the matter of who is liable if benefits would accrue to the family. Here are certain distinctions:

- a) If benefits have accrued to the family before the objection, the absolute community of property or conjugal partnership is liable for damages or the obligations incurred because all the profits and income from the acts or transactions of the spouse who acted without the consent of the other spouse became part of the absolute community of property or the conjugal partnership. The reason for this rule is that no one shall unjustly enrich himself at the expense of another.
- b) If benefits accrued after the objection, the separate property of the spouse who did not secure the consent of the other shall be solely liable for obligations incurred.
- c) The law says that creditors who acted in good faith are protected. So that, if one of the spouse transacted with a creditor without the consent of the other spouse but the creditor did not know of the absence of such consent, the absolute community of property or the conjugal partnership shall be liable. This is particularly so if the family benefited out of the transaction. Again, the rule is that, no one shall enrich himself at the expense of another.

Title IV
PROPERTY RELATIONS BETWEEN
HUSBAND AND WIFE

Chapter 1
General Provisions

Article 74. The property relations between husband and wife shall be governed in the following order:

- (1) By marriage settlements executed before the marriage;
- (2) By the provisions of this Code; and
- (3) By the local customs. (118)

Article 75. The future spouses may, in the marriage settlements, agree upon the regime of absolute community, 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 of property as established in this Code shall govern. (119a)

Presumption that spouses are governed by absolute community.

It is now a rule that if there is no agreement between the husband and wife, the property relationship between them is absolute community of property. This is a departure from the old rule that in the absence of any stipulation, the property relationship shall be governed by the conjugal partnership regime. The rule also holds true if the regime agreed upon is void.

Kinds of property regimes.

The future spouses can agree on either of the following property regimes:

- a) absolute community;
- b) conjugal partnership;
- c) complete separation of property;
- d) dowry system, where the wife would bring in property to help the husband in supporting the family, subject to the condition that at the end of the marriage the property or its value shall be returned.

When marriage settlement must be made.

The marriage settlements must be made before the celebration of the marriage and not thereafter in order that the same may be valid. (Articles 76 and 77, Family Code). In fact, they cannot change it during the marriage except as authorized by law.

Article 76. In order that any modification in the marriage settlements may be valid, it must be made before the celebration of the marriage, subject to the provisions of Articles 66, 67, 128, 135 and 136. (121)

Article 77. 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 third persons unless they are registered in the local civil registry where the marriage contract is recorded as well as in the proper registries of property. (122a)

When marriage settlement may be changed.

The general rule is that, the parties cannot change or even modify their property relationship during the marriage. Any modification or change must be made before the celebration of the marriage. Any agreement to the contrary is void. (Quintana vs. Lerma, 24 Phil. 285; Tim vs. Del Rio, 37 O.G. 386).

Exceptions to the rule.

While the general rule is that the parties cannot make any change or modification in their property relationship during the marriage, the rule however is not absolute. It admits of certain exceptions as provided for in the following rules:

- (a) In case of legal separation, the property relationship of the spouses shall be dissolved. But in case of reconciliation between the parties, 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 court's order containing the foregoing shall be recorded in the proper civil registries. (Article 66, paragraph 2, Family Code).

In this situation, while the parties may have originally agreed on the kind of property relationship during the marriage, or even if there is none as the law presumes absolute community to govern them, the same is dissolved in case of legal separation. In case of reconciliation between the parties, still, they are free to revive their former property relationship or agree on another kind. The agreement to revive must be with the approval of the court. (Article 67, Family Code).

- (b) Under the provisions of Article 67 of the Family Code, the agreement to revive the former property regime referred to in the preceding Article shall be executed under oath and shall specify:
- (1) The properties to be contributed anew to the restored regime;
 - (2) Those to be retained as separate properties of each spouse; and
 - (3) The names of all their known creditors, their addresses and the amounts owing to each.

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, in its order, take measures to protect the interest of creditors and such order shall be recorded in the proper registries of properties.

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 properties to satisfy the creditor's claim.

- (c) Another exception is where a spouse without just cause abandons the other. In that case, the other spouse may ask for judicial separation of property. (Article 128, Family Code).
- (d) There may also be judicial separation of property on the following grounds:

“Art. 135. Any of the following shall be considered sufficient cause for judicial separation of property:

“(1) That the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction;

“(2) That the spouse of the petitioner has been judicially declared an absentee;

“(3) That loss of parental authority of the spouse of petitioner has been decreed by the court;

“(4) That 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 Article 101;

“(5) That the spouse granted the power of administration in the marriage settlements has abused that power; and

“(6) That at the time of the petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable.

“In the cases provided for in Numbers (1), (2) and (3), 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.” (191a)

- (e) Finally, Article 136 of the Family Code provides that 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.

All 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.

In short, the rule that there can be no change in the property relationship during the marriage is not absolute as it accepts of some exceptions. What is important is that the parties cannot just agree on any separation of properties during the marriage; they must go to court first and secure authority to do so. In case of non-compliance with such requirement, the agreement to separate properties is void.

Prescinding from the foregoing enumeration of circumstances allowing the change in the property relationship of the spouses during the marriage, it can be said that, as a rule, the law does not allow the change in the property relationship between the spouses during the marriage. If ever there should be any change, it should be the result of a principal action or it must be the principal action itself.

An example of the change as a result of a principal action is where one of the spouses files a suit for legal separation. If it is granted, it causes the dissolution of the property relationship of the spouses. But if there is reconciliation between the two of them, they can revert to their former property regime.

On the other hand, if the parties agree to have a separation of properties, that agreement by itself cannot be valid. It is still prohibited by Article 77 of the Code. But under Article 136 of the Family Code, they can jointly file a petition for separation of properties. So, if there was a prior agreement, such action can be filed for the purpose of having their joint agreement approved by the court.

Finally, if there is a ground for separation of properties during the marriage like when the spouses have been living separately from one another for more than one (1) year, then, the aggrieved spouse may file an action for separation of properties.

In the two (2) proceedings mentioned above, if they are granted, then, the change in the property relationship between the parties arises from absolute or conjugal partnership to complete separation and it is the effect of the action by itself. If they decide to live together again, they can always go back to court in the same proceedings and simply manifest in court that they are reverting to their former property regime.

Article 78. A minor who according to law may contract marriage may also execute his or her marriage settlements, but they shall be valid only if the person designated in Article 14 to give consent to the marriage are made parties to the agreement, subject to the provisions of Title IX of this Code. (120a)

Article 79. 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. (123a)

Article 78 no longer applies.

Due to the reduction of the age of majority to 18 years under R.A. No. 6809, the rule under Article 78 may no longer be applicable. No minor can get married, otherwise, it is void. The law is deemed repealed by R.A. No. 6809.

With respect to other persons, like those who have been sentenced with civil interdiction having been pronounced or subject to other disabilities, the law requires that a guardian be appointed for them by a court of competent jurisdiction. This rule is so because a person under civil interdiction cannot execute a document *inter vivos*, although he can do so *mortis causa*. A marriage settlement takes effect during his/her lifetime; hence, he needs a guardian to give his consent to his marriage settlement.

Note that civil interdiction or civil death is merely a restriction on capacity to act. (Article 38, New Civil Code). Its effects are regulated by the provisions of Article 34 of the Revised Penal Code, which provides that, “Civil interdiction shall deprive the offender during the time of his sentence of the rights of parental authority or guardianship, either as to the person or property of any ward, or marital authority, of the right to dispose of such property by an act or any conveyance *inter vivos*.” (Capistrano, Civil Code of the Philippines, 1950 ed., p. 127).

Article 80. In the absence of a contrary stipulation in a marriage settlement, the property relations of the spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence.

This rule shall not apply:

- (1) Where both spouses are aliens;

(2) With respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and

(3) With respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situated in a foreign country whose laws require different formalities for its extrinsic validity. (124a)

Law that governs property relations; rules.

This is an application of the national law principle regardless of the place of celebration of the marriage. The law applies if the spouses are living in the Philippines or abroad, or even if they have properties located in the Philippines or abroad. Their national law follows them wherever they are.

If the spouses are aliens, their national law shall govern their property relationship. Again, this is an application of the national law principle.

Exceptions.

The two (2) exceptions under paragraphs 2 and 3 are applications of the principle of *lex situs*.

Illustration:

X and Y, both Filipinos, were married in the United States. If they enter into any marriage settlements, they shall be governed by Philippine law; hence, they can agree on the conjugal partnership regime, or complete separation or dowry system. If they have no agreement, then, they shall be governed by the principle that their property relationship is one of absolute community. Or, if the agreement is void, the property relationship shall be absolute community of property.

Article 81. Everything stipulated in the settlements or contracts referred to in the preceding articles 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. (125a)

The reason for the law is clear. If the marriage does not take place; all stipulations in the marriage do not take place, all stipulations in the marriage settlement would be void because if it were otherwise, there would be unjust enrichment of the parties. Furthermore, under Article 88 of the Family Code, the absolute community of property between the spouses shall commence at the precise moment that the marriage is celebrated.

The rule is not, however, absolute. There may be stipulations in the marriage settlement which remain valid even if the marriage is not celebrated. An example is a stipulation where a natural child may be recognized. This remains valid even if the marriage is not celebrated because this stipulation does not depend upon the celebration of the marriage for its validity. If at all, the document would be considered as an authentic writing.

Chapter 2

Donations by Reason of Marriage

Article 82. 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. (126)

Article 83. These donations are governed by the rules on ordinary donations established in Title III of Book III of the Civil Code, insofar as they are not modified by the following articles. (127a)

Requisites of donations *propter nuptias*.

In order that donations *propter nuptias* may be valid, the following requisites must be present:

- (a) they must be made before the celebration of the marriage;
- (b) they must be made in consideration of the marriage;
- (c) they must be made in favor of one or both of the future spouses.

Under Article 87 of the Family Code, the spouses cannot donate or grant gratuitous advantage, direct or indirect, during the existence of the marriage, except moderate gifts which the spouses may give during family celebrations or rejoicings.

It must be noted that a donation is an act of liberality by which a person disposes gratuitously of a thing or right in favor of another, who accepts it. (Article 725, New Civil Code).

Donations by reason of marriage are likewise known as donations *propter nuptias*. They may even be made by third persons in favor of one or both the future spouses or by one spouse in favor of another. If made to only one of the spouses, the same belongs to him/her as exclusive property, except if the donor provides that it shall form part of the absolute community of properties. (Art. 92, Family Code).

Donations *propter nuptias* are governed by the Statute of Frauds in Article 1403 of the Civil Code as they are agreements based upon the consideration of marriage, other than a mutual promise to marry. Hence, to be enforceable, it must appear in writing pursuant to the Statute of Frauds. Such writing need not be in a public instrument. It may be in a private writing. This is true with respect to donations in consideration of marriage but not in ordinary donations which require a public instrument and acceptance. (Article 749, New Civil Code).

Article 84. If the future spouses agree upon a regime other than the absolute community of property, they cannot donate to each other in their marriage settlements more than one-fifth of their present property. Any excess shall be considered void.

Donations of future property shall be governed by the provisions on testamentary succession and the formalities of wills. (130a)

Limitation on donations prior to marriage.

Implicit from the law is that, if the spouses are governed by the absolute community regime, there is no limit as to the extent of the donation the future spouses may give to one another before or in consideration of the marriage. The reason for the rule is, if the future spouses are governed by the absolute community property, the same is a virtual donation of properties to one another before the marriage. All their properties except those enumerated by Article 92 of the Family Code are put into a common fund to form parts of their absolute community properties.

If they are governed by the conjugal partnership or complete separation of properties or dowry system, the limit of the donations

to one another before and in consideration of the marriage is only one-fifth (1/5) of their present property.

Illustration:

Before the marriage, A had properties valued at P500,000.00. He entered into a marriage settlement with B, his future spouse, where a conjugal partnership was agreed upon. The law allows A to give only 1/5 of such properties to B before and in consideration of the marriage.

If the future spouse gives the other more than 1/5 of his present property, the donation would not be completely void. Only the excess is void.

Donations of future properties are allowed under the law, by way of an exception to Article 751 of the Civil Code which says that a future property is a thing which the donor cannot dispose of at the time of the donation. They are governed by the law on testamentary succession, both as to their intrinsic validity and extrinsic validity. They can be reduced if they are inofficious, but since they are donations *propter nuptias*, they cannot be revoked at will or at the discretion of the donor. However, they can be revoked on the basis of Article 86 of the Family Code.

Article 85. Donations by reason of marriage of property subject to encumbrances 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. (131a)

Rules if property donated is encumbered.

A, the future spouse of B, donated a parcel of land to the latter. Before the donation however, the same was mortgaged with the PNB. That donation is considered valid by law, even if there is an existing lien or encumbrance. The reason for the law is that, the donor is still the owner, even if it is encumbered.

If the mortgage is foreclosed and sold at a lesser price, the donee is not liable for the deficiency. If it is sold for more, the donee is entitled to the excess.

Illustration:

The property donated is worth P100,000.00. It was sold for P70,000.00. The rule is that, the donee is not under an obligation to pay the deficiency.

However, if the property is sold for P110,000.00, the donee is entitled to the P10,000.00, which is the excess of the total amount of the obligation.

Even if the property donated is mortgaged or encumbered, the same can be donated because the donor is still the owner.

Article 86. A donation by reason of marriage may be revoked by the donor in the following cases:

(1) If the marriage is not celebrated or judicially declared *void ab initio* except donations made in the marriage settlements, which shall be governed by Article 81;

(2) When the marriage takes place without the consent of the parents or guardian, as required by law;

(3) When the marriage is annulled, and the donee acted in bad faith;

(4) Upon legal separation, the donee being the guilty spouse;

(5) If it is with a resolutive condition and the condition is complied with;

(6) When the donee has committed an act of ingratitude as specified by the provisions of the Civil Code on donations in general. (132a) (See Art. 765, NCC)

If the marriage is not celebrated or judicially declared *void ab initio* except donations made in the marriage settlements, which shall be governed by Article 81;

(1) The celebration of the marriage is a condition *sine qua non* for the validity of a donation *propter nuptias*.

(2) The donation may either be made by one spouse in favor of the other. It may be made by a stranger.

(a) If the donation is made by a stranger, the action for revocation may be brought under the ordinary rules

on prescription since the Family Code is silent about it. Hence, if the donation is in writing, it must be brought within ten (10) years under paragraph 1, Article 1144 of the New Civil Code. If oral, it must be brought within 6 years.

When the marriage takes place without the consent of the parents or guardian, as required by law;

A, the man, married B, the woman, while the latter is at the age of 20. The consent of B's parents was not given. Before their marriage, B donated properties to A. Under Article 86(2) of the Family Code, the donation can be revoked at the instance of B.

When the marriage is annulled, and the donee acted in bad faith;

- (1) X, a stranger to A and B, future spouses, donated property to the latter in consideration of and before their marriage. The marriage was annulled and the donees acted in bad faith. The donor can file an action for revocation. The action shall be governed by Article 1144, par. 1, of the New Civil Code, that is, the action must be brought within 10 years. If oral, it must be brought within 6 years under Article 1145, par. 1, of the New Civil Code.
- (2) If the donation was made by one spouse in favor of another and the donee is in bad faith, the donation is revoked by operation of law pursuant to Articles 43(3), 44, and 50 of the Family Code. There is no need, therefore, for the spouse, who acted in good faith or the innocent spouse to file an action for revocation.

Upon legal separation, the donee being the guilty spouse;

- (1) One of the effects of legal separation is the dissolution of the absolute community of property or the conjugal partnership. Furthermore, under Article 64 of the Family Code, after the finality of the decree of legal separation, the innocent spouse may revoke the donations made by him or her in favor of the offending spouse. The law, however, requires that the action for revocation be brought within five (5) years from the finality of the decision. (Art. 64[2], FC).

- (2) The action by the innocent spouse can be waived because if he/she does not file such action for revocation, it would prescribe. His or her inaction can mean waiver of such right.

If it is with a resolutive condition and the condition is complied with;

- (1) Before the marriage of A and B, A donated to B a property worth P1M. The property was immediately delivered to her. The condition of the donation is that the moment B graduates from college and is able to look for a job, B shall give back the property to A. B was able to finish college and was lucky to land a job. B now is under obligation to return the property because the resolutive condition has been complied with or has already happened.
- (2) A resolutive condition is one by which the happening of an event extinguishes an obligation. In an obligation, subject to a resolutive condition, the thing is delivered to the other party and the latter acquires ownership over the same, subject to the condition that if the event happens, the obligation is extinguished.

When the donee has committed an act of ingratitude as specified by the provisions of the Civil Code on donations in general;

- (1) Article 765 of the New Civil Code provides for the following acts of ingratitude which may be grounds for revocation of a donation by reason of marriage:
 - (a) if the donee should commit some offense against the person, the honor, or the property of the donor, or of his wife or children under his parental authority;
 - (b) if the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it, unless the crime or the act has been committed against the donee himself, his wife or children under his authority;
 - (c) if he unduly refuses him support when the donee is legally or morally bound to give support to the donor.

Article 87. Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. The prohibition shall also apply to persons living together as husband and wife without a valid marriage. (133a)

Husband and wife cannot donate to one another.

The general rule is that the husband and wife cannot donate to one another during the marriage. The reason is founded on public policy. This is to prevent the weaker spouse from being influenced by the stronger one. The law also seeks to protect the creditors, as they would be defrauded if the law would allow them to donate to one another.

Exceptions.

The spouses, however, can give to one another gratuitous advantage during family rejoicings, such as birthdays, anniversaries, Christmas and the like. But these moderate gifts may be moderate to one, but may not be moderate to others.

Illustration:

X is an employee with a salary of P3,000.00 a month. On the occasion of his wife's birthday, it may not be a moderate gift for him to give his wife a brand new car, if his salary is the only means of livelihood of the family.

But if it were the birthday of the wife of a multi-millionaire, a brand new car may be considered as a moderate gift. (*Harding vs. Com. Union Assurance Co.*, 38 Phil. 464).

Prohibition applies to common law relationship.

The prohibition against donation given by the spouses to each other does not limit itself to a lawfully wedded relationship. The law now includes common law relationship. The reasons for the law are to prevent the possibility that one spouse may influence the other and that if in a common-law relationship, they are allowed to donate to one another during the marriage, then, they would be placed in a better position than the spouses living in a legal union. (*Buenaventura*

vs. Bautista, CA 50 O.G. 3679; Matabuena vs. Cervantes, 38 SCRA 284; Alvarez vs. Espiritu, August 14, 1965).

In *Matabuena vs. Cervantes*, 38 SCRA 284, the Supreme Court outlined the reason for the applicability of the prohibition against donation between the husband and wife to a common-law husband and wife. It said:

“If the policy of the law is to prohibit donations in favor of the other consort and his descendants because of fear or undue and improper pressure and influence upon the donor, a prejudice deeply rooted in our ancient law, then there is every reason to apply the same prohibitive policy to persons living together as husband and wife without the benefit of nuptials. For it is not to be doubted that assent to such irregular connection for thirty years bespeaks greater influence of one party over the other, so that the danger that the law seeks to avoid is correspondingly increased. Moreover, as already pointed out by Ulpian (in his *lib. 32 ad Sabinum, fr. 1*) “it would not be just that such donations should subsist, lest the condition of those who incurred guilt should turn out to be better. So long as marriage remains the cornerstone of our family law, reason and morality alike demand that the disabilities attached to marriage should likewise attach to concubinage.”

Along the same vein, in *Agapay vs. CA*, G.R. No. 116668, July 28, 1997, 85 SCAD 145, it was said that if a married man marries another woman and gives the amount of P20,000.00 to the second wife during their coverture and the said woman uses the money to purchase a property and registers it under her name, such property has to be reverted to the community of properties in the first marriage. The reason is obvious from the fact that it is a donation during the marriage. The donee merely holds the property in trust for the conjugal partnership in the first marriage.

Requirement of cohabitation.

It must be emphasized however, that for the prohibition to apply, there must be cohabitation between the man and the woman, otherwise, the donation is valid. If, for example, a man and a woman have amorous relationship, where there are repeated acts of intercourse in those nights of clandestine trysts, but they do not live to-

gether as husband and wife, the donation by one in favor of the other is valid because there is no cohabitation. A good example is where they merely meet each other secretly in nights of clandestine trysts in a hotel or a motel and have repeated acts of sexual intercourse that is not cohabitation. In order that there may be cohabitation, they must deport to the public that they are husband and wife. Cohabitation is not limited to sexual intercourse for even without sexual intercourse, there can be cohabitation. Any donation by one to the other is valid.

Case:

**Arcaba vs. Tabancura Vda. de Batocael
G.R. No. 146683, November 22, 2001**

Facts:

Francisco Comille, a widower asked his niece and her cousin to take care of him. There was another woman, Cirila Arcaba, then, a widow who took care of him. When the niece and her cousin got married, Cirila was left to take care of Francisco. There were conflicting versions as to their relationship because evidence was shown that they became lovers since they slept in the same room. Cirila, however, said that she was a mere helper who could enter the master's bedroom only when the old man asked her to and that in any case, he was too old for her. She denied having sexual intercourse with him. Before he died, he executed a Deed of Donation *Inter Vivos* of a real property in her favor in consideration of her faithful services rendered for the past 10 years. After his death, his relatives filed an action for declaration of nullity of the Deed of Donation claiming that since he left no heirs, they, as nieces and nephews were entitled to inherit the property under the law on intestate succession. They claimed that the donation was void since they were common law husband and wife. In her testimony, she said that she signed documents bearing the name "Cirila Comille and on the basis of such findings and other pieces of evidence, the RTC ruled that they were common-law spouses, hence, the donation was void under Article 87 of the Family Code. The judgment was affirmed by the CA, hence, she went to the Supreme Court raising as error the finding of the two lower courts that they were common-law spouses, claiming that they have never cohabited since there was no sexual intercourse between them. Brushing aside such contention, the Supreme Court —

Held:

In *Bitangcor vs. Tan*, it was held that the term “cohabitation” or “living together as husband and wife” means not only residing under one roof, but also having repeated sexual intercourse. Cohabitation, of course, means more than sexual intercourse, especially when one of the parties is already old and may no longer be interested in sex. At the very least, cohabitation is the public assumption by a man and woman of the marital relation, and dwelling together as man and wife, thereby holding themselves out to the public as such. Secret meetings or nights clandestinely spent together, even if often repeated, do not constitute such kind of cohabitation; they are merely meretricious. In this jurisdiction, it has been considered as sufficient proof of common-law relationship the stipulations between the parties, a conviction of concubinage, or the existence of illegitimate children.

Was Cirila Francisco’s employee or his common-law wife? Cirila admitted that she and Francisco resided under one roof for a long time. It is very possible that the two consummated their relationship, since Cirila gave Francisco therapeutic massage and Leticia, one of the nieces said they slept in the same bedroom. At the very least, their public conduct indicated that their’s was not just a relationship of caregiver and patient, but that of exclusive partners akin to husband and wife.

Aside from Erlinda Tabancura’s testimony that her uncle told her that Cirila was his mistress, there are other indications that Cirila and Francisco were common-law spouses. Seigfredo Tabancura presented documents apparently signed by Cirila using the surname “Comille,” like an application for a business permit to operate as a real estate lessor, a sanitary permit to operate as real estate lessor with a health certificate, and the death certificate of Francisco. These documents show that Cirila saw herself as Francisco’s common-law wife, otherwise, she would not have used his last name. Similarly, in the answer filed by Francisco’s lessees in “*Erlinda Tabancura, et al. vs. Gracia Adriatico Sy and Antonio Sy*,” RTC Civil Case No. 4719 (for collection of rentals), these lessees referred to Cirila as “the common-law spouse of Francisco.” Finally, the fact that Cirila did not demand from Francisco a regular cash wage is an indication that she was not simply a caregiver-employee, but Francisco’s common-law spouse. She was, after all, entitled to a regular cash wage under the law. It is difficult to believe that she stayed with Francisco and

served him out of pure beneficence. Human reason would thus lead to the conclusion that she was Francisco's common-law spouse.

It having been proven by a preponderance of evidence that Cirila and Francisco lived together as husband and wife without a valid marriage, the inescapable conclusion is that the donation made by Francisco in favor of Cirila is void under Art. 87 of the Family Code.

Other prohibitions.

Aside from the prohibition against donation to one another, the spouses cannot also sell to one another, except:

- (a) where a separation of property was agreed upon in the marriage settlements;
- (b) when there has been a judicial separation of property. (Article 1490, New Civil Code).

The husband and wife cannot enter into a universal partnership. (Article 1782, New Civil Code).

The reason for the law in prohibiting the spouses from entering into a universal partnership is that, it is virtually a donation to one another which is prohibited by law.

The law likewise prohibits the spouses from leasing to one another. (Art. 1646, NCC). The reason is the same as the prohibition against selling to one another.

Persons who can question donations.

Who can question the donation, sale and partnership of the spouses during the marriage?

In *Cook vs. McMicking*, 27 Phil. 10, the Supreme Court said that strangers cannot assail them. If they bear no relation to the parties at the time of the sale or transfer, they cannot question the transaction.

So that if A, the husband, sold or donated to his spouse, B, in January, and enters into a contract with C, in March, then C has no interest to question the validity of the sale or donation. He has no interest yet at the time of the donation or sale.

The State or the Bureau of Internal Revenue, however, is always in possession of a personality to question any donation or sale between the husband and wife.

In *Harding vs. Com. Union Assurance Co.*, 38 Phil. 464, the husband donated a car to his wife who insured it. In an accident where the car was totally destroyed, the wife sought to collect indemnity from the insurance company which questioned the validity of the policy, contending that it is void. In brushing aside such contention, the Supreme Court said that the insurance company cannot challenge the donation, since it had no rights or interests in the car in question, whether present, remote or inchoate.

It has been said that donations during the marriage are outlawed as they disturb the system of property relations between the spouses. They can also be used as instruments of defrauding their creditors. The weaker one should also be protected from exploitation by the stronger one. But if the donations are donations *mortis causa* or those that will take effect after the death of the donor, then, the same are valid, because at the time they take effect, the marriage is already dissolved by the death of the donor-spouse. In fact, such a donation *mortis causa* is in the form of a will. The donation is like an institution of heirs.

A spouse may be beneficiary of insurance.

Note, however, that the prohibition against donations during the marriage does not include a spouse being the beneficiary of an insurance contract over the life of the other spouse. (*Gercio vs. Sunlife Assurance Co. of Canada*, 48 Phil. 53).

Chapter 3

System of Absolute Community

Section 1. General Provisions

Article 88. The absolute community of property 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. (145a)

This law erased the anomalous situation in Article 145 of the Civil Code which provides that the conjugal partnership shall commence precisely on the date of the celebration of the marriage. If we are to interpret it literally, then even before the actual celebra-

tion of the marriage, the parties already have a property relationship in operation. For example, A and B's marriage will be solemnized at 7 o'clock in the evening of December 9, 1999, does it mean that as early as 7 o'clock in the morning of that day, they are already governed by a property relationship? That would be anomalous since a property acquired by onerous title prior to the marriage would be considered as part of the property relationship. The present law has clarified the doubt and the possible anomalous situation by saying that the absolute community of property shall commence at the precise moment that the marriage is celebrated.

Article 89. No waiver of rights, interests, shares and effects of the absolute community of property 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 as provided in Article 77. 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. (146a)

The law confines to the fact that during the existence of the marriage, there can be no changes in the property relationship. In order that there may be modifications of the same, they must be done prior to the celebration of the marriage; otherwise, the same would be void, except if they are done by judicial action. Such modifications include any waiver of rights, interests, shares and effects of the absolute community of properties.

Of course, the waiver pertains to the share of one spouse in the gains and effects of the partnership of properties, that is, the net gains. The waiver must be in a judicial separation of properties — like in legal separation, declaration of nullity or annulment of marriage — in an action for separation of properties filed voluntarily and jointly by the parties for causes provided for by law. The law requires a judicial action, because for as long as the community of property is existing, the same is regulated by law and cannot be modified jointly or unilaterally by the parties.

For purposes of binding third persons, the waiver mentioned above must appear in a public instrument and that it be recorded in the local civil registry of marriage and in the proper registries of

property. Creditors may petition the court for the rescission of such waiver to the extent that they may be prejudiced.

Article 90. The provisions on co-ownership shall apply to the absolute community of property between the spouses in all matters not provided for in this Chapter. (n)

The law provides for the property regime in case of common-law relationships or void marriages. (See Arts. 147 and 148, Family Code). In fact, the Supreme Court in *Valdez vs. RTC of Quezon City, et al.*, G.R. No. 122749, July 31, 1996, 72 SCAD 967, said that the property relationship in void marriages *ab initio* is co-ownership and if ever there is a declaration of nullity of a void marriage, even if based on psychological incapacity, the dissolution of the properties or distribution shall be based on the law on co-ownership where the parties shall share and share alike.

Note, however, that the Supreme Court in *Agapay vs. CA*, G.R. No. 116668, July 28, 1997, 85 SCAD 145, had ruled that if the marriage is void, it does not follow that they are always governed by the rule on co-ownership. In the aforementioned case, the Supreme Court laid down the rule that for co-ownership to govern them, there must be proof of actual material contribution, otherwise, if there is no such proof, then, the spouse in that void marriage who cannot show how much he contributed would receive no share out of the properties acquired during their coverture. In fact, the Court further said that, upon the dissolution of their relationship, they shall divide their properties in proportion to their contributions. So that, if in a void marriage, B can prove that she contributed 30% of the purchase price of a property, then, it is to the extent of 30% of such property that she could get as her share when such relationship is terminated or dissolved.

The aforementioned case of *Agapay vs. Court of Appeals* has to be distinguished from the case of *Uy vs. CA*, G.R. No. 102726, May 27, 1994, 51 SCAD 428. In such case, the Supreme Court said that even if one of the parties in a common-law cohabitation did not contribute materially in the acquisition of the properties during such coverture, still such party is entitled to a share of one-half (1/2) of the properties upon the termination of the same. What is important is that, such party contributed spiritually in the acquisition of such properties. Such contributions may come in the form of taking care of the children, attending to the needs of the family. The distinction

lies in the fact that in *Agapay* the marriage was void as the man had an existing marriage; while in *Uy vs. CA*, their cohabitation was free, that had they gotten married, the same would have been valid. In *Agapay*, they got married, but since there was legal impediment on the part of the man, the marriage was void.

The rule has to be so because the law abhors cohabitation in violation of the marriage vows. It frowns upon immorality. It protects the legitimate family, for if the other party in a cohabitation like in *Agapay* were allowed to get one-half of the properties upon the termination of such relationship even without any material contribution, then, it would countenance immorality aside from causing undue prejudice to the legitimate family.

Section 2. What Constitutes Community Property

Article 91. Unless otherwise provided in this Chapter or in the marriage settlements, the community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter. (197a)

The law provides for two (2) kinds of properties that shall form part of the absolute community of properties; namely,

- (1) All properties owned by the spouses at the time of the celebration of the marriage;
- (2) All properties acquired after the celebration of the marriage.

The absolute community of properties is in keeping with the custom in majority of Filipino families where the husband and wife consider themselves as co-owners of all properties brought into and acquired during the marriage. It is in consonance with a Filipino custom which is nearer to the ideal of family until and is more in harmony with the traditional oneness of the Filipino family. The adoption of the same by the framers of the Family Code will be better for the enduring cohesion of the Filipino family.

The law provides, however, that even if the parties are governed by the absolute community, they may agree that some properties be exempted from its coverage. If that is so, then, the ante-nuptial agreement embodied in their law further provides that there are properties that exclusively belong to them as found in Article 92 of the Family Code.

Article 92. The following shall be excluded from the community property:

(1) 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;

(2) Property for the personal and exclusive use of either spouse. However, jewelry shall form part of the community property;

(3) 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. (201a)

The law enumerates three (3) properties that would form part of the exclusive properties of the husband or the wife.

A property may have been donated to one of the spouses by a third person during the marriage. Or, such spouse may have inherited a property during the marriage from his/her parents. All of these were acquired by gratuitous title and as a rule, they form part of the exclusive properties of the said spouse. The rule is not, however, absolute since the donor or grantor may provide in the deed of donation or will that it shall form part of the absolute community of the spouses. In that case, the property shall be a part of the absolute community of properties.

The rule is that properties for the personal and exclusive use of either spouse shall belong to each of them exclusively-like perfumes, stockings, shoes, etc. But because of their value, pieces of jewelry shall form part of the absolute community of properties.

If there is a property acquired by a spouse before the marriage and such spouse has legitimate descendants by a former marriage, such property and its fruits are exclusive property of said spouse.

Illustration:

A and B were married. They had four (4) legitimate children. A died; hence, B married C. But before their marriage, B acquired several properties. These constitute her exclusive properties because these were acquired by one who has legitimate children by a former marriage. The

purpose of the law is to protect the legitime and interest of the legitimate children in the former marriage.

The rule is equally applicable and with more reason if in the previous marriage, properties were acquired and there were legitimate children.

The reason why the law considers those properties mentioned in Article 92(3) of the Family Code as forming part of the exclusive properties of the spouses in the second marriage is to protect the legitime or interest of the children in the previous marriage. If the properties in the first and second marriage would be mixed, time might come when it can no longer be determined which properties belong to the first and the second marriages. It would be prejudicial to the children of the two (2) marriages.

Article 93. Property acquired during the marriage is presumed to belong to the community, unless it is provided that it is one of those excluded therefrom. (160a)

The law merely emphasizes the rule on absolute community of properties that properties acquired during the marriage form part of their absolute community of properties. But even if they were acquired during the marriage, if the other spouse or heirs of the latter can prove that the same were acquired by gratuitous title where no provision exists that it shall form part of the absolute community of properties, still, the same is exclusive. Or, if it can be proven that the property is for the personal and exclusive use of either spouse, it is exclusive.

Section 3. Charges Upon and Obligations of the Absolute Community

Article 94. The absolute community of property shall be liable for:

(1) 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;

(2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the com-

munity, or by both spouses, or by one spouse with the consent of the other;

(3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited;

(4) All taxes, liens, charges and expenses, including major or minor repairs, upon the community property;

(5) All taxes and expenses for mere preservation made during marriage upon the separate property of either spouse used by the family;

(6) Expenses to enable either spouse to commence or complete a professional or vocational course, or other activity for self-improvement;

(7) Ante-nuptial debts of either spouse insofar as they have redounded to the benefit of the family;

(8) 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;

(9) 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

(10) Expenses of litigation between the spouses unless the suit is found to be groundless.

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. (161a, 162a, 163a, 202a-205a)

Support of the family; source.

The reason for paragraph 1 of Article 94 of the Family Code is found in Article 195 of the Family Code which requires the spouses

and the children, whether legitimate, or illegitimate to support each other.

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. (Article 194, Family Code).

In case of illegitimate children, the rule is that their support shall come from the separate property of each spouse if they have illegitimate children. If they have no separate properties or if there are, but not sufficient, then the absolute community of property shall advance the support, but the same shall be deducted from the share of the spouse obliged upon the liquidation of the absolute community or the conjugal partnership. (Article 197, Family Code).

Obligations redounding to benefit of family.

All debts contracted by one spouse with or without the consent of the other are chargeable against the community of property. What is important is that they must have redounded to the benefit of the family or at least the community of property so that they shall be liable to the extent that the debts may have benefited the family.

Ante-nuptial debts.

A spouse owns a house and lot; during the time that he is not yet married, he borrowed money to repair the same. That loan has not yet been paid at the time of the marriage. If he later on gets married and the house and lot becomes part of the absolute community of property, such ante-nuptial debt shall be borne by the absolute community of property as the loan redounded to the benefit of the family.

Ante-nuptial debts which did not redound to the benefit of the family shall not be borne by the absolute community of property. If that spouse who contracted it has no separate property to answer the same, then, the absolute community of property shall answer the same, but this shall be treated as advances from the absolute

community of property, chargeable against his share upon liquidation of the absolute community of property or conjugal partnership.

This is true also if one spouse is held civilly liable for a *quasi-delict* or crime. If the spouse liable does not have sufficient properties or if his properties are not sufficient to answer for the same, then, the same shall be advanced by the conjugal partnership or absolute community of property. Such advances shall be deducted from his/her share of said community of property or conjugal partnership at the time of liquidation.

Illustration:

If X, the husband of Y, hits a pedestrian and kills the latter, and when sued for damages, he is held liable for the same, the foregoing rule shall apply.

The law says that if the community property is not sufficient to answer for all the liabilities aside from those mentioned in paragraph 9, the spouses shall be liable solidarily with their separate properties.

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. (164a)

Gambling is never allowed by law. In case of losses incurred by one of the spouses, he/she shall answer the same with his/her exclusive properties. This is to discourage it as it tends to dissipate the properties of the family. If a spouse, however, wins, the winnings would form part of the absolute community of properties, because they are considered as earnings or properties acquired during the marriage.

Section 4. Ownership, Administration, Enjoyment and Disposition of the Community Property

Article 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of dis-

agreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that 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. These powers do not include the powers of disposition or encumbrance without authority of the court or the written consent of the 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. (206a)

Rules on joint administration.

Unlike in the Civil Code, the Family Code now provides for a joint administration and enjoyment of the community property by the husband and wife. Under the Civil Code, it was the husband who was the administrator of the conjugal partnership property.

In spite of joint administration of the community property by the husband and wife, the husband's decision prevails in case of disagreement. The wife, however, has a remedy against such decision, for she can question it in court within five (5) years from the date of the contract implementing such decision. After that period, the action shall prescribe.

When a spouse may assume sole power of administration.

There are instances when one spouse may assume sole powers of administration as when: (a) one spouse is incapacitated; or (b) one spouse is unable to participate in the administration of the common property. Such power as administrator, however, does not include the power to sell properties of the community property. For such administrator-spouse to validly sell properties of the community property, there must be an authorization from the court or the written consent of the other spouse.

The Supreme Court declared as void the sale by the husband of conjugal partnership property without the consent of the wife. The

reason for this is that, selling properties is an act of ownership or dominion which is not present in administration. In fact, under Article 96 of the Family Code, such sale is void. (See *Nicolas vs. CA*, 154 SCRA 635). The mere fact that there was awareness of the other spouse of such sale is not consent. (*Tinitigan vs. Tinitigan, Sr.*, 100 SCRA 619). The reason is obvious, as it requires the written consent of the other spouse.

There is, however, a new concept in the law, that even if the sale by one of the spouses is void, as it was done without the consent of the other, it is a continuing offer between the consenting spouse and the third person and may be perfected as a binding contract upon acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

While the law provides for administration of the husband and wife, yet, they are free to agree that one of them may administer the absolute community of properties. That agreement is valid and binding between the parties.

As discussed earlier, administration does not carry with it the power to sell, as the latter is an act of ownership or dominion. In fact, administration does not include the power to encumber without the authority of the court or the written consent of the other spouse. If the administrator-spouse leases a property of the absolute community of properties beyond one (1) year, it must bear the consent of the other spouse, because a lease beyond one (1) year is more than an encumbrance. In *Roxas vs. CA*, G.R. No. 92245, June 26, 1991, it was said that the concept of encumbrance includes lease; thus, an encumbrance is sometimes construed broadly to include not only liens, such as mortgages and taxes, but also attachment, leases, inchoate dowry rights, water rights, and other restrictions on use. Moreover, lease is not only an encumbrance but also a qualified alienation, with the lessee becoming, for all legal intents and purposes, and subject to its terms, the owner of the thing affected by the lease. (51 C.J.S., p. 522).

The provision of the law providing for joint administration is for the purpose of recognizing the equality of the spouses — since their interests in the community of properties are equal.

Article 97. Either spouse may dispose by will of his or her interest in the community property. (n)

Disposition of share of each spouse; rules.

The reason for the law is that the disposition by will of the interest of one spouse is an act of ownership. One attribute of ownership is the right to dispose.

The disposition does not require the consent of the other spouse because the same shall take effect only after the death of the testator.

Remember that what the law allows of a spouse to dispose by will is his or her interest in the community property. It cannot be any specific property as it is not yet known what properties would be given to said spouse at the time of the liquidation of the absolute community property. It cannot be considered as non-existing property since the share really exists. The transmission of rights of ownership is merely suspended. The remedy of the one who acquires it is to ask for partition because the acquisition by him/her resulted in co-ownership. In a co-ownership, the co-owners cannot claim to be owners of specific portions. They can claim only aliquot parts.

Article 98. 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. (n)

The law authorizes the spouses to dispose of by will his or her share in the community property. This right of disposition is a recognition of the right of ownership over such interest in the said property, but the heir will receive that portion allotted to the spouse, who executed the will in his favor, when there is liquidation and distribution of the properties.

This law must be distinguished from Article 97 of the Family Code. It prohibits a spouse from donating any community property without the consent of the other. In Article 97, the law allows a spouse to

Section 5. Dissolution of Absolute Community Regime

Article 99. The absolute community 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 under Articles 134 to 138. (175a)

Termination of the community property to be registered; reason.

It is a rule laid down in *Adolfo Aenlle vs. Maria Rheims and Phil. Guaranty Co.*, 52 Phil. 553, that the termination of the community property must be registered so that third persons may not be prejudiced, as when the surviving spouse enters into a contract involving the community property after the death of the other spouse.

Speaking of prejudice to third persons, if after the death of one of the spouses, the surviving spouse sells properties of the community property, the innocent purchaser for value and in good faith must be amply protected. If any action is to be brought, it must be done against the surviving spouse.

Such a situation occurred in *Nable Jose vs. Nable Jose*, 41 Phil. 713, where the husband sold properties registered under his name, but in truth, to the conjugal partnership. Since the vendee was considered an innocent purchaser and for value, the Supreme Court ruled in his favor. In this case, the heirs of the deceased tried to recover the properties but failed, because the purchaser was considered in good faith, the dissolution of the partnership not having been duly registered.

Effect of legal separation.

One of the legal consequences of legal separation is the termination of the community of property. However, if the parties reconcile, they are free to revive the same or to agree on a different property regime.

Note that the modes of termination of the absolute community of properties are exclusive in nature. There is no other way; like for example, an extra-judicial partition between the parties. Without the approval of the court, the agreement would be void. (*Luna vs. Linatoc*, 74 Phil. 15). This is especially so, because any modifications of the community of property must be done before the celebration of the marriage. Thereafter, or during the marriage, any modifications or changes in the community property must be done with judicial intervention.

As a consequence of the dissolution of the absolute community of properties, whatever is acquired by one of the spouses thereafter belongs to him/her exclusively. At the same time, debts contracted thereafter are answerable by him/her exclusively.

Article 100. 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. (178a)

The aforementioned law merely means that the absolute community of property or the conjugal partnership shall still remain in spite of the separation in fact of the husband and wife.

If one of the spouses leaves the conjugal dwelling without any justifiable reason, he/she cannot ask for support.

Illustration:

A and B are married. B, without any justifiable reason, left the conjugal dwelling. She cannot ask for support. But if she left the conjugal dwelling because she is being maltreated, insulted by her husband, A; then, she can ask for the support.

Suppose there is a need to sell or encumber the property of the spouses where the consent of the other is necessary and it cannot be obtained because of the fact that B has left the conjugal dwelling. Then, A can go to court and ask for judicial authorization for such sale. The

authorization shall be sufficient substitute for such consent.

There are other consequences of the separation in fact of the spouses, such as:

- (1) the separate properties of the husband and wife shall be solidarily liable for the support of the family if there are no sufficient properties of the community property;
- (2) the present spouse may petition the court that he be authorized to administer and encumber specific separate properties of the other spouse and use the fruits to satisfy his or her share.

Illustration:

A and B are married. A left the conjugal dwelling without justifiable cause. B can ask for judicial authority to administer some properties of B and use the fruits to satisfy A's share.

If the husband brings a concubine in the conjugal dwelling, maltreats her, insults her, or forces her to live with persons whose habits, character, and language are offensive to her dignity, or compels her to be merely subordinate to his mother, the same may justify the wife to live separately from him and pray for separate maintenance for her.

Property acquired during the marriage, even if spouses are separated, is presumed to be conjugal.

Case:

**Spouses Ricky and Anita Wong, et al. vs.
IAC, et al.
G.R. No. 70082, August 19, 1991**

Facts:

Romarico and Katrina are married. They have three children, but they have been living separately from each other most of the time. During the marriage, Romarico acquired a lot consisting of 1,787

square meters. In 1972, while in Hong Kong, Katrina entered into a contract with Anita Wong, whereby she consigned to her pieces of jewelry worth P321,830.95. When she failed to return the jewelries, Anita demanded the payment where Katrina issued a check for P55,000.00. When it bounced, she was sued criminally, but since the obligation was purely civil in nature, a suit for collection of sum of money was filed against her. Judgment was rendered against Katrina. When it became final and executory, the parcel of land was levied upon and sold at a public auction.

Issues:

- (1) Whether or not the property is conjugal or not;
- (2) Whether the property is liable for the indebtedness of Katrina.

Held:

- (1) Having been acquired during the marriage, the property is presumed to belong to the conjugal partnership (*Cuenca vs. Cuenca*, 168 SCRA 335), even though Romarico and Katrina had been living separately. (*Flores vs. Escudero*, 92 Phil. 786).

The presumption of the conjugal nature of the properties subsists in the absence of clear, satisfactory, and convincing evidence to overcome said presumption or to prove that the properties are exclusively owned by Romarico. (*Ahern vs. Julian*, 39 Phil. 607). While there is proof that Romarico acquired the properties with money he had borrowed from an officemate, it is unclear where he obtained the money to repay the loan. If he paid it out of his salaries, then the money is part of the conjugal assets and not exclusively his. Proof on this matter is of paramount importance considering that in the determination of the nature of a property acquired by a person during coverture, the controlling factor is the source of the money utilized in the purchase.

- (2) The conjugal nature of the properties notwithstanding, Katrina's indebtedness may not be paid for with the same since her obligation was not shown by the petitioners to be one of the charges against the conjugal partnership. (*Lacson vs. Diaz*, 14 SCRA 183). In addition to the fact that her rights over the properties are merely inchoate prior to the liquidation of the conjugal partnership, the consent of her husband and her authority to incur such indebtedness had not been alleged in the complaint and proven at the trial.

(Manaois-Salonga vs. Natividad, 107 Phil. 268). Furthermore, under the Civil Code (before the effectivity of the Family Code on August 3, 1988), a wife may bind the conjugal partnership only when she purchases things necessary for the support of the family or when she borrows money for the purpose of purchasing things necessary for the support of the family if the husband fails to deliver the proper sum; when the administration of the conjugal partnership is transferred to the wife by the courts or by the husband, and when the wife gives moderate donations for charity. Having failed to establish that any of these circumstances occurred, the Wongs may not bind the conjugal assets to answer for Katrina's personal obligations to them.

Article 101. 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.

The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.

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. (178a)

Remedies in case of abandonment; rules.

Article 101 provides for the remedies of a spouse in case of abandonment by the other such as:

- (a) petition for receivership;
- (b) petition for judicial separation of property;
- (c) petition for authority to be the sole administrator of the absolute community of property.

When the spouse has been granted the authority to administer the community property, he/she cannot sell the same without authority of the court. Selling is an act of dominion which requires

the authority of the court or the consent of the other spouse. If there is no authority of the court or consent of the other spouse, the sale is void.

When there is abandonment.

There is abandonment by one spouse when he/she left the conjugal dwelling without any intention of returning and when he/she no longer complies with his/her marital, parental and property relations with the family.

Said spouse is presumed to have abandoned the family if:

- (a) he/she left the conjugal dwelling for a period of three (3) months; or
- (b) he/she has failed within three (3) months to give any information as to his or her whereabouts.

If the spouse left for abroad to look for a job but he communicates with the present spouse and gives support to the family, there is no abandonment.

Abandonment has been defined in *Partosa-Jo vs. CA*, 216 SCRA 692, December 18, 1992. It is not limited to a departure of one spouse from the conjugal dwelling with no intention to return, but it encompasses the act of rejecting or preventing the other spouse from returning to the conjugal dwelling. The Supreme Court said:

“Abandonment implies a departure by one spouse with the avowed intent never to return, followed by prolonged absence without just cause, and without in the meantime, providing in the least for one’s family although able to do so. There must be absolute cessation of marital relations, duties, and right with the intention of perpetual separation. (*Dela Cruz vs. Dela Cruz*, 22 SCRA 333). This idea is clearly expressed in the above-quoted provision, which states that a spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without any intention of returning.”

In this case, records show that as early as 1942, the private respondent had already rejected the petitioner, whom he denied admission to their conjugal home in Dumaguete City when she returned from Zamboanga. The fact that she was not accepted by Jo demonstrates all too clearly that he had no intention of resuming

their conjugal relationship. Moreover, beginning 1968 until the final determination by the Court of the action for support in 1988, the private respondent refused to give financial support to the petitioner. The physical separation of the parties, coupled with the refusal by the private respondent to give support to the petitioner, sufficed to constitute abandonment as a ground for the judicial separation of their conjugal property.

In addition, the petitioner may also invoke the second ground allowed by Article 128, for the fact is that he has failed without just cause to comply with his obligations to the family as husband or parent. Apart from refusing to admit his lawful wife to their conjugal home in Dumaguete City, Jo freely admitted to cohabiting with other women and siring many children by them. It was his refusal to provide for the petitioner and their daughter that prompted her to file the actions against him for support and later, for separation of the conjugal property; in which actions, significantly, he even denied being married to her. The private respondent has not established any just cause for his refusal to comply with his obligations to his wife as a dutiful husband.

Abandonment is a matter of intention. Even if the spouse left the conjugal dwelling for a period of three (3) months or more, if there is no intention to abandon the family, he/she cannot be considered to have abandoned the family. So that in a suit by the present spouse for receivership, or judicial separation of property, or authority to be the sole administrator of the community of property, the suing spouse must prove the fact of abandonment, for the presumption is only *prima facie*, not conclusive. In fact, if the present spouse cannot prove it, then the action may not prosper. There must be a motive so that the other spouse may go to court to disprove the fact of abandonment. This is to prevent an unscrupulous spouse from taking advantage of the absence of a spouse and have sole administration of their properties. The notice can be done by publication.

The law mentions the obligations of the spouses to the marriage like marital, parental, or property relations. If a spouse does not perform the obligation to live with the other for a period of three (3) months, the other spouse may go to court and ask for relief. This is so, because the husband and wife are obliged to live together. (Article 68, Family Code). If one of the spouses fails or refuses to perform the duties to the family like support, care, custody of children; then, there can be abandonment, and the other spouse may go to court and ask

for the reliefs granted under the law. One of the duties to the marriage is the administration of properties of the husband and wife. In fact, the husband and wife have joint administration of the properties of the absolute community (Article 96, Family Code) and the conjugal partnership of gains. (Article 124, Family Code). If one of the spouses fails or refuses to comply with the duty, then, the other spouse may go to court and ask that he/she be appointed the sole administrator of the properties.

Section 6. Liquidation of the Absolute Community Assets and Liabilities

Article 102. 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 as provided in this Code. For purposes 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. (n)

Rules in case of dissolution of the community property.

Article 102 of the Family Code outlines the manner in which the absolute community property shall be liquidated in case of dissolution of the same.

Community property to answer for all debts.

All debts of the absolute community are to be paid out of its assets. If the community is not sufficient, then, the separate properties of the spouses shall be answerable. The law says that the spouses shall be solidarily liable.

It must be noted that for the spouses to be solidarily liable with their separate properties, such debts must have been 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. (Article 94[2], Family Code).

If the debts and obligations did not benefit the family and were contracted without the consent of the other spouse, said spouse shall bear such debts alone as it would be unfair to the other or the absolute community property if either would shoulder the same. (BA Finance Corp. vs. CA, G.R. No. 61464, May 28, 1988). If it cannot be shown that a contract was entered into by the husband during the marriage, but after he has abandoned the family, benefited the family, then, he is solely liable. If he acts as guarantor or surety for another in an indemnity agreement, such contract does not benefit the family. There must be the requisite showing of some advantages which clearly accrued to the welfare of the spouses. (BA Finance vs. CA). A surety or guaranty undertaking does not benefit the family, but it dissipates the absolute community or the conjugal partnership.

Exception to the rule.

In *Johnson and Johnson (Phils.), Inc. vs. CA, et al.*, G.R. No. 102692, September, 23, 1996, 74 SCAD 645, the following questions were asked:

“May a husband be held liable for the debts of his wife which were incurred without his consent and which did not benefit the conjugal partnership? May a judgment declaring a wife solely liable, be executed upon conjugal property, over the objection of the husband?”

It appears that Delilah Vinluan, owner of Vinluan Enterprises, and her husband Capt. Alejo Vinluan, were sued by the plaintiff corporation for a sum of money. Delilah purchased cosmetic products of the plaintiff and incurred liabilities in the amount of P235,880.89. She issued checks in payment of the same, but the check bounced when presented for payment, hence, the suit. After trial, the court declared Delilah solely liable, stating that plaintiff and Alejo had no privity of contract and that Alejo was not a co-owner of the business enterprise. His actuations of offering a settlement were not considered as admission of the co-ownership of Vinluan Enterprises a finding by the trial court to which it justifies by saying that common sense and our inborn *mores* or conduct dictate that a husband must give aid and comfort to his distressed wife. The judgment became final and executory, but the sheriff levied upon the properties of Delilah and the properties of the conjugal partnership of the spouses. Alejo filed a third-party claim, seeking the lifting of the levy on the conjugal properties. However, the trial court denied the aforesaid claim. The trial court reasoned out that he did not seek to air his objections in his wife’s engaging in business; coupled with the several representations for the settlement of his wife’s account, his consent became evident; hence, his own capital may now be liable. He filed a Motion for Reconsideration, but the same was denied; hence, he appealed to the CA which upheld the trial court’s ruling. In upholding the CA’s ruling, the Supreme Court said that the decision of the trial court which held the woman’s properties as solely liable for her obligations cannot be disturbed by the trial court itself.

The respondent Court correctly ruled that the trial court cannot, in the guise of deciding the third-party claim, reverse its final decision. Commenting on the trial court’s very patent “about-face” on the issues of consent of the husband, benefit to the family, and the husband’s liability for obligations contracted by his wife, the Appellate Court held, and we quote:

“We see in these stark contradictions an attempt by the respondent Court to reverse itself, even when the decision sought to be executed had already become final.

The respondent Court has no authority to modify or vary the terms and conditions of a final and executory judgment (*Vda. de Nabong vs. Sadang*, 167 SCRA 232) and this attempt to thwart the rules cannot be allowed to pass. Even if the respondent Court feels that it needed to reverse its findings to correct itself, the decision, whether erroneous or not, has become the law of the case between the parties upon attaining finality. (*Balais vs. Balais*, 159 SCRA 37). The respondent Court has no choice but to order the execution of the final decision according to what is ordained and decreed in the dispositive portion of the decision. (*National Steel Corp. vs. NLRC*, 165 SCRA 452).

“The dispositive portion of the decision charges the defendant Delilah Vinluan alone to pay the plaintiff corporation, having already declared that the defendant-husband cannot be held legally liable for his wife’s obligations. Perhaps, when it was later discovered that the defendant Delilah Vinluan did not have sufficient property of her own to settle the obligation, the conjugal properties of the defendant-spouse became the object of the levy. But in order to bind the conjugal partnership and its properties, the New Civil Code provides that the debts and obligations contracted by the husband (or the wife) must be for the benefit of the conjugal partnership (Art. 161, par. 1, NCC); and that the husband must consent to his wife’s engaging in business. (Article 117, NCC).

“As We stated earlier, this cannot be done because the decision along with the respondent Court’s original findings, had already become final and indisputable. The respondent Court already found that the defendant husband did not give his consent; neither did the obligation incurred by the defendant-wife redound to the benefit of the family. Hence, the conjugal partnership, as well as the defendant-husband, cannot be held liable. As originally decreed by the Court, only the defendant wife and her paraphernal property can be held liable. Since the power of the court in execution of judgments extends only to properties unquestionably belonging to the judgment debtor alone (*Republic vs. Enriquez*, 166 SCRA 608), the conjugal properties and the capital of the defendant husband cannot be levied upon.”

Rules after payment of debts.

After the payment of all the obligations of the community property, the net remainder shall be divided between them, unless the spouses, in their marriage settlements, agreed on another division of the net assets or there has been a waiver of such share.

The presumptive legitime of the legitimate common children shall be delivered upon partition. However, in spite of having received their presumptive legitimes, the children shall still be entitled to inherit from their parents upon their death. Whatever they may have received shall, however, be considered as advance inheritance. (Article 51, par. 3, Family Code).

The law also mandates that, in the absence of an agreement in the partition of properties, the conjugal dwelling shall be delivered to the spouse with whom majority of the children choose to remain. If there is no such majority, the court, in the exercise of its sound judicial discretion shall decide, taking into consideration the best interests of the children.

Article 103. 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 one year from the death of the deceased spouse. If upon the lapse of the said 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. (n)

Duty of the surviving spouse.

The law mandates that the surviving spouse should liquidate the community property upon termination of the marriage by death. This is normally done in the settlement of the estate of the deceased, whether testate or intestate.

If no judicial settlement proceeding is instituted, the surviving spouse must liquidate the community property within one (1) year

from the death of the deceased, whether judicially or extra-judicially. If he/she does not comply with this requirement, and he/she sells properties of the community property, the same is void.

Effect of failure to comply with duty to liquidate.

Should the surviving spouse fails to comply with the liquidation requirement within one (1) year from the death of the deceased, and he/she gets married, the subsequent marriage shall be governed by the regime of mandatory complete separation of property. Basically, the reasons for the law are to prevent any prejudice to the compulsory heirs of the first marriage and to prevent fraud to creditors.

It is required by Article 102, paragraph 5 of the Family Code that the presumptive legitimes of the legitimate common children shall be delivered upon the liquidation of the community property. This is one reason for paragraph 3 of Article 103 of the Family Code. It cannot be said that their shares may be safe in the subsequent marriage. It is possible that they may be dissipated in the subsequent one.

The law imposes upon the subsequent marriage the regime of mandatory complete separation of property if the spouse, whose community of property has been terminated, did not liquidate the same. This is an exception to Article 75 of the Family Code which says that in the absence of marriage settlements, or when the regime agreed upon is void, the system of absolute community of property shall govern.

Article 104. Whenever the liquidation of the community properties of two or more marriages contracted by the same person before the effectivity of this Code is carried out simultaneously, the respective capital, fruits and income of each community shall be determined upon such proof as may be considered according to the rules of evidence. In case of doubt as to which community the existing properties belong, the same shall be divided between or among the different communities in proportion to the capital and duration of each. (189a)

Procedure in liquidation.

The law specifies the procedure in the liquidation of the community properties of two or more marriages where it is being carried out simultaneously.

- (a) Determine the respective capital of each community property, then the fruits and income as may be proven. The law requires that evidence must be presented to prove that one property belongs or was acquired during the existence of one or the other. (*Oñas vs. Javillo*, 59 Phil. 733).
- (b) In case of doubt as to which community the existing properties belong, they shall be divided in proportion to the capital and duration of each.

In *Vda. de Delizo vs. Delizo*, 69 SCRA 216, the Supreme Court held that if one marriage lasted for 18 years and the other for 46 years, the properties should be divided in the proportion of 18 to 46, if the capital of either marriage or the contribution of each spouse cannot be determined with mathematical certainty.

Chapter 4

Conjugal Partnership of Gains

Section 1. General Provisions

Article 105. In case the future spouses agree in the marriage settlements that the regime of conjugal partnership of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application.

The provisions of this Chapter shall also apply to conjugal partnership of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 255. (n)

Article 106. 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. (142a)

Article 107. The rules provided in Articles 88 and 89 shall also apply to conjugal partnership of gains. (n)

Article 108. The conjugal partnership shall be governed by the rules on the contract of partnership in all that is not in conflict with what is expressly determined in this Chapter or by the spouses in their marriage settlements. (147a)

Rules in conjugal partnership.

In a conjugal partnership of gains, the spouses place in a common fund the proceeds, products, and fruits and income of their separate properties and those acquired thereafter through their efforts or by chance. Upon the dissolution of the conjugal partnership, the net gains shall be divided equally between the spouses, unless otherwise agreed upon in the marriage settlements.

The spouses retain ownership and administration of their separate properties. They also retain possession and enjoyment of the same. (Art. 110, Family Code). But either of them may transfer the administration to each other by means of a public instrument which must be recorded in the registry of property of the place where the property is located. (Art. 110, Family Code).

While the law guarantees that the net gains or benefits of the conjugal partnership shall be divided between the spouses at the liquidation of the conjugal partnership, such guarantee, however, does not mean that they would always get their shares. Such right over the net gains is merely inchoate because it may be found out after the liquidation that there is no conjugal partnership of gains to be divided. (Nable Jose vs. Nable Jose, 41 Phil. 713).

Presumption of conjugality.

While it is true that there is a presumption that real properties acquired during the marriage are presumed to be conjugal, such *prima facie* presumption, however, can be overturned by a cadastral court's specific finding that the property is paraphernal (under the Family Code, the word "exclusive" is now used) in character. The title to the entire property shall pass by operation of law to the buyer once the seller acquired title over it by hereditary succession even if at the time of the execution of the deed of sale, the seller owned only a portion of the property. (Jessie Pisueña vs. Heirs of Petra Unating, et al., G.R. No. 132803, August 31, 1999, 111 SCAD 540).

The presumption is a strong one for, as held in *Camia de Reyes vs. Reyes de Ilano*, 63 Phil. 620, it is sufficient to prove that the

property was acquired during the marriage in order that the same may be deemed conjugal property. And in *Laluan vs. Malpaya*, 65 Phil. 494, it was held that proof of acquisition of the property in dispute during the marriage suffices to render the statutory presumption operative. (*Mendoza vs. Reyes*, 124 SCRA 154).

In *Entonina vs. C.A., et al.* (78 SCAD 321, 266 SCRA 627, January 27, 1997), it was said that the presumption under the law that all properties of the marriage belong to the conjugal partnership applies only when there is proof that the property was acquired during the marriage. The mere fact that the title was issued when the spouses were already married is not sufficient proof of conjugality especially where there was no proof as to when the property was acquired.

For, as held in *Jocson vs. C.A.*, 204 SCRA 297; *Cobb-Perez vs. Lautin*, 23 SCRA 637; *Maramba vs. Lozano, et al.*, 20 SCRA 474, the certificates of title, upon which petitioner rests his claim is insufficient. The fact that the properties were registered in the name of Emilio Jocson married to Alejandra Poblete is no proof that the properties were acquired during the marriage. Acquisition of title and registration are two different acts. It is well-settled that the registration does not confer title but merely confirms one already existing. It may be that the properties under dispute were acquired by Emilio Jocson when he was still a bachelor, but were registered only after his marriage to Alejandro Poblete, which explains why he was described in the certificates of title as married to the latter.

In *Jessie Pisueña vs. Heirs of Petra Unating, et al., supra*, it was found out that the property was inherited from the owner's mother. While the case was merely intended to reconstitute the title, such finding that it was inherited even if not the issue is binding as it has already become final and executory and material to the nature of the ownership over the lot. Furthermore, it was based on the evidence presented by the parties and considered by the court. Hence, the reconstituted title under the name of owner. (See also *Magallon vs. Montejo*, 146 SCRA 282 [1986]; *Stuart vs. Yatco*, 4 SCRA 1143 [1962]; *Litam vs. Espiritu*, 100 Phil. 364 [1956]).

Section 2. Exclusive Property of Each Spouse

Article 109. 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

(4) That which is purchased with exclusive money of the wife or of the husband. (148a)

Property exclusively owned.

There may be properties acquired or owned by the spouses before the marriage. Such properties are considered exclusive properties of the husband and wife, unless they are brought into the marriage as parts of the absolute community property.

Sale with right to repurchase.

If a future spouse sold his property with right to repurchase before the marriage and reacquired it during the marriage, such property is still the exclusive property of said spouse. (*Santos vs. Bartolome*, 44 Phil. 76). If the money he paid for the repurchase came from the conjugal assets, then, said spouse must reimburse the conjugal partnership. If, however, the money used was the exclusive money of the spouse and he can prove it, then, that remains to be exclusive property and there is no obligation on his part to reimburse the conjugal partnership. (*Lorenzo vs. Nicolas*, 91 Phil. 686). Note, however, that the reimbursement shall be done at the liquidation of the conjugal partnership. (*Santos vs. Bartolome*, 44 Phil. 76; *Consunji vs. Tison*, 15 Phil. 81).

Nature of inherited property.

If one of the spouses is a recipient of a property through testate or intestate succession or even by donation, the property is an exclusive property of such spouse.

Award of damages.

If a spouse meets an accident and in a suit for damages, he is awarded damages for hospitalization expenses, medical assistance and loss of salary, the Supreme Court said that these are conjugal properties. (*Liluis vs. MRR*, 62 Phil. 56). But any moral damages awarded for personal injury in such accident are exclusive properties of each spouse.

Nature of gratuity from the government.

Monetary benefits given *gratis* by the government because of previous work is a gratuity and should be considered separate property.

Hence, the directive in a default judgment to deliver 1/2 of the husband's retirement benefits to the wife who sued him for support, makes the default judgment doubly illegal because: (1) retirement gratuity is exempt from execution; (2) being a reward for lengthy and faithful service to the recipient, it should be treated as separate property of the retiree. (*Sarmiento vs. Judge Ordoñez and IAC*, G.R. No. 75409, August 17, 1987).

Redemption of property.

If the husband redeems the paraphernal property of the wife with his money, he does not own the same. Ownership belongs to the heirs of the wife and the wife. (*Alvarez vs. Espiritu*, G.R. No. L-18833, August 14, 1965). But the estate owes the husband.

Property acquired by exchange.

An exchange presupposes that there is a barter.

But if an exclusive property is exchanged with another and sometimes was used by the owner, the same is conjugal property without prejudice to the trade-in value. The conjugal partnership is indebted to the original owner. (*Abella de Diaz vs. Erlanger and Galinger, Inc.*, 59 Phil. 326).

Purchase of property.

If a property is purchased partly with money of the wife and partly with conjugal money, the same is partly conjugal and partly paraphernal. (*Padilla vs. Paterno*, G.R. No. L-4130, September 30, 1953).

When marriage is descriptive of status only.

A is the owner of a parcel of land. The title states: "A, married to B." A is the owner. The description or reference to marriage is merely descriptive of his civil status. (*Gonzales vs. Miller*, 69 Phil. 340).

When property is acquired under Homestead Law.

Under the Homestead Law (C.A. No. 141, Sec. 105), a vested right over a homestead is acquired only by the presentation of the final proof and its approval by the Director of Lands. If a spouse applies for a homestead and dies before it is granted, the same belongs to the heirs. It would never be a conjugal property. (*Ude Soliman vs. Icdang, et al.*, G.R. No. L-15924, May 31, 1961; *Veran vs. CA*, G.R. No. 41154, January 29, 1988).

Wife is the owner and administrator of her separate properties. Sale by husband; effect.

The wife is the owner and administrator of her paraphernal properties. If she delivers the administration to her husband, it must be in a public instrument and such instrument must be recorded in the Registry of Property. If the properties are movables, the husband must give adequate security. But even if he is the administrator of the paraphernal properties, he cannot dispose of the paraphernal properties. (*Manotok Realty, Inc. vs. CA*, G.R. No. L-45038, April 30, 1987. Please refer to Art. 145, Family Code). The reason for the rule is that selling is an act of ownership. Administration does not include such power to sell.

Property acquired by right of redemption.

If a future spouse sold his property before the marriage, and reacquired it during the marriage, such property is still the exclusive property of said spouse. (*Santos vs. Bartolome*, 44 Phil. 76). If the money he paid for the repurchase came from the conjugal assets, then, said spouse must reimburse the conjugal partnership. If, however, the money used was the exclusive money of the spouse and he can prove it, then, that remains to be exclusive property and without the obligation on his part to reimburse the conjugal partnership. (*Lorenzo vs. Nicolas*, 91 Phil. 686). Note, however, that the reimbursement shall be done at the liquidation of the conjugal partnership. (*Santos vs. Bartolome*, 44 Phil. 76).

If the husband redeems the paraphernal property of the wife with his money, he does not own the same. Ownership belongs to the heirs of the wife and the wife. (*Alvarez vs. Espiritu*, L-18833, August 14, 1965). The estate, however, is indebted to the husband.

An exchange presupposes that there is a barter.

If an exclusive property is exchanged with another and some funds were used by the owner, the same is conjugal property without prejudice to the trade-in value. The conjugal partnership is indebted to the original owner. (*Abella de Diaz vs. Erlanger and Galiner, Inc.*, 59 Phil. 328).

If a property is purchased partly with money of the wife and partly on conjugal money, the same is partly conjugal and partly paraphernal. (*De Padilla vs. Paterno*, G.R. No. L-4130, September 30, 1953).

If during the marriage, property was acquired by the spouses but the same was registered in the name of one of the spouses only, the law presumes that the property is conjugal, unless the contrary is proved.

The adjudication of real property to one of the spouses does not necessarily mean that it is his or her exclusive property, if said land was acquired during the marriage. But if the title, for instance, says that the land is registered in the name of “Teodulo Diaz married to Maria Espejo,” this shows that the property was acquired during the existence of the conjugal partnership. (*Diaz vs. CA*, G.R. No. L-42130, November 10, 1986).

Owner of property acquired with the exclusive money of either spouse.

As a rule, properties purchased with the use of the exclusive money of either spouse is separate property. (*Hartske vs. Frankel and Phil. Trust Co.*, 54 Phil. 156; *Gefes vs. Salvio*, 36 Phil. 221; *Gonzales vs. Miller*, 69 Phil. 340). Hence, if the property acquired during the marriage with money belonging exclusively to the wife is considered as her own, it is unquestionable that it does not belong to the class of community property. Therefore, the husband is not authorized to alienate, encumber, or make contracts in regard thereto, without the knowledge and consent of its lawful owner, and a sale or conveyance thereof by the husband, who is not its owner, is null and void.

In fact, in *Perez vs. Tuason de Perez*, 109 Phil. 654, the SC said that injunction will not lie to restrain the spouse from alienating his or her exclusive property on the ground that the conjugal partnership will be deprived of its fruits. Furthermore, the owner-spouse can freely

alienate the property without the consent of the other. (Rodriguez vs. Dela Cruz, 8 Phil. 665).

Whether the administration of such property can be made by either spouse, the SC said yes. In fact, in *Peoples Bank and Trust Co. vs. Register of Deeds of Manila*, 60 Phil. 167, it was ruled that either spouse may transfer the administration of his or her exclusive property to a third person instead of the other spouse. The transfer of management does not make the transferee the owner thereof. (Rodriguez vs. Dela Cruz, *Ibid.*).

Property acquired gratuitously is exclusive property of the spouse.

In this case of *Villanueva vs. IAC*, 192 SCRA 21, it appears that Mariano inherited a parcel of land from his parents. When a title was issued, it was issued under the name "Mariano married to Elsa." They died without any issues. Mariano, however, was survived by two illegitimate children who mortgaged the land. Having failed to pay their obligation, the mortgagee foreclosed the mortgage; after which, ownership was consolidated. A new title was then issued. Two claimants, Consuelo and Ray, appeared and asked for cancellation of the title, contending that they are co-owners, based on a will executed by Elsa disposing of the said land. In not upholding the claim of Consuelo and Ray, the SC held:

"The land is not the conjugal property of Elsa and Mariano. It is the exclusive private property of Mariano who inherited it from his parents. Whether Mariano succeeded to the property prior or subsequent to his marriage to Elsa is inconsequential. As a matter of law (Art. 148, Civil Code, now Art. 109, Family Code), the exclusive property of each spouse is 'that which is brought to the marriage as his or her own' or 'that which each acquires during the marriage by lucrative title.' Thus, even if it is assumed that Mariano's acquisition of the land by succession took place during his marriage to Elsa, said land would nonetheless be his exclusively, because he acquired it by lucrative title. So not being a conjugal property. Elsa could not have disposed of it in her will."

Exclusive property is liable for the personal debts of owner.

In *Ramon Ong vs. CA, et al.*, G.R. No. 63025, November 29, 1991, Ong contracted a loan with Boix which was secured by a mort-

gage of property. She failed to pay her obligation; hence, there was a foreclosure of the mortgage. Boix was the highest bidder, thus, a writ of possession was issued later. The husband, Ramon Ong, filed a motion to quash the writ of possession contending, among others, that the property was conjugal, hence, it could not be liable for the personal debts contracted by the wife. The land was declared in the name of Teodora Ong. It was contended, too, that since the surname “Ong” was carried by Teodora in the tax declaration, such indicates that the subject property was acquired during the marriage, and for that reason, the property is presumed to be owned jointly by both spouses.

The High Court said:

We disagree. The mere use of the surname of the husband in the tax declaration of the subject property is not sufficient proof that said property was acquired during the marriage and is therefore conjugal. It is undisputed that the subject parcel was declared in the name of the spouses. Under such circumstances, coupled with a careful scrutiny of the records of the present case, we hold that the lot in question is paraphernal (now exclusive) and is therefore, liable for the personal debts of the wife.

Thus, it was held in the case of *Maramba vs. Lozano*, 20 SCRA 474, that:

“The presumption that property is conjugal (Art. 160, New Civil Code) refers to property acquired during the marriage. When there is no showing as to when the property was acquired by a spouse, the fact that the title is in the spouse’s name is an indication that the property belongs exclusively to said spouse.”

Burden of proof to show conjugality of property.

The party who invokes the presumption that all property of the marriage belongs to the conjugal partnership (Art. 160, New Civil Code) must first prove that the property was acquired during the marriage. Proof of acquisition during the marriage is a condition *sine qua non* for the operation of the presumption in favor of the conjugal partnership. (*Cobb-Perez, et al. vs. Lantin, et al.*, 23 SCRA 637; *Jose Ponce de Leon vs. Rehabilitation Finance Corp.*, 36 SCRA 289). In the same manner, the recent case of *PNB vs. Court of Appeals*, 153 SCRA 435, affirms that:

“When the property is registered in the name of a spouse only and there is no showing as to when the property was acquired by said spouse, this is an indication that the property belongs exclusively to said spouse. And this presumption under Art. 160 of the Civil Code cannot prevail when the title is in the name of only one spouse and the rights of innocent third parties are involved.”

Furthermore, even assuming, for the sake of argument, that the property in dispute is conjugal, the same may still be held liable for the debts of the wife in this case. Under Article 117 of the Civil Code, the wife may engage in business although the husband may object (but subject to certain conditions). It is clear from the records that the wife was engaged in the logging business with the husband's knowledge and apparently without any objection on his part. The acts of the husband show that he gave his implied consent to the wife's engagement in business. According to Justice Ameurfina Herrera (then Associate Justice of the Court of Appeals) in her concurring opinion, the rule that should govern in that case is that the wife's paraphernal properties, as well as those of their conjugal partnership, shall be liable for the obligations incurred by the wife in the course of her business. (Arts. 117, 140, 172, 203, and 236, Civil Code; Art. 10, Code of Commerce, cited in Commentaries and Jurisprudence on the Phil. Commercial Laws, Martin, T.C., Vol. 1, 1970 Revised Edition, pp. 14-15). After all, whatever profits are earned by the wife from her business go to the conjugal partnership. It would only be just and equitable that the obligations contracted by the wife in connection with her business may also be chargeable not only against her paraphernal property but also against the conjugal property of the spouses.

The husband cannot bind the separate properties of wife.

Case:

**Roberto Laperal, Jr. and Purificacion Laperal
vs. Ramon Katigbak and Evelina Katigbak
90 Phil. 770**

Facts:

Plaintiff alleged that defendants:

(a) Borrowed P14,000.00 in four (4) promissory notes dated March, April, and May, 1950;

(b) Received eleven pieces of jewelry valued at P97,500.00 for sale on commission basis.

Plaintiffs also alleged that the notes are still unpaid, and that neither the jewelry nor the money has been returned.

The facts show that only Ramon Katigbak signed. Evelina did not sign and that only Ramon received the jewelry, as shown in the receipts therefor. Evelina moved to dismiss on the ground that there was no cause of action against her. Hence, this appeal.

Issue:

Was there a cause of action against Evelina?

Held:

It is obvious that defendant Evelina is not personally liable on the notes. Ramon was not her agent and he did not contract for her. The husband cannot by his contract bind the paraphernal property unless its administration has been transferred to him, which is not the case. Neither can the paraphernal property be made to answer for debts incurred by the husband; Ramon was personally responsible with his own private funds, and at most, the assets of the conjugal partnership. To reach both kinds of property, it is not necessary for plaintiffs to implead the wife Evelina. Where the husband alone is liable, no action lies against the wife, and she is not a necessary party-defendant. Of course, there are provisions in the old Civil Code that although the fruits of the paraphernal property form part of the assets of the conjugal partnership, they may not be subjected to the payment of the personal obligations of the husband, unless it be proved that such obligations redounded to the benefit of the family. Perhaps in view of these provisions, the plaintiffs have included Evelina to give her a chance to defend her interests. But plaintiffs having made no allegations about the benefits to the family, we fail to see the necessity or justice of bothering said defendant. Regarding the jewelry, as the receipts therefor are signed only by Ramon, what has been stated regarding the promissory notes apply equally to this. It is true that the plaintiffs alleged that both “defendants acted as their agents” in the sale on commission of the jewels, but having attached the receipts as integral parts of the complaint, their allegation as to agency, insofar as Evelina is concerned, should be deemed as a mere legal inference from the marital relation, not a factual assertion based on specific contract.

Article 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 where the property is located. (137a, 168a, 169a)

As owner of his/her exclusive property, a spouse of age can mortgage, encumber, alienate, dispose of his/her exclusive property without the consent of the other. He/she can appear in court to litigate with regard to the same. (Art. 111, Family Code). But the owner-spouse may transfer the administration of his/her exclusive properties to that other spouse in a public instrument.

Article 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. (n)

Article 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. (n)

Effect if spouse granted administration sells the property.

The reason for the rule that the spouse who was granted the power to administer the exclusive properties of the other cannot sell the same is that the spouse administering such exclusive property violated his/her duties or obligations. Selling is an act of ownership which cannot be exercised by the administrator without the written consent of the owner or authority of the court. He is considered a mere trustee. Such an automatic termination is imposed by law to penalize the erring spouse.

Effect of sale by the owner spouse of administered property.

If the owner-spouse may transfer the administration of his/her exclusive properties to the other spouse, but in the meantime the property under administration is sold to another person, then, the administration is terminated because the seller-spouse is no longer the owner. Even if the property is under administration by the other

spouse, the owner can still do all acts of ownership. If the owner-spouse sells the property being administered by the other, the administration shall automatically cease. The reason is that, the administering spouse is merely an agent but it is deemed termination upon the cessation of ownership by the owner-spouse.

Article 113. Property donated or left by will to the spouses, jointly and with designation of determinate shares, shall pertain to the donee-spouse 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. (150a)

Article 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. (151a)

Article 115. Retirement benefits, pensions, annuities, gratuities, usufructs and similar benefits shall be governed by the rules on gratuitous or onerous acquisitions as may be proper in each case. (n)

The provisions of Article 113 contemplate of two (2) situations where a property is donated to the spouses or inherited by them with designation of shares, and where there is no designation of shares. In both cases, such property belongs to them exclusively; and if there is no designation as to their shares, the property shall be divided between them, but it shall belong to them exclusively.

Examples:

- (1) A donated a parcel of land to X and Y, spouses with designation of shares, like 1/2 to X and 1/2 to Y. The share of each spouse belongs to him/her exclusively.
- (2) In the problem above, if there is no designation of shares, then, the property shall be divided into two, share and share alike and still, the share of each shall belong exclusively to them.

The rule above-cited is without prejudice to the right of accretion.

Accretion is a right by virtue of which, when two or more persons are called to the same inheritance, devise or legacy, the part

assigned to the one who renounces or cannot receive his share, or who died before the testator, is added or incorporated to that of his co-heirs, co-devisees or co-legatees. (Art. 1015, Civil Code).

So that, if Y in the problems above would remove her share, or cannot receive it, or dies before the testator or donor, her share would go to, or would be added to, the share of X by virtue of the right of accretion.

Note that, as a rule, there is no right of accretion in case a donation is made to several persons jointly (Article 753, NCC); however, Article 113 of the Family Code is considered as an exception to such rule.

Article 114 speaks of a donation that is onerous; and if ever it is given to a spouse, then, his/her exclusive property shall answer for the charges. An onerous donation is one where there are burdens and charges or future services equal in value if not greater than that of the thing donated. If A donates a one hectare lot to B in Quezon City, with the obligation to construct a children's center/park worth P500,000.00, then, his exclusive property shall answer for such a charge or burden. If the P500,000.00 was advanced by the conjugal partnership, then, the exclusive properties of B must reimburse the conjugal partnership.

Ownership of retirement benefits.

Article 115 of the Family Code makes a distinction as to who shall own the retirement benefits, pensions, annuities, gratuities, usufructs and similar benefits. If they were acquired by gratuitous title, they are exclusive properties. (See Art. 109, par. 2, Family Code). If acquired by onerous title during the marriage, like contributions to pension funds or deduction from salaries of the common funds, they are conjugal properties. (See Art. 117, par. 1, Family Code).

Retirement Benefits.

These are payments or services provided after reaching the age of retirement or upon withdrawal from one's position or occupation and are separate and distinct from the salaries received. In *Ferrer vs. GSIS* (12 CA Rep. 361), it was held that retirement benefits are not conjugal properties but belong to the beneficiary designated by the deceased member. (See also *Sarmiento vs. IAC*, G.R. Nos. 75409, 75410, August 17, 1987).

Pension.

An amount given regularly to an official or employee of the Government out of liberality and as an expression of its appreciation for past services. It is compliance with the State's duty imposed by social justice to help the aged and disabled persons, who in their prime, both physical and mental, have served the community with loyalty, constancy, and self-abnegation. (*Alano vs. Florido*, 61 Phil. 303). Pension is given by the Government as an expression of its appreciation of the past services after the person entitled to it has severed his relations with the Government; while salary or compensation is paid during the time the officer or employee entitled thereto is still in the service of the Government. (*Alano vs. Florido*, 61 Phil. 303). Pension received by the husband under C.A. No. 188 (Liquidation of the Pension and Retirement Fund of the Philippine Constabulary) is conjugal and is answerable for the support of the family. (*Bowers vs. Roxas*, 69 Phil. 626). Pension is gratuity only when it is granted for services previously rendered and which at the time they were rendered gave rise to no legal obligation. (*Pirovano vs. De la Rama Steamship Co.*, 96 Phil. 335).

Annuity.

The aleatory contract of life annuity binds the debtor to pay an annual pension or income during the life of one or more determinate persons in consideration of a capital consisting of money or other property, whose ownership is transferred to him at once with the burden of the income. (Art. 2021, NCC). *Example:* A gave to B a building with the condition that B will give an annual income of P200,000.00 as long as A lives. Here, the ownership of the building is immediately transferred to B with the burden of the annual income. If the building is exclusive property, the annuity of P200,000.00 is separate property of the recipient.

He who constitutes an annuity by gratuitous title upon his property, may provide at the time the annuity is established that the same shall not be subject to execution or attachment on account of the obligations of the recipient of the annuity. If the annuity was constituted in fraud of creditors, the latter may ask for the execution or attachment of the property. (Art. 2026, NCC).

Gratuity.

This is something voluntarily given in return for a favor or services; a bounty, a tip (*Pirovano vs. De la Rama Steamship Co.*, 96

Phil. 335); that paid to the beneficiary for past services rendered purely out of the generosity of the giver or grantor. (*Peralta vs. Auditor General*, 100 Phil. 1051; *Mendoza vs. Dizon*, 77 Phil. 533).

Usufructs.

Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides. (Art. 562, NCC). If the usufruct is acquired through gratuitous title, it is exclusive property. But the fruits thereof are conjugal.

Life Insurance Benefits.

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. (*Del Val vs. Del Val*, 29 Phil. 534). The contract of life insurance is a special contract and the destination of the proceeds thereof is determined by special law which deals exclusively on the subject. (*Ibid.*). However, 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. (*BPI vs. Posadas*, 56 Phil. 215). The distinction is, in *Posadas*, the proceeds of the insurance formed part of the estate, whereas in *Del Val*, the proceeds did not form part of the estate.

Social Security System.

This law (R.A. No. 1161) is not a law of succession. Ordinarily, it is not the heirs of the employee who are to receive the benefits or compensation. It is only when the beneficiary is the estate, or when there is none designated, or if the designation is void, that the System is required to pay the employee's heirs. A non-relative or a third person may be designated as beneficiary. The beneficiary or beneficiaries should be the ones to primarily profit under the System where the government had not contributed anything. The contributions came from the employees and their employers. (*Tecson vs. SSS*, 3 SCRA 735).

Section 3. Conjugal Partnership Property

Article 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)

Presumption of conjugality of properties of the husband and wife.

If there is a property that is acquired by onerous title during the marriage, there is a presumption of conjugality regardless of the source of the funds used to acquire it. The presumption is not however, conclusive. It is rebuttable.

Case:**Balcodero vs. CA
227 SCRA 303****Facts:**

This case involves the question of ownership over a piece of property acquired by a husband living with a paramour and after having deserted his lawful wife and children.

Aloy Bosing was married to Juliana Oday in 1927 with whom he had three (3) children. In 1946, he left the conjugal home and lived with Josefa Rivera with whom he begot a child named Josephine. In 1949, he purchased a parcel of land on installment with an indicated civil status “married to Josefa Bosing,” the common-law wife. In 1955, he authorized the transfer of the property under Josefa alone, such that when the deed of sale was executed in 1959, the title was placed under Josefa alone. In 1958, he married Josefa even while his marriage with Juliana was subsisting. He died in 1967, Josefa and Josephine executed an extrajudicial partition and sale in favor of Josephine, hence, a title was issued in favor of Josephine in 1974. In 1980, his real wife/widow and their children filed an action for reconveyance where the court ruled in their favor ordering Josephine to reconvey the property to his heirs. On appeal to the CA, the judgment was affirmed, hence, a petition for review was filed with the Supreme Court raising the issue as to who are the owners of the property. The Court ruled it to be conjugal and —

Held:

The property belongs to the conjugal partnership of Aloy and Juliana together with their children. Under the law, all properties of the marriage are presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife. (Article 160, NCC, now Article 92, Family Code). That fact

that it was registered under the name of Josefa does not mean that she is the owner, especially so that the registration under her name was upon request of Aloy. Furthermore, she implicitly recognized Aloy's ownership when she and her daughter executed a deed of extrajudicial partition and sale over her share in the conjugal partnership with Aloy. The said adjudication would exactly conform with a partition in intestacy had they been the sole and legitimate heirs of the decedent.

It was further said that at the time that the adjudication of ownership was made following the demise of Aloy a constructive trust was created by operation of law in favor of Josephine. It was not created when he allowed the property to be titled under Josefa's name since the title was not adversarial to Aloy's interest. Under the law, if a property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. (Article 1456, NCC).

Presumption of conjugality.

The presumption of conjugality of properties acquired by onerous title during the marriage arises regardless of the source of the funds used to acquire the same. Suppose A and B are married. During their marriage, X, the father of A died and he inherited a certain amount of money. Of course, that money belongs to A exclusively since it was acquired by gratuitous title during the marriage. But if A and B used the money to acquire a property and registered it under the names A married to B, the property is presumed to be conjugal because it was acquired by onerous title during the marriage. What gives rise to the presumption is its acquisition by onerous title during the marriage. But let us assume that the marriage would now be declared void. A now can prove that it belongs to him exclusively by showing that he inherited the money that was used to purchase the property. If A can prove it, then, it belongs to him exclusively. The phrase "married to" would be considered merely as descriptive of the status of A as a married person. (See *Magallon vs. Montejo*, G.R. No. 73733, December 16, 1986).

The presumption is still true even if the property that was purchased with the money inherited by A during the marriage was registered under his name alone. The basis of the presumption is the fact that it was acquired during the marriage by onerous title.

And, the presumption would still lie even if the property that was acquired with the use of the money inherited by A during the marriage was registered under the name of B, the wife. A can prove that the property belongs to him exclusively. In fact, the presumption is not conclusive, but merely rebuttable. At anytime, A can prove it to be his exclusive property. If A can prove that it is his exclusive property, then, B is holding the property in trust in the meantime that it is registered under her name. The reason is found in the provisions of Article 1448 of the Civil Code which provides:

“There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.”

B cannot sell the property considering that she is not the owner. However, this is without prejudice to the right of a buyer in good faith and for value.

Even if the property is registered under the name of B, no matter how long, she cannot acquire ownership over it. A remains to be the owner. In fact, A can recover it at any moment. The exception to the rule is that, if B repudiates the trust, communicates the repudiation to A and performs acts of ownership over the property, A has a period of ten (10) years from the repudiation of the trust to recover, otherwise, the action will prescribe. In short, after the action for reconveyance has prescribed, A can no longer file an action for reconveyance.

Effect if property is adjudicated to only one of the spouses.

During the marriage, property was acquired by the spouses but registered in the name of one of the spouses only. The law presumes that the property is conjugal, unless the contrary is proved.

The adjudication of real property to one of the spouses only does not necessarily mean that it is his or her exclusive property, if said land was acquired during the marriage. But if the title, for instance, says that the land is registered in the name of “Teodulo Diaz mar-

ried to Maria Espejo,” this shows that the property was acquired during the existence of the conjugal partnership. (Diaz vs. CA, G.R. No. L-42180, November 10, 1986).

Property acquired during the second marriage.

Where the property was registered during the second marriage, the presumption is that it was acquired during the second marriage. Hence, the children of the first marriage cannot claim the property as the conjugal property of their mother and father. (Mang-oy vs. CA, G.R. No. L-27421, September 12, 1986).

Article 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. (153a, 154, 155, 159)

Effect if property is acquired through conjugal funds.

If properties were acquired through conjugal funds during the marriage, such properties are conjugal. This is true even if the properties were acquired for only one of the spouses.

Illustration:

A and B are married. During the marriage, they acquired a parcel of land using conjugal funds but the same was registered in the name of B. Under Article 117(a) of the Family Code, the property is conjugal. In *Marasigan vs. Macabuntos*, 17 Phil. 107, the Supreme Court ruled that the registration in the husband's name alone is immaterial if the property is acquired with conjugal funds.

In *Flores vs. Flores*, 48 Phil. 288, a man married three (3) times. During the second marriage, he bought a parcel of land with some conjugal funds. He was able to register the land after his second wife died. Under this situation, the land belongs to the partnership of the second marriage.

Salaries are conjugal.

Benefits obtained from the salaries of the spouses and their businesses are considered as conjugal properties of the husband and wife. The reason if that, they were obtained thru labor or industry of a spouse during the marriage.

Ownership of fruits of separate properties.

A owns a 10-door apartment leased to different lessees for P2,000.00 per month. In January 1988, he collected one-year advance rentals. On June 1, 1988, he got married to B.

Under such a situation, A is supposed to deliver to the conjugal partnership the rentals from June 1988, to December 1988 because such rentals are considered fruits of the separate properties of A which form part of their conjugal partnership. In short, A is indebted to the conjugal partnership for the rentals beginning June 1988.

Fruits of the common and separate properties of the spouses are conjugal properties.

It must also be noted that in *BA Finance Corp. vs. CA*, G.R. No. 61464, May 28, 1988, it was ruled that a business (single proprietorship) established during the marriage is presumed conjugal and that the fact that it is registered in the name of only one of the spouses does not destroy its conjugal nature.

Article 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)

Property acquired on installments.

X bought a house and lot on installment basis from Y for P150,000.00. He paid P120,000 but there is a stipulation that upon the execution of the contract, ownership shall be vested upon X. A few months later, X married Z. During the marriage, the amount of P20,000.00 was paid out of conjugal funds. Who owns the house and lot?

X is the owner, because ownership was vested in him before the marriage. The fact that the amount was paid on installment basis does not matter. What matters is the stipulation that the ownership shall be vested before the marriage. Under Article 1478 of the Civil Code, the parties may stipulate that ownership of the thing shall not pass to the purchaser until he has fully paid the price. Conversely, they can agree that even if the price has not yet been fully paid, ownership shall be acquired by the vendee. Furthermore, Article 1498 of the Civil Code provides that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot be inferred.

If the ownership in the case above-cited is vested during the marriage, the house and lot are owned by the conjugal partnership.

The law, however, requires that in either case, X must reimburse the conjugal partnership for whatever he advanced or paid. In the same vein, in the second case, the conjugal partnership shall reimburse X the amount of P120,000.00 he paid to Y. (See Art. 118, Family Code).

Article 119. Whenever an amount or credit payable within a period of time belong 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)

A lent B the amount of P50,000.00 payable in one year starting January 1988. On June 1, 1988, A married C. In such a case, any amount collected by A from B in payment of the principal is his exclusive property. However, if the obligation earns interest, any interest falling due from June 1988 is conjugal. The reason for this is that, interests are considered as fruits of the separate properties of each spouse. However, with respect to the capital, the same is exclusive property, because that is considered as exclusive property of each spouse.

Article 120. 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:

When the cost of the improvement made by the conjugal partnership and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of one of the spouses shall belong to the conjugal partnership, subject to reimbursement of the value of the property of the owner-spouse at the time of the improvement; otherwise, said property shall be retained in ownership by the owner-spouse, likewise subject to reimbursement of the cost of the improvement.

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. (158a)

Ownership of land and building.

X is the owner of a parcel of land. He married Y. Out of the conjugal funds, a five-storey building was constructed on the land. Who owns the land or the building?

Article 120 of the Family Code makes a distinction depending upon the value of each property at the time of the improvement. If the building is more valuable than the land, then the conjugal partnership shall become the owner of the land and the building. On the other hand, if the land is more valuable than the building, then, the building shall become the property of X. In both cases, however, the

conjugal partnership or X has the obligation to reimburse the cost of the land or the building at the time of the liquidation of the conjugal partnership.

Reimbursement shall be done during the liquidation of the conjugal partnership.

While the law says that the conjugal partnership or the owner of the land is the owner of the building or land, the law, however, says that ownership of the entire property shall be vested only upon the liquidation of the conjugal partnership. The reason for the law is that, it is only during liquidation that payment shall be made to the conjugal partnership or X. Prior to the liquidation of the properties, the improvement is conjugal.

Section 4. Charges Upon and Obligations of the Conjugal Partnership

Article 121. The conjugal partnership shall be liable for:

(1) The support of the spouses, their common children, and the legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;

(2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the conjugal partnership of gains, or by both spouses or by one of them with the consent of the other;

(3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited;

(4) All taxes, liens, charges and expenses, including major or minor repairs upon the conjugal partnership property;

(5) All taxes and expenses for mere preservation made during the marriage upon the separate property of either spouse;

(6) Expenses to enable either spouse to commence or complete a professional, vocational, or other activity for self-improvement;

(7) Ante-nuptial debts of either spouse insofar as they have redounded to the benefit of the family;

(8) 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; and

(9) Expenses of litigation between the spouses unless the suit is found to be groundless.

If the conjugal partnership is insufficient to cover the foregoing liabilities, the spouses shall be solidarily liable for the unpaid balance with their separate properties. (161a)

Rule on support.

Under Article 195 of the Family Code, the following are obliged to support each other:

- (1) The spouses;
- (2) Legitimate ascendants and descendants;
- (3) Parents and their legitimate children and the legitimate and illegitimate children of the latter;
- (4) Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and
- (5) Legitimate brothers and sisters, whether of full or half-blood. (291a)

Support of illegitimate children of each spouse shall be charged from their separate properties. However, if a spouse does not have separate properties, then, the conjugal partnership shall advance the same, but the said advances shall be deducted from the share of the spouse obliged upon the liquidation of the conjugal partnership. (Art. 197, Family Code). The said spouse is considered as a debtor of the conjugal partnership because there is no obligation of the conjugal partnership to support the illegitimate children of each spouse.

Effect if debts were contracted during the marriage.

Debts and obligations contracted during the marriage by the administrator-spouse shall be chargeable against the conjugal partnership for as long as they redounded to the benefit of the family. For said property to be held liable, the obligation contracted by the administrator-husband must have redounded to the benefit of the

conjugal partnership under Art. 121 of the Family Code. (BA Finance Corporation vs. Court of Appeals, G.R. No. 61464, 28 May 88).

Where the obligation sought to be enforced against the conjugal property managed by the wife was incurred by the husband after the latter had abandoned his family and had left the conjugal home, such obligation was undoubtedly contracted for his own benefit. To make the conjugal property liable for said loan would be unjust and contrary to the express provision of the Family Code. (BA Finance Corporation vs. Court of Appeals, G.R. No. 61464, 28 May 88).

It is true that the husband and wife are the administrators of the conjugal partnership pursuant to Article 163, NCC (Now Art. 124 of the Family Code) yet, as administrators of the said property, the only obligations incurred by the husband or wife that are chargeable against the conjugal property are those incurred in the legitimate pursuit of his/her career, profession or business with the honest belief that he is doing right for the benefit of the family. (BA Finance vs. CA, *supra*).

This is not true in a case where the husband acts as a guarantor or surety for another in an indemnity agreement, for in such a case, he does not act for the benefit of the conjugal partnership. The inference is more emphatic, when no proof is presented that the husband, in acting as a surety or guarantor received consideration for it, which may redound to the benefit of the conjugal partnership. (BA Finance Corporation vs. Court of Appeals, G.R. No. 61464, 28 May 88).

A conjugal partnership is liable only for such "debts and obligations contracted by the husband for the benefit of the conjugal partnership." There must be the requisite showing them of some advantages which clearly accrued to the welfare of the spouses. (BA Finance Corporation vs. Court of Appeals, G.R. No. 61464, 28 May 88). For other discussion, please refer to Article 94. (See also Johnson & Johnson [Phils.], Inc. vs. CA, et al., *supra*).

Conjugal properties do not answer obligations of husband if they did not redound to the benefit of the family.

In *Philippine Bank of Commerce vs. C.A., et al.*, G.R. No. 106858, September 5, 1997, 86 SCAD 599, G.L. Chua executed a Deed of Exchange with Jaleco Dev't. Corp. with the conformity of his wife. There were creditors of Chua who filed suits against him. They con-

tended that the Deed of Exchange was fictitious and in fraud of creditor since Jaleco is controlled by Chua and the immediate members of his family, hence, the house and lot were levied upon. Can the wife contend that the same cannot be made to answer for Chua's obligations because the transactions did not redound to the benefit of the family? Why? Can she file a motion to quash the writ contending that the conjugal partnership was the owner of the same? Why?

The High Court said:

No, because she was under estoppel to claim that the property belonged to the conjugal partnership because she gave her conformity to the Deed of Exchange and never intervened in the suit to annul the Deed of Exchange.

The Supreme Court further said that the conjugal properties cannot be made to answer for obligations of the husband if they did not redound to the benefit of the family. It said that this particular codal provision in question rightfully emphasizes responsibility of the husband as administrator. He is supposed to conserve and, if possible, augment the funds of the conjugal partnership, not dissipate them. If out of friendship or misplaced generosity on his part the conjugal partnership would be saddled with financial burden, then the family stands to suffer. No objection needed to arise if the obligation thus contracted by him could be shown to be for the benefit of the wife and the progeny if any there be. That is but fair and just. Certainly, however, to make a conjugal partnership respond for a liability that should appertain to the husband alone is to defeat and frustrate the avowed objective of the New Civil Code (now the Family Code) to show the utmost concern for the solidarity and well-being of the family as a unit. The husband, therefore, as is wisely thus made certain, is denied the power to assume unnecessary and unwarranted risks to the financial stability of the conjugal partnership. (citing *Luzon Surety, Inc. vs. De Garcia*, 30 SCRA 111; *Ting vs. Villarín*, 174 SCRA 532).

Conjugal properties cannot answer for the surety undertaking of a spouse.

In *Ayala Investments and Development Corp., et al. vs. CA, et al.*, G.R. No. 118305, February 12, 1998, 91 SCAD 663, the Supreme Court in saying that the surety undertakings of a spouse cannot bind the conjugal properties of the husband and wife even if it has become a part of his duties as an officer of a corporation to sign as surety in

certain undertakings of the corporation of which he is the Executive Vice-President. In this case, Philippine Blooming Mills (PBM) obtained a P50,300,000.00 loan from Ayala Investments and Development Corporation, with Alfredo Ching, its Executive Vice-President as surety, making himself jointly and severally liable with PBM's indebtedness to AIDC. The former failed to pay, hence, the latter filed a suit for sum of money against PBM and Ching. After trial, the two (2) defendants were held jointly and severally liable for the indebtedness. A writ of execution was issued where conjugal properties of Ching and his wife were levied upon.

The basic issues raised were the following: (1) Under Article 161 of the Civil Code (Now Arts. 94 and 121 of the Family Code) what debts and obligations contracted by the husband alone are considered "for the benefit of the conjugal partnership" which are chargeable against the conjugal partnership? (2) Is a surety agreement or an accommodation contract entered into by the husband in favor of his employer within the contemplation of the said provision? The Supreme Court ruled as follows:

If the husband himself is the principal obligor in the contract, *i.e.*, he directly received the money and services to be used in or for his own business or his own profession, that contract falls within the term "x x x obligations for the benefit of the conjugal partnership." Here, no actual benefit may be proved. It is enough that the benefit to the family is apparent at the time of the signing of the contract. From the very nature of the contract of loan or services, the family stands to benefit from the loan facility or services to be rendered to the business or profession of the husband. It is immaterial, if in the end, his business or profession fails or does not succeed. Simply stated, where the husband contracts obligations on behalf of the family business, the law presumes, and rightly so, that such obligation will redound to the benefit of the conjugal partnership.

In this case, it was shown that Ching signed as surety. It is incumbent upon PBM to prove that Ching's acting as surety redounded to the benefit of the conjugal partnership. Absent such proof, the conjugal partnership is not liable. (*Luzon Surety, Inc. vs. De Garcia*, 30 SCRA 111).

One question can be asked. When the guaranty is in favor of the husband's employer, would it not result in the employee's benefit? This question is asked because it would prolong the employment of the surety. Or, would not the shares of stocks of his family appreci-

ate if PBM could be rehabilitated through the loan? Or, would not his career be boosted if PBM would survive because of the loan?

No, because these are not the benefits contemplated by the law. The benefits must be one directly resulting from the loan. It cannot merely be a by-product or a spin-off of the loan itself considering the odds involved in guaranteeing a large amount of loan. The probable prolongation of employment in PBM and increase in value of its stocks, would be too small to qualify the transaction as one “for the benefit” of the surety’s family. Verily, no one could say with a degree of certainty, that the said contract is even “productive of some benefits” to the conjugal partnership.

Such rule is even more emphasized in the Family Code as it highlights the underlying concern of the law for the conservation of the conjugal partnership; for the husband’s duty to protect and safeguard, if not augment, not to dissipate it. Thus, the Supreme Court said:

“This is the underlying reason why the Family Code clarifies that the obligations entered into by one of the spouses must be those that redounded to the benefit of the family and that the measure of the partnership’s liability is to ‘the extent that the family is benefited.’ (Art. 121, Nos. 2 and 3, Family Code).

“These are all in keeping with the spirit and intent of the other provisions of the Civil Code (now the Family Code) which prohibits any of the spouses to donate or convey gratuitously any part of the conjugal property. Thus, when co-respondent Alfredo Ching entered into a surety agreement he, from then on, definitely put in peril the conjugal property (in this case, including the family home) and placed it in danger of being taken gratuitously as in case of donation.”

In a very novel and new theory that was raised in this case, it was contended that Ching’s acting as surety is part of his business or profession.

The signing as a surety is certainly not an exercise of an industry or profession. Signing as a surety is not embarking in a business. No matter how often an executive acts or is persuaded to act, as a surety, for his own employer, this should not be taken to mean that he had thereby embarked in the business of suretyship or guaranty. Thus, the Supreme Court said:

“This is not to say, however, that we are unaware that executives are often asked to stand as surety for their company’s loan obligations. This is especially true if the corporate officials have sufficient property of their own; otherwise, their spouses’ signatures are required in order to bind the conjugal partnerships.

The fact that on several occasions, the lending institutions did not require the signature of the wife and the husband signed alone does not mean that being a surety became part of his profession. Neither could he be presumed to have acted for the conjugal partnership.

Art. 121, paragraph 3, of the Family Code is emphatic that the payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal partnership except to the extent that they redounded to the benefit of the family.

Here, the property in dispute also involves the family home. The loan is a corporate loan not a personal one. Signing as a surety is certainly not an exercise of an industry or profession nor an act of administration for the benefit of the family.”

Origin of the principle.

The predecessors of the law and the jurisprudence cited above can be traced from the cases of *Ansaldo vs. Sheriff of Manila, et al.*, 64 Phil. 115; *Liberty Insurance Corp. vs. Banuelos*, 59 O.G. No. 29, 4526; and *Luzon Surety, Inc. vs. De Garcia*, 30 SCRA 111, where the Supreme Court said:

“The fruits of the paraphernal property (now exclusive property) which form part of the assets of the conjugal partnership, are subject to the payment of the debts and expenses of the spouses, but not to the payment of the personal obligations (guaranty agreements) of the husband, unless it be proved that such obligations were productive of some benefit to the family. (*Ansaldo case*)”

When there is no showing that the execution of an indemnity agreement by the husband redounded to the benefit of his family, the undertaking is not a conjugal debt but an obligation personal to him. (*Liberty Insurance*).

In the most categorical language, a conjugal partnership under Article 161 of the New Civil Code (now the Family Code) is liable only for such “debts and obligations contracted by the husband for the benefit of the conjugal partnership.” There must be the requisite showing then of some advantage which clearly accrued to the welfare of the spouses. Certainly, to make a conjugal partnership respond for a liability that should appertain to the husband alone is to defeat and frustrate the avowed objective of the New Civil Code to show the utmost concern for the solidarity and well-being of the family as a unit. The husband, therefore, is denied the power to assume unnecessary and unwarranted risks to the financial stability of the conjugal partnership. (Luzon Surety, Inc.).

Liability of the conjugal partnership for obligations redounding to the benefit of the family.

The test of liability of the conjugal properties of the husband and wife for obligations contracted during the marriage is the fact that they redounded to the benefit of the family. This is true even if the obligations were contracted without the consent of the other spouse. It is also true even if the obligation was contracted prior to the marriage. The measure of liability of the absolute community and conjugal properties of the spouses is that, the obligation must have redounded to the benefit of the family. And direct benefit is required.

**Carlos vs. Abelardo
G.R. No. 146504, April 4, 2002**

Facts:

Petitioner lent to the respondent but without the consent of his spouse the amount of \$25,000.00 for the purchase of a house and lot. In fact, when he inquired from them the status of their loan, they acknowledged it but they failed to pay despite demand, hence, a suit for sum of money was filed. Respondent claimed that the amount was his share in the corporation’s profits. The RTC decided for the plaintiff but the CA decided for the defendant. Are the conjugal partnership properties answerable for the obligation? Why?

Held:

Yes, because the loan redounded to the benefit of their family.

The amount of \$25,000.00 was in the form of a loan as shown by the fact that they acknowledged the indebtedness from the plaintiff, and hence, the liability of the conjugal partnership. Under the law, the conjugal partnership shall be liable for “x x x (2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the conjugal partnership of gains, or by both spouses or by one of them with the consent of the other; (3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited”;

The loan redounded to the benefit of the family because it was used to purchase the house and lot which became the conjugal home of respondent and his family. Hence, notwithstanding the alleged lack of consent of respondent, under Art. 121 of the Family Code, he shall be solidarily liable for such loan together with his wife.

The term “*benefit*” is the crucial point in determining whether the properties of the husband and wife are liable for obligations contracted prior to or during the marriage. The burden of proof that the obligation redounded to the benefit of the family of the debtor lies in the creditor.

The conjugal partnership is liable if obligation redounded to the benefit of the family.

The mortgagee contended that the conjugal partnership is liable to the extent that it redounded to the benefit of the family citing Article 121(3) of the Family Code which provides that the conjugal partnership shall be liable for debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited. Hence, even if the contract is void, then, the conjugal partnership should be liable to the extent of the share of the husband who authorized the mortgage.

The basic and established fact is that during his lifetime, without the knowledge and consent of his wife, the husband constituted a real estate mortgage on the subject property, which formed part of their conjugal partnership. By express provision of Article 124 of the Family Code, in the absence of (court) authority or written consent of the other spouse, any disposition or encumbrance of the conjugal property shall be void.

The law does not qualify with respect to the share of the spouse who makes the disposition or encumbrance in the same manner that

the rule on co-ownership under Article 493 of the Civil Code does. Where the law does not distinguish, courts should not distinguish. (*Recaña vs. CA*, 349 SCRA 24 [2001]).

Matters to be proven for the conjugal partnership to be liable.

Under Article 121 of the Family Code, the conjugal partnership shall be liable for debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited.

For the conjugal property to be held liable, the obligation contracted by the husband must have redounded to the benefit of the conjugal partnership. There must be the requisite showing then, of some advantage which clearly accrued to the welfare of the spouses. Certainly, to make a conjugal partnership respond for a liability that should appertain to the husband alone is to defeat and frustrate the avowed objective of the then New Civil Code to show the utmost concern for the solidarity and well-being of the family as a unit. (*Ayala Investment & Dev. Corp. vs. Court of Appeals*, 349 Phil. 942; *Luzon Surety Co., Inc. vs. De Garcia*, 30 SCRA 111).

The burden of proof that the debt was contracted for the benefit of the conjugal partnership of gains lies with the creditor-party litigant claiming as such. (286 SCRA 272). *Ei incumbit probatio qui dicit, non qui negat* (he who asserts, not he who denies, must prove). (*Castilex Industrial Corp. vs. Vasquez, Jr.*, 378 Phil. 1009 [1999]; *Homeowners Savings & Loan Bank vs. Dailo*, G.R. No. 153802, March 11, 2005).

Article 122. The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal partnership except insofar as they redounded to the benefit of the family.

Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.

However, the payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been

covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purposes above-mentioned. (163a)

Benefit to the family is required for ante-nuptial debts, etc. to be answered by the properties of the spouses.

Conformably to Article 121 of the Family Code, ante-nuptial debts of either spouse may be charged against the conjugal partnership as long as they redounded to the benefit of the family.

Debts contracted by either spouse during the marriage are also chargeable to the conjugal partnership. The condition is that, they must have redounded to the benefit of the family.

In *BA Finance vs. CA*, G.R. No. 61464, May 28, 1988, the husband abandoned the family and contracted an obligation by being a guarantor or surety in favor of a third person. Such obligation or debt did not benefit the family; hence, the Supreme Court said that it is chargeable not to the conjugal partnership, but against the husband alone. To say otherwise would place the conjugal partnership and the family in an unfair situation. It would invite the commission of fraud which may prejudice the family especially the innocent children.

Ante-nuptial debts, fines and indemnities imposed upon them, and support for their illegitimate children, shall be answered by their separate properties. If they have none, the conjugal partnership shall advance the payments, subject to deduction at the time of the liquidation of the partnership.

Article 123. Whatever may be lost during the marriage in any game of chance, or in 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 conjugal partnership but any winnings therefrom shall form part of the conjugal partnership property. (164a)

The discussion should be referred to Article 95. Additionally, the purpose of the law is to punish the gambler-spouse, for gambling, as a rule, dissipates the community of properties.

Section 5. Administration of the Conjugal Partnership Property

Article 124. The administration and enjoyment of the conjugal partnership property 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 proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers 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. (165a)

Acts of Administration.

A spouse may perform acts of administration alone over their properties without the consent of the other.

Unlike an act of alienation or encumbrance where the consent of both spouses is required, joint management or administration does not require that the husband and the wife always act together. Each spouse may validly exercise full power of management alone, subject to the intervention of the court in proper cases as provided under Article 124 of the Family Code. Hence, the husband alone could file a petition for *certiorari* and prohibition to contest the writ of demolition issued against the conjugal property with the Court of Appeals without being joined by his wife. The reason is that it is a mere act of administration. (*Docena vs. Judge Lapesura*, G.R. No. 140153, March 28, 2001).

Unlike in the Civil Code, the administration, and enjoyment of the conjugal partnership property is now a joint act of the spouses. As such administrators, all debts and obligations contracted by them during the marriage and for the benefit of the conjugal partnership are chargeable to the community of property. Where they sign or the

husband when authorized to sign, a promissory note for the benefit of the conjugal partnership, said partnership is liable for such obligation. (DBP vs. Judge Adil, L-48889, May 11, 1988).

While the husband and wife are joint administrators, the decision of the husband, however, prevails in case of conflict. Under such a situation, however, the wife has a recourse by going to court to prevent the implementation of such decision. She must, however, do so within five (5) years from the date of the contract implementing such decision; otherwise, it would prescribe and the contract would become binding.

The spouses are the conjugal partnership administrators. As long as they believe or anyone of the spouse believes that they/he is doing right to his family, they/he should not be made to suffer and answer alone. If the husband incurs debts in the legitimate pursuit of his career or profession or suffers losses in the legitimate business, the conjugal partnership must equally bear the indebtedness and losses. (G-Tractors, Inc. vs. CA, G.R. No. 57402, February 28, 1985).

The sale at auction of a conjugal property to satisfy the husband's debt is valid and unassailable, because the conjugal partnership of gains must answer for the indebtedness that the husband incurs in pursuing his profession. (G-Tractors, Inc. vs. Court of Appeals, *supra*).

Effect of Divorce.

When the American husband of a Filipina obtains a divorce pursuant to his national law, he becomes no longer the Filipina's husband. He is bound by and could not repudiate, the decision of his own country's court, which validly exercised jurisdiction over him. That is to say, once he gets a divorce from his Filipina wife, under the laws of his state, he loses his standing to sue as her husband and can no longer exercise control over the conjugal assets. He is estopped by his own representation before said Court from asserting his right over the alleged conjugal property. (Van Dorn vs. Judge Romillo, Jr., 139 SCRA 139).

Husband, as administrator of the conjugal partnership, cannot lease property without the wife's consent.

The issue in *Melania Roxas vs. CA, et al.*, G.R. No. 92245, June 26, 1991 is simple. It devolves upon the question as to whether or

not, the husband, as administrator of the conjugal partnership, may legally enter into a contract of lease involving conjugal real property without the knowledge and consent of the wife.

No. The husband is not an ordinary administrator, for while a mere administrator has no right to dispose of, sell or otherwise alienate the property being administered, the husband can do so in certain cases allowed by law.

The pivotal issue in this case is whether or not a lease is an encumbrance and/or alienation within the scope of Art. 116 of the New Civil Code. (Now Arts. 96 and 124, Family Code).

Under Art. 1643 of the New Civil Code, “In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid.” Under the law, lease is a grant of use and possession: it is not only a grant of possession. The right to possess does not always include the right to use. For while the bailee in the contract of deposit holds the property in trust, he is not granted by law the right to make use of the property in deposit.

In a contract of lease, the lessor transfers his right of use in favor of the lessee. The lessor’s right of use is impaired therein. He may even be ejected by the lessee if the lessor uses the leased realty. Therefore, lease is a burden on the land, it is an encumbrance on the land. The opinion of the Court of Appeals that lease is not an encumbrance is not supported by law. The concept of encumbrance includes lease, thus, “an encumbrance is sometimes construed broadly to include not only liens such as mortgages and taxes, but also attachment, LEASES, inchoate dower rights, water rights, easements, and other RESTRICTIONS on USE.”

Moreover, lease is not only an encumbrance but also a “qualified alienation, with the lessee becoming, for all legal intents and purposes, and subject to its terms, the owner of the thing affected by the lease.” (51 C.J.S., p. 522).

Sale by the wife of the conjugal assets.

The sale by a spouse of conjugal assets without the consent of the other is void. This is true even if the spouse consented in the negotiation, but refused to give consent in the perfection of the contract.

Felipe vs. Heirs of Maximo Aldon
120 SCRA 628

Facts:

In 1951, Gimena Almosara, wife of Maximo Aldon, sold to the spouses, Eduardo Felipe and Hermogena V. Felipe, parcels of land, which she and her husband acquired in 1948-1950 with conjugal funds without the consent of Maximo Aldon (the husband).

On April 26, 1976, the heirs of Maximo Aldon, namely his widow Gimena and their children Sofia and Salvador Aldon, brought an action against Felipe for the recovery of the parcels of land in question. The defendants (Felipe) asserted that they had acquired the lots from the plaintiffs by purchase and subsequent delivery to them; thus, the trial court sustained their claim and rendered judgment in their favor.

The plaintiff (heirs of Maximo Aldon) appealed the decision to the Court of Appeals who reversed and set aside the judgment of the lower court, ordering the defendant-appellees (Felipe) to surrender the lots in question to the plaintiffs-appellants on the basis that the sale made in 1951, though not a forgery but invalid, having been executed without the needed consent of her husband, the lots being conjugal, hence, this petition.

Issues:

- a. Whether or not the wife (Gimena) is now estopped from instituting the action.
- b. Whether or not the right of action of the wife and the children, assuming that they have a right, has already prescribed.
- c. The legal effect of sale of lands belonging to the conjugal partnership made by the wife without the consent of the husband.

Held:

Since the land had been acquired by the spouses Aldon with conjugal funds, it is clear that it is conjugal in character. Consequently, when Maximo (husband) died, his one half (1/2) share in the land was inherited by his wife and their two (2) children in the proportion of one-third (1/3) for each; hence, the action for the recovery of the

disputed lots will prosper with respect to the share of the children but not with respect to the share of the wife.

The sale of the land is voidable (now void) since it was made by the wife without the consent of the husband subject to annulment by the husband during the marriage, because the wife, who was the party responsible for the defect, could not ask for its annulment. Their children could not likewise seek the annulment of the contract while the marriage subsisted because they merely had an inchoate right to the lands sold.

The termination of the marriage and the dissolution of the conjugal partnership by the death of the husband did not improve the situation of the wife. What she could not do during the marriage, she could not do thereafter.

The case of the children is different. After the death of their father, they acquired the right to question the defective contract insofar as it deprived them of their hereditary rights in their father's share in the land.

As far as the question of prescription is concerned, the children's cause of action accrued from the death of their father. Under Article 1141 of the New Civil Code, they have thirty (30) years within which to institute it. It is clear that the action is well within the period of prescription.

Moreover, if we were to consider the appellees' (Felipe) possession in bad faith as a possession in the concept of an owner, this possession at the earliest started in 1951; hence, the period for extraordinary prescription (30 years) had not yet lapsed when the action was instituted on April 26, 1976.

Sale of properties of the conjugal partnership needs the consent of the spouses; otherwise, void.

The basic issue in *Sps. Antonio and Luzviminda Guiang vs. CA, et al.*, G.R. No. 125172, June 26, 1998, 95 SCAD 264, was the validity of the sale of a conjugal property by the husband without the wife's consent. It appears that while the wife was in Manila looking for a job, the husband sold the property in question, hence, she questioned the validity of the sale.

The Supreme Court ruled that the sale was void (Art. 124, Family Code) as it was done without the wife's consent. Adopting the trial court's ruling, the Supreme Court said that Art. 173, NCC pro-

vided that the wife may, within 10 years from the transaction ask for annulment of the sale, but this law was not carried over in the Family Code. Hence, any alienation or encumbrance made after August 3, 1988 is void if it is without the consent of the other spouse.

The sale cannot even be the subject of an amicable settlement because a void contract cannot be ratified. (*Tiongco vs. CA*, 123 SCRA 99).

As to the contention that the amicable settlement before the barangay authorities could be a continuing offer, the Supreme Court said, No. It reasoned out by saying that after the sale, the petitioners filed a complaint for trespassing against private respondent after which the barangay authorities secured an amicable settlement and petitioners filed a motion for execution with the MTC. The settlement did not mention a continuing offer to sell the property or an acceptance of such a continuing offer. Its tenor was to the effect that private respondent would vacate the property.

Remedy of a spouse who wants to sell a property when her spouse is incapacitated due to sickness.

In *Jose Uy, et al. vs. CA, et al.*, G.R. No. 109557, November 29, 2000, Teodoro Jardeleza and Gilda Jardeleza are married. The man suffered a stroke rendering him incapacitated to manage their properties, hence, the wife filed a petition to declare him incapacitated and prayed that she should assume sole administration of their properties and prayed that she be authorized to sell property of the spouses. On the other hand, the parents of the man filed a petition for guardianship over the man. The RTC of Iloilo granted the wife's petition. The parents of the man filed a motion for reconsideration contending that the petition for declaration of incapacity, assumption of sole powers of administration and authority to sell the conjugal properties was essentially a petition for guardianship of the person and properties of the man. As such it need not be prosecuted in accordance with Article 253, Family Code. It should follow the Rules of Court. It was denied but on appeal, the CA reversed the RTC decision ordering the dismissal of the special proceedings to approve the deed of sale which was declared void. A motion for reconsideration was filed but it was denied.

The issue raised was whether petitioner Gilda Jardeleza as the wife of Ernesto Jardeleza, Sr., who suffered a stroke rendering him comatose, and could not manage their conjugal partnership prop-

erty may assume sole powers of administration of the conjugal properties under Article 124 of the Family Code and dispose of a parcel of land with its improvements, worth more than twelve million pesos, with the approval of the court in a summary proceedings, to her co-petitioners, her own daughter and son-in-law, for the amount of eight million pesos.

The CA ruled that in the condition of Dr. Ernesto Jardeleza, Sr., the procedural rules on summary proceedings in relation to Article 124 of the Family Code are not applicable. Since Dr. Jardeleza, Sr. was unable to take care of himself and manage the conjugal properties due to illness that had rendered him comatose, the proper remedy was the appointment of a judicial guardian of the person or estate or both of such incompetent, under Rule 93, Section 1, 1964 Revised Rules of Court. Indeed, petitioner earlier had filed such a petition for judicial guardianship. On appeal, the Supreme Court held

Article 124 of the Family Code provides as follows:

Art. 124. The administration and enjoyment of the conjugal partnership property 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.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the 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."

In regular manner, the rules on summary judicial proceedings under the Family Code govern the proceedings under Article 124 of the Family Code. The situation contemplated is one where the spouse is absent, or separated in fact or has abandoned the other or consent is withheld or cannot be obtained. Such rules do not apply to cases

where the non-consenting spouse is incapacitated or incompetent to give consent. In this case, the trial court found that the subject spouse “is an incompetent” who was in comatose or semi-comatose condition, a victim of stroke, cerebrovascular accident, without mental faculties. In such case, the proper remedy is a judicial guardianship proceedings under Rule 93 of the 1964 Revised Rules of Court.

Even assuming that the rules of summary judicial proceedings under the Family Code may apply to the wife’s administration of the conjugal properties, the law provides that the wife who assumes sole powers of administration has the same powers and duties as a guardian under the Rules of Court.

Consequently, a spouse who desires to sell real property as such administrator of the conjugal property must observe the procedure for the sale of the ward’s estate required of judicial guardians under Rule 95, of the Revised Rules of Court, not the summary judicial proceedings under the Family Code.

The trial court did not comply with the procedure under the Revised Rules of Court. Indeed, the trial court did not even observe the requirements of the summary judicial proceedings under the Family Code. Thus, the trial court did not serve notice of the petition to the incapacitated spouse; it did not require him to show cause why the petition should not be granted.

In short, the spouse of the incompetent should file a petition for appointment as guardian over the person and properties of the spouse and following the rules, file a motion for leave to sell properties pursuant to Rule 95.

Mortgage of conjugal property by husband without consent of the wife is void.

The law has changed the rule that if there is sale or encumbrance of a conjugal property, it used to be voidable. Now, it is void if without the consent of the other spouse and the nullity is total even if we consider the fact that upon the dissolution of the marital relationship, they would divide the properties equally. They are not governed by the rule on co-ownership such that they would divide their properties equally.

In *Homeowners Savings & Loan Bank vs. Miguela Dailo*, G.R. No. 153802, March 11, 2005 (Tinga, *J.*), the husband and wife owned properties. The husband executed a Special Power of Attorney in favor

of a person to secure a loan with the use of a conjugal property as security. The loan was secured with a mortgage over said property. The loan was not paid, hence, there was foreclosure of the mortgage.

There was a certificate of sale and due to his failure to redeem, the property was consolidated under the name of the mortgagee, the petitioner in this case. When the wife learned of the mortgage and sale, she filed a complaint to declare the mortgage and sale void invoking Article 124 of the Family Code. The lower court declared the mortgage and sale void. On appeal, it was contended by the mortgagee that Article 124 of the Family Code should be construed with Article 493 of the Civil Code, thus, the mortgage and sale are valid to the extent of the share of the husband as his share in the co-ownership.

The rules on co-ownership do not even apply to the property relations of the husband and wife even in a suppletory manner. The regime of conjugal partnership of gains is a special type of partnership, where 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. (Art. 106, Family Code). Unlike the absolute community of property wherein the rules on co-ownership apply in a suppletory manner (Art. 90, Family Code), the conjugal partnership shall be governed by the rules on contract of partnership in all that is not in conflict with what is expressly determined in the chapter (on conjugal partnership of gains) or by the spouses in their marriage settlements. (Art. 108, Family Code). Thus, the property relations of the husband and wife shall be governed, foremost, by Chapter 4 on Conjugal Partnership of Gains of the Family Code and, suppletorily, by the rules on partnership under the Civil Code. In case of conflict, the former prevails because the Civil Code provisions on partnership apply only when the Family Code is silent on the matter.

Article 125. Neither spouse may donate any conjugal partnership property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the conjugal partnership property for charity or on occasions of family rejoicing or family distress. (174a)

Donation, while an act of liberality transfer ownership over properties. It is akin to sale of the same, hence, there is a need for the consent of the other spouse if one of them make a donation of any conjugal property. Otherwise, it is void.

Section 6. Dissolution of Conjugal Partnership Regime

Article 126. The conjugal partnership 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 under Articles 134 to 138. (175a)**

Effect of death a spouse on the conjugal properties.

In *Calpatura, et al. vs. Patricio, Jr., et al.*, G.R. No. 156879, January 20, 2004, the spouses acquired a property during their marriage. One of them died. The Supreme Court explained the effect of death on the conjugal property and said that the property being conjugal, one-half of the subject property was automatically reserved to the surviving spouse, as her share in the conjugal partnership. The husband's rights to the other half, in turn were transmitted upon his death to his heirs, which included his widow, who is entitled to the same share as that of each of the legitimate children. Thus, as a result of his death, a regime of co-ownership arose between the spouse and the other heirs in relation to the property. The remaining one-half was transmitted to his heirs by intestate succession. By the law on intestate succession, his six children and surviving spouse inherited the same at one-seventh (1/7) each *pro indiviso*. (Art. 996, NCC). In as much as she inherited one-seventh (1/7) of her husband's conjugal share in the said property and is the owner of one-half (1/2) thereof as her conjugal share, she owned a total of 9/14 of the subject property. Hence, she could validly convey her total undivided share in the entire property. She and her children are deemed co-owners of the subject property.

But, no particular portion of the property could be identified as yet and delineated as the object of the sale considering that the property had not yet been partitioned in accordance with the Rules of Court. (*Alejandro vs. CA*, G.R. No. 114151, September 17, 1998). While she could validly sell one half of the subject property, her share being 9/14 of the same, she could not have particularly conveyed the northern portion thereof before the partition, the terms of which was still to be determined by the parties before the trial court.

It must be emphasized that upon the death of either spouse, the conjugal partnership shall be terminated. In such case, the following rules shall be observed:

Art. 103. 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 one year from the death of the deceased spouse. If upon the lapse of the one year 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. (n)”

Effects of Legal Separation

One of the effects of the granting of a petition for legal separation is the dissolution of the conjugal partnership. Thus, Articles 63 and 64 of the Family Code lay down the rules as:

“Art. 63. The decree of legal separation shall have the following effects:

x x x

(2) The absolute community or the conjugal partnership shall be dissolved or liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2). x x x”

Under Article 43(2) of the Family Code, the termination of a subsequent marriage where there was absence of one spouse shall produce the following effect:

“(2) The absolute community of property or the conjugal partnership, as the case may be, 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 community property or conjugal partnership property shall

be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse. x x x”

Furthermore, Article 64 of the Family Code provides:

“Art. 64. After the finality of the decree of legal separation, the innocent spouse may revoke the donations made by him or by her in favor of the offending spouse, as well as the designation of the latter as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable. The revocation of the donations shall be recorded in the registries of property in the places where the properties are located. Alienations, liens and encumbrances registered in good faith before the recording of the complaint for revocation in the registries of property shall be respected. The revocation of or change in the designation of the insurance beneficiary shall take effect upon written notification thereof to the insured.

The action to revoke the donation under this Article must be brought within five years from the time the decree of legal separation has become final. (107a)”

Note that under the law, the revocation of donations is not by operation of law. An action must be brought within five years from the time the decree of legal separation becomes final. That is optional on the part of the innocent spouse.

The registration of such donations must be made in the registry of property in the places where the properties are located in order to bind third persons who may be buyers in good faith and for value. If not registered, then any conveyance over the properties donated shall not bind third persons who are innocent purchasers in good faith.

Effect of Annulment of Marriage.

In case of annulment of marriage or declaration of nullity, the conjugal partnership shall be dissolved and liquidated but if one spouse contracted the marriage in bad faith, he shall lose his share of the net profits of the partnership which shall be forfeited in favor of the common children, or if none, to the children of the guilty spouse by a previous marriage or if there be none, to the innocent spouse.

Note that the guilty spouse is not entitled to the net gains of the conjugal partnership.

Effect of Separation of Properties.

Under Article 137 of the Family Code, once the separation of property has been decreed, the absolute community or conjugal partnership of gains shall be liquidated.

Article 127. The separation in fact between husband and wife shall not affect the regime of conjugal partnership, 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 conjugal partnership property, the separate property of both spouses shall be solidarily liable for the support of the family. The spouse present shall, upon 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. (178a)

Effect of separation in fact of the spouses.

This law must be taken together with Article 101 of the Family Code.

Separation in fact between the husband and wife does not dissolve the marriage. However, it has the following effects:

- (a) the spouse who leaves the conjugal dwelling without just cause shall not be entitled to be supported.

The law uses the phrase “without just cause.” If the husband comes home every dawn and beats the wife everytime he comes home, the wife can leave the dwelling and still, she can demand support, since, there is just cause in leaving the conjugal dwelling. As a matter of fact, such act of the husband may even constitute a ground for legal separation. (See Art. 55, FC).

- (b) if the consent of one spouse is necessary for any transaction of the other, the same may be obtained in a summary proceeding;
- (c) If there is an insufficient conjugal property, the separate properties of the husband and wife shall be solidarily liable for the support of the family.
- (d) The present spouse, however, cannot just encumber or sell separate properties of the other spouse to satisfy his/her share of the support of the family. There is a need to ask for judicial authority to sell; otherwise, the sale is void.

Properties acquired by onerous title during the period of separation-in-fact of the husband and wife shall redound to the conjugal partnership because the marriage bond has not been severed. (Wong vs. CA, et al., *supra*).

Article 128. 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 conjugal partnership property, subject to such precautionary conditions as the court may impose.

The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.

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. (167a, 191a)

Note: Please refer to the discussion in Article 101, F.C.

Section 7. Liquidation of the Conjugal Partnership Assets and Liabilities

Article 129. Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:

(1) An inventory shall be prepared, listing separately all the properties of the conjugal partnership and the exclusive properties of each spouse.

(2) Amounts advanced by the conjugal partnership in payment of personal debts and obligations of either spouse shall be credited to the conjugal partnership as an asset thereof.

(3) Each spouse shall be reimbursed for the use of his or her exclusive funds in the acquisition of property or for the value of his or her exclusive property, the ownership of which has been vested by law in the conjugal partnership.

(4) The debts and obligations of the conjugal partnership shall be paid out of the conjugal 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 paragraph (2) of Article 121.

(5) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.

(6) Unless the owner had been indemnified from whatever source, the loss or deterioration of movables used for the benefit of the family, belonging to either spouse, even due to fortuitous event, shall be paid to said spouse from the conjugal funds, if any.

(7) The net remainder of the conjugal partnership properties shall constitute the profits, 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 or forfeiture of such share as provided in this Code.

(8) The presumptive legitimes of the common children shall be delivered upon partition in accordance with Article 51.

(9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, 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. (181a, 182a, 183a, 184a, 185a)

Paragraph 3 has reference to Article 120 of the Family Code. If one of the spouses owns a lot where a building was built with conjugal funds, on the assumption that the value of the building is more than that of the land, the conjugal partnership shall reimburse the spouse owning the land during the liquidation of the partnership.

This is so because it is only when the value of the land has been paid to the spouse that ownership shall be vested in the partnership.

The debts and obligations referred to in paragraph 4 are those that benefited the family.

It must be noted that the net assets shall be divided. Separate properties of each spouse, if there is any remainder, shall be delivered to them.

Article 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extra-judicially within one year from the death of the deceased spouse. If upon the lapse of the six-month period no liquidation is made, any disposition or encumbrance involving the conjugal partnership 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. (n)

Note: For discussion, refer to Article 103 of the Family Code.

Article 131. Whenever the liquidation of the conjugal partnership properties of two or more marriages contracted by the same person before the effectivity of this Code is carried out simultaneously, the respective capital, fruits and income of each partnership shall be determined upon such proof as may be considered according to the rules of evidence. In case of doubt as to which partnership the existing properties belong, the same shall be divided between the different partnerships in proportion to the capital and duration of each. (189a)

Note: For discussion, see the comments in Article 104 of the Family Code.

Article 132. The Rules of Court on the administration of estates of deceased persons shall be observed in the appraisal and sale of property of the conjugal partnership, and other matters which are not expressly determined in this Chapter. (187a)

Article 133. 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. (188a)

Chapter 5

Separation of Property of the Spouses and Administration of Common Property by One Spouse During the Marriage

Article 134. 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. (190a)

Where there can be separation of properties during the marriage.

Once the parties have entered into the regime of conjugal partnership that cannot be changed during the marriage without a judicial order. In the same manner, if the system of absolute community of property has been established, the same cannot be changed during the marriage without judicial order. Any stipulation between the parties during the marriage without a judicial order is void. While the parties have the liberty to enter into any contract, the same is true only if the contract is not contrary to law. (Article 1306, New Civil Code; *Lacson vs. Lacson*, 24 SCRA 837).

The separation of property may either be voluntary or with a cause, the causes may be found in Article 135 of the Family Code.

Except as may be provided for under Articles 66, 67, 128, 135, and 136, in order that any modification in the marriage settlements may be valid, it must be made before the celebration of the marriage.

Article 135. Any of the following shall be considered sufficient cause for judicial separation of property:

(1) That the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction;

(2) That the spouse of the petitioner has been judicially declared an absentee;

(3) That loss of parental authority of the spouse of petitioner has been decreed by the court;

(4) That 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 Article 101;

(5) That the spouse granted the power of administration in the marriage settlement has abused that power; and

(6) That at the time of the petition, the spouses have been separated in fact for at least one (1) year and reconciliation is highly improbable.

In the cases provided for in nos. 1, 2, and 3, 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. (191a)

Declaration of absence.

Absence may be declared under the following circumstances provided for under Article 384 of the Civil Code:

“Two years having elapsed without any news about the absentee or since the receipt of the last news, and five years in case the absentee has left a person in charge of the administration of his property, his absence may be declared.”

Under Article 385 of the Civil Code, the following may ask for the declaration of absence:

- (1) The spouse present;
- (2) The heirs instituted in a will, who may present an authentic copy of the same;
- (3) The relatives who may succeed by the law of intestacy;
- (4) Those who may have over the property of the absentee some right subordinated to the condition of his death.

The judicial declaration of absence, however, shall not take effect until Six (6) months after its publication in a newspaper of general circulation.

Constructive and actual abandonment.

Abandonment presupposes that a spouse leaves the conjugal dwelling without the intention of returning. It presupposes an active act of leaving the conjugal dwelling. The case of *Partosa-Jo vs. CA*, 216 SCRA 692, however is different as the husband was considered as having abandoned the wife inspite of the fact that he never left the home. He, however, prevented the wife from returning to the conjugal dwelling after a vacation in her home province. It was ruled therein that the mere act of preventing the spouse from returning to the conjugal dwelling is sufficient act to constitute abandonment. This is otherwise known as constructive abandonment.

The case of *Partosa-Jo vs. CA* has to be distinguished from actual abandonment in Article 101 of the Family Code which provides that a spouse is deemed to have abandoned the other when he or she left the conjugal dwelling without intention of returning. The spouse who has left the conjugal dwelling for a period of three (3) 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. In such provision of the law, there is actual abandonment; in *Partosa-Jo*, there is merely constructive abandonment.

The obligations to the family referred to by the law as grounds for the filing of an action for separation of properties during the marriage are marital, parental or property relations. (Art. 101[3], Family Code). This must therefore be taken in relation to Article 68 of the Family Code which states that “the husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.”

Declaration of absence.

It is obvious from the law that if a spouse has been declared an absentee, the present spouse can file an action for separation of properties. This is so because administration of the properties is vested upon the spouses jointly and it needs actual, physical presence to perform such act. It is not possible for a person who has been declared absent to personally administer such properties. So that the law imposes a penalty upon such person by allowing the present spouse to ask for separation of properties during the marriage in order not to unduly prejudice the present spouse. Furthermore, if the present spouse wishes to sell, encumber or mortgage the proper-

ties, the same would not be valid without the consent of the other spouse. In order not to prejudice the present spouse, the law allows him/her to ask for separation of properties so that if granted, the present spouse may exercise his/her acts of ownership over his/her own.

Separation for at least one (1) year.

It is not enough that the spouses have been separated in fact for at least one (1) year in order that an action for separation of properties may be granted. It is a necessary prerequisite that reconciliation between the two of them is highly improbable. But if reconciliation is still probable, then the action for separation of properties will not prosper. Or, even if reconciliation is improbable, but not highly improbable, still the action for separation of properties during the marriage will not prosper.

The reason for the law is obvious from the intention of the law of trying to preserve the marriage. Separation of properties during the marriage between spouses who are living separately may even be a stumbling block to their reconciliation; or where it was improbable prior to separation of properties, it may become highly improbable thereafter.

Final Judgment.

The last paragraph of Article 135, Family Code provides for a procedural requirement in an action for separation of properties during the marriage. It merely provides that if there is a judgment sentencing a spouse to a penalty which carries with it civil interdiction, or judicial declaration of absence, or judicial pronouncement of loss of parental authority, it is enough that the final judgment be presented in support of the action for separation of properties during the marriage and the same shall be enough basis for the grant of the action. This is so because these are grounds for judicial separation of properties. There is no need to prove them anymore because they have already been proven.

The law permits the spouses to jointly file a verified petition for the voluntary dissolution of the absolute community or the conjugal partnership of gains, or for the separation of their common properties. Even if they agree to dissolve their property regime or separate their properties during the marriage, such agreement is not sufficient. It must be submitted to court as it is the court approval, by way of

filing a verified petition that is valid. The reason is that, under Article 77 of the Family Code, there can be no change in the property relationship during the marriage except upon judicial approval. Thereafter, they shall be governed by the complete separation of property regime.

The creditors are amply protected by law when the spouses file an action for separation of properties or dissolution of the community or properties. That is why they are entitled to notice in order that they may file their claims against the community or the spouses individually. This is to prevent fraud against creditors.

Article 136. The spouse 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.

All 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. (191a)

Article 137. Once the separation of property has been decreed, the absolute community or the conjugal partnership of gains shall be liquidated in conformity with this 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. (192a)

Article 138. After dissolution of the absolute community or of the conjugal partnership, the provisions on complete separation of property shall apply. (191a)

Article 139. The petition for separation of property and the final judgment granting the same shall be recorded in the proper local civil registries and registries of property. (193a)

Article 140. The separation of property shall not prejudice the rights previously acquired by creditors. (194a)

Article 141. The spouses may, in the same proceedings where separation of property was decreed, file a motion in court for a decree reviving the property regime that existed between them before the separation of property in any of the following instances:

- (1) When the civil interdiction terminates;
- (2) When the absentee spouse reappears;
- (3) When the court, being satisfied that the spouse granted the power of administration in the marriage settlements will not again abuse that power, authorizes the resumption of said administration;
- (4) When the spouse who has left the conjugal home without a decree of legal separation resumes common life with the other;
- (5) When parental authority is judicially restored to the spouse previously deprived thereof;
- (6) When the spouses who have been separated in fact for at least one year, reconcile and resume common life; or
- (7) When after voluntary dissolution of the absolute community of property or conjugal partnership has been judicially decreed upon the joint petition of the spouses, they agree to the revival of the former property regime. No voluntary separation of property may thereafter be granted.

The revival of the former property regime shall be governed by Article 67. (195a)

Article 142. The administration of all classes of exclusive property of either spouse may be transferred by the court to the other spouse:

- (1) When one spouse becomes the guardian of the other;
- (2) When one spouse is judicially declared an absentee;
- (3) When one spouse is sentenced to a penalty which carries with it civil interdiction; or
- (4) 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. (n)

The impossibility of the exercise of the powers of an administrator of the properties exclusively belonging to each spouse necessitates an order of the court transferring the administration of said

properties to the other spouse. If such spouse is disqualified due to incompetence, conflict of interest, or any other just cause, the court shall appoint a suitable person to be the administrator.

The law (Art. 138, Family Code) says that when the absolute community of property or the conjugal partnership is dissolved, the regime of complete separation of property shall govern the spouses. In that case, whatever properties acquired by the spouses thereafter shall belong to them exclusively. Even the fruits of the same shall belong to them exclusively. The management and the right to dispose of said properties shall pertain to the spouses exclusively.

The law requires that the judgment ordering the separation of properties by the spouses must be registered in the proper Civil Registry and Registry of Property. This is so to bind third persons and creditors.

The separation of properties during the marriage is without prejudice to the rights of a creditor acquired prior to the separation. Of course, this rule is to be so because the law would always protect the creditors; otherwise, the separation of properties may be used as a shield by the spouses to defraud their creditors.

If the causes for the separation of properties of the spouses during the marriage have already ceased, the spouses may file a motion for the issuance of a decree reviving the former property regime. It can be filed in the same proceedings which decreed the separation of properties to be contributed anew to the restored regime; those to be retained as separate properties of each spouse; as well as the names of all their known creditors, their addresses and the amounts owing to each. (Art. 67, Family Code).

Chapter 6

Regime of Separation of Property

Article 143. 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 this Chapter shall be supplementary. (212a)

Article 144. 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. (213a)

Article 145. Each spouse shall own, dispose of, possess, administer and enjoy his or her own separate estate, without 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. (214a)

Article 146. Both spouses shall bear the family expenses in proportion to their income, or, in case of insufficiency or default thereof, to the current market value of their separate properties.

The liability of the spouses to creditors for family expenses shall, however, be solidary. (215a)

Rules on complete separation of property regime.

The future spouses may agree on a regime of complete separation of properties. Like the absolute community or conjugal partnership, the parties may agree on a total or partial separation of properties. While the parties may be governed by the absolute community or conjugal partnership, the future spouses may, however, declare that certain properties be considered their separate properties. (Arts. 92, 109, Family Code). If there are properties not agreed upon as separate properties, then, they are governed by the absolute community of property. This is so because of the rule that in the absence of any marriage settlement or if the agreement is void, the system of absolute community of property shall govern.

Effect if parties are governed by complete separation.

Under the system of complete separation of properties between the husband and wife, the spouses shall retain ownership and possession of their separate properties. The fruits of their separate properties, their income from business or exercise of a profession or vocation shall exclusively belong to them in absolute ownership. They can dispose of their properties without the consent of one another under the principle that such disposition is an exercise of ownership.

In spite of the spouses' absolute ownership over their separate properties, income and fruits of their properties, as well as income from the exercise of any profession or business, they shall, however, bear the expenses in proportion to their income, or in case of insufficiency or default thereof, the current market value of their separate properties.

Illustration:

A and B are married. In their marriage settlement, they agreed on a regime of complete separation of property. A earns P20,000.00 per month from the exercise of his profession. B earns P10,000.00 in the exercise of her profession. The expenses of the family shall be borne by them in the proportion of 2:1.

Chapter 7**Property Regime of Unions Without Marriage**

Article 147. 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 on co-ownership.

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. For purposes of this Article, 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 or of 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. (144a)

Coverage of the law.

Article 147 of the Family Code speaks of a situation where the man and the woman who live together as husband and wife without the benefit of marriage are capacitated to live as husband and wife or marry each other. If the man is married, or if the woman is married, the law does not apply because they are not capacitated to marry each other due to the legal impediment to marry.

Property regimes of the two unions.

Article 147, Family Code applies to unions of parties who are legally capacitated *and* not barred by any impediment to contract marriage but whose marriage is nonetheless void for other reasons, like the absence of a marriage license. Even if the death benefits were earned by him alone while in government, Article 147 creates a co-ownership in respect thereto, entitling the first spouse to 1/2 of the same. As there is no bad faith of the parties, there is a presumption of good faith. Thus, 1/2 goes to the first wife and the other 1/2 passes by intestate succession to his legal heirs, namely his children with the first wife.

Under Article 148 of the Family Code, which refers to the property regime of bigamous marriages, adulterous relationships, relationship in a state of concubine, relationships where both man and woman are married to other persons, multiple alliances of the same married man, only the properties acquired by both of the parties thru their actual joint contributions of money, property or industry shall be owned by them in common in proportion to their respective contributions. Wages and salaries earned by each party belong to him or her respectively. Contributions in the form of care of the home, children and household, or spiritual or moral inspiration are excluded in this regime. Since the second marriage is bigamous, Article 148 applies.

Application of Article 147, Family Code; requisites.

In *Elna Mercado-Fehr vs. Bruno Fehr*, G.R. No. 152716, October 23, 2003, a marriage was declared void on the ground of psychological incapacity. The judgment became final and executory in the lower court. The facts show that in March 1983, after a long distance courtship, Elna left Cebu City to live-in with Bruno, where a child was born on December 3, 1983. They got married on March 14, 1985. In the meantime, they purchased on installment a condominium unit,

Suite 204 at LCG Condominium, as evidenced by a Contract To Sell dated July 25, 1983 executed by Bruno as the buyer and J.V. Santos Commercial Corporation as the seller. Elna also signed the contract as witness, using the name “Elna Mercado Fehr.” Upon completion of payment, the title to the condominium unit was issued in the name of Elna.

In the declaration of nullity of marriage case, there arose a controversy as to the ownership of the said property.

After the court resolved the issue of nullity of the marriage, it issued an order that Suite 204 of LCG Condominium belonged to Bruno considering that it was purchased by exclusive funds from him prior to their marriage. Elna moved to reconsider, contending that the property was acquired on installment basis while they were live-in partners, hence, the rule on co-ownership should govern in accordance with Article 147 of the Family Code. Resolving the motion, the court ruled that the rule on co-ownership should apply since the marriage was declared *void ab initio*.

The Supreme Court ruled that Suite 204 was acquired during the parties’ cohabitation and held that Article 147 of the Family Code on co-ownership should govern.

For Article 147 to operate however, the man and the woman: (1) must be capacitated to marry each other; (2) live exclusively with each other as husband and wife; and (3) their union is without the benefit of marriage or their marriage is void. All these elements are present in the case at bar. It has not been shown that the parties suffered any impediment to marry each other. They lived exclusively with each other as husband and wife when Elna moved in with Bruno in his residence and were later united in marriage. Their marriage, however, was found to be void under Article 36 of the Family Code because of Bruno’s psychological incapacity to comply with the essential marital obligations.

The disputed property, Suite 204 of LCG Condominium, was purchased on installment basis on July 26, 1983, at the time when they were already living together. Hence, it should be considered as their common property and hence, should be divided in accordance with the law on co-ownership.

It this case, even if the woman did not contribute materially, in the acquisition of the property, still they were governed by the rule on co-ownership, hence, the same should be divided equally between them upon the declaration of nullity of their marriage.

The law does not cover a relationship which is transient, as when a man and a woman merely date with each other without living in a common dwelling. There must be a semblance of permanency.

Intent of the law.

The intention of the law is to cover a singular relationship. If a man has several common-law wives, the law does not apply.

If both of them are working, their salaries and wages are owned in equal shares. So that if X, the man, has a salary of P10,000.00 per month, and Y, the woman, has a salary of P8,000.00 per month, the law considers them as owning their salaries in equal shares or P9,000.00 each.

Properties acquired by them during their coverture are governed by the law on co-ownership.

The law likewise covers a void marriage between persons who are below the age of 18, as the marriage is void even with the consent of their parents.

Presumption of co-ownership.

Even if the man is the only one employed and the properties which were acquired during their coverture came from the salaries or wages of the man, the law presumes that the parties are co-owners of the said properties. The contributions of the woman, who may have played the role of a plain housewife, are her efforts, consisting of the caring and maintenance of the family and the household.

Disposition of properties.

While the law allows the man and the woman to own in common properties acquired during their cohabitation, the law, however, prohibits them from disposing or selling said properties during such cohabitation. Such disposal must be with the consent of the other.

Rules on the disposition of properties owned in common when one of the spouses in a void marriage is in bad faith:

- (a) The share of the party in bad faith shall go to their common children;
- (b) If there are no common children of the spouses or if the

common children have waived their shares, such properties shall go to their respective descendants;

- (c) If there are no descendants, common or otherwise, such properties shall go to the innocent spouse;
- (d) Such forfeitures shall occur only upon the termination of the cohabitation. In the meantime, therefore, properties acquired during their coverture shall be owned in common; they shall enjoy the fruits in common.

Article 147, Family Code; its coverage and requirements.

In March 1977, Francisco Gonzales and Erminda Gonzales lived as husband and wife. After two (2) years, or on February 4, 1979, they got married. From this union, four (4) children were born, namely: Carlo Manuel, Maria Andres, Maria Angelica and Marco Manuel.

On October 29, 1992, Erminda filed a complaint for annulment (should be nullity) of marriage with prayer for support *pendente lite*. The complaint alleged that Francisco was psychologically incapacitated to comply with the obligations of marriage, alleging that he often beat her for no justifiable reason, humiliated and embarrassed her, and denied her love, sexual comfort and loyalty. During the time they lived together, they acquired properties. She managed their pizza business and worked hard for its development.

In his answer Francisco averred that it was Erminda who was psychologically incapacitated. He denied that she was the one who managed the pizza business and claimed that he exclusively owns the properties “existing during their marriage.”

In her reply, she alleged that she controlled the entire operation of Fiesta Pizza representing 80% of the total management of the same and that all income from said business are conjugal in nature.

The public prosecutor, in compliance with Article 48 of the Family Code, certified that no collusion existed between the parties in asking for the declaration of the nullity of their marriage and that he would appear for the state to see to it that the evidence is not fabricated or suppressed.

Each party submitted a list of the properties with their valuation, acquired during their union.

Evidence adduced during the trial show that petitioner used to beat respondent without justifiable reasons, humiliating and embar-

rassing her in the presence of people and even in front of their children. He has been afflicted with satyriasis, a personality disorder characterized by excessive and promiscuous sex hunger manifested by his indiscriminate womanizing.

The trial court rendered its decision declaring Francisco as one suffering from psychological incapacity.

Francisco did not challenge the judgment declaring the marriage void but challenged the manner the properties were divided. He contended that they were governed by the rule on co-ownership under Article 147 of the Family Code, hence, the equal division of the properties was not proper.

The Supreme Court ruled that the property relationship is governed by Article 147 of the Family Code and said that the sharing is equal.

These provisions enumerate the two instances when the property relations between spouses shall be governed by the rules on co-ownership. These are: (1) when a man and woman capacitated to marry each other live exclusively with each other as husband and wife without the benefit of marriage; and (2) when a man and woman live together under a void marriage. (The void marriage here should be one without legal impediment, like a previous marriage.). Under this property regime of co-ownership, properties acquired by both parties during their union, in the absence of proof to the contrary, are presumed to have been obtained through the joint efforts of the parties and will be owned by them in equal shares.

Article 147 creates a presumption that properties acquired during the cohabitation of the parties have been acquired through their joint efforts, work or industry and shall be owned by them in equal shares. It further provides that 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.

While it is true that all the properties were bought from the proceeds of the pizza business, Francisco himself testified that she was not a plain housewife and that she helped him in managing the business. In his handwritten letter to her he admitted the "You've helped me for what we are now and I won't let it be destroyed."

It appeared that before they started living together, he offered her to be partner in his pizza business and to take over its opera-

tions. She started managing the business in 1976. Her job was to: (1) take care of the daily operations of the business; (2) manage the personnel; and (3) meet people during inspection and supervision of outlets. She reported for work everyday, even on Saturdays and Sundays, without receiving any salary or allowance.

These are efforts sufficient to constitute her contributions, thus, entitling her to share equally in the properties. (Gonzales vs. Gonzales, G.R. No. 159521, December 16, 2005, Gutierrez, *J.*).

Co-ownership is the property relationship in void marriage due to psychological incapacity.

The property relationship of the spouse whose marriage was nullified by reason of psychological incapacity is one of co-ownership.

In *Valdes vs. Regional Trial Court, Branch 102, Quezon City*, 260 SCRA 221 (1996), the Court expounded on the consequences of a void marriage on the property relations of the spouses and specified the applicable provisions of law saying that Article 147 of the Family Code applies.

The Supreme Court said:

“This peculiar kind of co-ownership applies when a man and a woman, suffering no legal impediment to marry each other, so exclusively live together as husband and wife under a void marriage or without the benefit of marriage. The term ‘capacitated’ in the provision (in the first paragraph of the law) refers to the legal capacity of a party to contract marriage, *i.e.*, any ‘male or female of the age eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38’ of the Code.”

“Under this property regime, property acquired by both spouses through their work and industry shall be governed by the rules on equal co-ownership. Any property acquired during the union is *prima facie* presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall still be considered as having contributed thereto jointly if said party’s ‘efforts consisted in the care and maintenance of the family household.’ Unlike the conjugal partnership of gains, the fruit of the couple’s separate property are not included in the co-ownership.”

In *Buenaventura vs. Buenaventura*, G.R. Nos. 127358 and 127449, March 31, 2005, the Supreme Court said that if a marriage is declared void on the ground of psychological incapacity, the properties should be owned in the concept of co-ownership. This is to over-emphasize the rule that a void marriage, regardless of its ground cannot be governed by the conjugal partnership of gains or the absolute community of property regime.

Property relationship in a void marriage.

**Francisco vs. Master Iron Works
Construction Corp.
G.R. No. 151967, February 16, 2005
(Callejo, J.)**

Facts:

Josefina Castillo and Eduardo Francisco were married on January 15, 1983. On August 31, 1984, she bought two parcels of land where titles were issued under their names. At the dorsal portion of the titles, there were entries showing that Eduardo waived any right over the properties as they were purchased out of her own savings. When she mortgaged the property, Eduardo affixed his marital conformity. In 1990, Eduardo bought 7,500 bags of cement from MIWCC but failed to pay, hence, a complaint was filed. Judgment was rendered against him, hence, there was levy on the properties but Josefina filed a third party claim with the sheriff. There was sale of the properties hence, she filed a complaint to declare the sale void alleging that the properties were bought out of her own money and through the help of her brother and sister and that Eduardo had no participation at all. In the meantime, Josefina filed a complaint to declare their marriage void as Eduardo had a prior marriage. It was granted. The action to declare the sale void was granted but it was reversed by the CA ruling that the properties were presumed to be conjugal. It further held that the waiver was void. Before the Supreme Court she contended that since her marriage was void, they were governed by the rule on co-ownership under Article 148, Family Code, thus, there must be evidence to show that Eduardo contributed materially in the purchase of the property. On the other hand, the other party contended that the properties are presumed to be conjugal as there was no showing that she alone bought the properties. Rule on the contentions.

Held:

The contention of the wife is not correct as she failed to prove that she acquired the properties with her personal funds.

The contention of the petitioner that Article 144 of the New Civil Code does not apply is correct. In *Tumlos vs. Fernandez*, 330 SCRA 718 (2000), it was held that Article 144 of the New Civil Code applies only to a relationship between a man and a woman who are not incapacitated to marry each other, or to one in which the marriage of the parties is void from the very beginning. It does not apply to a cohabitation that is adulterous or amounts to concubinage, for it would be absurd to create a co-ownership where there exists a prior conjugal partnership or absolute community between the man and his lawful wife. In this case, the petitioner admitted that when she and Eduardo cohabited, the latter was incapacitated to marry her.

The Family Code upon which petitioner anchored her claims has filled the *hiatus* in Article 144 of the New Civil Code by expressly regulating in Article 148 the property relations of couples living in a state of adultery or concubinage. Under Article 256 of the Family Code, the law can be applied retroactively if it does not prejudice vested or acquired rights. The petitioner failed to prove that she had any vested right over the property in question.

Since the subject property was acquired during the subsistence of the marriage of Eduardo and Carmelita, under normal circumstances, the same should be presumed to be conjugal property. Article 105 of the Family Code of the Philippines provides that the Code shall apply to conjugal partnership established before the code took effect, without prejudice to vested rights already acquired under the New Civil Code or other laws. (*Villanueva vs. CA*, G.R. No. 143286, April 14, 2004). Thus, even if Eduardo and Carmelita were married before the effectivity of the Family Code of the Philippines, the property still cannot be considered conjugal property because there can be but one valid existing marriage at any given time. (*Tumlos vs. Fernandez, supra.*) Article 148 of the Family Code also debilitates against the petitioner's claim since, according to the said article, a co-ownership may ensue in case of cohabitation where, for instance, one party has a pre-existing valid marriage provided that the parents prove their actual joint contribution of money, property or industry and only to the extent of their proportionate interest thereon. (*Malang vs. Moson*, 338 SCRA 393 [2000]).

Article 148. In cases of cohabitation not falling under the preceding Article, only the 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 presumption 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 likewise apply even if both parties are in bad faith. (144a)

Coverage of the law.

Article 148 of the Family Code speaks of cohabitation where the parties are not capacitated to marry one another, like in bigamous marriages, adulterous relationship, and others. Article 147 of the Family Code treats of a relationship where the parties are capacitated to marry each other.

The properties owned in common by the spouses are those acquired by them during their cohabitation through their actual joint contribution of money, property, or industry in proportion to their respective contributions. So that, if X and Y are living together as husband and wife and they acquired a house and lot worth P500,000.00, with X contributing P400,000.00 and Y contributing P100,000.00, their shares shall be at the ratio of 4:1. In the absence, however, of evidence of their respective contributions, the law presumes the same to be equal. There is, however, a need to prove material contribution unlike in Article 147 where spiritual contribution is sufficient for an equal sharing of the properties.

Rules on forfeiture of shares:

- (a) If one of the parties is validly married to another, his/her share shall redound to the benefit of the absolute community or the conjugal partnership in the valid marriage;

- (b) If the party who acted in bad faith is not validly married to another person, his or her share shall be distributed in the following manner:
 - b.1. The share of the party in bad faith shall go to their common children;
 - b.2. In default of common children or if they waived their share, the properties shall go to their respective children;
 - b.3. If there are no common children or children of their own, the share of the party in bad faith shall go to the innocent spouse.

Note that forfeiture shall be applicable even if both parties are in bad faith.

Note further that if both are validly married and no one is in bad faith, the share of each shall go to their respective marriage.

If they are not validly married and there are no children, they shall get their own share if no one is in bad faith. But if both are in bad faith, their common children shall get their share, or in the absence of such common children or their descendants, their respective children shall get their share.

Note, however, that their salaries and wages shall belong to each of them exclusively.

Application of Arts. 147 and 148, Family Code.

In *Uy vs. CA, et al.*, 51 SCAD 248, 232 SCRA 579 (May 27, 1994), it appears that Natividad Calaunan-Uy and Menilo Uy were common-law husband and wife for 36 years. They gave birth to four (4) children. They also acquired properties during their coverture. On September 27, 1990, Menilo died. What law governs the partition of the properties?

The provisions of Articles 147 and 148 of the Family Code shall govern the partition of properties evidently acquired during the period of their common-law relationship considering that Menilo died on September 27, 1990 and the Family Code took effect on August 3, 1988.

Concept of Contribution.

The contribution referred to by law need not be limited to

material things like earnings or property, but the same may refer to spiritual things like the caring of the family.

Case:

**Margaret Maxey, et al. vs.
The Court of Appeals, et al.
129 SCRA 187**

Facts:

Melbourne Maxey and Regina Morales lived as husband and wife without the benefit of marriage. They had 6 children. Between 1911 and 1912, Melbourne acquired properties. After the death of Regina, Melbourne sold the parcels of land to the spouses Macayra. In 1962, their children filed a suit to recover the said parcels of land contending that the parcels of land were sold without their consent and they discovered the sale only in 1961. They contended that the properties were common properties of their parents. The defendants interposed the defense of being buyers in good faith and for value. The trial court ruled in favor of the plaintiffs, but the Court of Appeals reversed the decision saying that the parcels of land belong exclusively to Melbourne Maxey; stating in its decision that it was unlikely for the petitioners' mother to have materially contributed in the acquisition of the properties since she had no property of her own or she was not gainfully engaged in any business or profession from which she could derive income unlike their father who held the positions of teacher, deputy governor, district supervisor, and superintendent of schools. On appeal, the Supreme Court,

Held:

We are constrained to adopt a contrary view. Considerations of justice dictate the retroactive application of Article 144 of the Civil Code to the case at bar which states that, "when a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the separate property acquired by either or both of them through their work or industry or their wages or salaries shall be governed by the rules on co-ownership."

Prior to the effectivity of the present Civil Code, on August 30, 1950, the formation of an informal partnership between a man and wife not legally married and their corresponding right to an equal share in properties acquired through their joint efforts and industry

during cohabitation were recognized through decisions of this Court. (Aznar, et al. vs. Garcia, 102 Phil. 1055; Flores vs. Rehabilitation Finance Corporation, 94 Phil. 451; Marata vs. Dionio, G.R. No. L-24449, December 31, 1925; Lesaca vs. Lesaca, 91 Phil. 135).

With the enactment of the new Civil Code, Article 144 (now Article 147, Family Code) codified the law established through judicial precedents, but with the modification that the property governed by the rules on co-ownership may be acquired by *either or both of them* through their work or industry. Even if it is only the man who works, the property acquired during the man and wife relationship belongs through a fifty-fifty sharing to the two of them.

This new Article of the Civil Code recognizes that it would be unjust and abnormal if a woman who is a wife in all aspects of the relationship, except for the requirement of a valid marriage, must abandon her home and children, neglect her traditional household duties, and go out to earn a living and engage in the business before the rules on co-ownership would apply. This article is particularly relevant in this case where the “common-law relationship” was legitimated through a valid marriage 34 years before the properties were sold.

The provisions of the Civil Code are premised on the traditional, existing, normal, and customary gender roles of Filipino men and women. No matter how large the income of a working wife compared to that of her husband, the major, if not full responsibility of running the household remains with the woman. She is the administrator of the household. The fact that the two involved in this case were not legally married at the time does not change the nature of their respective roles. It is the woman who traditionally holds the family purse even if she does not contribute to filling that purse with funds. As pointed out by Dean Irene Cortes of the University of the Philippines, “in the Filipino family, the wife holds the purse, husbands hand over their paycheck and get an allowance in return and the wife manages the affairs of the household. x x x And the famous statement attributed to Governor General Leonard Wood is repeated: In the Philippines, the best man is a woman.” (Cortes, “*Women’s Rights Under the New Constitution*,” WOMAN AND THE LAW, U.P. Law Center, p. 10).

The real contribution to the acquisition of property mentioned in *Yapinchay vs. Torres* (28 SCRA 489) must include not only the earnings of a woman from a profession, occupation or business but also her contribution to the family’s material and spiritual goods,

through caring for the children, administering the household, husbanding scarce resources, freeing her husband from household tasks, and otherwise performing the traditional duties of a housewife.

Should Article 144 of the Civil Code (now Art. 147 of the Family Code) be applied in this case? Our answer is “Yes,” because there is no showing that vested rights would be impaired or prejudiced through its application. A vested right is defined by this Court as property which has become fixed and established, and is no longer open to doubt or controversy; an immediately fixed right of present or future enjoyment as distinguished from an expectant or contingent right. (*Benguet Consolidated Mining Co. vs. Pineda*, 98 Phil. 711; *Balboa vs. Farrales*, 51 Phil. 498). This cannot be said of the “exclusive” right of Melbourne Maxey over the properties in question when the present Civil Code became effective, for standing against it was the concurrent right of Regina Morales or her heirs to a share thereof. The properties were sold in 1953 when the new Civil Code was already in full force and effect. Neither can this be said of the rights of the private respondents as vendees insofar as one-half of the questioned properties are concerned, as this was still open to controversy on account of the legitimate claim of Regina Morales to a share under the applicable law.

The disputed properties were owned in common by Melbourne Maxey and the estate of his late wife, Regina Morales, when they were sold. Technically speaking, the petitioners should return one-half of the P1,300.00 purchase price of the land while the private respondents should pay some form of rentals for their use of one-half of the properties.

Co-ownership exists if a man and a woman live together as husband and wife without marriage; exception.

Juaniza vs. Jose
89 SCRA 306

Facts:

Eugenio Jose was the registered owner and operator of the passenger jeepney involved in an accident of collision with a freight train of the PNR that took place on November 23, 1969 and which resulted in the death of seven (7) and physical injuries to five (5) of its passengers. At that time of the accident, Eugenio Jose was le-

gally married to Socorro Ramos but had been cohabiting with the defendant-appellant, Rosalia Arroyo, for sixteen years in a relationship akin to that of husband and wife.

Issue:

1. Whether or not Art. 144 (Now Article 147, Family Code) of the Civil Code is applicable in a case where one of the parties in a common-law relationship is incapacitated to marry.
2. Whether or not Rosalia who is not a registered owner of the jeepney can be held jointly and severally liable for damages with the registered owner of the same.

Held:

What is contemplated in Art.144 of the Civil Code (now Art. 147, Family Code) is that the man and woman living together must not in any way be incapacitated to contract marriage. Since Eugenio Jose is legally married to Socorro Ramos, there is an impediment for him to contract marriage to Rosalia Arroyo and; therefore, Arroyo cannot be a co-owner of the jeepney.

Rosalia Arroyo, who is not the registered owner of the jeepney, can neither be held liable for damages caused by its operation. It is settled in our jurisdiction that only the registered owner of a public service vehicle is responsible for damages that may arise from consequences incident to its operation, or may be caused to any of the passengers therein.

One question has been raised as to what law will govern the distribution of the common properties in case a marriage is declared void *ab initio* for any cause. The answer is that, it is governed by the law on co-ownership.

Case:

**Antonio A.S. Valdes vs. RTC, Quezon City, et al.
G.R. No. 122749, July 31, 1996
72 SCAD 967**

Facts:

Antonio Valdes and Consuelo Gomez got married on January 5, 1971. They begot five children. On June 22, 1992, Valdez filed an

action for declaration of nullity of their marriage on the ground of psychological incapacity — which was granted — where the court declared their marriage void on the ground of *mutual psychological* incapacity. It further directed the parties to start proceedings on the liquidation of their common properties as defined by Article 147 of the Family Code and to comply with the provisions of Articles 50, 51, and 52. A clarification was asked by Consuelo for she asserts that there are no provisions governing the procedure for the liquidation of common property in unions without marriage; hence, the trial court ruled that the provisions on co-ownership shall apply. It further declared that considering that the marriage has been declared void, pursuant to Article 147, the property regime shall be governed by the rules on co-ownership. It said that Articles 102 and 109 are inapplicable as they refer to the absolute community and the conjugal partnership of gains; hence, a petition was filed with the Supreme Court arguing that Arts. 50, 51 and 52 are controlling and that:

- I. Article 147 of the Family Code does not apply to cases where the parties are psychologically incapacitated;
- II. Articles 50, 51, and 52, in relation to Articles 102 and 129 of the Family Code, govern the disposition of the family dwelling in cases where a marriage is declared void *ab initio*, including a marriage declared void by reason of the psychological incapacity of the spouses;
- III. Assuming, *arguendo*, that Article 147 applies to marriages declared void *ab initio* on the ground of the psychological incapacity of a spouse, the same may be read consistently with Article 129.

Held:

The trial court correctly applied the law in that a *void marriage*, regardless of the cause thereof, the property relations of the parties during the period of cohabitation is governed by the provisions of Article 147 or Article 148, such as the case may be, of the Family Code. Article 147 is a remake of Article 144 of the Civil Code as interpreted and so applied in previous cases. (*Maxey vs. CA*, 129 SCRA 187; *Aznar, et al. vs. Garcia*, 102 Phil. 1055). If this peculiar kind of co-ownership applies when a man and a woman, suffering no legal impediment to marry each other, exclusively live together as husband and wife under a void marriage or without the benefit of marriage. The term “capacitated” in the provision (in the first para-

graph of the law) refers to the *legal capacity* of a party to contract marriage, *i.e.*, any male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38 of the Code.

Under this property regime, property acquired by both spouses through their *work* and *industry* shall be governed by the rules on *equal* co-ownership. Any property acquired during the union is *prima facie* presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall still be considered as having contributed thereto jointly if said party's "efforts consisted in the care and maintenance of the family household (Art. 147)." Unlike the conjugal partnership of gains, the fruits of the couple's separate property are not included in the co-ownership.

Article 147 of the Family Code, in substance and to the above extent, has clarified Article 144 of the Civil Code. In addition, the law now expressly provides that —

- (a) Neither party can dispose or encumber by acts *inter vivos* of his or her share in co-ownership property, without the consent of the other, during the period of cohabitation; and
- (b) In the case of a void marriage, any party in bad faith shall forfeit his or her share in the co-ownership in favor of their common children; in default thereof or waiver by any or all of the common children, each vacant share shall belong to the respective surviving descendants, or still in default thereof, to the innocent party. The forfeiture shall take place upon the termination of the cohabitation or declaration of the nullity of the marriage.

When the common-law spouses suffer from a legal impediment to marry or when they do not live exclusively with each other (as husband and wife), only the property acquired by both of them through their actual joint contribution of money, property, or industry shall be owned in common and in proportion to their respective contributions. Such contributions and corresponding shares, however, are prima facie presumed to be equal. The share of any party who is married to another shall accrue to the absolute community or conjugal partnership, as the case may be, if so existing under a valid marriage. If the party who has acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner already heretofore expressed. (Art. 148, Family Code).

Resolution of incidental matters.

In deciding to take further cognizance of the issue on the settlement of the parties' common property, the trial court acted neither imprudently nor precipitately; a court which has jurisdiction to declare the marriage a nullity must be deemed likewise clothed with authority to resolve incidental and consequential matters. Nor did it commit a reversible error in ruling the petitioner and private respondent own the "family home" and all their common property in *equal shares*, as well as in concluding that, in the liquidation and partition of the property owned in common by them, the provisions on *co-ownership* under the Civil Code, not Articles 50, 51, and 52, in relation to Articles 102 and 129 of the Family Code, should aptly prevail. The rules set up to govern the liquidation of either the absolute community or the conjugal partnership of gains, the property regimes recognized for valid and voidable marriages (in the latter case until the contract is annulled), are irrelevant to the liquidation of the co-ownership that exists between common-law spouses. The first paragraph of Article 50 of the Family Code, applying paragraphs (2), (3), (4), and (5) of Article 43, relates only, by its explicit terms, to *voidable* marriages and exceptionally, to *void* marriages under Article 40 of the Code, *i.e.*, the declaration of nullity of a subsequent marriage contracted by a spouse of a prior void marriage before the latter is judicially declared void. The latter is a special rule that somehow recognizes the philosophy and an old doctrine that void marriages are in-existent from the very beginning and no judicial decree is necessary to establish their nullity. In now requiring for *purposes of remarriage*, the declaration of nullity by final judgment of the previously contracted void marriage, the present law aims to do away with any continuing uncertainty on the status of the second marriage. It is not then illogical for the provisions of Article 43, in relation to Arts. 41 and 42, of the Family Code, on the effects of termination of a subsequent marriage contracted during the subsistence of a previous marriage, to be made applicable *pro hac vice*. In all other cases, it is not to be assumed that the law has also meant to have coincident property relations, on the one hand, between spouses in valid and voidable marriages (before annulment) and, on the other, between common-law spouses or spouses of void marriages, leaving to ordain, in the latter case, the ordinary rules on co-ownership subject to the provision of Article 147 and Article 148 of the Family Code. It must be stressed, nevertheless, even as it may merely state the obvious, that the provisions of the Family Code on the "family home," *i.e.*, the provisions found in Title V, Chapter 2, of the Family Code,

remain in force and effect regardless of the property relationship of the spouses.

Article 148, F.C. requires actual contribution by a spouse in acquisition of property before presumption of equal shares.

In *Agapay vs. CA, et al.*, G.R. No. 116668, July 28, 1997, 85 SCAD 145, a parcel of land was acquired by Miguel and Erlinda who got married while Miguel's marriage with Carlina was still subsisting. The question was what law governs the acquisition of such property. Can Erlinda be considered a co-owner since there is no showing of her contribution to the acquisition of the same since she was only 20 years old then.

Held:

No, the property cannot be considered property governed by the law on co-ownership since Erlinda failed to prove that she contributed money to the purchase price of the riceland. It should therefore belong to the conjugal partnership of Miguel and Carlina. Under Art. 148, Family Code, only the 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. Actual contribution is required by Art. 148, Family Code in contrast to Art. 147, Family Code which states that efforts in the care and maintenance of the family and household are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry. If actual contribution of the party is not proved, there will be no co-ownership and no presumption of equal shares.

It must be observed that the Supreme Court made reference to the phrase "respective contributions" suggesting that if one of the parties can show material contribution only to the extent of 20% of the value of the properties, then, such person is entitled to an equivalent of 20% of the property upon the termination of the relationship. The mere proof of the existence of a co-ownership in this case does not mean that the parties shall divide equally the property. It shall be divided in proportion to their respective contributions.

Application of Article 148, New Civil Code.

In *Tumlos vs. Sps. Mario Fernandez*, G.R. No. 137650, April 12, 2000, during the marriage of Mario and Lourdes Fernandez, Mario

was cohabitating with another woman. The relationship started under the Civil Code.

Issues:

1. Whether they are governed by the law on co-ownership? Why?
2. Whether the Family Code applicable?

Held:

1. No, there is no co-ownership of Mario with the other woman unless actual contribution is proved. It was further ruled that the Family Code is retroactive in nature.

Under Article 148, Family Code, only the properties acquired by both parties thru their actual joint contribution of money, property or industry shall be owned by them in common in proportion to their respective contribution. It must be stressed that actual contribution is required by Article 148, Family Code in contrast to Article 147, Family Code which states that the efforts in the care and maintenance of the family and household, are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry. If the actual contribution of the party is not proved, there will be no co-ownership and no presumption of equal shares. (citing *Agapay vs. CA, et al.*, 276 SCRA 340). In this case, there was no proof of actual contribution. The claim of co-ownership is anchored merely on the claim of cohabitation. That is not sufficient.

It was contended that Article 144, New Civil Code is applicable to them, not Article 148, Family Code.

2. It was said, No.

Article 144, New Civil Code applies only to a relationship between a man and a woman who are not incapacitated to marry each other; or to one in which the marriage of the parties is void from the beginning. It does not apply to a cohabitation that amounts to adultery or concubinage, for it would be absurd to create a co-ownership where there exists a prior conjugal partnership or absolute community between the man and his lawful wife. Based on the evidence, Mario was incapacitated to marry at the time of his cohabitation with the other woman.

The applicability of the Family Code inspite of the fact that the cohabitation existed under the Civil Code is based on the retroactive

provision of the Family Code itself, subject however to the condition that it does not prejudice vested or acquired rights. In this case, petitioner failed to show any vested right over the property in question.

It must be remembered that the law, whether the Civil Code or the Family Code does not allow the existence of co-ownership where the parties are guilty of adultery or concubinage because to do otherwise would be sanctioning immortality. The law was never meant to be so.

Title V
THE FAMILY

Chapter 1
The Family as an Institution

Article 149. 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. (216a, 218a)

The law has consolidated the provisions of Articles 216 and 218 of the Civil Code. It provides for solidarity of the family, that no less than the Constitution recognizes the importance of the family by providing that:

“The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government. (Sec. 12, Art. II, 1987 Const.)”

If we have to look further into the Constitution, there are more provisions seeking to protect the family, such as:

“Sec. 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

“Sec. 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.”

“Sec. 3. The State shall defend:

“(1) The right of spouses to form a family in accordance with their religious convictions and the demands of responsible parenthood;

“(2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development;

“(3) The right of the family to a family living wage and income; and

“(4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.”

“Sec. 4. The family has the duty to take care of its elderly members but the State may also do so through just programs of social security.” (Art. XV, 1987 Constitution).

Implementing the Family Code, it expressly provides that the family is the foundation of the nation and a basic social institution that public policy cherishes and protects. As such, no custom, practice or agreement destructive of the family shall be recognized or given effect. In fact, if there is an action for annulment of marriage or declaration of nullity of the same, the court will always tend to uphold the validity of the marriage. In fact, the law mandates the courts to take all measures to protect it not only from the collusion of the parties, but also from the presentation of fabricated evidence. (Arts. 48 and 60, Family Code). In fact, when legal separation is granted, the parties are at liberty to manifest in the same proceedings that they have already reconciled and that would effect the setting aside of the decree of legal separation. Other protections by the State would show that in legal separation, the same cannot be heard on the merits until after the lapse of the six (6) months cooling-off period as well as the five (5) years prescriptive period for the filing of such proceeding.

Article 150. Family relations include those:

- (1) Between husband and wife;**
- (2) Between parents and children;**
- (3) Among other ascendants and descendants; and**

(4) Among brothers and sisters, whether of the full or half-blood. (217a)

Article 151. 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 may be dismissed.

This rule shall not apply to cases which may not be the subject of compromise under the Civil Code. (222a)

Requirement of allegation of prior recourse to compromise between immediate members of family; reason; who are the members of the family.

In *April Martinez, et al. vs. Rodolfo Martinez*, G.R. No. 162084, June 28, 2005 (Callejo, J.), a complaint for ejectment was filed by the owner of a property against his brother and sister-in-law. There was no allegation of a prior recourse to compromise, hence, a motion to dismiss on the ground of failure to comply with a condition precedent was filed. The plaintiff contended that there was an allegation of prior recourse to barangay conciliation, hence there was substantial compliance with the requirement of an allegation of prior recourse to compromise. Is the contention correct? Explain.

The contention is correct, especially so that the sister-in-law is not an immediate member of the family.

The phrase “members of the family” must be construed in relation to Article 150 of the Family Code, to wit:

Art. 150. Family relations include those:

- (1) Between husband and wife;
- (2) Between parents and children;
- (3) Among other ascendants and descendants; and
- (4) Among brothers and sisters, whether of the full or half-blood.

Article 151 of the Family Code must be construed strictly, it being an exception to the general rule. Hence, a sister-in-law or brother-in-law is not included in the enumeration. (*Gayon vs. Gayon*, 36 SCRA 104 [1970]).

Reason for the rule that every effort must be made toward a compromise if it is between immediate members of the family.

It is difficult to imagine a sadder and more tragic spectacle than a litigation between members of the same family. It is necessary that every effort should be made toward a compromise before a litigation is allowed to breed hate and passion in the family and it is known that a lawsuit between close relatives generates deeper bitterness than between strangers. (*Magbalita vs. Gonong*, 76 SCRA 511 [1977]).

Even on the assumption that the suit did not include the sister-in-law but there was recourse to the barangay where conciliation proceedings were conducted, the case cannot still be dismissed. There is no need to allege that there was a prior recourse to compromise.

The allegation in the complaint, as well as the certification to file action by the barangay chairman, is sufficient compliance with Article 151 of the Family Code. It bears stressing that under Section 412(a) of Republic Act No. 7160, no complaint involving any matter within the authority of the Lupon shall be instituted or filed directly in court for adjudication unless there has been a confrontation between the parties and no settlement was reached. (Sec. 412, Local Government Code; *Santos vs. CA, et al.*, G.R. No. 134787, November 15, 2005).

Law does not apply to strangers.

The closest of blood relations constitute the family, such that the law limits those who are included in family relations. It does not include a brother-in-law or a sister-in-law.

If there is a suit between immediate members of the family, there must be an allegation that prior earnest efforts toward a settlement must have been resorted to but that the same have failed; or if it is shown that no such efforts were exerted, the same can be dismissed, not for lack of jurisdiction, but only for pre-maturity or lack of cause of action. The law, or principle, however, does not apply if the parties are strangers to the family. (*Magbaleta vs. Gonong*, Phil. 511; *Guerrero vs. RTC of Ilocos Norte, et al.*, 47 SCAD 229, G.R. No. 109068, January 10, 1994). The reason for the requirement is based on the fear that suits between immediate members of the family may plant more seeds of hatred than solving them. Such hatred may be handed from one generation to another. It may not laid solidarity to the family. Instead, it may break a family.

Case:

**Gaudencio Guerrero vs.
RTC, Branch XVI, Ilocos Norte, et al.
229 SCRA 274, January 10, 1994
47 SCAD 229**

Facts:

Gaudencio Guerrero and Pedro G. Hernando are brothers-in-law. The latter filed an *accion publiciana* against the former without alleging that earnest efforts were resorted to settle the dispute before the case was filed. Hernando overlooked such fact and did not file a motion to dismiss, but during the pre-trial, the judge noticed their relationship, so, he gave five (5) days for Guerrero to file a motion to dismiss. The judge dismissed the case on the ground of lack of jurisdiction because of the absence of an allegation of previous efforts towards reconciliation.

Issue:

Whether brothers-in-law are included in the provisions of Articles 149 and 151 of the Family Code.

Held:

No. As early as two decades ago, it has been held in *Gayon vs. Gayon*, 36 SCRA 104, that the enumeration of brothers and sisters as members of the same family, does not comprehend brothers or sisters-in-law; hence, there is no need to exert efforts towards a compromise before filing the present case.

Reason for the requirement of prior recourse to settlement.

When the law requires “no suit,” the law is negative and the requirement is mandatory, that the complaint or petition, which must be verified, shall allege that earnest efforts toward a compromise have been made but that the same have failed, so that, if it is shown that no efforts were in fact made, the case must be dismissed. The Code Commission, which drafted the precursor provision in the Civil Code, explained the reason for the requirement that earnest efforts at a compromise be first exerted before a complaint is given due course and said:

“This rule is introduced because it is difficult to imagine a sadder and more tragic spectacle than a liti-

gation between members of the same family. It is necessary that every effort should be made toward a compromise before a litigation is allowed to breed hate and passion in the family. It is known that a lawsuit between close relatives generates deeper bitterness than between strangers x x x. A litigation in a family is to be lamented far more than a lawsuit between strangers.”

Along the same line, the Supreme Court in *Mendoza vs. CA*, 19 SCRA 756, April 24, 1967, said:

“Since the law forbids a suit being initiated (filed) or maintained unless such efforts at a compromise appear, the showing that efforts were made is a condition precedent to the existence of a cause of action. It follows that the failure of the complainant to plead that the plaintiff previously tried in earnest to reach a settlement out of court renders it assailable for lack of a cause of action and it may be so attacked at any stage of the case even on appeal.”

Article 151 of the Family Code is complemented by Sec. 1, par. (j), Rule 16 of the Rules of Court which provides as a ground for a motion to dismiss that the suit is between members of the same family and no earnest efforts towards a compromise have been made.

To reiterate, the Constitution protects the sanctity of the family and endeavors to strengthen it as a basic autonomous social institution. (Art. II, Sec. 12, Constitution). This is also embodied in Art. 149 and given flesh in Art. 151 of the Family Code. (*Guerrero vs. RTC of Ilocos Norte*, Br. XVI, *supra*).

It has been said too, that an ideal society would be one where there are no litigations. To approach this perfect condition as nearly as possible is a paramount aim of every government. Hence, all systems of law have, for centuries, fostered amicable settlements of impending or actual lawsuits. (*Capistrano, Civil Code of the Phils.*, 1950 ed., p. 208).

Note, however, that the dismissal by the trial court on the ground of lack of jurisdiction in *Guerrero vs. RTC* was not proper because it should have been due to lack of a cause of action, or prematurity. The reason why it is improper is because, the failure to allege prior recourse to settlement is not a jurisdictional requirement, but merely a condition precedent. It is the law that confers jurisdiction.

Concept of the suit in Article 151.

The suit between immediate members of the family which requires an allegation of a prior recourse to compromise or settlement pertains to one which is adversarial or controversial in nature. Hence, in a collection of sum of money or a partition case filed by an immediate member of a family against another, it is a requirement that there must be an allegation of a prior recourse to compromise, otherwise, the case can be dismissed for prematurity or failure to comply with a condition precedent. (Rule 16, Section 1, Rules of Court). The reason for such rule is that such cases are controversial or adversarial. The law, however, does not encompass a petition for the settlement of estate because such case is not a controversial or adversarial in character. It is merely intended to determine the heirs, their shares in the estate and to ensure that the estate is properly administered to prevent its dissipation.

Case:

**Pilar S. Vda. De Manalo, et al. vs. CA, et al.,
G.R. No. 129242, January 16, 2001**

Facts:

Troadio Manalo died leaving several heirs and several real properties. After his death, eight (8) of his children filed a petition for the judicial settlement of his estate. Some of the heirs including his surviving spouse moved to dismiss the petition contending that there was failure to comply with a condition precedent due to the absence of an allegation of earnest efforts toward a compromise among members of the same family. The motion was denied, hence, they raised before the Supreme Court in a Petition for *Certiorari* the denial of the said motion. They claimed that the petition for judicial settlement was actually an ordinary civil action involving members of the same family because of the following averments:

“Par. 7. One of the surviving sons, ANTONIO MANALO, since the death of his father, TROADIO MANALO, had not made any settlement, judicial or extra — judicial of the properties of the deceased father, TROADIO MANALO.”

“Par. 8. x x x the said surviving son continued to manage and control the properties aforementioned,

without proper accounting, to his own benefit and advantage x x x.”

“Par. 12. That said ANTONIO MANALO is managing and controlling the estate of the deceased TROADIO MANALO to his own advantage and to the damage and prejudice of the herein petitioners and their co-heirs x x x.”

“Par. 14. For the protection of their rights and interests, petitioners were compelled to bring this suit and were forced to litigate and incur expenses and will continue to incur expenses of not less than, P250,000.00 and engaged the services of herein counsel committing to pay P200,000.00 as and for attorney’s fees plus honorarium of P2,500.00 per appearance in court x x x.”

On the basis of the said averments, they contended that the petition is actually an ordinary action which requires an allegation of earnest efforts to compromise.

Held:

Concededly, the petition in SP. PROC. No. 92-63626 contains averments which may be typical of an ordinary civil action. Petitioners, as Oppositors therein, took advantage of the said defect in the petition and filed their so-called Opposition thereto which is actually an Answer containing admissions and denials, special and affirmative defenses and compulsory counterclaims for actual, moral and exemplary damages, plus attorney’s fees and costs in an apparent effort to make out a case of an ordinary civil action and ultimately seek its dismissal under Rule 16, Section 1(j) of the Rules of Court *vis-á-vis*, Article 222 of the Civil Code. (Now Art. 151, Family Code).

Petitioners may not be allowed to defeat the purpose of the essentially valid petition for the settlement of the estate of the late Troadio Manalo by raising matters that are irrelevant and immaterial to the said petition. It must be emphasized that the trial court, sitting, as a probate court, has limited and special jurisdiction and cannot hear and dispose of collateral matters and issues which may be properly threshed out only in an ordinary civil action. In addition, the rule has always been to the effect that the jurisdiction of a court, as well as the concomitant nature of an action, is determined by the averments in the complaint and not by the defenses contained in the answer. If it were otherwise, it would not be too difficult to have a

case either thrown out of court or its proceedings unduly delayed by simple stratagem. So it should be in the petition for settlement of estate.

Petitioners argue that even if the petition in SP. PROC No. 92-63626 were to be considered as a special proceeding for the settlement of estate of a deceased person, Rule 16, Section 1(j) of the Rules of Court *vis-á-vis* Article 222 of the Civil Code of the Philippines (Now Art. 151 of the Family Code) would nevertheless apply as a ground for the dismissal of the same by virtue of Rule 1, Section 2 of the Rules of Court which provides that the “rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding.” Petitioners contended that the term “proceeding” is so broad that it must necessarily include special proceedings.

The argument is misplaced. Petitioners may not validly take refuge under the provisions of Rule 1, Section 2, of the Rules of Court to justify the invocation of Article 222 of the Civil Code of the Philippines (Now Art. 151 of the Family Code) for the dismissal of the petition for settlement of the estate of the deceased Troadio Manalo inasmuch as the latter provision is clear enough, to wit:

Art. 222. No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitation in Article 2035 (Now Art. 151, Family Code).

The above-quoted provision of the law is applicable only to ordinary civil actions. This is clear from the term “suit” that it refers to an action by one person or persons against another or others in a court of justice in which the plaintiff pursues the remedy which the law affords him for the redress of an injury or the enforcement of a right, whether at law or in equity. A civil action is an action filed in a court of justice, whereby a party sues another for the enforcement of a right, or the prevention or redress of a wrong. Besides, an excerpt from the Report of the Code Commission unmistakably reveals the intention of the Code Commission to make that legal provision applicable only to civil actions which are essentially adversarial and involve members of the same family, thus:

“It is difficult to imagine a sadder and more tragic spectacle than a litigation between members of the same family. It is necessary that every effort should be made

toward a compromise before a litigation is allowed to breed hate and passion in the family. It is known that lawsuit between close relatives generates deeper bitterness than strangers.”

It must be emphasized that the Oppositors are not being sued in SP. PROC. No. 92-63626 for any cause of action as in fact no defendant was impleaded therein. The Petition for Issuance of Letters of Administration, Settlement and Distribution of Estate in SP. PROC. No. 92-63626 is a special proceeding and, as such, it is a remedy whereby the petitioners therein seek to establish a status, a right, or a particular fact. The petitioners therein merely seek to establish the fact of death of their father and subsequently to be duly recognized as among the heirs of the said deceased so that they can validly exercise their right to participate in the settlement and liquidation of the estate of the decedent consistent with the limited and special jurisdiction of the probate court.

Father of illegitimate children may be granted visitation rights.

Case:

**Silva vs. CA, et al.
276 SCRA 604**

Facts:

Carlitos Silva and Suzanne Gonzales lived together as husband and wife without the benefit of marriage. Two children were born. There was a rift in the relationship when she allegedly decided to resume her acting career. They finally parted ways. Silva filed an action for custodial rights of his children but she opposed contending that he was always engaged in gambling and womanizing. The RTC rendered a judgment allowing visitatorial rights in favor of Silva but could not take out the children without the written consent of the mother. She appealed but in the meantime she got married to a Dutch national and, then, they migrated to Holland with the children. The CA ruled that the visitatorial rights of the father be put to stop, hence, Silva appealed to the Supreme Court where the question whether a parent has the right to have visitation rights over his children who are illegitimate was raised.

Held:

Yes. It is based on the provision of the law that recognizes the inherent and natural rights of parents over their children. Family relations include those between parents and children. (Article 150, Family Code). Article 219 of the Family Code in relation to Article 220 of the Family Code states that it is the natural right and duty of parents and those exercising parental authority to, among other things, keep children in their company and to give them love and affection, advice and counsel, companionship and understanding. The Constitution itself speaks in terms of the “natural and primary rights” of parents in the rearing of the youth. There is nothing conclusive to indicate that these provisions are meant to solely address themselves to legitimate relationships. Indeed, although in varying degrees, the laws on support and successional rights, by way of examples, clearly go beyond the legitimate members of the family and so explicitly encompass illegitimate relationships as well. Then, too, and most importantly, in the declaration of nullity of marriages, a situation that presupposes a void or inexistent marriage, Article 149 of the Family Code provides for appropriate visitation rights to parents who are not given custody of their children.

In *Medina vs. Makabali*, 27 SCRA 503, it was stressed that this is, as it should be, for the continued evolution of legal institutions, the *patria potestas* has been transformed from the *jus vitae ac necis* (right of life and death) of the Roman law, under which offspring was virtually a chattel of his parents, into a radically different institution, due to the influence of Christian faith and doctrines. The obligational aspect is now supreme. There is no power but a task; no complex rights of parents but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor.

Chapter 2

The Family Home

Article 152. The family home, constituted jointly by the husband and the wife or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated. (223a)

Article 153. The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries

actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law. (223a)

The family home is the dwelling where the family resides and the land on which it is situated. Once it is occupied by the family as a residence, it is deemed constituted, thereby abandoning the earlier principle of judicial constitution of a family home. From the moment of its constitution, it is exempt from execution, forced sale or attachment as a general rule. But a deeper look into the law is needed because of the use of the word “resides.” If there is a house and lot belonging to A and B who are married with children, but they do not reside therein, as it is principally used as a *bodega* and a store, it is not a family home within the legal contemplation as it is not used as a residence and, hence, not entitled to the exemptions granted to a family home. It can therefore, as a rule, be attached or levied upon to answer for an obligation of the owner. Even if A and B would sleep there for a few hours during the day as it is there where they have their business, still, it is not a family home since its principal use is determinative of its classification as a family home for it to be entitled to protection.

A family home may be constituted jointly by the husband and wife, or by an unmarried head of a family. In fact, in *Antonio A.S. Valdes vs. RTC, Quezon City, et al.*, G.R. No. 122749, July 31, 1996, 72 SCAD 967, it was said that the provisions found in Title V Chapter 2 of the Family Code remain in force and effect regardless of the property regime of the spouses. So, even if they are living under the concepts under Arts. 147 and 148 of the Family Code, they still have a family home.

When House and Lot cannot be considered Family Home; One occupied by overseer.

The family home must be the place where the owner or family resides for it to be exempt from attachment, levy or forced sale. If a maid is paid to reside therein while the family is abroad, it is not exempt.

In *Manacop vs. CA, et al.*, G.R. No. 97898, August 11, 1977, A and B owned a residential lot with a house built thereon where their family resided. They were engaged in the construction business and had indebtedness in the amount of P3.3M and when they failed to

pay their company, and they were sued on March 17, 1986. They entered into a compromise but they failed to pay according to the judgment approving the compromise. In the meantime, they have already transferred to the USA and just left a caretaker in their home. Since the judgment against them was partially satisfied through execution on their chattels, the question that arose was whether the writ of execution can be enforced against their house and lot.

The Supreme Court said, Yes, because the liability was incurred and the writ of execution was issued prior to the effectivity of the Family Code on August 3, 1988. This is especially so that there was no showing that the subject property was constituted as a family home in accordance with the Civil Code, hence, it is not protected by the Family Code.

Besides, the law provides that occupancy of the family home either by the owner or by any of the beneficiaries must be actual. Such beneficiaries are the husband and wife, or an unmarried person who is head of the family, their parents, ascendants, descendants, brothers and sisters, legitimate or illegitimate, living in the family home. It may also include the in-laws. But the law definitely excludes maids and overseers. Hence, the occupancy of the family home by an overseer is insufficient compliance with the law.

It would have been different if the owners of the family home left their parents in the same as they can be considered other ascendants as among the beneficiaries of the family home.

When the family home is exempt from execution, etc.

As a rule, the family home is exempt from attachment, levy or forced sale. The reason for the rule is to avoid a situation where a family shall be homeless, such that it would become a lepper or burden to society. The rule is not, however absolute, as when an obligation or liability was incurred by the owner prior to the constitution of the family home.

In a case, a complaint was filed against Marrietta on June 17, 1986 seeking redress for damages suffered due to the acts and omissions committed by her as early as 1977 when she assumed management and supervision of their deceased mother's rice land. Judgment was rendered against her and a house and lot was levied upon. It was contended by the children that it cannot be levied upon since it was a family home which their mother and father constituted from the time they occupied it as family residence in 1972 and that

under Article 153 of the Family Code, there is no longer a need to constitute it as a family home whether judicially or extra-judicially, because it became such by operation of law. They further asserted that the judgment against Marrietta was rendered in 1989 long after the constitution of the family home. The Supreme Court disagreed with the contention.

“Under Article 155 of the Family Code, the family home shall be exempt from execution, forced sale or attachment except for, among other things, debts incurred prior to the constitution of the family home. In the case at bar, the house and lot of respondents was not constituted as a family home, whether judicially or extra-judicially, at the time Marrietta incurred her debts. Under prevailing jurisprudence, it is deemed constituted as such only upon the effectivity of the Family Code on 03 August 1988, thus, the debts incurred before the constitution of the family home should be answered by it. As stated in the case of *Modequillo vs. Brevia*, G.R. No. 86355, May 31, 1990, 185 SCRA 766:

“ . . . Under Article 162 of the Family Code, it is provided that “the provisions of this Chapter shall also govern existing family residences insofar as said provisions are applicable.” It does not mean that Articles 152 and 153 of said Code have a retroactive effect such that all existing family residences are deemed to have been constituted as family homes at the time of their occupation prior to the effectivity of the Family Code and are exempt from execution for the payment of obligations incurred before the effectivity of the Family Code. Article 162 simply means that all existing family residences at the time of the effectivity of the Family Code, are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code. Article 162 does not state that the provisions of Chapter 2, Title V have a retroactive effect.” (Gomez, et al. vs. Sta. Ines, et al., G.R. No. 132537, October 14, 2005).

The language of the law clearly means that if the liability was incurred prior to the constitution of the family home, the same should be answered even by the family home even if it was constituted by operation of law upon the effectivity of the Family Code. The effect of its constitution by operation of law may be retroactive only if benefits would accrue to it, but if there were obligations contracted by the owner or beneficiary before it was constituted, it is not

retroactive such that it would wash out such obligations. The law was never intended to render unfairness. For, to say otherwise, would be to allow the debtor to escape scot-free from liability from obligations contracted prior to the constitution of the family home. Its retroactive effect therefore, is subject to the condition that there should be no impairment of vested rights.

Article 154. The beneficiaries of a family home are:

- (1) The husband and wife, or an unmarried person who is the head of a family; and**
- (2) 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. (226a)**

The law merely enumerates the beneficiaries of the family home.

Article 155. The family home shall be exempt from execution, forced sale or attachment except:

- (1) For non-payment of taxes;**
- (2) For debts incurred prior to the constitution of the family home;**
- (3) For debts secured by mortgages on the premises before or after such constitution; and**
- (4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building. (243a)**

As can be gleaned from Article 153, the moment the family home is constituted, it is exempted from execution, forced sale or attachment. These are the protections given by law to the family home, which really needs and is deserves protection as the home is the seat and symbol of family affections and it should not be liable to be seized for debts except in certain special cases, as enumerated in Article 155.

If there were debts or liabilities incurred prior to the constitution of the family home, then, the latter can be attached or levied upon to answer for the same.

Case:**Modequillo vs. Breva**
G.R. No. 86355, May 31, 1990**Facts:**

Judgment was rendered by the Court of Appeals ordering defendant to pay a sum of money to plaintiff. The judgment having become final and executory, a writ of execution was issued by the Regional Trial Court to satisfy the judgment on the goods and chattels of defendants. The sheriff levied on a parcel of residential land. A motion to quash the levy on execution was filed by the defendant, alleging therein that the residential land is where the family home is built since 1969 which is, prior to the commencement of the case, is exempt from execution, forced sale or attachment under Articles 152 and 153 of the Family Code. The trial court denied the motion to quash.

Held:

The residential house and lot of defendant was not constituted as a family home, whether judicially or extra-judicially under the Civil Code. It became a family home by operation of law under Article 153 of the Family Code. It is deemed constituted as a family home upon the effectivity of the Family Code on August 3, 1988.

Defendant's contention that it should be considered as a family home from the time it was occupied by him and his family in 1969 is not well-taken. Under Article 162 of the Family Code, "The provisions of this Chapter shall also govern existing family residences insofar as said provisions are applicable." It does not mean that Articles 152 and 153 of said Code have a retroactive effect such that all existing family residences are deemed to have been constituted as family homes at the time of their occupation prior to the effectivity of the Family Code and are exempt from execution for the payment of obligations incurred before the effectivity of the Family Code.

Article 162 simply means that all existing family residences at the time of the effectivity of the Family Code are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code. Article 162 does not state that the provisions of Chapter 2, Title V have a retroactive effect.

Defendant's family home is not exempt from the execution of the money judgment. The debt or the liability, which was the basis

of the judgment that arose, was incurred at the time of the vehicular accident on March 16, 1976 and the money judgment, arising therefrom rendered by the appellate court on 29 January 1988. Both preceded the effectivity of the Family Code on 3 August 1988. This case does not fall under the exemptions from execution provided in the Family Code.

Under the Family Code, a family home is deemed constituted on a house and lot from the time it is occupied as a family residence. There is no need to constitute the same judicially as was required in the Civil Code. If the family actually resides in the premises, it is, therefore, a family home as contemplated by law. Thus, the creditors should take the necessary precautions to protect their interest before extending credit to the spouses or to the head of the family who owns the home.

Article 155 of the Family Code also provides, "The family home shall be exempt from execution, forced sale or attachment except:

- (1) For non-payment of taxes;
- (2) For debts incurred prior to the constitution of the family home;
- (3) For debts secured by mortgages on the premises before or after such constitution; and
- (4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building. (243a)"

The exemption provided is effective from the time of the constitution of the family home as such and lasts as long as any of its beneficiaries actually reside therein. (*Manacop vs. CA*, G.R. No. 104875, November 13, 1992).

If the owner of the family home secured a debt using it as a security for the payment of his obligation, and if he does not pay them, the creditors can sue him and attach the family home, or if judgment has already been rendered and it has already become final and executory, it can be levied upon and sold to answer for such debt. The creditor can also foreclose the mortgage if he wants to. These things can be done as they are allowed by law by way of exception to the rule against attachment, etc.

If the owner of the family home constructed the house out of materials supplied by friends; labor was not paid; the architects, etc. were not paid, they can sue the owner for payment and can even attach the family home or levy upon it, if judgment has already been rendered. These acts are not prohibited by law. The reason is obvious as no one shall enrich himself at the expense of another.

It must be said that the main purpose of the law on the constitution of the family home is to place it beyond the reach of ordinary creditors and thus encourage the building of the family home which is the seat and symbol of family affections. (Capistrano, *Civil Code of the Phils.*, 1950 ed., p. 209).

Article 156. 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. (227a, 228a)

The law simply says that the family home is a part of the properties of the absolute community or the conjugal partnership. It can even be a part of the exclusive properties of the husband and wife.

Illustration:

A and B are married with five children. They constructed a house on a lot which they bought after their marriage. The family home is a part of their absolute community or conjugal partnership.

If the lot belongs exclusively to A, he may even construct a house on it from his exclusive money, and that is his exclusive property; yet, it is still a family home.

Article 157. The actual value of the family home shall not exceed, at the time of its constitution, the amount of three hundred thousand pesos in urban areas, and two hundred thousand pesos in rural areas, or such amounts as may hereafter be fixed by law.

In any event, if the value of the currency changes after the adoption of this Code, the value most favorable for the constitution of a family home shall be the basis of evaluation.

For purposes of this Article, urban areas are deemed to include chartered cities and municipalities whose annual income at least equals that legally required for chartered cities. All others are deemed to be rural areas. (231a)

Article 158. 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. (235a)

The law merely states the value of the family home depending upon its location.

The family home can be the object of a contract, like sale, assignment or donation. It can be encumbered as it can be used to secure the payment of an obligation. It must, however, be with the written consent of the person constituting it, or his spouse, and a majority of the beneficiaries of legal age. If there is a conflict, the court shall decide for them.

Article 159. 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 ten years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This rule shall apply regardless of whoever owns the property or constituted the family home. (238a)

The law extends the lifetime of a family home even beyond the death of the spouses or of the unmarried head of the family and that is ten years after their death or for as long as there is a minor beneficiary. The heirs cannot partition it except if there is a compelling reason that may justify it.

Article 160. When a creditor whose claim is not among those mentioned in Article 155 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 in Article 157, 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 in Article 157 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 mentioned in Article 157, and then to the liabilities under the judgment and the costs. The excess, if any, shall be delivered to the judgment debtor. (247a, 248a)

The law contemplates a situation where a person has a claim against the owners of the family home but it does not fall under any of the special cases where the family home can be attached, levied upon on execution or be the subject of a forced sale. But if he obtains a judgment and he has evidence that the value of the family home of the debtor is more than P300,000.00 or P200,000.00, he can file a motion in court for leave that the family home of the debtor be sold. At the execution sale, no bid below the amounts mentioned shall be allowed and the proceeds shall first be applied to the value of the family home and then the debt and the costs. The excess shall be delivered to the owner.

Illustration:

A filed a suit against B and C, the owners of a family home. Judgment was rendered for P1,000,000.00. Knowing that the family home is worth more than P300,000.00, he moved that the same be sold on execution which was granted. It was sold for P1,500,000.00. The proceeds shall be distributed as follows:

- (1) P300,000.00, which is the value of the family home, under the law, to be delivered first to B and C;
- (2) P1,000,000.00 to be delivered to A;
- (3) P200,000.00, which is the excess, to be delivered to B and C.

Article 161. For purposes of availing of the benefits of a family home as provided for in this Chapter, a person may constitute, or be the beneficiary of, only one family home. (n)

The law merely states that a person can only have one family home. The rest of his houses and lots are not entitled to the privileges under Article 153.

Article 162. The provisions in this Chapter shall also govern existing family residences insofar as said provisions are applicable. (n)

If family homes were not constituted as such in accordance with the Civil Code and the Rules of Court, all existing family residences upon the effectivity of the Family Code are constituted as such. For a clear discussion on this matter, the reader is asked to refer to the case of *Modequillo vs. Brevia*, discussed in Article 155.

The law does not make the Family Code retroactive in the sense that upon the effectivity of the law, all existing family residences shall be constituted as family home with the exemptions provided for by the law. While such exemptions are granted, the same shall not, however, prejudice vested rights. The exemption therefore shall commence from the effectivity of the law, otherwise, it shall operate to impair vested rights. The law was not meant to be retroactive to the extent of making all family residences that were not constituted as family homes in accordance with law, family homes from the time they were occupied years back. The law merely means that they are constituted as such upon the effectivity of the Family Code.

Title VI

PATERNITY AND FILIATION

Paternity and Filiation is the relationship between the parent and the child. It is created by nature, or by imitation of nature in case of adoption. It is either legitimate or illegitimate. (Capistrano, *Civil Code of the Phils.*, 1950 ed., p. 221). Paternity is the civil status of a father (maternity for the mother) with regard to the child, while filiation is the civil status of a child with regard to his parents. (Vitug, *Family Code Annotated*, First Ed., p. 109).

Chapter 1

Legitimate Children

Article 163. The filiation of children may be by nature or by adoption. Natural filiation may be legitimate or illegitimate. (n)

Article 164. Children conceived or born during the marriage of the parents are legitimate.

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 both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child. (255a, 258a)

Filiation is classified by law into two, namely, by nature or by adoption. Natural filiation may be legitimate as when a child is conceived or born of parents who are lawfully married. It must be recalled, however, that marriages in violation of Articles 52 and 36 of the Family Code, the law provides that there are legitimate children even if they are void from the very beginning, provided they are conceived or born prior to the declaration of their absolute nullity. Filiation by adoption is created by fiction of law, but it is limited to

those who, by legal and judicial processes, have been so decreed as adopted by the courts. It cannot comprehend a child who has been taken by another after birth without judicial process. This is where the extra-judicial adoption is not recognized by law; the child has no right as a legally-adopted child.

Even void marriages can produce legitimate children. Let us look into Article 54 of the Family Code which says that, children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory, shall be considered legitimate. Children conceived or born of the subsequent marriage under Article 53 shall likewise be legitimate. Article 36 refers to a marriage where one is suffering from psychological incapacity. It is void *ab initio*, but if a child is conceived or born prior to final and executory nature of the judgment declaring it void is legitimate. So if a judgment by the RTC declared the marriage of A and B as void on the ground of psychological incapacity, but it is still pending on appeal before the Court of Appeals or the Supreme Court, or during such time of appeal, a child is conceived or born, the child is legitimate because the judgment is not final and executory. The same rule applies where there is a violation of Articles 52 and 53 due to the fact that the spouses failed to partition their properties, deliver the presumptive legitimes of their compulsory heirs, and failed to record the decree of annulment or declaration of nullity of the marriage as well as the document delivering the presumptive legitimes of the compulsory heirs.

X and Y are married. Any child conceived or born during the marriage is legitimate.

Illustration:

(a) X and Y are married. One hundred fifty days after the marriage, X died. Before the lapse of 300 days, Y gave birth to Z.

The child here is legitimate because the child was conceived during the marriage even if he was born after the death of his father.

Status of children born out of artificial insemination.

The rule on artificial insemination is rather new in our legal system. According to the Code Commission, this was inserted in the

Family Code because of findings that artificial insemination has always been practiced.

The sperm in artificial insemination may either belong to the husband or to a donor. The law requires the authority or ratification of both spouses in a written instrument and that the same be signed by the parties before the birth of the child. An additional requirement is that, the instrument must be recorded in the Civil Registry together with the birth certificate of the child.

When the law speaks of “authorized,” it means that the authority must be given before artificial insemination is conducted.

Does it mean that the child would not be legitimate if prior authority is not given?

No, because the law says that it may be ratified. When the law speaks of “ratified” it means that an act without prior authority has already been done. It becomes valid or it is cleansed of any defect when ratified. In fact, the effect of ratification retroacts to the time of the performance of the act. (See Art. 1407, New Civil Code). However, if there was no authority and ratification at all, it is believed that the child is illegitimate.

No need to reveal identity of donor of sperm.

The Code Commission did not require that the donor of the sperm be revealed. The purpose is to prevent any complication later, where there may be suits for recognition or support.

The ratification must be made before the birth of the child, otherwise, the child is illegitimate. The purpose of the law is to prevent the introduction into the family of a child not belonging to the father, where the latter would have to support the said child. Worse, the said child may inherit. The justification for this rule can be gleaned from the case of *U.S. vs. Mata*, 18 Phil. 498, where the Supreme Court said that the “Gist of the crime of adultery under the Spanish law, as under the common law in force in England and the United States in the absence of statutory enactments, is the danger of introducing spurious heirs into the family, whereby the rights of the real heirs may be impaired and a man may be charged with the maintenance of a family not his own.”

Contractual conception.

A question of first impression may be asked. A woman is married but everytime she becomes pregnant, she has a miscarriage. To protect the fertilized ovum, the spouses entered into a contract with another woman for the latter to carry the ovum with the agreement that when the child is born, the latter shall be given to the natural mother. Is there any legal basis for the agreement?

Of course, there is, especially so that the intention of the parties is to protect the life of the unborn. There are even constitutional bases for the same, such as:

- (1) *Sec. 12, Article II. — The State recognizes the sanctity of the family and shall protect and strengthen the family as a basic autonomous social intention. It shall protect the life of the mother and the life of the unborn from conception. x x x.*
- (2) *Sec. 3(1), Article XV. — The State shall defend:*
1. *The right of the spouses to found a family in accordance with their religious conviction and demands of responsible parenthood.*

The agreement between the parties is valid, such that, if the one who gave birth to the child refuses to comply with the contract, the natural parents can file a petition for *habeas corpus* because there is unlawful restraint of liberty of the child to live with the natural parents. Or the natural parents can file a complaint for specific performance with damages.

Is there any distinction between artificial insemination and contractual conception?

There is. In Artificial insemination, there is no fertilized ovum yet. In contractual conception, there is a fertilized ovum such that, the biological mother is entitled to have custody of the child. Or in plain and simple language, the child born out of artificial insemination belongs to the biological mother even if the sperm may have come from a person, not the spouse.

Article 165. Children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this Code. (n)

If a child is born of an incestuous marriage, the child is illegitimate because the marriage is void.

If a child is likewise born of a marriage in violation of Article 38 or against public policy, the child is illegitimate, because the marriage is void.

Or even if the child is born of two persons who have the capacity to marry each other, if they are still unmarried, he is illegitimate, because he was born outside of a valid marriage.

While in previous discussions, we have said that there are void marriages that can produce legitimate children, like those under Articles 52 and 36, prior to the declaration of their nullity; yet, all other marriages that are void — under Articles 35, 37 and 38 — cannot produce legitimate children prior to the declaration of their absolute nullity. There are only two marriages that are void *ab initio* that produce legitimate children prior to their declaration of nullity. The reason is that, there is a presumption of legitimacy of a child born within wedlock, that even if the marriage is subsequently declared void, for as long as the child is conceived or born prior to the declaration of nullity of the marriage, the child is presumed to be legitimate. The marriage in Article 37 and in violation of Article 53 are legitimate because the children should not be blamed for the misfortunes or misgivings of their parents.

Article 166. Legitimacy of a child may be impugned only on the following grounds:

(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:

(a) The *physical incapacity* of the husband to have sexual intercourse with his wife (impotency);

(b) The fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or

(c) 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 second paragraph of Article 164; or

(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. (255a)

Father can impugn legitimacy of child.

The law allows the father to question or impugn the legitimacy of a child under certain circumstances. It also allows the children of the father to do so under certain circumstances. It cannot be questioned by the mother, for the law is clear that the child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress. It cannot be anybody or relations of the father. It cannot also be done by the child because he cannot choose his filiation. The reason why the husband can impugn the legitimacy of the child is the obvious unfairness in a situation where the child is not his, yet, he is going to maintain the child and the child will succeed from him. The law abhors such a situation.

The period of 120 days has been resorted to by law because medical findings show that the period of conception of a woman is during the first 120 days of the 300 days upon the fertilization of the egg cells by the sperm cells.

Physical impossibility of sexual act.

X and Y are married. X is working in the United States while Y is working in the Philippines. In this case, there is a physical impossibility of access by the man over the woman. So that if a child is born, there is a doubt as to the paternity of the child. There was impossibility of sexual intercourse between the husband and wife.

Another situation, where there is an impossibility of sexual intercourse, is when the man or the woman is a prisoner, unless it can be shown that there was the right to visit each other. In that case, there would be access to one another.

Effect of impotency.

When the law speaks of physical incapacity to have sexual intercourse, the law means that the husband or wife is impotent, not just sterile.

In *Andal vs. Macaraig*, 89 Phil. 165, it was held that if the husband is suffering from tuberculosis and the wife committed adultery during the period of conception, it was not enough to impugn the child's legitimacy. (See also *De Aparicio vs. Paraguya*, L-29771, May 29, 1987). For, a person who is afflicted with tuberculosis has been held not to have serious sickness, so serious that it would absolutely prevent sexual intercourse.

But a person who has syphilis or AIDS may fall under such situation where there may be impossibility of sexual intercourse or that it is absolutely prevented.

Consent to artificial insemination.

The law requires that the consent to the artificial insemination be voluntary. If it is tainted with fraud, mistake, violence, intimidation or undue influence, the same may constitute as a ground to impugn the legitimacy of the child.

Physical resemblance.

A father can prove that for biological or other scientific reasons, the child is not his. The mere fact that the father and the child do not have a physical resemblance is not enough evidence to show the illegitimacy of the child. There are many families with several children where the children do not resemble the parents at all. (See *Chun Chong vs. Collector*, 38 Phil. 815; *Chun Yeng vs. Coll.*, 28 Phil. 95). Racial dissimilarity coupled with the woman's adultery have been held as sufficient evidence to show illegitimacy. (*Lee vs. Collector*, 58 Phil. 147). In *Jao vs. CA*, G.R. No. L-49162, July 28, 1987, it has been ruled that blood-grouping tests may be conclusive as to non-paternity but inconclusive as to paternity. In *Tijing vs. CA*, 354 SCRA 19, it was held that resemblance between parent and child is, however, competent and material evidence to establish parentage when accompanied by strong evidence, direct or circumstantial, to prove the parentage of the child.

Recall, however, that if there was artificial insemination, it may result in physical differences between the father and the child. The father cannot impugn the legitimacy of the child on this score. That is, if his consent was not vitiated by fraud, intimidation, etc.

When Articles 164, 166, 170, 171, Family Code are applicable.

It was alleged in *Benitez-Badua vs. CA, et al.*, 47 SCAD 416, 229 SCRA 468 (January 24, 1994), that the spouses (now deceased)

begot no child, hence, the nephews and sister of Vicente Benitez as the only relatives, filed a petition for letters of administration. Petitioner opposed on the ground that she is the only legitimate child of spouses Vicente Benitez and Isabel Chipongian. Documentary evidences were presented. The RTC decided in favor of the petitioner and dismissed the petition for letters of administration. The CA reversed, applying Articles 166 and 170 of the Family Code. The record further shows that after Isabel's death, Vicente and Dr. Nilo Chipongian executed a Deed of Extra-Judicial Settlement of Estate of Isabel, stating that they are the sole heirs and that she died without descendants or ascendants. The Supreme Court, in affirming the CA's decision, said that the petitioner's insistence on the applicability of Articles 164, 166, 170, and 171 of the Family Code cannot be sustained.

It must be noted that in the execution of the Deed of Extra-Judicial Settlement of Estate of Isabel, Vicente Benitez effectively repudiated the Certificate of Live Birth of the petitioner.

The Supreme Court in this case said that a careful reading of Articles 164, 166, 170, and 171 will show that they do not contemplate a situation where a child is alleged not to be the child of nature or biological child of a certain couple. Rather, these articles govern a situation where a husband (or his heirs) desire as his own a child of his wife; thus, under Article 166, it is the husband who can impugn the legitimacy of a child by proving:

- (1) That it was physically impossible for him to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child;
- (2) That for biological or other scientific reasons, the child could not have been his child;
- (3) That in case of children conceived through artificial insemination, the written authorization or ratification by either parent was obtained through mistake, fraud, violence, intimidation or undue influence.

Articles 170 and 171 reinforce this reading as they speak when the husband or any of his heirs should file the action impugning the legitimacy of said child. In this case, it is not one where the heirs of the late Vicente are contending that petitioner is not his child by Isabel. Rather, their clear submission is that petitioner was not born to Vicente and Isabel. The Supreme Court, in the earlier case of *Cabatbat-Lim vs. IAC*, 166 SCRA 451, said:

“Petitioners’ recourse to Article 263 of the New Civil Code (now Art. 170 of the Family Code) is not well-taken. The legal provisions refer to an action to impugn legitimacy. It is inapplicable to this case because this is not an action to impugn the legitimacy of a child but an action of private respondents to claim their inheritance as legal heirs of their childless aunt. They do not claim that petitioner Violeta Cabatbat-Lim is an illegitimate child of the deceased, but that she is not the decedent’s child at all. Being neither legally adopted child nor an acknowledged natural child, nor a child by legal fiction of Esperanza Cabatbat, Violeta is not a legal heir of the deceased.”

Presumption of legitimacy.

Case:

Andal and Dueñas vs. Macaraig 89 Phil. 165

Facts:

Mariano Andal is the surviving son of Emiliano Andal and Maria Dueñas. Emiliano Andal was the owner of a parcel of land having acquired it from his mother Eduvigis Macaraig by virtue of a donation *propter nuptias* executed by the latter in favor of the former. Emiliano Andal died and Macaraig, taking advantage of the abnormal situation, entered the land in question. Mariano, a minor, assisted by his mother Maria Dueñas, as guardian *ad litem*, brought an action in the CFI for the recovery of the ownership and possession of the parcel of land. It appears that Emiliano became sick of tuberculosis in January 1941. Sometime thereafter, his brother Felix went to live in his house to help him work at his farm. His sickness became worse that on or about September 10, 1942, he became so weak that he could hardly move and get up from his bed. On September 10, 1942, Maria eloped with Felix. Since May 1942, Felix and Maria had sexual intercourse and treated each other as husband and wife. On January 1, 1943, Emiliano died. On June 17, 1943, Maria gave birth to Mariano.

Issue:

Legitimacy of Mariano insofar as his relation to Emiliano is concerned. The determination of this issue depends much upon the relationship that has existed between Emiliano and his wife during

the period of conception of the child up to the date of his birth in connection with the death of the alleged father, Emiliano.

Held:

The husband died on January 1, 1943. The boy whose legitimacy is in question was born on June 17, 1943.

The boy is presumed to be the legitimate son of said husband and his wife, he having been born within 300 days following the dissolution of the marriage. That presumption can only be rebutted by proof that it was physically impossible for the husband to have had access to his wife during the first 120 days of the 300 days next preceding the birth of the child. The fact that the wife has committed adultery cannot overcome this presumption.

Although the husband was already suffering from tuberculosis and his condition then was so serious that he could hardly move and get up from his bed, his feet was swollen and his voice hoarse, yet, that is no evidence of impotency, nor does it prevent carnal intercourse.

There are cases where persons, suffering from his sickness, can do the carnal act even in the most crucial stage because they are more inclined to sexual intercourse.

As an author has said, "The reputation of the tuberculosis towards eroticism is probably dependent more upon confinement to bed than the consequences of the disease."

Blood-grouping test conclusive as to non-paternity.

Case:

**Jao vs. CA
152 SCRA 359**

Facts:

Petitioner Janice Marie Jao, a minor represented by her mother and guardian *ad litem* Arlene Salgado, filed a case for recognition and support with the Juvenile and Domestic Relations Court against private respondent Perico Jao. The latter denied paternity; so the parties agreed to a blood-grouping test conducted by the NBI. The result of the blood-grouping test indicated that Janice could have

been the possible offspring of Jao and Arlene Salgado. The trial court declared Janice, as a child of Jao, thus entitling her to his monthly support. Jao appealed to the CA, questioning the trial court's failure to appreciate the result of the blood-grouping test arguing that the result of the test should have been conclusive and undisputable evidence of his non-paternity. The CA upheld Jao's contention and reversed the trial court decision.

Issue:

Whether or not the issue of admissibility and conclusiveness of the result of blood-grouping test to prove non-paternity is accurate.

Held:

There is now almost a universal scientific agreement that the blood-grouping tests are conclusive as to non-paternity, that is, the fact that the blood type of the child is a possible product of the mother and the alleged father does not conclusively prove that the child is born by such parents, but if the blood type of the child is not the possible blood type when blood type of the mother and that of the alleged father after it had been cross-matched, then the child cannot possibly be that of the alleged father. Accordingly, the court affirms the decision of the CA and hold that the result of the blood-grouping test involved in the case at bar are admissible and conclusive on the non-paternity of respondent Jao *vis-à-vis* petitioner Janice. The result of such test is to be accepted, therefore, accurately reflecting a scientific fact.

Source of the presumption of legitimacy of a child.

The presumption of legitimacy proceeds from the sexual union in marriage, particularly during the period of conception. (People vs. Giberson, 197 Phil. 509). To overthrow this presumption on the basis of Article 166(1)(b) of the Family Code, it must be shown beyond reasonable doubt that there was no access that could have enabled the husband to father the child. Sexual intercourse is to be presumed where personal access is not disproved, unless such presumption is rebutted by evidence to the contrary.

The presumption is quasi-conclusive and may be refuted only by the evidence of physical impossibility of coitus between husband and wife within the first 120 days of the 300 days which immediately preceded the birth of the child.

To rebut the presumption, the separation between the spouses must be such as to make marital intimacy impossible. This may take place, for instance, when they reside in different countries or provinces and they were never together during the period of conception. Or, the husband was in prison during the period of conception, unless it appears that sexual union took place through the violation of prison regulations. (1 Manresa 492-500).

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. (256a)

The law is more firm than Article 256 of the Civil Code as it now says (Art. 167) that the child is considered legitimate even if the mother may have declared against his legitimacy or may have been sentenced as an adulteress.

The declaration of the mother against the legitimacy of the child is simply considered as not made. Such declaration is inadmissible as evidence to rebut what the law considers as legitimate. For the husband may have forced the wife or threatened her to make such declaration. Or, due to hatred, resentment, or other evil motives, the woman may have made the declaration that the child is illegitimate. Conviction of the wife itself is not even considered or respected by law as evidence sufficient to overthrow the fact that the child is legitimate.

Case:

**Gerardo Concepcion vs. CA
G.R. No. 123450, August 31, 2005**

Facts:

Gerardo Concepcion and Ma. Theresa Almonte were married, but prior to the marriage, Ma. Theresa was married to Mario Gopiao and they had a child named Jose Gerardo. Gerardo filed a complaint for declaration of nullity of their marriage due to a prior marriage of Ma. Theresa which was granted. The child was declared an illegitimate child. The custody of the child was awarded to her subject to visitation rights of Gerardo. She moved to reconsider only insofar as the visitation rights are concerned contending that nothing in the law allows such rights. She further moved that the surname of the

child should be changed to Almonte. The RTC denied the motion upholding the best interest of the child. Appeal was made to the CA which held that the child was not the son of Ma. Theresa by Gerardo but by Mario during her marriage. It brushed aside the admission of the spouses that the child was their child in the void marriage. A motion for reconsideration was filed but it was denied hence, appeal was made to the Supreme Court, raising the issue whether the status of a child be the subject of a compromise.

Held:

No. The status and filiation of a child cannot be compromised. (Baluyut vs. Baluyut, 186 SCRA 504; Art. 2035, NCC). Article 164 of the Family Code is clear. A child who is conceived or born during the marriage of his parents is legitimate.

As a guaranty in favor of the child and to protect his status of legitimacy, Article 167 of the Family Code provides:

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.

The law requires that every reasonable presumption be made in favor of legitimacy. The rationale of this rule was explained in the recent case of *Cabatanian vs. CA*, G.R. No. 124814, October 21, 2004, where it was said:

“The presumption of legitimacy does not only flow out of a declaration in the statute but based on the broad principles of natural justice and the supposed virtue of the mother. It is grounded on the policy to protect the innocent offspring from the odium of illegitimacy.”

Article 168. If the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rules shall govern in the absence of proof to the contrary:

(1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage;

(2) A child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within three hundred days after the termination of the former marriage. (259a)

Widow prohibited from getting married within 300 days after death of husband; purpose.

The law generally prohibits the woman, whose marriage with a man has been terminated by death, from marrying within 300 days after such termination to prevent doubtful paternity of the child who may be born after the death of the father and during the subsequent marriage of the woman. However, if the woman remarries within 300 days after such termination, but prior to the marriage, she has already given birth to a child conceived prior to the death of her husband, the prohibition does not apply.

Illustration:

A and B are married. B, the woman, was pregnant by six (6) months at the time A died. Three months thereafter, she gave birth. She can contract a subsequent marriage even within the 300-day period. There would be no more doubtful paternity of the child.

Reason for presumption of legitimacy.

The law, in the interest of the child, establishes presumptions of legitimacy because paternity, as distinguished from maternity, is difficult to prove even with the aid of modern science, and because the wife is presumed chaste. Generation of life by the male was deemed to be a mysterious act of nature and whatever is done to disclose it will lead to error, from which erroneous and deplorable consequences may follow, while pregnancy and delivery are external acts susceptible of investigation and proof, as are all ordinary and visible facts of life. (*Borres vs. Municipality of Panay*, 42 Phil. 643).

Reason for the use of 180 days.

The period of 180 days of the 300 days is used by law as the basis of the presumption because it is regarded as the period of conception.

Cardozo, in *In Re Findlay*, said on the presumptions:

“Potent, indeed, the presumption is one of the strongest known to the law and will not fail unless common sense and reason are outraged by a holding that it abides. For there are many breaths of human nature at which presumptions shrink and wither.”

Article 169. The legitimacy or illegitimacy of a child born after three hundred days following the termination of the marriage shall be proved by whoever alleges such legitimacy or illegitimacy. (261a)

The law requires that whoever questions the legitimacy of a child born after 300 days following the termination of the marriage must prove it. The reason is that any child born within wedlock is presumed to be legitimate. In *Tison vs. CA*, 276 SCRA 582, it was held that there is no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate.

Article 170. The action to impugn the legitimacy of the child shall be brought within one year from the 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 was recorded.

If the husband or, in his default all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from 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 registration of said birth, whichever is earlier. (263a)

Period to impugn legitimacy of a child.

The law prescribes the prescriptive period within which the child's legitimacy must be questioned like:

- (1) within one (1) year from the knowledge of the birth or its recording in the civil register, if the husband or any of his heirs, are residing in the municipality where the birth took place or where it was recorded;

- (2) within two (2) years if the husband or any of his heirs are not residing in the place of birth or where it was recorded, if they are residing in the Philippines;
- (3) within (3) years, if the husband or any of his heirs are living abroad;
- (4) if the birth was concealed or unknown to the husband or any of his heirs, the period shall be counted from the discovery or knowledge of the birth or of the fact of registration whichever is earlier.

It has been said that the relatively short prescriptive period to contest the legitimacy of a child is reasonable. A longer period would be prejudicial to him, whose status should not be left open to question for a long time.

Article 171. The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only 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 complaint without having desisted therefrom; or**
- (3) **If the child was born after the death of the husband. (262a)**

The heirs of the father can also impugn the legitimacy of the child under the three (3) situations enumerated by the law, but only within the periods prescribed by law. The reason for the law is that the right to contest the legitimacy of a child is transmissible to the heirs who are affected especially insofar as their legitime and other successional rights are concerned.

The enumeration is exclusive as no one, except the father and the children of the father, can impugn the legitimacy of a child. The relatives cannot do so. (*Badua-Benitez vs. CA, et al., supra.*)

Application of Article 171, Family Code.

There is a question, however, whether the heirs of the father can bring an action to impugn the legitimacy of his children before his death? Should it not be filed only after death of the father?

The Supreme Court answered in the affirmative, saying that they are the one who stand to be benefited or injured by the judgment in the suit, or the parties entitled to the avails of the suit. (Lee, et al. vs. CA, et al., G.R. No. 118387, October 11, 2001).

A legitimate child may not impugn his own legitimacy to become an illegitimate child of another. The child cannot choose his own filiation.

Case:

Liyao vs. Liyao
GR No. 138961, March 7, 2002

Facts:

Corazon Garcia was legally married to Ramon Yulo but, at the time of the filing of this case, has been living separately from him for more than 10 years. In the meantime, Corazon cohabited with William Yao from 1965 to the time of his death in December, 1975. They lived together in the company of the two children of Corazon by Ramon. William was himself married to Juanita Tanhoti with whom he sired 2 daughters. In June, 1975, Corazon gave birth to a baby boy. In the boy's certificate, the baby was registered as the son of William and was named William Liyao, Jr. William, however, did not sign the birth certificate. William paid all the medical and hospital expenses for the birth of the boy. He even asked his secretary to secure a copy of the boy's birth certificate. William spent for the support of the boy and introduced him to friends as his good-looking son. Since birth, the boy had been in continuous possession and enjoyment of the status of a recognized child of William by his direct and overt acts. After the death of William in 1975, Corazon filed in 1976 an action against his wife and daughters for the compulsory recognition of the boy as his illegitimate child to entitle the boy to inherit from him. At the trial, Corazon and her children by Ramon testified that the boy is, indeed, the son of William and was recognized by him as such.

The trial court ruled in favor of Corazon on the ground that the boy was conceived at the time of her cohabitation with William, and that the boy had been in continuous possession and enjoyment of the status of a child of William through his direct and overt acts. On appeal, the CA reversed the trial court giving more weight to the testimony of the witness who testified that Corazon and Ramon were seeing each other at the time of the boy's supposed conception, and

that it was not shown that William had a hand in the preparation and registration of the boy's birth certificate considering that he did not sign it. Hence, this petition to the Supreme Court. The basic issue raised was whether the boy may be recognized as an illegitimate child of William?

Held:

No, he may not. Under the New Civil Code, the law applicable to the facts of this case, the boy is presumed to be the legitimate child of Corazon and Ramon having been born during their marriage. Therefore, the action filed by Corazon for the recognition of the boy as an illegitimate child of William is in reality an action to impugn the boy's status as a legitimate child of Ramon. It may be true that Corazon and Ramon were no longer living together at the time of the boy's conception but such fact is just a ground to impugn the status of the boy as a legitimate child of Ramon. Unfortunately, the law does not give the boy the right to impugn his own legitimate status. Only Ramon, or his heirs in case he dies before the birth of the boy, or before the lapse of the period to file it, or after filing it, may file and maintain the action to impugn the status of the boy as his legitimate child. The Civil Code does not also allow Corazon to impugn the legitimacy of her own child. It is settled that a child born within a marriage is presumed legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress. The testimony of the boy's siblings by Ramon will not work to impugn the legitimacy of the boy because there appears nothing on record that Ramon has already passed away. Therefore, the action to impugn the boy's legitimate status has to be dismissed not having been brought by Ramon. In any event, Corazon failed to present clear, competent and positive evidence to prove that William had admitted or recognize paternity of the boy.

May legitimate children impugn their own status? Why?

No. The law itself establishes the legitimacy of children conceived or born during the marriage of the parents. The presumption of legitimacy fixes a civil status for the child born in wedlock, and only the father (Article 170, Family Code), or in exceptional instances the latter's heirs (Article 171, Family Code), can contest in an appropriate action the legitimacy of a child. A child cannot choose his own filiation. (*De Jesus, etc. vs. The Estate of Juan Dizon, et al.*, G.R. No. 142877, October 22, 2001; *Liyao vs. Liyao*, G.R. No. 138961, March 7, 2002).

Application of Divinagracia case.

Petitioners hardly could find succor in Divinagracia. In said case, the Supreme Court remanded to the trial court for further proceedings the action for partition filed by an illegitimate child who had claimed to be an acknowledged spurious child by virtue of a private document, signed by the acknowledging parent, evidencing such recognition. It was not a case of legitimate children asserting to be somebody else's illegitimate children. Petitioners totally ignored the fact that it was not for them to declare that they could not have been the legitimate children, clearly opposed to the entries in their respective birth certificates, of Danilo and Carolina de Jesus.

The rule that the written acknowledgment made by the deceased Juan G. Dizon establishes petitioners' alleged illegitimate filiation to the decedent cannot be validly invoked to be of any relevance in this case. This issue, *i.e.*, whether petitioners are indeed the acknowledged illegitimate offsprings of the decedent, cannot be aptly adjudicated without an action having been first instituted to impugn their legitimacy as being the children of Danilo B. de Jesus and Carolina Aves de Jesus born in lawful wedlock. Jurisprudence is strongly settled that the paramount declaration of legitimacy by law cannot be attacked collaterally (*Tison vs. CA, supra.*), one that can only be repudiated or contested in a direct suit specifically brought for that purpose. (*La-Ducasse vs. Ducasse*, 45 So. 565, 120 La. 731; *Saloy's Succ.* 10 So. 782, 44 La. Ann., cited in 10 C.J.S. 77). Indeed, a child so born in such wedlock shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as having been an adulteress. (Article 167, Family Code).

Legitimacy of a child cannot be questioned collaterally; must be direct attack.

In *Tison, et al. vs. CA, et al.*, G.R. No. 12027, July 31, 1997, 85 SCAD 341, the legitimacy of the petitioners was questioned in an action for reconveyance of a property. The SC said that the question of legitimacy can not be raised collaterally. There is no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate. (*Jones, Commentaries on Evidence*, Vol. 1, 2nd ed., 118-119). And well-settled is the rule that the issue of legitimacy cannot be attacked collaterally, like in an action for reconveyance. The rationale behind the rule that legitimacy cannot be attacked collaterally has been voiced, thus:

“The presumption of legitimacy in the Family Code x x x actually fixes a civil status for the child born in wedlock, and that civil status cannot be attacked collaterally. The legitimacy of the child can be impugned only in a direct action brought for that purpose, by the proper parties, and within the period limited by law.

The legitimacy of the child cannot be contested by way of defense or as a collateral issue in another action for a different purpose. The necessity of an independent action directly impugning the legitimacy is more clearly expressed in the Mexican Code (Art. 335) which provides: “The contest of the legitimacy of a child by the husband or his heirs must be made by proper complaint before the competent court; any contest made in any other way is void.” This principle applies under our Family Code. Arts. 170 and 171 of the Code confirm this view, because they refer to “the action to impugn the legitimacy.” This action can be brought only by the husband or his heirs and within the periods fixed in the present articles.

Upon the expiration of the periods provided in Art. 170, the action to impugn the legitimacy of a child can no longer be brought. The status conferred by the presumption, therefore, becomes fixed, and can no longer be questioned. The obvious intention of the law is to prevent the status of a child born in wedlock from being in a state of uncertainty for a long time. It also aims to force early action to settle any doubt as to the paternity of such child, so that the evidence material to the matter, which must necessarily be facts occurring during the period of the conception of the child, may still be easily available.”

Only the man can impugn the legitimacy of a child; not the wife.

Only the husband can contest the legitimacy of a child born to his wife. He is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces; and he should decide whether to conceal that infidelity or expose it, in view of the moral and economic interest involved. It is only in exceptional cases that his heirs are allowed to contest such legitimacy. Outside of these cases, not even his heirs can impugn legitimacy; that would amount to an

insult to his memory. (Tolentino, A., *Civil Code of the Phils., Commentaries and Jurisprudence*, Vol. 1, 1990 ed., pp. 535-537).

Ordinarily, when a fact is presumed, it implies that the party in whose favor the presumption exists does not have to introduce evidence to establish that fact, and in any litigation where that fact is put in issue, the party denying it must bear the burden of proof to overthrow the presumption. The presumption of legitimacy is so strong that it is clear that its effect is to shift the burden of persuasion to the party claiming illegitimacy. (Jones on *Evidence*, Vol. 1, 5th ed., 178). And in order to destroy the presumption, the party against whom it operates must adduce substantial and credible evidence to the contrary. (95 ALR 883).

Where there is an entire lack of competent evidence to the contrary, and unless or until it is rebutted, it has been held that a presumption may stand in lieu of evidence and support a finding or decision. Perforce, a presumption must be followed if it is uncontroverted. This is based on the theory that a presumption is *prima facie* proof of the fact presumed, and unless the fact thus established *prima facie* by the legal presumption of its truth is disproved, it must stand as proved. (*Brawsell vs. Tindall*, 294 SW 2d. 685).

In fact, in *Liyao vs. Liyao, supra*, the Supreme Court rejected the move of the mother of her legitimate to ask for recognition as the children of William Yao. In still another case, *De Jesus vs. The Estate of Juan Dizon*, the Supreme Court rejected the action of two legitimate children of a couple when they sued the heirs of Juan Dizon and asked for their share of his estate using the document of recognition by Juan Dizon. In both cases, the Supreme Court said that their acts were in effect means of impugning their own legitimacy. The father and the father alone, or even the children can impugn the legitimacy of a child under extreme circumstances. Never can it be done by the child or the mother.

Chapter 2

Proof of Filiation

Article 172. 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. (265a, 266a, 267a)

The law enumerates the proof that a child may show to establish filiation with respect to his father.

Proof of filiation

The Supreme Court in a case made the observation that:

“Parentage, lineage and legitimacy cannot be made to depend upon parental authority or bodily marks of similarity. There is scarcely a family among any of the nationalities where there are a number of children, when one or more of them, due to heredity perhaps, do not resemble either of the immediate parents. Lineage cannot depend wholly upon the presence or absence of paternal similarity of physical appearance (*Chun Chong vs. Collector of Customs*, 38 Phil. 815; *Chun Yeng vs. Collector of Customs*, 28 Phil. 95).

With advances in medical science, filiation may now be established through forensic DNA (Deoxyribonucleic acid) and this has changed the judicial landscape. Hence, the Supreme Court has expressed its confidence in the value and admissibility of DNA in *Tijing vs. CA*, G.R. No. 125901, March 8, 2001 where it said:

“Fortunately, we have now the facility and expertise in using the DNA test for identification and parentage testing. . . . As the appropriate case comes, court should not hesitate to rule on the admissibility of DNA evidence. For it was said, that courts should apply the results of science when competently obtained in aid of situations presented since to reject it is to deny progress.”

In *People vs. Vallejo*, G.R. No. 144656, May 9, 2002, the Supreme Court finally had an appropriate case to use DNA evidence to affirm the decision of the trial court finding the accused guilty of rape with homicide. The National Bureau of Investigation obtained the DNA evidence from buccal swabs and hair samples taken from the accused, and vaginal swabs taken from the victim during autopsy. The NBI forensic chemist testified that the vaginal swabs from the victim contained the DNA profiles of both the accused and the victim. The Court admitted the DNA evidence as *corroborative evidence* which, together with the other evidence, indicated the guilt of the accused.

DNA evidence is now available to prove the filiation of a person, for it is the fundamental building block of all living matter. The “blueprint of life,” DNA contains the inherited information determining how an organism is built and organized. DNA is a component of virtually all the cells of the body, and is identical in each of those cells.

(1) Record of birth.

The rule is that an unsigned birth certificate of a child is not a good proof of filiation. It must be signed by the putative father to be admissible.

In the case of *Baluyut vs. Baluyut*, 186 SCRA 506, the Supreme Court had the occasion once again to say that a birth certificate, unsigned by the father is likewise not enough to establish filiation. Proof of bare filiation of an illegitimate child is insufficient to the entitlement of successional rights under Article 887 of the Civil Code. Acknowledgment by the father is required by law for proof of recognition but this rule of liberality does not apply to compulsory recognition where evidence of direct express acknowledgment is required. The continuous possession of the status of an illegitimate child must be of such nature that they reveal, not only the conviction of paternity, but also the apparent desire to have and treat the child as such in all relations of society and in life, not accidentally, but continuously.

Proof of filiation; signing of birth certificate.

In *Rosalina P. Eceta vs. Ma. Theresa Vell Lagura Eceta*, G.R. No. 157037, May 20, 2004 (Ynares-Santiago, *J.*), the Supreme Court once again said that the act of the father of signing the birth certificate

of the daughter is an act of acknowledgment of his paternity. In the earlier case of *De Jesus vs. Estate of Juan Dizon*, 366 SCRA 499 (2001), it was said that:

“The filiation of illegitimate children, like legitimate children, is established by (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 thereof, 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. The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required. In fact, any authentic writing is treated not just a ground for compulsory recognition; it is in itself a voluntary recognition that does not require a separate action for judicial approval.”

The right to file an action for compulsory recognition is a substantive right that vests upon birth of the illegitimate child.

Case:

**Bernabe vs. Alejo
GR No. 140500, January 21, 2002**

Facts:

Carolina Alejo had an affair with Ernesto Bernabe. A son was born to them in September 1981 whom they named Adrian. Ernesto died in 1993 leaving Ernestina as his sole legitimate heir. In 1994, Carolina filed an action to compel Ernestina to recognize Adrian as an illegitimate child of Ernesto. The trial court dismissed the action on the ground that under the Family Code which took effect in 1988, an action to compel recognition of an illegitimate child must be brought before the death of the putative parent. Since Ernesto has already died, the action must be abated. On appeal, the CA ruled

that since Adrian was born in 1981, his right to prove his illegitimate filiation is governed not by the Family Code but by the New Civil Code. Article 285 of the Civil Code allows an illegitimate child to file an action to compel recognition within 4 years from the child's attainment of majority if the putative parent died during the child's minority. The CA ruled that the change introduced by the Family Code did not affect the right of Adrian because his right under Article 285 has become a vested right. Ernestina appealed to the Supreme Court where the question raised was whether the Family Code took away the right of Adrian to compel his recognition after the death of his putative father.

Held:

No, it has not. The right granted by Article 285 to illegitimate children who were minors at the time of the death of the putative parent to bring an action for compulsory recognition within 4 years from attaining the age of majority, is a substantive right that vests from the time of the illegitimate child's birth. Therefore, the Family Code did not impair or take away the right of Adrian to file the present petition for recognition despite the death of his putative father.

Unsigned birth certificate cannot be a proof of filiation.

Once again, the Supreme Court in *Angeles vs. Angeles*, G.R. No. 153798, September 2, 2005 had the occasion to say that an unsigned birth certificate cannot be a proof of filiation. It was merely signed by the attending physician who certified that she attended to the birth of a child. Such certificate, *albeit* considered a public record of a private document is, under Rule 132 Section 23 of the Rules of Court evidence only of the fact which gave rise to its execution; the fact of birth of a child. Jurisprudence teaches that a birth certificate, to be considered as validating proof of paternity and as an instrument of recognition, must be signed by the father and mother jointly, or by the mother alone if the father refuses. (*Reyes vs. CA*, 135 SCRA 439). Dr. Arturo Tolentino, commenting on the probative value of the entries in a certificate of birth, wrote:

x x x if the alleged father did not intervene in the making of the birth certificate, the putting of his name by the mother or doctor or registrar is void; the signature of the alleged father is necessary. (*Bercilles vs. GSIS*, 128 SCRA 53; *Reyes vs. CA*, 135 SCRA 439).

It cannot be over-emphasized that the legitimate filiation of a child is a matter fixed by law itself. (Sayson vs. CA, 205 SCRA 321). It cannot be made dependent on the declaration of the attending physician or midwife, or that of the mother of the newborn child. For then, an unwed mother, with or without the participation of a doctor or midwife, could veritably invest legitimate status to her offspring through the simple expedient of writing the putative father's name in the appropriate space in the birth certificate. A long time past, the Court cautioned against according a similar unsigned birth certificate *prima facie* evidentiary value of filiation.

Give this certificate evidential relevancy, and we thereby pave the way for any scheming unmarried mother to extort money for her child (and herself) from any eligible bachelor or affluent *pater familias*. How? She simply causes the midwife to state in the birth certificate that the newborn baby is her legitimate offspring with that individual and the certificate will be accepted for registration . . . And any lawyer with sufficient imagination will realize the exciting possibilities from such mischief of such *prima facie* evidence — when and if the “father” dies in ignorance of the fraudulent design x x x. (Crisolo vs. Macadaeg, 94 Phil. 862).

Proof of filiation; Recognition by a man that he is the father of the children of a married couple; effect.

Facts:

Danilo B. de Jesus and Carolina Aves de Jesus got married on 23 August 1964. It was during this marriage that Jacqueline A. de Jesus and Jinkie Christie A. de Jesus, were born, the former on 01 March 1979 and the latter on 06 July 1982.

In a notarized document, dated 07 June 1991, Juan G. Dizon acknowledged Jacqueline and Jinkie de Jesus as his own illegitimate children by Carolina Aves de Jesus. Juan G. Dizon died intestate on 12 March 1992, leaving behind considerable assets consisting of shares of stock in various corporations and some real property. It was on the strength of his notarized acknowledgment that petitioners filed a complaint for “Partition with Inventory and Accounting” of the Dizon Estate.

Respondents, the surviving spouse and legitimate children of the decedent Juan G. Dizon, including the corporations of which the

deceased was a stockholder, sought the dismissal of the case, arguing that the complaint, even while denominated as being one for partition, would nevertheless call for altering the status of petitioner from being the legitimate children of the spouses Danilo de Jesus and Carolina de Jesus to instead be the illegitimate children of Carolina de Jesus and deceased Juan Dizon. The trial court denied, due to lack of merit, the motion to dismiss and the subsequent motion for reconsideration. Respondents assailed the denial of said motions before the Court of Appeals.

On 20 May 1994, the appellate court upheld the decision of the lower court and remanded the cases to the trial court for further proceedings. It ruled that the veracity of the conflicting assertions should be threshed out at the trial considering that the birth certificates presented by respondents appeared to have effectively contradicted petitioners' allegation of illegitimacy.

On 03 January 2000, long after submitting their answer, pre-trial brief and several other motions, respondents filed an omnibus motion, again, praying for the dismissal of the complaint on the ground that the action instituted was, in fact, made to compel the recognition of petitioners as being the illegitimate children of decedent Juan G. Dizon and that the partition sought was merely an ulterior relief once petitioners would have been able to establish their status as such heirs. It was contended, in fine, that an action for partition was not an appropriate forum to likewise ascertain the question of paternity and filiation, an issue that could only be taken up in an independent suit or proceeding.

The trial court, ultimately, dismissed the complaint of petitioners for lack of cause of action and for being improper. It decreed that the declaration of heirship could only be made in a special proceeding inasmuch as petitioners were seeking the establishment of a status or right.

Petitioners filed a petition for review on certiorari. Basically, petitioners maintained that their recognition as being illegitimate children of the decedent, embodied in an authentic writing, is in itself sufficient to establish their status as such and does not require a separate action for judicial approval following the doctrine enunciated in *Divinagracia vs. Bellosillo*, 143 SCRA 356.

Respondents submitted that the rule in *Divinagracia* being relied by petitioners is inapplicable to the case because there has

been no attempt to impugn legitimate filiation in *Divinagracia*. In praying for the affirmance of the dismissal of the complaint, respondents counted on the case of *Sayson vs. CA*, 205 SCRA 321, which has ruled that the issue of legitimacy cannot be questioned in a complaint for partition and accounting but must be seasonably brought up in a direct action frontally addressing the issue. Before the Supreme Court, the following questions were raised, thus:

1. How may filiation of legitimate and illegitimate children be proved?

The filiation of illegitimate children, like legitimate children, is established by (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 thereof, 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. (Article 172, Family Code).

2. What is the effect if a child is recognized in a record of birth, a will, etc.? Explain.

The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required. (*Gono-Javier vs. CA*, 239 SCRA 593). In fact, any authentic writing is treated not just a ground for compulsory recognition; it is in itself a voluntary recognition that does not require a separate action for judicial approval. (*Divinagracia vs. Bellosillo*, 143 SCRA 356).

3. What is the effect if the claim for recognition is not based on the aforementioned documents? Explain.

Where, instead, a claim for recognition is predicated on other evidence merely tending to prove paternity, *i.e.*, outside of a record of birth, a will, a statement before a court of record or an authentic writing, judicial action within the applicable statute of limitations is essential in order to establish the child's acknowledgment. (*Gono-Javier vs. CA*, *supra.*).

4. What is the presumption if records show that Jinkie and Jacqueline were born during the marriage of their parents and the certificates of live birth would also identify Danilo de Jesus as their father? Explain.

There is a presumption of legitimacy of the children.

There is perhaps no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate. (*Tison vs. CA*, 276 SCRA 582; Article 164, Family Code). This presumption indeed becomes conclusive in the absence of proof that there is physical impossibility of access between the spouses during the first 120 days of the 300 days which immediately precedes the birth of the child due to: (a) the physical incapacity of the husband to have sexual intercourse with his wife; (b) the fact that the husband and wife are living separately in such a way that sexual intercourse is not possible; or (c) serious illness of the husband, which absolutely prevents sexual intercourse. (Article 166, Family Code). Quite remarkably, upon the expiration of the periods set forth in Article 170, and in proper cases Article 171, of the Family Code (which took effect on 03 August 1988), the action to impugn the legitimacy of a child would no longer be legally feasible and the status conferred by the presumption becomes fixed and unassailed. (*Tison vs. CA, supra.*).

An unsigned birth certificate can be used as proof of filiation.

The rule is that an unsigned birth certificate is an incompetent evidence or proof of paternity to compel the father to recognize the child. In *Ilano vs. CA*, G.R. No. 104376, February 23, 1994, 48 SCAD 432, a woman was employed as secretary in a law office and met a prominent businessman, a client of her boss. Their acquaintance made them closer, but later on she resigned, only to meet again, hence, the courtship started, resulting in their marriage. When she was already pregnant, she found out that the man was married. The relationship continued with all the support given. Sometimes, he personally delivered the same. There were times his employee did it for him. When the child was born, he told the nurse that he was the child's father, but since he was asleep at the time the certificate of birth was ready for their signature, he told the nurse to come back. When the nurse returned, only the woman signed as the man had to leave for a meeting. He showered the child with love, supported her, dined her, signed her report cards in school. Later, when the child reached 8 years old, he stopped visiting them. A suit for recognition and support was filed but he denied being the father of the child. He repudiated the birth certificate as he never signed it. He pointed to his employee as the father of the child.

In brushing aside the man's contention, the Supreme Court said that, for while it is true that if the father does not sign the birth certificate, the placing of his name therein is incompetent evidence of paternity, the rule does not apply if the father himself gave all the data regarding the child's birth and caused his name to be placed therein as the child's father. Even if he did not sign the birth certificate, the same is still competent proof that he is the father because he was the one who supplied the data to the nurse. If he failed to sign the birth certificate, it was only because he left the hospital quite early.

The contention that the employee was the father of the child and the woman's lover is unbelievable considering his low income, that he could not have supported the rentals for the apartment, utility bills, and allowance. The inevitable conclusion is that he is the father and the child is entitled to be supported.

This case is the reverse of *Reyes vs. CA*, G.R. No. 39537, March 19, 1985, where the Supreme Court observed that the school records were not signed by the father. The school records were rejected as proof of filiation.

The case of *Ilano vs. CA* is a reverse of the case of *Roces vs. Local Civil Registrar (102 Phil. 108)*. While the Supreme Court said in *Roces* that, the unsigned birth certificate of the child is inadmissible as proof of filiation, yet, in *Ilano* it was said that, even if the birth certificate was unsigned, it was admissible in evidence. The reason in *Ilano* was that, the father was the one who supplied the data in the record of the birth that he is the father of the child. In *Roces*, it was the mother alone who supplied the data that *Roces* was the father of the child. In *Roces*, it was said that if the alleged father did not sign the birth certificate of the child, the placing of his name by the mother, the doctor, or the registrar is not competent evidence of paternity. (*Reyes vs. CA*, 135 SCRA 439; *Berciles vs. GSIS*, 128 SCRA 53). The case of *Ilano* is perfect example of estoppel *in pais*.

Case:

Rodriguez vs. CA, et al.
245 SCRA 150, 61 SCAD 896

Facts:

On October 15, 1986, an action for compulsory recognition and support was filed by Alarito Agbulos against Bienvenido Rodriguez.

At the trial, the plaintiff presented his mother, Felicitas Haber, who, on direct examination, revealed the identity of plaintiff's father. It was objected to, and the objection was sustained. The CA reversed the order and allowed the admission of the testimony. Rule on the validity of the CA's decision.

Held:

The CA's decision is correct. The provision of the Civil Code (Arts. 276, 277, 278, 279, and 280), which prohibited the disclosure of plaintiff's father, have been replaced by Article 172 of the Family Code, hence, undoubtedly disclosing the intention of the legislature to uphold the Code Commission's stand to liberalize the rule on the investigation of the paternity of the illegitimate children. The Family Code now allows the establishment of illegitimate filiation in the same way and on the same evidence as legitimate children. (Art. 175, Family Code).

Of interest is that of Art. 172 of the Family Code, which adopts the rule in Art. 283 of the Civil Code that filiation may be proven by "any evidence or proof that the defendant is his father."

(2) Order of a court.

There may be an action to compel recognition, and it was granted. The child can use such order or decision of the court to prove his filiation to the father in order that he/she may prove the right to inherit.

(3) Authentic writing.

An authentic writing as proof of filiation of a child where the father of the child executed a will instituting such child as one of the heirs and recognizing the child at the same time. Should the father-testator revoke the will, that becomes an authentic writing (Art. 834, NCC) which the child may use to prove his filiation and the right of inheritance. Such revocation of the will does not carry with it the revocation of the recognition of a child because it is not a testamentary disposition.

Authentic writing may be public or private for as long as it can be established as one made by the acknowledging parent. (*Madrideo vs. de Leon*, 55 Phil. 866; *De Jesus vs. Syquia*, 58 Phil. 866; *Varela vs. Villanueva*, 95 Phil. 248; *Pareja vs. Pareja*, 103 Phil. 324).

Case:**Consolacion Lumain De Aparicho vs. Hipolito Paraguya
G.R. No. L-29771, May 29, 1987****Facts:**

Trinidad Montilde, mother of the plaintiff herein, in order to hide her disgrace, married Anastacio Mamburao when she was four months pregnant as a result of her love affair with Fr. Felipe Lumain. 192 days thereafter, Consolacion was born and was registered as a legitimate child of the spouses. On October 31, 1936, Fr. Lumain died but left a last will and testament acknowledging Consolacion as his daughter and instituted her as the sole and universal heir of all his property rights and interests, which was duly probated.

Upon reaching the age of majority, Consolacion filed an action against Paraguya — for the recovery of certain parcels of land — which she claims to have inherited from her father Lumain.

Facts based on evidence showed that there were three parcels of land involved. The second parcel and a proportion of the third, were alleged to have been bought by the defendant through a *pacto de retro* sale from Roman and Macario Lumain, father and brother of Felipe, respectively. Interesting to note is the fact that while all of them are now deceased, Roman died before his two sons, thus making them joint heirs of the said property; and when Felipe died, he left a will, thereby prohibiting Macario to inherit from him. Moreover, it appears that there are no other heirs surviving.

Issue:

Whether or not the plaintiff is entitled to inherit the property of the deceased Fr. Felipe Lumain.

Held:

Plaintiff, having been born after 180 days following the celebration of the marriage, shall be presumed the legitimate child of the spouses Trinidad and Anastacio. (Art. 256, New Civil Code [now Art. 172, Family Code]). Moreover, the plaintiff's filiation of being a legitimate child is proven by the record of birth appearing in the Civil Register. However, the court finds it unnecessary to determine her paternity. In the last will and testament, which was duly probated, Fr. Lumain not only acknowledged Consolacion as his natural daughter but he, in fact, designated her as his only heir.

Thus, one who has no compulsory heir may dispose by will of his estate or any part of it in favor of any person having capacity to succeed.

(4) Private writing.

For a private writing to be admissible in evidence as proof of filiation, the same must be in the handwriting of the father and signed by him. If the private writing is typewritten and unsigned, that is not admissible. The requirements of the law are mandatory.

Illustration:

A, a law student of the FEU Institute of Law, has a girl friend in the province. They have an illegitimate child. While studying, he was working and sending half of his earnings to B, his girlfriend, for the subsistence of his son as C. In all his letters, which were in his handwriting and duly signed by him, he always referred to C, his son. The son, C, can utilize the private documents as proof of filiation with respect to his father.

(5) Open and continuous possession of the status of an illegitimate child.

The law allows a child to prove filiation by way of open and continuous possession of the status of a legitimate or illegitimate child. It must be *open*, and not *clandestine*; it must be *continuous* and not *intermittent*, in order that the child may be able to prove filiation through open and continuous possession. In the case of *Castro vs. CA*, G.R. Nos. 50974-75, May 31, 1989, it appears that Benita, the child of Eustaquio and Pricola, was born on March 27, 1919. Eustaquio, who caused the registration of said birth, gave the data indicated in the civil registry that he was the father. Benita was later baptized in the Catholic church. In the baptismal certificate, it appeared that the parents were Eustaquio and Pricola. When Eustaquio died, pictures were taken wherein the immediate members of the family in mourning were present, among whom was Benita.

Pricola, the natural mother of Benita, was wed to Felix against her wishes. While the celebration of the wedding was going on, Pricola surreptitiously left and went to live with her real sweetheart, Eustaquio, the father of Benita. At the time Eustaquio lived with Pricola, he was a widower, and was therefore free to marry Pricola.

The RTC and CA ruled that under the circumstances, Benita is the acknowledged and recognized child of Eustaquio, which the SC affirmed, applying the Family Code, considering the facts and equities of the case.

Continuing, the SC said that she lived with her father from birth up to death of her father, enjoyed the love and care that a parent bestowed on an only child.

It was Eustaquio who reported and registered the birth of Benita. He gave away Benita during her wedding. Unquestionably, Benita enjoyed the open and continuous possession of the status of an illegitimate child of Eustaquio. The action in defending her status is similar to an action to claim legitimacy brought during her lifetime.

It was also in this case where the SC said that the Family Code can be given retroactive effect since no clear vested rights would be impaired.

The case of *Alberto vs. CA, et al.*, 52 SCAD 67, 232 SCRA 745, June 2, 1994, is not different from *Castro vs. CA*. Maria Theresa Alberto was born outside of wedlock of one Aurora Reniva and Juan M. Alberto. She used the surname Alberto in her school records and correspondences. Alberto performed the following acts during his lifetime: (1) he gave money to her for her schooling; (2) he made known to his relatives and friends that she was his daughter; (3) he made known to the personnel of the International School, where she was enrolled that she was his daughter. There were also acts of his relatives like that of his youngest sister, Aurita Alberto Solidum, where she asked that the child be sent to his house in her Sunday's best to meet her father for the first time; Fr. Arcilla brought her to the bedside of the deceased Alberto in the hospital and likewise asked the guard to give way to her as she was a member of the family; the step-mother of the deceased Alberto introduced her to her youngest sister as an elder sister during the wake of Alberto.

The Supreme Court said that in view of the foregoing, Ma. Theresa Alberto has been in continuous possession of the status of a natural child of the deceased because of the direct acts of the father and his family. In fact, Alberto did not stop her from using his surname. There was even a testimony that he was very proud of her high grades. These acts are considered as declarations against interest. Under Rule 130, Sec. 38 of the Rules of Court, the declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the

time it was made so far contrary to declarant's own interest, that a reasonable man in the position would not have made his declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons. In short, Alberto took no pains to conceal the paternity of his child as it was known to his relatives and friends. But understandably, considering the strait-laced mores of the times and the social and political stature of Juan M. Alberto and his family, those who were privy to the relationship observed discreetness. But he himself visited her in school, had meetings at the MOPC on which occasions he gave money and introduced her proudly to his gangmates.

Reverse of the rule in Castro and Alberto.

The case of *Casimiro Mendoza vs. CA, et al.*, G.R. No. 86302, September 24, 1991, is the reverse of *Castro vs. CA*. The facts in the former show that Teopista claimed that she was the daughter of Brigida Toring, single, and Casimiro Mendoza, a married man. She claimed that Mendoza recognized her as an illegitimate child because of the following circumstances:

- (a) When she got married, Mendoza bought a passenger truck and engaged Valentin Tuñacao, her husband, as driver;
- (b) Casimiro later sold the truck and gave her the proceeds of the sale;
- (c) Casimiro gave her money to buy a lot from her brother;
- (d) Casimiro allowed her son to build a house on his lot;
- (e) Casimiro opened a joint savings account with her as one of the co-depositors.

Gaudencio and Isaac, both relatives of Casimiro, testified that the latter gave dole-outs to Teopista through them. The claim was resisted by Casimiro. His witness was Vicente Toring who said that Teopista's father was a carpenter named Ondoy, who later abandoned her. He testified that he was the one who sold the lot to her at a low price because she was his half-sister. It was also he who gave permission to Teopista's son to build a house on Casimiro's lot.

The lower court rendered judgment that Teopista was not in continuous possession of the status of a child of the alleged father by the direct acts of the latter or of his family. The Court of Appeals reversed the decision, hence, this petition.

To establish “the open and continuous possession of the status of an illegitimate child,” it is necessary to comply with certain jurisprudential requirements. “Continuous” does not mean that the possession of status shall continue forever but only that it shall not be of an intermittent character while it continues. (*De Jesus vs. Syquia*, 58 Phil. 866). The possession of such status means that the father has treated the child as his own, directly and not through others, spontaneously and without concealment though without publicity (since the relation is illegitimate). There must be a showing of the permanent intention of the supposed father to consider the child as his own, by continuous and clear manifestation of paternal affection and care.

With these guidelines in mind, the Supreme Court agreed with the trial court that Teopista has not been in continuous possession of the status of a recognized illegitimate child of Casimiro Mendoza, under both Article 283 of the Civil Code and Article 172 of the Family Code.

The plaintiff lived with her mother and not with the defendant although they were both residents of Omapad, Mandaue City. It is true, as the respondent court observed, that this could have been because defendant had a legitimate wife. However, it is not unusual for a father to take his illegitimate child into his house to live with him and his legitimate wife, especially if the couple is childless, as in the case. In fact, Vicente Toring, who also claimed to be an illegitimate child of Casimiro, lived with the latter and his wife, apparently without objection from the latter. Teopista did not use the surname of Casimiro although this is not decisive of one’s status. No less significantly, the regularity of defendant’s act of giving money to the plaintiff through Gaudencio Mendoza and Isaac Mendoza has not been sufficiently established. The trial court correctly concluded that such instances were “off-and-on,” not continuous and intermittent. Indeed, the plaintiff’s testimony on this point is tenuous. As in one breath she said that the mother of Casimiro helped in supporting her.

But although Teopista has failed to show that she was in open and continuous possession of the status of an illegitimate child of Casimiro, she has nevertheless established that status by another method.

An illegitimate child is allowed to establish his claimed filiation by “any other means allowed by the Rules of Court and special laws” or “by evidence or proof in his favor that the defendant is her father”

under the Family Code. Such evidence may consist of his baptismal certificate, a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, the testimonies of witnesses and other kinds of proof under Rule 130 of the Rules of the Court.

Such acts or declarations may be received in evidence as an exception to the hearsay rule because it is the best that the nature of the case admits and because greater evils are apprehended from the rejection of such proof than from its admission. The declarations concerning the pedigree of Teopista were made before the controversy arose. Said declarations were not refuted.

In view of the said declarations and circumstances, such as financial dole-outs given by Casimiro to Teopista; the hiring of the husband as driver; the giving of the proceeds of the sale of the truck to her; the opening of a joint account, the claimant was the illegitimate daughter of Casimiro Mendoza, and hence, entitled to be recognized as such.

Filiation of illegitimate child must be proved during the lifetime of the father.

Apolinario Uyguangco died intestate in 1975, leaving his wife, Dorotea, four legitimate children and considerable properties which they divided among themselves. Claiming to be an illegitimate son of the deceased Apolinario, and having been left out in the extrajudicial settlement of his estate, Graciano Bacjao Uyguangco filed a complaint for partition against all the petitioners.

Graciano alleged that he was born in 1952 to Apolinario Uyguangco and Anastacia Bacjao and that at the age of 15 he moved to his father's hometown at Medina, Misamis Oriental, at the latter's urging and also of Dorotea and his half-brothers. Here, he received support from his father while he was studying at the Medina High School, where he eventually graduated. He was also assigned by his father, without objection from the rest of the family, as storekeeper at the Uyguangco store in Manamom from 1967 to 1973.

In the course of his presentation of evidence at the trial, the petitioners elicited an admission from Graciano that he had none of the documents mentioned in Article 278 (Now Arts. 172 and 175, Family Code), New Civil Code, to show that he was the illegitimate son of Apolinario Uyguangco.

These documents are, “the record of birth, a will, a statement before a court of record, or (in) any authentic writing.” The petitioners thereupon moved for the dismissal of the case on the ground that the private respondent could no longer prove his alleged filiation under the applicable provisions of the Civil Code.

The motion was denied hence, the petitioners went to the SC reiterating their stand in the motion to dismiss.

This case must be decided under a new, if not entirely similar, set of rules, because the parties have been overtaken by events, to use a popular phrase. The Civil Code provisions they invoked have been superseded, or at least modified, by the corresponding articles in the Family Code, which became effective on August 3, 1988.

Under the Family Code, it is provided that:

“Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.”

The following provision is therefore available to the private respondent in proving his illegitimate filiation:

“Art. 172. 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 may 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.”

While the private respondent had admitted that he has none of the documents mentioned in the first paragraph, he insists that he has nevertheless been “in open and continuous possession of the status of an illegitimate child,” which is now also admissible as evidence of filiation.

An illegitimate child is now also allowed to establish his claimed filiation by “any other means allowed by the Rules of Court and special laws” like his baptismal certificate; a judicial admission; a family Bible in which his name has been entered; common reputation respecting his pedigree; admission by silence, the testimonies of witnesses, and other kinds of proof admissible under the Rules of Court.

(6) Other means to prove filiation.

The law (Family Code), like the Civil Code, allows other means to prove filiation. Cases have been decided on this matter which rejected blood tests, pictures, baptismal certificates as proof of filiation.

Case:

Fernandez, et al. vs. CA, et al.
230 SCRA 130, February 16, 1994
48 SCAD 333

Facts:

In a petition seeking to compel recognition of illegitimate children, the following evidences were presented: (1) certificate of live birth identifying the respondent as the father; (2) baptismal certificate stating the respondent as the father; (3) photographs taken during baptism. The respondent denied that he is the father of the petitioners. In fact, he claimed that he was only one of the sponsors in the baptism. The RTC ruled in favor of the petitioners but the decision was set aside by the CA, hence, this petition.

Held:

- (1) Petitioner cannot rely on the photographs showing the presence of the respondent in the baptism. They are far from proof that the private respondent is the father of the child.

- (2) The baptismal certificate naming respondent as the father has scant evidentiary value. There is no showing that he participated in its preparation. In the earlier case of *Macadangdang vs. CA*, 100 SCRA 73 (1980), it was said that while baptismal certificates may be considered public documents, they can only serve as evidence of the administration of the sacraments on the dates so specified. They are not necessarily competent evidence of the veracity of the entries therein with respect to the child's paternity.
- (3) The certificates of live birth of petitioner identifying private respondent as their father are also not competent evidence on the issue of their paternity. The private respondent had no hand in the preparation of the said certificates. In the earlier cases of *Roces vs. Local Civil Registrar*, 102 Phil. 1050 (1958), and *Berciles vs. Systems*, 128 SCRA 53 (1984), it was said that a birth certificate not signed by the alleged father therein indicated is not competent evidence of paternity. (*Fernandez, et al. vs. CA, et al.*, 48 SCAD 333, 230 SCRA 130 [February 16, 1994]).

Blood test, not an evidence of filiation.

Case:

People vs. Tumimpad
235 SCRA 483, August 19, 1994

Facts:

Two (2) accused were sued for rape. Later on, the victim gave birth. At the trial, the accused moved that a blood test, both "Major Blood-grouping," be conducted on the offended party, the child and the two accused. The test showed that the child has a type "O," and the victim, a type "B," accused Ruel Prieto type "O" and accused-appellant, "O." After the trial, the trial court convicted Moreno Tumimpad of the crime charged but acquitted Ruel Prieto on reasonable doubt, stating that he has a different blood type with that of the child. On appeal, the appellant contended that the trial court erred in convicting him based on a major blood-grouping test known as ABO and RHS test, and not on a paternal test known as chromosomes or HLA test.

Held:

The appeal is devoid of merit. The blood test was adduced as evidence only to show that the alleged father, or any one of many others of the same blood type, may have been the father of the child. As held in *Janice Marie Jao vs. CA*, 152 SCRA 359 (1987):

“Paternity — Science has demonstrated by the analysis of blood samples of the mother, the child and the alleged father, that it can be established conclusively that the man is not the father of a particular child. But group blood testing can show only the possibility that he is. Statutes in many states, and courts in others, have recognized the value and limitations of such test. Some of the decisions have recognized the conclusive presumption of non-paternity where the results of the test, made in the prescribed manner, show the impossibility of the alleged paternity. This is one of the few cases where the judgment of the Court may scientifically be completely accurate, and intolerable results avoided, such as have occurred where the finding is allowed to turn on oral testimony conflicting with the results of the test. The findings of such blood tests are not admissible to prove the fact of paternity as they only show a possibility that the alleged father, or any one of many others with the same blood type, may have been the father of the child.”

Unusual closeness to a child is not convincing proof of filiation.**Facts:**

In *Tan vs. Trocio*, 191 SCRA 764, it appeared that Cely was closing her business establishment when suddenly her lawyer was right in front of her making sexual advances which she could not resist. According to her, she then begot a child. The case was filed eight years later. To establish the lawyer’s immorality in the disbarment proceeding, she presented one of her maids who testified as to the unusual closeness of the son and the lawyer, like playing with him and the act of giving toys and gifts. Pictures were presented to show their physical likeness.

Issue:

Were these evidences enough to show the lawyer’s immorality?

Held:

No. The unusual closeness between the lawyer and the begotten son of Cely, like playing with him and giving him toys, are not convincing enough to prove paternity. The same must be said of the pictures of the lawyer and the boy showing allegedly their physical likeness to each other. Such evidence is inconclusive to prove paternity and much less would it prove violation of Cely's personal honor. On the other hand, the boy was born during the wedlock of Cely with her lawful husband. This presumes that the boy is their legitimate son unless physical access between the couple was impossible. Here, the presumption has not been overcome.

Voluntary recognition under the Civil Code.

Under Article 278 of the Civil Code, voluntary recognition took place in a record of birth, a will, statement before a court of record or in an authentic writing. In all these cases, there was no need for any court action to establish filiation for it has already been established as such by the voluntary act of the father.

Voluntary recognition is the equivalent of filiation in the Family Code having been "established." It needs no further action in court. (*Divinagracia vs. Bellosillo*, G.R. No. 47407, August 12, 1986).

Voluntary recognition must be express; a mere statement incidentally revealing paternity will not be sufficient. (*Javelona vs. Monteclaro*, 74 Phil. 393; *Donado vs. Donado*, 55 Phil. 861; *Sy-Quia vs. Sy-Quia*, G.R. No. 62283, November 23, 1983; *Colorado vs. CA*, L-39948, February 28, 1985).

Court merely confirms recognition by the father.

The father of a child may have performed positive acts of recognition of the child, like supporting the child, introducing her to the public as an illegitimate child, being proud of the good grades of his child, and asking her to be in her Sunday's best one day at his bedside before he died. One such case is *Alberto vs. CA, et al.*, G.R. No. 86639, June 2, 1994 (52 SCAD 67, 232 SCRA 745), where the Supreme Court said:

"When a putative father manifests openly through words and deeds his recognition of a child, the courts can do no less than confirm said acknowledgment. As the immortal band of Shakespeare perspicaciously said: 'Let

your own discretion be your tutor; suit the action to the word, the word to action.’ Herein deceased father cannot possibly be charged with indecisiveness or vacillation for he suited his action to his words and his words to his action.”

Proof of filiation through letters sent.

In *Raymond Pe Lim vs. CA, et al.*, G.R. No. 112229, March 18, 1997, 80 SCAD 685, it was found out that a man succeeded in seducing and impregnating a maid, only to disclaim the paternity of the child.

The man and the woman lived together as husband and wife, without the benefit of marriage until the woman left for Japan already pregnant. There were letters where the man recognized the child as his own, only to deny paternity after he got married to another woman. Since the man abandoned her child, she asked for support but the man denied being the father of the child.

The Supreme Court said, in *Alberto vs. CA*, “When a putative father manifests openly through words and deeds his recognition of a child, the courts can do no less than confirm said acknowledgment. As the immortal Bard Shakespeare perspicaciously said: “Let your own discretion be your tutor; suit the action to the word, the word to the action.” (52 SCAD 67, 232 SCRA 747).

The evidence shows that the man considered himself to be the father of the child as shown by the handwritten letters he wrote to the woman.

There were other letters by the man to the woman acknowledging that he is the father of the child. Under Art. 174 of the Family Code, illegitimate filiation maybe established in the same way and on the same evidence as legitimate children.

The man has never controverted the evidence on record. His love letters to the woman vowing to be a good father to the child; pictures of himself on various occasions cuddling the child and the Certificate of Live Birth say it all.

Open and continuous possession of status of an illegitimate child; other proofs of filiation.

In *Francisco Jison vs. CA, et al.*, G.R. No. 124853, February 24, 1998, 91 SCAD 849, Francisco has been married to Lilia Lopez Jison

since 1940. At the end of 1945 or the start of 1946, he impregnated Esperanza who was employed as the nanny of his daughter Lourdes. Monina, the private respondent was born on August 6, 1946 in Dingle, Iloilo out of the relationship of Francisco and Esperanza and since then, she has been enjoying continued and implied recognition as an illegitimate child of Francisco, not only to himself but that of his family. Support was given; she studied and she was supported by her father until she graduated and passed the CPA Board. She was supported by him when she got her master's degree. He even recommended her in her application for a job. Since her father refused to recognize her, she filed an action for judicial declaration of her illegitimate status as child of Francisco. Francisco denied having sexual relations with Esperanza, saying that during that period from 1945 to 1946, she was no longer under his employ and that he did not know where she was. He denied having recognized her expressly or impliedly. Evidence was shown that Francisco recognized her as her child by giving support; having recommended her for employment; having sent her to school; paid for her hospitalization when she got sick; paying for the funeral expenses of her mother; acknowledging his paternal greetings and calling her "*Hija*" or child; instructing his office personnel to give her a monthly allowance; allowing her to use his house in Bacolod City; paying for her expenses during vacations in Manila and allowing his surname to be used by her in her scholastic and other records.

The issue then was whether Monina is the illegitimate child of Francisco.

The Supreme Court held in the affirmative, saying those enumerated acts show recognition which has been consistently shown and manifested throughout the years publicly (citing *Baluyot vs. Baluyot*, 186 SCRA 506; *Alberto vs. CA*, 52 SCAD 67, 232 SCRA 745), spontaneously, continuously and in an uninterrupted manner. (*Ong vs. CA*, G.R. No. 95386, May 29, 1997, 82 SCAD 861).

The question on the probative value of the certification issued by the Local Civil Registrar concerning her birth was raised. On this issue, the Supreme Court said:

"It is settled that a certificate of live birth purportedly identifying the putative father is not competent evidence as to the issue of paternity, when there is no showing that the putative father had a hand in the preparation of said certificates, and the Local Civil Registrar is devoid of

authority to record the paternity of an illegitimate child upon the information of a third-person. (citing Fernandez vs. CA, 48 SCAD 333, 230 SCRA 130; Roces vs. Local Civil Registrar, 102 Phil. 1050). Simply put, if the alleged father did not intervene in the birth certificate, *e.g.*, supplying the information himself, the inscription of his name by the mother or doctor or registrar is null and void; the mere certificate by the registrar without the signature of the father is not proof of voluntary acknowledgment on the latter's part. (Berciles vs. GSIS, 128 SCRA 58). In like manner, Francisco's lack of participation in the preparation of the baptismal certificates and school records renders these documents incompetent to prove paternity, the former being competent merely to prove the administration of the sacrament of baptism on the date so specified. However, despite the inadmissibility of the school records *per se* to prove paternity, they may be admitted as part of Monina's testimony to corroborate her claim that Francisco spent for her education."

The Court also disagreed with the ruling of the Court of Appeals that the certificates issued by the Local Civil Registrar and the baptismal certificates may be taken as circumstantial evidence to prove Monina's filiation. Since they are *per se* inadmissible in evidence as proof of such filiation, they cannot be admitted indirectly as circumstantial evidence to prove the same.

There were various notes and letters written by Francisco's relatives attesting to Monina's filiation. But they were declared inadmissible in view of the fact that there was no showing that the authors or declarants were dead or unable to testify. The relationship between the authors and Monina was not also shown. (See Rule 130, Section 39, Rules of Court). As to the admissibility of such documents, the Supreme Court said that Rule 130, Section 40 of the Rules of Court needs further elaboration.

Thus, the Court said:

"Section 40. Family reputation or tradition regarding pedigree. — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles

or other family books or charts, engravings on rings, family portraits and the like, may be received as evidence of pedigree.

It is evident that this provision may be divided into two (2) parts: the portion containing the first underscored clause which pertains to testimonial evidence, under which the documents in question may not be admitted as the authors thereof did not take the witness stand; and the section containing the second underscored phrase. What must then be ascertained is whether such documents, as private documents, fall within the scope of the clause 'and the like' as qualified by the preceding phrase 'entries in family bibles or other family books or charts, engravings on rights [and] family portraits.'"

It was held that the scope of the enumeration contained in the second portion of this provision, in light of the rule of *ejusdem generis*, is limited to objects which are commonly known as "family possession," or those articles which represent, in effect, a family's joint statement of its belief as to the pedigree of a person. These have been described as objects "openly exhibited and well-known to the family," or those "which, if preserved in a family, may be regarded as giving a family tradition." Other examples of these objects which are regarded as reflective of a family's reputation or tradition regarding pedigree are inscriptions on tombstones, monuments or coffin plates."

Plainly then, such documents as private documents not constituting "family possessions" as discussed above, may not be admitted on the basis of Rule 130, Section 40. Neither may these exhibits be admitted on the basis of Rule 130, Section 41 regarding common reputation, it having been observed that:

"[T]he weight of authority appears to be in favor of the theory that it is the general repute, the common reputation in the family, and not the common reputation in community, that is a material element of evidence going to establish pedigree. x x x [Thus] matters of pedigree may be proved by reputation in the family, and not by reputation in the neighborhood or vicinity, except where the pedigree in question is marriage which may be proved by common reputation in the community."

But in spite of their inadmissibility, they were however, considered and admitted as part of Monina's testimony to strengthen her

claim that, indeed, relatives of Francisco recognized her as his daughter.

Francisco contended that Monina signed an affidavit stating that she is not Francisco's daughter. But she said, she signed it under duress as she was jobless, had no savings and needed the money to support herself and finish her studies. In fact, she said that she signed it as a lawyer of Francisco told her that filiation cannot be waived and that the ploy would boomerang upon Francisco. He, however, asserted that when she signed the affidavit, she was already 25 years old and in fact, advised by a lawyer.

The Supreme Court said that, indeed, if Monina were truly not Francisco's illegitimate daughter, it would have been unnecessary for him to have gone to such great lengths in order that Monina would denounce her filiation.

The unexplained delay of Monina in filing the case was another issue. It was contended that Monina filed the action when she was already more than 39 years of age. It was contended that she was barred by laches. In throwing out the contention, it was ruled that the essential elements of laches are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct as having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complaint would assert the right in which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred. The last element is the origin of the doctrine that stale demands apply only where by reason of the lapse of time it would be inequitable to allow a party to enforce his legal rights.

As Francisco set up laches as an affirmative defense, it was incumbent upon him to prove the existence of its elements. However, he only succeeded in showing Monina's delay in asserting her claim, but miserably failed to prove the last element. In any event, it must be stressed that laches is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims, and is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted. There is no absolute rule as to what constitutes laches; each case is to be determined according to its particular circumstances. The question of laches is

addressed to the sound discretion of the court, and since it is an equitable doctrine, its application is controlled by equitable considerations. It cannot be worked to defeat justice or to perpetuate fraud and injustice. (citing *Chavez vs. Bonto Perez*, 59 SCAD 379, 242 SCRA 73; *Fernandez vs. Fernandez*, 184 SCRA 190). Since the instant case involves paternity and filiation, even if illegitimate, Monina filed her action well within the period granted her by a positive provision of law. A denial then of her action on ground of laches would clearly be inequitable and unjust.

Standard of proof of filiation under the second paragraph of Article 172, Family Code.

To establish filiation under the second paragraph of Article 172 of the Family Code, the plaintiff has to hurdle the high standard of proof. Monina complied with this. More specifically, the Supreme Court said:

“For success of an action to establish illegitimate filiation under the second paragraph, which Monina relies upon given that she has none of the evidence mentioned in the first paragraph, a high standard of proof is required. Specifically, to prove open and continuous possession of the status of an illegitimate child, there must be evidence of the manifestation of the permanent intention of the supposed father to consider the child as his, by continuous and clear manifestations of parental affection and care, which cannot be attributed to pure charity. Such acts must be of such a nature that they reveal not only the conviction of paternity, but also the apparent desire to have and treat the child as such in all relations in society and in life, not accidentally, but continuously. (*Mendoza vs. CA*, 201 SCRA 675).

By ‘continuous’ is meant uninterrupted and consistent, but does not require any particular length of time.”

The foregoing standard of proof required to establish one’s filiation is founded on the principle that an order for recognition and support may create an unwholesome atmosphere or may be an irritant in the family or lives of the parties, so that it must be issued only if paternity or filiation is established by clear and convincing evidence. (*Constantino vs. Mendez*, 209 SCRA 18).

High Standard of Proof of filiation is required.**Carmelo Cabatana vs. CA, et al.
G.R. No. 124814, October 21, 2004**

In an action to prove filiation with support, the Regional Trial Court held that “the child was presented before the court and if the court is to decide this case, based on the personal appearance of the child then there can never be a doubt that the plaintiff-minor is the child of the defendant with the plaintiff-minor’s mother. Florencia Regodos.” This was affirmed by the CA on appeal. Both courts anchored their rulings on the basis of the admission by the defendant that he had sexual intercourse with the plaintiff’s mother who, herself was married.

The Supreme Court found such decisions incorrect because a very high standard of proof of filiation is necessary to prove filiation.

“Time and again, the Court has ruled that a high standard of proof is required to establish paternity and filiation. (Baluyot vs. Baluyot, 186 SCRA 506 [1990]). An order for recognition and support may create an unwholesome situation or may be an irritant to the family or the lives of the parties so that it must be issued only if paternity or filiation is established by clear and convincing evidence. (Constantino vs. Mendez, et al., 209 SCRA 18 [1992]; Carmelo Cabatana vs. CA, et al., G.R. No. 124814, October 21, 2004).

The applicable provisions of the law are Articles 172 and 175 of the Family Code.

The child presented a copy of his birth and baptismal certificates, the preparation of which was without the knowledge or consent of putative father. A certificate of live birth purportedly identifying the putative father is not competent evidence of paternity when there is no showing that the putative father had a hand in the preparation of said certificate. The local civil registrar has no authority to record the paternity of an illegitimate child on the information of a third person. (Fernandez vs. CA, 230 SCRA 120; Roces vs. Local Civil Registrar, 102 Phil. 1050 [1958]).

While a baptismal certificate may be considered a public document, it can only serve as evidence of the administration of the sacrament on the date specified but not the veracity of the entries with respect to the child’s paternity. (Macandang vs. CA, 100 SCRA 73).

Thus, certificates issued by the local civil registrar and baptismal certificates are *per se* inadmissible in evidence as proof of filiation and they cannot be admitted indirectly as circumstantial evidence to prove the same. (Jison vs. CA, 350 Phil. 138 [1998]).

In this case, both lower courts brushed aside the misrepresentation of the woman as a widow, saying that the lie was minor which did not affect her testimony. The truth is that, her husband was still alive and her marriage was still subsisting. The Supreme Court had this to say:

“Both courts dismissed the lie as minor which did not affect the rest of her testimony. We disagree. The fact that the woman’s husband is living and there is a valid subsisting marriage between them give rise to the presumption that a child born within that marriage is legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress. (Art. 167, Family Code). The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. The presumption is grounded on the policy to protect innocent offspring from the odium of illegitimacy.” (Liyao, Jr. vs. Liyao, et al., 428 Phil. 628 [2002]).

In this age of genetic profiling and deoxyribonucleic acid (DNA) analysis, the extremely subjective test of physical resemblance or similarity of features will not suffice as evidence to prove paternity and filiation before the courts of law. This only shows the very high standard of proof that a child must present to establish filiation.

Unprobated will may be a proof of filiation.

A will where there is recognition of child is a proof of filiation. In fact, even if such will has been revoked, it can be presented as proof of filiation as it shall then become an authentic writing. The revocation of a will does not carry with the revocation of the recognition of a child. (Art. 834, NCC). By inference therefore, even an unprobated will can be presented as proof of filiation. There is not even a necessity that the child has to go to court as the document itself is a consummated act of recognition.

Case:**Potenciano vs. Reynoso**
G.R. No. 140707, April 22, 2003**Facts:**

Felipe Pareja executed a Deed of Absolute Sale over a parcel of land in favor of his illegitimate son, Manuel Jayme. Before he died, he executed a Last Will and Testament wherein he bequeathed to Reynoso and Manuel Jayme the lot which was previously sold to Jayme while at the same time recognizing them as his illegitimate children. After the execution of the Deed of Sale, Manuel Jayme and his wife sold the property to Norgene Potenciano. The Reynosos filed a complaint for declaration of nullity of the Deed of Sale as the illegitimate children of Pareja with another woman. They assailed the sale by their father contending that he was already senile and still suffering from civil interdiction due to his conviction for the crime of murder. The RTC declared the Deed of Sale void since the signature of Pareja was a forgery. The CA affirmed the RTC decision but at the same time accepted the will of Pareja as sufficient proof of filiation they were recognized, even if it had not yet been probated. The CA ruled further that Jayme spouses are bound by the Joint Affidavit executed by Manuel Jayme and Dwight Reynoso declaring that, together with other parties, they were recognized as illegitimate children of Pareja. Jayme and Potenciano argued that the suit for declaration of nullity of the Deed of Sale cannot be maintained by the Reynosos because they have not established their filiation to Pareja as their father since his will has not been probated. Brushing aside such contention, the Supreme Court —

Held:

The contention is not correct. The way to prove the filiation of illegitimate children is provided by the Family Code under Articles 172 and 175.

The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required.

Under the Family Code, filiation may likewise be established by holographic as well as notarial wills, except that they no longer

need to be probated or to be strictly in conformity with the formalities thereof for purposes of establishing filiation.

The argument on the need for probate loses force when weighed against its purpose. In probate proceedings, all that the law requires is the court's declaration that the external formalities have been complied with. The will is then deemed valid and effective in the eyes of the law. Thus, probate proceedings merely determine the extrinsic validity of the will and do not affect its contents.

Plaintiff Dwight Reynoso and defendant Manuel Jayme had executed a joint affidavit declaring that they, together with the other plaintiffs were recognized illegitimate children of Felipe B. Pareja as embodied in the latter's Will. This affidavit which binds Jayme as affiant is proof of the existence of Pareja's Will and effectively demolishes Jayme's posture that the plaintiffs have no personality to institute the instant suit.

Petitioners are mistaken in assuming that this Joint Affidavit is being used by private respondents to prove the latter's filiation as illegitimate children of Pareja. The document cannot be used for that purpose, because the children were the ones who recognized their father and not the other way around. However, its importance lies in the fact that it prevents petitioners from denying private respondents' standing to institute the case against them.

Having admitted that Private Respondent Reynoso was indeed an illegitimate son of Pareja just like him, Manuel Jayme cannot now claim otherwise. An admission is rendered conclusive upon the person making it and cannot be denied as against the person relying on it. Neither can petitioners argue that such acknowledgment applies only to Jayme. Since Potenciano claims to have derived his right from the Jayme spouses, then he is bound by Jayme's admission.

Article 173. 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 five 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. (268a)

The law allows a child to prove his legitimate filiation during his or her lifetime. In fact, such right is transmissible to his/her heirs

if he should die during minority or in a state of insanity where the heirs shall have a period of five (5) years within which to institute the action. The obvious purpose of the law traces itself to the law on succession as it would redound to the benefit of the legitimate children. The action, however, prescribes if not brought within a period of five (5) years after the death of the father in case he died a minor or in a state of insanity. In short, if the children of such minor or insane may be considered to have waived the said right if they do not file it within the period prescribed by law.

The law allows the heirs of a child who had the right to claim legitimacy to file the suit provided that they do so within five (5) years after the death of such child. The question is: Does the law allow the illegitimate children of such child to file or continue such action if one has already been commenced?

It is submitted that the answer is YES because the law does not make any distinction, when it mentions the word “heirs” regardless of whether they are legitimate or illegitimate heirs. Again, the purpose goes into the rules on succession, for, if they prove that their father is a legitimate son of their grandfather, for purposes of succession, they would benefit out of the result of such proceeding, as distinguished from the fact that their father is a mere illegitimate child.

Survival of the action.

The condition for the survival of an action to claim legitimacy is that, it must have been commenced by the child prior to his death or that of his father or both.

Illustration:

A has a son B. A filed a suit to claim legitimate filiation. During the pendency of the action, A died. Can his own children continue the action.

Yes, because the law says that the action already commenced by the child shall survive notwithstanding the death of either or both of the parties. So, even with the death of A, his children/heirs can continue with the action.

The rule is the same even if A is dead or both A and B are dead.

Article 174. Legitimate 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; and
- (3) To be entitled to the legitime and other successional rights granted to them by the Civil Code. (264a)

Use of surname.

The new law is the same with the present law insofar as the use of surname is concerned. Under Article 364 of the Civil Code, the legitimate and legitimated children shall principally use the surname of the father. But the mother's name may also be used. (Article 174, Family Code).

Reading the laws together, the child is not mandated to use the surname of the father alone. This is so because, the child under Article 174 of the Family Code may likewise use the surname of the mother. It means that the law which uses the phrase "shall have the right" to bear the surname of the father simply means that it is more of a right, but not a duty on his part to bear the surname of the father. Article 174 of the Family Code is in fact a broader law considering that while the Civil Code stated that the child shall "principally use" the surname of the father, the present law now makes it a matter of right to use the surname of the father. What is more is that, it likewise give the child the right to carry the surname of the mother.

Support.

A child has the right to be supported. In fact, it is a duty of the parents to provide every child support. This is so because it is necessary for the sustenance of the child. In fact, it cannot be renounced, waived or transferred to a third person. The exception against its waiver is support in arrears for the reason that it is no longer needed by the person who is entitled to be supported.

Legitime and other successional rights.

Under the law, the legitime of the legitimate children is equivalent to one-half (1/2) of the parent's estate. But if there are several

of them, the same shall be divided among them equally. (Art. 888, NCC). In fact, the legitime is that part of the estate of the parent which is reserved by law in favor of the children of which they cannot be deprived unless there is a valid and legal reason for them to be disinherited (Art. 919, NCC). The grounds for disinheritance are exclusive. Any other ground relied upon by the parent in disinheriting a child will invalidate or render useless the said disinheritance.

Example:

A and B are married. They have a daughter C. they arranged the marriage of C with D, the son of their friend with a warning that if C would refuse to marry D, they would disinherit her. If C refuses and she is disinherited, the act is not proper as it is not a ground for disinheritance under the law.

If the child who is entitled to inherit dies ahead of the parent, then, the child offsprings may inherit what their parent was entitled to by right of representation, where they would be elevated to the level of their father but they are limited only to the extent that their parent was entitled to inherit from their parent's predecessor-in-interest.

Chapter 3

Illegitimate Children

Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent. (289a)

Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. (287a)

The law prescribes the period within which to claim the legitimacy of a child. It is even transmissible to the heirs. There is no

problem with respect to the legitimates, but problems on the period to claim filiation of illegitimates have arisen and Article 175 of the Family Code prescribes the period, that is, during the lifetime of the illegitimate father; otherwise, the defense of prescription is proper. This is, however, true if the case squarely falls under the Family Code. Furthermore, if the child was born under the Civil Code and the putative father died when he was a minor, he has a period of 4 years from the attainment of the age of majority within which to ask for recognition. (Art. 285, NCC). This is a vested right which cannot be washed away by the new law. (*Tayag vs. CA*).

Illustration:

A and B have an illegitimate child born on August 10, 1988. After A's death in 1994, C, the illegitimate, cannot go to Court anymore to establish illegitimate filiation, because the action has already prescribed as provided for in Article 175 of the Family Code; the action having been filed after the death of the putative father. The reason for the law is obvious from the fact that after A's death, he can no longer talk and defend himself.

The above-cited rule, however, is not applicable if the father died while the illegitimate child is a minor and that he acquired the right to go to court to establish filiation under the Civil Code. For, while the Family Code provides for retroactivity (Art. 256), yet, the retroactive effect does not apply if vested rights would be impaired. Let us examine the following case for purposes of clarifying the above-cited rule.

Action to establish filiation of an illegitimate child if the father died survives the death of the father.

Marquino, et al. vs. IAC, et al. vs. IAC, et al.

G.R. No. 72078, June 27, 1994

52 SCAD 425

Facts:

Bibiana Romano-Pagadora was born on December 2, 1926 of Gregoria Romano and allegedly Eutiquio Marquino, who was then

single. She became known to the Marquino family when she was hired as a domestic helper in the Marquinos' house. She always received financial support from them. On January 10, 1971, she filed an action for judicial declaration of filiation, annulment of partition, support, and damages against Eutiquio and his wife and children. She claimed that she enjoyed continuous possession of an acknowledged natural child by the direct and unequivocal acts of her father and his family which was denied by the Marquinos. Before she could finish presenting her evidence, she died on March 17, 1979. On March 23, 1979, her heirs were substituted for her. The petitioners filed a motion to dismiss on the ground that the action for recognition is intransmissible. The trial court dismissed the case. On appeal, the CA reversed the order contending that the heirs may continue the action already filed. A motion for reconsideration was filed, but it was denied, hence, this petition raising as issues:

1. Whether or not the right of action to compel recognition is intransmissible in character.
2. What is the effect of the death of the putative father during the pendency of the case?

Held:

Article 285 of the Civil Code provides that an action for recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:

1. If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;
2. If after the death of the father or of the mother a document should appear of which nothing had been heard and in which either or both parents recognize the child.

In this case, the action must be commenced within four years from the discovery of the document.

The rationale for the rule is to give the alleged parents the opportunity to be heard. The reason for the exceptions is to protect the heirs. (*Villalon vs. Villalon*, 71 Phil. 98 [1940]).

In *Conde vs. Abaya*, 13 Phil. 249 (1909), it was held that the right of action for the acknowledgment of natural children to which

Article 285, New Civil Code (Article 137, Old Civil Code) refers, can never be transmitted. The reason is that the Code makes no mention of it in any case, not even as an exception.

In the case at bench, it is evident that Bibiana was a natural child. She was born out of wedlock on December 2, 1926, of Gregoria Romano and allegedly of Eutiquio Marquino who at that time was single. Bibiana sued for compulsory recognition while Eutiquio was still alive. Sadly, she died on March 17, 1983, before she could present her proof of recognition. Her death tolled the action considering its personal nature and intransmissibility. As explained in the case of *Conde vs. Abaya, viz.:*

“It is most illogical and contrary to every rule of correct interpretation that the right of action to secure acknowledgment by the natural child should be presumed to be transmitted, independently, as a rule to his heirs, while the right to claim legitimacy from his predecessor is not expressly, independently, or, as a general rule conceded to the heirs of the legitimate child, but only relatively and as an exception. Consequently, the pretension that the right of action on the part of the child to obtain the acknowledgment of his natural filiation is transmitted to his descendants, is altogether unfounded. No legal provision exists to sustain such pretension, nor can an argument or presumption be based on the lesser claim when there is no basis for the greater one, and when it is only given as an exception in well-defined cases. It is placing the heirs of the natural child on better footing than the heirs of the legitimate one, when, as a child is not better than, nor even equal to, that of a legitimate child.”

This ruling was reiterated in the recent case of *Heirs of Raymundo C. Bañas vs. Heirs of Bibiano Bañas*, 143 SCRA 260 (1985), thus:

“Granting that, after the death of Bibiano Bañas, Raymundo could file an action for compulsory recognition against Bibiano’s heirs, still, plaintiffs-appellants cannot invoke Raymundo’s right to file such action, because it is not transmissible to the natural child’s heirs; the right is purely a personal one to the natural child.”

The second issue for resolution is whether or not after the death of the putative father the action for recognition of a natural child can be continued against the heirs of the former.

The SC ruled against its continuance. In an action for compulsory recognition, the party in the best position to oppose the same is the putative parent himself. (*Hernaez vs. IAC*, 208 SCRA 449). The need to hear the side of the putative parent is an overwhelming consideration because of the unsettling effects of such an action on the putative parent. For this reason, Article 285 provides only two (2) exceptions. Neither of these exceptions obtain in the case at bench. *Firstly*, the death of Eutiquio did not occur during the minority of Bibiana Romano. She was already forty-five (45) years old when the case was filed on January 10, 1971. *Secondly*, no document was discovered, before unknown, in which Bibiana was expressly acknowledged as a natural child. *Consequently*, the respondent court erred in ruling that the action can still be continued against the heirs of Eutiquio.

Our public policy at that time supports the rule limiting actions for recognition during the lifetime of the presumed parents, to quote:

“Public policy, indeed public necessity, demands that before an illegitimate child be admitted into a legitimate family, every requisite of the law must be completely and fully complied with. No one should ever be permitted upon doubtful evidence to take from legitimate children the property which they and their parents have, by industry, fidelity, and frugality, acquired. To do so would, in many instances where the legitimate children had labored unsparingly in order that they might have the comforts of life and joys of home, be manifestly contrary to every plainest principles of justice. And again, if this can ever be done upon oral testimony alone, after the lips of the alleged father and mother have been closed by death, such testimony must be clear, strong, and convincing.”

The law providing for the intransmissibility of an action for recognition, however, has been superseded by the New Family Code which took effect on August 3, 1988. Under Article 173 of the Family Code, it is now provided:

“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 five (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.” (268a)

The action commenced by the child shall survive notwithstanding the death of either or both of the parties.

Pursuant to this provision, the child can bring the action during his or her entire lifetime (not during the lifetime of the parents) and even after the death of the parents. In other words, the action does not prescribe as long as he lives.

Be that as it may, Article 173 of the Family Code cannot be given retroactive effect so as to apply to the case at bench because it will prejudice the vested rights of petitioners transmitted to them at the time of the death of their father, Eutiquio Marquino. “Vested right” is a right in property which has become fixed and established and is no longer open to doubt or controversy. (*Ayog vs. Cusi, Jr.*, 118 SCRA 492 [1982]). It expresses the concept of present fixed interest, which in right reason and natural justice should be protected against arbitrary State action. (*Eutiquio Marquino, et al. vs. IAC, et al.*, G.R. No. 72078, June 27, 1994, 52 SCAD 425).

In *Tayag vs. CA, et al.*, G.R. No. 95229, June 9, 1992, an action was filed by the mother of her child against the administrator of the estate of her late husband (not legal). It appeared that during the lifetime of Atty. Ocampo, they had an amorous relationship resulting in the birth of Chad on October 5, 1980. On September 28, 1983, Atty. Ocampo died. On April 9, 1987, the complaint was filed seeking for the child’s share in Atty. Ocampo’s estate. It was opposed on two (2) grounds, namely: (1) the recognition of the child has not been established; (2) prescription.

(1) ***The defense is not proper.***

As early as *Briz vs. Briz, et al.*, 43 Phil. 763 (1922), it has already been said that:

“The question whether a person in the position of the present plaintiff can, in any event, maintain a complex action to compel recognition as a natural child and at the same time to obtain ulterior relief in the character of heir,

is one which, in the opinion of this court, must be answered in affirmative, provided always that the conditions justifying the joinder of the two distinct causes of actions are present in the particular case. In other words, there is no absolute necessity requiring that the action to compel acknowledgment as to require that a rule should be here applied different from that generally applicable in other cases. x x x.”

The doctrine must be considered well-settled, that natural child having a right to compel acknowledgment, may maintain partition proceedings for the division of the inheritance against his co-heirs x x x; and the same person may intervene in the proceedings for the distribution of the estate of his deceased natural father, or mother x x x. In neither of these situations has it been thought necessary for the plaintiff to show a prior decree compelling acknowledgment. The obvious reason is that in partition suits and distribution proceedings the other persons who might take by inheritance are before the court; and the declaration of heirship is appropriate to such proceedings.

(2) *Prescription.*

It was argued that since filiation is sought to be proven by means of a private handwritten instrument signed by the parent concerned, the action has prescribed, as under Article 175, Family Code, the action to establish filiation of the illegitimate minor child must be brought during the lifetime of the alleged putative father. Petitioner contended that Article 285, New Civil Code, is not applicable and instead, Art. 175 of the Family Code should be given retroactive effect. The theory is based on the supposition that Art. 175 is procedural and no vested rights are created; hence, it can be made to apply retroactively.

Petitioner submits that Article 175 of the Family Code applies in which case the complaint should have been filed during the lifetime of the putative father, failing which the same must be dismissed on the ground of prescription. Private respondent, however, insists that Article 285 of the Civil Code is controlling and, since the alleged parent died during the minority of the child, the action for filiation may be filed within four years from the attainment of majority of the minor child.

Article 256 of the Family Code states that, “This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.”

It becomes essential, therefore, to determine whether the right of the minor child to file an action for recognition is a vested right or not.

Under the circumstances obtaining in the case at bar, it was said 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. In *Republic of the Philippines vs. Court of Appeals, et al.*, G.R. No. 92326, January 24, 1992, it was earlier held that the fact of filing of the petition already vested in the petitioner her right to file it and to have the same proceed to final adjudication in accordance with the law in force at the time, and such right can no longer be prejudiced or impaired by the enactment of a new law.

Even assuming *ex gratia argumenti* that the provision of the Family Code in question is procedural in nature, the rule that a statutory change in matters of procedure may affect pending actions and proceedings, unless the language of the act excludes them from its operation, is not so pervasive that it may be used to validate or invalidate proceedings taken before it goes into effect, since procedure must be governed by the law regulating it at the time the question of procedure arises especially where vested rights may be prejudiced. Accordingly, Article 175 of the Family Code finds no proper application to the instant case since it will ineluctably affect adversely a right of private respondent and, consequentially, of the minor child she represents, both of which have been vested with the filing of the complaint in court. The trial court is, therefore, correct in applying the provisions of Article 285 of the Civil Code and in holding that private respondent's cause of action has not yet prescribed.

Continuous possession of status of an illegitimate child.

The rule in *Tayag vs. CA, et al.*, 209 SCRA 665 (1992), has been reiterated. In that case, a complaint to compel recognition of an illegitimate child was brought before the 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." It was contended that the action has already prescribed since it was filed after the death of the illegitimate father. The SC in said case ruled that the right to file such action was already vested upon the child when the father died; thus:

"Under the circumstance obtaining in the case at bar, we hold 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. We herein adopt our ruling in the recent case of Republic of the *Philippines vs. Court of Appeals, et al.*, 205 SCRA 356 (1992), where we held that the fact of filing of the petition already vested in the petitioner her right to file it and to have the same proceed to final adjudication in accordance with the law in force at the time, and such right can no longer be prejudiced or impaired by the enactment of a new law.

x x x

x x x

x x x

Accordingly, Article 175 of the Family Code finds no proper application to the instant case since it will ineluctably affect adversely a right of private respondent and, consequentially, of the minor child she represents, both of which have been vested with the filing of the complaint. The trial court is, therefore, correct in applying the provisions of Article 285 of the Civil Code and in holding that private respondent's cause of action has not yet prescribed."

The case of *Jose Aruego, Jr., et al. vs. CA, et al.*, G.R. No. 112193, March 13, 1996, 69 SCAD 423, is similarly situated in that, Antonia and Evelyn Aruego, represented by their mother Luz Fabian, filed a complaint for compulsory recognition and enforcement of successional rights, stating that Luz Fabian had an amorous relationship with the late Jose Aruego, resulting in the birth of Antonia and Evelyn in 1962 and 1963, respectively. Jose Aruego died in 1982. Some evidences of recognition of the children were the regular support; allowance in the use of the surname; payments for maternal bills; baptism; taking them to restaurants; department stores; attendance to school problems of the children; calling them to his office every now and then and introducing them as his children to family friends. Thus, they have been in open and continuous possession of the status of illegitimate children. The trial court granted the prayer. In a motion for reconsideration, the legitimate heirs contended that the trial court has already lost jurisdiction over the case by virtue of the passage of the Family Code. It was denied. The Court of Appeals affirmed the lower court's ruling; hence, they appealed to the SC. Petitioner's contention was based on the provisions of Article 175 of the Family Code that illegitimate children may establish their illegitimate filiation, but should do it during the lifetime of their alleged parent, if

it is based on open and continuous possession of the status of an illegitimate child. The action was filed on March 7, 1983, or about one (1) year after Aruego's death. They contended that since Article 255 of the Family Code provides for retroactivity of the law, the case must be dismissed. In denying petitioner's contention, the Supreme Court held that the action for compulsory recognition as illegitimate children was founded on Article 285 of the Civil Code which provides:

“The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:

(1) If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority;

x x x

x x x

x x x

It was said:

“Tayag applied four-square with the case at bench. The action brought by private respondent Antonia Aruego for compulsory recognition and enforcement of successional rights, which was filed prior to the advent of the Family Code, must be governed by Article 285 of the Civil Code, and not by Article 175, paragraph 2 of the Family Code. The present law cannot be given retroactive effect insofar as the instant case is concerned, as its application will prejudice the vested right of private respondent to have her case decided under Article 285 of the Civil Code. The right was vested to her by the fact that she filed her action under the regime of the Civil Code. Prescinding from this, the conclusion then ought to be that the action was not yet barred, notwithstanding the fact that it was brought when the putative father was already deceased, since private respondent was then still a minor when it was filed, an exception to the general rule provided under Article 285 of the Civil Code. Hence, the trial court, which acquired jurisdiction over the case by the filing of the complaint, never lost jurisdiction over the same despite the passage of E.O. No. 209, also known as the Family Code of the Philippines. (Aruego, et al. vs. CA, et al., G.R. No. 112193, March 13, 1996, 69 SCAD 423).

In *Ma. Theresa Alberto vs. CA, et al.*, G.R. No. 86639, June 2, 1994, 52 SCAD 67, the Supreme Court said:

“When a putative father manifests openly through words and deeds his recognition of a child, the courts can do no less than confirm said acknowledgment.”

It was further said:

“What a poignant novel this daughter could well author as she now seeks to establish indubitable parental links with a father who sired her some 41 years ago.”

It appears that on September 18, 1953, the petitioner was born out of wedlock of one Aurora Reniva and Juan Alberto. She used the name “Alberto” in her school records and correspondences. Her father died intestate on September 18, 1967, intestate. On January 10, 1968, a petition for administration of his estate was filed. The wife Yolanda was appointed administratrix; and after the inventory, appraisal, and accounting were approved, the proceedings were closed. On September 15, 1978, she filed a motion to intervene as oppositor and to re-open the proceedings, praying that she be declared to have acquired the status of a natural child and thus, entitled to share in the estate of the deceased. It was granted. After natural child was declared as such, the court compelled the heirs of the decedent to recognize her as a natural daughter and allowed her to participate in the estate proceedings. The Court of Appeals reversed on appeal. Among the facts established to show her status as found by the probate court are the following:

- a. The deceased gave the oppositor sums of money for her schooling;
- b. The deceased made known to his friends and relatives that she was his daughter; and
- c. He made known to the personnel of the International School, where the oppositor was enrolled, that she was his daughter.

The following incidents would show the direct acts of the family of the deceased:

- a. When the deceased’s younger sister, Mrs. Auria Alberto Solidum asked that the oppositor be sent to her house in her Sunday best to meet her father for the first time;

- b. When Fr. Arcilla brought the oppositor to the bedside of the deceased in the hospital and likewise asked the guard to give way to her as she was a member of the family;
- c. When the step-mother of the deceased, during the wake, introduced the oppositor to her youngest sister as an elder sister.

The basic issue is this:

May the estate and heirs of the deceased Juan Alberto be compelled to recognize the petitioner as the deceased's natural daughter on the basis of the evidence established?

Held:

Yes. Alberto never took any step to stop her from using his name; Jose Tablizo testified on Alberto's recognition of his daughter when he showed him her report cards, stating that those were the grades of his daughter. This is a case of declaration against interest under Rule 130, Sec. 38 of the Rules of Court.

Recognition of petitioner's status as a natural daughter of Juan Alberto was made, not only by him, but his relatives as well. Article 283 of the New Civil Code provides:

“In any of the following cases, the father is obliged to recognize the child as his natural child:

x x x

2. When the child is in continuous possession of the status of a child of the alleged father by direct acts of the latter or his family.”

Supplementing such unmistakable acts of recognition are those of his kin and gangmates manifesting open acceptance of such relationship. He openly introduced her to the members of his family, relatives, and friends as his daughter. Taken altogether, the claimed filiation would be hard to disprove.

Since the oppositor seeks a judicial declaration that she be recognized as a natural child to enable her to participate in the estate of the deceased, Article 285 of the Civil Code, prescribing the period when such action should be brought, governs. It provides:

“Art. 285. The action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in the following cases:

(1) If the father or mother died during the minority of the child, in which case the latter may file the action before the expiration of four years from the attainment of his majority.

x x x

x x x

x x x.”

Surname of illegitimate child.

The rule is that an illegitimate child uses the surname of the mother. Not even *mandamus* could compel the Local Civil Registrar to register the child under the name of the father. Even if the father admits paternity, still, the child should carry the surname of the mother. This has always been the rule.

The core of the issue in *Ann Brigitt Leonardo vs. Court of Appeals, et al.*, G.R. No. 125329, September 10, 2003 was once again the surname of an illegitimate child who was born on July 14, 1993. In her birth certificate, her given name is that of her mother, Leonardo. As the parents wanted her to carry the surname of the father, Eddie B. Fernandez, they executed an affidavit and sent it to the Local Civil Registrar of Manila who refused to correct or change administratively the surname of the child, saying that as an illegitimate child, she should carry the surname of the mother as provided for under Article 176 of the Family Code. They contended on appeal to the Civil Registrar General that a natural child acknowledged by both parents shall principally use the surname of the father. If recognized by only one of the parents, a natural child shall employ the surname of the recognizing parent. (Article 266, NCC). The appeal was denied, hence, the parents sought a review of the decision before the National Economic Development Authority (NEDA) which denied the review citing its lack of authority. They appealed to the Office of the President which likewise denied the same. They brought the issue before the Court of Appeals which held that the provisions of the Civil Code on Surnames (Title XIII, Book I) has not been repealed. To this ruling, the Supreme Court reversed the Court of Appeals saying that Article 254 repealed the said title in the Civil Code. As early as *Mossesgeld vs. CA*, 300 SCRA 464, it has already been said that the Family Code has effectively repealed the provisions of Article 266 of the Civil Code of the Philippines giving a natural child acknowledged by both parents the right to use the surname of the father. The Family Code has limited the classification of children to legitimate and illegitimate, thereby eliminating

the category of acknowledged natural children and natural children by legal fiction.

The primary issue to be resolved in this case is whether an illegitimate child born after the effectivity of the Family Code has the right to use her father's surname. The Supreme Court ruled in the negative.

Article 176 of the Family Code reads:

“Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child.”

The rule applies even if the child's father admits paternity. So it was held in *Mossesgeld vs. Court of Appeals* that:

“Article 176 of the Family Code of the Philippines provides that ‘illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code.’ This is the rule regardless of whether or not the father admits paternity. Consequently, the Local Civil Registrar correctly refused to register the certificate of live birth of petitioner's illegitimate child using the surname of the alleged father, even with the latter's consent.” (300 SCRA 464).

Under Article 176 of the Family Code as amended by Republic Act (RA) No. 9255, which took effect on March 19, 2004, illegitimate children shall use the surname of their mother, unless their father recognizes their filiation, in which case they may bear the father's surname. In *Wang vs. Cebu Civil Registrar*, it was held that an illegitimate child, whose filiation is not recognized by the father, bears only a given name and his mother's surname. The name of the unrecognized illegitimate child identifies him as such. It is only when said child is recognized that he may use his father's surname, reflecting his status as an acknowledged illegitimate child. (*Alba, et al. vs. CA, et al., supra.*).

Illegitimate child has no middle name; exceptions.

An illegitimate child whose filiation is not recognized by the father bears only a given name and his mother's surname, and does

not have a middle name. The name of the unrecognized illegitimate child therefore identifies him as such. It is only when the illegitimate child is legitimated by the subsequent marriage of his parents or acknowledged by the father in a public document or private handwritten instrument that he bears both his mother's surname as his middle name and his father's surname as his surname, reflecting his status as a legitimated child or an acknowledged illegitimate child. (In Re Petition for Change of Name of Julian Wang vs. Cebu City Civil Registrar, G.R. No. 155966, March 30, 2005).

Effect of RA 9255 on Article 176, of the Family Code

The original version of the provisions of Article 176 of the Family Code states that illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The law has, however, been amended by RA 9255 which was approved on February 4, 2004 otherwise known as "An Act Allowing Illegitimate Children To Use The Surname Of Their Father." The law now provides:

"Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by their father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. *Provided*, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitime child."

This law equalizes the rights of the legitimates and the illegitimates only insofar as the right to use the surname of the father. It must be pointed out that the law uses the phrase "may use the surname" which presupposes that it is not mandatory for the illegitimate children to carry the surname of their father. They have the option to carry the surname of their mother or of their father considering that the right to carry the surname of their father is only an exception rather than the rule. The general rule is that they shall use the surname of their mother. In fact, their right to use the

surname of their father is subject to certain conditions as stated in the law and is without prejudice to the right of the father to go to court to prove non-filiation during his lifetime.

The law uses the word “allowing” which likewise suggests that it is just a matter of privilege even if the law uses at the same time the word “right.” Such right can be interpreted in the context of a privilege considering that the right to use the surname of their father is subject to certain conditions.

Under this law (RA 9255) the illegitimate children do not have to go to court to seek leave to use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten is made by the father. It is enough that such recognition is made in those documents. They do not have to establish filiation, for these documents are already considered as consummated acts of recognition. To still go to court and establish filiation before they may use the surname of their father would be a mere superfluity.

Chapter 4

Legitimated Children

Article 177. 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 may be legitimated. (269a)

Concept of legitimation.

Legitimation is a remedy by means of which those who in fact were not born in wedlock and should, therefore, be considered illegitimate children, are, by fiction, considered legitimate, it being supposed that they were born when their parents were validly married. (1 Manresa, 5th Ed., p. 550).

Requisites of legitimation:

- (a) the child must have been conceived and born outside of wedlock;
- (b) the child’s parents, at the time of the former’s conception, were not disqualified by any impediment to marry each

other. *In Re Enriquez* (29 Phil. 167), it was held that being a Catholic priest is not an impediment.

- (c) the subsequent valid marriage of the parents. (Art. 178, Family Code).

Concept of “any impediment” – This covers all causes and circumstances that may render a marriage void such as:

- (a) prior existing marriage (Art. 35[4]);
- (b) close blood relationship (Art. 37);
- (c) contravention of public policy (Art. 38);
- (d) other causes under Articles 35, 36, and 53 of the Family Code;
- (e) minority.

In order that there may be legitimation, the marriage must be valid. If it is void, then, there can be no legitimation. Legitimation takes effect by operation of law upon the subsequent marriage of the parents of the child.

Illustrative cases:

(a) X and Y, both 18 years of age are living together as husband and wife without the benefit of a marriage. They begot a child, Z. The child is legitimated if they would get married later.

However, if X is married to A at the time of the cohabitation between him and Y, the child cannot be legitimated even if they would get married after A's death. The reason is obvious: X was disqualified to marry Y at the time of the conception and birth of the child.

What controls whether a child can be legitimated or not is the absence of a legal impediment between the man and the woman at the time of the conception of the child.

(b) X and Y, both qualified to marry each other are living together as husband and wife without the benefit of a marriage. Y, the woman, conceived Z, but a few days before Z was born, X married A. A week thereafter, A died and then X and Y got married. Here, the marriage would give the child the status of a legitimated child.

Legitimated children are natural children, a species of illegitimate children, elevated by law to the status of legitimate children. They enjoy the same rights as legitimate children. (Capistrano, *Civil Code of the Phils.*, 1950 Ed., p. 241).

QUERY: A question has been asked whether a child born outside of wedlock of a 30-year old man and a 17-years old woman who subsequently got married when the woman was 25 can be legitimated. Of course, the answer is No, because the woman had a legal impediment to marry at the true of the conception and birth of the child. For the child to attain the status of a legitimate child, the parents have to adopt him/her. Age is a legal impediment if we are to consider the requirements of a valid marriage, that is, at least 18 years of age (Art. 5), and where the law declares that a marriage is void if contracted below the age of 18. (Art. 35).

Only natural children can be legitimated.

Facts:

On February 7, 1941, Dr. Antonio de Santos married Sofia Bona, which union was blessed with a daughter, herein petitioner Maria Rosario de Santos. After some time, their relationship became strained to the breaking point. Thereafter, Antonio fell in love with a fellow doctor, Conchita Talag, private respondent herein. Antonio sought a formal dissolution of his first marriage by obtaining a divorce decree from a Nevada court in 1949.

Obviously aware that said decree was a worthless scrap of paper in our jurisdiction which then, as now, did not recognize divorces, Antonio proceeded to Tokyo, Japan in 1951 to marry private respondent, with whom he had been cohabiting since his *de facto* separation from Sofia. This union produced eleven children. On March 30, 1967, Antonio and private respondent contracted a marriage in Tagaytay City celebrated under Philippine laws. On March 8, 1981, Antonio died intestate, leaving properties with an estimated value of P15,000,000.00.

On May 15, 1981, private respondent went to court asking for the issuance of letters of administration in her favor in connection

with the settlement of her late husband's estate. She alleged, among other things, that the decedent was survived by twelve legitimate heirs; namely, herself, their ten surviving children, and the petitioner. There being no opposition, her petition was granted.

After six years of protracted intestate proceedings, however, petitioner decided to intervene. Thus, in a motion she filed sometime in November 1987, she argued that private respondent's children were illegitimate. This was challenged by private respondent although the latter admitted during the hearing that all her children were born prior to Sofia's death in 1967.

On November 14, 1991, after approval of private respondent's account of her administration, the court *a quo* passed petitioner's motion. The court, citing the case of *Francisco A. Tongoy, et al. vs. Court of Appeals, et al.* (23 SCRA 99 [1983]), declared private respondents as the heirs of Antonio de Santos.

A motion for reconsideration was filed but it was denied; hence, a petition for *certiorari* was filed contending that there was a mistake in declaring the 10 children legitimated.

Held:

This argument is tenable.

Article 269 of the Civil Code (Now Art. 177, Family Code) expressly states:

“Only natural children can be legitimated. Children born outside wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other, are natural.” (See Art. 177, Family Code).

In other words, a child's parents should not have been disqualified to marry each other at the time of conception for him to qualify as a ‘natural child.’”

In the case at bench, there is no question that all the children born to private respondent and deceased Antonio de Santos were conceived and born when the latter's valid marriage to petitioner's mother was still subsisting. That private respondent and the decedent were married abroad after the latter obtained in Nevada, U.S.A. a decree of divorce from his legitimate wife does not change this fact, for a divorce granted abroad was not recognized in this jurisdiction

at that time. Evidently, the decedent was aware of the fact which is why he had to have the marriage solemnized in Tokyo outside of the Philippines. It may be added here that he was likewise aware of the nullity of the marriage for after his legitimate, though estranged wife died, he hastily contracted another marriage with private respondent, this time here in Tagaytay. (*Maria Rosario de Santos vs. Hon. Adoracion Angeles, et al.*, G.R. No. 105619, December 12, 1995, 66 SCAD 510).

Reiteration of rule in De Santos.

Along the same line, it was ruled in *Abadilla vs. Tabiliran, Jr.*, 65 SCAD 197, 249 SCRA 447, October 25, 1995, that legitimation is limited to natural children and cannot include those born of adulterous relations. (*Ramirez vs. Gmur*, 42 Phil. 855). The reasons for this limitation are as follows: (1) the rationale of legitimation would be destroyed; (2) it would be unfair to the legitimate children in terms of successional rights; (3) there will be the problem of public scandal, unless social mores change; (4) it is too violent to grant the privilege of legitimation to adulterous children as it will destroy the sanctity of the marriage; (5) it will be very scandalous especially if the parents marry many years after the birth of the child.

In this case, a judge had an existing valid marriage but lived scandalously and publicly with another woman, got married later and begot children who were born during their coverture. The subsequent marriage cannot legitimize their children. (See Art. 177, Family Code). The judge (respondent) was reprimanded for executing a "Deed of settlement of spouses to live separately from bed" with a stipulation that they allow each other to live with another woman or man, as the case may be, without the objection and intervention of the other.

Article 178. Legitimation shall take place by a subsequent valid marriage between parents. The annulment of a voidable marriage shall not affect the legitimation. (270a)

Requisite of legitimation.

For legitimation to take place, it is a condition precedent that there be a subsequent valid marriage. If the marriage is void, there can be no legitimation.

Illustration:

A and B, both 16 years of age, who are living together as husband and wife, begot a child. The child cannot be legitimated if they get married at the age of 17, because the marriage is void.

A forced B to live with him. They begot a child. Later, they got married. A year later, the marriage was annulled upon the action of B. The legitimation of their child is not affected by the subsequent annulment of their marriage. (Art. 178, Family Code).

Legitimation is a remedy whereby with those who in fact were not born in wedlock and should, therefore, be considered illegitimate children, are, by fiction, considered legitimate, it being supposed that they were born when their parents were validly married. (1 Manresa 543).

Article 179. Legitimated children shall enjoy the same rights as legitimate children. (272a)

Effects of legitimation.

The law speaks of rights of legitimate children which can be enjoyed by legitimated children. Among them are:

- (a) the right to bear the surname of their father;
- (b) the right to receive support from their parents, their ascendants, brothers and sisters;
- (c) the right to the legitime and other successional rights. (Art. 174, FC).

In *Estate of De los Santos vs. Luciano*, 60 Phil. 328, it was held that “the legitimate daughter of a daughter legitimated by subsequent marriage, now deceased is entitled to inherit from a brother of her mother who is a legitimate son of the same parents who legitimated her mother by subsequent marriage, and who died after the Civil Code took effect.”

Article 180. The effects of legitimation shall retroact to the time of the child’s birth. (273a)

Retroactive effect of legitimation; purpose.

The purpose of the law in giving retroactive effect to legitimation is to protect the innocent child. He should be given the right to enjoy the benefits of a legitimate child from the moment of birth, not from the time of marriage of the parents.

The retroactive effect of legitimation is anchored on the legal fiction that a legitimated child although born before the marriage, is considered born after the marriage without regard to the time of conception. In fact, the Code Commission regarded the best interest of the child in giving retroactive effect to the legitimation by subsequent marriage.

Tracing the history of this law from Article 123 of the Old Civil Code, said law provided that legitimation shall take effect as of the time of the marriage. Article 273 of the Civil Code provided for its effect as of the time of the child's birth. This is exactly reproduced in the Family Code. (Art. 180). The rule is designed to protect the innocent. The old law and the Family Law seek to remove an absurd situation where a child had two distinct personalities: (1) the child is legitimate after the marriage; (2) the child is illegitimate before the marriage. Due to the present law, a legitimated child has the right to inherit if succession is opened before the marriage, because legitimation retroacts to the time of the child's birth.

Article 181. The legitimation of children who died before the celebration of the marriage shall benefit their descendants. (274)

Rights even if the parents subsequently marry.

This law speaks of a situation where even if the child is already dead, if his parents would get married, the marriage would redound to the benefit of his own children.

Illustration:

X and Y are living together as husband and wife without the benefit of a marriage. They begot a child Z who married A. They have two children, B and C. In 1989, Z died. In 1990, X and Y got married. The marriage of X and Y would benefit B and C; hence, they can represent their father in the inheritance of their grandparents.

According to Manresa, the rule is only just. It is only just to give this privilege to such children who, during their lifetime, were unjustly deprived of it. By this means, the law preserves in the family property which otherwise might pass to strangers, and repair in some way the injury done to the memory of their father, committed by their grandfather by his long silence, the effect of which deprived them of their status.

Since a legitimate child has the same right as a legitimate child, he has now the right to inherit by right of representation. (*Obispo vs. Obispo*, 99 Phil. 960).

Article 182. Legitimation may be impugned only by those who are prejudiced in their rights, within five years from the time their cause of action accrues. (275a)

Note that there is a period prescribed by law for anyone who is prejudiced to question the legitimation. It must be done within five (5) years from the time the cause of action accrued. This is mandatory.

Those who are prejudiced in their rights are the legitimate children, as an illegitimate is elevated to the status of a legitimate and shall participate in the successional rights of the parents — in equal footing with the original legitimates. The legitimates are prejudiced because of such successional rights, for to elevate an illegitimate to the status of a legitimate child would cause a reduction of their successional rights. That is the prejudice referred to by law.

[REDACTED]

Effects of Adoption.

Case:

Teotico vs. Del Val 13 SCRA 406

Adoption is a juridical act that creates between two persons certain relations, purely civil, of paternity and filiation. The adopted becomes a legitimate child of the adopter with reciprocal rights and obligations arising from that relationship. Consequently, the child has the right to bear the surname of the adopter, receive support, and to inherit.

Adoption creates a status that is closely assimilated to legitimate paternity and filiation with corresponding rights and duties that necessarily flow from adoption, such as, but not necessarily confined to, the exercise of parental authority, use of surname of the adopter by the adopted, as well as support and successional rights. These are matters that cannot be considered inconsequential to the parties. (Rep. vs. Sps. Hughes, G.R. No. 100835, October 1993, 227 SCRA 401).

The relationship established by the adoption is limited to the adopting parents and does not extend to their other relatives, except as expressly provided by law. Thus, the adopted child cannot be considered as a relative of the ascendants and collaterals of the adopting parents, nor of the legitimate children which they may have after the adoption, except that the law imposes certain impediments to marriage by reason of adoption. Neither are the children of the adopted considered as descendants of the adopter. (Santos, Jr. vs. Republic, 21 SCRA 379). Hence, no relationship is created between the adopted and the collaterals of the adopting parent. As a consequence, the adopted is an heir of the adopter's but not of the relative of the adopter.

Under the old rule, the rights of a legitimate child given to an adopted child, as stated in Article 341 of our Civil Code (now Art. 189, Family Code) do not include the acquisition of the citizenship of the adopter. (Cheng Ling vs. Galang, L-11931, October 27, 1958). Even assuming that petitioner's son has been adopted as claimed, the fact remains that he would still retain the citizenship of his natural father, with the result that he should eventually benefit from it should his father become a naturalized Filipino. (Tan Hoi vs. Republic, No. L-15266, September 30, 1960). But this is not the prevailing rule

anymore in view of RA 9225 which amended Act No. 63, Section 4 of the new law provides that the unmarried child, whether legitimate, illegitimate or adopted below eighteen (18) years of age, of those who reacquire Philippine citizenship upon effectivity of this ACT shall be deemed citizens of the Philippines. The reason is that, an adopted child has the same rights as a legitimate child.

The citizenship of the adopter is a political matter, and not civil in nature, and that ways in which it should be conferred lie outside the ambit of the Civil Code. It is not within the province of our Civil Law to determine how or when citizenship in a foreign state is to be acquired.

Article 183. A person of age and in possession of full civil capacity and legal rights may adopt, provided he is in a position to support and care for his children, legitimate or illegitimate, in keeping with the means of the family.

Only minors may be adopted, except in the cases when the adoption of a person of majority age is allowed in this Title.

In addition, the adopter must be at least sixteen years older than the person to be adopted, unless the adopter is the parent by nature of the adopted, or is the spouse of the legitimate parent of the person to be adopted. (27a, E.O. No. 91 and P.D. No. 603)

Republic Act No. 8552, an Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children and For Other Purposes which was approved on February 25, 1998 introduced certain amendments to the law on adoption in the Family Code. Among the salient amendments introduced are the following:

“Sec. 7. *Who may adopt.* — The following may adopt:

Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, *of good moral character, has not been convicted of any crime involving moral turpitude, emotionally and psychologically capable of caring for children*, at least sixteen (16) years older than the adoptee, and who is in a position to support and care for his her children in keeping with the means of the family. The requirement of sixteen (16) years difference between the age of the adopted and adoptee may be waived when the adopter is the biological parent of the adoptee, or is the spouse of the adoptee’s parent;

Qualifications of an adopter:

- (a) he must be of age;
- (b) he must be in possession of full civil capacity and legal rights;
- (c) he must be at least sixteen years older than the adopted, unless the adopter is the parent by nature of the adopted, or is the spouse of the legitimate parent of the person to be adopted;
- (d) he must be of good moral character;
- (e) he has not been convicted of any crime involving moral turpitude.

It is a condition that the adopter must be in a position to support and emotionally and psychologically capable of caring for children, legitimate or illegitimate. So that, in the proceedings for the adoption of a child or a person, the court has to inquire into the economic status of the adopter to determine his capacity to support the adopted and his children. If the court finds that he could not even support his children in keeping with the means of the family, the court must deny the petition for adoption.

As a general rule, only minors may be adopted. However, under Article 187, Family Code, a person of legal age may be adopted if he is a child by nature of the adopter or his or her spouse, or prior to the adoption, said person has been consistently considered and treated by the adopter as his or her own child during minority.

When the law speaks “of age” it means that the adopter must be at least 18 years of age, the same being the age of majority. (Art. 234, Family Code as amended by R.A. No. 6809).

The law, in requiring that the adopter must be at least sixteen years older than the adopted, is merely trying to imitate nature, where it is impossible to have a child older than the father or the mother. One reason for the rule is that, it is necessary that the adopter has ascendancy over the adopted for it may not be possible for a younger person to have ascendancy over an older one. Furthermore, the adopter must be at least 18 years of age, the same being the age of majority, without prejudice to the Inter-country Adoption Law or R.A. No. 8043.

Moral turpitude.

The law now specifically adds that the adopter must of “good moral character, has not been convicted of any crime involving moral turpitude”. The law has to be so because a person who is not of good moral character or has been convicted of a crime involving moral turpitude may not have the moral ascendancy to provide for the moral, psychological development of the adopted, the preparation for a better life, not only economically, but even psychologically and morally are the concerns of the State. If the State through the courts does not find the evidence sufficient to warrant the granting of the petition for adoption, the same may be denied. That is why the Office of the Solicitor General and even the Prosecutor’s Office is even notified so that the State may be represented to see to it that the benefit of the child proposed to be adopted shall be amply protected.

Article 184. The following persons may not adopt:

(1) The guardian with respect to the ward prior to the approval of the final accounts rendered upon the termination of their guardianship relation;

(2) Any person who has been convicted of a crime involving moral turpitude;

(3) An alien, except:

(a) A former Filipino citizen who seeks to adopt a relative by consanguinity;

(b) One who seeks to adopt the legitimate child of his or her Filipino spouse; or

(c) One who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse a relative by consanguinity of the latter.

Aliens not included in the foregoing exceptions may adopt Filipino children in accordance with the rules on inter-country adoption as may be provided by law. (28a, E.O. No. 91 and P.D. No. 603).

Guardian cannot adopt ward.

The law prohibits the guardian from adopting the ward prior to the approval of his final accounts rendered upon the termination of the guardianship relationship. The purpose of the law is to prevent

the guardian from committing fraud against the ward. The guardian may be the guardian both of the person and the properties of the ward. It is possible that he may have misappropriated the funds or properties of the ward, so that, to circumvent the requirement that he has to make an accounting, he would just adopt the ward.

The law has been modified by RA 8225. It now states that “the guardian with respect to the ward after the termination of guardianship and clearance of his/her financial accountabilities” may adopt. (Sec. 7).

Moral turpitude a disqualification to adopt.

A person who has been convicted of a crime involving moral turpitude cannot adopt because such person has shown lack of good moral character. It is said that the convict cannot set a good example for the child to emulate. It must be recalled that the parent plays a role model for a child especially so that the foremost consideration is the development of a child. RA 8225 has converted this disqualification into qualification of an adopter.

Conviction is necessary because a person is presumed to be innocent unless the contrary is proved.

To illustrate, X is charged of a crime involving moral turpitude and was convicted.

He appealed. Pending appeal, can he adopt?

Yes, because the law requires prior conviction of a crime involving moral turpitude before he can be disqualified to adopt. The conviction must be final and executory.

Under the law, an alien may not adopt, except:

- (a) A former Filipino citizen who seeks to adopt a relative by consanguinity within the fourth civil degree.

Illustration:

X, a Filipino citizen, went to the U.S.A. and later on came back to the Philippines and wants to adopt a nephew. Under this situation, the law allows him to adopt. (Art. 184, par. 3[a], Family Code).

- (b) One who seeks to adopt the legitimate son/daughter of his or her Filipino spouse.

Illustration:

X, an American, is married to Y, a Filipina. Before Y's marriage to X, she had a child with her deceased husband. The American husband of Y can adopt the child of Y.

- (c) One who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse a relative within the fourth (4th) degree of consanguinity or affinity.

The second and third exceptions under No. 3 of Article 184 (now Section 7, RA 8552) contemplate of a situation where there is a Filipino element in the marriage, not where both are aliens. An example is where A and B, both Filipino citizens, got married but embraced American citizenship while in the U.S.A. They cannot adopt a relative by consanguinity or affinity within the fourth (4th) civil degree, under RA 8552, but they can do so under the Inter-country Adoption Law.

Aliens to adopt.

As a general rule, an alien cannot adopt. This rule is so because the law imposes certain conditions for an alien to adopt, hence, alien adoption is not the general rule. It is still an exception. In fact, the Family Code has undergone some amendments by RA 8552. It now provides:

“Any alien possessing the same qualifications as above stated for Filipino nationals: *Provided*, That his/her country has diplomatic relations with the Republic of the Philippines, that he/she has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered, that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/her adopted son/daughter: *Provided, further*, That the requirements on residency and certification of the

alien's qualification to adopt in his/her country may be waived for the following:

- i. a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity; or
- ii. one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or
- iii. one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouse.”

There are exception to the rule, such as:

- a) A former Filipino citizen who seeks to adopt a relative by consanguinity or affinity within the fourth civil degree.

Adoption; time to question decree; rights of children, etc.

In *Mauricio Sayson, et al. vs. CA, et al.*, 205 SCRA 321 (1992), it appears that Eleno and Rafaela Sayson were married and they had five (5) children, namely: Mauricio, Rosario, Basilisa, Remedios, and Teodoro. Eleno died on November 10, 1952. Rafaela died on May 15, 1976. Teodoro was married to Isabel and they had three (3) children, Delia, Edmundo and Doribel. Teodoro died on March 23, 1972 and Isabel died on March 26, 1981. Mauricio, Rosario, Basilisa, and Remedios filed an action for partition of the estate of Teodoro and Isabel. The children of Teodoro resisted, alleging their successional rights. Later, Delia, Edmundo, and Doribel filed an action for partition and accounting of the estate of Eleno and Rafaela against the surviving children of Eleno and Rafaela. The records later showed that Delia and Edmundo were adopted children of Teodoro and Isabel and that Doribel was the only legitimate child of the spouses. Both cases were decided for Delia, Edmundo, and Doribel, the lower court recognizing their right to inherit from Teodoro and Isabel, from thus, excluding Mauricio, Rosario, Basilisa and Remedios from the inheritance of Teodoro and Isabel; and in the other case, recognizing the right of Doribel to inherit from Eleno by right of representation. On Appeal, it was contended that Delia and Edmundo could not be adopted because Doribel was already born.

It is too late now to challenge the decree of adoption, years after it became final and executory. That was way back in 1967. Assuming

that the petitioners were proper parties, what they should have done was to seasonably appeal the decree of adoption, pointing to the birth of Doribel that disqualified Teodoro and Isabel from adopting Delia and Edmundo. They did not. In fact, they should have done this earlier, before the decree of adoption was issued. They did not, although Mauricio claimed he had personal knowledge of such birth.

The challenge to the validity of the adoption cannot be made collaterally, as in their action for partition, but in a direct proceeding frontally addressing the issue, for a presumption arises in such cases where the validity of the judgment is thus attached that the necessary jurisdictional facts were proven.

In the case of *Santos vs. Aranzanso*, 16 SCRA 344, the Supreme Court declared:

“Anent this point, the rulings are summed up in 2 American Jurisprudence, 2nd Series, Adoption, Sec. 75, p. 922, thus:

“An adoption order implies the finding of the necessary facts and the burden of proof is on the party attacking it; it cannot be considered void merely because the fact needed to show statutory compliance is obscure. While a judicial determination of some particular fact, such as the abandonment of his next of kin to the adoption, may be essential to the exercise of jurisdiction to enter the order of adoption, this does not make it essential to the jurisdictional validity of the decree that the fact be determined upon proper evidence, or necessarily in accordance with the truth; a mere error cannot affect the jurisdiction, and the determination must stand until reversed on appeal, and hence cannot be collaterally attacked. If this were not the rule, the status of adopted children would always be uncertain, since the evidence might not be the same at all investigations, and might be regarded with different effect by different tribunals, and the adoption might be held by one court to have been valid, while another, void.”

Rules under Inter-country Adoption Act of 1995 (RA 8043).

The Family Code sets down the general rule that aliens cannot adopt in the Philippines, but under the Inter-country Adoption Act, they can, but still, by way of exception to the rule.

Basic policy of the law.

The law states that it is hereby declared the policy of the State to provide every *neglected* and *abandoned child* with a family that will provide such child with love and care as well as opportunities for growth and development. Towards this end, efforts shall be exerted to place the child with an adoptive family in the Philippines. However, recognizing that inter-country adoption may be considered as allowing aliens, not presently allowed by law to adopt Filipino children if such children cannot be adopted by qualified Filipino citizens or aliens, the State shall take measures to ensure that inter-country adoptions are allowed when the same shall prove beneficial to the child's best interests, and shall serve and protect his/her fundamental rights. (Sec. 2, R.A. No. 8043).

Note that the best interest of the child is to be upheld under the Inter-country Adoption Act. It singles out the neglected and abandoned children as the priorities. In fact, the general rule in Article 184 of the Family Code still applies, that is, that aliens cannot adopt in the Philippines. Inter-country adoption, where an alien can adopt, is only an exception — for the law says that the State shall first endeavor to take measures that such child shall be adopted by Filipinos and that inter-country adoption shall be beneficial to the child.

Non-resident persons may adopt.

The spouses Ernesto S. Nieto and Matilde Nila Nieto, being childless, reared Roy from his birth in 1971 until 1975 when they had to go to Guam in view of Ernesto's job. Roy was left behind in the Philippines but was nonetheless continued to be supported by the Nietos. Their petition for adoption was denied by the trial court because the adopting parents were non-residents and because trial custody as required by P.D. No. 603 could not be effected in view of the foreign residence of the adopters. On appeal, the Supreme Court reversed the judgment and allowed the adoption, holding that a reading of Articles 27 and 28 of P.D. No. 603 (on who may adopt and who may not adopt) clearly shows that the temporary residence of the adopting parents in a foreign country does not disqualify them from adopting. As for the trial custody requirement, the High Court pointed out that Article 35 of P.D. No. 603 specifically authorizes the court, either upon its own or on petitioner's motion, to dispense with the trial custody if it finds that it is to the best interest of the child. (Nieto vs. Magat, 136 SCRA 533).

Concept of inter-country adoption.

Inter-country adoption refers to the socio-legal process of adopting a Filipino child by a foreigner or a Filipino citizen permanently residing abroad where the petition is filed, the supervised trial custody is undertaken, and the decree of adoption is issued outside the Philippines. (Sec. 3[a], R.A. No. 8043).

Definition of terms

- (1) **Child** means a person below fifteen (15) years of age unless sooner emancipated by law. (Sec. 3[b], *Ibid.*).
- (2) **Authorized and accredited agency** refers to the State welfare agency or a licensed adoption agency in the country of the adopting parents which provide comprehensive social services and which is duly recognized by the Department. (Sec. 3[e], *Ibid.*).
- (3) **Legally-free child** means a child who has been voluntarily or involuntarily committed to the Department, in accordance with the Child and Youth Welfare Code. (Sec. 3[f], *Ibid.*).
- (4) **Matching** refers to the judicious pairing of the adoptive child and the applicant to promote a mutually satisfying parent-child relationship. (Sec. 3[g], *Ibid.*).

Policy on adoption under the Inter-country Adoption Act.

The policy is that the Board shall ensure that all possibilities for adoption of the child under the Family Code have been exhausted and that inter-country adoption is in the best interest of the child. Hence, the child must first be placed under adoption in the Philippines before he is placed for inter-country adoption. (Sec. 7, *Ibid.*).

Who may be adopted under the Inter-country Adoption Act; its requirements.

Only a legally-free child may be the subject of inter-country adoption. (Sec. 8, *Ibid.*).

Who can adopt under the Inter-country Adoption Act.

Any alien or a Filipino Citizen, permanently residing abroad, may file an application for inter-country adoption of a Filipino child if he/she:

- a) is at least twenty-seven (27) years of age and at least sixteen (16) years older than the child to be adopted, at the time of application unless the adopter is the parent by nature of the child to be adopted or the spouse of such parent;
- b) if married, his/her spouse must jointly file for the adoption;
- c) has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone the appropriate counseling from an accredited counsellor in his/her country;
- d) has not been convicted of a crime involving moral turpitude;
- e) is eligible to adopt under his/her national law;
- f) is in a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted;
- g) agrees to uphold the basic rights of the child as embodied under Philippine laws, the U.N. Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of this Act;
- h) comes from a country with whom the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption is allowed under his/her national laws; and
- i) possesses all the qualifications and none of the disqualifications provided herein and in other applicable Philippine laws. (Sec. 9, *Ibid.*).

Where to file the petition for adoption.

An application to adopt a Filipino child shall be filed either with the Philippine Regional Trial Court having jurisdiction over the child, or with the Board, through an intermediate agency, whether governmental or an authorized and accredited agency, in the country of the prospective adoptive parents, which application shall be in accordance with the requirements as set forth in the implementing rules and regulations to be promulgated by the Board. (Sec. 10, *Ibid.*).

Documents in support of the petition.

In support of the petition for adoption, the following documents must be submitted:

- a) Birth certificate of applicant(s);
- b) Marriage contract, if married, and divorce decree, if applicable;
- c) Written consent of their biological or adopted children above ten (10) years of age, in the form of a sworn statement;
- d) Physical, medical and psychological evaluation by a duly licensed physician and psychologist;
- e) Income tax returns or any document showing the financial capability of the applicant(s);
- f) Police clearance of applicant(s);
- g) Character reference from the local church/minister, the applicant's employer and a member of the immediate community who have known the applicant(s) for at least five (5) years; and
- h) Recent postcard-size pictures of the applicant(s) and his immediate family.

The Rules of Court shall apply in case of adoption by judicial proceedings. (Sec. 10, *Ibid.*).

Family Selection/Matching.

No child shall be matched to a foreign adoptive family unless it is satisfactorily shown that the child cannot be adopted locally. (Sec. 11, *Ibid.*). This shows that aliens cannot still adopt as a general rule. The right to adopt is granted to them by way of exception, for the Board has yet to find a way for the child to be adopted locally.

Requirements before a child may be considered for placement under the law.

In order that a child may be considered for placement under the Inter-country Adoption Act, the following documents must be submitted:

- a) Child Study;

- b) Birth Certificate/foundling certificates;
- c) Deed of voluntary commitment/decreed of abandonment/death certificate of parents;
- d) Medical evaluation/history;
- e) Psychological evaluation, as necessary;
- f) Recent photo of the child. (Sec. 8, *Ibid.*).

Article 185. Husband and wife must jointly adopt, except in the following cases:

- (1) When one spouse seeks to adopt his own illegitimate child; or
- (2) When one spouse seeks to adopt the legitimate child of the other. (29a, EO 91 and PD 603).

Article 186. In case husband and wife jointly adopt or one spouse adopts the legitimate child of the other, joint parental authority shall be exercised by the spouses in accordance with this Code. (29a, E.O. No. 91 and P.D. No. 603).

Joint adoption by spouses.

“Husband and wife must jointly adopt, except in the following cases:

- (1) When one spouse seeks to adopt his own illegitimate child; or
- (2) When one spouse seeks to adopt the legitimate child of the other.”

Article 185 requires a joint adoption by the husband and wife, a condition that must be read along together with Article 184. This law likewise has undergone some modification by RA 8552 which now states:

The guardian with respect to the ward after the termination of the guardianship and clearance of his/her financial accountabilities.

Husband and wife shall jointly adopt, except in the following cases:

- i. if one spouse seeks to adopt the legitimate son/daughter of the other; or

- ii. if one spouse seeks to adopt his/her own illegitimate son/daughter: *Provided, however,* That the other spouse has signified his/her consent thereto; or
- iii. if the spouses are legally separated from each other.

In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses.

The historical evolution of this provision is clear. Presidential Decree 603 (The Child and Youth Welfare Code), provides that husband and wife “may” jointly adopt. Executive Order No. 91, issued on December 17, 1986, amended the said provision by stating that it is mandatory for both spouses to jointly adopt if one of them is an alien. It was so crafted to protect Filipino children who are put up for adoption. The Family Code reiterated the rule by requiring that husband and wife “must” jointly adopt, except in the cases mentioned before. Under the said new law, joint adoption by husband and wife is mandatory. While Section 7 of RA 8552 uses the word “shall” still the law requires a joint adoption by the husband and wife although sometimes “shall” may mean “may.” This is in consonance with the concept of joint parental authority over the child, which is the ideal situation. As the child to be adopted is elevated to the level of a legitimate child, it is but natural to require the spouses to adopt jointly. The rule also insures harmony between the spouses.

As amended by Executive Order No. 91, Presidential Decree No. 603 had thus made it mandatory for both the spouses to jointly adopt when one of them is an alien. The law was silent when both spouses were of the same nationality.

The Family Code has resolved any possible uncertainty. Article 185 thereof expresses the necessity for a joint adoption by the spouses except in only two instances:

1. When one spouse seeks to adopt his own illegitimate child; or
2. When one spouse seeks to adopt the legitimate child of the other.

It is the foregoing case when Article 186 of the Code, on parental authority, can aptly find governance. Said article provides:

“In case husband and wife jointly adopt or one spouse adopts the legitimate child of the other, joint parental

authority shall be exercised by the spouses in accordance with this Code.”

Article 185 is all too clear and categorical and there is no room for its interpretation. There is only room for application.

We are not unaware that the modern trend is to encourage adoption and every reasonable intendment should be sustained to promote that objective. Adoption is geared more towards the promotion of the welfare of the child and the enhancement of his opportunities for a useful and happy life. It is not the bureaucratic technicalities but the interest of the child that should be the principal criterion in adoption cases. Executive Order No. 209 likewise upholds that the interest and welfare of the child to be adopted should be the paramount consideration.

Rules on adoption to be interpreted liberally; humane laws.

In *Republic vs. CA, et al.*, G.R. No. 92326, January 24, 1992, the petitioner sought the reversal of the decision of the Court of Appeals granting the adoption on the ground that the husband was not joined in spite of the requirement of Art. 185 of the Family Code. The contention was that Article 185, Family Code is retroactive; hence, it must be dismissed. Note that the petition for adoption was filed before the effectivity of the Family Code. P.D. No. 603 does not require joint adoption by the spouses.

Article 185, Family Code is remedial in nature. Procedural statutes are ordinarily accorded a retrospective construction in the sense that they may be applied to pending actions and proceedings, as well as to future actions. However, they will not be so applied as to defeat procedural steps completed before their enactment. (82 C.J.S. Statutes, 998).

Although the husband was not named as one of the petitioners in the petition for adoption filed by his wife, his affidavit of consent attached to the petition shows that he himself actually joined his wife in adopting the child. Said declaration, and his subsequent confirmatory testimony in open court, are sufficient to make him a co-petitioner. Under the circumstances then obtaining, and by reason of his foreign residence, he must have yielded to the legal advice that an affidavit of consent on his part sufficed to make him a party to the petition. This is evident from the text of his affidavit. Punctiliousness in language and pedantry in the formal requirements should

yield to and be eschewed in the higher considerations of substantial justice. The future of an innocent child must not be compromised by arbitrary insistence on rigid adherence to procedural rules on the form of pleadings.

It is a settled rule therein that adoption statutes, as well as matters of procedure leading up to adoption, should be liberally construed to carry out the beneficent purposes of the adoption institution and to protect the adopted child in the rights and privileges coming to it as a result of the adoption. (2 Am. Jr. 2d., Adoption, 865). The modern tendency of the courts is to hold that there need not be more than a substantial compliance with statutory requirements to sustain the validity of the proceeding; to refuse would be to indulge in such a narrow and technical construction of the statute as to defeat its intention and beneficial results or to invalidate proceedings where every material requirement of the statute was complied with.

In support of this rule it is said that it is not the duty of the courts to bring the judicial microscope to bear upon the case in order that every slight defect may be enlarged and magnified so that a reason may be found for declaring invalid an act consummated years before, but rather to approach the case with the inclination to uphold such acts if it is found that there was a substantial compliance with the statute. The technical rules of pleading should not be stringently applied to adoption proceedings, and it is deemed more important that the petition should contain facts relating to the child and his parents, which may give information to those interested, than that it should be formally correct as a pleading. Accordingly, it is generally held that a petition will confer jurisdiction if it substantially complies with the adoption statute, alleging all facts necessary to give the court jurisdiction.

In determining whether or not to set aside the decree of adoption, the interests and welfare of the child are of primary and paramount consideration. (2 Am. Jr. 2d., Adoption, 910). The welfare of child is of paramount consideration in proceedings involving its custody and the propriety of its adoption by another, and the courts to which the application for adoption is made is charged with the duty of protecting the child and its interests and, to bring those interests fully before it, it has authority to make rules to accomplish that end. (2 Am. Jr. 2d., Adoption, 907). Ordinarily, the approval of the adoption rests in the sound discretion of the court. This discretion should

be exercised in accordance with the best interests of the child, as long as the natural rights of the parents over the child are not disregarded. In the absence of a showing of grave abuse, the exercise of this discretion by the approving official will not be disturbed. (2 C.J.S., Adoption of Children, 418).

In the case at bar, the rights concomitant to and conferred by the decree of adoption will be for the best interests of the child. His adoption is with the consent of his natural parents. The representative of the Department of Social Welfare and Development unqualifiedly recommended the approval of the petition for adoption and the trial court dispensed with the trial custody for several commendatory reasons, especially since the child had been living with the adopting parents since infancy. Further, the said petition was with the sworn written consent of the children of the adopters.

The trial court and respondent court acted correctly in granting the petition for adoption. As found and aptly stated by respondent court:

“Given the facts and circumstances of the case and considered in the light of the foregoing doctrine, We are of the opinion and so hold that the decree of adoption issued by the court *a quo* would go a long way towards promoting the welfare of the child and the enhancement of his opportunities for a useful and happy life.”

Adoption statutes, being humane and salutary, hold the interest and welfare of the child to be of paramount consideration. They are designed to provide homes, parental care and education for unfortunate, needy or orphaned children and give them the protection of society and family in the person of the adopted, as well as to allow childless couples or persons to experience the joys of parenthood and give them legally a child in the person of the adopted for the manifestation of their natural parental instincts. Every reasonable intentment should be sustained to promote and fulfill these noble and compassionate objectives of the law. (*Bobanovic vs. Montes, et al.*, 142 SCRA 485).

The rule laid down in *Republic vs. Hon. Vergara, et al.*, 80 SCAD 869, 270 SCRA 206 (March 20, 1997) is a mere reiteration of the earlier case of *Republic vs. CA*, 45 SCAD 496, 227 SCRA 401, wherein the SC said a foreigner who is married to a former Filipino citizen cannot adopt a relative of the wife by consanguinity. The law does not provide for an alien who is married to a former Filipina citizen

seeking to adopt jointly with his or her spouse a relative by consanguinity as an exception to the general rule that aliens may not adopt.

Article 187. The following may not be adopted:

(1) A person of legal age, unless he or she is a child by nature of the adopter or his or her spouse, or, prior to the adoption, said person had been consistently considered and treated by the adopter as his or her own child during minority;

(2) An alien with whose government the Republic of the Philippines has no diplomatic relations; and

(3) A person who has already been adopted unless such adoption has been previously revoked or rescinded. (30a, EO 91 and PD 603)

Modification of the law.

RA 8552 has introduced some changes in the law (Art. 187). It now provides:

Sec. 8. *Who may be adopted.* — The following may be adopted:

a) Any person below eighteen (18) years of age who has been administratively or judicially declared available for adoption;

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(s) as his/her own child since minority;

e) A child whose adoption had been previously rescinded; or

f) A child whose biological or adoptive parent(s) has died:

Provided, That no proceedings shall be initiated within six (6) months from the time of death of said parent(s).

Article 188. The written consent of the following to the adoption shall be necessary:

- (1) The person to be adopted, if ten years of age or over;
- (2) The parents by nature of the child, the legal guardian, or the proper government instrumentality;
- (3) The legitimate and adopted children, ten years of age or over, of the adopting parent or parents;
- (4) The illegitimate children, ten years of age or over, of the adopting parent, if living with said parent and the latter's spouse, if any; and
- (5) The spouse, if any, of the person adopting or to be adopted. (31a, E.O. No. 91 and P.D. No. 603)

Modification in the law.

RA 8552 has introduced changes in the law. It now provides:

“Sec. 9. *Whose consent is necessary to the adoption.*
– After being properly counselled and informed of his/her right to give or withhold his/her approval of the adoption, the written consent of the following to the adoption is hereby required:

- a) The adoptee, if ten (10) years of age or over;
- b) The biological parent(s) 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, ten (10) years of age or over, of the adopter(s) and adoptee, if any;
- d) The illegitimate sons/daughters, ten (10) years of age or over, of the adopter if living with said adopter and the latter's spouse, if any; and
- e) The spouse, if any, of the person adopting or to be adopted.”

Consent of adopted.

The law requires the consent of the person to be adopted if he/she is ten years of age or over. At that age, the child should have the capacity to discern or choose his/her parents.

If a three-day old child was given by its mother to another — that person may be considered a guardian exercising *patria potestas* over the abandoned child and, hence, competent to give consent to the adoption of the latter. Since there was no *guardian ad litem* appointed by the court and the child not being in the custody of an orphan asylum, children's home or any benevolent society, there could not have been anyone other than the person to whom the mother of the child gave the said child, who can be called the guardian. It was she who had actual physical custody of the infant and who, out of compassion and motherly instinct, extended the mantle of protection over the hapless and helpless infant.

Consent of parents; reason for requirement.

In *Santos, et al. vs. Aranzanso, et al.*, 16 SCRA 344, the Supreme Court spelled out the rule that while the consent of the parents to the adoption of their child is necessary, however, that requirement is not absolute. If the natural parents have abandoned their children, consent by the guardian *ad litem* suffices.

In adoption proceedings, abandonment imports any conduct on the part of the parent which evinces and settled purpose to forego all parental duties and relinquish all parental claims to the child. It means neglect or refusal to perform the natural and legal obligations of care and support which parents owe their children. (*Santos, et al. vs. Aranzanso, et al.*, 16 SCRA 344; 2 Am. Jur. 2d, Adoption, Sec. 32, pp. 886-887).

It is sound public policy for the natural parents, no matter how lowly they might be, to be given the opportunity to be heard in the changing of the legal status of their children which would necessarily affect their filial devotion. Such requirement appears to be in accordance with the fundamental principle of natural justice, human feelings, and virtual filial regard. So much so that there should be sufficient court findings and concomitant conclusions on its part that a parent or parents have deserted their children and consequently, forfeited their parental authority or rights. But said parents are previously entitled to previous notice for them to be heard. (*Sullivan vs. People*, 79 NE 696).

Consent of children of adopted required; reason.

It is now required that the children, whether legitimate or adopted, ten years of age or over, of the adopting parent or parents,

as well as the illegitimate children of the adopting parent who are living with him, to give their consent to the adoption. The reason for the law is that these children of the adopter would be prejudiced insofar as their legitimes are concerned, for the reason that the adopted child becomes the child of the adopter and is entitled to inherit.

It must be added that in case of adoption, the relationship of paternity and filiation, where none exists by blood relationship, is created. The consent of the children is now required to avoid conflicts, friction, and differences which may arise resulting from the infiltration of a foreign element into a family which already counts with children upon whom the parents can show their parental love and affection. (*In Re* Adoption of Resaba, 95 Phil. 244).

Article 189. Adoption shall have the following effects:

(1) For civil purposes, the adopted shall be deemed to be a legitimate child of the adopters and both shall acquire the reciprocal rights and obligations arising from the relationship of parent and child, including the right of the adopted to use the surname of the adopters;

(2) The parental authority of the parents by nature over the adopted shall terminate and be vested in the adopters, except that if the adopter is the spouse of the parent by nature of the adopted, parental authority over the adopted shall be exercised jointly by both spouses; and

(3) The adopted shall remain an intestate heir of his parents and other blood relatives. (39[1]a, [2]a, [3]a, [3]a, P.D. No. 603)

Nature and effects of adoption.

Adoption is a juridical act that creates between two persons certain relations, purely civil, of paternity and filiation. The adopted becomes a legitimate child of the adopter with reciprocal rights and obligations arising from that relationship. Consequently, the child has the right to bear the surname of the adopter, to receive support, and to inherit.

There is however severance of the relationship of the adopted and his/her biological parents. The right to inherit from the biological parents however remains.

The relationship established by the adoption is limited to the adopting parents and does not extend to their other relatives, except as expressly provided by law. Thus, the adopted child cannot be considered as a relative of the ascendants and collaterals of the adopting parents, nor of the legitimate children which they may have after the adoption, except that the law imposes certain impediments to marriage by reason of adoption. Neither are the children of the adopted considered as descendants of the adopter. (*Santos, Jr. vs. Republic*, 21 SCRA 379). Hence, no relationship is created between the adopted and the collaterals of the adopting parent. As a consequence, the adopted is an heir of the adopters but not of the relatives of the adopter. (*Teotico vs. Del Val*, 13 SCRA 406). Hence, in case the adopters predecease their own parents, the adopted can not inherit by right of representation because the relationship is limited to the adopters.

While an adopted child shall enjoy the same rights as a legitimate child, yet in matters of inheritance of the legitimates from the ascendants and relatives of their natural parents, the same is not enjoyed by the adopted. One such example is the right of representation. In the case of *Sayson, et al. vs. CA, et al.*, 205 SCRA 321, the Supreme Court said:

“Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages.

An adopted child succeeds to the property of the adopting parents in the same manner as a legitimate child. (Art. 979, New Civil Code).

The philosophy underlying this article is that a person’s love descends first to his children and grandchildren before it ascends to his parents and thereafter spreads among his collateral relatives. It is also supposed that one of his purposes in acquiring properties is to leave them eventually to his children as a token of his love for them and as a provision for their continued care even after he is gone from this earth.”

On the right of representation of the adopted, the Supreme Court, in *Sayson vs. CA*, 205 SCRA 321, said that the following provisions of the New Civil Code are applicable:

“Art. 970. Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and the degree of the person represented, and acquires the rights which the latter would have if he were living or if he could have inherited.

Art. 971. The representative is called to the succession by the law and not by the person represented. The representative does not succeed the person represented but the one whom the person represented would have succeeded.

x x x

x x x

x x x

Art. 981. Should children of the deceased and descendants of other children who are dead, survive, the former shall inherit in their own right, and the latter by right of representation.”

There is no question that as the legitimate daughter of Teodoro and thus the granddaughter of Eleno and Rafaela, Doribel has a right to represent her deceased father in the distribution of the intestate estate of her grandparents. Under Article 981, quoted above, she is entitled to the share her father would have directly inherited had he survived, which shall be equal to the shares of her grandparents' other children. (Art. 972, New Civil Code).

“But a different conclusion must be reached in the case of Delia and Edmundo, to whom the grandparents were total strangers. While it is true that the adopted child shall be deemed to be a legitimate child and has the same rights as the latter, these rights do not include the right of representation. The relationship created by the adoption is between only the adopting parents and the adopted child and does not extend to the blood relatives of either party. (Testico vs. Del Val, 13 SCRA 406; De la Puerta vs. CA, 181 SCRA 861).”

Right to citizenship.

The rights of a legitimate child given to an adopted child, as stated in Article 341 of our Civil Code (Now Art. 189, Family Code) do not include the acquisition of the citizenship of the adopter. (Cheng Ling vs. Galang, L-11931, October 27, 1958). Even assuming that the petitioner's son has been adopted as claimed, the fact remains

that he would still retain the citizenship of his natural father, with the result that he should eventually benefit from it should his father become a naturalized Filipino. (Tan Hoi vs. Republic, No. L-15266, September 30, 1960).

The citizenship of the adopter is a political matter, and not civil in nature, and the ways in which it should be conferred lie outside the ambit of the Civil Code. It is not within the province of our Civil law to determine how or when citizenship in a foreign state is to be acquired.

The rule has been changed due to the enactment of RA 9225 which provides:

“Sec. 4. *Derivative citizenship.* — The unmarried child, whether legitimate, illegitimate or adopted, below eighteen (18) years of age, of those who are re-acquire Philippine citizenship upon effectivity of this Act shall be deemed citizens of the Philippines.”

Adopted child may use the surname of the mother as middle name.

Facts:

Honorato Catindig filed a petition to adopt his minor illegitimate child named Stephanie Nathy Astorga Garcia. It was granted, ordering that the adopted child shall be known as Stephanie Nathy Catindig. A motion for clarification and/or reconsideration was filed praying that the child be allowed to use the surname of the mother. It was denied by the lower court, ruling that there is no law or jurisprudence allowing an adopted child to use the surname of the biological mother as his middle name. The Office of the Solicitor General agreed with the petition and asserted that the adopted should be permitted to use, as her middle name, the surname of the natural mother for the following reasons: customary for every Filipino to have as middle name, the surname of the mother; the middle name or initial is a part of the name of a person; adoption is for the benefit and best interest of the adopted child, hence, her right to bear a proper name should not be violated; permitting Stephanie to use the middle name “Garcia” (her mother’s surname) avoids the stigma of her illegitimacy; and her continued use of “Garcia” as her middle name is not opposed by either the Catindig or Garcia families. May the

adopted child use the surname of her natural mother as her middle name? Explain.

Held:

Yes. *First*, it is necessary to preserve and maintain the child's filiation with her natural mother because under Article 189 of the Family Code, she remains to be an intestate heir of the latter. Thus, to prevent any confusion and needless hardship in the future, her relationship or proof of that relationship with her natural mother should be maintained.

Second, there is no law expressly prohibiting the adopted to use the surname of her natural mother as her middle name. What the law does not prohibit, it allows.

Last, it is customary for every Filipino to have a middle name, which is ordinarily the surname of the mother. This custom has been recognized by the Civil Code and Family Code. In fact, the Family Law Committees agreed that the initial or surname of the mother should immediately precede the surname of the father so that the second name, if any, will be before the surname of the mother. (In the Matter of Adoption of Stephanie Nathy Astorga Garcia, Honorato Catindig, Petitioner, G.R. No. 148311, March 31, 2005, Gutierrez, J.).

The underlying intent of adoption is in favor of the adopted child.

Adoption is defined as the process of making a child, whether related or not to the adopter, possess in general, the rights accorded to a legitimate child. It is a juridical act, a proceeding *in rem* which creates between two persons a relationship similar to that which results from legitimate paternity and filiation. The modern trend is to consider adoption not merely as an act to establish a relationship of paternity and filiation, but also as an act which endows the child with a legitimate status. (*Prasnick vs. Rep.*, 98 Phil. 665). This was, indeed, confirmed in 1989, when the Philippines, as a State Party to the Convention of the Rights of the Child initiated by the United Nations, accepted the principle that adoption is impressed with social and moral responsibility, and that its underlying intent is geared to favor the adopted child. (*Lahom vs. Sibulo*, 406 SCRA 135 [2003]). Republic Act No. 8552, otherwise known as the "Domestic Adoption Act of 1998," secures these rights and privileges for the adopted. (Sec. 17).

One of the effects of adoption is that the adopted is deemed to be a legitimate child of the adopter for all intents and purposes pursuant to Article 189 of the Family Code and Section 17, Article V of RA 8552.

Being a legitimate child by virtue of her adoption, it follows that she is entitled to all the rights provided by law to a legitimate child without discrimination of any kind, including the right to bear the surname of her father and her mother, as discussed above. This is consistent with the intention of the members of the Civil Code and Family Law Committees. In fact, it is a Filipino custom that the initial or surname of the mother should immediately precede the surname of the father.

Additionally, her continued use of her mother's surname (Garcia) as her middle name will maintain her maternal lineage. It is to be noted that Article 189(3) of the Family Code and Section 18, Article V of RA 8552 (law on adoption) provide that the adopted remains an intestate heir of his/her biological parent. Hence, she can well assert her hereditary rights from her natural mother in the future.

Liberal construction of adoption statutes in favor of adoption.

It is settled rule that adoption statutes, being humane and salutary, should be liberally construed to carry out the beneficent purposes of adoption. (Rep. vs. CA, et al., 205 SCRA 356). The interests and welfare of the adopted child are of primary and paramount consideration, hence, every reasonable intendment should be sustained to promote and fulfill these noble and compassionate objectives of the law. (Bobanovic, et al. vs. Montes, et al., 142 SCRA 485).

Lastly, Article 10 of the New Civil Code provides that:

“In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.”

This provision, according to the Code Commission, “is necessary so that it may tip the scales in favor of right and justice when the law is doubtful or obscure. It will strengthen the determination of the courts to avoid an injustice which may apparently be authorized by some way of interpreting the law.

Hence, since there is no law prohibiting an illegitimate child adopted by her natural father, like Stephanie, to use, as middle name

her mother's surname, there is no reason why she should not be allowed to do so. (In the Matter of the Adoption of Stephanie Nathy Astorga Garcia, Honorato Catindig, Petitioner, G.R. No. 148311, March 31, 2005, Gutierrez, *J.*).

Change of name to drop the middle name of a child.

A unique case was filed asking that a child be allowed to drop his middle name. All cases filed and decided pertain to change of name or surname but in this case, the petition was to drop his middle name, alleging as reason therein convenience, that it would be easier for him to integrate into Singaporean society. He further alleged that the continued use of his middle name would cause confusion and difficulty. He was not able to establish that how such change of name would make his integration into Singaporean society easier and convenient. The Supreme Court denied it upholding the State interest in the names borne by individuals and entities for purposes of identification.

Article 190. Legal or intestate succession to the estate of the adopted shall be governed by the following rules:

(1) Legitimate and illegitimate children and descendants and the surviving spouse of the adopted shall inherit from the adopted, in accordance with the ordinary rules of legal or intestate succession;

(2) When the parents, legitimate or illegitimate, or the legitimate ascendants of the adopted concur with the adopters, they shall divide the entire estate, one-half to be inherited by the parents or ascendants and the other half, by the adopters;

(3) When the surviving spouse or the illegitimate children of the adopted concur with the adopters, they shall divide the entire estate in equal shares, one-half to be inherited by the spouse or the illegitimate children of the adopted and the other half, by the adopters;

(4) When the adopters concur with the illegitimate children and the surviving spouse of the adopted, they shall divide the entire estate in equal shares, one-third to be inherited by the illegitimate children, one-third by the surviving spouse, and one third by the adopters;

(5) When only the adopters survive, they shall inherit the entire estate; and

(6) When only collateral blood relatives of the adopted survive, then the ordinary rules of legal or intestate succession shall apply. (39[4]a, P.D. No. 603)

Illustrations:

(1) A adopted B. B later married C and they gave birth to E, a legitimate child. F, an illegitimate child of B before his marriage with C, his surviving spouse. Distribute the estate if the estate of B is P120,000.00.

E	—	1/2 or P60,000.00
F	—	1/4 or P30,000.00
C	—	1/4 or P30,000.00

This is the distribution made by paragraph 1 of Article 190 of the Family Code. The adopter, however, does not get any share of the estate.

(2) A adopted B. B died, leaving an estate of P100,000.00, with A and his natural parents, C and D, as his survivors. Distribute the estate.

A	—	1/2 or P50,000.00
C & D	—	1/2 or P50,000.00

(3) A adopted B. He married C and died without an issue. He is survived by C, his wife and A, his adopter. He left an estate of P100,000.00. Distribute the estate.

C	—	1/2 or P50,000.00
A	—	1/2 or P50,000.00

If, instead of getting married, B lived with a woman without the benefit of a marriage and they gave birth to C. Distribute his estate which is P100,000.00.

C	—	1/2 or P50,000.00
A	—	1/2 or P50,000.00

(4) A adopted B. Before B's marriage to C, he had an illegitimate child with D, named E. He died with an

estate of P120,000.00, leaving his spouse, illegitimate child, and A, his adopter, as his survivors. Distribute the estate.

C — 1/3 or P40,000.00

E — 1/3 or P40,000.00

A — 1/3 or P40,000.00

(5) A and B adopted C, who died with an estate of P100,000.00. He left no survivors except A and B. Distribute the estate.

The law says that if the only survivors are the adopters, they shall inherit the entire estate. A and B would therefore get P100,000.00. (See par. 5, Art. 190, Family Code).

Article 191. If the adopted is a minor or otherwise incapacitated, the adoption may be judicially rescinded upon petition of any person authorized by the court or proper government instrumentality acting on his behalf, on the same grounds prescribed for loss or suspension of parental authority. If the adopted is at least eighteen years of age, he may petition for judicial rescission of the adoption on the same grounds prescribed for disinheriting an ascendant. (40a, P.D. No. 603)

Modification by RA 8552.

The law has been modified by RA 8552 which provides:

“Sec. 19. *Grounds for Rescission of Adoption.* — Upon petition of the adoptee, with the assistance of the Department if a minor or if over eighteen (18) years of age but is incapacitated, as guardian/counsel, the adoption may be rescinded on any of the following grounds committed by the adopters: (a) repeated physical and verbal maltreatment by the adopter(s) despite having undergone counseling; (b) attempt on the life of the adoptee; (c) sexual assault or violence; or (d) abandonment and failure to comply with parental obligations.

Adoption, being in the best interest of the child, shall be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in Article 919 of the Civil Code.”

Right of succession of adopted where decree was rescinded.

Section 20(3) of RA 8552 provides that succession rights shall revert to its former status prior to adoption, but only as of the date of judgment of judicial rescission.

The law simply means that if the decree of adoption is rescinded pursuant to Section 19 of RA 8552 the adopted child of the adopter, hence, the relationship of the adopted child and his/her biological parents is restored and consequently, he/she shall be entitled to all the rights and obligations provided by law in favor of the child. One of such rights is succession. The law however places a limit on the resumption of successional rights by providing that the same shall only resume as of the date of the judgment of rescission. Implied from this law is the fact that after the decree of adoption where there is severance of legal ties between the child and the biological parents, the right of succession likewise ceases, only to be revested when the adoption is judicially rescinded. This law modifies Article 189(3) of the Family Code which provides that “the adopted shall remain an intestate heir of his parents and other relatives.”

Grounds for disinheritance of descendants.

The adopters, like ordinary biological parents have the right to disinherit their child on grounds provided for by law. RA 8552 specifically makes reference to Article 919 of the Civil Code which enumerates the grounds for disinheritance. The law provides:

“Article 919. The following shall be sufficient causes for the disinheritance of children and descendants, legitimate as well as illegitimate:

(1) When a child or descendant has been found guilty of an attempt against the life of the testator, his or her spouse, descendants, or ascendants;

(2) When a child or descendant has accused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation has been found groundless;

(3) When a child or descendant has been convicted of adultery or concubinage with the spouse of the testator;

(4) When a child or descendant by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made;

(5) *A refusal without justifiable cause to support the parent or ascendant who disinherits such child or descendant;*

(6) *Maltreatment of the testator by word or deed, by the child or descendant;*

(7) *When a child or descendant leads a dishonorable or disgraceful life;*

(8) *Conviction of a crime which carries with it the penalty of civil interdiction. (756, 853, 674a)”*

Grounds for judicial rescission of adoption.

The grounds for judicial rescission of adoption provided for by the law. In general, it can be said that since the purpose of adoption is to uplift the condition of the adopted, if the adopters cannot or refuse to comply with their obligations to the adopted, the latter can ask for rescission of the decree of adoption.

The law allows the filing of a petition for judicial rescission of adoption by a person authorized by the court or by a proper government instrumentality acting on behalf of the minor; or by the minor himself if he is at least 18 years of age.

Article 192. The adopters may petition the court for the judicial rescission of the adoption in any of the following cases:

(1) **If the adopted has committed any act constituting a ground for disinheriting a descendant; or**

(2) **When the adopted has abandoned the home of the adopters during minority for at least one year, or, by some other acts, has definitely repudiated the adoption. (41a, P.D. No. 603)**

Rescission of adoption by adopters.

The law has been amended in that only the adopted child can now file a petition for rescission of the decree of adoption. More specifically, Section 19(2), RA 8552 says that “adoption, being in the best interest of the child, shall not be subject to rescission by the adopters. However, the adopters may disinherit the adoptee for causes provided in Article 919 of the Civil Code.”

Article 193. If the adopted minor has not reached the age of majority at the time of the judicial rescission of the adoption, the court in the same proceeding shall reinstate the parental authority of the parents by nature, unless the latter are disqualified or incapacitated, in which case the court shall appoint a guardian over the person and property of the minor. If the adopted person is physically or mentally handicapped, the court shall appoint in the same proceedings a guardian over his person or property or both.

Judicial rescission of the adoption shall extinguish all reciprocal rights and obligations between the adopters and the adopted arising from the relationship of parent and child. The adopted shall likewise lose the right to use the surnames of the adopters and shall resume his or her surname prior to the adoption.

The court shall accordingly order the amendment of the records in the proper registries. (42a, P.D. No. 603)

The rescission of adoption may only be effected *judicially* upon petition of: (a) any person authorized by the court or the proper governmental instrumentality on the same grounds prescribed by the Family Code (Title IX, *infra.*) for loss or suspension of parental authority; (b) the person adopted, if at least eighteen years of age on the same grounds prescribed for disinheriting an ascendant (see Article 920, Civil Code); or (c) the adopters on the grounds expressed in Article 192 of the Family Code. (*supra*; see also Art. 919, Civil Code).

Judicial rescission has the effect of extinguishing forthwith the adoptive relationship, hence:

- (1) The rights and obligations between the adopter and the adopted arising from the adoptive relationship cease;
- (2) The adopted loses the right to the use of the adopter's surname and shall resume the use of his or her surname prior to the adoption.
- (3) Parental authority, in case the adopted is still a minor, shall re-vest in the parents by nature or, if disqualified or incapacitated, in a guardian appointed by the court in the same proceeding for rescission. (see Art. 193, Family Code, *supra*).

Abandonment presupposes the fact that the adopted left the home of the adopters without the intention of returning for at least one year.

RA 8552 has introduced some modifications to the law. It provides:

“Sec. 20. *Effects of Rescission.* — If the petition is granted, the parental authority of the adoptee’s biological parent(s), if known, or the legal custody of the Department shall be restored if the adoptee is still a minor or incapacitated. The reciprocal rights and obligations of the adopter(s) and the adoptee to each other shall be extinguished.

The court shall order the Civil Registrar to cancel the amended certificate of birth of the adoptee and restore his/her original birth certificate.

Succession rights shall revert to its status prior to adoption, but only as of the date of judgment of the judicial rescission. Vested rights acquired prior to judicial rescission shall be respected.

All the foregoing effects of rescission of adoption shall be without prejudice to the penalties imposable under the Penal Code if the criminal acts are properly proven.”

Title VIII

SUPPORT

Article 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. (290a)

Support demandable.

It is to be noted that under the law the fact that a right to be supported is recognized in favor of the person to be supported such recognition of right does not automatically entitle him to receive support as 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 and support will not be paid except from the date it is extra-judicially demanded. (Art. 203, [par. 1], Family Code). Appropriately, therefore, the right to demand support arises from imperative necessity, without which it cannot be demanded, and the law presumes that such necessity does not exist unless support is demanded. (Jocson, et al. vs. Empire Insurance Co., et al., 50 O.G. 2628).

Unborn child entitled to support.

In accordance with existing jurisprudence, even an unborn child is entitled to support. This is so, because a conceived child, although as yet unborn, is given by law a provisional personality of its own for purposes favorable to it and correspondingly, the right to support from its progenitors, even if the said child is only "*en ventre de sa*

mere,” just as a conceived child, even if as yet unborn, may receive donations under Article 742, New Civil Code. (Quimiguing vs. Icao, 34 SCRA 132).

Ascendants and descendants required to support one another.

Under the law, legitimate ascendants and descendants are required to support each other. (Art. 195, Family Code). In this regard, the basis of the right to support is the legitimacy of relationship so that in case the status of a child is denied and placed in issue, no effect can be given to the child’s claim for support until an authoritative declaration has been made as to the existence of the cause. (Francisco vs. Zanduetta, 61 Phil. 752).

In *Castillo vs. Castillo*, O.G., March 27, 1941, p. 968, it has been ruled by the Supreme Court that abandonment of a descendant will deprive the ascendant of the right to receive support from the descendant so abandoned. Thus, where a mother delivered her child to other persons when the child was scarcely two years old, and since then never took care of such child, abandoning her entirely, such mother relinquishes all parental claim and is not entitled to be supported by the child.

Right of illegitimate to support.

Under the law, illegitimate children are entitled to be supported. (Silva vs. Peralta, 2 SCRA 1025). This grant of right in favor of illegitimate children has been recognized as a form of assistance in order for them to surmount the disadvantages facing them through the misdeeds of their parents, since the transgressions of social conventions committed by the parents should not be visited upon such children. (Report of the Code Commission, Civil Code, p. 89).

Insofar as ascendants and descendants are concerned, they are mutually bound to support each other, but in *Castillo vs. Castillo*, 39 O.G. No. 37, March 27, 1941, p. 968, it was ruled that if the mother brought the child to the custody of another when he was only two years old, and since then, never took care of the child, abandoning the same, the mother relinquishes the right to be supported and parental care.

The unfair and unequal situation in Article 291 of the Civil Code has been remedied by Article 195 (Paragraphs 3 and 4) of the Family Code, in that descendants, whether legitimate or illegitimate, whether

they proceed from parents legitimate or illegitimate, are entitled to support. In short, illegitimate descendants, whether from legitimate or illegitimate children, are entitled to support from their grandparents.

Brothers and sisters not legitimately related, whether of the full or halfblood, are entitled to support to the full extent under Article 194, of the Family Code. This is not similar to the Civil Code, as they were entitled only to natural support or the necessities in life. But suppose, such brother or sister is of age but he is very lazy that he/she does not want to work, can he/she be entitled to such support? The answer is no, because the law says, "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." (Art. 196, Family Code).

Allowance to widow, etc. who are included.

Art. 133 of the Family Code provides that, from the common mass of property, support shall be given to the surviving spouse and to the children during the liquidation of the inventories of property x x. "Does the term "children" include "grandchildren"?"

The Supreme Court in *Estate of Hilario M. Ruiz, et al. vs. CA, et al.*, G.R. No. 118671, January 29, 1996, 67 SCAD 420, said NO. It limits the allowance to the widow and children and it does not extend to the deceased's grandchildren regardless of their minority or incapacity. (See also *Babao vs. Villavicencio*, 44 Phil. 921 [1922]).

Note that support is rooted on the fact that the right and duty to support, especially the right to education, subsist even beyond the age of majority. (See *Estate of Hilario Ruiz vs. CA, et al.*, *supra*).

Married man cannot be required to acknowledge a child of a woman he raped.

In *People vs. Manahan*, 315 SCRA 476, it was said that if the rapist is a married man, he cannot be compelled to recognize the offspring of the crime, should there be any, as his child, whether legitimate or illegitimate. But he can be required to support the child. (citing *People vs. Guerrero*, 242 SCRA 606). The reason for the rule is the existence of a legal impediment to acknowledge as the accused is married.

Article 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

- (1) The spouses;**
- (2) Legitimate ascendants and descendants;**
- (3) Parents and their legitimate children and the legitimate and illegitimate children of the latter;**
- (4) Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and**
- (5) Legitimate brothers and sisters, whether of full or half-blood. (291a)**

Article 196. 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 in Article 194, 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. (291a)

Spouses:

The right and obligation to support arises from law, life Article 68 of the Family Code which obliges the spouses to held and support one another.

It has been recognized that the marriage relation imposes upon the spouses the obligation to support. (*Santos vs. Sweeney*, 4 Phil. 79; *Lerma vs. Mamaril*, 9 Phil. 118; *Clausen vs. Cabrera*, 72 Phil. 252). Thus, if the wife is forced to leave the conjugal dwelling by causes justifying her establishment of a separate domicile, she is entitled to separate maintenance from the husband. (*Goitia vs. Campos Rueda*, 35 Phil. 252; *Garcia vs. Santiago*, 53 Phil. 952; *Dadivas de Villanueva vs. Villanueva*, 54 Phil. 92; *Panuncio vs. Sula*, 34 O.G. 1291). In this regard, the right of a wife to support depends upon her status as such (*Yangco vs. Rhoda*, 1 Phil. 404), so that once the marriage has been annulled, the right ceases, even during the pendency of the action filed by her for the liquidation of their conjugal property. (*Mendoza vs. Paruñgao*, 49 Phil. 271). The right to support exists even *pendente lite*. (*Hashim vs. Concepcion*, 42 Phil. 694; *Yabut vs. Agrava*, 62 O.G. 3595). But there is a defense that if there was adultery of the woman, support would not be given. (*Quintana vs. Lerma*, 24 Phil. 285).

Article 197. For the support of 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. (n)

Support of illegitimate children of a spouse.

If a person who is married has ascendants, or descendants whether legitimate or illegitimate, or brothers and sisters, and he is obliged to support them, such support shall come from the separate properties of such spouse. If he has no separate properties, the absolute community or conjugal partnership shall advance the support. Upon the liquidation of the absolute community of property or the conjugal partnership, such advances shall be deducted from the share of such spouse. The reason for the law is that there is no obligation of the lawful spouse to support the children of the other spouse with another person, unless they have been adopted by them. If that is so, the properties of the husband and wife are not bound to answer for their support.

Article 198. 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 properties of the absolute community or the conjugal partnership. After the final judgment granting the petition, the obligation of mutual support between the spouses ceases. However, in case of legal separation, the court may order that the guilty spouse shall give support to the innocent one, specifying the terms of such order. (292a)

The law is in conformity with Article 49 of the Family Code mandating that during the pendency of an action for annulment or declaration of nullity of the marriage, the court shall provide for the support of the spouses and the children. The same is true in Article 62 in cases of legal separation. The reason for the law is that, of utmost consideration is the welfare, moral or maternal, of the children. The support shall come from the conjugal properties or the

absolute community of properties. The support given is known as support *pendente lite*, but the moment there is declaration of nullity of the marriage, the obligation to support and the right to be supported cease to exist. The reason is that, after annulment or declaration of nullity of the marriage, the relationship ceases to exist. But in legal separation, the court may still order the guilty spouse to support the other, but it is discretionary on the part of the court and as such, it cannot be demanded as a matter of right.

In an action by a wife against her husband for support the defendant may set up as a special defense that the wife had forfeited her right to support by committing adultery, the special defense of adultery set up by the defendant is a good defense and if properly proved and sustained, will defeat the action.

Article 199. Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:

1. The spouse;
2. The descendants in the nearest degree;
3. The ascendants in the nearest degree; and
4. The brothers and sisters. (294a)

This is an enumeration of the order of liability in matters of support. Manresa reasoned out by saying that, since the obligation to support certain relatives rests primarily upon the requirements of human nature and the ties created by family relations, it is only logical that the obligation should first be imposed upon those who are closely related to the recipient and it is only in default of those nearer in degree of relationship that those more remote are called upon to discharge the obligation. (1 Manresa 674).

The action for support may be brought against any of those obliged to give it, but the plaintiff must show that those who are called upon to furnish the support before the defendant are without means to give such support. If the defendant can prove that another person who is ahead of him in the order of liability can give the support, the obligation must fall upon the latter. Thus, a rich brother will not be obliged to give support if he proves that the father has enough means to give for support. (1 Manresa 679).

Article 200. When the obligation to give support falls upon two 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 two 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 obligees should be the spouse and a child subject to parental authority, in which case the child shall be preferred. (295a)

This article makes the obligation of several obligors in the same grade a joint and not a solidary one. The proportionate share of each will depend upon his means as compared to the others. It may happen, however, that some obligors may be absent and their domiciles unknown, or for some other reason they cannot immediately furnish their shares. In such case, the law provides that any obligor may be compelled to give the full amount of support, without prejudice to his right to recover the proportionate shares of the others. Thus, although the general rule is that the recipient should claim his support from all those obliged to give it, under special circumstances he may bring his action against any of them. If the court finds that there is ground for the action against the defendant, it will oblige him to provisionally give the full support deserving his rights against the others. (1 Manresa 677-678).

In matters of support, the law gives preference to children under *patria potestas* over all other relatives including the spouse. (Dela Cruz vs. Santillan, [CA] G.R. No. 8491, February 12, 1943). This is irrespective of whether they are legitimates, legitimated, or illegitimate. Such an adopted child is entitled to the same right and preference because he has the same rights as a legitimate child.

Article 201. The amount of support, in the cases referred to in Articles 195 and 196, shall be in proportion to the resources or means of the giver and to the necessities of the recipient. (296a)

Article 202. Support in the cases referred to in the preceding article 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. (297a)

Judgment of support is always subject to modification.

In determining the amount of support to be awarded, such amount should be in proportion to the resources or means of the giver and the necessities of the recipient.

It is incumbent upon the trial court to base its award of support on the evidence presented before it. The evidence must prove the capacity or resources of both parents who are jointly obligated to support their children as provided for under Article 195 of the Family Code; and the monthly expenses incurred for the sustenance, dwelling, clothing, medical attendance, education and transportation of the child.

In this case, the only evidence presented by the plaintiff regarding her claim for support of the child was her testimony. The same does not establish the amount needed by the child nor the amount that the parents are reasonably able to give. (*Jose Lam vs. Adriana Chua*, G.R. No. 131286, March 18, 2004).

The amount of support is by no means permanent. In *Advincula vs. Advincula*, 10 SCRA 189 (1964), it was held that another action for support could be filed again by the same plaintiff notwithstanding the fact that the previous case for support filed against the same defendant was dismissed. It was further held that:

“Judgment for support does not become final. The right to support is of such nature that its allowance is essentially provisional; for during the entire period that a needy party is entitled to support, his or her alimony may be modified or altered, in accordance with his increased or decreased needs, and with the same means of the giver. It cannot be regarded as subject to final determination.”

Thus, there is no merit to the claim that the compromise agreement between the husband and wife embodied in a decision in the case for voluntary dissolution of conjugal partnership of gains is a bar to any further award of support in favor of their child. The provision for a common fund for the benefit of their child as embodied in the compromise agreement between the parties which had been approved by the court cannot be considered final and *res judicata*

since any judgment for support is always subject to modification, depending upon the needs of the child and the capabilities of the parents to give support.

Article 203. 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 extra-judicial demand.

Support *pendente lite* may be claimed in accordance with the Rules of Court.

Payment shall be made within the first five days of each corresponding month. When the recipient dies, his heirs shall not be obliged to return what he has received in advance. (298a)

Article 204. 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. (299a)

No finality of support judgment.

A judgment for support does not become final at all. The reason for this is that, it can be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the giver.

Illustration:

If a person is obliged to give support by virtue of a decision of the court and such decision mandates that he should give the recipient P1,000.00 per month and later on gets demoted in his work and receives a lesser compensation, he can ask for a reduction because his resources or means of the said person has diminished. Appropriately, however, the reduction of means as a defense does not apply to support of spouses for it refers more to a case where the recipient is a stranger to the family of the obligor. (Corral vs. Gallego, 38 O.G. 3158).

Support, judgment for support is immediately executory.

A judgment for support is immediately executory because it is needed by the person to be supported. Section 4, Rule 39 of the Rules of Court clearly states that, unless ordered by the trial court, judgments in actions for support are immediately executory and cannot be stayed by an appeal. This is an exception to the general rule which provides that the taking of an appeal stays the execution of the judgment and that advance execution will only be allowed if there are urgent reasons therefore. The provision peremptorily calls for immediate execution of all judgments for support and makes no distinction between those which are the subject of an appeal and those which are not.

The rule has to be so because in all cases involving a child, his interest and welfare are always the paramount concerns. There may be instances where, in view of the poverty of the child, it would be a travesty of justice to refuse him support until the decision of the trial court attains finality while time continues to slip away. (*Gan vs. CA, et al.*, G.R. No. 145527, May 28, 2002, citing *De Leon vs. Soriano*, 95 Phil. 806).

Demand is necessary.

The provisions of Article 203, Family Code requires that before support is paid, there must be judicial or extrajudicial demand. This is so because the right to demand support arises from imperative necessity, without which, it cannot be demanded, and the law presumes that such necessity does not exist unless support is demanded. (*Jocson, et al. vs. Empire Insurance Co., et al.*, 50 O.G. 2628).

When obligation ceases.

According to law, the obligation to give support shall cease when the recipient engages in a trade, profession or industry, or has obtained work or has improved his fortune in such a way that he no longer needs the allowance for his subsistence. Thus, if in spite of the ability to practice the profession, art or trade, or even its actual practice, the necessities of the recipient continue without his fault, the obligation to give what is needed subsists. (*Corral vs. Gallego*, 38 O.G. 3158). Appropriately, it is the sufficiency of income derived from the practice of the profession, art or trade that determines the necessity for support and so a father is not obliged to give support to

his children if they have their own properties or profession or industry, from which they get sufficient income for their subsistence. (Manresa, *Comentario al Código Civil*, Vol. 1, p. 697).

The person obliged to give support has the option to give it by either paying a fixed allowance to the person entitled to it or maintaining him in the family dwelling the person entitled to the support, but maintaining and receiving him in the family dwelling cannot be done if there is a moral or legal obstacle. Some of these moral or legal obstacles may be:

- (1) when a daughter is already married as she has to live with the husband;
- (2) where the defendant abducted the plaintiff and married her to avoid prosecution but never lived with her; (Sentencia [Cuba] of February 15, 1937).
- (3) if the natural father of a child has already married a woman, not the mother of the child. (US vs. Alvin, 576; Pascual vs. Martinez, 37 O.G. 2418).

Article 205. The right to receive support under this Title as well as any money or property obtained as such support shall not be levied upon on attachment or execution. (302a)

The right to receive support is exempt from attachment or levy. The reason is obvious in that it would defeat the purpose of the law in giving protection to the recipient against misery. This is a situation which accepts certain exceptions like when support is founded on contract or will, the excess of which is subject to attachment or levy.

Article 206. When, without the knowledge of the person obliged to give support, it is given by a stranger, the latter shall have a right to claim the same from the former, unless it appears that he gave it without intention of being reimbursed. (2164a)

Article 207. 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 apply particularly 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. (2166a)

- (1) The provisions of Articles 206 and 207 of the Family Code are similar to the provisions of Article 1236 of the New Civil Code which states that the creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary. Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor. (1158a)
- (2) X is obliged to support Y. Without X's knowledge or consent, Z paid the amount of support to Y. The right of Z is to ask for reimbursement from X, unless there is a showing that Z did not intend to be reimbursed.

If there is no evidence of such intention, Z can ask for reimbursement from X.

The rule is also true in case the person obliged to give support fails or refuses to give support.

- (3) In order that the stranger under Article 206, Family Code may recover what he gave to another by way of support, the following must concur:
 - (a) the person obliged to give support failed to give it;
 - (b) support was needed;
 - (c) support was given without the knowledge and consent of the person who is required to give it;
 - (d) support was given with the intention of being reimbursed.

The "stranger" referred to in the law means one who is not under obligation to support another, like for example, X, who is not even related to Y but he voluntarily gives support to Y on account of his parents' failure or inability to give him support. It must be recalled that when a person obliged to support an orphan or an insane or other indigent person unjustly refuses to give support to the latter, any third person may furnish support to the needy individual, with right of reimbursement from the person obliged to give support. The provisions of this article apply when the father or mother of a child under eighteen years of age unjustly refuses to support him. (Art. 2166, New Civil Code).

The aforementioned law is a form of a quasi-contract which requires the one who is obligated to support another but who fails to do so to reimburse a third person who voluntarily gave support to the one entitled to it, otherwise, he would be unduly enriching himself at the expense of another person.

Article 208. 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.
(n)**

The law contemplates of a contractual support or that support which is given through a will. While the law does not allow the attachment or levy on legal support, however, it allows attachment or levy of the excess of a contractual support over and above legal support. It also says that contractual support can be adjusted when necessary due to changes in the circumstances manifestly beyond the contemplation of the parties.

Title IX
PARENTAL AUTHORITY

Chapter 1
General Provisions

Article 209. 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. (n)

- (1) Under the present concept of parental authority, the right of the parents to the company and custody of their children is but ancillary to the proper discharge of parental duties to provide the children with adequate support, education, moral, intellectual and civic training, and development. Thus, while our law recognizes the right of a parent to the custody of the child, courts have not lost sight of the basic principle that “in all questions of the care, custody, education and property of the children, the latter’s welfare shall be paramount and that for compelling reasons, even a child under seven may be ordered separated from the mother.” (Medina vs. Makabali, 27 SCRA 502; Luna vs. IAC, 137 SCRA 7).
- (2) Parental authority is the sum total of the rights of parents over the person and property of their children. (2 Manresa 8, cited in Paras, *Civil Code of the Philippines, Annotated*, Fourth Ed., p. 591).
- (3) The guardianship which parents exercise over their children by virtue of the parental authority granted them by law has for its purpose their physical development, the cultivation of their intelligence and the development of

their intellectual and sensitive faculties. (Reyes vs. Alvarez, 8 Phil. 723).

- (4) Parental authority, otherwise known as *patria potestas*, may be defined as the mass of rights and obligations which parents have in relation to the person and property of their children until their majority age or emancipation and even after this under certain circumstances. (2 Manresa 8).

Article 210. Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law. (313a)

It is a rule that parental authority is inalienable and every abdication of this authority by the parents is void. (1 Planiol and Ripert, 324; Bacayo vs. Calum, 35 [CA] 53 O.G. 8607). It cannot be waived except under circumstances allowed by law like adoption, guardianship or surrender to a children's home or an orphan asylum. (See Act No. 3094). If a mother, as in *Celia vs. Cafuin*, 86 Phil. 554, would surrender the custody of her child to another — that is merely temporary — it does not deprive her of the right to get back or regain the custody of her child.

Parental authority is inalienable.

The case at bar is a conflict between parents in law and the father of a young child involving the custody of the child who was entrusted to the grandparents. The mother was then in the USA when the case arose. One question that was resolved was whether parental authority and responsibility is alienable or not and the Supreme Court said:

“No. Parental authority and responsibility are inalienable and may not be transferred or renounced except in cases authorized by law.” The right attached to parental authority, being purely personal, the law allows a waiver of parental authority only in cases of adoption, guardianship or surrender to a children's home or orphan institution. (Arts. 222-224, Family Code, Act No. 3094). When a parent entrusts the custody of a minor to another such as a friend or godfather, even in a document, what is given is merely *temporary* custody and it does not constitute a renunciation of parental authority. (*Celis vs. Cafuir*, 86 Phil. 554). Even if a definite renunciation is

manifest, the law still disallows the same. (Art. 210, Family Code; Santos, Sr. vs. CA, et al., G.R. No. 113054, March 16, 1995, 59 SCAD 672).

The Supreme Court went further and said that:

“The right of custody accorded to parents springs from the exercise of parental authority. Parental authority or *patria potestas* in Roman Law is the juridical institution whereby parents rightfully assume control and protection of their unemancipated children to the extent required by the latter’s needs. It is a mass of rights and obligations which the law grants to parents for the purpose of the children’s physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses. As regards parental authority, ‘there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty, but a sacred trust for the welfare of the minor.’” (Santos, Sr. vs. CA, et al., G.R. No. 113054, March 16, 1995, 59 SCAD 672).

Article 211. 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 toward their parents and are obliged to obey them as long as the children are under parental authority. (17a, P.D. No. 603)

The law recognizes the joint parental authority of parents over their children. They are now in equal footing, except that if there is a disagreement, still, the father’s decision shall prevail, subject to a court order contrary to the father’s decision. In matters of the physical, moral, and educational development of the child, their authority is joint. There are, however, instances where the law recognizes the preferential authority of the father like:

- (1) Article 225 of the Family Code which provides for the joint exercise of guardianship over a minor child’s properties. But in case of conflict, the decision of the father shall prevail, except if there is a judicial order to the contrary;
- (2) In cases where the child gets married, but needs the consent of the parents, Article 14 of the Family Code provides that the father is preferred to that of the mother.

If the child is adopted by both parents, there is joint adoption.

Under the law, there are two (2) basic duties of the children toward their parents, like:

- (1) to obey their parents as long as they are under parental authority;
- (2) to observe respect and reverence toward their parents.

The duty to honor the parents, however, does not mean that the children are to be deprived of the exercise of any right or prevented from fulfilling any legal, moral, or social obligation, simply because their acts in this regard might in some way impair that reverence due from the children to the parents. (15 Sanchez Roman 1137).

Act No. 4002 provides for the criminal liability of a minor child in case of disrespect and disobedience to the parents. In fact, Article 223 of the Family Code allows the parents to apply for an order providing for disciplinary measures over the child.

Article 212. 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. (17a, P.D. No. 603)

The law, as a rule, provides for joint parental authority of parents over their children. If one is already dead, hence, for obvious reasons, cannot exercise parental authority anymore, the surviving spouse shall exercise parental authority. If the surviving spouse remarries, he/she retains parental authority over the children, unless the court appoints another person to act as guardian over the persons and property of the children.

Article 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 seven years of age, unless the parent chosen is unfit. (n)

No child under seven years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise.

- (1) Article 213 of the Family Code enunciates the rule that no child below the age of seven years shall be separated from the mother, except for compelling reasons. The reason for the law is that the welfare of the child is always given priority. Insanity may be considered a compelling reason to separate the child from the mother. But mere unfaithfulness to her husband may not be a ground. Even prostitution is not.
- (2) In the contest of the custody of a 9 year-old child, the natural parents were awarded the custody. When the judgment became final, execution was issued, but a new development happened whereby the child manifested that she would kill herself or run away from home if she should be taken away by the parents from the grandparents. Banking on this, opposition was filed by the petitioners.

The Supreme Court ruled that the manifestation of the child that she would kill herself if she should be taken away from her grandparents would make the execution of the judgment unfair and unjust, if not illegal. Article 363 of the Civil Code (now Art. 213, FC) provides that, in all questions relating to the child, his welfare is paramount. This means that the best interest of the child can override procedural rules and even the rights of parents to the custody of their children. Since the very life and existence of the minor is at stake and the child is in an age where she can exercise an intelligent choice, the courts can do no less than respect, enforce, and give meaning and substance to that choice and uphold her right to live in an atmosphere conducive to her physical and moral, as well as intellectual development. (Luna vs. CA, 137 SCRA 7).

Child's best interest can override procedural rules and even parental right to her custody.

An interesting twist of Art. 363, of the Civil Code (now Art. 213, F.C.), was given in *Luna vs. Intermediate Appellate Court, et al.* (L-68374, June 18, 1985). This legal provision declares that, in all questions relating to the care, custody, education, and property of the children, the latter's welfare is paramount. Shirley Salumbides, now nine years of age, was given by her parents, just two or four months after her birth, to the custody of Mr. and Mrs. Horacio Luna.

Horacio was the illegitimate father of Shirley's mother and had no child by his wife. The Lunas were rich, showered Shirley with love and affection, and brought her up as their very own child. Shirley called them Papa and Mama, while she called her parents Daddy and Mommy. At age 4, she was enrolled at Maryknoll College in Quezon City. At age 5, the Lunas wanted to take her with them on a trip to the U.S. and show her Disneyland and other places of interest there, but her real parents refused to give written permission to the child's application for visa. Shirley was utterly disappointed. She was left with her real parents, who transferred her to the St. Scholastica College while the Lunas were away. The parents also refused to return Shirley to the Luna's custody when the latter got back. A *habeas corpus* was filed by the Lunas to regain custody, but while they won in the CFI, the Court of Appeals reversed the decision and ordered the Lunas to turn over Shirley to her parents. The Supreme Court said that when the trial court issued a writ of execution to enforce the decision, the Lunas vigorously opposed the execution of the judgment and thereafter filed a motion for the reconsideration of the order and writ of execution on the ground of supervening events and circumstances, namely, that subsequent emotional, psychological and physiological condition of the child which would make the enforcement of the judgment unduly prejudicial and unjust to the child aside from causing irreparable damage to her welfare and interests. In a conference called by the judge, Shirley manifested that she would kill herself or run away from home if she should ever be separated from the Lunas. The judge, however, denied the motion for reconsideration. The Lunas filed *certiorari* proceedings with the Court of Appeals, which dismissed the petition, hence, this recourse to the Supreme Court.

The manifestation of the child that she would kill herself or run away from home if she should be taken away from the Lunas and be forced to live with her real parents, which she reiterated in her letters to the members of the Supreme Court and during the hearing before said Court, is a circumstance that would make the execution of the judgment inequitable, unfair and unjust, if not illegal. Art. 363 of the Civil Code (now Art. 213, FC) means that the best interest of the minor can override procedural rules and even the rights of parents to the custody of their children. Since, in this case, the very life and existence of the minor is at stake and the child is at an age when she can exercise an intelligent choice, the courts can do no less than respect, enforce, and give meaning and substance to that

choice and uphold her right to live in an atmosphere conducive to her physical, moral, and intellectual development. (citing Art. 365, par. 4, Civil Code). The threat may be proven empty, but Shirley has a right to a wholesome family life that will provide her with love, care and understanding, guidance and counseling, and moral and material security. The psychologist has pointed out that Shirley has grown more embittered, cautious, and mistrustful of her biological parents. To return her to the custody of the private respondents to face the same emotional environment, which she is now complaining of, would indeed be traumatic and may cause irreparable damage to the child. As requested by her, let us not destroy her future. The custody of the child was thus granted to the Lunas, with Justice Felix Makasiar filing a lone dissent.

The reason behind this rule is to avoid a tragedy when a mother would see her baby torn away from her. No man can sound the deep sorrow of a mother who is deprived of her child of tender age. (*Hontiveros vs. IAC*, 132 SCRA 745).

Mother preferred as trustee of insurance proceeds for minor child.

In *Cabanas vs. Pilapil* (L-25843, July 25, 1974), the rule that the welfare of the child must be held paramount in cases involving his care, custody, education and property of Art. 363 of the Civil Code (now Art. 213, FC), was made the basis for upholding the right of the mother of a minor child to be the trustee of certain insurance proceeds that became payable upon the death of the children's father, despite the fact that when the father insured himself and instituted his child as beneficiary, he expressly appointed his brother, Francisco, to act as trustee during the child's minority. The Supreme Court held that there is a recognition in the law of the deep ties that bind parent and child and that in the event there is less than full measure of concern for the offspring, the protection is supplied by the bond required under Article 320 of the Civil Code (Art. 225, FC). The Supreme Court justified the decision upholding the mother as against the child's uncle by citing the "added circumstance" that the child was staying with the mother and not the uncle, that there was no evidence of lack of maternal care, and that it was assumed that infidelity to the trust imposed by the deceased is much less in the case of the mother than in the case of an uncle.

Controversies on the custody of a minor, welfare is paramount.**Case:****Unson III vs. Hon. Navarro and Araneta
101 SCRA 183****Facts:**

Petitioner Miguel R. Unson III was married to Edita N. Araneta on April 19, 1971. On December 1, 1971 was born Ma. Teresa Unson, their daughter, which in this case both claimed to have the rightful custody over their minor child.

Spouses were living separately since June 1972 and an order of separation of properties in Civil Case No. 7716 was rendered by respondent Judge.

Since the birth of Ma. Teresa, she has always lived with her mother. In 1978, Edita Araneta, with the knowledge of petitioner, moved to San Lorenzo, Makati and lived with her brother-in-law. However, petitioner found out that Edita Araneta delivered a child fathered by Agustin Reyes, her brother-in-law, on September 24, 1978 and another child also by Agustin Reyes, on May 21, 1980. So petitioner tightened her custody over his daughter.

Issue:

What are the criteria in awarding a minor child to one of the parents?

Held:

It is axiomatic in our jurisprudence that all controversies regarding the custody of a minor, the sole and foremost consideration is the physical, education, social, and moral welfare of the child, taking into account the social and moral situations of the contending parents. The Court finds no difficulty in this case, the custody of the child cannot be awarded to the wife who might create an immoral influence over the child's moral and social outlook at her tender age. (See *Espiritu vs. CA, et al.*, 59 SCAD 631, 242 SCRA 362, March 15, 1995).

In determining the custody of an illegitimate child, his welfare is the paramount consideration. Even the mother who alone has parental authority over the child may be deprived of custody for compelling reasons.

Case:

Tonog vs. Daguimol
GR No. 122906, February 7, 2002

Facts:

Dinah Tonog and Edgar Daguimol lived together without the benefit of marriage. They had a daughter, Gardin Faith who was born in 1989. A year after the birth of Gardin Faith, Dinah left for the USA where she found work as a registered nurse. Gardin Faith was left in the care and custody of Edgar. In 1992, Edgar filed a petition to place Gardin Faith under his guardianship. The trial court granted the petition. Upon learning of the guardianship, Dinah came home and filed a petition to set aside the judgment of the court placing Gardin Faith under the guardianship of Edgar. The trial court set aside the judgment and allowed Dinah to file her opposition. Edgar filed a motion for reconsideration of this order. In the meantime, Dinah moved to recover custody over Gardin Faith. She argued that since Gardin Faith is an illegitimate child, she alone has parental authority over her. In addition, she argued that Gardin Faith cannot be separated from her because Gardin Faith was less than 7 years old.

The trial court granted Dinah's motion for custody. Edgar went up to the CA which reversed the trial court in so far as it transferred the custody of Gardin Faith to Dinah. From this reversal, Dinah went up to the Supreme Court where the basic question raised was whether the mother of an illegitimate child less than 7 years old may be deprived of custody during the pendency of the action to deprive her parental authority.

Held:

Yes, if it will be for the best welfare of the child. While it is true that the right to custody springs from the exercise of parental authority, and in case of an illegitimate child the mother alone has parental authority, the mother may be deprived of her custody if such will be for the best interest of the child. And while a child less than

7 years old may not be separated from the mother, the mother may be deprived of custody if there is a compelling reason. In the case at bar, it will be for the best interest of Gardin Faith that she remains with Edgar during the pendency of the guardianship proceeding. This is to prevent *havoc* on her psychological make-up when she is transferred to the custody of Dinah and then back to Edgar in case he wins the guardianship case below.

Custody of children, drug dependence.

Case:

Laxamana vs. Laxamana
G.R. No. 144767, September 3, 2002

Facts:

A and B contested the custody of their two (2) children above the age of seven (7). The woman contended that the man was a drug addict and had undergone rehabilitation, but he was not totally rehabilitated as shown by the results of the psychiatric evaluation. The Court awarded the custody to the woman on the basis of the evaluation but did not conduct further trial which was questioned by the man. Does drug dependence disqualify the man from having custody of his children?

The Court where it was said that it does not necessarily follow that he may be disqualified by reason of drug dependence.

Held:

In controversies involving the care, custody and control of their minor children, the contending parents stand on equal footing before the court who shall make the selection according to the best interest of the child. The child, if over 7 years of age may be permitted to choose which parent he/she prefers to live with, but the Court is not bound by such choice if the parent chosen is unfit. In all cases, the sole and foremost consideration is the physical, educational, social and moral welfare of the child concerned, taking into account the respective resources as well as the social and moral situations of the opposing parents. (Unson III vs. Navarro, et al., 101 SCRA 183).

While a man may have a history of drug dependence, there must be adequate evidence as to his moral, financial and social well-being. The result of the psychiatric evaluation showing that he is not

“completely cured” may render him unfit to take custody of the children, but there must be evidence to show that the man is unfit to provide the children with adequate support, education as well as moral and intellectual development. The children in this case were 14 and 15 years, yet the Court did not ascertain their choice as to which parent they want to live with. These inadequacies could have been remedied by an exhaustive trial proving the accuracy of the report and the capacity of both parties to raise their children. So the case was returned to the lower court for trial.

Mindful of the nature of custody cases, a court should conduct a trial notwithstanding the agreement of the parties to submit the case for resolution on the basis, *inter alia*, of the psychiatric report of a doctor. Thus, a party is not estopped from questioning the absence of a trial considering that said psychiatric report, which was the court’s primary basis in awarding custody to a party is insufficient to justify the decision. The fundamental policy of the State to promote and protect the welfare of children shall not be disregarded by mere technicality in resolving disputes which involve the family and the youth.

A child’s custody may not be the subject of an amicable settlement.

The child’s paramount interest demands that proceedings be conducted to determine the fitness of the parent who is to assume custody over said minor child.

Every child has rights which are not and should not be dependent solely on the wishes, much less the whims and caprices, of his parents. His welfare should not be subject to the parents’ say-so or mutual agreement alone. In case the parents are already separated in fact, the courts must step in to determine in whose custody the child can better be assured the rights granted to him by law. The need, therefore, to present evidence regarding this matter, becomes imperative. In short, the court should conduct trial where the parents have to present evidence and not merely on the mutual agreement of the spouses-parents. To be sure, this is not sufficient basis to determine the fitness of each parent to be the custodian of the children.

Besides, if the child is already 7 and above, he should be given the choice of the parent he wishes to live with. (*Laxamana vs. Laxamana*, G.R. No. 144763, September 3, 2002, citing *Lacson vs. Lacson*, 24 SCRA 837).

Common-law relationship of a child's mother with a married man, a ground to separate the child.

In the case of *Cervantes vs. Fajardo*, G.R. No. 79955, January 27, 1989, the Supreme Court made a very strong pronouncement that in all cases involving the custody, care, education, and property of children, the latter's welfare is paramount. The provision that no mother shall be separated from a child under five (5) years of age (now seven [7], under Art. 213 of the Family Code), will not apply where the Court finds compelling reasons to rule otherwise.

One compelling reason to separate the child from the mother is when she has a common-law relationship with another man. The reason given by the Supreme Court is that a common-law relationship of the mother with a married man will not afford the minor child that desirable atmosphere where she can grow and develop into an upright and moral-minded person.

In this same case, the child was adopted. The Supreme Court said that a decree of adoption has the effect, among others, of dissolving the authority vested in natural parents over the adopted child; except where the adopting parent is the spouse of the natural parent of the adopted, in which case, parental authority over the adopted child shall be exercised jointly by both spouses. The adopting parents, have the right to the care and custody of the adopted child and exercise parental authority and responsibility over him.

In matters of the custody of a child, her best interest is to be upheld.**Case:**

Espiritu, et al. vs. CA, et al.
242 SCRA 362, March 15, 1995
59 SCAD 631

Facts:

Reynaldo Espiritu and Teresita Masanding first met each other in 1976 in Iligan City. In 1977, Teresita left for California to work as a nurse, but when Reynaldo was sent by his employer to the U.S.A., they began to maintain a common-law relationship, resulting in the birth of a child named Rosalind Therese. While they were on vacation in the Philippines in 1987, they got married. When they returned

to the U.S.A, she gave birth to Reginald Vince, but their relationship became sour and deteriorated; hence, they separated in 1990. When Teresita came back to the Philippines, she filed a petition for *habeas corpus* seeking to regain custody of her children. The RTC dismissed the petition and awarded the custody to Reynaldo, but with visitation rights to Teresita. The CA reversed it based on Art. 213 of the Family Code that if a child is below 7 years of age, the mother is preferred. The RTC based its decision on the result of the psychological test of the child Rosalind, tending to show that she even saw her mother hugging and kissing a bad man who lived in their house and worked for her father.

Held:

The CA was unduly swayed by an abstract presumption of law rather than an appreciation of relevant facts and the law which should apply to those facts. The task of choosing the parents to whom custody shall be awarded is not a ministerial function to be determined by a simple determination of the age of a minor child. Whether a child is under or over seven years of age, the paramount criterion must always be the child's interests. Discretion is given to the court to decide on who can best assure the welfare of the child and award the custody on the basis of that consideration.

In ascertaining the welfare and best interests of the child, courts are mandated by the Family Code to take into account all relevant considerations. If a child is under seven years of age, the law presumes that the mother is the best custodian. The presumption is strong but it is not conclusive. It can be overcome by "compelling reasons." If a child is over seven, his choice is paramount, but again, the Court is not bound by that choice. In its discretion, the Court may find the chosen parent unfit and award custody to the other parent, or even to a third party as it deems fit under the circumstances.

Respondent Teresita, for her part, argues that the 7-year age reference in the law applies to the date when the petition for a writ of *habeas corpus* is filed, not to the date when a decision is rendered. This argument is flawed. Considerations involving the choice made by a child must be ascertained at the time that either parent is given custody over the child. The matter of custody is not permanent and unalterable. If the parent who was given custody suffers a future character change and becomes unfit, the matter of custody can always be re-examined and adjusted. (*Unson III vs. Navarro*). To be sure, the welfare, the best interests, the benefit, and the good of the child

must be determined as of the time, both children are over 7 years of age and are thus perfectly capable of making a fairly intelligent choice.

A closer look into the case of *Johana Sombong vs. CA, et al.*, G.R. No. 111876, January 31, 1996, 67 SCAD 529, a petition for *habeas corpus* filed by an alleged mother of a child is necessary. In such case, the petitioner is the mother of Arabella O. Sombong who was born on April 23, 1987 in Signal Village, Taguig, Metro Manila. Sometime in November 1987, Arabella, then only six months old, was brought to the Sir John Clinic, located at 121 First Avenue, Kalookan City, for relief of coughing fits and for treatment of colds. Petitioner did not have enough money to pay the hospital bill in the amount of P300.00. Arabella could not be discharged, because of the petitioner's failure to pay the bill. Petitioner surprisingly gave a testimony to the effect that she allegedly paid the private respondents by installments in the total amount of P1,700.00, knowing for a fact that the sum payable was only P300.00. Despite such alleged payments, the owners of the clinic, Dra. Carmen Ty and her husband, Mr. Vicente Ty, allegedly refused to turn over Arabella to her. Petitioner claims that the reason for such a refusal was that she refused to go out on a date with Mr. Ty, who had been courting her. This allegedly gave Dra. Ty a reason to be jealous of her, making it difficult for everyone around.

In contrast to her foregoing allegations, petitioner testified that she visited Arabella at the clinic only after two years, *i.e.*, in 1989. This time, she did not go beyond berating the spouses Ty for their refusal to give Arabella to her. Three years thereafter, *i.e.*, in 1992, petitioner again resurfaced to lay claim to her child. Her pleas allegedly fell on deaf ears.

Consequently, on May 21, 1992, petitioner filed a petition with the Regional Trial Court of Quezon City for the issuance of a writ of *habeas corpus* against the spouses Ty. She alleged therein that Arabella was being unlawfully detained and imprisoned at No. 121, First Avenue, Grace Park, Kalookan City. The petition was denied due course and summarily dismissed.

It was also shown that said child was brought to the custody of Marieta Neri Alviar. The child was later on baptized and named Cristina Grace Neri. The RTC ruled in favor of the petitioner, but the CA reversed the RTC's decision because of the failure to show that Arabella and Cristina were the same person, *i.e.*, Arabella.

In affirming the CA's decision, the Supreme Court said that, in *habeas corpus* proceedings, the question of identity is relevant and

material, subject to the usual presumptions, including those as to the identity of a person. (Sec. 19, 39A C.J.S., p. 99). The witnesses who were presented could not be sure if Cristina is the same person as Arabella. In fact, when the case was set for hearing by the CA, primarily for the purpose of observing petitioners' demeanor towards the minor Cristina, Justice Lourdes Jaguros of the Court of Appeals made the following observations:

“The undersigned *ponente*, as a mother herself of four children, wanted to see how petitioner, as an alleged mother of a missing child supposedly in the person of Cristina Neri, would react on seeing again her long lost child. The petitioner appeared in the scheduled hearing of this case late; and she walked inside the courtroom looking for a seat without even stopping at her alleged daughter's seat; without even casting a glance on said child; and without even that tearful embrace which characterizes the reunion of a loving mother with her missing dear child. Throughout the proceedings, the undersigned *ponente* noticed no signs of endearment and affection expected of a mother who had been deprived of the embrace of her little child for many years. The conclusion or finding of the undersigned *ponente*, as a mother herself, that petitioner-appellee is not the mother of Cristina Neri, has been given support by the aforestated observation x x x.”

With these observations and findings, the Supreme Court said that the inevitable but sad conclusion is that petitioner has no right of custody over the minor Cristina as she is not identical with her missing daughter, Arabella.

Parental authority is inalienable.

In *Teresita Sagala-Eslao vs. CA, et al.*, 78 SCAD 50, 266 SCRA 317 (January 16, 1997), the controversy arose over the custody of a minor child. It was between the natural mother and mother-in-law. The mother entrusted the custody of the child to her mother-in-law after her husband died to assuage the feelings of her mother-in-law for the death of her son.

Later on, she got married to a Japanese-American. She migrated to the USA and when she returned to the Philippines, she wanted to

get back her child but the mother-in-law resisted. In fact, she even accused her of having abandoned the child, thus the suit.

The Supreme Court said that parental authority and responsibility are inalienable and may not be transferred and renounced except in cases authorized by law. The right attached to parental authority being personal, the law allows a waiver only in cases of guardianship, adoption, and surrender to a children's home or an orphan institution. When a parent entrusts the custody of a minor to another, such as a friend or godfather, even in a document, what is given is merely temporary custody and it does not constitute a renunciation of parental authority. Even if a definite renunciation is manifest, the law still disallows the same. The right of parents to the custody of their minor children is one of the natural rights incident to parenthood, a right supported by law and sound public policy. The right is an inherent one, which is not created by the State or decisions of the courts, but derives from the nature of parental relationship. (See Santos, Sr. vs. CA, 59 SCAD 672, 242 SCRA 407).

Lesbianism *per se* is not a ground to separate a child from the mother.

Well-settled is the rule that in matters of custody of a child, the foremost consideration is his/her welfare and development. Technical rules can even be set aside if the life and limb of the child is at stake. In a case, it was said that lesbianism of the mother is not enough to separate the child from the mother especially if he/she is below the age of seven. There must be a showing that such act is carried out under circumstances not conducive to the child's proper moral development. Otherwise, the custody of the child remains with the mother.

Case:

Jocelyn Pablo-Gualberto vs. Crisanto Rafaelito Gualberto V., G.R. No. 154994 and Crisanto Rafaelito Gualberto V. vs. Court of Appeals, et al., G.R. No. 156254, June 28, 2005

Facts:

During the pendency of an action for declaration of nullity of the marriage of the spouses, the man moved that the custody of their child below the age of seven (7) be transferred to him. He alleged

that his wife was a lesbian. After hearing, the trial court awarded the custody to the man, but it was reversed later, awarding the custody to the woman. The CA reversed the Order of the trial court and awarded custody to the father *pendente lite*, hence, the mother brought the matter to the Supreme Court raising the issue whether lesbianism may warrant the separation of a child below the age of seven (7) from the mother?

Held:

As a rule, the mother's immoral conduct may constitute a compelling reason to deprive her custody.

It is not enough, however, that the woman is a lesbian. He must also demonstrate that she carried on her purported relationship with a person of the same sex in the presence of their son or under circumstances not conducive to the child's proper moral development. Such a fact has not been shown here. There is no evidence that the son was exposed to the mother's alleged sexual proclivities or that his proper moral and psychological development suffered as a result.

Sexual preference or moral laxity alone does not prove parental neglect or incompetence. Not even the fact that a mother is a prostitute or has been unfaithful to her husband would render her unfit to have custody of her minor child. To deprive the wife of custody, the husband must clearly establish that her moral lapses have an adverse effect on the welfare of the child or have distracted the offending spouse from exercising proper parental care.

Note:

To this effect did the Supreme Court rule in *Unson III vs. Navarro*, wherein the mother was openly living with her brother-in-law, the child's uncle. Under the circumstance, the Court deemed it in the nine year-old child's best interest to free her "from the obviously unwholesome, not to say immoral influence, that the situation in which the mother had placed herself might create in the child's moral and social outlook."

In *Espiritu vs. CA*, the Court took into account psychological and case study reports on the child, whose feelings of insecurity and anxiety had been traced to strong conflicts with the mother. To the psychologist the child revealed, among other things, that the latter was disturbed upon seeing "her mother hugging and kissing a 'bad' man who lived in their house and worked for her father." The Court

held that the “illicit or immoral activities of the mother had already caused the child emotional disturbances, personality conflicts, and exposure to conflicting moral values.”

The Supreme Court went on to say that when love is lost between spouses and the marriage inevitably results in separation, the bitterest tussle is often over the custody of their children. Thus, the Court would now be confronted with the most difficult task of determining who should have custody of the children especially those below the age of seven. Article 213 of the Family Code governs the custody of their children in case the spouses are separated, legally or otherwise. Article 213 of the Family Code takes its bearing from Article 363 of the Civil Code, which reads:

“Art. 363. In all questions on the care, custody, education and property of children, the latter’s welfare shall be paramount. No mother shall be separated from her child under seven years of age, unless the court finds compelling reasons for such measure.”

The general rule that children under seven years of age shall not be separated from their mother finds its *raison d’être* in the basic need of minor children for their mother’s loving care. In explaining the rationale for Article 363 of the Civil Code, the Code Commission stressed thus:

“The general rule is recommended in order to avoid a tragedy where a mother has seen her baby torn away from her. No man can sound the deep sorrows of a mother who is deprived of her child of tender age. The exception allowed by the rule has to be for ‘compelling reasons’ for the good of the child: those cases must indeed be rare, if the mother’s heart is not to be unduly hurt. If she erred, as in cases of adultery, the penalty of imprisonment and the (relative) divorce decree will ordinarily be sufficient punishment for her. Moreover, her moral dereliction will not have any effect upon the baby who is as yet unable to understand the situation.” (Report of the Code Commission, p. 12).

Mandatory Character of Article 213 of the Family Code.

In *Lacson vs. San Jose-Lacson*, 133 Phil. 884 (1968), the Court held that the use of “shall” in Article 363 of the Civil Code and the

observations made by the Code Commission underscore the mandatory character of the word. Holding in that case that it was a mistake to deprive the mother of custody of her two children, both then below the age of seven, the Court stressed:

“Article 363 prohibits in no uncertain terms the separation of a mother and her child below seven years, unless such a separation is grounded upon compelling reasons as determined by a court.”

In like any manner, the word “shall” in Article 213 of the Family Code and Section 6 of the Rule 99 of the Rules of Court has been held to connote a mandatory character. Article 213 and Rule 99 similarly contemplate a situation in which the parents of the minor are married to each other, but are separated by virtue of either a decree of legal separation or a *de facto* separation. (Briones vs. Miguel, G.R. No. 156343, October 18, 2004). In the present case, the parents are living separately as a matter of fact.

Article 214. 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 in the preceding article, shall exercise the authority. (19a, P.D. No. 603)

It is in case of death of the parents or their unsuitability or absence that substitute parental authority shall be exercised by the grandparents, but the law still considers the welfare, moral, and physical development of the child as the most important consideration. The rearing of the child for civic efficiency shall be considered by the grandparents.

The law says that it is in case of the absence of the parents, death or unsuitability that the grandparents will exercise parental authority; so, if the mother of the child is abroad, the custody of the child should be given to the father since the father is still in a position to take care of the child. This is especially so because parental authority and responsibility is inalienable and may not be transferred or renounced except in cases authorized by law. (Santos vs. CA, et al., G.R. No. 113054, March 16, 1995, 59 SCAD 672).

Case:

Santos vs. CA, et al.
G.R. No. 113054, March 16, 1995
59 SCAD 672

Facts:

Leouel Santos, Jr. was born of the spouses Leouel Santos, Sr. and Julia Bedia-Santos. From the time of his birth, he has been under the care of his maternal grandparents. His mother left for the USA to work as a nurse and his father alleged in a Petition for the Care, Custody and Control of the minor that he was not aware of her whereabouts. The RTC awarded the custody of the child to his maternal grandparents who contended that they are in a better position to take care of the child for they have amply demonstrated their love and affection for the boy since his infancy, and hence, they are in the best position to promote the child's welfare. Who should be awarded the custody of the child?

Held:

The father should be given the custody of the child. The law vests on the father and mother joint authority over the persons of their common children. (Art. 211, Family Code). In the absence or death of either parent, the parent's present shall continue exercising parental authority. (Art. 212, Family Code). Only in case of the parents' death, absence or unsuitability may substitute parental authority be exercised by the surviving grandparent. (Art. 214, FC; Santos vs. CA, et al., G.R. No. 113054, March 16, 1995, 59 SCAD 672).

Parents have the natural right, as well as the moral and legal duty, to care for their children, see to their proper upbringing, and safeguard their best interest and welfare. This authority and responsibility may not be unduly denied the parents; neither may it be renounced by them. Even when the parents are estranged and their affection for each other is lost, the attachment and feeling for their offsprings invariably remain unchanged. Neither the law nor the courts allow this affinity to suffer absent, of course, any real, grave and imminent threat to the well-being of the child. It appears that Silva, a married man and Gonzales an unmarried local actress cohabited without the benefit of marriage resulting in the birth of two (2) children. The controversy arose when Gonzales refused to allow him to have company with their children on weekends as they

have previously agreed upon. Silva filed a petition for custodial rights over their children which was opposed by Gonzales alleging that Silva often engaged in gambling and womanizing which would affect the moral and social values of the children. The RTC ruled in favor of Gonzales which was affirmed by the Court of Appeals.

The basic issue in this case pertains to the visitation rights of Gonzales over their children.

The Supreme Court held that there is, despite a dearth of specific legal provisions, enough recognition on the inherent and natural right of parents over their children. Article 150 of the Family Code expresses that “family relations include those x x x (2)(b) between parents and children; x x x.” Article 209, in relation to Article 220, of the Family Code states that it is the natural right and duty of parents and those exercising parental authority to, among other things, keep children in their company and to give them love and affection, advice and counsel, companionship and understanding. The Constitution itself speaks in terms of the “natural and primary rights” of parents in the rearing of the youth. (Art. II, Sec. 12, Constitution). There is nothing conclusive to indicate that these provisions are meant to solely address themselves to legitimate relationships. Indeed, although in varying degrees, the laws on support and successional rights, by way of examples, clearly go beyond the legitimate members of the family and so explicitly encompass illegitimate relationships as well. (Art. 176; Art. 195, Family Code). Then, too, and most importantly, in the declaration of nullity of marriages, a situation that presupposes a void or inexistent marriage, Article 49 of the Family Code provides for appropriate visitation rights to parents who are not given custody of their children.

There is no doubt that in all cases involving a child, his interest and welfare is always the paramount consideration. A few hours spent by petitioner with the children, however, could not all be that detrimental to the children. (*Silva vs. CA, et al.*, G.R. No. 114742, July 17, 1997, 84 SCAD 651).

The case of *Silva vs. Court of Appeals* must be distinguished from *David vs. Court of Appeals*. In the latter, the illegitimate father sought to have custody of his child contending that he recognized the child. It was said that if the child is illegitimate, it is the mother who has the rightful custody even if he recognized the child. In the *Silva* Case, what was invoked was the visitation right, not custody of the father. The Court was more liberal in the *Silva* Case because the father was merely given visitation rights which he invoked.

Article 215. 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. (315a)

Note that the privilege does not include or extend to civil cases. An example is a case of support where the child files a suit against the parents. The child can testify against his parents in such a suit.

What is covered is that, in criminal cases, a child or descendant has the privilege of refusing to testify against his parents. They can, however, voluntarily testify against their parents or grandparents. They are not also disqualified from testifying against them if their testimony is indispensable in a crime against him or by one parent against the other.

Illustration:

A, the son of B, was shot and seriously injured by B. A can testify against his father B. Or, if A is the daughter of B who raped her, A can testify against her father. Or, if A and B are married, they have a son C; A then, killed B. C can, of course, testify against his father as a crime was committed by A against B.

Note that the privilege was considered as a good law by the Code Commission, justified by the solidarity of the Filipino family and the traditional respect for ancestors.

Chapter 2

Substitute and Special Parental Authority

Article 216. In default 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, as provided in Art. 214;
- (2) The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and
- (3) The child's actual custodian, over twenty-one 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. (349a, 351a, 354a)

Rules:

- (1) The law enumerates those persons who may exercise substitute parental authority over the minor child. It must be noted from the law that the surviving grandparents are preferred over all other persons.
- (2) The law provides that in certain cases the custody of a child may be awarded even to strangers, as against either the father or the mother or against both. Thus, in proceedings involving a child whose parents are separated – either legally or *de facto* – and where it appears that both parents are improper persons to whom to entrust the care, custody and control of the child, “the court may either designate the paternal or maternal grandparent of the child or his eldest brother or sister or some reputable and discreet person to take charge of such child, or commit it to any suitable asylum, children’s home or benevolent society. (*Chua vs. Cabangbang*, 26 SCRA 791).
- (3) It should be remembered, however, that parents are never deprived of the custody and care of their children except for cause. (*Ibanez de Aldecoa vs. Hongkong and Shanghai Banking Corp.*, 30 Phil. 228). As every intendment of law or fact leans toward the authority of parents over their children, the law raises a strong presumption that the child’s welfare will be best served in the care and control of their parents. Accordingly, the showing of the relationship of parent and child, in the absence of anything more, makes out a *prima facie* case for the parents, which can be overcome only by the most solid and substantial reasons, established by plain and certain proof. Consequently, the burden of proof is not on the parent but on the opposing party even when the latter has the actual custody of the child. (See also *Flores vs. Esteban*, 97 Phil. 439; *Murdock, et al. vs. Chuidian*, 99 Phil. 821).

It has been said that the inclusion of the grandparents and the oldest brother or sister among those standing in *loco parentis* is in conformity with the customs in the Philippines. (Report of the Code

Commission, p. 49). But an aunt of a minor has no right or is not entitled to legal custody of the child. (*Ortiz vs. Del Villar*, 57 Phil. 19).

Article 217. 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. (314a)

A foundling is an abandoned child, whose parents are unknown. A child left at the door of a private home or charitable institution by its mother in order to hide her shame because of extreme poverty so that the child may be reared as an act of charity, is a foundling. (Capistrano, *Civil Code of the Phils.*, 1950 ed., p. 297).

An abandoned child is one who has no parental care or guardianship or whose parents or guardians have deserted him for at least six (6) months. (*Dempsey vs. Regional Trial Court*, 164 SCRA 384).

Article 218. 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.

Authority and responsibility shall apply to all authorized activities whether inside the premises of the school, entity or institution. (349a)

Article 219. Those given the authority and responsibility under the preceding Article 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 of those referred to in the preceding paragraph 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 of the Civil Code on quasi-delicts. (n)

The law enumerates the persons who have special parental authority and responsibility over a minor child, like the school, its administrators, teachers and institutions or individuals having supervision, instruction or custody of such minor child. The authority extends beyond the campus of the school, as it applies to all authorized activities inside or outside the school premises. And, more importantly, their liability is solidary if the minor causes damage to another while he is under their supervision, instruction or custody. The liability of the parent is only subsidiary.

If a child is in class and he performs an act that causes injury to a schoolmate, the teacher is liable for this act of the child, but the teacher can interpose the defense of the diligence of a good father of a family.

But if the teacher has already dismissed the class but the minor students are still in school playing and one of them would box the face of another causing blindness to one of his eyes, the teacher is no longer liable, because he has no more instruction, custody or supervision over the students. But the school or its administrators would be liable without prejudice to their defense of the diligence of a good father of a family.

In both situations, the liability of the parents of the child/student is only subsidiary, that is, if the teachers, or school or administrators or institutions have no properties to answer for their primary liability; then, the parents shall answer for the same. There must, however, be proof that they have no properties to answer for that liability before the parents of the child can be subsidiarily liable.

Another situation covered by the laws is that, the moment the child has already gone out of the school campus and he is now on his way home, the persons who exercise special parental authority and responsibility are no longer liable as they have no more custody, instruction or supervision. The parents become primarily liable.

Liability of teachers and heads of establishments of arts and trades.

The law provides for the liability of teachers for the acts or omissions of their pupils or students causing damage to another. Not only the Civil Code (Art. 2180) provides for such responsibility. The Family Code likewise provides for the liability of the teachers for the acts or omissions of their minor students for as long as they are under their supervision, instruction or custody. (Art. 218, Family Code). In

fact, their liability is primary in nature. (Art. 219, Family Code). Such liability even goes as far as activities outside the school for as long as the same are authorized by the school.

There has been a drastic change in our jurisprudence insofar as the liability of teachers and heads of establishments of arts and trades are concerned. For, while in *Exconde vs. Capuno*, 101 Phil. 843; *Mercado vs. CA*, 108 Phil. 414 and *Palisoc vs. Brillantes*, 41 SCRA 548, the Supreme Court uniformly held that for the liability of the teacher for the tortious act of his student or pupil to attach, he must be a teacher of a school of arts and trades. That is no longer the rule.

It may be wise at this time to trace back the history of this present doctrine to have a comparative view of the old and the new one.

In the case of *Amadora vs. CA, et al.*, L-47745, April 15, 1988, a student at the Colegio de San Jose-Recoletos, Cebu City was killed inside the campus of the school while complying with certain requirements of graduation. Due to the death of said student, several people, including the school, were sued. The Supreme Court said:

“Unlike in *Exconde* and *Mercado*, the Colegio de San Jose-Recoletos has been directly impleaded and is sought to be held liable under Article 2180; and unlike in *Palisoc*, it is not a school of arts and trades but an academic institution of learning. The parties herein have also directly raised the question of whether or not Article 2180 covers even establishments which are technically not schools of arts and trades, and if so, when the offending student is supposed to be ‘in its custody.’

After an exhaustive examination of the problem, the Court has come to the conclusion that the provision in question should apply to all schools, academic as well as non-academic. Where the school is academic rather than technical or vocational in nature, responsibility for the tort committed by the student will attach to the teacher-in-charge of such student, following the first part of the provision. This is the general rule. In the case of establishments of arts and trades, it is the head thereof, and only he, shall be held liable as an exception to the general rule. In other words, teachers, in general, shall be liable for the acts of their students except where the school is technical

in nature, in which case it is the head thereof who shall be answerable. Following the Canon of *reddendo singula singulis*, ‘teachers’ should apply to the words ‘pupils and students’ and ‘heads of establishments of arts and trades’ to the word ‘apprentices.’

x x x

x x x

x x x

There is really no substantial distinction between the academic and the non-academic schools insofar as torts committed by their students are concerned. The same vigilance is expected from the teacher over the students under his control and supervision, whatever the nature of the school where he is teaching. x x x.

The court cannot see why different degrees of vigilance should be exercised by the school authorities on the basis only of the nature of their respective schools. There does not seem to be any plausible reason for relaxing that vigilance simply because the school is academic in nature and for increasing such vigilance where the school is non-academic. Notably, the injury subject of liability is caused by the student and not by the school itself nor is it a result of the operations of the school or its equipment. The injury contemplated may be caused by any student regardless of the school where he is registered. The teacher certainly should not be able to excuse himself by simply showing that he is teaching in an academic school where, on the other hand, the head would be held liable if the school were non-academic.

These questions, though, may be asked: If the teacher of the academic school is to be held answerable for the torts committed by his students, why is it only the head of the school who is held liable where the injury is caused in a school of arts and trades? And in the case of the academic or nontechnical school, why not apply the rule also to the head thereof instead of imposing the liability only on the teacher?”

In the *Exconde* Case, Dante Capuno, a student of the Balintawak Elementary School and a boy scout, attended a Rizal Day parade on instructions of the City School Supervisor. After the parade, the boy boarded a jeep, took over its wheel and drove it so recklessly that it turned turtle, resulting in the death of two of its passengers. Dante

was found guilty of double homicide with reckless imprudence. In the separate civil action filed against them, his father was held solidarily liable with him in damages under Article 1903 (now Article 2180) of the Civil Code for the tort committed by the 15 year-old boy. (See also *Ylarde vs. Aquino*, L-33722, July 29, 1988).

This decision, which was penned by Justice Bautista Angelo on June 29, 1957, exculpated the school in an *obiter dictum* (as it was not a party to the case), on the ground that it was not a school of arts and trades. Justice J.B.L. Reyes, with whom Justices Sabino Padilla and Alex Reyes concurred, dissented, arguing that it was the school authorities who should be held liable. Liability under this rule, he said, was imposed on (1) teachers in general and (2) heads “of schools of arts and trades.” The latter should apply only to “heads” and not “teachers.”

Exconde was reiterated in the Mercado Case, and with an elaboration. A student cut a classmate with a razor blade during recess time at the Lourdes Catholic School in Quezon City, and the parents of the victim sued the culprit’s parents for damages. Through Justice Labrador, the Court declared in another *obiter* (as the school itself had also not been sued) that the school was not liable because it was not an establishment of arts and trades. Moreover, the custody requirement had not been proved as this “contemplates a situation where the student lives and boards with the teacher, such that the control, direction and influences on the pupil supersede those of the parents.” Justice J.B.L. Reyes did not take part but the other members of the Court concurred in this decision promulgated on May 30, 1960.

In *Palisoc vs. Brillantes*, decided on October 4, 1971, a 16 year-old student was killed by a classmate with fist blows in the laboratory of the Manila Technical Institute. Although the wrongdoer — who was already of age — was not boarding in the school, the head thereof and the teacher-in-charge were held solidarily liable with him. The Court declared through Justice Teehankee:

“The phrase used in the cited article ‘so long as (the students) remain in their custody’ — means the protective and supervisory custody that the school and its heads and teachers exercise over the pupils and students for as long as they are at attendance in the school, including recess time. There is nothing in the law that requires that for such liability to attach, the pupil or student who commits the tortious act must live and board in the school, as erroneously held by the lower court.”

The reason for the disparity can be traced to the fact that historically the head of the school of arts and trades exercised a closer tutelage over his pupils than the head of the academic school. The old schools of arts and trades were engaged in the training of arts and apprenticed to their master who personally and directly instructed them on the technique and secrets of their craft. The head of the school of arts and trades was such a master and was personally involved in the task of teaching his students, who usually even boarded with him and so came under his constant control, supervision and influence. By contrast, the head of the academic school was not as involved with his students and exercised only administrative duties over the teachers who were the persons directly dealing with the students. The head of the academic school had then (as now) only a vicarious relationship with the students. Consequently, while he could not be directly faulted for the acts of the students, the head of the school of arts and trades, because of his closer ties with them, could be so blamed.

It is conceded that the distinction no longer obtains at present in view of the expansion of the school of arts and trades, the consequent increase in their enrolment, and the corresponding diminution of the direction and personal contact of their heads with the students, Article 2180 of the Civil Code, however, remains unchanged. In its present state, the provision must be interpreted by the Court according to its clear and original mandate until the legislature, taking into account the changes in the situation subject to be regulated, sees fit to enact the necessary amendment.

The other matter resolved by the Supreme Court was the duration of the responsibility of the teacher or the head of the school of arts and trades over the students. Is such responsibility co-extensive with the period when the student is actually undergoing studies during the school term, as contended by the respondents and impliedly admitted by the petitioners themselves?

From a reading of the provision of Art. 2180(7), New Civil Code, it is clear that while the custody requirement does not mean that the student must be boarding with the school authorities, it does signify that the student should be within the control and under the influence of the school authorities at the time of the occurrence of the injury. This does not necessarily mean that such custody be coterminous with the semester, beginning with the start of classes and ending upon the close thereof, and excluding the time before or after such

period, such as the period of registration, and in the case of graduating students, the period before the commencement exercises.

In the view of the Court, the student is in the custody of the school authorities as long as he is under the control and influence of the school and within its premises, whether the semester has not yet begun or has already ended.

It is too tenuous to argue that the student comes under the discipline of the school only upon the start of classes notwithstanding that before that day he has already registered and thus placed himself under its rules. Neither should such discipline be ended upon the last day of classes notwithstanding that there may still be certain requisites to be satisfied for completion of the course, such as submission of reports, term papers, clearances and the like. During such periods, the student is still subject to the disciplinary authority of the school and cannot consider himself released altogether from observance of its rules.

As long as it can be shown that the student is in the school premises in pursuance of a legitimate student objective, in the exercise of a legitimate student right, and even in the enjoyment of a legitimate student privilege, the responsibility of the school authorities over the student continues. Indeed, even if the student should be doing nothing more than relaxing in the campus in the company of his classmates and friends, and enjoying the ambience and atmosphere of the school, he is still within the custody and subject to the discipline of the school authorities under the provisions of Article 2180.

During all these occasions, it is obviously the teacher-in-charge who must answer for his students' torts, in practically the same way that the parents are responsible for the child when he is in their custody. The teacher-in-charge is the one designated by the dean, principal, or other administrative superior or to exercise supervision over the pupils in the specific classes or sections to which they are assigned. *It is not necessary that at the time of the injury, the teacher be physically present and in a position to prevent it. Custody does not connote immediate and actual physical control but refers more to the influence exerted on the child and the discipline instilled in him as a result of such influence.* Thus, for the injuries caused by the student, the teacher and not the parent shall be held responsible if the tort was committed within the premises of the school at any time when its authority could be validly exercised over him.

In any event, it should be noted that the liability imposed by this article is supposed to fall directly on the teacher or the head of the school of arts and trades and not on the school itself. If at all, the school, whatever its nature, may be held to answer for the acts of its teachers or even of the head thereof under the general principle of *respondeat superior*, but then it may exculpate itself from liability by proof that it had exercised the diligence of a *bonus paterfamilias*.

Such defense is, of course, also available to the teacher or the head of the school of arts and trades directly held to answer for the tort committed by the student. As long as the defendant can show that he had taken the necessary precautions to prevent the injury complained of, he can exonerate himself from the liability imposed by Article 2180, which also states that:

“The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damages.”

“In this connection, it should be observed that the teacher will be held liable not only when he is acting in *loco parentis* for the law does not require that the offending student be of minority age. Unlike the parent, who will be liable only if his child is still a minor, the teacher is held answerable by the law for the act of the student under him regardless of the student’s age. Thus, in the Palisoc Case, liability attached to the teacher and the head of the technical school although the wrongdoer was already of age. In this sense, Article 2180 treats the parent more favorably than the teacher.”

It must be recalled that the school is not the one liable. If ever it would be, it can always interpose the defense of due diligence in selecting and supervising the head or its teachers.

It is interesting to note that the precedent — setting decision in *Amadora vs. Court of Appeals* has been reiterated in a few months time after the former was decided. In *Federico Ylarde vs. Aquino*, L-33722, July 29, 1988, this case involved the issue as to whether the principal is liable for the tortious act of his pupils or students. The Supreme Court explicitly said that it is only the teacher and not the principal or head of an academic school who should be answerable for torts committed by their students. It went further by saying that in a school of arts and trades, it is only the head of the school who

can be held liable. The teacher is liable as he stands in *loco parentis* to his pupils and should make sure that the children are protected from all harm in his company.

The pronouncements in *Amadora* and *Ylarde* must have to be modified in view of the provisions of Article 218 of the Family Code. Such law states that, "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."

"Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution."

Furthermore, under Article 219 of the Family Code, "Those given the authority and responsibility under the preceding Article 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 of those referred to in the preceding paragraph 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 of the Civil Code on quasi-delicts."
(n)

Note that both in the *Amadora* and *Ylarde* doctrines, the Supreme Court said that the school is not liable for the tortious acts of their students or pupils, even as it held the teacher liable. But under Article 218 of the Family Code, it is now liable. The school's liability is subject, however, to certain conditions like: (a) the student or pupil must be a minor; (b) the student or pupil must be under their supervision, instruction or custody.

In view of the requirement of minority of the student or pupil, the pronouncement of the Supreme Court that the age of the student is immaterial would no longer be applicable. (Art. 219, Family Code).

Even activities outside of the school are covered by the all-encompassing responsibility of the school, its administrators or teachers for as long as such activities are authorized. Let us take this example:

A history class of FEU high school is supposed to have a field trip in Calamba, Laguna for the purpose of visiting the house of Dr. Jose Rizal preparatory to a report they are required to submit. Such field trip was authorized by the school. If a student of that class commits an act that injures another classmate, the school, its administrators or teachers are liable for damages. Their liability is solidary.

They are not, however, defenseless. They can prove that they exercised the proper diligence of a good father of a family.

Basis of the liability of a school.

A question has been raised in the Supreme Court as to the source of liability of a school if a student is killed inside the campus by a non-student. Is it founded on contract or is it founded on quasi-delict? It has been ruled that it is based on contract, because when the student enrolls in a school, there is a contract. The case of *PSBA, et al. vs. CA, et al.*, G.R. No. 84698, February 4, 1992, is relevant.

Case:

PSBA, et al. vs. CA, et al. G.R. No. 84698, February 4, 1992

Facts:

A stabbing incident on 30 August 1985 which caused the death of Carlitos Bautista while on the second floor premises of the Philippine School of Business Administration (PSBA) prompted the parents of the deceased to file suit in the Regional Trial Court of Manila for damages against PSBA and its corporate officers. At the time of his death, Carlitos was enrolled in the third year commerce course at PSBA. It was established that his assailants were not members of the school's academic community but were elements from outside.

Defendants *a quo* (now petitioners), sought to have the suit dismissed, alleging that since they are presumably sued under Article 2180 of the Civil Code, the complaint states no cause of action against them, as jurisprudence on the subject is to the effect that academic institutions, such as the PSBA, are beyond the ambit of the rule in the aforestated article.

The RTC ruled for the plaintiffs, hence, this petition.

The basic issue is whether the school is liable for the death of a student who was stabbed by a stranger inside the campus. If so, what is the basis of its liability?

Held:

The basis of the liability is for damages.

At the outset, it is to be observed that the respondent court anchored its decision on the law of quasi-delicts under Arts. 2176 and 2180 of the Civil Code.

Article 2180, in conjunction with Article 2176 of the Civil Code, establishes the rule of *in loco parentis*. This Court discussed this doctrine in the aforecited cases of Exconde, Mendoza, Palisoc and, more recently, in *Amadora vs. Court of Appeals*, 160 SCRA 315. In all such cases, it has been stressed, that the law (Article 2180) plainly provides that the damage should have been caused or inflicted by pupils or students of the educational institution sought to be held liable for the acts of its pupils or students while in its custody. However, this material situation does not exist in the present case for, as earlier indicated, the assailants of Carlitos were not students of PSBA, for whose acts the school could be made liable.

However, does the appellate court's failure to consider such material facts mean the exculpation of the petitioners from liability? It does not necessarily follow, for it was said that when an academic institution accepts students for enrollment, there is established a contract between them, resulting in bilateral obligations which both parties are bound to comply with. (*Non vs. Dames II*, 185 SCRA 523). For its part, the school undertakes to provide the student with an education that would presumably suffice to equip him with the necessary tools and skills to pursue higher education or a profession. On the other hand, the student covenants to abide by the school's academic requirement and observe its rules and regulations.

Institutions of learning must also meet the implicit or "built-in" obligation of providing their students with an atmosphere that promotes or assists in attaining its primary undertaking of imparting knowledge. Certainly, no student can absorb the intricacies of physics or higher mathematics or explore the realm of the arts and other sciences when there looms around the school premises a constant

threat to life and limb. Necessarily, the school must ensure that adequate steps are taken to maintain peace and order within the campus premises and to prevent the breakdown thereof.

Because the circumstances of the present case evince a contractual relation between the PSBA and Carlitos Bautista, the rules on quasi-delict do not really govern. A perusal of Article 2176 of the Civil Code shows that obligations arising from quasi-delicts or tort, also known as extra-contractual obligations, arise only between parties not otherwise bound by contract, whether express or implied. However, this impression has not prevented this Court from determining the existence of a tort even when there obtains a contract. In *Air France vs. Carrascoso*, 18 SCRA 155, the private respondent was awarded damages for his unwarranted expulsion from a first-class seat aboard the petitioner airline. It is to be noted, however, that the Court referred to the petitioner-airline's liability as one arising from tort, not one arising from a contract of carriage. In effect, *Air France* is the authority for the view that liability from tort may exist even if there is a contract, for the act that breaks that contract may be also a tort. (*Austro-America S.S. Co. vs. Thomas*, 248 Fed. 231).

This view was not all that revolutionary, for even as early as 1918, this Court was already of a similar mind. In *Cangco vs. Manila Railroad*, 38 Phil. 768, Mr. Justice Fisher elucidated thus:

“The field of non-contractual obligation is much broader than that of contractual obligation, comprising, as it does, the whole extent of juridical human relations. These two fields, figuratively speaking, are concentric; that is to say, the mere fact that a person is bound to another by contract does not relieve him from extra-contractual liability to such person. When such a contractual relation exists, the obligor may break the contract under such conditions that the same act which constitutes a breach of the contract would have constituted the source of an extra-contractual obligation had no contract existed between the parties.”

Immediately what comes to mind is the chapter of the Civil Code on Human Relations, particularly Article 21, which provides:

“Any person who wilfully 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.”

Air France penalized the racist policy of the airline which emboldened the petitioner’s employee to forcibly oust the private respondent to cater to the comfort of a white man who allegedly “had a better right to the seat.” In *Austro-American*, *supra*, the public embarrassment caused to the passenger was the justification for the Circuit Court of Appeals (Second Circuit) to award damages to the latter. From the foregoing, it can be concluded that, should the act which breaches a contract be done in bad faith and violative of Article 21, then there is a cause to view the act as constituting a quasi-delict.

In the circumstances obtaining in the case at bar, however, there is, as yet, no finding that the contract between the school and Bautista had been breached thru the former’s negligence in providing proper security measures. This would be for the trial court to determine. And, even if there be a finding of negligence, the same could give rise, generally, to a breach of contractual obligation only. Using the test of *Cangco*, *supra*, the negligence of the school would not be relevant absent a contract. In fact, the negligence becomes material only because of the contractual relation between PSBA and Bautista. In other words, a contractual relation is a condition *sine qua non* for the school’s liability. The negligence of the school cannot exist independently of the contract, unless the negligence occurs under the circumstances set out in Article 21 of the Civil Code.

The Supreme Court said that it is not unmindful of the attendant difficulties posed by the obligation of schools, above-mentioned, for conceptually, a school, like a common carrier, cannot be an insurer of its student against all risks. This is especially true in the populous student communities of the so-called “university belt” in Manila where there have been reported several incidents ranging from gang wars to other forms of hooliganism. It would not be equitable to expect of schools to anticipate all types of violent trespass upon their premises, for notwithstanding against an individual or group determined to carry out a nefarious deed inside school premises and environs. Should this be the case, the school may still avoid liability by proving that the breach of its contractual obligation to the students was not due to its negligence, here, statutorily defined to be, the omission of that degree of diligence which is required by the nature of the obligation and corresponding to the circumstances of person, time and place. (Art. 1173, New Civil Code).

Chapter 3

Effect of Parental Authority Upon the Persons of the Children

Article 220. 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 interest 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 and obedience;

(8) To impose discipline on them as may be required under the circumstances; and

(9) To perform such other duties as are imposed by law upon parents and guardians. (316a)

Article 221. 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. (2180[12]a and [4]a)

As earlier discussed, the best interest of the child is of utmost importance. The social, mental and physical development of the child are supposed to be promoted by the parents or whoever has custody over the child. All these can be seen from the enumeration in Article

220. Hence, in *Salvaña vs. Gaela*, 55 Phil. 680, where the parents filed a petition for custody of a minor daughter who went to live in the home of a judge because the parents refused to give their consent for her to marry, but they were not forcing her to marry another man, the Supreme Court said that, when the means employed by the parents to make their unemancipated children marry against their will is such as to bring about moral or physical sufferings, the intervention of the courts to deprive them of *patria potestas* and the custody of said children will be justified.

In this case, the Supreme Court observed that the parents were forcing their child to marry another man against her will, hence, it said:

“If they desire to keep her in their company notwithstanding her condition, it is because they love her. It may be that by marrying the man by whom she is pregnant, she would be happier than by living with her own parents, but since the law does not authorize the deprivation of parental authority on the ground that parents refuse to consent to the marriage of their unemancipated minor children, it would be a direct violation of the law to deprive said parents of their parental authority. The parents were given custody of the child.”

In a similarly situated case, the Court granted the petition for *habeas corpus* in favor of the parents of a child. The parents surrendered the child to the care of a religious institution since she was 2 1/2 years old and lived there for 13 years. While the girl said that she was there because of her own free will, and did not want to leave the institution, still, the Court granted the petition. (Reyes vs. Alvarez, 8 Phil. 723; see also *Canua vs. Zalameda*, O.G. Supplement, September 20, 1941).

Liability of father or mother.

It must be emphasized that the liability of the father or mother of a minor attaches when such minor lives in their company. So that, if a minor child is staying in Manila while his parents are in the province, and the child commits an act or omission causing damage to another, the parents are not liable. Minority alone of the child does not make the parents liable for his acts. Such minority must be coupled with the fact that the child is living in the company of the father or mother.

Note also that for the tortuous act of a minor, the parents are not liable together. The law speaks of an alternative situation where the mother is liable only in case of death or incapacity of the father. Hence, if a minor child in the company of his parents commits a tortuous act, his father should be sued alone. In the absence of the father or in his incapacity, the mother can be made liable. (Romano, et al. vs. Parinas, et al., 101 Phil. 140).

The provisions of Article 2180, New Civil Code, are amply supported by Article 221 of the Family Code which states that, "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.

Case:

**St. Mary's Academy vs. Carpetanos, et al.
G.R. No. 143363, February 6, 2002**

Facts:

A suit for damages was filed due to the death of a high school student. There was an enrollment campaign/drive conducted by the students in Dipolog City. High school students were on board a jeep belonging to a certain Villanueva driven by Sherwin who was a minor. It met an accident resulting in the death of one of the students. The lower court held the school liable for damages, holding that the school is primarily liable as it had special parental authority at the time of the accident. Is the decision correct?

Held:

Under Article 218 of the Family Code, the following shall have special parental authority over a minor child while under their supervision, instruction or custody: (1) the school, its administrators and teachers; or (2) the individual, entity or institution engaged in child care. This special parental authority and responsibility applies to all authorized activities, whether inside or outside the premises of the school, entity or institution. Such authority and responsibility applies to field trips, excursions and other affairs of the pupils and students outside the school premises whenever authorized by the school or its teachers.

However, to be liable, there must be a finding that the act or omission considered as negligent was the proximate cause of the injury caused because the negligence must have a casual connection to the accident. (*Sanitary Steam Laundry, Inc. vs. CA*, 360 Phil. 1999).

In order that there may be a recovery for an injury, however, it must be shown that the “injury for which recovery is sought must be the legitimate consequence of the wrong done; the connection between the negligence and the injury must be a direct and natural sequence of events, unbroken by intervening efficient causes.” In other words, the negligence must be the proximate cause of the injury. For, “negligence, no matter in what it consists, cannot create a right of action unless it is the proximate cause of the injury complained of.” And “the proximate cause of an injury is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.” (*Cruz vs. CA*, 346 Phil. 872).

It was shown that the accident was not due to the negligence of the school or the reckless driving of the driver but the detachment of the steering wheel guide of the jeep. In fact, such detachment was admitted. Furthermore, no evidence was shown to prove the negligence of the school authorities. No evidence was shown to prove that the school allowed the minor to drive the jeep which was under the possession of a certain Ched Villanueva, the grandson of the owner. The minor was allowed to drive by him.

Hence, liability for the accident, whether caused by the negligence of the minor driver or mechanical detachment of the steering wheel guide of the jeep, must be pinned on the minor’s parents primarily. The negligence of the school was only a remote cause of the accident. Between the remote cause and the injury, there intervened the negligence of the minor’s parents or the detachment of the steering wheel guide of the jeep.

Case:

Maria Teresa Cuadra vs. Alfonso Monfort
35 SCRA 160

Facts:

A 13 year-old girl tossed a headband at her 12 year-old classmate. This happened while they were playing inside the schoolyard. Since the latter was surprised, she turned around but her eyes were

hit, causing eventual blindness of one eye. The culprit's father was sued for damages.

Held:

The culprit's father is not liable, for he could not have prevented the damage. The child was at school, where she ought to be under the supervision of the school authorities.

Nota Bene:

The record of the case shows that no suit was brought against the school authorities, like the teacher-in-charge. Had this case happened today, and a suit was filed against the school, its administrators and teachers, the latter would have been liable, regardless of the nature of the school. (See Art. 218, Family Code).

Liability of emancipated child's father.

Case:

Elcano vs. Hill
77 SCRA 98

Facts:

Elcano was killed by Hill. At the time of the incident, Hill was a minor but he was married and living with his parents and receiving subsistence. He was acquitted due to lack of intent to kill coupled with mistake. The heirs of Elcano sued the parents of Hill. The case was dismissed; hence, they appealed.

The basic issue was whether the father of a minor who was already married but living with and receiving subsistence from said father was liable for damages for the crime committed by the minor.

Held:

Art. 2180 applies to Hill, the father of the minor, notwithstanding his emancipation by reason of marriage. However, inasmuch as it is evident that Hill is now of age, as a matter of equity, the liability has become subsidiary to that of the son.

Even if emancipated, he can sue and be sued only with the assistance of the father, mother or guardian.

The reason behind the joint and solidary liability of parents with their offending child under Art. 2180 is that, it is their obligation to supervise their minor children in order to prevent them from causing damage to third persons.

The marriage of a minor does not relieve its parents of the duty to see to it that the child, while still a minor, does not give cause to any litigation.

Under R.A. No. 6809, which took effect on December 13, 1989, the age of majority now is eighteen (18) years. In *Elcano vs. Hill*, the minor was emancipated by reason of marriage, yet the father was held liable subsidiarily by reason of equity. Worthwhile mentioning is Article 236 of the Family Code which provides:

“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 exceptions established by existing laws in special cases.”

Notwithstanding the provision of Article 236 of the Family Code, the father or the mother or guardian of a child who has reached the age of eighteen (18) but is below the age of twenty-one (21) may still be held liable for the acts or omissions of said child. This is due to the provision of R.A. No. 6809, lowering the age of majority to eighteen (18) years, which states:

“Nothing in this Code shall be construed to derogate from the duty or responsibility of parents or guardians for children or wards below twenty-one years of age mentioned in the second and third paragraphs of Article 2180 of the Civil Code.”

The above-cited provision clearly suggests that even if a child is over 18 but below 21, his father or mother or guardian may still be liable for his acts or omissions. This is an exception to Article 236 of the Family Code which provides for the personal responsibility of a child who has been emancipated. *Elcano vs. Hill* may, therefore, still be a good case.

Case:**Cresencio Libi, et al. vs. Intermediate Appellate
Court, et al.
G.R. No. 70890, September 18, 1992****Facts:**

Respondents are the parents of Julie Ann Gotiong, while petitioners are the parents of Wendell Libi. Julie and Wendell, both minors, were sweethearts for more than two years. Julie broke up her relationship with Wendell after she found him to be sadistic and irresponsible. Wendell kept on pestering Julie with demands for reconciliation but the latter refused; hence, Wendell went to the extent of resorting to threats against her life. On January 14, 1979, both of them died from a single gunshot wound inflicted with the same firearm. The parents theorized that Wendell killed Julie; the parents of Wendell rejected the same and contended that an unknown third party, whom Wendell may have displeased by reason of his work as narcotics informer of the CANU, must have caused Wendell's death and then shot Julie to eliminate any witness. An action for damages was filed by Julie's parents against Wendell's parents to recover damages arising from the latter's vicarious liability under Art. 2180 of the Civil Code. The RTC dismissed the action. On appeal, the CA set aside the same and another judgment was rendered against the petitioners, hence, this petition. Before the Supreme Court, they submitted the following issues:

1. Whether or not respondent court correctly reversed the trial court in accordance with established decisional laws; and
2. Whether or not Article 2180 of the Civil Code was correctly interpreted by respondent court to make petitioners incur vicarious liability.

Held:

1. On the first issue, the Supreme Court said:

“We have perforce to reject petitioners' effete and unsubstantiated pretension that it was another man who shot Wendell and Julie Ann. It is significant that the Libi family did not even point to or present any suspect in the crime nor did they file any case against any alleged “John Doe.” Nor can we sustain the trial court's dubious theory that Wendell Libi did not die by his own hand because of the

overwhelming evidence — testimonial, documentary and pictorial — the confluence of which point to Wendell as the assailant of Julie Ann, his motive being revenge for her rejection of his persistent pleas for reconciliation.

Petitioners' defense that they had exercised the due diligence of a good father of a family, hence, they should not be civilly liable for the crime committed by their minor son, is not borne out by the evidence on record either."

Petitioner Amelita Yab Libi, mother of Wendell, testified that her husband, Cresencio Libi, owns a gun which he kept in a safety deposit box inside a drawer in their bedroom. Each of these petitioners holds a key to the safety deposit box and Amelita's key is always in her bag, all of which facts were known to Wendell. They have never seen their son Wendell taking or using the gun. She admitted, however, that on the fateful night the gun was no longer in the safety deposit box. We, accordingly, cannot but entertain serious doubts that petitioner-spouses had really been exercising the diligence of a good father of a family by safely locking the fatal gun away. Wendell could not have gotten hold thereof unless one of the keys to the safety deposit box was negligently left lying around or he had free access to the bag of his mother where the other key was.

The diligence of a good father of a family required by law in a parent and child relationship consists, to a large extent, of the instruction and supervision of the child. Petitioners were gravely remiss in their duties as parents in not diligently supervising the activities of their son, despite his minority and immaturity, so much so that it was only at the time of Wendell's death that they allegedly discovered that he was a CANU agent and that Cresencio's gun was missing from the safety deposit box. Both parents were sadly wanting in their duty and responsibility in monitoring and knowing the activities of their children who, for all they know, may be engaged in dangerous work such as being drug informers, or even drug users. Neither was a plausible explanation given for the photograph of Wendell, with a handwritten dedication to Julie Ann at the back thereof, holding upright what clearly appears as a revolver and on how or why he was in possession of that firearm."

2. In affirming the CA's decision holding the parents of Wendell liable for moral, exemplary damages and attorney's fees, the SC said:

"Now, we do not have any objection to the doctrinal rule holding the parents liable, but the categorization of their liability as being

subsidiary, and not primary, in nature requires a hard second look considering previous decisions of the Court on the matter which warrant comparative analyses. Our concern stems from our readings that if the liability of the parents for crimes or quasi-delicts of their minor children is subsidiary, then the parents can neither invoke nor be absolved of civil liability on the defense that they acted with the diligence of a good father of a family to prevent damages. On the other hand, if such liability imputed to the parents is considered direct and primary, that would constitute a valid and substantial defense.

We believe that the civil liability of parents for quasi delicts of their minor children, as contemplated in Article 2180 of the Civil Code, is primary and not subsidiary. In fact, if we apply Article 2194 of said code which provides for solidary liability of joint tortfeasors, the persons responsible for the act or omission, in this case the minor and the father and, in case of his death or incapacity, the mother, are solidarily liable. Accordingly, such parental liability is primary and not subsidiary; hence, the last paragraph of Article 2180 provides that (t)he responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed the diligence of a good father of a family to prevent damage.”

We are also persuaded that the liability of the parents for felonies committed by their minor children is likewise primary, not subsidiary. Article 101 of the Revised Penal Code provides:

“Art. 101. Rules regarding civil liability in certain cases. —

x x x

First. In cases of subdivisions x x x 2, and 3 of Article 12, the civil liability for acts committed by x x x a person under nine years of age, or by one over nine but under fifteen years of age, who has acted *without* discernment, shall devolve upon *those having such person under their legal authority or control, unless it appears that there was no fault or negligence on their part.*” (Emphasis supplied.)

Accordingly, just like the rule in Article 2180 of the Civil Code, under the foregoing provision, the civil liability of the parents for crimes committed by their minor children is likewise direct and primary, and also subject to the defense of lack of fault or negligence on their part, that is, the exercise of the diligence of a good father of a family.”

That in both quasi-delicts and crimes the parents primarily responsible for such damages is buttressed by the corresponding provisions in both Codes that the minor transgressor shall be answerable or shall respond with his own property only in the absence or in case of insolvency of the former. Thus, for civil liability *ex quasi delicto* of minors, Article 2182 of the Civil Code states that, "(If the minor x x x causing damage has no parents or guardian, the minor x x x shall be answerable with his own property in an action against him where a guardian *ad litem* shall be appointed." For civil liability *ex delicto* of minors, an equivalent provision is found in the third paragraph of Article 101 of the Revised Penal Code, to wit:

"Should there be no person having such x x x minor under his authority, legal guardianship or control, or if such person be insolvent, said x x x minor shall respond with (his) own property, excepting property exempt from execution, in accordance with civil the law."

The civil liability of parents for felonies committed by their minor children contemplated in the aforesaid rule in Article 101 of the Revised Penal Code, in relation to Article 2180 of the Civil Code, has, aside from the aforesaid case of *Fuellas vs. Cadano*, 3 SCRA 361, been the subject of a number of cases adjudicated by the Court, *viz.*: *Exconde vs. Capuno, et al.*, 101 Phil. 843; *Araneta vs. Arreglado*, 104 Phil. 529; *Salen, et al. vs. Balce*, 107 Phil. 748; *Paleyan vs. Bangkili, et al.*, 40 SCRA 132; *Elcano, et al. vs. Hill, et al.*, 77 SCRA 98.

Suffice it to say that when a minor child is adopted, there is a change of parental authority or custody. The adopting parents would then become liable for his negligent act or omission causing damage to another. This is because there is a transfer of custody of parental control to the adopting parents. An examination of the case of *Tamargo vs. Court of Appeals, et al.*, would therefore be relevant.

Case:

**Tamargo vs. CA, et al.
209 SCRA 518 (1992)**

Facts:

Adelberto Bundoc, a 10 year-old child, shot Jennifer Tamargo with an air rifle causing her death. At that time, there was a petition for adoption filed by the Rapisura spouses which was granted on

November 18, 1982, that is, after the shooting incident on October 20, 1982. When sued for damages, the natural parents of the child pointed to the adopting parents as the ones liable because of the retroactive effect of the adoption to the date of the filing of the petition. The adopting parents contended that Adelberto was still living with his natural parents at the time of the incident.

Held:

We do not believe that parental authority is properly regarded as having been retroactively transferred to and vested in the adopting parents, the Rapisura spouses, at the time the air rifle shooting happened. We do not consider that retroactive effect may be given to the decree of adoption so as to impose a liability upon the adopting parents accruing at a time when the adopting parents had no actual or physical custody over the adopted child. Retroactive effect may perhaps be given to the granting of the petition for adoption where such is essential to permit the accrual of some benefit or advantage in favor of the adopted child. In the instant case, however, to hold that parental authority had been retroactively lodged in the Rapisura spouses so as to burden them with liability for a tortious act that they could not have foreseen and which they could not have prevented (since they were at that time in the United States and had no physical custody over the child Adelberto) would be unfair and unconscionable. Such result, moreover, would be inconsistent with the philosophical and policy basis underlying the doctrine of vicarious liability. Put a little differently, no presumption of parental dereliction on the part of the adopting parents, the Rapisura spouses, could have arisen since Adelberto was not in fact subject to their control at the time the tort was committed.

Article 35 of the Child and Youth Welfare Code fortifies the conclusion reached above. Article 35 provides as follows:

“Art. 35. *Trial Custody.* — No petition for adoption shall be finally granted unless and until the adopting parents are given by the court a supervised trial custody period of at least six months to assess their adjustment and emotional readiness for the legal union. During the period of trial custody, parental authority shall be vested in the adopting parents.” (Italics supplied.)

The Supreme Court, in *Tamargo vs. CA*, went further and said:

It is not disputed that Adelberto Bundoc’s voluntary act of shooting Jennifer Tamargo with an air rifle gave rise to a cause of action

on quasi-delict against him. As Article 2176 of the Civil Code provides:

“Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict* x x x.”

Upon the other hand, the law imposes civil liability upon the father and, in case of his death or incapacity, the mother, for any damages that may be caused by a minor child who lives with them. Article 2180 of the Civil Code reads:

“The obligation imposed by Article 2176 is demandable not only for one’s own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

x x x

x x x

x x x

The responsibility treated of in this Article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.”

This principle of parental liability is a specie of what is frequently designated as vicarious liability, or the doctrine of “imputed negligence” under Anglo-American tort law, where a person is not only liable for torts committed by himself, but also for torts committed by others with whom he has a certain relationship and for whom he is responsible. Thus, parental liability is made a natural or logical consequence of the duties and responsibilities of parents — their parental authority — which includes the instructing, controlling and disciplining of the child. The basis for the doctrine of vicarious liability was explained by the Court in *Cangco vs. Manila Railroad Co.* in the following terms:

“With respect to extra contractual obligation arising from negligence, whether of act or omission, it is competent for the legislature to elect — and/or legislature has so elected — to limit such liability to cases in which the person upon whom such an obligation is imposed is morally

culpable or, on the contrary, for reasons of public policy, to extend that liability, without regard to the lack of moral culpability, so as to include responsibility for the negligence of those persons whose acts or omissions are imputable, by a legal fiction, to others who are in a position to exercise an absolute or limited control over them. The legislature, which adopted our Civil Code, has elected to limit extra-contractual liability – with certain well-defined exceptions – to cases in which moral culpability can be directly imputed to the persons to be charged. This moral responsibility may consist in having failed to exercise due care in one's own acts, or in having failed to exercise due care in the selection and control of one's agents or servants, or in the control of persons who, by reasons of their status, occupy a position of dependency with respect to the person made liable for their conduct.”

The civil liability imposed upon parents for the torts of their minor children living with them, may be seen to be based upon the parental authority vested by the Civil Code upon such parents. The civil law assumes that when an unemancipated child living with its parents commits a tortious act, the parents were negligent in the performance of their legal and natural duty to supervise closely the child who is in their custody and control. Parental liability is, in other words, anchored upon parental authority coupled with presumed parental dereliction in the discharge of the duties accompanying such authority. The parental dereliction is, of course, only presumed and the presumption can be overturned under Article 2180 of the Civil Code by proof that the parents had exercised all the diligence of a good father of a family to prevent the damage.

In the instant case, the shooting of Jennifer by Adelberto with an air rifle occurred when parental authority was still lodged in respondent Bundoc spouses, the natural parents of the minor Adelberto. It would thus follow that the natural parents who had then actual custody of the minor Adelberto, are the indispensable parties to the suit for damages.

The natural parents of Adelberto, however, stoutly maintain that because a decree of adoption was issued by the adoption court in favor of the Rapisura spouses, parental authority was vested in the latter as adopting parents as of the time of the filing of the petition for adoption, that is, before Adelberto had shot Jennifer with an air rifle. The Bundoc spouses contend that they were therefore free of any parental responsibility for Adelberto's allegedly tortious conduct.

Respondent Bundoc spouses rely on Article 36 of the Child and Youth Welfare Code which reads as follows:

“Article 36. *Decree of Adoption.* — If, after considering the report of the Department of Social Welfare and Development or duly licensed child placement agency and the evidence submitted before it, the court is satisfied that the petitioner is qualified to maintain, care for, and educate the child, that the trial custody period has been completed, and that the best interests of the child will be promoted by the adoption, a decree of adoption shall be entered, which shall be effective as of the date the original petition was filed. The decree shall state the name by which the child is thenceforth to be known.”

The Bundoc spouses further argue that the above Article 36 should be read in relation to Article 39 of the same Code:

“Art. 39. *Effect of Adoption.* — The adoption shall:

x x x

(2) Dissolve the authority vested in the natural parent or parents, except where the adopter is the spouse of the surviving natural parent;

x x x.”

— and argue that their parental authority must be deemed to have been dissolved as of the time the petition for adoption was filed.

The Court is not persuaded. As earlier noted, under the Civil Code, the basis of parental liability for the torts of a minor child is the relationship existing between the parents and the minor child living with them and over whom, the law presumes, the parents exercise supervision and control. Article 58 of the Child and Youth Welfare Code re-enacted this rule, thus:

“Article 58. *Torts.* — Parents and guardians are responsible for the damage caused by the child under their parental authority in accordance with the Civil Code.”

Article 221 of the Family Code of the Philippines has similarly insisted upon the requisite that the child, doer of the tortuous act, shall have been in the actual custody of the parents sought to be held for the ensuing damage:

“Art. 221. 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.”

The reason behind the joint and solidary liability of the parents for the acts or omissions of their minor children is their failure to supervise them in order to prevent them from causing damage to third persons.

Article 222. The courts may appoint a guardian of the child’s property, or a guardian *ad litem* when the best interests of the child so require. (317)

The best interest of the child is always of paramount importance. Even if the parents are not dead, absent or are not suitable as guardians, still, if the best interest of the child requires the appointment of a guardian *ad litem* or over the properties, then, the court, as guardian of the welfare of the child, would appoint a substitute representative. Assume that the parents would abuse their powers as guardians over the properties of their child, then, the child may sue the parents. He needs a guardian *ad litem*.

Article 223. 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. (318a)

Article 224. The measures referred to in the preceding article may include the commitment of the child for not more than thirty 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. (319a)

As an incident to the duty of the parents to uphold the best interest of the child, the parents can impose certain forms of discipline upon him but the same must be reasonable. The parents or any person exercising parental authority may even go to court and apply for an order providing for disciplinary measures over the child. But if the court finds the parents or the one who has custody to be at fault, the court may suspend or deprive them of their parental authority.

Chapter 4

Effect of Parental Authority Upon the Property of the Children

Article 225. The father and the 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 market 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 ten *per centum* (10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or, if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely supplementary except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply. (320a)

There is a joint exercise of legal guardianship by the father and the mother over the properties of their unemancipated common children. The law says that they need not be appointed by the court. But if there is any disagreement, the father's decision shall prevail unless there is a judicial order to the contrary. The Supreme Court, in *Pineda vs. CA*, said that there is no need for an appointment of the parents in order that they may become guardians of the properties of their minor children.

The only requirement is for the parents to post a bond in an amount to be determined by the court — but not less than 10% of the value of the properties as their annual income or if the value of the properties of the child exceeds P50,000.00. If the value is exactly P50,000.00 or even less, there is no need to post a bond. The purpose of the bond is to secure the performance of the obligations of the guardians.

If the value of the properties would exceed P50,000.00, there is a need to post a bond by the parents. And, they have to go to court for the approval of the bond.

However, if the court appoints a guardian over the properties of the minor other than the parents, there is a need to post a bond irrespective of the value of the properties of said child.

There are instances when the law does not give the power of administration to the parents over the properties of a minor, like:

- (1) when the parent is disinherited by an ascendant, such parent cannot administer the legitime which is inherited by such child by right of representation (Art. 923, New Civil Code);
- (2) when the parent is incapacitated by unworthiness to succeed an ascendant, he is deprived of the powers of administration over the legitime transmitted to the child. (Art. 1035, New Civil Code).

Article 226. 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. (321a, 323a)

There is no more complete usufruct that the parents exercise over the properties of their minor child. This has been eradicated by the Family Code. Under Article 584 of the Civil Code, the parents are usufructuaries of their children's property. Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides. The right to use the properties and fruits granted to parents over the properties of their children has been removed by the Family Code because the law now mandates that the child's properties shall be devoted exclusively to the support and education of the child. If at all the parents can use the fruits, the right is secondary and it must be collectively for the daily needs of the family. They cannot use the income and fruits of their children's properties for their own use.

Article 227. 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 reasonable monthly allowance in an amount not less than that which the owner would have 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. (322a)

The law speaks of the child as the one managing the properties of his parents. The law allows him reasonable compensation by way of a monthly allowance, but the same shall not be charged against his legitime. But notwithstanding the fact that he is being given an allowance, the obligation to support would still exist since he is still under parental authority.

Chapter 5

Suspension or Termination of Parental Authority

Article 228. Parental authority terminates permanently:

- (1) Upon the death of the parents;**
- (2) Upon the death of the child; or**
- (3) Upon emancipation of the child. (327a)**

Article 229. Unless subsequently revived by a final judgment, parental authority also terminates:

- (1) Upon adoption of the child;**
- (2) Upon appointment of a general guardian;**
- (3) Upon judicial declaration of abandonment of the child in a case filed for the purpose;**
- (4) Upon final judgment of a competent court divesting the party concerned of parental authority; or**
- (5) Upon judicial declaration of absence or incapacity of the person exercising parental authority. (327a)**

There are two ways of termination of parental authority, such as: (1) permanent; (2) temporary.

Permanent termination of parental authority happens when the parents die; when the child dies; or when the child is emancipated. Emancipation takes place when the child attains the age of majority.

It must be noted that under Article 328 of the Civil Code, the remarriage of a spouse causes the loss of parental authority over the minor child. There is no such provision in the Family Code, hence, the logical conclusion is that, the remarriage of a parent does not make him or her lose parental authority.

Adoption causes the termination of parental authority over the child since the adopters would now exercise parental authority over the adopted child. (Arts. 186, 189, Family Code). But an adopted minor who has not reached the age of majority at the time of the judicial rescission of the adoption shall revert to the parental authority of his parents by nature, except if the natural parents are disqualified or incapacitated. (Art. 193, Family Code). Rescission can be commenced by the adopting parents or the adopted child.

Article 230. Parental authority is suspended upon conviction of the parent or guardian 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. (330a)

Article 231. 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:

- (1) Treats the child with excessive harshness or cruelty;
- (2) Gives the child corrupting orders, counsel or example;
- (3) Compels the child to beg; or
- (4) 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 therefor has ceased and will not be repeated. (332a)

Article 232. 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. (n)

The impossibility of performing the duties of parents is the reason for the suspension of parental authority. If the parent is serving his sentence in prison, how can he or she exercise parental authority? But the law says that if the parent concerned has been pardoned or granted amnesty, automatically, parental authority is reinstated. It means, therefore, that the suspension of parental authority is not absolute or permanent, but only temporary.

The reason for Article 231 is that, the best interest of the child is of paramount or utmost importance when it comes to his custody. It must be remembered that in the enumeration above, the court cannot *motu proprio* suspend parental authority. There must be a case filed for that purpose. In so depriving the parent of parental authority, the court may adopt measures to protect the interests of the child, and one such measure is to appoint another person who is to exercise parental authority. To restore such parental authority, a case may be filed for that purpose, or in the same proceedings, the court must be convinced that such acts inimical to the interests of the child shall not be repeated.

The law is more strict when it comes to child abuse committed by the person having parental authority over the child or when the same allows others to commit the same against the child. Such person may be permanently deprived by the court of such parental authority. Again, it must be stressed that the reason for the law (Art. 232, Family Code) is that the paramount consideration in matters of a child's custody is his interest.

Case:

**Johanna Sombong vs. CA, et al.
G.R. No. 111876, January 31, 1996
67 SCAD 529**

Facts:

A question was raised on the effect of abandonment of a child. It appears that the minor child Arabella was sick and was brought to a clinic, but the child could not be released because the mother had nothing to pay the clinic. After bringing her to the clinic, she visited the child only after two (2) years. After three (3) years, she resurfaced to lay claim over the child. Such act, the Court of Appeals said, was an act of abandonment. In fact, it said that, "what can be the worst culpable negligence of a parent than abandoning her own child?"

Held:

In short, because of the act of abandonment, the welfare of the child was not considered, yet, the welfare of the child is an all – important factor in the custody of a child. The Child and Youth Welfare Code provides that, in all questions regarding the care and custody, among others, of a child, his welfare shall be the paramount consideration. (P.D. No. 603, Art. 8). In the same vein, the Family Code authorizes the courts to, if the welfare of the child so demands, deprive the parents concerned of parental authority over the child, or adopt such measures as may be proper under the circumstances. (Art. 231, Family Code).

The Supreme Court, in this *habeas corpus* case over the custody of a minor child, said:

"It may be said that in custody cases involving minors, the question of illegal and involuntary restraint of

liberty is not the underlying rationale for the availability of the writ as a remedy; rather, the writ of *habeas corpus* is prosecuted for the purpose of determining the right of custody over a child.”

The controversy does not involve the question of personal freedom, because an infant is presumed to be in the custody of someone until he attains majority age. In passing on the writ in a child custody case, the court deals with a matter of an equitable nature. Not bound by any mere legal right of parent or guardian, the Court gives his or her claim to the custody of the child due weight as a claim founded on human nature and considered generally equitable and just. Therefore, these cases are decided, not on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of adults, but on the Court’s view of the best interests of those whose welfare requires that they be in the custody of one person or another. Hence, the Court is not bound to deliver a child into the custody of any claimant or any person, but should, in the consideration of the facts, leave it in such custody as its welfare at the time appears to require. In short, the child’s welfare is the supreme consideration.” (Johanna Sombong vs. CA, *supra*).

Article 233. The person exercising substitute parental authority shall have the same authority over the person of the child as the parents.

In no case shall the school administrator, teacher or individual engaged in child care exercising special parental authority, inflict corporal punishment upon the child. (n)

The law is a mere reiteration of Articles 220, 221, 223, and 224 of the Family Code. It emphasizes the fact that if another person has custody of a child, he has the same authority over the child as if he were the parents who have the rightful custody of the child. The actual custodian of the child has also the same duties and responsibilities among which is to uphold the best interest of the child. Such custody is not permanent, as he can also be deprived of the same if it is shown that his acts are inimical to the interest of the child.

Title X

EMANCIPATION AND AGE OF MAJORITY

Article 234. Emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of eighteen years. (As amended by R.A. No. 6809)

There is only one mode of emancipation under the law now, and that is, the attainment of the age of majority. Under R.A. No. 6809, the age of majority commences at the age of eighteen years. The old law provided that marriage of a minor caused his/her emancipation. That was true then because the age of majority under the old law was 21 years. The old law also provided that the marriageable age was 14 or 16, hence, it was possible for a minor to get married. But in view of the increase in the marriageable age to 18 and the fact that the age of majority has been reduced to 18, it is no longer possible for a minor to get married and be emancipated by reason of marriage.

Article 235. The provisions governing emancipation by recorded agreement shall also apply to an orphan minor and the person exercising parental authority but the agreement must be approved by the court before it is recorded. (404, 405a, 406a)

This provision has been repealed by R.A. No. 6809.

Article 236. Emancipation for any cause 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 exceptions established by existing laws in special cases.

Contracting marriage shall require parental consent until the age of twenty-one.

Nothing in this Code shall be construed to derogate from the duty or responsibility of parents and guardians for children and

wards below twenty-one years of age mentioned in the second and third paragraph of Art. 2180 of the Civil Code. (As amended by R.A. No. 6809)

Emancipation entitles the child to perform all acts of civil life. He shall also be liable for all acts of civil life.

Illustration:

(1) A is the son of X and Y. He is now 18 years of age; hence, by virtue of R.A. No. 6809, he has already attained the age of majority. As a consequence, he can now borrow money or sell properties without the consent of his parents, because he is now qualified for all acts of civil life.

But in the example above, suppose, A was driving the car of his father one morning. On their way to the court, as X is a judge, he hit a pedestrian. Can his father interpose the defense in a suit for damages when A bumped a pedestrian causing injuries to the pedestrian that A alone should be liable since he is already emancipated?

The answer is, No, because while it is true that A who is 18 years of age has already been emancipated, yet, R.A. No. 6809 says that, "Nothing in this Code shall be construed to derogate from the duty and responsibility of parents and guardians for children and wards below twenty-one years of age mentioned in the second and third paragraphs of Article 2180 of the Civil Code." So, X is still liable considering that A is below 21 years of age, although already emancipated. This is an exceptional situation which can be considered as an exception to Article 236 of the Family Code. It must be noted that were it not for R.A. No. 6809, the answer would be different, but the law establishes the duty and responsibility of the parents of a child 18 years and above but below 21 for as long as they live in the company of the parents as provided for under Article 2180 of the Civil Code.

(2) X and Y are married, they have a son A who is 18 years of age. Can he get married without the consent of X and Y? The answer is, No, for while A is now qualified for all acts of civil life, yet, under R.A. No. 6809, which

reduced the age of majority to 18 and; hence, the child is now qualified and responsible for all acts of civil life, it provides for an exception in that contracting marriage shall require parental consent until the age of 21.

Article 237. The annulment or declaration of nullity of the marriage of a minor or of the recorded agreement mentioned in the foregoing Articles 234 and 235 shall revive the parental authority over the minor but shall not affect acts and transactions that took place prior to the recording of the final judgment in the Civil Register. (n)

This has been repealed by R.A. No. 6809.

Title XI
SUMMARY JUDICIAL PROCEEDINGS
IN THE FAMILY LAW

Chapter 1
Scope of Application

Article 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules. (n)

The law makes the provisions of the Rules of Court applicable in matters of separation in fact of the spouses, abandonment, and incidents pertaining to parental authority.

Chapter 2
Separation in Fact Between
Husband and Wife

Article 239. 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.

The petition shall attach the proposed deed, if any, embodying the transaction, and, if none, shall describe in detail the said transaction and state the reason why the required consent thereto cannot be secured. In any case, the final deed duly executed by the parties shall be submitted to and approved by the court. (n)

Article 240. Claims for damages by either spouse, except costs of the proceedings, may be litigated only in a separate action. (n)

Article 241. Jurisdiction over the petition shall, upon proof of notice to the other spouse, be exercised by the proper court authorized to hear family cases, if one exists, or in the regional trial court or its equivalent, sitting in the place where either of the spouses resides. (n)

Article 242. 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, on or before the date set in said notice for the initial conference. The notice shall be accompanied by a copy of the petition and shall be served at the last known address of the spouse concerned. (n)

Article 243. A preliminary conference shall be conducted by the judge personally without the parties being assisted by counsel. After the initial conference, if the court deems it useful, the parties may be assisted by counsel at the succeeding conferences and hearings. (n)

Article 244. In case of non-appearance of the spouse whose consent is sought, the court shall inquire into the reasons for his or her failure to appear, and shall require such appearance, if possible. (n)

Article 245. If, despite all efforts, the attendance of the non-consenting spouse is not secured, the court may proceed *ex parte* and render judgment as the facts and circumstances may warrant. In any case, the judge shall endeavor to protect the interests of the non-appearing spouse. (n)

Article 246. 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. If testimony is needed, the court shall specify the witnesses to be heard and the subject-matter of their testimonies, directing the parties to present said witnesses. (n)

Article 247. The judgment of the court shall be immediately final and executory. (n)

Article 248. 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. (n)

The law outlines the procedure that the court shall undertake in case a transaction seeks judicial authorization where the consent of one spouse is necessary in such a transaction, but the consent is withheld or cannot be obtained. This happens when the spouses are separated in fact, or one has abandoned the other.

These laws have cross-reference to Articles 96 and 124 of the Family Code which provide for joint administration of the properties comprising the absolute community or the conjugal partnership. Even if the spouses are joint administrators, they cannot just sell properties without the consent of the other. If the consent is, however, withheld unreasonably or without any justification, then, a petition in court may be filed seeking for authority to sell, and if the court grants it, then, the order of the court is considered as the consent of the other party or a substitute for the same. After the perfection of the contract of sale, the spouse selling the property of the community of properties must ask for the approval of the same by the court which gave the authority to sell; otherwise, the contract is unenforceable, as the spouse who sold the property was an agent who acted outside of the scope of his authority. (Art. 1403, par. 1, New Civil Code).

The law requires that the petition should state the reason why the consent cannot be secured, because if there is a good reason for withholding the consent, then, the court would deny the petition. Upon the filing of the petition, the court shall notify the parties; and for the party who refuses to give consent to the transaction, to show why it should not be granted. If the said spouse fails to appear, the court shall inquire into the reason for the non-appearance. But if there is still non-appearance, the court may hear the petition *ex-parte* and render judgment as may be warranted by the evidence. If granted, the court shall make provisions for the protection of the interests of the non-appearing party. The decision is final and executory. That means, it cannot be appealed, except in cases of grave abuse of discretion amounting to lack of jurisdiction.

Chapter 3

Incidents Involving Parental Authority

Article 249. Petitions filed under Articles 223, 225, and 239 of this Code involving parental authority shall be verified. (n)

Note that the non-verification is not a jurisdictional defect. It is only a formal requirement of a pleading which can be cured by sub-

sequent acts. Like for example, if a petition is filed but not verified, the court can always order the party to verify it at any stage of the proceedings. That cures the defect of the pleading or petition.

Article 250. Such petitions shall be filed in the proper court of the place where the child resides. (n)

The venue of the petitions referred to in the preceding article hereof is the place where the child resides, or if he resides abroad, in the place where his property or any part thereof is located.

Article 251. Upon the filing of the petition, the court shall notify the parents or, in their absence or incapacity, the individuals, entities or institutions exercising parental authority over the child. (n)

Article 252. The rules in Chapter 2 hereof shall also govern summary proceedings under this Chapter insofar as they are applicable. (n)

Chapter 4

Other Matters Subject to Summary Proceedings

Article 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable. (n)

Title XII

FINAL PROVISIONS

Article 254. Titles III, IV, V, VI, VII, VIII, IX, XI and XV of Book I of Republic Act No. 386, otherwise known as the Civil Code of the Philippines, as amended, and Articles 17, 18, 19, 27, 28, 29, 30, 31, 39, 40, 41 and 42 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, as amended, and all laws, decrees, executive orders, proclamations, rules and regulations, or parts thereof, inconsistent herewith are hereby repealed. (n)

Article 255. If any provision of this Code is held invalid, all the other provisions not affected thereby shall remain valid. (n)

Article 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws. (n)

One of the exceptions to the prospective effect of a law is when the law itself provides for its retroactivity, like the Family Code. The condition for such retroactivity is that it should not prejudice or impair vested or acquired rights in accordance with the Civil Code and other laws. In the case of *Republic vs. CA, et al.*, G.R. No. 100835, October 26, 1993, 45 SCAD 496, the Supreme Court said an adoption by the wife alone granted under the Child and Youth Welfare Code cannot be annulled by the requirement of joint adoption under Article 185 of the Family Code since a new law cannot erase the rights acquired under an old law. This is true even if the Court held that Article 185 of the Family Code requiring joint adoption is a remedial statute for, whether remedial or substantive, a law may be given retroactive effect provided that no prejudice would result on rights that have already been acquired under other laws. The rights acquired by the adopted child under the Child and Youth Welfare Code cannot be defeated by the enactment of a new law. In *Tayag vs. CA*, June 9, 1992, the Supreme Court said that while it is true that under Article 175, FC, the action to establish filiation by an illegitimate child should be

brought during the lifetime of the putative father, yet, if that right was acquired under the Civil Code (Art. 285), the child can bring such action within four (4) years from the attainment of the age of majority if the father of the child died when the child was a minor. This is a vested right under another law which cannot be affected or defeated by the retroactive effect of the Family Code, for if the provisions of the Family Code would retroact, then, that would impair vested rights acquired by the minor child.

A vested right is an immediate fixed right of present and future enjoyment. It is to be distinguished from a right which is fixed, unalterable, absolute, complete and unconditional to the exercise of which no obstacle exists, and which is perfect in itself and not dependent upon a contingency. Thus, for a property to be vested, there must be a transition from the potential or contingent to the actual, and the proprietary interest must have attached to a thing, it must have become fixed or established and is no longer open to doubt or controversy. (*Jovellanos vs. CA, et al.*, G.R. No. 100728, June 18, 1992).

Article 257. This Code shall take effect one year after the completion of its publication in a newspaper of general circulation, as certified by the Executive Secretary, Office of the President.

Publication shall likewise be made in the *Official Gazette*. (n)

The Family Code took effect on August 3, 1988. As discussed in Article 2 of the Civil Code, the reason why the law was amended to the effect that laws likewise take effect after their publication in a newspaper of general circulation is due to the wider and more frequent circulation of the newspapers. It was felt that the newspapers were easier and faster ways by which the people may be informed of the existence of a law, unlike the Official Gazette which has a limited readership.

Title XIII

USE OF SURNAMES (n)

Article 364. Legitimate and legitimated children shall principally use the surname of the father.

Article 365. An adopted child shall bear the surname of the adopter.

Article 366. A natural child acknowledged by both parents shall principally use the surname of the father. If recognized by only one of the parents, a natural child shall employ the surname of the recognizing parent.

(Repealed)

Article 367. Natural children by legal fiction shall principally employ the surname of the father.

(Repealed)

One of the rights of legitimate children is the use of the surname of the father. The same is true with respect to a legitimated child because he enjoys the same rights as that of a legitimate child. An adopted child shall likewise have the right to use the surname of the adopter.

It must be noted that under the provisions of Article 174 of the Family Code, legitimate children shall have the right to bear the surname of the father and the mother in conformity with the provisions of the Civil Code on Surnames.

Article 368. Illegitimate children referred to in Article 287 shall bear the surname of the mother.

Article 369. Children conceived before the decree annulling a voidable marriage shall principally use the surname of the father.

The law gives the benefit of the doubt to the child conceived prior to the decree annulling a marriage by allowing him to principally

use the surname of the father. It does not make retroactive the effect of the decree annulling the marriage; instead, it recognizes the fact that the decree is only prospective in nature. And it is for this reason that it can be said that the right to use the surname of the father is acquired from the moment of conception.

Use of Surnames.

Under the Family Code, illegitimate children must use the surname of their mothers even if the father has admitted paternity and has consented to the registration of the child under his name. (*Mossesgeld vs. Civil Registrar General*, G.R. No. 111455, 23 December 1998, 101 SCAD 928).

Change of Name.

While an illegitimate child of a woman maybe allowed to bear the surname of its stepfather without the benefit of adoption, a legitimate child had by a prior marriage may not. To allow said child to adopt the surname of its mother's second husband, who is not its father, could result in confusion as to its paternity. It could also create the suspicion that the child who was born during the coverture of the mother the first husband was in fact sired by the second husband, thus bringing its legitimate status into discredit. (*Republic vs. Vicencio*, G.R. No. 88202, 14 December 1998, 101 SCAD 662). In short, the child might create more troubles than solving them.

Article 370. A married woman may use:

- (1) Her maiden first name and surname and add her husband's surname; or**
- (2) Her maiden first name and her husband's surname; or**
- (3) Her husband's full name, but prefixing a word indicating that she is his wife, such as "Mrs."**

The law provides for alternatives on the part of the woman when she gets married; hence, it is not mandatory for a woman to use the surname of her husband.

Illustration:

Janet Calvin got married to Andy Ancheta. Janet can use the name Janet Calvin Ancheta. Or, she can use the name Janet Ancheta; or, she can use Mrs. Andy Ancheta.

Article 371. In case of annulment of marriage, and the wife is the guilty party, she shall resume her maiden name and surname. If she is the innocent spouse, she may resume her maiden name and surname. However, she may choose to continue employing her husband's surname, unless:

- (1) The court decrees otherwise; or**
- (2) She or the former husband is married again to another person.**

It is a must that in case of annulment of marriage where the woman is the guilty spouse, like having defrauded her husband, she shall resume the use of her maiden name and surname. This is to penalize her for her wrongdoing. However, if the wife was the innocent spouse, she may resume her maiden name and surname. It means that she may still continue using the surname of her husband, except if the court decrees otherwise, or she or her former husband contracts marriage with another person. The reason for the latter is to prevent confusion when the former husband gets married to another person, such person having the right to carry the surname of the husband. It can also be added that there would be confusion, or there would be an anomalous situation where, despite the fact that the woman has already contracted a subsequent marriage, she would still be carrying the surname of her former husband. By reason of public policy, she should refrain from using her former husband's surname.

Note that in case of annulment of marriage or even if the wife was divorced under the Muslim Laws, she may automatically resume the use of her surname without any order of the court.

A married woman may revert to her maiden surname after being divorced by the husband even without authority of the court.

Case:

Facts:

When Hiyasmin D. Abdul got married to Hakeem Rauf, she started using her husband's surname. Then, they were divorced. Their divorce became irrevocable after observance of a period of three (3) monthly courses from the decree of divorce. (Arts. 56, 57, P.D. No. 1083). Their marriage bond was severed. Then, Hakeem got married

to another woman, so when Hiyasmin learned of it, she filed a petition asking that she be allowed to resume the use of her maiden name. It was denied on the ground that the petition was, in effect, a petition for change of name and hence, it must comply with the requirements of the Rules of Court. Was the decision correct?

Held:

No, a petition for the resumption of maiden name and surname is not a petition for change of name. The true and real name of a person is that given to him and entered in the Civil Registrar. It is the only true and official name that may be changed with judicial authority. In this case, Hiyasmin's registered name is Hiyasmin A. Abdul. In effect, she does not seek to change her registered name but instead prays that she be allowed to resume the use of her maiden name in view of the dissolution of her marriage to Hakeem by virtue of a divorce decree granted in accordance with Muslim Law.

Under our Civil Code, a married woman may use only her maiden name and surname, although she has the option, but not a duty, to use the surname of her husband in any of the following ways: (a) by using her maiden first name and surname and add her husband's surname; (b) her maiden first name and her husband's surname; (c) her husband's full name but prefixing a word indicating that she is his wife, such as "Mrs." She need not apply and/or seek judicial authority to do so. Similarly, when the marriage ties no longer exist, as in the case of the death of the husband or divorce as authorized by the Muslim Code, the widow or divorcee need not seek judicial confirmation of the change of her civil status in order to revert to her maiden name as the use of her husband's surname is optional and not obligatory for her.

When Hiyasmin married Hakeem, she did not change her name but only her civil status, so, her petition to resume the use of her maiden name is a superfluity and an unnecessary proceeding. (*Hatima Yasin vs. Shari'a District Court, Third Shari'a Judicial District, G.R. No. 94986, February 23, 1993*). In this decision, the Supreme Court also made a pronouncement that the use of the husband's surname after the annulment of the marriage or after the death of the husband is permissive — and not obligatory. The only exception is legal separation, where she may not revert to her maiden name and surname at will, but must continue using her name and surname employed before the decree of legal separation.

Article 372. When legal separation has been granted, the wife shall continue using her name and surname employed before the legal separation.

In case of legal separation, the wife shall continue to use the name and surname of her husband. The reason for this rule is that they are still married, legal separation being a mere separation from bed and board without severing the marital relationship of the husband and wife. (*Laperal vs. Republic*, 6 SCRA 357). But in spite of the use of the word “shall,” the use of the husband’s surname by the woman is not mandatory, but merely optional.

Article 373. A widow may use the deceased husband’s surname as though he were still living, in accordance with Article 370.

After the death of the husband, the wife may still continue to use the name and surname of the husband as provided in Article 370. In this case, she may use the name “Corazon Cojuangco Vda. de Aquino” to show that she is the widow of the late Senator Benigno Aquino.

Article 374. In case of identity of names and surnames, the younger person shall be obliged to use such additional name or surname as will avoid confusion.

Article 375. In case of identity of names and surnames between ascendants and descendants, the word “Junior” can be used only by a son. Grandsons and other direct male descendants shall either:

- (1) Add a middle name or the mother’s surname; or
- (2) Add the Roman numerals II, III, and so on.

To distinguish between two persons with identical names, especially ascendants and descendants, the younger shall be obliged to use identifying names or marks to avoid confusion.

Illustration:

Luis Garces is married to Ely Ahorro. They have a son named Luis. The latter can use Luis, Jr. to distinguish the ascendant from the descendant to avoid confusion. Roman numerals can also be used to distinguish one from the other.

Article 376. No person can change his name or surname without judicial authority.

In order that a person may change his name or surname, the same must be with judicial authority. Changing one's own name or surname is not a matter of right but a matter of privilege. (*Republic vs. Avila*, 122 SCRA 483). There must be sufficient grounds to change one's own name or surname, like:

- (1) When the name is ridiculous or tainted with dishonor; extremely difficult to write or pronounce;
- (2) When the right to a new name is a consequence of a change of status, like where a natural child is acknowledged or legitimated;
- (3) When the change is necessary to avoid confusion;
- (4) A sincere desire to adopt a Filipino name to erase signs of a former alien nationality which unduly hampers social and business life. (*Uy vs. Republic*, 15 SCRA 457; *Que vs. Republic*, 26 SCRA 1074; *Yu vs. Republic*, 15 SCRA 454; *Yap vs. Republic*, 27 SCRA 1114).

But in *Republic vs. Judge*, 132 SCRA 462, an application for a change of name was denied as it would sow confusion in paternity and successional rights.

A question has been raised as to the effect of change of name. The Supreme Court, in *Calderon vs. Republic*, 19 SCRA 721, said that what is altered is only the label or appellation by which a person is known and distinguished from the others. It does not alter family relations. It does not create new family rights and duties. It does not affect a person's legal capacity or status or citizenship. (*Ang Chay vs. Republic*, 34 SCRA 224).

Article 377. Usurpation of a name and surname may be the subject of an action for damages and other relief.**Article 378. The unauthorized or unlawful use of another person's surname gives a right of action to the latter.**

The usurpation of name implies injury to the interests of the owner of the name. It consists in the possibility of confusion of identity, or the appearance of some family relation between the owner and usurper. It exists when a person designates himself by another's

name, such as when he uses it in his personal cards, his signboards, his signature for voting purposes. (2 Von Tuhr 101).

Illustration:

Atty. Victoriano Miguel's name and surname are being used by Mr. Pedro Miguel in the practice of law, or in his business dealings with others.

But it has also been said that there is no usurpation when the name is not used to designate a person, such as when it is used to designate a particular merchandise or article. (2 Von Tuhr 102). There may be an unlawful or unauthorized use but not usurpation. (Tolentino, *Civil Code*, Vol. 1, 1990 ed., p. 680). In order that there may be usurpation of a name, the following must be present:

- (1) That there is an actual use of another's name by the defendant;
- (2) That the use is unauthorized;
- (3) The use of another's name is to designate personality or identity a person. (Tolentino vs. CA, 162 SCRA 66).

Proof of actual injury to another or the owner of the name is not necessary because there is always the potential harm due to the possibility of confusion of identity. (Battle, pp. 61-63). As to the remedies of one whose name is being usurped, he can ask for moral and actual damages. He can also restrain the further use of the same. (Battle, pp. 63-64).

Article 379. The employment of pen names or stage names is permitted, provided it is done in good faith and there is no injury to third persons. Pen names and stage names cannot be usurped.

A pseudonym has been defined by Ferrara as a conventional fictitious name freely chosen by a person to disguise his personality. (cited in I Tolentino, *Civil Code*, 1990 ed., p. 681). An example is the pseudonym "Quijano de Manila," a Filipino writer, whose name is "Nick Joaquin." It designates a person in a peculiar activity, his reputation and the value of his work are reflected in such designation. As a reflection of personality, it is protected by the law. This protection is based on the respect for the legitimate desire of persons to hide

their identity in certain cases, provided this is not motivated by a desire to avoid unnecessary trouble, or other reason not prohibited by law or morals. A person may use various pseudonyms, but no pseudonym may be used which may give rise to confusion with another existing name. (I Tolentino, 1990 ed., p. 681). It has been said that a pseudonym cannot be used in any transaction with the State, as it is intended for literary, artistic, scientific, and professional activities. (Battle, pp. 45-47). It is protected only when it is well-known as the designation of a particular writer or artist. In *Ong vs. Republic*, 54 O.G. 2527, it was said that the right to the use of a pseudonym is acquired depends upon the circumstances. Thus, a simple use of a pseudonym in a literary work of lasting fame would be enough; but not when the person used it merely in passing, as an actor in just one play. It is difficult sometimes to establish the necessary intensity which would give rise to the right to a pseudonym. (See 2 Von Tuhr 105).

Article 380. Except as provided in the preceding article, no person shall use different names and surnames.

The Revised Penal Code imposes the penalty of *arresto mayor* and a fine not to exceed P500.00 upon any person who shall use a fictitious name for the purpose of concealing a crime, evading the execution of a judgment, or causing damage. Any person who conceals his true name and other personal circumstances shall be punished by *arresto menor* or a fine not to exceed P200.00. (Art. 178, RPC). Hence, it is the duty of every individual to use his correct name and surname in dealing with the government. If it is a private dealing, he is not obliged, except if there is a wrongful or unlawful purpose. (2 Von Tuhr 97-98).

Case:

**Cesario Ursua vs. CA, et al.
G.R. No. 112170, April 10, 1996
70 SCAD 123**

Facts:

On August 1, 1989, Atty. Francis Palmones, counsel for petitioner, wrote the Office of the Ombudsman in Davao City requesting that he be furnished a copy of the complaint against

petitioner. Atty. Palmones then asked his client to take his letter-request to the Office of the Ombudsman because his law firm's messenger, Oscar Perez, had to attend to some personal matters. Before proceeding to the Office of the Ombudsman, petitioner talked to Oscar Perez and told him that he was personally reluctant to ask for the document since he was one of the respondents before the Ombudsman. However, Perez advised him not to worry as he could just sign his (Perez) name if ever he would be required to acknowledge receipt of the complaint.

When petitioner arrived at the Office of the Ombudsman in Davao City, he was instructed by the security officer to register in the visitor's logbook. Instead of writing his name, petitioner wrote the name "Oscar Perez," after which he was told to proceed to the Administrative Division for the copy of the complaint he needed. He handed the letter of Atty. Palmones to the Chief of the Administrative Division, Ms. Loida Kahulugan, who then gave him a copy of the complaint, receipt of which he acknowledged by writing the name "Oscar Perez."

Before petitioner could leave the premises, he was greeted by an acquaintance, Josefa Amparo, who also worked in the same office. They conversed for a while, and then he left. When Loida learned that the person who introduced himself as "Oscar Perez" was actually petitioner Cesario Ursua, a customer of Josefa Amparo in her gasoline station, Loida reported the matter to the Deputy Ombudsman who recommended that petitioner be accordingly charged. After trial, he was found guilty of violation of Sec. 1, C.A. No. 142, as amended by R.A. No. 6085.

On appeal to the Court of Appeals, the decision was affirmed. Before the Supreme Court, he contended that he did not violate C.A. No. 142, as amended by R.A. No. 6085, since he did not use any alias or that "Oscar Perez" was not his alias. In acquitting the accused, the Supreme Court

Held:

An alias is a name or names used by a person or intended to be used by him publicly, or habitually, usually in business transactions, in addition to his real name by which he is registered at birth or baptized the first time or, substitute name authorized by competent authority. A man's name is simply the sound or sounds by which he is commonly designated by his fellows and by which they distinguish him, but sometimes a man is known by several different names and

these are known as aliases. (Words and Phrases, Permanent Edition, Vol. III, West Publishing Co., p. 139). Hence, the use of a fictitious name or a different name belonging to another person in a single instance without any sign or indication that the user intends to be known by this name in addition to his real name from that day forth does not fall within the prohibition contained in C.A. No. 142, as amended. This is so in the case at bench.

It is not disputed that petitioner introduced himself in the Office of the Ombudsman as “Oscar Perez,” which was the name of the messenger of his lawyer who should have brought the letter to that office in the first place instead of the petitioner. He did so while merely serving the request of his lawyer to obtain a copy of the complaint in which petitioner was a respondent. There is no question then that “Oscar Perez” is not an alias name of the petitioner. There is no evidence showing that he had used or was intending to use that name as his second name in addition to his real name. The use of the name “Oscar Perez” was made by petitioner in an isolated transaction where he was not legally required to expose his real identity. For, even if he had identified himself properly at the Office of the Ombudsman, petitioner would still be able to get a copy of the complaint as a matter of right, and the Office of the Ombudsman could not refuse him because the complaint was part of public records, hence, open to inspection and examination by anyone under the proper circumstances.

While the act of the petitioner may be covered by other provisions of the law, such does not constitute an offense within the concept of C.A. No. 142, as amended, under which he is prosecuted. The confusion and fraud in business transactions which the *anti-alias law* and its related statutes seek to prevent are not present here as the circumstances are peculiar and distinct from those contemplated by the legislature in enacting C.A. No. 142, as amended. There exists a valid presumption that undesirable consequences were never intended by a legislative measure and that a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil, and injurious consequences. Moreover, as C.A. No. 142 is a penal statute, it should be construed strictly against the State and in favor of the accused. (People vs. Uy Jui Pio, 102 Phil. 679). The reason for this principle is the tenderness of the law for the rights of individuals and the object is to establish a certain rule by conformity to which mankind would be safe, and the discretion of the court limited. Indeed, our mind

cannot rest easy on the proposition that petitioner should be convicted by a law that does not clearly penalize the act done by him.

In *Ursua vs. CA, et al.*, G.R. No. 112170, April 10, 1996, 70 SCAD 123, the Supreme Court had the occasion to explain the meaning, concept, and ill-effects of the use of an alias within the purview of C.A. No. 142, reiterating *Yu Kheng Chiau vs. Republic*, 106 Phil. 762; thus, the Court said that:

“There can hardly be any doubt that petitioner’s use of his alias “Kheng Chiau Young” in addition to his real name “Yu Cheng Chiau” would add to more confusion. That he is known in his business as manager of the Robert Reid, Inc., by the former name, is not sufficient reason to allow him its use. After all, petitioner admitted that he is known to his associates by both names. In fact, the *Anselmo Trinidad, Inc.*, of which he is a customer, knows him by his real name. Neither would the fact that he had encountered certain difficulties in his transactions with government offices, which required him to explain why he bore two names, justify the grant of his petition, for petitioner could easily avoid said difficulties by simply using and sticking only to his real name ‘Yu Kheng Chiau.’”

“The fact that petitioner intends to reside permanently in the Philippines, as shown by his having filed a petition for naturalization in Branch V of the above-mentioned court, argues the more against the grant of his petition, because if naturalized as a Filipino citizen, there would be no necessity for his further using said alias, as it would be contrary to the usual Filipino way and practice of using only one name in the ordinary, as well as business, transactions. And, as the lower court correctly observed, if he believes (after he is naturalized) that it would be better for him to write his name following the Occidental method, he can easily file a petition for change of name, so that in lieu of the name ‘Yu Kheng Chiau,’ he can, abandoning the same, ask for authority to adopt the name ‘Kheng Chiau Young.’”

“All things considered, we are of the opinion and so hold, that petitioner has not shown satisfactory, proper and reasonable grounds under the aforementioned provisions of Commonwealth Act No. 142 and the Rules of Court, to

warrant the grant of his petition for the use of an alias name.”

Clearly therefore, an alias is a name used by a person interested to be used by him, publicly and habitually in business transactions, in addition to his real name by which he is registered at birth or baptized the first time or, substitute name authorized by a competent authority.

Title XIV

ABSENCE

Absence is that special legal status of one who is not in his domicile, his whereabouts being unknown and it is uncertain whether he is dead or alive. Where the absentee disappeared under normal circumstances, and without apparent danger, there is ordinary absence; but, where the disappearance was under extraordinary circumstances, or with apparent danger, it is called qualified absence. (1 Castan 175; 2 Manresa 97).

Stages of Absence.

There are three stages of absence:

- (1) Temporary or provisional absence;
- (2) Normal or declared absence;
- (3) Definite absence or presumptive death. (1 Castan 179).

Chapter 1

Provisional Measures in Case of Absence

Article 381. When a person disappears from his domicile, his whereabouts being unknown, and without leaving an agent to administer his property, the judge, at the instance of an interested party, a relative, or a friend, may appoint a person to represent him in all that may be necessary.

This same rule shall be observed when under similar circumstances the power conferred by the absentee has expired. (181a)

There is temporary or provisional absence as soon as a person disappears from his domicile and his whereabouts are unknown, leaving no administrator of his property.

Normal or declared absence is one judicially declared after two years since the last news was heard from him, or five years if he left an administrator.

Definite or presumptive death takes place when, after the period provided by law, a person is presumed dead; the period varies according to the circumstances. (Tolentino, Civil Code).

The law requires that in order to justify the taking of remedies for provisional absence, it is necessary that no news be heard of the person who has disappeared, after a reasonable period shall have lapsed. Furthermore, there must be an immediate necessity for his representation in some specific urgent matter. (1 Castan 182-183).

Article 382. The appointment referred to in the preceding article having been made, the judge shall take the necessary measures to safeguard the rights and interests of the absentee and shall specify the powers, obligations and remuneration of his representative, regulating them, according to the circumstances, by the rules concerning guardians. (182)

The procedure that should be followed by the court in the appointment of a representative of an absentee is governed by Rule 107 of the Rules of Court. The court, however, must, under the circumstances issue orders to protect the rights and interests of the absentee. The guardian appointed cannot sell or encumber properties of the absentee without approval or authority; otherwise, the sale is rescissible. (Art. 1368, New Civil Code). The powers of the guardian must be specified by the court appointing him. He cannot exercise powers outside of those conferred upon him by the court. The authority can be revoked.

Article 383. In the appointment of a representative, the spouse present shall be preferred when there is no legal separation.

If the absentee left no spouse, or if the spouse present is a minor, any competent person may be appointed by the court. (183a)

The law says that in the appointment of a representative for an absentee, the spouse present is preferred, except in case of legal separation. If there is no spouse, then the court has the power to appoint any competent person.

The provision of the law that in case the spouse of the absentee is a minor, a competent person may be appointed does not apply anymore, in view of the fact that the age of majority has been reduced to 18 years and the minimum marriageable age is 18. There is no longer a possibility of a minor spouse. The law has been repealed by the Family Code and R.A. No. 6809.

The spouse present must be appointed as a representative of the absentee spouse in order that he or she may have a cause of action or capacity to maintain an action to recover possession of the properties of the absentee. (*Ablang vs. Fernandez*, 25 Phil. 33). In fact, in *Garrido vs. North Camarines Lumber Co.*, CA 44, O.G. 4000, it was said that, the authority of the wife to represent the husband arises only after she has been appointed as representative. As there was no appointment, she had no authority to accept payment of plaintiff's salaries in military notes, which were practically worthless at the time of payment, and the release which she gave to the defendant was without effect as against the plaintiff.

In *Reyes vs. Alejandro*, 141 SCRA 65, the Supreme Court had the occasion to say that there can be a complex petition to declare a husband an absentee and to place the management of the conjugal properties in the hands of the wife.

Rules:

- (1) Provisional measures to be undertaken before declaration of absence:
 - (a) appointment of a person to represent him, at the instance of an interested party, a relative or a friend;
 - (b) court must safeguard the rights and interests of the absentee by specifying the powers, obligations, and remuneration of the representative.
- (2) Preference in the appointment of representative of the absentee:
 - a) the spouse present, if there is no legal separation; or
 - b) a competent person, in case the absentee left no spouse or the spouse is incompetent.

Chapter 2

Declaration of Absence

Article 384. Two years having elapsed without any news about the absentee or since the receipt of the last news, and five years in case the absentee has left a person in charge of the administration of his property, his absence may be declared. (184)

The absence of a person may be declared under the following circumstances:

- (a) two years have elapsed without any news from the absentee;
- (b) two years have elapsed since the receipt of the last news about the absentee;
- (c) five years have elapsed in case the absentee left a person in charge of the administration of his property.

If a person is in abroad and has communication with his family, his absence cannot be declared. There is no compliance with the requirements of Article 384, New Civil Code.

Note that the law makes a distinction between a person who is absent and left no administrator of his properties and a person who is absent and has left an administrator of his properties. In the former, the period is two (2) years. In the latter, the period is five (5) years. The reason is obvious. In case a person left an administrator, there is an assurance that his properties are taken cared of. In the case of a person who left without anyone to administer his properties, the same are not taken cared of, hence, the shorter period.

In *Reyes vs. Alejandro*, L-32026, January 16, 1986, the Supreme Court laid down certain rules on the declaration of absence of a person:

- (a) The petition to declare a husband an absentee and the petition to place the management of the conjugal properties in the hands of the wife may be combined and adjudicated in the same proceedings. The purpose of the rule is to prevent multiplicity of suits;
- (b) An absentee person needs to be judicially declared an absentee if he has properties which have to be taken cared of or administered by a representative appointed by the court (Article 384, Civil Code); or if the absentee spouse is

asking for separation of property; or if the absentee is the husband, his wife asking the court that the administration of all classes of property in the marriage be transferred to her;

- (c) The sole purpose of the filing of the petition to declare the husband absent is to establish the absence of the husband, who left no property, the petition should be dismissed, because there is no need to declare him judicially absent.

The reason for the rule is that there is no need for such declaration because there is no property to take care of or administer. Therefore, it would be an exercise in futility to have a declaration of absence;

- (d) For the purpose of the civil marriage law, it is not necessary to have the former spouse judicially declared an absentee. The declaration of absence made in accordance with the provision of the Civil Code has for its sole purpose to enable the taking of necessary precautions for the administration of the estate of the absentee. For the celebration of the civil marriage, however, the law only requires that the former spouse has been absent for seven consecutive years (now four [4] years under Article 41 of the Family Code) at the time of the second marriage; that the spouse present does not know his or her former spouse to be living; that such former spouse is generally reputed to be dead and, that the spouse present so believes the same at the time of the celebration of the marriage. (*Reyes vs. Alejandro*, L-32026, January 16, 1986, citing *Jones vs. Hortiguella*, 64 Phil. 179).

Article 385. The following may ask for the declaration of absence:

- (1) The spouse present;**
- (2) The heirs instituted in a will, who may present an authentic copy of the same;**
- (3) The relatives who may succeed by the law of intestacy;**
- (4) Those who may have over the property of the absentee some right subordinated to the condition of his death. (185)**

Article 386. The judicial declaration of absence shall not take effect until six months after its publication in a newspaper of general circulation. (186a)

- (1) Note that the law enumerates the persons who may ask for the declaration of absence of a person under the circumstances falling under Article 384 of the Civil Code.
- (2) The judicial declaration of absence cannot take effect immediately. It has to be published in a newspaper of general circulation. Six months after the publication of the decision declaring a person absent, the decision shall then be effective.
- (3) Before any alienation or encumbrance of the properties of the absentee can be made by the wife or the administrator appointed, there must be judicial approval. This rule is so because the acts of selling or encumbering properties are acts of ownership. The very purpose of the law is to protect the rights and interests of the absentee.
- (4) The moment the death of the absentee is proved, administration over his properties shall cease because his estate will then be settled, as there would be opening of succession. Note that under Article 777 of the Civil Code, the moment there is death, there is transmission of rights, properties, and obligations to the heirs of the decedent.

Chapter 3

Administration of the Property of the Absentee

Article 387. An administrator of the absentee's property shall be appointed in accordance with Article 383. (187a)

Article 388. The wife who is appointed as an administratrix of the husband's property cannot alienate or encumber the husband's property, or that of the conjugal partnership, without judicial authority. (188a)

Article 389. The administration shall cease in any of the following cases:

- (1) **When the absentee appears personally or by means of an agent;**

(2) When the death of the absentee is proved and his testate or intestate heirs appear;

(3) When a third person appears, showing by a proper document that he has acquired the absentee's property by purchase or other title.

In these cases, the administrator shall cease in the performance of his office, and the property shall be at the disposal of those who may have a right thereto. (190)

In case of personal appearance of the absentee, logically and obviously, the administration of his properties by another would cease considering that he can now assume the administration of his properties.

If the death of the absentee is proved, then, there would be opening of his succession as there would then be transmission of successional rights to his heirs (Art. 777, New Civil Code); in that case, the powers of administration by another person would cease.

A person who is presumed dead may, after all, be alive. In the meantime, he may have sold his properties, so that, even if there is an administrator, such administration would be terminated upon appearance of the buyer of the properties from the owner. Such buyer would then be exercising his rights of ownership.

Chapter 4

Presumption of Death

Article 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.

The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence for five years shall be sufficient in order that his succession may be opened.
(n)

The law lays down the presumption of death of a person after an absence of seven (7) years, provided that it is unknown whether he is still alive or not. In that case, he is presumed dead for all pur-

poses, except the opening of succession. However, if he has been absent for ten (10) years or more, he shall be presumed dead for all purposes, including the opening of his succession. But if he disappeared after the age of seventy-five (75) years, he shall be presumed dead after an absence of five years, including that of his succession.

The law says that the absent spouse shall be presumed dead for “all purposes” except succession. It is only after an absence of ten (10) years that his succession will be opened. In that case, his heirs can now commence an intestate proceeding, for purposes of dividing or distributing the estate of the absentee, for by then, the right of inheritance shall have already become choate, for under Article 777 of the Civil Code, it is from the moment of death that there shall be transmission of rights, properties, or even obligations from the decedent to the heirs because of the presumptive death of the absentee. There is no physical death, but there is only presumptive death under the situation.

The rule lays down a shorter period of five (5) years in case of the absence of a seventy-five (75) year-old person. For all purposes, including the opening of his succession, he is presumed dead. The reason for the rule is that, due to his old age, he will be dead after five years from the time of his disappearance and due to his old age, it is less likely that he will survive longer, thus, the shorter period.

May a person be declared presumptively dead?

No, as a general rule, because:

- (a) it would be useless to make such declaration, since it is already declared by law;
- (b) the judgment would never really become final, since the person involved may actually turn out to be still alive.

The exception is when property rights are involved. (*In re* Presumption of Death of Nicolai Szatraw, 81 Phil. 461; *In re* William Que vs. Republic, G.R. No. L-14058, March 24, 1960; Taken from Paras, *Civil Code Annotated*, Vol. I, 1978 ed., p. 754; See also Reyes vs. Alejandro, G.R. No. L-32026, January 16, 1986).

It must be recalled that the computation of the periods provided for in Article 391, New Civil Code, shall be reckoned from the date of the last news concerning the absentee is received. (*Jones vs. Hortiguella*, 64 Phil. 179).

In *Lukban vs. Republic*, 98 Phil. 547, the wife of an absent husband sought to have a judicial declaration that her husband is presumed dead. The Supreme Court, in not entertaining her petition said that a petition for judicial declaration that petitioner's husband is presumed dead cannot be entertained because it is not authorized by law, and if such declaration cannot be in a special proceeding, much less can the Court determine the status of petitioner as a widow since the matter must necessarily depend upon the fact of the death of the husband. The Court said, that it can declare, upon proper evidence, that he is dead, but not to decree that he is merely presumed dead.

Amplifying further such ruling in *Lukban vs. Republic*, the Supreme Court said in *Nicolas vs. Zsatrow*, 46 O.G. 1st Supp. 243, that the philosophy behind the ruling in *Lukban vs. Republic* is that a judicial pronouncement to that effect, even if final and executory, would still be a *prima facie* presumption only. It is still disputable. It is for that reason that it cannot be the subject of a judicial pronouncement or declaration, if it is the only question or subject matter involved in a case, or upon which a competent court has to pass. It is, therefore, clear that judicial declaration that a person is presumptively dead because he had been unheard from in seven years, being a presumption *juris tantum* only, subject to contrary proof, cannot be final.

Article 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

- (1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;**
 - (2) A person in the armed forces who has taken part in war, and has been missing for four years;**
 - (3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.**
- (n)**

The reason why a person is presumed dead under these circumstances provided in Article 391 is the great possibility that the person is dead after four years from the time of the loss of the vessel or other catastrophe.

Rules:

- (1) The period of four (4) years in Article 391, NCC has been reduced to two (2) years under Article 41 of the Family Code, for purposes of remarriage, but the present spouse has to go to court in a summary proceeding for purposes of having the absent spouse declared presumptively dead so that he/she can contract a subsequent marriage. If the present spouse does not go to court for that purpose and contracts a subsequent marriage, the same is void and bigamous. He can be convicted of the crime of bigamy. (Manuel vs. People, G.R. No. 165842, November 29, 2005; Republic vs. CA, et al., G.R. No. 159614, December 9, 2005).
- (2) Article 391, NCC governs extraordinary absence. From the language of the law, the period of four (4) years shall be reckoned at the beginning of the period pursuant to that decision of the Court of Appeals in *Judge Advocate General vs. Gonzales, et al.*, 48 O.G. 12, p. 5329.
- (3) On February 23, 1954, Pedro Icong, an employee of the petitioner, was sleeping on board the latter's vessel, M/V "Miss Leyte," when it caught fire. Awakened by the fire, Pedro Icong jumped overboard. Since then, he has not been heard of. The employee was unmarried, receiving daily P4.00 with meals estimated at P1.20, and respondent Juan Icong, his father, was his partial dependent. On April 30, 1954, the latter filed with the WCC and the petitioner a notice of claim for death compensation. The petitioner reported the matter to the Commission only on August 17, 1954. The Commission rendered an award in favor of respondent Juang Icong in the sum of P2,038.40, plus P200.00 for burial expenses and P20.00 as legal fee.

There was a question as to whether Article 391, New Civil Code applies.

The Supreme Court said that, Article 391, NCC, relating to presumption of death of persons aboard a vessel lost during a sea voyage, applies to cases wherein the vessel cannot be located nor accounted for, or when its fate is unknown or there is no trace of its whereabouts, inasmuch as the word "lost" used in referring to a vessel must be given the same meaning as "missing" employed in connection with an aeroplane, the persons taking both means of conveyance being the object of the rule expressed in the same sentence. Where, as in

the case at bar, none of the foregoing conditions appear to exist, the rule does not apply. Instead, the rule on preponderance of evidence applies to establish the fact of death. (Victory Shipping Lines, Inc. vs. WCC, 106 Phil. 550; Madrigal Shipping Co., Inc. vs. Baens del Rosario, et al., L-13130, October 31, 1959).

- (4) If the absentee appears or his presence is proved, he can recover his properties and the price of any properties that may have been alienated or the properties acquired therewith. He cannot, however, claim any fruits or rents.

The reason is obvious because the possessor is presumed to be in good faith, and if that is so, he is entitled to the fruits of the properties in his possession.

The term "*vessels*" or "*aeroplanes*" include watercraft, and all aircrafts respectively. But the loss of the vessel must be during a sea voyage. This will include not only voyages in the open sea, but also passage along the mouths of rivers, canals in the course of such voyage. However, trips which are only in inland waters are not included. (8 Von Tuhr 26).

War includes military operations or undertakings in armed fight. The presumption of death applies to soldiers as well as employees rendering services to the armed forces like doctors, nurses, as well as those who render voluntary services like guerillas, as well as reporters, cameramen and photographers. (1 Salvat 525). Manresa says that it is not enough, however, that the disappearance of such persons be during wartime, it is necessary that it be during military operations. (2 Manresa 223).

Other circumstances where there is danger of death would include such events as earthquakes, fires, explosions, inundations, dangerous expeditions, cave-ins of mines, volcanic eruptions, landslides, etc. In such cases, the death should be considered to have taken place on the day of the danger; and it is also from this day that the four-year period is to be computed. If the danger continues for several days, there are some who believe that the period should be counted from the day the danger commenced. (1-I Ennecerrus, Kipp and Wolff 351). It has, however, been said that the more logical view seems to be that the period should be computed from the last day of danger; in case of expeditions and similar adventures of which nothing is heard of after it has started, the date when it should have been computed, if favorably concluded, is to be taken into account. (2 Von Tuhr 27).

Article 392. If the absentee appears, or without appearing his existence is proved, he shall recover his property in the condition in which it may be found, and the price of any property that may have been alienated or the property acquired therewith; but he cannot claim either fruits or rents. (194)

The law provides for the effect of reappearance or proof of existence of the person presumed dead. Let us say that a person was presumed dead and his estate was distributed in accordance with law or his will, but he reappears, then, he can recover the properties in the condition they may be found, or the price thereof, if they have been sold or alienated. But he cannot claim the fruits or rents. The reason for this is that the distributees and heirs are in good faith. Under Article 544 of the Civil Code, a possessor in good faith is entitled to receive the fruits of the thing in his possession. But the moment he reappears, the possessor would no longer be entitled to receive the fruits, as they would then redound to the benefit of the owner. There would also be interruption of the possession in good faith.

In the Family Code, when the present spouse contracts a subsequent marriage after judicial declaration of presumptive death of the absentee spouse, and there is an affidavit of reappearance that is registered by an interested person in the proper civil registry, with notice to the parties of the second marriage, the latter shall be considered as automatically terminated, without prejudice to the right of the present spouse to question such reappearance. It is believed that if the absent spouse physically reappears, the subsequent marriage would still be terminated. This is so because of the fact that if constructive reappearance by way of the registration of the affidavit of reappearance is enough, then with more reason physical reappearance should terminate the subsequent marriage. The added reason is that, in case an affidavit of reappearance is registered, the present spouse can question the fact of reappearance.

Chapter 5

Effect of Absence Upon the Contingent Rights of the Absentee

Article 393. Whoever claims a right pertaining to a person whose existence is not recognized must prove that he was living at the time his existence was necessary in order to acquire said right. (195)

This law has necessary connections to the law on succession, but it requires that there be proof of the existence of the absentee at the time his existence was necessary; otherwise, there would be no transmission of rights.

Illustration:

In 1960, Jose disappeared. In 1965, Hector died, leaving a will where he instituted Jose, who himself is married and with a child named Ariel. In order that Ariel may rightfully claim that portion of the estate of Hector, he must prove the existence of Jose at the time of Hector's death, for if Jose was already dead at the time of Jose's death, then Jose never acquired that portion of the estate to which he was instituted. Consequently, Ariel cannot also claim it since Jose never transmitted it to Ariel. The situation is similar to Article 1025 of the Civil Code which requires that the heir must be alive at the time of the death of the decedent.

Article 394. Without prejudice to the provisions of the preceding article, upon the opening of a succession to which an absentee is called, his share shall accrue to his co-heirs, unless he has heirs, assigns or representatives. They shall all, as the case may be, make an inventory of the property. (196a)

Article 395. The provisions of the preceding article are understood to be without prejudice to the action or petition for inheritance or other rights which are vested in the absentee, his representatives or successors in interest. These rights shall not be extinguished save by lapse of time fixed for prescription. In the record that is made in the registry of real estate which accrues to the co-heirs, the circumstance of its being subject to the provisions of this article shall be stated. (197)

This law has something to do with the rules on succession. It says that if an absentee is called upon to inherit, his share shall accrue to his co-heirs, as a rule.

Illustration:

A and B are married. They have three (3) children named X, Y, and Z. Upon the death of A, X, Y, and Z were

called upon to succeed A, but X is an absentee. His share of the estate of his father shall accrue to Y and Z.

Accretion is a right by virtue of which, when two or more persons are called to the same inheritance, devise or legacy, the part assigned to the one who renounces or cannot receive his share, or who died before the testator, is added or incorporated to that of his co-heirs, co-devisees or co-legatees. (Art. 1015, New Civil Code).

In order that the right of accretion may take place in a testamentary succession, it shall be necessary:

- (1) That two or more persons be called to the same inheritance or to the same portion thereof, *pro indiviso*; and
- (2) That one of the persons thus called die before the testator, or renounce the inheritance, or be incapacitated to receive it. (Art. 1016, New Civil Code).

Among the compulsory heirs the right of accretion shall take place when the free portion is left to two or more of them, or to any one of them and to a stranger.

Should the part repudiated be the legitime, the other co-heirs shall succeed to it in their own right, and not by the right of representation. (Art. 1021, New Civil Code).

In testamentary succession, when the right of accretion does not take place, the vacant portion of the instituted heirs, if no substitute has been designated, shall pass to the legal heirs of the testator, who shall receive it with the same charges and obligations. (Art. 1022, New Civil Code).

The heirs to whom the portion goes by the right of accretion take it in the same proportion that they inherit. (Art. 1019, New Civil Code).

The heirs to whom the inheritance accrues shall succeed to all the rights and obligations which the heir who renounced or could not receive it would have had. (Art. 1020, New Civil Code).

The rule cited in the example does not apply if X has his own heirs or representatives. Hence, if X in the problem above is married to M and they have children N and O, then, his share shall accrue to his heirs by right of representation.

If in the meantime Y and Z obtained titles over the share of X, the heirs of X can still recover the same since the provisions of Article 395 of the Civil Code state that the share of the absentee shall accrue to his co-heirs without prejudice to the action or petition for inheritance or other rights which are vested in the absentee, his representatives or successors in interest. Since the heirs of X inherited the share by right of representation, they can commence an action to recover the same, unless the action has prescribed. The period of prescription is 10 years.

But suppose Y and Z obtained a title to the said share that accrued to them and sold the same to a buyer in good faith and for value, then the children of X cannot recover anymore because of the protection afforded to a buyer in good faith and for value by the Torrens System.

Article 396. Those who may have entered upon the inheritance shall appropriate the fruits received in good faith so long as the absentee does not appear, or while his representatives or successors in interest do not bring the proper actions. (198)

The law grants the right to whoever entered upon the inheritance of an absentee, like the right to appropriate the fruits until the absentee shall have reappeared or until the proper actions shall have been brought by the heirs or representatives. (See Art. 544, New Civil Code).

Illustration:

A and B are married. They have children X, Y, and Z. X is living in the USA with two (2) children, but unknown to Y and Z. A died, hence, the heirs were called upon to inherit, but since X is an absentee, there is no knowledge of such heirs; Y and Z entered into the inheritance of X by right of accretion. They can continue to receive the fruits of such property for as long as the heirs of X have not filed an action to recover the share of their father. They are in good faith.

Title XV
CIVIL REGISTER

Article 407. Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register. (325a)

Article 408. The following shall be entered in the civil register:

(1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filiation; (15) voluntary emancipation of a minor; and (16) changes of name. (326a)

Article 409. In cases of legal separation, adoption, naturalization and other judicial orders mentioned in the preceding article, it shall be the duty of the clerk of the court which issued the decree to ascertain whether the same has been registered, and if this has not been done, to send a copy of said decree to the civil registry of the city or municipality where the court is functioning. (n)

Article 410. The books making up the civil register and all documents relating thereto shall be considered public documents and shall be *prima facie* evidence of the facts therein contained. (n)

Article 411. Every civil registrar shall be civilly responsible for any unauthorized alteration made in any civil register, to any person suffering damage thereby. However, the civil registrar may exempt himself from such liability if he proves that he has taken every reasonable precaution to prevent the unlawful alteration. (n)

Article 412. No entry in a civil register shall be changed or corrected, without a judicial order. (n)

(1) Substantial alterations affecting the status and citizenship of a person in the civil registry records are not allowed unless first threshed out in an appropriate action. Summary proceeding under Article 412, New Civil Code only justifies an order to correct innocuous or clerical errors. (*Castro vs. Rep.*, January 17, 1985).

Illustration:

George F. Castro to Ramon Castro. There is a substantial alteration.

(2) A petition to enter material corrections in the record of birth was filed so that "Sy Piao" would be made "Esteban Sy." The two names refer to one and the same person. It was published in a newspaper of general circulation. The OSG was served with a copy of the petition and notice of hearing. The State, through the Civil Registrar, participated in the proceedings.

The petition was granted in the case of *Rep. vs. Mac-li-ing*, March 18, 1985. In fact, the Supreme Court said in *Republic vs. Valencia*, March 5, 1986, that such a petition for correction of entry and/or cancellation of entries in the record of birth even if filed under Rule 108 of the Rules of Court can no longer be considered summary. If there is an opposition and the opposition is actually prosecuted, the proceedings become adversary. (See also *Bumanlag vs. Alzate*, L-39119, September 26, 1986).

(3) Clerical mistakes or harmless and innocuous errors may be corrected under the summary proceedings under Art. 412 and Rule 108, RRC. But substantial changes in the entry in the birth certificate such as the change of name from "Dominador Patawaran" to "Dominador P. Dizon" and the alteration of the word "Unknown" after the column "name of Father" to "Policarpio Dizon" cannot be done under Rule 412 and Rule 108. Changes sought not only involve a change of name, but also principally the issue of paternity or filiation.

Changes or corrections under Art. 412, NCC refer to harmless and innocuous alterations, such as misspelling, or errors visible to the eye. (*Rep. vs. Flojo*, L-49703, July 31, 1987). Change of name is to be threshed out in an adversary proceeding where each is given

the opportunity to demolish each case, and the evidence is roughly weighed and considered.

- (4) In *Rep. vs. Hon. Carriaga, et al.*, G.R. No. 54159, March 18, 1988, petitioner asked for correction of entries in the record of birth of his children; thus, “Chinese to Filipino father; religion, from Catholic to Islam; race, brown, not yellow” petitioner was informed of the trial and in fact, it filed an opposition to the petition. Petitioner maintained that only innocuous or clerical errors can be corrected.

It was ruled by the Supreme Court that when petitioner filed an opposition, the proceeding was converted into an adversary proceeding. There was a full-blown trial which complied with the requirements of appropriate proceeding. (*Republic vs. Valencia*).

Substantial alterations cannot be ordered in the registry of birth; exceptions.

Case:

**Vda. de Castro vs. Republic
134 SCRA 12, January 17, 1985**

Facts:

Saturnina Vda. de Castro filed a petition for the correction of the name of her son in the Civil Registry, that instead of George F. de Castro, it should be Ramon F. de Castro. The court granted the petition and ordered the local civil registrar to effect such change. Was the order correct?

Held:

The answer is, No. The decision must be reversed. It has been the consistent ruling of this Court since *Ty Kong Tin vs. Republic*, 94 Phil. 321, “that substantial alterations, such as those affecting the status and citizenship of a person in the Civil Registry Records, can not be ordered by the court unless threshed out first in an “appropriate action wherein all the parties who may be affected by the entries are notified or represented” (See Rule 108 of the Revised Rules of Court), and that the summary proceedings under Article 412 of the Civil Code only justify an order to correct innocuous or clerical errors, such as misspellings and the like, errors that are visible to the eyes are

obvious to the understanding.” (Baybayan vs. Republic of the Philippines, 16 SCRA 403).

In *Luilin vs. Nuño*, 9 SCRA 707, this Court said:

“Article 412 of the New Civil Code contemplates of mere corrections that are clerical in nature, like misspelled names or occupations of the parents, etc., but not those which may affect the civil status, or the nationality or citizenship of the persons involved, for in such case it is necessary to file the proper action wherein not only the State, but also all the parties concerned should be made parties to the defendants.

In the case at bar, where it is admitted that the name placed in the certificate of birth is not the name of a different person but the alias name of the petitioner himself and the name of the child was her real name, so that it cannot be contended that a mistake has been committed in giving the information to the local civil registry, while the changes sought for may affect the status of the petitioner or the paternity and filiation of his children, it is held that the lower court erred in granting the petition under Article 412 of the New Civil Code.”

Indeed, the mistake in the case at bar is not the mistake or the error contemplated under Article 412 of the New Civil Code which justifies the correction of the birth certificate. Article 412 allows correction only of clerical mistakes, is not those substantial changes which may affect the identity (a man identified by his name), personality, civil status or nationality of the persons involved. Thus, errors in birth certificate which are not clerical in nature, as in this case, cannot be corrected by means of a petition for correction.

Even substantial errors may be corrected where proceedings are adversary, not summary.

The 1986 case of *Republic vs. Leonor Valencia* (L-32181, March 5, 1986, 141 SCRA 462) appears to have sounded the death knell to the much abused *Ty Kong Tin* doctrine. Since 1954, when *Ty Kong Tin vs. Republic* (94 Phil. 321) was decided, the Supreme Court has held, almost invariably, that only “clerical” or “harmless” errors can be corrected by petition under Article 412 of the Civil Code, this, despite the promulgation in 1964 of Rule 108 of the Rules of Court,

which prescribes publication of notice of hearing and the impleading of the civil registrar and all interested persons and parties. Under such doctrine, entries affecting civil status and citizenship could not be corrected by petition under Article 412 and Rule 108.

In Valencia, however, the High Court *en banc*, speaking through Justice Hugo Gutierrez, affirmed the trial court's decision granting petitioner's prayer that her civil status and citizenship as appearing in two of her child's birth certificates, as well as the civil status and citizenship of her children, be corrected. The evidence showed that petitioner, a Filipina, was a common-law spouse of a Chinese named Go Eng, with whom she had seven children, two of whom were erroneously registered as legitimate and Chinese citizens in their birth certificates. All the other five children had birth records correctly reflecting the fact that their parents were both single, that they were illegitimate and that they were Filipino citizens. The petition was published in a newspaper of general circulation as required by Rule 108. Notice thereof was duly served on the Solicitor General, the Local Civil Registrar, and Go Eng. The order setting the case for hearing also directed the civil registrar and other respondents or any person claiming any interest to file their opposition. The Republic did file an opposition and cross-examined the petitioner during the trial. The Supreme Court said, "It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving nationality and citizenship, which is undisputably substantial and controversial, affirmative relief cannot be granted in a proceeding summary in nature. However, it is also true that a right in law may be enforced and a wrong may be remedied as long as the *appropriate remedy is used*. This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided that the parties aggrieved by the error avail of themselves of the appropriate adversary proceeding. x x x To follow (the Solicitor General's) argument that Rule 108 has been followed, a petition for correction can no longer be considered "summary." There can be no doubt, said the Court, that when an opposition to the petition is filed either by the Civil Registrar or any person having or claiming any interest in the entries sought to be cancelled and/or corrected and the opposition is actively prosecuted, the proceedings thereon become adversary proceedings. After noting the well-documented proof which was never contradicted by the Republic, the High Court observed that it would be a denial of substantive justice if two children proven by the facts to be Filipino citizens and whose five brothers and sisters

born of the same mother and father enjoy all the rights of citizens — are denied the same rights on the simple argument that the “correct procedure,” not specified or even intimated, has not been followed.

When substantial errors may be summarily corrected in the civil registry.

Republic vs. Hon. Bautista, et al., L-35316, Oct 26, 1987, is a mere reiteration of *Republic vs. Valencia*, 141 SCRA 462. In the former, the word “American” was sought to be changed to “Danish” in the registry of birth of Raymund Mangabat Sorensen. The lower court denied the petition for correction of entry; hence, a petition for *certiorari* was filed. The Republic opposed on the ground that a correction of entry in the civil registry is allowed only when the same refers to mere clerical errors or mistakes, but not substantial changes affecting the civil status, nationality, or citizenship of the person concerned. The Court of Appeals granted the petition, thus, ordering the local Civil Registrar to make the necessary corrections. Hence, this petition by the Republic.

In dismissing the petition, the Supreme Court said that the proceedings under Article 412 of the New Civil Code and Rule 108 of the Rules of Court may either be summary or adversary in nature.

If the correction sought to be made in the civil registry is clerical, then the procedure to be adopted is summary. If the rectification affects the civil status, nationality, or citizenship of a party, it is deemed substantial, and the procedure to be adopted is adversary. Thus, in *Republic vs. Valencia*, it was said that:

“It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving nationality and citizenship, which is undisputably substantial and controversial, affirmative relief cannot be granted in a proceeding summary in nature.”

However, it is also true that a right in law may be enforced and a wrong may be remedied as long as the *appropriate remedy is used*. This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail of themselves of the appropriate adversary proceeding.”

What is meant by “appropriate adversary proceeding”? Black’s Law Dictionary says:

“One having opposing parties; contested, as distinguished from an *ex parte* hearing and proceeding. One of which the party seeking relief has given legal notice to the other party, and afforded the latter an opportunity to contest it.”

It was further ruled in *Republic vs. Valencia* that if the procedural requirements provided in Sections 3, 4 and 5 of Rule 108 of the Rules of Court are followed, the procedure ceases to be summary and becomes litigious. Proceedings following the aforementioned sections may then be appropriate for the correction of substantial matters in the civil registry.

Hence, for as long as the relevant facts have been fully and properly developed, where the opposing counsel is given the opportunity to demolish the opposite party’s case, and the evidence is thoroughly weighed and considered, the proceedings are adversary or appropriate proceedings. (Rep. vs. Judge Flojo, L-49703, July 31, 1987; Rep. vs. CFI, L-36773, May 31, 1988).

Correction of entry in civil registry.

The basic question in *Virginia A. Leonor vs. CA, et al.*, G.R. No. 112597, April 2, 1996, 70 SCAD 57, is:

Is a judgment voiding a marriage and rendered by the Regional Trial Court under Rule 108 of the Rules of Court valid and proper?

Rule 108, Section 1, of the Rules of Court provides that, “Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto. x x x.”

Answering the question, the Supreme Court ruled that:

“On its face, the Rule would appear to authorize the cancellation of any entry regarding ‘marriages’ in the civil registry for any reason by the mere filing of a verified petition for the purpose. However, it is not as simple as it looks. Doctrinally, the only errors that can be cancelled or

corrected under this Rule are typographical or clerical errors, not 'material or substantive' ones like the validity or nullity of marriages. A clerical error is one which is visible to the eyes or obvious to the understanding; error made by a clerk or transcriber; a mistake in the copying or writing (*Black vs. Republic*, L-10869, November 28, 1958); or some harmless or innocuous change such as a correction of name that is clearly misspelled or of a misstatement of the occupation of the parent. (*Ansaldo vs. Republic*, L-10226, February 14, 1958).

"Where the effect of a correction in a civil registry will change the civil status of a petitioner and her children from legitimate to illegitimate, the same cannot be granted except only in an adversary proceeding." In *Vda. de Castro vs. Republic*, 134 SCRA 12, the Court held:

"It has been the consistent ruling of this Court since *Ty Kong Tin vs. Republic*, 94 Phil. 321, that substantial alterations, such as those affecting the status and citizenship of a person in the Civil Registry Records, cannot be ordered by the Court unless threshed out first in an 'appropriate action wherein all the parties who may be affected by the entries are notified or represented' (See Rule 108 of the Revised Rules of Court), and that the summary proceedings under Article 412 of the Civil Code only justify an order to correct innocuous or clerical errors, such as misspellings and the like, errors that are visible to the eyes and obvious to the understanding. (*Baybayan vs. Republic of the Philippines*, 16 SCRA 403)."

Clearly and unequivocally, the summary procedure under Rule 108, and for that matter under Article 412 of the Civil Code, cannot be used by Mauricio to change his and Virginia's civil status from married to single and their three children from legitimate to illegitimate. Neither does the trial court, under said rule, have any jurisdiction to declare their marriage null and void and as a result thereof, to order the local civil registrar to cancel the marriage entry in the civil registry. Further, the respondent judge seriously and gravely abused his discretion in unceremoniously expanding his very limited jurisdiction under such rule to hear the evidence on such controversial matter as nullity of a marriage under the Civil Code and/or Family Code, a process that is proper only in ordinary adversarial proceedings under the Rules.

“A void judgement for want of jurisdiction is no judgment at all. It cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void; “x x x it may be said to be a lawless thing which may be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head.” (Citing *Banco Español-Filipino vs. Palanca*, 37 Phil. 921).

In this case, what was done was that, a petition for the cancellation of the late registration of the marriage in the civil registry of San Carlos City was filed on the ground that the marriage was void due to the non-observance of the legal requirements for a valid marriage.

In the case of *Republic vs. CA, et al.*, G.R. No. 103695, March 15, 1996, 69 SCAD 548, the adoption of the child Michael C. Mazon was granted and held to be proper. But the Supreme Court ruled that the trial court erred in ordering the correction of the name of the minor from “Midael” to “Michael.” The same is a case of a change of name which can be the subject of cancellation or correction upon good and valid grounds. The Supreme Court said that the change falls under Rule 108, Section 2(o), Rules of Court. Indeed, it has been the uniform ruling of this Court that Article 412 of the Civil Code — to implement which Rule 108 was inserted in the Rules of Court in 1964 — covers those harmless and innocuous changes, such as a correction of a name that is clearly misspelled. (*Ansaldo vs. Republic*, 102 Phil. 1046 [1958]; *Barillo vs. Republic*, 113 Phil. 695 [1961]; *Tan vs. Republic*, 114 Phil. 1070 [1962]; *Yu vs. Republic*, 21 SCRA 1018 [1967]; *Labayo-Rowe vs. Republic*, 168 SCRA 294 [1988]). Thus, in *Yu vs. Republic*, it was held that, “to change ‘Sincio’ to ‘Sencio,’ which merely involves the substitution of the first vowel, ‘e,’ amounts merely to the righting of a clerical error.” In *Labayo-Rowe vs. Republic*, it was held that, “the change of petitioner’s name from Beatriz Labayo/Beatriz Labayu to Emperatriz Labayo is a mere innocuous alteration wherein a summary proceeding is appropriate.”

Correction of substantial entry.

In *Republic vs. Gladys Labrador*, G.R. No. 132980, March 25, 1999, 105 SCAD 223, a petition was filed to correct the name in the birth certificate of a person from “Sarah Zita Caño Erasmo” to “Sara Zita Cañon” and the erroneous entry in the birth certificate of said person with respect to her mother from “Rosemarie B. Cañon” to

“Maria Rosario Cañon.” It was alleged that Maria Rosario Cañon never got married to a certain Degoberto Erasmo, the father of the child. After trial, the Court ordered the correction summarily, hence, the Republic filed this petition contending that the summary proceedings under Rule 108 of the Rules of Court and Article 412 of the Civil Code may be used only to correct or change clerical or innocuous errors. It was argued that Rule 108 cannot be used to modify, alter or increase substantive rights, such as those involving legitimacy or illegitimacy of the child, which respondent desires to do. The change sought will result not only in substantial correction in the child’s record of birth but also in the child’s rights which cannot be effected in a summary action. In short, the issues were:

1. Whether or not a change in the record of birth in a civil registry, which affects the civil status of a person, from legitimate to illegitimate may be granted in the summary proceedings;
2. Whether or not Rule 108 of the Revised Rules of Court is the proper action to impugn the legitimacy of a child.

The Supreme Court summed up the issue as to whether Rule 109 of the Rules of Court may be used to change the entry in a birth certificate regarding the filiation of a child.

In resolving for the Republic, the Supreme Court said that the issue has already been resolved in *Leonor vs. CA*, 70 SCAD 57, 256 SCRA 69. In that case, Mauricio Leonor filed a petition before the trial court seeking the cancellation of the registration of his marriage to Virginia Leonor. He alleged, among others, the nullity of their legal vows arising from the “non-observance of the legal requirements for a valid marriage.” In debunking the trial court’s ruling granting such petition, the Court held as follows:

“On its face, the Rule would appear to authorize the cancellation of any entry regarding ‘marriages in the civil registry for any reason by the mere filing of a verified petition for the purpose.’ However, it is not as simple as it looks. Doctrinally, the typographical or clerical errors are not material or substantial ones like the validity or nullity of a marriage. A clerical error is one which is visible to the eyes or obvious to the understanding; error made by a clerk or a transcriber; a mistake in copying or writing (*Black vs. Republic*, L-10869, November 28, 1958); or some harmless and innocuous change such as a correction of name that is clearly misspelled or of a misstatement of

the occupation of the parent. (*Ansalada vs. Republic*, L-10226, February 14, 1958).

Where the effect of a correction in a civil registry will change the civil status of petitioner and her children from legitimate to illegitimate, the same cannot be granted except only in an adversarial proceeding. x x x

“Clearly and unequivocally, the summary procedure under Rule 108, and for that matter under Article 412 of the Civil Code cannot be used by Mauricio to change his and Virginia’s civil status from married to single and of their three children from legitimate to illegitimate. x x x”

Thus, where the effect of a correction of an entry in a civil registry will change the status of a person from “legitimate” to “illegitimate,” as in Sara Zitah’s case, the same cannot be granted in summary proceedings.

In *Republic vs. Valencia*, 141 SCRA 462, it was likewise held that corrections involving the nationality or citizenship of a person were substantial and could not be effected except in adversarial proceedings.

The Supreme Court held:

“It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving the nationality or citizenship, which is indisputably substantial as well as controverted, affirmative relief cannot be granted in a proceeding summary in nature. However, it is also true that a right in law may be enforced and a wrong may be remedied as long as the appropriate remedy is used. This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the ‘appropriate adversary proceedings.’

In said case, the trial court granted respondent Leonor Valencia’s petition for the cancellation and/or correction of the entries in the birth records of her two minor children. Thus, the nationality of Valencia’s children was changed from ‘Chinese’ to ‘Filipino’; their status from

'legitimate' to 'illegitimate'; and Valencia's status from 'married' to 'single.'

What is meant by 'appropriate adversary proceeding' .Black's Law Dictionary defines 'adversary proceeding' as follows:

One having opposing parties, contested, as distinguished from an *ex-parte* application, one in which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it. Excludes an adoption proceeding. (Platt vs. Magagnini, 187 pp. 716, 718, 100 Was. 39)"

Thus, *Valencia* requires that a petition for a substantial correction or change of entries in the civil registry should have as respondents the civil registrar, as well as all other persons who have or claim to have any interest that would be affected thereby. It further mandates that a full hearing, not merely a summary proceeding, be conducted.

In this case, the changes sought by Labrador were undoubtedly substantial: *first*, she sought to have the name appearing on the birth certificate changed from "Sarah Zita Erasmo" to "Sarah Zita Cañon," thereby transforming the filiation of the child from legitimate to illegitimate; *second*, she likewise sought to have the name of Sara Zita's mother, which appeared as "Rosemarie" in the child's birth record, changed to "Zita Rosario." Pursuant to *Valencia*, an adversarial proceeding is essential in order to fully thresh out the allegations in respondent's petition.

Sarah Zita and her purported parents should have been parties to the proceeding. After all, it would affect her legitimacy, as well as her successional and other rights. In fact, the change may also embarrass her because of the social stigma that illegitimacy may bring. The rights of her parents over her and over each other would also be affected. Note that if there is a change of her status from legitimate to illegitimate, the custody over her would be vested in the mother since an illegitimate child is supposed to be under the custody of the mother. (*Daisy David vs. CA, supra*). Furthermore, a change of name would affect not only the mother but possibly creditors, if any. Finally, no sufficient legal explanation has been given why an aunt, who had not been appointed as guardian of the minor, was the party-petitioner.

True, it would seem that an adversarial proceeding was conducted, the trial court set the case for hearing and had the notice of hearing published in a newspaper of general circulation in Cebu City once a week for three (3) weeks; a hearing was actually conducted during which the respondent and the petitioner were represented; the respondent was able to testify and be cross-examined by the petitioner's representative.

But such proceeding does not suffice. In *Labayo-Rowe vs. Republic*, 168 SCRA 294, Emperatriz Labayo-Rowe filed a petition seeking to change an entry in her child Victoria Micalat's birth certificate. Alleging that she had never been married to her daughter's father, she wanted to have her civil status appearing on the certificate changed from "married" to "single." The Supreme Court ruled that the trial court erred in granting Labayo-Rowe's petition, because the proper parties had not been impleaded; and the proceedings had been sufficiently adversarial, *viz.*:

"In the case before us, since only the Office of the Solicitor General was notified through the Office of the Provincial Fiscal, representing the Republic of the Philippines as the only respondent, the proceedings taken, which are summary in nature, alterations are sought. Aside from the Office of the Solicitor General, all other indispensable parties should have been made respondents. They include not only the declared father of the child but the child as well, together with the paternal grandparents, if any, as their hereditary rights would be adversely affected thereby. All other persons who may be affected by the change should be notified or represented. The truth is best ascertained under an adversary system of justice.

The right of the child Victoria to inherit from her parents would be substantially impaired if her status would be changed from 'legitimate' to 'illegitimate.' Moreover, she would be exposed to humiliation and embarrassment resulting from the stigma of an illegitimate filiation that she will bear thereafter. The fact that the notice of hearing of the petition was published in a newspaper of general circulation and notice thereof was served upon the State, will not change the nature of the proceedings taken. Rule 108, like all other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its

rule-making authority under Section 13, Article VIII of the 1973 Constitution, which directs that such rules ‘shall not diminish, increase or modify substantive rights.’ Said rule would thereby become an unconstitutional exercise which would tend to increase or modify substantive rights. This situation is not contemplated under Article 412 of the Civil Code.”

Even granting that the proceedings held to hear and resolve the petition before the lower court were “adversarial,” it must be noted that the evidence presented by the respondent was not enough to fully substantiate her claim that Sarah Zita was illegitimate. Her evidence consisted mainly of her testimony and a certification from the civil registry of Cebu City that such office had no record of a marriage between Rosemarie/Maria Rosario Cañon and Degoberto Erasmo. Unlike in another case where Valencia was applied, like for example, in *Republic vs. Bautista*, 155 SCRA 1, October 26, 1987, respondent Imelda Mangabat Sorensen sought to correct and change the word “American” to “Danish” in the birth certificate of her minor son, Raymund, to reflect the true nationality of his father, Bo Huage Sorensen. To prove her claim, she presented her husband as a witness. He testified that he was Danish; presented a certification from the Royal Danish Consulate to prove this claim, and maintained that he was married to Imelda, and that in the birth certificate of their first child, his nationality as Danish was correctly stated. Likewise, in *Republic vs. Carriaga*, 159 SCRA 12, March 18, 1988, the Court upheld the trial court’s assessment that respondent Tan Lim, who sought the correction of entries in the birth records of his children, was able to prove his claims through testimonial and documentary evidence. (See also *Republic vs. Sayo*, 188 SCRA 634, August 20, 1990). Respondent Labrador was not able to prove the allegations in her petition.

Indeed, respondent correctly cites Article 176 of the Family Code, which states that “illegitimate children shall use the surnames x x of their mothers.” But to enforce such provision, the proper recourse is an adversarial contest. It must be stressed that Rule 108 does not contemplate any ordinary civil action but a special proceeding. But its nature, this recourse seeks merely to correct clerical errors, and not to grant or deny substantial rights. To hold otherwise is tantamount to a denial of due process to third parties and the whole world.

Rules in R.A. No. 9048.**Entries in the civil registry that may be changed or corrected without juridical order.**

Under the law, no entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname which can be corrected or changed by the concerned city or municipal registrar or consul general in accordance with the provisions of RA 9048 and its implementing rules and regulations. (Sec. 1, RA 9048)

Who and where to file a petition for correction of a clerical error or change in a name or nickname.

Any person having direct and personal interest in the correction of a clerical or typographical error in an entry and/or change of first name or nickname in the civil register may file in person a verified petition with the local civil registry office of the city or municipality where the record being sought to be corrected or changed is kept.

In case the petitioner has already migrated to another place in the country and it would not be practical for such party, in terms of transportation expenses, time and effort to appear in person before the local civil registrar keeping the documents to be corrected or changed, the petition may be filed, in person, with the local civil registrar of the place where the interested party is presently residing or domiciled. The two (2) local civil registrars concerned will then communicate to facilitate the processing of the petition.

Citizens of the Philippines who are presently residing or domiciled in foreign countries may file their petition, in person, with the nearest Philippine Consulates. (Sec. 3, RA 9048).

How many times a person avail of the right to change his first name.

All petitions for the correction of clerical or typographical errors and/or change of first names or nicknames may be availed of only once. (Sec. 3, RA 9048)

Grounds for change of first name or nickname.

The petition for change of first or nickname may be allowed in any of the following cases:

1. The petitioner finds the first name or nickname to be ridiculous, tainted with dishonor or extremely difficult to write or pronounce;
2. The new first name or nickname has been habitually and continuously used by the petitioner and he has been publicly known by that first name or nickname in the community; or
3. The change will avoid confusion (Sec. 4, RA 9048).

Case:

**In Re Petition for Change of Name
Julian Wang vs. Cebu City Civil Registrar
G.R. No. 159966, March 30, 2005**

Facts:

On September 22, 2002, petitioner Julian Lin Carulasan Wang, a minor, represented by his mother Anna Lisa Wang, filed a petition for change of name and/or correction/cancellation of entry in the Civil Registry of Julian Lin Carulasan Wang. Petitioner sought to drop his middle name and have his registered name changed from “Julian Lin Carulasan Wang” to “Julian Lin Wang.” He contended that it would be for his best interest to drop his middle name as this would help him to adjust more easily to and integrate himself into Singaporean society. The trial court denied the petition saying that the State has an interest in the name of a person, names cannot be changed to suit the convenience of the bearers. It was further ruled that when he reaches the age of majority, he could then decide whether he will change his name by dropping his middle name. His motion for reconsideration having been denied, he filed a petition for review on certiorari arguing that with globalization and mixed marriages, there is a need for the Supreme Court to rule on the matter of dropping of family name for a child to adjust to his new environment, for consistency and harmony among siblings, taking into consideration the “best interest of the child.” It is argued that convenience of the child is a valid reason for changing the name as long as it will not prejudice the State and others. He pointed out that the middle name “Carulasan” will cause him undue embarrassment and the difficulty in writing or pronouncing it will be an obstacle to his social acceptance and integration in the Singaporean community. Rule on the contention.

Held:

The contention is not correct. The State has an interest in the names borne by individuals and entities for purposes of identification, and that a change of name is a privilege and not a right, so that before a person can be authorized to change his name given him either in his certificate of birth or civil registry, he must show proper or reasonable cause, or any compelling reason which may justify such change. Otherwise, the request should be denied. (Rep. vs. Lee Wai Lam, 28 SCRA 1040).

The touchstone for the grant of a change of name is that there be ‘proper and reasonable cause’ for which the change is sought. (Rep. vs. CA, 300 SCRA 138). To justify a request for change of name, a person must show not only some proper or compelling reason therefore but also that he will be prejudiced by the use of his true and official name. Among the grounds for change of name which have been held valid are: (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence, as in legitimation; (c) when the change will avoid confusion; (d) when one has continuously used and been known since childhood by a Filipino name, and was unaware of alien parentage; (e) a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudicing anybody; and (f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest. (Rep. vs. CA, 209 SCRA 189; Rep. vs. Hernandez, 253 SCRA 509).

Article 413. All other matters pertaining to the registration of civil status shall be governed by special laws. (n)

This law makes reference to Act No. 3753, “An Act Establishing a Civil Register.”