

CIVIL CODE of the PHILIPPINES ANNOTATED

BY

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by

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To my dearly beloved wife Gloria†, my loving children Emmanuel, Edgardo, Jr., and Eugene; my caring daughter-in-law Ylva Marie; and my talented grandchildren Yla Gloria Marie and Edgardo III – in all of whom I have found inspiration and affection – I dedicate this humble work.

PREFACE

Notwithstanding the dawning of E-Commerce, it cannot be gainsaid that the purpose of language is communication.

This volume is now on its 16th edition. While this book found print as a hard-bound way back in 1959 (1st ed.), it actually started 10 years earlier (1949) in mimeographed form.

This edition is completely revised — with every single Article annotated plus the addition of noteworthy features such as the latest Supreme Court decisions and circulars, and recent legislations related to persons and family relations.

For that matter, the Publisher would like to extend its gratitude to the late revered author's second son, Dean/Dr. Edgardo C. Paras, for the timely, relevant, and material update. Edgie, as he is fondly monickered, is a doctor of civil law, a Ph.D. in Economics, a fellow of Hague Academy of International Law, president of Philippine Legal Writers' Association, vice-president of De La Salle University Press, a consultant of US Government-AGILE [an attached group of Harvard Institute for International Development and Pricewaterhouse Coopers], and former consultant of Associated Press-Dow Jones/Telerate, governor of National Book Development Board of the Office of the President, judicial staff head of the Supreme Court, and full professor of Assumption, DAP Institute of Public Management, PMI Institute of Graduate Studies, UP Law Center, and UST Graduate School of Law. Just very recently, Dr. Paras took post-doctoral studies at the famed John F. Kennedy School of Government at Harvard University.

Acknowledgment is likewise made to the other immediate members of the Paras clan, Gloria (retired Court of Appeals Justice), Emmanuel (senior partner of Sycip Salazar Hernandez & Gatmaitan law firm), and Eugene (MTC Judge of Hagonoy, Bulacan) for additional research.

This volume (I) by the way, as well as the other volumes (II-V), was bestowed the "Book Centenary Award" by the Supreme Court, as a scholarly reference.

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INTRODUCTORY CHAPTER

(1) Law Considered As ‘Instructions from the Maker’

If an inventor in a moment of generosity, should favor you with the gift of a complicated newly-invented machine, how would you make it work? The answer is simple: follow his instructions. Follow the machine manual’s instructions, and the machine will work. Disregard them, and the machine will simply refuse to function.

How can the human machine — this strange, lovable, complex machine called MAN, with its mortal body, and its eternal soul — be made to function well? The answer is also simple: follow the instructions of its Maker. Unless this is done, the human machine will become a futile, senseless object, utterly incapable of fulfilling its destiny. These instructions from the Maker — we call the LAW.

(2) Faculties and Objects of the Human Mind

The human mind consists principally of two faculties:

- (a) the *intellect* — the proper object of which is the TRUTH;
- (b) and the *will* — the proper object of which is the GOOD.

The intellect cannot rest till it has comprehended INFINITE TRUTH; the will cannot be satisfied till it has grasped INFINITE GOOD.

Since the combination of the truth and the *good is what we call the beautiful, it follows* that the combination of INFINITE TRUTH and INFINITE GOOD is INFINITE BEAUTY or GOD.

Thus it is that man, who was created by GOD (the First Cause), is ultimately destined for GOD (Who is also the Last Cause).

Thus, it is also that man, whose purpose is to know GOD, to love HIM, and to serve HIM in this world, and to be happy with HIM forever in the next, can attain his final destiny only by following the LAW.

(3) 'Law' Defined in its Most Generic Sense

Law may be defined in its most generic signification as an ordinance of reason promulgated for the *common good* by *Him Who is in charge*.

To be useful and fair, law has to be *promulgated*, *i.e.*, made known to those who are expected to follow it.

(4) Classification of Law According to the Manner of Its Promulgation

<i>NATURAL LAW</i> (promulgated <i>impliedly</i> in our conscience and body)	<i>Natural Moral Law</i> (applies to our higher faculties) (<i>example</i> : do good and avoid evil)
	<i>Law of Nature</i> (applies to both our higher and lower faculties) (<i>example</i> : the law of gravity)
<i>POSITIVE LAW</i> (promulgated <i>expressly</i> or <i>directly</i>)	<i>Divine Positive Law</i> (like the 10 Commandments)
	<i>Divine-Human Positive Law</i> (like the Commandments of the Catholic Church)
	<i>Human Positive Law</i> (like Congressional Statutes or Executive Orders)

[NOTE: Understandably, this book will deal only with Human Positive Law, and at that, only a portion thereof. The two other kinds of Positive Law are more properly discussed in Tomes on Theology and Theodicy.]

(5) ‘Human Positive’ Law Defined

In general, human positive law is a reasonable rule of action, expressly or directly promulgated by competent human authority for the common good, and usually, but not necessarily, imposing a sanction in case of disobedience.

Justice Bradley of the United States Supreme Court says — “law is a science of principles by which civil society is regulated and held together, by which right is enforced, and wrong is detected and punished.”

De Page speaks of law as “the body of rules governing the conduct of persons living in association with others, under the guaranty of social compulsion.”

Upon the other hand, Sanchez Roman says that law is a rule of conduct, just, obligatory, promulgated by legitimate authority, and of common observance and benefit.

(6) Essential Elements of Human Positive Law

- (a) Reasonable rule of action.
- (b) Due promulgation — for otherwise obedience can hardly be expected.
- (c) Promulgation by competent authority.
- (d) Generally, a sanction imposed for disobedience.

(7) Human Positive Law Distinguished from Morality

While human positive law covers only external conduct, morality covers both external acts and internal thoughts. Moreover, the former is enforced by the State; this is not so in the case of morality, except insofar as moral legislation has been enacted.

(8) Bases of Human Positive Law

Human positive law has for its *basic premises* the following Divine Pronouncements, the natural moral nature of man, legislative enactments, jurisprudence or judicial decisions, conventions or treaties, customs and traditions.

(9) Concepts of Law as ‘Derecho’ and ‘Ley’

- (a) Considered as a *cause*, “*derecho*” is the abstract science of law; considered as an *effect*, it is the given.
- (b) “*Ley*” is a specific law.

[NOTE: A student of law (*derecho*) studies specific laws (*leyes*).]

(10) Classification of Human Positive Law

- (a) According to whether a right is given, or merely the *procedure* for enforcement is laid down:
 - 1) *Substantive law* — that which establishes rights and duties. (*See Bustos v. Lucero, 81 Phil. 640.*)
 - 2) *Remedial (or procedural or adjective) law* — that which prescribes the manner of enforcing legal rights and claims.
- (b) According to the *scope or content of the law*:
 - 1) *Private law* — that which regulates the relations of the members of a community with one another. (This consists of Civil and Commercial Laws.)
 - 2) *Public law* — that which governs the relations of the individual with the State or ruler or community as a whole. (This includes Political Law, Criminal or Penal Law, and Remedial Law.)
- (c) According to *force or effect*:
 - 1) *Mandatory (absolute, imperative) and/or Prohibitive laws* — those which have to be complied with, because they are expressive of public policy: disobedience is punished either by direct penalties or by considering an act or contract void. [*Examples: a transfer of large cattle is not valid unless registered (Sec. 33, Act 1147); a donation of real property must be in a public instrument to be valid even as between the parties. (Art. 749, Civil Code).*]
 - 2) *Permissive (or suppletory) laws* — those which may be deviated from, if the individual so desires. [*Exam-*

ple: In the case of “hidden treasure,” the finder gets 50% and the owner of the land on which it is found gets 50%. (See Art. 438). However, by agreement, the proportion can be changed.]

(11) ‘Civil Law’ Defined

- (a) It is that branch of the law that generally treats of the *personal and family relations* of an individual, his *property and successional rights*, and the effects of his *obligations and contracts*.
- (b) It is that mass of precepts that determine and regulate the relations of assistance, authority, and obedience among members of a family, and those which exist among members of a society for the protection of private interests (*1 Sanchez Roman, Estudios de Derecho Civil, p. 70 citing Arribas*), family relations, and property rights. (*1 Falcon 9*).

[NOTE: The word “civil” is derived from the Latin word “*civiles*,” a citizen, as distinguished from a savage or a barbarian. Originally, the word pertained to a member of a “*civitas*” or free political community. (*Black’s Law Dictionary, p. 331*)].

(12) ‘Civil Law’ Distinguished from ‘Political Law’

While *civil law* governs the relations of the members of a community with *one another*, *political law* deals with the relations of the people and the *government*.

(13) ‘Civil Law’ Distinguished from the ‘Civil Code’

While most of our civil laws are found in the Civil Code, still the Civil Code is not the only place where we can find our civil laws. A Civil Code is a compilation of existing civil laws, scientifically arranged into books, titles, chapters, and sub-heads and promulgated by legislative authority. (*Black’s Law Dictionary, p. 334*). A codification may be necessary to provide for *simplicity, unity, order, and reform* in legislation. From time to time, however, *additional* civil statutes, civil presidential

decrees (during the existence of martial law), or civil executive orders may be promulgated. For instance, Presidential Decree 603, otherwise known as "*The Child and Youth Welfare Code*," effective six months from the date of its approval on December 10, 1974 (Art. 213 thereof) introduces new rules on adoption and child welfare. In fact, said Code *expressly repeals* Articles 334 up to 348 inclusive (articles on adoption) of the Civil Code, and replaces them with Articles 27 to 42 inclusive of The Child and Youth Welfare Code. (Art. 26, PD 603). In turn, PD 603 has been amended by PD 1179.

Several years back, then President Corazon C. Aquino promulgated "*The Family Code of the Philippines*," Executive Order 209, July 6, 1987, as amended by Executive Order 227, July 17, 1987. Art. 257 thereof reads:

“Art. 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)”

Arts. 254, 255 and 256 of The Family Code read as follows:

“Art. 254. Titles III, IV, V, VI, VII, VIII, IX, XI and XV of Book I of Republic Act 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 603, otherwise known as *The Child and Youth Welfare Code*, as amended, and all regulations, or parts thereof, inconsistent herewith are hereby repealed. (n)

Art. 255. If any provision of this Code is held invalid, all the other provisions not affected thereby shall remain valid. (n)

Art. 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)”

CIVIL CODE OF THE PHILIPPINES (REPUBLIC ACT 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)

COMMENT:

(1) Sources of the Civil Code

- (a) The Civil Code of Spain
- (b) The Philippine Constitution of 1935
- (c) Statutes or Laws (Philippine, American, European)
- (d) Rules of Court (local and foreign)
- (e) Decisions of local tribunals (particularly the Supreme Court)
- (f) Decisions of foreign tribunals
- (g) Customs and traditions of our people
- (h) General principles of law and equity
- (i) Ideas from the Code Commission itself

[NOTE: The principal basis is the Civil Code of Spain, which became effective in the Philippines either on December 7, 1889 (*Mijares v. Neri*, 3 *Phil.* 195) or on

December 8, 1889. (*Benedicto v. Rama*, 3 *Phil.* 34). The correct date, it would seem, is December 7, 1889 (or 20 days after publication in the *Gaceta de Manila* on November 17, 1889). (See *Insular Government v. Aldecoa*, 19 *Phil.* 505; *Barretto v. Tuason*, 59 *Phil.* 845). Titles 4 and 12, however, of Book 1 of said Civil Code were never applied, for their application in the Philippines was suspended. (See also *Barretto v. Tuason*, 59 *Phil.* 845). (Note that the Civil Code of Spain was in turn an adaptation of the Code Napoleon — French Civil Code of 1804)]

(2) Commentators and Annotators on the Civil Code of Spain

Among the famous commentators and annotators on the Civil Code of Spain were:

- (a) Justice Jose Ma. Manresa y Navarro (*Comentarios alCodigo Civil Español* — 12 volumes)
- (b) Felipe Sanchez Roman (*Estudio de Derecho Civil*)
- (c) Quintus Mucius Scaevola (pen name of a group of commentators borrowed from the famous Roman juris-consultant) (*Codigo Civil Comentado*)
- (d) Calixto Valverde (*Tratado de Derecho Civil Español*)
- (e) Mario Navarro Amandi (*Cuestionario del Codigo Civil Reformado*)
- (f) Colin and Capitant (French authors), De Buen (who wrote the Spanish notes). (*Curso Elemental de Derecho Civil*)
- (g) Enneccerus, Kipp, and Wolff (German authors — *Derecho Civil*)
- (h) Chief Justice Jose Castan Tobenas

(3) Brief History of Our Civil Laws

- (a) Prior to the present Civil Code, our civil law was premised principally on the old Civil Code (the Civil Code of Spain of 1889).

- (b) Prior to the Civil Code of Spain of 1889, our civil law was found in the *Recopilacion de las Leyes de las Indias* with the following as supplemental laws to be applied in the following order:
 - 1) the latest Spanish laws enacted for the colonies
 - 2) *La Novisima Recopilacion*
 - 3) *La Nueva Recopilacion*
 - 4) the Royal Ordinances of Castille
 - 5) *Leyes de Toro* (Laws of Toro)
 - 6) the *Siete Partidas* (promulgated thru the *Ordenamiento de Alcalá* of 1384)

(4) Sources of Philippine Civil Law

- (a) The 1935 and the 1973 Philippine Constitutions, respectively. (*See Art. 7, par. 2, Civil Code*). (In the case of *Javelana v. The Executive Secretary*, L-36283, Mar. 31, 1973, the Supreme Court ruled that there was no more obstacle to the effectivity of the 1973 Constitution. Its effective date is Jan. 17, 1973 noon, according to a Presidential Proclamation). After the 1973 Constitution, we had the Freedom (Revolutionary and Provisional) Constitution promulgated as a result of the EDSA Revolution of Feb. 22-25, 1986. Presently, we have the 1987 Constitution, effective Feb. 2, 1987.
- (b) Statutes, laws, presidential decrees, or executive orders which are applicable.
- (c) Administrative or general orders insofar as they are not contrary to the laws or the Constitution. (*See Art. 7, par. 3, Civil Code*).
- (d) Customs of the place, provided they are not contrary to existing laws, public order, or public policy. (*Art. 11, Civil Code*).
- (e) Judicial decisions (interpreting the law), as well as judicial customs (where decisions are made notwithstanding the

absence of applicable statutes or customs). (*Art. 11, Civil Code*).

- (f) Decisions of foreign courts.
- (g) Principles covering analogous cases. (*Cerrano v. Tan Chuco, 38 Phil. 932*).
- (h) Principles of legal hermeneutics (statutory construction).
- (i) Equity and the general principles of law (juridical standards of conduct premised on morality and right reasoning).

(5) Books of the Civil Code

- (a) Book I — Persons (Note — Book I is called “Persons” instead of “Persons and Family Relations” because *juridical persons* such as corporations, which are likewise referred to in Book I, have NO families.)
- (b) Book II — Property, Ownership, and its Modifications
- (c) Book III — Different Modes of Acquiring Ownership
- (d) Book IV — Obligations and Contracts:

Other Parts:

- 1) Preliminary Title
- 2) Human Relations
- 3) Transitional Provisions
- 4) Repealing Clause

(6) Some Important Changes Made by the Civil Code

- (a) Book I — The elimination of absolute divorce, the creation of judicial or extrajudicial family homes, the insertion of a chapter on Human Relations, the abolition of the “*dowry*,” greater rights for married women.
- (b) Book II — There are new provisions on the quieting of title; on the creation of new easements. The provisions on the “*censo*” and “*use and habitation*” have been eliminated.

- (c) Book III — The holographic will has been revived; rights (successional) of the surviving spouse and of illegitimate children have been increased; the “*mejora*” or “betterment” has been disregarded.
- (d) Book IV — Defective contracts have been reclassified; there is a new chapter on “reformation of contracts;” some implied trusts are enumerated; new quasi-contracts have been created.

(7) The Code Commission

A Code Commission of five members was created by then President Manuel A. Roxas thru Executive Order 48, dated Mar. 20, 1947, in view of the need for immediate revision and codification of Philippine Laws — in conformity with Filipino customs and ideals, and in keeping with progressive modern legislation. The final draft of the Civil Code was finished on Dec. 16, 1947. The Commission rendered its report in a publication dated Jan. 26, 1948. Congress approved the draft on June 18, 1949 as Republic Act 386.

(8) The Original Members of the Code Commission

- (a) Dean Jorge Bocobo (Chairman)
- (b) Judge Guillermo B. Guevarra (Member)
- (c) Dean Pedro R. Ylagan (Member)
- (d) Dean Francisco R. Capistrano (Member)

[NOTE: The fifth member Senator Arturo Tolentino had not yet been appointed at the time the Civil Code was drafted.]

(9) Proportion of Changes

The Civil Code contains 2270 articles, 43% of which are completely new provisions.

(10) Language of the Civil Code

Inasmuch as the Civil Code was written in English, and approved as such by Congress, the English text should

prevail in its interpretation and construction. (*Sec. 15, Rev. Adm. Code*). Literal English translations of Spanish or Latin terms must be interpreted, however, according to their original sources.

(11) Need for a Preliminary Title

Please note that in the preceding Chapter I is the phrase "*Preliminary Title*." The purpose of this Title is to set forth *general principles*.

Art. 2. Laws shall take effect after fifteen days following the completion of their publication in the *Official Gazette*, unless it is otherwise provided. This Code shall take effect one year after such publication. (1a)

COMMENT:

(1) Scope of the Article on Effectivity of Laws

This Article provides for the effectivity of two kinds of law, namely:

- (a) An ordinary law
- (b) The Civil Code

NOTE: When a country is placed under martial law, the law-making authority is ordinarily vested in the Chief Executive or President or Commander-in-Chief who usually issues:

- (1) General Orders (which may sometimes be similar to CODES)
- (2) Presidential Decrees or Executive Orders (which may be similar to STATUTES)
- (3) Letters of Instruction or Letters of Implementation (which may be similar to CIRCULARS)
- (4) Proclamations (which are *announcements* of important things or events)

Tañada v. Tuvera
GR 63915, Dec. 29, 1986

The Supreme Court cannot rule upon the wisdom of a law or to repeal or modify it if it finds it impractical. That is not its function. That function belongs to the legislature. The task of the Supreme Court is merely to interpret and apply the law as conceived and approved by the political departments of the government in accordance with prescribed procedure.

(Nota Bene: Executive Order 200, dated June 18, 1987, modifying Article 2 of the Civil Code, now provides for the publication of laws either in the Official Gazette or in a newspaper of general circulation in the Philippines as a requirement for effectivity.)

(2) Effectivity Date of an Ordinary Law

An ordinary law takes effect:

- (a) On the date it is expressly provided to take effect. (*Art. 2, Civil Code*).
- (b) If no such date is made, then after 15 days following the completion of its publication in the *Official Gazette* (*Art. 2, Civil Code*) or in a newspaper of general circulation.

(3) When No Publication Is Needed

Where a law provides for its own effectivity, such as, for example July 4, 2002; or “upon approval” (*i.e.*, by the President or by Congress over the veto of the President), publication in the *Official Gazette* is not necessary so long as it is not punitive in character. This was the rule enunciated by the Supreme Court in *Askay v. Casalan* (46 Phil. 179) and in *Balbuna v. Sec. of Education* (L-14283, Nov. 29, 1960).

If a law is signed on the *last* hour of June 16, and the law itself says it becomes effective upon approval, was it already effective even during the *first* hour of June 16? In *Republic of the Phil. v. Encarnacion* (L-3936, Dec. 29, 1950), it was held that the answer should be in the affirmative, otherwise we

would be confronted with a situation where the fixing of the date of effectivity would depend on the *unreliable* memory of man.

(4) When Publication Is Needed

Unless otherwise provided, laws shall take effect *after 15 days* following the completion of the publication in the *Official Gazette* (Art. 2, Civil Code) or in a newspaper of general circulation.

Tañada v. Tuvera GR 63915, Dec. 29, 1986

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. It must be made in the *Official Gazette*, and not elsewhere, as a requirement for their effectivity after 15 days from such publication or after a different period provided by the legislature.

[NOTE: When an ordinary law or presidential decree is therefore completely published in an issue of the *Official Gazette* dated say, Sep. 12, 2002, it becomes effective, unless otherwise provided, on Sep. 28, 2002 — the 16th day after its publication. (Note that the laws say “after 15 days following,” meaning on the *16th day* following publication, *not* on the 15th day following: just as “after *Wednesday*” means Thursday, and not Wednesday.)]

[NOTE: The provision in the Administrative Code relating to effectivity “*at the beginning of the fifteenth day* after the completion of the publication” has, therefore, been repealed.]

(5) Rule Applicable to Certain Circulars but not to All

The rule relating to the effectivity of a law applies to a Central Bank circular (*People v. Que Po Lay, 50 O.G. 4850, GR L-6791, Mar. 29, 1954*) inasmuch as the latter, having been issued for the implementation of the law authorizing its issuance, has the force and effect of law, according to settled juris-

prudence. (*U.S. v. Tupas Molina*, 29 Phil. 119). The fact that the circular is PUNITIVE in character is the principal reason why publication should be made. The Regulations implementing the Minimum Wage Law issued by the Chief of the Wage Administration Service cannot be given punitive effect unless published in the *Official Gazette*. (*People v. Uy Kimpang, Jr.*, C.A., 52 O.G. 3087).

However, circulars which are mere statements of general policy as to how the law should be construed do NOT need presidential approval and publication in the *Official Gazette* for their effectivity. Such a circular may be exemplified by Circular 22 of the Social Security Commission. Said Circular purports merely to advise employers-members of the System that, in the light of the amendment of the law, they should include in determining the monthly compensation of their employees, upon which compensation the social security contributions should be based. The circular is within the authority of the Social Security Commission to promulgate. (*Victorias Milling Co. v. Social Security Commission*, L-16704, Mar. 17, 1962).

People v. Que Po Lay
L-6791, Mar. 29, 1954

FACTS: Po Lay was accused of violating Circular No. 20 of the Central Bank compelling those who had foreign currency to sell the same to the Central Bank. Po Lay alleged that as the circular had not yet been published in the *Official Gazette* before he committed the act, the circular should have no effect on his act and that therefore he should be acquitted.

HELD: Po Lay is correct for the circular has the force of law, and should have been published. Moreover, as a rule, circulars which prescribe a penalty for their violation should be published before becoming effective. This is based on the general principle and theory that before the public is bound by its contents, especially its penal provisions, a law, regulation, or circular must first be published, and the people officially and specifically informed of said contents and the penalties for violation thereof.

Tañada v. Tuvera
GR 63915, Dec. 29, 1986

The circulars issued by the Monetary Board must be published if they are meant not merely to interpret but to “fill in the details” of the Central Bank Act (RA 265) which that body is supposed to enforce.

Escardo v. Manalo
Adm. Matter 2268-MJ
Nov. 7, 1980

Barangay court reference or referral is needed — “effective upon receipt of the certification by the Minister (now Secretary) of Local Government and Community Development that all the barangays within the court’s jurisdiction have organized their Lupons provided for in PD 1508, otherwise known as the “*Katarungang Pambarangay Law*” (Circular 22 issued by Chief Justice Enrique M. Fernando, and dated Nov. 9, 1979). Said circular was noted in a Letter of Implementation of President Ferdinand E. Marcos dated Nov. 12, 1979.

Phil. Association of Service
Exporters v. Hon. Ruben Torres, et al.
GR 10279, Aug. 6, 1992

While the questioned circulars (Department Order 16) and POEA (Memorandum Circular 30, Series of 1991) are a valid exercise of the police power as delegated to the executive branch of the Government, nevertheless, they are LEGALLY INVALID, defective and unenforceable for LACK OF PROPER PUBLICATION and filing in the Office of the National Administrative Register as required in Art. 2 of the Civil Code, Art. 5 of the Labor Code, and Secs. 3(1) and 4, Chapter 2, Book VII of the Administrative Code of 1987.

(6) Rule applied to Executive Orders and Administrative Rules

- (a) Must conform to standards of the law. (*Tayug Rural Bank v. Central Bank, GR 46158, Nov. 28, 1986*).

- (b) Administrative Rules have the force of law. (*Ibid.*)

**Tayug Rural Bank v. CB
GR 46158, Nov. 28, 1986**

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 on the fundamental law itself, a public official must locate in the statute relied upon, a grant of power before he can exercise it. Department zeal may not be permitted to outrun the authority conferred by statute.

(7) Date of Effectivity of the New Civil Code (BAR)

In the case of *Lara v. Del Rosario* (GR 6339, 50 O.G. 1957), the Supreme Court in an *obiter dictum* (*obiter* — because the principal date concerned in the case was September 4, 1950) held that the Civil Code of the Philippines took effect on Aug. 30, 1950. This date is exactly one year after the *Official Gazette* publishing the Code was released for “circulation,” the said release having been made on Aug. 30, 1949.

This ruling with respect to the effectivity date seems to be contrary to the provision of the law which states that “This Code shall take effect one year after such *publication*” (*Art. 2, Civil Code*), *not* after “circulation.” And under the Revised Administrative Code (*Sec. 11*), “for the purpose of fixing the date of issue of the *Official Gazette*, it is *conclusively* presumed to be *published* on the date indicated therein as the date of *issue*.” It should be remembered that the *June 1949 issue* of the *Official Gazette* was circulated on Aug. 30, 1949. While it is no doubt desirable that the date of issue should be the same as the date of circulation, for otherwise the public may be unduly prejudiced, still no amount of *judicial legislation* can or should outweigh the express provision of *Sec. 11* of the

Revised Administrative Code. *Dura lex sed lex* (“the law may be harsh but it is the law”).

Furthermore, the ruling in the *Del Rosario* case is contrary to the Supreme Court’s statement in a prior case that the reason for the conclusive presumption in the Revised Administrative Code “is obviously to avoid uncertainties likely to arise if the date of publication is to be determined by the date of the *actual release of the Gazette*.” (*Barretto, et al. v. Republic, L-2738, 2739, and 2740, Prom. Dec. 21, 1950*).

Manuel Lara, et al. v. Petronilo del Rosario, Jr.
L-6339, Prom. Apr. 20, 1954, 50 O.G. 1957

FACTS: The plaintiffs were former taxi drivers of the defendant. When the latter sold some of his vehicles, the plaintiffs who were no longer needed were dismissed. Because their employer did not give them their one month’s salary in lieu of the notice required in Art. 302 of the Code of Commerce, this action was instituted.

HELD: The services of the plaintiffs ended September 4, 1960, when the new Civil Code was already in force, it having become effective Aug. 30, 1950 (or one year after it was released for circulation). The new Civil Code in Art. 2271 repealed the provisions of the Code of Commerce governing agency, one provision of which was Art. 302. Hence, the plaintiffs are no longer entitled to their one month severance pay.

[*NOTE:* After this case was decided, an Act (RA 1052) was passed providing for a one-month severance pay or a one-month notice in case of dismissal from a job where the term of employment has not been definitely fixed. (*Jose Monteverde v. Casino Español, L-11365, Apr. 18, 1958*). Subsequently, said Act was further amended by RA 1787 (Termination Pay Law), effective June 21, 1957.]

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

COMMENT:**(1) Latin Maxim on Ignorance of the Law**

A familiar legal maxim is found in the Latin *Ignorantia legis non excusat* meaning *Ignorance of the law excuses no one*. It would seem that this maxim is a bit unfair today: before the compliance is required, there must be due promulgation of the law; now then, the present method of promulgation — publication in the *Official Gazette* is clearly inadequate — *firstly*, the *Official Gazette* generally comes out several years late; *secondly*, how many of our citizens can get hold of a copy thereof, much less, read the same? Moreover, in a very real sense, law was made for evil men. The good hardly need law when they do good acts, this is not because they are deliberately complying with the law, but because they are simply good men.

Upon the other hand, without the maxim, the corrupt will make social existence unbearable, abuses will increase, and ignorance will be rewarded.

(2) Applicability of the Maxim

Art. 3 applies to all kinds of *domestic* laws, whether civil or penal (*Luna v. Linatoc*, 74 *Phil.* 15; *Delgado v. Alonzo*, 44 *Phil.* 739), and whether substantive or remedial (*Zulueta v. Zulueta*, 1 *Phil.* 258) on grounds of expediency, policy, and necessity, *i.e.*, to prevent evasion of the law. However, the maxim refers only to *mandatory* or *prohibitive* laws, not to permissive or suppletory laws. (*See 1 Manresa 56*).

Ignorance of foreign law is not ignorance of the law, but ignorance of the fact because foreign laws must be alleged and proved as matters of fact, there being no judicial notice of said foreign laws. (*Adong v. Cheong Seng Gee*, 43 *Phil.* 43; *Sy Joc Lieng v. Syquia*, 16 *Phil.* 137).

Thus, what the law of Texas is with respect to successional rights to the estate of a citizen of Texas, domiciled in the Philippines at the moment of her death — is a question of fact, which must duly be ascertained in a proceeding held in the probate court. (*PCIB v. Hon. Venicio Escolin*, L-27860 and L-27896, Mar. 29, 1974; *Testate Estate of the Late Linnie Jane*

Hodges, et al. v. Lorenzo Carlos, et al., L-27936 and L-27937, Mar. 28, 1974).

If the foreign law is not properly alleged and proved, the presumption is that it is the same as our law. (*Estate of Suntay, 50 O.G. 5321*). This presumption has been referred to by the famed author Wharton as a “processual presumption.” (*Coll. of Int. Rev. v. Fisher, et al., L-11622 and L-11668, Jan. 28, 1961*). Thus, a marriage in China celebrated before a *village leader* therein cannot be recognized as valid in the Philippines, unless there is *proof* that indeed in China and according to Chinese law such a marriage is regarded as valid. Without such proof, we will assume that the law on marriage in China is the same as the law in the Philippines, and in our country, it is well-known that a *village leader cannot* perform a marriage, whether before or after the effectivity date of the new Civil Code. (*Wong Woo Yiu v. Vivo, et al., L-21076, Mar. 31, 1965*).

**Philippine Commercial and Industrial Bank
v. Hon. Venicio Escolin
L-27860, Mar. 29, 1974**

FACTS: The deceased Hodges was a citizen of Texas but a domiciliary of the Philippines. A claim was made by the administrator (PCIB) of his estate that under Texas law, the successional rights to the estate of the deceased would be governed by the law of the domicile (as a result of *renvoi* — the referring back to our country of the problem). This claim of the administrator was, however, disputed. What should the court do?

HELD: The court must resolve the matter by asking for proof on what the Texas law on the matter is. This proof must be presented before the trial court (the Supreme Court thus remanded the case to the trial court so that the latter might receive evidence *re* the law of Texas). Be it noted that the foreign law must be proved as a fact unless the court already actually knows what it is, either because it is already generally known, or because it has been so ruled in other cases before it, and there is no claim to the contrary.

Subsidiary Issue:

Suppose *before presenting proof of the Texas laws*, the administrator states what said Texas law is, and how the alleged law would affect the administration of the estate, would the administrator still be able to invoke the *correct* Texas law, if in his previous statement, he had made an error as to what said law was?

HELD: No more, since he would be in estoppel (stopped from asserting the truth, in view of the previous falsity). After all proof of a foreign law needs proof as to a FACT, and in the matter of facts, there can be estoppel.

[*NOTE:* It is believed that while the proving of a foreign law requires the proving of a fact, still once the foreign law is actually proved, what has been proved is a LAW, and not a mere fact. As to law, there is no question that there cannot be estoppel. It is therefore submitted by the annotator that the correct Texan law can still be applied.]

Generally a written foreign law can be proved in our courts by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. When however said foreign law has been presented properly in evidence during, say, the probate of a will, the court can take judicial notice of said foreign law in a subsequent hearing of the project of partition, *WITHOUT* proof any more of such law. (*Testate Estate of Bohanan, L-12105, Jan. 30, 1960*). However, in other cases subsequently brought, the Supreme Court ruled that it is essential to prove all over again the existence of the foreign law already proved in a prior case. *Reason:* The foreign law may have undergone changes or amendments since the hearing of the original case.

Republic v. Emilio Guanzon
L-22374, Dec. 18, 1974

FACTS: Emilio Guanzon borrowed money from the Bank of Taiwan during the Japanese occupation. Security was given in the form of a real mortgage on two parcels, and a chattel

mortgage on the crops growing on said parcels. When the Philippines was liberated in 1946, the mortgage credit was acquired by the United States, and later transferred to the Philippines thru the Philippine Property Act of 1946 (of the US Congress, and therefore, a foreign law). The Philippines then filed an action for foreclosure. The lower court dismissed the action, *firstly*, on the ground that the Philippines is not a party in interest (has no real legal interest in the mortgage loans), and *secondly*, on the ground that the foreign law cited cannot be taken judicial notice of, and *resultantly*, cannot be effective in our country.

HELD: 1. The Philippines has legal interest in the mortgage loans, because the mortgage credit was transferred to our government by the U.S. thru the Philippine Property Act of 1946 (a foreign law duly acquiesced in by both the executive and legislative branches of our government). (*Brownell, Jr. v. Sun Life Assurance Co., 95 Phil. 228 [1954]*).

2. Because of such consent, said foreign law can be taken judicial notice of, and therefore can be given effect in our country.

(3) Scope of ‘Ignorance of the Law’

When we say “*ignorance of the law*,” we refer not only to the literal words of the law itself, but also to the meaning or interpretation given to said law by our courts of justice. (*Adong v. Cheong Seng Gee, 43 Phil. 43; Sy Joc Lieng v. Syquia, 16 Phil. 137*).

(4) Ignorance of the Law Distinguished from Ignorance of the Fact (Mistake of Fact)

While ignorance of the law is no excuse, *i.e.*, no excuse for not complying with the law, ignorance of the fact eliminates criminal intent as long as there is no negligence.

Thus, a man who marries a second wife upon the reasonable belief after due search that his wife, missing for 10 years, is dead, does not incur criminal responsibility (*U.S. v. Enriquez, 32 Phil. 202*) even if it turns out that the first wife is still alive. This is merely ignorance of the fact.

Art. 41 of the Family Code, however, provides:

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 the reappearance of the absent spouse.

[NOTE: A person who charges usurious rates of interest cannot claim justification in his ignorance of the Usury Law. He can, therefore, be made to pay reasonable attorney's fees of the debtor (*Delgado v. Alonzo*, 44 Phil. 739), aside from other consequences. Clearly, this is ignorance of the law.]

[NOTE: As of today, however, usury is no longer prohibited under Central Bank (now Bangko Sentral) Circulars.]

Ignorance of the law prohibiting the possession of certain drugs, like opium, cannot excuse criminal responsibility. (*U.S. v. Que-Quenco*, 12 Phil. 444).

The following have been held to be mere honest mistakes of facts:

- (a) An honest error made by a lawyer in the interpretation of the law. (Therefore, he cannot be disbarred on this ground.) (*In Re Filart*, 40 Phil. 205 — “No Attorney is bound to know all the laws; God forbid that it should be imagined that an attorney or counsel or even a judge is bound to know all the laws. The knowledge we acquire is forgotten at the moment when most needed. The science of law is a most extensive and difficult one.”). Be it noted, however, that a client is bound by the mistakes of

his lawyer. (*Severino Macavinta, Jr. v. People, L-36052, Dec. 28, 1973*).

- (b) An erroneous belief that a certain court had jurisdiction to grant an absolute divorce. (*Marcelo v. Jason, 60 Phil. 442*). A subsequent marriage entered into under such erroneous belief will still be one contracted in *good faith* by such party. (*Ibid.*)
- (c) If a girl married without parental consent thinking she was already of a certain age when as a matter of fact she was several years younger, she is not criminally liable, for this is an honest mistake of fact. (*U.S. v. Peñalosa, 1 Phil. 190*).

(5) Ignorance of the Law as the Basis of Good Faith

The Civil Code specifically provides that a mistake on a doubtful or difficult question of law may be the basis of *good faith*. (*Art. 526*). This does not mean, *however*, that one is excused because of such ignorance. He is still liable, but his liability shall be *mitigated, i.e.*, while he will still be considered as a debtor, he will be a debtor in *good faith*.

Thus, it has been held that one who possesses land by virtue of a *void* contract can, nevertheless, be considered a possessor in good faith if the law involved is comparatively difficult to comprehend, and as such he is entitled to reimbursement for useful improvements he had introduced on the land before he is deprived of the land. (*Kasilag v. Rodriguez, 69 Phil. 217*).

(6) Ignorance of the Law on the Part of the Judge

**Asuncion v. Hon. Casiano P.
Anunciacion, Jr.
AM MTJ-90-496, Aug. 18, 1992**

Respondent Judge's denial of complainants' right to be assisted by counsel and the right to defend themselves, even as their father (Marcelo Asuncion) pleaded for postponement of the proceedings because his lawyer was not available at the

time, constitute oppressive and precipitate action by respondent Judge who displayed arrogance and *gross ignorance of the law* and violated the complainants' human rights.

Atty. H. Balayon, Jr. v. Judge G. Ocampo
AM MTJ-91-619, Jan. 29, 1993

Every court has the power and indeed the duty to amend or reverse its findings and conclusions when its attention is timely called to any error or defect therein. Let it be noted, though, that this is the second complaint charging respondent Judge of issuing a search warrant and/or warrant of arrest in violation of the requirement of personal knowledge of the facts and circumstances by the applicant and his witnesses. This does not speak well of respondent Judge's appreciation and application of the law. It would be beneficial for both respondent Judge and those whose cases would fall within his jurisdiction, if respondent updated himself with the law and the latest jurisprudence.

(7) Ignorance of the Law on the Part of the Sheriff

Del Rosario, et al. v. Bascar, Jr., et al.
Adm. Matter P-88-255, Mar. 3, 1992

FACTS: A sheriff has been charged with gross ignorance of the law, an issue not confined to judges alone. In a verified letter-complaint, Manuel U. del Rosario, *et al.*, charged Deputy Sheriff Jose Bascar, Jr. of the Municipal Trial Court in Cities (MTCC), Branch 4, Cebu City for "Gross Ignorance of the Law, Levying Properties Unreasonably and Unnecessarily Levying Properties with Malice and Abuse of Authority and Gross/Willful Violation of Law."

This case originated from a complaint filed with the then Human Settlements Regulatory Commission, Region VII, Cebu City in HSRC Case REM-0006-210685 entitled "*Angel Veloso, et al. v. Esperanza del Rosario, et al.*," for violation of Presidential Decree 957, otherwise known as the Subdivision and Condominium Buyer's Protective Decree.

A decision was rendered on the aforesaid case on June 10, 1986, the dispositive portion of which reads: “WHEREFORE, in view of the foregoing considerations, respondents Esperanza del Rosario, Manuel del Rosario, Adelaida Kalubiran and Nicolas Kalubiran are hereby ORDERED — jointly and severally — 1. to apply for and secure a Certificate of Registration from this Commission within two (2) months from receipt hereof; 2. to accept installment payments from complainants with interest at the legal rate of twelve percent (12%) per annum and to execute a Deed of Sale over subject lots once full payment of the unpaid balance of the purchase price is effected; 3. to register the Contract of Sale executed on March 1, 1974 with the Office of the Register of Deeds of Cebu City within one (1) month from receipt hereof; 4. to pay a fine of P2,000 for failure to secure a certificate of registration and a license to sell from this Commission within one (1) month from receipt hereof; 5. to develop the subdivision open space, parks and playgrounds as advertised within six (6) months from receipt hereof; and 6. to complete development of subdivision roads and underground drainage facilities up to lot lines within six (6) months from receipt hereof.”

Complainants alleged that respondent Deputy Sheriff is grossly ignorant of the law in implementing the writ of execution of the dispositive portion of the aforesaid case which orders specific performance and hence, is governed by Section 9 of Rule 39 of the Rules of Court. They said that under this Section, no levy of personal or real properties is required but thru gross ignorance, respondent executed the writ pursuant to Section 15 of Rule 39 and proceeded to levy on execution three (3) parcels of land having a total market value of P1,236,600 of Miradel Development Corporation wherein Esperanza del Rosario has alleged shares, interest and participation, in order to satisfy the judgment involving specific performance.

Further, complainants alleged that the levy on execution involved registered lands and hence, must be in accordance with Section 71, RA 496 which requires that levy on execution of registered lands must contain a reference to the number of the Certificate of Title of the land to be affected and the volume and page in the registry book where the certificate is

registered. It is contended by the complainants that respondent is grossly ignorant of the law considering that the dispositive portion of the decision is for specific performance and the fine of P2,000 is not payable to the prevailing parties but to the Commission. Complainants asserted that the levy on the three (3) parcels of land belonging to the Miradel Corporation with a value of more than P1 million is excessive considering that, apparently, the levy is for the payment of the fine of P2,000 and the implementation of the writ was tainted with malice and abuse of authority because he could have just levied on the personal properties of the herein complainants which could satisfy the alleged judgment and costs.

Pursuant to a Resolution of the Supreme Court dated Nov. 23, 1988, respondent filed his comment on the complaint, contending that the levy was not made to satisfy the fine of two thousand pesos (P2,000) but to protect the rights of the prevailing parties considering that complainants refused to comply with the decretal portion of the decision. He stated that the lots he levied upon which are portions of the lots in controversy covered by TCTs 55606 and 55607 are vacant and there was malice and bad faith in the transfer of the lots in question to Miradel Development Corporation wherein complainant Esperanza del Rosario is the treasurer. In the resolution of this Court dated Dec. 5, 1990, this case was referred to Executive Judge; Regional Trial Court, Cebu City for investigation, report and recommendation. Executive Judge Godardo A. Jacinto in his report merely admonished respondent deputy sheriff.

HELD: Disagreeing with the investigating Judge's decision, the Supreme Court said: The deputy sheriff's unjustifiable acts demand sanction. Respondent acted with gross ignorance of the law in making an unreasonable and unnecessary levy in the process of enforcing the writ of execution of a decision ordering specific performance and payment of a fine of P2,000. He deviated from what was decreed in the writ by making an unnecessary levy on execution of three lots allegedly forming part of the lots in controversy which were already sold to the Miradel Development Corporation by the complainants. The manner in which respondent conducted the levy leaves no room for doubt that he was unmindful of the rule that in the exercise

of his ministerial duty of enforcing writs, it was incumbent upon him to ensure that only that portion of a decision decreed in the dispositive part should be the subject of execution, no more, no less. He made no effort to limit the levy to the amount called for in the writ.

Respondent had no reason to make a levy on three parcels of land belonging to Miradel Development Corporation after having found that Esperanza del Rosario, one of the respondents in the HSRC case, was treasurer thereof on the pretext of protecting the prevailing parties whom he claims could eventually lose the lots by reason of the sale thereof by complainants to the said corporation. More importantly, the Court opined, it was not incumbent upon him as sheriff to determine for himself the means to safeguard the rights of the prevailing party in a case for specific performance. All that he was called upon to do in such instance was to serve the writ of execution with a certified copy of the judgment requiring specific performance upon the party/parties against whom the same was rendered and in case of failure to abide, it is at the prevailing party's instance not the sheriff's that the aid of the court may be sought.

This Court had said before, and reiterates it here, as it has done in other cases, that the conduct and behavior of every one connected with an office charged with the dispensation of justice, from the presiding justice to the lower clerk, should be circumscribed with the heavy burden of responsibility. His conduct, at all times, must only be characterized by propriety and decorum but above all else be above suspicion. Respondent's actuations in enforcing the Writ of Execution of HSRC Case REM-0006-210685 did not live up to this strict standard.

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

COMMENT:

(1) Reason Why Laws in General Are Prospective

In general, laws are prospective, not retroactive. While the judge looks backward, the legislator must look forward. If

the rule was that laws were retroactive, grave injustice would occur, for these laws would punish individuals for violations of laws not yet enacted. While ignorance of the law does not serve as an excuse, such ignorance refers only to laws that have already been enacted.

Thus, the amendment to the Workmen's Compensation Act, effective June 20, 1962, making the Act apply to *all* industrial employees without regard to the *amount of compensation*, *cannot* be applied so as to give compensation for the death of a laborer in 1951, when the Act then excluded from its benefits employees receiving more than P42.00 a week and the said laborer had a weekly wage of P43.00. (*NASSCO v. Santos, et al.*, L-9561, Sep. 30, 1957). Similarly, the requirement under RA 1199 for a *written notice* at least a year in advance before a landlord can lay-off an agricultural tenant in view of *intended mechanized farming*, *cannot* affect pending actions for such lay-off. The requirement is *substantive*, and not merely procedural in nature. (*Tolentino v. Alzate*, L-9267, Apr. 11, 1956).

Largardo v. Masaganda, et al.
L-17624, June 30, 1962

FACTS: Under RA 2613, inferior courts had NO jurisdiction to appoint guardians. A subsequent statute, Rep. Act No. 3090, approved in June 1961, sought to correct this oversight, and the new law thus granted to said courts jurisdiction over guardianship cases. Now then in view of the passage of the new law, would a municipal court have jurisdiction over a petition for guardianship filed in January 1960, when Rep. Act No. 2613 was still in force?

HELD: No, for the new Act should *not* be given retroactive effect, in the absence of a saving clause to the contrary. The jurisdiction of a court depends on the law existing at the time an action is filed.

Buyco v. Philippine National Bank
L-14406, June 30, 1961

Art. 4 of the Civil Code applies to amendment of statutes. After an Act is amended, the original Act continues to be in

force with regard to all rights that had accrued prior to such amendment. Applying this rule, it has been held that RA 1576 divesting the Philippine National Bank of the authority to accept backpay certificates in payment of loans, does not apply where the offer of payment was made before the effectivity of said Act.

ABS-CBN v. Court of Tax Appeals
L-52306, Oct. 12, 1981

A circular or ruling issued by the Commissioner of Internal Revenue has no retroactive effect if to have such would adversely affect a taxpayer.

People v. Jabinal
L-30061, Feb. 27, 1974

When a doctrine laid down by the Supreme Court is overruled and a different view adopted, the new doctrine should be applied prospectively, and not apply to parties relying on the old doctrine and acting on the faith thereof.

Such 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.

(2) Exceptions to the Prospective Effects of Laws

While in general, laws are prospective, they are retroactive in the following cases:

- (a) If the laws themselves provide for retroactivity (*Art. 4, Civil Code*), but in no case must an *ex post facto* law be passed. [It should be noted that generally, the Philippine Constitution does not prohibit retroactive laws. (*Camacho v. Court of Industrial Relations, 80 Phil. 848*).].

[NOTE: An example of an *ex post facto* law is one that makes criminal and punishable an act done before the passing of the law and which was innocent when done. (*Boston v. Cummins, 6 Ga. 102; People v. Bao, L-11324, Mar. 29, 1958*).].

[NOTE: The War Profits Tax Law, which imposed certain taxes on profits made during the Japanese Occupation or World War II, while retroactive in application (since the law was enacted AFTER World War II) is not unconstitutional since, it is *NOT ex post facto*. *The prohibition against ex post facto laws applies only to criminal matters, and not to civil matters (People v. Taguba, GR 95207-17, Jan. 10, 1994, 47 SCAD 172) such as the imposition of taxes. (Testate Estate of Fernandez, L-9141, Sept. 25, 1956)*. Indeed, tax statutes can expressly be allowed retroactive operation. Such a phenomenon is indeed incidental to social existence. (*Lorenzo v. Posadas, 64 Phil. 353*). Of course, failure to pay under the War Profits Tax Law is criminally punishable, but this refers only to failure to pay AFTER (not before) the effectivity of the law — the taxes imposed on profits earned during the war.]

[NOTE: Art. 256 of the Family Code provides:

“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.”]

- (b) If the laws are remedial in nature.

[REASON — There are no vested rights in rules of procedure. (*Aguillon v. Dir. of Lands, 17 Phil. 507*). Therefore, new rules of court on procedure can apply to pending actions. (*People v. Sumilang, 77 Phil. 764; Art. 2258 of the Civil Code provides that procedural statutes apply to the enforcement of rights vested under the old law. See also Guevarra v. Laico, 64 Phil. 144; Laurel v. Misa, 76 Phil. 372*). The Arbitration Law (RA 876) which took effect on December 19, 1953, is procedural in character and may be applied retroactively to an agreement to submit to arbitration entered into prior to said date. (*Testate Estate of Jacobo Fajardo, L-9324, Aug. 30, 1957*).]

- (c) If the statute is penal in nature, provided:
- 1) It is favorable to the accused or to the convict;
 - 2) And provided further that the accused or convict is not a *habitual delinquent* as the term is defined

under the Revised Penal Code. (*Art. 22, Rev. Penal Code*).

[*EXAMPLE*: Statutes which lighten the penalty or completely extinguish the liability. (*U.S. v. Cuna, 12 Phil. 241; U.S. v. Soliman, 36 Phil. 5*).

Note that where the law imposes the payment of interest for delay in the payment of taxes, the interest *cannot* be considered a penalty, and the same cannot be applied retroactively to a tax delinquency incurred prior to the passage of the law. The reason is that interest is merely considered *as just compensation* to the state for the delay in paying the tax; and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands, especially if the interest charged is made proportionate to the period of delay. (*Maria B. Castro v. Collector, L-12174, Dec. 28, 1962*).

- (d) If the laws are of an emergency nature and are authorized by the police power of the government. (*Santos v. Alvarez, 44 O.G. 4259*). Laws enacted in the exercise of *police power*, to which Rep. Act No. 1199 belongs, may constitutionally affect tenancy relations created *even before* the enactment or effectivity thereof. (*Viuda de Ongsiako v. Gamboa, 47 O.G. 5613; Valencia, et al. v. Surtido, et al., L-17277, May 31, 1961*).
- (e) If the law is *curative* (this is necessarily retroactive for the precise purpose is to cure errors or irregularities). However, this kind of law, to be valid, must not impair vested rights nor affect final judgments. (*See Aetna Insurance Co. v. O'Malley, 118 SW 3*). (*Frivaldo v. COMELEC and Lee, GR 120295, June 28, 1996, 71 SCAD 413*).
- (f) If a substantive right be declared for the first time, unless vested rights are impaired. (*See Art. 2253, par. 2; also Uson v. Del Rosario, L-4963, Jan. 29, 1953; Belen v. Belen, 49 O.G. 997; People v. Alejaga, GR L-49, O.G. 2833*).

[*NOTE*: What constitutes a *vested* or *acquired right* will be determined by the Courts as each particular issue is submitted to them. The Supreme Court has defined a vested right as some right or interest in property that has

become fixed and established that it is no longer open to controversy. (*Balbao v. Farrales*, 51 Phil. 498). It may also be defined as such right the deprivation of which would amount to a deprivation of property without due process of law. A right is also vested when it has so far been perfected that nothing remains to be done by the party asserting it. (*Dones v. Director, et al.*, L-9302, May 14, 1956).].

[NOTE: A spurious (say, adulterous) child, whose filiation has been either judicially declared or voluntarily admitted by the parent, was not entitled to any legitime under the old Civil Code, but is now entitled thereto under the new Civil Code, provided that the parent *dies* after the new Civil Code became effective. This is an example of a new right granted for the first time. Be it noted, however, that to get his rights, the spurious child must as already stated have been recognized *voluntarily* or by *judicial decree*. (See *Republic v. Workmen's Compensation Commission*, L-19946, Feb. 26, 1965).]

But if the parent died under the old Code, the spurious child cannot get any legitime, since this would now impair the vested right of the other heirs. This is so even if the inheritance has not yet been distributed, because succession accrues from the moment of death and not from the moment of distribution of the inheritance. (*Art. 777, Civil Code*). Indeed, the law distinctly provides that successional rights are vested upon the death of the decedent. (*Art. 2263, Civil Code*).].

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

COMMENT:

(1) Mandatory or Prohibitory Laws

It should be noted that Art. 5 refers to *mandatory* or *prohibitory* laws, as distinguished from those which are merely *permissive*. While one has to obey *mandatory* statutes, other-

wise his acts would generally be void, the violation of *directory* laws does not result in invalid acts. (*38 Corpus Juris, 956; See also Ramos v. Hijos de I. de la Rama, 15 Phil. 554*).

Kinds of mandatory legislation (like penal and some contractual laws):

- (a) Positive — when something must be done
- (b) Negative or prohibitory — when something should not be done

Example: Generally, in order to be valid, a simple donation *inter vivos* of a parcel of land must be in a *public* instrument. If *orally* made, or if effectuated in a *private* instrument, the donation is null and void. (*Art. 749, Civil Code*).

**Philippine Association of Free Labor
Unions (PAFLU), et al. v. Sec. of Labor, et al.
L-22228, Feb. 27, 1969**

ISSUE: Are legal provisions prescribing the period within which a decision should be rendered, mandatory or directory?

HELD: They are MANDATORY in the sense that if not complied with, other officers concerned may be dealt with administratively. But this is also DIRECTORY in the sense that the judgments rendered after said period would still be valid (unless there be some other important defect). (*See also Estrella v. Edaño, L-18883, May 18, 1962*).

(2) Exceptions

Although in general, violations of mandatory or prohibitory laws result in *void* acts or contracts, in some instances, the law authorizes their validity. (*Art. 5, Civil Code*). Among these exceptional instances are the following:

- (a) When the law makes the act not void but merely *voidable* (valid, unless annulled) at the instance of the victim.

Example: Although consent of the parties is essential for a valid marriage, still if that consent is vitiated by

intimidation or fraud, the marriage is not null and void, but only voidable. (*Art. 87, Civil Code; Art. 45[3], Family Code*). A contract entered into by a municipal council for the lease of certain fisheries without the approval of the provincial governor is only voidable. (*Mun. of Camiling v. Lopez, L-89945, May 23, 1956*).

- (b) When the law makes the act valid, but subjects the wrongdoer to criminal responsibility.

Example: A widow generally must wait for 300 days before she can remarry. If she violates this and she marries again, the marriage is valid, *as long as she was able to obtain a marriage license*, without prejudice to her criminal liability. (*Art. 351, Rev. Penal Code; See 1 Manresa 64-65*). Of course, had she married without the requisite marriage license, the marriage would be void under the law. (*Art. 80, Civil Code*).

- (c) When the law makes the act itself void, but recognizes some legal effects flowing therefrom.

Example: A brother cannot marry his sister, and therefore ordinarily, any child they would have would be illegitimate; if however, they marry first before having the child, the child would be legitimate if the child is conceived or born before the judgment declaring the marriage void becomes final and executory. (*Art. 54, Family Code*).

- (d) When the law itself makes certain acts valid although generally they would have been void.

Example: The Jai-Alai, or the horse races or the Sweepstakes, including Lotto, on the part at least of the spectators, or purchasers (ticket), is a game of chance, but the law itself allows gambling on the results therein.

Art. 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)

COMMENT:**(1) Rules for the Waiver of Rights**

General rule — Rights may be waived

Exceptions:

- (a) When the waiver is contrary to law, public order, public policy, morals, or good customs.
- (b) When the waiver is prejudicial to a third person with a right recognized by law. (*Art. 6, Civil Code*). (Unless, of course, such waiver has been made with the consent of such third persons).

[*NOTE:* Art. 6 deals with the waiver of rights, not the waiver of obligations or duties. Waiver of obligations or duties would be possible only if the person being possessed of certain rights, and *resultant* obligations or duties waives the said rights; or if the law itself authorizes such waiver (*e.g.*, if a person who has a right renounces the same, in a sense he is exempting himself from the obligations that may have ensued from the exercise of the right).].

(2) Definitions

- (a) *Right* — the power or privilege given to one person and as a rule demandable of another (*Black's Law Dictionary, p. 1158*), as the right to recover a debt justly due. In still another sense, a right denotes an interest or title in an object or property. (*Black's Law Dictionary, p. 1558*). Generally, rights involve two subjects: the *active subject* (the person entitled) and the *passive subject* (the person obliged to suffer the enforcement of the right).

Rights may be:

- 1) real rights (*jus in re, jus in rem*) — enforceable against the whole world (absolute rights);
- 2) personal rights (*jus in personam, jus ad rem*) — enforceable against a particular individual (relative rights).

- (b) *Waiver* — the intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right. (*Christenson v. Carleton*, 69 Vt. 91). Thus, a waiver may be express or implied. (*Black's Law Dictionary*, pp. 1827-1828).

**Leopoldo Lorenzo v. Workmen's Compensation
Commission, et al.
L-42631, Jan. 31, 1978**

FACTS: An employee of the Philippine Glass Manufacturing Co. incurred TB allegedly in the course of employment. As a result, claim was made for compensation. The claim was not contested (or controverted) in time by the employer. What is the effect of such non-controversion?

HELD: The failure to timely and effectively controvert the claim amounts to a WAIVER or RENUNCIATION of the right to controvert the claim.

(3) Requisites for a Valid Waiver

- (a) The person waiving must be capacitated to make the waiver. (Hence, a waiver by a minor or by an insane person or *non-compos mentis* is voidable).
- (b) The waiver must be made clearly, but not necessarily express. (*Acting Prov. Sheriff of Surigao v. PTC*, L-4083, Aug. 31, 1953; *Andres v. Crown Life Insurance Co.*, L-10874, Jan. 28, 1958).
- (c) The person waiving must actually have the right which he is renouncing; otherwise, he will not be renouncing anything. (*See TS*, Mar. 11, 1964).
- (d) In certain instances the waiver, as in the express remission of a debt owed in favor of the waiver, must comply with the formalities of a donation. (*See Art. 1270, Civil Code*).
- (e) The waiver must not be contrary to law, morals, public policy (the aim of the State in promoting the social welfare of the people). (*Ferrazini v. Gsell*, 34 Phil. 693), public

order (or public safety) (*Ferrazini v. Gsell*, 34 Phil. 693), or good customs (those which exist in a particular place). (*Art. 6, Civil Code*).

- (f) The waiver must not prejudice others with a right recognized by law.

**Jovencio Luansing v. People
of the Philippines
L-23289, Feb. 28, 1969**

FACTS: In a criminal action for seduction, the offended party expressly reserved the right to file a separate civil action. The CFI (now RTC) found the accused guilty, and imposed civil liabilities. No motion for reconsideration was filed by the offended party.

ISSUE: Was the imposition of civil liability proper, despite the reservation?

HELD: No, the imposition of the civil liability was not proper because:

- (a) there was the reservation as to the civil aspect;
- (b) the mere failure to file a motion for reconsideration does not necessarily result in waiver or abandonment. Abandonment requires a more convincing *quantum* of evidence than mere forbearance to actually file the civil action, especially when we consider the fact that the same could be filed even after the decision in the criminal case had been rendered;
- (c) proof should be given with respect to the amount.

**Velasco v. Court of Appeals
96 SCRA 616**

If a corporation waives (by selling) in favor of the GSIS all the former's rights in a subdivision, and assumes the payment of debts for materials used,

and later said corporation becomes insolvent, the GSIS should answer for said debts for it has obtained the benefits (the improvements of which the GSIS is now the owner).

(4) Examples of Rights that Cannot be Renounced

(a) *Natural rights, such as the right to life*

[Therefore, if a person requests another to kill him, the killer would still be criminally liable. (*Art. 253, Rev. Penal Code*). As a matter of fact, even if a person is not the killer himself, if a person assists another in the latter's suicide, the helper is penalized by the penalty of *prision mayor*. (*Art. 253, Rev. Penal Code*). The right to be supported (present or future support) cannot be renounced, for support is vital to the life of the recipient. (*Art. 301*).].

(b) *Alleged rights which really do not yet exist*

Future inheritance cannot be renounced, since no right is vested till the death of the decedent. (*Art. 2263, Civil Code*).

(c) *Those the renunciation of which would infringe upon public policy*

- 1) The right to be heard in court cannot be renounced in advance, hence, this kind of confession of judgment cannot be allowed.
- 2) A waiver of the legal right to repurchase a homestead that had been sold if the waiver is made in advance. This is so, otherwise the benevolent intent of the State to give the homesteader all chances to preserve for himself and his family the land that the State has rewarded him which would be rendered useless. (*Barcelon v. Arambulo, et al., C.A. 48 O.G. 3976*).
- 3) A waiver in advance of the one-month separation pay (*the mesada*) is contrary to public policy, but not a waiver after the right has accrued. (*Sanchez v. Lyons Construction Co., 48 O.G. 605*).

- 4) A tenant is *not* allowed to waive his right to the exemption provided by the Rice Tenancy Act from lien and attachment of 25% of his share in the land products because such a waiver would be equivalent to a waiver of the tenant's right to live. Thus, a sheriff's levy on said properties, and the subsequent sale thereof, should be considered unlawful. (*Maniego v. Castelo*, L-9855, Apr. 29, 1957).
 - 5) A waiver of the 10-year period for suing on a written contract (*Art. 1144*) is contrary to public policy. (See *Macias and Co. v. China Fire Insurance Co.*, 46 Phil. 345; *Deocariza v. General Indemnity Co.*, CA, 53 O.G. 345).
 - 6) A stipulation requiring the recipient of a scholarship grant to waive (before receiving said award) his right to transfer to another school, unless he refunds the equivalent of his scholarship in cash, is null and void. The school concerned obviously understands scholarship awards as a business scheme designed to increase the business potential of an educational institution. Thus, conceived, it is not only inconsistent with sound policy, but also with good morals. (*Cui v. Arellano University*, L-15127, May 30, 1961).
- (d) *When the waiver is prejudicial to a third person with a right recognized by law*

Examples:

- 1) While an heir may renounce present inheritance (*i.e.*, inheritance that has already accrued by virtue of the decedent's death), still if the waiver will prejudice existing creditors, the latter can accept the inheritance in the name of the heir, but only to the extent sufficient to cover the amount of their credits. (*Art. 1052, Civil Code*).
- 2) *T* dies leaving *J* and *H* as heirs. *H* has his own children. If *H* repudiates the inheritance, his own children will clearly be prejudiced because *H* would have less property and the entire estate would be

inherited by *J*. However, *H* is allowed to do this renouncing since after all, the children of *H* have no right recognized by the law (to their own legitime) till after *H*'s own death. The right to the legitime is indeed, from this viewpoint, a mere expectancy.

Padilla v. Dizon
L-8026, Apr. 20, 1956

FACTS: Because the land he bought had a much smaller area than what had been agreed upon, Padilla sued the seller Dizon either for a refund of the whole amount or for a proportionate reduction in price. Judgment was rendered in Padilla's favor, giving Dizon the option to choose: refund or reduce. After the judgment had become final, Dizon selected the right to refund the whole amount. But Padilla, apparently realizing that the sale was really in his favor, filed a motion to *wave the decision* in his favor, and asked for the restoration of the parties to the *status quo*.

HELD: This cannot be done because a waiver cannot prejudice the right given to Dizon to make the choice. Dizon here is an example of a third person with a right recognized by law.

(5) Examples of Rights that may be Renounced

- (a) Support *in arrears* — for evidently this is no longer needed for subsistence. (*Art. 301, Civil Code*).
- (b) The right granted to prepare at least two days before trial is waivable, expressly or impliedly. It can be implied from the failure to ask for sufficient time to prepare for trial. (*People v. Moreno, 7 Phil. 548*).
- (c) The right to object to testimony of a wife on information obtained because of her domestic relations with her husband, is waived when a husband accused of killing his son, *does not only deny his guilt, but also points to the wife as the killer*. (*People v. Francisco, 78 Phil. 69*). In a prosecution for rape against his own child, a husband

cannot object to the testimony given by his wife against him, for in effect this may be considered an offense committed by a husband against his wife.

- (d) The right of the accused to be helped by counsel may also be waived; provided, the judge informs said accused of his right. (*U.S. v. Escalante*, 39 *Phil.* 743).
- (e) The right of the accused in a criminal case to have a preliminary investigation may be waived. (*U.S. v. Marfori*, 35 *Phil.* 666).
- (f) The venue of actions (the place where the action should be brought) may be waived, but not the court's jurisdiction. (*Central Azucarera v. De Leon and Fernando*, 56 *Phil.* 169).
- (g) Although a *tax* obligation has already been extinguished by prescription, the taxpayer may waive the benefit granted by law by reason of said prescription by the execution of a chattel mortgage to secure the payment of the same. (*Sambrano v. Court of Tax Appeals*, L-8652, *Mar.* 30, 1957).
- (h) An individual who accepts the office of an executor or administrator may waive compensation therefor. (*Sison v. Teodoro*, L-9721, *Mar.* 29, 1957).
- (i) The right to the back pay of an employee who has been dismissed without any justifiable cause may be waived by him. This is particularly so when he has been put back to work. (*Dimayuga v. CIR and Cebu Portland Co.*, L-10213, *May* 27, 1957).
- (j) Failure to ask for vacation and sick leave privileges after a period of more than 5 years constitutes a valid waiver unless the intent of the law granting the same is clearly otherwise. The purpose of the privilege is to give the employee a much needed rest, and not merely an additional salary. The privilege must be demanded in opportune time, and if he allows the years to go by in silence, he waives it. (*Phil. Air Lines, Inc. v. Balanguit, et al.*, L-8715, *June* 30, 1956; *Sunripe Coconut Prod. v. NLU*, L-7964, 51 *O.G.* 5133).

Papa and Delgado v. Montenegro
54 Phil. 331

FACTS: Under Art. 1387 of the old Civil Code, prior to its amendment by the Paraphernal Law (*now Art. 140, new Civil Code*), a husband had the right to refuse his wife permission to alienate her paraphernal property. Could such a right be waived?

HELD: Yes, since there is nothing in the waiver that would be detrimental to anybody else. (*NOTE:* Under Art. 140 of the Civil Code, a wife of legal age can alienate her paraphernal property without the consent or permission of the husband.)

- (k) Prescription, if not pleaded as a defense before or during the trial, is deemed waived, and said defense cannot therefore be raised for the first time on appeal. (*Universal Corn Products, Inc. v. WCC and Pelagia Calderon, L-33463, May 21, 1974*).

Ectuban v. Court of Appeals
L-45164, Mar. 16, 1987

Notice to prospective redemptioner of the sale by a co-owner may be given either by the vendor or by the vendee, citing *De Conejero v. Court of Appeals, 16 SCRA 775* (where a copy of the deed of sale was presented).

Art. 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 courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.

Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution. (5a)

COMMENT:**(1) Sources of Law**

In general, the sources of law are given in this Article, and in the order of preference, they are: the Constitution, laws (or presidential decrees), administrative or executive acts, orders, and regulations.

(2) How Laws Are Repealed

Laws are repealed:

- (a) Expressly
- (b) Or impliedly (insofar as there are inconsistencies between a prior and a subsequent law)

[*NOTE*: Implied repeals are not looked upon with favor. (*U.S. v. Palacio*, 33 *Phil.* 208). Therefore, if both statutes can stand together, there is no repeal. (*Lichauco v. Apostol*, 44 *Phil.* 138).].

Borlough v. Fortune Enterprises
L-9451, Mar. 29, 1957

FACTS: Under the Chattel Mortgage Law, a chattel mortgage must be registered in the Chattel Mortgage Registry. Under the Motor Vehicles Law, a chattel mortgage on an *automobile* must be registered in the Motor Vehicles Office (now the Land Transportation Commission). Now then, has the latter law repealed the former?

HELD: No, because the requirement of registration in the Motor Vehicles Office is *merely additional* to the requirement of registration in the Chattel Mortgage Registry, if the subject matter is a vehicle. The two laws are complementary, not inconsistent. (*Borlough v. Fortune Enterprises, Inc.*, L-9451, Mar. 29, 1957). The failure of a chattel mortgagee to register the mortgage of a car in the Motor Vehicles Office has the effect of making said mortgage *ineffective* against third persons who have registered in the MVO the purchase in good faith of the car. (*Montano v. Lim Ang*, L-13057, Feb. 27, 1963).

[NOTE: Our Supreme Court, in the case of *Hilado v. Collector* (L-9408, Oct. 31, 1956), held that Philippine laws which are not of a political character continued to be in force during the Japanese Occupation, it being a legal maxim that a law once established continues until changed by some competent legislative power. Therefore, our *internal revenue laws*, among others, continued to exist during the occupation.]

[NOTE: The Civil Code repeals:

- 1) The old Civil Code of 1889.
- 2) The Code of Commerce provisions on sales, partnership, agency, loan, deposit, and guaranty.
- 3) The provisions of the Code of Civil Procedure on prescription, as far as they are inconsistent with the new Civil Code.
- 4) All laws, acts, parts of acts, Rules of Court, executive orders, and administrative regulations, inconsistent with the new Civil Code. (*Art. 2270, Civil Code*).].

[NOTE: In turn, we have the following repealing clause in the Family Code:

“Titles III, IV, V, VI, VII, VIII, IX, XI, and XV of Book 1 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.” (*Art. 254*).].

(3) Rule for General and Special Laws

In case of conflict between a general and a special law, which should prevail?

- a) If the general law was enacted prior to the special law, the latter is considered the exception to the general law. Therefore, the general law, in general remains good law, and there is no repeal (*Lichauco v. Apostol*, 44 *Phil.*

138), except insofar as the exception or special law is concerned.

- b) If the general law was enacted *after* the special law, the special law remains *unless*:
- (1) There is an express declaration to the contrary.
 - (2) Or there is a clear, necessary and unreconcilable conflict. (*Cia General v. Coll. of Customs*, 46 Phil. 8).
 - (3) Or unless the subsequent general law covers the whole subject and is clearly intended to replace the special law on the matter. (*In re: Guzman*, 73 Phil. 51; *Joaquin v. Navarro*, 81 Phil. 373).].

Bocobo v. Estanislao
L-30458, Aug. 31, 1976

FACTS: A radio broadcaster was accused of libel before the municipal court of Balanga, Bataan, the municipality being one of the places where the broadcast was heard. It was contended that while RA 1289 vested exclusive jurisdiction over libel cases in courts of first instance, still under a later law, RA 3828, municipal courts in provincial capitals were given *concurrent* jurisdiction over certain crimes (up to a certain penalty).

ISSUE: Which court has jurisdiction?

HELD: The Court of First Instance (now Regional Trial Court) of Bataan has jurisdiction. Repeal of the special enactment (RA 1289) by a *general but later enactment* (RA 3828) is NOT FAVORED, unless the legislative purpose to do so is manifest. This is so, even if the provisions of the general but later law are sufficiently comprehensive to include matters *apparently* set forth in the special law. Incidentally, the reason why suit must be filed with the RTC of the province is to prevent undue harassment of the accused, in case, for instance, the suit is brought in a very remote municipality, simply because the broadcast was heard there.

The contention that the alleged libel, having arisen from a *radio broadcast*, is triable only by a municipal court, because Art. 360 of the Revised Penal Code talks only of “defamation in writing” and does not say “by similar means” is not tenable, since the contention ignores the basic purpose of the law, namely, to prevent inconvenience or harassment. A radio broadcast may be spread far and wide, much more so than in the case of newspapers, and it is not difficult to imagine the deplorable effect (of the harassment) on the accused even if he has a valid defense.

[NOTE: An act passed *later* but going into effect earlier will prevail over a statute passed earlier and going into effect later. (*Manila Trading and Supply Co. v. Phil. Labor Union*, 72 Phil. 7). This is because the later enactment expresses the later intent.]

(4) Lapse of Laws

Laws may lapse (*i.e.*, end by itself in view of the expiration of the period during which it was supposed to be effective) without the necessity of any repeal as exemplified by the law granting the President, Emergency Powers (*Rodriguez v. Nat. Treasurer*, 45 O.G. 4412) or the annual appropriations law.

Problem:

A committed an offense, but before the time of trial, the offense was no longer considered an offense by the law. Should A still be punished?

ANSWER: It depends.

- (a) If there has been a complete repeal, he should not be punished anymore. (*People v. Tamayo*, 61 Phil. 225).
- (b) It is *otherwise* if the law merely lapsed, like for example, the Import Control Law. (*Ang Beng v. Com. of Immigration*, GR L-9621, Jan. 30, 1957). Here, the penalty can still be imposed.

(5) Effect if the Repealing Law is Itself Repealed

- (a) 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. (*Sec. 14, Rev. Adm. Code*).

EXAMPLE: Law A is expressly repealed by Law B. If Law B is itself repealed by Law C, is Law A revived? No, unless Law C expressly so provides.

- (b) 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. v. Soliman, 36 Phil. 5*).

EXAMPLE: Law A is impliedly repealed by Law B. Law B is later repealed by Law C. Is Law A revived? Yes, unless Law C provides otherwise.

(6) Non-Observance of the Law

Disuse, custom, or practice to the contrary does not repeal a law. Thus, although hardly enforced nowadays, an article of the Revised Penal Code still prohibits betting on the results of a basketball game, or any other sports contest. (*Art. 197, Rev. Penal Code*).

(7) Executive Fiat Cannot Correct a Mistake in the Law

A mistake in the law or in legislation cannot be corrected by executive fiat but by another legislation. Thus, in *Largado v. Masaganda (L-17624, June 30, 1962)*, the Supreme Court ruled that an opinion of the Secretary of Justice to the effect that inferior courts had jurisdiction over guardianship cases between Aug. 1, 1959 and June 17, 1961, when RA 2613 providing the contrary was in force, cannot be legally given application. (*See Comment No. 1, Art. 4*).

(8) Unconstitutional Laws, Treaties, Administrative or Executive Orders

- (a) *Rule under the 1935 Constitution*

To declare a *law* or a *treaty* unconstitutional, *eight* Justices of the Supreme Court out of eleven must so declare. (*Sec. 9, Judiciary Act of 1948*). A simple majority (*six Justices out of eleven*) would suffice to declare an executive or administrative order unconstitutional. (*Sec. 9, Judiciary Act of 1948*). This simple majority would likewise be sufficient to hold a municipal ordinance unconstitutional.

(b) *Rule under the 1973 Constitution*

The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in two divisions. (*Sec. 2[3], Art. X*).

All cases involving the constitutionality of a treaty, executive agreement, or law shall be heard and decided by the Supreme Court *en banc*, and no treaty, executive agreement or law may be declared unconstitutional without the concurrence of at least ten Members. All other cases, which under its rules are required to be heard *en banc*, shall be decided with the concurrence of at least eight Members. (*Sec. 2[2], Art. X*).

Cases heard by a division shall be decided with the concurrence of at least five Members but if such required number is not obtained, the case shall be decided *en banc*: *Provided*, That no doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in division may be modified or reversed except by the Court sitting *en banc*. (*Sec. 2[3], Art. X*).

(c) *Rule under the 1987 Constitution*

The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in divisions of three, five, or seven members. Any vacancy shall be filled within ninety days from the occurrence thereof. (*Sec. 4[1], Art. VIII*).

All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be

heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations shall be decided with the concurrence of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon. (*Sec. 4[2], Art. VIII*).

Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such members. When the required number is not obtained, the case shall be decided *en banc*: *Provided*, That no doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in division, may be modified or reversed except by the Court sitting *en banc*. (*Sec. 4[3], Art. VIII*).

The Supreme Court shall have the following powers:

Review, revise, reverse, modify, or affirm on appeal or *certiorari* as the law or the Rules of Court may provide, final judgments or orders of lower courts in:

All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question. (*Sec. 5[2-a], Art. VIII*).

(9) Supremacy of the Constitution

According to the Code Commission, the last paragraph of Art. 7 (*re* administrative or executive acts) “asserts the supremacy of law and the Constitution over administrative or executive acts. 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.” (*Report of the Code Commission*). It must be stated, however, that generally, rules and regulations

are imperative because Congress cannot conceivably provide for all necessary details in the enforcement of a particular law. (*De Villata v. Stanley*, 32 *Phil.* 541).

[NOTE: The Secretary of Finance can revoke a circular issued by his predecessor based on an erroneous construction of the law, because the construction of a statute by those administering it is not binding on their successors. An administrative officer cannot change a congressional law by a wrong interpretation of it. (*Hilado v. Collector*, L-9408, Oct. 31, 1956). Departmental regulations must be in harmony with legal provisions. The regulations by themselves should NOT be allowed to enlarge or extend the law. (*Inter-Provincial Autobus Co. v. Coll. of Int. Rev.*, 52 *O.G.* 791).].

**Lianga Bay Logging, Co., Inc. v.
Hon. Enage, et al.
L-30637, July 16, 1987**

Decisions of administrative officers should not be disturbed by the courts except when the former have acted without jurisdiction or in grave abuse of discretion.

**Alcuaz, et al. v. PSBA, et al.
GR 76353, May 2, 1988**

It is well-settled that by reason of their special knowledge and expertise gained from the handling of specific matters falling under their respective jurisdictions, the Court ordinarily accords respect if not finality to factual findings of administrative tribunals, unless the factual findings are not supported by evidence; where the findings are vitiated by fraud, imposition or conclusion; where the procedure which led to the factual findings is irregular; when palpable errors are committed; or when a grave abuse of discretion, arbitrariness, or capriciousness is manifest.

**Abra Valley College, Inc. v. Hon. Aquino, et al.
L-39086, June 15, 1988**

It is axiomatic that facts not raised in the lower court cannot be taken up for the first time on appeal. Nonetheless, as an

exception to the rule, although a factual issue is not squarely raised below, still in the interest of substantial justice, the Supreme Court is not prevented from considering a pivotal factual matter. The Supreme Court is clothed with ample authority to review palpable errors not assigned as such if it finds that their consideration is necessary in arriving at a just decision.

(10) No Collateral Attack

It is well-settled that the constitutionality of a law or executive order may not be collaterally attacked. They shall, therefore, be deemed valid unless declared null and void by a competent court. (*NAWASA v. Reyes, L-28597, Feb. 29, 1968*). The constitutionality of a law may not be made to depend on the effects of a conclusion based on a stipulation of facts entered into by the parties. Otherwise, the law would be constitutional in certain cases and unconstitutional in others. (*Genuino v. Court of Agrarian Relations, L-25035, Feb. 26, 1968*).

(11) Examples of Constitutional Laws

- (a) A statute providing that a school teacher who is a member of an organization which advocates the overthrow of the government by force is disqualified from continued employment in the public schools, is constitutional and does not violate either freedom of speech or assembly or due process of law. (*Adler v. Board of Educations, 34 U.S. 485 [1953]*).
- (b) The law on the installation of road safety signs and devices is constitutional because it is recommended under the 1968 Vienna Convention on road signs and signals. The Philippines is a signatory to said Convention. Besides, our country adopts the generally accepted principles of international law as part of the law of the land. (*Agustin v. Edu, L-49112, Feb. 2, 1979*).
- (c) A provision of the Share Tenancy Act which authorizes the tenant to change the *share tenancy* to that of *leasehold tenancy* is constitutional, having been inserted in the law to give the tenant an opportunity to improve his lowly lot. The police power has been exercised here to remedy an

acute socio-economic problem existing in the country, especially in the rice-producing provinces of Central Luzon. (*Macasaet v. CAR, etc., L-19750, July 17, 1964*).

- (d) RA 809 which regulates the relations among persons engaged in the sugar industry in the interest of police power and social justice. (*Ass. de Agricultores, etc. v. Talisay-Silay Milling Co., L-21304, Feb. 19, 1979*).
- (e) Secs. 4 and 34 of the Agricultural Land Reform Code (RA 3844), generally abolishing agricultural share tenancy and compelling the landowner and tenant to enter into the *leasehold system*, are CONSTITUTIONAL, as a valid exercise of police power. (*Eduarda S. Vda. de Genuino v. Court of Agrarian Relations, et al., L-25035, Feb. 26, 1968*).

**Eduarda S. Vda. de Genuino v.
The Court of Agrarian Relations, et al.
L-25035, Feb. 26, 1968**

FACTS: Twenty-two tenants of the estate of the deceased Jacinto Genuino, Jr. (local in Candaba, Pampanga) sued the judicial administratrix, Eduarda S. Vda. de Genuino — to compel her to convert their agricultural share tenancy relationship to leasehold tenancy pursuant to the Agricultural Land Reform Code. (*Rep. Act 3844*). The administratrix however alleged the unconstitutionality of said Land Reform Code, stating among other things that:

- (a) The freedom of contract is violated, and there is resultantly a deprivation of property without due process of law; and
- (b) Police power cannot be exercised on the ground that share tenancy does not involve health, morals, and public safety.

HELD: The abolition of share tenancy and the compulsion on landlord and tenant to enter into the leasehold system should be considered *constitutional*:

- (a) Individual rights to contract and property must give way to police power exercised for the public welfare. Instances where the state has imposed its will on account of police power include the enactment of the Social Security System Law, Child Labor Law, Blue Sunday Law, Minimum Wage Law, *etc.*
- (b) Police power is broad enough to be exercised on the basis of the ECONOMIC need for the public welfare. (*See Veix v. Sixth Ward Building and Loan Association, 310 U.S. 32.*)

Jose v. Arroyo
GR 78435, Aug. 11, 1987

The contention that Executive Order No. 127 is violative of the provisions of the 1987 Constitution guaranteeing career civil service employees security of tenure overlooks the provisions of Sec. 16, Art. XVIII (Transitory Provisions) which explicitly authorizes the removal of career service employees “not for cause but as a result of the reorganization pursuant to Proclamation No. 3, dated March 25, 1986 and the reorganization following the ratification of this Constitution.” By virtue of said provision, the reorganization of the Bureau of Customs under Executive Order 127 may continue even after the ratification of the Constitution, and career civil service employees may be separated from the service without cause as a result of such reorganization.

**Palm Avenue Realty Development
Corp. v. Presidential Commission
on Good Government (PCGG)**
GR 76296, Aug. 31, 1987

The Supreme Court had sustained the constitutionality of the grant to the PCGG of the power to sequester property alleged to be “ill-gotten,” “amassed by the leaders and supporters of the previous regime,” and the power to freeze assets and provisionally take over business enterprises.

Silverio v. PCGG
GR 77645, Oct. 26, 1987

Under Secs. 5 and 6 of the Rules and Regulations of the PCGG, the opportunity to contest the propriety of the sequestration order is available to the parties whose properties had been sequestered. The power to issue such writs, however, is qualified by Sec. 26 of the Transitory provision of the 1987 Constitution which provides that a sequestration or freeze order shall be issued only upon a showing of a *prima facie* case.

Lozano v. Martinez, et al.
L-63419, Dec. 18, 1986

It may be constitutionally impermissible for the legislature to penalize a person for non-payment of a debt *ex contractu*. But certainly it is within the prerogative of the lawmaking body to prescribe certain acts deemed pernicious and inimical to public welfare. Acts *mala in se* are not only acts which the law can punish. An act may not be considered by society as inherently wrong, hence, not *malum in se*, but because of the harm that it inflicts on the community, it can be outlawed and criminally punished as *malum prohibitum*. The state can do this in the exercise of its police power.

The gravamen of the offense punished under *Batas Pambansa Blg. 22*, popularly known as the Bouncing Check Law, is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of the deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property, but an offense against public order.

By definition, a *check* is a bill of exchange drawn on a bank and payable on demand. It is a written order on a bank, purporting to be drawn against a deposit of funds for the pay-

ment at all events, a sum of money to a certain person therein named or to his order or to cash, and payable on demand. Unlike a promissory note, a check is not a mere undertaking to pay an amount of money. It is an order addressed to a bank and partakes of a representation that the drawer had funds on deposit against which the check is drawn, sufficient to ensure payment upon its presentation to the bank. There is, therefore, an element of certainty or assurance that the instrument will be paid upon presentation. For this reason, checks have become widely accepted as a medium of payment in trade and commerce. Although not legal tender, checks have come to be perceived as convenient substitutes for currency in commercial and financial transactions. The basis or foundation of such perception is confidence. If such confidence is shaken, the usefulness of checks as currency substitutes would be greatly diminished or may become nil. Any practice, therefore, tending to destroy that confidence should be deterred, for the proliferation of worthless checks can only create havoc in trade circles and the banking community.

**Kapatiran ng mga Naglilingkod sa
Pamahalaan ng Pilipinas, Inc., et al. v.
Hon. Bienvenido Tan, et al.
GR 81311, June 30, 1988**

Executive Order No. 273 (effective Jan. 1, 1988), which amended certain sections of the Tax Code and adopted the *value-added tax* (VAT), is *not* oppressive, discriminatory, regressive nor violative of due process and equal protection clauses and other provisions of the 1987 Constitution.

The VAT is a tax levied on a wide range of goods and services. It is a tax on the *value, added by every seller*, with aggregate gross annual sales of articles and/or services, exceeding P200,000, *to his purchase of goods and services*, unless exempt. VAT is computed at the rate of 0% or 10% of the gross selling price of goods or gross receipts realized from the sale of services. VAT is said to have eliminated privilege taxes, multiple rated sales tax on manufacturers and producers, advance sales tax, and compensating tax on importations.

Herein, petitioners have failed to show that EO 273 was issued capriciously and whimsically or in an arbitrary or despotic manner by reason of passion or personal hostility. It appears that a comprehensive study of the VAT was made before EO 273 was issued. In fact, the merits of the VAT had been extensively discussed by its framers and other government agencies involved in its implementation, even under the past administration. For that matter, the VAT was already in force, in a modified form, before EO 273 was issued. As pointed out by the Solicitor General, the Philippine sales tax system, prior to the issuance of EO 273, was essentially a single stage value added tax system computed under the “cost subtraction method” or “cost deduction method” and was imposed only on original sale, barter or exchange of articles by manufacturers, producers, or importers. Subsequent sales of such articles were not subject to sales tax. However, with the issuance of PD 1991 on Oct. 31, 1985, a 3% tax was imposed on a second sale, which was reduced to 1.5% upon the issuance of PD 2006 on Dec. 31, 1985, to take effect on Jan. 1, 1986. Reduced sales taxes were imposed not only on the second sale, but on *every* subsequent sale, as well. EO 273 merely increased the VAT on *every sale* to 10%, unless zero-rated or exempt.

Moreover, the sales tax adopted in EO 273 is applied similarly on all goods and services sold to the public, which are not exempt, at the constant rate of 0% or 10%. The disputed sales tax, is also *equitable*. As earlier adverted to, it is imposed only on sales of goods or services by persons engaged in business with an aggregate gross annual sales exceeding P200,000. Small corner *sari-sari* stores are consequently exempt from its application. Similarly exempt from the tax are sales of farm and marine products, so that the costs of basic food and other necessities, spared as they are from the incidence of the VAT, are expected to be relatively lower and within the reach of the general public. Thus, EO 273 enumerates in its Sec. 102, zero-rated sales and in its Sec. 103, transactions exempt from the VAT.

Further, EO 273 has been in effect for quite sometime now, so that the fears expressed by the petitioners that the adoption of the VAT will “trigger the skyrocketing of prices of basic commodities and services,” as well as “mass actions and

demonstrations” against the VAT should by now be evident. The fact that nothing of the sort has happened, shows that the fears and apprehension of the petitioners appear to be more imagined than real. It would seem that the VAT, is not as bad as we are made to believe.

**Arturo M. Tolentino v. Secretary of Finance
and the Commissioner of Internal Revenue
GR 115455, Oct. 30, 1995
65 SCAD 352**

By stating that RA No. 7716 seeks to “[RESTRUCTURE] THE VALUE-ADDED TAX (VAT) SYSTEM [BY] WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED AND FOR OTHER PURPOSES,” Congress thereby clearly expresses its intention to amend any provision of the NIRC which stands in the way of accomplishing the purpose of the law.

Equality and uniformity of taxation means that all taxable articles or kinds of property of the same class be taxed at the same rate. The taxing power has the authority to make reasonable and natural classifications for purposes of taxation. To satisfy this requirement it is enough that the statute or ordinance applies equally to all persons, firms and corporations placed in similar situation. (*City of Baguio vs. De Leon, supra.*; *Sison, Jr. vs. Ancheta, supra.*) Indeed, the VAT was already provided in EO 273 long before RA 7716 was enacted. RA 7716 merely expands the base of the tax. The validity of the original VAT Law was questioned in *Kapatiran ng Naglilingkod sa Pamahalaan ng Pilipinas, Inc. vs. Tan, 163 SCRA 383 (1988)* on grounds similar to those made in these cases, namely, that the law was “oppressive, discriminatory, unjust and regressive in violation of Art. VI, Section 28(1) of the Constitution.”

The Constitution does not really prohibit the imposition of indirect taxes which, like the VAT, are regressive. What it simply provides is that Congress shall “*evolve* a progressive system of taxation.” The constitutional provision has been interpreted to mean simply that “direct taxes are . . . to be preferred [and] as much as possible, indirect taxes should be minimized.” (E.

Fernando, *THE CONSTITUTION OF THE PHILIPPINES* 221 [Second ed., 1977]). Indeed, the mandate to Congress is not to *prescribe*, but to *evolve*, a progressive tax system. Otherwise, sales taxes, which perhaps are the oldest form of indirect taxes, would have been prohibited with the proclamation of Art. VIII, Section 17(1) of the 1973 Constitution from which the present Art. VI, Section 28(1) was taken. Sales taxes are also regressive. Resort to indirect taxes should be minimized but not avoided entirely because it is difficult, if not impossible, to avoid them by imposing such taxes according to the taxpayers' ability to pay. In the case of the VAT, the law minimizes the regressive effects of this imposition by providing for *zero rating* of certain transactions (RA 7716, Section 3, amending Section 102[b] of the NIRC), while granting *exemptions* to other transactions. (*RA 7716, Section 4, amending Sec. 103 of the NIRC*).

The VAT is not a license tax. It is not a tax on the exercise of the privilege, much less a constitutional right. It is imposed on the sale, barter, lease or exchange of goods or properties or the sale or exchange of services and the lease of properties purely for revenue purposes. To subject the press to its payment is not to burden the exercise of its right any more than to make the press pay income tax or subject it to general regulation is not to violate its freedom under the Constitution.

(12) Some Grounds for Declaring a Law Unconstitutional

- (a) The enactment of the law may not be *within the legislative powers* of the lawmaking body.
- (b) *Arbitrary* methods may have been established.
- (c) The purpose or effect violates the Constitution or its basic principles. (*See In Re: Cunanan, supra.*)

(13) Example of an Unconstitutional Law

**In Re: Cunanan
(The Bar Flunkers' Case)
94 Phil. 534 (1954)**

FACTS: Congress thru RA 972 (Bar Flunkers' Act of 1953) decreed among other things, that bar candidates who obtained

in the bar exams of 1946 to 1952 a general average of 70% without failing below 50% in any subject should be admitted *en masse* to the practice of law despite their having been refused admission by the Supreme Court.

ISSUE: Has Congress the right to do this?

HELD: No, Congress has no right to admit these flunkers because this disputed law is not even legislation; it is a *judgment* — one revoking those promulgated by the Supreme Court during the aforesaid years affecting the bar candidates concerned. A good bar is essential for the proper administration of justice. For Congress to oblige the Tribunal to admit flunkers is contrary to reason. Surely, this law is a manifest encroachment on the Constitutional responsibility of the Supreme Court.

[*NOTE:* In the dissenting opinion of then Chief Justice Ricardo Mercader Paras, he noted that while the law may be UNWISE, still little intelligence is needed to observe that the Constitution itself provides that Congress has the power to *repeal, amend, or modify* provisions of the Rules of Court for admission to the profession and practice of law.]

(14) Effect of a Law That Has Been Declared Unconstitutional

While it is true that generally an unconstitutional law confers *no* right, creates *no* office, affords *no* protection, and justifies *no* acts performed under it, there are instances when the operation and effects of the declaration of its unconstitutionality may be relaxed or qualified because the actual existence of the law prior to such declaration is an *operative fact* and may have consequences which cannot justly be ignored. Thus, it has been held that although the Moratorium Law was eventually declared unconstitutional, it suspended the period of prescription for actions to enforce the obligations covered by the moratorium. (*Manila Motor Co., Inc. v. Flores, L-9396, Aug. 16, 1956*).

[*NOTE:* Substantial taxpayers, like the PHILCONSA (Philippine Constitutional Association, Inc.) may assail in court

the unconstitutionality of statutes requiring the expenditure of public funds. (*PHILCONSA v. Gimenez, et al.*, L-23326, Dec. 18, 1965).].

(15) No Power of Executive Department to Promulgate Even By Means of a Treaty, Rules for Admission to the Practice of Law

The “Treaty on Academic Degrees and the Exercise of Professions” between the Philippines and Spain, while it recognized the validity of college and university *degrees* in either country, could NOT have been intended to modify the rules governing admission to the practice of law in the Philippines (such as the bar examination requisite) for the reason that the Executive Department may not encroach upon the constitutional prerogative of the Supreme Court to promulgate rules for admission to the practice of law in the Philippines — the power to repeal, alter, or supplement such rules being reserved only to Congress of the Philippines. Indeed, the Treaty was designed to govern Filipino citizens desiring to practice their profession in Spain *vis-à-vis* the citizens of Spain desiring to practice their profession in the Philippines. Thus, Spanish lawyers desiring to practice law in the Philippines must still TAKE and PASS our bar examinations. (*In re: Garcia*, Aug. 15, 1961).

(16) ‘Operative Fact’ Doctrine

This is when a legislative or executive act, prior to its being declared as unconstitutional by the courts, is valid and must be complied with. (*Francisco Chavez v. NHA*, GR 164527, Aug. 15, 2007).

As the new Civil Code puts it: “When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders, and regulations shall be valid only when they are not contrary to the laws of the Constitution.” (*Art. 7, new Civil Code*). It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive. (*Chavez v. NHA*, *op. cit.*).

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

COMMENT:

(1) Are Judicial Decisions Laws?

While it is true that decisions which apply or interpret the Constitution or the laws are *part of the legal system* of the Philippines (*Art. 8, Civil Code*) still they are NOT laws, if this were so, the courts would be allowed to legislate contrary to the principle of separation of powers. Indeed, the courts exist in order to state what the law is, not for giving it. (*Jus dicere, non jus dare*). There have been instances, however, when the Supreme Court has made use of “judicial statesmanship,” *i.e.*, it has rendered decisions not based on law or custom.

Judicial decisions, though not laws, are evidence, however, of what the laws mean, and this is why they are part of the legal system of the Philippines. (*Art. 8, Civil Code; see also I Camus 38*). The interpretation placed upon the written law by a competent court has the force of law. (*People v. Jabinal, L-30061, Feb. 27, 1974*). The interpretation placed by the Supreme Court upon a law constitutes, in a way, part of the law as of the date the law was *originally passed*, since the Court’s construction *merely established the contemporaneous legislative intent* that the interpreted law desired to effectuate. Thus, a decision of an administrative body rendered *prior* to the declaration by the Court of the unconstitutionality of the grant of authority to said administrative body, can have no valid effect. (*Senarillos v. Hermosisima, L-10662, May 14, 1956*). It is clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed. However, a *reversal* of that interpretation *cannot* be given a retroactive effect to the prejudice of parties who had relied on the first interpretation. (*People v. Jabinal, L-30061, Feb. 27, 1974*).

Be it noted that only the decisions of the Supreme Court, and unreversed decisions of the Court of Appeals on cases of first impression, establish jurisprudence or doctrines in the

Philippines. (*Miranda, et al. v. Imperial, et al.*, 77 Phil. 1066). In *Ang Ping v. Regional Trial Court*, GR 75860, Sept. 17, 1987, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.

One very interesting case in this regard is that of *Mendoza, et al. v. Agrix Marketing, Inc.*, GR 62259, Apr. 10, 1989. Agrix Marketing, Inc., herein respondent, was sued in the Court of First Instance of Manila by Dolores V. Mendoza and the spouses Rogelio and Fe Tagle, who sought to collect sums of money which they claimed to have entrusted to the latter in reliance on its assurances, later contravened, that their money would be invested and earn profits higher than the interest rates then prevailing. Agrix Marketing, Inc. (Agrix Group of Companies) was also sued in the Securities and Exchange Commission by many of its stockholders claiming to have been defrauded by it, in consequence of which the premises of the corporation were sealed and sequestered and its records seized by deputies of the Commission. The President of the Philippines then took over. He directed the National Development Company to formulate and implement a rehabilitation program for the Agrix Group of Companies, and deputized it as the Rehabilitation Receiver. Subsequently, he promulgated Presidential Decree 1717, directing the dissolution of the Agrix Group of Companies and the transfer of its assets and liabilities to a new corporation, the "New Agrix, Inc."

While the action was pending in the Manila CFI (Br. XXXII), and after having in fact obtained a writ of preliminary attachment therefrom, the petitioners filed with the Claim Committee created by PD 1717 a Joint Affidavit dated Nov. 17, 1980, for verification and validation of their pecuniary interests in the defendant corporation. Their claims were duly processed and found to be legitimate: so the New Agrix, Inc. issued in their favor some months later, a stock certificate (No. 09320), representing shares valued at P40,000 in accordance with the provisions of the decree. The certificate was delivered to and received by Dolores V. Mendoza on April 13, 1981. It is note-

worthy that the acceptance of the stock certificate was made without qualification or protest of any nature whatsoever by Mendoza or her co-plaintiffs.

These events were brought to the attention of the Court (Manila CFI, Br. XXXII, as aforesaid) wherein the petitioner's action was pending, and led to the promulgation by it of an order on June 1, 1981, now assailed in the present proceedings. The order reads as follows: "It appearing that the claim of plaintiffs had been validated by the Claim Committee formed by the National Development Company as Rehabilitation Receiver of the defendant; that the New Agrix, Inc. has recognized plaintiff's claim and is willing to settle its obligation; and that the New Agrix, Inc. has issued Stock Certificate No. 09320 in favor of plaintiffs which was received by plaintiff Dolores V. Mendoza on Apr. 13, 1981, in accordance with the provisions of PD 1717, the complaint is hereby dismissed, without pronouncement as to costs." The petitioners appealed to the Supreme Court from this order, and now plead for its reversal on the following arguments: (1) they never intended to waive their right to judicial relief; (2) they were denied due process in the validation of their claims before the Claim Committee; (3) they had delivered money to the old Agrix company as a loan, and not as an investment; and (4) PD 1717 was unconstitutional because it deprived courts of jurisdiction, and authorized reduction of claims without due process.

Upon the undisputed facts, it is not possible for the petitioners to succeed. With full awareness of the provisions of PD 1717, particularly those already cited herein, *i.e.*, those relating to the valuation of claims in the Agrix Group of Companies, and the rules laid down by the Claim Committee conformably therewith, as well as those mandating the dismissal of all "monetary claims against the dissolved corporation which are presently pending," they voluntarily and unqualifiedly submitted their claims to the Claim Committee precisely for valuation conformably with its rules and the aforementioned provisions of the decree. Subsequently, on being officially advised that said Committee had placed on their claims an aggregate value of P40,000 (instead of P58,000, as proposed by them) and that a certificate of stock in the new corporation representing this declared amount of P40,000 had been issued in their favor,

they accepted and took delivery of the certificate as voluntarily and unqualifiedly as they had initially presented their claims. It is in the premises certainly duplicitous for petitioners now to assert that by thus receiving equity in the New Agrix, Inc., they had not waived the right they originally tried to litigate in court against the same corporation, or that the valuation of their claim had been attended by irregularity. It is as duplicitous for them to assail the very law and implementing rules under which they had applied for and received benefits; in truth the impugnation of the law as unconstitutional at this time appears to be nothing but a mere afterthought. What at bottom the petitioners desire, is to receive and retain benefits under a law without being bound by the conditions laid down by that law for the grant thereof, and of which conditions they were fully cognizant at the time they applied for those benefits. "They want, in a word, to have their cake and eat it, too. This the Court will not permit."

Floresca v. Philex Mining Corporation
GR 30642, Apr. 30, 1985

Judicial decisions of the Supreme Court assume the same authority as the statute itself. Art. 8 of the Civil Code, tells us that judicial decisions that apply or interpret laws of the Constitution form part of our legal system. These decisions, although in themselves not laws, are evidence of what the laws mean. The application or interpretation placed by the Court upon a law is part of the law as of the date of its enactment since the Court's application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect.

(2) Decisions Referred to in Art. 8

The decisions referred to are those enunciated by the Supreme Court, which is the court of last resort. Thus, the Supreme Tribunal in *Miranda, et al. v. Imperial, et al.* (77 Phil. 1066), categorically stated that "only the decisions of this Honorable Court establish jurisprudence or doctrines in this jurisdiction." Thus, decisions of subordinate courts are only per-

suasive in nature, and can have no mandatory effect. However, this rule does not militate against the fact that a conclusion or pronouncement of the Court of Appeals which covers a point of law still undecided in the Philippines may still serve as a *judicial guide* to the inferior Courts. It is even possible that such conclusion or pronouncement can be raised to the status of a doctrine, if after it has been subjected to test in the crucible of analysis and revision, the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence. (77 *Phil.* 1066; see also *Gaw Sin Gee v. Market Master of the Divisoria Market, et al.*, C.A., 46 O.G. 2617).

A final judgment “*ratio decidendi*” should, however, be distinguished from the opinion which states the reasons for such judgment. (*Contreras, et al. v. Felix, et al.*, 78 *Phil.* 570). While an opinion is the informal expression of the views of the Court, it cannot certainly prevail against its final order or decision. (1 *Freeman on Judgment*, p. 6).

Under the 1935 Constitution, “no decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based.” (*Sec. 12, Art. VIII, 1935 Phil. Const.*). Likewise, the 1987 Constitution says: “No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.” “No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.” (*Sec. 14, Art. VIII, 1987 Constitution*). This does not require however, the court to write in its decision every bit and piece of evidence presented. It is enough that the decision contains the necessary facts to warrant its conclusion. (*Air France v. Carrascoso and Court of Appeals, L-21438, Sep. 28, 1966*).

Que v. People of the Phils.
GR 75217-18, Sep. 21, 1987

No provision of the Constitution is violated when the Supreme Court denies a petition for review by the issuance of a mere *minute resolution*.

The “resolutions” are not “decisions” within the constitutional requirement. They merely hold that the petition for a review should not be entertained in view of the provisions of the Rules of Court. Even ordinary lawyers understand this.

[NOTE: Where the Court has jurisdiction over the case, any error of law or fact committed by the trial court is curable by appeal. After the judgment has become *final*, the issues that were litigated in the case are no longer debatable by the parties in subsequent proceedings, whether erroneously decided or not. (*Florentin v. Galera*, L-17419, June 30, 1962). However, the fact that a decision has become final does NOT prevent a modification thereof, because even with the finality of judgment, when its execution becomes IMPOSSIBLE or UNJUST, it may be modified or altered to harmonize with justice and the facts. (*Ronquillo, et al. v. Marasigan*, L-11621, May 31, 1962). While ideally a case should be deemed terminated insofar as the court that has taken cognizance thereof is concerned, the moment there is entered on the records the satisfaction of judgment, still the court would have jurisdiction when *compelling matters* demand that it should so act, lest more injustice result from further delay in the final resolution of the case. (*Raymundo A. Crystal v. Court of Appeals*, L-35767, Feb. 25, 1975).].

(3) Doctrine of Stare Decisis

In the Philippines, we adhere to the doctrine of *stare decisis* (let it stand, *et non quieta movere*) for reasons of stability in the law. The doctrine, which is really “adherence to precedents,” states that once a case has been decided one way, then another case, involving exactly the same point at issue, should be decided in the same manner.

Of course, when a case has been decided *erroneously*, such an error must not be perpetuated by blind obedience to the doctrine of *stare decisis*. No matter how sound a doctrine may be, and no matter how long it has been followed thru the years, still if found to be contrary to law, it must be abandoned. The principle of *stare decisis* does not and should not apply when there is a conflict between the precedent and the law. (*Tan Chong v. Sec. of Labor*, 79 Phil. 249).

While stability in the law is eminently to be desired, idolatrous reverence for precedent, simply as precedent, no longer rules. More pregnant than anything else is that the court shall be right. (*Phil. Trust Co. v. Mitchell*, 59 *Phil.* 30).

(4) **Obiter Dicta**

Obiter dicta (singular “*dictum*”) are opinions not necessary to the determination of a case. They are not binding, and cannot have the force of judicial precedents. It has been said that an *obiter dictum* is an opinion “uttered by the way, *not* upon the point of question pending.” “It is as if the Court were turning aside from the main topic of the case to collateral subjects.” (*People v. Macaraeg*, L-4316, May 28, 1952).

Upon the other hand, a dissenting opinion affirms or overrules *no* claim, right or obligation. And neither disposes of nor awards anything. It merely expresses the view of the dissenter. (*Tolentino v. Ongsiako*, L-17938, Apr. 30, 1963).

(5) **How Judicial Decisions May Be Abrogated**

- (a) By a contrary ruling by the Supreme Court itself. (Example is the case of *Tan Chong v. Sec. of Labor*, 79 *Phil.* 249, where the Supreme Court abandoned the theory that “*jus soli*” was recognized formerly in the Philippines. Another is the case of *Eraña, et al. v. Vera, et al.*, 74 *Phil.* 272, which held that preliminary attachment was in certain instances proper in criminal cases. This reversed the ruling laid down in *U.S. v. Namit*, 38 *Phil.* 926, and *People v. Moreno*, 60 *Phil.* 674).
- (b) By corrective legislative acts of Congress (*See People v. Mendoza*, 59 *Phil.* 163), although said laws cannot adversely affect those favored prior to Supreme Court decisions.

[NOTE: Congress cannot, however, alter a Supreme Court interpretation of a constitutional provision, for this would be an unwarranted assumption of judicial power. (*Endencia, et al. v. David*, 49 *O.G.* 4822). The legislature

is, however, allowed to define the terms it uses in a statute, said definitions being considered as part of the law itself.].

(6) Is There a Philippine Common Law? (BAR)

In general, the Philippines is not a common law country. But if what is meant by the phrase is case law, based almost exclusively on Anglo-American common law which is not in conflict with local laws, customs and constitution, then we have some sort of Philippine Common Law — a common law that supplements and amplifies our statute law. (*In Re: Shoop, 41 Phil. 213*). Of course, if a case is covered by an express provision of the Civil Code, the common law principle cannot be applied in deciding the same. (*Cruz v. Pahati, L-8257, Apr. 13, 1956*).

(7) Opinions of the Secretary of Justice and Other Executive Officials

The Secretary of Justice is the legal adviser of the Government and his opinions override those of provincial fiscals who are his subordinates. His opinions although NOT law, should be given great weight. (*Garcia v. Pascual, et al., L-16950, Dec. 22, 1961*). However, said opinions cannot correct mistakes in legislation. (*Largado v. Masaganda, et al., L-17624, June 30, 1962*). Nor should said opinions have a controlling effect on the Courts. (*Poa v. Chan, L-25945, Oct. 31, 1967*). The executive interpretation of legislative acts of course carries great weight. (*Bayani Sarmiento, et al. v. Constantino Nolasco, et al., L-38565, Nov. 15, 1974*).

**Almazar v. Hon. Cenzon
L-46188, May 28, 1988**

While conceding the power of the Secretary of Justice to review the action of prosecutors, such official should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in court. The matter should be left entirely to the determination of the Court.

(8) Judicial Review of Administrative Decisions

Judicial review of the decision of an administrative official is subject to certain guideposts. For instance, findings of fact in such decision should *not* be disturbed if supported by substantial evidence; but review is justified when there has been a denial of due process, or mistake of law, or fraud, collusion, or arbitrary action in the administrative proceeding. (*Atlas Development and Acceptance Corporation v. Benjamin M. Gozon, et al.*, L-21588, July 31, 1967).

**Franklin Baker Co. of the Phils. v.
Hon. Trajano, et al.
GR 75039, Jan. 28, 1988**

Findings of administrative agencies which have acquired expertise, like the Labor Ministry (Department), are accorded respect and finality and that the remedy of *certiorari* does not lie in the absence of any showing of abuse or misuse of power properly vested in the Ministry (Department) of Labor and Employment.

**Luzon Stevedoring Corp. v.
Court of Tax Appeals and The
Com. of Internal Revenue
L-30232, July 29, 1988**

As a matter of principle, the Supreme Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject unless there has been an abuse or improvident exercise of authority.

(9) When Final Judgments May Be Changed

While it is true that the trial court cannot change, amplify, enlarge, alter, or modify the decision of an appellate court which is final and executory (*Maca-Santos, et al. v. Fernan, et al.*, L-13726, May 31, 1961), still two important things must be pointed out:

- (a) Firstly, a judgment void for lack of jurisdiction over the subject matter can be assailed at any time either directly

or collaterally. (*Trinidad, et al. v. Yatco, et al.*, L-17288, Mar. 27, 1961).

- (b) Secondly, it is now well-settled in this jurisdiction that when after judgment has been rendered and the latter has become final, facts and circumstances transpire which render its execution impossible or unjust, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and with the facts. (*City of Butuan v. Ortiz, et al.*, L-18054, Dec. 22, 1961).

Phil. Rabbit Bus Lines v. Arciaga
L-29701, Mar. 16, 1987

The doctrine of finality of judgments is grounded on fundamental considerations concerning public policy and sound practice that at the risk of occasional errors, court judgments must become final at some definite date fixed by law.

In Re: Laureta and Maravilla-Ilustre
GR 68635, Mar. 12, 1987

The Supreme Court has the authority and the duty to preserve its honor from the attacks of irate lawyers. The Supreme Court has so many cases that the appearances of various lawyers in each of them may escape the attention of the members of the Court.

x x x

The Supreme Court in its decisions is supreme, and no other government entity including the Tanodbayan (now the Ombudsman) can declare them unjust.

Enrique A. Zaldivar v.
Sandiganbayan and Raul M. Gonzales,
Claiming to Be and Acting as Tanodbayan
under the 1987 Constitution
GR 79690-707, Apr. 27, 1988

(The text of the decision follows in full.)

In GR 79690-707 “Petition for *Certiorari*, Prohibition, and *Mandamus* under Rule 65,” Petitioner Enrique

A. Zaldivar, governor of the province of Antique, sought to restrain the Sandiganbayan and Tanodbayan Raul M. Gonzales from proceeding with the prosecution and hearing of Criminal Cases 12159 to 12161 and 12163 to 12177 on the ground that said cases were filed by said Tanod-bayan without legal and constitutional authority. Since under the 1987 Constitution which took effect on Feb. 2, 1987, it is only the Ombudsman (not the present or incumbent Tanodbayan) who had the authority to file cases with the Sandiganbayan. The aggregate prayer of the petition reads: "WHEREFORE, it is respectfully prayed that pending the final disposition of this petition or until further orders of the Honorable Court, a writ of preliminary injunction issue upon the filing of a bond in such amount as may be fixed by the Honorable Court, restraining the Honorable Sandiganbayan from hearing and trying Criminal Cases 12159 to 12161, and 12163 to 12177, insofar as petitioner Enrique A. Zaldivar is concerned and from hearing and resolving the special prosecutor's motion to suspend, and thereafter, final judgment be rendered: (1) ordering that the amended informations in the abovementioned criminal cases be quashed, or issuing a writ of *mandamus* commanding and ordering the respondent Sandiganbayan to do so and, in consequence, prohibiting and restraining the respondent Sandiganbayan from proceeding to hear and try the abovementioned criminal cases or making the temporary preliminary injunction permanent; (2) declaring the acts of respondent Gonzales as "Tanodbayan-Ombudsman" after Feb. 2, 1987 relating to these cases as a nullity and without legal effect, particularly, the promulgation of the Tanodbayan resolution of Feb. 5, 1987, the filing of the original information on Mar. 3, 1987 and the amended ones on June 4, 1987, and the filing of the Motion for Suspension *Pendente Lite*. "PETITIONER prays for such other and further relief as may be deemed proper in the premises, with costs against the respondents. Manila, Philippines, Sep. 9, 1987.

In GR 80578, petitioner Enrique A. Zaldivar, on substantially the same ground as the first petition, prays

that Tanodbayan Gonzales be restrained from conducting preliminary investigations and filing similar cases with the Sandiganbayan. The prayer reads: "WHEREFORE, it is respectfully prayed that pending the final disposition of the petition or until further orders by this Honorable Court, a writ of preliminary injunction issue restraining the respondent from further acting in TBP CASE 87-01304 and, particularly, from filing the criminal informations consequent thereof, and from conducting preliminary investigations in, and filing criminal informations for such complaints/cases now pending or which may hereafter be filed against petitioner with the Office of the respondent. It is likewise prayed that the present petition be consolidated with GR 79690-79707."

After proper proceedings, it is prayed that final judgment be rendered annulling the acts of respondent Gonzales as "Tanodbayan-Ombudsman" after February 2, 1987 relating to the investigation of complaints against petitioner, particularly: (1) Annulling, for absolute want of jurisdiction, the preliminary investigation conducted, and the Resolution rendered, by respondent in TBP CASE 87-01304; (2) Prohibiting and restraining the respondent from filing any criminal information as a consequence of the void preliminary investigation he conducted in TBP CASE 87-01304, or annulling the criminal information in the said case which may, in the meantime, have already been filed; (3) Prohibiting and restraining the respondent from conducting preliminary investigations in and filing criminal informations for, such other complaints/cases now pending or which may hereafter be filed against petitioner with the Office of the respondent. PETITIONER further prays for such other and further reliefs as may be deemed proper in the premises, with costs against the respondent. Manila, Philippines, Nov. 18, 1987.

We issued the restraining orders prayed for. After a study of the petitions, We have decided to give due course to the same; to consider the comments of the Solicitor-General and Tanodbayan Gonzales as their Answers thereto; and to forthwith decide the petitions. We find the petitions impressed with merit.

Under the 1987 Constitution, the Ombudsman (as distinguished from the incumbent Tanodbayan) is charged with the duty to: investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. The Constitution likewise provides that the existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the *Office of the Ombudsman created under this Constitution*. (Art. XI, Sec. 7). Now then, inasmuch as the aforementioned duty is given to the Ombudsman, the incumbent Tanodbayan (called Special Prosecutor under the 1987 Constitution and who is supposed to retain powers and duties NOT GIVEN to the Ombudsman), is clearly *without authority* to conduct preliminary investigations and to direct the filing of the criminal cases with the Sandiganbayan, except upon orders of the Ombudsman. This right to do so was *lost* effective Feb. 2, 1987. From that time, he has been divested of such authority.

Under the present Constitution, the Special Prosecutor (Raul Gonzales) is a mere subordinate of the Tanodbayan (Ombudsman) and can investigate and prosecute cases only upon the latter's authority or orders. The Special Prosecutor cannot initiate the prosecution of cases but can only conduct the same if instructed to do so by the Ombudsman. Even his original power to issue *subpoena*, which he still claims under Section 10 (d) of PD 1630, is now deemed transferred to the Ombudsman, who may, however, retain it in the Special Prosecutor in connection with the cases he is ordered to investigate.

It is not correct either to suppose that the Special Prosecutor remains the Ombudsman as long as he has not been replaced, for the fact, is that he has never been the Ombudsman. The Office of the Ombudsman is a new creation under Article XI of the Constitution different from the

Office of the Tanodbayan created under PD 1607 although concededly some of the powers of the two offices are identical and similar. The Special Prosecutor cannot plead that he has the right to hold over the position of Ombudsman as he has never held it in the first place. WHEREFORE, We hereby: (1) GRANT the consolidated petitions filed by the petitioner Zaldivar and hereby NULLIFY the criminal informations filed against him in the Sandiganbayan; and (2) ORDER respondent Raul Gonzales to cease and desist from conducting investigations and filing criminal cases with the Sandiganbayan or otherwise exercising the powers and functions of the Ombudsman.

THE FINAL RULING ON THE MOTION FOR RECONSIDERATION

GENTLEMEN,

Quoted hereunder, for your information, is a resolution of the Court En Banc dated May 19, 1988.

GR 79690-79707 (*Enrique A. Zaldivar v. The Hon. Sandiganbayan, et al.*) and GR 80578 (*Enrique A. Zaldivar v. Hon. Raul M. Gonzales*). The Respondent has moved for a reconsideration of our ruling that he is not the Ombudsman but merely a subordinate thereof as Special Prosecutor. The reasons he invoke are insubstantial where they are not irrelevant. The motion must be and is hereby DENIED.

The Court shall deal later with his citation for contempt and meanwhile GRANTS him the 30-day extension he seeks to file his comment, with warning that no further extension will be granted. The Court NOTES pending the submission of his said comment, his motion to inhibit the Chief Justice and three other justices. The Court further NOTES the (a) the motion for clarification of the decision of Apr. 27, 1988, dated May 3, 1988 and (b) the manifestation, dated May 6, 1988, both filed by the Solicitor General. On the motion for the reconsideration

as well as the supplement thereto, the Court makes the following ruling that should settle this matter once and for all.

The Office of the Tanodbayan, which was formerly held by the respondent, was originally created by PD 1607 pursuant to Article XIII, Section 6, of the 1973 Constitution. It was converted into the Office of the Special Prosecutor by Article XI, Section 7, of the 1987 Constitution and allowed to retain only such of its powers as had not been transferred to the Ombudsman. It is this new office as reduced in status by the present charter that is now held by the respondent. The Office of the Ombudsman was directly created by the self-executing provision of Article XI, Section 6, of the present Constitution. No implementing legislation was needed to bring it into existence, which legally commenced on Feb. 2, 1987, when the charter was ratified. It was recently filled by the President with a person other than the respondent. The respondent is not and never has been the Ombudsman under the present Constitution. What is more, it is now the new Ombudsman who carries the title of Tanodbayan. The clear intention of the Constitution is to vest the Ombudsman with more authority, prestige and importance and reduce the Special Prosecutor to the rank of a mere subordinate of the former. Obviously, the Special Prosecutor under this set-up cannot claim to be concurrently the Ombudsman and exercise the latter's powers as this would be a violation of the Constitution.

The Ombudsman is nominated by the Judicial and Bar Council and appointed by the President of the Philippines without need of confirmation by the Commission on Appointments. He is among the high officials of the government removable only by impeachment and has the same rank as the Chairmen of the Constitutional Commissions. The Constitution does not accord the same regard and stature to the Special Prosecutor. Under Section 12 of Article XI of the 1987 Constitution, the principal responsibility of the Ombudsman is "to act promptly on complaints filed in any form or manner against public of-

officials or employees of the Government.” For this purpose, he is conferred the specific powers mentioned in Section 13, among which are the following: (1) *Investigate* on his own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. (2) *Direct the officer concerned to take appropriate action* against a public official or employee at fault, and recommend his removal suspension, demotion, fine, censure or prosecution, *and ensure compliance therewith.*

The above powers, even if originally vested in the former Tanodbayan, may no longer be exercised by the respondent as Special Prosecutor. Having been transferred to the Ombudsman, they are deemed expressly withdrawn from the Special Prosecutor under Section 7, which plainly says: “Sec. 7. The existing Tanodbayan shall hereafter be known as the Office of the Prosecutor. It shall continue to function and exercise its power as now or, hereafter may be provided by law, *except those conferred on the Office of the Ombudsman created under the Constitution.*”

The power of investigation as thus conferred on the Ombudsman covers both administrative and criminal offenses. When the Constitution does not distinguish, the respondent must not distinguish. This is elementary. Accordingly, the Special Prosecutor cannot claim that he retains the specific power of preliminary investigation while conceding the general power of investigation to the Ombudsman. The greater power embraces the lesser. This too is elementary. What the respondent seems unable to accept is that he is not even equal to but certainly lower than the Ombudsman. There is nothing personal about this. It is the office that has been demoted. In constitutional government, egotism is and should never be considered a source of official power. And neither should expediency. The respondent suggests that as a result of the ruling of this Court withdrawing his powers, many information filed by him will have to be annulled and

thousands of criminals will be set free to roam the streets. This is unfounded exaggeration aimed more at exciting public anxieties than appealing to law and reason.

The Court reiterates that the withdrawal of his powers was made not by it but by the Constitution. Moreover, the respondent is not that indispensable in the scheme of the Republic or even only to the campaign against graft and corruption. It is the height of conceit to say that unless the respondent is there to protect us, the country will be overrun by scoundrels. In any event, the fact that the informations filed by the respondent from Feb. 2, 1987, were invalid because they were not authorized by the Ombudsman, is not a jurisdictional defect. The informations could have been challenged in a motion to quash under Rule 117 of the Rules of Court on the ground of lack of authority on the part of the officer filing the same. If this ground was not invoked, it is deemed waived under Section 8 of the same Rule, which means that the cases can then continue to be tried. Not one of these cases is considered invalidated nor is a single accused entitled to be discharged.

To settle this question categorically, we hereby rule that the decision of this Court in this case shall be given prospective application from Apr. 27, 1988. We adopt this rule to prevent a dislocation of the cases commenced by the Special Prosecutor without authorization and avoid the consequent serious impairment of the administration of our criminal laws, including violations of the Anti-Graft and Corrupt Practices Act.

This is the same principle adopted by the United States Supreme Court in connection with the operation of the *Escobedo and Miranda* doctrines, which were given prospective application only in *Johnson v. New Jersey*, 388 U.S. 719. There it was held in part: "At the same time, retroactive application of *Escobedo and Miranda* would seriously disrupt the administration of our criminal laws. It would require the retrial or release of numerous prisoners found guilty by trustworthy evidence in conformity with

the previously announced constitutional standards. Prior to *Escobedo* and *Miranda*, few States were under any enforced compulsion on account of local law to grant requests for the assistance of counsel or to advise accused persons of their privilege against self-incrimination. Compare *Crooker v. California*, 357 U.S., at 448, note 4, 2L ed 2d at 1459 (dissenting opinion). By comparison, *Mapp v. Ohio*, *supra.*, was already the law in a majority of the States at the time it was rendered, and only six States were immediately affected by *Griffin v. California*, 380 U.S. 609, 14 L ed 2d 106, 85 S Ct 1229 (1966). See *Tehan v. Shott*, 382 U.S., at 418, 15L ed 2d at 461. "In light of various considerations, we conclude that *Escobedo* and *Miranda*, like *Mapp v. Ohio*, *supra.*, and *Griffin v. California*, *supra.*, should not be applied retroactively." At the same time, we do not find any persuasive reason to extend *Escobedo* and *Miranda* to cases tried before those decisions were announced, even though the cases may still be on direct appeal. Our introductory discussion in *Linkletter*, made it clear that there are no jurisprudential or constitutional obstacles to the rule we are adopting here. See 381 U.S., at 622-629, 14 L ed 2d at 604-608. In appropriate prior cases we have already applied new judicial standards in a wholly prospective manner. See *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 11 L ed 2d 440, 84 S CT 461 (1964); *James v. United States*, 366 U.S. 213, 6 L ed 2d 246, 81 S CT 1052 (1961). Nor have we been shown any reason why our rule is not a sound accommodation of the principles of *Escobedo* and *Miranda*. "In light of these additional considerations, we conclude that *Escobedo* and *Miranda* should apply only to cases commenced after those decisions were announced."

To reiterate, the Court holds that, in the interest of justice, its ruling of Apr. 27, 1988 shall apply prospectively to cases filed in the Court after the promulgation of said ruling but shall not apply to cases filed in Court prior to said resolution and pending trial nor to convictions or acquittals pronounced therein. The exception is where there has been a *timely objection and specific challenge*,

as in this case, where the Court ordered the nullification of the information filed for lack of authority on the part of respondent Gonzales. The Court notes with disapproval the unilateral action of the Sandiganbayan in suspending all proceedings in the above-cited cases on the justification that they might have become invalid as suggested by the respondent. No motion for such suspension had been filed as far as this Court knows and in any event our decision was not yet final. The action of the Sandiganbayan was uncalled for and precipitate. It has only added to the needless confusion and concern generated by respondent's hysterical alarms. The Sandiganbayan is hereby admonished for its unwarranted act. The Court is also bemused by the gratuitous comments of certain supposed authorities on the Constitution, including some of its framers, who would invoke the records of their debates to support what would appear to be their retroactive intention. That intention, according to them, was to make the Ombudsman a "toothless tiger" only and to retain in the Special Prosecutor the power to prosecute, thus making him, in comparison, the more effective officer. If that was really the intention, it is certainly not reflected at all in the language of Article XI. The rule in legal hermeneutics is that the intention of the framers should be sought and discovered in the text of the document itself, within the four corners of the instrument, before extrinsic aids may be resorted to, and then only if the language is ambiguous. The Court finds no ambiguity in the provision, whatever strained meanings these professed experts may give it now, in retrospect.

The debates in the constitutional convention do not necessarily reflect the thinking of the entire body but may only reveal the individual views of some of the members. The excerpts cited by the respondent, of an earlier discussion, do not appear to represent any agreement accepted by the commission as a whole. On the other hand, if reliance is to be placed at all on the proceedings, the more acceptable record is the following excerpt of a later debate showing that the move to restore the hitherto discarded power of investigation in the Office of the Ombudsman

was accepted and approved in the plenary session of July 28, 1986, of the Constitutional Commission.

“Mr. Bennagen: This is on page 4 after line 24. I propose to restore to the section the first function that was in the Committee Report No. 16, which was not included in the Committee Report No. 17.

“Mr. Monsod: Yes, it is a whole paragraph. So, it is an amendment by insertion.

“The President: Before subparagraph 1.

“Mr. Bennagen: Yes, it used to be Section 6-A of Committee Report No. 16 and reads:

“TO INVESTIGATE ON ITS OWN OR ON COMPLAINT BY ANY PERSON ANY ACT OR OMISSION OF ANY PUBLIC OFFICIAL, EMPLOYEE, OFFICE OR AGENCY WHEN SUCH ACT OR OMISSION IS ILLEGAL, UNJUST, IMPROPER, OR INEFFICIENT.

“I think the reason [for] restoring this is that it is a direct function of the Ombudsman without having to delegate it to others.

“The President: Is this accepted?

“Mr. Romulo: Madam President, before we accept, could we ask Commissioner Bennagen to get together with Commissioner Natividad because he has the same idea. The principle being enunciated is acceptable to us but so as not to duplicate efforts, I suggest that the proponent confer with Commissioner Natividad.

“The President: Commissioners Bennagen and Natividad are requested to confer.

x x x

“The President: Has it been accepted?

“Mr. Bennagen: Yes, Madam President.

“Mr. Monsod: Madam President, that is a restatement of the first draft of the Committee and the proposal

of Commissioner Bennagen is to restate it. The *Committee accepts the proposal.*”

If the real intention of the framers is to arm the Special Prosecutor and disarm the Ombudsman, the Court can only wonder why it is that the text of Article XI, as the commissioners finally approved it, was to *strengthen the Ombudsman and emasculate the Special Prosecutor*. If the purpose was to make the Ombudsman a “constitutional eunuch,” as he is quaintly and pejoratively described, it may well be asked why he has been made an impeachable officer and *for doing nothing* is given the assistance of one overall deputy and at least a deputy each for Luzon, Visayas, and Mindanao, and even the military establishment. As judges, we can only read sense out of the Constitution, guided by its language as the surest indication of the intention of its framers. If it is deficient in wisdom, we cannot supply it; if it suffers from defects, we cannot correct them; if it needs improvement, this cannot come from us. Only the people themselves, exercising their sovereign powers, can infuse it with the vigor of its commands as the ultimate authority in the republican society. It remains for us to deplore that much improper pressure, including the filing of the impeachment charges, has been exerted on the Court to intimidate it into reconsidering its decision. Obviously, such threats must fail. The Court decides only on the merits of each case regardless of extraneous influences that can only becloud the issues and prevent their objective resolution. When the members of the Court sit as judges and rule under their oath, the law is their only lodestar and justice their only goal. This denial is final and immediately executory.

Alcuaz, et al. v. PSBA, et al.
GR 76353, May 2, 1988

ISSUE: Whether or not there has been deprivation of due process for petitioners-students who have been barred from re-enrollment and for intervenors-teachers whose services have been terminated as faculty members, on account of their participation in the demonstration or

protest charged by respondents as “anarchic rallies, and a violation of their constitutional rights of expression and assembly?”

HELD: Under similar circumstances where students have been refused re-enrollment but without allegation of termination of contracts as in the instant case, this Court has stressed, that due process in disciplinary cases involving students does not entail proceedings and hearings similar to those prescribed for actions and proceedings in courts of justice. Such proceedings may be summary and cross-examination is not even an essential part thereof. Accordingly, the minimum standards laid down by the Court to meet the demands of procedural due process are: (1) the students must be informed in writing of the nature and cause of any accusation against them; (2) they shall have the right to answer the charges against them, with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case. The right of the school to refuse re-enrollment of students for academic delinquency and violation of disciplinary regulations has always been recognized by this Court. Thus, the Court has ruled that the school’s refusal is sanctioned by law. Sec. 107 of the Manual of Regulations for Private Schools considers academic delinquency and violation of disciplinary regulations as valid grounds for refusing re-enrollment of students. The opposite view would do violence to the academic freedom enjoyed by the school and enshrined under the Constitution.

(10) Barangay Courts

Crispina Peñaflor v. Hon. Paño
L-60083, Oct. 29, 1982

- (1) Under Sec. 6 of PD 1508, no complaint, petition, action, or proceeding involving matters, within the authority of

the Lupon (as provided for in Sec. 2 thereof) shall be filed or instituted in court unless there has been confrontation between the parties.

- (2) The Barangay Court has no jurisdiction if the parties come from different municipalities AND their barangays do not adjoin each other.

(11) Extradition Law

Justice Serafin R. Cuevas
substituted by Artemio G. Tuquero in his capacity
as Secretary of Justice v. Juan Antonio Muñoz
GR 140520, Dec. 18, 2000

The process of preparing a formal request for *extradition* and its accompanying documents, and transmitting them thru diplomatic channels, is not only time-consuming but also leakage-prone. There is naturally a great likelihood of flight by criminals who get an intimation of the pending request for their extradition.

To solve this problem, speedier initial steps in the form of treaty stipulations for provisional arrest were formulated. (*Shearer, Extradition in International Law, 1971 ed., p. 200*). Thus, it is an accepted practice for the requesting state to rush its request in the form of a telex or diplomatic cable, the practicality of the use of which is conceded. Even our own Extradition Law (PD 1069) allows the transmission of a request for provisional arrest *via* telegraph. With the advent of modern technology, the telegraph or cable has been conveniently replaced by the facsimile (fax) machine.

Therefore, the transmission by the Hong Kong DOJ of the request for respondent's provisional arrest and the accompanying documents, namely: a copy of the warrant of arrest against respondent, a summary of the facts of the case against him, particulars of his birth and address, a statement of the intention to request his provisional arrest and the reason therefor, by fax machine, more than serves the purpose of expediency.

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

COMMENT:

(1) Duty of a Judge if the Law is Silent

A judge must give a decision, whether he knows what law to apply or not. Thus, even if a judge does not know the rules of cockfighting, he must still decide the case. (*Chua Jan v. Bernas, 34 Phil. 631*).

(2) Old Codal Provision

Under the old Civil Code, we had the provision that “when there is no law exactly applicable to the point in controversy, the custom of the place shall be applied, and in default thereof, the general principles of law.” (*Art. 6, par. 2, old Civil Code*).

This provision is no longer found in the new Civil Code. The question has therefore been asked: if the law be silent, obscure, or insufficient, what should the judge apply in deciding a case?

Apparently the judge may apply any rule he desires as long as the rule chosen is in harmony with general interest, order, morals, and public policy. Among such rules may be the following:

- (a) Customs which are not contrary to law, public order, and public policy. (*See Art. 11, Civil Code*).
- (b) Decisions of foreign and local courts on similar cases.
- (c) Opinions of highly qualified writers and professors.
- (d) Rules of statutory construction.
- (e) Principles laid down in analogous instances. (*See Cerrano v. Tan Chuco, 38 Phil. 392*). Thus, it has been said that where the law governing a particular

matter is silent on a question at issue, the provision of another law governing another matter may be applied where the underlying principle or reason is the same. “*Ubi cadem ratio ibi eadem disposito.*”

Philippine Bank of Commerce v. De Vera
L-18816, Dec. 29, 1962

FACTS: A real estate mortgage was foreclosed *extrajudicially*. The amount received was, however, less than the mortgage indebtedness. The creditor, therefore, sued to recover the *deficiency*. Now then, Act 3135 which provides for extrajudicial foreclosure is SILENT as to the mortgagee’s right to recover such deficiency.

ISSUE: May said deficiency be recovered?

HELD: Yes, for in the absence of a pertinent provision in Act 3135, we may make use of the rule under the Rules of Court that the deficiency may be recovered in JUDICIAL foreclosures. After all, the principle involved is the same, namely, that a mortgage is a mere security, and does *not*, even if foreclosed whether judicially or not, effect a satisfaction of the debt.

[*NOTE:* But the rule of *pari materia* (like matter), which is only an aid to statutory construction, cannot be used to apply a *deficiency of a prescriptive* period provided for in *another statute*; more so, if the two laws are not in *pari materia*. (*Flores, et al. v. San Pedro, et al., L-8580, Sep. 30, 1957*).]

Floresca v. Philex Mining Corporation
GR 30642, Apr. 30, 1985

Art. 9 of the Civil Code has explored the myth that courts cannot legislate. The legislator recognizes that in certain instances, the court, in the language of Justice Holmes, “do and must legislate” to fill the gaps in the law; because the mind of the legislator, like all human beings, is finite and therefore cannot envisage all possible cases

to which the law may apply. Nor has the human mind the infinite capacity to anticipate all situations. But while the judges do and must legislate, they can only do so only interstitially. They are confined from molar to molecular motions.

- (f) General principles of the natural moral law, human law, and equity.
- (g) Respect for human dignity and personality.

[NOTE: Congress deleted the recommended draft of the Code Commission containing the rules hereinabove mentioned because it was feared that there was an undue delegation of legislative power, which delegation might be declared unconstitutional.]

(3) Does Art. 9 Apply to Criminal Cases?

In a way, yes. True, an offense is not a crime unless prohibited and punished by the law (*U.S. v. Taylor*, 28 Phil. 599; *People v. Sindiong*, 44 O.G. 1471) applying the rule “*nullum crimen, nulla poena sine lege*” (there is no crime and there is no penalty in the absence of law), nevertheless, if somebody is accused of a non-existent crime, the judge must DISMISS the case. This, in reality, is equivalent to a judicial acquittal.

Ramon Borguilla v. Court of Appeals L-47286, Jan. 7, 1987

Evaluation of testimony, particularly if conflicting, is the principal task of courts of justice.

(4) Keeping Abreast With SC Decisions

Roy v. Court of Appeals GR 80718, Jan. 29, 1989

It is the bounden duty of a lawyer in active practice to keep abreast with Supreme Court decisions, particularly where issues have been clarified, reiterated, and published in the advance reports of the journals.

[NOTE: The SCRA (Supreme Court Reports Annotated) and the SCAD (Supreme Court Advanced Decisions) belong to the journals hereto referred.].

(5) Supreme Court – Basically a Review Court

**Subic Bay Metropolitan Authority v. COMELEC, Enrique T. Garcia, and Catalino A. Calimbas
74 SCAD 811, GR 125416, Sep. 26, 1996**

The Supreme Court is basically a review court. It passes upon errors of law (and sometimes of fact, as in the case of mandatory appeals of capital offenses) of lower courts as well as determines whether there had been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any “branch or instrumentality” of government.

Art. 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)

COMMENT:

(1) Dura Lex Sed Lex

“*The law may be harsh, but it is still the law.*” Hence, the first duty of the judge is to apply the law — whether it be wise or not, whether just or unjust — provided that the law is clear, and there is no doubt. It is the sworn duty of the judge to apply the law without fear or favor, to follow its mandate, not to temper with it. What the law grants, the court cannot deny. (*Jose Go v. Anti-Chinese League of the Philippines and Fernandez*, 47 O.G. 716; *Gonzales v. Gonzales*, 58 Phil. 67). If some laws are unwise and detrimental, proper representations may be made to Congress. (*Quintos v. Lacson, et al.*, 51 O.G. 3429). Be it observed that our courts are referred to as courts of law (not necessarily of justice).

(2) In Case of Doubt

Of course, in case of doubt, the judge should presume that “the lawmaking body intended right and justice to prevail.” (*Art. 10, Civil Code; Frivaldo v. COMELEC and Lee, GR 120295, June 28, 1996*). After all, it has been truly said that “we should interpret not by the letter that killeth, but by the spirit that giveth life.” (*Cayetano v. Monsod, GR 100113, Sep. 13, 1991, J. Paras, ponente*). Thus although literally, under Act No. 2747, only a “mortgagor” may redeem foreclosed property, the word was construed to include “the legal heirs of the mortgagor” otherwise gross injustice might result. (*De Castro v. Olondriz and Escudero, 50 Phil. 725*). Judicial conclusions inconsistent with the spirit of a law must be avoided. (*Torres v. Limhap, 56 Phil. 141*). Moreover, it has been wisely stated that “when the reason for the law ceases, the law automatically ceases to be one.” *Cessante ratione cessat ipsa lex*.

Justinian once defined equity as “justice sweetened with mercy.”

**Feria v. Commission on Elections
GR 704712, May 6, 1992**

No law is ever enacted that is intended to be meaninglessly much less inutile. “We must therefore, as far as we can, divine its meaning, its significance, its reason for being... If a statute would be construed... the most dominant in that process is the purpose of the Act.”

(3) Congressional Debates

Courts are not bound by a legislator’s opinion in congressional debates regarding the interpretation of a particular legislation. It is deemed to be a mere personal opinion of the legislator. (*Mayon Motors, Inc. v. Acting Com. of Int. Revenue, L-15000, Mar. 29, 1961*).

(4) Comment of the Code Commission

Art. 10, 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.” (*Comment of the Code Commission, p. 78*).

(5) Some Rules of Statutory Construction

- (a) When a law has been clearly worded, there is no room for interpretation. Immediately, *application* of the law must be made unless consequences or oppression would arise. (*U.S. v. Allen, 2 Phil. 630*).
- (b) If there are two possible interpretations or constructions of a law, that which will achieve the ends desired by Congress should be adopted. (*U.S. v. Navarro, 19 Phil. 134*).
- (c) In interpreting a law, the following can be considered: the preamble of the statute (*Go Chioco v. Martinez, 45 Phil. 256*); the foreign laws from which the law was derived (*Alzua v. Johnson, 21 Phil. 308*); the history of the framing of the law, including the deliberations in Congress (*Palanca v. City of Manila, 41 Phil. 125*); similar laws on the same subject matter (*in pari materia*). (*Gov't. v. Binalonan, 32 Phil. 634*).
- (d) *Patent or obvious mistakes and misprints in the law*, may properly be corrected by our courts. (*Torres v. Limhap, 56 Phil. 141*).
- (e) Laws of pleadings, practice, and procedure must be liberally construed. (*See Rule 1, Sec. 2, Rules of Court; Riera v. Palmaroli, 40 Phil. 105*).
- (f) Laws in derogation of a natural or basic right must be strictly, *i.e.*, restrictively, interpreted. Therefore, extensions by analogy should be avoided. This is also true in the case of penal and tax legislations (*Manila Railroad Co. v. Coll. of Customs, 52 Phil. 950; I.S. v. Abad Santos, 36 Phil. 243*) and in laws which enumerate exceptions to well-established juridical axioms.
- (g) The contemporaneous interpretation given by administrative officials to a law which they are duty bound to enforce

or implement deserves great weight. (*Pascual v. Director of Lands, L-15816, Feb. 29, 1964*).

Rodriguez Luna v. IAC
GR 62988, Feb. 25, 1985

The court will not apply equity, if equity will not serve the ends of justice. It will, instead, strictly apply the law.

Rural Bank of Parañaque, Inc. v. Romolado
GR 62051, Mar. 18, 1985

Justice is done according to law. As a rule, equity follows the law. There may be a moral obligation, often regarded as an equitable consideration (meaning compassion), but if there is no legal duty, the action must fail although the disadvantaged deserves commiseration or sympathy.

Phil. Rabbit Bus Lines, Inc. v. Arciaga
GR 29701, Mar. 16, 1987

One cannot invoke equity as a ground for reopening a case if an express provision of law exists under which the remedy can be invoked. Equity follows the law. There are instances, when a court of equity gives a remedy where the law gives none; but if the law gives a particular remedy, and that remedy is bounded and circumscribed by particular rules, it would be improper for the court to take it up where the law leaves it and to extend it further than the law allows. Equity aids the vigilant, not those who slumber on their rights.

Alonzo v. Padua
GR 72873, May 28, 1987

The question is sometimes asked, in serious inquiry or in curious conjecture, whether we are a court of law or a court of justice. Do we apply the law even if it is unjust or do we administer justice even against the law? Thus queried, we do not equivocate. The answer is that we do neither because we are a court *both* of law and of justice. We apply the law *with*

justice for that is our mission and purpose in the scheme of our republic.

Madrona v. Judge Rosal
GR 39120, Nov. 21, 1991

The words “*hambog ka*” and “*animal ka*” (braggart, devil, animal) are slanderous. And under the circumstances, they were not meant to praise or to compliment. The words must be construed in their plain meaning.

Ong v. Court of Appeals
GR 43025, Nov. 29, 1991

When there is no showing when the property was acquired, the fact that it is registered in the name of one spouse alone is an indication that the property is *exclusive*, not conjugal, property.

Wong v. Intermediate Appellate Court
GR 70082, Aug. 19, 1991

FACTS: Romarico had a wife named Katrina from whom he was living separately. Romarico had a parcel of land in Angeles City, purchased with money borrowed from a friend. Katrina, who had been given several pieces of jewelry to sell, was *not* able to give the selling price to the owner. May Romarico’s land be seized upon?

HELD: No, because the interest of the wife in the conjugal lot (conjugal, because it had been acquired during the marriage) is merely INCHOATE. There should have been first a liquidation of the conjugal assets. Incidentally, in the instant case, the husband was not represented by any attorney in the litigation.

Mendoza v. Court of Appeals
GR 83602, Sep. 14, 1991

The term “continuous” in the provision referring to “continuous possession” does *not* mean that the concession of

status must be forever but it must not be of an intermittent character.

If the concession is only intermittent, the ground of “continuous possession” does not exist but the law allows for recognition other means allowed by the law of evidence in the Rules of Court such as the baptismal certificate, a judicial admission, an entry in the family Bible, common reputation regarding his pedigree.

Eugenio v. Velez
GR 86470, May 17, 1990

While Art. 305 of the Civil Code speaks of funeral arrangements, still Sec. 1104 of the Revised Adm. Code provides that the person charged with burying the deceased shall have custody of the body except when an inquest is required by law for the determination of the cause of death, and unless death was due to a dangerous communicable disease in which case custody of the body will be with the local health officer or if there be none, with the municipal council.

Republic v. Judge Marcos
GR 31065, Feb. 15, 1990

For the publication of a petition for a change of name, the real name and the alias or aliases used must be included in the caption. The name to be adopted must also be included. The person desiring the change must file the petition.

Balanguit v. Electoral
Tribunal of the House of Representatives
GR 92202-03, July 30, 1991

Citizenship cannot be attacked collaterally.

A person elects Philippine citizenship presumably because he was an alien or is possessed of two or more nationalities.

**In the Matter of the Adoption of Stephanie Nathy
Astorga Garcia
454 SCRA 541**

It is both of personal as well as public interest that every person must have a *name*. For one, the name of an individual has two parts — the given or proper name and the surname or family name; the given name may be freely-selected by the parents for the child, but the surname to which the child is entitled is fixed by law.

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. 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.

Adoption statutes, being humane and salutary, should be liberally construed to carry out the beneficent purposes of adoption. Art. 10 of the new Civil Code which presumes in the interpretation of application of law that the law-making body intended right and justice to prevail was intended to strengthen the determination of the courts to avoid an injustice which may apparently be authorized by some way of interpreting the law.

An adopted child 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. Being a legitimate child by virtue of her adoption, it follows that Stephanie Nathy Astorga Garcia, in the case at bar, 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. And since there is no law prohibiting an illegitimate child adopted by her natural father to use, as middle name her mother's surname, the Supreme Court finds no reason why she should not be allowed to do so.

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

COMMENT:**(1) 'Custom' Defined**

A *custom* is a rule of human action (conduct) established by repeated acts, and uniformly observed or practiced as a rule of society, thru the implicit approval of the lawmakers, and which is therefore generally obligatory and legally binding. (See Chief Justice Arellano's definition cited by *La Jurisprudencia*, Vol. 1, p. 38). Stimson's Law Dictionary defines a custom of a place as that which is brought about by local usage, and is not annexed or peculiar to any particular individual.

(2) Requisites Before the Courts can Consider Customs

- (a) A custom must be proved as a fact, according to the rules of evidence; otherwise, the custom cannot be considered as a source of right. (*Patriarcha v. Orfate*, 7 Phil. 370). Thus, there is no judicial notice of custom. (Art. 12, Civil Code).
- (b) The custom must not be contrary to law (*contra legem*), public order, or public policy. (Art. 11, Civil Code).
- (c) There must be a number of *repeated acts*.
- (d) The repeated acts must have been *uniformly performed*.
- (e) There must be a *juridical intention (convictio juris seu necessitatis)* to make a rule of social conduct, *i.e.*, there must be a conviction in the community that it is the proper way of acting, and that, therefore, a person who disregards the custom in fact also disregards the law.
- (f) There must be a *sufficient lapse of time* — this by itself is not a requisite of custom, but it gives evidence of the fact that indeed it exists and is being duly observed.

[NOTE: An Igorot custom of adoption without legal formalities is contrary to law and cannot be countenanced or invoked. (*Lubos v. Mendoza*, C.A., 40 O.G. 553). A custom which may endanger human life cannot be allowed. (*Yamata v. Manila Railroad Co.*, 33 Phil. 8). For rig-drivers or *cocheros*, however, to temporarily leave their horses while assisting in unloading the *calesa* is not an

inherently injurious custom. (*Martinez v. Van Buskirk, 18 Phil. 79*).]

(3) ‘Law’ Distinguished from ‘Custom’

While ordinarily a law is written, consciously made, and enacted by Congress, a custom is unwritten, spontaneous, and comes from society. Moreover, a law is superior to a custom as a source of right. While the courts take cognizance of local laws, there can be no judicial notice of customs, even if local. (*Art. 12, Civil Code*).

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

COMMENT:

(1) Presumption of Acting in Accordance with Custom

There is a presumption that a person acts according to the custom of the place.

(2) When a Custom is Presumed Non-Existent

A custom is presumed not to exist when those who should know, do not know of its existence. (*The Ship Success, 18 La. Am. 1*).

(3) Kinds of Customs

- (a) A *general* custom is that of a country; a “custom of the place” is one where an act transpires.

[*NOTE*: A general custom if in conflict with the local custom yields to the latter. However, in the absence of proof to the contrary, a general custom is presumed to be also the “custom of the place.” (*Reyes and Puno, Outline of Civil Law, Vol. 1, p. 8*).]

- (b) A custom may be *propter legem* (in accordance with law) or *contra legem* (against the law). It is *unnecessary* to apply the first, because it merely repeats the law; it is *wrong* to apply the second. Customs *extra legem* are those which

may constitute sources of supplementary law, in default of specific legislation on the matter. (*Reyes and Puno, Outline of Civil Law, Vol. 1, p. 8*).

Art. 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)

COMMENT:

(1) Examples of How Periods Are Computed

- (a) 10 months = 300 days

Thus, a debt payable in 10 months must be paid at the end of 300 days, and not on the *same date* of a month, ten months later.

- (b) 1 year = 365 days

This does not, however, apply in computing the age of a person. Thus, a person becomes 21 years old on his 21st birthday anniversary, and not on the date arrived at by multiplying 21 by 365 days. However, in case the law speaks of years (as in prescriptive periods for crimes), it is believed that the number of years involved should be multiplied by 365. Thus, if a crime that is committed today prescribes in 10 years, the end of said period would be 365×10 or, 3,650 days from today. In effect, therefore, the period will be shorter than when the calendar reckoning is used because certain years are LEAP YEARS. (*See NAMARCO v. Tecson, L-29131, Aug. 27, 1969*).

[NOTE: Any year, except a century year, is a leap year if it is exactly divisible by FOUR. In the case of a century year the same must be exactly divisible by 400

(four hundred) to be a LEAP YEAR (*Example: the year 1,600 was a leap year*).].

- (c) March = 31 days

This is because the month is specifically designated by name. (*Art. 13, par. 2, Civil Code*). Thus, if in a contract it is stipulated that performance should be done, say in the month of “March,” the act can still be validly performed on March 31.

- (d) One week = seven successive days. (*Derby and Co. v. City of Modesto, 38 Pac. 901*). But a week of labor, in the absence of any agreement, is understood to comprehend only six labor days. (*Lee Tay & Lee Chay, Inc. v. Kaisahan Ng Mga Manggagawa, L-7791, Apr. 19, 1955*).

(2) Civil or Solar Month

The civil or solar or calendar month is that which agrees with the Gregorian calendar, and those months in said calendar are known by the names of January, February, March, etc. They are composed of unequal portions of time. (*Bowyer’s Law Dictionary, cited in Gutierrez v. Carpio, 53 Phil. 334*).

The general rule is that when months are not designated by name, a month is understood to be only 30 days; thus, Art. 90 of the Revised Penal Code refers to a “30-day” month, and not to the solar or civil month. (*People v. Del Rosario, L-7234, May 21, 1955*).

(3) Meaning of ‘Day’ Applied to the Filing of Pleadings

If the last day for submitting a pleading is today, and at 11:40 p.m. (after office hours) today it is filed, the Supreme Court has held that it is properly filed on time because a day consists of 24 hours. (*See De Chavez v. Ocampo and Buenafe, 66 Phil. 76*). This presupposes that the pleading was duly received by a person authorized to do so.

[NOTE: The question has been asked: When is mailed petition considered filed, from the date of mailing or from the time of actual receipt by the Court? The Supreme Court, in the case of *Caltex (Phil., Inc. v. Katipunon*

Labor Union, L-7496, Jan. 31, 1956), held that the petition is considered filed from the time of mailing. This is because the practice in our courts is to consider the mail as an *agent* of the government, so that the date of mailing has always been considered as the date of the filing of any petition, motion or paper. In *Gonzalo P. Nava v. Commissioner of Internal Revenue, L-19470, Jan. 30, 1965*, the Court held that while there is a presumption that a letter duly directed and mailed was received in the regular course of mail, still there are two facts that must first be proved before the presumption can be availed of: (a) the letter must have been properly addressed with postage prepaid, and (b) the letter must have been mailed.].

(4) Computation of Periods

In computing a period, the first day shall be excluded, and the last day included. (*Art. 13, last par., Civil Code*). Thus, 12 days after July 4, 2006 is July 16, 2006. In other words, we just add 12 to the first-mentioned date.

(5) Rule if the Last Day is a Sunday or a Legal Holiday

If the last day is a Sunday or a legal holiday, is the act due that day or the following day?

It depends.

- (a) In an *ordinary contract*, the general rule is that an act is due even if the last day be a Sunday or a legal holiday. Thus, a debt due on a Sunday must, in the absence of an agreement, be paid on that Sunday. [*This is because obligations arising from contracts have the force of law between the contracting parties. (Art. 1159, Civil Code).*]. There are, of course, some exceptions, among them the maturity date of a negotiable instrument.
- (b) When the time refers to a period prescribed or allowed by the *Rules of Court*, by an *order of the court*, or by any other *applicable statute*, if the last day is a Sunday or a legal holiday, it is understood that the last day should really be *the next day*, provided said day is neither a Sunday nor a legal holiday.

(6) Cases**Gonzaga v. De David
L-14858, Dec. 29, 1960**

FACTS: August 31 was the usual last day for payment of registration fees but it was declared a special public holiday by Presidential Proclamation. Now then under the law, the last day for said payment was the last working day in August (ordinarily August 31) but because of the holiday, the last working day in August for the Motor Vehicles Office was on August 30. Now then, may the fees still be paid without penalty on Sep. 1?

HELD: Yes. Since August 31 was declared a holiday, payment could still be made on the next day, under Sec. 31 of the Revised Adm. Code. The “last working day in August” for the general public in paying fees is NOT necessarily the same as the “last working day in August” for employees in the Motor Vehicles Office.

**Advincula v. Commission on Appointments, et al.
L-19823, Aug. 31, 1962**

FACTS: Under Sec. 21 of the Revised Rules of the Commission on Appointments, approval of Presidential appointments may be reconsidered within ONE DAY after said approval. Approval of the appointment of a certain municipal judge was made *Friday*, Apr. 27, 1962. Reconsideration was asked on *Monday*, Apr. 30, 1962, on the theory that under Rep. Act No. 1880, Saturday and Sunday are holidays. Is this a correct interpretation of the provision?

HELD: This is an internal business of the legislature (interpretation of its own rules) which CANNOT be made the subject of judicial inquiry.

**Rural Bank v. Court of Appeals
L-32116, Apr. 21, 1981**

The pretermission (exclusion from computation) of a holiday applies only to a period fixed by law or the Rules of Court, not to a date fixed by the Judge or a government officer. Thus,

if a public sale or foreclosure is set by the sheriff for a certain day, and that day is declared a special public holiday, the next date of the sale cannot be the next day if the needed publication for the sale on that day has not been made. If by the Rules of Court a defendant should answer within 15 days, and the 15th day is declared a holiday, the last day for the answer will be the 16th day. But if a Judge fixes a trial hearing for a certain day, and that day is declared a holiday, trial will not be on the following day.

**Firestone Tire and Rubber Co.
v. Lariosa and NLRC
L-70479, Feb. 27, 1987**

The 10-day period within which to appeal from the decision of the Labor Arbiter to the National Labor Relations Commission (NLRC) consists of 10 *calendar*, not working days.

(7) What the Words ‘On or About’ Envisage

Said words envisage a period, months or even 2 or 4 years before the date indicated. (*People v. Lizada*, 396 SCRA 62 [2003]).

(8) What the Phrase ‘Until Further Notice’ Prescribes

Said phrase has reference to a limit to the extension of the contract conditional on a future event, specifically the receipt by the concessionaire of a notice of termination from the grantor. (*Manila International Airport Authority v. CA*, 397 SCRA 348 [2003]).

Art. 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)

COMMENT:

(1) Theories of Territoriality and Generality

We adhere in the Philippines to that doctrine in criminal law known as the *theory of territoriality*; i.e., any offense com-

mitted within our territory offends the state. Therefore any person, whether *citizen* or *alien*, can be punished for committing a crime here. Thus, the technical term *generality* came into being; it means that even aliens, male or female come under our territorial jurisdiction. This is because aliens owe some sort of allegiance even if it be temporary.

Illuh Asaali, et al. v. Commissioner of Customs
L-24170, Dec. 16, 1968

FACTS: On Sept. 10, 1950, at about noon time, a Philippine customs patrol team on board Patrol Boat ST-23 intercepted five (5) sailing vessels on the *high seas* between British North Borneo and Sulu, while they were *heading towards* Tawi-tawi, Sulu. The vessels were all of Philippine registry, owned and manned by Filipino residents of Sulu. The cargo consisted of cigarettes *without* the required import license, hence, smuggled. They were seized by the patrol boat.

ISSUE: May the seizure be made although the vessel was on the high seas?

HELD: Yes, for the following reasons:

- (a) The vessels were of Philippine registry, hence under the Revised Penal Code, our penal laws may be enforced even outside our territorial jurisdiction.
- (b) It is well-settled in international law that a state has the right to protect itself and its revenues, a right not limited to its own territory, but extending to the high seas. (*Church v. Hubbard*, 2 Cranch 187, 234).

(2) Exceptions

Art. 14, recognizes two exceptions:

- (a) *Firstly*, the principles of public international law.

Examples are the immunities granted to diplomatic officials and visiting heads of states, provided the latter do not travel *incognito*. If they travel *incognito* but with the *knowledge* of our government officials, heads of states are entitled to immunity. If the *incognito* travel

is without the knowledge or permission of our country, diplomatic immunity cannot be insisted upon, and the heads of states traveling may be arrested. However, once they *reveal their identity*, immunity is given. Generally, should a friendly foreign army be given permission to march thru our country or be stationed here, said army is usually exempt from civil and criminal responsibility. (*See Raquiza v. Bradford, 75 Phil. 50*).

- (b) *Secondly*, the presence of treaty stipulations. (Thus, we have the Philippine-United States Military Bases Agreement, dated Mar. 14, 1947 [*43 O.G. No. 3, pp. 1020-1034*], which contains some provisions exempting certain members of the armed forces of the United States from the jurisdiction of our courts.)

(3) Constitutionality of the Military Bases Agreement

If bases may validly be granted the United States under our Constitution, it follows necessarily that the lesser attribute of *jurisdiction over certain* offenses may be waived or given by law or treaty. Furthermore, the grant of bases necessarily includes the waiver of jurisdiction within the terms “necessary appurtenances to such bases, and the rights incident thereto.” (*Dizon v. Philrycom, 46 O.G. [Sup.] No. 1, p. 68; see also Miquiabas v. Com. Gen. Phil. Ryukyus Command, U.S. Army, GR L-1988, Feb. 24, 1948*).

[NOTE: The RP-US Military Bases Agreement has been terminated by the Phil. Gov’t in 1991.]

Art. 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)

COMMENT:

(1) ‘Status’ Defined

The status of a person in civil law includes personal qualities and relations, more or less permanent in nature, and not ordinarily terminable at his own will, such as his being

married or not, or his being legitimate or illegitimate. (*See 119 Restatement*). Bouvier's Law Dictionary defines status as the sum total of a person's rights, duties, and capacities (*Vol. 3, p. 3229*); Sanchez Roman considers civil status the distinct consideration of a person before the civil law. (*Vol. 2, p. 110*).

(2) Scope of Art. 15 (Nationality Principle)

Art. 15 refers to:

- (a) Family rights and duties (including parental authority, marital authority, support);
- (b) Status;
- (c) Condition;
- (d) Legal capacity. (But there are various exceptions to this rule on legal capacity.)

(3) Applicability of Art. 15

Art. 15 which is a rule of private international law (or a conflicts rule, containing as it does a reference to a foreign element, such as a foreign country) stresses the principle of *nationality*; some other countries, like Great Britain and the United States, stress the principle of *domicile*.

Does Art. 15 apply to Filipinos merely?

ANSWER:

- (a) Yes — insofar as Philippine laws are concerned. (*Gibbs v. Gov't., 49 Phil. 293*). (Thus, a Filipino husband is still a husband, under our law, wherever he may be or may go). (*Yañez v. Fuston, 29 Phil. 606*).
- (b) No — in the sense that nationals of other countries are also considered by us as being governed in matters of status, etc., by their *own national law*.

Thus, we may say that Filipinos are governed by Philippine laws; foreigners, by their own national law. (In *Gibbs v. Gov't., 49 Phil. 293*, the Supreme Court made the observation that “we should resort to the law of California, the nationality and domicile of Mr. and Mrs. Gibbs, to ascertain the norm

which would be applied here as law were there any question as to their status.”) (*See Babcock Templeton v. Rider Babcock*, 52 *Phil.* 130; *In re: Estate of Johnson*, 39 *Phil.* 156). As a matter of fact, our Supreme Court has categorically stated that where the spouses are citizens of the United States, their marital and personal status, and the dissolution of such status are governed by the laws of the United States, which laws sanction divorce. This is pursuant to Art. 15 of the Civil Code. (*Recto v. Harden*, L-6897, Nov. 29, 1956).

(4) Capacity to Enter into Ordinary Contract

The capacity to enter into an ordinary contract is governed by the national law of the person, and not by the law of the place where the contract was entered into (*lex loci celebrationis*), as erroneously enunciated by our Supreme Court in the case of *Gov't. v. Frank*, 13 *Phil.* 239.

Insular Gov't. v. Frank 13 Phil. 239

FACTS: Mr. Frank, an American citizen from Illinois, U.S.A., entered into a contract with the Philippine government to serve as a stenographer for a period of two years. He served for only six months, and, therefore, the government sued for damages. Frank presented minority as a defense. The contract was entered into in Illinois; in said State, Frank was considered an *adult*; under Philippine laws, Frank was a *minor*.

HELD: The contract is valid because at the time and place (Illinois) of the making of the contract (*loci celebrationis*), Frank was of age and fully capacitated. Therefore, Frank can be held liable for damages.

[**NOTE:** The reason given by the court is wrong because Frank's capacity should be judged by his *national* law and not by the law of the place where the contract was entered into. This is the clear implication of Art. 15. Of course, in the instant case, whether Frank's national law or the law of the place where the contract was made should be used, was *immaterial*, for they happened to be the same;

however, the doctrine would have had a different result if the contract had been entered into in the *Philippines*, for under the doctrine of *lex loci celebrationis*, the contract would now be considered *invalid*; under the national law theory, the contract would be valid.].

(5) Capacity under the Code of Commerce

Art. 15 of the Code of Commerce says that “foreigners and companies created abroad may engage in commerce in the Philippines subject to the laws of *their country* with respect to their capacity to contract.”

(6) Capacity to Enter into Other Relations

Capacity to enter into other relations or contracts is not necessarily governed by the national law of the person concerned.

Thus:

- (a) Capacity to acquire, encumber, assign, donate or sell property depends on the law of the place where the property is situated (*lex situs* or *lex rei sitae*). (See *Art. 16, par. 1, Civil Code*).
- (b) Capacity to inherit depends not on the national law of the heir, but on the national law of the decedent. (*Art. 1039, Civil Code*).
- (c) Capacity to get married depends not on the national law of the parties, but on the law of the place where the marriage was entered into (*lex loci celebrationis* or *locus regit actum*), subject to certain exceptions. [(See *Arts. 26, 35 (1), (4), (5) and (6), 36, 37 and 38, Family Code*)].

Bobanovic v. Hon. Montes L-71370, Jan. 31, 1987

The requirement in the Philippine-Australia Memorandum Agreement that a prospective adopter of a Filipino child should first undergo a Family Study to be conducted by the adopter’s home state or territory should

be complied with before travel clearance certificate may be issued.

Art. 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)

COMMENT:

(1) Conflicts Rules on Property (*Lex Rei Sitae*)

Property, whether *real* or *personal*, is as a rule governed by the *lex rei sitae* (law of the place where the property is situated). (*Art. 16, par. 1*).

It is inevitable that the rule should be thus for *real property*, for after all, *real property* is *attached* to the land, and a contrary rule may render a judgment on the land *ineffective* or *incapable of enforcement*.

Upon the other hand, the rule enunciated under the new Civil Code for personal property changes the old rule on the matter. Under the old Civil Code (*Art. 10, old Civil Code*), personal property was subjected to the law of the nation of the owner; *i.e.*, personal property followed the national or domiciliary law of the owner, under the doctrine of *mobilia sequuntur personam*. The old rule grew up in the Middle Ages when movable property could easily be carried from place to place. (*Pullman's Palace Car Co. v. Comm. of Pennsylvania, 141 U.S. 18-22*). However, now that there has been a great increase in the amount and variety of personal property not immediately connected with the person of the owner (*Wharton, Conflicts of Laws, Secs. 297-311*), it was deemed advisable by the Congress of the Philippines to adopt the doctrine of *lex rei sitae* also to movables. (*Report of Senator Lorenzo Tañada, Chairman, Special Committee on the new Civil Code*).

(2) Applications of the Doctrine of *Lex Rei Sitae*

Shares of stock of a foreigner, even if personal property, can be taxed in the Philippines so long as the property is located in this country. (*Wells Fargo Bank v. Collector of Int. Revenue*, 40 O.G. [85] No. 12, p. 159; 70 Phil. 325). Bank deposits in the Philippines even if belonging to a foreigner may be the subject of attachment proceedings. (*Asiatic Petroleum Co. v. Co Quico*, 40 O.G. 132). Taxes may be imposed on dividends from shares in a gas corporation situated in the Philippines even if the stockholders do not reside here. (*Manila Gas Corporation v. Col.*, 62 Phil. 895).

**Collector of Internal Revenue v.
Anglo California National Bank
L-12476, Jan. 29, 1960**

FACTS: The sale of shares of the capital stock of the Pampanga Sugar Mills was *negotiated, perfected, and consummated* in San Francisco, California.

ISSUE: May our Government impose income tax on said sale?

HELD: No, since all the factors (negotiation, perfection and consummation) took place in California, said place is deemed to be the source of the capital gain. Therefore, this is *income derived* from abroad. Under our present laws, only corporate income derived from Philippine sources may be taxed in our country.

**Testate Estate of Idonah Slade Perkins;
Renato Tayag v. Benguet Consolidated, Inc.
L-23145, Nov. 29, 1968**

FACTS: Idonah Slade Perkins died domiciled in New York on March 27, 1960; because she has properties both in New York and in the Philippines, a *domiciliary* administrator was appointed in New York by the New York courts, and an *ancillary* administrator was appointed in the Philippines by the Philippine courts. Now then, to sat-

isfy the legitimate claims of local creditors, the Philippine ancillary administrator asked the New York administrator to surrender to the former two stock certificates owned by the deceased in a Philippine corporation, the Benguet Consolidated, Inc. Although said New York administrator had the stock certificates, he refused to surrender them despite the order of the Philippine court, prompting the court to consider said certificates as LOST for all purposes in connection with the administration of the deceased's Philippine estate. The court then ordered the Benguet Consolidated, Inc. to cancel said certificates and to issue new certificates deliverable either to the ancillary administrator or to the Philippine probate court. The company refused to issue the *new certificates* on the ground firstly, that after all, the old certificates still really exist, although in the possession of the New York administrator; and secondly, that in the future, the Company may be held liable for damages because of the presence of *conflicting certificates*.

ISSUE: Should the company issue the new certificates?

HELD: Yes, the company must issue the new certificates because of the following reasons:

- (a) While factually the old certificates still exist, the same may by judicial fiction be considered as LOST – in view of the refusal of the New York administrator to surrender them, despite a lawful order of our courts. To deny the remedy would be derogatory to the dignity of the Philippine judiciary. The ancillary Philippine administrator is entitled to the possession of said certificates so that he can perform his duty as such administrator. A contrary finding by any foreign court or entity would be inimical to the honor of our country. After all, an administrator appointed in one state has no power over property matters in another state. (*Leon and Ghessi v. Manufacturer's Life Ins. Co.*, 99 Phil. 459 [1951]).
- (b) The Company has nothing to fear about contingent liability should the new certificates be issued. Its

obedience to a lawful court order certainly constitutes a valid defense.

(3) Exception to the *Lex Situs* Rule

One important exception to the *lex situs* rule occurs in the case of successional rights. Thus, the following matters are governed, not by the *lex situs*, but by the national law of the deceased (*Art. 16, par. 2, Civil Code*):

- (a) Order of succession.
- (b) Amount of successional rights. (This refers to the amount of property that each heir is legally entitled to inherit from the estate available for distribution). (*Coll. of Int. Rev. v. Fisher, et al., L-11622, 11668, Jan. 28, 1961*).
- (c) Intrinsic validity of the provisions of a will. (*Examples: whether a disinheritance has properly been made or not; whether a testamentary disposition can be given effect or not.*)
- (d) Capacity to succeed. (*Art. 1039, Civil Code*).

(4) Examples

In country X, even recognized illegitimate children are not allowed to inherit. A citizen of country X dies in the Philippines, with some of his parcels of land located in our country. Under our laws, recognized illegitimate children can inherit. Will Y, a recognized illegitimate child of the deceased, be entitled to inherit?

ANSWER: No, because under the law of his father's country, he has no right to inherit. This is so even if the lands are found in the Philippines. What should control is the national law of the deceased. (*Art. 16, par. 2, Civil Code*).

Miciano v. Brimo **50 Phil. 867**

FACTS: An alien testator (Turk) who made his will in the Philippines stated in the will that his property

should be distributed in accordance with Philippine law, and not that of his nation. Is the provision valid?

HELD: No, for Turkish law should govern the disposition of his property. This is clear under Art. 16.

(5) Defect of Art. 16, Par. 2 (Successional Rights)

If a Filipino dies leaving lands in China, should the inventory of his estate required by our courts include the lands in China?

The conventional answer is “Yes” because we have to know the total value of his estate for eventual distribution to his heirs. As a matter of fact, under Art. 16, par. 2, it is our law that should govern their disposition. This answer would be all right, provided that Chinese courts would respect the decisions of our courts. But what if they do not? It should be observed that we can hardly do anything about it since the lands are in China. The problem of possible unenforceability and ineffectiveness is precisely a defect of the second paragraph of Art. 16. To eliminate the possibility of “no-jurisdiction,” it is clear that Art. 16, par. 2 can apply only to properties located in the Philippines. (*See Gibbs v. Government, 49 Phil. 293*).

(6) The Renvoi Problem

Renvoi literally means a referring back; the problem arises when there is a doubt as to whether a reference in our law (such as Art. 16, par. 2 of the Civil Code) to a *foreign law* (such as the national law of the deceased) —

- (a) is a reference to the INTERNAL law of said foreign law; or
- (b) is a reference to the WHOLE of the foreign law, including its CONFLICTS RULES.

In the latter case, if one state involved follows the *nationality* theory, and the other, the *domiciliary* theory, there is a possibility that the problem may be referred back to the law of the first state.

Perhaps the very first case where our Supreme Court has been able to expound at length on what we ought to do when confronted by the *renvoi* problem is the case entitled *In the Matter of Testate Estate of the Deceased Edward E. Christensen, Deceased; Adolfo C. Aznar and Lucy Christensen v. Helen Christensen Garcia*. Penned by Justice Alejo Labrador, the decision, which was promulgated on January 31, 1963 as GR L-16759, in effect held that if a California citizen dies domiciled in the Philippines, our courts are under Art. 16, par. 2 of the Civil Code compelled to apply the national law of the deceased (California law); but since said California law itself refers back the matter to the Philippines (the place of domicile), we have no alternative except to accept the referring back to us (substantially; this is the theory of the *single renvoi* or the theory of acceptance of the *renvoi*). To do otherwise (*i.e.*, to refer back again the matter to the foreign country, with the possibility that once again the problem will be returned to us) would in the Court's opinion give rise to "international football."

The salient facts of the *Christensen* case are these: Edward E. Christensen, though born in New York, migrated to California, where he resided (and consequently was considered a California citizen) for a period of nine years. In 1913, he came to the Philippines where he became a domiciliary till the time of his death. However, during the entire period of his residence in this country he had always considered himself a citizen of California. In his will executed on March 5, 1951, he instituted an acknowledged natural daughter, Maria Lucy Christensen (now Mrs. Bernard Daney) as his only heir, but left a legacy of sum of money in favor of Helen Christensen Garcia (who in a decision rendered by the Supreme Court had been declared another acknowledged natural daughter of his). Counsel for the acknowledged natural daughter Helen claims that under Art. 16, par. 2 of the Civil Code, California law should be applied; that under California law, the matter is referred back to the law of the domicile; that therefore Philippine law is ultimately applicable; that finally, the share of Helen must be increased in view of the successional rights of illegitimate children under Philippine law. Upon the other hand, counsel for the child Maria Lucy contends that inasmuch as it is clear

that under Art. 16, par. 2 of our Civil Code, the national law of the deceased must apply, our courts must immediately apply the internal law of California on the matter; that under California law there are no compulsory heirs and consequently a testator could dispose of any property possessed by him in absolute dominion and that finally, illegitimate children not being entitled to anything under California law, the will of the deceased giving the bulk of the property to Maria Lucy must remain undisturbed.

The Court in deciding to grant more successional rights to Helen said in effect that there are two rules in California on the matter: the internal law (which should apply to Californians domiciled in California); and the conflicts rule (which should apply to Californians domiciled OUTSIDE of California). The California conflicts rule, found in Art. 946 of the California Civil Code, says: "If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner and is governed by the *law of his domicile*." Christensen being domiciled outside California, the law of his domicile, the Philippines, ought to be followed. Were we to throw back the matter to California, the problem would be tossed back and forth between the states concerned, resulting in "international football." (The case was remanded to the trial court for further proceedings — the determination of successional rights under *Philippine law*).

**Testate Estate of Bohanan
v. Bohanan, et al.
106 Phil. 997**

Since the laws of the State of Nevada 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 Philippine laws, should be respected and the project of partition made in accordance with his testamentary dispositions respected, and with the project of partition made in accordance with his testamentary dispositions approved.

**Testate Estate of Amos G. Bellis, et al.
v. Edward A. Bellis
L-23678, June 6, 1967**

FACTS: Amos G. Bellis was a citizen and resident of Texas at the time of his death. Before he died, he 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 conflicts rule (rule of Private International Law) 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 would be entitled, if Philippine law were to apply).

ISSUE: Are they entitled to their legitimes?

HELD:

- (1) Said children are NOT entitled to their legitimes — for under Texas Law which we must apply (because it is the national law of the deceased), there are no legitimes. (*See Art. 16, par. 2, Civil Code*).
- (2) The *renvoi* doctrine, applied in *Testate Estate of Edward Christensen, Adolfo Aznar v. Christensen Garcia, L-16749, Jan. 31, 1963*, cannot be applied. Said doctrine is usually pertinent where the decedent is a national of one country, and a domiciliary of Texas at the time of his death. So that even assuming that Texas has a conflicts of law rule providing that the law of the domicile should govern, the same would not result in a reference back (*renvoi*) to Philippine law, but would still refer to Texas law because the deceased was BOTH a citizen and a domiciliary of Texas. Nonetheless, if Texas has a conflicts rule adopting the *situs* theory (*lex rei sitae*) calling for the application of the law of the place where the properties are situated, *renvoi* would arise, since the properties here involved are found in the Philippines. In the absence, however, of proof as to the conflicts

of law rule in Texas, it should not be presumed different from ours. (*Lim v. Collector*, 36 Phil. 472; *In re: Testate Estate of Suntay*, 95 Phil. 500).

- (3) The contention that the national law of the deceased (Art. 16, par. 2; Art. 1039) should be disregarded because of Art. 17, par. 3 which in effect states that our prohibitive laws should not be rendered nugatory by foreign laws, is WRONG, firstly because Art. 16, par. 2 and Art. 1039 are special provisions, while Art. 17, par. 3 is merely a general provision; and secondly, because Congress deleted the phrase “notwithstanding the provisions of this and the next preceding article” when it incorporated Art. 11 of the old Civil Code as Art. 17 of the new Civil Code, while reproducing without substantial change, the second paragraph of Art. 10 of the old Civil Code as Art. 16 in the new. It must have been its purpose to make the second paragraph of Art. 16 a specific provision in itself, which must be applied in testate and intestate successions. As further indication of this legislative intent, Congress added a new provision, under Art. 1039, which decrees that capacity to succeed is to be governed by the national law of the decedent. It is therefore evident that whatever public policy or good customs may be involved in our system of legitimes, Congress has not intended to extend the same to the succession of foreign nationals.
- (4) It has been pointed out by the oppositor that the decedent executed two wills — one to govern his Texas estate and the other his Philippine estate — arguing from this that he intended Philippine law to govern his Philippine estate. Assuming that such was the decedent’s intention in executing a separate Philippine will, it will NOT ALTER the law, for as this Court rules in *Miciano v. Brimo*, 50 Phil. 867, 870, a provision in a foreigner’s will to the effect that his properties shall be distributed in accordance with the Philippine law and not with his national law, is

illegal and void for his national law, in this regard, cannot be ignored.

**PCIB v. Hon. Venicio Escolin
L-27860 and L-27896, Mar. 29, 1974**

FACTS: A married woman, Linnie Jane Hodges, a citizen of Texas, USA, was a domiciliary of the Philippines at the moment of her death. With respect to the validity of certain testamentary provisions she had made in favor of her husband, a question arose as to what exactly were the laws of Texas on the matter at the precise moment of her death (for while one group contended that Texan law would result in the *renvoi*, the other group contended that *no renvoi* was possible). Should the laws of Texas on the matter be ascertained?

HELD: Yes, for what the law of Texas is on the matter, is a question of fact to be resolved by the evidence that would be presented in the probate Court. Texas law at the time of her death (and not said law at any other time) must be proved.

[*NOTE:* While in the *Amos Bellis* case, the Court partially discussed the law of Texas, still it is needful to prove in the instant case what that law precisely was — at the moment of Linnie Jane Hodges' death. After all, the law may have been *different*. Besides, in *Amos Bellis*, the deceased was a citizen and domiciliary of Texas; here, she was a citizen but not a domiciliary of Texas.]

Art. 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 the 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, pub-

lic policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determi-nations or conventions agreed upon in a foreign country. (11a)

COMMENT:

(1) Doctrine of *Lex Loci Celebrationis*

The first paragraph of the Article lays down the rule of *lex loci celebrationis* insofar as *extrinsic validity* (forms and solemnities) is concerned. Thus, a contract entered into by a Filipino in Japan will be governed by Japanese law insofar as form and solemnities of the contract are concerned. Thus also, if a power of attorney is executed in Germany, German laws and not our Civil Code should determine its formal validity. (*Germann and Co. v. Donaldson, Sim and Co., 1 Phil. 63*).

**Germann and Co. v. Donaldson,
Sim and Co.
1 Phil. 63**

FACTS: A power of attorney was executed in Germany giving the recipient authority to bring an action in the Philippines. Said power of attorney was not authenticated by a notary public. In Germany, no such authentication was needed, *contrary* to Philippine rules. *Question:* Was the power of attorney properly made insofar as form was concerned?

HELD: Yes, because it was executed in Germany. There is no reason why the *lex loci celebrationis* should not apply.

(2) Formalities for the Acquisition, Encumbering, or Alienation of Property

Formalities for the acquisition, encumbering and alienation of property (whether real or personal) shall however, be governed not by the *lex loci celebrationis* but by the *lex rei sitae*. (*See Art. 16, par. 1*).

Example:

In Japan, a Chinese sold to a Filipino a parcel of land located in the Philippines. The law of which country governs the formalities of the sale?

ANSWER: The law of the Philippines because the land is located here. This is (*Art. 16, par. 1*), an exception to *lex loci celebrationis*.

(3) Rule of Exterritoriality

Even if the act be done abroad, still if executed before Philippine *diplomatic and consular officials*, the solemnities of Philippine laws *shall* be observed. The theory is that the act is being done within an extension of Philippine territory (the principle of *extritoriality*).

(4) Rule Respecting Prohibitive Laws

The third paragraph gives one exception to the rule that a foreign law, contract, or judgment can be given effect. The reason is that public policy in the Philippines prohibits the same.

Examples:

- (a) A contract for the sale of human flesh (prostitution) even if valid where made cannot be given effect in the Philippines.
- (b) An absolute divorce granted Filipinos abroad even if valid where given cannot be recognized in the Philippines inasmuch as under the Civil Code, absolute divorce is prohibited (except insofar as Mohammedan Filipinos are concerned).
- (c) A U.S. court allowed a mother living with a man other than her husband to exercise authority over her child with the lawful husband. It was held by our Supreme Court that such a decision cannot be enforced in the Philippines.

(*Querubin v. Querubin*, GR L-3693, 47 O.G. [Supp. 12], p. 316.). The rule is the same today except that in case of separation of his parents, no child under 7 years of age shall be separated from his mother, unless the court finds compelling reasons to do so. Even the commission of adultery, according to the Code Commission, is not a compelling reason.

(5) Intrinsic Validity of Contracts

It should be noted that while the first paragraph of Art. 17 speaks of forms and solemnities, no mention is made of the law that should govern the *intrinsic validity* of contracts in general. The prevailing rule in Private International Law today is to consider the *lex loci voluntatis* (the law of the place voluntarily selected) or the *lex loci intentionis* (the law of the place intended by the parties to the contract).

Art. 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)

COMMENT:

(1) Rule in Case of Conflict Between the Civil Code and Other Laws

In case of conflict with the Code of Commerce or special laws, the Civil Code shall only be *suppletory*, except if otherwise provided for under the Civil Code. *In general*, therefore, in case of conflict, the special law prevails over the Civil Code, which is general in nature. (*Leyte A. and M. Oil Co. v. Block*, 52 Phil. 429).

Enriquez v. Sun Life Assurance Company of Canada 41 Phil. 39

FACTS: A applied for a life annuity. The insurance company accepted, and intended to mail its acceptance, but never actually mailed the same. So the applicant

never received the letter of acceptance. Later, the applicant died. Was the contract ever perfected?

HELD: No, because acceptance was never made known to the applicant. This rule in the Civil Code, which requires knowledge by the offeror of the acceptance, can be applied because the Insurance Law (a special law) contains no rule on the matter. In other words, the Civil Code can supply the deficiency.

[NOTE:

- (a) When the action of a plaintiff against a shipowner is upon a civil tort, Art. 2180 of the Civil Code applies; but when the case involves tortious conduct resulting in *maritime collision*, it is a maritime tort, and the liability of the shipowner is governed by the provisions of the Code of Commerce. (*Manila Steamship Co. v. Abdulhamar, L-9534, Sep. 29, 1956*).
- (b) Under the Veterans Guardianship Act, RA 390 (a special law), guardianship of a minor terminates only upon reaching the age of 21 (age of majority is now 18), not upon marriage. Therefore, in a case involving monetary benefits from the Veterans' Act, the special law must prevail. (*Estate of Daga, L-9695, Sep. 10, 1956*).]

(2) When the Civil Code is Superior

There are instances when the Civil Code expressly declares itself superior to special laws:

- (a) *Common carriers* — The Code of Commerce supplies the deficiency. (*Art. 1766, Civil Code*).
- (b) *Insolvency* — The special laws supply the deficiency. (*Art. 2237, Civil Code*).

(3) The Case of Usury

In case of conflict, the new Civil Code applies. (*Art. 1961, Civil Code*). But under another article, the new Civil Code inconsistently says that in case of conflict, usurious transactions are governed by special laws. (*Art. 1175, Civil Code*). See *Liam*

Law v. Olympic Sawmill Co. & Elin Lee Chi, L-30771, May 28, 1984, however, where the Supreme Court held that “for sometime now usury has been legally non-existent; interest can now be charged as lender and borrower may agree upon.”

(4) Rule in Statutory Construction

The general rule is that the special law governs in case of conflict. (*Ramos v. De la Rama, 15 Phil. 544*). Thus, in this case (*Ibid.*), large cattle was sold in a public instrument. It was contended that under the Civil Code, the sale should be valid. It was held by our Supreme Court that the sale is void because under the Cattle Registration Act, no sale or transfer of large cattle is valid unless it is registered and a certificate of the transfer is obtained under the Cattle Registration Act. The Civil Code cannot apply because there is no deficiency in the matter in this special law.

Chapter 2

HUMAN RELATIONS (n)

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.

COMMENT:

(1) Why the Code Commission Formulated a Chapter on Human Relations

A chapter on human relations was formulated to present some basic principles that are to be observed for the rightful relationship between human beings and the stability of the social order. The lawmaker makes it imperative that everyone duly respect the rights of others. (*Report, p. 39*). Indeed this Chapter is calculated “to indicate certain norms that spring from the fountain of good conscience. These guides for human conduct should run as golden threads through society, to the end that law may approach its supreme ideal, which is the sway and dominance of justice.” (*Ibid.*).

[*NOTE*: The new provisions in this Chapter can be given retroactive effect, pursuant to Arts. 2252, 2253 and 2254 of the Civil Code. These articles have been applied to condemn the defendant to pay damages even though the acts, basis of the action, took place before the Civil Code became effective on Aug. 30, 1950. (*Velayo v. Shell Co. of the Phil., L-7817, Oct. 31, 1956*).].

(2) Stress of the Article

This article stresses:

- (a) Acting with justice;

- (b) The giving to everyone his due;
- (c) The observance of honesty and good faith.

Thus, rights must never be abused; the moment they are abused, they cease to be right.

In the celebrated case of *Dominador R. Aytona v. Andres Castillo, et al.* (L-19313, Jan. 19, 1962), the Supreme Court held that although President Carlos P. Garcia was still President up to noon Dec. 30, 1961 (his successor, President Diosdado Macapagal was scheduled to assume the Presidency on said date) he should not have issued *mass* “midnight appointments” on December 26, 1961. Such an act may be regarded by the successor as an abuse of Presidential prerogatives, the appointments detracted “from that degree of *good faith, morality, and propriety* which form the basic foundation of claims to equitable relief . . . Needless to say there are instances wherein not only strict legality, but also fairness, justice, and righteousness should be taken into account.”

However in *Gilera v. Fernandez, L-20741, Jan. 31, 1964*, it was held that appointments made by an outgoing President to fill up vacancies in important positions, if few and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee’s qualification, are valid.

Upon the other hand, an attorney who deliberately neglects the trial of his cases, fails in his duty to prepare for trial with diligence and deliberate speed. And should he present a frivolous and dilatory appeal to the appellate courts TREBLE COSTS may be assessed against his client, said costs to be PAID by the ATTORNEY. (*Elpidio Javellana v. Nicolas Lutero and the Roman Catholic Archbishop of Jaro, L-23956, July 21, 1967*). A charge against an attorney, particularly made by a brother lawyer, must be well-founded, for as Justice Cardozo has correctly observed, reputation in the legal profession is a plant of tender growth and its bloom, once lost, is not easily restored. (*Beltran v. Llamas, Jr., Adm. Case 980, Nov. 27, 1974*).

While it is true that a person who is aggrieved may have recourse against the person or entity responsible, still if a

person has not been damaged in any way by another's act, the former has no cause of action against the latter. Thus, a warehouse operator who has not been damaged by the act of an entity in taking delivery of certain goods from the warehouse thru an alleged forged permit has no right to go after said entity. Only those who have suffered loss because of such "misdelivery" have the right to complain. (*See Consolidated Terminals, Inc. v. Artex Development Co., Inc., L-25748, Mar. 10, 1975*).

Albetz Investments, Inc. v. Court of Appeals
L-32570, Feb. 28, 1977

FACTS: Having won a case in a final and executory judgment, the winning party, in having the judgment executed, did not give the occupants of a house (sought to be demolished) sufficient time to remove their personal belongings. Are said occupants entitled to damages?

HELD: Since no reasonable time was given, and the belongings were damaged, the demolition of the house may be said to have been carried out in a manner not consistent with justice and good faith, as required by Art. 19 of the Civil Code. Damages may therefore be awarded in view of this abuse of a right.

Phil. Nat. Bank v. CA, et al.
L-27155, May 18, 1978

The refusal of a bank to approve the lease of sugar quotas simply because of a P200 difference in the rental is contrary to Art. 19 of the Civil Code, particularly when it is considered that hardly anybody was willing to lease at the higher rate and that as a consequence of said refusal, a bank client suffered.

Magtibay v. Garcia
GR 28971, Jan. 28, 1983

An institution of learning has a contractual obligation to afford to students a fair opportunity to complete the course

they seek to pursue, but when a student commits a serious breach of discipline or fails to maintain the required academic standard, he forfeits his contractual right.

RCPI v. CA
143 SCRA 657

A telegraph company is liable for acts of its employees in connection with a libelous or defamatory telegram. A message-sending company is duty-bound to take precautionary or necessary steps in order to prevent such humiliating incident.

[*NOTE*: By analogy, in light of Information Technology, a pager company must exercise due caution that no libelous, defamatory nor obscene or pornographic message come through. Obviously, such a message speaks for itself (“*res ipsa loquitur*”), and thus calls for an award of damages.].

AHS/Phil. Employees Union
v. National Labor Relations Commission
GR 73721, Mar. 30, 1987

Concededly, retrenchment to prevent losses is a just cause for termination of employment. However, if the termination is made in bad faith, as when, after the termination of the employee, another is hired, this is not in keeping with good faith.

Meralco v. CA, et al
L-39019, Jan. 22, 1988

FACTS: Because of respondent’s failure to pay his electric bills, Meralco cut his electric supply without prior notice.

HELD: Meralco is liable for damages under Art. 19. The law requires at least a 48-hour notice before electric supply service of disconnection is made to a delinquent customer. Failure to provide said prior written notice amounts to tort.

**Globe Mackay Cable & Radio
Corp. v. Court of Appeals
GR 81262, Aug. 25, 1989**

A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality.

Thus, when a right is exercised in a manner which does not conform with the norms enshrined in Art. 19 of the Code and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible.

**Garciano v. CA, et al.
GR 96121, Aug. 10, 1992**

Liability for damages under Arts. 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.

**In Re: Emil (Emiliano) P. Jurado
Ex Rel: PLDT, per its First VP Vicente R. Samson
AM 93-2-037 SC, Apr. 6, 1995**

Art. 19 of the Civil Code is reflective of the universally accepted precept of “abuse of rights,” one of the most dominant principles which must be deemed always implied in any system of law. It parallels to “the supreme norms of justice which the law develops” and which are expressed in three familiar Latin maxims: *honeste vivere*, *alterum non laedere*, and *jus suum quique tribuere* (to live honorably, not to injure others, and to render to every man his due).

Freedom of expression, the right of speech and of the press is, to be sure, among the most zealously protected rights in the Constitution. But every person exercising it, is, as the Civil Code stresses, obliged “to act with justice, give everyone his due, and observe honesty and good faith.” The constitutional right of freedom of expression may not be availed of to broadcast lies or half-truths — this would not be “to observe

honesty and good faith;” it may not be used to insult others, destroy their name or reputation or bring them into disrepute — this would not be “to act with justice” or “give everyone his due.”

Clearly, the public interest involved in freedom of speech and the individual interest of judges (and for that matter, all other public officials) in the maintenance of private honor and reputation need to be accommodated one to the other. And the point of adjustment or accommodation between these two legitimate interests is precisely found in the norm which requires those who, invoking freedom of speech, publish statements which are clearly defamatory to identifiable judges or other public officials to exercise *bona fide* care in ascertaining the truth of the statements they publish.

The norm does not require that a journalist guarantee the truth of what he says or publishes. But the norm does prohibit the reckless disregard of private reputation by publishing or circulating defamatory statements without any *bona fide* effort to ascertain the truth thereof. That this norm represents the generally accepted point of balance or adjustment between the two interests involved is clear from a consideration of both the pertinent civil law norms and the Code of Ethics adopted by the journalism profession in the Philippines.

(3) Acting with Justice and Giving Another His Due

This is elaborated in the following articles, among others:

- (a) Art. 20 — indemnification of another due to illegal acts
- (b) Art. 21 — indemnification due to immoral acts
- (c) Art. 24 — unfair competition
- (d) Art. 22 — unjust enrichment

(4) Observance of Honesty and Good Faith

This is elaborated in the following articles, among others:

- (a) Art. 26 — respect for the personality and dignity of others
- (b) Art. 25 — restraint of undue extravagance
- (c) Art. 31 *et seq.* — independent civil actions

[NOTE:

Honesty — careful regard for other's rights and property.

Good faith — honest intention to avoid taking undue advantage of another. (*Cui v. Henson*, 51 Phil. 612).]

Thus, if the government itself creates a *semblance* of "agrarian unrest" in a privately owned Hacienda (such as the Canlubang Sugar Estate) in an attempt to expropriate the same for resale to the tenants thereof, the Supreme Court can order the government to stop "fomenting and inciting unrest" in said Hacienda. Honesty and good faith so demand. (*See Minute Resolution of the Supreme Court, Tuesday, Feb. 12, 1963*). Similarly, the following acts may also be considered highly IMMORAL: the suspension of an appointive official for an unreasonable period of time, during the pendency of a case against him; the threat to cancel a franchise of a public utility corporation, for alleged violations of said franchise unless certain politicians allegedly controlling the same are removed (with the clear implication that said violations would be condoned provided the politicians concerned are thrown overboard); the move to reorganize the Upper House of Congress by taking advantage of the illness and absence of a member thereof. On the other hand, mere bad judgment or negligence does not necessarily mean bad faith. There must be a dishonest purpose or some moral obliquity and conscious doing of wrong. (*See Board of Liquidators v. Heirs of Maximo Kalaw, et al., L-18805, Aug. 14, 1967*).

**The Board of Liquidators v.
Heirs of Maximo M. Kalaw, et al.
L-18805, Aug. 14, 1967**

FACTS: Maximo M. Kalaw, as general manager of the governmental organization, the National Coconut Corporation (NACOCO), entered into various contracts (involving the sale

of *copra*), without *prior* authority of the Board of Directors. However, he later presented the contracts to the Board for ratification. Under NACOCO's corporate by-laws, *prior* approval is required. The Board ratified said contracts (although Kalaw had informed them that losses would be incurred, due to typhoons, etc.). After Kalaw's death, action was brought against Kalaw's heirs (and against the members of the Board) to recover governmental losses in the transactions. The action was brought by the Board of Liquidators (an entity that took the place of NACOCO, after it was dissolved).

ISSUE: Can damages be recovered?

HELD: Damages cannot be recovered, for Kalaw and the Board *did not act in bad faith*. Several reasons may be given:

- (a) While it is true that the NACOCO by-laws specifically provided for prior approval, still a general manager, by the very *nature* of his functions should be allowed greater leeway. A rule that has gained acceptance throughout the years is that a corporate general manager may do necessary and appropriate acts *without* special authority from the Board. This is specially true in *copra* trading — where “future sales” or “forward sales” of still unproduced *copra* are needed to facilitate sales turn-overs. To call the Board to a formal meeting is difficult when time is essential.
- (b) Many times in the past, Kalaw had done the same (without prior Board approval); profits were then made; instead of criticism, Kalaw had received a bonus for “signal achievement.”
- (c) Even assuming need of prior authority, it must be remembered that RATIFICATION *retroacts* to the time of the act or contract ratified, and is therefore equivalent to original authority.
- (d) Bad faith does not simply connote bad judgment or negligence; it imparts a dishonest purpose or some moral obliquity and conscious doing of wrong. None of these is present here. Thus, Kalaw and the Board are NOT LIABLE.

Velayo v. Shell Co. of the Phil.
L-7817, Oct. 31, 1957

FACTS: The CALI (Commercial Air Lines, Inc.) knew it did not have sufficient assets to pay off its liabilities, and so it called a meeting of 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 Co., took advantage of this information, and made a telegraphic assignment of its credit in favor of a *sister Shell Co.*, in the U.S. which then promptly attached the plane in California, thus depriving the other creditors of its value.

Question: Can the Shell Co. in the Philippines be made to pay for damages to the other creditors?

HELD: Yes, because it did not show good faith and honesty.

Yutivo & Sons Hardware Co. v.
Court of Tax Appeals, et al.
L-13203, Jan. 28, 1961

A taxpayer has the legal right to decrease the amount of what otherwise would be his taxes or altogether *avoid* them by means which the law permits. All legal means used by the taxpayer to reduce taxes are all right. A man may therefore perform an act that he honestly believes to be sufficient to exempt him from taxes. He does *not* incur fraud thereby even if the act is thereafter found to be insufficient. (*NOTE:* While tax *avoidance* is *allowable*, tax evasion is dishonest and illegal.)

Nera v. Garcia
L-13169, Jan. 30, 1960

If an *appointive* government officer or employee is dishonest or is guilty of oppression, his right to continue in office is affected, even if the acts are *not* connected with his office. The private life of an employee cannot be segregated from his public life. The rule is different in the case of an elective official, since his term is *shorter*, and he is *generally responsible only to the people*.

Medina v. Court of Appeals
L-34760, Sep. 28, 1973

Because of possible conflict of duties and possible abuse, the appointment of a Clerk of Court or any other court official or employee as administrator of an estate (in a case pending before the court where he works) is *disfavored* by the Supreme Court.

Bengzon v. Ramos
AM P-160, May 31, 1974

The unauthorized use of vehicles and other personal properties in the official custody of the sheriff cannot be sanctioned or tolerated and borders on misappropriation.

Magtibay v. Garcia
GR 28971, Jan. 28, 1983

Courts should not review the discretion of university authorities in excluding a student from the roll of graduating ones for serious breach of discipline and failure to maintain the requisite academic standards.

Lamberto Torrijos v. Court of Appeals
L-40336, Oct. 24, 1975

FACTS: In 1964, Torrijos purchased a lot from Diamnuan. Later Torrijos learned that in 1969, Diamnuan sold the same lot to De Guia. Torrijos initiated an estafa complaint against the seller, who was eventually convicted by the CFI (RTC). During the pendency of the case in the Court of Appeals, the accused Diamnuan died. His lawyer filed a motion to dismiss the case alleging that the death of his client, prior to final judgment, extinguished both the personal and the pecuniary penalties.

ISSUES: Is the civil liability also extinguished? Should the case be dismissed?

HELD: The civil liability here is not extinguished, because *independently* of the criminal case, the accused was civilly liable

to Torrijos. If after receiving the purchase price from Torrijos, he failed to deliver the property (even before selling it again to De Guia), there would as yet be no estafa, but there is no question of his civil liability thru an action by Torrijos either for specific performance plus damages, or rescission plus damages. Death is not a valid cause for the extinguishment of a civil obligation. Had the only basis been the commission of estafa, it is clear that the extinguishment of the criminal responsibility would also extinguish the civil liability, provided that death comes before final judgment.

Furthermore, under Arts. 19, 20, and 21 of the Civil Code, the accused would be civilly liable independently of the criminal liability for which he can be held liable. And this civil liability exists despite death prior to final judgment or conviction. The case, therefore, cannot as yet be dismissed.

Vda. de Oribiana v. Atty. Gerio
AM 1582, Feb. 28, 1979

FACTS: The client of a lawyer had no money to pay for the printing of a brief. So the lawyer did not file one. Is the lawyer administratively liable?

HELD: Yes, for he could have filed a mimeographed or typewritten brief, or he could have informed the court of his difficulty in preparing a printed brief.

Nakpil & Sons v. Court of Appeals
L-47851, Apr. 15, 1988

The showing of wanton negligence in effecting the plans, designs, specifications, and construction of a building is equivalent to *bad faith* in the performance of the assigned tasks. Thus, one who negligently creates a dangerous condition cannot escape liability for the natural and probable consequences thereof, although the act of a third person or an Act of God for which he is not responsible, intervenes to precipitate the loss.

Ginson v. Municipality of Murcia
L-46585, Feb. 8, 1988

An abolition of office neither means removal nor separation from office and is not thus covered by the constitutional clause on security of tenure. The principle carries a *caveat*, however, that the abolition is done in good faith.

(5) Anonymous Complaints

Anonymous Complaint v. Araula
AM 1571-CFI
Feb. 7, 1978

Although the Supreme Court does not as a rule act on anonymous complaints, cases are excepted in which the charge (concealment of the pendency of a criminal case by a person at the time he applied for appointment to the judiciary) can be fully borne by public records of indubitable integrity, thus needing no corroboration by evidence to be offered by complainant, whose identity and integrity can hardly be material where the matter involved is of public interest.

(6) Inexperienced 'Counsel de Oficio'

Lames v. Lascieras
AM 1919, Mar. 30, 1979

FACTS: A counsel *de officio* defended his client without the ability of a more experienced and competent lawyer. Should the counsel *de officio* be disbarred?

HELD: No, because said incompetence does not necessarily make him unfit to be a member of the bar.

(7) Effect of a Plea for Social Justice

Salonga v. Farrales
L-47088, July 10, 1981

- (a) The law on obligations and contracts cannot be nullified

just because of a plea for social justice. To so nullify is beyond the power of the courts.

- (b) Social justice provisions in the 1973 Constitution cannot defeat the law on obligations and contracts, and cannot take away rights from a person and give them to another who is not entitled thereto. Surely, this is beyond the power of the courts to grant.

(8) Effect of a Veiled Threat on Dispensers of Justice

In Re: Laureta and Maravilla-Ilustre GR 68635, Mar. 12, 1987

To subject justices to the threat of an investigation or prosecution for official acts is to subvert their independence.

(9) Law and Equity

Esconde v. Barlongay GR 67583, July 31, 1987

Justice is done according to law. As a rule, *equity follows the law*. There may be a moral obligation, often regarded as an equitable consideration (meaning compassion) but if there is no enforceable legal duty, the action must fail although the disadvantaged party deserves commiseration or sympathy.

(10) Bad Faith

Sea Commercial Co., Inc. v. CA GR 122823, Nov. 25, 1999, 116 SCAD 198

By appointing as dealer of its agricultural equipment, the corporation recognized the role and undertaking of the dealer to promote and sell said equipment.

After being informed of the demonstration, the dealer had conducted to promote the sales of the equipment, including the operations at the dealer's expense conducted for 5 months, and

the approval of its service facilities by the dealer, the corporation participated in the bidding for the said equipment at a lower price, placing itself in direct competition with its own dealer. The actuations of the corporation are tainted with bad faith.

(11) Sexual Harassment Is About Power Exercised By a Superior Over a Subordinate

**Paiste v. Mamenta, Jr.
412 SCRA 403 (2003)**

“Sexual harassment” in the workplace is not about a man taking advantage of a woman by reason of sexual desire — it is about POWER being exercised by a superior over his women-subordinates.

In the instant controversy, owing to respondent’s sexual harassment, the Supreme Court held that it “constituted serious misconduct prejudicial to the interest of the service which warrant his dismissal from office.”

[NOTE: RA 7877 on the Anti-Sexual Harassment Act of 1995 allows for an independent action for damages and other affirmative relief. (Sec. 6).].

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

COMMENT:

(1) Willful or Negligent Acts

The article punishes illegal acts whether done *willfully* or *negligently*. Thus, in the law of torts or quasi-delicts — “Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done.” (Art. 2176, *Civil Code*).

The mere possession of a slot machine or even its operation for amusement and not for profit does not constitute a

crime, in the absence of a law that regards its operation as a crime. In fact, a slot machine is not a gambling device *per se*, because by itself, it can be operated legally as well as illegally. (*Owners of 51 Jackpot Slot Machines v. Director of the NBI, L-18899, Feb. 29, 1964*). Slot machines which are actually made for gambling purposes are of course illegal and may be destroyed by the proper authorities.

Fernando v. CA
GR 92087, May 8, 1992

Negligence has been defined as the failure to observe for the protection of the interests of another person that degree of care, precaution and vigilance which the circumstances greatly demand, whereby such other person suffers injury.

N.B.: Acts resulting from *negligence* may vary in nature, extent, and resulting consequences. This is why, particularly in criminal cases, courts are given greater leeway or discretion in imposing the proper penalty, and are not bound to mathematical formulas for the lowering of degrees of penalty. (*People v. Felicisimo Medroso, Jr., L-37633, Jan. 31, 1975*).

(2) Torts

Art. 20 introduces a broader concept of torts in our country, for it embraces:

- (a) The Spanish tort — based on negligence. (*Art. 1902, old Civil Code, see Caguioa, Civil Law, Vol. I, p. 19*).
- (b) And the American tort — based on malice. (*Prosser, Torts, p. 4; see Caguioa, Civil Law, Vol. I, p. 19*).

(3) When No Action for Damages Would Prosper

If someone be damaged, he does not necessarily have the right to be indemnified. It is essential that some right of his be impaired. Thus, it has been held that no rights to the prizes may be asserted by the contestants in an oratorical contest (in case of defeat) because theirs was merely the privilege to

compete for the prizes, and that privilege did not ripen into a demandable right unless and until they were proclaimed winners of the competition by the judges. The judiciary has no power to reverse an award of the board of judges of an oratorical contest, even if the decision be erroneous. "Error" and "wrong" do not mean the same thing. "Wrong" as used in the legal principle that where there is a wrong there is a remedy, is the deprivation or the violation of a right. Indeed a contestant has no right to the prize until he is declared the winner. If after declaration, he is still deprived of the prize, an action would now be proper. (*Felipe v. Leuterio, et al., L-4606, May 30, 1955*).

What has been said hereinabove applies with full force to literary and beauty contests, and similar competitions. (*Felipe v. Leuterio, et al., L-4606, May 30, 1955*). However, if according to the promulgated rules, only *unmarried girls* may qualify in a beauty contest, but the judges pick as winner a *wife*; or if an essay should in no case exceed 5,000 words, but the prize is awarded to one containing an excess of the maximum number of words, an actionable wrong shall have been committed, for certainly, judges cannot violate the rules they themselves have promulgated.

(4) When Judiciary Can Interfere in Decisions of Religious Tribunals

On at least one occasion, the Supreme Court has stated the instances when *it can or cannot* inquire into the validity of decisions of ecclesiastical courts. In *Fonacier v. Court of Appeals (L-5917, Jan. 28, 1955)*, the Supreme Court thru Justice Felix Bautista held that the expulsion of a member of the Filipino Independent Church who had not been given any notice or opportunity to be heard is not conclusive upon civil courts *when a property right is involved*.

Civil courts, according to the Highest Tribunal, have jurisdiction to inquire into the jurisdiction of religious tribunals and the regularity of their procedure; and may even subject their decisions to the test of fairness or to the test furnished by the Constitution and laws of the Church.

However, civil courts *cannot* pass upon the abandonment of faith by a member of the church nor upon restatement of articles of religion since these are unquestionably ecclesiastical matters which are outside the province of the civil courts. (*The Court cited 45 Am. Jur. 748-752*).

(5) Courts Cannot Just Set Aside Rules

**Evelyn E. Peña, et al. v. NLRC,
Naga Parochial School, et al.
71 SCAD 530, GR 100629, July 5, 1996**

It is the prerogative of a school to set high standards of efficiency for its teachers since quality education is a mandate of the Constitution. As long as the standards fixed are reasonable and not arbitrary, courts are not at liberty to set them aside. Schools cannot be required to adopt standards which barely satisfy criteria set for government recognition.

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.

COMMENT:

(1) Willful Acts Contrary to Morals

“Would not Art. 21 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. . . Furthermore, there is no belief of more baneful consequences upon the social order than that a person may with impunity cause damage to his fellowmen so long as he does not break any law of the State, though he may be defying the most sacred postulates of morality. What is more, the victim loses faith in the ability of the government to afford him protection or relief.” (*Report of the Code Commission, pp. 40-41*).

Art. 21 was intended to expand the concept of torts in this jurisdiction by granting adequate legal remedy for the untold number of moral wrong which is impossible for human foresight to specifically provide in the statutes. (*PNB v. CA*, 83 SCRA 247 [1978]).

Nota Bene:

The allegation of malice or ill-will does not bring the case under Art. 21 which can only apply in the absence of contractual stipulations.

Note: In a corporation, the by-laws govern the relations of the members, not Art. 21.

Buñag, Jr. v. CA
GR 101749, July 10, 1992

The acts of petitioner in forcibly abducting private respondent and having carnal knowledge with her against her will, and thereafter promising to marry her in order to escape criminal liability, only to thereafter renege on such promise after cohabiting with her for 21 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 Art. 21 in relation to paragraphs 2 and 10, Art. 2219, and Arts. 2229 and 2234 of the Civil Code.

Ponce v. Legaspi
GR 79104, May 6, 1992

One cannot be held liable for damages and to malicious prosecution unless he acted without legal or probable cause.

(2) Article 21 Distinguished from Article 20

(a) In Art. 21 — The act is contrary to morals, good customs, or public policy.

In Art. 20 — The act is contrary to law.

- (b) In Art. 21 — The act is done willfully.

[NOTE: “Willful” may mean not merely voluntarily but with a bad purpose. (*U.S. v. Ah Chong*, 15 *Phil.* 488; *People v. Parel*, 44 *Phil.* 437).].

In Art. 20 — The act is done either willfully or negligently.

(3) Examples

- (a) A student willfully humiliates a professor, causing her to have a nervous breakdown. This would be contrary to good customs and morals, and the professor can sue for damages.
- (b) *Example Given by the Code Commission*

A seduces the 19-year-old daughter of X. A’s promise of marriage either has not been made or cannot be proved. The girl becomes pregnant. Under the present criminal laws, there is no crime as the girl is above 18 years of age. Neither can any civil action for breach of promise be filed. Under Art. 21, she and her parents would have the right to bring an action for damages against A.

[NOTE: The example given by the Code Commission is correct, provided that the man had in some way defrauded or deceived the girl (not necessarily “seducing” her, as the term is used under the Revised Penal Code). But if the two of them had engaged in illicit relations out of mutual carnal lust, then it is believed that there can be no recovery of damages, since both parties are at fault. (*See Arts. 1411 and 1412, Civil Code; see also Batarra v. Marcos*, 7 *Phil.* 56). The same rule applies when it was the girl who deliberately tempted the man.].

Lirag Textile Mills v. Court of Appeals L-30736, Apr. 14, 1975

One who willfully dismissed an employee without just cause breaks a contract, and is both morally and legally liable under Art. 21 of the Civil Code.

Raquisa v. Castañeda
AM 1312-CFI
Jan. 31, 1978

“Misconduct” implies a wrongful intention and not a mere error of judgment. (*Buenaventura v. Hon. Benedicto*, 38 SCRA 71). Even if a judge is not correct in his legal conclusions, his judicial actuations cannot be regarded as grave misconduct, unless the contrary sufficiently appears.

Sevilla v. Court of Appeals
L-41182-3, Apr. 15, 1988

Unlike simple grants of a power of attorney, an agency declared to be compatible with the intent of the parties, cannot be revoked at will. The reason is that it is one coupled with an interest, the agency having been created for the mutual interest of the agent and the principal. Thereupon, interest is not limited to the commissions earned as a result of business transactions concluded, but one that extends to the very subject matter of the power of management delegated. Accordingly, a revocation proved to be so entitles the prejudiced party to a right to damages.

Albenson Enterprises Corp., et al. v.
CA and Baltao
GR 88694, Jan. 11, 1993

A party injured by the filing of a court case against him, even if he is later on absolved, may file a case for damages grounded either on the principle of abuse of rights, or on malicious prosecution.

Regarding the latter, it is well-settled that one cannot be held liable for maliciously instituting a prosecution where one has acted with *probable cause*. (“Probable cause” is the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that

the person charged was guilty of the crime for which he was prosecuted.)

Espiritu v. Melgar
GR 100874, Feb. 13, 1993

There is nothing wrong in preventively suspending an officer prior to the hearing of formal charges against him as long as there are reasonable grounds to believe his guilt. This is to prevent his office from hampering the normal course of the investigation.

(4) Can There Be An Action for Breach of Promise to Marry?

- (a) For the recovery of *actual* damages, yes. Thus, if a person gives another P500 because the latter promised to marry the former, and the promise is not fulfilled, the money given can be recovered. (*Domalagan v. Bolifer, 33 Phil. 471*). Thus also, if a teacher resigns from her position because of a man's promise to marry her, she can recover indemnity for damages if later on the promise is not fulfilled. (*Garcia v. Del Rosario, 3 Phil. 189*). The same thing may be said for the recovery of wedding expenses, such as the wedding breakfast, the ceremony, the trousseau, the issuance of invitations, if one party fails to appear.
- (b) *Recovery of Moral Damages*

In *Hermosisima v. Court of Appeals, et al., L-14628, Sep. 30, 1960*, the Supreme Court held that under the Civil Code, there can be no recovery of moral damages for a breach of promise to marry, AS SUCH, the omission in the Civil Code of the proposed Chapter on Breach of Promise Suits is a clear manifestation of legislative intent not to sanction as such, suits for breach of promise to marry, otherwise many "innocent men may become the victims of designing and unscrupulous females." However, if there be seduction (as defined in Arts. 337 and 338 of the Revised Penal Code), moral damages may be recovered under Art. 2219, par. 3, of the Civil Code. The Court, however, *implied* that if there be *moral seduction* as distinguished

from criminal seduction, there MAY BE a grant of moral damages, possibly under Art. 21. In said *Hermosissima* case, however, it was the woman who virtually seduced the man, by “surrendering herself” to him because she, a girl 10 years OLDER, was “overwhelmed by her love” for him. (*See also Estopa v. Piansay, Jr., L-14733, Sep. 30, 1960; Beatriz Galang v. Court of Appeals, et al., L-17248, Jan. 29, 1962*).

Cecilio Pe, et al. v. Alfonso Pe
L-17396, May 30, 1962

FACTS: A married man, who was the adopted son of a relative of a girl’s father and who had the same family name as the girl, became very close to the girl and her family. In fact, the members of the family considered him as one of them. In 1952, the man thus frequented the house of the girl (Lolita) on the pretext of desiring to teach her how to pray the rosary. The two eventually fell in love, and met each other in clandestine trysts, over the objections of the family. One day in 1957, the man wrote Lolita a note asking her to have a date with him. Lolita went to him. Her parents, brothers, and sisters now sue the defendant under Art. 21.

HELD: The Supreme Court, applying Art. 21 ruled that indeed he, a married man, has seduced Lolita through an ingenious and tricky scheme, to the extent of making her fall in love with him. Verily, he has committed an injury to Lolita’s family in a manner contrary to morals, good customs and public policy. He was, therefore, ordered to pay P5,000 as damages and P2,000 as attorney’s fees, in addition to the expenses of the litigation.

BAR

A, a married man, and B, an unmarried woman, entered into a written agreement to marry each other when A becomes a widower. After becoming a widower, A married another woman. Can B sue A for breach of promise?

ANSWER: No, insofar as moral damages are concerned. (See above discussion.) Moreover, to engage in such a promise during the lifetime of another's spouse would be contrary to good morals and good customs, and the agreement, even on that ground alone, must be considered void.

[**NOTE:** Had there been carnal knowledge, the matter would even be worse. Thus, it has been held that a promise of marriage founded on carnal intercourse has an unlawful consideration, and no suit on such promise can possibly prosper. (*Inson v. Belzunce*, 32 Phil. 342; *Dalistan v. Armas*, 32 Phil. 648).]

BAR

In an action based on a breach of promise to marry, what rights has the aggrieved party in cases:

- (a) When there has been carnal knowledge?
- (b) When there has been NO carnal knowledge?

ANSWER:

- (a) When there has been carnal knowledge, the aggrieved party may:
 - 1) ask the other to *recognize* the child, should there be one, and give *support* to said child.
 - 2) sue for *moral damages*, if there be *criminal* or *moral seduction*, but not if the intercourse was due to mutual lust. (*Hermosisima v. Court of Appeals*, L-14628, Sep. 30, 1960; *Estopa v. Piansay, Jr.*, L-14733, Sep. 30, 1960; *Batarra v. Marcos*, 7 Phil. 56; *Beatriz Galang v. Court of Appeals, et al.*, L-17248, Jan. 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). However, moral damages may be recovered by the girl if the man, in his effort to make the girl withdraw a suit for support of the

- child, deliberately calls the attention of the girl's employer to her condition as an unwed mother — a maneuver causing her mental anguish and even physical illness and suffering. (*Ledesma Silva, et al. v. Peralta, L-13114, Nov. 25, 1960*).
- 3) sue for ACTUAL damages, should there be any, such as the expenses for the wedding preparations. (*See Domalagan v. Bolifer, 33 Phil. 471*).
- (b) When there has been NO carnal knowledge, there may be an action for *actual and moral damages under CERTAIN* conditions, as when there has been a deliberate desire to inflict loss or injury, or when there has been an evident abuse of a right. Thus, a man who *deliberately* fails to appear at the altar during the scheduled wedding simply because it was his intention to embarrass or humiliate the girl no doubt inflicts irreparable injury to her honor and reputation, wounds her feelings, and leads the way for her possible social ostracism. The girl in such a case can recover not only actual but also moral and exemplary damages. (*See Victorino v. Nora, CA 13158-R, Oct. 26, 1955*).

Wassmer v. Velez
L-20089, Dec. 26, 1964

Mere breach of promise to marry is not actionable wrong, but to formally set a wedding and go through all the preparation therefore, only to walk out of it when the marriage is about to be solemnized is quite different. Obviously, it is contrary to good customs, and the defendant consequently must be held answerable for damages in accordance with Art. 21 of the Civil Code.

Cabrera v. Agustin
AM 225, Sep. 30, 1959

FACTS: If a lawyer has carnal knowledge of a poorly educated girl, promises to marry her to continue his carnal satisfaction, and then breaks his promise on account of

an expensive wedding which the parents of the girl insist upon, may he be disbarred?

HELD: Yes, for he has not maintained the highest degree of morality and integrity, which at all times is expected of and must be possessed by a member of the bar.

(5) Breach of Promise of Employment

In order that an action for breach of promise of employment may succeed, nothing short of an actual, clear, and positive promise on the part of the prospective employer must be shown by competent evidence. His unjustified hopes, perhaps inspired by courteous dealings of the other party, do not constitute a promise of employment whose breach is actionable at law. (*Exconde v. Int'l. Harvester Co.*, 48 O.G. 4794).

(6) Claim for Damages When Victim Is at Fault

If a man defaults in the payment of his light bills, he can not successfully bring an action for moral damages if the electric company should temporarily disconnect his light facilities. Even assuming that the act of the electric company constitutes a breach of public policy, still no recovery can be had, for Art. 21 of the Civil Code which is relied upon by him must necessarily be construed as granting the right to recover damages only to injured persons who are not themselves at fault. (*Mabutas v. Calapan Electric Co.*, [C.A.] 50 O.G. 5828).

(7) Nominal Damages

Nominal damages are granted for the vindication or recognition of a right violated or invaded, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. (*Citytrust Corp. v. IAC*, GR 84281, May 27, 1994, 51 SCAD 411). And this is so even if actual damages be not proved. (*Areola v. CA*, GR 95641, Sep. 22, 1994, 44 SCAD 478). Nominal damages in the amount of P10,000 may even be granted, and should there be bad faith on the part of the offender, the amount may be greater. (*Robes-Francisco Realty v. CFI Rizal*, L-41093, Oct. 30, 1978).

(8) Effect of Price Increases**Velasco v. Court of Appeals
96 SCRA 616**

Although it is of judicial notice that prices and costs of materials and labor have substantially increased since 1970, it is not fair to give materialmen and laborers four times the value of what they had furnished or constructed. It is sufficient to give them 12% interest per annum from the time they filed their complaint.

(9) May Moral Damages Be Granted?**Flordelis v. Mar
L-54887, May 22, 1982**

FACTS: A school administrator, because of a personal grudge, relieved two vocational teachers of their assignments, and even when ordered by the Secretary of Education to reinstate them, refused to do so. May said administrator be held liable for moral damages?

HELD: No, because the case does not fall under any of the cases (Arts. 2219, 2220) when moral damages can be granted.

Dissenting (J., Vicente Abad Santos):

Yes, because Art. 2219, in connection with Art. 21, entitles them to damages because of harassment on the part of the administrator.

**Meralco v. CA, et al.
L-39019, Jan. 22, 1988**

The failure to give prior notice amounts to a tort, and the petitioner's act in disconnecting respondents' gas service without prior notice constituted breach of contract amounting to an independent tort. The pre-maturity of the action was held indicative of an intent to cause additional mental and moral suffering to private respondent and a clear violation of Art. 21 providing 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.”

(10) Liable for Questionable Conduct

Arturo de Guzman v. NLRC GR 90856, July 23, 1992

Applying Art. 21 (and Art. 19), we hold that although the petitioner cannot be made solidarily liable with AMAL (Affiliated Machineries Agency Ltd.) for the monetary demand of its employees, he is nevertheless directly liable to them for his questionable conduct in attempting to deprive them of their just share in the assets of AMAL.

(11) Sexual Harassment

RA 7877 is an act declaring sexual harassment unlawful in the employment, education or training environment.

(12) Anti-Sexual Harassment Act

The “Anti-Sexual Harassment Act of 1995,” otherwise known as RA No. 7877, was approved on February 14, 1995.

The law’s declared policy provides that “[t]he State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment and students or those undergoing instruction or education. Towards this end, all forms of sexual harassment in the employment, education or training environment are hereby declared unlawful.” (*Sec. 2, RA No. 7877*).

Persons liable for sexual harassment include, *inter alia*: employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any *sexual favor* from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act (RA No. 7877). (*Sec. 3, id.*).

Sexual harassment is committed in two (2) kinds of environments, namely:

1. work-related (*e.g.*, hiring, reemployment, promotion of employees); and
2. education or training (*e.g.*, in the case of a student — giving of a passing grade by the offender-teacher, or the granting of honors/scholarships. (*See Sec. 3[a][b], id.*).

Aside from the penalties that may be imposed (in the form of imprisonment and/or fine) (*See Sec. 7, id.*), the victim of work, education, or training-related sexual harassment cases is not precluded “from instituting a separate and independent action for damages and other affirmative relief.” (*See Sec. 6, id.*).

Art. 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.

COMMENT:

(1) Duty to Return What Was Acquired Unjustly or Illegally

No person should unjustly enrich himself at the expense of another. (*Nemo cum alterius detrimento protest*). (*Report, Code Commission; see also Art. 2142 on quasi-contracts*). It ought to be noted, however, that when property is obtained by virtue of a final judgment of a court, Art. 22 *cannot* apply. (*See Escudero v. Flores, 51 O.G. 3444*).

In the same breath, this Article embodies the maxim, *Nemo ex alterius incommode debet lecupletari* (“No man ought to be made rich out of another’s injury”). (*Advanced Foundation Construction Systems Corp. v. New World Properties & Ventures, Inc., 491 SCRA 557 [2006]*).

In *Prudential Guarantee & Assurance, Inc. v. Trans-Asia Shipping Lines, Inc.* (491 SCRA 411 [2006]), “[t]he pile tests conducted should be for the account of the principal in accordance with the accepted practice in the construction industry.”

(2) Example

A owed B a sum of money evidenced by a promissory note. At maturity, A paid, and a receipt was given him. When later on he was again asked to pay, he could not find the receipt, so to avoid trouble he paid again. Subsequently, he found the missing receipt. Can he now get back what he had intentionally (but unwillingly) paid?

ANSWER: Yes, in view of Art. 22, which incidentally treats of an *accion in rem verso*.

Baje and Sacdalan v. Court of Appeals, et al.
L-18783, May 25, 1964

FACTS: A contract for the sale of land was declared null and void after the buyer had already paid the purchase price. May said buyer recover the price paid from the successors-in-interest of the seller?

HELD: Yes, because if said successors could recover the land without being required to reimburse the buyer, they would be enriching themselves unjustly at the expense of the buyer.

Commissioner of Internal Revenue v.
Fireman's Fund Insurance Co., et al.
GR 30644, Mar. 9, 1987

No person shall unjustly enrich himself at the expense of another. The government is not exempted from the application of this doctrine. Hence, if the government has already realized the revenue which is the object of the imposition of the subject stamp tax, it is not justified to require the payment of the same tax for the same documents.

Rolando P. Dela Torre v.
COMELEC and Marcial Villanueva
71 SCAD 876, GR 121592, July 5, 1996

The duty not to appropriate, or to return, anything acquired either by mistake or with malice is so basic it finds expression in some key provisions of the Civil Code on "Human

Relations” (Arts. 19, 20, 21, and 22) and “*Solutio Indebiti.*” (Art. 2154).

(3) Essential Requisites of an “*Accion in Rem Verso*”

- (a) One party must be *enriched* and the other *made poorer*.
- (b) There must be a casual relation between the two.
- (c) The enrichment must not be justifiable (so if the law itself allows the enrichment, or if the enrichment results from a contract or from the impoverished person’s own negligence, there can be no recovery).
- (d) There must be no other way to recover (so if, for example, a tort action or a quasi-contract action is proper, it is not necessary to file a claim *in rem verso*). (*Reyes and Puno, Outline of Phil. Civil Law, Vol. 1, pp. 42-43; Tolentino, Commentaries and Jurisprudence on the Civil Code, Vol. 1*).
- (e) The indemnity cannot exceed the loss or enrichment, whichever is less. (*Reyes and Puno, Outline of Phil. Civil Law, Vol. 1*).

[NOTE: It should be noted that in an *accion in rem verso*, as in the first example given, there was no mistake; in the quasi-contracts of *solutio indebiti* (undue payment) it is essential that there be a mistake. (*Tolentino, Commentaries and Jurisprudence on the Civil Code, Vol. 1, p. 81*).].

Art. 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.

COMMENT:

(1) Duty to Indemnify Because of Benefit Received

Unless there is a duty to indemnify, unjust enrichment will occur.

(2) Example

Without *A*'s knowledge, a flood drives his cattle to the cultivated highland of *B*. *A*'s cattle are saved, but *B*'s crops are destroyed. True, *A* was not at fault, but he was benefited. It is but right and equitable that he should indemnify *B*. (*Code Commission, p. 42; See Art. 941, Civil Code of Argentina*).

Art. 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.

COMMENT:**(1) Reason for the Courts' Protection of the Underdog**

The law takes great interest in the welfare of the weak and the handicapped. Thus, we have "*parens patriae*" (BAR — 1957).

Literally, "*parens patriae*" means "father or parent of his country." In the U.S. (as in the Philippines), the phrase refers to the sovereign power of the state in safeguarding the rights of person under disability, such as the insane and the incompetent. (*In re: Turner, 94 Kan. 115*). Thus, were the law always to be applied strictly, there would be danger that injustice might arise (*summum jus, summa injuria*). (*Reyes and Puno, Outline of Phil. Civil Law, p. 43, citing, Cicero, De Officiis*). The State as *parens patriae* is under the obligation to minimize the risk to those who because of their minority, are as yet unable to take care of themselves fully. (*People v. Baylon, L-35785, May 29, 1974*).

[Under Presidential Decree 603, the Child and Youth Welfare Code, effective beginning six months from December 10, 1974, we have the following:

Art. 63. Financial Aid and Social Services to Needy Families. — Special financial or material aid and social services shall be given to any needy family, to help it maintain the child or children in the home and prevent their placement elsewhere.

The amount of such aid shall be determined by the Department of Social Welfare, taking into consideration, among other things, the self-employment of any of the family members and shall be paid from any funds available for the purpose.

Art. 64. *Assistance to Widowed or Abandoned Parent and Her Minor Dependents.* — The State shall give assistance to widowed or abandoned parent or where either spouse is on prolonged absence due to illness, imprisonment, etc. and who is unable to support his/her children. Financial and other essential social services shall be given by the National Government or other duly licensed agencies with similar functions to help such parent acquire the necessary knowledge or skill needed for the proper care and maintenance of the family.

Art. 65. *Criterion for Aid.* — The criteria to determine eligibility for the aid mentioned in the next two preceding articles shall be: (1) the age of the child or children, (2) the financial condition of the family, (3) the degree of deprivation of parental care and support, and (4) the inability to exercise parental authority.

Art. 66. *Assistance to Unmarried Mothers and Their Children.* — Any unmarried mother may, before and after the birth of her child, seek the assistance and advice of the Department of Social Welfare or any duly licensed child placement agency. The said agencies shall offer specialized professional services which include confidential help and protection to such mother and her child, including placement of the child for adoption whenever warranted, and enforcement of such mother's rights, if any, against the father of such child.]

(2) Meaning of “Vigilant for His Protection”

The phrase in general means that in case of doubt, the doubt must be resolved in favor of the underdog. Thus, in *labor contracts*, doubts are resolved in favor of the decent living and safety of the worker. (*See Art. 1702, Civil Code*). According to the Commission, Art. 24, protects among others the laboring class, many members of which face obvious disadvantages. (*Report, Code Com., p. 16*). Thus, the Workmen's Compensation Act being a social legislation designated to give relief to labor in case of

injury, its provisions should be given a liberal interpretation in order to fully carry into effect its beneficent provisions. Doubts as to the right of the laborers to compensation should be resolved in his favor. (*Bautista v. Murillo*, L-13374, Jan. 31, 1962). If undue influence intervenes in a will, the will is void (*Art. 839, No. 4, Civil Code*); if in a contract, the contract is voidable. (*Art. 1337, Civil Code*). While generally stipulations in a contract come about after a deliberate drafting by the parties thereto, still there are certain contracts, almost all the provisions of which have been drafted only by ONE party, usually a corporation. Such contracts are called *contracts of adhesion* because the only participation of the other party is the signing of his signature or his “adhesion” thereto. Insurance contracts, bills of lading, contracts for the sale of lots on the installment plan fall into this category. It is obvious that to protect the rights of the other party, courts must construe obscurities or ambiguities in the contract strictly AGAINST the corporation or company. (*See Qua Chee Gan v. Law Union and Rock Insurance Co.*, 52 O.G. 1982).

Under Art. 1332 of the Civil Code, “when one of the parties (to a contract) is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.”

(Note that the burden of proof is not on the illiterate party.)

(3) Inadmissibility of Confessions Obtained Thru Coercion

A confession obtained thru coercion, whether physical, mental, or emotional is inadmissible. What is essential for a confession’s validity is that it proceeds from the free will of the person confessing. Courts should be slow in accepting such confessions unless corroborated by other testimony. (*People v. Ramon Roa*, L-35284, Jan. 17, 1975). Besides, constitutional provisions on the matter of extrajudicial confessions must be observed.

(4) Some Rules on Labor

- (a) The former Court of Industrial Relations was empowered to allow or order the employer to give a *retirement gratuity* to the employees as long as the reward is reasonable and compatible with the employer's right to a reasonable profit on its capital. Thus, also, the Court has the duty of inquiring into the *question of how much* the company can afford to give. (*J.P. Heilbronn Co. v. Nat. Labor Union, L-6454, Nov. 29, 1954*).
- (b) Laborers contracted "temporarily" or without any designated time or period of time previously determined, or for an unspecified work, have the right to be notified one month ahead that their services would no longer be necessary to their employers. The laborers shall have the right in case of immediate dismissal to the salary corresponding to said month. Any waiver by the laborer of these privileges is null and void. (*Phil. Mfg. Co. v. NLU, L-4507, July 31, 1952*).
- (c) It would be unfair labor practice for an employer to prohibit his employees and laborers from joining a mass demonstration against alleged police abuses. (*Phil. Blooming Mills Org. v. Phil. Blooming Mills Co., L-31195, June 5, 1973*).
- (d) The right to fire employees must not be abused. (*Phil. Long Distance Tel. Co. v. Phil. Long Dist. Tel. Workers' Union, et al., 48 O.G. 2676*).

**Phil. Long Dist. Tel. Co. v. Phil. Long Dist.
Tel. Workers' Union, et al.
48 O.G. 2676**

FACTS: When *L*, a *blind* man was hired, his employers knew of his physical defect. For many years, he did his work efficiently. Later, the company dismissed him on account of his *blindness*, as recommended by the company physician, alleging it was dangerous for him to work (in the streets) because he might be struck down by passing vehicles. Was the dismissal proper?

HELD: No. While an employer can ordinarily choose and fire employees without interference, this right should not be abused or exercised capriciously, with reference to a worker who has worked faithfully and satisfactorily with a defect visible and known; for otherwise in future similar cases the exercise of such right might be abused and used as a disguise for dismissing an employee for union adherence.

- (e) But a casual worker does not enjoy the benefits of the Workmen's Compensation Law. (*Vicente Uy Chao v. Manuel Aguilar and Ernesto Ramos, L-9069, Mar. 28, 1959*).

**Vicente Uy Chao v. Manuel Aguilar
and Ernesto Ramos
L-9069, Mar. 28, 1959**

FACTS: Aguilar was engaged by Ramos to help repair or replace the eaves in the commercial store owned by Vicente Uy Chao. While working, Aguilar was injured by the sudden falling of the whole eaves. Incidentally, the store was in the business of buying and selling glassware. Is Aguilar entitled to compensation under the Workmen's Compensation Law?

HELD: No, because the employment was purely casual, and not for the purpose of the owner's business or occupation as a glassware dealer. There is no connection between the buying and selling of glassware and repair of the store. The rule in *Caro v. Rilloraza, et al., L-9569, Sep. 30, 1957*, granting compensation to a laborer who fell while constructing a window railing cannot apply, for in said case the building being repaired was for lease and income purposes, and the "repair, maintenance, and painting thereof, with a view to attracting tenants and of inducing them to pay a good or increased rental is most certainly part of the business." In the instant case, the owner was not engaged in the house-letting business, but in buying and selling glassware.

- (f) The absence of any specific evidence of a work-connection cause of an injury is NOT necessarily fatal to a claim for

compensation under the Workmen's Compensation Act, if death occurred *in the course* of employment. In the absence of any evidence as to the cause of death, the presumption or inference is that death arose in view of the employment. (*Iloilo Dock and Engineering Co. v. Workmen's Compensation Commission, L-16202, June 29, 1962*).

Euro-Linea, Phils., Inc. v. NLRC
GR 75782, Dec. 1, 1987

In interpreting the Constitution's protection to labor and social justice provisions and the labor laws and rules and regulations implementing the constitutional mandate, the Supreme Court adopts the liberal approach which favors the exercise of labor rights.

PLDT v. NLRC
GR 74562, July 31, 1987

Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just or authorized cause and without prejudice to the requirement of notice under Art. 284 of the Labor Code, clearance to terminate employment shall no longer be necessary. (*Art. 278[b] of the Labor Code of the Philippines, as amended by Secs. 13 and 14, Batas Pambansa Blg. 139*).

Abella v. NLRC
GR 71812, July 20, 1987

In carrying out and interpreting the Labor Code's provisions and its implementing regulations, the workingman's welfare should be the primordial and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as provided for in Art. 4 of the Labor Code which states that "all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations shall be resolved in favor of labor." The policy is to extend the law's appli-

cability to a greater number of employees under the law, in consonance with the avowed policy to give maximum aid and protection to labor.

Juan v. Musngi
GR 67053, Oct. 27, 1987

In any proceeding before the National Labor Relations Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of the Labor Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure.

Under the basic principle that administrative or executive acts, orders, and regulations shall be valid only when they are not contrary to the laws or the Constitution, the Supreme Court ruled that Sec. 2, Rule IV, Book III of the Implementing Rules and Policy Instruction No. 9 issued by the then Sec. of Labor are null and void since in the guise of clarifying the Labor Code's provisions on Holiday Pay, they in effect amended them by enlarging the scope of their exclusions. Thus, administrative regulations under legislative authority by a particular department must be in harmony with the provision of the law, and should be for the sole purpose of carrying into effect its general provisions. By such regulation, the law itself cannot be extended. An administrative agency cannot amend an act of Congress.

Far Eastern Univ. — Dr. Nicanor Reyes
Medical Foundation, Inc. v. Trajano
GR 76273, July 31, 1987

Under Art. 244 of the Labor Code, the rank-and-file employees of non-profit medical institutions are now permitted to form, organize or join labor unions of their choice for purposes of collective bargaining. If the union had complied with the requisites provided by law for calling a certificate election, it is incumbent upon the Director to

conduct such certification election to ascertain the bargaining representative of the hospital's employees.

**Gen. Rubber and Footwear Corp. v.
Bureau of Labor Relations
GR 74262, Oct. 29, 1987**

Members of supervisory unions who do not fall within the definition of managerial employees shall become eligible to join or assist the rank-and-file of labor organizations and if none exists, to form or assist in the forming of such rank-and-file organizations.

**Riker v. Ople
GR 50492, Oct. 27, 1987**

An employer cannot be compelled to continue in employment, an employee guilty of acts inimical to the interests of the employer and justifying loss of confidence in him.

**Euro-Linea, Phils., Inc. v. National
Labor Relations Commission
GR 75782, Dec. 1, 1987**

The prerogative of management to dismiss or lay-off an employee must be done without abuse of discretion for what is at stake is not only on the employee's position but also his means of livelihood. The right of an employer to freely select or discharge his employees is subject to regulation by the State, basically in the exercise of its paramount police power. This is so because the preservation of the lives of the citizens is a basic duty of the State, more vital than the preservation of corporate profits.

**Pacific Products v. Pacific
Products, Inc.
GR 51592, Sep. 18, 1987**

The acts committed by an employee (a first offender) of vending, soliciting and engaging in usurious activities do not warrant the drastic remedy of dismissal, since

the company rules and regulations merely provide the penalty of written reprimand for the first offense, six (6) days suspension for the second offense, and discharge for the third offense.

**San Miguel Brewery Sales
Force Union (PTGWO) v. Blas Ople
170 SCRA 25 (1989)**

Except as limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, *transfer of employees*, work supervision, lay-off of workers and the discipline, dismissal and recall of work.

**Chu v. NLRC
52 SCAD 84
GR 106107, June 2, 1994**

An owner of a business enterprise is given considerable leeway in managing his business because it is deemed important to society as a whole that he should succeed. Our law, therefore, recognizes certain rights as inherent in the management of business enterprises. These rights are collectively called *management prerogatives* or acts by which one directing a business is able to control the variables thereof so as to enhance the chances of making a profit. Together, they may be taken as the freedom to administer the affairs of a business enterprise such that the costs of running it would be below the expected earnings or receipts. In short, the elbow room is the quest for profits.

**Victorina A. Cruz v. CA, et al.
GR 119155, Jan. 30, 1996
67 SCAD 468**

Personnel action denotes the movement of personnel in the civil service and includes appointment through cer-

tification, promotion, transfer, reinstatement, re-employment, detail, reassignment, *demotion*, and separation. All personnel actions shall be in accordance with such rules, standards, and regulations as may be promulgated by the CSC (Civil Service Commission).

On the matter of “demotion,” such is the movement from one position to another involving the issuance of an appointment with diminution in duties, responsibilities, status, or rank which may or not involve reduction in salary. In the case at bench, the appointing authority has absolutely nothing to do with what the petitioner perceived to be a demotion in her salary — such was done by operation of law.

**Marcopper Mining Corp. v. Hon.
Actg. Sec. of Labor Jose Brillantes,
National Mines and Allied Workers Union,
Marcopper Employees Labor Union
69 SCAD 327, GR 119381, Mar. 11, 1996**

Following an assumption or certification order, returning to work, on the part of a worker, is not a matter of option or voluntariness but of obligation. The sanction for failure to comply with such obligation, under the law, is loss of employment status.

Case law likewise provides that by staging a strike after the assumption of jurisdiction or certification for arbitration, workers forfeited their right to be readmitted to work, having abandoned their employment, and so could be validly replaced.

**Evelyn Peña v. NLRC
71 SCAD 530, GR 100629, July 5, 1996**

Security of tenure, while constitutionally guaranteed, cannot be used to shield incompetence or deprive an employer of its prerogatives under the law.

**Superclean Services Corp. v. CA and
Home Development Mutual Fund
71 SCAD 615, GR 107824, July 5, 1996**

As in the case of illegal dismissal in labor law, if reinstatement is no longer possible, because the position has been abolished and there is no way the dismissed employee can be reinstated to a comparable position, the employee's action is not thereby rendered moot and academic. He can instead ask for separation pay.

**Allied Banking Corp. v. NLRC, et al.
72 SCAD 188, GR 116128, July 12, 1996**

While this Court should view with compassion the plight of the workers, this sense of compassion should be coupled with a sense of fairness and justice to the parties concerned. Hence, while social justice has an inclination to give protection to the working class, the cause of the labor sector is not upheld at all times as the employer has also a right entitled to respect in the interest of simple fair play.

**Pantranco North Express,
Inc. v. NLRC and Urbano Suñiga
72 SCAD 355, GR 95940, July 24, 1996**

A Collective Bargaining Agreement (CBA) incorporates the agreement reached after negotiations between employer and bargaining agent with respect to terms and conditions of employment.

Incidental to this is RA 7641, known as "The Retirement Pay Law," which went into effect on Jan. 7, 1993. Although passed many years after the compulsory retirement of herein private respondent, nevertheless, the said statute sheds light on the present discussion x x x "mak[ing] clear the intention and spirit of the law to give employers and employees a free hand to determine and agree upon the terms and conditions of retirement."

In the case at bar, providing in a CBA for compulsory retirement of employers after 25 years of service is legal and enforceable so long as the parties agree to be governed by such CBA. The law presumes that employees know what they want and what is good for them absent any showing that fraud or intimidation was employed to secure their consent thereto.

PAL v. NLRC and ALPAP
72 SCAD 620, GR 114280, July 26, 1996

Although PD 851, as amended by Memorandum Order 28, requires all employers to pay all their rank-and-file employees a 13th month pay, the rule is subject to certain exceptions. Excluded from the coverage are employees already paying their employees a 13th month pay or more in a calendar year or its equivalent at the time of the issuance of the law.

Construing the term “its equivalent,” the same is defined as inclusive of Christmas bonus, mid-year bonus, profit-sharing payments and other cash bonus amounting to not less than 1/12 of the basic salary but shall not include cash and stock dividend, cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits. When an employer pays less than 1/12 of the employee’s basic salary, the employer shall pay the difference.

NOTE: The term “*bonus*” is in turn interpreted to mean “an amount granted and paid to an employee for his industry and loyalty which contributed to the success of the employer’s business and made possible the realization of profits. It is an act of generosity of the employer.” It is also granted by an enlightened employer to spur the employee to greater efforts for the success of the business and realization of bigger profits. (*PAL v. NLRC & ALPAP, GR 114280, July 26, 1996; UST Faculty Union v. NLRC, 190 SCRA 215 [1990]; Phil. Education Cod., Inc. v. CIR, 92 Phil. 381 [1952]*).

**MGG Marine Services, Inc. and/or Doroteo
C. Garlan and Cesar Rotilo v. NLRC and
Elizabeth A. Molina
GR 114313, July 29, 1996, 72 SCAD 791**

To justify fully the dismissal of an employee, the employer — as a rule — must prove (a) that the termination was due to a just cause and (b) that the employee was afforded due process prior to dismissal.

Does the violation by a comptroller-finance officer of explicit instructions from senior management on how the available liquid resources of the company are to be controlled and disbursed, such violation resulting in the collapse of the company's cash flow, constitute loss of trust and confidence sufficient to justify termination of such management officer?

Indeed, private respondent's disobedience and precipitated actions caused great damage to the company's cash flow. In the harsh world of business, cash flow is as important as — and oftentimes, even more critical than — profitability. So long as an enterprise has enough liquidity (cash) to pay its workers, requisition fuel, meet office rentals, maintain its equipment and satisfy its life-line creditors within tolerable limits, it will survive and bridge better days for its recovery. But once it fails to pay such bills because its liquid resources are improvidently used and disbursed, as private respondent did in the instant case, it runs the all-too-real risk of *immediate* collapse. No wonder, petitioners were rightfully aghast when upon their return from abroad, they discovered that their treasury was almost completely drained, with a measly P5,720.00 remaining.

Private respondent took it upon herself to disburse the company funds in amounts and for purposes of her own discretion, and in disregard of the program and plans of the company. She arrogated to herself the combined powers of the management and the board of directors of the company. An employer cannot be compelled to retain an employee who is guilty of acts inimical to the interests

of the employer. A company has the right to dismiss its employees if only as a measure of self-protection. This is all the more true in the case of supervisors or personnel occupying positions of responsibility.

In the instant case, let it be remembered that the private respondent is not an ordinary rank-and-file employee. She is the Comptroller-Finance Officer who unarguably violated her duty of controlling cash flow *and* specific instructions on how the very limited cash of the company was to be spent. It would be extremely oppressive and cruel to require petitioners to retain in their innermost sanctum of management an officer (not just a rank-and-file employee) who has admitted not only violating specific instructions but also to being completely unreliable and untrustworthy in the discharge of her duty to safeguard the cash flow of the company.

**Homeowners Savings & Loan
Association, Inc. v. NLRC and
Marilyn Cabatbat
74 SCAD 736, GR 97067, Sep. 26, 1996**

The Philippine Constitution, while inexorably committed towards the protection of the working class from exploitation and unfair treatment, nevertheless mandates the policy of social justice so as to strike a balance between an avowed predilection for labor, on the one hand, and the maintenance of the legal rights of capital, the proverbial hen that lays the golden egg, on the other. Indeed, we should not be unmindful of the legal norm that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.

Of relevant significance in the case at bar is the right of the employer to transfer employees in their work station. Having the right should not be confused with the manner in which that right must be exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. Nor when the real

reason is to penalize an employee for his union activities and thereby defeat his right to self-organization. But the transfer can be upheld when there is no showing that it is unnecessary, inconvenient and prejudicial to the displaced employee. The acceptability of the proposition that transfer made by an employer for an illicit or underhanded purpose — *i.e.*, to defeat an employee's right to self-organization, to rid himself of an undesirable worker, or to penalize an employee for union activities — cannot be upheld is self-evident and cannot be gainsaid. The difficulty lies in the situation where no such illicit, improper or underhanded purpose can be ascribed to the employer, the objection to the transfer being grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer.

What the law requires is for the employer to inform the employee of the specific charges against him and to hear his side and defenses. This does not, however, mean a full adversarial proceeding. Litigants may be heard through: (1) pleadings, written explanations, position papers, memorandum; (or) (2) oral argument. In both instances, the employer plays an active role. He must provide the employee with the opportunity to present his side and answer the charges, in substantial compliance with due process. Actual adversarial proceeding becomes necessary only for clarification or when there is a need to propound searching questions to unclear witnesses. This is a procedural right which the employee must, however, ask for. It is not an inherent right. Summary proceedings may be conducted. This is to correct the common but mistaken perception that procedural due process entails lengthy oral argument. Non-verbal devices such as written explanations, affidavits, position papers or other pleadings can establish just as clearly and concisely an aggrieved party's defenses. What is essential is ample opportunity to be heard. Management must accord the employee every kind of assistance to prepare adequately for his defense.

The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer.

San Miguel Jeepney Service v. NLRC
GR 92772, Nov. 28, 1996

FACTS: Petitioner contends it cannot be made liable for separation pay, having experienced financial reverses since 1986. Petitioner Galace cited the following figures showing “sliding incomes.” Thus, our gross receipt in 1985 amounted to P846,459.25; in 1986 — P676,748.75; so our income decreased in 1986 by P169,710.50; our gross income in 1986 was P676,748.75; our gross income in 1987 was P534,204.71; our income decreased in 1987 by P142,544.04.

Petitioner also faults the NLRC for acknowledging in its findings of fact (p. 2 of the Resolution) that SMJS had experienced financial reverses while at the same time holding that the closure of SMJS was simply due to nonrenewal of its transportation contract, and thereby implying unfairly that SMJS did not cease operations due to financial reverses.

ISSUE: Is petitioner correct?

HELD: No. As admitted by petitioner, what is suffered were “sliding incomes,” in other words, decreasing revenues. What the law speaks of is serious business losses or financial reverses. Clearly, sliding incomes are not necessary losses, much less serious business losses within the meaning of the law. In this connection, we are reminded that ‘the requisites of a valid retrenchment are: a) the losses expected should be substantial and not merely *de minimis* in extent; b) the substantial losses apprehended must be reasonably imminent; c) the retrenchment must be reasonably necessary and likely to effectively prevent the expected losses; and d) the alleged losses, if already incurred, and the expected imminent losses ought to be forestalled, must be proved by sufficient and convincing evidence.’ We also held that adverse business conditions justify the exercise of management prerogative to retrench in order to avoid the not-so-remote possibility of closure of the entire business. At the other end of the spectrum, it seems equally clear that not every asserted possibility of

loss is sufficient legal warrant for reduction of personnel. In the nature of things, the possibility of incurring losses is constantly present, in greater or lesser degree, in the carrying on of business operations, since some, indeed many, of the factors which impact upon the profitability or viability of such operations may be substantially outside the control of the employer.

All the foregoing considerations simply require that the employer bear the burden of proving his allegation of economic or business reverses with clear and satisfactory evidence, it being in the nature of an affirmative defense. Apparently, the petitioner's evidence failed to persuade the public respondent, and it is not difficult to understand why. The petition made reference to a position paper dated Mar. 10, 1988, in which petitioner Galace admitted that "I did not ask to renew our contract with the Navy Exchange because our income had been consistently going down (petitioner then shows the decreases in gross incomes for 1985, 1986 and 1987). It became clear to me as early as July last year that I shall not be able to continue operating because of the sliding incomes. So, in August, I announced that I would not renew my contract." Apparently, petitioner did not renew his contract because of 'sliding incomes,' and not because of serious business losses.

In the same position paper, he also stated that "(i)n 1987, I incurred a loss of P40,471.69 from operations. x x x From 1980 to 1986, or in the six years of previous operations, I had managed to make a profit in spite of all the expenses. Such loss *per se*, absent any other evidence, and viewed in the light of the amounts of gross receipts the business generated historically, may not be deemed the serious business loss contemplated by law, and this cannot justify the nonpayment of separation pay. Neither did petitioners present any evidence whatsoever regarding the impact of the said net loss on the business (extent of impairment of equity, loss of liquidity, and so forth) nor on expected losses that would have been continued (under, say, a new contract with the base).

Moreover, we note that in the same position paper, petitioner Galace admitted that he had been persistently

refusing to recognize the union organized among his employees, which undoubtedly had to do with the work stoppage that he latter complained of. In brief, we are of the belief that the cessation of operations and closure of SMJS were, in the ultimate analysis, triggered by factors other than a P40,000 loss. We therefore find no grave abuse of discretion on the part of respondent Commission in ordering the payment of separation pay equivalent to one-half month's wage for every year of service.

**Meralco v. Hon. Sec. of Labor
Leonardo Quisumbing, et al.
GR 127598, Feb. 22, 2000**

The P2,000 increase for the 2-year period awarded to the rank-and-file is much higher than the highest increase granted to supervisory employees. The Court does "not seek to enumerate in this decision the factors that should affect wage discrimination" because collective bargaining disputes, particularly those affecting the national interest and public service "requires due consideration and proper balancing of interests of parties to the dispute and of those who might be affected by the dispute."

The Court takes judicial notice that the new amounts granted herein are significantly higher than the weighted average salary currently enjoyed by other rank-and-file employees within the community. It should be noted that the relations between labor and capital is impressed with public interest which must yield to the common good. Neither party should act oppressively against the other or impair the interest or convenience of the public. Besides, matters of salary increases are part of management prerogative.

**Malayang Samahan ng Mga
Manggagawa sa M. Greenfield
(MSMG-UWP), et al. v. Hon.
Cresencio J. Ramos, et al.
GR 113907, Feb. 28, 2000**

A local union, being a separate and voluntary association, is free to serve the interests of all its members,

including the freedom to disaffiliate or declare its autonomy. Hence, there cannot be any valid dismissal.

Art. 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.

COMMENT:

(1) Reason for Curtailing Thoughtless Extravagance

Thoughtless extravagance during emergencies may incite the passions of those who cannot afford to spend.

(2) Who Can Bring the Action?

Only a *charitable institution* (whether *government* or *private*) may bring the action. The Mayor of a city, should he desire to stop an alleged display of extravagance by a social organization cannot summarily order the stopping all by himself. He has to ask for a court order. A Mayor indeed cannot just take the law into his own hands, no matter how noble or sincere his motive may be.

Art. 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.**

COMMENT:**(1) Duty to Respect Dignity and Privacy**

This Article enhances human dignity and personality. Social equality is not sought, but due regard for decency and propriety. (*Report, Code Commission, pp. 33-34*).

(The acts referred to in the Article were asked in a bar exam).

(2) Remedies

- (a) An action for *damages*;
- (b) An action for *prevention*;
- (c) Any *other relief*.

[A civil action may be instituted even if no crime is involved, and moral damages may be obtained. (*See Arts. 29 and 2219, Civil Code*).].

(3) Scope

- (a) Prying into the *privacy of another's residence* — includes by implication respect for another's *name, picture, or personality* except insofar as is needed for publication of information and pictures of legitimate news value. (*Prosser, Torts, p. 1050*).
- (b) Meddling with or disturbing the private life or family relations of another — includes alienation of the affections of the husband or the wife. (*Prosser, Torts, p. 916*). (Thus, a girl who makes love to a married man, even if there be no carnal relations, disturbs his family life, and damages may therefore be asked of her.) Intriguing against another's honor (gossiping) is also included.
- (c) Intriguing to cause another to be alienated from his friends — includes gossiping, and reliance on hearsay.
- (d) Vexing or humiliating — includes criticism of one's health or features without justifiable legal cause. (*138 A.L.R. 25*). Religious freedom does not authorize anyone to heap obloquy and disrepute upon another by reason of the latter's religion. (*Commission Report, p. 33*).

Art. 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.

COMMENT:

(1) Refusal or Neglect in the Performance of Official Duty

- (a) The article refers to a *public servant* or *employee*. Taken from Art. 839 of the German Civil Code, the purpose of Art. 27 is to end the *pabagsak* or *bribery* system, where the public official for some flimsy excuse, delays or refuses the performance of his duty until he gets some kind of “*pabagsak*.” (See *Bocobo, Study of Proposed Civil Code Changes, 16 Lawyers Journal, p. 97*).

In a sense, it may be said that there are three kinds of bribes:

- 1) the *pabagsak* — the gift given so that an illegal thing may be done.
- 2) the *pampadulas* — the gift given to facilitate or expedite the doing of a legal thing.
- 3) the *pampasalamat* — the gift given in appreciation of a thing already done.

[NOTE: An administrative case will generally be provisionally dismissed, where a criminal case involving the same parties and the same charges as those of the administrative case is *sub judice*. (*Flores v. Ganaden, Adm. Matter No. P-152, Nov. 29, 1974*).]

**Tuazon and Mapagu v. CA
and Jurado
GR 90107, Aug. 21, 1992**

It has been remarked that one purpose of Article 27 is to end the “bribery system, where the public official, for some flimsy excuse, delays or refuses the performance of

his duty until he gets some kind of *pabagsak*.” (*E. Paras, Civil Code of the Philippines [Annotated], 1989, pp. 145-146*). Official inaction may also be due to plain indolence or a cynical indifference to the responsibilities of public service.

According to *Phil. Match Co., Ltd. v. City of Cebu* (81 SCRA 99), the provision (*Art. 27*) presupposes that the refusal or omission of a public official to perform his official duty is attributable to malice or inexcusable negligence. In any event, the erring public functionary is justly punishable under this Article for whatever loss or damage the complainant [may] sustain.

Bustillo v. Sandiganbayan
486 SCRA 545 (2006)

Under the “Anti-Graft and Corrupt Practice Act,” particularly, suspension from office is mandatory whenever a valid Information charges an incumbent public officer with: (a) Violation of RA 3019; (b) violation of Title 7, Book II of the Revised Penal Code; (c) any offense involving fraud upon government; or (d) any offense involving fraud upon public funds or property.

To illustrate: The term “fraud,” as used in Sec. 13 of RA 3019, is understood in its generic sense, *i.e.*, referring to “an instance or an act of trickery or deceit especially when involving misrepresentation.” As used in government, vouchers, like daily time records, are official documents signifying a cash outflow from government coffers, especially if receipt of payment is acknowledged.

Garcia v. Sandiganbayan
507 SCRA 258 (2006)

To be convicted of violation of Sec. 3(b) of RA 3019, as amended, the prosecution has the burden of proving the following elements:

1. The offender is a public officer;

2. Who requested or received a *gift*, a present, a share, a percentage, or a benefit;
3. On behalf of the offender or any other person;
4. In connection with a contract or transaction with the government; and
5. In which the public officer, in an official capacity under the law, has the right to intervene.

It is quite clear from Sec. 3(b) of RA 3019 that the requesting or receiving of any gift, present, share, percentage, or benefit must be in connection with “a contract or transaction” wherein the public officer in his official capacity has to intervene under the law — what is required is that the transaction involved should at least be described with particularity and proven.

Ejercito v. Sandiganbayan
509 SCRA 190 (2006)

Cases of unexplained wealth are similar to cases of bribery or dereliction of duty and no reason why these two classes of cases cannot be excepted from the rule-making bank deposits confidential — and, undoubtedly, cases for plunder involve unexplained wealth.

In the case at bar, the crime of bribery and the overt acts constitutive of plunder are crimes committed by public officers, and in either case the noble idea that “a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny” applies with equal force.

- (b) There must be *refusal or neglect without just cause* to perform (non-feasance). (If duty is performed, Art. 27 does not apply) (*Bagalay v. Ursal*, 50 O.G. 4231, GR L-6445, July 29, 1954) where the city assessor allegedly was demanding a double payment of realty taxes. The taxpayer, however, did not state that he had already paid, and therefore the complaint should be dismissed since the official was

merely performing his duty. In *Consunji v. Villanueva, Adm. Matter P-205, Nov. 27, 1974*, the Court ruled that if a public official fails to do what is incumbent on him, the fact that he was about to retire when the incident occurred may be an explanation, but certainly, it is NOT a justification. For the ideal of a public office as a public trust implies that until the last day of one's tenure, strictest compliance with one's duties is necessary. In *Vda. de Laig v. CA, L-26882, Apr. 5, 1978*, the Supreme Court ruled that high officials (like a Secretary of a Department or a Director) is not liable for the mistakes of their assistants, as long as said high officials were not motivated by malice.

- (c) The NAWASA Manager may be compelled by *mandamus* to perform the acts required of him by a resolution of the NAWASA Board, thus he can be ordered to execute deeds of sale (for lots in a housing project) if same is authorized by Board Resolution. (*Sergio M. Isada v. Judge Juan L. Bocar, et al., L-33535, Jan. 17, 1975*).

(2) Examples

- (a) A goes to a government office where B, an administrative clerk, instead of attending to A (upon A's request) just reads the newspaper. If A suffers *material or moral loss*, B will be liable. Also, if B refuses to perform his duty unless given a bribe, damages may be asked of him in addition to the proper criminal and administrative liabilities.
- (b) A Chief of Police who, instead of giving legal assistance to the victim of an assault, intimidates and harasses said victim, his father, and his witnesses is liable for damages under Art. 27. This is so even if other remedies (such as an administrative charge against the chief of police and the filing of a criminal complaint with the office of the city attorney for such assault) are also available to the victim. (*Amaro, et al. v. Sumangit, L-14986, July 31, 1962*).
- (c) Similarly, a town mayor (and other officials) who consistently absents himself from town council sessions, and refuses to act upon the minutes of sessions conducted by the councilors present, and to sign the payrolls for the

councilors' per diems at such sessions, can be liable under this Article for refusal to do his duty. (*Javellana, et al. v. Tayo, L-18919, Dec. 24, 1962*).

A judge should be commended instead of being administratively charged for going out of his way to pacify protagonists in a quarrel and to prevent bloodshed. (*Mun. Council v. Judge Morales, Adm. Matter No. 81-MJ, Nov. 13, 1974*).

Phil. Match Co. Ltd. v. City of Cebu
L-30745, Jan. 18, 1978

FACTS: A city treasurer collected taxes, conformably with a city sales tax ordinance. The collection was partially invalidated by the courts. Is the treasurer liable for damages?

HELD: No, for this official honestly believed in the complete validity of the tax. And this is true even if he was only partially sustained by the courts.

Ceferino P. Azucena v. Hon. Emmanuel
M. Muñoz
AM 130-J, June 30, 1970

FACTS: In connection with a theft case, a CFI (RTC) issued a search warrant for a *jeep* which was eventually seized. Later, the complaint for theft was dismissed but the judge refused to order the return of the jeep to the person from whom it had been seized — in view of conflicting claims as to the ownership of the jeep.

ISSUE: Is the judge liable?

HELD: No, the judge is not liable — for after all there were conflicting claims as to the ownership of the jeep. The question of title can be determined not in criminal process but in a civil case. The judge cannot therefore be guilty of serious misconduct or inefficiency — (Incidentally, in the same case, it was ruled that a judge who fails to execute a decision of an appellate tribunal is not necessarily guilty of misconduct in office where said decision is not *known* to him).

Flores v. Ganaden
AM P-152, Nov. 29, 1974

FACTS: In the course of an altercation between a court stenographer and a private person, the former uttered certain defamatory remarks against the latter. The evidence showed that the protagonists were not in good terms with each other. An administrative action was brought against the stenographer.

HELD: The stenographer should be reprimanded with a warning for her censurable conduct. As the Court stressed in *Atienza v. Perez (Adm. Matter No. P-216, Oct. 31, 1974)*, those in the government service, are bound by rules of proper and decorous behavior in the office premises and “high-strung and belligerent behavior has no place in the government service, where the personnel and employees are enjoined to act with self-restraint and civility at all times, even when confronted with rudeness and insolence.”

Torio v. Fontanilla
L-29993, L-30183, Oct. 23, 1978

FACTS: During a town fiesta, a defectively constructed stage collapsed, causing a person’s death. The fiesta had been organized by the Municipal Council. Who is liable?

HELD: The municipality alone is liable, not the municipal councilors for they did not participate in the defective construction nor did they personally allow people to go up the stage.

Philippine Match Co. Ltd. v. City of Cebu
81 SCRA 99

A public officer cannot be regarded as personally liable to those injured as a result of an act within the scope of his official capacity and performed in line of duty. This is true whether the officer is a judicial, quasi-judicial or executive official.

Yap v. Carreon
14 SCRA 99

The Director of Private Schools is not liable if he releases for publication, his lists of disapproved educational courses as well as the schools which offer said courses.

**Sarmiento Engineering Corp. v. Workmen's
Compensation Commission**
L-42618, Jan. 7, 1987

Death benefits given to an employee should not be held liable for hospital and medical expenses of the employee. Said expenses should be borne by the employer.

Ledesma v. Court of Appeals
GR 54598, Apr. 15, 1988

FACTS: A college student scheduled to graduate with *magna cum laude* honors was deprived of the distinction because of her act of lending money to members of an organization of which she was a member, purportedly in violation of existing school rules and regulations, according to the president of the State College. This, despite the intervention of the Bureau of Public Schools who instructed the state college not to deprive her of the honors. But just the same, she was made to graduate as a plain student.

ISSUE: Is the state college president, being a public servant, be deemed liable for damages for failure to perform his duties?

HELD: Yes, damages (both moral and exemplary) are proper, brought about by the school president's neglect of duty and callousness *vis-à-vis* the painful ordeal suffered by the student.

(3) Applicability of the Civil Service Law

The Civil Service Law applies to government-owned or -controlled corporations. (*Phil. Land-Air-Sea Labor Union v. CIR, et al., L-15984, Mar. 30, 1962*).

Art. 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 damages.

COMMENT:

(1) Reason for Preventing Unfair Competition

The above provision is necessary in a system of free enterprise. Democracy becomes a veritable mockery if any person or group of persons by any unjust or high-handed method may deprive others of a fair chance to engage in business or to earn a living." (*Report, Code Commission, p. 31*). "This Article is intended to lay down a general principle outlawing unfair competition, both among enterprises and among laborers. Unfair competition must be expressly denounced in this Chapter because same tends to undermine free enterprise. While competition is necessary in a free enterprise, it must not be unfair." (*Memorandum of the Code Commission, L.J., Aug. 31, 1953*).

**Philip S. Yu v. CA, et al.
GR 86683, Jan. 21, 1993**

FACTS: Petitioner, the exclusive distributor of the House of Mayfair wallcovering products in the Philippines, cried foul when his former dealer of the same goods, herein private respondent, purchased the merchandise from the House of Mayfair in England thru FNF Trading in West Germany and sold said merchandise in the Philippines. Both the court of origin and the appellate court rejected petitioner's thesis that private respondent was engaged in a sinister form of unfair competition within the context of Art. 28 of the Civil Code.

In the suit for injunction which petitioner filed before the RTC of the National Capital Region stationed in Manila, petitioner pressed the idea that he was practically by-passed and, that private respondent acted in concert with the FNF Trading in misleading Mayfair into believing that the goods ordered by the trading firm were intended for shipment to Nigeria although they were actually shipped to and sold in

the Philippines. Private respondent professed ignorance of the exclusive contract in favor of petitioner and asserted that petitioner's understanding with Mayfair is binding only between the parties thereto.

HELD: The right to perform an exclusive distributorship agreement and to reap the profits resulting from such performance are proprietary rights which a party may protect and which may otherwise not be diminished, nay, rendered illusory by the expedient act of utilizing or interposing a person or firm to obtain goods from the supplier to defeat the very purpose for which the exclusive distributorship was conceptualized, at the expense of the sole authorized distributor.

(2) Scope

The Article speaks of unfair competition in:

- (a) Agricultural enterprises
- (b) Commercial enterprises
- (c) Industrial enterprises
- (d) Labor

Thus, the following acts, among others, are not allowed:

- (a) A strike prematurely declared. (*Insular Sugar Ref. Corp. v. C.I.R.*, GR L-7594, Sep. 8, 1954).
- (b) A strike for trivial, unjust, or unreasonable cause. (*Luzon Marine Dept. Union v. Luzon Stevedoring Co.*, 47 O.G. [Supp. No. 12] 146).
- (c) A strike carried out thru force, intimidation or other unlawful means. (*Luzon Marine Dept. Union v. Luzon Stevedoring Co.*, 47 O.G. [Supp. No. 12] 146).
- (d) A strike in order to circumvent valid obligations entered into a collective bargaining contract. (*Manila Oriental Sawmill Co. v. Nat. Labor Union, et al.*, 4330, Mar. 24, 1952).
- (e) Cutthroat competition (where one is ready to lose if only to drive somebody else out of business). (*Tuttle v. Black*, 107 Minn. 145).

- (f) The making of any false statement in the course of trade to discredit the goods, business, or services of another. (*See RA 166*).
 - (g) The making of goods so as to deceive *purchasers* (and by “purchasers,” the law means “ordinary or average purchasers” and not necessarily “intelligent buyers”). (*E. Spenser and Co. v. Hesslein, 54 Phil. 224*).
- [NOTE: There can be unfair competition even if the competing trademark is registered. (*Parke Davis & Co. v. Kin Foo, 60 Phil. 928*). The registration may in some way of course lessen damages, showing as it does, good faith *prima facie*, but this will not completely prevent an action for damages, or for unfair competition. (*R.F. and J. Alexander & Co., et al. v. Jose Ang and Sy Bok, L-6707, May 31, 1955*).]
- (h) Selling goods above the maximum prices set by the State. (*Ayuda v. People, et al., L-6149, L-6150, Apr. 12, 1954*).

Ayuda v. People, et al.
L-6149-50, Apr. 12, 1954

FACTS: For selling two notebooks and a pad at P0.25 each when Executive Order 337, implementing RA 509, fixed the ceiling price for notebooks and pads at P0.23 and P0.20, respectively, the accused was fined by the lower court the amount of P2,000 in each of the two cases filed against him, and suspended from the wholesale and retail trade business for 5 years, as provided for in the statute. He now claims that the fine is unduly excessive.

HELD: Considering the national policy against profiteering, the fine is not excessive. The damage to the state is not measured exclusively by the gain of the appellant, but also by the fact that one violation would mean others, and there would be a consequential breakdown of the beneficial system of price controls. (In this case, the accused was convicted but the court recommended executive clemency as regards his suspension in the right to engage in trade.)

- (i) A strike to obtain better terms and conditions of employment is a legitimate labor activity recognized by law, and its legality does NOT depend on the reasonableness of the demands. If they cannot be granted, they should be rejected, but without other reasons, the strike itself does *not* become illegal. Unfair labor practice acts may be committed by the employer against workers on strike. A strike is not abandonment of employment and workers do *not* cease to be employed in legal contemplation, simply because they struck against their employer. (*Caltex v. PLO, L-4758, May 30, 1953*).

(3) Test of Unfair Competition

Pro Line Sports Center, Inc. v. CA 88 SCAD 524 (1997)

The test of unfair competition is whether certain goods have been intentionally clothed with an appearance which is likely to deceive the ordinary purchasers exercising ordinary care.

(4) Case

Tatad v. Sec. of the Dept. of Energy 88 SCAD 679 (1997)

A market controlled by one player (*monopoly*) or dominated by a handful of players (*oligopoly*) is hardly the market where honest-to-goodness competition will prevail. Monopolistic or oligopolistic market deserve our careful scrutiny and laws which barricade the entry points of new players in the market should be viewed with suspicion.

Under a deregulated regime, the people's only hope to check the overwhelming power of the foreign oil oligopoly lies on a market where there is fair competition. With prescience, the Philippine Constitution, mandates the regulation of monopolies and interdicts *unfair competition*.

A monopoly is a privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right or power to carry on a particular business or trade, manufacture a particular article, or control the sale or the whole supply of a particular commodity. It is a form of market structure in which one or only a few firms dominate the total sales of product or service.

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. 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.

COMMENT:

(1) Example of Civil Action After Acquittal In a Criminal Case

A was accused of theft, but he was acquitted because his guilt had not been proved beyond reasonable doubt. B, the offended party, can institute the civil action for damages for the same act and this time, mere preponderance of evidence is sufficient. (*Art. 29, Civil Code*).

[NOTE: An acquittal on the ground that the guilt of the defendant “has not been satisfactorily established” is equivalent to one on reasonable doubt, and does not preclude or prevent a civil suit under Art. 29. (*Machinery and Eng'g. Supplies, Inc. v. Quintano, L-8142, Apr. 27, 1956*).].

[NOTE: Art. 29 does not speak of an independent civil action.]

(2) Criminal and Civil Liabilities

Under the Revised Penal Code (*Art. 100*) a person criminally liable is also civilly liable. The two liabilities are separate and distinct from each other; the criminal aspect affects the social order; the civil, private rights. One is for the punishment or correction of the offender, while the other is for reparation of damages suffered by the aggrieved party. (*Report, Code Commission, p. 45*). Thus, even if the accused be acquitted because of prescription of the crime, he is released only from criminal responsibility, not civil liability; otherwise, the victim would be prejudiced. (*Sombilla and Positos v. Hodges and Mogar, L-4660, May 30, 1952*).

**Conrado Buñag, Jr. v. CA and
Zenaida B. Cirilo
GR 101749, July 10, 1992**

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. 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 case might arise did not exist. (*Sec. 2b, Rule III, 1985 Rules of Criminal Procedure*).

In the instant case, the dismissal of the complaint for forcible abduction with rape was by mere resolution of the fiscal at the preliminary investigation stage. There is no declaration in a 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 case 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. Thus, in *Rillon v. Rillon* (107 Phil. 783 [1960]), 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.

People v. De Guzman
GR 92537, Apr. 25, 1994
50 SCAD 106

The trial court should be made the depository of the civil indemnity for the death of the victim and the heirs of the victim should be given a period of ten (10) years to claim the amount otherwise the same will be escheated in favor of the State.

(3) Reason for Art. 29

Criminal liability is harder to prove than civil liability because the former demands proof of guilt beyond reasonable doubt; the other, mere preponderance of evidence. Now then if criminal conviction is not obtained because of reasonable doubt there is still a chance that the civil liability can be held to exist because of preponderance of evidence.

PNB v. Catipon
L-6662, Jan. 31, 1956

FACTS: A was acquitted in a criminal case for estafa, but later he was sued for *civil liability* arising from the contract he had signed. A alleged in the civil case that his acquittal in the criminal case was a bar to the present civil action because plaintiff did not reserve its right to separately enforce civil liability against him. In the decision on the criminal case, this statement appeared: "If any responsibility was incurred by the accused, it is *civil* in nature."

ISSUE: Can the civil case prosper?

HELD: Yes.

- (a) Firstly, because this civil obligation is based *ex contractu* (from a contract) and *not ex-maleficio* or *ex-delicto* (from a crime).
- (b) Secondly, the decision did *not* state that the fact from which the civil liability might arise did not in fact exist.
- (c) Thirdly, the acquittal here is equivalent to one based on reasonable doubt as to guilt, and does not therefore prevent a suit to enforce the civil liability for the same act or omission.

(*NOTE:* The doctrine in the *Catipon* case was reiterated in *Mendoza v. Alcala*, L-14305, Aug. 29, 1961).

[*NOTE:* The Supreme Court has ruled that when the decision of the lower court (*court a quo*) provides “that the evidence throws no light on the cause of fire, and that was *an unfortunate accident* for which the accused *cannot* be held responsible,” this declaration practically means that the accused cannot be liable, even civilly. (*Tan v. Standard Vacuum Oil Co., et al.*, 48 O.G. 2745). Similarly, if the accused in an *estafa* case is alleged to have sold a piece of property to two different persons, but is acquitted because it was proved that the alleged first sale was merely a *fictitious one, no money ever having* changed hands, acquittal in the criminal case is a BAR to an action under Art. 29. Her acquittal was based on pure innocence and not on reasonable doubt. (*See Racela v. Albornoz*, 53 O.G. 1087).]

People v. Mamerto S. Miranda
L-17389, Aug. 31, 1962

FACTS: Miranda was accused of *estafa* thru falsification of commercial document. The lower court, however found that retention of the money was done because of a previous agreement on this point. The lower court ACQUITTED the defendant on the theory that a mere civil liability was involved, but still held him *civilly liable* for the loan, precisely because of said agreement.

ISSUE: Is the imposition of the civil liability proper in this criminal case?

HELD: No, for civil liability in a criminal case may exist only if there is criminal liability. It was therefore improper to enforce the civil liability in this criminal case. (See *People v. Pantig*, L-8325, Oct. 25, 1955). However, should he so desire, the offended party *may institute* the corresponding civil suit for the recovery of the amount involved in the contractual loan or agreement.

Marcia v. Court of Appeals
L-34529, Jan. 27, 1983

If in a criminal case, the accused is *acquitted* because the fact from which any civil liability could arise did not exist, a civil case subsequently brought must be dismissed. This is not a mere case of acquittal because of reasonable doubt.

Bermudez v. Hon. Herrera
L-32055, Feb. 26, 1988

The fact that complainants reserved their right in the criminal case to file an independent civil action did not preclude them from choosing to file a civil action for quasi-delict. Even without such reservation, an injured party in a criminal case, which results in the acquittal of the accused, can recover damages based on quasi-delict. While the guilt of the accused in a criminal prosecution must be established beyond reasonable doubt, only a preponderance of evidence is required in a civil action for damages.

Ruiz v. Ucol
GR 45404, Aug. 7, 1987

Restated here is the rule that unless the complainant intervenes and actively participates in the criminal case, an acquittal of the accused would not bar the institution of an independent civil action.

People v. Maniego
GR 30910, Feb. 27, 1987

If supported by a preponderance of evidence, a court in a criminal case is allowed to award damages against an acquitted accused.

Lontoc v. MD Transit & Taxi Co., Inc., et al.
L-48949, Apr. 15, 1988

The well-settled doctrine is 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. This ruling is based on Art. 29 of the Civil Code.

(4) Rule in Tax Cases (*Patanao Case*)

Republic v. Pedro B. Patanao
L-22356, July 21, 1967

FACTS: Pedro B. Patanao, an Agusan timber concessionaire, was prosecuted for failure to file income tax returns and for non-payment of income tax. He was ACQUITTED. Later, the government sued him *civilly* for the collection of the tax due. Patanao alleges that the civil claim cannot prosper anymore because:

- (a) He was already acquitted in the criminal case;
- (b) The collection of the tax was not reserved in the criminal action.

HELD: Patanao must still pay said income taxes:

- (a) The acquittal in the criminal case is not important. Under the Revised Penal Code, civil liability is the result of a crime; in the Internal Revenue Code, civil liability arises first, *i.e.*, civil liability to pay taxes arises from the fact that one has earned income or has engaged in business, and not because of any criminal act committed by him.

In other words, criminal liability comes only after failure of the debtor to satisfy his civil obligation.

- (b) The collection of the tax could not have been reserved in the criminal case — because criminal prosecution is not one of the remedies stated in the law for the collection of the tax. (*See People v. Arnault, L-4288, Nov. 20, 1952; People v. Tierra, L-17177-17180, Dec. 28, 1964*). Indeed civil liability is not deemed included in the criminal proceeding. The tax certainly is not a mere civil liability arising from a crime, that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. (*Castro v. Collector of Internal Revenue, L-12174, Apr. 20, 1962*).

(5) Case

People of the Phil. v. Pimentel L-47915, Jan. 7, 1987

Conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case. However, while the foregoing is an established rule, the same does not apply where the lower court overlooked certain facts of substance and value that if considered, would affect the result of the case.

(6) **Survival of the Civil Liability Depends on Whether the Same Can Be Predicated on Sources of Obligations Other Than Delict**

Villegas v. CA 81 SCAD 538 (1997)

Stated differently, the claim for civil liability is also extinguished together with the criminal action if it were solely based thereon, *i.e.*, civil liability *ex delicto*.

Art. 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.

COMMENT:

(1) Civil Liability Arising from an Unprosecuted Criminal Offense (Example)

A accused *B* of stealing his (*A*'s) watch, and so he (*A*) brought a civil action against *B* to get the watch and damages. If the fiscal institutes criminal proceeding against *B* the civil case is suspended in the meantime (*Rule 110, Revised Rules of Court*), this case *not being* one of those for which there can be an independent civil action. But if the fiscal does not, then the civil case continues, and here, a mere preponderance of evidence would be sufficient to enable *A* to recover.

(2) No Independent Civil Action Here

As in Art. 29, this Art. 30 does not speak of an independent civil action.

Art. 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.

COMMENT:

(1) Meaning of 'Independent Civil Action'

An independent civil action is one that is brought distinctly and separately from a criminal case allowed for considerations of public policy, because the proof needed for civil cases is LESS than that required for *criminal* cases; but with the injunction in general that *success* in financially recovering in one case should prevent a recovery of damages in the other.

It should be noted that the bringing of the independent civil action is PERMISSIVE, not compulsory. Arts. 32, 33, 34 and 2177 give instances of independent civil actions. (*See Rule 111, Revised Rules of Court; See also comments under Art. 33*).

(2) Instances When the Law Grants an Independent Civil Action

- (a) Art. 32 — (breach of constitutional and other rights)
- (b) Art. 33 — (defamation, fraud, physical injuries)
- (c) Art. 34 — (refusal or failure of city or municipal police to give protection)
- (d) Art. 2177 — (quasi-delict or *culpa aquiliana*)

(3) Scope of Art. 31 (Obligation Not Arising from a Crime)

Art. 31 contemplates a case where the obligation does not arise from a crime, but from some other act — like a contract or a legal duty.

(4) Examples

A civil action for recovery of government funds in the hands of a postmaster can prosper independently of a charge of *malversation*, since in the first, the obligation arises from law (*ex lege*), while in the second the obligation to return the money arises *ex delicto*. (*Tolentino v. Carlos, 39 O.G. No. 9, p. 121*). A civil complaint for separation of property can continue even if a criminal action for concubinage is subsequently filed. While it is true that the first is *not* a prejudicial question for the determination of the latter, still it is completely DIFFERENT from the second. (*See Cabahug-Mendoza v. Varela, 49 O.G. 1842*).

**Republic v. Bello
GR 34906, Jan. 27, 1983**

Even if an accused in a criminal case is acquitted of the crime of *malversation* because of the failure of the prosecu-

tion to prove criminal intent and failure to establish the guilt beyond reasonable doubt, the government may still file a civil action to recover the government funds disbursed by him without prior authority.

**Nicasio Bernaldes, Sr., et al. v.
Bohol Land Trans., Inc.
L-18193, Feb. 27, 1963**

FACTS: Due to the driver's reckless imprudence, a bus passenger was killed and his brother seriously injured. A criminal case was filed against said driver, but he was acquitted on the ground that his guilt had not been proved beyond reasonable doubt. Subsequently, a *civil* action for damages was filed against the bus company. The latter alleged that the action could not prosper because:

- (a) it was barred by a prior judgment (in the criminal case);
- (b) the plaintiffs had already intervened in the criminal case thru private prosecutors; and
- (c) the plaintiffs had not reserved the civil case.

HELD: The civil case may still prosper:

- (a) because the suit is based on *culpa contractual*, not the alleged criminal offense (and under Art. 31, an independent civil action is allowed).
- (b) because, if at all, the intervention in the criminal case amounted inferentially to submitting in said case the claim for civil liability, the claim could have been only that against the driver, and not against the bus company, which was not a party therein.
- (c) because, while there was no express reservation made, still such reservation is already *implied* in the law which declares the civil action to be independent and separate from the criminal action. (As a matter of fact, the duty of the offended party to make such reservation applies only to a reservation against the defendant in the criminal case, and NOT to persons

secondarily liable. (*See Chaves, et al. v. Manila Electric Co., 31 Phil. 47.*)

[NOTE: See however Rule 111 of the Revised Rules of Court, and the comments under Art. 33.]

Mariano G. Almeda, Sr., et al. v. Perez, et al.
L-18428, Aug. 30, 1962

Under RA 1379 (Anti-Graft Law), a public officer with unexplained wealth faces two important sanctions:

- (a) for making the *unlawful* acquisition — a forfeiture of the properties is in order. (This is a CIVIL, *not* a criminal proceedings.)
- (b) for conveying or *transferring* said unlawfully acquired properties — CRIMINAL proceedings may be filed. (It is here where a preliminary investigation is needed, NOT in mere forfeiture proceedings).

Jovencio Suansing v. People of the Phil.
and Court of Appeals
L-23289, Feb. 28, 1969

FACTS: In a criminal action for seduction, the offended party expressly reserved the right to file a separate civil action. The CFI (now RTC) found the accused guilty, and imposed civil liabilities. No motion for reconsideration was filed by the offended party.

ISSUE: Was the imposition of civil liability proper, despite the reservation?

HELD: No, the imposition of the civil liability was not proper because:

1. there was the reservation as to the civil aspect;
2. the mere failure to file a motion for reconsideration does not necessarily result in waiver or abandonment. Abandonment requires a more convincing *quantum* of evidence than mere forbearance to actually file the civil action especially when we consider

the fact that the same could be filed even after the decision in the criminal case had been rendered;

3. proof should be given with respect to the amount.

(5) Effect of Acquittal in CIVIL CASE

Where the civil case was based on the theory that the money involved was used for the purchase of a lot, and the criminal complaint in turn alleges that the money was used not to purchase a lot but was in fact embezzled by the accused, the dismissal of the civil action CANNOT constitute a bar to the criminal suit for the two actions are entirely distinct from each other, and may therefore be litigated upon independently. (*Gorospe v. Nolasco*, L-14745, Mar. 30, 1962). (NOTE: The Court referred to Art. 31).

Bordas v. Canadalla and Tabar L-30036, Apr. 15, 1988

Indeed, there is a need for the plaintiff-appellant to make a reservation of his right to file separate civil action inasmuch as the civil action contemplated is not derived from the criminal liability of the accused but one based on *culpa aquiliana*. The trial court was therefore in error in considering the conviction of the accused as a “prejudicial question” to the civil liability of Canadalla and his employer Primo Tabar. The confusion lies in the failure to distinguish between the civil liability arising out of criminal negligence (governed by the Penal Code) on one hand, and the responsibility for *culpa aquiliana* or *quasi-delict* upon the other, the latter being separate and distinct from the civil liability arising from crime. It is thus clear that the plaintiff-appellant’s action, being one for *culpa aquiliana* may not be classified as a civil action arising from the criminal offense of Senceno Canadalla to be suspended “until judgment in the criminal case has been rendered.”

Moreover, Section 2, Rule III of the Rules of Court on independent civil actions has been amended on Jan. 1, 1985 to read as follows: “In the cases provided for in Articles 32, 33, and 34 of the Civil Code, 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. Such civil action shall proceed independently on the criminal prosecution, and shall require only a preponderance of evidence.”

As revised, it should be noted that Section 2, Rule III, eliminated not only the requirement that the right to institute such independent civil actions be reserved by the complainant, but more significantly, eliminated Articles 31 and 2177 of the Civil Code from its purview. This is so because the civil actions contemplated in Articles 31 and 2177 are not civil actions *ex delicto*. Moreover, said articles by themselves, authorize the institution of a civil action for damages based on *quasi-delict* which may proceed independently of the criminal proceeding for criminal negligence and regardless of the result of the latter. (*Arts. 31 and 2177, Civil Code; Corpus v. Paje, 28 SCRA 1062*).

(6) Where Civil Liability Survives

People v. Bayotas
GR 102007, Sep. 2, 1994
55 SCAD 140

Where civil liability survives, an action for recovery may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

A private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privatization of right by prescription.

Applying this set of rules to the case at bench, the death of appellant extinguished his criminal liability and the civil liability based solely on the act complained of, *i.e.*, rape. Consequently, the appeal is dismissed without qualification.

(7) Not a ‘Stranger’ to the Case

The husband of the judgment debtor cannot be deemed a “stranger” to the case prosecuted and adjudged against his wife which would allow the filing of a separate and independent action. (*Ching v. CA, 398 SCRA 88 [2003]*).

Art. 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 or 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.

COMMENT:**(1) Implementation of Constitutional Civil Liberties**

The civil liberties guaranteed by the Constitution need implementation, hence, the necessity for Art. 32.

In asking for a Civil Liberties Day in the Philippines, Chief Justice Cesar Bengzon in a speech delivered before the Civil Liberties Union on Nov. 30, 1962 aptly pointed out that civil liberties generally refer “to those fundamental freedoms which, historically associated with the bill of rights, aim at protecting the individual against oppression through government action; they are the rights which are deemed essential to any enlightened scheme of ordered liberty which endows the individual with the dignity of man in the society of his equals.” The chief magistrate pointed out that a Civil Liberties Day “would serve to emphasize in phrases of wisdom and admonition that liberty does not mean license, that rights involve duties, and that freedom must be coupled with responsibility and self-restraint.”

**Jose Rizal College v. NLRC
GR 65482, Dec. 1, 1987**

The “cardinal primary” requirements of due process in administrative proceedings are: (1) the right to a hearing which includes the right to present one’s case and submit evidence to support thereof; (2) the tribunal must consider the evidence presented; (3) the decision must have something to support itself; (4) the evidence must be substantial, which means such evidence as a reasonable mind must accept as adequate to support a conclusion; (5) the decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) the tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; and (7) the board or body should in all controversial questions, render its decisions in such manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.

Aberca v. Fabian Ver
GR 69866, Apr. 15, 1988

FACTS: Persons apprehended and imprisoned without charges during the Martial Law regime, upon their release after a new administration took over, filed suits for damages against General Fabian Ver and company who effected their arrest and detention.

HELD: Art. 32, which renders any public officer or employee or any public individual liable in damages for violating the constitutional rights and liberties of another, as enumerated therein, does not exempt military officials and officers from responsibility.

While military authorities are not restrained from pursuing their assigned task or carrying out their mission with vigor, they must nonetheless, observe the constitutional and legal limitations. The linchpin in the psychological struggle (struggle of the mind versus struggle of arms) is faith in the rule of law. Once that faith is lost or compromised, the struggle may well be abandoned.

**Ayer Productions PTY, Ltd., et al. v. Hon. Capulong
and Juan Ponce Enrile**
GR 82380, Apr. 29, 1988

The constitutional and legal issues raised by the present petitions are sharply drawn. Petitioners claim that in producing and filming “The Four-Day Revolution” (*i.e.*, the historic peaceful struggle of the Filipinos at EDSA [Epifanio de los Santos Avenue]), they are exercising their freedom of speech and of expression protected under our Constitution. Private respondent, upon the other hand, asserts a right of privacy and claims that the production and filming of the projected mini-series would constitute an unlawful intrusion into his privacy which he is entitled to enjoy.

Considering first petitioners’ claim to freedom of speech and of expression, the Court would once more stress that this freedom includes the freedom to film and produce motion pictures and to exhibit such motion pictures in theaters or to

diffuse them through television. In our day and age, motion pictures are a universally utilized vehicle of communication and medium of expression. Along with the press, radio and television, motion pictures constitute a principal medium of mass communication for information, education, and entertainment.

This freedom of expression is available to our country both to locally-owned and to foreign-owned motion picture companies. Hence, to exclude commercially-owned and operated media from the exercise of constitutionally protected freedom of speech and of expression can only result in the drastic contraction of such constitutional liberties in our country.

Corollary to this is the counter-balancing of private respondent to a right of privacy. This right of privacy or “the right to be let alone,” like the right of free expression, is not an absolute right, however. Succinctly put, the right of privacy cannot be invoked to resist publication and dissemination of matters of public interest.

Thus, the line of equilibrium in the specific context of the instant case between the constitutional freedom of speech and of expression and the right to privacy, may be marked out in terms of requirement that the proposed motion picture must be fairly truthful and historical in its presentation of events. There must, further, be no presentation of the private life of the unwilling private respondent and certainly no revelation of intimate or embarrassing personal facts to the extent that “The Four-Day Revolution” limits itself in portraying the participation of private respondent in the EDSA Revolution to those events which are directly and reasonably related to the *public facts* of the EDSA Revolution, the intrusion into private respondent’s privacy cannot be regarded as unreasonable and actionable. Such portrayal may be carried out even without a license from private respondent.

**Lupangco, et al. v. Court of Appeals
and Professional Regulations Commission
GR 77372, Apr. 29, 1988**

ISSUE: Thru its issuance of Resolution 105 (as part of its “Additional Instructions to Examinees”), can The Professional

Regulations Commission (PRC) lawfully prohibit the examinees (preparing to take the licensure examinations in accountancy) from attending review classes, receiving handout materials, tips or the like, three (3) days before the scheduled date of the examination?

HELD: While the Court realized that the questioned resolution was adopted for a commendable purpose which is “to preserve the integrity and purity of the licensure examinations,” the Commission’s good aim, however, cannot be a cloak to conceal its constitutional infirmities. On its face, it can be readily seen that it is unreasonable in that an examinee cannot even attend any review class, briefing, conference or the like, or receive any hand-out, review materials, or any tip from any school, college or university, or any review center or the like or any reviewer, lecturer, instructor, official or employee of any of the aforementioned or similar institutions. The unreasonableness is more obvious in that one who is caught committing the prohibited acts even without any ill motives will be barred from taking future examinations conducted by the respondent PRC. Furthermore, it is inconceivable how the Commission can manage to have a watchful eye on every examinee during the three days before the examination period. It is an axiom in administrative law that administrative authorities should not act arbitrarily and capriciously in the issuance of rules and regulations. To be valid, such rules and regulations must be reasonable and fairly adapted to secure the end in view. If shown to bear no reasonable relation to the purposes for which they are authorized to be issued, then they must be held to be invalid.

Resolution 105 is not only unreasonable and arbitrary, it also infringes on the examinees’ right to liberty guaranteed by the Constitution. Respondent PRC has no authority to dictate on the reviewers as to how they should prepare themselves for the licensure examinations. They cannot be restrained from taking all the lawful steps needed to assure the fulfillment of their ambition to become public accountants. They have every right to make use of their faculties in attaining success in their endeavors. They should be allowed to enjoy their freedom to acquire useful knowledge that will promote their

personal growth. As defined in a decision of the U.S. Supreme Court: “The term ‘liberty’ means more than mere freedom from physical restraint or the bounds of a prison. It means freedom to go where one may choose and to act in such a manner not inconsistent with the equal rights of others, as his judgment may dictate for the promotion of his happiness, to pursue such callings and vocations as may be most suitable to develop his capacities, and give to them their highest enjoyment.” (*Minn. v. Illinois*, 94 U.S. 143).

Another evident objection to Resolution No. 105 is that it violates the academic freedom of the schools concerned. Respondent PRC cannot interfere with the conduct of review that review schools and centers believe would best enable their enrollees to meet the standards required before becoming a full-fledged public accountant. Unless the means or methods of instruction are clearly found to be inefficient, impractical, or riddled with corruption, review schools and centers may not be stopped from helping out their students. At this juncture, We call attention to Our pronouncement in *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, 68 SCRA 277, regarding academic freedom, to wit: “It would follow then that the school or college itself is possessed of such a right. It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students. This constitutional provision is not to be construed in a niggardly manner or in a grudging fashion.”

Needless to say, the enforcement of Resolution No. 105 is not a guarantee that the alleged leakages in the licensure examinations will be eradicated or at least minimized. Making the examinees suffer by depriving them of legitimate means of review or preparation on those last three precious days — when they should be refreshing themselves with all that they have learned in the review classes and preparing their mental and psychological make-up for the examination day itself — would be like uprooting the tree to get rid of a rotten branch. What is needed to be done by the respondent is to find out the source of such leakages and stop it right there. If corrupt officials or

personnel should be terminated from their jobs, then so be it. Fixers or swindlers should be flushed out. Strict guidelines to be observed by examiners should be set up and if violations are committed, then licenses should be suspended or revoked. These are all within the powers of the respondent commission as provided for in Presidential Decree 223. But by all means the right and freedom of the examinees to avail of all legitimate means to prepare for the examinations should not be curtailed.

(2) Additional Rights

In addition to the Bill of Rights provisions, Art. 32 refers to:

- (a) Freedom of suffrage. (*Art. 32, par. 5, Civil Code*).
- (b) Freedom from being forced (coerced) 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. (*Art. 32, par. 17, Civil Code*).

People v. Albofera and Lawi-an L-69377, July 20, 1987

In a custodial investigation, if an accused makes an extrajudicial confession, the same must be in the presence of and assistance of counsel. The waiver of this right, if the waiver is to be valid, should be in writing and must be made in the presence of his counsel.

(3) Scope

It should be noted that the following can be made liable:

- (a) Any *public* officer or employee.
- (b) Any private individual even if he be in good faith; the precise purpose of the Article is to eliminate the defense of good faith, otherwise the main reason for the Article would be lost. (*See Memorandum of Dr. Bocobo, Chairman, July 22, 1950*).

But judges are not liable unless the act or omission is a crime. (*Art. 32, last paragraph, Civil Code; see Arts. 204 to 207, R.P.C.*) This is because in the case of a crime, it is well known that a person criminally liable is also civilly liable. (*Art. 100, Rev. Penal Code*).

Note, however, that while judges are expressly exempted under Art. 32, it would seem that this exemption does not apply to cases properly falling under Art. 27. (*See by implication in Aldaba, et al. v. Hon. Elepano, et al., L-16771, Sep. 29, 1962*).

QUERY: May Commissioners of the Public Service Commission be held liable under Art. 32? It would seem that the answer is YES, for the Commissioners “are not judges in the true sense.” (*Danan, et al. v. Hon. Aspillera, et al., L-17305, Nov. 28, 1962*). YET, in the case of *Serrano v. Muñoz Motors, Inc. (L-25547, Nov. 27, 1967)*, the Supreme Court answered NO.

Serrano v. Muñoz Motors, Inc.
L-25547, Nov. 27, 1967

ISSUE: On the assumption that a Public Service Commissioner commits an act in violation of civil liberties (under Art. 32 of the Civil Code), can he *as such* be held liable?

HELD: No, for he is here in the same category as a judge. Now then, if as such judge, he is charged with a CRIME (such as rendering knowingly an unjust judgment). This will be the time when his civil liability can arise.

It should be observed further that Art. 32 punishes not only *direct and indirect violations of constitutional liberties, but also their impairment.* (*Art. 32, par. 1, Civil Code*).

Lim v. De Leon
L-22554, Aug. 29, 1975

FACTS: Because of his belief that a certain motor launch was the subject matter of a robbery, Fiscal Ponce de Leon, after the preliminary investigation, ordered the seizure of the motor launch, even without a search warrant. Is the Fiscal liable for damages?

HELD: Yes, he is liable for actual damages (including attorney's fees), moral damages, and exemplary damages, in view of the illegal seizure, and violation of constitutional rights. The good faith of the Fiscal (now Prosecutor) is immaterial under Art. 32 of the Civil Code.

Araneta University v. Hon. Manuel Argel
L-48076, Feb. 12, 1980

In an action for damages against a University and certain officials thereof for allegedly dismissing unfairly a dean of the school, the trial court must be given an opportunity to hear all evidence in favor of or against the suit. For clearly, under Art. 32, there can be liability for the infringement of an important constitutional and human right.

Lecaroz v. Ferrer
L-77918, July 27, 1987

Elective and appointive officials and employees under the 1973 Constitution cannot be removed by proclamation, executive order, designation or appointment and qualification by their successors *after* Feb. 2, 1987 (effectivity date of the 1987 Constitution) except for causes specified in the law. [This has *no* application to OICs (Officers-in-Charge).].

(4) Remedies

The Article allows an *independent civil action*, whether or not a crime has been committed, with indemnification for *moral and exemplary* damages in addition to other damages. In the case of *exemplary* damages, award thereof is discretionary with the Court.

(5) Defendant in an Independent Civil Action to Safeguard Civil Liberties

The defendant is not the state, but the public officer involved. Hence, the consent of the state is not required. (*Festejo v. Fernando*, L-5156, Mar. 11, 1954, 50 O.G. 1556).

Festejo v. Fernando
L-5156, Mar. 11, 1954, 50 O.G. 1556

FACTS: Plaintiff sued Fernando in an action entitled “*Festejo v. Isaias Fernando, as Director of Public Works*” for allegedly depriving her of property without due process in that he allegedly constructed a canal on her land against her will. She asked for a return of her property to its former condition, and should this not be possible, for damages. The trial court dismissed the case on the ground that it had no jurisdiction over the same inasmuch as it was a suit filed against the state without its consent. Was the dismissal proper?

HELD: The dismissal was not proper. The action is a personal one for tortious acts committed by Fernando as a public official, and not a suit against the state. Under Art. 32 of the Civil Code, public officials are not exempt from responsibility for such acts, and they cannot take shelter in the fact that they are public agents. The case should therefore be remanded to the trial court for further proceedings.

[*NOTE:* It should be remembered, however, that where the State or its government enters into a *contract*, thru its officers or agents, in furtherance of a legitimate aim and purpose, and pursuant to constitutional legislative authority, whereby *mutual* or reciprocal benefits accrue, and rights and obligations arise therefrom, and if the law granting the authority *does not provide* for or name the officer against whom action may be brought in the event of a breach thereof, the *State itself may be sued even without its consent*. The reason is that by entering into a contract, the sovereign state has descended to the level of the citizen, and its consent to be sued is *implied* from the very act of entering into such contract. (*Santos v. Santos, et al., 48 O.G. 4815*).].

(6) Reason for the Creation of an Independent Civil Action Under Art. 32

- (a) Sometimes the fiscal (prosecutor) is afraid to prosecute

fellow public officials, and the citizen may be left without redress.

- (b) Even when the fiscal (prosecutor) files a criminal case, still said case requires proof of guilt beyond reasonable doubt, a requirement much harder to comply with than mere preponderance of evidence.
- (c) There are many unconstitutional acts which are not yet made crimes. The remedy for this is clearly a civil action. (*Report of the Code Commission, pp. 30-31*).

**Tropical Homes, Inc. v. National
Housing Authority
L-48672, July 31, 1987**

The Supreme Court does not decide legal or constitutional matters unless the same have been brought before it, are properly raised, and are necessary for the determination of the case.

Art. 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, and shall require only a preponderance of evidence.

COMMENT:

(1) Independent Civil Action for Defamation, Fraud, and Physical Injuries

Art. 33 speaks of:

- (a) Defamation (or libel or slander or intrigue against honor)
- (b) Fraud (or estafa or swindling)
- (c) Physical injuries including *consummated, frustrated and attempted* homicide (*Dulay v. CA, GR 108017, Apr. 3, 1995, 60 SCAD 283*), murder, parricide, infanticide — so long as there was physical injury.

(*Carandang v. Santiago*, 51 O.G. 2878, L-8238, May 25, 1955; *Dyogi, et al. v. Yatco, et al.*, L-9623, Jan. 22, 1957).

[NOTE: This is because the three terms — defamation, fraud, and physical injuries — are used in their *generic significations*. Therefore, although under the Revised Penal Code “physical injuries” is distinguished from, say, attempted murder, in that in the latter there is “an intent to kill,” a requirement not found in the former, still Art. 33 can apply in the latter. (*Carandang v. Santiago*, 51 O.G. 2878, L-8238, May 25, 1955; *Dyogi, et al. v. Yatco, et al.*, L-9623, Jan. 22, 1957).] However, crimes referred to as “criminal negligence” or “offenses of criminal negligence” under Art. 365 of the Revised Penal Code such as crimes formerly known as “homicide thru reckless imprudence” or “physical injuries thru reckless imprudence” do not fall under the purview of Art. 33 of the Civil Code. (*Laura Corpus, et al. v. Felardo Paje, et al.*, L-26737, July 31, 1969). (Query — Since they are caused by “*culpa aquiliana*,” can there not be an independent civil action for them under Art. 2177 read together with Art. 2176 of the Civil Code?). Incidentally, it was in *People v. Buan*, L-25366, Mar. 29, 1968, where the court ruled that the crimes resulting from negligence (*e.g.*, “homicide thru reckless imprudence” should really be called “offenses of criminal negligence” because the penalty is always the SAME. Thus, what the law punishes is the negligent or careless act, *not* the result whether the result be arson, or homicide, or physical injuries, etc.).

Marcia v. Court of Appeals
GR 34529, Jan. 27, 1983

A separate civil action for damages based on injuries allegedly arising from reckless driving should be dismissed if the driver-accused had been acquitted in the criminal action on the ground that he was not negligent, the entire mishap being a “pure accident.” Art. 33 does not refer to unintentional acts or those without malice. [NOTE: Art. 2177 provides for an independent civil action for negligence.]

Virata v. Ochoa
L-46179, Jan. 31, 1978

Even if a driver is acquitted in a criminal case where offended party intervened thru a private prosecutor, a civil case may still be allowed. What is prohibited is a double recovery, not a double attempt of filing of the action.

(2) New Concept of Tort

By virtue of this article, *torts* in the Philippines are now of two kinds, namely:

- (a) The American concept of tort (which is done maliciously or intentionally).
- (b) The Spanish concept of tort (*culpa aquiliana or quasi-delict*, which is based on *negligence*).

According to the Code Commission (*Report, p. 46*), “this separate civil action is similar to the action in tort for libel or slander, deceit, and assault and battery under the American law.”

Palisoc v. Brilliantes
41 SCRA 548

Officials of a school can be held liable for the tortious acts of their students unless they can prove that they observed all the diligence of a good father of a family to prevent damage. (*Art. 2180, Civil Code*).

(3) For Whose Benefit, Restrictions

Art. 33 of the Civil Code is more for the benefit of the claimant or victim than anybody else. Nevertheless, if he *files a civil case under Art. 33*, the victim can no longer *intervene in the prosecution of the criminal case*. (*Gorospe v. Gatmaitan, et al., L-9606, Mar. 9, 1956*). The same rule applies if he had *expressly reserved his right to file an independent civil action*. (*Española v. Simpson, L-8724, Apr. 13, 1956*).

(4) Libel or Defamation Cases

To determine whether a news story is libelous or not, we must consider not only the headline but also the entire news story. Newspapers should be given such leeway and tolerance as to enable them to courageously and efficiently perform their important role in our democracy. They have to race with deadlines, and consistently with good faith and reasonable care, they should not be held to account to a point of suppression for honest mistakes or imperfection in the choice of words. (*Quisumbing v. Lopez, et al., L-6465, Jan. 31, 1955*).

Although the offended party in a *criminal* case cannot appeal from a dismissal ordered by the court, upon the petition of a fiscal who believed that the supposed libelous document was a privileged communication (otherwise there would be double jeopardy), still the complainant is allowed to institute a separate civil action under Art. 33 of the Civil Code. (*People v. Flores, L-7528, Dec. 18, 1957*).

A remark that the Civil Service Commission is “a hangout of thieves” uttered in the presence of an employee thereof facing criminal and administrative charges involving his honesty and integrity cannot be considered a grave offense against said employee, because the remark itself may be regarded as general in nature and not specifically directed toward the accused. If he felt he was alluded to by the remark, this was merely his own individual reaction thereto. Other people nearby could not possibly know that said employee was being insulted unless they were aware of the charges of moral turpitude that had been levelled against him. (*People v. Alberto Benito, L-32042, Feb. 13, 1975*).

In all “privileged communications,” it is clear that exemption from liability extends only to matters that are patently related to the subject of the inquiry and not to those which are patently unrelated. (*Sison v. David, L-11268, Jan. 28, 1961*).

NOTE: After the passage of RA 1289, inferior (J.P.) courts may entertain *criminal* complaints for written defamation not for trial on the merits, but for purposes of preliminary investigation. (*People v. Olarte, L-13027, June 30, 1960; Mercader v. Valilia, L-16118, Feb. 16, 1961*).

Bocobo v. Estanislao
L-30458, Aug. 31, 1976

FACTS: Because of a radio broadcast, the person responsible thereof was accused of libel. Suit was brought in the Municipal Court of Balanga, Bataan, the municipality being one of the places where the broadcast was heard. Does the municipal court have jurisdiction?

HELD: No, because under the law, the suit must be filed with the CFI (RTC) of the province. The purpose of the law is to prevent undue harassment of the accused, in case for instance, the suit is brought in a very remote municipality, simply because the broadcast was heard there. The contention that the alleged libel, having arisen from a *radio broadcast*, is triable only by a Municipal Court for Art. 360 of the Revised Penal Code talks only of “defamation in writing” and does not say “by similar means” is not tenable, because it ignores the basic purpose of the law, namely to prevent inconvenience or harassment. A radio broadcast may be spread far and wide much more so than in the case of newspaper, and it is not difficult to imagine the deplorable effect on the accused even if he has a valid defense.

Rufo Quemuel v. Court of Appeals
and People of the Philippines
L-22794, Jan. 16, 1968

FACTS: Rufo Quemuel, convicted by the CFI (RTC) of Rizal for the crime of libel (consisting of the imputation of bribery to a public officer), appealed to the Court of Appeals, which not only affirmed the decision, but also awarded an indemnity to the victim of P2,000 with subsidiary imprisonment in case of insolvency. Quemuel now appeals to the Supreme Court, maintaining that the decision of the Court of Appeals is *erroneous* because:

- (a) it awarded said indemnity, despite the fact that the offended party had *not* appealed from the decision of the trial court, which made NO AWARD of such nature;

- (b) the assessment of damages in a criminal case, in which the civil action is impliedly included, is vested in trial courts (and not in appellate courts);
- (c) there is no proof that damages had been sustained by the offended party; and
- (d) subsidiary imprisonment, for non-payment of the indemnity constitutes imprisonment for non-payment of debt, which is unconstitutional.

HELD: The petitioner's contention is *untenable*:

- (a) The appeal in a criminal case opens the *whole* case for review, and this includes the penalty, which may be increased (*U.S. v. Trono, 199 U.S. 521; People v. Carreon, L-17920, May 30, 1962*), and the *indemnity is part of the penalty*, it being expressly provided by Art. 100 of the Revised Penal Code that every person criminally liable is civilly liable. (*Bagtas v. Director of Prisons, 84 Phil. 692*).
- (b) Although the authority to assess damages or indemnity in criminal cases is vested in trial courts, it is so only in the *first instance*. On appeal, such authority passes to the appellate courts. Thus, the Supreme Court has, in *many* cases, INCREASED the damages awarded by the trial court, although the offended party had not appealed from said award, and the only party who sought a review of the decision was the accused. (*People v. Licerio, 61 Phil. 361; People v. Raquel, L-17401, Nov. 28, 1964; Catuiza v. People, L-20455, Mar. 31, 1965; People v. Berdida, L-20183, June 30, 1966*).
- (c) As regards the alleged absence of proof that the offended party has suffered mental anguish, loss of sleep, or could not look his neighbor straight in the eye, suffice it to stress that by its *very nature*, libel causes dishonor, disrepute, and discredit; that injury to the reputation of the offended party is a natural and probable consequence of the defamatory words in libel cases; that "where the article is

libelous *per se*” — as it is in the case at bar “the law implies damages;” and that the complainant in libel cases is *not* “required to introduce evidence of actual damages,” at least when the amount of the award is more or less *nominal* as in the case at bar. (*Phee v. La Vanguardia*, 45 Phil. 211).

- (d) The civil liability arising from *libel* is *not* a “debt,” within the purview of the constitutional provision against imprisonment for non-payment of “debt.” Insofar as said injunction is concerned, “debt” means an obligation to pay a sum of money “arising from contract” express or implied. In addition to being part of the penalty, the civil liability in the instant case arises, however, from a *tort or crime*, and hence, from law. As a consequence, the subsidiary imprisonment for non-payment of said liability does not violate the constitutional injunction. (*See U.S. v. Cara*, 41 Phil. 828; *Freeman v. U.S.*, 40 Phil. 1039).

(5) Is There Any Necessity of Reserving the Civil Aspect of the Criminal Case?

Let us consider a hypothetical situation: *X* physically injures *Y*.

First Query — If *Y* files a CIVIL case against *X* (for damages as a result of the injuries) and during its pendency a criminal case is filed against *X*, should the civil case be suspended in the meantime?

Second Query — If the CRIMINAL case had been brought first, may the civil case be brought either during the former’s pendency or later EVEN WITHOUT A RESERVATION?

With respect to the first query (where the CIVIL case is brought AHEAD of the CRIMINAL case), there is no doubt that the civil case will not be suspended. This rule as found in Art. 33 of the Civil Code is clear; and there is *nothing* in the Revised Rules of Court to the contrary. Art. 33 reads:

“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, and shall require only a preponderance of evidence.”

An interesting point is thus raised: May the Supreme Court, under its rule-making power, virtually amend the provisions of the Civil Code, by insisting that the right to institute an independent civil action (once a criminal suit has been brought) be *dependent* on the *reservation of such right* (a reservation not demanded under the Civil Code)? Upon the other hand, it may be argued that the Court is well within its rights for it would seem that the requirement of the “reservation” is merely PROCEDURAL, and *not substantive* in character.

The following may be considered a brief *resume* of the doctrines promulgated by our Supreme Court before the Revised Rules became effective:

“The independent civil action of damages arising from physical injuries under Art. 33 may be brought by the offended party even if he had not reserved the right to file the same in the criminal case for the same injuries. (*Ortaliz v. Echarri*, L-9331, July 31, 1957). As a matter of fact, two different courts may at the same time try the same accident, one from the criminal standpoint, the other from the standpoint of Art. 33. The result of the criminal case, whether acquittal or conviction, would be in such a case, entirely irrelevant to the civil action. (*Dionisio and Almoador v. Alvendia*, L-10567, Nov. 26, 1957; *Bisaya Land Trans. Co. v. Majia*, L-8830, 8837-8839, May 11, 1956). Indeed to subordinate the civil action contemplated in said Articles (*Arts. 31, 32, 33, 34, 2177*) to the result of the criminal prosecution whether it be conviction or acquittal would render meaningless, the independent character of the civil action, and the clear injunction in Art. 31 that this action ‘may proceed independently of the criminal proceeding and regardless of the result of the latter.’ (*Azucena v. Potenciano, et al.*, L-14028, June, 30, 1962). Note, however that Art. 33 uses the words ‘may be,’ implying that the institution of the suit is *optional*. Thus, if the offended party in libel intervenes in the prosecution of the criminal cases through a private prosecutor, he will

be deemed to have waived the civil action, if he failed to make a reservation therefor. Thus, also, if the court did *not* enter a judgment for civil liability because the offended party failed to submit evidence of damage, and there is no motion for reconsideration or appeal, the judgment becoming final, this is clearly the fault of the offending party or his counsel. The judgment becomes *res judicata*, and an independent civil action under Art. 33 CANNOT be brought anymore. (*Roa v. De la Cruz, et al.*, L-13134, Feb. 13, 1960). Therefore, it may truly be said that the only exception to the rule that Art. 33 gives a completely independent civil action is when the offended party not only fails to reserve the right to file a separate civil action but *intervenens actually* in the criminal case by appearing through a private prosecutor for the purpose of recovering indemnity for damages therein, in which case a judgment of acquittal BARS a subsequent civil action. (*Azucena v. Potenciano, et al.*, L-14028, June 30, 1962). However, if in the criminal proceedings, the offended party DID NOT ENTER any appearance, or INTERVENE in any other manner, an independent civil action can prosper under Art. 33, if no civil liability was adjudged in the criminal case. This is so even if there was no reservation made. (*Pachoco v. Tumangday, L-14500, May 25, 1960*)."

Parenthetically, since the advent of the Revised Rules, the Court has had occasion to make use of Art. 33 of the Civil Code, *without* however *touching* on the requirement of "reservation" ordained under the Revised Rules. The first case (*Lavern v. Dulweg, L-19596*) was promulgated Oct. 30, 1964 and enunciated the *dictum* that Art. 33 does NOT make any distinction as to whether the "injured party" who may maintain the action for damages is a Filipino citizen, or an alien, whether resident or not. Consequently, a non-resident alien plaintiff may bring the independent civil action; and this is so even if there be in said case a counterclaim brought against him. The second case (*Pilar Joaquin, et al. v. Felix Aniceto, et al.*, L-18719), promulgated Oct. 31, 1964, presented a more interesting issue. The substantial facts in the *Joaquin case* are as follows: While Pilar Joaquin was on the sidewalk of Aviles Street, Manila, on Apr. 27, 1960, a taxicab driven by Felix Aniceto and owned

by Ruperto Rodelas bumped her. As a result, she suffered physical injuries. Aniceto was charged with serious physical injuries thru reckless imprudence in the Municipal Court (now City Court) of Manila. He was subsequently found guilty, and sentenced to imprisonment. However, no ruling was made on his civil liability to the offended party in view of the latter's reservation to file a separate civil action for the damages caused her. Aniceto appealed. Pending the appeal, the victim brought the civil case, making both the driver and his employer the defendants. At the trial of the civil case, the plaintiff worked on the theory of *culpa criminal*, not *culpa aquiliana*. Thus, she blocked all attempts of the employer to prove due diligence in the selection and supervision of the driver (this defense is allowed in *culpa aquiliana*, not in *culpa criminal*), on the ground that such a defense is not available in a civil action brought under the Penal Code to recover the *subsidiary* civil liability (of the employer) arising from the crime. The lower court sustained the plaintiff's objection.

The issue was succinctly stated in the following wise: May an employee's primary civil liability for crime and his employer's subsidiary liability therefor be proved in a (separate) civil action even while the criminal case against the employee is still *pending*? The question was resolved in the negative, the Court holding the action to be PREMATURE in view of the pendency of the criminal case. The Court further held that Art. 33 allows a recovery against the employee alone (not because a crime had been committed but because a tortious act had been done); and Art. 2177 allows recovery against BOTH the employee and the employer (not again because of a crime, but because of a quasi-delict or act of negligence), but in such a case, the employer may exempt himself if he proves due diligence in the selection and supervision of the employee. The Court concluded: While a separate and independent civil action for damages may be brought against the employee under Art. 33 of the Civil Code, no such action may be filed against the employer on the latter's subsidiary civil liability because such liability is governed not by the Civil Code but by the Penal Code, under which conviction of the employee is a condition *sine qua non* for the employer's subsidiary liability. If the court trying the employee's liability adjudges the employee liable, but the court trying the criminal

action acquits the employee, the subsequent insolvency of the employee cannot make the employer subsidiarily liable to the offended party or to the latter's heirs.

Coming back to the question — may the Supreme Court validly require, under the Revised Rules, a “reservation” to be made in a criminal case before an “independent civil action” may be brought? Permit me to quote the pertinent discussion on the matter during the institution on the Revised Rules of Court conducted by the University of the Philippines (Dec. 12-14, 1963):

Atty. Voltaire Garcia: Under the provisions of the Civil Code, there are certain special cases where the law authorizes civil and criminal cases simultaneously and independent of each other. So that the criminal action should be instituted first and/or subsequently the civil action may be instituted first.

Justice Alejo Labrador: That is under the civil law.

Atty. Garcia: Yes, Justice. My point is that the drafters of Rule 111 added in Section 2 thereof the phrase “provided the right is reserved as required in the preceding section.” But under the Civil Code, there is no need for reservation.

Justice Labrador: Well, the trouble is, Section 1 of Rule 111 which says that the civil action is deemed instituted with the criminal action unless it is reserved expressly.

Atty. Garcia: Precisely. The Supreme Court, I think, had no authority to modify the provisions of the Civil Code on the matter.

Justice Labrador: Well, but Rule 111 is procedural in nature. It does not involve substantive law, but determines only where the action is to be brought. Now, if there is a conflict between a rule of procedure and a provision of the Civil Code, it seems to me that since the Supreme Court has the authority to promulgate rules of procedure then these rules will prevail being on procedural matters.

Atty. Garcia: Well, I believe the Supreme Court went further by adding the phrase “provided the right is reserved as required in the preceding section.” The Civil Code does not provide for that.

Justice Labrador: That was considered by Justice Reyes (JBL). (Laughter) But if there is a conflict between the procedural law and the Civil Code on the matter, I think the rule of procedure should prevail. [*Proceedings of the Institute on the Revised Rules of Court (1963), published by The Law Center, College of Law, University of the Philippines, pp. 82-83.*]

It is obvious from the foregoing discussion that the issue revolves itself into this: is the “reserving” procedural or substantive? If the former, the authority of the Court cannot be doubted; if the latter, the Constitution has certainly been contravened.

In the case of *In re McCombe's Estate*, 80 N.E. 2d 573, 586, the principal point of differentiation was indicated: substantive law creates, defines, and regulates rights as opposed to “adjective or procedural” law which provides the method of enforcing and protecting such rights, duties, and obligations as are created by substantive law. In *McNichols v. Lennox Furnace Co.*, DCNY 7 FRD 40, it was ruled that the creation of a right of action is “substantive” while the means or method of enforcement of the right is “procedural.” These distinctions can lead to only one logical conclusion, namely, the “reservation” is merely *procedural*, and is consequently within the competence of the Supreme Court. The right to the “independent civil action” is given by the Civil Code and how that right may be availed of is enunciated in the Revised Rules, *i.e.*, the reservation must be made. While Congress can create a right, the Supreme Court can, under our constitutional framework, ordain the exact manner in which that right may be enforced: for instance, in civil actions, the Court can ordain their venue, can indicate the pleadings that have to be (or can be) made, can prescribe the number of copies of a document or paper that have to be submitted, can fix the number of days within which pleadings have to be accomplished, can limit the number of days within

which appeals may be allowed. No one can deny the prerogative of the court to virtually negate a substantive right in case the rules have been violated, nor its privilege, in the interest of substantial justice, to waive defects in procedure. What has been said of pleadings and appeals can, with equal vigor, apply to the “reservation” referred to in the Revised Rules.

The following citations are in order:

- (1) One which operates as means of implementing an existing right is valid as a procedural rule. (*People v. Smith, Cal. App. 205 p. 2d 444, 448*).
- (2) In an action in a federal court for injuries suffered in Kansas, the right to recover is substantive, and is therefore controlled by Kansas law, but how *plaintiff is required to proceed*, and in whose name the action must be filed is procedural. (*Montgomery Ward and Co. v. Callahan, CCA Kan. 127 F 2d 32, 36*).
- (3) The element of “notice” is generally not a substantive step but is rather a procedural precaution. (*Smith v. Olson, D.C. Neb. 44 F. Supp. 456, 458*).
- (4) The amendment to a compensation act, which became effective on July 1, 1939 providing that the right to file an application for compensation shall be barred, where no compensation is paid *unless application is filed within one year* after date of accident is a “procedural change” relating to the remedy. (*Diamond T. Motor Co. v. Industrial Com., 37 NE 2d 782, 784, 378 Ill. 203*).

Anent the contention that there is no need to make the reservation since the law itself has already automatically effected such reservation, as held by the Supreme Court in *Nicasio Bernaldes, Sr., et al. v. Bohol Land Trans., Inc., L-18193, Feb. 27, 1963* and in other cases, suffice it to say that under our scheme of jurisprudence, a judicial decision (or decisions), even by our Supreme Court, may be abrogated by it either by a contrary ruling in a subsequent litigation or by simply amending its own rules of procedure, as in the instant problem. (*See Tan Chong v. Sec. of Labor, 79 Phil. 249 and Eraña, et al. v. Vera, et al., 74 Phil. 272*). The writer does not imply by this statement

that with this procedural change in the Revised Rules all the rulings given in the *Bernaldes* case have been altered: no — only the statement that the reservation is already implied in the law creating the independent action stands corrected. In fact, the statement adverted to was in the nature of an *obiter* inasmuch as the defendants in the criminal and the civil cases were *not* the same individual. Thus, even with the Revised Rules, the *Bernaldes* case still remains substantially unaltered. However, all other cases insofar as they may be applied to future suits, would seem to have undergone a modification in their *ratione decidendi*.

The argument that judicial decisions are laws (when they apply or interpret the laws or the Constitution) may be summarily dismissed for it is premised on the misconception that the phrase “shall form part of the legal system of the Philippines” in Art. 8 of the Civil Code converts said decisions into laws. While such decisions do form part of the legal system of our country, they are NOT laws, for if these were so, the courts would be allowed to legislate, contrary to the principle of the separation of powers. To any one familiar with republican processes, it is evident that courts exist for stating what the law is, not for giving it (*jus dicere, non jus dare*).

Having come to the felicitous conclusion that the requirement of “reservation” in Rule 111 is purely PROCEDURAL (*See, however, the cases of GARCIA and ABELLANA, infra.*), we now come to grip with the question — should Rule 111 (*Sec. 3*) have *retroactive* effect? If so, how about the cases filed BEFORE Jan. 1, 1964 and WITHOUT the needed reservation (because of a reliance on the judicial rulings then prevailing)?

The answer is quite simple: Being procedural, Rule 111 (*Sec. 3*) should have a retroactive effect in the sense that it applies to causes of action ACCRUING even before January 1, 1964, PROVIDED that the independent civil actions which had been FILED before said date should *not* be adversely affected. Thus, a cause of action accruing for example in 1962 and for which an independent civil action *without* the needed reservation was filed in 1963 should be allowed to continue even with the coming of the Revised Rules (a contrary rule would

be manifestly pernicious); on the other hand, if by January 1, 1964 the independent civil action had *not* yet been filed, Sec. 3 of Rule 111 should be applied, even if the cause of action had arisen long before said date. In *Barker v. St. Louis County*, it was correctly held that: "Where the overruled decision deals with procedural or adjective law, the effect of the overruling decision is *prospective* only; but where the overruled decision deals with substantive law, the effect of the overruling decision is *retroactive*." (340 Mo. 986).

(6) Some Decisions on the Matter

Garcia v. Florido **L-35095, Aug. 31, 1973**

FACTS: After a vehicular accident, the victims were brought to the hospital for treatment. In the meantime, the police authorities filed a criminal case of reckless imprudence resulting in physical injuries, **WITHOUT** making a reservation as to the civil aspect. When the victims became well enough to go to court, they decided to file a *civil case* despite the pending of the criminal case.

ISSUE: Should the civil case be allowed, despite the pendency of the criminal proceedings?

HELD: Yes, for while it is true that a reservation should have been made under Rule 111 of the Revised Rules of Court (though such rule has been assailed by **SOME** in this respect as virtually eliminating or amending the "substantive" right of allowing an "independent civil action," as ordained by the Civil Code) *still the Rule does not state when the reservation is supposed to be made*. Here, the victims had no chance to make the reservation (for they were still at the hospital); moreover, *the trial has not even begun*. It is therefore not yet too late to make the reservation; in fact, the actual filing of the civil case, though at this stage, is even better than the making of the reservation.

**Crispin Abellana and Francisco Abellana v.
Hon. Geronimo R. Maraue and
Geronimo Companer, et al.
L-27760, May 29, 1974**

FACTS: Francisco Abellana was driving a cargo truck, when he hit a motorized pedicab. Four of the passengers of the pedicab were injured. He was accused in the City Court of Ozamis for his reckless imprudence (no reservation was made as to any civil action that might be instituted); he was convicted; he then appealed to the Court of First Instance (now Regional Trial Court). During the pendency of the appeal (and in fact, before trial in the CFI [now RTC]), the victims decided to make a WAIVER re-claim for damages in the criminal case, and RESERVATION with respect to the civil aspects. The victims then in another Branch of the CFI (RTC) allowed the FILING of the civil case. The accused objected to the allowance on the theory that in the *City Court* (original court) *no reservation* had been made, thus the civil aspect should be deemed included in the criminal suit, conformably with Rule 111 of the Revised Rules of Court. The CFI (now RTC) maintained that the civil case should be allowed because with the appeal, the judgment of the City Court had become *vacated* (said court was not then a court of record) and in the CFI (now RTC) the case was to be tried anew (trial *de novo*). This ruling of the CFI (now RTC) was elevated to the Supreme Court on *certiorari*.

ISSUE: May a civil case still be brought despite the appeal in the criminal case?

HELD: Yes, for three reasons:

- (a) *Firstly*, with the appeal, the original judgment of conviction was *VACATED*; there will be a *trial de novo* in the CFI (now RTC), a trial that has not even began, therefore, a reservation can still be made and a civil action can still be allowed.
- (b) *Secondly*, to say that the civil action is barred because no reservation (pursuant to Rule 111) had been made in the City Court when the criminal suit was filed is to present a grave constitutional question, namely, can the Supreme Court, in Rule 111 amend or restrict a **SUBSTANTIVE**

right granted by the Civil Code? This cannot be done. The apparent *literal* import of the Rule cannot prevail. A judge “is not to fall prey,” as admonished by Justice Frankfurter, to the vice of literalness.

- (c) *Thirdly*, it would be *UNFAIR*, under the circumstances if the victims would not be allowed to recover any civil liability, considering the damage done to them.

Francisco Escueta v. Eutiquiano Fandialan
L-39675, Nov. 29, 1974

Under Art. 33 of the Civil Code, *even without a reservation*, an injured person can prosecute his civil action for damages from the physical injuries separately and independently of the criminal action and would require only a preponderance of evidence to support his action. Such separate and independent civil action under the cited codal article proceeds to trial and final judgment irrespective of the result of the criminal action. (*Rule 111, Sec. 2, Rules of Court*).

[NOTE: Under said Rule, a reservation is REQUIRED. Why a contradictory rule was cited as authority will perhaps remain an unceasing source of wonder.]

Art. 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.

COMMENT:

(1) Independent Civil Action for the Liability of City or Municipal Police Force

- (a) *Primary liability* is assessed against the member of the police force who *refuses* or *fails* to render aid or protection.

- (b) Subsidiary liability is imposed on the *city* or *municipality* concerned in case of *insolvency*. (*Art. 34, Civil Code*).

[NOTE: By virtue of this Article, the city or municipal government concerned can be sued for its subsidiary liability. Incidentally, this Article does *not* grant to the government the defense of due diligence in the selection and supervision of the policemen.].

(2) Does the Article Apply to the Philippine National Police (PNP) Force and to National Government?

Since Art. 34 speaks merely of a city or *municipal* police force, it would seem that the answer is in the negative.

Art. 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.

COMMENT:

(1) Rule if No Independent Civil Action Is Granted

This Article applies to cases when there is no independent civil action (such as when the liability sought to be recovered arises from a crime); and not to a *tortious* action such as that provided for under Art. 33.

(2) Example

A woman accused her classmate of committing against her the crime of unintentional abortion. But the fiscal refused to institute criminal proceedings. She may bring a civil action for damages against the alleged offender, but if in the course of the trial, an information should be presented by the fiscal, charging the classmate with the crime, the civil action shall be suspended until the termination of the criminal proceedings.

Canlas v. Chan Lin Po, et al.
L-16929, July 31, 1961

FACTS: In a criminal case, the aggrieved party *reserved* the right to file a *separate* civil action. Despite this reservation, the Court sentenced the accused to pay civil indemnity.

ISSUE: Is the judgment *res judicata*?

HELD: The judgment, except as to the fact of commission by the accused of the act charged therein CANNOT be *res judicata*, constituting a bar to the civil action to enforce the subsidiary or primary liability of the defendants who were *not* parties to the criminal case.



Art. 36. Prejudicial questions, which must be decided before any criminal prosecution may be instituted or may proceed, shall be governed by rules of court which the Supreme Court shall promulgate and which shall not be in conflict with the provisions of this Code.

COMMENT:**(1) Definition of a ‘Prejudicial Question’**

A *prejudicial question* is one which must be decided first before a criminal action may be instituted or may proceed because a decision therein is vital to the judgment in the criminal case. In the case of *People v. Adelo Aragon* (L-5930, Feb. 17, 1954), the Supreme Court defined it as one which arises in a case, the resolution of which question is a logical antecedent of the issues involved in said case and the cognizance of which pertains to another tribunal. The prejudicial question must

be determinative of the case before the Court; this is the *first element*. Jurisdiction to try said question must be lodged in another tribunal; this is the *second element*. (See *Carlos v. CA*, 79 SCAD 582 [1997]).

Indeed, 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 former, it must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that in the resolution of the issues raised in said civil action, the guilt or innocence of the accused would necessarily be determined. (*Mendiola, et al. v. Macadaeg, et al.*, L-16874, Feb. 27, 1961). In an action for bigamy, for example, if the accused claims that the first marriage is null and void, and the right to decide such validity is vested in another tribunal, the civil action for nullity must first be decided before the action for bigamy can proceed; hence, the validity of the first marriage is a prejudicial question. (*People v. Adelo Aragon*, L-5930, Feb. 17, 1954).

Isabelo Apa, et al. v. Hon. R.F. Fernandez, et al.
GR 112381, Mar. 20, 1995
59 SCAD 759

FACTS: The information alleges that “without the knowledge and consent of the *owner*, ROSITA TIGOL” petitioners occupied or took possession of a portion of “*her* property” by building their houses thereon and “deprived [*her*] of the use of a portion of *her* land to her damage and prejudice.” Now the ownership of the land in question, known as Lot 3635-B of the Opon cadastre covered by TCT No. 13250, is the issue in Civil Case 2247-L now pending in Branch 27 of the RTC of Lapu-Lapu City. The resolution, therefore, of this question would necessarily be determinative of petitioners’ criminal liability for squatting. In the criminal case, the question is whether petitioners occupied a piece of land not belonging to them but to private respondent and against the latter’s will.

HELD: A prejudicial question is a question 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 accused. To justify suspension

of the criminal action, it must appear not only that the civil case involves facts intimately related to those upon which the criminal prosecution is based but also that the decision of the issue or issues raised in the civil case would be decisive of the guilt or innocence of the accused.

(2) Requisites of Prejudicial Questions

- (a) the civil case involves facts intimately related to those upon which the criminal prosecution would be based;
- (b) in the resolution of the issue or issues raised in the civil actions, the guilt or innocence of the accused would necessarily be determined; and
- (c) jurisdiction to try, said question must be lodged in another tribunal. (*People v. Consing, Jr.*, 395 SCRA 366 [2003]).

[NOTE: Neither is there a prejudicial question if the civil and criminal action can, according to law, proceed independently of each other. (*People v. Consing, Jr., supra.*)].

(3) Examples

- (a) A was lawfully married to B. At the point of a gun, A was threatened if he would not marry C. So A married C. Out of jealousy, B asked the fiscal to file bigamy charges against A, who had in the meantime asked that the second marriage be annulled in view of the intimidation committed on him. Should the criminal action proceed at once?

ANSWER: No. For the decision in the civil case would affect A's criminal liability, and this therefore is a prejudicial question. (See *De Leon v. Mabanag*, 70 Phil. 202).

Cases

Merced v. Diez, et al. **109 Phil. 155**

FACTS: A married man, Abundio Merced, was forced by Elizabeth Ceasar to contract marriage with her. He

then sued for the annulment of the second marriage on the ground of force and intimidation, but Elizabeth countered with a criminal charge of bigamy. In his answer in the bigamy case, he filed a motion to suspend the criminal proceedings until after the termination of the annulment case — on the theory that the annulment was a prejudicial question.

HELD: The annulment is really a prejudicial question, because if he was really forced, there was no consent to the second marriage, and he cannot therefore be guilty of bigamy. In order that a person may be held guilty of bigamy, the second marriage must have had all the essential elements of a valid marriage, were it not for the existence of the first marriage. (*See People v. Dumpo*, 62 *Phil.* 246). The contention that the second marriage being bigamous and void, does not have to be declared such, as held in *People v. Mendoza*, 50 *O.G. No. 10*, p. 4767, cannot be sustained because precisely the issue here is whether or not such marriage was really bigamous.

NOTE: The doctrine in *Merced v. Diez* (*supra*), was reiterated in *Zapanta v. Montesa, et al.*, L-14534, Feb. 28, 1962, where the Supreme Court ruled that the defendant in a case for bigamy claims that his second marriage is not valid on the ground that his consent thereto was obtained by means of duress, force, and intimidation, the suit for annulment of the second marriage must first be decided before the criminal action for bigamy can proceed.

People v. Adelo Aragon
94 Phil. 357

FACTS: A was married to B. Later, A forced C to marry him. C filed an action to cancel the marriage to her. Meantime, A was accused of bigamy. A alleges that the civil case is a prejudicial question. Is he correct?

HELD: A is wrong because it was he who employed the force insofar as the second marriage is concerned. He cannot use his own act or crime as his defense.

- (b) A was forced to marry B. A then sued for annulment.

During the pendency of the case, A married C. When C learned of the first marriage, C complained to the fiscal who now sued A for bigamy. A alleges that the pendency of the annulment proceedings is a prejudicial question. Is he correct?

ANSWER: A is wrong because the decision in the annulment case is not important. The first marriage will be either annulled or not. If not *annulled*, *bigamy* can prosper; if annulled, still bigamy can prosper, for when he married the second time, he was *still married* to his first wife, a voidable marriage being considered *valid until it is annulled*.

Donato v. Hon. Luna
GR 53642, Apr. 15, 1988

A case for annulment of marriage can be considered as a prejudicial question to the bigamy case against the accused only if it is proved that the petitioner's consent to such marriage was obtained by means of duress, violence, and intimidation in order to establish that his act in the subsequent marriage was an involuntary one and as such the same cannot be the basis for conviction. A prejudicial question usually comes into play in a situation where a civil action and a criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in a criminal case.

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.

Landicho v. Relova
22 SCRA 73

In order that a case of annulment of marriage be considered a prejudicial question to a case of bigamy as against an accused, it must be shown that the petition-

er's consent to such marriage was procured by means of duress, force, and intimidation to show that his act in the second marriage was involuntary and cannot be made the basis of his conviction for the crime of bigamy.

**Umali v. Intermediate
Appellate Court
GR 63198, June 21, 1990**

An action for rescission of a contract is not deemed prejudicial in an action based on Batas Pambansa Blg. 22 or Bouncing Checks Law.

**Ark Travel Express, Inc. v. Abrogar
410 SCRA 148 (2003)**

Pending determination of the falsity of the subject testimonies of private respondents in the civil case, the criminal action for false testimony must perforce be suspended.

Whether or not the testimonies of private respondents in the civil cases are false is a prejudicial question.

(c) *Other Instances of Prejudicial Questions*

- 1) In a criminal case for damage to one's property, a civil action that involves the *ownership* of said property should first be resolved. (*De Leon v. Mabanag*, 38 *Phil.* 202).
- 2) A civil action involving an obligation to pay wages is a prejudicial question to a *criminal prosecution* for delay in the payment of such wages. (*Aleria v. Mendoza*, 46 *O.G.* 5334).

(d) *Instances of Non-Prejudicial Questions*

The *determination* of title to land in a cadastral case is not prejudicial question to a criminal case for *falsification of a public document* filed against a notary public who allegedly falsified an affidavit that had been presented as evidence in the cadastral proceeding.

Ocampo, et al. v. Judge Tancinco, et al.
L-5967, Jan. 31, 1955, 51 O.G. 137

FACTS: A was charged criminally with violating the Copyright Law, and he in turn brought a civil action against the complainant and the Director of Libraries for the cancellation of the copyright granted to the complainant. A then asked for the postponement of the criminal case on the ground that the civil action raised a prejudicial question.

HELD: In this case, the civil action does not raise a prejudicial question because until and unless cancelled, the copyright is presumed to have been duly granted. In other words, before infringing upon any copyright alleged to have been unlawfully issued, A should have first asked for its cancellation.

Republic v. Ret
L-13754, Mar. 31, 1962

FACTS: The defendant was criminally accused of failure to file income tax returns, and also of having filed false income tax returns. The defendant was found guilty. After conviction, the government filed a civil suit for the recovery of the taxes involved. In this civil case, the defendant pleaded prescription. Upon the other hand, the government alleged that the filing of the criminal case constituted a prejudicial question which ought to be resolved before the civil action for collection could be filed.

HELD: The criminal case did *not* affect one way or the other the running of the prescriptive period for the commencement of the civil suit. The two kinds of suits are entirely separate and distinct. Hence, the provisions of Sec. 1 of Rule 107 of the Rules of Court (now Rule 111, Revised Rules of Court) that after a criminal action had been commenced no civil action arising from the same offense can be *prosecuted*, is NOT applicable. And even assuming the applicability of the rule, still it is the prosecution of the civil action that ought to be suspended, NOT its *filing* within the prescribed period.

Brito Sy v. Malate Taxicab
L-8937, Nov. 29, 1957

In a suit by a taxi passenger against the taxi operator for breach of contract for injury sustained when the taxi collided with a truck, a third-party complaint by the defendant against the truck driver for tort (*culpa aquiliana*) is not a prejudicial question, for the main action does not depend on the result of the third-party complaint. On the contrary, it is the latter that depends on the main case, at least insofar as the amount of damages is concerned. And even if the truck driver is also negligent, the taxi company will not be exempt from liability.

Benitez, et al. v. Concepcion, et al.
L-14646, May 30, 1961

In a civil case for annulment of the deed of mortgage, the issue was that the signature of one of the parties appearing thereon were *forged*. In a criminal case, the issue was likewise the forgery of the same signature. Inasmuch as the issues in BOTH are the same arising as they do from the same facts, it is *not* necessary that the civil case be determined first before taking up the criminal case. This being the case the proposition is simply reduced to a *matter of preference*.

Ocampo v. Buenaventura
L-32293, Jan. 24, 1974

FACTS: Petitioner lodged with the Police Commission (POLCOM) an administrative complaint against certain policemen. The latter in turn sued petitioner for damages, alleging harassment.

ISSUE: Should the civil case for damages be suspended on account of a prejudicial question?

HELD: There is no prejudicial question here because no criminal prosecution is involved. However, the civil case is *premature* because it may turn out that the administrative case will be decided against the policemen, who would naturally not be entitled to recover damages.

Eufracio Rojas v. People, et al.
L-22237, May 31, 1974

Independent civil actions are not prejudicial questions to the proper criminal cases. Hence, an independent civil action for fraud may prosper while the criminal case for estafa is pending. No prejudicial question is involved.

- (e) *Previous Questions Distinguished from Prejudicial Questions*

Not all previous questions are prejudicial, although all prejudicial questions are necessarily previous. (*Brito Sy v. Malate Taxicab, L-8937, Nov. 29, 1957*).

- (f) *Nature of Our Courts*

In the Philippines, where the courts are vested with both civil and criminal jurisdiction, the principle of the prejudicial question is to be applied even if there is only one court before which the civil action and the criminal action are to be litigated. But in such a case, the court, when exercising jurisdiction over the civil action, is considered **DISTINCT** and **DIFFERENT** from itself when trying the criminal action. (*Merced v. Diez, et al., 109 Phil. 155*).

- (g) *When Must the Suspension of the Criminal Case Alleged to be Prejudicial Be Asked For?*

A petition for suspension of the criminal action based upon the pending of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests. (*Rule 111, Sec. 6, Revised Rules of Criminal Procedure*).

- (h) *Who May Raise the Issue on Prejudicial Questions?*

It would seem from the ruling of the Supreme Court in *People v. Villamor, et al. (L-13530, Feb. 28, 1962)* that it is the defendant in a criminal case (and NOT the prosecution) who can raise the issue of prejudicial questions. Thus, if the prosecution presents evidence against the defendant the latter in his own defense presents certain documents

(the execution and validity of which are *still being threshed out* in an appealed civil case), the prosecution CANNOT ask for a suspension of the trial on the ground that a prejudicial question is involved. This is *unfair* to the defendant who should have the right to have the criminal case terminated as soon as possible. In fact, the prosecution, if it really believes that a prejudicial question is involved should have refrained from instituting the criminal case prematurely.

People v. Judge Villamor, et al.
L-13530, Feb. 28, 1962

FACTS: Puzon filed a civil action against Querubin to declare as non-existent and void a deed of sale alleged to have been executed by Puzon in favor of Querubin. Puzon won in the lower court, but Querubin appealed the case to the Court of Appeals. Meantime, on complaint of Puzon, the fiscal accused Querubin of *falsely testifying* that Puzon had executed a deed of sale. The prosecution presented its evidence to show the non-execution of such deed. After it had rested its case, the defense started to present evidence to disprove the prosecution's allegations. Prosecution then filed a motion to suspend the trial on the ground that the issue dwelt on by the defendant partook of a prejudicial question and as such must await the final adjudication of the appealed civil case.

ISSUE: Should the trial in the criminal case be suspended

HELD: The trial must proceed. Even granting that a prejudicial question is involved, still after the prosecution has rested its case, it would be UNFAIR if the accused should be deprived of an opportunity to disprove the evidence of the prosecution and thus establish her innocence. It is her constitutional prerogative to have her case terminated with the least possible delay. In fact the prosecution should have refrained from instituting the criminal case prematurely, if it really believed that a prejudicial question was involved.

BOOK I. — PERSONS

Title I. CIVIL PERSONALITY

Chapter 1

GENERAL PROVISIONS

INTRODUCTORY COMMENTS:

- (1) *Person* — any being, natural or artificial, capable of possessing legal rights and obligations. (2 *Sanchez Roman 110*).
- (2) *Two Kinds of Persons*
 - (a) *Natural persons* — human beings created by God through the intervention of the parents.
 - (b) *Juridical persons* — those created by law. (2 *Sanchez Roman 112-114*).

Art. 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).

COMMENT:

- (1) **Definition of ‘Juridical Capacity’** — the fitness to be the subject of legal relations.
- (2) **Definition of ‘Capacity to Act’** — the power to do acts with legal effect.

(3) Differences Between ‘Juridical Capacity’ and ‘Capacity to Act’

<i>Juridical Capacity</i>	<i>Capacity to Act</i>
(a) Passive	(a) Active
(b) Inherent	(b) Merely acquired
(c) Lost only through death	(c) Lost through death and may be restricted by other causes
(d) Can exist without capacity to act	(d) Exists always with juridical capacity

(4) Synonyms

- (a) Juridical capacity; *capacidad juridica*
- (b) Capacity to act; *capacidad de obrar*; “*facultas agendi*.”

(5) Definition of Full or Complete Civil Capacity – The union of the two kinds of capacity (*plena capacidad civil*).

(6) Example of the Use of the Terms

A 1-year-old boy has juridical capacity but has no capacity to act. When he becomes 18, he will have full civil capacity.

(7) A person is presumed to have capacity to act. (*Standard Oil Co. v. Arenas, et al., 14 Phil. 363*).

Art. 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)

COMMENT:**(1) Restrictions on Capacity to Act**

Capacity to act, unlike juridical capacity, may be restricted or limited. Among the restrictions are the following:

- (a) Minority (below 18).
- (b) Insanity or imbecility.
- (c) State of being a deaf-mute.
- (d) Prodigality (the state of squandering money or property with a morbid desire to prejudice the heirs of a person). (*Martinez v. Martinez, 1 Phil. 182*).
- (e) Civil interdiction (the deprivation by the court of a person's right):
 - 1) To have parental or marital authority.
 - 2) To be the guardian of the person and property of a ward.
 - 3) To dispose of his property by an act *inter vivos* (he cannot donate, for this is an act *inter vivos*; but he can make a will, for this is a disposition *mortis causa*).
 - 4) To manage his own property. (*Art. 34, RPC*).

[NOTE: The penalty of civil interdiction is given to a criminal punished by imprisonment for 12 years and 1 day or more. (*Art. 41, RPC*)].

(2) Minority

The age of majority in the Philippines has been lowered from 21 to 18. Generally, a minor needs parental consent before he can enter into an ordinary contract. If he goes ahead without such consent, the contract is not however void. It is merely voidable; that is, valid until annulled. Incidentally, it is wrong to say that a minor has NO capacity to act; he has, but his capacity is RESTRICTED.

A minor *cannot* create a trust of any kind (*Gayondato v. Treasurer, 49 Phil. 244*), nor can he act as an executor or administrator. (*Rule 78, Sec. 1, Rules of Court*).

If at least 14 years of age, however, he must give his written consent to make valid a legal adoption. (*Art. 188[1], Family Code*). If at least 18 years old, he can make a will (*Art. 797, Civil Code*) or be a witness to one. (*Art. 820, Civil Code*).

Cruz v. Court of Appeals
L-40880, Oct. 13, 1979

Minority is only one of the limitations on the capacity to act and does not exempt the minor from certain obligations, as when the latter arise from his acts or from property relations. Thus, he may acquire property using the capital of his parents, said property to belong to the latter in ownership and usufruct.

Alimagno v. People
GR 36468, Feb. 21, 1983

Art. 340 of the Revised Penal Code which deals with the “corruption of minors” refers to minors below 21 (now 18) years, even if more than 18 years old.

(3) Insanity or Imbecility

Insanity is a condition in which a person’s mind is sick. *Imbecility is feeble-mindedness*, or a condition in which a person thinks like a small child.

[NOTE: Insanity in one thing (movie stars, for example) is not necessarily insanity in other things. This kind of insanity is called *monomania*. (*See Standard Oil v. Arenas, 19 Phil. 363*).].

[NOTE: If a person is under guardianship because of insanity, he is of course presumed insane if he should enter into a contract. But this presumption is only *prima facie* or rebuttable. If it can be shown that he was acting during a lucid interval, the contract will be considered valid. (*Dumaguin v. Reynolds, et al., 48 O.G. 3887*).].

(4) State of Being a Deaf-Mute

A deaf-mute may either be sane or insane. If sane, prescription may run against him. (*Director of Lands v. Abelardo, 54 Phil. 387*). He may make a will (*Art. 807*); but cannot be a competent witness to a notarial will. (*Art. 820*).

(5) Civil Interdiction

Effect in general of the restrictions:

- (a) The restrictions in Art. 38 do not extinguish capacity to act. They merely restrict or limit the same. Thus, an insane person's contract is merely voidable, not void.
- (b) The incapacitated person is not exempt from certain obligations arising from his acts.

Example: If he commits a crime, his property may still be held liable.

Art. 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)

COMMENT:**(1) Modifications or Limitations on Capacity to Act**

This Article enumerates other restrictions, like *family relations* and *alienage*. According to the Code Commission, Art. 39 is broader than Art. 38. For while Art. 38 refers to restrictions on capacity to act; Art. 39 includes not only the

restrictions or limitations but also those circumstances that modify capacity to act. (*Memorandum of the Code Commission, Lawyers' Journal, July 31, 1953*). For instance, according to the Code Commission, a father has generally full civil capacity and is not as such restricted under Art. 38, however, precisely because he is a father, his capacity to alienate his property is modified in the sense that he cannot impair the legitime of his compulsory heirs. (*See 16 L. J., p. 197*).

(2) Family Relations

A man cannot marry his mother, or sister, or even a first cousin. The fact that a man is the father of a family creates an obligation to give support to his family and to give his children their legitime. (*See Memorandum of the Code Commission, Law Journal, July 31, 1953*). Where no improper or unlawful motivation — such as the presence of a personal grudge against the accused — is shown, mere blood or family relationship with the victim does NOT render the clear and positive testimony of witnesses less worthy of full faith and credit. (*People v. Amiril Asmawil, L-18761, Mar. 31, 1965*).

(3) Alienage

An alien cannot generally acquire private or public agricultural lands, including those residential in nature, except thru hereditary succession (*Krivenko v. Reg. of Deeds, 44, O.G. 471*) and this prohibition extends to alien corporations, which cannot under the law acquire ownership over said lands, *even for a limited period of time*. (*Reg. of Deeds of Manila v. China Banking Corporation, L-11964, Apr. 28, 1962*). An alien cannot practice medicine (*Sec. 776, Rev. Adm. Code*) or law, save in exceptional instances. (*See Rule 138, Secs. 2, 3, 4, Rules of Court*). Nor can an alien vote or be voted for a public office. Moreover, he cannot engage in coastwise shipping. (*Sec. 1172, Rev. Adm. Code*).

A Filipino woman married to a foreigner and who acquires his citizenship cannot acquire land in the Philippines. And even if she becomes a widow on or after Oct. 1936 — still before she can acquire said lands, she must first repatriate herself; that is, reacquire Philippine citizenship. (*Pindangan Agric. A, Inc.*

v. Ernest A. Sebenkel, L-46768, Apr. 30, 1949; Talaroc v. Uy, L-5397, Sep. 26, 1952).

An alien who gained entrance into the country through misrepresentation may be deported since he would be considered undesirable. (*Balber Singh v. Board of Com. of the Bureau of Immigration, L-11015, Feb. 25, 1961*). Courts will not interfere with the Immigration Board's detention of a proposed deportee unless the deportee has been held for too long a period or the Government admits it cannot deport him or he is being indefinitely imprisoned under the pretense of awaiting a chance for deportation. (*Bayer v. Board of Com. of the Bureau of Immigration, L-16932, Sep. 29, 1961*).

Generally, proceedings for exclusion or deportation and a criminal action against the alien do not exclude each other, and may therefore co-exist. (*Galang v. Court of Appeals, L-15569, May 30, 1961*).

Yap v. Grageda
L-31606, Mar. 28, 1983

FACTS: A residential lot in Albay was sold to a Chinese who later became a naturalized Filipino. Can the vendor recover the lot?

HELD: No more, because the purpose of the constitutional provision has already been achieved. Note that the buyer has already become a naturalized Filipino.

Godinez v. Fong Pak Luen
L-36731, Jan. 27, 1983

FACTS: Jose Godinez, a Filipino, sold his residential lot to Fong Pak Luen (an alien) in 1963, who later sold the lot to Trinidad Navata (a Filipino). Can Godinez recover the lot?

HELD: No more, because although the sale was originally VOID, in view of the sale to the alien, the defect has been cured because the subsequent buyer is a Filipino and the purpose of the Constitution has been attained.

(4) Absence

“The fact that one has been absent for several years and his whereabouts cannot be determined, subjects his property to administration by order of the court although his capacity to act is not limited.” (*Memorandum of the Code Commission, L.J., July 31, 1953*).

(5) Married Woman

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

She may, for example donate, mortgage, or pledge her own paraphernal property without marital consent. (*Art. 140, Civil Code*). She may even exercise a calling or profession. (*Art. 117, Civil Code, now Art. 73, Family Code*).

If the married woman be under 21, she is considered a *married minor*. She therefore cannot dispose of or encumber her own real property without parental consent. (*Art. 399*). If her husband is the guardian, his consent is needed.

According to the Code Commission, “The fact that a woman is a wife modifies her capacity to dispose of the conjugal property or to bring an action, though her capacity to act is not limited in the sense that a minor’s capacity is limited.” (*Memorandum of the Code Commission, L.J., July 31, 1953*).

(6) Bar

Juana married Pedro in 1947. Is her capacity to execute acts and contracts governed by the new Civil Code?

ANSWER: Yes, under Art. 2259 which provides that the capacity of a married woman to execute acts and contracts is governed by the new Civil Code, even if her marriage was celebrated under the former laws.

Chapter 2

NATURAL PERSONS

Art. 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)

COMMENT:

(1) Beginning of Personality

Personality does not begin at birth; it begins at conception. This personality at conception is called *presumptive personality*. It is, of course, essential that birth should occur later, otherwise the foetus will be considered as never having possessed legal personality.

From, of course, another viewpoint, we may say that personality (*actual* personality) really commences at birth, for conception may in certain cases, be already considered birth. (*See wording of Art. 41*).

(2) When No Registration Will Be Made

If the conditions specified in Art. 41 are not complied with, the birth and the death of the child will not be recorded in the Civil Registry.

(3) Rule in Case of Abortive Infants

If a physician operates on a pregnant woman and succeeds in aborting the foetus, the parents would normally be entitled only to moral damages (distress, disappointment of parental expectation) and to *exemplary* damages, if warranted, but NOT to *actual* damages (injury to rights of the deceased, his right to life and physical integrity). Art. 2206 of the Civil Code, which

grants P3,000 (now P50,000) for the death of a person, does NOT cover the case of an *unborn foetus*, since this is not endowed with personality. And even the *moral* damages cannot be recovered by the husband of a woman (who had voluntarily sought the abortion) from the physician if said husband took *no* steps to investigate the causes of the abortion. (*Geluz v. Court of Appeals, L-16439, July 20, 1961*).

(4) Newborn Screening Act

The “Newborn Screening Act of 2004,” otherwise known as RA 9288, became effective on May 24, 2004, upon its publication by the *Philippine Star*.

The law’s declared policy provides that “[i]t is the policy of the State to protect and promote the right to health of the people, including the rights of children to survival and full and healthy development as normal individuals. In pursuit of such policy, the State shall institutionalize a National Screening System that is comprehensive, integrative and sustainable, and will facilitate collaboration among government and non-government agencies of the national and local levels, the private sector, families and communities, professional health organizations, academic institutions, and non-governmental organizations. The National Newborn Screening System shall ensure that every baby born in the Philippines is offered the opportunity to undergo newborn screening and, thus, be spared from heritable conditions that can lead to mental retardation and death if undetected and untreated.” (*Sec. 2, RA 9288*).

Under RA 9288, the term “comprehensive newborn screening system,” means a newborn screening system that includes, but is not limited to:

1. education of relevant stakeholders;
2. collection and biochemical screening of blood samples taken from newborns;
3. tracking and confirmation testing to ensure the accuracy of screening results;
4. clinical evaluation and biochemical/medical confirmation of test results;

5. drugs and medical/surgical management and dietary supplementation to address the heritable conditions;
6. evaluation activities to assess long-term outcome;
7. patient compliance; and
8. quality assurance. (*Sec. 4[1], id.*).

A significant provision of the law is a parent or legal guardian's decision to "refuse testing on the ground of religious belief." (*Sec. 7, id.*). Said person (parent or legal guardian) "shall acknowledge in writing [an] understanding that refusal for testing, places [the] newborn at risk for undiagnosed heritable conditions." (*Ibid.*). Be it noted that "[a] copy of this refusal documentation shall be made part of the newborn's medical record and refusal shall be indicated in the national newborn screening data base." (*Ibid.*). A "newborn," for all intent and purposes, means a child from the time of complete delivery to 30 days old. (*Sec.4[7], id.*).

Art. 41. For civil purposes, the foetus is considered born if it is alive at the time it is completely delivered from the mother's womb. However, if the foetus 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)

COMMENT:

(1) Two Kinds of Children

- (a) *Ordinary* — with an intra-uterine life of at least seven months. (Mere birth is sufficient here.)
- (b) *Extraordinary* — if the intra-uterine life be less than seven months. (Here the child must have lived for at least 24 hours after its complete delivery from the *maternal womb*.)

[NOTE: The term "*extraordinary*" was used instead of (2) Example "*premature*," for while a child with an intra-uterine life of eight months is still considered pre-

mature, it is for the purpose of the article considered an *ordinary* child.].

(2) For Beneficial Civil Purposes

Note that the law says the foetus is considered born only for civil purposes (*Art. 41*) which are beneficial. (*Art. 40*).

Therefore, a conceived child, thru the mother, may be the recipient of a donation; but if the donation be onerous or should prove burdensome, the donation will not be considered valid.

A conceived child can be acknowledged even before it is born. (*De Jesus v. Syquia, 58 Phil. 866*). It is also already entitled to be supported. (*See Kyne v. Kyne, 100 Pac. 806*).

(3) Requirement of Human Form Eliminated

Under the old Civil Code, the law required the child to have a human form. However, this requirement has been eliminated because it has been proved by medical science that no monster can be born of human beings. (*Report, Code Com., pp. 124-125*).

Art. 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)

COMMENT:

(1) How Civil Personality is Extinguished

Civil personality is extinguished by death (physical death). Civil interdiction (civil death) merely restricts, not extinguishes, capacity to act.

(2) Effect of Physical Death

Effect of death is determined by:

- (a) Law

- (b) Contract
- (c) Will

(3) Examples of Determination by Laws

If a person be made a voluntary heir in the will of another and he dies before the testator, he cannot be represented by his own heirs.

Other legal effects of death:

- (a) The right to support ends.
- (b) A marriage, whether voidable or valid, also ends.
- (c) The tenure of public office ends.
- (d) If an individual dies, the property or estate left by him should be subject to the tax in generally the same manner as if he were alive. (*Testate Estate of Fernandez, L-9441, Sep. 25, 1956*).
- (e) If a person dies after he has authorized another to sell the former's property, the sale after such death is *not valid*, if made by the agent with knowledge of the principal's death. This is true even if the buyer be in good faith. (*Rallos v. Felix Go Chan and Sons Realty Corporation, L-24332, Jan. 3, 1978*).

(4) Is a Person's "Estate" a Person by Itself?

In a questionable decision of the Supreme Court, it has held that the "estate" of a deceased is a person that may continue the personality of the deceased even after death — for the purpose of settling debts. (*Limjuco v. Estate of Pedro Fragante, 45 O.G. No. 9, p. 397*).

(5) Service of Summons on the Dead

Dumlao v. Quality Plastics Products, Inc. L-27956, Apr. 30, 1976

FACTS: The CFI (now RTC) rendered a judgment against several defendants, one of whom was *already dead* even before the complaint was filed. The Court did not know this fact,

because the other defendants never told the Judge about the death. The heirs of the dead man sued for the annulment of the judgment, but the CFI (now RTC) refused alleging that voluntary appearance of the deceased had been made thru the other defendants, and that the heirs of the dead man, who knew that the latter had been made defendant, are now in estoppel for not correcting the error. Is the judgment against the dead defendant valid?

HELD: The judgment is a patent nullity, insofar as the dead defendant is concerned, because being already dead, summons could not be validly served on him for want of civil personality. His juridical capacity was lost the moment he died. There is therefore no question of voluntary appearance. Neither can estoppel be made to apply.

People v. Tirol and Baldesco
L-30538, Jan. 31, 1981

FACTS: One of the convicted defendants in a murder case died while the case was on appeal before the Supreme Court. Will his case be dismissed?

HELD: His death extinguished his criminal liability, but the proceedings should continue to determine his civil liability (in case it is proved that he had really committed the crime).

Art. 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)

COMMENT:

(1) Presumptions on Survivorship under the Revised Rules of Court

Under the Revised Rules of Court, Art. 43 is COPIED and is referred to as Rule 131, Sec. 5(kk). Immediately preceding it is Rule 131, Sec. 5(jj), which reads as follows:

When two persons perish in the same calamity, such as a 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 presumed from the probabilities resulting from the strength and age of the sexes, according to the following rules:

- (a) If both were under the age of fifteen years, the older is presumed to have survived;
- (b) If both were above the age of sixty, the younger is presumed to have survived;
- (c) If one be under fifteen and the other above sixty, the former is presumed to have survived;
- (d) If both be over fifteen and under sixty, and the sexes be different, the male is presumed to have survived; if the sexes be the same, then the older;
- (e) If one be under fifteen or over sixty, and the other between those ages, the latter is presumed to have survived.

(2) Applicability of Civil Code Provision on Non-Survivorship

Art. 43 applies when the case involves two or more persons who are “called to succeed each other.” (*Example: father and son.*) In all other cases, we should apply Rule 131, Sec. 5(jj).

(3) Effect of Presence of Facts

Neither Art. 43 nor the Rules of Court presumptions on survivorship can apply when there are facts, known or knowable, from which a contrary conclusion can be inferred. In such a case, the rule of preponderance of evidence controls. (*Joaquin v. Navarro, L-5426-28, May 29, 1953; Victory Shipping v. Workmen’s Compensation Commission, L-9268, Nov. 28, 1959.*)

Chapter 3

JURIDICAL PERSONS

Art. 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)**

COMMENT:

(1) Classification of Juridical Persons

There are two kinds of juridical persons:

- (a) Public juridical persons
- (b) Private juridical persons

(2) Public Juridical Persons

- (a) Public corporations like the province and the city
- (b) The state itself

(3) Private Juridical Persons

- (a) Private corporations
- (b) Partnerships
- (c) Foundations

[NOTE: Public corporations are those formed or organized for the Government of a portion of the State. Private corporations are those formed for some private purpose, benefit, aim, or end, as distinguished from public corporations which have for their purpose the general good and welfare. (*Sec. 3, Act 1459, The Corporation Law*). (*See Corporation Code, BP 68*).]

(4) When Personality of Private Juridical Persons Begins

A private corporation begins to exist as a juridical person from the moment a certificate of incorporation is granted to it. The certificate is issued upon filing the articles of incorporation with the Securities and Exchange Commission. (*See the Corporation Code*). It should be noted, however, that a corporation cannot be regarded as possessed of a personality separate and distinct from its members when to allow it would be to sanction the use of the fiction of corporate identity as a shield to further an end subversive of justice. (*Palacio, et al. v. Fely Transportation Co., L-15121, Aug. 31, 1962*). Indeed, to organize a corporation or a partnership that could claim a juridical personality of its own and transact business as such is NOT a matter of absolute right but a PRIVILEGE which may be enjoyed only under such terms as the State may deem necessary to impose. (*Ang Pue and Co. v. Secretary of Commerce and Industry, L-17295, July 30, 1962*). A partnership, even if not registered is a juridical person, provided that it has been validly constituted. (*Art. 1768*). However, a limited partnership, to be valid as such, must be registered with the Securities and Exchange Commission.

(5) Examples of Juridical Persons

The Postal Savings Bank is a juridical person, separate and distinct from the government. The funds of said Bank do not belong to the government. A suit directed against the Postal Savings Bank is not a suit against the government. (*Styver v. Aud. Gen., L-361 [1946]*). The Philippine Normal College (now University) is a juridical person because RA 416 has endowed it with the general powers set forth in Sec. 13 of Act 1459, the Corporation Law (now Corporate Code). It can, therefore, sue and be sued. (*Berney v. P.N.C., L-8670, May 18, 1956*). The

San Juan De Dios Hospital, a foundation of public interest, is a juridical person, and may apply for a Torrens Title. (*San Juan De Dios Hospital v. Mun. Council of San Rafael*, 67 *Phil.* 158). The Manila Railroad Co., although owned by the government, is a *private corporation*. The funds of said company are NOT government funds. (*Tanchoco v. GSIS*, L-16926, Jan. 31, 1962).

Republic v. Phil. Nat. Bank
L-16485, Jan. 30, 1965

FACTS: The Republic of the Philippines, in behalf of the Armed Forces of the Philippines, sued the Philippine National Bank for allegedly cashing *forged* checks to the detriment of the Army. The PNB alleged:

- (a) That the Republic could not properly represent the Army in court.
- (b) That the action has already prescribed.
- (c) That the suit is useless since the PNB is government controlled and that therefore it would virtually be the case of the State suing itself.

HELD:

- (a) The Republic can represent the Army since the latter is an instrumentality thru which governmental functions are exercised.
- (b) Prescription does *not* lie against the State.
- (c) The PNB has a juridical personality of its own and may therefore be sued independently.

[*NOTE:* A classroom organization, whether for oratorical, debating, literary or social activities, *cannot* be considered a juridical person because it is essential, to be one, that the association be granted a juridical personality by the law. In *U.S.T. Press v. Nat. Labor Union, et al.*, L-17207, Oct. 30, 1962, it was held that a printing press maintained by a university is neither a natural nor juridical person. It has, therefore, no personality to be party-respondent in unfair labor practice cases, the real party in interest being the university to which it belongs.].

[NOTE: An office of the Government, such as the Bureau of Printing, has no juridical personality, and therefore cannot be sued. A suit against it is a suit against the government, and it is settled that the government cannot be sued without its consent. (*Bureau of Printing v. Bureau of Printing Employees Association, et al.*, L-15751, Jan. 28, 1961). Similarly, the Bureau of Customs, although allowed by Sec. 1213, RA 1937 — The Tariff and Customs Code — to engage in *arrastre service* — cannot be sued as an *arrastre operator* because the business of storing the goods in the meantime (pending the collection of *customs duties*) is merely INCIDENTAL to its governmental function. There is thus no waiver of the sovereign immunity from suit. (*Mobil Philippines Exploration, Inc. v. Customs Arrastre Service and Bureau of Customs*, L-23139, Dec. 17, 1966). The proper remedy for an aggrieved party is to file its claim with the Auditor General's Office under the provisions of C.A. 327. (*Ibid.*). Upon the other hand, the National Airports Corporation primarily exists to perform not a governmental, but a proprietary function, hence said corporation can be sued. (*National Airports Corporation v. Teodoro*, 91 Phil. 203). However, the Central Bank (now Bangko Sentral) is a juridical person, and therefore it can be sued, by express provision of its charter. Therefore also, any sum of money that has been illegally collected by it, and which has in turn already been turned over to the national treasury, may still be recovered in a suit for its refund. The principle that the state cannot be sued without its consent, cannot apply here, for precisely, by virtue of the charter given to the Bank, the State has given its consent to be sued. The Central Bank (now Bangko Sentral), may thus be properly made the defendant in the suit for the refund. (*Olizon v. Central Bank of the Phils.*, L-16524, June 30, 1964).].

[NOTE: The dismissal of a case on the ground that the plaintiff does NOT possess legal personality to file the action operates as an adjudication upon the merits, and therefore is a bar to another action between the same parties on the same subject matter, unless the court expressly directs that the dismissal is without prejudice. (*Tuballa v. De la Cruz, et al.*, L-13461, Mar. 20, 1961).].

(6) The Church

The Roman Catholic Church in the Philippines is a person. (*Barlin v. Ramirez*, 7 *Phil.* 41). But it is an entity or person separate and distinct from the personality of the Pope or the Holy See. The Roman Catholic Church, or any of its corporation soles, duly incorporated in the Philippines, can therefore acquire lands in our country. (*Roman Cath. Apostolic Adm., Inc. v. Land Registration Com. and Reg. of Deeds*, L-8451, Dec. 20, 1957). The Roman Catholics of a parish, however, are not a juridical person, there being no provision of law for their organization as one. (*Roman Catholic Apostolic Adm., Inc. v. Land Registration Com. and Register of Deeds*, L-8451, Dec. 20, 1957).

**Phil. Airlines Employees' Association
v. CFI of Rizal
L-41966, Jan. 8, 1987**

The Philippine Airlines (PAL), although a juridical entity, is not a government-controlled corporation within the contemplation of Republic Act 186.

Art. 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)

COMMENT:**Determination of Nationality of Juridical Persons**

The *nationality* of a corporation is generally determined by the place of its incorporation. So if incorporated in the Philippines, it is a Philippine corporation. Two exceptions may for certain purposes, be made to this rule, namely:

- (a) For the grant of the rights in the Constitution to the operation of public utilities, and for the acquisition of land and other natural resources, a corporation, even if incorporated here, cannot acquire said rights unless 60% of its capital be Philippine-owned.
- (b) During war, we may *pierce the veil of corporate identity*, and go to the very nationality of the controlling stockholders regardless of where the incorporation had been made. Thus a German-controlled corporation, even if incorporated in the Philippines, was considered an enemy corporation during the war for the purpose of *freezing its assets*. A contrary rule may endanger Philippine security. (*David Winship v. Phil. Trust Co.*, L-3869, Jan. 31, 1952).

**Converse Rubber Corp. v. Universal
Rubber Products, Inc.
L-27906, Jan. 8, 1987**

Even if a foreign corporation is not doing business in the Philippines, and even if not licensed, it may sue here in our country.

**Georg Grotjahn GMBH & Co v. Hon.
Lucia Violago Isnani, et al.
GR 109272, Aug. 10, 1994
54 SCAD 289**

There is no general rule or governing principle as to what constitutes “doing” or “engaging in” or “transacting” business in the Philippines.

Art. 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 organization. (38a)

COMMENT:

(1) Rights of Juridical Persons

- (a) To acquire and possess property of all kinds.

- (b) To incur obligations.
- (c) To bring civil or criminal actions.

[NOTE: While a corporation being a juridical person, by itself can be held liable without any personal liability on the part of the stockholders, still said stockholders may be held for obligations contracted by the corporation whenever circumstances have shown that the corporate entity is being used as an *alter ego* (other self) or business conduit for the sole benefit of the stockholders. (*McConnell, et al. v. Court of Appeals, L-10510, Mar. 17, 1961*). A corporation is civilly liable in the manner as natural persons for torts committed by its officers or agents. (*PNB v. CA, 83 SCRA 247*). Although the mere fact that one or more corporations are owned and controlled by a single stockholder is NOT of itself sufficient for disregarding separate corporate entities, still, where a corporation is a dummy, is unreal, or a sham and serves no business purpose and is intended only as a blind, the corporate form may be ignored, for the law cannot countenance a form that is a mischievous fiction. (*Liddell and Co. v. Coll. of Internal Revenue, L-9687, June 30, 1961*).]

Philips Expa B.V. v. CA
GR 96161, Feb. 21, 1992

The general rule is that a corporation is entitled to use a name, but not in violation of the rights of others.

(2) May a Corporation Form a Partnership?

ANSWER: No, because the relationship of trust and confidence which is found in a partnership, is absent in corporations. Moreover, if the corporation can be a partner, any other partner may bind it, and this is contrary to the Corporation Law (now Corporation Code), which says that a corporation can be bound only by the act of its Board of Directors. However, it may enter into joint venture with another corporation where the nature of that venture is in line with the business authorized by its charter. (*J.M. Tuason Co. v. Bolanos, L-4935, Mar. 28, 1954*).

(3) Capacity to Acquire Lands

A religious corporation which is not controlled by Filipinos cannot acquire lands, otherwise alien religious landholdings in this country would be revived. (*Register of Deeds v. Ung Sui Si Temple, L-6776, May 21, 1955*). But the Roman Catholic Church in the Philippines can acquire lands. This is true because the Catholic Church in any country, lawfully incorporated in said country, is an entity or person separate and distinct from the personality of the Pope or of the Holy See. Needless to say, however, the Roman Catholics of a Parish do not constitute a juridical person, there being no provision of law for their organization as one. (*Roman Cath. Apostolic Adm. Inc. v. Land Reg. Com. and Reg. of Deeds, L-8451, Dec. 20, 1957*).

An American citizen, under the *Parity Amendment*, can acquire lands in the Philippines, exploit our natural resources, and operate public utilities, only if in his *particular state* in the United States, Filipinos are granted RECIPROCAL parity rights. (*Palting v. San Jose Petroleum Inc., L-14441, Dec. 17, 1966*).

Pedro R. Palting v. San Jose Petroleum, Inc.
L-14441, Dec. 17, 1966

ISSUE: Assuming that 60% of a partnership or corporation is controlled by American citizens, does it necessarily follow that said entity can engage in the exploitation and development of our natural resources?

HELD: No. For it is still essential to prove that the particular State in the U.S. of which the members or stockholders (of the partnership or corporation concerned) are citizens, allow reciprocal rights to Filipino citizens and associations or corporations in said State. (*See par. 3, Art. VI of the Laurel-Langley Agreement*).

(4) Capacity to Engage in Retail Trade

Under RA 1180, persons not citizens of the Philippines; and associations, partnerships, or corporations the capital of which is not owned wholly by citizens of the Philippines, are prohibited from engaging in the retail trade directly or indi-

rectly. The law has been declared constitutional in view of the exercise of police power. Moreover, there is no class legislation here, for all those in the same category are equally affected. (*Ichong v. Hernandez, et al., L-7995, May 31, 1957*).

N.B.: RA 1180 has been expressly repealed by RA 8762 (Retail Trade Liberalization Act of 2000).

(5) A Non-Existent Corporation Cannot Sue

Recreation and Amusement Association of the Philippines v. City of Manila, et al., L-7922, Feb. 22, 1957

FACTS: Plaintiff, representing itself as a non-stock corporation composed of pinball machine operators, filed a complaint to restrain the city authorities of Manila from enforcing a certain ordinance against pinball machines, but the corporation was registered in the Securities and Exchange Commission. Did it have personality to bring the action?

HELD: No, because it is not a juridical person. The mere grouping together did not give corporate life to the group formed. It cannot act as a corporation. Neither can it create agents or exercise by itself authority in its behalf. Had the association formed a partnership, it could have maintained a court suit, for registration in this case is not required. However, in this case, the association of pinball operators did not claim itself to be a partnership.

(6) A Non-Existent Partnership Cannot Sue

If a partnership does not lawfully exist, it cannot sue, but it may be sued, otherwise third persons may be prejudiced. Thus, where two persons represented themselves as co-managers of an alleged partnership, they cannot later on impugn a chattel mortgage on two vehicles executed by them in behalf of the firm, by stating or proving that in truth there was NO partnership between them, but a mere co-ownership. (*MacDonald v. NCBNY, L-7991, May 21, 1956, citing Behn Meyer & Co. v. Rosatzen, 5 Phil. 660*).

(7) An Unregistered Labor Organization Cannot Sue

**Phil. Association of Free Labor Unions
(PAFLU), et al. v. Sec. of Labor, et al.
L-22228, Feb. 27, 1969**

FACTS: Sec. 23 of RA 875 requires *registration* with the office of the Sec. of Labor, before a labor organization can acquire legal personality. Said Sec. 23 reads as follows:

“Any labor organization, association, or union of workers duly organized for the material, intellectual, and moral well-being of its members shall acquire *legal personality* and be entitled to all the rights and privileges granted by law to legitimate labor organizations within 30 days of filing with the office of the Sec. of Labor notice of its due organization and existence, and (certain specified) documents. . .”

It is alleged that said requirement of registration —

- (1) violates freedom of assembly and association and is inconsistent with the Universal Declaration of Human Rights.
- (2) should be deemed repealed by the International Labor Organization Convention (ILO Convention) No. 87.

HELD: The theory to the effect that Sec. 23 of RA 875 unduly curtails the freedom of assembly guaranteed in the Bill of Rights is devoid of factual basis. The *registration prescribed therein is not* a limitation to the right of assembly or association, which may be exercised *with or without registration*. (*Ex parte R.J. Thomas, 174 S.W. 2d, 958-960*). The latter is merely a condition *sine qua non* for the acquisition of legal personality by labor organization, etc., and the *possession* of the “rights and privileges granted by law to legitimate labor organizations.” The Constitution does not guarantee these rights and privileges, much less said personality, which are mere *statutory creation*, for the possession and exercise of which registration is required to protect both labor and the public against abuses, fraud, and impostors who pose as organizers, although not truly accredited agents of the union they purport to represent. Such requirement is a valid exercise of the police power.

For the same reasons, said Sec. 23 does not impinge upon the right of organization guaranteed in the Declaration of Human Rights, or run counter to Art. 8 of the ILO Convention No. 87, which provides that “workers and employees shall have the right to establish and join organizations of their own choosing, without previous authorization,” that “workers and employees’ organizations shall not be liable to be dissolved or suspended by administration authority;” that “the acquisition of legal personality by workers and employees’ organizations shall not be made subject to conditions of such a character as to restrict the application of the provisions” above-mentioned; and that “the guarantee provided for in” said convention shall not be impaired by the law of the land.

The cancellation of a labor union’s registration certificate (for failure to comply with important requirements would *not* entail a dissolution of said association or its suspension. The EXISTENCE of the organization would not be affected by said cancellation, although its juridical personality and its statutory rights and privileges — as distinguished from those conferred by the Constitution — would be suspended thereby. (*See also B.S.P. v. Araos, L-10091, Jan. 20, 1958*).

(8) Estoppel

A person who contracts with a “corporation” cannot later deny its personality. (*Ohta Development Co. v. Steamship “Pompey,” 49 Phil. 117*). But the person who represents himself as the agent of a non-existing corporation cannot prevent the person who has been misled from suing the “agent” personally, since a non-registered corporation does not have a juridical personality. (*See Albert v. Univ. Publishing, L-19118, Jan. 30, 1965*).

Mariano A. Albert v. University Publishing Co., Inc. L-19118, Jan. 30, 1965

FACTS: Albert entered into a contract with the University Publishing Co., Inc. represented by its President, Jose N. Aruego. The company however, *broke* the contract and was sentenced to give damages to Albert. When execution was about

to be made, Albert discovered that the Company was NOT REGISTERED with the Securities and Exchange Commission. Albert therefore wants to hold Aruego personally liable — in other words he wants to levy execution of the judgment on the properties of Aruego.

HELD: Aruego can be personally liable.

- (a) Since the Company was not registered, it has no juridical personality; it is therefore not a corporation, not even a corporation *de facto*. (See *Hall v. Piccio*, 86 Phil. 603). It cannot be sued independently from Aruego.
- (b) Aruego led Albert to believe that the Company was a duly organized and existing corporation. One who has induced another to act upon his willful misrepresentation that a corporation was duly organized, cannot thereafter set up against his victim the principle of corporation by estoppel. (See *Salvatiera v. Garlitos*, 56 O.G. 3069).
- (c) Aruego can be considered the real party to the contract for it was he who reaped the benefits resulting therefrom; he violated the terms of the agreement; in the litigation, he was the real defendant. Therefore, responsibility under the judgment falls on him.
- (d) Aruego cannot successfully allege that he has been deprived of “due process” — of “his day in court,” for although not the defendant in name, it was actually he, through his attorneys, who conducted the defense, who presented and cross-examined witnesses, and who appealed from the decision. Clearly, then, Aruego had his day in court as the real defendant, and due process has been substantially observed.

(9) A Dissolved Corporation

Gelano v. Court of Appeals L-39050, Feb. 24, 1981

Even if a corporation has been dissolved, it can still *continue* prosecuting (as plaintiff) or defending (as a defendant)

for the next three years, thru its legal counsel, who may be considered a “trustee” for this purpose.

Art. 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)

COMMENT:

(1) Rule If Public Juridical Persons Are Dissolved

- (a) This Article refers to *public* corporations or associations.
- (b) How assets are to be distributed:
 - 1) First apply the provisions of the law or charter creating them.
 - 2) If there is no such provision, the assets will be for the benefit of the place which was already receiving the principal benefits during the existence of the corporation or association.

(2) How a Corporation Can Exercise Its Powers and Transact Business

It can only do so thru its board of directors, officers, and agents — when authorized by a board resolution or its by-laws. (*Firme v. Bukal Enterprises & Development Corp.*, 414 SCRA 190 [2003]).

(3) Effect When a Corporation Is a Mere Alter Ego or Business Conduit of a Person — Separate Personality of the Corporation May be Pierced

While such may be the case (*Lipat v. Pacific Banking Corp.*, 402 SCRA 339 [2003]), it cannot be gainsaid that to

“warrant resort to the extraordinary remedy of piercing the veil of corporate fiction, there must be *proof* that the corporation is being used as a cloak or cover for fraud or illegality, or to work injustice. Thus, books and records of the corporation are, ordinarily, the best evidence of corporate acts and proceedings. (*Gala v. Ellice Agro-Industrial Corp.*, 418 SCRA 431 [2003]).

(4) Purpose of a ‘Family’ or ‘Close’ Corporation

The concept of a *close corporation* organized for the purpose of running a family business or managing family property has formed the backbone of Philippine Commerce and Industry. (*Gala Ellice Agro-Industrial Corp.*, 418 SCRA 431 [2003]).

A family corporation should serve as a rallying point for family unity and prosperity not as a flashpoint for familial strife. (*Ibid.*) Extending this concept of *social contract* to the corporate family, the decision on the direction of the course of the corporate business is “vested in the board and not with courts.” (*Ong Yong v. Tiu*, 401 SCRA 1 [2003]).

(5) In the Case of Corporations, who is the Signatory of the Certification of Non-Forum Shopping?

The requirement that the certification of *non-forum shopping* should be executed and signed by the plaintiff or the principal — means that counsel cannot sign said certification unless clothed with special authority to do so. “In the case of corporations, the physical act of signing may be performed, on behalf of the corporate entity, only by specifically-authorized individuals for the simple reasons that corporations, as artificial persons, cannot personally do the task themselves. (*Mariveles Shipyard Corp. v. CA*, 415 SCRA 573 [2003].)

Put in another manner, “[s]ince powers of corporations are exercised thru their board of directors and/or duly-authorized officers and agents, physical acts, like the signing of documents, can be performed *only* by NATURAL persons duly-authorized for the purpose by a corporate by-laws or by specific acts of the board of directors.” (*BPI Leasing Corp. v. CA*, 416 SCRA 4 [2003]).

Title II. CITIZENSHIP AND DOMICILE

INTRODUCTORY COMMENTS:

(1) Citizenship and Nationality

Citizenship is the status of being a citizen, or of owing allegiance to a certain state for the privilege of being under its protection. While *citizenship* is political in character, *nationality* refers to a racial or ethnic relationship. This is the difference, as the two terms are known in such subjects as political science, social science, and sociology.

In the field however of Civil Law and Private International Law, the two are possessed of the same meaning, *i.e.*, the meaning of CITIZENSHIP.

Thus, when we say that successional rights depend on the *national law* of the deceased, we really refer to the law of the country of which he was a *citizen* at the moment of death.

(2) Three Kinds of Citizens

- (a) *Natural-born citizen* — Those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. (*Art. III, Sec. 4, 1973 Constitution*). (This must be distinguished from the native-born citizen, one born in the country of which he is a citizen. Hence, a child born to a Filipino father in Germany is a natural-born, but not native-born citizen.)

Under the 1987 Constitution, Art. IV, No. 2, we have the following:

“Natural-born citizens are those who are citizens of the Philippines from birth without having to perform

any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.”

- (b) *Naturalized citizens* — citizens who become such through judicial proceedings.
- (c) *Citizen by election* — citizens who become such by exercising the option to *elect* a particular citizenship, usually within a reasonable time after reaching the age of majority.

(3) Two Theories on Whether Place or Ancestry Determines Citizenship

- (a) *Jus soli* — If born in a country, a person is a citizen of the same. (This is not applied in the Philippines today.) (*Tan Chong v. Sec. of Labor, L-47616, Sep. 16, 1947; Tio Tian v. Rep., L-9602, Apr. 25, 1957*).
- (b) *Jus sanguinis* — One follows the citizenship of his parents; this is citizenship by blood. (This is the rule followed in the Philippines.)

(4) Effect of the Exercise of the Rights of a Filipino Citizen

The exercise by a person of the rights and/or privileges that are granted only to Filipino citizens is not conclusive proof that he or she is a Filipino citizen. Otherwise, a person disqualified by reason of citizenship may exercise and enjoy the right or privilege of a Filipino citizen simply by representing himself to be a Filipino. (*Norberto B. Poa v. Quintin Chan, L-25945, Oct. 31, 1967*).

(5) Effect of Opinion of the Secretary of Justice on One’s Citizenship

The opinion of the Secretary of Justice, declaring a person to be a Filipino citizen, does not have a controlling effect on the Court. (*Poa v. Chan, supra.*)

(6) The Problem of Dual and Multiple Nationalities

Strictly speaking, the problem of dual or multiple nationalities or citizenships can hardly arise because citizenship is a matter to be exclusively determined by a country's own law. In other words, Philippine courts are only allowed to determine *who are Filipino citizens and who are not*. They may not ordinarily rule that a person is, for example, a Chinese or a German; they may only decree that said person, is NOT a Filipino. The determination by our tribunals of a person's particular foreign citizenship cannot of course be regarded as binding by other courts.

Thus, Art. 2 of the Hague Convention on Conflict of Nationality Laws (*Apr. 12, 1930*) says:

“Any question as to whether a person possesses the nationality of a particular state should be determined in accordance with the law of that state.”

THUS, the answer to the question “does dual or multiple nationality exist?” is: It depends:

- a) from the viewpoint of the countries directly involved, it does NOT exist (ordinarily);
- b) BUT from the viewpoint of THIRD STATES, it does exist.

EXAMPLE: A Chinese applicant for naturalization in the Philippines had all the qualifications and none of the disqualifications. However, the Solicitor-General objected on the ground that he had not previously obtained permission to renounce Chinese citizenship from the Chinese Ministry of the Interior, which permission was indispensable under Chinese Law. The Philippine Court, in the case of *Johnny Chaustinek v. Republic (L-2275, May 18, 1951)*, held that the applicant can be naturalized, because in so far as our country is concerned, it is insignificant that he disobeyed Chinese law. What matters is his compliance with our laws. Now, then, it is clear that in so far as we are concerned, the applicant is now a Filipino, suppose that in China, for failing to follow Chinese rules, he is still regarded as a *Chinese citizen* — will this not be a case of DUAL CITIZENSHIP?

ANSWER: Strictly speaking, this is not a case of dual citizenship. In so far as the Philippines is concerned he is only a Filipino, not a Chinese. And insofar as China is concerned he may be only a Chinese, not a Filipino.

However, from the viewpoint of a *third state*, dual or multiple citizenship may really exist. Thus, in the example given, Japan, a third state, may view the applicant as BOTH a Filipino and a Chinese the moment he is naturalized. It is therefore, in this sense that we shall now try to solve the problem of personal law in connection with multiple or dual citizenship. Suggested instances and their solutions:

- (a) A testator, considered a Filipino citizen under our law and a Chinese under Chinese law, died in France leaving properties in the Philippines. How should a Filipino judge in a Philippine court of justice determine the successional rights to the estate of the decedent?

ANSWER: Inasmuch as we regard him as a Filipino citizen, there is no doubt that applying Art. 16, par. 2 of our Civil Code, Philippine law shall control the successional rights to his estate. (*Rule* — get the law of the forum if the forum is one of the countries of which the deceased was a national.)

- (b) A testator, considered a Chinese under Chinese law, and a Japanese under Japanese law, died in Manila, leaving properties in the Philippines. Prior to his death, the deceased was domiciled in Japan. How should a Filipino judge presiding over a Philippine tribunal adjudicate successional rights to the estate of the deceased?

ANSWER: Japanese law shall be applied, because the deceased was BOTH a citizen and a domiciliary of Japan. Japanese law, obviously is preferred over Chinese law, for the DOMICILE was also in Japan. In a case like this, it has been said that the domiciliary theory runs to the rescue of the nationality theory. (*Rule* — If the deceased is not a citizen of the forum, we must get the law of the nation of which he was both a *national* and a *domiciliary*. This is the theory of *effective nationality*: it is evident that here the deceased himself considered the domicile as the more effective connection factor for his

personal law. This rule does not militate against Art. 16, par. 2 — for after all, it cannot be denied that indeed the deceased was a *national of Japan at the moment of death*. (See *Rabel, Conflict of Laws, Vol. II, p. 121*).

[NOTE: The solution given is in accordance with Art. 5 of the Hague Convention on Conflict of Nationality Laws:

“Within a third state, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in personal matters and of any conventions in force, a third state shall, of the nationalities which any such person possesses, recognize exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.”].

- (c) A testator, considered a Cuban under Cuban law, and an Algerian under Algerian law, was domiciled at the moment of his death in Italy. He died in Alaska, leaving properties in the Philippines. How should a Philippine court dispose of the successional rights to his estate?

ANSWER: To properly apply Art. 16, par. 2, of our Civil Code, it is believed that in a case like this, our rule should be:

- 1) first, get the Cuban and the Algerian laws on succession, and apply them in so far as they are consistent with or identical to each other;
- 2) secondly, in so far as there is a conflict, we must apply the law of Italy, the law of the domicile, to resolve the conflict.

Before concluding this discussion on dual or multiple citizenship, let us enumerate briefly the various ways in which this situation might arise:

- (a) *Through Marriage*

Example: An American woman who married a Filipino citizen under American Laws; she also becomes a

Filipino, under our laws, she has all the qualifications and none of the disqualifications for Philippine naturalization.

- (b) *Through a Naturalized Citizen's Failure to Comply with Certain Legal Requirements in the Country of Origin*

Example: A Chinese may become a naturalized Filipino citizen under our law, but if he had not previously obtained from the Chinese Ministry of the Interior permission to renounce Chinese citizenship, China may still consider him a Chinese citizen. (*See Johnny Chaustinek v. Republic, L-2275, May 18, 1951.*)

- (c) *From a Combined Application of Jus Soli and Jus Sanguinis.*

Example: While a married Filipino couple was in the United States, a child was born to the wife. The child is an American citizen under American law, by virtue of the principle of *jus soli*. At the same time under Philippine law, he is a Filipino citizen because of *jus sanguinis*.

- (d) *By the Legislative Act of States*

Example: A Filipino citizen may by the legislative act of a foreign State be considered by such state also as its citizen. The reason for the award may of course vary.

- (e) *By the Voluntary Act of the Individual Concerned*

Example: A citizen of State *X* may become a naturalized citizen of State *Y*, but at the same time, he may have received permission from State *X* to remain a citizen of State *X*. (*See Wolff, Private International Law, p. 128.*)

(7) 'Duals' May Now Exercise the Right of Suffrage

Nicolas Lewis v. Commission on Elections 497 SCRA 649 (2006)

There is no provision in the dual citizenship law — RA 9225 — requiring “duals” to actually establish residence and physically stay in the Philippines first before they can exer-

cise the right to vote — on the contrary, RA 9225, in implicit acknowledgment that “duals” are most-likely non-residents, grants under its Sec. 5(1) the same right of suffrage as that granted an absentee voter under RA 9189.

Considering the unison intent of the 1987 Philippine Constitution and RA 9189 and the expansion of the scope of that law with the passage of RA 9225, the irresistible conclusion is that “deeds may now exercise the right of suffrage thru the absentee voting scheme and as overseas absentee voters.”

(8) The Problem of Stateless Individuals

(a) How statelessness is brought about:

A person may become stateless by any of the following means:

- 1) He may have been *deprived* of his citizenship for any cause, such as the commission of a crime;
- 2) He may have renounced his nationality by certain acts, express or implied;
- 3) He may have voluntarily asked for a release from his original state;
- 4) He may have been born in a country which recognizes *only* the principle of *jus sanguinis* — citizenship by blood, of parents whose law recognizes only the principle of *jus soli* — citizenship by birth in a certain place. Thus, he is neither a citizen of the country where he was born, nor a citizen of the country of his parents.

(b) Personal law of stateless individuals:

The Hague Conference of 1928 on International Private Law suggested that the personal law of stateless individuals shall be:

- 1) the law of the domicile (habitual residence); or
- 2) secondarily, the law of the place of temporary residence. (*See Rabel, Conflict of Laws, Vol. 2, p. 123*).

[NOTE: The query has been asked — What rule shall govern if a stateless person has no domicile? The question assumes an impossible premise; as will be seen in the chapter on domicile, no natural person can ever be without a domicile.]

(9) Successional Rights

Under Art. 16, the rights to the succession of a person are governed by his national law. Suppose the deceased had no nationality or citizenship, what should apply?

ANSWER: The law of the domicile. (Suppose there is no domicile? This *cannot* be, for no person can ever be without a domicile.)

(10) Where a Declaration of Philippine Citizenship May Be Made

A judicial declaration that a person is a Filipino citizen cannot be made in a petition for naturalization for the reason that in this jurisdiction, there can be *no* independent action for the judicial declaration of the citizenship of an individual. Courts of justice exist for the settlement of *justiciable controversies*, which imply a given *right*, legally demandable and enforceable, an *act or omission* violative of said right, and a remedy, granted by law for said breach of right. As an INCIDENT only of the adjudication of the rights of the parties to a controversy, the court may pass upon, and make a pronouncement relative to their status. Otherwise such pronouncement is beyond judicial power. (*See Lao Yap Hun Diok v. Republic, L-19007-19109, Sep. 30, 1964; See also Yung Uan Chu v. Republic of the Phils., L-34973, Apr. 14, 1988*). This holding **OVERRULES** the holding in *Pablo y Sen, et al. v. Republic, L-6868, Apr. 30, 1955* and other previous cases to the effect that the court can make a declaration that an applicant for naturalization is already a Filipino citizen in the same naturalization proceedings if the evidence so warrants. (*Suy Chan v. Rep., L-14159, Apr. 18, 1960; Tan Yu Chin v. Republic, L-15775, Apr. 29, 1961; Tan v. Republic, L-16108, Oct. 31, 1961; Dionisio Palaran v. Republic, L-15047, Jan. 30, 1962; Reyes, et al. v. Republic, L-17642, Nov. 27, 1964; Lao Yap Han Diok v. Republic, L-19007-19109, Sep.*

30, 1964). HOWEVER, if the Court declares a petitioner as *already a Filipino* in a naturalization case — and thus dismisses the case for the reason stated, the declaration even if *erroneous* does not necessarily render the decision void, and the same would acquire *force and effect* unless reversed on appeal, or (in case the judgment is already final) set aside on other recognized grounds, such as fraud in its procurement. (*Andres Singson v. Rep.*, L-21855, Jan. 30, 1968). Indeed, declaration of Philippine citizenship CANNOT be validly made in an action for declaratory relief. (*In Re: Villa Abrille v. Rep.*, L-7096, May 31, 1956) or in a summary action for a change or correction in the Civil Registry under Art. 412; *Tin. v. Rep.*, L-5609, Feb. 5, 1954). One instance when a declaration of Philippine citizenship may be made is a petition for injunction to restrain for instance the Alien Control Officer, acting under orders from an Associate Commissioner of Immigration, from compelling certain people, allegedly Filipinos, to register as aliens. (*Lorenzo Lim, etc. v. De la Rosa*, L-17790, Mar. 31, 1964).

**Lorenzo Lim and Juana Alvarez Lim v.
De la Rosa, et al.
L-17790, Mar. 31, 1964**

FACTS: Lorenzo Lim alleges that he is a citizen of the Philippines, but the Department of Justice, in three separate opinions rendered in 1955, 1956 and 1958, denied said claim. Pursuant to said opinions, respondent Alien Control Officer, upon orders from respondent Associate Commissioner of Immigration, required said petitioner to register as an alien within ten (10) days upon receipt of the notice in accordance with the provisions of the Alien Registration Act under which all aliens residing in the Philippines must register with the Bureau of Immigration. Petitioner Lorenzo Lim and his wife, the other petitioner, thereupon filed an injunction suit with the Court of First Instance of Manila to enjoin respondents from requiring or compelling them (the spouse) to register as aliens. The CFI, after hearing, rendered judgment holding that the said spouses are Filipino citizens, and enjoining respondents from requiring their registration as aliens. Respondents brought this appeal on the principal ground that petitioners' citizenship cannot be determined under the petition.

HELD: What would be the remedy of a citizen or an inhabitant of the country claiming to be a citizen thereof, who is being required or compelled to register as alien by administrative officers of the Government, who, relying upon ruling or opinions of superior administrative officers, are in turn complying with their duty? If the person claiming to be a citizen of the country who is being required or compelled to register as alien can show, establish or prove that he is such citizen, *the remedy of injunction* to prevent the officers from requiring or compelling him to register as alien is *certainly the proper and adequate remedy to protect his right*. The finding of the trial court that petitioner Lorenzo Lim is such a citizen being supported by the evidence presented, the judgment appealed from is affirmed. In the case at bar, the following were proved:

- (a) After the passage of Commonwealth Act 625, Lim elected Philippine citizenship;
- (b) In 1955, he was a registered voter;
- (c) In 1957, he was issued a Filipino passport;
- (d) In 1957 also, the Court of First Instance of Zamboanga City, in granting a petition for a change of name; had stated that Lim is a Filipino citizen;
- (e) Lim has never been registered as an alien; and
- (f) The certificate of registration of his business name recites that Lim is a Filipino citizen.

**In Re: Petition for Correction of Entry of
Certificate of Birth of the Minor Chua Tan Chuan
L-25439, Mar. 28, 1969**

FACTS: An illegitimate child of a Chinese father and a Filipino mother was registered in the Civil Registry as a Chinese. She filed a petition for the correction of the entry to make her citizenship read as "Filipino" in view of the absence of a marriage between her parents. Will the petition prosper?

HELD: No, the petition will not prosper, because although ostensibly this is a mere petition for a clerical correction, still in substance, what is sought is a judicial declaration of Philippine citizenship. (*See Reyes v. Republic, L-17642, Nov. 27, 1964*).

Republic v. Hon. Manolo L. Maddela
L-21664, Mar. 28, 1969

FACTS: Miguela Tan Suat, a Chinese woman married to a Filipino, went to court to seek a declaration of Philippine citizenship and to compel the Commissioner of Immigration to cancel her alien certificate of registration in view of her marriage. Will the petition prosper?

HELD: No. Because generally, no person claiming to be a citizen can get a judicial declaration of citizenship.

[NOTE: The proper remedy would have been for her to file a petition for citizenship or naturalization under the *Burca* ruling.]

(11) Citizenship of a Filipino Woman Who Marries a Foreigner

(a) *Rule Prior to the 1973 Constitution*

If she acquired his nationality, she lost Philippine citizenship; otherwise, she remains a Filipino.

(b) *Rule under the 1973 Constitution*

A female citizen of the Philippines who marries an alien *shall retain* her Philippine citizenship UNLESS by her act or omission she is deemed, under the law, to have renounced her citizenship. (*Art. III, Sec. 2*).

(12) Citizenship of a Foreign Woman Who Marries a Filipino

Rule Prior to the MOY YA Case

If she has all the qualifications and none of the disqualifications for Philippine citizenship she becomes a Filipino, PROVIDED, that she is able to prove these facts in a *proper proceeding*. If she is *unqualified* (lacks qualifications) or *disqualified* (possesses disqualifications), she cannot be considered a Filipino citizen. This is so even if by virtue of said diverse citizenship, the husband and the wife will not be able to live together. This apparent subversion of family solidarity, and the

consequent violation of the duty to live together, according to the Supreme Court, are irrelevant to the issue of citizenship — an issue which concerns only the right of a sovereign state to determine what aliens can remain within its territory and under what conditions, they can stay therein. (*Chay v. Galang*, L-19977, Oct. 30, 1964). The ruling above-stated applied also to the wife of a naturalized Filipino. While it is true that under Sec. 15 of the Naturalization Law, “any woman who is now or may hereafter be married to a citizen of the Philippines shall be deemed a citizen of the Philippines,” still the law requires that she might herself be lawfully naturalized implying that she must first prove that she has all the qualifications and none of the disqualifications for naturalization. This rule is in line with the national policy of selective admission to Philippine citizenship, which after all, is a privilege granted only to those who are found worthy thereof, and not indiscriminately to anybody at all on the basis alone of marriage to a man who is a citizen of the Philippines, irrespective of moral character, ideological beliefs, and identification with Filipino customs and traditions. (*Choy King Tee v. Emilio L. Galang*, L-18351, Mar. 26, 1965; *Agustin de Austria, et al. v. Conchu*, L-20716, June 22, 1965; *Olegario Brito, et al. v. Commissioner*, L-16829, June 30, 1965).

In the case of *Zita Ngo Burca* (L-24252, Jan. 30, 1967), the Supreme Court categorically held that the proper proceeding in which an alien woman married to a Filipino can be herself declared a Filipino citizen is a citizenship (naturalization) proceeding.

In Re: Petition to Declare Zita Ngo Burca to Possess All the Qualifications and None of the Disqualifications for Naturalization
L-24252, Jan. 30, 1967

FACTS: This was a petition to declare Zita Ngo Burca, a Chinese citizen and wife of Francisco Burca, a Filipino citizen as possessing “all the qualifications and none of the disqualifications” for naturalization under Commonwealth Act No. 473 — The Naturalization Law — for the purpose of cancelling her alien registry with the Bureau of Immigration.

Notice of hearing was sent to the Solicitor-General and duly published. The Solicitor-General opposed and moved to dismiss the petition on two grounds:

- (1) *firstly*, that “there is no proceeding established by law or the rules for the judicial declaration of the citizenship of an individual”; and
- (2) *secondly*, that as an application for Philippine citizenship, Burca’s petition “is fatally defective for failure to contain or mention the essential allegations under Sec. 7 of the Naturalization Law,” such as, among others, the petitioner’s former place of residence. Moreover, there was the absence of the affidavits of at least two supporting witnesses.

The trial court granted the petition, but the Solicitor-General appealed the case to the Supreme Court.

HELD:

- (1) “By constitutional and legal precepts, an alien woman who marries a Filipino citizen, does not by the mere fact of marriage — automatically become a Filipino citizen.” *Reason:* she must possess all the qualifications and none of the disqualifications for naturalization. (*Ly Giok Ha, et al. v. Galang, et al.*, L-31332, Mar. 13, 1966).

[NOTE: The Court observed that if it is enough to have none of the disqualifications (without requiring the presence of qualifications), there is a danger that a person such as a maintainer of a bawdy house, who has *not been previously* convicted by a competent court, could become a Filipino — since it is the conviction that could disqualify.]

- (2) “The rule heretofore adverted to is to be observed whether the husband be:
 - (a) a natural-born Filipino (*Austria, et al. v. Conchu*, L-20716, June 22, 1965);
 - (b) a naturalized Filipino (*Lao Chay, et al. v. Galang*, L-19977, Oct. 30, 1964); or

- (c) *a Filipino by election.*”
- (3) “If an alien woman married to a Filipino does not *ipso facto* become a Filipino citizen, she has to file a petition for citizenship (a petition for naturalization).” This petition must:
- (a) recite that she possesses all the qualifications set forth in Sec. 2, and none of the disqualifications under Sec. 4 of the Revised Naturalization Law;
- (b) be filed in the Court of First Instance where the petitioner has resided at least one year immediately preceding the filing of the petition.
- (4) “Any action by *any other* office, agency, board or official, administrative or otherwise — *other than the judgment of a competent court of justice* — certifying or declaring that an alien wife of a Filipino citizen is also a Filipino citizen, is hereby declared *null and void.*”

The Supreme Court, after treating Burca’s petition as one for naturalization, then went to the merits of the petition and denied the same on the ground that *not all* of her former places of residence had been stated therein, and on the further ground that the petition was *not* supported by the affidavit of at least two credible persons.

Some Observations on the Burca Ruling

- (a) If the Court insists on the presence of all qualifications, would this not be unfair? For instance, why demand a 10-year residence period of an alien woman married to a Filipino, when only a 5-year residence is required for an alien man married to a Filipino woman? Besides, how many alien wives can own real estate (prior to becoming a Filipino) or exercise a lucrative trade or profession independently of their Filipino husband, when their principal function is to act as housewives?
- (b) It is unfortunate that in referring to an alien woman married to a Filipino, the Court used the phrase *ipso facto*,

i.e., the Court said that “she does not *ipso facto* become a Filipino citizen.” Because of the use of the phrase the Court had to conclude that since the woman does not *automatically (ipso facto)* become Filipino, it follows that she has to do something, namely, ask for naturalization in a naturalization proceeding. It is believed that the more appropriate legal and accurate term is “*necessarily*.” Hence, the alien wife does not “necessarily” become a Filipino by the mere fact of marriage, since it may turn out that indeed she should not be. In other words, the author submits that the condition should be *resolatory* not *suspensive*. In other words, upon the occurrence of a *bona fide* marriage to a Filipino, the alien woman should be presumed immediately as a Filipino. Should she turn out to be disqualified by reason of legal disqualifications, she should be stripped of Philippine citizenship. Unfortunately, under the present ruling, the filing of naturalization proceedings on her part has been made a *condition precedent*. It is even more unfortunate that since the advent of the Naturalization Law, foreign wives of foreign petitioners for naturalization have heretofore scarcely been required to file petitions (joint or separate) for naturalization.

Rules After the MOY YA Case

In *Moy Ya Lim Yao v. Com. of Immigration (GR L-21289, 41 SCRA 292)*, the Supreme Court *reversed* the *Burca* ruling and held that “under Sec. 15 of Com. Act 473 (the Revised Naturalization Law) an alien woman marrying a Filipino, native-born or naturalized, becomes *ipso facto* a Filipino provided, she is not disqualified to be a citizen of the Philippines under Sec. 4 of the same law.” Moreover, “an alien woman married to an alien who is subsequently naturalized here follows the Philippine citizenship of her husband the moment he takes his oath as a Filipino citizen, provided she does not suffer from any of the disqualifications under said Section 4.” The decision in effect ruled that it is *not necessary* for an alien citizen to *prove in a judicial proceeding* that she possesses all the qualifications set forth in Sec. 2 and none of the disqualifications under Sec.

4, both of the Revised Naturalization Law. (*Yap v. Republic*, L-27430, May 17, 1972).

Yung Uan Chu v. Republic of the Phils.
L-34975, Apr. 14, 1988

If an alien woman married to a Filipino citizen is proved to be already a Filipino citizen in a judicial proceeding, there is no necessity for her to still undergo administrative proceedings.

**The Spouses, Jose Yap Joaquin and
Lam Sok Ram v. Hon. Emilio L. Galang**
L-29132, May 29, 1970

ISSUES:

- (a) Has the Commissioner of Immigration the power to determine the validity of a marriage?
- (b) May a foreign woman married to a Filipino in the Philippines still be excluded from our country if in the meantime she gives birth to two minor children?

HELD:

- (a) Yes. The Commissioner of Immigration has the power to determine the validity of a marriage for the purpose of deporting aliens. (*See Brito, et al. v. Comm. of Immigration, 106 Phil. 417*).
- (b) The fact that the wife has given birth to two children will *not* prevent her from being excluded from the Philippines. As ruled in *Vivo v. Cloribel, L-25411, Oct. 26, 1968*, the contention that a 2-year-old child will be separated from the mother, and the further contention that to make the wife depart from the Philippines is destructive of family solidarity (*Arts. 218-221*) are **BESIDE THE POINT**. Said provisions govern the relations *between private persons*, **NOT** the relations between visiting aliens and the sovereign host-country.

(13) Coverage Under Immigration Law

Djumantan v. Hon. Andrea Domingo, et al.
GR 99358, Jan. 30, 1995
58 SCAD 612

The fact of marriage by an alien to a citizen does not withdraw her from the operation of the immigration laws governing the admission and exclusion of aliens.

(14) Rationale Why a Distinction Made Between Franchise of Ownership As Opposed to Recovery of Funds Is a Futile Exercise on Alien Spouse's Part

This is because to allow reimbursement would, in effect, permit respondent to enjoy the fruits of a property which he is not allowed to own. (*Muller v. Muller*, 500 SCRA 65 [2006]).

(15) Curative Measure Available to An Alien Whose Arrest Was Attended by Infirmities Committed By Authorities

The filing of the Charge Sheet before the Bureau of Special Inquiry (BSI) of the Bureau of Immigration and Deportation (BID) cures whatever irregularities or infirmities that were attendant to the arrest of an alien, and his remedy is to file a motion for the dismissal of the Charge Sheet and the Mission Order of the Immigration Commissioner, not a petition for a writ of *habeas corpus* before the Regional Trial Court. (*Kiani v. BID*, 483 SCRA 341 [2006]).

(16) Deport of Aliens

**Kiani v. Bureau of Immigration
and Deportation (BID)**
483 SCRA 341 (2006)

Issue: Is a party aggrieved by a Deportation Order issued by the Board of Commissioners (BoC) of the Bureau of Immigration and Deportation (BID) *proscribed* from assailing said Order in the Regional Trial Court (RTC) even *via* a petition for a writ of *habeas corpus*.

Held: Yes. As a consequence, he may file a motion for reconsideration thereof before the BoC, and in case such motion is denied, he may appeal to the Secretary of Justice, and if the latter denies the appeal to the Office of the President, the power to deport aliens is vested on the President of the Philippines, subject to the requirements of due process.

Or, the aggrieved party, may choose to file a petition for *certiorari* with the Court of Appeals under Rule 65 of the Rules of Court, or, in case the Secretary of Justice, dismisses the appeal, he (aggrieved party) may resort to filing a petition for review under Rule 43 of the Rules of Court.

(17) Purpose of the Constitutional Provision Disqualifying Aliens From Acquiring Lands of the Public Domain and Private Lands

The primary purpose is the conservation of the national economy. (*Muller v. Muller*, 500 SCRA 65 [2006]).

Save for the exception provided in cases of hereditary succession, an alien disqualification from owning lands in the Philippines is absolute — not even an ownership in trust is allowed; where the purchase is made in violation of an existing statute and in evasion of its express provision, no trust can result in favor of the party who is guilty of the fraud. (*Ibid.*)

(18) Power of the Immigration Commissioner Re Admission of Foreigners in the Philippines

The Philippine Immigration Act of 1940, as amended, confers upon the Commissioner of the Bureau of Immigration and Deportation, to the *expulsion* of the courts of justice, the power and authority to enforce its provisions, specifically the admission of foreigners to this country. (*De Jesus v. Dilag*, 471 SCRA 171 [2005]).

[NOTE: Ordinarily, a foreigner who breaks into a government office would expect to face: (i) *investigation*, (ii) *prosecution*, (iii) perhaps *expulsion* from the country, if not (iv) *incarceration* — instead, the foreigner here received speedy and extensive assistance from the very agency he tried to burglarize. (*CSC v. Ledesma*, 471 SCRA 589 [2005]).]

Art. 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)

COMMENT:

(1) Citizens of the Philippines under the 1973 Constitution

- (a) Those who are citizens of the Philippines at the time of the adoption of the Constitution.
- (b) Those whose fathers or mothers are citizens of the Philippines.
- (c) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five.
- (d) Those who are naturalized in accordance with law. (*Art. III, Sec. 1*).

[NOTE: It would seem that children born after the effectivity date of the 1973 Constitution, January 17, 1973, of mothers who are citizens of the Philippines are Filipinos without need of election to be such, the election in par. (c) evidently referring to children born prior to the 1973 Constitution. (See No. 3, Sec. 1, Art. III, 1973 Constitution). Unless, of course, said children had even before the 1973 Constitution already reached the age of 21 and

had already elected Philippine citizenship, in which case, they would be citizens under the first group — citizens at the time of the adoption of the new Constitution./.

(2) Citizens of the Philippines under the 1987 Constitution

The following are citizens of the Philippines:

- (a) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
- (b) Those whose fathers or mothers are citizens of the Philippines;
- (c) Those born before Jan. 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
- (d) Those who are naturalized in accordance with law. (*Art. IV, Sec. 1*).

(3) Citizens at the Time of the Adoption of the 1935 Constitution (May 14, 1935)

The following were the citizens of the Philippines at the time of the adoption of the Philippine Constitution on May 14, 1935:

- (a) Persons born in the Philippines who resided therein on Apr. 11, 1899, and were Spanish subjects on that date, unless they had lost their citizenship on or before the adoption of the Philippine Constitution on May 14, 1935 (as inferred from the Philippine Bill of 1902, the Jones Law, and the Philippine Constitution itself);
- (b) Natives of Peninsular Spain who resided in the Philippines on Apr. 11, 1899, and who did not declare their intention of preserving their Spanish nationality between that date and Oct. 11, 1900, unless they had lost their citizenship by May 14, 1935 (as inferred from the Philippine Bill of 1902, the Jones Law, and the Philippine Constitution);
- (c) Spanish naturalized citizens (subjects who resided in the Philippines on Apr. 11, 1899, and who did not declare

their intention of preserving their Spanish nationality between that date and Oct. 11, 1900, unless they had lost their citizenship by May 14, 1935. *Carlos Palanca v. Republic of the Philippines, L-301, Apr. 7, 1948, and the 1935 Constitution*);

- (d) Children born of (1), (2), and (3) subsequent to Apr. 11, 1899, unless they had lost their citizenship by May 14, 1935 (*Phil. Bill of 1902, Jones Law of 1916, and the 1935 Constitution*);
- (e) Persons who became naturalized citizens of the Philippines in accordance with the formal procedure set forth in the Naturalization Law since its enactment on March 22, 1920, unless they had lost their citizenship by May 14, 1935 (by inference from the Naturalization Law and the Philippine Constitution);
- (f) Children of persons embraced under No. 5, unless they had lost their citizenship by May 14, 1935;
- (g) Filipino women who, after having lost Philippine citizenship by marriage to foreigners, had subsequently become widows and regained Philippine citizenship on or before May 14, 1935 (*Roa v. Collector of Customs, 23 Phil. 321; Talaroc v. Uy, L-5397, Sep. 25, 1952*);
- (h) Children of No. (4) who were still under 21 years of age at the time their mothers regained Philippine citizenship (*Roa v. Collector, supra; Talaroc v. Uy, supra.*);
- (i) Foreign women who married Filipino citizens on or before May 14, 1935, provided that they themselves could be lawfully naturalized, and provided further that they had not lost Philippine citizenship by May 14, 1935 (*See Sec. 13[a] of Act 3448, amended*);
- (j) All other persons born in the Philippines who on the strength of the erroneous recognition of the “*jus soli*” doctrine in the *Roa case* were mistakenly declared by the courts to be Filipino citizens, unless they had lost their citizenship by May 14, 1935. (*See Tan Chong v. Sec. of Labor, L-47616, Sep. 16, 1947; Talaroc v. Uy, L-5397, Sep. 26, 1952*).

[NOTE: In an *obiter dictum* in *Roa v. Collector*, 23 Phil. 321, the Supreme Court declared that during the advent of American sovereignty in the Philippines, we recognized here in our country the doctrine of *jus soli* — the theory applied in the United States. This *dictum* was applied in many subsequent cases. (*Vano v. Collector*, 23 Phil. 41; *Go Julian v. Government*, 45 Phil. 286; *Haw v. Collector*, 59 Phil. 612; *etc.*). The error was discovered and the doctrine was thus repudiated in subsequent cases, like *Tan Chong v. Sec. of Labor*, L-47616, Sep. 16, 1947, and *Lam Swee Sang v. Commonwealth*, 45 O.G. 1269. Unfortunately, in an *obiter* in *Talaroc v. Uy*, L-5397, Sep. 26, 1952, the Court, apparently misled by an *obiter* in the *Tan Chong* case, *supra*, reverted to the *Roa doctrine*. In *Tio Tian v. Republic*, L-9602, Apr. 25, 1957, the Court, however, apparently returned to the *Tan Chong* ruling.]

[NOTE: With the advent of the 1987 Constitution, the new proviso reads: “Those who are citizens of the Philippines at the time of the adoption of this (1987) Constitution.”]

(4) Citizens By Virtue of Having Been Elected To a Public Office in the Philippines

The law says: “Those born in the Philippines of foreign parents who, before the adoption of the Philippine Constitution, had been elected to a public office in the Philippines.” (*Art. IV, Sec. 1, No. 2, 1935 Constitution; Art. 48, No. 2, Civil Code*).

[NOTE: This proviso has been eliminated in the 1973 and 1987 Constitutions. It is understood, however, that those falling under No. 2 of the 1935 Constitution may now be classified under No. 1 of the 1973 Constitution.]

- (a) This provision does not rely on *jus soli* exclusively, *service* should have been rendered.
- (b) If “born OUTSIDE the Philippines,” the article does not apply.
- (c) If “appointed” and not “elected,” the article does not apply.

- (d) If “private” instead of “public” office, the article does not apply.
- (e) Who is considered the Philippine citizen, the “parents” or the “child?”

Answer: The child himself in view of his service. Of course, the *children of the child himself* would also be citizens of the Philippines because of No. 3 of Art. 48 of the Civil Code, and No. 3, Sec. 1, Art. IV of the 1935 Constitution. In other words, this paragraph on citizens by virtue of their election benefits not only the individual himself who was elected, but also his children; hence, this would allow derivative citizenship. (*See Chiongbian v. De Leon, L-2007, Jan. 31, 1949*).

- (f) *Reason for the Provision:* Fermin Caram, a delegate to the Constitutional Convention, was born in the Philippines of Syrian parents. Before the Constitutional Convention, he had previously been elected to the Provincial Board of Iloilo, although he was not a Filipino citizen, since his parents were foreigners, and he himself had never been naturalized as a Filipino. There was, therefore, the anomalous situation of a non-Filipino having been elected to a public office in the Philippines, an anomaly that obviously was caused by the then prevailing belief that mere birth in the Philippines was sufficient to make one a Filipino citizen. (*See Roa case, supra.*). To cure this anomaly is apparently the principal motive of this provision. Otherwise, a non-Filipino would have participated in the drafting of the Philippine Constitution. (*See Caram v. Montinola, IV Lawyers' Journal, p. 850*). Despite this apparent intent, therefore, to favor a particular individual, namely, the person who had been elected to a public office in the Philippines although not yet a Filipino, the Supreme Court has given to the proviso *not only a personal connotation but also a derivative implication*, hence, even his own children have been given the benefit. (*See Chiongbian v. De Leon, supra.*).

(g) *Illustrative Case:*

Chiongbian v. De Leon
L-2007, Jan. 31, 1949

FACTS: An alien married couple had a son, Victoriano Chiongbian, who had been born in the Philippines. Victoriano, although a foreigner, was elected to the position of municipal councilor (of Plaridel, Occidental, Misamis) in 1925. Victoriano himself had his own son, William Chiongbian, who was still a *minor* at that time of the adoption of the Philippine Constitution. William was able to register certain vessels in his own name when he became of age. Customs officials, however, wanted to cancel the registration on the theory that while Victoriano may be considered a Filipino (by virtue of his election to a public office prior to the adoption of the Constitution), still William should not be so considered, for the grant in this provision is *strictly personal*, that is, it should not benefit Victoriano's descendants.

ISSUE: Should William be also considered a Filipino citizen, although he himself had not held public office prior to the adoption of the Philippine Constitution?

HELD: Yes, William Chiongbian is a Filipino. The parents of Victoriano are certainly not Filipinos; but Victoriano himself was a Filipino because he was born in the Philippines of foreign parents, and before the adoption of the Philippine Constitution he had been elected to a public office in the Philippines. (*Par. 2, Sec. 1, Art. IV, 1935 Constitution*) Therefore, William Chiongbian, who was then a minor, also became a Filipino citizen, his father, being a Filipino. (*Par. 3, Sec. 1, Art. IV, 1935 Constitution*).

QUERY: In the above case of *Chiongbian*, when did Victoriano himself become a Filipino — upon the adoption of the Constitution, or from the time of his election?

ANSWER: Although the Supreme Court said: "It is conclusive that *upon the adoption* of the Constitution, Victoriano Chiongbian, father of herein petitioner, having

been elected to public office in the Philippines before the adoption of the Constitution, became a Filipino citizen by virtue of Art. IV, Sec. 1, Subsection 2 of the Constitution." Still it is believed that "upon the adoption" should be construed to mean "*by virtue of the adoption.*" In other words, Victoriano became a Filipino, not upon the adoption, but because of the adoption of the Constitution; and precisely because of this Constitution, he should be deemed a Filipino from the *time of his election*. Otherwise, we would legally sanction the spectacle of a *non-Filipino holding a Filipino public office* prior to the adoption of the Philippine Constitution.

(5) Children of Filipino Fathers

- (a) This paragraph enunciates the principle of *JUS SANGUINIS*.
- (b) The rule applies whether the mother is a Filipino or not; and whether the child is born in the Philippines or outside.
- (c) The rule certainly is applicable if the father is a natural-born Filipino citizen; does it also apply if the father is a *naturalized* Filipino?

To answer this question, let us first examine the pertinent provisions of the Naturalization Law on the matter. Sec. 15 of the law says:

- "1. Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof."
- "2. A foreign-born minor child, if dwelling in the Philippines at the time of naturalization of the parent, shall automatically become a Philippine citizen, and a foreign-born minor child who is not in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he resides permanently in the Philippines when still a minor, in which case he will continue to be a Philippine citizen even after becoming of age."

- “3. A child born outside the Philippines, after the naturalization of his parents shall be considered a Philippine citizen, unless within one year after reaching the age of majority, he fails to register himself as a Philippine citizen at the Philippine consulate of the country where he resides and to take the necessary oath of allegiance.”

The question may now be properly answered in the following manner:

- (a) a *minor* child born BEFORE naturalization —
- 1) if born *in* the Philippines — is a Filipino;
 - 2) if born *outside* the Philippines —
 - a) if dwelling *in* the Philippines at the time of the parent’s naturalization — is a Filipino;
 - b) dwelling *outside* the Philippines at the time of parent’s naturalization — is a Filipino only during his *minority* unless he resides *permanently here when still a minor*, in which case he will continue to be a Philippine citizen even after becoming of age.
- (b) a *minor* child born AFTER naturalization —
- 1) if born *in* the Philippines — is a Filipino;
 - 2) if born *outside* the Philippines — shall be considered a Philippine citizen, unless within one year after reaching the age of majority he fails to register himself as a Philippine citizen at the Philippine consulate of the country where he resides and to take the necessary oath of allegiance.

It will be observed that:

- (a) in the case of children *already of age* at the time of the parent’s naturalization, they do not become Filipino citizens unless they themselves are naturalized;
- (b) in the case of *minors*, who were born IN the Philippines *before or after the parent’s naturalization, and*

in the case of minors born OUTSIDE the Philippines but already dwelling IN the Philippines at the time of the parent's naturalization — no condition is imposed by the law: they are FILIPINO CITIZENS;

- (c) in the case of *minors* born OUTSIDE the Philippines, the law is more strict on the child born BEFORE naturalization because he is *compelled to reside here*, whereas in the case of the child born AFTER naturalization, all that the law requires is *registration*. Both of these requisites *appear* to be unconstitutional, since the fundamental law makes no distinction; nonetheless it would seem that these requirements are proper, and unless complied with would result in loss of Philippine citizenship, a loss which under the Constitution itself can properly be proved for by law. (*Art. IV, Sec. 2, 1935 Constitution*).

(6) Children of Filipino Mothers

- (a) *Provision of the 1935 Constitution* — “Those whose mothers are citizens of the Philippines and upon reaching the age of majority elect Philippine citizenship.” (*Art. IV, Sec. 1[4], 1935 Constitution*).
- (b) *Requisites under the 1935 Constitution*
- 1) The father here must *not* be a Filipino citizen, otherwise, another provision (already discussed) applies;
 - 2) The mother must be a Filipino citizen;
 - 3) Upon reaching the age of majority, the child, to be a Filipino, must elect Philippine citizenship.
- (c) *Query*: As of what moment must the mother be a citizen of the Philippines?

Theories:

- 1) The first theory is that the mother must be a citizen of the Philippines at the time of the *birth* of the child.
- 2) The second theory is that the mother must be a Fili-

pino citizen at the time the child elects Philippine citizenship.

- 3) The third theory is that it is sufficient for the mother to have been a Filipino citizen at the time of her marriage to a foreigner.

The Correct Theory:

It would seem that the third theory — that the mother is a Filipino at the time of her *marriage* to an alien — is the CORRECT theory (*See Matter of Robert Cu, L-3018, July 18, 1951*) for two (2) cogent reasons:

- 1) If the first or the second theory is to be applied, very few children can avail themselves of the option, for in many instances, the mother would follow the husband's nationality and thus lose Philippine citizenship;
 - 2) Also, unless we apply the third theory, the right to elect Philippine citizenship will depend in many cases on the husband's national law — a law which may vary from time to time, even to the extent of denationalizing its own citizens. (*See Hudson, Cases on International Law, p. 201*). [NOTE: In the case of *Villahermosa v. Commissioner of Immigration, L-1663, Mar. 31, 1948*, however, the Supreme Court seemed to imply the *second* should be adhered to. In said case the Court made the observation that the child can elect Philippine citizenship only if at the time of such election the mother has already reacquired Philippine citizenship.]
- (d) *Query:* Within what period after attaining the age of majority must the child elect Philippine citizenship?

Answer: The option must be exercised within a REASONABLE period after having attained the age of majority. (*Opinion of the Secretary of Justice, Aug. 12, 1945; June 26, 1947*). What is reasonable is a question of fact, depending upon the peculiar circumstances of each case. In one instance, three years was still considered a

reasonable period. (*Opinion of the Secretary of Justice, No. 20, s. 1948*). But generally, five years would be unreasonable. (*Lim Teco v. Com. of Customs, 24 Phil. 84*).

- (e) *Query*: Before the child elects Philippine nationality, what is his nationality?

Answer: Generally, this would be the nationality of the father, if the child is a legitimate child. But of course this would depend on the father's national law.

- (f) *Query*: Suppose a Filipino mother is not married to a Chinese but is merely cohabiting with him, is the child still a Filipino?

Answer: Yes, a child born *outside* a lawful marriage of an alien father and a Filipino mother, being *illegitimate*, follows the mother's citizenship. However, if the parents should marry each other later, the *legitimated* child should generally follow the father's citizenship. (*Kok Hua v. Republic, L-5047, May 8, 1952; Zamboanga Transportation Co. v. Lim, L-10975, May 27, 1959*).

- (g) *Law on the option to elect Philippine Citizenship*

COMMONWEALTH ACT 625*

AN ACT PROVIDING THE MANNER IN WHICH THE OPTION TO ELECT PHILIPPINE CITIZENSHIP SHALL BE DECLARED BY A PERSON WHOSE MOTHER IS A FILIPINO CITIZEN

Section 1. The option to elect Philippine citizenship in accordance with subsection (4), Sec. 1, Art. IV of the Constitution shall be expressed in a statement to be signed and sworn by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest Civil Registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and Government of the Philippines.

*See Appendix "A".

Sec. 2. If the party concerned is absent from the Philippines, he may make the statement herein authorized before any officer of the Government of the United States (now before embassy and consular officials of the Philippines abroad save in those cases where there are no officials yet, in which case the party concerned has to do so before the embassy or consular officials of the United States in the country where he may be), and he shall forward such statement together with his oath of allegiance, before the Civil Registry of Manila.

Sec. 3. The Civil Registrar shall collect as filing fees of the statement the amount of ten pesos.

Sec. 4. The penalty of *prision correccional*, or a fine not exceeding ten thousand pesos or both shall be imposed on anyone found guilty of fraud or falsehood in making the statement herein prescribed.

Sec. 5. This Act shall take effect upon its approval.

Approved, June 7, 1941.

- (h) *Query:* If a Filipino woman marries a foreigner, she gets her husband's nationality or citizenship, if the laws of her husband's country so provide. In such a case, she loses Philippine citizenship. Now then, upon the husband's death, does she immediately reacquire Philippine citizenship?

ANSWER: It depends:

- 1) If she became a widow *before* the effectivity of Commonwealth Act 63 (Oct. 21, 1936), she immediately reacquired Philippine citizenship without any need of repatriating herself, since it would be unfair to require repatriation (reacquisition of citizenship by a formal act) *before* there existed any Act requiring her to do so. There is one exception, however, and this would be if she, by outward or external acts, decided to continue being a citizen of her husband's country. (*Talaroc v. Uy, L-5397, Sep. 26, 1952*).

- 2) If she became a widow on or after Oct. 21, 1936, she has to repatriate herself; otherwise, she remains a foreigner. (*Talaroc v. Uy, supra; Villahermosa v. Commissioner of Immigration, L-1663, Mar. 31, 1948*).

NOTE: If the woman repatriates herself, does her repatriation carry with it the repatriation of her minor child?

ANSWER: No, for repatriation means re-acquisition. Since the child never was a Filipino previously, it is obvious that he cannot reacquire that which he never had. (*See Villahermosa v. Commissioner of Immigration, L-1663, Mar. 31, 1948*). It should be observed, however, that if instead of repatriation (for repatriation, there must be a FORMAL ACT) the widow had *automatically* regained Philippine citizenship, the nationality of her minor child would follow hers. (*Talaroc v. Uy, L-5397, Sep. 26, 1952*).

Laureto Talaroc v. Alejandro D. Uy
L-5397, Sep. 26, 1952

FACTS: Uy was elected municipal mayor. Talaroc, a defeated candidate for said office, brought *quo warranto* proceedings against Uy, alleging the latter's Chinese citizenship, and consequent disability. Uy was born in Lanao in 1912 of a Chinese father and a Filipino mother. While Uy was still a minor, his father died in 1917. The mother died in 1949, without expressly repatriating herself. Uy had voted in previous Philippine elections, and on some occasions he had even been allowed to hold public offices.

HELD: When Ursula Diabo, Uy's mother became a widow, Commonwealth Act 63 had not yet been enacted; therefore, without need of repatriation, he automatically followed the nationality of the mother. Hence, Uy became a Filipino. Uy is, therefore, eligible.

(7) Naturalized Filipino Citizens

Under Art. 49 of the Civil Code, “naturalization and the loss and reacquisition of citizenship of the Philippines are governed by special laws.” Our Naturalization Law is Com. Act 473, as amended by Rep. Act 530. Loss and reacquisition of Philippine citizenship are governed by Com. Act 63, as amended. In the 1987 Constitution, we have the following provisos:

- (a) Among the citizens of the Philippines are “[T]hose who are naturalized in accordance with law.” (*Art. IV, Sec. 1[4], 1987 Constitution*).
- (b) “Philippine citizenship may be lost or reacquired in the manner provided by law.” (*Art. IV, Sec. 3, 1987 Constitution*).

(8) The Term “Private Citizen” in the PNP Law – How Used

**PNP Supt. Florencio D. Fianza v. PLEB
of the City of Baguio, et al.
GR 109639, Mar. 31, 1995
60 SCAD 235**

The term *private citizen* in the PNP (Philippine National Police) Law and PLEB (People’s Law Enforcement Board) Rules is used in its common signification and was not meant to refer to the members of the PNP.

At this point, a review of the PLEB’s organic law is in order. The PLEB, established pursuant to Sec. 43 of RA 6975, is part of the PNP’s administrative disciplinary machinery. Sec. 43 reads, in part: “The PLEB shall have jurisdiction to hear and decide citizen’s complaints or cases filed before it against erring officers and members of the PNP.”

Art. 49. Naturalization and the loss and reacquisition of citizenship of the Philippines are governed by special laws.

(n)

COMMENT:**(1) 'Naturalization' Defined**

Naturalization is the process of acquiring the citizenship of another country.

- (a) In the *strict sense*, it is a judicial process, where formalities of the law have to be complied with, including a judicial hearing and approval of the petition.
- (b) In the *loose and broad sense*, it may mean not only the judicial process but also the acquisition of another citizenship by such acts as marriage to a citizen, and the exercise of the option to elect a particular citizenship.

(2) Attributes of Naturalization

- (a) Citizenship is not a right, it is a privilege. (*Ching Leng v. Galang*, L-11931, Oct. 27, 1958). Thus, to acquire Philippine citizenship by naturalization is merely a privilege granted to certain aliens under certain conditions. (*Kin v. Republic*, L-6894, Apr. 27, 1955).

“The Naturalization Law grants to aliens the privilege of obtaining Philippine citizenship under certain conditions; the conditions must be complied with.” (*Kin v. Republic*, *supra*.).

Petitions for naturalization involve public interest; hence, even if objections to a defective petition had not been raised in the trial court, the higher tribunal may subject the entire records of the case to scrutiny. Naturalization being a privilege and not a right, the burden is on the applicant to show clearly that he has complied with every condition that the law imposes. (*Kwan Kwock How v. Republic*, L-18521, Jan. 30, 1964; see also *Lee Ng Len v. Republic*, L-20151, Mar. 31, 1965).

- (b) The requisite conditions for naturalization are laid down by Congress; courts cannot change or modify them. (*Bautista v. Republic*, L-3353, Dec. 29, 1950).
- (c) Only foreigners may be naturalized. (*Palanca v. Republic*, 45 O.G. 204, Sep. 1949). If the petitioner turns out to be

already a Filipino, the petition for naturalization as such must be turned down. (*Yan Tu v. Republic*, L-15775, Apr. 29, 1960).

- (d) Just as a State may denationalize its own citizens, so may naturalization be *revoked*, by the cancellation of the certificate of naturalization. In this sense, a final judgment for naturalization can never be truly final. (*Rep. v. Co Bon Lee*, L-11499, Apr. 29, 1961).
- (e) Naturalization demands allegiance to our Constitution, laws, and government. (*Sec. 11, Commonwealth Act 473, as amended.*)

(3) Qualifications for Naturalization

Our Naturalization Law requires the petitioner for naturalization to have ALL the qualifications and NONE of the disqualifications referred to therein. (*Ly Hong v. Republic*, L-14630, Sep. 30, 1960). The contents of the petition must be those required under present laws, not those prescribed in an old law that no longer exists. (*Lou C. Lim v. Republic*, L-27126, May 29, 1970). In fact, the petitioner himself must take the witness stand so that he may be examined regarding his qualifications. It is NOT for the “character witnesses” to show that the petitioner has all the qualifications and none of the disqualifications. (*Palaran v. Republic*, L-15047, Jan. 30, 1962). Upon the other hand, it is not sufficient for the petitioner to undertake this task alone. The sworn assertions made by him must be supported by the affidavit of at least two credible witnesses (*Ng v. Republic*, L-16302, Feb. 28, 1962) as well as by their sworn TESTIMONY. (*Yap v. Republic*, L-13944, Mar. 30, 1962). Parenthetically, the qualifications must be possessed at the time the petitioner applies for naturalization, not subsequently. (*Pablo Lee v. Republic*, L-20148, Apr. 30, 1965). The testimony of petitioner’s witnesses to the effect that petitioner is not in any way disqualified simply “because he possesses all the qualifications to become a Filipino” does NOT prove affirmatively that the petitioner does not possess any of the disqualifications. To possess the qualification is one thing, and it is another *not* to possess any of the disqualifications. (*Kho Eng Poe v. Republic*, L-17146, June 20, 1962).

The following are the QUALIFICATIONS for naturalization:

- (a) The petitioner must not be less than 21 (majority age today is 18) years of age on the date of the hearing of the petition;
- (b) He must have, as a rule, resided in the Philippines for a continuous period of not less than ten years;
- (c) He must be of good moral character, and believe in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as with the community in which he is living;
- (d) He must own real estate in the Philippines worth not less than P5,000, Philippine currency, or must have some lucrative trade, profession, or lawful occupation;
- (e) He must be able to speak and write English or Spanish and any one of the principal Philippine languages;
- (f) He must have enrolled his minor children of school age in any of the public schools or private schools recognized by the Bureau of Private Schools where Philippine history, government, and civics are taught or prescribed as part of the school curriculum during the entire period of the residence required of him, prior to the hearing of his petition for naturalization as citizen. (*Sec. 2, Commonwealth Act 473, as amended*).

(4) The First Qualification – Age

- (a) Minors do not have to file a petition for naturalization; if their father is naturalized, they generally also become Filipino citizens. (*See Dee v. Republic, L-3683, Jan. 28, 1953*).

- (b) At the time applicant files a *bona fide* declaration of intention to become a Filipino he does not have to be 21 years of age. The age requirement is as of the date of the hearing of the *petition*; not the date of the declaration of intention, nor even the date of the filing of the petition.
- (c) It will be noted that the age of majority in the country of the petitioner does *not* matter.

(5) The Second Qualification — Ten Years Residence

- (a) The residence contemplated is not merely legal residence but ACTUAL and SUBSTANTIAL residence in order that the purpose of the law may be obtained:
 - 1) *firstly*, to enable the government and the community to observe the conduct of the applicant;
 - 2) *secondly*, to ensure his having imbibed sufficiently the principles and the spirit of our institutions. (*Dy v. Republic, L-4548, Nov. 26, 1952*).
- (b) The residence requirement is REDUCED to five years in any of the following cases:
 - 1) If the applicant has honorably held office under the Government of the Philippines or under that of any of the provinces, cities, municipalities, or political subdivisions thereof;
 - 2) If he has established a new industry or introduced a useful invention in the Philippines;
 - 3) If he is married to a Filipino woman;
 - 4) If he had been engaged as a teacher in a public or recognized private school not established for the exclusive instruction of children of persons of a particular nationality or race in any of the branches of education or industry for a period of two years;
 - 5) If he was born in the Philippines. (*Sec. 3, Commonwealth Act 473, as amended*).
- (c) If the petitioner wants to avail himself of the *reduced* period of five years, he has the burden of proving that he

comes under any of the instances enumerated in No. (2). The reason is obvious: the shorter period is an exception to the general rule. (*Ng Sin v. Republic, L-7590, Sep. 20, 1955*).

- (d) Although the residence BOTH for ten years or five years must be ACTUAL, SUBSTANTIVE, and CONTINUOUS (and not mere legal residence), still PHYSICAL presence is not necessarily required for the entire period of residence required of the petitioner. Not every absence is fatal to continuous residence. So long as there is an intent to return (*animus revertendi*) the residence may still be considered continuous. The temporary absence must however, be of short duration: certainly an absence of say six years is not of a short duration. (*Dargani v. Republic, L-11525, Dec. 24, 1959*).

(6) The Third Qualification – Good Morals and Conduct and Belief in the Principles Underlying the Philippine Constitution

- (a) Regarding good morals, there is NO NECESSITY for a criminal conviction for a crime involving moral turpitude. True, such a conviction is required to show a DISQUALIFICATION, but lack of a conviction does not necessarily mean that the petitioner is of good moral character. (*See Tio Tek Chay v. Republic, L-19112, Oct. 30, 1964*). One who GAMBLES in violation of the Revised Penal Code, even if for some reason or another he is not criminally convicted, is a person who lacks good moral character, and is, therefore, lacking in one of the necessary qualifications. (*Ly Hong v. Republic, L-14630, Sep. 30, 1960*). But a mere violation of a municipal ordinance against the playing of “mahjong” is a minor moral transgression involving no moral turpitude or willful criminality, and the petitioner therefore is not by that fact alone disqualified. (*Chiong v. Republic, L-10976, Apr. 16, 1958*). Upon the other hand, the use of a meter stick without the seal of the Internal Revenue Office, involves moral turpitude because it manifests an evil intent on the part of the applicant to defraud purchasers. (*AO Un v. Republic, L-18506, Jan. 30, 1964*).

QUERY: If because of certain specified acts, a petition is denied because of lack of irreproachable conduct, is there a chance that the alien can later on be granted naturalization upon proof of having reformed? YES, provided that a sufficient number of years have elapsed. A second petition filed less than a year after the denial of the first application would not comply with the number of years required. (*Sy Chut v. Republic, L-17960, Sep. 30, 1964*). But if for a reasonable number of years after the denial of one's application, the petitioner proves in the requisite proceeding to have reformed and has observed irreproachable conduct, the bar may be lifted. (*Sy Chut v. Republic, L-17960, Sep. 30, 1964*).

- (b) What constitutes "proper and irreproachable conduct" must be determined, not by the law of the country of which the petitioner is a citizen (China, for example, sometimes used to allow polygamy) but by the standards of morality prevalent in this country, and these in turn, by the religious beliefs and social concepts existing here. (*Yu Singco v. Republic, 50 O.G. 104*). In the case of *Chua Pun v. Republic (L-16825, Dec. 22, 1961)*, the Supreme Court had occasion to point out that "morally irreproachable conduct" imposes a HIGHER standard of morality than "good moral character." Hence, merely being "very good" or a "law-abiding citizen" will not be enough for naturalization purposes. In the case of *Ly Lam Go v. Republic, L-15858, July 31, 1962*, the Court said that evidence of irreproachable conduct may be proved by competent evidence other than the testimony of the two vouching witnesses. Evidence for example that no derogatory police and court record exists against him would corroborate the testimony of the applicant as regards his proper and irreproachable conduct." (*See Mo Yuen Tsi v. Republic, L-17137, June 29, 1962*).
- (c) Examples of *improper conduct* are the following:
- 1) Illicit and open cohabitation with a woman other than one's own wife (*Yu Lo v. Republic, 48 O.G. 4334*), even if later on petitioner marries the mother of his 13 children six months before applying for

naturalization. (*Sy Kian v. Republic*, 54 O.G. 3802). However, in one case, the Supreme Court, while dismissing the petition of an alien who married his common-law wife *during* the pendency of petition, nonetheless made the dismissal, “without prejudice to the filing of another petition for naturalization.” (*Sy Tian Lai v. Republic*, L-5867, Apr. 29, 1945).

- 2) Failure to register oneself as an alien if he erroneously believed himself to be already a Filipino. (*Cu v. Republic*, L-16073, Mar. 27, 1961). Late registration of the child of the petitioner with the Bureau of Immigration is fatal. (*Ng v. Rep.*, L-37027, Apr. 26, 1974).
- 3) Failure to file an income tax return (*Co v. Republic*, L-12150, May 26, 1960; *Justino O. Cu alias Justo Dee v. Republic*, L-13341, July 21, 1962), as well as deliberate and fraudulent non-payment of income tax. (*Yao v. Republic*, L-5074, Mar. 3, 1953). If the tax return shows a lower income than the true one, naturalization will be denied. (*Lim Siong v. Republic*, 56 O.G. 5041). Misrepresenting oneself to be married, just to be able to obtain an income tax deduction will also result in the denial of the petition. (*Deetuanka v. Republic*, L-12981, Jan. 29, 1960). Failure to file the required statement under the Tax Census Law is a ground for disqualification. (*Ng v. Rep.*, L-33027, Apr. 26, 1974).
- 4) Suppression of a material fact in the petition, a fact which, if revealed, would result in the denial of the application. (*Dy Chan Tiao v. Republic*, L-6430, Aug. 31, 1954). Failure of the petition to state ALL the former residences of the petitioner is a fatal defect of the petition. (*Kiat v. Rep.*, L-28169, Mar. 23, 1974).
- 5) Desertion of a common-law wife and children simply to be able to marry another. (*Yu Singco v. Republic*, L-6162, Dec. 29, 1953).
- 6) Engaging in the retail business in violation of the retail trade nationalization law. (*Ong v. Republic*, L-14625, Oct. 24, 1960).

- 7) Frequenting of gambling dens and playing prohibited games, even if the applicant has not been convicted of this crime against public morals. (*Sy Hong v. Republic, L-14630, Sep. 30, 1960*).
- 8) Signing of his name as *Robert Dee Koa Gui* in his Marriage Certificate although his name is only *Koa Gui* in the Alien Certificate of Registration and in the Immigrant Certificate of Residence. (*Koa Gui v. Republic, L-13717, July 31, 1962*). (In this case, he explained that he used the additional name “Robert Dee” because this was the Christian name given him when he was BAPTIZED preparatory to his canonical marriage. He also explained that he had never used said additional name in his social or business dealings. This explanation was NOT considered satisfactory by the Court, which held that the use of the additional Chinese name “Dee” was likely to confuse his identity as a contracting party to the marriage. The Court said further that in this country, marriage is a sacred institution that requires full and accurate disclosure of the identity of the contracting parties). The use of an alias without proof that the same is an authorized exception under the Anti-Alias Law, does not speak well of petitioner’s moral norms. (*Hiok v. Republic, L-17118, Nov. 17, 1964*). Thus, the use of an *alias* without proper authority will result in the denial of the petition for naturalization. (*Wilfredo Lim v. Republic, L-19835, May 29, 1970*). Besides, the use of various names makes impossible the full identification of the petitioner in the necessary notices, thereby preventing possible oppositors from setting up valid objections to the naturalization. (*Andres Ong Khan v. Republic, L-19709, Sep. 30, 1964*). Upon the other hand, when the petitioner described himself in his petition as “Ong Bon Kok alias Uy Sae Tin,” this does *not* necessarily mean that he used this alias. It merely indicates that Ong Bon Kok is the same person formerly known as Uy Sae Tin. This alias appears in his declaration of intention and petition for naturalization because the

law requires it and because failure to comply with said requirement would have been a ground for the denial of said petition. In other words, if the record does not show that in his activities he really used such an alias, and if the government has no proof on this matter, the petition is ought to be granted. (*See Ong Kok v. Republic, L-19583, Sep. 30, 1964*).

- 9) An attempt to circumvent the Constitution by purchasing a parcel of land through his mother-in-law, a Filipino citizen. (*Fong v. Republic, L-15991, May 30, 1961*).
- 10) Membership in "Hiat Kan Luan," the most active Chinese guerrilla unit affiliated with the Chinese Communist Party is a ground for denial of naturalization, for the applicant would then be a communist suspect. (*Qua v. Republic, L-16975, May 30, 1964*).
- 11) Pleading guilty to a violation of the Price Tag Law simply to avoid troublesome court proceedings betrays a lack of faith in the administration of justice in this country. (*Chai v. Republic, L-19112, Oct. 30, 1964*).
- 12) Conniving with another businessman to agree on a common price at which to offer for lumber being requisitioned by a city so that the two conspirators can get the higher price and thus be able to split the difference. (*Ong Giok Tin v. Republic, L-18212, Dec. 8, 1964*).
- 13) Discrepancy in stating his gross income in the income tax *return* and in the *statement* needed for the issuance of Residence Tax B. (*Harry Ong Pin Seng v. Republic, L-19575, Feb. 26, 1965*).
- 14) Offering \$500 to a municipal mayor for the repeal of a certain municipal ordinance. (*Watt v. Republic, L-26952, Aug. 30, 1972*).
- 15) Falsely stating that he had never previously filed any petition for naturalization. (*Ang To v. Republic, L-26952, Aug. 30, 1972*).

- (d) Examples of conduct that will NOT PREVENT naturalization:
- 1) Justifiable discrepancy in the use of petitioner's surname. (*Cheng v. Republic, L-12791, Feb. 23, 1960*).
 - 2) Use of unauthorized aliases, when after all no prejudice has been caused other people, inasmuch as in such a case, this would be a minor transgression. (*Hao Bing Chiong v. Republic, L-13526, Nov. 24, 1956*).
 - 3) Failure to present alien certificate of registration of his wife and minor children, so long as they were really registered. The Court held here that compliance with the law of the country need not be enumerated as in a bill of particular. (*Lim v. Republic, 57 O.G. 1032*).
 - 4) Running a properly licensed cabaret, for such conduct is not necessarily immoral, otherwise, the government would not have allowed the cabaret to exist. (*Sy Chiuco v. Republic, L-7545, Oct. 25, 1955*).
 - 5) Formerly, the use of unauthorized aliases, when after all no prejudice had been caused other people, inasmuch as in such a case, this would be a minor transgression. (*Hao Bing Chiong v. Republic, L-13526, Nov. 24, 1956*). But later, the Court ruled in many, many cases that the use of other names or aliases deliberately by him, without prior judicial approval is unlawful, and reflects the absence of a good moral character. (*Uni Bun v. Republic, L-12822, Apr. 26, 1961; Yap v. Republic, L-26820, July 31, 1970; Chua Bong Chiong v. Republic, L-29200, May 31, 1971; Watt v. Republic and other cases, Aug. 30, 1972*). Be it noted, however, that if petitioner did not use aliases, but is nonetheless known by said aliases without any fault on the part of the petitioner, he will not be disqualified. However all such names or aliases by which he is known should be included in the petition otherwise the lack would lead to a dismissal of the petition the defect being jurisdictional.

(See *Republic v. Borromeo*, L-26820, May 29, 1970; *Dy v. Republic*, L-21958, Sep. 28, 1970).

(e) Belief in the principles underlying the Constitution:

- 1) The law requires a *belief* in said principles, not the ability to enumerate them expressly. (*Lim v. Republic*, 57 O.G. 1032). Thus, even if petitioner testifies that he knows them, and even names some of said principles, knowledge is not equivalent to belief. One thing is to *know* and another, to *believe* in what one knows. Thus, evidence of knowledge is no evidence of belief. (See *Qua v. Republic*, L-16975, May 30, 1964).
- 2) A belief in the principles embodied in Philippine laws does NOT necessarily mean a belief in the principles of the Philippine Constitution, for according to the unduly strict interpretation by the Court here, the scope of law in ordinary parlance does not necessarily include the Constitution. (*Co v. Republic*, L-12150, May 26, 1960). The omission in the petition of the assertion by the petitioner that he believes in the principles of the Philippine Constitution is NOT cured by a mere statement at the hearing of the petitioner's belief in the IDEALS of the Filipino people. (*Ching v. Republic*, L-15955, Oct. 26, 1961).
- 3) Failure to state the customs, traditions, and ideals of the Filipinos which the applicant desires to embrace is not a fatal defect, for his knowledge of these things can be presumed if he has studied in high school. (*Pang Kok Hua v. Republic*, L-5047, May 8, 1952).
- 4) The possibility that the applicant expects to receive certain benefits from naturalization should not prevent approval of the petition: the expectation is natural, for if one does not have such expectations, he will not even apply for naturalization. (*Co v. Republic*, 56 O.G. 3036). BUT if the applicant declares that he is NOT willing to embrace Philippine citizenship if he *would not* be allowed to acquire real estate and engage in retail business, the sincerity of

the petitioner in becoming a citizen, is put in serious doubt by this declaration, and, therefore, the petition should be *denied*. The Naturalization Law, according to the Court must be rigidly enforced and strictly construed in favor of the government and against the applicant. (*Chan Chen v. Republic, L-13370, Oct. 31, 1960*).

(7) The Fourth Qualification – Real Estate or Occupation

- (a) In the absence of credible proof regarding allegations of property ownership, the Court will be constrained to conclude that petitioner has *not* met the requirement of ownership of property. One good proof is the certificate of assessment or a *declaration* of real estate property ownership. (*Justino O. Cu Alias Justo Dee v. Republic, L-13341, July 21, 1962*). However, the requirement as to the ownership of real estate in the Philippines OR the possession of some lucrative trade, profession, or lawful occupation is in the ALTERNATIVE. This has to be so in the face of the constitutional prohibition in general against landholdings by aliens. (*Krivenko v. Reg. of Deeds, 79 Phil. 461*). In our country, aliens may hold land thereof prior to the adoption of the Constitution (*Art. XIII, Sec. 1, 1935 Constitution*) or if he purchases land after the effectivity of the Constitution by virtue of the exercise of the right of repurchase which had already been vested in him even *prior* to the adoption of said Constitution. In the case of *Vasquez v. Li Seng Giap, 51 O.G. 717*, however, it would seem that the Court held that if an alien after the adoption of the Constitution, unlawfully acquired land, the acquisition can be considered valid and effective so long as the alien later on becomes a naturalized Filipino citizen. The Court in this case held that inasmuch as the purpose of the Constitution “is to preserve the nation’s land for future generations of *Filipinos*, the aim or purpose would not be thwarted but achieved by making lawful the acquisition of real estate by aliens who become Filipino citizens by naturalization.” In the case of *King v. Republic, L-2687, May 23, 1951*, the Court stated the rule that as long as the alien *already owns* the land, the requirement in the

law is satisfied even if at the time of the filing of the petition, the certificate of title has *not* yet been issued in his name.

- b) In the absence of real estate worth P5,000, the alien may present evidence that he has some “known lucrative trade, profession, or lawful occupation.” While apparently the word “lucrative” modifies only “trade,” it has been held to also apply to “profession” and “lawful occupation”; thus, while to be a “student” is a “lawful occupation” still it is not by itself a “lucrative” one, and therefore comes short of the legal requirement. (*Lim v. Republic*, L-3920, Nov. 20, 1951). The term “lucrative” implies substantial or gainful employment, or the obtaining of tangible receipts. (*Lim v. Republic*, *supra*.). In *Felix Tan v. Republic*, L-19580, Apr. 30, 1965, the Court stated that for lucrative employment to be present, there must be an appreciable margin of income over expenses in order to provide for adequate support in the event of unemployment, sickness, or disability to work. The object is to forestall one’s becoming an object of charity. The lucrative level of an applicant’s income is determined as of the time of the filing of the petition. (*Sy v. Republic*, L-32287, Feb. 28, 1974). *The following have been held NOT sufficiently lucrative:*
- 1) An *annual* income of P8,687.50 when the petitioner has no real estate and has a wife and five children to support. (*Keng Giok v. Republic*, L-13347, Aug. 31, 1961). In this case, the applicant was the manager of a jewelry store, and his salary appeared to be declining every year.
 - 2) A *monthly* salary of P150.00, received by the petitioner as a salesman in his father’s grocery store. (*Que Choc Cui v. Republic*, L-16184, Sep. 30, 1961). [NOTE: The fact that the petitioner’s father is his employer, and that he still lives with him makes doubtful the truth of his employment, and gives rise to the suspicion that he was employed by his father only for the purpose of the petition. (*Justino O. Cu v. Republic*, L-13341, July 21, 1962).].
 - 3) A yearly income of P1,000 when the petitioner has a wife and 12 children to support (*Hao Su Siong*,

etc. v. Republic, L-13045, July 30, 1962), or even P5,000. This is so notwithstanding the fact that the petitioner may have NO children. (*Koa Gui v. Republic, L-13717, July 31, 1962*).

- 4) An annual income of P4,200 for a married applicant with three children. This is so even if the wife herself receives income from her coconut lands because the petitioner, not his wife, is the applicant. (*Uy v. Republic, L-19578, Oct. 27, 1964*).
- 5) An annual income of P5,234 in 1961, and P8,067 in 1962, petitioner having a wife and 5 children to support, it being immaterial that his income increases every year. (*Yap Bun Pin v. Republic, L-19577, Oct. 30, 1964*).
- 6) An annual income of P1,800 as a purchasing agent even if petitioner is unmarried and without a family, and even if occasionally, he receives substantial commissions as an insurance underwriter, because such income may be considered speculative in character. (*Felipe Tochip v. Republic, L-19637, Feb. 26, 1965*).
- 7) An annual income of P4,800 a year for a married man, even if *allowances* and *bonuses* are periodically given to him — because said additional amounts, given in case of profits, are purely contingent, accidental, or incidental. (*Yu Kian Chie v. Republic, L-20169, Feb. 26, 1965*).
- 8) An annual income of P8,000 proved by evidence introduced in court — when the income alleged in the petition is only P1,800 per annum. This is because *qualifications are determined as of the filing of the petition*. Here the increased income subsequent to the filing was due to additional earnings produced by the property inherited subsequent to the filing. (*Watt v. Republic, L-20718, Aug. 30, 1972*).

Upon the other hand, the following were *formerly* held to satisfy the statutory requirement:

- 1) A *monthly* salary of P250.00 of an unmarried and childless applicant. (*Republic v. Lim, L-3030, Jan. 31, 1951*).
- 2) A *monthly* salary of P80.00, with free board and lodging, of an unmarried, childless and working student. (*Lim v. Republic, 49 O.G. 122*).

However, in *Siong Hay Uy v. Republic, L-19845, Feb. 26, 1965*, the Court ruled that said case of *Lim v. Republic* (about the P80) has already been *abrogated* by *Chuan v. Republic (1964)*, *Koh Chit v. Republic (1964)*, *Tse v. Republic (1964)*, and *Tan v. Republic (1963)*. Similarly, in *Uy v. Republic, L-20799, Nov. 29, 1965*, it was ruled that the doctrine in *Republic v. Lim* (about the P250) can NO LONGER hold true today, for the value of the peso has declined considerably and the cost of living has kept on increasing.

So long as the income is sufficiently lucrative, it is not important that the petitioner should be the registered owner of the business from which he derives his income. The business may be registered in the name of his Filipino wife. This is conduct worthy of emulation because "it shows esteem of family, and this in turn, is an indication that he is a moral and law-abiding citizen." (*Ong Sang v. Republic, L-4609, Oct. 30, 1952*). It is understood of course that his wife should not be used as mere dummy to cover up illegal businesses.

Be it noted that in *Ramon Gan Ching Lim v. Republic, L-21859, Dec. 24, 1965*, the Supreme Court granted the petition for naturalization (incidentally, this was the only petition granted in 1965). Here the petitioner was a graduate in Mechanical Engineering from the National University but was engaged in farming. He had *cash* assets of P6,137.33 apart from his *fixed* assets (consisting of land with a market value of P13,000). He was single and had no descendants to support. He had an income of approximately P5,000 for the year 1962 and about the same for other years. The Court held that considering the circumstances, the applicant had *lucrative income*.

(8) Fifth Qualification – Language Requisites

- (a) The law says that the petitioner must “be able to *speak* and *write* English or Spanish and any one of the principal Philippine languages.” (*Sec. 2, Naturalization Law*).
- (b) A deaf-mute cannot speak, therefore, he cannot be naturalized. (*Orestoff v. Government, 40 O.G. 37, 13th Supp*). The ability to write may be inferred from the ability to speak in business and society. (*De Sero v. Republic, 53 O.G. 3425*). If the applicant can understand, but cannot speak and write the requisite languages, he is not qualified. (*Te Chao Ling v. Republic, L-7346, Nov. 25, 1955*). The finding by the trial court that the petitioner does not speak, read, and write Tagalog (the dialect or language he claims to know) must be given weight and value unless its finding is clearly erroneous. (*Lao Tek Sing v. Republic, L-14735, July 13, 1962*). Upon the other hand, faultless, fluent, and idiomatic language, is not essential; it is sufficient that in the petitioner’s association with Filipinos in daily life, he can understand them. (*Zuellig v. Republic, 83 Phil. 768*). This is particularly so if he was able to get along with his guerrilla comrades during the hazardous resistance movement during the Japanese occupation. (*Kookooritchkin v. Solicitor-General, 81 Phil. 435*). However, if the applicant when asked to write the words “Good morning sir, how are you?” wrote the following “Good morning sir, who ras you?” petitioner committed two mistakes, showing that he cannot write in the English language in a sufficient and intelligent manner which would warrant the conclusion that he possesses a working knowledge thereof. (*Lim Bun v. Republic, L-12822, Apr. 26, 1961*).
- (c) The law does *not* require a speaking and writing knowledge of BOTH English and Spanish, for the law says “OR” with reference to these two. The legal requirement regarding the alternative knowledge of English has NOT been abrogated with the adoption of Tagalog as an official language of this country, for after all, Tagalog or Filipino has not been declared the exclusive official language. (*Bautista v. Republic, 87 Phil. 818*).

- (d) The law, in *addition* to English OR Spanish requires “any one of the principal Philippine languages.” A dialect spoken by a substantial portion of the population of the country comes under the category of “principal Philippine language.” To this class, among others, belong TAUSUG, which is the Moro dialect in the province of Sulu; CHAVACANO, spoken in Cebu and Zamboanga (*Wu Siock Boon v. Republic*, 49 O.G. 489); and HILIGAY-NON (*Yap v. Solicitor-General*, 81 Phil. 486). The ability to speak and write any of the principal Philippine languages may be inferred from the lengthy residence in a city where the petitioner has been doing business (*Ong Ho Ping v. Republic*, L-9712, Apr. 27, 1957) or from his birth and residence all his life in the Philippines (*Leelin v. Republic*, 84 Phil. 352) or even from a technical and fluent command of English. (*Kookooritchkin v. Solicitor-General*, 81 Phil. 455). However, if there is nothing in the record to warrant the presumption of knowledge of a native dialect, and if *no* question in any dialect was ever propounded to him in order to demonstrate his knowledge thereof, the Court cannot simply presume such speaking and writing ability. (*Lorenzo Go v. Republic*, L-20019, Feb. 26, 1965).

(9) Sixth Qualification – Enrollment of Minor Children of School Age

- (a) The reason for this provision is for the children of the applicants (prospective Filipino citizens themselves) to learn and imbibe the customs, traditions, and ideals of Filipinos: this is preparatory to a life of responsible and law-abiding citizenship. (*Dee v. Republic*, L-3683, Jan. 28, 1953). Since under the law, naturalization generally gives the wife and minor children of the petitioner Philippine citizenship, it is necessary that the petitioner proves the filiation of his alleged children. (*Yu Kay Guan v. Republic*, L-12628, July 28, 1960).
- (b) Compliance with this provision must be *competently* and affirmatively shown, otherwise, the application will have to be denied. (*Chan Su Hok v. Republic*, L-3470, Nov. 27, 1951). The educational requirement cannot be exacted

from those whose children are not of school age. (*Yu Kay Oh v. Republic, L-10084, Dec. 19, 1957*). Enrollment of the minor children of school age in the designated schools is sufficient; their completion of primary and secondary education is not demanded under this provision. (*Yrostorza v. Republic, 83 Phil. 727*). Enrollment in an exclusive Chinese school does not satisfy the law (*Chua Pieng v. Republic, 48 O.G. 4349*), unless, of course, the Government recognizes it and Philippine history, government, and civics are taught therein or are prescribed as part of the curriculum. (*Uy Yu v. Republic, L-5592, Dec. 21, 1953*).

- (c) All the children concerned should have been enrolled; this is completely mandatory. Failure to enroll *even* one of them will result in a denial of the petition even if:
- 1) he happens to be out of the Philippines and he could *not* be brought to the Philippines because of insufficient finances. (*Tan Hi v. Republic, L-3354, Jan. 25, 1951*). If, of course, it is physically impossible to bring back the child to the Philippines, this would be a justifiable excuse. (*Hao Lian Chu and Haw Pusoy v. Republic, 87 Phil. 668*). However, the mere outbreak of the Civil War in China is not an adequate ground. (*Koe Sengkee v. Republic, L-3863, Dec. 27, 1951*).
 - 2) the absent child was born and grew up in China and is already married (*Dy Chan Tiao v. Republic, L-6430, Aug. 13, 1954*) or has already reached the age of majority. (*Quing Ku Chay v. Republic, L-3265, Dec. 27, 1951*).
 - 3) the child died before or during the pendency of the proceedings. (*Chua Pieng v. Republic, 48 O.G. 4349*).
 - 4) and finally, even if the child is adopted by a Filipino (*Tan Hoi v. Republic, L-15266, Sept. 30, 1960*) since after all, said adopted child by virtue of the adoption does NOT become a Filipino (*Ching Leng v. Galang, L-11931, Oct. 27, 1958*) but remains a Chinese child, one who stands to become a Filipino himself should

his father by nature be granted naturalization. (*Tan Hoi v. Republic, supra*). However, if the child of the petitioner resides in a place where there is *no* school for deaf and mute children, failure to enroll said child may be considered justified. (*Garchitorena, etc. v. Republic, L-15102, Apr. 20, 1961*).

- d) The denial of the first petition for naturalization by reason of applicant's failure to bring to the Philippines his child of school age is a bar to the grant of a subsequent petition *even* if at the time the new petition is presented, the child is no *longer* of school age. (*Yap Chun v. Republic, L-18516, Jan. 30, 1964*).

(10) Disqualification for Naturalization

Sec. 4. *Naturalization Law*. The following cannot be naturalized as Philippine citizens:

- (a) Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;
- (b) Persons defending or teaching the propriety of violence, personal assault, or assassination for the success and predominance of their ideas;
- (c) Polygamists or believers in the practice of polygamy;
- (d) Persons convicted of a crime involving moral turpitude;
- (e) Persons suffering from mental alienation or incurable contagious diseases;
- (f) Persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos;
- (g) Citizens or subjects of nations with whom the United States and the Philippines are at war;
- (h) Citizens or subjects of a foreign country other than the United States, whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof.

COMMENT:

- (a) The burden of proof as to qualifications is on the applicant; the burden of proceeding with respect to the *disqualifications* is ordinarily on the State. The State is not, however, bound by what are contained in the pleadings relating to qualifications and disqualifications. (*Yap Chin v. Republic, L-4177, June 29, 1952*). However, in *Singh v. Republic, 51 O.G. 5172*, the Court held that a petitioner must establish by proof that he has NONE of the disqualifications. This ruling was reiterated by *Ly Hong v. Republic, L-14630, Sep. 30, 1960*. The reason, according to the Court is that the Naturalization Law should be strictly construed, and doubts resolved, against the applicant. As a matter of fact, even without any objection on the part of the Government (Solicitor-General's Office), the Court may *motu proprio* (on its own accord) DENY the application if the evidence fails to prove that all the requirements have been met. (*Pe v. Republic, L-16980, Nov. 29, 1961; Hao Su Siong, etc. v. Republic, L-13045, July 30, 1962*).
- (b) Re Par. (c) — Mere belief in polygamy without practising it is enough to disqualify.
- (c) Re Par. (d) — Moral turpitude is that which shows in a person the unit of injustice, dishonesty, immodesty, or immorality. Crimes involving moral turpitude include estafa (*Villasanta v. Peralta, 54 O.G. 954*), concubinage (*In re: Isada, 60 Phil. 915*), and profiteering (*Tak Ng v. Republic, L-13017, Dec. 23, 1959*), but not “speeding” (*Daniel Ng Teng Lin v. Republic, L-10214, Apr. 28, 1958*), nor the playing of “mahjong” during prohibited hours. (*Chiong v. Republic, L-10976, Apr. 16, 1958*).
- (d) Re Par. (e) — The disease must be BOTH incurable and contagious to constitute a disqualification.
- (e) Re Par. (f) — This may be rebutted by a complete (from grade school to college) education in the proper Philippine schools. (*Joaquin Yap v. Republic, L-11178, Apr. 23, 1958*). The law requires however, that an applicant should “mingle socially” with Filipinos as a fact, and is not content with personal beliefs to that effect. The burden laid on an applicant to affirmatively show that he maintains social

relations with the Filipinos must be shown by concrete instances (with dates, places, names). The law demands that the “social mingling” takes place during the ENTIRE period of residence in the Philippines in order to preclude any temporary sporadic social intercourse set up only for naturalization purposes. Receipts for contributions to charitable organizations will not suffice for these contributions may have been made without any significant social intercourse to mingle socially, an applicant must deal with and receive Filipinos in his home, and visit Filipino homes in a spirit of friendliness and equality without discrimination. (*Chua v. Republic, L-19775, Sep. 29, 1964*). Enrollment of the children at a Chinese school, even if it is recognized by the Government, argues against the alleged sincere desire of the petitioner to embrace Filipino customs and traditions, as well as to mingle socially with the Filipinos, for he could have enrolled his children in a school owned or run by Filipino citizens. In the Chinese school referred to, most of the students are Chinese or foreigners, with the Filipinos forming the minority. (*Uy Ching Ho v. Republic, L-19582, Mar. 26, 1965*).

- (f) Re Par. (h) — The petitioner must prove that his country allows the naturalization of Filipino citizens. (*Singh v. Republic, 51 O.G. 5172*). Among the countries already shown to grant reciprocal naturalization right to Filipinos are the United States by Public Act 483 of the 79th U.S. Congress (*Pritchard v. Republic, 81 Phil. 244*), Nationalist China (*Yap v. Solicitor-General, 84 Phil. 217*), and Spain (*Delgado v. Republic, L-2564, Jan. 28, 1950*). Formerly, it was not necessary for petitioner to show that the laws of Nationalist China (now Taiwan) allow Filipinos to be citizens of that country, it being sufficient that he submits proof of Chinese citizenship. The reason then given by our Court is that in a number of decisions, it has been found that indeed Filipinos may be naturalized in Nationalist China. (*Cu v. Republic, 51 O.G. 5625; Ng Liam Keng v. Republic, L-14146, Apr. 29, 1961*). HOWEVER, the Court later reversed this dictum on the ground that laws may be *repealed* at anytime, and the applicant must therefore fully establish that his nation grants reciprocal rights to our citizens at the time his application is heard. The bur-

den of proof is on petitioner. (*Chua v. Republic, L-19775, Sep. 29, 1964*). Upon the other hand, the applicant does not have to obtain permission from his country to renounce his original citizenship or nationality. It is enough that our rules are complied with; to seek compliance with the rules of other countries would be in a case such as this “a brazen encroachment upon the sovereign will and power of the people of this Republic.” (*Pardo v. Republic, 86 Phil. 340*). In the case of stateless citizens, they may be naturalized without proving that their original country grants reciprocal rights to Filipinos in this matter. (*Kookoo-ritchkin v. Republic, 81 Phil. 435; Bermont v. Republic, L-3323, July 18, 1951*).

(11) Steps in Naturalization Proceedings

- (a) A declaration of intention to become a Filipino citizen must first be filed, unless the applicant is exempted from this requirement. (*Secs. 5 and 6, Commonwealth Act 473*).
- (b) The petition for naturalization must then be filed. (*Sec. 8, Commonwealth Act 473*).
- (c) The petition will then be heard. (*Sec. 9, Commonwealth Act 473, as amended*).
- (d) If the petition is approved, there will be a rehearing two years after the promulgation of the judgment awarding naturalization. (*Sec. 1, Republic Act 530*).
- (e) The last step will be the taking of the oath of allegiance to support and defend the Constitution and the laws of the Philippines. (*Sec. 11, Commonwealth Act 473, as amended*).

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A decision in a petition for naturalization becomes final only after 30 days from its promulgation and, in-

sofar as the Solicitor General is concerned, that period is counted from the date of his receipt of the copy of the decision.

Under Sec. 9 of the Revised Naturalization Law, both the petition for naturalization and the order setting it for hearing must be published once a week for three consecutive weeks in the *Official Gazette* and a newspaper of general circulation.

(12) The Declaration of Intention

(a) *The Codal Provision*

“One year prior to the filing of his petition for the admission to Philippine citizenship, the applicant for Philippine citizenship shall file with the Office of the Solicitor General a declaration under oath that it is his *bona fide* intention to become a citizen of the Philippines.” (*Sec. 5, Naturalization Law*).

(b) *Mandatory Character*

Unless the applicant is exempted by law, the filing of this intention is mandatory, and failure would be fatal. (*Chua Pieng v. Republic, L-4032, Oct. 25, 1952; Ong Khan v. Republic, L-4866, Oct. 28, 1960*). A filing fee of P10.00 must be paid simultaneously with the filing of the declaration. This fee is provided for in a regulation issued by the Secretary of Justice.

Even if the declaration is filed one year prior to the filing of the petition for naturalization, still if the filing fee for such declaration is paid later, say, 5-1/2 months prior to the petition for naturalization, the filing of the declaration produces NO legal effect. (*Lee v. Republic, L-15027, Jan. 31, 1964*, where the Court applied a *pari materia* ruling in *Lazaro v. Endencia, 57 Phil. 552*).

(c) *Reasons for the Provision*

Firstly, the period of one year is intended to give the State a reasonable time to screen and study the qualifications of the applicant (*Chua v. Republic, L-4112, Aug.*

28, 1952); *secondly*, it is a means by which good intention and sincerity of purpose may be gauged. (*Kiat v. Republic L-4802, Apr. 29, 1953*).

(d) *Contents of the Declaration*

Aside from the *bona fide* intention to become Filipino, the declarant must also set forth his name and personal circumstances, and that “he has enrolled his *minor* children if any, in any of the public schools or private schools recognized by the Bureau of Private Schools of the Philippines (now the Department of Education, Culture, and Sports), where Philippine history, civics, and government are taught or prescribed as part of the school curriculum, during the *entire* period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen. Each declarant must furnish two photographs of himself. (*Sec. 5, Naturalization Law*).

(e) *Persons Exempt From the Requirement to Make a Declaration of Intention:*

- 1) Persons *born in the Philippines* and who have *received* their *primary and secondary education* in public schools or private schools recognized by the Government, and not limited to any race or nationality;
- 2) Those who have resided *continuously* in the Philippines for a period of *thirty years or more* before filing their application;
- 3) The widow and minor children of an alien who has declared his intention to become a citizen of the Philippines and dies before he is actually naturalized.

NOTE: In the cases above-mentioned it is also necessary that the applicant has given primary and secondary education to ALL his children in the public schools or in private schools recognized by the government and not limited to any race or nationality. (*Sec. 6, Naturalization Law*). See also *Tan Ten Koc v. Republic, L-18344, Feb. 28, 1964*, where the Court ruled that a petitioner whose

children stopped schooling merely because of marriage and illness, is NOT exempt from filing the declaration of intention if he is *not* able to present satisfactory proof that said marriage and illness made it ABSOLUTELY necessary for the children to stop going to school. In this case, the petitioner, despite his 30 years of residence was NOT granted the benefit of the exemption.

(f) *Strict Interpretation of the Exemptions*

- 1) Regarding No. 1 in the preceding number, aside from birth in the Philippines, the applicant who wishes exemption from the declaration of intention must have COMPLETED his secondary course. This is the interpretation given by the Court to the phrase "received their primary and secondary education." (*Pidelo v. Republic, L-7796, Sep. 29, 1955*). Thus, finishing a part of the fourth year course in high school is not enough (*Dy v. Republic, 49 O.G. 939*) unless at the time of the filing and hearing of the petition, he is still enrolled in said fourth year, in which case, the law does not demand an impossibility. (*King v. Republic, L-3264, Nov. 29, 1950*). In the *King case*, the Court ruled that substantial compliance was sufficient, considering the circumstances of the case; in *Uy Boco v. Republic, 85 Phil. 320*, the Court held that in general, there should be a strict, not a mere substantial compliance with the law. However, while the petitioner himself must have COMPLETED his secondary education, his children need not have finished the same; it is sufficient that they are enrolled (*Tan v. Republic, L-1551, Oct. 31, 1949*), unless they are not yet of school age. (*Gotauco v. Republic, 55 O.G. 2247*). The best evidence to show the respective ages of the children would be their birth certificates. Failure to submit said certificates would be FATAL. (*Hao Su Siong, etc. v. Republic, L-13045, July 30, 1962*). All the children of school age must have been enrolled. (*Ng Sin v. Republic, L-7590, Sep. 20, 1955*). Needless to say, the enrollment does not have to be during the entire *period*

of residence for otherwise the children would be in school for ever so long: absurd or impossible situations were never intended by the drafters of the law. (*Pritchard v. Republic*, 81 Phil. 244). For one of the children not to be given secondary education simply because she got married is not a valid excuse. (*Lee Cho v. Republic*, L-12408, Dec. 28, 1958). However, in *Ong Kue v. Republic*, L-14550, July 26, 1960, the Court allowed marriage as a justifiable excuse for not continuing with the proper studies, inasmuch as by virtue of such marriage, the girl was released from the parental authority of the applicant. In the same case, the Court also considered ill-health, attested to by a medical certificate of another child as a valid reason for not completing her secondary education. In *Sy Kiap v. Republic*, 44 O.G. 3362, the Court had the occasion to say that the enrollment in government-approved schools of the Philippines in addition to other requisites was required since such is one of the tests of the *bona fide* intention of the applicant to become a citizen: this would forestall aliens and their minor children from becoming citizens of this country without knowing its institutions and the duties of citizenship. In *Lee Ng Len v. Republic* (L-20151, Mar. 31, 1965), the Supreme Court stressed that the burden lies on the *applicant* to satisfactorily show that all schools attended by him are NOT LIMITED to students of a particular nationality, and are regularly attended by a *sizeable number of Filipino students* from whom applicant could have imbibed Filipino customs and traditions. In case of failure to prove this, applicant cannot be considered exempt from filing the declaration of intention. (*Ang Ban Giok v. Republic*, L-26949, Feb. 22, 1974).

- 2) Regarding No. 2 in the preceding number, it has been held that for the person to be exempt from the filing of the declaration of intention, the residence here of thirty years must be actual and substantial not a mere legal residence. (*Dy v. Republic*, 48 O.G. 4813; *Kiat Chun Tan v. Republic*, L-4802, Apr. 29, 1953;

Co Cho v. Republic, L-17917, Apr. 30, 1964). A mere six months absence from our country, with, however, the intent to return here does not interrupt the 30 years “continuous” residence. (*Ting v. Republic, 54 O.G. 3496*). A residence here, however, of only 29 years is not enough to exempt the petitioner from filing the declaration of intention. (*Chua v. Republic, L-4112, Aug. 28, 1952*). If the applicant did not file a declaration of intention because he thought that while a minor, he could be considered a resident here — because of the Philippine residence of his *father* — although said *minor* was actually in China, he will be denied naturalization. The rule that a minor follows his father’s residence does NOT apply when the residence required is ACTUAL. (*See Yek Tek v. Republic, L-19898, June 28, 1965*).

- 3) Regarding No. 3, it has been held that the right given to the widow and the minor children of the petitioner who has died, to continue the proceedings, APPLIES whether the petitioner dies before or after final decision is rendered, but before judgment becomes executory. The widow may be allowed to take the oath of allegiance once the naturalization proceeding of her deceased husband shall have been completed on her own behalf and of her children, if she herself might be lawfully naturalized. (*Tan Lin, et al. v. Republic, L-13786, May 31, 1961*).
- (g) **QUERY:** Is it a *jurisdictional* requirement for the petition for naturalization to *state* that the applicant has filed a declaration of intention or is exempt from making such a declaration?

ANSWER: If the ruling enunciated by the Supreme Court in the case of *Sy Ang Hoc v. Republic, L-12400, Mar. 29, 1961*, is to be strictly adhered to, the answer is a resounding *yes*. This would be a veritable legal bombshell; it would destroy, on the ground of lack of jurisdiction, so many “fiscal decisions” on the matter of naturalization. In *Sy Ang Hoc case*, while the declaration of intention was

really filed with the Office of the Solicitor-General within the proper period, still this fact of compliance was NOT AVERRED in the PETITION for citizenship. The Court ruled that this was a JURISDICTIONAL DEFECT. The Court observed:

“*Sec. 7 of Commonwealth Act 473 requires that there should be an averment in the petition for naturalization that the petitioner has complied with the requirements of Sec. 5 of said Act, which refers to the filing of the declaration of intention to become a Filipino citizen, one (1) year prior to the filing of the petition for naturalization, in this particular case, June 16, 1954. Petitioner has not averred in his petition that he has complied with the requirements of Sec. 5 of this Act. It is TRUE that on May 22, 1963, within the reglementary period, the petitioner filed with the Office of the Solicitor-General a declaration of intention (Exh. D). But the law provides specifically that the filing of the declaration of intention must be averred in the petition. The declaration of intention is so essential in cases of naturalization that its incorporation in the petition has become jurisdictional.*”

If by “incorporation” is meant the *attaching* of the declaration of intention as an integral part of the petition, not much damage will be done to the decided cases on naturalization. But if the word means that the averment must be made in the petition itself, even though the declaration of intention is already attached, this appears to be a little absurd and trivial. To say that lack of such an averment is a JURISDICTIONAL defect would, like a megaton bomb, rend into pieces many “final judgments” on naturalization. It need not be pointed out that all too often, such an averment has NOT been done. As has been previously intimated, the Court has held in the case of *Republic v. Co Bon Lee, L-11499, Apr. 29, 1961*, that:

“Unlike final decisions in actions and other proceedings in court, a decision or order granting citizenship to the applicant *does not* really become

executory; and a naturalization proceeding, not being a judicial adversary proceeding, the decision rendered therein is not *res judicata* as to any of the reasons or matters which would support a judgment cancelling the certificate of naturalization for illegal or fraudulent procurement. As a matter of fact, it is settled in this jurisdiction that a certificate of naturalization may be cancelled upon grounds or condition *subsequent* to the granting of the certificate of naturalization.”

(13) Filing of the Petition for Naturalization

(a) *Where petition is to be filed*

After the lapse of one year from the time the declaration of intention (if married) is filed, the petition itself for naturalization may be presented in court. Under Sec. 8 of the Naturalization Law, “The Court of First Instance (now Regional Trial Court) of the province in which the petitioner has *resided* for at least *one* year immediately *preceding the filing of the petition* shall have exclusive original jurisdiction to hear the petition.”

Let it be noted that the law says “*preceding the filing*” not “*preceding the hearing*.” (*Squillantini v. Republic*, L-2785, Jan. 31, 1951). The “residence” required under this particular provision is not physical, actual, or substantial residence; mere LEGAL residence is sufficient. (*King v. Republic*, L-72687, May 23, 1951). Thus, in one case, an applicant residing in one province, had to temporarily stay in another province during the entire period of the Japanese occupation. The court held that for the purpose of the provision now under consideration, the petition must be filed in the first province. (*Chan Kim Lian v. Republic*, 49 O.G. 128). In another case, a Pasay resident who had to leave his damaged house in Pasay and stay temporarily in Manila was deemed by the Court not to have abandoned his Pasay residence. (*Zuelig v. Republic*, 83 Phil. 786). Indeed, the intent to return (*animus revertendi*) must always be taken into account in

the determination of one's domestic residence. (*King v. Republic, supra*). The purpose of the one-year residence is to facilitate the determination by official authorities of the different activities of the applicant, specially with regard to his qualifications. (*Chieng Yen v. Republic, L-18885, Jan. 31, 1964*). It has been held that the petition must be denied when the applicant fails to state in his petition his present and former places of residence. (*Koa Gui v. Republic, L-13717, July 31, 1962*). The omission in the petition of some of applicant's former places of residence is in itself a sufficient disqualification. (*Yeng v. Republic, L-18885, Jan. 31, 1964; Ang To v. Republic, L-26952, Aug. 30, 1972; and Ong Chia v. Republic of the Phils. and CA, GR 127240, Mar. 27, 2000*). The purpose of indicating all former places of residence is to facilitate a checking up of applicant's activities. (*Long v. Republic, L-18758, May 30, 1964*). An omission of this requirement therefore, in effect falsifies the truth and indicates a lack of good moral character. (*Giok v. Republic, L-13347, Aug. 31, 1964*). Evidence presented during trial will not cure the original defect. (*Qua v. Republic, L-19834, Oct. 27, 1964*). The failure of the applicant to mention the name he had been baptized with is FATAL because persons who might have derogatory information against such name might not come forward with it in the belief that the applicant is a different person. (*Kwan Kwock How v. Republic, L-18521, Jan. 30, 1964*).

The affidavit of two *credible* persons must support the petition for naturalization. Said persons must state:

- 1) That they are citizens of the Philippines;
- 2) That they personally know the petitioner to be a resident of the Philippines for the period of time required by the Naturalization Law;
- 3) That the petitioner is a person of good repute and is morally irreproachable;
- 4) That he has, in their opinion, all the qualifications, and none of the disqualifications for naturalization. (*Sec. 7, Naturalization Law*).

Within the purview of the Naturalization Law, a “credible person” is one who has a good standing in the community, one known to be honest and upright. Evidence must be presented on this point. (*Dy Shin Sheng v. Republic*, L-13496, Apr. 27, 1960). The two “credible persons” which the law demands are in a sense insurers of the applicant’s qualifications and lack of disqualifications, and hence in themselves, must be individuals of probity and good standing in the community. Thus, an employment as a bookkeeper in a Chinese firm for over thirty years is not necessarily satisfactory proof of probity and good standing in the community; neither is mere membership in the police force, particularly if the policeman character-witness had once upon a time been accused, although acquitted, of a violation of our opium laws. (*Tek v. Republic*, L-19831, Sep. 30, 1964). Where the character witnesses’ knowledge of the applicant was derived principally from occasional business dealings, such character witnesses cannot be considered competent, because said business dealings afford little room for personal matters and do not provide a reliable basis for gauging a person’s moral character. (*Uy v. Republic*, L-19578, Oct. 27, 1964). A mere customer of the applicant’s store cannot act as such witness, neither a person who is a mere neighbor who meets the petitioner every day and possesses a nodding acquaintance with him. (*Tse v. Republic*, L-19542, Nov. 9, 1964). The relationship must not be merely on the business level; there must be social relations — friendship more or less with the petitioner’s parents, brothers, and sisters. (*Saw Cen v. Republic*, L-20310, Apr. 30, 1965). A witness who resides in a place different from where the applicant lives is likewise disqualified to be a witness for him. (*Lara v. Republic*, L-18203, May 29, 1964). What must be “credible” is not necessarily the testimony itself, but the person giving it. (*Si Ng v. Republic*, L-16828, May 30, 1962; *Ong Ling Chuan v. Republic*, L-18550, Feb. 28, 1964). Ordinarily, the affiant must be the very ones presented during the hearing (*Singh v. Republic*, 51 O.G. 5172), unless of course good reasons exist for a substitution as in the case of death (*Pe v. Republic*, 52 O.G. 5855) or unexpected absence. (*Ong v. Republic*, 55 O.G. 3290).

With reference to (b), it should be noted that the witnesses are not required to attest and testify to the conduct of the applicant during the ENTIRE period of his residence in the Philippines; it is enough that the knowledge is for the period of time REQUIRED under the Naturalization Law. Upon the other hand, the period of infancy or childhood is NOT included in the phrase “during the entire period of his residence in the Philippines.” Such period refers to that time when a person becomes conscious and responsible for his acts and conduct in the community where he lives. (*Dy Lam Go v. Republic, L-15858, July 31, 1962*). The witnesses however, must NOT be under the authority or influence of the petitioner. (*Lo v. Republic, L-15919, May 19, 1961*). Hence, the circumstances that one of the witnesses was the lawyer of petitioner’s father lends doubt as to the veracity of his testimony, and leads one to conclude that his declarations are biased and untrustworthy. (*Ong Ling Chuan v. Republic, L-18550, Feb. 28, 1964*). To prove the “good repute” of the petitioner, the personal opinion of the two witnesses that the applicant is a hardworking, law abiding and a credit to the community is NOT sufficient. For “good repute” primarily means the opinion of the community about the petitioner, not just the opinion of two individuals. (*Kwan Kwock How v. Republic, L-18521, Jan. 30, 1964*).

Gerardo Angat v. Republic of the Philippines
GR 132244, Sep. 14, 1999, 112 SCAD 410

RA 965 and RA 2630 are laws applicable to persons who had lost their citizenship by rendering service to, or accepting commission in, the armed forces of an allied foreign country or the Armed Forces of the United States of America.

Parenthetically, under these statutes, the person desirous to reacquire Philippine citizenship would not even be required to file a petition in court, and all that he had to do was to take an oath of allegiance to the Republic of the Philippines and to register that fact with the civil registry in the place of his residence or where he had last resided in the Philippines.

(14) The Hearing of the Petition

After proper publication once a week for three consecutive weeks in the *Official Gazette*, and in one of the newspapers of general circulation in the province where the petitioner resides, and proper posting of the petition, the same shall be heard by the court. (*Sec. 9, Naturalization Law*). The publication must be in a newspaper of general circulation not only in the province where the petition is made but also in places where the petitioner spent the greater part of his youth. (*Antonio Jao v. Republic, L-23116, Jan. 24, 1968*). Failure of the appellant to publish his petition “once a week for *three consecutive weeks*” is fatal to the petition because this affects the jurisdiction of the trial court. This is so even if at the time publication was made, the *Official Gazette* came out once only every MONTH. What should be done in this case would be to publish the same once a month for *three consecutive MONTHS*. Failure on the part of the government to object is immaterial for the defect is fatal, impairing as it does the very root or foundation of the authority to decide the case regardless of whether the one to blame therefor is the Clerk of Court or the petitioner or his counsel. (*Cy Quing Reyes v. Republic, L-10761, Nov. 29, 1958; Tan Cona v. Republic, L-13224, Apr. 27, 1960*). To avoid unfairness however, the abovementioned ruling must NOT ADVERSELY affect previous judgments on naturalization. For generally, as the Supreme Court itself has stated (wisely or not) correction of judicial errors must be given *prospective* effect.

Tam Tek Chian v. Republic
102 SCRA 129
L-21035, Jan. 22, 1981

If the statutory requirement of notice in three consecutive issues of the Official Gazette is not complied with, this is a jurisdictional defect (*See Gan Tsitung v. Republic, 19 SCRA 401*) and this ruling affects the validity of certificates of naturalization issued after, not on or before May 29, 1957. (*NOTE* — The ruling is that if the O.G. is not published weekly, the 3-time publication requirement refers to a 3-time *monthly* publication).

The purpose of the publication is to apprise the public of the pendency of the petition so that those who know of any legal objection to it may come forward with said information (*Yu Seco v. Republic, L-13441, June 30, 1960*), so that the Office of the Solicitor-General (not the complainant himself) may properly speak for the Government. (*Anti-Chinese League v. Felix and Lim, L-998, Feb. 20, 1957; Go v. Anti-Chinese League and Fernandez, 84 Phil. 468*). The non-inclusion of the alias of the petitioner in the publication of the petition is FATAL, for it deprives a person, knowing the petitioner by said alias, of the opportunity to come forward, and inform the authorities of anything that may affect the petition. The defect is therefore JURISDICTIONAL. [Of course, if the *alias* was without judicial authority, this defect by itself would result in the denial of the petition for the use of said alias is illegal. (*Dy v. Republic, L-21958, Sep. 28, 1950; Saw Cen v. Republic, L-20310, Apr. 30, 1965*)]. If the original petition is void for non-compliance with the law, it is essential that the amendatory petition be also published anew in accordance with Sec. 9 of the Naturalization Law. (*Joaquin Tan v. Republic, L-19897, June 24, 1965*). If the records do *not* show that the copies of the petition, and the general notice of the hearing of the petition were posted at a public and conspicuous place in the municipal building, this discrepancy constitutes a jurisdictional defect. (*Tan Kong Kiat v. Republic, L-19915, June 23, 1965*). The requirement that the *certificate of arrival* be made part of the petition is *mandatory*. Failure in this regard is fatal. (*Yu Ti v. Republic, L-19913, June 23, 1965*). If after due hearing it is proved that the applicant has all the qualifications and none of the disqualifications, it is MANDATORY for the court to grant the petition. What the law grants, the court is not allowed to deny. (*Go v. Anti-Chinese League, supra*). In case of an appeal, the period of thirty days must be counted from the date the Solicitor-General receives copy of the decision. This is true even if the Solicitor-General had previously directed the fiscal or the city attorney to appear in behalf of the Solicitor-General and even if said fiscal or attorney had received his own copy of the decision *earlier*. This is so because the authorization cannot be construed to have divested the Solicitor-General of his control of the stand or defense of the state. (*See Sec. 10, Revised*

Naturalization Law; Republic v. Chiu and Hon. Abbas, etc., L-20846, Oct. 31, 1964).

(15) Rehearing After Two Years in Case of Approval of the Petition

- (a) Even if the Court approves the petition, the decision will *not* be executory until two years from its promulgation. Certain conditions will have to be fulfilled and proper proof thereof must be presented. The pertinent law on this matter is Rep. Act 530, amending the Naturalization Law. Said Rep. Act was approved on June 16, 1950. It was published in 46 O.G. 4729.

**REPUBLIC ACT 530
AN ACT MAKING ADDITIONAL
PROVISIONS FOR NATURALIZATION**

Section 1. The provisions of existing laws notwithstanding, no petition for Philippine citizenship shall be heard by the courts until *after six months* from the publication of the application required by law, nor shall any decision granting the application become executory until after two years from its promulgation and after the court, on proper hearing with the attendance of the Solicitor-General or his representative is satisfied and so finds that during the intervening time the applicant:

- (1) has not left the Philippines,
 - (2) has dedicated himself continuously to a lawful calling or profession,
 - (3) has not been convicted of any offense or violation of government promulgated rules,
 - (4) or committed any act prejudicial to the nation or contrary to any Government announced policies.
- (b) *Comment:*

The purpose of the two-year period is to place the petitioner on probation. (*Dee Sam v. Republic L-9097, Feb.*

29, 1956). The period starts from the time the judgment becomes final: thus, if the government does NOT appeal, the starting period begins from the time the judgment of the trial court is promulgated; if the government appeals, the period starts from the time the appellate court promulgates its judgment awarding naturalization. These rules are obvious, for it is only upon final judgment that the authorities concerned will know that naturalization is about to be granted; hence, from that time, a close scrutiny of the petitioner's conduct will be made. (*Republic v. Makalintal*, 48 O.G. 4346; *Chaustinek v. Anti-Chinese League and Fernandez*, 50 O.G. 1499; *Pisingan Chiong v. Republic*, L-15313, Mar. 25, 1961). During the hearing on the petition to take oath, any question affecting the qualification of the applicant may be invoked. (*Lim Hok Albano v. Republic*, L-10912, Oct. 31, 1958). On appeal therefore, the appellate court can inquire whether or not applicant is not disqualified for naturalization. (*Ong Ching Guan v. Republic*, L-15691, Mar. 27, 1961). The failure of an applicant to pass successfully (without violation of the requirements) the two-year probationary period results in the loss of whatever rights he may have acquired under the decision authorizing his naturalization inasmuch as said decision was *rendered nullified* by a subsequent one denying the grant of the certificate of naturalization (denied because the applicant had been convicted during the probationary period for the violation of a municipal ordinance). The order of denial, when it became final, nullified the prior authorization, and from that time of finality, this particular naturalization proceeding may be considered to have *terminated*. It is of no moment that an absolute pardon was subsequently granted. Whatever its nature, the fact still remains that it was granted *subsequent* to the denial of his petition for the issuance of the certificate. It is well-settled that a pardon has no retrospective operation. (67 C.J.S. Sec. 11, p. 578). It can have NO effect upon judicial proceedings already terminated. (*Republic v. Maglanoc, etc.*, L-16848, Feb. 27, 1963, citing *Isasi v. Republic*, L-9823, Apr. 30, 1957).

(c) *Comment: Re-Leaving the Philippines*

During the two-year probation period, the *physical* presence of the petitioner in the Philippines is required, not mere legal residence, otherwise the government will not have the opportunity to observe and scrutinize his conduct. Unless he be actually in our country, how can he dedicate himself to a lawful calling and profession? Moreover, if he be allowed to stay abroad, he may commit in a foreign soil acts inimical to our interests. (*Uy v. Republic*, 52 O.G. 5874). Should he leave our shores, the fact that he intends to return or that he has no desire of establishing a domicile elsewhere is immaterial. The law on this matter does not speak of residence or domicile; it says: "left." (*Te Tek Lay v. Republic*, 51 O.G. 5154). In certain cases, however, the physical absence from the Philippines may be excused; if the petitioner leaves for abroad on a government mission; if he has been kidnapped or forcibly removed from the country, if he has to go and stay abroad, to undergo an operation to save his life (*Uy v. Republic*, *supra*); but not if the purpose is to obtain a medical check-up, or to strengthen business connections (*Uy v. Republic*, *supra*), or to help in the settlement of the estate of a relative (*Dee Sam v. Republic*, L-9097, Feb. 29, 1956), or to help his wife obtain medical treatment abroad (*Isasi v. Republic*, 53 O.G. 6529), or to gather information abroad on insurance matters in behalf of his firm, even, if incidentally, he may be able to obtain a presidential appointment to act as representative of the Philippine government, particularly when such appointment has been given merely to accommodate him and give some official color to the trip. (See *Ivanovich v. Republic*, L-15998, May 26, 1964).

Ivanovich v. Republic
L-15998, May 26, 1964

FACTS: On March 20, 1957, petitioner was allowed by the trial court to become a Filipino citizen in a resolution promulgated for that purpose subject to the provisions of RA 530. During the two-year probationary period, he requested permission from the lower court to leave the

Philippines for business reasons. Although his request was denied, he went abroad just the same. Petitioner now contends that he went abroad to gather information on insurance and re-insurance schemes being used in other countries in the interest of the company he represents but at the same time he was appointed by the President of the Philippines "as representative of the Republic of the Philippines to observe economic trends in connection with social security system and insurance treaties in foreign countries." With this contention, he desires to convey the impression that he left the Philippines not of his own volition but at the instance of the government.

HELD: This contention is belied by his own evidence. Thus, in his own letter to Solicitor-General mentioned elsewhere, he indicated that his purpose in going abroad was principally for the benefit of the Fieldmen's Insurance Company, Inc. of which he is the Executive Vice President, General Manager, and Chief Administrative Officer elected by its Board of Directors to make the necessary contact with its re-insurers abroad in the shortest time possible. He emphasized that as such official, it was his duty to establish fresh contact in the world re-insurance market for the re-insurers requirement of said company and that "he is going to journey in Europe and also in America, which trip is scheduled to be during the middle part of August 1, 1957 and is expected not to exceed three months," all in behalf of the Fieldmen's Insurance Company, Inc.

It is true that petitioner is invoking in his behalf a letter of then President Carlos P. Garcia wherein apparently he was given authority to go abroad as a representative of the Republic of the Philippines "to observe economic trends in connection with social security system and insurance treaties in foreign countries." But this letter cannot give him comfort, for there it appears that he was to be given a formal appointment for that purpose but that his trip would be at his own expense. It also appears that such appointment was never extended. At any rate, even if the required authority were given by our government still it could not erase the impression that his trip

abroad was in the interest of his business concern, for it is to be presumed that his designation was extended merely to accommodate him just to give some official color to his trip. Certainly, such trip cannot furnish any valid justification for *infringing the letter and spirit of Republic Act 530*.

- (d) *Comment: Re Dedication to a Lawful Calling or Profession*

Said calling or profession must be exercised in the Philippines during the two-year period. (*Uy v. Republic, supra*).

- (e) *Comment: Re Non-Conviction or Violation*

The law says “not been convicted.” Hence, it is not essential that the offense or violation was “committed” during the two-year period. If the *commission* was before the two-year period but the *conviction* was within said time, the petitioner will not be allowed to take his oath. (*Tiu San v. Republic, L-7301, Apr. 20, 1955*). Upon the other hand, if the *commission* was within the time specified in the law, but conviction has not yet taken place because of the pendency of the case in court, the oath-taking will be postponed until after the final adjudication of the charge: if acquitted, oath-taking will come next; if convicted, it is clear that the oath will never be taken. (*Ching Leng v. Republic, L-6268, May 10, 1954*).

Be it noted also that the law says, “has not been convicted of any offense or violation of government-promulgated rules.” Hence, a conviction for the violation of a municipal ordinance during this period of two years will effectively prevent the oath-taking. A municipal ordinance is, after all, a government-promulgated rule; moreover, here the law, makes no distinction between acts *mala in se* and acts *mala prohibita*. (*Tiu San v. Republic, L-7301, Apr. 20, 1955*).

- (f) *Comment: Re Commission of Prejudicial Act or One Contrary to Public Policy*

The law says “committed any act prejudicial to the interest of the nation or contrary to any government an-

nounced policies.” Because of the use of the word “committed” it follows that here it is not essential that the petitioner be “convicted.” If criminal proceedings have been instituted, the Court may postpone the taking of the oath until the criminal case has been decided. (*Ching Leng v. Republic, L-6268, May 10, 1954*). The execution of the petition of an “agreement to sell” and his consenting to the placing of his nationality as “Filipino” (although he was not *yet* one) comes under this provision, and he will not be allowed to take his oath. (*Tan Tiam v. Republic, L-14802, May 30, 1961*).

In the case of *Antonio Kay See v. Republic, L-17318, Dec. 28, 1962*, the Supreme Court disqualified an alien from taking his oath, because during the two-year probationary period, he failed to still register as an alien. The fact that his failure to so register was due to an honest belief that he was exempted therefrom is of *no* moment.

(g) *Effectivity of Rep. Act 530*

Under Sec. 4 of the Act, effectivity will take place upon its approval. Said approval took place on June 16, 1950. And although it was signed at the last hour of June 16, 1950, it is considered to be effective from the first hour of said date; in other words, it took effect not on the midnight of June 16 but at midnight, June 15, 1950. To count the effectivity of a law from the moment of actual signing would make such effectivity depend upon the fallible memory of man. The law specifies the date, not the hour or the minute of effectivity. (*Republic v. Encarnacion, et al., 87 Phil. 843*).

(h) *Applicability to Pending Cases and to Those Where the Petitioner Has Not Yet Taken the Oath*

“This Act shall take effect upon its approval, and shall apply to *cases pending* in court, and to those where the applicant has *not yet taken the oath of citizenship*; *Provided, however*, That in pending cases where the requisite of publication under the old law had already been complied with, the publication herein required shall not apply.” (*Sec. 4, Rep. Act 530*).

(16) The Taking of the Oath

After due hearing (after two years) by the same court that granted the naturalization, the order of the court granting citizenship shall be registered, if the court is convinced that the conditions imposed for the two-year probation period have been duly fulfilled and proved. (*Anselmo Lim Hok Albano v. Republic*, 56 O.G. 4750; *Sec. 2, Rep. Act 530*). The filing of the petition to take the oath must be done within a reasonable time after the expiration of said 2-year period. A delay of more than 6 years in this regard reveals petitioner's lack of interest in the matter. If his right to take the oath, in view of the attending circumstances, is an extremely doubtful one, the doubt ought to be resolved in favor of the state, and against the petitioner. (*Cheng Kiat Giam v. Republic*, L-16999, June 22, 1965). A copy of the petition to take the oath, as well as the notice of hearing thereof, must be served on the office of the Solicitor-General, even if *previously, the Solicitor-General had already authorized the Provincial Fiscal to represent the state at the hearing of the application for naturalization. Authority to represent* at the latter hearing is NOT authority to represent at the hearing for the taking of oath. This defect is FATAL. (*Lee Luan Co v. Jarencio*, L-21521, Oct. 29, 1965). In case all requisites have been complied with, the petition to take the oath will be granted. The oath will then be taken by the applicant, whereupon, and NOT BEFORE, he will be entitled to all the privileges of a Filipino citizen. (*Sec. 2, Rep. Act 530*). The taking of allegiance determines the beginning of his new status as a regular member of our citizenry. (*Tiu Peng Hong v. Republic*, 52 O.G. 782). Thus, the act of a trial judge in allowing the applicant to take the oath even BEFORE the 2-year period is highly irregular. (*Ong So v. Republic*, L-20145, June 30, 1965). Incidentally, the renunciation of titles or orders of nobility must also be registered or recorded in the court. (*See Sec. 17, Naturalization Law*). If at the time the petitioner takes his oath his former minor children have already become of age, such children naturally do not automatically become Filipinos, because at the time of the naturalization of the parent (*i.e.*, the attainment of Filipino citizenship by the parent) said children are no longer minors. (*Sec. 15, Naturalization Law; Tin Peng Hong v. Republic*, 52 O.G. 782). If the records of the naturali-

zation proceedings and the certificate of naturalization issued have been destroyed or lost, a petition for the reconstitution of the records may be filed within the prescription period fixed by law. (*Republic Act 441*). In said petition, mere oral evidence would be utterly insufficient and unsatisfactory. A contrary rule would throw the door wide open for the commission of fraud against the State. (*Procopy Moscal v. Republic, L-10836, Nov. 29, 1960*).

Republic v. Guy
L-41399, July 20, 1982
115 SCRA 244

If an alien is granted citizenship by the CFI, he cannot on the same day take his oath as a Filipino. This is because the government must be given a chance to appeal the decision. The administration of the oath is therefore null and void.

Lao v. Republic
L-31475, Mar. 24, 1981

Naturalization case pending before the Supreme Court will be considered moot if in the meantime the applicant is granted Philippine citizenship under PD 836.

Juan Simon v. Republic
L-31892, Mar. 24, 1981

An alien whose application for naturalization was denied by the trial court because of his alleged use of an unauthorized alias appealed to the Supreme Court. During the pendency of the appeal, he was granted naturalization under LOI 270. What happens to his appeal? The same will be regarded moot and academic.

(17) Cancellation of the Naturalization Certificate

Sec. 18 of the Naturalization Law provides:

“Upon motion made in the proper proceedings by the Solicitor-General or his representatives, or by the proper Provin-

cial Fiscal, the competent Judge may cancel the naturalization certificate issued and its registration in the Civil Registry:

- (a) If it is shown that said naturalization certificate was obtained fraudulently or illegally;
- (b) If the person naturalized shall, within five years next following the issuance of said naturalization certificate, return to his native country or to some foreign country and establish his permanent residence therein: *Provided*, That the fact of the person naturalized remaining for more than one year in his native country or the country of his former nationality, or two years in any other country, shall be considered as *prima facie* evidence of his intention of taking up permanent residence in the same;
- (c) If the petition was made on an invalid declaration of intention;
- (d) If it is shown that the minor child of the person naturalized failed to graduate from public or private high school recognized by the Bureau of Private Schools (now Department of Education, Culture, and Sports), where Philippine history, government, and civics are taught or prescribed as part of the school curriculum, through the fault of their parents either by neglecting to support them or by transferring them to another school or schools. A certified copy of the decree cancelling the naturalization certificate shall be forwarded by the Clerk of the Court to the Office of the President and the Office of the Solicitor-General;
- (e) If it is shown that the naturalized citizen has allowed himself to be used as a dummy in violation of the Constitution or legal provision requiring Philippine citizenship as requisite for the exercise, use or enjoyment of a right, franchise, or privilege.”

The Solicitor-General personally or thru his delegate and the provincial fiscal are the only officers or persons authorized by law to appear on behalf of the Government to

ask for the cancellation of a naturalization certificate already issued. (*Anti-Chinese League of the Philippines v. Felix, et al.*, 77 Phil. 1012). An alien who misrepresents his length of residence in the Philippines (*Bell v. Atty. Gen.*, 56 Phil. 667), or who conceals the fact that he is disqualified to become a Filipino citizen deserves to have his naturalization certificate cancelled because such certificate may be considered to have been obtained fraudulently or illegally. (*Gurbuxani v. Government*, 69 Phil. 280). Should it turn out that the naturalized citizen was already a Filipino even before he was naturalized, the naturalization certificate should naturally be cancelled because said certificate is unnecessary. (*Palanca v. Republic*, 80 Phil. 578). A decision in a naturalization case can never be *res judicata* as to any of the reasons or matters which would support a judgment cancelling the certificate of naturalization for illegal or fraudulent procurement. As a matter of fact, it is settled in this jurisdiction that a certificate of naturalization may be cancelled upon grounds or conditions *subsequent* to the granting of the certificate of naturalization. (*Republic v. Co Bon Lee*, L-11499, Apr. 29, 1961). Indeed it is settled that the doctrine of estoppel or of laches does not apply against the Government suing in its capacity as sovereign or asserting governmental rights. It has been held that the government is never estopped by mistakes or errors on the part of its agents. (*Pineda v. CFI of Tayabas*, 52 Phil. 803, 807). Estoppel cannot give validity to an act that is prohibited by law or is against public policy. (*Benguet Consolidated v. Pineda*, 52 O.G. No. 4, p. 1961; *Eugenio v. Perdido*, L-7083, May 18, 1955).

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Res judicata does not apply to naturalization cases. So if an alien has been awarded citizenship, he can still be stripped of said citizenship, if he is convicted of rape and perjury, after the 2-year probationary period. Thus, a decision in naturalization can never be a final one.

(18) How Citizenship May Be Lost in General**(a) *By substitution of a new nationality****Comment:*

- 1) One example is by becoming a naturalized citizen of a foreign State. (*Commonwealth Act 63, as amended by Rep. Act 106*).
- 2) Another example is in the case of a Filipino woman who marries a foreigner. If she acquires her husband's nationality, she loses Philippine citizenship. (*Sec. 1, Commonwealth Act 63, as amended by Republic Act 106*).

NOTE: If a Filipino woman marries a stateless citizen, she retains Philippine citizenship for the simple reason that she has not acquired any new nationality. (*Commonwealth v. Baldello, 37 O.G. 2080*).

(b) *By renunciation of citizenship**Comment:*

- 1) This is also known as EXPATRIATION. In *Roa v. Collector of Customs, 23 Phil. 321*, the Supreme Court defined expatriation as the voluntary renunciation or abandonment of nationality and allegiance. The right has been said to be a natural and inherent right of individuals. (*U.S. v. Karuth, 19 F. Supp. 581*).
- 2) The renunciation may be EXPRESS or IMPLIED. (*Secs. 2 and 3, Commonwealth Act 63, as amended by Republic Act 106*). A form of IMPLIED renunciation exists in the following provision:

“By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attainment of 21 years of age or more.” (*Sec. 3, Commonwealth Act 63, as amended by Republic Act 106*).

- 3) Renunciation, whether express or implied, cannot be lawfully done while the Philippine Republic is at war with any country. (*Sec. 3, Com. Act 63, as amended*

by Rep. Act 106). (See Also *People v. Manayao*, 44 O.G. 4867, where the defendant in a case of treason against our government *unsuccessfully* pleaded that inasmuch as he had renounced Philippine citizenship during the war, he cannot be held guilty of treason).

(c) *By deprivation*

Comment:

- 1) Deprivation exists when a person is deprived of his citizenship as a sort of punishment.
- 2) Deprivation may take any of the following forms:
 - a) cancellation of the certificates of naturalization. (*Sec. 4, Commonwealth Act 63, as amended by Republic Act 106*).
 - b) cancellation of citizenship for having been declared by competent authority a deserter of the Philippine Armed Forces in time of war, unless subsequently, a plenary pardon or amnesty has been granted. (*Sec. 1, No. 6, Commonwealth Act 63, as amended by Rep. Act 106*). In case of pardon or amnesty, citizenship may be reacquired by *repatriation*. (*Sec. 2, Commonwealth Act 63, as amended by Republic Act 106*).
 - c) forfeiture of citizenship by rendering service to, or accepting a commission in the armed forces of a foreign country.

NOTE: The law on this point, however, provides that the rendering of a service to, or the acceptance of a commission in, the armed forces of a foreign country, and taking of the oath of allegiance incident thereto, with the consent of the Republic of the Philippines, shall NOT divest a Filipino of his Philippine citizenship if either of the following circumstances is present:

- 1) The Republic of the Philippines has a defensive and/or offensive pact of allegiance with the said foreign country; or

- 2) The said foreign country maintains armed forces on Philippine territory with the consent of the Republic of the Philippines;

PROVIDED, that the Filipino citizen concerned, at the time of rendering said service, or acceptance of said commission, and taking the oath of allegiance incident thereto states that he does so **ONLY** in connection with his service to said foreign country; and

PROVIDED, FINALLY, with reference to (a) and (b) the citizen concerned shall **NOT** be permitted to participate or vote in any election of the Republic of the Philippines during the period of his service to, or commission in, the armed forces of said foreign country. Upon his discharge from the service of the said foreign country he shall be automatically entitled to the full enjoyment of his civil and political rights as a Filipino citizen. (*Sec. 1, No. 4, Commonwealth Act 63, as amended by Republic Act 106*).

- (d) *By release*

Comment:

As distinguished from deprivation, release is **VOLUNTARY** in the sense that a person asks the permission of his country to be freed from citizenship therein. This is **NOT** expressly provided for by our law so no prior permission is essential. All that the citizen is required to do is to renounce. (*See Sec. 1, No. 1, Commonwealth Act 63, as amended by Republic Act 106*).

- (e) *By expiration*

Comment:

- 1) Here, citizenship is lost in view of a *long stay abroad*. The principle is ordinarily **NOT** applicable to Filipinos.
- 2) However, if a naturalized citizen, *within* five years from the time he is issued the naturalization certificate, permanently resides in a different country,

his naturalization certificate may be cancelled on this ground. This is our equivalent of EXPIRATION. (See *Sec. 18, Letter [a], Commonwealth Act 473, as amended by Commonwealth Act 535*).

(19) How Philippine Citizenship May Be Lost

Under Commonwealth Act 63, as amended by RA 106, a Filipino citizen may lose his citizenship in any of the following ways:

- (a) By naturalization in foreign countries; or
- (b) By express renunciation of citizenship.

Aznar v. COMELEC and Emilio Mario Renner Osmeña GR 83820, May 25, 1990

As a holder of a valid and subsisting Philippine passport and who has continuously participated in the electoral process in this country since 1963 up to the present, private respondent remains a Filipino and the loss of his Philippine citizenship cannot be presumed.

In the case of Osmeña, the Certification that he is an American does not mean that he is not still a Filipino, possessed as he is, of both nationalities or citizenships. Indeed, there is no express renunciation here of Philippine citizenship; truth to tell, there is even no implied renunciation of said citizenship. When we consider that the renunciation needed to lose Philippine citizenship must be “express,” it stands to reason that there can be no such loss of Philippine citizenship when there is no renunciation, either “express” or “implied.”

Parenthetically, the statement in the 1987 Constitution that “dual allegiance of citizens is inimical to the national interest and shall be dealt with by law” (*Art. IV, Sec. 5*) has no retroactive effect. And while it is true that even before the 1987 Constitution, our country had already frowned upon the concept of dual citizenship or allegiance, the fact is it actually existed. Be it noted further

that under the aforesaid *proviso*, the effect of such dual citizenship or allegiance shall be dealt with by a future law. Said law has not yet been enacted.

- (c) By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more: *Provided, however*, That a Filipino may not divest himself of Philippine citizenship in any manner while the Republic of the Philippines is at war with any country;
- (d) By rendering service to, or accepting commission in the armed forces of a foreign country: *Provided*, That the rendering of service to, or the acceptance of such commission, in the armed forces of a foreign country, and the taking of an oath of allegiance incident thereto, with the consent of the Republic of the Philippines, shall not divest a Filipino of his Philippine citizenship if either of the following circumstances is present:
 - 1) The Republic of the Philippines has a defensive and/or offensive pact of alliance with the said foreign country; or
 - 2) The said foreign country maintains armed forces on Philippine territory with the consent of the Republic of the Philippines: *Provided*, That the Filipino citizen concerned, at the time of rendering said service, or acceptance of said commission, and taking the oath of allegiance incident thereto, states that he does so only in connection with his service to said foreign country: *And provided finally*, That any Filipino citizen who is rendering service to, or commissioned in the armed forces of a foreign country under any of the circumstances mentioned in paragraph (1) or (2), shall not be permitted to participate nor vote in any election of the Republic of the Philippines during the period of his service to, or commission in, the armed forces of said foreign country. Upon his discharge from the service of said foreign country, he shall be automatically entitled to the full enjoyment of his civil and political rights as a Filipino citizen;

- (e) By cancellation of the certificate of naturalization;
- (f) By having been declared by competent authority, a deserter of the Philippine armed forces in time of war, unless subsequently, a plenary pardon or amnesty has been granted; and
- (g) In the case of a woman, upon her marriage to a foreigner, if by virtue of the laws in force in her husband's country, she acquires his nationality.

The provisions of this section notwithstanding, the acquisition of citizenship by a natural-born Filipino citizen from one of the Iberian and any friendly democratic Ibero-American countries or from the United Kingdom shall not produce loss or forfeiture of his Philippine citizenship if the law of that country grants the same privilege to its citizens and such had been agreed upon by treaty between the Philippines and the foreign country from which citizenship is acquired. (*As amended by Republic Act 2639 and by Republic Act 3834, approved June 22, 1963*).

(20) Denaturalization Proceedings

Denaturalization proceedings (to cancel one's naturalization certificate for instance) must be commenced upon motion by the Solicitor-General or by his representative or by the Provincial Fiscal (now Prosecutor), the Judge cannot therefore *motu proprio* declare null and void the grant of citizenship by a competent court. (*See Sec. 18, Commonwealth Act 473; see also Gueto v. Catolico, L-25204 and L-25219, Jan. 23, 1970*).

(21) How Philippine Citizenship May Be Reacquired

Under Commonwealth Act 63, Philippine citizenship may be reacquired as follows:

“Sec. 2. *How citizenship may be reacquired* — Citizenship may be reacquired:

- (1) By naturalization: *Provided*, That the applicant possesses none of the disqualifications prescribed in Section Two of Act Numbered Twenty-nine hundred and twenty-seven;

(2) By repatriation of deserters of the Army, Navy or Air Corps: *Provided*, That a woman who lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of this Act after the termination of the marital status; and

(3) By direct act of the National Assembly.

Sec. 3. *Procedure incident to reacquisition of Philippine citizenship* — The procedure prescribed for naturalization under Act Numbered Twenty-nine hundred and twenty-seven as amended, shall apply to the reacquisition of Philippine citizenship by naturalization provided for in the next preceding section; *Provided*, That the qualifications and special qualifications prescribed in Sections three and four of said Act shall not be required; *and provided further*,

(1) That the applicant be at least twenty-one years of age and shall have resided in the Philippines at least six months before he applies for naturalization:

(2) That he shall have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines, in his relation with the constituted government as well as with the community in which he is living; and

(3) That he subscribes to an oath declaring his intention to renounce absolutely and perpetually all faith and allegiance to the foreign authority, state or sovereignty of which he was a citizen or subject.

Sec. 4. Repatriation shall be effected by merely taking the necessary oath of allegiance to the Commonwealth of the Philippines and registration in the proper civil registry.”

**Juan G. Frivaldo v. COMELEC and
Raul R. Lee
GR 120295, June 28, 1996
71 SCAD 413**

Decisions declaring the acquisition or denial of citizenship cannot govern a person’s future status with finality. This

is because a person may subsequently reacquire, or for that matter lose, his citizenship under any of the modes recognized by law for the purpose.

(22) Alien Social Integration

Republic Act 7919, otherwise known as *The Alien Social Integration Act of 1995*, allows illegal aliens who arrived in the Philippines before June 30, 1992, to apply for permanent residency status.

REPUBLIC ACT 8247

AN ACT EXEMPTING ALIENS WHO HAVE ACQUIRED PERMANENT RESIDENCY UNDER EXECUTIVE ORDER NO. 324 FROM THE COVERAGE OF REPUBLIC ACT NO. 7919, OTHERWISE KNOWN AS "THE ALIEN SOCIAL INTEGRATION ACT OF 1995," AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF SAID ACT AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 3 of Republic Act 7919 is hereby amended to read as follows:

"SEC. 3. *Coverage.* Upon effectivity of this Act, all aliens whose stay in the Philippines is otherwise illegal under existing laws, and who have entered the country prior to June 30, 1992 are hereby granted legal residence status upon compliance with the provisions of this Act, and shall not be prosecuted for crimes defined under Commonwealth Act 613, otherwise known as the Immigration Act of 1940, which are inherent to illegal residence such as the absence of valid travel documents or visa: *Provided*, That in no case shall alien refugees in the Philippines be qualified to apply under this Act.

"The legal residence granted to aliens who availed of the benefits of Executive Order 324 is hereby affirmed and given full faith and credit."

“The bar to prosecution shall apply only to such crimes or felonies committed due to acts necessary or essential to maintain a false or fraudulent or illegal residence, such as falsification of marriage, birth or baptismal certificates or travel documents, visas or alien certificates of registration.”

SEC. 2. Subsection 4.3.1. of Section 4 of the same Act is hereby amended to read as follows:

“4.3.1. One hundred thousand pesos (P100,000.00) upon filing of the registration forms with the bank plus Fifty thousand pesos (P50,000.00) per year over a three-year period from the payment of the first installment. The subsequent three (3) installment payments should be paid within twelve (12) months from the date of the first payment without any extensions. The integration fees paid by aliens granted legal residence under Executive Order 324 who registered anew under the provisions of this Act shall be refunded.”

“In lieu of the above installment payments, the applicant may immediately pay Two hundred thousand pesos (P200,000.00).”

SEC. 3. Section 6 of the same Act is hereby amended to read as follows:

“SEC. 6. *Duties of the Bureau of Immigration.* — Upon presentation by the applicant of the official receipt from the bank together with a certification from the bank or agency concerned, as the case may be that the civil registrar, BIR (Bureau of Internal Revenue) and NBI (National Bureau of Investigation) received copies of the registration forms, and the submission in the Bureau of Immigration of the registration forms defined in Section 4.2. hereof, the Bureau of Immigration shall immediately issue an Alien Certificate of Registration (ACR) to the applicant. The legal residence granted under this Act shall commence from the date the Bureau of Immigration issues the ACR and ICR.”

“The Bureau of Immigration shall publish, at the applicant’s cost, the names, ages, municipality/city of residence, and a photograph of each of the applicants in a national newspaper of general circulation at the end of each calendar month during the effectivity of the application period, as hereinafter provided

in Section 8. The banks authorized under this Act to collect the fees herein required shall collect a publication fee of Five thousand pesos (P5,000.00) from the applicant.”

REPUBLIC ACT 9139

ADMINISTRATIVE NATURALIZATION ACT OF 2000

This Act, approved June 8, 2001, “[p]rovid[es] for the acquisition of Philippine citizenship for certain aliens by administrative naturalization and for other purposes.” The policy declaration reads: “The State shall control and regulate the admission and integration of aliens into its territory and body politic including the grant of citizenship to aliens. Towards this end, aliens born and residing in the Philippines may be granted Philippine citizenship by administrative proceedings subject to certain requirements dictated by national security and interest.” (*Sec. 2, RA 9139*).

(23) Application for Repatriation to be Filed with Special Committee on Naturalization

Under Sec. 1 of PD 725, dated June 5, 1975, amending Commonwealth Act 63, an application for repatriation could be filed by Filipino women who lost their Philippine citizenship by marriage to aliens, as well as by natural-born Filipinos who lost their Philippine citizenship, with the Special Committee on Naturalization. (*Gerardo Angat v. Republic, GR 132244, Sep. 14, 1999, 112 SCAD 410*).

(24) Who Can Avail of the Privilege of Repatriation?

Tabasa v. Court of Appeals 500 SCRA 9 (2006)

Two (2) classes are entitled to repatriation under RA 8171, thus:

1. To natural-born Filipinos who lost their citizenship on account of political or economic necessity; and

2. To the minor children of said natural-born Filipinos. To claim the benefit of RA 8171, however, said children must be of minor age at the time the petition is filed by the parent.

While it is true that renunciation of allegiance to one's native country is necessarily a political act, it does not follow that the act is inevitably politically or economically-motivated.

Art. 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)

COMMENT:

(1) 'Domicile' Distinguished from 'Citizenship' or 'Nationality'

Domicile speaks of one's permanent place of abode, in general; on the other hand, *citizenship* and *nationality* indicate ties of allegiance and loyalty. A person may be a citizen or national of one state, without being a domiciliary thereof; conversely, one may possess his domicile in one state without necessarily being a citizen, or national thereof.

(2) Importance of Knowing Domicile

Although the Philippines generally adheres to the nationality theory, it is also worthwhile to know something about the domiciliary theory because:

- (a) *Firstly*, our own law makes in some cases the law of the domicile as the controlling factor in the solution of conflicts problems rather than the national law of the person involved. This is particularly true in the revocation of wills. Thus, Art. 829 of the Civil Code says:

“A revocation done outside the Philippines, by a person who does not have his *domicile* in this country, is valid when it is done according to the law of the place where the will was made, or according to the law of the place in which the testator had his *domicile* at the time;

and if the revocation takes place in this country, when it is in accordance with the provisions of this Code.”

- (b) *Secondly*, in some codal provisions, *both* the domiciliary and the nationality theories are used. For instance, Art. 816 of the Civil Code provides that:

“The will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he *resides*, or according to the formalities observed in *his country*, or in conformity with those which this Code prescribes.”

- (c) *Thirdly*, as already intimated in previous chapters, the domiciliary theory often runs to the rescue of the nationality theory in solving conflicts problems posed by stateless individuals, and by those possessed by a dual or multiple citizenship.
- (d) *Fourthly*, during the years when we were under the control and jurisdiction of the United States, many domiciliary rules prevalent then were engrafted into our jurisprudence.
- (e) Some very important nations of the world have adopted almost invariably the domiciliary theory: a comparative study of the approaches of both theories is therefore imperative.

(3) Definition of Domicile

Domicile is that place where a person has certain settled, fixed, legal relations because:

- (a) it is assigned to him by the law AT THE MOMENT OF BIRTH (*domicile of origin*); or
- (b) it is assigned to him also by the law AFTER BIRTH on account of a legal disability caused for instance by minority, insanity, or marriage in the case of a woman (*constructive domicile or domicile by operation of law*); or
- (c) because he has his *home* there — that to which whenever he is absent, he intends to return (*domicile of choice*). (See *American Restatement, Sec. 9; Story, Conflict of Laws, Sec. 41*).

(4) The Three Kinds of Domicile

As indicated in the definition, there are usually three types or kinds of domicile classified according to the manner it has come about: the domicile of origin, the constructive domicile or the domicile by operation of law, and the domicile of choice.

- (a) The domicile of origin is acquired at *birth*; constructive domicile is given *after birth*.
- (b) Domicile of origin applies *only to infants*; constructive domicile refers to *all those who lack capacity to choose their own domicile*: infants, married women, idiots, and the insane. Legal disabilities prevent their making a choice.
- (c) Domicile of origin never changes; for a person is born only once; constructive domicile may change from time to time, depending upon circumstances which will be subsequently discussed.
- (d) While both the domicile of origin and the constructive domicile are fixed by LAW, domicile of choice is a result of the VOLUNTARY WILL AND ACTION of the PERSON CONCERNED.

(5) Rules for the Domicile of Origin (*Domicilium Originis*)

The domicile of origin of:

- (a) a *legitimate* child — is the domicile of choice of his father at the moment of the birth of the child.

Example: If a Filipino child is born in France at the time that his father is domiciled in Japan, the domicile of origin of the child is in Japan.

However, if the child is a posthumous one (born after the death of the father) its domicile of origin is the domicile of choice of the mother.

- (b) an *illegitimate* child — is the domicile of choice of the mother at the time of the birth of the child.
- (c) a *legitimated* child (an illegitimate child who subsequently is granted the status of a legitimate child by the process

called *legitimation*) — is the domicile of the father at the time of the *birth* (not the legitimation) of the child. This is so because “legitimation shall take effect from the time of the child’s birth.” (*Art. 273, Civil Code*).

- (d) an *adopted* child — is not the domicile of the adopter (for generally adoption takes place sometime after the birth of the child) but the domicile of the real parent or the parent by consanguinity.
- (e) a *foundling* (an abandoned infant whose parents are unknown) — is the country where it was found.

Query: Suppose the parents become known, what will be the domicile of origin of the foundling?

Answer: It is NOT a foundling, and therefore cannot have a domicile of origin as a foundling. If legitimated, we follow the rules hereinabove given; if illegitimate, follow the indicated rules.

(6) Rules for the Constructive Domicile (*Domicilium Necessarium*)

(a) *Rules for Infants:*

- 1) If *legitimate* — the domicile of choice of the father.

Example: If at the time the child is say six years old, the domicile of choice of the father is in the United States (California), then California will be the constructive domicile of the child at that age. If by the time the child becomes eleven years old the father is already domiciled in China, China will be the constructive domicile of said child at the age of eleven.

[*NOTE:* If the father is dead, the mother generally exercises authority over the child; hence, this time the constructive domicile is the domicile of choice of the mother. The following articles of the Civil Code are in point:

Art. 328. The mother who contracts a subsequent marriage loses the parental authority over

her children, unless the deceased husband, father of the latter, has expressly provided in his will that his widow might marry again, and has ordered that in such case she *should keep and exercise parental authority over their children*.

Art. 333. If the widowed mother who has contracted a subsequent marriage should again become a widow, she shall *recover* from this moment her parental authority over all her *unemancipated* children.

It would seem, therefore, that in our country the legitimate child follows the domicile of whoever exercises parental authority over him.]

[*NOTE:* If both parents of the legitimate child are dead, the constructive domicile of the child will be that of the parent who died later. (*See Goodrich, Conflict of Laws, p. 90*).]

- 2) If *illegitimate* — the domicile of choice of the mother (after all she is supposed to take care of the child). (*See Minor, Conflict of Laws, pp. 92-93*).
 - 3) If *adopted* — the domicile of choice of the *adopter*. (*Restatement, Sec. 35*).
 - 4) If a *ward* — the domicile of choice of the guardian (over the person of the ward). (*See Beale, Vol. 1, Conflict of Laws, p. 220*).
- (b) *Rules for Married Women:*
- 1) If the marriage is **VALID** — the constructive domicile of a wife is the domicile of choice of her husband. The reason is obvious: in general, the husband fixes the residence or domicile of the family. In certain instances, however, the wife is allowed to have a separate domicile; in this case, her domicile will not be a constructive one any more; it will be her domicile of choice. In the following instances, among others, the wife may be allowed to have a separate domicile:

- a) If the husband lives abroad, except if living abroad is in the service of the Republic. (*Art. 110, Civil Code*).
- b) If they are legally separated. (*Art. 106, par. 1, Civil Code*).
- c) If the husband forcibly ejects the wife from the conjugal home so that he may have illicit relations with another. (*De la Vina v. Villareal, 41 Phil. 13*).
- d) If there is a separation *de facto* of the spouses. (*See De la Vina v. Villareal, supra*). However, it must be noted that under Art. 221 (*Par. 1*) of the Civil Code, “any contract for personal separation between husband and wife shall be void and of no effect.”

The reason for the general rule has been well stated by our Supreme Court in the following manner: “It is true, as a general principle of law, that the domicile of the wife follows that of her husband. This rule is founded upon the theoretic identity of person and interest between the husband and the wife, and the presumption that, from the nature of the relation, the home of one is the home of the other. It is intended to promote, strengthen, and secure the interests in this relation, as it ordinarily exists, where union and harmony prevail. But the authorities are unanimous in holding that this is not an absolute rule. When married women as well as children subject to parental authority live, with the acquiescence of their husbands or fathers, in a place distinct from where the latter live, they have their own independent domicile, which should be considered in determining jurisdiction in cases of provisional support, guardianship of persons, etc. If the wife can acquire a separate residence when her husband consents or acquiesces, we see no reason why the law will not allow her to do so when, as alleged in the present case, the husband unlawfully

ejects her from the conjugal home in order that he may freely indulge in his illicit relations with another woman. Under no other circumstances could a wife be more justified in establishing a separate residence from that of her husband. For her to continue living with him, even if he had permitted it, would have been a condonation of his flagrant breach of fidelity and marital duty. Furthermore, in this case no longer was there an identity of person and interest between the husband and the wife. Therefore, the law allowed her to acquire a separate residence. For it would do violence to the plainest principle of common sense and common justice to call this residence of the guilty husband where the wife is forbidden to come, the domicile of the wife.” (*De la Vina v. Villareal*, 41 Phil. 13).

- 2) If the marriage is VOIDABLE, the marriage is regarded as valid until annulled; therefore, prior to annulment the constructive domicile of the wife is the domicile of choice of the husband, unless she is permitted under the circumstances to select her own domicile of choice. After the marriage is annulled, the woman ceases to be a wife; hence, being no longer under any legal disability, she no longer has any constructive domicile. If she decides to remain in the domicile of her former husband, this would be her own freely selected *domicile of choice*, not her constructive domicile. (*See Minor, Conflict of Laws*, pp. 97-105).
- 3) If the marriage is VOID, it is as if there was no marriage, and the “wife” is not really one. Hence, she is not laboring under any legal disability; consequently, she has no constructive domicile. Should she continue being domiciled in the same place as where her “husband” is a domiciliary, such place would not be her constructive domicile, it would be her domicile of choice. (*See Goodrich, Conflict of Laws*, p. 77). If a marriage is null and void its existence is generally not recognized at all by law (save the fact that children conceived or born of such marriage

are considered as natural children by legal fiction under Art. 89 of the Civil Code); therefore, there is no necessity of declaring such a marriage null and void. (*People v. Mendoza, L-5877, Sep. 28, 1954; People v. Aragon, L-10016, Feb. 28, 1957*). However, in case damages are sought, it is obvious that the void marriage must be declared such by the courts. (*See Art. 91, Civil Code*).

(c) *Rules for Idiots, Lunatics, and the Insane:*

Idiots, lunatics, and the insane are generally devoid of any intelligence that may enable them to freely select their own domicile of choice; hence, the law assigns to them their domicile:

- 1) If they are *below* the age of majority — they are still considered infants under the law; thus, the rules for infants are applicable to them.
- 2) If they are above the age of majority a distinction must be made: if they have guardians over their persons, they have to follow the domicile of choice of their guardians; if they have no guardians over their persons, their constructive domicile is in the place where they had their domicile of choice shortly before they became insane.

It should be remembered, however, that a voluntary domicile of choice may be acquired by insane individuals if at the time of the choice they were in their lucid intervals. Furthermore, the choice of a voluntary domicile does not require as much intelligence as would normally be essential for binding oneself in a CONTRACT; to enter into an agreement respecting a contract, one must possess capacity to assume a *burden*; on the other hand, the choice of a domicile does not necessarily carry with it the assumption of obligations. As Goodrich so aptly puts it: “In changing domicile, the actor merely subjects himself to the operation of the legal system of the new jurisdiction — a system that must be presumed to guard rights and privileges and to operate equally upon all. So that the test is said to be whether the party had sufficient reason and

understanding to choose his place of residence.” (*Goodrich, Conflict of Laws, p. 94*).

Query: If the husband is insane or otherwise incapacitated, what is the constructive domicile of his wife?

Answer: Prof. Minor believes that in a case like this, the wife is free from all legal disability insofar as domicile is concerned; therefore, she is free to select her own domicile of choice. (*Minor, Conflict of Laws, p. 100*).

(7) Rules for Domicile of Choice

Domicile of choice is that which is voluntarily chosen by a *sui juris* — as his more or less permanent home — that to which, whenever he is absent, he intends to return. (*See Story Conflict of Laws, Sec. 41; See also Uytengsu v. Republic, 50 O.G. 4781, Oct. 1954*). In the Civil Code, Art. 50 refers to what we call the “domicile of choice.” Said Article reads: “For the exercise of civil rights and the fulfillment of civil obligations, the domicile of *natural* persons is the place of their *habitual residence*.” In the case of *Corre v. Tan Corre, L-10128, Nov. 13, 1956*, the Court had occasion to define domicile of choice as “the permanent home, the place to which whenever absent for business or pleasure, one intends to return, and depends on facts and circumstances, in the sense that they disclose intent.”

There are certain fundamental principles governing domicile of choice:

- (a) No natural person must ever be without a domicile.
- (b) No person can have two or more domiciles at the same time, except for certain purposes and from different legal viewpoints.
- (c) Every *sui juris* may change his domicile.
- (d) Once acquired, it remains the domicile unless a new one is obtained:
 - 1) by a *capacitated* person;
 - 2) with *freedom* of choice;

- 3) with *actual physical presence* in the place chosen;
- 4) and a *provable intent* that it should be one's fixed and permanent place of abode — one's home — that is, there should be "*animus manendi*" (intent to remain) or "*animus non-revertendi*" (intent not to return to the original abode). [See *Velilla v. Posadas*, 62 Phil. 624; *Zuellig v. Republic*, 64 O.G. (Supp. No. 11, p. 220) L-1150, May 30, 1949; *Quetulio v. Ruiz*, C.A. 46 O.G. 155; *Gallego v. Vera*, 73 Phil. 453].

Comment — Re: Principle (a) ONE domicile

Every natural person has a domicile; he cannot be without one. If he never leaves his domicile of origin, the same becomes his domicile of choice after attaining the age of majority or after being otherwise emancipated. (*Minor, Conflict of Laws*, pp. 67-72).

Comment — Re: Principle (b) ONLY ONE domicile

Generally, no natural person can have more than one domicile at a time. (*Minor, Conflict of Laws*, p. 68). While a person may have more than one residence, vacation or summer residence, legal residence, the Civil Code recognizes only one domicile: the place of habitual residence. (*Art. 50*). Otherwise the law supposed to follow the person in certain cases would be indeterminate. (*Beale, Vol. I, Conflict of Laws*, p. 124). However, since domicile serves different purposes, it has been suggested that a man may possibly have one domicile (say, for the purpose of taxation) and another domicile (say, for the purpose of obtaining a legal separation). (*Cook, Legal and Logical Bases of the Conflict of Laws*, pp. 194-210). Moreover, the characterization of domicile presents a big problem; the general rule, however, is for the forum to characterize the domicile of the litigant before it. (*See In Re Dorrance's Estate*, 309 Pa. 151; 115 N.J. Eq. 268).

*Illustrative Cases:*a) *From Pennsylvania***In Re Dorrance's Estate
309 Pa. 151**

FACTS: Mr. Dorrance, a resident of New Jersey, bought a large estate in Pennsylvania, where he began to live with his wife and children, and where eventually a daughter of his was married. **HOWEVER**, at the time, he maintained his house in New Jersey, going there once in a while; and in his will he stated that he was a resident of New Jersey (to avoid paying certain taxes in Pennsylvania). The issue was whether or not he was domiciled in Pennsylvania for the tax appraisalment of his estate.

HELD: The Pennsylvania court held that he was domiciled in Pennsylvania as shown by his **CONDUCT**, notwithstanding his expressed desire to still have New Jersey as his domicile for purposes of taxation. His declaration as to New Jersey is utterly self-serving, and contrary to his actual conduct of living in Pennsylvania.

b) *From New Jersey (the same case)***In Re Dorrance's Estate
115 N.J. Eq. 268**

FACTS: Same as in the Pennsylvania case. The issue was whether or not the Pennsylvania decision was binding on the courts of New Jersey.

HELD: The domicile of the deceased was in New Jersey as evidenced by his **INTENTION** to return there, notwithstanding actual residence in Pennsylvania. In view of the *animus manendi*, he never lost his New Jersey domicile. A man may choose his own domicile; the motive that may prompt him is immaterial. As between two residences, a man may select which one is his true domicile. Hence, the Pennsylvania decision does not bind New Jersey courts.

Comment — Re: Principles (c) and (d) — CHANGE and RETENTION of domicile

- a) For a *change* of domicile — intention to reside elsewhere without actual residence in the place chosen will not be sufficient; on the other hand, actual residence in the new place without the intention to make it the permanent abode will also not be enough. In other words, to effect a change of domicile both the ACTUAL STAY and the INTENT must concur.
- b) For a *retention* of the old domicile — there need NOT be a concurrence of the two; for unless a new domicile is acquired, the old one is retained. Hence, one may retain his old domicile so long as he resides there OR even if not, so long as he intends to return. (*See Cheshire, Private International Law, pp. 215-216*).
- c) As Prof. Cheshire put it:

“Intention without residence or residence without intention will not suffice for the acquisition of a domicile, but will be sufficient for the retention of an existing domicile.” (*Cheshire, ibid.*).

Velilla v. Posadas
62 Phil. 624

FACTS: Mr. Moody lived and worked in Manila for more than 25 years. However, he wandered around in various countries until he died in Calcutta.

ISSUE: Where was his domicile at the time of death?

HELD: His domicile at the time of his death was in the Philippines, because he never acquired any new domicile in a foreign country, despite his wanderings abroad. To effect the abandonment of one’s domicile, there must be a deliberate and provable choice of a new domicile, coupled with actual residence in the place chosen, with a declared or provable intent that it should be one’s fixed and permanent place of abode, one’s home. This was NOT proved.

Gallego v. Vera
73 Phil. 453

Question: To acquire a new domicile of choice, what things must concur?

HELD: There must concur:

- (1) residence or bodily presence in the new locality;
- (2) an intention to remain there;
- (3) and an intention to abandon the old domicile.

In other words there must be an *animus non-revertendi* and an *animus manendi*. The intent to remain in or at the domicile of choice must be for an indefinite period of time. The acts of the person must conform with his purpose. The change of residence must be *voluntary*; the residence at the place chosen for the domicile must be actual; and to the fact of residence there must be added the *animus manendi*.

Testate Estate of Bohanan
L-2105, Jan. 30, 1960

FACTS: 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.

HELD: His permanent domicile in the United States depended upon his personal intent or desire, and as he selected Nevada as his domicile, he was at the time of his death a domiciliary of Nevada. (Incidentally, in the United States, a person is a *national* or a citizen, not of the state where he was born, but of the state in which he is *domiciled*). Nobody else but the testator could choose his own domicile or permanent residence for him, because such choice is his exclusive and permanent right.

- (d) In view of their *legal disability*, infants, idiots, lunatics and the insane cannot acquire any domicile of choice.

Because of lack of voluntariness, the following cannot also acquire a new domicile of choice:

- 1) a convict or a prisoner — here, his domicile of choice is the one previously possessed by him, unless he deliberately makes the new locality his permanent home, after he gets out of prison. (*See Minor, Conflict of Laws, pp. 111-112*).
- 2) involuntary exiles — those compelled by the command of a superior political power to abandon their country. (Here, the domicile of choice is still the previously existing domicile since there was no freedom of choice.)

[NOTE: Voluntary exiles deliberately choose their new domicile, unless of course they intend to eventually return to *their native land*.]

- 3) Soldiers — since they are compelled to follow the dictates of military exigencies. (Their domicile of choice is their domicile at the time of their enlistment in the armed forces.) (*See Harris v. Harris, 205 Iowa 108*).
- 4) Public officials and employees, diplomats, and consular officers — since their stay abroad is in an official, not personal capacity. (Their domicile of choice is therefore their previously existing domicile, unless they manifestly desire to take up permanent residence in the place of employment.)

(8) Domicile Distinguished from Residence

The principal distinction is this: while residence is more or less temporary, domicile is more or less permanent. Secondly, while a person can have several places of residence, he can have generally only one domicile. As a matter of fact, under the Civil Code, domicile carries a note of habituality. (*Art. 50*). In *Uytengsu v. Republic, 50 O.G. 4781, Oct. 1954*, the Supreme Court held:

“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 one and the same purpose at any time, but he may have numerous places of residence. His place of residence generally is his place of domicile, but is not by any means necessarily so since no length of residence without intention of remaining will constitute domicile.” (See also *Kennan on Residence and Domicile*, pp. 26, 35, 36).

[NOTE: The distinction given hereinabove apparently reverse the opinions given by the same Supreme Court in at least two cases. In *Larena v. Teves*, 61 Phil. 36, the Court said that “the term ‘residence’ is synonymous with home or domicile denoting a permanent dwelling place, to which the party when absent intends to return.” In *Nuval v. Guray*, 52 Phil. 645, the Court said 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.”]

[NOTE: Incidentally, it should be pointed out that the place of obtaining a residence certificate and the data contained therein are NOT CONCLUSIVE as to the real residence or domicile of a person owning said certificate. (*Zuellig v. Republic*, 83 Phil. 768).].

(9) Constitutional and Penal Safeguards on Domicile

(a) *Constitutional Provisions*

“The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health as may be provided by law.” (*Art. III, Sec. 6, The 1987 Constitution*).

NOTE: The right includes freedom to live and work where the individual desires (*Meyer v. Nebraska*, 262 U.S. 360), subject only to reasonable restraint by general law for the common good. (*Blackstone, Constitutional Law*, pp. 535-536; *Lorenzo v. Dir. of Health*, 50 Phil. 55).

(b) *Penal Provision for the crime of EXPULSION*

Under Art. 127 of the Revised Penal Code if a public officer or employee without legal authority *expels* a person from the Philippines or compels a person to change his residence, the penalty of *prision correccional* (six months and one day to six years) shall be imposed upon him.

(c) *Under Art. 32 of the Civil Code*

Any public officer or employee, or any private individual (who) directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs the liberty of abode and of changing the same shall be liable for damages. 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.

(10) The Cases of Imelda Marcos and Agapito “Butz” Aquino

Two cases reached the Supreme Court (SC) which had a bearing on future election disputes, *vis-à-vis* “conflict of laws” issues.

These were *Imelda Romualdez Marcos v. The Commission on Elections (COMELEC)*, GR 119976, 64 SCAD 358, *en banc* resolutions of Sep. 12 and Oct. 25, 1995, and *Agapito A. Aquino v. Comelec*, GR 120265, 64 SCAD 457, *en banc* resolutions of Sept. 12 and Oct. 25, 1995, respectively.

The first made final the proclamation of Imelda Marcos as the duly elected representative of the first congressional district of Leyte over respondent (private) Cirilo Roy Montejo. The case started when Montejo asked Comelec to disqualify Marcos for allegedly lacking the one-year residency requirement mandated under the 1987 Philippine Constitution. Montejo claimed the former First Lady placed her residency in the first district of the province at seven months preceding the balloting (*i.e.*, five months short of the required residency). Marcos argued, however, that she has been a resident of the area since childhood and has not abandoned her residency. After the poll body disqualified her, she took the case to the SC. In an *en banc* resolution dated Sep. 12, 1995, the SC granted Marcos' petition that she be declared qualified to run and be elected to a congressional seat. That is, to grant the petition on the ground that neither the Comelec nor the SC has competence over the issue of disqualifications of candidates for representatives, exclusive jurisdiction over such an issue being vested in the House of Representatives Electoral Tribunal (HRET), in accordance with Section 17, Article VI of the 1987 Philippine Constitution. In the same manner that the petition was granted on the basic theory that the petitioner was qualified to run and be voted for as representative. The SC further resolved that the conclusions herein reached did not preclude the issue of the petitioner's qualification in an appropriate proceeding before the HRET.

In the second case, the Supreme Court (SC), in its Sept. 12, 1995 resolution, has barred petitioner Agapito A. Aquino from assuming the post of representative for the second district of Makati. This is the case of *Aquino vs. Commission on Elections (COMELEC)*, GR 120265, *en banc* resolution of Sep. 12, 1995 and Oct. 25, 1995, respectively. The congressional aspirant was disqualified on the ground that he is ineligible for the post. The disqualification case against the former senator stemmed from a complaint filed by the "Move Makati" group, which alleged that he fell short of the required residency. He elevated the issue before the SC, after the poll body found him ineligible to run in the May polls. He won by a margin of around 2,500 votes against political rival Augusto Syjuco, Jr.

Be it noted that the SC's basis in denying with finality Syjuco's motion to proclaim him a duly elected representative of the second district of Makati (following the disqualification of Aquino for lack of the one-year residency requirement), is merely a reiteration of its earlier doctrine that a candidate who got the second-highest number of votes cannot be proclaimed winner, since he is not the choice of the electorate.

Art. 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)

COMMENT:

(1) Rules for Determining the Domicile of Juridical Persons

- (a) Get the domicile provided for in the law creating or recognizing them or in their articles of agreement.
- (b) If not provided for, get the place:
 - 1) Where their legal representation is established.
 - 2) Or where they exercise their principal functions.

(2) Domicile of a *De Facto* Partnership

A defectively organized partnership which the law recognizes as *de facto* insofar as third persons are concerned, can possess a domicile for purposes of its *de facto* existence. (*MacDonald v. NCBNY, L-7991, May 21, 1956*).

(3) Domicile of a Corporation with a Head Office and with Branches

Here the domicile is where the head office is located.

[NOTE: The entire Title III, Marriage, Book I, Civil Code, has been REPEALED by The Family Code. (See Art. 254, Family Code).]

Art. 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) (*Family Code*)

[The following Articles and Comments are therefore those concerning the Family Code.]

THE FAMILY CODE OF THE PHILIPPINES

(Executive Order 209, July 6, 1987, as amended
by Executive Order 227, July 17, 1987)

Title I

MARRIAGE

Chapter I

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)

COMMENT:**(1) The Two Aspects of Marriage**

- (a) It is a special contract. (*Art. 1*).
- (b) It is a status or a relation or an institution. (*Goitia v. Campos Rueda, 35 Phil. 252*). As a status, the principle in contracts that the parties may, by mutual agreement, put an end to it, cannot certainly apply, for the consequences of the marriage as a rule are fixed by LAW. (*Art. 52*). Notaries public who draw up instruments destroying the inviolability of marriage (such as agreements permitting spouses to have carnal knowledge with third parties) are subject to disciplinary action. (*Biton v. Momongan, 62 Phil. 7; In re Santiago, 70 Phil. 66*).

[NOTE: The phrase “after a marriage” can refer to something after a “wedding” or after the “dissolution of a marriage.”]

[NOTE: The enactment of RA 6955 declaring unlawful the practice of matching Filipino women for marriage to foreign nationals on a mail-order basis and other similar practices.]

(2) Marriage as a STATUS or UNION

It is the union (and inviolable social institution) of one man with one woman for the reciprocal blessings of a domestic home life, and for the birth, rearing, and education of children. In one case, the Supreme Court ruled that marriage is also a new RELATION in the maintenance of which the general public is interested. (*Perido v. Perido, 63 SCRA 97*). Under Art. 1 of the Family Code, the purpose of marriage is the establishment of *conjugal* and *family* life. Under the Constitution, “marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.” (*Article XV, Section 2, 1987 Philippine Constitution*).

Under the Muslim Code (PD 1083, also called the Code of Muslim Personal Laws of the Philippines, and declared effective

as of Feb. 4, 1977), marriage has a different concept in that a Muslim can have as many as four wives at a time, provided, he can give them equal companionship and equal treatment. (*See Art. 27 of the Muslim Code*).

[NOTE: Marriage (as a ceremony or the wedding *ends* when marriage as a status *begins*).].

(3) Some Principles

- (a) *Union* — *Physical and spiritual* mating.
- (b) *Of one man with one woman* — This is monogamy, which is the ideal marriage.
- (c) *Reciprocal blessings* — Marriage is a 50-50 proposition; the wife must not henpeck the husband; neither must the husband oppress the wife.
- (d) *Birth* — Since one of the purposes of marriage is the procreation of children, the natural moral law prohibits *artificial birth control*. (For this is neither birth, nor control; not birth, for no children are born; not control, for this would result only in excess and indulgence.). (*Gilbert K. Chesterton*).

People v. Roberto Cue CA-GR 14635-CR, Nov. 8, 1978

Both science and experience have shown that the so-called “safe” or “sterile” periods have many times proved neither “safe” nor “sterile.” It is a proved medical fact that many women are particularly eager for sex just after the menstrual flow, indicating more likely than not that nature intended the “safe” periods to be actually very naturally fertile ones.

- (e) *Rearing* — The care of BOTH parents is essential; too often, the rearing is done by the mother alone, which is tragic.
- (f) *Education of children* — It is the natural right of parents to educate their children.

(4) Marriage Distinguished from Ordinary Contracts

- (a) Ordinary contracts are mere contracts; a marriage contract is also a *social institution*.
- (b) In ordinary contracts, the agreements entered into usually depend on the stipulations agreed into by the contracting parties unless those stipulations are against the law, against public policy, against public order, against morals, or against good customs. In marriage, the nature and the consequences, as well as the incidents, are governed by the law — except with reference to marriage settlements. In marriage, therefore, as a general rule, stipulations are of no value.
- (c) The age for ordinary contracts is the age of majority; for marriage, the age varies. (This will be treated of subsequently.)
- (d) An ordinary contract may end either thru express provision of the law, thru expiration of the term for which the contract was agreed upon, thru fulfillment of the purpose for which the contract was entered into, or thru mutual agreement by the parties concerned. In marriage, only death or annulment for legal causes dissolves the marriage contract.

<i>Marriage</i>	<i>Ordinary Contract</i>
1. both a contract AND a social institution	1. merely a contract
2. generally, stipulations are fixed by law — not by the parties (exception: marriage settlement provisions)	2. stipulations are generally fixed by the parties
3. can be dissolved only by <i>death</i> or <i>annulment</i> , not by mutual agreement	3. can be ended by mutual agreement and by other legal causes

(5) Rules Governing Marriage Before the New Civil Code

- (a) *For the marriage ceremony* — Under Spain, only the religious or canonical marriages were recognized in the Philippines. The *civil* marriages in the Spanish Civil Code of 1889 were never extended to the Philippines. (*Benedicto v. De la Rama*, 3 Phil. 341; *Garcia v. David*, 67 Phil. 279). The Americans introduced civil marriage in General Order 68, promulgated on December 18, 1899, as modified by Acts 1451 and 3412. General Order 68 was repealed by Act 3613 (effective Dec. 4, 1929), as amended by Act 3848, Com. Acts 62 and 114 and Rep. Act 241. In turn, Act 3613 has been repealed by the Civil Code, except insofar as the former's penal provisions are concerned. (*See Art. 96, Civil Code*).
- (b) *For some effects of marriage* — Arts. 44 to 78 of the Spanish Marriage Law of 1870 were partly in force.
- (c) *For properties of the marriage and for property contracts on the occasion of marriage* — Arts. 1315 to 1444 of the old Civil Code governed.

[NOTE: Arts. 42 to 107 of the old Civil Code were never enforced in the Philippines because their application here was suspended by a decree of the Spanish Governor-General dated Dec. 2, 1889. (*Garcia, et al. v. David, et al.*, 67 Phil. 279).].

(6) Offer of Marriage

People v. Dreu
GR 126282, June 20, 2000

The offer of the accused to marry the victim establishes his guilt. As a rule in rape cases, an offer of marriage is an admission of guilt. (*People v. Casao*, 220 SCRA 362; *People v. Gerones*, 193 SCRA 263).

In the case at bar, after the accused's offer of marriage was rejected, he left town and only came back after his co-accused had been acquitted. Clearly, his offer of marriage was apparently only an attempt to evade prosecution and obviously

makes his leaving town an incident of flight. As earlier adverted to, this is evidence of guilt.

(7) Acknowledgment of Offspring of Crime

People v. Manahan
GR 128157, Sep. 29, 1999, 113 SCAD 248

Persons guilty of rape shall be sentenced to acknowledge the offspring of the crime “unless the law should prevent him from doing so.”

(8) Guidelines for the Proper Appreciation of Minority Either as an Element of a Crime or as a Qualifying Circumstances

People v. Gavino
399 SCRA 285 (2003)

1. the best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party;

2. in its absence, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age;

3. if the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim’s mother or a member of the family either by affinity or consanguinity who is qualified to testimony on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Sec. 40, Rule 130 of the Rules of Evidence shall be sufficient; and

4. in the absence of all the above, the complainant’s testimony will suffice provided it is expressly and clearly admitted by the appellant.

(9) The Human Side of a Case should not be Totally Ignored

**Estrada v. Escritor
400 SCRA 1 (2003)**

In this case, the Supreme Court posited the following views, thus:

1. the human side of the instant case should not be totally ignored because respondent's present position is not one which has caused scandal to anyone truly concerned with public morality;

2. without fear of contradiction, it would be violating godly laws of charity and love and, to say the least, embracing cruelty and hypocrisy, if [the Supreme Court] should require respondent to abandon her faithful spouse and loving son, or penalize her for treasuring the unity of her family as she would keep her work, for the punctilious satisfaction of a blind world;

3. the relations, duties, obligations, and consequences of marriage are important to the morals and civilizations of a people and to the peace and welfare of society; and

4. any attempt to inject freedom of religion in an effort to exempt oneself from the Civil Service rules relating to the sanctity of the marriage tie must fail.

Art. 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)

Art. 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)

COMMENT:

(1) Essential Requisite No. 1 – Legal Capacity of the Contracting Parties

- (a) This means that the parties must have the necessary age or the necessary consent of parents in certain cases.
- (b) There must be no impediment caused by a **PRIOR EXISTING MARRIAGE** or by **CERTAIN RELATIONSHIPS** by *affinity* (law) or *consanguinity* (blood).

(2) Essential Requisite No. 2 – Their consent freely given

- (a) “*Consent*” refers to the consent of the contracting parties, not parental consent. Parental consent is in connection with requisite No. 1 referring to legal capacity.
- (b) Consent is required because marriage is a contract, a voluntary act.
- (c) If there is consent, but it is **VITIATED** by error, fraud, intimidation, force, etc., the marriage is not void; it is merely **VOIDABLE**, *i.e.*, valid until annulled.
- (d) If there is absolutely no consent, or when the parties did not intend to be bound, as in the case of a **JOKE** or in the case of a **STAGE** or **MOVIE PLAY**, the marriage is **VOID**.

[NOTE: Without the essential requisites, the marriage is void except as stated in Art. 35(2).]

(3) Formal Requisite No. 1 – Authority of the person solemnizing the marriage

Under the old Marriage Law (*Act 3613, Sec. 27*), the marriage was considered completely valid if, at the time of solemnization, both the spouses or one of them believed in good

faith that the solemnizer was actually empowered to do so and that the marriage was perfectly legal. Under the Civil Code, however, the good or bad faith of the parties was immaterial. If the person performing the marriage had no authority to do so, the marriage was void, regardless of the good or bad faith of the parties. Under the Family Code, even if the solemnizing officer is not authorized, the marriage would be valid if either or both parties believe in good faith in his authority to solemnize the marriage.

(4) Formal Requisite No. 2 – A marriage license, except in a marriage of exceptional character

- (a) What is required is the marriage license, not the marriage certificate. The latter is not an essential or formal requisite; thus, an oral solemnization is valid. In fact, a marriage may be proved by oral evidence.

Bartolome v. Bartolome
L-23661, Dec. 20, 1967

FACTS: A man and a woman lived together as husband and wife for many years, but in the office of Manila Civil Registry, there was no record that a marriage between them had ever been celebrated.

ISSUE: Are we to presume that they are married?

HELD: Yes, because of their cohabitation for many years. Moreover, the lack of a marriage record in Manila does not rebut the presumption of marriage, for the marriage could have been celebrated elsewhere.

[*NOTE:* The *minority* of the private complainant, concurring with the fact that the accused is the *common-law* husband of the victim's mother, is a *special qualifying circumstances* warranting the imposition of the death penalty if alleged in the information and duly-proved. (*People v. Lizada*, 396 SCRA 62 [2003]). Both the circumstances of minority and relationship must be alleged in the information and proven during the trial to warrant the imposition of the death penalty. (*People v. Marahay*, 396 SCRA 129 [2003] and *People v. Cañete*, 400 SCRA 109 [2003]).]

(5) Formal Requisite No. 3 — A marriage ceremony

This must be made in the presence of not less than two witnesses of legal age.

[*NOTA BENE*: Absence of any of the formal requisites — the marriage is *VOID AB INITIO*, unless one or both of the parties are in good faith.].

Art. 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)

COMMENT:**(1) Irregularity in Formal Requisites Will Not Affect Validity of Marriage, In General**

This will, however, subject the party responsible to civil, criminal, and administrative liabilities. Some examples of these irregularities, include: presence of only one (1) witness, lack of legal age of witnesses, failure to comply with procedural requirements under Art. 12, non-observance of 3-month period under Art. 15, and failure to comply with requirements of notice under Art. 17.

(2) Case

**Buñag v. CA
GR 101749, July 10, 1992**

Dismissal of complaint for forcible abduction with rape was by mere resolution of the fiscal (now prosecutor) at the preliminary investigation stage. There is no declaration in a

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 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.

Art. 5. Any male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38, may contract marriage. (54a)

COMMENT:

Marriageable Ages of the Contracting Parties

Art. 5 sets forth the marriageable ages of the contracting parties to a marriage. Be it remembered that formerly, the marriageable age was 14 yrs. for females and 16 yrs. for males.

In addition to the age requirement set forth in Art. 5, both parties must not suffer from legal impediments of blood relationship as to render the marriage incestuous under Art. 37 or of certain relationships as to render the marriage void for reasons of public policy under Art. 38. Likewise, parties of marriageable ages and not suffering from any legal impediment are obligated to still comply with other essential as well as formal requisites.

Art. 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 said party, which fact shall be attested by the solemnizing officer. (55a)

COMMENT:

(1) Necessity for a Ceremony or Celebration

A “ceremony” is required, although no particular form for it is needed. And it must be before a duly authorized person. It need not be written; signs would be sufficient (*People v. Cotas, C.A., 40 O.G. 3154*) but in no case would a common-law marriage between *Filipinos* be considered as valid, for performance must be before the proper officer. (*See Cruz v. Catandes, C.A., 39 O.G. 324; Enriquez, et al. v. Enriquez, et al., 8 Phil. 565*).

**People v. Opeña
L-34954, Feb. 20, 1981**

If a man and a woman deport themselves as if they were husband and wife, they are presumed to be validly and legally married to each other and this presumption is not rebutted by a mere denial by the man (or woman) of the fact of marriage. (*See In re Mallare, 23 SCRA 292, Apr. 29, 1968*).

(2) Common-Law Marriage

A common-law marriage is one where the man and the woman just live together as husband and wife without getting married. In today’s language, this is referred to as a *live-in* relationship.

Is a *common-law marriage* valid in the Philippines if between *foreigners*, and if the relationship began *abroad*?

ANSWER: It would seem that the answer is yes, provided that it is valid according to the personal law of the parties and according to the place where the relationship began.

People v. Ignacio
81 SCAD 138 (1997)

Appellant's own admission that she was married to the victim was a confirmation of the *semper praesumitur matrimonio* and the presumption that a man and a woman so deporting themselves as husband and wife had verily acted into a lawful contract of marriage.

Mariano Adriano v. CA
GR 124118, Mar. 27, 2000

Although in cases of common-law relations where an impediment to marry exists, equity would dictate that property acquired by the man and woman thru their joint endeavor should be allocated to each of them in proportion to their respective efforts, petitioners in the instant case have not submitted any evidence that Vicenta actually contributed to the acquisition of the property in question.

(3) Marriage by Proxy — One where the other party is merely represented by a delegate or friend.

(4) Rules on Marriages by Proxy

- (a) If performed here in the Philippines, the marriage is void because physical presence of both parties is required under Art. 6 of the Family Code.
- (b) If performed abroad, whether between Filipinos or foreigners or mixed, it would seem that the controlling Article is Art. 26 of the Family Code. Hence, ordinarily, if the marriage by proxy is valid as such where celebrated, it should be considered as valid in the Philippines, without prejudice to any restrictions that may be imposed by our Immigration Laws for purposes of immigration.

[NOTE: The marriage by proxy is deemed celebrated at the place where the delegate or the proxy appears.]

(5) Effect If One Party is Not Asked

If the solemnizing officer after hearing the wife says, she was willing to take the groom as her husband, *forgot* to ask the groom on the same matter, the marriage would be valid, just the same, so long as the groom also signed the marriage certificate. (*Karganilla v. Familiar, C.A., 7175, 1 O.G. 345*).

Art. 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 Article 10. (56a)

COMMENT:**(1) Rule Re Ship Captain or Airplane Chief**

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. (*Art. 31, Family Code*).

(2) Rule Re Military Commander

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. (*Art. 32, Family Code*).

(3) Rule Re Consular Officials

Marriage 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. (*Art. 10, Family Code*).

(4) Governors, Mayors and Ambassadors Lack Authority to Solemnize Marriages

Under the Family Code, governors, mayors, and ambassadors are not authorized to perform marriages. (*Inclusio unius est exclusio alterius* — What the law does not include, it excludes.) A village elder cannot likewise celebrate a marriage. (*See Wong Woo Yiu v. Vivo, 13 SCRA 552*).

Under the Local Government Code, however, mayors are now authorized to perform marriages within their jurisdiction. (*See Secs. 444-455, Local Government Code*).

(5) Burden of Proof

If a person seeks to impugn the validity of a marriage on the ground that the person who solemnized it was not really authorized, such lack of authority must be proved by the person petitioning. (*De Cardenas v. Cardenas, et al., L-8218, Dec. 15, 1955*).

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 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)

COMMENT:

(1) Reason for Public Solemnization

The requirement that the marriage be done publicly is based on the premise that the state takes an active interest in the marriage.

(2) Instances Where Public Solemnization is Not Needed

Public solemnization is needed except:

- (a) Marriages in chambers of the Justice or Judge.
- (b) In marriages in *articulo mortis*.
- (c) In marriages in a remote place.
- (d) When both of the parties request in writing for solemnization in some other place. The place must be designated in a sworn statement.

Art. 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)

COMMENT:

(1) Where Marriage License Should Be Issued

The marriage license should be issued by the local civil registrar of the municipality where EITHER contracting party habitually resides. (But if this requirement as to the *place of*

issuance is not complied with, the marriage would still be valid, provided all the other requisites are present.) The solemnizing officer does not have to investigate whether or not the license had been properly issued. (*People v. Jansen*, 54 Phil. 176).

(2) Marriages of Exceptional Character (No Marriage License is Required)

- (a) In *articulo mortis* (Art. 27).
- (b) In a remote place (Art. 28).
- (c) Marriage of people who have previously cohabited for at least 5 years. (Art. 34). (Ratification of marital cohabitation)
- (d) Marriages between pagans or Mohammedans, who live in non-Christian provinces, and who are married in accordance with their customs. (Art. 33). (Suppose the parties live in non-Christian provinces but the wedding is in Manila?)

(3) Religious Ratification

Religious ratification of a valid marriage does not require a marriage license.

Art. 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)

COMMENT:

If Performed Abroad

Under this Rule, whenever a marriage between Filipino citizens is performed abroad by the Filipino consular official, the provisions on marriage found under the Family Code shall

apply, *i.e.*, as if the marriage is performed in the Philippines. The consular official of the Philippines abroad shall discharge the duties of the local civil registrar and of the solemnizing official.

Art. 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)

COMMENT:

This Article provides the data that must be included in the application for the marriage license.

Art. 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)

COMMENT:**Rules in Determining Whether Parties Have Required Age for Marriage**

Art. 12 sets forth the rules by which the civil registrar shall determine as to whether the parties have the required age for marriage.

Art. 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 circumstance and his or her actual civil status and the name and date of death of the deceased spouse. (61a)

COMMENT:**Art. 13 Is a Substitute for Art. 12**

This is when either party had been previously married in which case the applicant or applicants if both parties had been previously married, shall present in lieu of birth or baptismal certificate, the enumerated listing in Art. 13.

Art. 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)

COMMENT:

Without the needed CONSENT, the marriage is VOIDABLE.

Art. 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)

COMMENT:

(1) Effect of Parent's Refusal or If Advice is Unfavorable

If the parents *refuse* to give the advice and this fact is stated in a sworn statement with the Civil Registrar, marriage would of course be still possible (*Guerrero v. Dolojan, L-4631, Feb. 26, 1952*), under the conditions set forth in the Article. The same rule applies if the advice is unfavorable.

Under Art. 15, *advice* is required.

(2) Effect if Parties Refuse to Obtain Parental Advice

If the parties refuse to obtain parental advice, the marriage license must not be issued till after *three* months from the end of the 10-day publication. If they marry without the license, the marriage will be null and void. (*Art. 35, No. 3*).

Art. 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 counselling. Failure to attach said certificate of marriage counselling 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 counselling referred to in the preceding paragraph.
(n)

COMMENT:

Marriage Counselling Now a Requirement

As a requirement, marriage counselling is implicitly done by a priest, *imam* or minister, or a duly accredited marriage counselor (*i.e.*, a psychologist or a psychiatrist [a medical doctor]).

Art. 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)

COMMENT:**Required 10-Day Publication**

The required 10-day publication of application for a marriage license is done merely by way of notice in the bulletin board (outside the office of the local civil registrar) conspicuously located and accessible to the public.

Art. 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 corresponding bond required for the issuance of the order. (64a)

COMMENT:**Notice to Civil Registrar of Any Impediment to Marriage**

Notice made to the local civil registrar of any impediment to the marriage shall not prevent the issuance of the marriage license after the 10-day publication unless otherwise ordered by a competent court upon petition of the civil registrar at his own instance or that of any interested party.

Art. 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)

COMMENT:**Indigent Parties Are the Only Ones Exempt From Fees on Issuance of Marriage License**

Reason: They have no visible means of income or whose income is insufficient for their subsistence, a fact established thru an affidavit or oath made before the local civil registrar.

Art. 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)

COMMENT:**Life of a Marriage License**

Under this Rule, the life of a marriage license subsists for 120 days from date of issue and with the expiry date stamped in bold character on the face of every license.

Note that under Art. 350 of the Revised Penal Code, any (solemnizing) officer who solemnizes a marriage as well as the parties thereto after the license had expired may be held criminally liable.

Art. 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)

COMMENT:**(1) Certificate of Legal Capacity Required for Foreigners**

In general, capacity of foreigners to contract marriage in the Philippines is subject to their personal law (that is, their *national* law, as a rule); thus, they are required under this Article to obtain a *certificate of legal capacity*.

(Note that Art. 21 applies where EITHER or BOTH are citizens or subjects of a foreign country.).

(2) Who Can Issue the Certificate of Legal Capacity

The certificate of legal capacity should be issued by the proper diplomatic or consular officials.

(3) Diplomatic Officials

- (a) Ambassador
- (b) Minister plenipotentiary and envoy extraordinary
- (c) Resident minister
- (d) Charge *d'affaires* (in charge of affairs)

(4) Consular Officials

- (a) Consul-general
- (b) Consul
- (c) Vice-consul
- (d) Consular agent

Art. 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 the 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 settlements, if any, attaching a copy thereof. (67a)

COMMENT:

(1) The Marriage Certificate

This Article deals with the “marriage certificate.” It is not an essential requisite of marriage. (*Madridejo v. De Leon*, 55 *Phil. 1*). The best documentary evidence of a marriage is the marriage contract or the marriage certificate. (*See Villanueva v. Court of Appeals*, 198 *SCRA 472 [1991]*). Thus, an oral solemnization of the marriage is sufficient. Failure to sign the marriage contract does NOT *invalidate* the marriage. (*De Loria, et al. v. Felix*, 5 *O.G. 8114*).

Said marriage contract being notarized, the document now carries the evidentiary weight conferred upon it with respect to its due executive, and documents acknowledged before a notary public have in their favor the presumption of regulating. (*Ferancullo v. Ferancullo*, 509 *SCRA 1 [2006]*). In the instant controversy, the penalty for maintaining an illicit relationship may either be suspension or disbarment, depending on the circumstances of the case. (*Ibid.*)

**Tugeda v. Trias, et al.
L-16925, Mar. 31, 1962**

FACTS: The existence of a marriage was the issue involved in this case. No record of the alleged marriage existed in the record of marriages in the municipality where it was alleged to have been celebrated. Moreover, the solemnizing officer allegedly failed to send a copy of the marriage certificate

to the Civil Registry. Upon the other hand, the fact of marriage was sought to be established by the following:

- (a) The testimony of the justice of the peace who solemnized the marriage.
- (b) The living together of the parties as husband and wife for 18 years.
- (c) A project of partition (of property) signed by their children and the children of one by a prior marriage stating that they are the children of the second and the first marriages respectively of the deceased spouses.

HELD: The marriage existed, in view of the proofs presented. Incidentally, the failure of the solemnizing officer to send a copy of the marriage certificate is not a fatal defect, the certificate not being an essential requisite for marriage.

NOTE: In parricide, the *best proof* of relationship between appellant and the deceased is the marriage certificate and in the absence thereof, oral evidence of the fact of marriage may be considered. (*People v. Florendo*, 413 SCRA 132 [2003]).

(2) The Certificate Distinguished from the License

The marriage *certificate* must *not* be confused with the marriage *license*, the latter being an essential requisite of marriage.

(3) Proof of the Existence of a Marriage

The best evidence of the existence of a marriage is the marriage certificate — but it is not the only evidence that can be admitted to prove the existence of a marriage. Testimony of witnesses may be admitted on this point. (*U.S. v. Memoracion*, 34 Phil. 633). In fact, the declaration of one of the parties to the marriage as well as of the people who attended the ceremony, is regarded as competent proof of the marriage. (*People v. Al-day*, 59 O.G. 411; *Balogbog v. CA*, GR 83598, Mar. 7, 1997, 80 SCAD 229). There is even the legal presumption “that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.” (*See Sec. 5[bb], Rule*

131, *Revised Rules of Court*). Marriage may even be proved by such evidence as *certificates of title to land*, which shows that the girl is married to the man, and by various court decisions referring to the marriage. (*Padilla v. Howard, et al., L-7098, Apr. 22, 1955*).

[NOTE: The presumption hereinabove referred to, found in the Rules of Court, may be rebutted by evidence showing that the marriage did not actually take place. (*Fernandez v. Puatdu, L-10071, Oct. 31, 1957*).]

Fernandez v. Puatdu
L-10071, Oct. 31, 1957

FACTS: A woman, Rosario Campos Fernandez, claimed to be the surviving wife of the deceased Guillermo Puatdu. She alleged, among other things:

- (a) That she contracted marriage with him on May 15, 1896 before a Catholic priest by the name of Alfonso Garcia.
- (b) That there were sponsors and guests for the wedding.
- (c) That they lived together publicly as husband and wife in Spain until 1902, then they came to the Philippines and continued their marital life in Manila, and later in Bulacan.
- (d) That in 1917, after discovering that he was unfaithful to her, she returned to Spain.

She did *not* produce any marriage certificate, claiming that the document was lost during the Spanish civil war. The Court, however, relied on the following evidence to rebut the presumption of marriage:

- (a) There was no entry of the marriage in the civil registry of Madrid, nor in the records of the diocese to which the Church alluded to, belong.
- (b) The Chancellor-Secretary of the bishopric concerned issued a certification stating that in the books for registration of licenses of priests kept in said office

from the year 1896, the name of a Father Alfonso Garcia does not appear.

- (c) In the records of the Spanish consulate in Manila, the girl petitioner was listed in 1916 as “*soltera*” (single). (Said record, being official and over 40 years old, is *prima facie* evidence of the facts stated therein.)
- (d) The original certificates of title to real property of the deceased, issued in 1930, stated that the deceased was “single.”
- (e) In a contract of lease executed by the deceased, he stated that he was “single.”
- (f) In certain public instruments in which he acknowledged certain people as his natural children, he stated that he was single. (Said instruments were later on confirmed in a civil case before the CFI [now RTC].)

HELD: The presumption of marriage has been rebutted in view of the above-mentioned evidence.

Lim Pang v. Uy Pian
52 Phil. 571

FACTS: *T* made a will where he stated that *W* was his wife. The will was duly probated. Is the will admissible to prove the existence of the marriage?

HELD: Yes, because *prima facie* (on the face of it), *W* can be considered as the wife, otherwise, *T* would not have made this admission against his own pecuniary interest.

People v. Cocas
(C.A.) O.G., Oct. 11, 1941, p. 3154

FACTS: In attempt to disprove the existence of a marriage, the priest who allegedly solemnized it testified that he could not remember what was said during the wedding. He was corroborated in this by one of the parties. However, there was a greater mass of evidence pointing to prolonged cohabitation.

HELD: The marriage was properly celebrated, and it continues to be presumed as valid.

Martin Ramos, et al. v. Caridad Ortuzar, et al.
L-3299, Aug. 9, 1951

FACTS: Ramos claimed the deceased had cohabited with her and as a result, several children were born, so that when the deceased contracted a marriage with another and subsequently died, Ramos stepped forward and alleged she was the real and legitimate wife of the deceased, entitled to the rights of a legitimate wife in the deceased's estate. However, she was not able to present any marriage certificate; and in the civil registry, there was no entry of such a marriage. This absence has not been adequately explained.

HELD: There are several circumstances to show that there was no marriage between the plaintiff Ramos and the deceased Hill. No certificate of marriage or entry thereof in the civil registry has been presented nor has satisfactory explanation of the absence been offered; the claim that a house or store was built for this plaintiff across the street from the big house in which the deceased lived, and that she moved to the new house with her children, far from sustaining the marriage, confirms that there was none; *common* observations and human psychology reject the thought that this woman could have consented with complete resignation that she be banished for good from the conjugal home with her children in order that her husband might live in peace with another woman, rear children, and enjoy the home and fortunes which according to her, she had helped build and earn. And no intelligent and responsible man that Percy A. Hill undoubtedly was would likely have been so unmindful of social convention and so reckless of penal consequences as publicly to marry twice while his first wife was alive, and live with his new wife in plain and constant sight of his former and legitimate wife and children. Moreover, the plaintiff Ramos was married to another man after her separation from Hill. Besides, she came forward claiming to be Hill's wife for the first time in six years after the partition and adjudication of the estate. All these circumstances are enough to destroy whatever presumption of marriage may have been engineered and created by the cohabitation of the deceased and Ramos.

Silva, et al. v. Peralta
L-13144, Nov. 25, 1960

FACTS: In this case, there is *no proof* of the alleged marriage between the man and the woman, except the testimony of the woman and her counsel. Moreover, it was proved that at one time, the girl had alleged that she was the “common-law wife” of the man; that in a previous affidavit she made, in connection with a petition for support, she had stated that she was “single.” No document was ever introduced. The testimony was even conflicting as to who really had solemnized the alleged marriage.

HELD: No marriage ever took place. The presumption of marriage arising from the cohabitation of the man and the woman under the Rules of Court, cannot certainly be applied under the circumstances.

Bartolome v. Bartolome
L-23661, Dec. 20, 1967

FACTS: A man and a woman lived together as husband and wife for many years, but in the office of the Manila Civil Registry, there was no record that a marriage between them had ever been celebrated.

ISSUE: Are we to presume that they are married?

HELD: Yes, because of their cohabitation for many years. Moreover, the lack of a marriage record in Manila does not rebut the presumption of marriage, for the marriage could have been celebrated elsewhere.

Corpus v. Administrator
L-22469, Oct. 23, 1978

It is disputably presumed that a man and a woman depicting themselves as husband and wife have entered into a lawful contract of marriage, and that a child born in lawful wedlock, there being no divorce — absolute or from bed and board, is legitimate.

Balogbog v. CA
GR 83598, Mar. 7, 1997, 80 SCAD 229

FACTS: Two boys claimed to be the legitimate children of the deceased. They did not present the marriage contract of their parents, but only a certification that records in the municipality where the marriage was performed had been destroyed during the war. The wife testified as to the existence of the marriage, as did two family friends who themselves attended the wedding and who know the couple and their children. The brother and sister of the deceased, who denied knowing the claimants, said their brother died single and without issue, and because there was no marriage contract, the alleged marriage was not proven.

ISSUE: Is this contention correct?

HELD: No. Although the marriage contract is considered primary evidence of marriage, failure to present it is not proof that no marriage took place. Other evidence such as testimonies of witnesses may be presented to prove marriage. The presumption is that a man and a woman deporting themselves as husband and wife are in fact married and this can only be rebutted by cogent proof to the contrary, which is not obtaining in the abovecited case.

Persons Dwelling Together Apparently In Marriage Are Presumed to be in Fact Married

Presumptions of law are either conclusive or disputable. For instance, altho a marriage contract is considered a primary evidence of marriage, its absence is not always proof that no marriage, in fact, took place. (*Delgado Vda. de Dela Rosa v. Heirs of Marciana Rustia Vda. de Damian*, 480 SCRA 334 [2006]).

Art. 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)

COMMENT:

Copies of the Marriage Certificate

Four copies of the marriage contract (certificate) must be made, as follows:

- (a) One for the contracting parties;
- (b) Two for the local civil registrar (who must receive it within 15 days after the celebration); and
- (c) One for the person solemnizing.

[NOTE: Even if no one receives a copy, the marriage will still be valid. (Jones v. Hortiguela, 64 Phil. 179).]

Art. 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)

COMMENT:

(1) Free Documents

The preparation of documents and the administration of oaths shall be done FREE.

(2) Exemption from the Documentary Stamp Tax

No documentary stamp tax is required.

Art. 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)

COMMENT:

Recording of Applications for the Marriage License

- (a) The entries must be chronological.
- (b) Pertinent data must be recorded.

**Republic v. CA and Angelina M. Castro
GR 103047, Sep. 12, 1994
55 SCAD 157**

FACTS: Angelina M. Castro seeks a judicial declaration of nullity of her marriage to Edwin F. Cardenas. The marriage was celebrated without the knowledge of Castro's parents. Moreover, thru her lawyer's effort, discovered was the fact that there was no marriage license issued to Cardenas prior to the celebration of the marriage. As proof, Castro offered as evidence a certification from the Civil Register that after a diligent search, no record or entry of a specified tenor is found to exist in the records of her office. Said written statement was signed by the Senior Civil Registry Officer (Cenona D. Quintos) who had custody of the official record.

ISSUE: Whether or not the documentary and testimonial evidence presented by private respondent are sufficient to establish that no marriage license was issued by the Civil Registrar prior to the celebration of the marriage.

HELD: The certification of the local civil registrar of due search and inability to find a record or entry to the effect that no marriage license has been issued to the parties is adequate to prove its non-issuance.

As custodian of public documents, a civil registrar is a public officer charged with the duty, *inter alia*, of maintaining

a register book where he is required to enter all applications for marriage licenses, including the names of the appellants, the date the marriage license was issued, and such other relevant data. The certification of “due search and inability to find” issued by the local civil registrar enjoys probative value, she being the officer charged under the law to keep a record of all data relative to the issuance of a marriage license. Unaccompanied by any circumstance of suspicion and pursuant to Sec. 29, Rule 132 of the Rules of Court, a certificate of “due search and inability to find” sufficiently proved that his office did not issue a marriage license to the contracting parties. As already adverted to, records show that the marriage between Castro and Cardenas was initially unknown to the parents of the former. Such marriage is one of those commonly known as a “secret marriage” — 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.

It is noteworthy to mention that the finding of the appellate court that the marriage between the contracting parties is null and void for lack of a marriage license does not discount the fact that indeed, a spurious marriage license, purporting to be issued by the civil registrar, may have been presented by Cardenas to the solemnizing officer. Be it remembered that at the time the subject marriage was solemnized, the law governing marital relations was the Civil Code, providing that no marriage shall be solemnized without a marriage license first issued by a local civil registrar. Being one of the essential requisites of a valid marriage, absence of a license would render the marriage void *ab initio*.

NOTA BENE: A marriage though void still needs a judicial declaration of such fact under the Family Code even for purposes other than remarriage. (*Domingo v. CA*, 44 SCAD 955, GR 104818, Sep. 17, 1993).

Art. 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. (71a)

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law. (A) (As Amended by E.O. No. 227, dated July 17, 1987)

COMMENT:

(1) General Rule for Validity of Marriages Celebrated Abroad

“If valid where celebrated, it is also valid here.” (This is the doctrine of “*lex loci celebrationis*,” the law of the place of celebration.)

(2) The Exceptions

Those prohibited under Arts. 35 (1, 4, 5 and 6), 36, 37 and 38 of the Family Code.

Art. 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;

x x x x x x x x x

(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; and

(6) Those subsequent marriages that are void under Article 53.

Art. 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 Executive Order 227, dated July 17, 1987)

Art. 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.

Art. 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 step-children;
- (3) Between parents-in-law and children-in-law;
- (4) Between the adopting parent and the adopted child;
- (5) Between the surviving spouse of the adopting parent and the adopted child;
- (6) Between the surviving spouse of the adopted child and the adopter;
- (7) Between an adopted child and a legitimate child of the adopter;
- (8) Between adopted children of the same adopter; 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.

(3) Rule for Void or Voidable Foreign Marriages

Art. 26 is framed in the affirmative "if valid there as such." Now then, suppose the marriage is VOID in the place of celebration, should it also be considered as void in the Philippines?

ANSWER: The general rule is YES. If VOID where celebrated, the marriage shall be considered VOID in the Philip-

pines. Similarly, if VOIDABLE where celebrated, the marriage would also be VOIDABLE here in the Philippines, without prejudice of course to the exceptions under Art. 26.

(4) Requirements to Prove a Foreign Marriage

- (a) The existence of the pertinent provision of the foreign marriage law.
- (b) The celebration or performance of the marriage in accordance with said law. (*Ching Huat v. Co Heong*, 4 O.G. 1214; *Adong v. Cheong Seng Gee*, 43 Phil. 43; *Lao and Lao v. Dee Tim*, 45 Phil. 739; *Board of Commissioner of Immigration and Deportation v. De La Rosa*, 197 SCRA 853 [1991]).

Needless to say, the foreign law is not of judicial notice, and it must therefore be *proved as a fact*. Hence, if there is no competent testimony on what said law is, the court cannot be convinced morally of the existence of such a marriage. (*Adong v. Cheong Seng Gee*, 43 Phil. 43).

(5) Problem Involving Polygamous Marriages

H, a citizen of Turkey, is validly married there simultaneously to three wives, by each of whom he has children. Will the marriage be considered as valid in the Philippines?

ANSWER: For the purpose of cohabitation in the Philippines, only the first marriage should be considered as valid; but for the purpose of considering the legitimacy of children, the marriage are all to be considered as VALID. In case of doubt, we must resolve same in favor of the legitimacy of children. Thus, it has been said that a marriage, from this viewpoint, may be considered VOID in one respect, and VALID in another respect.

(6) Bar

If an Indonesian brings to the Philippines two wives to whom he validly married in Indonesia, should both marriages be likewise recognized here as, equally valid?

ANSWER: Yes, under the Muslim Code.

(7) Foreign Divorce Obtained by a Foreigner Married to a Filipino

The purpose of the second paragraph of the Article is to avoid unfairness to the Filipino spouse.

Note that the rule does not apply if both parties are Filipinos.

(8) Effect of Divorce of a Marriage Between a Filipino Citizen and a Foreigner

If validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law. (*Art. 26, par. 2*).

NOTE: If the foreign divorce is obtained by the Filipino spouse, the divorce is VOID.

(9) Case

**Imelda Manalaysay Pilapil v. Hon. Ibay-Somera,
Hon. Victor, and Erich Ekkehard Geiling
GR 80116, June 30, 1989**

FACTS: An ill-starred marriage of a Filipina and a foreigner which ended in a foreign absolute divorce, only to be followed by a criminal infidelity suit of the latter against the former, provides us the opportunity to lay down a decisional rule on what hitherto appears to be an unresolved jurisdictional question.

On Sep. 7, 1979, petitioner Imelda Manalaysay Pilapil, a Filipino citizen, and private respondent Erich Ekkehard Geiling, a German national, were married before the Registrar of Births, Marriages and Deaths at Friedensweiler in the Federal Republic of Germany. The marriage started auspiciously enough, and the couple lived together for some time in Malate, Manila where their only child, Isabella Pilapil Geiling, was born on Apr. 20, 1980. Thereafter, marital discord set in with mutual recriminations between the spouses, followed by a separation *de facto* between them. After about three and a half years of

marriage, such connubial disharmony eventuated in private respondent initiating a divorce proceeding against petitioner in Germany before the Schoneberg Local Court in Jan., 1983. He claimed that there was failure of their marriage and that they had been living apart since Apr., 1982.

Petitioner, upon the other hand, filed an action for legal separation, support and separation of property before the Regional Trial Court of Manila, Branch XXXII, on Jan. 23, 1983 where the same is still pending as Civil Case 83-15866.

On Jan. 15, 1986, Division 20 of the Schoneberg Local Court, Federal Republic of Germany, promulgated a decree of divorce on the ground of failure of marriage of the spouses. The custody of the child was granted to petitioner. The records show that under German law, said court was locally and internationally competent for the divorce proceeding and that the dissolution of said marriage was legally founded on and authorized by the applicable law of that foreign jurisdiction. On June 27, 1986, or more than five months after the issuance of the divorce decree, private respondent filed two complaints for adultery before the City Fiscal of Manila alleging that, while still married to said respondent, petitioner "had an affair with a certain William Chia as early as 1982 and with yet another man named James Chua sometime in 1983." Assistant Fiscal Jacinto A. de los Reyes, Jr., after the corresponding investigation, recommended the dismissal of the cases on the ground of insufficiency of evidence. However, upon review, the respondent city fiscal approved a resolution, dated Jan. 8, 1986, directing the filing of two complaints for adultery against the petitioner. The complaints were accordingly filed and were eventually raffled to two branches of the Regional Trial Court of Manila. The case entitled "*People of the Philippines vs. Imelda Pilapil and William Chia*," docketed as Criminal Case 87-52435, was assigned to Branch XXVI presided by the respondent judge; while the other case, "*People of the Philippines vs. Imelda Pilapil and James Chua*," docketed as Criminal Case 87-52434 went to the sala of Judge Leonardo Cruz, Branch XXV, of the same court.

On Mar. 14, 1987, petitioner filed a petition with the Secretary of Justice asking that the aforesaid resolution of

respondent fiscal be set aside and the cases against her be dismissed. A similar petition was filed by James Chua, her co-accused in Criminal Case 87-52434. The Secretary of Justice, through the Chief State Prosecutor, gave due course to both petitions and directed the respondent city fiscal to inform the Department of Justice "if the accused have already been arraigned and if not yet arraigned, to move to defer further proceedings" and to elevate the entire records of both cases to his office for review. Petitioner thereafter filed a motion in both criminal cases to defer her arraignment and to suspend further proceedings thereon. As a consequence, Judge Leonardo Cruz suspended proceedings in Criminal Case 87-52434. Upon the other hand, respondent judge merely reset the date of the arraignment in Criminal Case 87-52435 to Apr. 6, 1987. Before such scheduled date, petitioner moved for the cancellation of the arraignment and for the suspension of proceedings in said Criminal Case No. 87-52435 until after the resolution of the petition for review then pending before the Secretary of Justice. A motion to quash was also filed in the same case on the ground of lack of jurisdiction, which motion was denied by the respondent judge in an order dated Sep. 8, 1987. The same order also directed the arraignment of both accused therein, that is, petitioner and William Chia. The latter entered a plea of not guilty while the petitioner refused to be arraigned. Such refusal of the petitioner being considered by respondent judge as direct contempt, she and her counsel were fined and the former was ordered detained until she submitted herself for arraignment. Later, private respondent entered a plea of not guilty.

On Oct. 27, 1987, petitioner filed this special civil action for *certiorari* and prohibition, with a prayer for a temporary restraining order, seeking the annulment of the order of the lower court denying her motion to quash. The petition is anchored on the main ground that the court is without jurisdiction "to try and decide the charge of adultery, which is a private offense that cannot be prosecuted *de officio* (sic), since the purported complainant, a foreigner, does not qualify as an offended spouse having obtained a final divorce decree under his national law prior to his filing the criminal complaint." Earlier, on Oct. 21, 1987, this Court issued a temporary restraining order enjoining the respondents from implementing the aforesaid order of Sep.

8, 1987 and from further proceeding with Criminal Case No. 87-52435. Subsequently, on Mar. 23, 1988, Secretary of Justice Sedfrey A. Ordoñez acted on the aforesaid petitions for review and, upholding petitioner's ratiocinations, issued a resolution directing the respondent city fiscal to move for the dismissal of the complaints against the petitioner.

HELD: We find this petition meritorious. The writs prayed for shall accordingly issue. 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 a jurisdictional, and not merely a formal, requirement. While in point of strict law, the jurisdiction of the court over the offense is vested in it by the Judiciary Law, the requirement for a sworn written complaint is just as jurisdictional a mandate since it is that complaint which starts the prosecutory proceeding 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 guardian of the offended party. The so-called exclusive and successive rule in the prosecution of the first four offenses abovementioned does 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 a deceased or incapacitated victim in the aforesaid offenses of seduction, abduction, rape and acts of lasciviousness, in default of her parents, grandparents or 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.

Corollary to such exclusive grant of power to the offended spouse to institute the action, it necessarily follows that such initiator must have the status, capacity or legal representation

to do so at the time of the filing of the criminal action. 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.

The absence of an equivalent explicit rule in the prosecution of criminal cases does not mean that the same requirement and rationale would not apply. Understandably, it may not have been found necessary since criminal actions are generally and fundamentally commenced by the State, thru the People of the Philippines, the offended party being merely the complaining witness therein. However, in the so-called "private crimes," or those which cannot be prosecuted *de officio*, and the present prosecution for adultery is of such genre, the offended spouse assumes a more predominant role since the right to commence the action, or to refrain therefrom, is a matter exclusively within his power and option. This policy was adopted out of consideration for the aggrieved party who might prefer to suffer the outrage in silence rather than go through the scandal of a public trial. Hence, as cogently argued by petitioner, Article 344 of the Revised Penal Code thus presupposes that the marital relationship is still subsisting at the time of the institution of the criminal action for adultery. This is a logical consequence since the *raison d'être* of said provision of law would be absent where the supposed offended party had ceased to be the spouse of the alleged offender at the time of the filing of the criminal case. In these cases, therefore, it is indispensable that the status and capacity of the complainant to commence the action be definitely established and, as already demonstrated, 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 the legal capacity to do so.

To repeat, there does not appear to be any local precedential jurisprudence on the specific issue as to when precisely the

status of a complainant as an offended spouse must exist where a criminal prosecution can be commenced only by one who in law can be categorized as possessed of such status. Stated differently and with reference to the present case, the inquiry would be whether it is necessary in the commencement of a criminal action for adultery that the marital bonds between the complainant and the accused be unsevered and existing at the time of the institution of the action by the former against the latter.

American jurisprudence, on cases involving statutes in that jurisdiction which are *in pari materia* with ours, yields the rule that *after a divorce has been decreed, the innocent spouse no longer has the right to institute proceedings against the offenders* where the statute provides that the innocent spouse shall have the exclusive right to institute a prosecution commenced, a divorce subsequently granted can have no legal effect on the prosecution of the criminal proceedings to a conclusion.

In the cited *Loftus case*, the Supreme Court of Iowa held that no prosecution for adultery can be commenced except on the complaint of the husband or wife. Section 4932, Code. *Though Loftus was husband of defendant when the offense was said to have been committed, he had ceased to be such when the prosecution was began;* and appellant insists that his status was not such as to entitle him to make the complaint. We have repeatedly said that the offense is against the unoffending spouse, as well as the state, in explaining reason for this provision in the statute; and we are of the opinion that *the unoffending spouse must be such when the prosecution is commenced*. We see no reason why the same doctrinal rule should not apply in this case and in our jurisdiction, considering our statutory law and jural policy on the matter. We are convinced that in cases of such nature, the status of the complainant *vis-à-vis* the accused must be determined as of the time the complaint was filed. Thus, the person who initiates the adultery case must be an offended spouse, and by this is meant that he is still married to the accused spouse, at the time of the filing of the complaint.

In the present case, the fact that private respondent obtained a valid divorce in his country, the Federal Republic of

Germany, is admitted. Said divorce and its legal effects may be recognized in the Philippines insofar as private respondent is concerned (*Recto v. Harden*, 100 Phil. 427 [1956]) in view of the nationality principle in our civil law on the matter of status of persons. Thus, in the case of *Van Dorn vs. Romillo, Jr., et al.*, 139 SCRA 139 (1985), 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. 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 considered 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. Pursuant to his national law, private respondent 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.

The said pronouncements foreshadowed and are adopted in the Family Code of the Philippines (Executive Order 209, as amended by Executive Order 227, effective on Aug. 3, 1988), Article 26 whereof provides that "(w)here marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law."

Under the same considerations and rationale, private respondent, being no longer the husband of petitioner, had no legal standing 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 nor 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, since there would thenceforth be no spousal 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 aforecited case of *United States vs. Mata (18 Phil. 490 [1911])* 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 secured a formal judicial declaration to that effect.” Definitely, it cannot be logically inferred therefrom that the complaint can still be filed after the declaration of nullity 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.

Private respondent’s invocation of *Donio-Teven, et al. vs. Vamenta, 133 SCRA 616 (1984)*, must suffer the same fate of inapplicability. A cursory reading of said case reveals that

the offended spouse therein had duly and seasonably filed a complaint for adultery, although an issue was raised as to its sufficiency but which was resolved in favor of the complainant. Said case did not involve a factual situation akin to the one at bar or any issue determinative of the controversy herein.

Justice Edgardo L. Paras (concurring opinion):

It is my considered opinion that regardless of whether we consider the German absolute divorce as valid also in the Philippines, the fact is that the husband in the instant case, by the very act of his obtaining an absolute divorce in Germany can no longer be considered as the offended party in case his former wife actually has carnal knowledge with another, because in divorcing her, he already implicitly authorized the woman to have sexual relations with others. A contrary ruling would be less than fair for a man, who is free to have sex will be allowed to deprive the woman of the same privilege.

In the case of *Recto v. Harden* (100 Phil. 427 [1956]), the Supreme Court considered the absolute divorce between the American husband and his American wife as valid and binding in the Philippines on the theory that their status and capacity are governed by their *National Law*, namely, American law. There is no decision yet of the Supreme Court regarding the validity of such a divorce if one of the parties, say an American, is married to a Filipino wife, for then two (2) different nationalities would be involved.

In the book of Dr. Jovito Salonga entitled *Private International Law* and precisely because of the *National Law* doctrine, he considers the absolute divorce as valid insofar as the American husband is concerned but void insofar as the Filipino wife is involved. This results in what he calls a "socially grotesque situation," where a Filipino woman is still married to a man who is no longer her husband. It is the opinion however, of the undersigned that very likely the opposite expresses the correct view. While under the *national law* of the husband the absolute divorce will be valid, still one of the exceptions to the application of the proper foreign law (one of the exceptions to comity) is when the foreign law will work an injustice or injury to the people or residents of the forum. Consequently, since

to recognize the absolute divorce as valid on the part of the husband would be injurious or prejudicial to the Filipino wife whose marriage would be still valid under her national law, it would seem that under our law existing before the new Family Code (which took effect on Aug. 3, 1988) the divorce should be considered void both with respect to the American husband and the Filipino wife.

The case of *Van Dorn v. Romillo, Jr.* (139 SCRA [1985]) cannot apply despite the fact that the husband was an American with a Filipino wife because in said case the validity of the divorce insofar as the Filipino wife is concerned was NEVER put in issue.

Chapter 2

MARRIAGES EXEMPT FROM THE LICENSE REQUIREMENT

Rule Under the Old Law

Under the old marriage law (*i.e.*, before the Civil Code), there were *two more* marriages of exceptional character that were allowed, namely:

- (a) Marriage during a religious revival, provided, that the parties had already been living together as husband and wife for two years.
- (b) Marriage between new converts to the Christian religion, provided they were baptized not more than five years prior to the marriage ceremony. (*Secs. 22, 24, Act 3613*).

[*NOTE*: These two kinds of marriages were eliminated in the Civil Code. Said marriages and some others were also eliminated in the Family Code.].

Art. 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)

COMMENT:

When No New Marriage Ceremony Is Needed

A marriage remains valid even without need of a new marriage ceremony if the ailing party survives. (*See Soriano v. Felix, L-9005, June 20, 1958*).

Art. 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)

COMMENT:

(1) Rule If Both Parties are at the Point of Death

There can be a valid marriage in *articulo mortis* even if both parties are at the point of death, provided, of course, that all the essential requisites are present. It is clear that the parties concerned must be *conscious* of what they are doing.

(2) Signature of Dying Party

In a marriage in *articulo mortis*, while it is advisable that a witness to the marriage should sign the dying party's signature if the latter be physically unable to do so, still if upon order of the solemnizing official, *another* person should so sign, the marriage is still valid. The law as much as possible intends to give legal effect to a marriage. As a matter of fact, no particular form for a marriage celebration is prescribed. (*Cruz v. Catandes, C.A., 39 O.G. No. 18, p. 324*).

(3) Who Can Perform Marriages in Articulo Mortis

It is erroneous to say that only priests, ship captains, airplane chiefs or commanding officers (in the particular instances enumerated in Arts. 31 and 32) are the ones who can perform a marriage in *articulo mortis*. A justice, a judge, etc., can also do so within their respective jurisdictions.

(4) 'Danger of Death' Distinguished from 'Point of Death'

If a soldier is about to go to war, he may be in *danger* of death, but *not* at the *point* of death; hence, a marriage in *articulo mortis* would not be applicable to him.

(5) Marriage in a Remote Place

The marriage in Art. 28 is a *marriage in a remote place*. There is no prescribed minimum or maximum distance, unlike that in the Civil Code.

Art. 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 that the officer took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of a legal impediment to the marriage. (72a)

COMMENT:**Purpose of the Affidavit**

The affidavit is for the purpose of proving the basis for exemption from the marriage license. Even if there is failure on the part of the solemnizing officer to execute the necessary affidavit, such irregularity will not invalidate the marriage for the affidavit is not being required of the parties. (*See Soriano v. Felix, L-9005, June 20, 1958*).

Art. 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 days after the performance of the marriage. (73a)

COMMENT:**Civil Registrar Is Given the Original of the Affidavit**

This is so for the simple fact that he keeps the records of marriages taking place. Thus, the local civil registrar is given

the original of the affidavit which takes the place of a marriage license.

Again, failure to comply with said requirement does not invalidate the marriage.

Art. 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)

COMMENT:

The marriage may be solemnized during *stopovers*.

Art. 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)

COMMENT:

(1) Special Cases of Marriages in Articulo Mortis

- (a) The people referred to in Arts. 31 and 32 can celebrate the marriage only if it is in *articulo mortis*.
- (b) Of course, other people, like a judge or a consul, can perform a marriage in *articulo mortis*.

(2) Re: Military Commander

- (a) must be a *commissioned officer*
- (b) marriage may be between civilians, also if in *articulo mortis*.

Art. 33. Marriages among Muslims or among members of the ethnic cultural communities may be performed validly without the necessity of a marriage license, provided that they are solemnized in accordance with their customs, rites or practices. (78a)

COMMENT:

(1) No Judicial Notice

No judicial notice can be taken of Mohammedan rites and customs for marriage. They must be alleged and proved in court. (*People v. Dumpo*, 62 Phil. 246).

(2) Consistency With the Constitution

Art. 33 is but consistent with the constitutional provision which provides that “the State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.” (*Art. XIV, Sec. 17, 1987 Phil. Const.*).

Art. 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)

COMMENT:

(1) Ratification of Marital Cohabitation – Requisites

- (a) The contracting parties must have lived together as husband and wife for at least five years before the marriage they are entering into.

- (b) No legal impediment of any kind must exist between them. For example, they must not be first cousins, or stepbrother and stepsister.
- (c) Requirements (a), (b) and (c) must be stated in an affidavit before any person authorized by law to administer oaths.
- (d) The necessary affidavit of the person solemnizing the marriage.

(The marriage is sometimes referred to as the “ratification of marital cohabitation.”)

(2) Illustrative Problems

- (a) A 23-year-old man married a 21-year-old girl without a marriage license, but previous to the marriage they had been living together for *three* years. Is the marriage valid or void?

ANSWER: VOID, for they had not lived together for at least five years.

- (b) A man 30 years old has been living for five years as the common-law husband of a girl who is now 17 years old. Do you believe that they can get validly married even without a marriage license?

ANSWER: No, for the girl is still a minor, and therefore cannot as yet marry.

(3) Effect of the New Majority Age of 18

Although *A* and *B* were merely 18 years old, they swore to an affidavit stating they were of legal age. Previously, they had been living together for more than five years. If they marry without a marriage license on the strength of such affidavit, the marriage should be considered as VALID because the age of majority is now 18.

(4) Reason for the Article

“The publicity attending the marriage license may discourage such persons from legalizing their status.” (*Report of the Code Com., p. 80*).

(5) Case

**Tomasa Vda. De Jacob v. CA
GR 135216, Aug. 19, 1999**

FACTS: Respondent Pedro Pilapil argues that the marriage was void because the parties had no marriage license.

HELD: This argument is misplaced because it has been established that Dr. Jacob and petitioner lived together as husband and wife for at least 5 years. An affidavit to this effect was executed by Dr. Jacob and petitioner. Clearly then, the marriage was exceptional in character and did not require a marriage license.

Chapter 3

VOID AND VOIDABLE MARRIAGES

INTRODUCTORY COMMENT:

(1) Distinctions Between a Void and a Voidable Marriage

<i>VOID</i>	<i>VOIDABLE</i>
(a) Can never be ratified.	(a) Can generally be ratified by free cohabitation.
(b) Always void.	(b) Valid until annulled.
(c) Can be attacked directly or collaterally.	(c) Cannot be assailed collaterally; there must be a direct proceeding.
(d) There is no conjugal partnership (Only a co-ownership).	(d) There is a conjugal partnership.

(2) Two Kinds of Impediments in Marriages

- (a) *Diriment impediments* – They make the marriage VOID.

Examples:

- 1) Close blood relationship
 - 2) Prior existing marriage
- (b) *Prohibitive impediments* – They do not affect the validity of the marriage, but criminal prosecution may follow.

(3) Another Classification of the Impediments

(a) *Absolute* — Here the person cannot marry at all.

Example: When one is below the required age of 18.

(b) *Relative* — Here the prohibition is only with respect to *certain persons*.

Example: A brother cannot marry his sister. (*See Bowyer, Modern Civil Code, pp. 44-45*).

Art. 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; and**

(6) **Those subsequent marriages that are void under Article 53.**

COMMENT:

Void Marriages Enumerated

Set forth under Art. 35 are the void marriages found in Arts. 26, 27, 38, 44, and 53.

NOTA BENE: RA 6955 declares unlawful the practice of matching Filipino women for marriage to foreign nationals on a mail-order basis and other similar practices, including the

advertisement, publication, printing or distribution of brochures, fliers, and other propaganda materials in furtherance thereof.

Art. 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. (n) (As Amended by E.O. No. 227, dated July 17, 1987)

COMMENT:

(1) ‘Psychological Incapacity’ As a Ground to Render the Marriage Void

The “psychological incapacity” to comply with the essential marital obligations of marriage is a ground that will render the marriage void. This incapacity need not necessarily be manifested before or during the marriage although it is a basic requirement that the psychological defect be existing during the marriage. Thus, “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.” (*Art. 36, as amended by EO 227*).

[*N.B.*: Essential marital obligations are set forth under Art. 68 which provides that “the husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.”]

(2) The Concept of “Psychological Incapacity”

“Psychological incapacity” is the condition of a person who does not have the mind, will, and heart for the performance of marriage obligations. Said incapacity must be a lasting condition, *i.e.*, the signs are clear that the subject will not be rid of his incapacity, considering the peculiar socio-cultural milieu of his marriage, its actual situation, and the concrete person of his spouse. However, the incapacity must already be a con-

dition in the subject at the time of the wedding, although its manifestation or detection would occur later. (*Dr. Gerardo Ty Veloso, Questions and Answers on Psychological Incapacity as Ground for Marriage Annulment Under Article 36 of the Family Code, 1988, pp. 13-25*).

Under the Family Code, more specifically, in its 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."

The inclusion in the Family Code of "psychological incapacity" had its bearings in the Canon Law Code. Thus, Canon 1095, paragraph 3, reads: "They are incapable of contracting marriage, who are not capable of assuming the essential obligations of matrimony due to causes of a psychological nature." In other words, "psychological incapacity" is now accepted in civil law as ground for civil marriage annulment. Of course, it has already been for years favored in the annulment of Catholic religion marriage. (*Veloso, supra., p. 42*).

Observe that if a marriage can be declared void by the church (such as the Catholic Church) on the ground of "psychological incapacity," the same ground may be given as cause for cancellation of a marriage in our civil courts without the necessity of prior church cancellation. Please note CANCELLATION of the marriage, not legal separation, and said cancellation will allow either or both parties to get married again to some other persons.

Under church laws, examples of "psychological incapacity" will include, *inter alia*: a wrong concept of marital vows and marital infidelity, adamant refusal to give support, unbearable jealousy on the part of one party, indolence, extremely low intelligence, criminality (or the state of a person consistently getting into trouble with the law), sadism, epilepsy, habitual alcoholism, drug addiction, compulsive gambling, homosexuality in men or lesbianism in women, satyriasis in men or nymphomania in women. And even if these causes should manifest themselves long after the wedding as already adverted to, said causes are considered to be POTENTIALLY existing already

at the time of the celebration of the marriage. Surely, this is actual *absolute divorce*, although given another name.

To quote the words of Dr. Veloso: “Isn’t psychological incapacity a ground for divorce? It should be if divorce were allowed here. In countries permitting it, psychological incapacity could go under different names, such as mental cruelty or outright insanity. The difference between annulment and divorce is real, but they produce the same result, namely, freedom to marry again. Freedom is what people look for, whatever the theoretical scaffolding leading to it.” (*Veloso, supra, pp. 36-37*).

Anent the non-existence of absolute divorce, it is THEORETICALLY correct to say that we have NO divorce law at present (except insofar as Muslim divorces are concerned). But the startling TRUTH is that under Art. 36 of the new Family Code (Executive Order 209, as amended by EO 227, dated July 17, 1987), there seems to be a basis for the conclusion that we now have a semblance of absolute divorce here in the Philippines.

Note that for marriages celebrated on or after Aug. 3, 1988 (date of effectivity of the Family Code), the period within which to file the action does NOT prescribe, *i.e.*, the action can be brought before our civil courts at ANYTIME. Likewise, there is no prescription for marriages entered into before said date. (*See Sec. 1, RA 8533, dated Feb. 23, 1998*).

NOTE: Psychological incapacity DOES NOT refer to mental incapacity tantamount to insanity (which merely renders the marriage voidable).

(3) The Existence of Psychological Incapacity Depends on the Facts of the Case

Amy Perez-Ferraris v. Brix Ferraris 495 SCRA 396 (2006)

ISSUE: Whether or not psychological incapacity exists in a given case — calling for annulment of marriage — depends crucially, more than in any field of the law, on the *facts* of the case.

HELD: Yes. Said the Supreme Court, thus:

1. The term “psychological incapacity” to be a ground for the nullity of marriage under Art. 36 of the Family Code, refers to a serious psychological illness affecting a party even before the celebration of the marriage; and
2. A husband’s alleged mixed personality disorder, the “leaving-the-house” attitude whenever the spouses quarreled, the violent tendencies during epileptic attacks, the sexual infidelity, the abandonment and lack of support, and, his preference to spend more time with his band mates than his family, are not rooted on some debilitating psychological condition but a mere refusal or unwillingness to assume the essential obligations of marriage. 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.

QUERY

Is an unsatisfactory marriage considered a null and void marriage?

Ans.: No, it is not. (*Perez-Ferraris v. Ferraris*, 495 SCRA 396 [2006]).

ANOTHER QUERY

Is Art. 36 of the Family Code dealing with “psychological incapacity” the same as that of “divorce”?

ANSWER: No. Said Art. (36) should not be confused with a divorce law that cuts the marital bond at the time, the causes therefor manifest themselves, and neither is it 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. (*Perez-Ferraris v. Ferraris*, *supra*).

(4) Concept of ‘Psychological Incapacity’ As Ground For Nullity of Marriage Is Novel In the Body of Philippine Laws

This is so, altho mental incapacity has long been recognized as a ground for the dissolution of a marriage. (*Antonio v. Reyes*, 484 SCRA 353 [2006]).

Several reasons have been adduced by the Philippine Supreme Court, in arriving at this conclusion, thus:

1. Jurisprudence 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 (*Ibid.*);
2. Given the avowed State interest in promoting marriage as the foundation of the nation, there is a corresponding interest for the State to defend against marriages, ill-equipped to promote family life (*Ibid.*);
3. The requirement provided in the *Molina case* for the Solicitor General to issue a certification stating his reasons for his agreement or opposition to the petition for annulment of marriage has been dispensed with following the implementation of AM 02-11-10-SC, or the Rule on Declaration of Absolute Nullity of Void Marriages and [Annulment of Voidable Marriages] (*Ibid.*);
4. The root causes of respondent’s psychological incapacity has been medically or clinically-identified and proven by experts as perennially telling lies, fabricating ridiculous stories and inventing personalities and situations, of writing letters to petitioner using fictitious names, and of lying about her actual occupation, income, educational attainment and family background *inter alia* (*Ibid.*);
5. The Supreme Court has already held in *Marcos v. Marcos*, 343 SCRA 755 (2000), that personal examination of the subject by the physician is not

required for the spouse to be declared psychologically incapacitated.

6. A person unable to distinguish between fantasy and reality would similarly be unable to comprehend the legal nature of the marital bond, much less its psychic meaning, and the corresponding obligations attached to marriage, including parenting (*Antonio v. Reyes, op. cit.*); and
7. The psychological incapacity must be shown to be medically or clinically permanent or incurable. The requirement that psychological incapacity must be shown to be medically or clinically permanent or incurable is one that necessarily cannot be divined without expert opinion. (*Ibid.*)

(5) Decided Cases

**Leouel Santos v. CA and
Julia Rosario Bedia-Santos
GR 112019, Jan. 4, 1995
58 SCAD 17**

FACTS: It was in Iloilo City where Leouel, who then held the rank of First Lieutenant in the Philippine Army, first met Julia. The meeting later proved to be an eventful day for Leouel and Julia. On September 20, 1986, the two exchanged vows before Municipal Trial Court Judge Cornelio G. Lazaro of Iloilo City, followed, shortly thereafter, by a church wedding. Leouel and Julia lived with the latter's parents at the J. Bedia Compound, La Paz, Iloilo City. On July 18, 1987, Julia gave birth to a baby boy, and he was christened Leouel Santos, Jr. The ecstasy, however, did not last long. It was bound to happen, Leouel averred, because of the frequent interference by Julia's parents into the young spouses' family affairs. Occasionally, the couple would also start a "quarrel" over a number of other things, like when and where the couple should start living independently from Julia's parents or whenever Julia would express resentment on Leouel's spending a few days with his own parents.

On May 18, 1988, Julia finally left for the United States of America to work as a nurse despite Leouel's pleas to dissuade her. Seven months after her departure, or on January 1, 1989, Julia called up Leouel for the first time by long distance telephone. She promised to return home upon the expiration of her contract in July 1989. She never did. When Leouel got a chance to visit the United States, where he underwent a training program under the auspices of the Armed Forces of the Philippines from Apr. 10 to Aug. 25, 1990, he desperately tried to locate, or to somehow get in touch with, Julia but all his efforts were of no avail. Having failed to get Julia to somehow come home, Leouel filed with the Regional Trial Court of Negros Oriental, Branch 30, a complaint for "Voiding of Marriage Under Article 36 of the Family Code" (docketed, Civil Case No. 9814). Summons was served by publication in a newspaper of general circulation in Negros Oriental.

On May 31, 1991, respondent Julia, in her answer (through counsel), opposed the complaint and denied its allegations, claiming, in main, that it was the petitioner who had, in fact, been irresponsible and incompetent. A possible collusion between the parties to obtain a decree of nullity of their marriage was ruled out by the Office of the Provincial Prosecutor (in its report to the court). On Oct. 25, 1991, after pre-trial conferences had repeatedly been set, *albeit* unsuccessfully by the court, Julia ultimately filed a manifestation, stating that she would neither appear, nor submit evidence.

On November 6, 1991, the court *a quo* finally dismissed the complaint for lack of merit. Leouel appealed to the Court of Appeals. The latter affirmed the decision of the trial court. Leouel argues that the failure of Julia to return home, or at the very least to communicate with him, for more than five years are circumstances that clearly show her being psychologically incapacitated to enter into married life.

ISSUE: Whether or not petitioner's marriage with private respondent be declared a nullity by virtue of Art. 36 of the Family Code.

HELD: The factual settings in the case at bench, in no measure at all, can come close to the standards required to decree a nullity of marriage. Undeniably and understandably,

Leouel stands aggrieved, even desperate, in his present situation. Regrettably, neither law nor society itself can always provide all the specific answers to every individual problem.

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 intentment 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 psychologic 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.”

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 peremptorily 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 — “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.”

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.”

Chi Ming Tsoi v. CA and Gina La-Tsoi
GR 119190, Jan. 16, 1997
78 SCAD 57

One of the essential marital obligations under the Family Code is “to procreate children based on the universal principle that procreation of children thru sexual cooperation is the basic end of marriage.” Constant non-fulfillment of this obligation will finally destroy the integrity, or wholeness of the marriage.

The senseless and protracted refusal of one of the parties of sexual cooperation for the procreation of children is equivalent to psychological incapacity. In this case, there was no sexual contact between the parties since their marriage on May 22, 1988 up to Mar. 15, 1989 or for almost a year. Likewise, either spouse may file the action to declare the marriage void, even the psychologically incapacitated.

Republic v. Molina
GR 108763, Feb. 13, 1997, 79 SCAD 462

Laid down hereinbelow are specific guidelines in interpreting and applying Art. 36, to wit:

- (a) The burden of proof to show the nullity of the marriage belongs to the plaintiff, and any doubt must be resolved in favor of the existence of the marriage and against its nullity.
- (b) The *root cause* of the psychological incapacity must be: (1) medically or clinically identified; (2) alleged in the complaint; (3) sufficiently proven by experts; and (4) clearly explained in the decision.

- (c) The incapacity must be proven to be existing at “the time of the celebration of the marriage,” although the manifestation need not be perceivable at such time.
- (d) The incapacity must also be shown to be medically or clinically permanent or incurable, although the incurability may be relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, the incapacity must be relevant to the assumption of marriage obligations, not to those not related to marriage like the exercise of a profession or employment in a job.
- (e) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.
- (f) The essential marital obligations must be those embraced by Arts. 68-71 of the Family Code as regards husband and wife, and Arts. 220-225, same Code, in regard to parents and their children. Such non-compliance must also be stated in the petition, proven by evidence, and included in the text of the decision.
- (g) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling, should be given great respect by our courts.
- (h) The trial court must order the fiscal and the Solicitor-General to appear as counsel for the State. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating his reasons for his agreement or opposition to the petition. The Solicitor General and the fiscal shall submit such certification to the court within fifteen (15) days from the date the case is submitted for resolution.

In the case at bar, finding that there was no psychological incapacity on the part of the respondent-husband but more a “difficulty” if not outright “refusal” or “neglect” in the performance of some marital duties, and that the evidence merely showed that the parties could not get along with each other, the Supreme Court denied

the petition for declaration of nullity of marriage filed by petitioner-wife.

(6) Effect of the Rule ‘Expert Opinion Need Not Be Alleged’

The obvious effect on the new rules providing that “expert opinion need not be alleged” in the petition is that there is also no need to alleged the root cause of the psychological incapacity — only experts in the fields of neurological and behavioral sciences are competent to determine the root cause of psychological incapacity. (*Barcelona v. CA*, 412 SCRA 41 [2003]).

(7) ‘Psychological Incapacity’ Reexamined

“Psychological incapacity” should refer to no less than a mental (not physical) incapacity that causes a party to be truly cognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which include their mutual obligations to live together, observe love, respect, fidelity, and to render help and support. (*Republic v. Iyoy*, 470 SCRA 508 [2005]).

It is contradictory to characterize acts as a product of psychologically 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. (*Buenaventura v. CA*, 454 SCRA 261 [2005]). And 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. (*Ibid.*).

While it is no longer necessary to allege expert opinion in a petition under Art. 36 of the Family Code, such psychological incapacity must be established by the TOTALITY OF THE EVIDENCE presented during the trial. (*Rep. v. Iyoy, supra*). The totality of the evidence, as shown in *Villalon v. Villalon* (475 SCRA 572 [2005]), does not support a finding that petitioner is psychologically incapacitated to fulfill his marital obligations. Although he engaged in marital infidelity in at least two occasions, the same does not appear to be symptomatic of

a grave psychological disorder which rendered him incapable of performing his spousal obligations. (*Ibid.*).

Psychological incapacity, as a ground for the declaration of nullity of a marriage, must be characterized by juridical antecedence, gravity, and incurability. (*Villalon, op. cit.*). In said case, the Supreme Court agrees with the Court of Appeals that petition failed to establish the incurability and gravity of his alleged psychological disorder. (*Ibid.*). By itself, sexual infidelity, is not sufficient proof that petitioner is suffering from psychological incapacity. It must be shown that the acts of unfaithfulness are manifestations of a discarded personality which make petitioner completely unable to discharge the duties and obligations of marriage. (*Ibid.*). Nonetheless, refusal to comply with the essential obligations of marriage is not psychological incapacity within the meaning of the law. (*Republic of the Phils. v. CA, 268 SCRA 198 [1997]*). The cause of the alleged psychological incapacity must be identified as a psychological illness and its incapacitating nature fully-explained. (*Ibid.*)

Even when the rules have been relaxed and the personal examination of a spouse by a psychiatrist or psychologist is no longer mandatory for the declaration of nullity of their marriage, the *totality of evidence*, as often repeated in our discussion presented during trial by the spouse seeking the declaration of nullity of marriage must still prove the gravity, judicial antecedence, and incurability, as previously adverted to, of the alleged psychological incapacity. (*Rep. v. Iyoy, supra.*)

Art. 36 of the Family Code is Not to be Confused with a Divorce Law

Art. 36 of the Family Code is NOT TO BE CONFUSED WITH A DIVORCE LAW that cuts the material 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.

Art. 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)**

COMMENT:**How Degrees of Generation Are Computed**

- (a) In the direct line, count ALL who are included, then *minus one*. Herein, a granddaughter is *two* degrees away from the grandfather (GF-F GD=3-1=2 degrees).
- (b) In the collateral line — go up to the nearest common ancestor, then go down *minus one*. (Hence, brothers are 2 degrees apart [$13, -F-B_2 = 3-1=2$].)

Art. 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 step-children;**
- (3) **Between parents-in-law and children-in-law;**
- (4) **Between the adopting parent and the adopted child;**
- (5) **Between the surviving spouse of the adopting parent and the adopted child;**
- (6) **Between the surviving spouse of the adopted child and the adopter;**
- (7) **Between an adopted child and a legitimate child of the adopter;**
- (8) **Between adopted children of the same adopter; 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)**

COMMENT:**(1) Other Void Marriages**

- (a) Marriages in a play, drama, or movie.
- (b) Marriages between two boys and two girls.
- (c) Marriages in jest.
- (d) Common law marriages.

(2) When Second Marriage is NOT Bigamous

People v. De Lara
CA, 51 O.G. 4079

FACTS: A married man contracted a second marriage on Aug. 18, 1951, but the marriage license was issued only on Aug. 19, 1951, or one day following. He was prosecuted for bigamy.

HELD: He is *not guilty*, because the second marriage *by itself* was null and void. The subsequent issuance of the license does *not* validate the void marriage. Had the license been issued prior to the celebration of the second marriage, said second marriage would have been valid were it not for the existence of the first marriage. In such a case, he would have been guilty of bigamy.

(3) Liability of Solemnizer

Negre v. Rivera
Adm. Matter No. 343-MJ
June 22, 1976

If a Judge signs a marriage contract before the marriage license is obtained (and then postdates the marriage contract) on the request of the mother of the bride (who had been raped), he can be said to have acted imprudently, and should be admonished.

(4) Bigamous Marriage*Example:*

A girl married a man who, unknown to her, was already married to another, who was still alive. Is the marriage valid or void?

ANSWER: The marriage is VOID and BIGAMOUS, the good faith of the girl being immaterial.

(5) Incestuous Marriage

Examples: A person cannot marry his sister, or his grandmother.

Reason for the law: Contrary to public policy.

(6) Stepbrothers, Etc.*Example:*

A woman with a child *G* got married to a man with a child, *B*. May *G* and *B* get validly married to each other?

ANSWER: Yes, because although they are considered as stepbrother and stepsister of each other, still such a marriage, while prohibited under the Civil Code, is now allowed under the Family Code.

Example:

M marries *W*, who has a daughter *D*. When *W* dies, may *M* marry *D*?

ANSWER: No, because he is her stepfather.

Question:

G marries *B*. May *G*'s mother marry *B*'s father?

ANSWER: Yes, because the law provides no impediment for them, assuming that all other requisites are present.

(7) Effect of Adoption

(a) *M* adopts *G*. They cannot marry.

- (b) *M* adopts *B*, a boy. Later, *M* marries *W*. Subsequently, *M* dies. May *B* marry *W*?

ANSWER: No, because the adopted child (*B*) cannot marry the surviving spouse of the adopter (*M*).

- (c) *M* adopts *B*, a boy. Later, *B* marries *G*. Subsequently, *B* dies. May *M* marry *G*?

ANSWER: No, because the adopter (*M*) cannot marry the surviving spouse of the adopted child (*B*).

(8) Query

H and *W* are validly married. Later, *W* commits adultery with *P*. *W* and *P* are convicted. Later, after prison, if *H* is already dead, may *W* marry *P*?

ANSWER: Yes, for there is no prohibition under the law.

(9) Rule for Roman Catholic Priests

May a Roman Catholic priest get married?

ANSWER: Yes, under the civil law, for his being a priest is not, under our law, a disqualification. Thus, it is legally possible for such a priest to have a legitimate child.

Art. 39. The action or defense for the declaration of absolute nullity of a marriage shall not prescribe. (As amended by RA 8533, dated Feb. 23, 1998)

COMMENT:

Self-explanatory

Wiegel v. Sempio-Diy 143 SCRA 499

There is need to declare a void marriage as void or invalid.

Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of marriage on the basis solely of a final judgment declaring such previous marriage void. (n)

COMMENT:**(1) What the Article Provides**

A void marriage must first be declared void for purposes of remarriage.

(2) What the Clause “On the Basis Solely of a Final Judgment Declaring Such Marriage Void” Denotes

Domingo v. CA
GR 104818, Sep. 17, 1993
44 SCAD 955

The Family Code has clearly provided the effects of the declaration of nullity of marriage. For one, there is necessity for a judicial declaration of absolute nullity of a prior subsisting marriage before contracting another.

The clause “on the basis solely of a final judgment declaring such marriage void” in Art. 40 of the Code denotes that such final judgment declaring the previous marriage void need not be obtained only for purposes of remarriage.

(3) Applicability to Remarriages Entered Into After Effectivity of Family Code

Lupo Almodiel Atienza v. Judge
Francisco F. Brillantes, Jr.
AM MTJ-92-706, Mar. 29, 1995
60 SCAD 119

Under the Family Code, there must be a judicial declaration of the nullity of a previous marriage before a party thereto can enter into a second marriage.

Thus, Art. 40 of the Code is applicable to remarriages entered into after the effectivity of the Family Code on Aug. 3, 1988 regardless of the date of the first marriage. Besides, under Art. 256 of the Code, said Article is given “retroactive effect insofar as it does not prejudice or impair vested or acquired

rights in accordance with the Civil Code or other laws.” This is particularly true with Art. 40, which is a rule of procedure.

(4) Void Marriage Still Needs Judicial Declaration

Apiag v. Cantero 79 SCAD 327 (1997)

Now, per *current* jurisprudence, “a marriage though void still needs a judicial declaration of such fact” before any party thereto “can marry again; otherwise, the second marriage will also be void.” This was expressly provided for under Art. 40 of the Family Code.

Art. 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)

COMMENT:

(1) Query

H and *W* were Filipinos validly married in the Philippines. Later *H* and *W* went to America, and obtained a divorce considered valid in Reno, the ground being mental cruelty. Subsequently *H* married *S*, a Hollywood actress, the marriage being performed in California, where the marriage was considered as valid. Later, *H* and *S* came to the Philippines. Is the marriage

valid, and can *H* be successfully prosecuted in the Philippines for the crime of bigamy?

ANSWER:

- a) The marriage is void, it being considered bigamous. The divorce is not recognized in the Philippines.
- b) But the husband cannot be convicted for the crime of bigamy, for the crime, if any was committed, took place outside the territorial jurisdiction of the Philippines.

Ofelia Gomez v. Joaquin P. Lipona
L-23214, June 30, 1970

FACTS: A husband, while still married to his wife, entered into a bigamous marriage in 1935 with a woman who did not know of his existing marriage. The second marriage ended in 1958.

ISSUE: What are the rights of the second wife to the properties acquired during said bigamous marriage?

HELD:

- (a) Art. 1417 of the old *Civil Code*, which declared the share of the husband in the properties of the second marriage as FORFEITED in favor of his innocent second wife cannot apply because this void marriage ended only in 1958 (with the death of the second wife) when the new *Civil Code* was already in force.
- (b) The only just solution would be to give to the estate of the second wife 1/2 of the properties of the second marriage and to give to the first conjugal partnership the other 1/2. [Incidentally, it was also ruled in this case that the validity of a bigamous marriage can be subject to collateral (indirect or incidental) attack during the proceedings for the settlement of the estate of one of the spouses.]

(2) Judicial Declaration of Presumptive Death

- (a) To validly get married for the second time in case the first spouse has been absent for more than seven years, is a judicial declaration of said presumptive death required?

ANSWER:

- 1) In the case of *Jones v. Hortinguela*, 64 Phil. 179, it was held that for the purpose of the civil marriage law, it is not necessary for the absent spouse to be declared an absentee, and that the only purpose of the declaration of absence is for the proper administration of the estate of the absentee. Hence, in that case, it was held that for the celebration of a second valid marriage, all that was necessary was that the absent spouse has been unheard from for seven consecutive years at the time of the second marriage. If this is so, then the second marriage is valid and lawful.

[NOTE: Under the Family Code, only a period of 4 years or 2 years as the case may be, is required.]

- 2) However, it would seem from the wording of Art. 349 of the Revised Penal Code that the present spouse must first ask for a declaration of presumptive death of the absent spouse in order that the present spouse may not be guilty of bigamy.
- 3) And yet, in the case of *In Re Szatraw*, 81 Phil. 461, the Supreme Court declared that *unless the case involved the distribution of property*, a declaration of presumptive death will not be given by the court because:
 - a) Such a presumption is already made in the law.
 - b) Such a judgment can never be final.
 - c) Such a declaration might lead the present spouse to believe that she can get married again.

It should seem therefore from this last pronouncement of the Supreme Court that if a spouse has been unheard from for more than seven years, the present spouse cannot yet get married. This anomalous legal situation must be clarified by the Supreme Court.

[NOTE: The case of *Szatraw* was reiterated in *Lukban v. Republic*, 52 O.G. 1441, where the court said that

while a person may upon proper evidence be *declared dead*, he cannot be declared as *presumptively* dead. "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 therefore clear that a 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 reach the stage of finality or become final." In the case of *Gue v. Republic, L-14058, Mar. 24, 1960*, the Court said that if there can be no judicial declaration of presumptive death, there can also be, in a similar proceeding, NO determination of the status of a petitioner as WIDOW, since this matter must of necessity depend upon the fact of death of the husband. This death, the Court can declare upon proper evidence, but it cannot decree that a person is merely presumed to be dead.]

[NOTE: It should be observed however, that arguments may be advanced against the reasons set forth by the Court.

- (a) Firstly, if there can be no declaration of presumptive death, how may Art. 349 of the Revised Penal Code REQUIRING the *judicial declaration of presumptive* death ever be given effect?
- (b) Secondly, why *have there been judgments* on SUPPORT and on NATURALIZATION when said judgments, according to the Supreme Court itself can never be final in the sense that the amount for support may VARY from time to time, and a certificate of naturalization may be cancelled for causes provided for by law? (*See Gorayeb v. Hashim, 47 Phil. 87*).
- (c) Thirdly, it must be remembered that in one case, the Supreme Court found nothing wrong with an order, issued by a Manila Court of First Instance (now Regional Trial Court), which order declared a missing husband PRESUMPTIVELY DEAD. (*See Commonwealth v. Baldello, 67 Phil. 277*).].

[NOTE: Please observe that under Art. 41, second paragraph of the Family Code, the party desiring to re-

marry **MUST** ask for a judicial declaration of presumptive death. In effect, this new provision revokes all previous Supreme Court decisions to the contrary.]

(3) Judicial Declaration of Absence

For the purposes of the civil marriage law, it is not even necessary to have the spouse judicially declared an absentee. And even when such declaration is made, the period of seven years must be counted, not from the judicial decree, but from the time the absent person was last heard from. (*Jones v. Hortiguella*, 64 Phil. 179).

Bienvenido v. CA GR 111717, Oct. 24, 1994, 56 SCAD 288

Since Aurelio had a valid, subsisting marriage to Consejo Velasco, his subsequent marriage to respondent Luisita was void for being bigamous.

Consequently, there is basis for holding that the property in question was property of the conjugal partnership of Luisita and the late Aurelio because there was no such partnership in the first place.

N.B.: Under Art. 84 of the Civil Code, “no marriage license shall be issued to a widow till after three hundred days following the death of her husband, unless in the meantime she has given birth to a child.”

(4) Issuance of Marriage License to a Widow

- (a) The purpose is to prevent doubtful paternity. (*People v. Rosal*, 49 Phil. 504).
- (b) Art. 351 of the Revised Penal Code says: *Premature marriages*. Any widow who shall marry within three hundred and one days from the date of the death of her husband, or before having delivered if she shall have been pregnant at the time of the death, shall be punished by *arresto mayor* and fined not exceeding P500.
- (c) If a widow somehow gets a marriage license within the period prohibited and she gets married, it is believed that

the marriage would still be valid without prejudice to criminal liability. (*See State v. Stevenson, 11 La. 777*).

- (d) The prohibition or impediment in this Article should be considered merely a prohibitive impediment and not a diriment impediment.

(5) Problems

- (a) A wife was legally separated from her husband. Before 300 days had expired, she married another. Is the marriage valid?

ANSWER: No. Such a marriage would indeed be bigamous as her legal separation did not dissolve the matrimonial bond of the first marriage.

- (b) If a woman's marriage is annulled, may she be issued a marriage license without waiting for the period of 300 days?

ANSWER: No, unless in the meantime she has given birth to a child or unless the first marriage had been annulled on the ground of impotence. Although Art. 84 speaks merely of a widow, it is believed that the same principle applies.

(6) Effect of Sterility

People v. Masinsin (CA) GR 9157-R, June 4, 1953

H and *W* were validly married, but *H* was sterile. Later, *H* died. Without waiting for 300 days, *W* got married again. Is *W* criminally liable?

ANSWER: No, for the question of doubtful paternity does not enter the picture, the dead husband having been proved to be sterile.

Art. 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)

COMMENT:

Elements Contained in this Rule

There are two (2) elements contained under Art. 42, to wit: (1) the subsequent marriage under Art. 41; and (2) a sworn statement of the fact and circumstances of reappearance.

Art. 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 a 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)

COMMENT:

“Net Profits”

The words “*net profits*” should be read together with Arts. 63(2) and 102(4).

Net profits refer to 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. Net profits do not refer to the capital contributed by each spouse who retains his/her right thereto regardless of bad/good faith.

N.B.: Arts. 43(2, 3, 4, and 5) and 44 — apply to marriages declared void *ab initio* or annulled by final judgment under Arts. 40 and 45.

Art. 44. If both spouses of the subsequent marriage acted in bad faith, said marriage shall be void *ab initio* and all donations by reason of marriage and testamentary dispositions made by one in favor of the other are revoked by operation of law. (n)

COMMENT:

Another Instance of a Void Marriage

Art. 44 refers to another instance of void marriage when both spouses in the subsequent marriage act in bad faith. Akin to other void marriages, there must be a judicial declaration of nullity as required under Art. 40 as well as registration of said judgment in the civil registry under Art. 52.

N.B.: Void marriages are found under Arts. 35, 36, 37, 38, 44, and 53.

Art. 45. The 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, guardian 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)

COMMENT:

(1) Grounds for the Annulment of a Marriage

- (a) This Article speaks of the grounds for *annulment*. They must exist at the time of the celebration of the marriage. A voidable marriage is valid until it is annulled. Before annulment, the voidable marriage must be regarded as valid. One cannot just take the law into his own hands. He must go to court. (*See Landicho v. Relova, 22 SCRA 731*).

- (b) Key words for the causes
 - 1) Non-age (below 18)
 - 2) Unsoundness of mind
 - 3) Fraud (as defined in Art. 46, Family Code)
 - 4) Force, intimidation, or undue influence
 - 5) Impotence
 - 6) Sexually-transmitted disease (if incurable)

(2) Non-age

- (a) *Example:*

A 20-year-old boy married a 22-year-old girl. No parental consent was obtained by the man. The marriage is VOIDABLE.

- (b) May the parents *ratify*?

ANSWER: No, for this is not provided for under the law. Had this been an ordinary contract, and not a social institution, the answer would have been different.

(3) Unsoundness of Mind

- (a) The parties must possess the mental capacity the law requires for the making of a will. (*Menciano v. San Jose, L-1967, May 28, 1951*). The true test is whether the party concerned could intelligently consent; that is, that he knew what contract he was entering into. (*Hoadley v. Hoadley, 244 N.Y. 424*).
- (b) Intoxication which results in lack of mental capacity to give consent is equivalent to unsoundness of mind. (*McKnee v. McKnee, 49 Nev. 90*). So is somnambulism at the time of the wedding. (*15 Sanchez Roman 528*). Akin is unsoundness of mind due to drug addiction.

(4) Fraud

- (a) In general there is fraud when, thru 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. (*Art. 1338, Civil Code*).

- (b) But in marriage contracts, not all kinds of fraud make the marriage voidable. The fraud in marriage must be one of those enumerated in Art. 46.
- (c) How ratified — free cohabitation after full knowledge of the facts constituting the fraud.

(5) Force, Intimidation or Undue Influence

- (a) *Force or Violence* — “There is violence when in order to wrest consent, serious or irresistible force is employed.”
- (b) *Intimidation* — “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 or property, or upon the person or property of his spouse, descendants, or ascendants, to give his consent.” (*Art. 1335, 2nd par., Civil Code*).
- (c) *Undue influence* — control over one’s will.

Tiongco v. Matig-a
44 O.G. No. 1, p. 96

FACTS: A man married a woman because of the threats and armed demonstrations of the brothers of the wife. The wife put up, in court, the defense that the marriage should not be annulled because the policy of the law is to maintain marriage ties. Decide the case.

HELD: The marriage should be annulled. It is true that it is the policy of the law to maintain the marriage ties, but when the marriage is effected thru duress and intimidation, and without the consent and against the will of one of the parties, there are no ties to be preserved. There can be no doubt that the plaintiff acceded to the signing of the marriage contract due to a reasonable and well-grounded fear of losing his life due to the threats and armed demonstrations of the brothers of the defendant.

People v. Santiago
51 Phil. 68

FACTS: A raped B, and then forced B to marry him. A had no intention at all of living with B. When A was

prosecuted for the crime of rape, he offered the marriage as a defense. Should A still be convicted?

HELD: Yes, A should be convicted. The consent of the girl was vitiated by duress. The marriage ceremony was performed merely as a device by the accused to escape punishment. The marriage is therefore not sanctioned by law, and constitutes no obstacle to the prosecution of the accused for the offense.

- (d) When is a threat not considered as one vitiating consent?

A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent. (*Art. 1335, last paragraph, Civil Code*).

- (e) *Problem*

FACTS: A man had carnal knowledge of a girl who later on threatened to oppose his admission to the practice of law if he did not marry her. Because he was afraid, the man married her. Later, he asked for annulment on the ground of intimidation.

HELD: Marriage cannot be annulled because the threat was in a way a legal claim, since under the law an immoral man should not be admitted to the bar. (*See Ruiz v. Atienza, O.G. Aug. 30, 1941, p. 1903*). If, however, the charge of immorality was false, the marriage can be annulled. (*See Collins v. Collins, 2 Brewst [Pa.] 515*).

Wiegel v. Sempio-Diy
GR 53703, Aug. 19, 1986

FACTS: A and B were allegedly forced to enter into marital union on June 25, 1972. Later, in July 1973, B and C got married. When C learned about the first marriage of B to A, C filed an action for a declaration of the nullity of his marriage with B. At the pre-trial, the issue agreed upon by both parties was the status of the first marriage (assuming the presence of force exerted against both parties, *i.e.*, A and B): Was said prior marriage void or was it merely voidable? B wanted to present evidence

that the first marriage was vitiated by force and that the first husband was at the time of marriage in 1972 already married to someone else. The trial court ruled against the presentation of evidence because the existence of force exerted on both parties of the first marriage had already been agreed upon.

HELD: There is no need for *B* to prove that her first marriage was vitiated by force, because assuming this to be so, the marriage will not be so, the marriage will not be void but merely voidable, and therefore, valid until annulled. Since no annulment has yet been made when *B* married *C*, therefore *B* was still validly married to *A*. Thus, *B*'s marriage to *C* is void. There is also no need to introduce evidence about the existing prior marriage of *A* at the time *B* and *C* married each other. Such marriage though void still needs a judicial declaration of such fact and for all legal intents and purposes *B* would still be regarded as a married woman at the time she contracted her marriage with *C*. Hence, the marriage of *B* and *C* would be regarded void under the law.

[*N.B.* — The rule enunciated here is that a marriage vitiated by force or intimidation is voidable, *i.e.*, valid until annulled. Therefore, if the first marriage has not yet been annulled, a second marriage contracted by one of the parties to the first marriage is void.]

(6) Impotence or Physical Incapacity

- (a) *Impotence (impotentia copulandi)* refers to lack of power of copulation and not to mere sterility (*impotentia generandi*). (35 *C.J.S.* 826). Although impotency carries with it sterility, a sterile person is not necessarily impotent. Impotency is a ground to annul marriage because if known to the impotent person, a grievous fraud and injury has been committed; and if unknown, there is a violation of an implied warranty. (See *Keezer on Marriage and Divorce, 3rd Edition, pp. 268-269, 477-480*).

Menciano v. San Jose
89 Phil. 63

The test is not the capacity to reproduce, but the capacity to copulate. (*Sarao v. Guevara, CA, 40 O.G. 263*).

Jimenez v. Canizares
109 Phil. 173

Physical incapacity, as a ground for the annulment of a marriage, refers to *impotency* or the inability to perform the sexual act, and not to *sterility* or the inability to procreate.

Andal and Duenas v. Macaraig
89 Phil. 165

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 were swollen and his voice hoarse, yet that is no evidence of impotency, nor does it prevent carnal intercourse.

There are cases where patients, suffering from this 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 tuberculosis towards erotism is probably dependent more upon confinement to bed than the consequences of the disease."

- (b) The burden of proof of impotency is upon the complainant (who must be the potent spouse) to prove that the impotency existed at the time of the wedding, that it still existed, and that it is incurable; and the pleadings must so state. This is so because the presumption is in favor of the marriage. (*See Keezer on Marriage and Divorce, 3rd Edition, pp. 478-481*). 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, therefore, insufficient to tear asunder the ties that have

bound them together as husband and wife. (*Jimenez v. Cañizares*, L-12790, Aug. 31, 1960).

People v. Ablog
GR 124005, June 28, 1999, 108 SCAD 145

ISSUE: Whether or not impotency in rape cases must be proved with certainty to overcome the presumption in favor of potency.

HELD: No. The advanced age of accused, even if true, did not mean that sexual intercourse for him was no longer possible, as age taken alone could not be a criterion in determining sexual interest and capability of middle-aged and older people.

- (c) A man may be impotent insofar as his wife is concerned, but potent insofar as other women are concerned. In this case, it has been held that the woman can still have the marriage annulled, for her husband's impotency with her was as prejudicial as universal impotency. (*Tompkins v. Tompkins*, 92 N.J. Eq. 113, 111, Atl. 599, citing a case in *Rob. Ecc.* 635). Thus, the law says "with the other." (Art. 45, No. 5, the Family Code).
- (d) *Doctrine of "Triennial Cohabitation"* — Although the general rule is in favor of potency, still there is a doctrine applied in England and some courts of the United States to the effect that if the wife still remains a virgin after living together with her husband for three years, the presumption is that the husband is impotent, and he will have to overcome this presumption. (See *Tompkins v. Tompkins*, *supra.*).

Tompkins v. Tompkins
92 N.J. Eq. 113, 111 Atl. 599

FACTS: A wife sued her husband for annulment of the marriage on the ground of impotency. The couple, young persons, had lived together for five years, and the wife was still a virgin. The wife testified that the husband was impotent, while the man claimed that they had no

sexual intercourse because this was painful and distressing to the wife.

HELD: Under the doctrine of triennial cohabitation, the husband in this case is presumed to be impotent. The claim of the husband that the wife did not want carnal intercourse is hard to believe. Such solicitation of a groom is noble; of a husband, heroic. Men are still cavemen in the pleasures of the bed. The husband's plea does not inspire confidence. Common experience discredits it. And if in fact he had the physical power and refrained from sexual intercourse during the five years 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. The presumption of impotency (because of the doctrine of triennial cohabitation) has not been overcome, and the decree of annulment will be granted.

- (e) The person alleged to be impotent may be examined physically. A refusal on the part of a man to submit to an examination raises the presumption that the defendant is really impotent. Where the lack of present impotency is admitted, an examination may still be made to determine if the impotency existed at the time of the marriage celebration. (*Keezer on Marriage and Divorce*, pp. 480-481). However, refusal on the part of a Filipino girl to submit to such physical examination, does NOT raise the presumption of impotency because of the natural modesty of our native girls. (*Jimenez v. Cañizares*, L-12790, Aug. 31, 1960).
- (f) For impotency to be a ground for the annulment of a marriage, the action must be brought by the potent spouse, and such spouse must have been unaware of the other's impotency. (*See Keezer*, pp. 268-269).
- (g) In one case, where the plaintiff, 73 years of age, alleged that the husband was impotent (age of husband was 60), the court refused to allow this defect to cancel the marriage. (*See Keezer*, p. 478).

Sarao v. Guevara
(C.A.) 40 O.G. (1st Sup.) 263

FACTS: A wife felt great pain during copulation, so an operation was made on her by a doctor, with her and her husband's consent. The operation was successful but now the husband has lost all sexual desire for the wife since he was a witness to the operation and all its sordid details and because the wife is now sterile. He asked for annulment.

HELD: The annulment cannot be granted because the apparent impotence of the wife was merely *temporary*, and as a matter of fact, she is no longer impotent. Sterility, on the other hand, is not a ground.

If both the husband and wife are impotent, the marriage cannot be annulled because neither can claim he or she has been aggrieved by the other.

Jimenez v. Cañizares
L-12790, Aug. 31, 1960

FACTS: A husband wanted to have his marriage annulled on the ground that his wife was impotent, her vagina being too small to allow the penetration of the male organ for copulation. The lower court ordered a physical examination of the wife, but she *refused*. The said court then ordered the marriage annulled. The City Attorney intervened and filed a motion for reconsideration praying that the defendant be really subjected to physical examination. When the lower court denied the motion, the City Attorney appealed.

HELD: The trial court must order the physical examination of the girl because her impotence has NOT been proved. Without proof of impotence, the marriage cannot be annulled for the presumption is always in favor of potency. (*Menciano v. San Jose, L-1967, May 28, 1951*). Her refusal to be examined does not create a presumption of impotency because Filipino girls are inherently shy and

bashful. Incidentally, to order a physical examination would not infringe upon her constitutional right against testimonial or mental self-incrimination.

(7) Sexually-Transmitted Diseases (STD)*

These would include AIDS, herpes, syphilis, gonorrhea, hepatitis, and the like, provided, they are *serious*. Of course, AIDS is not only serious, it is fatal.

(8) How Voidable Marriages May be Ratified

- (a) In general, free and voluntary cohabitation *ratifies* the voidable marriage. The period need not be long. However, the cohabitation “must be something more than mere living together in the same house or even occupying the same bed; it is the living together of the parties as husband and wife, including sexual relations.” (*Sison v. Te Lay Ti, C.A., No. 7037, May 7, 1952*).

**Sison v. Te Lay Ti
C.A. No. 7037, May 7, 1952**

FACTS: Sison was forced by her father to marry a Chinese. The girl was virtually a prisoner in the home of the parents of the husband. No sexual intercourse was had except a month later, and even then, the Chinese had to threaten her with a knife. She subsequently escaped. This case for annulment was then brought.

HELD: The marriage here has not been ratified because there was no voluntary cohabitation. Here also, the woman never consented to the status of a wife. Therefore, the marriage can be annulled.

*See Appendix “B”.

(9) Distinctions Between ANNULMENT and LEGAL SEPARATION

<i>ANNULMENT</i>	<i>LEGAL SEPARATION</i>
(a) The marriage was defective at the very beginning.	(a) There was no defect in the marriage at the beginning.
(b) The cause for annulment must be already existing at the time of the marriage.	(b) The cause for legal separation arises after the marriage celebration.
(c) There are seven grounds for annulment.	(c) There are ten grounds for legal separation.
(d) Annulment dissolves the marriage bond; the parties are free to marry again.	(d) The marriage remains.
(e) From the angle of Private International Law, the grounds are generally those given in the <i>lex loci celebrationis</i> (by implication from Art. 71 of the Civil Code).	(e) From said angle, the grounds are those given by the NATIONAL LAW, not the <i>lex loci celebrationis</i> for in legal separation, the very validity of the marriage itself is NOT questioned, unlike in the case of annulment. (See Art. 15 of the Civil Code).

Art. 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, 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)

COMMENT:

(1) Fraud in Marriage

This Article should be read in connection with Art. 45, No. 3, Family Code (regarding fraud). The enumeration here of possible grounds is exclusive, meaning that no other kind of fraud is ground for the annulment of the marriage.

**Aurora Anaya v. Fernando Paraloan
L-27930, Nov. 26, 1970**

The non-disclosure by the husband of a premarital relationship with another woman is NOT a ground for the annulment of the marriage.

(2) Example for Ground No. 2

A married a girl not knowing she was pregnant. It turned out later that she was pregnant because of another sweetheart. The marriage is annulable. But if the cause of the pregnancy had been A, then the marriage would not be annulable. Note that the pregnancy must be at the time of the marriage ceremony. Otherwise, if the pregnancy occurred afterwards, there can be no annulment, whether the cause of pregnancy was the husband or other person.

(3) Effect of Husband's Knowledge of the Pregnancy

It must be borne in mind that if a husband *knew* at the time the marriage was celebrated that the woman was pregnant because of him, the marriage cannot be annulled on the ground of fraud. The woman, as a matter of fact, does not even have to tell him of her pregnancy, as when, for example, a child is born less than 90 days after the celebration of the marriage. *Reason:* The present condition of the woman was already evident at the time of the marriage. (*Buccat v. Manganas*, 72 Phil. 19). A pregnancy however, of about *four months* is not readily apparent, particularly if the woman is "naturally plump" or fat. (*Aquino v. Delizo*, L-15853, July 27, 1960). In fact it is only on the 6th month of pregnancy that the enlargement of the woman's abdomen reaches a height above the umbilicus, making the roundness of the woman's abdomen more general and apparent. (See *Lull, Clinical Obstetrics*, p. 122). Even physicians and surgeons, with the aid of the woman herself, who shows and gives her subjective and objective symptoms, can only claim positive diagnosis of 33% at five months, and 50% at six months. (*XI Cyclopedia of Medicine, Surgery, Pregnancy*, p. 10). Note finally that it is concealment (as already discussed) and not mere pregnancy that is the thrust of the fraud.

(4) Cases

Lyman v. Lyman 97 Atl. 312

FACTS: *M*, who had carnal knowledge of *W*, was persuaded by *W* to marry her as according to her, she was pregnant because of *M*. The truth was that *Y* was responsible for the pregnancy. When *M* discovered the fraud, he sued for annulment of the marriage on these grounds. *W*'s attorney countered by saying that *M* had no right to complain because, having had intercourse with the woman prior to the marriage, *M* ought to have known that *W* was unchaste, and having unclean hands, *M* could not invoke chastity. Decide the case.

HELD: The marriage should be annulled on the ground of fraud. *M* married the woman only because he wanted to repair an alleged wrong — his causing her to be pregnant. If upon discovery of the fraud, he cannot ask for annulment, his

purely laudable action would be rewarded by a grave punishment. This should not be the case.

Millar v. Millar
175 Cal. 97

FACTS: *W* had an illegitimate child born of her after living a lascivious life. Later she met *M*, who married her not knowing of her previous life and unaware of the child's existence. When he discovered the truth, he asked for annulment.

HELD: Annulment denied, since this kind of fraud is not one of those contemplated by the law.

Garcia v. Montague
12 Phil. 480

FACTS: Garcia, a girl, married Montague, in a *civil* ceremony, on the strength of the latter's promise to have a Catholic wedding later. The girl subsequently discovered that the groom was NOT a Catholic, and was NOT willing to undergo the Catholic marriage rites. She sued for annulment.

HELD: The marriage CANNOT be annulled on the ground of fraud. This is not the kind of fraud contemplated by the law on marriage.

Aurora A. Anaya v. Fernando O. Palaroan
L-27930, Nov. 26, 1970

The Court ruled that:

- (a) Non-disclosure of a husband's pre-marital relationship with another woman is *not* the kind of fraud that can annul a marriage.
- (b) Fraud based on any secret intention on the husband's part *not* to perform his marital duties must be alleged (if a wife wants a marriage annulled) within 4 years after the celebration of the marriage. This is because said secret intent is something that can be readily discovered by the wife soon after the wedding. [*NOTE:* This second ruling was only *obiter* — for this ground was alleged not in the original *complaint* but only in the *reply* of the plaintiff to the defendant's answer.].

(5) Concealment of a Sexually-Transmitted Disease

Note that here, the state of the disease need not be serious. However, there must have been *concealment*. In Art. 45(6) (*Family Code*), the sexually-transmitted disease must be *serious* and need *not* have been concealed at the time of the marriage ceremony.

Art. 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 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; by any relative, guardian or person having legal charge of the insane, at any time before the death of either party; or by the insane spouse during 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)

COMMENT:

(1) Persons Who May Sue for Annulment of the Marriage, and Prescriptive Periods

a. *Non-age*

Persons —

- (1) *before* party becomes 21 — her or his parent
- (2) *after* party becomes 21 — the party herself or himself.

Period — within 5 years after reaching 21.

b. *Unsoundness of Mind*

Persons — the spouse (who did NOT know of the other's insanity) OR the relatives or guardians of the insane.

Period — at any time *before* the death of either party.

[NOTE: If a man marries an insane girl knowing her to be insane, may the marriage still be annulled?

Answer — Yes, not on the part of the man because of his prior knowledge, but on the part of the relatives of the insane party. (See Art. 47, No. 2).]

c. *Fraud*

Person — the injured party

Period — within 5 years after the discovery of the fraud.

(NOTE: If both committed *fraud*, neither can sue.)

d. *Force or Intimidation or undue influence*

Person — the injured party

Period — within 5 years from the time the force or intimidation or undue influence ceased.

e. *Impotence*

Person — the injured party

Period — within 5 years after the *celebration* of the marriage.

f. *Sexually transmissible disease*

Person — the injured party

Period — within 5 years after the *celebration* of the marriage.

(2) Period for Annulment of Marriage

Note that in general, the period is five (5) years.

(3) Problems on Unsoundness of Mind

A, a man, married B, a woman. It turned out that B was insane when the ceremony was performed.

- (a) If A knew of this insanity during the marriage ceremony may he ask successfully for the annulment of the marriage? — No. The law clearly says he must have no knowledge of the other's insanity. He who comes to equity must come with clean hands. (*See also Hoadley v. Hoadley, 244 N.Y., 424*). But the relatives as guardian of the insane may.
- (b) If A did not know of the insanity during the marriage ceremony may he bring action for annulment? — Yes.

Art. 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 the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment. (88a)

COMMENT:**(1) Rationale for the Rule on Stipulation of Facts or Confession of Judgment**

It is true that marriage may be annulled for certain causes, but if instead of proving these causes the party concerned will only submit either a stipulation of facts (facts agreed upon and signed by both the husband and wife) or a confession of judgment (a statement by the erring spouse to the effect that he or she is not against the annulment), then the court will refuse to render judgment. Instead, the Court will proceed as in Art. 60, 2nd par. of the Family Code. It is provided for in Art. 60, par. 2, that "in any case, the court shall order that prosecuting attorney or fiscal assigned to take steps to prevent collusion

between the parties and to take care that the evidence is not fabricated or suppressed.”

A marriage cannot be annulled by means of a summary judgment. (*Jocson v. Robles*, 22 SCRA 521).

(2) Confession of Judgment Defined

There are two kinds of confession of judgment, namely:

- (a) *Confession of judgment by warrant of attorney* — authority given by defendant to plaintiff’s attorney allowing the latter to tell the court that the defendant confesses or admits the plaintiff’s claim to be true and just. This is done even before the action is actually filed.
- (b) *Confession of judgment or judgment by confession cognovit actionem* — that rendered where, instead of defending himself, the defendant chooses to acknowledge the rightfulness of the plaintiff’s action. (*See Black’s Law Dictionary*, p. 1026).

In *Ocampo v. Florenciano*, L-13553, Feb. 23, 1960, the Court said that a confession of judgment usually happens when the defendant appears in court and confesses the right of the plaintiff to judgment, OR files a pleading expressly agreeing to the plaintiff’s demand. If ASIDE from a stipulation of facts or a confession of judgment, there still is presented SUFFICIENT EVIDENCE, the Court may render a judgment annulling the marriage.

De Cardenas v. De Cardenas, et al. L-8218, Dec. 15, 1955

FACTS: *H* married *W* No. 1, and later married, *W* No. 2, while the first wife was still alive. Can the second marriage be cancelled on petition of the first wife on a stipulation of facts?

HELD: Yes, although Art. 88 (Civil Code) prohibits the annulment of marriage on a stipulation of facts (and Art. 101, Civil Code — regarding legal separation), still said article contemplates an annulment or legal separation by collusion. In this case, there could be no collusion because the interests of the two wives are conflicting.

Roque v. Judge Encarnacion, et al.
L-6505, Aug. 23, 1954

FACTS: A wife brought an action for legal separation, but the husband, though admitting marriage with the wife, alleged as counterclaim that she had previously been married to another. In turn, the wife answered that she married her present husband because she erroneously thought that her first husband having been absent for 14 consecutive years, was already dead. The second husband moved for a summary judgment annulling the marriage. This motion was supported by a deposition made by the first husband.

ISSUE: Can the counterclaim for annulment by the husband be decided in a summary proceeding?

HELD: No. First, because an action to annul marriage is neither an action to “recover upon a claim” nor “to obtain declaratory relief,” and secondly, because it is the avowed policy of the state to prohibit annulment of marriage by summary proceedings. The Rules of Court both old and revised expressly disallows such annulment without actual trial. The mere fact that no genuine issue was even really presented or that it was desired to expedite the resolution of the case, should not justify a misinterpretation of a rule adopted as the policy of the state.

[*NOTE:* In the Family Code, even if the marriage is void, a judicial declaration to that effect is still required. (*See Art. 48*).].

Romulo Tolentino v. Helen Villanueva, et al.
L-23264, Mar. 15, 1974

FACTS: Petitioner sued to annul his marriage. His wife did not answer nor appear. So the Judge referred the matter to the city fiscal to determine whether or not a collusion exists. The petitioner refused to be interrogated by the fiscal, claiming that he did not want to reveal his evidence in advance. Can the Court properly dismiss the annulment suit?

HELD: Yes, the Court can dismiss the suit for failure of the petitioner to cooperate, resulting in the failure of the fiscal to determine whether or not a collusion exists. The State is

vitaly interested in the preservation of the sacred institution of marriage.

[NOTE: The case of *Macias v. Macias* (410 SCRA 365 [2003]) is a reiteration of the *Tolentino v. Villanueva* case (*supra*). In the *Macias* case, the Supreme Court opined that “[w]here the defending party in an action for *declaration of nullity of marriage* fails to file his or her answer to the petition, the trial court should order the prosecution to intervene for the State by conducting an investigation to determine whether or not there was collision between the parties.”]

(3) When a Marriage Is Annulled, Does the Obligation to Give Support Still Subsist?

After a marriage is annulled, the obligation of mutual support between the spouses ceases. (*Art. 198*). But the children should still be supported by them. (*See Art. 195*).

(4) Who Pays for Attorney’s Fees and Other Expenses in Annulment Cases?

It depends:

- a. if the action prospers (and the annulment is granted), the ABSOLUTE COMMUNITY PROPERTY shall be liable.
- b. if the marriage is *not* annulled, whoever brought the action shall pay for the attorney’s fees and other litigation expenses.

(5) Instances When Damages May Be Awarded When the Marriage Is Judicially Annulled or Declared Void from the Beginning

- (a) If there has been fraud, force or intimidation in obtaining the consent of one of the contracting parties (VOIDABLE MARRIAGE).
- (b) If either party was, at the time of the marriage, *impotent*, and the other party did not know this (VOIDABLE MARRIAGE).

- (c) If one party was *insane*, and the other was aware thereof at the time of the marriage (VOIDABLE MARRIAGE).
- (d) If the person solemnizing the marriage was *not legally* authorized to perform marriage, and that fact was *known* to one of the contracting parties, but he or she *concealed* it from the other (VOID MARRIAGE).
- (e) If a *bigamous* or *polygamous* marriage was celebrated, and the impediment was concealed from the plaintiff by the party disqualified (VOID MARRIAGE).
- (f) If, in an *incestuous* marriage, or other marriage prohibited by Article 32 (*void*, but *not incestuous*), the relationship was *known to only one* of the contracting parties, but was *not disclosed to the other* (VOID MARRIAGE).

(6) A Rare Instance Where Neither Law Nor Society Can Provide the Specific Answer to Every Individual Problem

**Republic v. Iyoy
470 SCRA 508
(2005)**

In the instant case, at most, the wife's abandonment, sexual infidelity, and bigamy — give the husband grounds to file for legal separation, but not for declaration of nullity of marriage — while the Supreme Court commiserates with the latter 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.

Art. 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)

COMMENT:**Pendency of Action**

According to Art. 49, during the pendency of the action and in the absence of adequate provisions in a written agreement between the spouses, the court shall:

1. Provide for the support of the spouses and the custody and support of their common children.
2. Give paramount consideration to the moral and material welfare of said children and their choice of the parent with whom they wish to remain.
3. Provide for appropriate visitation rights of the other parent.

**Silva v. CA
84 SCAD 651 (1997)**

There is, despite a dearth of specific *legal* provisions, enough recognition on the *inherent* and *natural right* of parents over their children. (Examples are Arts. 150, 209, and 220 of the Family Code.)

The Constitution itself speaks in terms of the *natural and primary rights* of parents in their rearing of the youth.

Then, too, and most importantly, in the declaration of *nullity* of marriages, a situation that presupposes a void or inexistent marriage. Art. 49, for one, provides for appropriate visitation rights to parents who are not given custody of their children.

Art. 50. The effects provided for in paragraphs (2), (3), (4) and (5) of Article 43 and in Article 44 shall also apply in 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.

COMMENT:

Effects of Termination of Subsequent Marriage – Where Applicable

As set forth under Arts. 43(2-5) and 44, the effects of termination of a subsequent marriage shall apply to final judgments annulling a voidable marriage or declaring the latter's nullity.

Art. 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)

COMMENT:

Value of Partition of Presumptive Legitimes

In said partition, the value of the presumptive legitimes of all common children are computed as of the date of the final judgment of the trial court, and shall be delivered in:

1. cash,
2. property, or
3. sound securities.

This is unless the parties, by mutual agreement judicially approved, had already provided for such matters.

Art. 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)

COMMENT:

Who Are Not Affected?

Under the Rule provided for under Art. 52, third parties shall NOT be affected.

Art. 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.

COMMENT:

After Compliance With Requirements

After complying with the requirements of Art. 52, either of the former spouse may marry again. To do otherwise renders the subsequent marriage null and void.

Art. 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.

COMMENT:**(1) Illustrative Problems**

- (a) *A* married *B* and had a child *C*. Later, there marriage was declared void because of *A*'s psychological incapacity. What is the status of the child? — If *conceived* or *born before* the decision of the court declaring the marriage VOID becomes final and executory, the child would be considered legitimate. (*Art. 54, Family Code*).
- (b) *A* married *B* through fraud. Later a child *C* was born. One month afterwards, an action for annulment was brought by *B*, and after a few weeks, the decree of annulment was granted. What is the status of *C*? — Legitimate because it had been born previous to the annulment.
- (c) *A* married *B* through force and intimidation. Later, a child *C* was conceived. In the meantime, *B* had brought an action for annulment. A few weeks later, the annulment was granted. Some months afterwards, *C* was finally born. What is the status of *C*? — Legitimate. Although it was born after the decree of annulment, it had been conceived prior thereto, and by provision of law, is to be considered legitimate.
- (d) Although *A* forced *B* to marry him, *B* soon grew to be fond of him, and they freely cohabited with each other. Later, *B* filed an action for annulment. Because of this free and willing cohabitation with each other, a child was conceived after the action for annulment had been filed in court. A few months thereafter, the child *C* was born. What is the status of *C*? — Legitimate. In the first place, *C* was the result of free cohabitation on the part of its parents, and therefore the action of annulment cannot be successfully brought. In the second place, granting that the cohabitation was not free, and granting further that the decree of annulment was given, still the child had been conceived prior thereto, and should therefore be considered legitimate.

(2) Problems on Double Marriages

A woman in good faith married a man whom she thought to be unmarried but who was in reality already married.

- (a) Is the second marriage valid?

ANSWER: No, the second marriage is not valid. Being bigamous, it is both illegal and void *ab initio*.

- (b) Is the man guilty of bigamy?

ANSWER: Yes.

- (c) But suppose the man thought that his first wife was already dead, but did not make diligent efforts to ascertain this fact, would he still be criminally liable?

ANSWER: Yes, he would still be guilty of bigamy. Besides, he should have first asked for a judicial declaration of presumptive death. (*Art. 41, 2nd par., Family Code*).

(3) Problem

People v. Mendoza L-5877, Sep. 28, 1954

FACTS: In 1936, Mendoza married Jovita. While Jovita was still alive, Mendoza in 1941 married Olga. In 1943, Jovita died. In 1949, while Olga was still alive, Mendoza married Carmencita. Mendoza was then accused of bigamy for his marriage to Carmencita. Is Mendoza guilty?

HELD: No, Mendoza is *not guilty* of bigamy, for when he married Carmencita, he had no previous valid marriage. Marriage No. 1 (to Jovita) had already been dissolved by Jovita's death in 1943; while marriage No. 2 (to Olga) cannot be counted inasmuch as it was void *ab initio*, having been contracted while Jovita was still alive. Said second marriage needed no judicial declaration to establish its invalidity because it was bigamous, and void from the very beginning, as distinguished from a merely voidable or annulable marriage.

(Please note that under the Family Code, a judicial declaration of nullity is required even for a VOID marriage.)

Title II

LEGAL SEPARATION

INTRODUCTORY COMMENT:

(1) Two Kinds of Divorces

- (a) Absolute divorce (*divorce a vinculo matrimonii*) – Marriage is *dissolved*.

[NOTE: Under Act 2710, there were two grounds.]

- (b) Relative divorce or LEGAL SEPARATION (*divorce a mensa et thoro*) – Marriage is NOT dissolved; here, the parties are merely separated from bed and board.

[NOTE: Under the Civil Code, there are three (3) grounds. Under the Family Code, there are ten (10) grounds.]

(2) A Brief History of Absolute Divorce and Legal Separation in the Philippines

- (a) The *Siete Partidas* provided for legal separation, not absolute divorce. This was our law until Act 2710 (Mar. 11, 1917) (the Old Divorce Law), which allowed only *absolute divorce*.
- (b) The Divorce Law (Act 2710) recognized only two grounds for absolute divorce and implicitly ruled out relative divorce. (*Garcia Valdez v. Tuazon, 40 Phil. 943*).

The two grounds were:

- 1) Adultery on the part of the wife
- 2) Concubinage on the part of the husband

[NOTE: In either case, there had to be a *previous criminal conviction*. (Sec. 8, Act 2710). This was needed as the *only proof for the commission* of the above-mentioned offenses. However, said criminal conviction need not already exist before the action for absolute divorce is filed. (*Raymundo v. Penas*, L-6705, Dec. 23, 1954).]

[NOTE: While we were still under the old Divorce Law, some Filipino couples went to foreign countries and obtained their decree of absolute divorce there. Were said decrees ever recognized as valid in the Philippines?

ANSWER: It depends.

- 1) The absolute divorce would be considered as valid here, provided that the two following conditions concurred:
 - a) The foreign court had jurisdiction over the parties and over the subject matter.
 - b) The ground for the divorce was one of the grounds provided for under the Philippine absolute divorce law, namely, adultery on the part of the wife and concubinage on the part of the husband. (*Barretto Gonzales v. Gonzales*, 58 Phil. 67; *Arca v. Javier*, 50 O.G. 3538, 1954).
- 2) If either or both of the abovementioned conditions were absent, the divorce would not be considered as valid here in the Philippines. (*Barretto Gonzales v. Gonzales*, *supra*; *Arca v. Javier*, *supra*; *Sikat v. Canson*, 67 Phil. 207).].

(3) Bar Problem

X is a male Filipino. He married Y, an American woman, in Nevada, U.S.A. They lived together as husband and wife for a period of five years in the same state. X returned to the Philippines alone, leaving his wife in Nevada. After staying for two years in the Philippines, X was sued for divorce in Nevada by Y and she obtained a decree of divorce. Three years after the divorce had been granted, X married in the Philippines in

the year 1952. *Question:* Is this second marriage of *X* valid in the Philippines? Reason.

ANSWER: Since the divorce in the problem was obtained in 1949 (three years prior to 1952), it is evident that the new Civil Code does not apply: instead, we have to use our principles — on absolute divorce decreed in foreign lands — enunciated under the old law. Without going into the question of jurisdiction, it is apparent that the ground for the divorce herein was *neither* adultery on the part of the wife nor concubinage on the part of the husband. Therefore also, the second marriage is void since the first marriage had not yet been dissolved when said second marriage was entered into. (*Barretto Gonzales v. Gonzales*, 58 Phil. 67; *Sikat v. Canson*, 67 Phil. 207; *Arca v. Javier*, 50 O.G. 3538 [1954]).

[*NOTE:* In the *Sikat* and *Arca* cases, the ground for the foreign divorce was desertion. In the *Arca* case, the Supreme Court said: “The courts in the Philippines can grant divorce (under the old law) only on the ground of adultery on the part of the wife or of concubinage on the part of the husband, and if the decree is predicated on another ground, that decree cannot be enforced in this jurisdiction. The above pronouncement is sound as it is in keeping with the well-known principle of Private International Law which prohibits the extension of a foreign judgment, or the law affecting the same, if it is contrary to the law or fundamental policy of the State of the forum... It is also in keeping with our concept of moral values which has always looked upon marriage as an institution.”]

(4) Divorce During the Japanese Occupation

During the Japanese occupation, there was a new absolute divorce law under Executive Order 141 (which enlarged the grounds provided for under Act 2710). This was effective until October 23, 1944, when General Douglas MacArthur, by Proclamation, reestablished the Commonwealth Government. Said Proclamation in effect repealed said Executive Order and revived Act 2710. (*Justo Bapista v. Castañeda*, 42 O.G. 3186;

Raymundo v. Peñas, 96 Phil. 311). Executive Order 141 had been framed “as an answer to the cry of many victims of chronic matrimonial tragedies which under Act 2710, practically only death could dissolve.” (*Editorial of “The Tribune,” Mar. 31, 1943*).

Sec. 2 of Executive Order No. 141 enumerated the *grounds*, and provided that:

“A civil action for divorce may be brought by either spouse in a proper court of justice on any of the following grounds:

- 1) Adultery on the part of the wife or concubinage on the part of the husband, committed under any of the forms described in the Revised Penal Code.
- 2) Attempt by one spouse against the life of the other.
- 3) A second or subsequent marriage contracted by either spouse before the marriage has been legally dissolved.
- 4) Loathsome contagious diseases contracted by either spouse.
- 5) Incurable insanity which has reached such a stage that the intellectual community between the spouses has ceased.
- 6) Criminal conviction of either spouse of a crime in which the minimum penalty imposed is not less than six years imprisonment.
- 7) Repeated bodily violence by one against the other to such an extent that the spouses cannot continue living together without endangering the lives of both or either of them.
- 8) Intentional or unjustifiable desertion continuously for at least one year prior to the filing of the action.
- 9) Intentional absence from the last conjugal abode continuously for three consecutive years prior to the filing of the action.
- 10) Slander by deed or gross insult by one spouse against the other to such an extent as to make further living impracticable.”

(5) Repeal of the Old Divorce Law

Act 2710 (the old Divorce Law) was repealed by the new Civil Code (*Raymundo v. Peñas, 96 Phil. 311*) and today, with the exception of Moslem divorces, we only have relative divorce or legal separation in the Philippines and the implicit absolute divorce allowed under Art. 36 (psychological incapacity) of the Family Code.

(6) Transitional Rules on Absolute Divorces

(a) *Absolute Divorce under Act 2710*

- 1) If granted validly before August 30, 1950 (the date of effectivity of the new Civil Code), the same remains valid today.
- 2) If *pending* merely on August 30, 1950, the same would be allowed to continue till *final judgment*. This is true even if the final judgment on the crime (adultery or concubinage) was rendered only *after* August 30, 1950 because what is important is that the crime was committed **BEFORE** the said date. (*Raymundo v. Peñas, 96 Phil. 311*).

(b) *Absolute Divorce under Executive Order No. 141*

- 1) If granted validly *before* October 23, 1944 (date of Gen. MacArthur's proclamation re-establishing the Philippine Government), the same will be considered as valid. (*Raymundo v. Peñas, supra*). This is because our government under the Japanese was considered a *de facto* government, and all its acts and court decisions which did not partake of a political complexion continued to remain valid.
- 2) If *merely pending* on October 23, 1944, would it be allowed to continue?

ANSWER: No, except if the action was based on the adultery of the wife or concubinage on the part of the husband. (*Nesperos v. Martinez, C.A., 43 O.G. 4660; Peña de Luz v. CFI, 43 O.G. 4102*).

[NOTE: Observe that while pending suits under Act 2710 were allowed, those under Executive Order No. 141 were generally not allowed to continue. The difference lies in the fact that the former are governed by the *transitional* provisions of the new Civil Code; the latter are not. (*Raymundo v. Peñas, supra*).]

Patrocinio Raymundo v. Doroteo Peñas
96 Phil. 311

FACTS: Raymundo and Peñas were validly married to each other in Manila on Mar. 29, 1941. The spouses lived together until 1949, but had no children, nor did they acquire conjugal property. Sometime in July, 1949, the husband lived maritally with another woman, Carmen Paredes.

At the instance of the deserted wife, an information for concubinage was filed on Oct. 30, 1949. The husband Peñas was convicted and sentenced to imprisonment by the CFI (now RTC) on May 25, 1950. Pending his appeal on July 14, 1950, the wife instituted the present proceedings praying for a decree of absolute divorce. The conviction of Peñas was affirmed by the Court of Appeals on Oct. 31, 1951.

The trial court found that the acts of concubinage that gave rise to the action as well as the judgment of conviction by the CFI took place before the repeal of Act 2710 (the Divorce Law) by the new Civil Code (which became effective on August 30, 1950, as held by this court in *Lara v. Del Rosario, 50 O.G. 1957*). Nevertheless, said trial court did not grant the divorce on the ground that the wife had acquired no right to a divorce which can be recognized after the effective date of the new Civil Code in view of Art. 2254 (“no vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others”). Thus, it concluded that the criminal act of the husband did not give the wife any vested right, and since divorce is abolished under the

new Civil Code, the divorce decree should not be granted, even if the divorce proceedings were instituted prior to the effective date of the new Civil Code.

HELD: (a) The trial court is not correct. It should be apparent upon reflection that the prohibition of Art. 2254 must be directed at the offender, not the offended party who is in no way responsible for the violation of legal duty. The interpretation adopted by the court below results in depriving a victim of any redress because of the very act that injured him. The Code Commission, speaking of Art. 2254, said: "It is evident that no one can validly claim any vested or acquired right if the same is founded upon his having violated the law or invaded the rights of others." In other words, it is the wrongdoer who is punished, not the victim.

(b) Despite the change of legislation (*i.e.*, no more divorce under the new Civil Code), the wife is protected by Art. 2253 which provides that "The Civil Code of 1819 and other previous laws shall govern rights originating under said laws, from acts or events which took place under their regime, even though this Code may regulate them in different manner, or may not recognize them. True, the new Code does not recognize absolute divorce, but only legal separation, thereby impliedly repealing Act 2710, but other provisions clearly safeguard rights and actions arising under the preceding law.

(c) The present case is readily distinguished from the case of divorce proceedings instituted under Executive Order No. 141 of the Japanese occupation Executive Commission, and which were pending at liberation. We ruled in *Peña de Luz v. CFI*, 43 O.G., p. 4102, that such pending divorce proceedings must be dismissed because the occupation divorce ceased to be in force and effect upon liberation of the national territory and because the proclamation of General Douglas MacArthur in Leyte on Oct. 23, 1944 had abrogated all occupation legislation absolutely and without qualification. The repeal of Act 2710 by the new Civil Code is in a different position since the transitional provisions of a latter law expressly prescribe, as we have

seen the subsistence of rights derived from acts that took place under the prior legislation.

(d) It is of no moment that the conviction of the husband only became final after the new Civil Code, denying absolute divorce, came into effect, for this Court has already ruled in *Chereau v. Fuentebella* (43 Phil. 220) that Sec. 8 of Act 2710 (“a divorce shall not be granted without the guilt of the defendant being established by final sentence in a criminal action”) is only evidentiary in character, since it merely “has reference of course, to the species of proof required to establish the basal fact on which the right to the divorce rests” (*i.e.*, it is not a condition precedent that there be final judgment prior to filing of the divorce suit; it is enough that at the time of litigation, final sentence can be presented as proof).

(e) Wherefore, the decision appealed from is reversed and new judgment shall be entered granting a decree of absolute divorce as prayed for.

[NOTE: The importance of this case lies in the fact, that as long as the divorce proceeding had already been brought *before* Aug. 30, 1950, same will be allowed to *continue*. Moreover, even if the final judgment of conviction is made after Aug. 30, 1950 — this is *all right* and divorce can still be granted. Had, however, the divorce case been brought *after* the effective date of the new Code (Aug. 30, 1950), it would not have *prospered*.]

(7) Rules for Absolute Divorce TODAY Both Under the Civil Code and the Family Code (Without Prejudice to Moslem Divorces)

(NOTE: This is very important, considering the fact that absolute divorce has already been abolished under the new Civil Code.)

(a) *If the action is brought HERE in the Philippines*

- 1) Between Filipinos — will NOT prosper
- 2) Between foreigners — will NOT prosper

- 3) Between a Filipino and a foreigner — will NOT prosper
- (b) *If the action is brought in a FOREIGN COURT*
- 1) *Between Filipinos* — will NOT be recognized here even if allowed by said foreign court, and even if the ground be either adultery on the part of the wife or concubinage on the part of the husband. (*Arts. 15 and 17*).
 - 2) *Between foreigners* — Foreign decree will be RECOGNIZED here only if the following two conditions *concur*:
 - a) The foreign court has jurisdiction to grant the absolute divorce.
 - b) AND said divorce is recognized as valid by the *personal law* of the parties involved, that is, if valid according to their *national law* or the *law of their domicile* depending upon the theory adopted by their countries. (*See Recto v. Harden and Harden, L-6897, Nov. 29, 1956*, where the Court said: “Inasmuch as Mr. and Mrs. Harden are admittedly citizens of the United States, their *status* and *dissolution* thereof are governed by the laws of the United States which sanction divorce.”).
 - 3) *Between a Filipino and a foreigner* — If obtained by the foreigner and valid according to his personal law — valid for *both* foreigner and Filipino.

(8) Problems on Absolute Divorce

- (a) An American movie actress married an American star in Hollywood. After three weeks of marriage, she obtained a divorce. If she would come to the Philippines, will she be allowed to get married here?

ANSWER: Yes, provided that she can obtain a certificate of legal capacity to contract marriage from the

American diplomatic or consular officials — under Art. 66. After all, she is NOT a Filipino.

- (b) A Filipino woman got married to *H*, a national of *X*'s country. Under the laws of *X*, the wife acquired the husband's nationality. Later, *H* and the wife obtained a decree of absolute divorce, which was considered as valid in country *X*. Upon the woman's return to the Philippines, will she be allowed to marry again here?

ANSWER: Yes, both under the Civil Code and the Family Code. And this is true whether or not she acquires the nationality or citizenship of *X*.

(9) 'Legal Separation' Distinguished from 'Separation of Property'

<i>Legal Separation</i>	<i>Separation of Property</i>
<p>(a) Must be done thru the court.</p> <p>[NOTE: An extrajudicial agreement to separate is VOID. (Art. 221, No. 1, Civil Code).]</p>	<p>(a) 1) If one prior to marriage — may be done thru the marriage settlement.</p> <p>2) If done during the existence of the marriage — must be done thru the courts.</p>
<p>(b) Always involves also separation of property.</p>	<p>(b) May exist with or without legal separations.</p>
<p>(c) May be considered, in a sense, as a cause of separation of property.</p>	<p>(c) May be considered, in a sense as one of the effects of legal separation (Art. 63, Family Code). (Of course, separation of property may exist without a legal separation.)</p>
<p>(d) The spouse <i>persons</i> are necessarily separated.</p>	<p>(d) The spouses <i>persons</i> are NOT necessarily separated.</p>

Art. 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)

COMMENT:

(1) Increase in the Number of Grounds

While in the Civil Code, there were only three grounds for legal separation, there are ten grounds enumerated in the Family Code.

(2) Proof Needed

Mere preponderance of evidence, not guilt beyond reasonable doubt, will suffice to prove the existence of any of the grounds, although in ground No. 4, previous criminal conviction is essential (this is a *separate* case) in view of the necessity of a “final judgment.”

(3) Sexual Infidelity

This can include adultery or concubinage.

Pastor B. Tenchavez v. Vicenta F. Escaño
L-19671, Nov. 29, 1965

FACTS: In 1948, Pastor Tenchavez and Vicenta Escaño were married before a Catholic priest. On Oct. 22, 1950, Vicenta obtained an absolute divorce from her husband — from the State of Nevada. She then married in America, an American. Both presently reside in California, the girl having acquired American citizenship in 1958. On July 30, 1955, however, Tenchavez had already initiated legal separation proceedings in the Philippines.

ISSUE: Will the legal separation proceedings and relief for damages prosper?

HELD: Yes, because the girl technically has committed adultery (in view of the sexual intercourse with her American husband) her divorce NOT BEING recognized here in the Philippines. Pastor, aside from being relieved of his duty to support her, can obtain damages from her — in view of her refusal to perform her wifely duties, her denial of *consortium*, and her desertion of her husband. (*Art. 2176, Civil Code*). [*NOTE:* He was awarded P25,000 by way of moral damages and attorney’s fees]. By way of resume of the important principles in this case, it can be said that:

- (a) a foreign divorce between *Filipino* citizens sought and decreed after the effectivity of the new Civil Code is not entitled to recognition (as valid) in our country;

- (b) neither is the marriage contracted with another party by the “divorced” consort, subsequent to the foreign decree of divorce, entitled to validity in this jurisdiction;
- (c) the remarriage of the “divorced” wife and her cohabitation with her new “husband” entitles her lawful husband to a decree of legal separation;
- (d) the desertion by one consort entitles the other to recover *moral damages*;
- (e) an action for alienation of affections against the parents of one consort will *not* prosper in the absence of proof of malice and unworthy motives on the part of said parents;
- (f) the original marriage subsists despite the foreign divorce;
- (g) to grant effectivity to foreign divorces would be a patent violation of the declared public policy of the State, especially so because of the 3rd paragraph of Art. 17 of the Civil Code; and
- (h) to give preference to a second (but illegal) marriage simply because it appears to be more solid and blessed with children will do away with the concept of marriage as a social institution.

(4) Effect of the Institution of a Criminal Action

If a wife sues for legal separation on the ground of concubinage, and during the pendency of said suit, she files a *criminal* charge for concubinage, the civil action should be **SUSPENDED** until after final judgment is rendered in the criminal case (*Sec. 3[b], Rule 111, Revised Rules of Court*) inasmuch as her cause of action in the case for legal separation arises from the very crime of concubinage charged in the criminal case. (*Jerusalem v. Zurbano, et al., L-11935, Apr. 24, 1959*).

This is a question of decision since the offense now need not be proved in a criminal case.

(5) Duty of Court to Try to Effect a Reconciliation

In every case, the court must take steps, before granting the legal separation, toward the reconciliation of the spouses, and must be fully satisfied that such reconciliation is highly improbable. (*Art. 98*). It is the policy of the law to discourage legal separation (*Juarez v. Turon, 51 Phil. 736*) because the family is a basic social institution which public policy cherishes and protects. (*Art. 216*).

(6) The Action Is Personal in Nature

Lapuz-Sy v. Eufemio
43 SCRA 177

An action for legal separation which involves nothing more than bed-and-board separation of the spouses is purely personal. Being personal in character, it follows that the death of one party to the action causes the death of the action itself — *actio personalia meritis cum persona*.

(7) Conviction Is Not Necessary Before Legal Separation May Prosper

A decree of legal separation, on the ground of concubinage (a form of sexual infidelity under Art. 55, no. 8 of the Family Code) may issue upon proof by preponderance of evidence in an action (for legal separation). Thus, no criminal proceedings or conviction is necessary. (*Gaudionco v. Hon. Peñaranda, L-72984, Nov. 27, 1987*).

Art. 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)

COMMENT:

(1) Defenses in Legal Separation

- (a) Condonation
- (b) Consent
- (c) Connivance
- (d) Mutual guilt (recrimination)
- (e) Collusion
- (f) Prescription

(2) Condonation

- (a) This means forgiveness, express or implied. Sleeping together after full knowledge of the offense is condonation. (*Bugayong v. Ginez, L-10033, Dec. 28, 1956*).
- (b) It comes AFTER, not before, the offense. (*People v. Schneckeburger, 73 Phil. 413*).
- (c) Implied condonation may come in the form of voluntary sexual intercourse after knowledge of the cause (*Johnston v. Johnston, 116 Va. 778; Keezer, Marriage and Divorce, p. 554*), unless the reason was to save the marital relationship and maintain harmony (*Keezer, Marriage and Divorce, p. 557*) or for the purpose of attempting (unsuccessfully) a reconciliation. (*Hawkins v. Hawkins, 286, Pac. 747*).
- (d) Each sexual intercourse of the wife outside marriage is a separate act of adultery. Therefore, condonation of one act does not necessarily imply condonation of the others. (*People v. Zapata and Bondoc, L-3047, May 16, 1951*).

- (e) Where the wife left the conjugal home after her adulterous acts were discovered, the fact that the husband did *not* actively search for her is *not* condonation. It was not the duty of the husband to search for the wife under the circumstances. On the contrary, hers was the duty to return to the conjugal home. (*De Ocampo v. Florenciano, L-13553, Feb. 23, 1960*).

(3) Consent

- (a) This may be express or implied.

People v. Sansano and Ramos **59 Phil. 73**

FACTS: A and B, husband and wife, respectively, were legally married. Later, B abandoned A. B lived with C. A did nothing to interfere with the relations of his wife and her paramour. He even went to Hawaii, completely abandoning his wife B for more than seven years. Later, A returned and charged B and C with adultery. Is B guilty of adultery?

HELD: B should be acquitted because A's conduct warranted the inference that in truth, as well as in fact, he had consented to the philandering of his wife.

People v. Schneckenburger **73 Phil. 413**

(This reverses the contrary rule in *People v. Guinocud and Tagayun, 58 Phil. 621*).

FACTS: A husband and a wife entered into a mutual agreement whereby each could live with others, have carnal knowledge of them, without interference from the other. Pursuant to the agreement, the husband lived with another woman, and in the prosecution for concubinage, he presented in defense the prior agreement or consent. Is he guilty?

HELD: No, he is not guilty in view of the consent of the wife.

(1) We do not legalize the agreement; the agreement is still null and void because it is contrary to the law and contrary to morals. BUT precisely because the girl had previously consented, she is now undeserving of our sympathy. She deserves less consideration than a woman who condones.

(2) It is alleged that when the law speaks of consent, what it meant is condonation. This is not so; otherwise, why is *consent* used as the alternative of *condonation*? *Consent is prior* to the act; condonation comes *after*. (See also *Matubis v. Praxedes*, L-11766, Oct. 25, 1960).

- (b) Consent must be distinguished from *entrapment*. Therefore, if the purpose is to merely catch the wife, this is not consent even if the husband deliberately went away only to come back and trap the wife.

Example:

Pedro was lawfully married to Josefa. Because Pedro suspected his wife of being in love with another, Pedro pretended to go to the province for a week. However, he did not really go away. He stayed merely in a downtown hotel. At midnight he went to his house and there and then surprised his wife in the act of adultery. If he sues for legal separation, how will you, as judge, decide the case?

ANSWER: I will grant the legal separation on the ground of adultery. There is nothing wrong in the husband watching the actuations of a wife whom he suspected of infidelity. As held in a similar American case, it cannot be said that in the problem presented, there was connivance. (See *Robbins v. Robbins*, 54 Am. Rep. 448).

- (c) Of course, if a husband hires a detective to spy on his wife, and tells him to have sexual intercourse with her in order to have evidence, this will be a case of connivance. The husband here is unworthy. (See *Keezer, Marriage and Divorce*, pp. 550-551).

(4) Mutual Guilt

Both parties being in *pari delicto*, there is *no* offended spouse who deserves to bring the action. This is true even if one of the parties has been pardoned but the other has not. (*Benedicto v. De la Rama*, 3 *Phil.* 34). If there is no *pari delicto* as when the husband can prove he did not allow the wife to desecrate the home, the adulterous wife can be charged for adultery. Incidentally, while consent comes BEFORE the act, and condonation comes AFTER, to make use of either, the same must be BEFORE the filing of the complaint. (*Arroyo v. Court of Appeals*, 203 *SCRA* 150 [1991]).

(5) Collusion

This is an agreement whereby one will pretend to have committed the ground relied upon. (*Keezer, Marriage and Divorce*, p. 546). A legal separation obtained thru collusion is void. (*See Art. 221, No. 3, Civil Code*).

(6) Effect of Death During Pendency

If one party dies during the pendency of the case, the same should be DISMISSED since the action is purely a *personal* one. This is true even if there would have been effects on property rights if a decree of legal separation had been granted. Without the decree, there can be no effects. (*Lapuz v. Eufemio*, 43 *SCRA* 179).

Art. 57. An action for legal separation shall be filed within five years from the time of the occurrence of the cause. (102a)

COMMENT:**Non-necessity of Alleging Prescription**

Although prescription should ordinarily be alleged, this is not so in legal separation or annulment proceedings. Therefore, the court even by itself can take cognizance of prescription of the case because said action involves 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. (*Brown v. Yambao*, L-10699, Oct. 18, 1957).

Art. 58. An action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition. (103a)

COMMENT:

(1) Cooling-Off Period

Purpose of the six months period before trial is to enable the parties to cool off (*Pacete, et al. v. Hon. G. Carriaga, Jr., et al.*, 49 SCAD 673, GR 53880, Mar. 17, 1994) for a possible reconciliation. (*Araneta v. Concepcion and Benitez Araneta*, L-9667, July 31, 1956).

Enrico L. Pacete v. Hon. Glicerio V. Carriaga, Jr.
GR 53880, Mar. 17, 1994
49 SCAD 673

The special proscriptions on actions that can put the integrity of marriage to possible jeopardy are compelled by no less than the State's interest in the marriage relation and its avowed intention not to leave the matter within the exclusive domain and the vagaries of the parties to alone dictate.

(2) No Suspension for Support *Pendente Lite*

But the cooling-off period does not mean the overruling of such other provisions as custody, alimony, and support *pendente lite* according to the circumstances. (*Art. 105, Civil Code*). Therefore, even during said period of six months, support *pendente lite* may be granted if justified; otherwise rank injustice may be caused. (*Araneta v. Concepcion and Benitez Araneta*, L-9667, July 31, 1956, 52 O.G. 5165). Similarly, a writ of preliminary mandatory injunction for the return of the wife's paraphernal property can in the meantime be heard and granted during the 6-month period. (*Semosa-Ramos v. Vamenta*, 46 SCRA 110).

Art. 59. No legal separation may be decreed unless the court has taken steps toward the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation is highly improbable. (n)

COMMENT:

Steps to First Be Taken By the Court

The Court must have first taken steps toward the reconciliation of the spouses and be fully satisfied, despite such efforts, that reconciliation is highly improbable, before any legal separation may be decreed.

Art. 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)

COMMENT:

(1) Legal Separation Based on Stipulation of Facts or Confession of Judgment

- (a) The law requires *proof*, not a mere stipulation of facts or a confession of judgment. Indeed, there ought to be a trial. (Incidentally, Rule 19 of the Revised Rules of Court also prohibits a judgment on the pleadings in actions for legal separation or annulment of a marriage.)
- (b) The proof may be either direct or circumstantial evidence.
- (c) Note that the case may prosper even if the defendant does not appear.

**Jose De Ocampo v. Serafica Florenciano
L-13553, Feb. 23, 1960**

FACTS: In 1951, Jose discovered that his wife, Serafica was having illicit relations with a certain Arcalas.

Serafica then left the conjugal home. In 1955, Jose again caught his wife having carnal knowledge with a certain Nelson. Jose then told Serafica he was filing suit for legal separation. Serafica agreed on condition that she would *not* be charged criminally with adultery. The case for legal separation was then filed. When the fiscal outside the court asked her why she failed to file an answer, she replied that she was in conformity with the legal separation. The lower court and the Court of Appeals both *denied* the legal separation on the ground that there was a confession of judgment under Art. 101 of the Civil Code. The case was appealed to the Supreme Court.

HELD: The legal separation should be granted, in view of the presence of other evidence. Here there was only an extrajudicial admission and NOT a confession of judgment (which usually happens when the defendant appears in *court* and confesses the right of plaintiff to judgment or files a pleading *expressly* agreeing to the *plaintiff's demand*). *And even if the statement of the defendant really constitutes a confession of judgment, still inasmuch as there is evidence of adultery independently of such statement, the decree of legal separation may and should be granted since it would be premised not on her confession, but on the strength of the evidence presented by her husband. Indeed, what the law prohibits is a judgment based exclusively or mainly on the confession of judgment. If a confession can automatically and by itself defeat the suit, any defendant who opposes the legal separation will immediately confess judgment, purposely to prevent the giving of the decree.*

[NOTE: Art. 60 of the Family Code does not exclude as evidence any admission or confession made by the defendant outside the court. (See *Ed Vincent S. Albano, Bar Review Guide in Civil Law, First Ed., pp. 34-35*).].

(2) Bar

May the court issue a decree of legal separation based upon facts stipulated by the spouses? If so, why? If not, why not?

ANSWER: No, if the decree is based solely on the stipulation of facts. (*Art. 101, Civil Code*). Yes, if there be other evidence of the existence of a ground for legal separation. (*Ocampo v. Florenciano, L-13553, Feb. 23, 1960*).

N.B.: Art. 60 has been culled from Art. 101 of the Civil Code and which in turn has been taken from Art. 30 of the California Civil Code. (*Pacete v. Carriaga, GR 53880, 49 SCAD 673, Mar. 17, 1994*).

Brown v. Yambao
102 Phil. 168

FACTS: Husband plaintiff sued his wife for legal separation on the ground of adultery committed with a certain Field. Wife did not answer the complaint. The court then asked the City Fiscal of Manila to intervene for the state. The fiscal during trial was able to prove that the plaintiff was himself guilty. Plaintiff now questions the actuation of the fiscal in examining him, claiming that the fiscal had intervened not for the state but for the wife.

HELD: Collusion in matrimonial cases being “the act of married persons in procuring a divorce by mutual *consent*, whether by a pre-concerted commission by one of a matrimonial offense, or by failure, in pursuance of agreement, to defend divorce proceedings” (*Cyclopedia Law Dictionary; Nelson, Divorce and Separation, Sec. 500*), it was lawful for the fiscal to bring to light any circumstances that could give rise to the inference that the wife’s default was calculated or agreed upon, to enable the plaintiff to obtain the decree of legal separation that he sought without regard to the legal merits of his case.

Pacete v. Carriaga
GR 53880, Mar. 17, 1994, 49 SCAD 673

Art. 101 of the Civil Code (now Art. 60, Family Code) reflects the public policy on marriages. It should easily explain the mandatory tenor of the law.

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 marriage relation and its avowed intention not to leave the matter within the exclusive domain and the vagaries of the parties to alone dictate.

Art. 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)

COMMENT:

- (1) Note that the spouses can live *separately* after the filing of the petition for legal separation. But they are *not required* to do so.
- (2) A third person may manage the property regime. The designation of this person may be done by the court.

Art. 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)

COMMENT:

- (1) Note that as in the annulment or declaration of the nullity of a marriage, Art. 49 shall likewise apply to *support* and *custody*.
- (2) Art. 49 provides:

“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.”

Araneta v. Concepcion
99 Phil. 709

Support *pendente lite* can be availed of in an action for legal separation and granted at the discretion of the judge.

Gaudionco v. Hon. Peñaranda
L-72984, Nov. 27, 1987

If the amount of support *pendente lite* granted is found to be onerous by the petitioner, he can always file a motion to modify or reduce the same.

Art. 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)

COMMENT:**(1) Scope**

This Article applies regarding some effects *after* the grant of a decree of legal separation.

(2) Continued Existence of the Marriage

- (a) Neither party can have a paramour.
- (b) The married couple *cannot insist* on sexual intercourse with each other.
- (c) Even if the wife be the one guilty, she may continue using her maiden name.

(3) Custody of the Minor Children

The custody is generally given to the *innocent* spouse.

(4) Disqualification from Testate and Intestate Succession

Generally, the guilty spouse cannot inherit from the innocent spouse.

(5) Case

**Laperal v. Republic
L-18008, Oct. 30, 1962**

The dissolution and liquidation of the conjugal partnership upon issuance of the decree of legal separation SHALL BE AUTOMATIC.

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 a 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)

COMMENT:

Two Things that May Be Revoked by the Innocent Spouse

- (a) Donations made in favor of the offending spouse.
- (b) Designation of the offending spouse as beneficiary in the insurance contracts of the innocent spouse.

Art. 65. If the spouses should reconcile, the corresponding joint manifestation under oath duly signed by them shall be filed with the court in the same proceeding for legal separation. (n)

COMMENT:

This Article requires a *joint manifestation under oath* in case of reconciliation.

Art. 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 in 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)

COMMENT:

- (1) Generally, forfeiture of the share of the guilty spouse remains – if there should be a reconciliation.
- (2) Exception – when the parties agree to revive the former property regime.

Art. 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 separated 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)

COMMENT:

- (1) Note the protection given to the creditors.
- (2) Creditors who were *not notified* or *not listed* in the order shall *not be prejudiced*.

Title III

RIGHTS AND OBLIGATIONS BETWEEN HUSBAND AND WIFE

Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support. (109a)

COMMENT:

(1) Personal Obligations of Husband and Wife

- (a) Duty to live together
- (b) Duty to observe mutual love, respect and fidelity
- (c) Duty to render mutual help and support

(2) Duty to Live Together

- (a) There is a *duty* and a *right* to live together: *cohabitation* or *consortium* (including sexual intercourse).

[NOTE: In the absence of a specific law on the matter, a husband cannot be successfully accused of rape (unless there has been legal separation, in which case there is no more duty to have sexual intercourse). But he can be accused of coercion if he forces his wife against her will.]

- (b) The wife may establish a *separate residence* or *domicile* in the following cases:
 - 1) If the husband continually indulges in illicit relations with others even if the concubine or concubines are not brought into the marital abode. (*Dadivas v. Vilanueva*, 54 *Phil.* 92).

- 2) If the husband is immoderate or barbaric in his demands for sexual intercourse. (*Goitia v. Campos-Rueda*, 35 *Phil.* 252). (In this case, the Supreme Court made the observation that implied approval by the Court of a wife's separate residence from her husband does not necessarily violate the sacredness and inviolability of marriage. If separation *de facto* is allowed in this case, it is only because both public peace and the wife's purity must be preserved.)
 - 3) If the husband grossly insults her. (*Talana v. Willis*, [C.A.] 35 *O.G.* 1369).
 - 4) If the husband maltreats her. (*Goitia v. Campos-Rueda*, 35 *Phil.* 252; *Arroyo v. Vasquez de Arroyo*, 42 *Phil.* 54).
 - 5) If she was virtually driven out of their home by her husband and she is threatened with violence if she should return. (*Garcia v. Santiago and Santiago*, 53 *Phil.* 952).
 - 6) If the husband continually gambles, refuses to support the family, and insults the wife. (*Panuncio v. Sula*, [C.A.] 34 *O.G.* 1291).
 - 7) If the husband lives as a vagabond having no fixed home. (1 *Manresa* 329).
 - 8) If the husband insists on their living together with his own parents. (*Del Rosario v. Del Rosario*, C.A., 4600 *O.G.* 6122). (It must be noted, however, that in *Atilano v. Chua Cheng Beng*, L-11806, Mar. 29, 1958, the Supreme Court in an *obiter* held that misunderstanding with in-laws cannot by itself justify a wife's refusal to live with the husband.)
- (c) If the wife refuses *unjustifiably* to live with her husband, the court will *admonish* but not order her to return; and even if an order is made, contempt proceeding against the wife will not prosper. The only remedy here for the husband is to refuse to grant support. (*Mariano B. Arroyo v. Dolores C. Vasquez de Arroyo*, 42 *Phil.* 54; Art. 178, No. 1, *Civil Code*).

**Mariano B. Arroyo v. Dolores
C. Vasquez De Arroyo
42 Phil. 54**

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. Otherwise stated, as indicative in the case at bar, a husband cannot by mandatory injunction, compel his wife to return to the conjugal dwelling.

Nevertheless, the husband is without doubt, entitled to judicial declaration (*Art. 385, Civil Code*) that his wife has absented herself without sufficient cause, and that she is admonished that it is her duty to return.

- (d) The court cannot order her to have sexual intercourse with the husband. This is impractical. Moreover, specific performance is *not* a remedy in personal obligations. But support may, of course, be denied. The husband may also resort to what is commonly referred to as the “silent treatment,” that is, refuse to talk to the wife.
- (e) Damages are recoverable from a *stranger* if he:
 - 1) Injures the wife and deprives the husband of “consortium”; and
 - 2) Tries to interfere with the domestic home life of the spouses. (*Art. 26, Civil Code; Lilius v. Manila Railroad, 62 Phil. 56*).

(3) Duty to Observe Mutual Love, Respect and Fidelity

- (a) Instead of obedience, the law now requires mutual respect.
- (b) Infidelity may be a ground for *legal separation*, or disinheritance, or for unworthiness in matters of succession or for *criminal liability* under the provisions of the Revised Penal Code.

(4) Duty to Render Mutual Help and Support

- (a) Marriage is a 50-50 proposition; therefore, there must be mutual help and support.

- (b) Mutual help includes the right to defend the life and honor of the other spouse. (*Art. 11, Civil Code*).
- (c) Support includes medical attendance for the sick spouse, even if the doctor was called by another person. (*Pelayo v. Lauron, 12 Phil. 453*).
- (d) Mutual help also includes *moral* assistance.

(5) Some Other Consequences of Marriage

- (a) Marriage emancipates a person from parental authority as to person. As to property, there is an *incomplete* emancipation.
- (b) A husband and a wife can chastise or reprimand each other, but may not inflict force, except when either catches the other in the act of sexual intercourse with a stranger. (*Art. 247, Revised Penal Code*).
- (c) *The Marriage Privilege Rule*

A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband without his consent, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other. (*Sec. 22, Rule 130, Revised Rules of Court*).

- (d) *The Marital Communication Rule*

The husband or the wife during the marriage or afterwards, cannot be examined without the consent of the other as to any *communication* received in confidence by one from the other during the marriage. (*Sec. 24a, Rule 130, Revised Rules of Court*).

- (e) A wife should use the husband's surname.

**Rosales v. Rosales
L-40789, Feb. 27, 1987**

A surviving spouse is *neither* a compulsory nor an intestate heir of his or her parent-in-law.

Abandonment

“Abandonment” means neglect and refusal to perform the filial and legal obligations of love and support. (*Landingin v. Republic*, 493 SCRA 415 [2006]). As held in *Ong v. Ong* (505 SCRA 76 [2006]), “[a]s it was established that Lucita left William due to his abusive conduct, does not constitute *abandonment* contemplated by the said provisions.” Nor such abandonment is likewise deemed to exist in a scenario wherein a child is merely premitted “to remain for a time undisturbed in the care of others.” (*Landingin v. Republic*, *op. cit.*)

Art. 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)

COMMENT:

(1) Instances Where Wife Is Justified to Leave Husband and Thereby Select Her Own Domicile or Residence

1. If the husband lives as a vagabond having no fixed home. (*1 Manresa* 329).
2. If the husband maltreats her. (*Goitia v. Campos Rueda*, 35 *Phil.* 252).
3. If the husband insists on his immoderate or barbaric demands from the wife for sexual intercourse. (*Goitia v. Campos Rueda*, *supra*). (There is now such thing as *marital rape law*).
4. If the wife is asked by the husband to leave the conjugal place threatening to use violence upon her if she should return home. (*Garcia v. Santiago*, 53 *Phil.* 952).

5. If the husband commits concubinage and continuously indulges in such illicit relationship. (*Dadivas v. Villanueva*, 54 Phil. 92).

(2) Cases

Atilano v. Chua Bing Beng **L-11086, Mar. 29, 1958**

FACTS: The husband fixed the family residence in the home of his parents. The wife objected and refused to live with him. The wife claimed that misunderstanding with her parents-in-law resulted in quarrels and bickerings. As a consequence, the wife filed an action for support against the husband.

HELD: The action would not prosper because misunderstanding with the in-laws was not a sufficient moral or legal obstacle to her living with the husband against whom the action for support is directed.

N.B.: The aforementioned ruling is clearly valid. But, if either spouse courts judicial intervention, then Arts. 69 and 72 apply.

Imelda Marcos v. COMELEC **GR 119976, Sep. 18, 1995, 64 SCAD 358**

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.

Art. 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)

COMMENT:**Sources of Expenses For Support and Conjugal Obligations:**

- (a) community property
- (b) *income* or *fruits* of their separate properties
- (c) their separate properties

Art. 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)

COMMENT:

Note that both of the spouses share in the management.

According to a prolific lawbook author, “questions that may arise from *household management* may cover interior decoration of the house, nature of furniture to be bought or used, kinds of food to be cooked or kitchen materials needed, family celebrations or parties, number of maids to be hired, their wages, etc. The husband has now a say or should be consulted on these matters.”

Art. 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)

COMMENT:

Art. 72 speaks of a situation whereby the aggrieved party may ask the court for relief.

Art. 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)

COMMENT:

(1) Right of Either Spouse to Engage in a Profession or Occupation or to Engage in Business

Either spouse may exercise any legitimate profession, occupation, business or activity. However, any one of them may object, provided the opposition is founded on VALID, SERIOUS, and MORAL grounds.

(2) If Wife Engages in Business, What Property Will Be Liable?

- a. If the husband consented to the engaging in business — *all* the properties will be liable.
- b. If there was no express or implied consent — only the community and the separate properties of the wife will be liable, NOT the separate property of the husband. Observe however that the community property can be liable — for after all, the *earnings* of the wife appertain to the community property.

(3) Family Code *vis-à-vis* Corporation Code

With the advent of the Family Code (Executive Order 209, as amended), certain effects on the Corporation Code (Batas Pambansa Blg. 69, as amended) may be discerned, *inter alia*, when we look into the rights of a wife to become an incorpora-

tor of a corporation, to transfer her corporate shares to another person, and to exercise her voting rights.

Sec. 10 of the Corporation Code (which refers to the number and qualifications of incorporations), has always been interpreted, as requiring the marital consent of her husband for her to sign the Articles of Incorporation. This view is anchored on the presumption that a married woman who acts as an incorporator binds conjugal funds and since it is the husband who is presumptively the administrator of the conjugal funds, his consent is necessary. The married woman, of course, is excused from securing the husband's consent if she can show that she is a widow, is using her paraphernal funds or is otherwise no longer under the "marital care" of the husband.

Upon the other hand, Arts. 96 and 124 of the Family Code, unequivocally vest the administration of both the community and conjugal properties on both husband and wife jointly. Moreover, Art. 73 of the same Code is explicit in allowing either spouse to exercise any legitimate profession, occupation, business or activity without the consent of the other. If the wife thus were to exercise an ordinary occupation or profession, the passage of the Family Code presupposes that she no longer needs the consent of her husband. While ordinarily this conclusion can be reached, in our problem, however, the wife will need money to be a subscriber or incorporator and if the money she uses will be community or conjugal funds, the husband is required to give his consent. Now if the money is her exclusive or separate property, she does not need her husband's consent. (Under the Family Code, there is no mention of the term "paraphernal," instead what is used is "exclusive" or "separate" property.)

By virtue of Art. 75 of the Family Code, most marriages after the effectivity of the Code will be governed by the regime of absolute community of property. Such must be so because most couples will not even be aware that there are different regimes available or that they even have a choice at all.

Let us assume that both husband and wife owned shares of stock before they got married. If they failed to agree on what property regime to adopt, the shares of stock they used to own

individually would have to be deemed as community property now, governed by the rules of co-ownership under Art. 90 of the Family Code and therefore also by Sec. 56 of the Corporation Code (which refers to voting in case of joint ownership of stock). Co-ownership will automatically have to be the case, even if the stock certificates are still in their respective names, especially the maiden name of the wife.

Given such a situation, would it be necessary now to require *proof of consent* (by the other spouse) to vote such shares even if the shares appear in the name of one spouse alone? Yes, since this is the logical consequence of holding their shares as community property governed by the rules of co-ownership. In the absence of such consent, the Corporate Secretary would be saddled in the added responsibility of requiring a proxy from any of the spouses who comes to vote at a stockholders' meeting — even if such shares he or she will vote upon, happen to be exclusively in his or her name alone. If the Corporate Secretary fails to demand such proxy signed by the other co-owner/spouses, will the latter be allowed to impugn the vote cast by the other spouse at the stockholders' meeting on the ground that as a co-owner, he or she was not consulted by the spouse who voted the shares? If so, what effect will that have on the validity of corporate acts where the vote cast by the spouse happens to be the determining vote? The vote of the wife can be invalidated for her failure to secure the consent of her husband.

Art. 52 of the Family Code provides that the judgment of annulment or the 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. The aforementioned provision of the Family Code should be taken in conjunction with Sec. 63 of the Corporation Code (which refers to the certificate of stock and transfer shares) because if shares of stock are involved in the liquidation of properties after the annulment of marriage, it is not enough to record the judgment affecting them in the registry of property

as provided in the Family Code. As further required by Sec. 63 of the Corporation Code, any transfer of the shares to one or the other spouse must also be registered in the books of the corporation (*i.e.*, the proper entries must be made in the stock and transfer books; the old certificates must be used in the name of the transferee).

Art. 51 of the Family Code provides that in case of partitions following annulment, the value of the presumptive legitimes of all common children shall be delivered in cash, property or sound securities. In a situation such as this, the requirements of Sec. 63 of the Corporation Code regarding the proper manner of transferring the shares of stock, if any, representing the whole or part of the presumptive legitimes of the children must have to be complied with. This, as already explained, refers not only to the proper recording in the registry of property but also the indorsement of the stock certificates, the cancellation of old certificates, and the issuance of new ones.

(4) Where the Second Paragraph of Art. 73 is Inapplicable

This is where one spouse consents to the other engaging in business for in such case, there is no disagreement. The resulting obligations are enforceable against the conjugal property. (*See Lacuna v. Soliman, GR 89321, Sep. 19, 1990*).

(5) Case

**Ong v. CA
GR 43025, Nov. 29, 1991**

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 spouse.

(6) Instance Where Petitioner Never Acquired the Legal Interest As a Wife Upon Which Her Motion For Intervention Is Based

**Perez v. CA
480 SCRA 411 (2006)**

FACTS: Petitioner never acquired the legal interest as a wife upon which her motion, for intervention is based.

Issue: What is meant here by the phrase "legal interest"?

HELD: At the outset, it must be borne in mind that there are three (3) requirements for intervention, thus:

1. Legal interest in the matter in litigation;
2. Consideration must be given as to whether the adjudication of the original parties may be delayed or prejudiced; or
3. Whether the intervenor's rights may be protected in a separate proceeding or not.

Legal interest, which entitles a person to intervene, must be in the matter in litigation and of such direct legal operation and effect of the judgment. Such interest must be actual, direct, and material — and not simply, contingent and expectant.

Title IV

**PROPERTY RELATIONS BETWEEN
HUSBAND AND WIFE**

Chapter 1

GENERAL PROVISIONS

Art. 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 custom. (118)**

COMMENT:

'Marriage Settlement' Defined

It is a contract entered into by the future spouses fixing the matrimonial property regime that should govern during the existence of the marriage.

Art. 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)

COMMENT:**(1) Matrimonial Property Regime That May Be Agreed Upon in the Marriage Settlement**

- (a) Absolute community regime (almost everything is owned *in common*).
- (b) Relative community regime or the conjugal partnership of gains (everything earned during marriage belongs to the conjugal partnership).
- (c) Complete or absolute separation (each owns his earnings).
- (d) Any other regime.

Example:

Dotal or dowry system — Wife before marriage delivers a dowry or property to the husband to help out in the marriage obligations, but later, at the end of the marriage, the property or its value must be returned.

(2) The Marriage Settlement is a Contract

The provisions of the marriage settlement must not be contrary to law, good morals, good customs, public order, and public policy. After all, the marriage settlement is still a contract. Said provisions must not be derogatory to the dignity or authority of the husband and the wife. (*See 9, Manresa 121*). If in the marriage settlement, one of the surviving spouse is prohibited in marrying another, such an agreement would be void as against public policy. Furthermore, the marriage settlement must generally confine itself merely to property relations.

(3) Query

In a marriage settlement, a future husband and his future wife agreed that “there will not be any absolute community of property between them.” There was no other provision. What system should prevail?

ANSWER: Their *intention* must be ascertained from their actions immediately before, during, and after the execution of the contract. It is clear, however, that the absolute community

of property should *not* exist. Very likely the parties could have intended the conjugal partnership or separation of property.

(4) Requisites for a Marriage Settlement

- (a) Must be made BEFORE the celebration of the marriage and even modification must also be made BEFORE the wedding *except* conversion into the complete separation of property regime, which would be allowed provided that there is *judicial approval* and no *prejudice to creditors*.
- (b) Must *not* contain provisions contrary to law, good morals, good customs, public order, and public policy (*Art. 1306, Civil Code*), or against the dignity of either spouse.
- (c) Must generally confine itself only to property relations. (*9 Manresa 121-122*).
- (d) Must be in writing.

[NOTE: The marriage settlement shall *not* prejudice third person with respect to real properties unless the settlement is recorded in the proper registries of property. (*Art. 77, Family Code*).].

- (e) If made by minors, their parents must consent by signing also; if by other incompetents, such as those under civil interdiction, the guardian must consent and also sign. (*See Arts. 78 and 79, Family Code*).

Art. 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)

COMMENT:

Any modification in the marriage settlements may be deemed valid. However, such must be made before the celebration of the marriage, subject to the following provisions:

1. Art. 66 (on consequences of reconciliation of the spouses in legal separation);

2. Art. 67 (on conditions for revival of the former property regime in legal separation);
3. Art. 128 (on petition for sole administratorship of the conjugal partnership in case of abandonment by a spouse or failure to comply with his or her obligations to the family);
4. Art. 135 (grounds for judicial separation of property); and
5. Art. 136 (joint petition of spouses for dissolution of property regime governing their relations).

NOTE: Art. 101 (abandonment without just cause or failure by a spouse to comply with obligations [marital, parental, or arising from property relation] to the family) should be included in the enumeration put forth in Art. 76.

Art. 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)

COMMENT:

Art. 77 puts forth the requisites of a marriage settlement as well as any of its modifications in correlation with Art. 81.

The requisites are that the marriage settlement must be: (1) in writing, (2) signed by the parties thereto, (3) executed before the celebration of the marriage, (4) marriage must be celebrated, and (5) duly registered in the civil registry and registry of property in order to bind third persons.

Art. 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 persons 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)

COMMENT:

- (1) The age of majority today is 18. At this age, the person is no longer a minor.
- (2) Hence, if 18 years old, the marriage settlement may be executed without parental consent.

Art. 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)

COMMENT:

This Article is reflective of the same principle involved in the preceding Article. (*Art. 78*). Thus, the guardian of: (1) a person sentenced to the accessory penalty of civil interdiction (*Art. 34, Revised Penal Code*); or (2) a person suffering from disability (except minority) must be made a party to the marriage settlement of either of such persons in (1) and (2).

Art. 80. In the absence of a contrary stipulation in a marriage settlement, the property relations of the spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence.

This rule shall not apply:

- (1) Where both spouses are aliens;
- (2) With respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and
- (3) With respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situ-

ated in a foreign country whose laws require different formalities for its extrinsic validity. (124a)

COMMENT:

Unless stipulated otherwise in the marriage settlement, Art. 80 provides that Philippine laws shall govern the property relations of the spouses (Filipino spouses or Filipino-alien spouses) wherever they reside or regardless of the place of celebration of their marriage.

Art. 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)

COMMENT:

(1) Effects If Marriage Does Not Take Place

- (a) *Example of the General Rule* — In a marriage settlement, a future husband and wife agreed on absolute community of property. The marriage did not take place. Because of this there would be no sense in going ahead with the stipulation in the contract. In this case, the marriage is a condition precedent the nonfulfillment of which would naturally render void any stipulation made because of it.
- (b) *Example of the Exception* — By reason of their forthcoming marriage, the future husband donated, in a marriage settlement, a house to his future wife, who in turn in the same settlement, accepted the donation. Later, the future wife died. The marriage naturally could not take place. What happens to the donation which was made part of the marriage settlement?

ANSWER: The donation of the house here is not automatically rendered inoperative. The law clearly pro-

vides that such a donation is merely revocable, that is, it remains valid unless revoked by the parties concerned. We have therefore an example of a stipulation in a marriage settlement which is not automatically rendered null and void by virtue of the non-celebration of the marriage. (*Art. 86, No. 1, Family Code*).

(2) Rule If a Child is Recognized in the Marriage Settlement

In a marriage settlement, the spouses recognized their natural child Edmundo. If the marriage does not take place, does the recognition of the child remain valid?

ANSWER:

- (a) If the child is of *major* age, the recognition is valid, provided that the child gave his consent. This is so even if no judicial approval was obtained because the child is already of major age. The marriage settlement, whether in a public or private instrument, can be considered, insofar as recognition of a child is concerned, as an authentic writing.
- (b) If the child is a *minor*, the minor need not consent, but judicial approval is needed, for if the recognition of a *minor* does not take place in a *record of birth* or in a *will*, judicial approval shall be needed. Hence, if no judicial approval was obtained, the recognition of the minor is not valid, even if we consider the marriage settlement as an authentic writing. However, the recognition is not void; it is only VOIDABLE and may be ratified by the child later on inasmuch as the necessity of judicial approval is for the benefit of the child. (*See Javelona v. Monteclaro, 74 Phil. 393; Apacible v. Castillo, 74 Phil. 589; Guarina, et al. v. Guarina-Casas, 109 Phil. 1111*).

Chapter 2

DONATIONS BY REASON OF MARRIAGE

Art. 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)

COMMENT:

(1) Donations *Propter Nuptias* Distinguished from Wedding Gifts

Donations propter nuptias (“*propter*” means “*before*”) are wedding gifts, but not all wedding gifts are donations *propter nuptias*, for said wedding gifts may come after the celebration of the marriage.

(2) Requisites for a Valid Donation *Propter Nuptias*

- (a) Must be made before the celebration of the marriage.
- (b) Must be made in consideration of the same.
- (c) Must be made in favor of one or both of the future spouses.

[*NOTE*: If one of the requisites is not complied with, it may still be valid as an ordinary donation (provided that all other essential requisites are complied with), *but not as a donation propter nuptias.*].

Estanislao Serrano v. Melchor Solomon 105 Phil. 998

FACTS: A man, prior to his marriage, made a donation in a public instrument, in favor of his future wife, with the condition that should she die before him and there be no children,

1/2 of the properties donated shall be given to the natural guardians of his wife. Nine months after the wedding, the wife died without issue. The natural guardians now claim the 1/2 share given to them in the deed.

HELD: The natural guardians cannot get said share. Insofar as said share is concerned, the alleged donation to them cannot be a valid donation *propter nuptias* nor a donation *inter vivos* nor a donation *mortis causa*: not a donation *propter nuptias* because said share was not given to *one of the spouses* (Art. 126, Civil Code, now Art. 82, Family Code); not a donation *inter vivos*, for there was no acceptance on the part of said natural guardians (Art. 749, Civil Code), and not a donation *mortis causa* because the deed of donation did not have the formalities of a will aside from the fact that the donor is still alive.

Art. 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)

COMMENT:

Generally all rules on *ordinary* donations apply to donations *propter nuptias*.

Examples:

- (a) A donation *propter nuptias* of land must be in a public instrument in order to be valid. (See Art. 749, Civil Code).
- (b) To be valid, a donation *propter nuptias* must be *accepted*, for no one may be compelled to accept the generosity of another.

Art. 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)

COMMENT:

(1) Problem

The future spouses donated to each other in their marriage settlements one-fourth (1/4) of their respective properties. Will the donations be reduced?

ANSWER:

- (a) If their property regime is that of *absolute community*, no reduction will be made.
- (b) Otherwise, the donations will be reduced to one-fifth (1/5).

(2) Future Property

- (a) This is anything which the donor cannot dispose of at the time he makes the donation. *Example:* The land of his father who is still alive.
- (b) The future spouses (not other people) may donate future property to each other, but this shall be governed not by the rules on ordinary donations but by the provisions of *testamentary succession* and the *formalities of wills*.

Art. 85. Donations by reason of marriage of property subject to encumbrance shall be valid. In case of foreclosure of the encumbrance and the property is sold for less than the total amount of the obligation secured, the donee shall not be liable for the deficiency. If the property is sold for more than the total amount of said obligation, the donee shall be entitled to the excess. (131a)

COMMENT:

(1) No Necessity of Removing Encumbrances

A donation *propter nuptias* is valid even if the property

is already subject to encumbrances (such as a mortgage). (*See Art. 85, first sentence*).

(2) Rules as to Deficiency or Excess in Case of a Foreclosure Sale

A parcel of land mortgaged for P3 million in favor of a bank, was donated to a future bride. Unfortunately, the donor-debtor was unable to pay the mortgage debt when it matured and the land was sold during the foreclosure sale. If the selling price is different from the debt of P3 million, what happens in case of a *deficiency or excess*?

ANSWER:

- (a) The donee shall not be liable for the deficiency. (*Art. 85, 2nd sentence*).
- (b) But in case of an excess, said donee is entitled to said excess. (*Art. 85, 3rd sentence*).

Art. 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 resolutory 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)

COMMENT:**(1) Scope of the Article**

The Article enumerates the grounds for the revocation of a donation *propter nuptias*.

(2) Effect of Non-Celebration of the Marriage

If the marriage is not celebrated, the donation would be considered *revocable* merely, not automatically revoked.

(3) Effect if the Marriage is Void (as when the requisite marriage license had not been obtained)

The donation would still be merely revocable that is, if no action is brought to declare the marriage void, and the donation revoked, the donation would remain valid.

(4) Note that in case of annulment of a marriage, the donation *propter nuptias* may be revoked if it was the donee who had acted in bad faith, not if the donee, had been in *good faith*, in which case the donation shall remain valid even if an action to revoke the same had been brought because said action would fail.

Art. 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)

COMMENT:**(1) Coverage of the Article**

Donations *propter nuptias* between

- (a) lawfully married spouses
- (b) common-law spouses (live-ins)

[NOTE: That every grant of gratuitous advantage (direct or indirect) between the spouses are void.]

[NOTE: That moderate donations or gifts between spouses are valid, if given on the occasion of a family re-joining. What is moderate depends on the financial status of the people concerned.]

(2) Reasons for the General Prohibition of Donations Between Spouses

- (a) To protect creditors.
- (b) To prevent the weaker spouse from being influenced by the stronger spouse.
- (c) To prevent an indirect violation of the rule prohibiting modifications of the marriage settlement during the existence of the marriage.

[NOTE: The gratuitous (or even onerous) assignment by a wife to her husband of the sales certificate of her paraphernal property is NULL and VOID. (*Honesto Alvarez v. Pedro K. Espiritu, L-18833, Aug. 14, 1965*).].

[NOTE: The Article does NOT apply if the donation was made several moments before the marriage, for this would clearly be a donation *propter nuptias* (*Garcia v. Sangil, 53 Phil. 968*), nor to a husband's life insurance policy making the wife the beneficiary, for in this respect, the proceeds would NOT constitute a donation (*Del Val v. Del Val, 29 Phil. 534*), nor to an admission in a public instrument by the husband that certain properties believed to be conjugal are really paraphernal. (*De Guzman v. Calma, L-6800, Nov. 29, 1956*).].

(3) Status of the Donation

Although the donation is VOID (not merely voidable), not everybody can assail its validity. Only those prejudiced by the transfer may take advantage of the fact that the donation is void.

**Harding v. Commercial Union
Ass. Co., 38 Phil. 464**

FACTS: A husband donated an automobile to his wife, who subsequently insured it for P3,000. When the car was later completely destroyed, the wife sought to recover the insurance indemnity, but the insurer pleaded in defense that the wife had no insurable interest in the car, the donation by the husband being void.

HELD: *Firstly*, the insurer company failed to show that the gift was not a moderate one, considering the circumstances of the parties. *Secondly*, even if the gift had not been a moderate one, the company cannot assail the validity of the donation, because *at the time of transfer, it was not a creditor*. The transfer could not have therefore prejudiced it.

NOTE: The second (and last) sentence in Art. 87 embodies the ruling in a decided case making the prohibition against donation by one spouse in favor of the other as applicable to a common law relationship. Policy considerations of the most exigent character as well as the dictates of morality require that the same prohibition should apply to a common law relationship. (*Matabuena v. Cervantes, L-28771, Mar. 31, 1971*).

[*N.B.:* Owing to the fact that not every person can question the validity of the donation between spouses, only those affected or prejudiced by said donation may question the same. (*See Cook v. McMcking, 27 Phil. 10*).]

Chapter 3

SYSTEM OF ABSOLUTE COMMUNITY

Section 1. General Provisions

Art. 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)

COMMENT:

In the absence of a marriage settlement providing for another kind of matrimonial property regime, the spouses shall be governed by the *absolute community* regime. (Under the Civil Code, the relative community or conjugal partnership of gains constituted the *general rule*.)

Art. 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)

COMMENT:

Waiver of the rights, interests, shares, and effects can be made during the existence of the marriage only in a *judicial*

separation of property (said judicial separation of property of course takes place also in a *legal separation*).

Art. 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)

COMMENT:

All matters not covered by the Family Code are governed by the rules on co-ownership.

Section 2. What Constitutes Community Property

Art. 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)

COMMENT:

Community property consists of all property owned by the spouses at the time of the marriage celebration or thereafter acquired.

Art. 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 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)

COMMENT:

(1) Note that even in the system of absolute community, there are also separate (*separately-owned*) properties.

(2) Reasons for the Separate Properties Mentioned in the Article

- (a) Par. 1 — The desire of the gratuitous giver must be respected. (*Re*: the exception)
- (b) Par. 2 — The reason here is obvious.
- (c) Par. 3 — This is to protect the rights or legitimes of the children or other descendants of the prior marriage. Said children and other descendants must be *legitimate*.

(3) Problem

A husband and wife were living under the system of absolute community. A friend donated a parcel of land to the husband. Who owns the land?

Answer:

The husband in view of the gratuitous title.

Art. 93. Property acquired during the marriage is presumed to belong to the community, unless it is proved that it is one of those excluded therefrom. (160a)

COMMENT:

(1) Evidence Must Be Shown

But before the presumption applies, evidence must be shown that the disputed properties have been acquired during the marriage.

(2) Case**Torrela v. Torrela
93 SCRA 391**

Knowing that TCT's (or Transfer Certificates of Title) are insufficient, the mere fact showing that the properties in question have been registered in the name of Emilio Jocson married to Alejandra Poblete is no proof that said properties have been acquired during the duration of the marriage. Be it noted that registration and acquisition are entirely different things. Registration does not confer title but merely confirms one already existing.

**Section 3. Charges Upon and Obligations
of the Absolute Community**

Art. 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 community, 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) Antenuptial 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) Antenuptial 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)

COMMENT:

(1) Par. 1

The children of *either spouse must be legitimate* for the support to be charged against the absolute community. (The illegitimate children of either spouse must also be supported, but *not* by the absolute community.)

(2) Solidary Liability

If the community property is not enough, the spouses are liable *solidarily* with their separate properties.

Exception — the liabilities referred to in Par. 9 of the Article.

Art. 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)

COMMENT:

The gambler bears the losses, but the winnings shall go to the absolute community.

Section 4. Ownership, Administration, Enjoyment and Disposition of the Community Property

Art. 96. The administration and enjoyment of the community 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 common 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. (206a)

COMMENT:**(1) General Rule**

Joint administration and enjoyment by both the husband and wife.

(2) Exception

In case of disagreement, the *husband* will prevail, subject to recourse to the court by the wife for the proper remedy.

(Prescriptive period — *five years* from the date of the contract implementing the *husband's decision*.)

(3) Rule If One Spouse is Incapacitated or Otherwise Unable to Participate

The 2nd paragraph of the Article applies.

[NOTE: That there are different rules for:

- (a) administration
- (b) disposition or encumbrance

This (b) needs either:

- 1) the consent of the other spouse, or
- 2) the authorization by the court.]

(Effect of non-consent and non-authorization — the contract shall be VOID, without prejudice to future marital consent or judicial authorization.)

(4) Case

Roxas v. CA
GR 92245, June 26, 1991

Leasing a realty is encumbering the same.

Art. 97. Either spouse may dispose by will of his or her interest in the community property. (n)

COMMENT:

While the community subsists, either spouse may not dispose *inter vivos* of his interest to the extent of 1/2 unless otherwise stipulated in the marriage settlement. For that matter, he may dispose of such interest only by will (a *mortis causa* act) observing: (1) the formalities of a will; and (2) the provisions on legitimes and free portion.

Art. 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 occasion of family rejoicing or family distress. (n)

COMMENT:

Donations from the absolute community need *common consent*, except if *moderate* and in favor of:

- (a) charity, or
- (b) occasions of family *rejoicing* or family *distress*.

**Section 5. Dissolution of Absolute
Community Regime**

Art. 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)

COMMENT:

Art. 99 puts forth the grounds for termination of the absolute community of property.

Art. 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)**

COMMENT:

Note that the Article refers to a separation *de facto*. In the proper case there can be:

- (a) loss of support;
- (b) judicial authorization instead of marital consent;
- (c) subsidiary *solidary* liability of the separate property;
- (d) judicial authority to administer or encumber the *separate* property (including fruits and proceeds) of the other spouse.

Art. 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 any 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)

COMMENT:

(1) Effects of Abandonment Without Just Cause

With judicial authorization, there may be:

- (a) receivership
- (b) judicial separation of property
- (c) sole administration of the absolute community (subject to precautionary conditions).

(2) Note the 3-month period.

Section 6. Liquidation of the Absolute Community Assets and Liabilities

Art. 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)**

COMMENT:

(1) The Inventory

Separate listing of:

- (a) absolute community; and
- (b) exclusive properties of each spouse

(2) Payment of Debts and Obligations of the Absolute Community

- (a) absolute community assets; and
- (b) if insufficient, the separate properties (solidarily)

(3) Rule of Forfeiture

- (a) 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. (*Art. 43[2], Family Code*).
- (b) 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). (*Art. 63[2], Family Code*).

[NOTE: The reference to *bad faith* and to children —

- 1) common children.
- 2) children of the *guilty* (not innocent spouse).]

(4) Who Gets The Conjugal Dwelling or Lot

- (a) Whatever is agreed upon in the marriage settlement.
- (b) If no such agreement — The spouse with whom the *majority* of the *common* children chose to remain.

(5) Choice of Children Below Seven (7) Years of Age

They are deemed to have chosen the *mother*, unless the court has decided otherwise.

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)

COMMENT:

(1) When Liquidation Made

- (a) during the judicial settlement proceeding;
- (b) if none — within six (6) months after the death of the deceased spouse

(2) Rule If No Liquidation Is Made Within 6 Months

Any disposition or encumbrance involving the community property shall be VOID.

(3) Rule If There Is a Subsequent Marriage Without the Liquidation Required by Law

A mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.

(4) Case

**Ledesma v. Intestate Estate of Cipriano Pedrosa
219 SCRA 808**

Properties that may be allocated to the deceased petitioner by virtue of the liquidation of the conjugal assets, shall be distributed in accordance with the laws of intestate succession in Special Proceedings.

Art. 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 the different communities in proportion to the capital and duration of each. (189a)

COMMENT:

(1) Applicability of the Article

Only to those marriages contracted BEFORE the effectivity of the Family Code.

(2) Distribution of the Property Between the Two Marriages

- (a) Adduce proof as determined by the rules of evidence
- (b) In case of doubt, get *proportion* of:
 - 1) capital, and
 - 2) duration of each marriage.

(3) No Uniformity Prior to Advent of the Family Code

Before the advent of the Family Code, the Supreme Court has not been uniform in its rulings as to whether there is need for judicial declaration of nullity of a void marriage although it would seem that of late, there was really a need for judicial decree on nullity of a void marriage. Under Art. 40 of the Family Code, a final judgment declaring a marriage void is necessary for purposes of remarriage.

Chapter 4

CONJUGAL PARTNERSHIP OF GAINS

Section 1. General Provisions

Art. 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. (n)

COMMENT:

(1) ‘Conjugal Partnership’ Defined

It is that formed by a husband and his wife whereby they place in a *common fund* the *fruits* of their separate property, and the income from their work or industry, the same to be divided between them EQUALLY (as a general rule) upon the dissolution of the marriage or the partnership.

(2) Duration of Conjugal Partnership

The conjugal partnership of gains (*Sociedad de gananciales*, the “*ganantial* regime,” the “relative community of property”) is supposed to last until:

- (a) the dissolution of the marriage, like death or annulment.
- (b) the dissolution of the partnership, like legal separation or judicial separation of property.

(3) Distinctions Between A ‘Conjugal Partnership’ and An ‘Ordinary Partnership’

CONJUGAL <i>PARTNERSHIP</i>	ORDINARY <i>PARTNERSHIP</i>
a. no juridical personality	a. has juridical personality
b. regulated generally by law	b. regulated by agreement between the parties and only subsidiarily by law
c. generally managed by the husband	c. management depends upon the stipulation of the parties
d. purpose is not particularly for profit	d. purpose is for profit
e. few grounds for dissolution	e. many grounds for dissolution

(4) When Conjugal Partnership Exists

Only when the same has been agreed upon in the marriage settlement.

[NOTE: Under the Civil Code, the general rule is the conjugal partnership of gains; in the Family Code, the general rule is the absolute community of property.]

(5) A Mere Inchoate Right During the Conjugal Partnership

What kind of right is possessed by the husband or the wife over the conjugal property while the partnership remains?

ANS.: Merely an inchoate right, a mere expectancy, because if it will be discovered during the liquidation of the marriage that there is no conjugal property to be divided, there will be no share for either the husband or the wife. (*Nable Jose*)

v. Nable Jose, 41 Phil. 713). However, after the dissolution of the conjugal partnership, as by the death of the husband, this interest ceases to be inchoate, and becomes actual and vested with respect to the undivided one-half share of said properties. It is one thing to say that the widow's share being undivided, does not consist of determinate and segregated properties and an entirely different thing to consider her interest as still inchoate. The partnership having been dissolved, if the deceased husband leaves heirs other than the wife, the properties come under the regime of co-ownership among them until final liquidation and partition. (*Taningco v. Reg. of Deeds, L-15242, June 29, 1962, 5 SCRA 38*).

Art. 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)

COMMENT:

Properties Covered by the Conjugal Partnership

- (a) The proceeds, products, fruits and income from the separate properties of the spouses.
- (b) Those acquired by *either* or *both* of the spouses.
 - 1) by their efforts, or
 - 2) by chance.

Art. 107. The rules provided in Articles 88 and 89 shall also apply to conjugal partnership of gains. (n)

COMMENT:**(1) Rule Under 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. (*Family Code*).

(2) Rule Under 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 Art. 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. (*Art. 89, Family Code*).

Art. 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)

COMMENT:**Liability (Pro-rata) of Partners**

As may be applicable to the conjugal partnership, partners are liable *pro-rata* in the satisfaction of the partnership's indebtedness. (*See National Bank v. Quintos, et al., 46 Phil. 370*). Nonetheless, "if the conjugal partnership is insufficient to cover" liabilities, the spouses shall be solidarily liable for the unpaid balance with their separate properties." (*Art. 121, last par.*).

Section 2. Exclusive Property of Each Spouse

Art. 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)

COMMENT:

(1) Two Kinds of Separate Property of Each Spouse

- (a) Property by direct acquisition (*pars. 1 and 2*) (originally exclusive)
- (b) Property by substitution (*pars. 3 and 4*)

(2) Par. 1 – Brought to the Marriage

- (a) *Example:* a house brought by a wife into the marriage.
- (b) Prior to her marriage, a woman purchased land from a minor. The seller reached the majority age when the woman was already married, but he did *not* ask for the annulment of the sale. Is the land paraphernal (exclusive property of the wife) or conjugal?

ANSWER: Paraphernal, for it was purchased by the exclusive money of the wife even prior to the marriage. While it is true that the defect of vitiated consent was cured only during the marriage, this fact should not be considered important, for in no case were conjugal funds used. Besides the virtual ratification of the contract cleanses it of any defect — from the very beginning.

- (c) Prior to her marriage, a woman purchased a piece of land on the installment plan. Part of the purchased price was paid prior to the marriage, while the balance was paid during the marriage. All receipts were issued in the name of the wife. Is the land paraphernal or conjugal?

ANSWER: Paraphernal since it was purchased even prior to the marriage. However, she must reimburse the conjugal partnership for whatever amount was used from the conjugal fund for the payment of the balance. Said balance must be deemed to have come from the conjugal funds because no evidence was given to show that said balance was paid from paraphernal funds. (*Lorenzo, et al. v. Nicolas, et al.*, L-4085, July 30, 1952). Note, however, that homesteads the right to which is perfected after the celebration of the marriage are regarded as conjugal property. (*Ocampo v. Delizo*, L-32820, Jan. 30, 1976).

- (d) Property alienated before the marriage but subsequently reacquired during the existence of the marriage by say annulment of the previous contract, by revocation, or by rescission. (*Santos v. Bartolome*, 44 Phil. 76).

(3) Par. 2 – Acquired During the Marriage by GRATUITOUS (Lucrative) Title

(a) *Examples*

- 1) Property inherited during the marriage. (*Alvaran v. Marques*, 11 Phil. 263).
- 2) Remissions and donations.

BUT NOT:

- 1) Hidden treasure (conjugal). (*Art. 117[4], Family Code*).
- 2) Those acquired by occupation like fishing and hunting. (*Art. 117[5], Family Code*).

(b) *Gratuities and pensions*

- 1) If given *gratis* by the government because of previous work (like the retirement pay of a *provincial auditor*

(*Mendoza v. Dizon*, L-387, Oct. 25, 1956), or that of a Justice of the Peace (*Eclar v. Eclar*, CA, 40 O.G. 12th Supp. No. 18, p. 86), this is a gratuity and should be considered as separate property.

This is true even if the amount is computed on the basis of months or years of service. (*Mendoza v. Dizon*, *supra*).

- 2) If no liberality on the part of the government is involved, and what are being given are merely accumulated savings or deductions, this would be a PENSION and therefore considered as *conjugal*, for then it was money really earned during the existence of the marriage. (See *Eclar v. Eclar*, CA, 40 O.G. 12th Supp. No. 18, p. 86). Being *conjugal* it ought to be administered by the husband even if he is living separately from his wife. (*Atienza v. Lopez*, L-18327, Aug. 24, 1962).
- (c) *Unearned increment* (such as increase in the value of the paraphernal property) belongs to the spouse concerned.
 - (d) Damage because of an accident
 - 1) If for physical or moral damages of the injured spouse — *paraphernal*
 - 2) If loss of expected salary, or for hospitalization expenses — *conjugal*. (See *Lilius v. Manila Railroad Co.*, 62 Phil. 56).

(4) Par. 3 — Acquired by Right of Redemption

- (a) Here the thing to find out is: Who had the right to redeem? Whoever had the right gets the property redeemed. The source of the money is not important.

Santos v. Bartolome 44 Phil. 76

FACTS: Before her marriage, a wife sold a piece of land to A with the right to repurchase it from A. In other words, she gave herself the right of redemption with

reference to the land. During her marriage, the time for redemption came, but she did not have money. So she and her husband redeemed the parcel of land with conjugal funds, and they were able to get back the land. Who owns the land, the wife or the conjugal partnership?

HELD: The wife owns the land because she acquired it by right of redemption of her own paraphernal property. However, since conjugal funds were used to effect the redemption, the wife is now indebted to the conjugal partnership for the amount of the repurchase money used. The community estate or the conjugal partnership thus becomes the creditor of the amount thus expended. In the liquidation of the conjugal property, account should be taken of this obligation.

Alvarez v. Espiritu
L-18833, Aug. 14, 1965

If a husband redeems the paraphernal property of his deceased wife with his own money, he does *not* become exclusive owner thereof. Ownership belongs to the heirs of the wife (this would of course include the surviving spouse).

Gefes v. Salvio
36 Phil. 221

FACTS: A husband owned two parcels of land during his marriage. Later the husband died. But since he had personal debts before his death, the two parcels of land were sold at public auction to pay for his debts. Meantime, his wife had married for the second time. She authorized her second husband to acquire with her own money, and in her behalf, the two parcels of land which were being auctioned off. The second husband bought the parcels in question. Later, without any authorization from the wife, the second husband sold the two parcels of land. What was the effect of the sale made by the second husband?

HELD: The sale made by the second husband was not valid because without the authorization from his wife,

he sold her paraphernal property. The two parcels of land could not be considered anymore as the property of the first husband for the wife had subsequently acquired them with her own money through her second husband. The purchase by the second husband was indeed valid since it was authorized, but his subsequent sale thereof cannot be considered as valid for want of proper authorization.

[*NOTE*: But is it not true that what had been redeemed here was the separate property of the husband, and therefore the husband's heirs should be entitled to the property?

True, redemption was made of the separate property of the husband but this redemption took place after the death of the husband, and the widow had no obligation at all to redeem such property. What she did was purely voluntary on her part.].

Consunji v. Tison
15 Phil. 81

FACTS: During the marriage, the husband sold his property with the right to repurchase the same after a certain period of time. The husband was not able to repurchase it because he died. Afterwards, the widow purchased the property of her dead husband. The heirs of the husband now claim the property as their own. Who owns the property, the wife, who purchased it with her own money, or the heirs of the late husband?

ANSWER: The owners of the property are the heirs of the husband, subject to a lien in favor of the wife for the money she used in redeeming the property.

[*NOTE*: Does this not contradict the doctrine laid down in *Gefes case*? No, there is really no contradiction. In *Consunji case*, the right to purchase was acquired by the husband when still alive, and so the widow was merely exercising the right previously given in favor of the husband; and thus the property does not belong to her. In *Gefes case*, the right of redemption was not given to the husband during his lifetime. She was therefore

exercising a right exclusively hers. Thus, the property should be considered hers.].

- (b) During the marriage, a husband registered under his own name the property which really belonged to the wife as her separate or paraphernal property. Does this make the property now the exclusive property of the husband?

ANSWER: No, the property is still the wife's. But since it is registered in the name of the husband, the proper remedy for the wife is to compel the husband during his lifetime, or his heirs after his death, to execute a deed of conveyance transferring the registered title to the land to the wife or her assigns (those to whom she may have given or assigned the property). (*Consunji v. Tison*, 15 *Phil.* 81).

[*NOTE:* The right to compel the conveyance exists however only while the property is still registered under the name of the husband or the heirs, and *not* under the name of a stranger.].

Rosete v. Sheriff of Zambales
95 Phil. 560

FACTS: A husband was convicted, and to satisfy his civil liability since he did not possess sufficient separate property, four parcels of land belonging to the conjugal partnership were sold. Out of the P1,385 the husband was supposed to pay, only a portion was paid from the proceeds of the sale and there remained a balance of P793. In the meantime, two of the parcels were redeemed by the wife with money she had obtained from her father. Later, the sheriff attached said parcels and sold the same on execution to satisfy the balance. The wife now wants to cancel the sale on the ground that the redeemed parcels are to be considered paraphernal, and should therefore, not have been levied upon.

HELD: The sale should be annulled because the parcels are paraphernal. The wife redeemed the property, not in behalf of her husband, but in her own behalf as a

successor in interest in property. Having been obtained by her own right of redemption with money belonging exclusively to her said property becomes paraphernal. It thus ceased to be conjugal property; it cannot be levied on by virtue of a judgment affecting exclusively the personal liability of the husband.

(5) Par. 3 – Acquired by EXCHANGE With Other Property Belonging to Only One of the Spouses

- (a) Exchange here generally means *barter*, not purchase or sale.

Example:

If a wife brings a paraphernal Jaguar car, which she exchanges during the marriage with a diamond ring, the ring is also paraphernal. But if the car is traded in for a new car, with the additional price coming from the conjugal funds, the new car is conjugal without prejudice to the trade-in value of the old car. (*See Abella de Diaz v. Erlanger & Galinger, 59 Phil. 326*).

- (b) A wife received an inheritance of certain property from her father when she was already married. Later, she bartered said property with land. Who owns the parcel of land?

ANSWER: The wife is the owner. Property acquired by barter or exchange with paraphernal property belongs to the wife. (*Lim v. Garcia, 7 Phil. 320*).

- (c) A wife's paraphernal house, insured prior to the marriage, was destroyed by fire, and the wife was able to collect the insurance indemnity. Later, the land on which said house had been built was expropriated by the government.

Questions:

- 1) Who owns the insurance indemnity?
- 2) Who owns the expropriation indemnity?

ANSWER: In both cases, the wife for the indemnities given merely substitutes for the house and the land. (*See 9 Manresa 567*).

(6) Par. 4 — Purchased With Exclusive Money of Either Spouse

Here who makes the purchase is not important; what matters is whose money was used. (*Rivera v. Batallones, C.A., 40 O.G. 2090*). Land bought partly with paraphernal and partly with conjugal funds are partly paraphernal and partly conjugal. (*De Padilla v. Paterno, L-4130, Sep. 30, 1953*). If the wife acquired land with her own funds, and the husband never asserted any right thereto and there is notarial proof, it is evident that the land is hers. (*Hartske v. Frankel and Phil. Trust Co., 54 Phil. 156*). And this is true even if she be described as a wife, hence, if the title reads “X, married to Y.” X is the owner, the reference to marriage being merely descriptive of her civil status. (*Gonzales v. Miller, 69 Phil. 340*).

(7) Acquisition of a Homestead After Death

**Ude Soliman v. Icdang, et al.
L-15924, May 31, 1961**

FACTS: A husband, applied for a homestead, which was finally granted by the Director of Lands only after the applicant's death.

ISSUE: Who owns the homestead?

HELD: The homestead was never conjugal property since it was granted only after the dissolution of the conjugal partnership. Hence, it belongs to the heirs of the husband-applicant. (*See Sec. 105, Com. Act 141*). “A vested right over a homestead is acquired only by the presentation of the final proof and its approval by the Director of Lands.”

(8) Effects of a Suit for Ejectment Against a Husband Alone If the Property Is Paraphernal

**Plata v. Yatco
L-20825, Dec. 28, 1964**

If a wife is not made a party defendant in an ejectment suit brought by a stranger against her husband over possession

of a parcel of land which is her paraphernal property, she can validly ignore the judgment against her husband. In case of disobedience to the order of *execution*, she will not be liable for contempt of court, for after all, as to her, the writ of execution was not lawful.

Art. 110. The spouses retain the ownership, possession, administration, and enjoyment of their exclusive properties.

Either spouse may, during the marriage, transfer the administration of his or her exclusive property to the other by means of a public instrument, which shall be recorded in the registry of property of the place where the property is located. (137a, 168a, 169a)

COMMENT:

Transfer of administration over separate property may be made in a *public* instrument, to the other spouse.

Art. 111. A spouse of age may mortgage, encumber, alienate or otherwise dispose of his or her exclusive property, without the consent of the other spouse, and appear alone in court to litigate with regard to the same. (n)

COMMENT:

- (1) The spouse here must be at least eighteen (18) years old.
- (2) Note that the other spouse need not consent.

Art. 112. The alienation of any exclusive property of a spouse administered by the other automatically terminates the administration over such property and the proceeds of the alienation shall be turned over to the owner-spouse. (n)

COMMENT:

Note that the proceeds should be turned over to the owner-spouse.

Art. 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)

COMMENT:

If a friend donates to a married couple a parcel of land, the land will not be conjugal, but separate property (1/2 for each). This is acquisition by gratuitous title. If a different proportion or designation of shares is made, such will be followed.

Art. 114. If the donations are onerous, the amount of the charges shall be borne by the exclusive property of the donee spouse, whenever they have been advanced by the conjugal partnership of gains. (151a)

COMMENT:

This Article is copied almost *in toto* from Art. 151 of the Civil Code. This provision (*Art. 114, Family Code*) is prefaced by the phrase "*if the donations are onerous.*"

Art. 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)

COMMENT:

(1) When the Presumption Applies

If the benefits are being given by reason of payments from the conjugal property, these shall pertain to the conjugal partnership like annuities or proceeds of insurance. (*See BPI v. Posadas, 56 Phil. 215*).

(2) Insufficient to Overcome the Presumption

Under the Family Code, if the properties are acquired during the marriage, the presumption is that they are conjugal. However, as was held in *Villanueva v. CA (427 SCRA 439 [2003])*, “tax declarations are *not* sufficient proof to overcome the presumption under Art. 116 of the Family Code.”

Section 3. Conjugal Partnership Property

Art. 116. All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved. (160a)

COMMENT:

The presumption applies only if the acquisition was *during* the marriage. (*Art. 116*). Nonetheless, this presumption applies where the subject property was acquired during the marriage. This presumption can only be overcome by strong, clear, and convincing evidence. (*Lacuna v. Soliman, GR 89321, Sep. 19, 1990*). In other words, proof of acquisition during the coverture is a condition *sine qua non* for the operation of the presumption in favor of the conjugal ownership. (*Jocson v. CA, GR 55322, Feb. 16, 1989*).

**Lacuna v. Soliman
GR 89321, Sep. 19, 1990**

The land itself was not conjugal partnership of Victoria and her husband Modesto. It was the latter’s exclusive private property, which he had inherited from his parents, registered solely in his name. Whether Modesto succeeded to the property prior or subsequent to the marriage with Victoria is inconsequential. The property should be regarded as his own exclusively, as a matter of law.

**Ong v. CA
GR 43025, Nov. 29, 1991**

The presumption that the property is conjugal indeed refers to property acquired during the marriage. When there is

no showing as to when the property was acquired by the spouse, the fact that title is in the spouse's name is an indication that the property belongs exclusively to said spouse.

The party who invokes the presumption must first prove that the property was acquired during the marriage before the presumption will operate.

Art. 117. The following are conjugal partnership properties:

(1) Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;

(2) Those obtained from the labor, industry, work or profession of either or both of the spouses;

(3) The fruits, natural, industrial, or civil, due or received during the marriage from the common property, as well as the net fruits from the exclusive property of each spouse;

(4) The share of either spouse in the hidden treasure which the law awards to the finder or owner of the property where the treasure is found;

(5) Those acquired through occupation such as fishing or hunting;

(6) Livestock existing upon the dissolution of the partnership in excess of the number of each kind brought to the marriage by either spouse; and

(7) Those which are acquired by chance, such as winnings from gambling or betting. However, losses therefrom shall be borne exclusively by the loser-spouse. (153a, 154, 155, 159)

COMMENT:

(1) The Kinds of Conjugal Property

This Article speaks of the various kinds of conjugal property.

(2) Examples of Par. 1 (Acquired by Onerous Title)

- (a) During the marriage, a husband bought a car for the benefit of the family at the expense of the conjugal funds. Who owns the car? — The conjugal partnership.
- (b) During the marriage, a husband bought a house for the exclusive use and ownership of his wife. The money spent was conjugal funds. Who owns the house? — The conjugal partnership, and not the wife, owns the house. Such is the express provision of the law, even if it was “for the benefit of only one of the spouses.”

Flores and Flores v. Flores
48 Phil. 288

FACTS: A man was married three times. During his second marriage, he bought some land with conjugal funds. After the second wife died, the husband registered the land under his own name in the Torrens System. Later, he married for the third time. Who owns the land?

HELD: The conjugal partnership of the second marriage is the owner of the land. In Sec. 70 of the Land Registration Act (No. 496) it is among other things, expressly declared that nothing in that Act shall be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband and wife... except as otherwise provided in the Act. Property acquired during the marriage with conjugal funds pertain to the conjugal partnership regardless of the form in which the title is then or thereafter taken.

Rivera v. Batallones
(C.A.) 40 O.G. 2090

FACTS: A was leasing part of the Friar’s Estate (belonging to the government) and as a consequence of said lease and possession, he was given an option to buy. A then got married, and during the marriage, he bought the land using conjugal funds.

ISSUE: Who owns the land?

HELD: The conjugal partnership because the acquisition by onerous title was done thru the use of conjugal funds. In a case like this, only the origin, the ownership of the money invested on the property given in exchange, may be inquired into to find out if the property acquired was conjugal or separate. It does not matter that the husband's lease or possession may have given him the right to buy the land. This possession is at most a secondary consideration. Before the actual sale, all the husband had was a temporary naked possession, possessing no title to the land. After the sale, ownership passed — but not to him. The conjugal partnership became the owner.

Marigsa v. Macabuntoc
17 Phil. 107

FACTS: A husband and wife bought cattle and the same were registered in the husband's name, although conjugal funds were used. After the husband's death, the widow sold some of the cattle. The administrator of the husband now brought an action to recover the sold cattle on the ground that the same were separate property of the husband and should therefore be included in his estate.

HELD: The registration in the husband's name alone is immaterial, for the property was acquired with conjugal funds. The widow was therefore owner of at least half of the cattle, and possibly all of them should there be no other heir. Since no other heir has been presented, the sale of the cattle should not be annulled.

Castillo, Jr. v. Paseo
L-16857, May 29, 1964

Under the Spanish Civil Code of 1889, property obtained during marriage partly with conjugal funds and *partly* with separate funds were considered *partly* conjugal and partly exclusive, in proportion to the respective contribution. [*NOTE:* This rule applies also in the case of the new Civil Code.].

Honesto Alvarez, et al. v. Pedro R. Espiritu
L-18833, Aug. 14, 1965

FACTS: A woman before her marriage purchased on the installment plan a lot forming originally a part of the Friar Lands. She then got married, and during the marriage, the money paid for the installments came from *conjugal funds*. After the lot was completely paid for, she executed a deed of assignment of the sales certificate in favor of her husband. After the assignment was approved by the Director of Lands, the lot was registered in the name of the spouses. In 1946, the spouses sold *half* of the land to a vendee *a retro*. In 1949, before the lot could be redeemed, the wife died, leaving to her husband her *half* interest in the lot. Only the husband and collateral relatives of the wife (brothers, etc.) survived her. After the death, the husband redeemed the property sold. Who owns the lot now?

HELD: (a) Under the Friar's Land Act, the lot was owned by the wife exclusively, even if full payment was made only during the marriage, and with conjugal funds at that. This is because the beneficial and equitable title went to the purchaser the moment the first installment was paid, and the certificate of sale was issued. However, she must reimburse the conjugal partnership for the funds used. (*See Lorenzo v. Nicolas, 91 Phil. 686*).

- (b) The assignment in favor of the husband — whether as a donation or a sale is clearly void because it was made during the marriage. (*Art. 133, Civil Code; Uy Co Que v. Sioca, 45 Phil. 430*).
- (c) The registration in the name of both spouses is immaterial; the lot is still paraphernal — this is because of the trust relationship between husband and wife, and the practice of registration in either's name, regardless of the source of the money. (*See Padilla v. Padilla, 74 Phil. 377*).
- (d) The redemption of the property by the husband after the wife's death is also immaterial since the right of redemption belonged to her. When the husband made the

redemption, the ownership of the land was revested in the heirs of the deceased wife. The husband, however, is entitled to a *lien*, for the amount paid by him.

- (e) One-half of the property, having been bequeathed to the husband, he now owns said half as his inheritance. The other half shall be disposed of in accordance with the rules of intestate succession. Under the *old law* (the death was in 1949), the collateral relatives were entitled to the remaining half, subject to the usufruct of the husband relative to 50% of *said balance*. This usufruct ceases upon the husband's death. [NOTE — Under the new Civil Code, the remaining or undisposed one-half belongs 50-50 to the husband or his heirs, AND the collateral relatives].

**Zulueta v. Pan American World Airways
L-28589, Jan. 8, 1973**

FACTS: Mr. and Mrs. Zulueta with their child were passengers of a Pan American airplane. Their tickets were paid for by the conjugal partnership. In the course of the trip, the airline company breached its contract of carriage with the family when it left Mr. Zulueta on an island which was a stop-over on the way to Manila. As a result, damages were awarded by the Court.

ISSUE: Who owns the damages awarded?

HELD: The conjugal partnership owns the awarded damages because the contract of carriage had been *paid for from conjugal funds*. Incidentally, if the wife enters into a compromise with the airline company regarding said damages, the compromise will not bind the conjugal partnership. After all, conjugal partnership funds are *not waivable* by one spouse alone prior to the dissolution of the conjugal partnership.

(3) Illustrative Examples and Problems under Par. 2 (Industry, Work, Salary)

- (a) A husband during his marriage was earning P1,000,000 a year. The marriage lasted for five years. After the dissolution of the marriage, the husband continued earning

the amount. He died five years after the dissolution of the marriage. Assuming that there were no expenses incurred, and assuming furthermore that there was no liquidation of the property till after the death of the husband, what part belongs to the conjugal partnership, and what part belongs to the separate and exclusive property of the husband?

ANSWER: The salary earned during the marriage belonged to the conjugal partnership (half of it belonging therefore to the husband, and the other half to the wife); but the salary earned after the marriage belonged exclusively to the husband, because after the dissolution of the marriage, the conjugal partnership ceased. P1,000,000 multiplied by 5 equals P5,000,000 (conjugal). Half of the conjugal is therefore P2,500,000. The hereditary estate of the husband is therefore as follows:

P2,500,000 as his share of the conjugal property

P5,000,000 as his own separate property after the marriage

A total of P7,500,000 all in all equals the hereditary estate of the husband.

- (b) How about the Japanese occupation backpay of the husband? — Since the backpay represents the salary of the husband (although payment thereof was delayed) such amount should be considered as conjugal property.
- (c) A man and a woman were married. The wife died on Jan. 1, 1944. Later, the husband collected his backpay for the period Jan. 1, 1942 to Dec. 31, 1944. To whom will the backpay belong?

ANSWER: The amount of the backpay is for three years. During the last year, however, the wife died, and therefore upon her death the conjugal partnership ceased to exist. The two-year backpay should be considered as conjugal property and the one-year (the last year) backpay should be the exclusive property of the husband.

Rosales de Echaus v. Gan
55 Phil. 527

FACTS: A husband's earning belong to the conjugal partnership. Suppose in a contract between the husband and his employer, it was stipulated that the salary would be paid *not* to the husband but to the wife, would such a stipulation be valid?

HELD: Yes, for there is nothing wrong with this stipulation. To recover the money in a court action, the wife alone, however, *cannot* bring the suit. The husband must be joined, for it is evident that the money is conjugal or ganancial in nature, and the fact that it has been made payable to the wife, instead of the husband, is immaterial.

(4) Illustrative Examples and Problems Under Par. 3 (Fruits, Rents, Interests)

- (a) Before her marriage, a wife already owned a house, and she was leasing it to a tenant. She received five year's advance rentals for the house. One year after the lease took effect, she got married. Who owns the rentals?

ANSWER: The wife is the owner of the rentals for the first year since they represent the rentals of her paraphernal property before her marriage. But the remaining four years rental belong to the conjugal partnership because these rentals are supposed to be due only during the marriage. (*Art. 117[3], Family Code*).

- (b) Before her marriage, a wife lent somebody a sum of money with interest. After she got married, the money was paid with interest. Who owns the principal and the interests?

ANSWER: The principal belongs to the wife as her paraphernal property. The interests that had accrued previous to the marriage also belong to the wife. But the interests that fell due during the marriage belong to the conjugal partnership. (*Art. 117[3], Family Code*).

- (c) If paraphernal property is unlawfully detained by a stranger, damages for such detention should belong to the conjugal partnership, for had it not been detained, the conjugal partnership would have been entitled to its use. (*See Bismorte v. Aldecoa and Co. [17 Phil. 480]*, where the Supreme Court held that the husband was a necessary party for the bringing of the action, he being the administrator of the conjugal partnership.).
 - (d) Fruits of the paraphernal property that *accrue* after the death of one of the spouses are paraphernal, *not* conjugal property, for at the time of accrual, the partnership has already been dissolved. (*Crespo v. Tinio, 62 Phil. 202*).
- (5) What Wife Should Do If Judgment Creditors, to Collect on Her Husband's Debts, Should Levy on Conjugal Properties**

**Polaris Marketing Corporation v.
Hon. Andres B. Plan
L-40666, Jan. 22, 1976**

FACTS: A husband (Eleuterio P. Santos) mortgaged ten (10) parcels of registered land in favor of Polaris Marketing Corporation (Polaris, for short); was not able to pay; and so was ordered by the Court to pay P104,172.50 plus interest, attorney's fees, and costs — within 90 days, otherwise the parcels would be sold at public auction. Because he failed to pay, the parcels, allegedly valued at P300,000 were sold at public auction to Polaris for only P20,500. So an alias writ of execution was issued, and the sheriff levied on 32 other lots, as well as on personal properties consisting of a jeep, a trailer, a tractor, and 393 cavans of palay, supposedly belonging to the judgment debtor, Eleuterio Santos. The sheriff scheduled the sale of these properties (except the palay) on Apr. 15, 1974. On Mar. 16, 1974, Natalia A. Santos, wife of the judgment debtor filed a third party claim with the sheriff. She claimed that the personal properties valued at P125,950.90 were conjugal assets in which she had a one-half interest. On the same date, Mar. 16, 1974, she sued Polaris and the sheriff in a separate action. In her complaint she

prayed that the levy on the conjugal properties be declared void, and that their auction sale be enjoined. The trial court fixed the injunction bond at P50,000, and enjoined the sheriff from levying on the conjugal assets. Did the trial court have jurisdiction to do this?

HELD: Yes, the trial court had jurisdiction to entertain the complaint of the wife. She was not a party in the foreclosure case, and so she was not bound by the proceedings therein, she could not have intervened in that case and assert that the conjugal assets should not be liable for the trial in said case had already terminated. (*Trazo v. Manila Pencil Co., Inc.*, 110 *Phil.* 1016).

This is the reason why a third person claiming to be the owner of the property attached or levied upon is required to file a separate or independent action to determine whether the property should answer for the claim of the attaching or judgment creditor, instead of being allowed to raise that issue in the case where the writ of attachment or execution was issued. (*Bayer Phil., Inc. v. Agana*, L-38701, Apr. 8, 1975, 63 *SCRA* 355). The mandatory injunction issued by the trial court cannot be considered as an interference with the writ of execution issued by a court of coordinate and co-equal jurisdiction. The reason is clear. The *alias* writ of execution was issued by the first court for the purpose of levying on the properties of the *judgment debtor*, NOT *on the properties of others*. (Hence, there is no conflict). The wife is entitled to be heard on her legal point in a separate action. This was the procedure followed in *Quintos de Ansaldo v. Sheriff of Manila*, 64 *Phil.* 115.

(6) Special Rules for Insurance

If the beneficiary is a person OTHER THAN the insured or his estate, the irrevocable beneficiary has a vested right to the insurance indemnity (unless the insured had expressly reserved the right to change the beneficiary); and therefore, upon the death of the insured, the whole insurance indemnity shall belong to the beneficiary. This is true *regardless* of whether the premiums were paid from the insured's separate property or from conjugal funds. (*See Del Val v. Del Val*, 29 *Phil.* 534).

Bank of the Phil. Islands v. Posadas
56 Phil. 215

FACTS: A husband insured himself during his marriage and made his estate, not his wife, as his beneficiary. The premiums paid were borne by the conjugal partnership. Later the husband died. Who is entitled to the proceeds of the insurance, the heirs of the husband (since the beneficiary was the estate of the husband) or the wife?

HELD: Both the heirs of the husband as well as the wife are entitled to the proceeds of the insurance. The proceeds of a life insurance policy payable to an insured person's estate, on which the premiums were paid by the conjugal partnership, constitute conjugal property, and belong one-half exclusively to the husband and the other half to the wife. If the premiums were paid partly with separate property, and partly with conjugal funds, the proceeds are in like proportion separate in part, and conjugal in part. This is the just interpretation of the article. To have his estate as the sole beneficiary would be to sanction a fraud upon the wife, and this must not be done. Although the husband is generally the manager of the conjugal property, he cannot of his own free will convert the partnership property into his own exclusive property. The amount of the policy represents the premiums to be paid, and the right to it arises the moment the contract is perfected, at that moment the power of disposing of it may be exercised and if death occurs payment may be demanded. It is therefore something acquired for a valuable consideration during the marriage, though the period of its fulfillment depends upon the death of one of the spouses, which terminates the partnership. Thus, if the premiums are paid with the exclusive property of the husband or the wife, the policy belongs to the owner (if he makes himself or his estate the beneficiary); if with conjugal property, or if the money cannot be proved as coming from one or the other of the spouses, the policy would be conjugal or community property.

[*NOTE:* It is true in the case of *Del Val v. Del Val*, 29 *Phil.* 534, the doctrine was laid down that an heir appointed beneficiary to a life insurance policy taken out by the deceased, becomes the absolute owner of the proceeds of such a policy upon the death of the insured. *But* the estate of a deceased person *cannot* be placed on the same footing as an individual

heir. The proceeds of a life insurance policy payable to the estate of the insured pass to the executor or administrator of such estate, and form part of its assets (*37 C.J. 165, Sec. 322*); whereas the proceeds of a life insurance policy payable to an heir of the insured as beneficiary belongs exclusively to said heir and does not form part of the deceased's estate subject to administration. (*Bank of the P.I. v. Posadas, 56 Phil. 215*).]

(7) Money Received Under the Social Security Act

The Social Security System not being a law of succession, it is *not* the heirs of the employee who are to necessarily receive the benefits or compensation, but the person designated as his BENEFICIARY. It is only in case the beneficiary is the estate, or if there is none designated, or if the designation is void that the System is required to pay the employees's heirs. As the funds of the System are obtained from the employees and the employers, without the Government having contributed any portion thereof, it would be unjust for the System to refuse to pay the benefit to those whom the employee has designated as his beneficiaries. The contribution of the employee is his money; the contribution of the employer is for the benefit of the employee. Hence, the beneficiary should primarily be the one to profit by such contributions, as expressly provided in Sec. 13 of the law. It may be argued that the purpose of the coverage under the Social Security System is protection of the employee as well as his family, but this purpose or intention of the law cannot be enforced to the extent of contradicting the very provisions of said law as contained in Sec. 13 thereof. Where the provisions of the law are clear and explicit, the courts can do nothing but apply its clear and explicit provisions. (*Tecson v. Social Security System, L-15798, Dec. 28, 1961*).

(8) Money Received from the United States Government By Way of Indemnity or Insurance for the Death of a Soldier Son

**Alabat, et al. v. Alabat, et al.
L-22169, Dec. 29, 1967**

FACTS: Leonardo Alabat was a USAFFE soldier killed in action during World War II. After his death, the U.S. Veterans

Administration gave his parents (Leonardo was a bachelor) certain death benefits amounting to P16,000.

ISSUE: Who owns the P16,000 — the estate of Leonardo or his parents?

HELD: His parents own the death benefits. The money was paid to them by the United States Government by way of indemnity or insurance for the death of Leonardo. The latter was never entitled to it himself because he died before the payment accrued. The amount is therefore the *community* property of the parents.

[*NOTE* — The term “*community property*” here should be understood to mean “*common property*” — as in co-ownership and *not conjugal* for the acquisition was *gratuitous*.]

(9) Some Cases

Testate Estate of the Late Baldomero J. Lesaca; Consuelo F. Lesaca and Juana Vda. de Lesaca L-3605, Apr. 21, 1952

FACTS: Baldomero Lesaca died in Manila in 1946, survived by his second wife, two minor children by the latter, two children by his first marriage as the co-executrices. Three questions arose in this case, namely:

- (a) Whether allowances for support granted by the court to the minor heirs should or should not be subject to collation and deducted from their respective hereditary portions.
- (b) Whether *money received after marriage* as purchase price of land sold with *pacto de retro* to one of the spouses constitutes conjugal property or not.
- (c) Whether a standing crop of palay planted and harvested during marriage, but the amount of which was received only after the death of one of the consorts, constitutes fruits and income and one-half of such crop should be delivered to the surviving spouse.

HELD:

- (a) Such allowances for support pending the liquidation of the estate *are subject* to collation and should be deducted from

the expected hereditary shares. BUT only insofar as *they exceed* the fruits or income of such hereditary share during the liquidation. True, that in another article found in the section on Collation, support is not collationable but this support is the support given after death. The support during the lifetime of the decedent is based on the philosophy that such donation in no way impoverishes the donor or enriches the donee, and would ordinarily have been spent by the giver, thus forming no part of the inheritance.

- (b) The money received for the repurchase from one of the spouses is not conjugal because what was exchanged for the money was property belonging exclusively to said spouse. The money previously given to the seller *a retro* was not common property since it had been earned only by the man.
- (c) Since it was proved that said palay was given as rent to the husband for the use of his land, during the existence of the conjugal partnership, it follows that it should be considered conjugal property. It is immaterial that the rent was actually received after dissolution of the marriage through the death of one of the spouses. It is the date of accrual that is important. It was harvested and therefore accrued, during coverture (marriage).

**Intestate Estate of F.T. Ramos
L-7546, June 30, 1955**

FACTS: An hacienda was inherited by a husband with the condition that he should reimburse the other heirs their shares with cash. If the reimbursement should come from *conjugal funds*, would the hacienda be considered *conjugal* or *separate* property?

HELD: The hacienda is conjugal because it was acquired with conjugal funds.

[*NOTE:* The author believes that with reference to the part of the hacienda really inherited by the husband, he alone owns the same since the property was acquired by gratuitous or lucrative title. But the shares of the

other relatives should be considered as conjugal since indeed they were acquired with conjugal funds, namely, the proceeds from the hacienda.]

Art. 118. Property bought on installments paid partly from exclusive funds of either or both spouses and partly from conjugal funds belongs to the buyer or buyers if full ownership was vested before the marriage and to the conjugal partnership if such ownership was vested during the marriage. In either case, any amount advanced by the partnership or by either or both spouses shall be reimbursed by the owner or owners upon liquidation of the partnership. (n)

COMMENT:

- (1) It is important to determine when full ownership over the property is vested.
- (2) Note the need for reimbursement.

Art. 119. Whenever an amount or credit payable within a period of time belongs to one of the spouses, the sums which may be collected during the marriage in partial payments or by installments on the principal shall be the exclusive property of the spouse. However, interests falling due during the marriage on the principal shall belong to the conjugal partnership. (156a, 157a)

COMMENT:

Credit Belonging to One of the Spouses

Example: Previous to her marriage, a wife lent a friend the sum of P1,000,000 payable in ten years with interest of 6% *per annum*. Three years after the loan was contracted, she got married. After five years of married life, the marriage was dissolved. The wife continued collecting for the remaining two years. Who owns the principal and the interest?

ANSWER:

- (a) Regarding the principal and the interest for the first three years, the wife is the sole owner. *Reason:* She was not yet married.
- (b) As regards the principal for five years of married life, the wife is also the owner. *Reason:* The law does not consider installments due during the marriage as fruits, and instead considers them as pertaining to the capital or to the paraphernal property of the wife.

But the interests for five years of married life belong to the conjugal partnership. *Reason:* The interests here are considered as fruits of the paraphernal property.

- (c) The principal and interests during the last two years belong solely to the wife. *Reason:* The conjugal partnership has ceased to exist due to the dissolution of the marriage.

Art. 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)

COMMENT:**(1) It Is Important to Note Which Is Bigger or Greater —**

- (a) the value of the property just before the improvement was made; or
- (b) its value *after* the improvement including the cost

(2) Rules

If (a) is greater, the whole thing belongs to the owner-spouse, without prejudice to reimbursement of the conjugal partnership.

If (b) is greater, the whole thing belongs to the conjugal partnership but the owner-spouse must be reimbursed.

- (3) If on the lot of the husband worth P900,000, a 6-million peso (P6,000,000) house is constructed, the house and lot will belong to the conjugal partnership, but it will reimburse the husband P900,000. The ownership will be vested in the conjugal partnership at the *time of reimbursement* and this reimbursement will be made when the conjugal partnership is liquidated.
- (4) In No. 3, if the house costs less than P900,000, the husband will be the owner of the house and lot, but he must reimburse the conjugal partnership the cost of the house.

Lucia Embrado v. CA
GR 51457, June 27, 1994
52 SCAD 414

FACTS: Lot No. 564 is a 366-square meter lot situated in Dipolog City originally owned by Juan, Pastor, and Matias Carpitanos. On July 2, 1946, a *Venta Definitiva*, a notarized document written entirely in Spanish, was executed by the Carpitanos whereby they sold Lot No. 564 to LUCIA C. EMBRADO. The Torregianis then made their conjugal abode on the lot and in 1958 constructed a residential/commercial building thereon. As appearing from a document entitled *Absolute Deed of Sale* dated May 1, 1971, Lucia Embrado Torregiani sold Lot No. 564, described as her “own paraphernal property,” to her adopted daughter, herein private respondent Eda Jimenez.

On March 6, 1972, Eda Jimenez sold sixty-five (65) square meters of Lot 564, to Marcos Salimbagat for P6,500.00, and on Aug. 1, 1972, conveyed 301 square meters of the same lot to Pacifico Cimafranca. On Sep. 25, 1972, the Torregianis instituted in the Court of First Instance, now Regional Trial Court, of Zamboanga del Norte an action for declaration of nullity of contract, annulment of sales, reconveyance, and damages against the spouses Santiago and Eda Jimenez, Marcos Salimbagat and Pacifico Cimafranca alleging that the sale of Lot 564 by Lucia Embrado to Eda Jimenez was void because Oreste Torregiani did not consent to the sale, which consent was necessary because Lot 564 was conjugal property.

ISSUE: Whether or not Lot 564 was paraphernal property of Lucia Embrado or conjugal with her husband Oreste Torregiani.

HELD: The second paragraph of Art. 158 of the Civil Code (now Art. 120, Family Code) provides that “[b]uildings constructed, at the expense of the partnership, during the marriage on land belonging to one of the spouses, also pertain to the partnership, but the value of the land shall be reimbursed to the spouse who owns the same.” Under this Article, the land becomes conjugal upon the construction of the building without awaiting reimbursement before or at the liquidation of the partnership upon the concurrence of two conditions, to wit: (a) the construction of the building at the expense of the partnership; and (b) the ownership of the land by one of the spouses. The conditions have been fully met in the case at bench. Thus, even if Lot 564 was originally the paraphernal property of Lucia as evident from the “*Venta Definitiva*,” the same became conjugal upon the construction of the residential/commercial building in 1958.

Section 4. Charges Upon and Obligations of the Conjugal Partnership

Art. 121. The conjugal partnership shall be liable for:

(1) The support of the spouse, 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) Antenuptial 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)

COMMENT:

(1) Par. 1 – Support

The conjugal partnership is liable for the support of:

- (a) the spouses

- (b) their common children
- (c) *legitimate* children of either spouse

[NOTE: Illegitimate children are supported by the separate property of the parent-spouse.].

(2) Par. 2 – Debts

The debts must have been contracted in any of the following cases:

- (a) contracted by the designated administrator spouse – but only for the benefit of the family
- (b) contracted by both spouses (even if there was no benefit for the family)
- (c) contracted by one spouse with the consent of the other (even if there was no benefit for the family).

(3) Par. 3 – Debts *Without Marital Consent*

Provided there was benefit for the family.

**Johnson & Johnson (Phils.),
Inc. v. CA and Alejo M. Vinluan
GR 102692, Sep. 23, 1996
74 SCAD 645**

ISSUES: 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?

HELD: Because the husband did not give his consent and because neither did the obligation incurred by the wife redound to the benefit of the family, the conjugal partnership, as well as the husband, cannot be held liable. Only the wife and her paraphernal property can be held liable. And since the power of the court in execution of judgments extends only to properties unquestionably belonging to the judgment debtor alone, the conjugal properties and the capital of the husband cannot be levied upon.

- (4) **Par. 4 – Taxes, Liens, Charges, and Expenses, Major repairs, Minor repairs on conjugal partnership property**
- (5) **Par. 5 – Taxes and Expenses made for mere preservation – on separate property**
- (6) **Par. 6 – Education or Self-improvement**
- (7) **Par. 7 – Ante-nuptial debts – those contracted *before* the marriage, if they redound to the benefit of the family**
- (8) **Par. 8 – Donations or those promised to the common legitimate children for –**
 - (a) professional courses
 - (b) vocational courses
 - (c) any other activity for self-improvement.
- (9) **Par. 9 – Expenses of litigation *between* the spouses unless the suit is found to be *groundless***

If groundless, the spouse suing shall bear his or her expenses from the separate properties.
- (10) **Note the *subsidiary* but *solidary* liability of the separate properties**

Art. 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 partner-

ship, such spouse shall be charged for what has been paid for the purposes above-mentioned. (163a)

COMMENT:

(1) What Shall Not Be Charged Against the Conjugal Partnership

- (a) debts incurred (*before* or *during* the marriage) except insofar as they benefited the family; and
- (b) fines and pecuniary indemnities.

(2) HOWEVER, if the separate property is insufficient, the conjugal partnership property shall be liable, subject to *two* conditions:

- (a) the obligations of and charges upon the conjugal partnership shall have been covered; and
- (b) there must be reimbursement during liquidation.

Art. 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)

COMMENT:

Note the different rules in case of winnings and losses.

Section 5. Administration of the Conjugal Partnership Property

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 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)

COMMENT:

- (1) Note the joint administration.
- (2) In case of conflict — husband prevails, but wife has judicial redress — within five (5) years from the date of the contract implementing the husband's decision.
- (3) If one spouse is incapacitated or otherwise unable to participate — other spouse is given sole *administration* (No disposition or encumbrance without judicial or marital authority — otherwise void). However, because of the “continuing offer,” the contract may be considered VALID, unless “offer” is *withdrawn*.

Art. 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)

COMMENT:

- (1) The Article refers to *donations* from the conjugal partnership property.
- (2) *Moderate* donations may constitute the exception.

Section 6. Dissolution of Conjugal Partnership Regime

Art. 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)

COMMENT:

(1) Termination of the Conjugal Partnership

This Article enumerates the causes for the termination of the conjugal partnership.

(2) Registration of the Dissolution

If the conjugal partnership is dissolved, should the dissolution be registered in the Registry of Property, at least insofar as real property is concerned?

ANSWER: Yes, so as not to prejudice innocent third parties. Thus, if a husband, after the dissolution of the conjugal partnership, obtains a loan and offers conjugal land as security in the form of a mortgage, the debt can be considered as a conjugal debt. (*See Adolf Aenlle v. Maria Rheims and Philippine Guaranty Co., 52 Phil. 553*). This is particularly true when the property mortgaged was registered in the husband's name, although conjugal. (*See Seva v. Nolan, 36 O.G. 354*).

Enriquez v. Court of Appeals

L-48978, May 27, 1981

Even before the dissolution or liquidation of the conjugal partnership, a co-owner thereof may already bring an action to protect his or her interest therein.

(3) Problems Involving Death of Either Spouse

- (a) A conjugal partnership was indebted, and by the time the husband died the debt had not yet been paid in full. The husband had a piece of land producing fruits *even after his death*. Can these fruits be held liable for the balance of the conjugal debt?

ANSWER: Yes, but only after the conjugal assets have been exhausted. It is true that the “fruits” of the husband’s capital are conjugal, but this only refers to the fruits accruing prior to the dissolution of the conjugal partnership, not to those accruing after the husband’s death. The fruits accruing after are part of the husband’s separate property. These fruits, together with the original husband’s capital can of course be used to pay off conjugal obligations but only if the conjugal assets are not sufficient. (*See Crespo v. Tinio, 62 Phil. 202*).

- (b) After his wife died, a husband wanted to sell some conjugal property to pay conjugal debts. What should he do first?

ANSWER: He must comply with the formalities prescribed in the Rules of Court; otherwise, the sale will be null and void insofar as the share of the wife’s heirs is concerned. His share will of course be determined in the liquidation proceedings. (*See Coronel v. Ona, 33 Phil. 456; Nicolas v. Villarama, [C.A.] O.G. Supp. Oct. 11, 1941, p. 296*). It is, of course, understood that after the dissolution of the conjugal partnership as by death of one of the spouses, the survivor’s interest in the conjugal properties ceases to be inchoate and becomes actual and vested as to an undivided half-share of said properties (and even as to the part *inherited* by the survivor), and so the survivor may alienate, assign, or mortgage said share, even without any prior liquidation of the conjugal partnership. The alienation, assignment, or mortgage may be properly registered, and the registrar of property cannot refuse said registration. The personal creditors of the deceased cannot be prejudiced for after all their lien is on the deceased’s share in the property not on the share

that has been alienated, assigned, or mortgaged. Upon the other hand, it must be observed that the alienation, assignment, or mortgage does not refer to property with DEFINITE boundaries — it refers only to *whatever* part is finally adjudicated to the wife in the liquidation. Creditors of the *conjugal partnership* are therefore also amply protected for their credit will be considered before the survivor's share is finally determined. (*Taningco v. Reg. of Deeds, L-15242, June 29, 1962*).

- (c) Shortly after his wife's death, the husband sold to a stranger a piece of land registered under his name but really belonging to the conjugal partnership. The stranger acted in good faith and purchased the land for value; he did not know that the land was conjugal, or that the marriage had been dissolved, its dissolution not having been properly registered. As soon as the husband got the money, he spent it right and left. The heirs ask you for remedy, if any. What will you advise them?

ANSWER: They should not proceed against the innocent stranger, but should direct their action against the erring husband. The stranger should not be prejudiced because all he had to do was to rely on the record of registration in the Registry of Property. (*See Seva v. Nolan, 36 O.G. 354; also Nable Jose v. Nable Jose, 41 Phil. 713*).

- (d) Suppose after a wife's death, there is no *liquidation* of the conjugal partnership. What can the husband and the children do?

ANSWER: They can convert the conjugal partnership into an *ordinary co-ownership*. The husband will have his original half-share plus the inheritance from his wife; and the children will have the rest. (*See Prades v. Tecson, 49 Phil. 230*). As a matter of fact it has been held that such conversion into an ordinary co-ownership between the surviving spouse and the other heirs (or full exclusive ownership on the part of the surviving spouse in the absence of any other heir) is effected by OPERATION OF LAW. (*Taningco v. Register of Deeds of Laguna, L-15242, June 29, 1962*).

- (e) If one of the parties dies, where should the conjugal property be settled?

ANSWER: In the testate or intestate proceedings of the deceased spouse. If both spouses are dead, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either. (*Rule 73, Sec. 2, Revised Rules of Court*). While said proceedings are pending, any other proceedings aimed at liquidating the conjugal partnership should be excluded. (*Zaide v. Concepcion and Quintana, 32 Phil. 403; Del Rosario v. Del Rosario, 40 O.G. [IS] No. 3, p. 146*).

(4) Legal Separation

One of the effects of *legal separation* is the dissolution of the conjugal partnership. If the separation is only *de facto* (separation in fact), the conjugal partnership continues to exist. (*Gefes v. Salvio, 36 Phil. 221*).

(5) Case

Francisco Puzon v. Marcelin Gaerlan, et al. L-19571, Dec. 31, 1965

FACTS: A conjugal two-story building, owned by a husband and wife living separately from each other, was leased in favor of certain tenants, but the contract of lease stipulated that the rents would be paid to the husband alone. The wife sued for part of said rentals. In the course of the trial, a compromise was agreed upon between the spouses to the effect that the wife would pay the husband P35,000 in consideration of a waiver made by the husband to any right in said property and to any accounting of the rentals the property would earn. The compromise was then approved by the court.

ISSUE: Does the waiver to this property dissolve the conjugal partnership between the spouses?

HELD: No, for the waiver applies only to the property mentioned in the agreement. With reference to all other conjugal properties, as well as future properties, the conjugal partnership still remains.

Art. 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)**

COMMENT:

- (1) The rules here on separation *de facto* are akin to the rules on the same subject in the absolute community regime.
- (2) The law recognizes the *existence* not the *legality*, of a separation *de facto*.

Art. 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)

COMMENT:

- (1) This Article deals with the effect of unjust abandonment of *one spouse* by the *other spouse*.
- (2) Note the period of *three* (3) months referred to in the last paragraph.

Section 7. Liquidation of the Conjugal Partnership Assets and Liabilities

Art. 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)

COMMENT:

- (1) In the inventory, there should be a *separate* listing of the *conjugal* and the *separate* assets.
- (2) Note the *reimbursement* for *advances* made on personal debts and obligations.

(3) Case

Valencia v. Locquiao
412 SCRA 600
(2003)

As provided in Art. 129, express acceptance is not necessary for the validity of donation *propter nuptias*. Implied acceptance is sufficient.

Art. 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 settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extrajudicially within six months 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)

COMMENT:

(1) Scope of the Article

This Article deals with the question — *In what proceeding* will the settlement of the estate be carried out and within what period?

(2) Liquidation Under the Revised Rules of Court

“Where estate settled upon the dissolution of marriage.
— When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse. If both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either.” (*Sec. 2, Rule 73, Revised Rules of Court*).

(The above-mentioned procedure is applicable only when the marriage is dissolved by the death of one or both of the spouses. When the conjugal partnership is dissolved by a decree of legal separation, or when the marriage is annulled, or when

there is a judicial separation of property, the liquidation of the conjugal partnership will be done in the respective proceedings.)

(3) Where or How Liquidation of the Conjugal Partnership is Made

- (a) In case the cause of dissolution is death of one of the spouses
- 1) Testate or intestate proceedings of the deceased spouse. (*Sec. 2, Rule 73, Revised Rules of Court; Caragay v. Urquiza, 53 Phil. 72.*)
 - 2) Extra-judicial partition between the surviving spouse and the heirs of the deceased spouse, *provided* that there are *no debts* and provided, furthermore, that all concerned are of age, or are duly represented by their judicial guardians in the case of minors. (*Sec. 1, Rule 74, Revised Rules of Court; see also De Gala v. De Gala, 60 Phil. 311; also Calma v. Tañedo, 38 O.G. 1963; Fox v. Villanueva, [C.A.] 47 O.G. 4653.*)
 - 3) An ordinary judicial action for partition. (*Fox v. Villanueva, supra; Calma v. Tañedo, 38 O.G. 1963.*) This is proper because in said action for partition the liquidation of the conjugal partnership is already implied. (*Cruz v. De Jesus, 62 Phil. 870; see also Caragay v. Urquiza, 53 Phil. 72.*)
- (b) In case the cause of dissolution is legal separation, annulment of the marriage or judicial separation of property, the liquidation should ordinarily take place in said respective proceedings. However, it would be also proper to liquidate in an *extra-judicial partition* (except if the cause is separation of property by judicial decree) or in an ordinary action for partition (*See Fox v. Villanueva, [C.A.] 47 O.G. 4653*), if there had been no liquidation in the legal separation, annulment, or judicial separation of property proceedings.

[NOTE: In a proceeding where the conjugal partnership is going to be liquidated, it is essential that the chil-

dren even of prior marriages be notified personally of such proceeding. (*In Re: Voluntary Dissolution of the Conjugal Partnership of Jose Bernas, Sr. and Pilar Manuel Bernas, L-20379, June 22, 1965, 14 SCRA 327*).]

(4) Some Cases

**Fox v. Villanueva
(C.A.) 47 O.G. 4653**

ISSUE: If there is a judicial separation of property, would it be proper to have an extra-judicial partition to liquidate the conjugal partnership?

HELD: No, for here a judicial decree is required.

**Benigno v. De la Peña
57 Phil. 305**

Both husband and wife died. May the liquidation of the conjugal partnership be made in the intestate proceedings of the wife?

HELD: Yes, the law says that “if both spouses *have* died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either.” As a matter of fact, it would be proper to settle the estate of the husband, the estate of the wife, and to liquidate the conjugal partnership all in one proceeding.

**De Gala v. De Gala
60 Phil. 311**

FACTS: *X* claimed to be *Y*'s child and filed an action for acknowledgment by him while *Y* was still alive. Pending the action, *Y* died, and the new defendants were *Y*'s heirs. Before the action could be terminated, said heirs and *Y*'s widow extra-judicially partitioned the property among themselves, thereby liquidating the conjugal partnership. Is the partition valid?

HELD: The partition is null and void, for it was made pending an action for acknowledgment, and impliedly for-

heritance. Hence, also, the widow and the heirs can be ordered to render an accounting of their possession and administration to the court before whom acknowledgment and probate proceedings were pending.

(5) Participation of Minors in Extra-judicial Partition

An extra-judicial partition can bind a minor as long as he is duly represented. (*Centeno v. Centeno*, 52 Phil. 323). The representative must be a judicial guardian (*Sec. 1, Rule 74, Revised Rules of Court*), or the father, or in his absence, the mother, who are by law the guardians of the children under the Civil Code. (*Art. 320, Civil Code*).

(6) Oral Extra-judicial Partition May Be Valid

The Rules of Court provides that the extra-judicial partition must be made in a *public instrument* filed in the office of the register of deeds, but it has been held that this requirement is only for the protection of creditors so that as between the heirs, an oral partition may even be proper. (*Hernandez v. Andal, et al.*, 44 O.G. No. 8, 2672).

(7) Effect of Extra-judicial Partition Approved by the Court

If an extra-judicial partition is submitted to and approved by the court, it becomes a judicial partition and is final and absolute upon all parties who took part in the partition agreement and acquiesced therein. (*Centeno v. Centeno*, 52 Phil. 323).

(8) How to Question a Fraudulent Extra-judicial Partition

If it is claimed that an extra-judicial partition was brought by fraud, or that it was not valid, such claims should necessarily be presented in an ordinary action brought for the precise purpose of setting aside the partition. (*Mendiola v. Mendiola*, 7 Phil. 71).

(9) Where Questions Should be Raised

If the cause of dissolution of the conjugal partnership is the death of one of the spouses, the procedure relative to the liquidation and distribution of the estate is addressed to the *probate court* in the testamentary or intestate proceedings of the deceased spouse, or to the competent court, in an ordinary case of liquidation and distribution, and it is there where *all questions* regarding the nature of the various classes of properties should be raised properly to determine whether or not they are paraphernal, private property of the husband, conjugal property, or subject to collation. After finishing the inventory, the deduction shall then be made as indicated in Arts. 180 to 188 of the Civil Code. (*Tim v. Del Rio [C.A.]*, 37 O.G. No. 19, p. 386).

(10) Valuation of Assets in the Inventory

- (a) In making the inventory, should all acquired assets be noted down, or merely the assets existing at the time of liquidation?

ANSWER: In liquidating a conjugal partnership, an inventory of the actual property possessed by the spouses at the time of the dissolution must be made. It is error to determine the amount to be divided by adding up the profits which had been made in each year of its continuance, and saying that the result is that amount. (*Patricio v. Patricio*, 48 Phil. 749).

- (b) A husband deposited several amounts of conjugal funds in a bank. But before his wife died, said amounts were withdrawn and spent. Should said bank accounts be included in the inventory as conjugal assets?

ANSWER: No, said bank accounts should not be included in the inventory as conjugal assets inasmuch as they no longer existed at the time of the dissolution of the partnership. (*Patricio v. Patricio*, 48 Phil. 759).

- (c) In computing the value of the real property included in the inventory, what price should be noted down, the price at the time of acquisition or the price at the time of liquidation?

ANSWER: The price at the time of liquidation. (*Prado v. Natividad, 47 Phil. 775*).

- (d) We now know that in evaluating the real property, we should consider the value at the time of the liquidation of the partnership. The question to determine now is: How can we get the value at the time of the liquidation of the partnership?

ANSWER: We first get the market value of the property. In default of this, we should consider the assessed value. (*Prado v. Natividad, 47 Phil. 775*).

(11) Administration During Liquidation

- (a) Is the surviving spouse necessarily the administrator and liquidator of the conjugal property while it is being liquidated?

ANSWER: No. According to the case of *De Gala v. De Gala and Alabastre, 60 Phil. 311*, “When the husband dies, the conjugal property must be liquidated by the administrator appointed in his testamentary or intestate proceedings, and not necessarily by the surviving wife.”

- (b) A husband sold conjugal property (land) after the death of his wife. Is the sale valid or not?

ANSWER: The sale is not valid with reference to the share belonging to the deceased wife and her heirs. (*Coronel v. Ona, 33 Phil. 456*).

- (c) Does it mean then that whenever a part of the conjugal property is alienated or mortgaged by the surviving spouse, said alienation or mortgage is *void ab initio*?

ANSWER: No. We have to consider several things. If it turns out that the property alienated or mortgaged really would pertain to the share of the surviving spouse, then said transaction is valid. If it turns out that there really would be, after the liquidation, no more conjugal assets then the whole transaction is *null and void*. But if it turns out that half of the property thus alienated or mortgaged belongs to the husband as his share in the

conjugal partnership, and half should go to the estate of the wife, then that corresponding to the husband is valid, and that corresponding to the other is not. Since all these can be determined only at the time the liquidation is over, it follows logically that a disposal made by the surviving spouse is not *void ab initio*. Thus, it has been held that the sale of conjugal properties cannot be made by the surviving spouse without the legal requirements. The sale is void as to the share of the deceased spouse (except of course as to that portion of the husband's share inherited by her as the surviving spouse). The buyers of the property that could not be validly sold become trustees of said portion for the benefit of the husband's other heirs, the *cestui que trustent*. Said heirs shall not be barred by prescription or by laches. (*See Cuison, et al. v. Fernandez, et al., L-11764, Jan. 31, 1959.*)

**Paz Y. Ocampo, et al. v. Conrado
Potenciano, et al.
89 Phil. 159**

FACTS: One of the spouses died. The surviving spouse claims that, under the law, the conjugal partnership affairs must be liquidated by said spouse necessarily. Is this contention correct?

HELD: The surviving spouse is not necessarily the liquidator of the dissolved conjugal partnership. The rule that the husband must liquidate the partnership affairs is now obsolete. Upon the dissolution of the marriage due to the death of either the husband or the wife, the conjugal partnership affairs must be liquidated in the testate or intestate proceedings of the deceased spouse.

(12) Rule in Case of Separation of Property

If *H* and *W* are living under the regime of complete separation of property, or if during the marriage, there was judicial separation of property, there is no *more necessity* of making an inventory when the marriage is at last dissolved, for then there will be no more conjugal partnership to liquidate. Art.

179, No. (2), if it has to have a valid meaning should read: “When separation of property has preceded the dissolution of the marriage” (*not “partnership”*). A separation of property during marriage without court approval is void. (*See Art. 19*).

(13) Jurisdiction of the Court

The conjugal partnership ceases upon the dissolution of the marriage. Hence, upon the death of one of the spouses, and before the property can be adjudicated to his or her heirs, there must be a liquidation of the conjugal partnership. Consequently, the court in which a petition for the summary settlement of the estate of the deceased husband has been filed has jurisdiction to pass upon the question of ownership of the property among the heirs of the deceased. The rule that the court in an estate proceeding has no jurisdiction to pass upon the title to real property is true only where the title is disputed by a third person, not by the surviving spouse or heirs of the deceased. (*Falcatan v. Sanchez, et al., L-9247, May 31, 1957*).

(14) Necessity of Liquidation Before Sale of Deceased’s Assets

The conjugal partnership should first be liquidated and any question of ownership should first be resolved before the sale of the property of a deceased spouse can be allowed or authorized. (*Anderson v. Perkins, L-15388, Jan. 31, 1961*).

Phil. National Bank v. Court of Appeals 98 SCRA 207

A surviving spouse is not allowed by law to mortgage all by herself, land formerly belonging to the conjugal partnership (unless of course she is the sole heir thereto).

Del Mundo v. Court of Appeals 97 SCRA 373

A sale by the *surviving spouse* of conjugal property cannot be declared void by the court until a liquidation is first made of the conjugal estate.

(15) When Estate Proceeding is Closed; Permissible Transactions Before Closure

**Phil. Commercial and Industrial Bank
v. Hon. Venicio Escolin
L-27860, Mar. 29, 1974**

In order that a proceeding for the settlement of an estate of a deceased person may be considered ready for final closure, there should first be an order of distribution or assignment of the estate of the decedent to those legally entitled thereto. In the proper cases, advance or partial implementation of the terms of a duly probated will before the final distribution — can be allowed as long as the rights of third parties would not be adversely affected thereby. In fact, a surviving spouse can be allowed to dispose of his own share of the conjugal estate, pending its final liquidation, should it appear that the creditors of the conjugal partnership would not be prejudiced thereby.

Art. 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)

COMMENT:

(1) Liquidation of Two or More Conjugal Partnerships

It may very well happen that after the death of one spouse, the surviving spouse marries again without liquidating the first assets of the old conjugal partnership. In the liquidation of the second partnership property assets, it may then be necessary to liquidate also those of the first marriage.

As a general rule, all sorts of evidence or proofs may be submitted to find out to what partnership such and such prop-

erty may belong. This is especially needful when no inventories have been submitted. If after these proofs have been submitted to the court, it still cannot be determined to which partnership the court will award the property, a system of proportionate division is made by the provision of the Family Code.

Example: If the first marriage lasted for 10 years, and the second marriage lasted for only 5 years, and the values of the respective separate property have been approximately equal, the first marriage will have double those of the second. Thus, if the total properties amount to P6 million and there are no definite proofs to the contrary, the first conjugal partnership gets P4 million and the second, only P2 million. Remember, however, that this rule holds true only in the absence of definite proofs to the contrary.

(2) Cases

Tabotabo v. Molero **22 Phil. 418**

FACTS: A spouse married a second time after the death of the other. The first conjugal partnership was not, however, liquidated. Although there was no liquidation, certain supposedly conjugal property was awarded to the first spouse. Is this awarding proper?

HELD: This awarding is improper. *Reason:* Although some property may really be conjugal, still, without a liquidation, we cannot say that said property still remains a conjugal asset since after all *it is possible that after the liquidation, no more conjugal assets would remain* (if, for example, all said property is disposed of to pay for conjugal debts). Hence, the awarding, being premature, should be considered improper.

Onas v. Javillo **59 Phil. 733**

FACTS: A husband and a wife had some children. His wife died and he got married again, and he had more children. Later, he died. There was no liquidation of the first conjugal partnership. As a matter of fact, no such liquidation had previously been asked for.

1) How much is the share of the husband in the conjugal property?

2) How much would be the share of each child of the husband?

HELD: 1) The husband, were he still alive, would be entitled to one-half of the combined conjugal property.

2) Each child of the husband, whether of the first or of the second marriage, is entitled to the total share of the husband divided by the number of his children plus one (the surviving spouse who is considered a child, for this purpose) (in the absence, as in this case, of a will).

**In Re: Jose Bernas, Sr. and
Pilar Manuel Bernas
L-20379, June 22, 1965**

If a man marries twice (one wife then another after the first wife's death), liquidation of the conjugal partnership of his second marriage cannot be effected unless the first conjugal partnership is liquidated before hand. The children of said prior marriage have an interest in the proceedings, and therefore, it is essential that they be personally notified. Of course, the children of the second marriage must also be notified.

**De Ocampo v. Delizo
L-32820-21, Jan. 30, 1976**

If one marriage lasted for 18 years and the second marriage lasted for 46 years, the properties will 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.

(3) Acquisition of Public Lands Under the Public Lands Act

If a husband during his marriage applies for the purchase of public lands under the Public Lands Act, but cultivation and improvement are accomplished only after the death of said husband and *during the existence of the wife's second marriage*,

the land granted shall be considered property of the second marriage. The certificate will be issued to the wife and her second husband, each of them having equal rights over the land. The reason is simple: the mere fact of application for the land grants *no vested right* (to the first conjugal partnership). This is because, aside from the purchase, there are requirements for cultivation and improvement. (*Pugeda v. Trias, L-16925, Mar. 31, 1962*).

Art. 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)

COMMENT:

Applicable to liquidation of the conjugal partnership are the rules on appraisal and sale of property under the Rules of Court as well as other pertinent rules on matters not covered by the Family Code *apropos* to administration and settlement of the estate of deceased persons.

Art. 132 may likewise apply to liquidation of the absolute community of property in case of settlement of a deceased spouse's estate.

Art. 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)

COMMENT:

(1) Support for Family During Liquidation

- (a) What property should be computed for the purpose of determining the assets of the conjugal partnership — the actual property remaining, or all the property that may have been acquired during the partnership?

ANSWER: The actual property remaining determines the assets. It is error to determine the amount to be divided by adding up all the profits and investments made in each year of the continuance of the partnership, and saying that the result is the amount. (*De la Rama v. De la Rama*, 7 *Phil.* 745).

- (b) Are incapacitated grandchildren of the deceased entitled to an allowance?

ANSWER: Whether capacitated or not, they are not entitled, for they do not come under the category of “children.” (*Babao v. Villanueva*, 44 *Phil.* 921).

- (c) A wife had no paraphernal property. The only assets of the partnership were far less than the liabilities of the partnership. The wife soon became a widow, and as a widow, demanded support during the liquidation. The creditors refused because the assets were less than the liabilities. Should the widow be allowed support?

ANSWER: No, the widow should not be allowed support.

Said the Supreme Court: “Such is the case now before us. It appears from the record that the liabilities exceed the assets of the estate of Samuel William Allen and that his widow, by her own admission, had not contributed any property to the marriage. Wherefore, it is unlawful, in the present case, to grant the support which is under consideration because said support, having the character of an advance payment to be deducted from the respective share of each partner, when there is no property to be partitioned, lacks the legal basis provided by Article 1490 (now Art. 188 of the Civil Code).” (*Moore and Sons Mercantile Co. v. Wagner*, 50 *Phil.* 128).

**Estate of Hilario M. Ruiz, Edmond
Ruiz, Executor v. CA, et al.
GR 118671, Jan. 29, 1996, 67 SCAD 420**

FACTS: Petitioner alleges that this provision only gives the widow and the minor or incapacitated children

of the deceased the right to receive allowances for support during the settlement of estate proceedings. He contends that the testator's three granddaughters do not qualify for an allowance because they are not incapacitated and are no longer minors but of legal age, married, and gainfully employed. In addition, the provision expressly states "children" of the deceased which excludes the latter's grandchildren.

HELD: It is settled that allowances for support under Section 3 of Rule 83 should not be limited to the "minor or incapacitated" children of the deceased. Said proviso provides: "The widow and minor or incapacitated children of a deceased person, during the settlement of the estate, shall receive therefrom, under the direction of the court, such allowance as are provided by law." Art. 188 of the Civil Code (now Art. 133 of the Family Code), the substantive law in force at the time of the testator's death, provides that during the liquidation of the conjugal partnership, the deceased's legitimate spouse and children, regardless of their age, civil status or gainful employment, are entitled to provisional support from the funds of the estate. Art. 188 provides: "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 fruits or rents pertaining to them."

The law is rooted on the fact that the right and duty to support, especially the right to education, subsist even beyond the age of majority. (*Santero v. CFI of Cavite, 153 SCRA 728 [1987]*). (*Art. 290, Civil Code; now Art. 194, Family Code*).

Be that as it may, grandchildren are not entitled to provisional support from the funds of the decedent's estate. The law clearly limits the allowance to "widow and children" and does not extend it to the deceased's grandchildren, regardless of their minority or incapacity. (*Babao v. Villavicencio, 44 Phil. 921 [1922]*). It was error, therefore, for the appellate court to sustain the probate

court's order granting an allowance to the grandchildren of the testator pending settlement of his estate.

(2) Sale of Conjugal Property by Surviving Spouse

The sale of conjugal property by the *surviving spouse* is VOID as to the share of the deceased spouse except insofar as *she has* inherited part of it. The vendee as a consequence, becomes a trustee of the deceased spouse for said share — for the benefit of his other heirs. (See *Quizon v. Fernandez*, L-13571, Jan. 31, 1959).

Chapter 5

SEPARATION OF PROPERTY OF THE SPOUSES AND ADMINISTRATION OF COMMON PROPERTY BY ONE SPOUSE DURING THE MARRIAGE

Art. 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)

COMMENT:

Art. 134 is applicable where the property regime of the spouse is other than a complete separation of property.

Agapay v. Palang
85 SCAD 145
(1997)

Separation of property between spouses during the marriage shall not take place except by judicial order or without judicial conferment when there is an express stipulation in the marriage settlements. Judgment which resulted from the parties' compromise was not specifically and expressly, for separation of property and should not be so inferred.

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)

COMMENT:

Under Art. 135, the aforementioned instances are exclusive *vis-à-vis* the preceding article. (*Art. 134*).

Art. 136. 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. (191a)

COMMENT:

Note the *joint verified* petition.

Art. 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)

COMMENT:

- (1) Note that when the separation of property is decreed, the absolute community or the conjugal partnership shall be *liquidated*.
- (2) Liability for Support During the Pendency of the Proceedings for Separation of Property

Support for the *spouses* and *their children* shall be taken from the absolute community or from the conjugal partnership.

Art. 138. After dissolution of the absolute community or of the conjugal partnership, the provisions on complete separation of property shall apply. (191a)

COMMENT:

There is an assumption here that after liquidation, properties that respectively pertain to the spouses have already been determined.

Art. 139. The petition for separation of property and the final judgment granting the same shall be recorded in the proper local civil registries of property. (193a)

COMMENT:

(1) Duty to Record

- (a) the petition for separation of property
- (b) the *final judgment* granting the same

(2) What Registries Are Involved

Both the local civil registry and the registries of property (where the property is located).

Art. 140. The separation of property shall not prejudice the rights previously acquired by creditors. (194a)

COMMENT:

Creditors' claims must first be satisfied or be properly secured as to whether the petition for separation of property between the spouses is for a valid cause or voluntarily made.

Art. 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 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)

COMMENT:

Revival of the original property regime may be subject of a motion in the same proceedings where the separation of property was granted.

Art. 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)

COMMENT:

This deals with *administration* by the wife alone or by the husband *alone* of the *separate properties*.

Chapter 6

REGIME OF SEPARATION OF PROPERTY

Art. 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 suppletory. (212a)

COMMENT:

Observations on the System

- (a) This system is based on distrust.
- (b) There will be little trouble with reference to personal expenses, but in view of the fact that each spouse shall proportionately bear the family expenses (*Art. 146, Family Code*), trouble on this point might as well be expected.
- (c) Aside from the system of complete separation of property, there can also be a partial separation of property. In the latter case, it can be said that the conjugal partnership of gains or the absolute community, also exists. (*See Art. 144, Family Code*).
- (d) If no marriage settlement was made, there can be separation of property during the marriage without judicial approval.
- (e) If in the marriage settlement the future spouses agreed on the system of complete separation of property, this cannot later on be converted during the marriage into the conjugal partnership of gains. There is no provision of law authorizing this. Upon the other hand, the law expressly provides that the absolute community of property between spouses shall commence at the precise moment that the marriage is celebrated. Any stipulation, express or im-

plied, for the commencement of the community regime at any other time shall be void. (*Art. 88, Family Code*).

- (f) The conjugal partnership can, however, be converted into the separation of property regime during the marriage, provided there is judicial approval.

Art. 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)

Art. 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)

Art. 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)

COMMENT:

(1) The 'System of Separation of Property' Defined

It is that matrimonial property regime agreed upon in the marriage settlement by the future spouses whereby each spouse shall own, dispose of, possess, administer, and enjoy his or her own separate estate and *earnings* without the consent of the other (*Art. 145*), with each spouse proportionately bearing the family expenses (*Art. 146*) — proportionate to their earnings and profits of their respective property.

(2) Kinds of Separation of Property Systems

- a. Separation of property may refer to:
 - (1) present property

- (2) future property
- (3) both
- b. Separation may also be:
 - (1) total
 - (2) partial (here, the property not agreed upon as separate shall pertain to the absolute community of gains [*Art. 144*]).

(3) Extent of Liability

Note that liability to creditors for family expenses is SOLIDARY.

Chapter 7

PROPERTY REGIME OF UNIONS WITHOUT MARRIAGE

Art. 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 of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation. (144a)

COMMENT:**(1) Applicability of the Article**

The Article applies only if the following requisites are present:

- (a) both must be *capacitated* to marry *each other*
- (b) *there is no marriage* or the marriage is *void*

(Both requisites must concur.)

NOTE:

If a married man cohabits with an unmarried girl, the article does not apply.

(2) Shares of the Parties in the Property

- (a) their *wages* and *salaries* — owned in EQUAL shares by both the man and the woman
- (b) property acquired by both thru their *work* or *industry* — rules of *co-ownership* shall apply (this means *proportionate* to their efforts in the work or industry).

HOWEVER: Note:

- 1) the presumption is that the effort, work, or industry is JOINT and therefore the shares are equal.
- 2) care and maintenance of the family and household — deemed to be *joint* and *equal*.

(3) Analysis of Art. 147

One of the least understood and, therefore, controversial Articles of the Family Code of the Philippines is Article 147, which reads in part:

“When a man and 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.”

Under this Article, there are two cases or instances when the governing system is that of CO-OWNERSHIP (and not ABSOLUTE COMMUNITY or CONJUGAL PARTNERSHIP), namely: (1) when a man and a woman live together as husband and wife, but they are not married (hence, a common-law union or a “live-in” relationship); and (2) when there is no benefit of marriage although the man and the woman are capacitated to marry each other and the marriage is void (void *ab initio*).

What are the *properties* of said union which are governed by the rules on co-ownership (provisions of Arts. 484 to 501 of the Civil Code)?

They are: (1) the property acquired by *either* or *both* of them thru their work or industry; and (2) their wages and salaries.

Hence, *donated, inherited, or purchased* properties are NOT COVERED except that in the case of “purchases,” they are also co-owned if obtained in exchange or substitution of (1) or (2). Thus, a car purchased with salaries should be regarded as co-owned, but not a car bought with inherited cash. The latter vehicle belongs exclusively to the person who had inherited the money.

It will be noted that Article 147 of the Family Code does not speak of *fruits* of the separate or exclusive properties. However, if said fruits are the result of the work or industry of either or both of the parties (such as the products of a farm exclusively owned by the man but which products have come about thru the agricultural efforts of the couple), it is evident that said fruits are owned in common by them. Interest on bank deposits (being in the same category as civil fruits) exclusively owned by either spouses should likewise be regarded as exclusive or separate property, not co-owned. Interest on joint bank deposits (of the couple) should, of course, be considered as property owned in common.

Apparently excepted from the application of Art. 147 is the bigamous (and void) marriage, because in said marriage,

the earnings of the bigamous spouse should belong to the real, actual and legal partnership (with the first spouse). To argue otherwise would be to countenance an immoral situation. Yet, it must be observed that the law itself does not make any *ostensible* exception.

Perhaps a compromise solution (which would take into consideration both the existence of the valid marriage and continuing absolute community or conjugal and partnership on the one hand, and the common-law or bigamous relationship upon the other hand) would be ideal. Thus, if a married man also has a paramour, the salary would accrue to the absolute community or conjugal partnership. (*Art. 148, 2nd par. of the Family Code*); now then his *half-share* should be regarded as property owned in common by *him* and his *paramour*. (*Art. 147*).

Similarly, any salary of the mistress would be owned by her and by the man (50-50, under Art. 147); and the share here of the man must be deemed absolute community or conjugal (for him and his legal wife, under Art. 148, par. 2).

Antonio A.S. Valdes v. RTC of QC (Br. 102)
and Consuelo M. Gomez-Valdes
GR 122749, July 31, 1996
72 SCAD 967

FACTS: Antonio Valdes and Consuelo Gomez were married on Jan. 5, 1971. Begotten during the marriage were five children. In a petition dated June 22, 1992, Valdes sought the declaration of nullity of the marriage pursuant to Art. 36 of the Family Code. After hearing the parties following the joinder of issues, the trial court, in its July 29, 1994 decision granted the petition directing both the petitioner and respondent to start proceedings on the liquidation of their common properties as defined in Art. 147 of the Family Code, and to comply with the provisions of Arts. 50, 51, and 52 of the same Code, within 30 days from notice (of said decision).

Consuelo Gomez sought a clarification of that portion of the decision directing compliance with Arts. 50, 51, and 52 of

the Family Code. She asserted that the Family Code contained no provisions on the procedure for the liquidation of common property in “unions without marriage.”

In an order dated May 5, 1995, the trial court made the following clarifications:

(1) Considering that Art. 147 of the Family Code explicitly provides that the property acquired by both parties during their union, in the absence of proof to the contrary, are presumed to have been obtained thru the joint efforts of the parties and will be owned by them in equal shares, plaintiff and defendant will own their “family home” and all their other properties for that matter in equal shares.

(2) In the liquidation and partition of the properties owned in common by the plaintiff and defendant, the provisions on co-ownership found in the Civil Code shall apply.

(3) Considering that this court has already declared the marriage between petitioner and respondent as null and void *ab initio*, pursuant to Art. 147, the property regime of petitioner and respondent shall be governed by the rules on co-ownership.

ISSUE: Whether or not Art. 147 applies to cases where the parties are psychologically incapacitated.

HELD: The trial court correctly applied the law. In 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 Art. 147 or Art. 148, such as the case may be, of the Family Code. Art. 147 is a remake of Art. 144 of the Civil Code as interpreted and so applied in previous cases.

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 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." Unlike the conjugal partnership of gains, the fruits of the couple's separate property are not included in the co-ownership.

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 regime of the spouses.

[NOTE: Where the spouses were married before the effectivity of the Family Code, the provisions of the new Civil Code apply. (*Castro v. Miat*, 397 SCRA 271 {2003}).].

Art. 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)

COMMENT:**(1) Example of Applicability of the First Paragraph of the Article**

When the parties are brother and sister, whether a marriage between them has been celebrated or not.

(2) Example of Applicability of the Second Paragraph of the Article

When the marriage is *bigamous*.

Thus, if a husband is married to Wife No. 1, and contracts a bigamous marriage with Wife No. 2, who will own the following?

- a) P10 million earned by the husband alone.
- b) P30 million earned by the second wife alone — both having earned during the second marriage.

ANSWER:

- a) The P10 million will all go to the conjugal or community property of the first wife and the husband.
- b) The P30 million will all go to the second wife.

(3) Where Rule Is Applicable

This applies to joint deposits of money and evidences of credit like securities or bonds.

Title V

THE FAMILY

Chapter 1

THE FAMILY AS AN INSTITUTION

Art. 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)

COMMENT:

(1) Provisions of the 1987 Constitution on the Family

(a) Article II

SEC. 12. 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. 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

SEC. 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

(b) Article XIII

SEC. 14. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

(c) Article XV

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.

SEC. 3. The State shall defend:

- (1) The right of spouses to found 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 care for its elderly members, but the State may also do so through just programs of social security.

(2) Children of the World

According to the “Child and Youth Welfare Code” (PD 603), the child is one of the most important assets of the nation. Every effort thus should be exerted to promote his welfare and enhance his opportunities for a useful and happy life.

The child is not a mere creature of the State. Hence, his individual traits and aptitudes should be cultivated to the utmost insofar as they do not conflict with the general welfare. In this regard, every child has the right to live in a community and a society that can offer him an environment free from pernicious influences and conducive to the promotion of his health and the cultivation of his desirable traits and attributes. The child has the right to an efficient and honest government that will deepen his faith in democracy and inspire him with the morality of the constituted authorities both in their public and private lives.

More importantly, every child has the right to grow up as a free individual, in an atmosphere of peace, understanding, tolerance, and universal brotherhood, and with the determination to contribute his share in the building of a better world.

Two international developments related to children of the world are apropos. First, is the *UN Convention on the Rights of the Child (1989)*; and second, is the *World Summit for Children (1990)*.

The UN Convention, adopted by the UN General Assembly in 1989, is essentially a bill of rights for children that seeks to provide explicit legal protection against violence and exploitation, including physical and sexual abuse, whether in the home, the workplace, or during armed conflict. The Convention has been ratified and incorporated into law by 119 nations (it became international law after 20 nations ratified it).

The summit for children which convened at UN headquarters in New York City in 1990, brought together 71 Presidents and Prime Ministers, along with 88 ministerial delegations, to obtain their commitment to try to end child deaths and malnutrition by the year 2000.

The conclave on children broke ground in at least three (3) respects, to wit:

First. Leaders were asked to commit themselves to drawing up a national plan of action in their countries by 1992 to carry out the summit's goals.

Second. The leaders were challenged to increase their spending for primary health care, basic education and development assistance.

Third. They (the leaders) were asked to submit their programs to UN organizations for monitoring.

Art. 150. Family relations include those:

- (1) **Between husband and wife;**
- (2) **Between parents and children;**
- (3) **Among brothers and sisters, whether of the full or half-blood. (217a)**

COMMENT:

- (1) **What the Enumeration of “Brothers and Sisters” As Members of the Same Family Does Not Comprehend**

**Hontiveros v. RTC Br. 25 of Iloilo City, et al.
GR 125465, June 29, 1999, 108 SCAD 262**

The enumeration of “brothers and sisters” as members of the same family does not comprehend “sisters-in-law, and brother-in-law.” (*Gayon v. Gayon, L-28394, Nov. 26, 1970; Guerrero v. RTC of Ilocos Norte, GR 109068, Jan. 10, 1994, 47 SCAD 229*).

- (2) **One Member Cannot Be A Dummy of Family**

**Sile Wong v. Hon. Eduardo Caquioa
CA-GR SP-06886-R, Mar. 28, 1978**

Considering the solidarity of the family (*Art. 217, Civil Code [now Art. 150, Family Code]*), one member of the family

cannot be considered as a dummy of the family, because the law enjoins that mutual and, both moral and material, shall be rendered among members of the same family.

Art. 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 must be dismissed.

This rule shall not apply to cases which may not be the subject of compromise under the Civil Code. (222a)

COMMENT:

(1) Avoidance of Family Suits

“This rule is introduced because 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 a lawsuit between close relatives generates deeper bitterness than between strangers.” (*Report of the Code Commission, p. 18, italics supplied*).

(2) Rule If a Stranger Is Involved

**Magbalela v. Gonong
L-44903, Apr. 25, 1977**

If a stranger is a party to a case between close relatives, there is no need to assert or allege earnest efforts at a compromise. The stranger may not be willing to be inconvenienced by the delay, and it is not fair that his rights should depend on the way relatives would settle their differences.

Not all things may be the subject of compromise, however, not even if the questions to be settled involve members of the same family. The compromise not considered valid by the law are those on:

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

[NOTE: Under the Rules of Court, if the complaint fails to state that there was an attempt to compromise (in a suit between members of the same family), a MOTION TO DISMISS on said ground may be filed. But this will be *useful* only if:

- a. The suit involves a matter that *can be compromised* (therefore *not*, in the case of *future support*), AND
- b. the suit is *between members of the same family* (therefore *not*, in a case between a father and his son-in-law for such is not encompassed in the term “family relations”).]

NOTE: While jurisdiction over the subject matter cannot be waived, venue (place where action is brought) may be compromised or waived, except venue in criminal cases, for in the latter case, venue is jurisdictional. (*Ragpala, et al. v. Justice of the Peace of Tubod, L-15375, Aug. 31, 1960*). Lack of jurisdiction over the subject matter can be challenged at any stage of the proceedings. In fact, in view of said lack of jurisdiction, a court can dismiss a case *ex mero motu*. (*Com. of Int. Rev. v. Leonardo S. Villa and the CTA, L-23988, Jan. 2, 1968*). Attorneys cannot compromise their clients’ litigation or case without special authorization by said clients. (*Melecio Dorego and Felicidad Dorego v. Perez, L-24922, Jan. 2, 1968*).

Albano v. Gapusan
Adm. Matter 1022-MJ, May 7, 1976

A lawyer who notarizes a document allowing a husband and wife to be separated from each other, the extra-judicial liquidation of the conjugal partnership, and permitting them to commit adultery or concubinage should be censured, and the agreements mentioned are void.

(3) Agreement of Spouses to Allow Each Other to Remarry

**In Re: Bucana
Adm. Case 1637, July 6, 1976**

Because the agreement is contrary to law, morals and good customs, the notary public notarizing the agreement should be suspended for 6 months.

(4) Father Succeeds to Son's Obligations

**Dilson Enterprises, Inc. v. IAC and
Ramon Dy Prieto
GR 74964, Feb. 27, 1989**

Plaintiff's son was the guest of the hotel, but plaintiff (Ramon Dy Prieto, private respondent) is the owner of the car carnapped while parked in the basement used for parking purposes. As owner of the car, plaintiff succeeds to the personal rights and obligations of his son in the latter's contract or juridical relation with Dilson in representation of the Manila Monte Hotel.

NOTE:

Dilson Enterprises, Inc. v. Intermediate Appellate Court, GR 74964, Feb. 27, 1989, is a unique case decided by the Supreme Court, fraught with grave implications, if left unresolved.

Herein, petitioner Dilson Enterprises, Inc., is the operator of the Manila Monte located at Rizal Avenue, Manila. On Dec. 18, 1976, one Antonio Dy Prieto, a son of Ramon Dy Prieto, the private respondent in this case, while a guest of Manila Monte, parked a Colt Galant owned by his father in the parking area of Manila Monte, Antonio gave the car key to Reynante Oliveros, a security guard of Central Protective Agency. Said agency was hired by petitioner Dilson Enterprises to secure the parking basement and the hotel managed by Dilson. On the evening of said date, the car key was taken by an unknown person who claimed to be Antonio's brother from Oliveros.

On or about Apr. 20, 1977, private respondent's car was found in an auto repair shop by the Anti-Carnapping unit of the Metropolitan Police Force, and returned to private respondent's son, Antonio, in a very bad and poor condition. Ramon Dy Prieto then brought an action before the then Court of First Instance of Manila against petitioner and Oliveros. The case went to trial, and on Sep. 26, 1983, the Regional Trial Court of Manila rendered judgment, the dispositive part of which reads: "WHEREFORE, judgment is hereby rendered sentencing defendant Dilson Enterprises, Inc. and Central Protective Agency, Inc., jointly and severally, to pay the plaintiff the following sums: P14,785 corresponding to the value of the missing car accessories and parts of his motor vehicle; P8,000 corresponding to the cost of repainting, repair and adjustments to put the motor vehicle in a running condition; P5,000 for and as attorney's fees; and costs of suit."

In a Motion for Reconsideration filed by Ramon Dy Prieto in said decision, the lower court also awarded interest. The decision was appealed to the then Intermediate Appellate Court (now Court of Appeals) by petitioner Dilson Enterprises. In a decision promulgated on Feb. 26, 1986, which was received by petitioner's counsel on Apr. 4, 1986, the respondent Intermediate Appellate Court rendered judgment for the private respondent, the dispositive part of which reads: "WHEREFORE, modified in the sum that we reduce the cost of repair and repainting to P2,500, the decision *a quo* is hereby AFFIRMED in all other respects. No costs."

The Motion for Reconsideration filed by the petitioner Dilson Enterprises before the Intermediate Appellate Court was denied "for Lack of Merit." Hence, this petition for review on the following grounds: "the private respondent (plaintiff in the case) has no cause of action against petitioner; and there is no legal basis for the award of attorney's fees."

The petition having been given due course, Justice Edgardo L. Paras, speaking for the Supreme Court's second division, resolved the same in this wise: "Under the first proposition, petitioner points out that private respondent (Ramon Dy Prieto) has no interest in this case, essentially because it was his son who was the guest of the hotel." This contention is completely unmeritorious as the Court aptly stated thus: "Plaintiff's son

was the guest of the hotel, but plaintiff (Ramon Dy Prieto, private respondent) is the owner of the car carnapped while parked in the basement used for parking purposes. As owner of the car, plaintiff succeeds to the personal rights and obligations of his son in the latter's contract or juridical relation with Dilson in representation of the Manila Monte Hotel." Undoubtedly, he has material interest in the thing.

According to the Supreme Court, a real party in interest is one who could be benefited or injured by the judgment or the party entitled to the avails of the suit. It continued to state that a person who is not a party obliged principally or subsidiarily in a contract may exercise an action for nullity of the contract if he is prejudiced in his rights with respect to one of the contracting parties, and can show the detriment which would positively result to him from the contract in which he had no intervention.

The other proposition that there is no legal basis for the award of attorney's fees arguing that there is no basis or justification for the award of attorney's fees, it ruled, is justifiable under paragraph two Art. 2208 of the Civil Code, which provides: "In the absence of a stipulation, attorney's fees and expenses if litigation, other than judicial costs, cannot be recovered, except when defendant's acts or omissions has compelled the plaintiff to litigate with a third person or to incur expenses to protect his interest."

In the instant case, the private respondent was compelled to litigate in order to protect his rights and interests after the petitioner completely ignored his letters demanding the return of the motor vehicle lost or payment of its value in the total amount of P60,000, including accessories.

(5) Future Support Cannot Be Compromised

**Margaret Versoza, et al. v.
Jose Ma. Versoza
L-25609, Nov. 27, 1968**

FACTS: Margaret Versoza and her children sought support (past, present, and future) from the husband, Jose Ma.

Versoza on the ground that he had abandoned them, and was maintaining illicit relations with another woman. Defendant husband sought dismissal of the case on the ground that the complaint did NOT STATE that earnest efforts have been made towards a compromise.

HELD: The case should be allowed to continue, in view of the following reasons:

(1) While the case involves past, present, and future support, it should be noted that FUTURE SUPPORT is also asked for. This is something on which there can be NO COMPROMISE. Hence, there is *no necessity* of alleging in the complaint that there were earnest efforts to arrive at a compromise.

(2) The rule that such efforts at a compromise should have been made as a condition precedent before a suit between members of the same family can be entertained (*Art. 222*) applies only to cases that can be compromised. (*Mendoza v. Court of Appeals, 63 O.G. 10105*). Similarly, Sec. 1(j), Rule 16 of the Rules of Court, which states that failure to exert earnest efforts at a compromise is a ground for a motion to dismiss — likewise applies only to cases which can be compromised.

(3) Even if it was error on the part of the plaintiffs to have failed to allege the earnest efforts at a compromise — still in the interest of substantial justice, the plaintiffs should be allowed to *amend the complaint*. This is *not a case of lack of jurisdiction*; this merely seeks to *complete the statement of a cause of action*.

(6) Strict Application of the Article

Pedro Gayon v. Silvestre Gayon and Genoveva de Gayon L-28394, Nov. 26, 1970

A sister-in-law, a nephew, and a niece are *not* referred to in Art. 217, now Art. 150 of the Family Code (defining the scope of family relations). Said article must be construed strictly, being an exception to the general rule. Hence, the failure to seek a compromise before filing a suit will *not* bar the same.

(7) Efforts at a Compromise

Magbalela v. Gonong
L-44903, Apr. 25, 1977

If a stranger is a party to a case between close relatives, there is no need to assert or allege earnest efforts at a compromise. The stranger may not be willing to be inconvenienced by the delay, and it is not fair that his rights should depend on the way the relatives would settle their differences.

(8) Scrutiny of a Compromise Agreement

Mabale v. Hon. Apalisok
L-46942, Feb. 6, 1979

The trial court is required to scrutinize a compromise agreement very carefully and with circumspection in order to prevent misunderstanding and controversy in its implementation.

(9) What Court is Supposed to Approve

Bautista v. Lim
L-41430, Feb. 19, 1979

The court that is supposed to approve or pass upon a compromise agreement which settles the main case is the TRIAL court, not the Supreme Court, if the merits of the main case are not involved in the incident before the Supreme Court.

(10) Attempt to Compromise Is a Condition Precedent to Filing of Suit Between Members of the Same Family

Gaudencio Guerrero v. RTC of Ilocos Norte Judge
Luis B. Bello, Jr. and Pedro G. Hernando
GR 109068, Jan. 10, 1994
47 SCAD 229

The attempt to compromise as well as the inability to succeed is a condition precedent to the filing of a suit between

members of the same family, the absence of such allegation in the complaint being assailable at any stage of the proceeding, even on appeal, for lack of cause of action.

In the case at bar, it is not correct, as petitioner contends, that private respondent may be deemed to have waived the aforesaid defect in failing to move to dismiss or raise the same in the answer.

(11) Republic Act 8369

An Act Establishing Family Courts, Granting Them Exclusive Original Jurisdiction over Child and Family Cases, amending Batas Pambansa 129, as amended, otherwise known as the Judiciary Reorganization Act of 1980, appropriating funds thereof and for other purposes

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Title.* — This Act shall be known as the “*Family Courts Act of 1997.*”

SEC. 2. *State and National Policies.* — The State shall protect the rights and promote the welfare of children in keeping with the mandate of the Constitution and the precepts of the United Nations Convention on the Rights of the Child. The State shall provide a system of adjudication for youthful offenders which takes into account their peculiar circumstances.

The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. The courts shall preserve the solidarity of the family, provide procedures for the reconciliation of spouses and the amicable settlement of family controversy.

SEC. 3. *Establishment of Family Courts.* — There shall be established a Family Court in every province and city in the country. In case where the city is the capital of the province, the Family Court shall be established in the municipality which has the highest population.

SEC. 4. *Qualification and Training of Family Court Judges.* — Section 15 of Batas Pambansa 129, as amended, is hereby further amended to read as follows:

“SEC. 15. (a) *Qualification.* — No person shall be appointed Regional Trial Judge or Presiding Judge of the Family Court unless he is a natural-born citizen of the Philippines, at least thirty-five (35) years of age, and, for at least ten (10) years, has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite.

(b) *Training of Family Court Judges.* — The presiding Judge, as well as the court personnel of the Family Courts, shall undergo training and must have the experience and demonstrated ability in dealing with child and family cases.

The Supreme Court shall provide a continuing education program on child and family laws, procedure and other related disciplines to judges and personnel of such courts.”

SEC. 5. *Jurisdiction of Family Courts.* — The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

(a) Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or where one or more of the victims is a minor at the time of the commission of the offense: *Provided*, That if the minor is found guilty, the court shall promulgate sentence and ascertain any civil liability which the accused may have incurred. The sentence, however, shall be suspended without need of application pursuant to Presidential Decree 603, otherwise known as the “*Child and Youth Welfare Code*”;

(b) Petitions for guardianship, custody of children, *habes corpus* in relation to the latter;

(c) Petitions for adoption of children and the revocation thereof;

(d) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains;

(e) Petitions for support and/or acknowledgment;

(f) Summary judicial proceedings brought under the provisions of Executive Order 209, otherwise known as the "*Family Code of the Philippines*;"

(g) Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children; the suspension, termination, or restoration of parental authority and other cases cognizable under Presidential Decree 603, Executive Order 58 (Series of 1986), and other related laws;

(h) Petitions for the constitution of the family home;

(i) Cases against minors cognizable under the Dangerous Drugs Act, as amended;

(j) Violations of Republic Act 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," as amended by Republic Act 7658; and

(k) Cases of domestic violence against:

1) *Women* — which are acts of gender based violence that result, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom of movement; and

2) *Children* — which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

If an act constitutes a criminal offense, the accused or batterer shall be subject to criminal proceedings and the corresponding penalties.

If any question involving any of the above matters should arise as an incident in any case pending in the regular courts, said incident shall be determined in that court.

SEC. 6. *Use of Income.* — All Family Courts shall be allowed the use of ten percent (10%) of their income derived from filing and other court fees under Rule 141 of the Rules of Court for research and other operating expenses including capital outlay: *Provided*, That this benefit shall likewise be enjoyed by all courts of justice.

The Supreme Court shall promulgate the necessary guidelines to effectively implement the provisions of this section.

SEC. 7. *Special Provisional Remedies.* — In cases of violence among immediate family members living in the same domicile or household, the Family Court may issue a restraining order against the accused or defendant upon a verified application by the complainant or the victim for relief from abuse.

The court may order the temporary custody of children in all civil actions for their custody. The court may also order support *pendente lite*, including deduction from the salary and use of conjugal home and other properties in all civil actions for support.

SEC. 8. *Supervision of Youth Detention Homes.* — The judge of the Family Court shall have direct control and supervision of the youth detention home which the local government unit shall establish to separate the youth offenders from the adult criminals: *Provided, however*, That alternatives to detention and institutional care shall be made available to the accused including counseling, recognizance, bail, community continuum, or diversions from the justice system: *Provided, further*, That the human rights of the accused are fully respected in a manner appropriate to their well-being.

SEC. 9. *Social Services and Counseling Division.* — Under the guidance of the Department of Social Welfare and Development (DSWD). A Social Services and Counseling Division (SSCD) shall be established in each judicial region as the Supreme Court shall deem necessary based on the number of juvenile

and family cases existing in such jurisdiction. It shall provide appropriate social services to all juvenile and family cases filed with the court and recommend the proper social action. It shall also develop programs, formulate uniform policies and procedures, and provide technical supervision and monitoring of all SSCD in coordination with the judge.

SEC. 10. *Social Services and Counseling Division Staff.* — The SSCD shall have a staff composed of qualified social workers and other personnel with academic preparation in behavioral sciences to carry out the duties of conducting intake assessment, social case studies, casework and counseling, and other social services that may be needed in connection with cases filed with the court: *Provided, however,* That in adoption cases and in petitions for declaration of abandonment, the case studies may be prepared by social workers of duly licensed child caring or child placement agencies, or the DSWD. When warranted, the division shall recommend that the court avail itself of consultative services of psychiatrists, psychologists, and other qualified specialists presently employed in other departments of the government in connection with its cases.

The position of Social Work Adviser shall be created under the Office of the Court Administrator, who shall monitor and supervise the SSCD of the Regional Trial Court.

SEC. 11. *Alternative Social Services.* — In accordance with Section 17 of this Act, in areas where no Family Court has been established or no Regional Trial Court was designated by the Supreme Court due to the limited number of cases, the DSWD shall designate and assign qualified, trained, and DSWD accredited social workers of the local government units to handle juvenile and family cases filed in the designated Regional Trial Court of the place.

SEC. 12. *Privacy and Confidentiality of Proceedings.* — All hearings and conciliation of the child and family cases shall be treated in a manner consistent with the promotion of the child's and family's dignity and worth, and shall respect their privacy at all stages of the proceedings. Records of the cases shall be dealt with utmost confidentiality and the identity of parties shall not be divulged unless necessary and with authority of the judge.

SEC. 13. *Special Rules of Procedure.* — The Supreme Court shall promulgate special rules of procedure for the transfer of cases to the new courts during the transition period and for the disposition of family cases with the best interests of the child and the protection of the family as primary consideration taking into account the United Nations Convention on the Rights of the Child.

SEC. 14. *Appeals.* — Decisions and orders of the court shall be appealed in the same manner and subject to the same conditions as appeals from the ordinary Regional Trial Courts.

SEC. 15. *Appropriations.* — The amount necessary to carry out the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 16. *Implementing Rules and Regulations.* — The Supreme Court, in coordination with the DSWD, shall formulate the necessary rules and regulations for the effective implementation of the social aspects of this Act.

SEC. 17. *Transitory Provisions.* — Pending the establishment of such Family Courts, the Supreme Court shall designate from among the branches of the Regional Trial Court at least one Family Court in each of the cities of Manila, Quezon, Pasay, Caloocan, Makati, Pasig, Mandaluyong, Muntinlupa, Laoag, Baguio, Santiago, Dagupan, Olongapo, Cabanatuan, San Jose, Angeles, Cavite, Batangas, Lucena, Naga, Iriga, Legaspi, Roxas, Iloilo, Bacolod, Dumaguete, Tacloban, Cebu, Mandaue, Tagbilaran, Surigao, Butuan, Cagayan de Oro, Davao, General Santos, Oroquieta, Ozamis, Dipolog, Zamboanga, Pagadian, Iligan, and in such other places as the Supreme Court may deem necessary.

Additional cases other than those provided in Section 5 may be assigned to the Family Courts when their dockets permit: *Provided*, That such additional cases shall not be heard on the same day family cases are heard.

In areas where there are no Family Courts, the cases referred to in Section 5 of this Act shall be adjudicated by the Regional Trial Court.

SEC. 18. *Separability Clause.* — In case any provision of this Act is declared unconstitutional, the other provisions shall remain in effect.

SEC. 19. *Repealing Clause.* — All other laws, decrees, executive orders, rules or regulations inconsistent herewith are hereby repealed, amended, or modified accordingly.

SEC. 20. *Effectivity.* — This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved: Oct. 28, 1997.

(12) Republic Act 8370

Children's Television Act of 1997

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Title.* — This Act shall be known as the “*Children's Television Act of 1997.*”

SEC. 2. *Declaration of Policy.* — The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being by enhancing their over-all development, taking into account sectoral needs and conditions in the development of educational, cultural, recreational policies and programs addressed to them.

Likewise, the State recognizes the importance and impact of broadcast media, particularly television programs on the value formation and intellectual development of children and must take steps to support and protect children's interests by providing television programs that reflect their needs, concerns and interests without exploiting them.

The State recognizes broadcasting as a form of mass communication guaranteed by the Constitution, the exercise of which is impressed with public interest, and which imposes upon the broadcast industry the social responsibility of ensur-

ing that its activities serve the interest and welfare of the Filipino people.

SEC. 3. *Definition of Terms.* — For purposes of this Act, the following terms shall mean:

a) *Children* — all persons below eighteen (18) years old;

b) *Children's television* — refers to programs and other materials broadcast on television that are specifically designed for viewing by children;

c) *Child-friendly programs* — refer to programs not specifically designed for viewing by children but which serve to further the positive development of children and contain no elements that may result in physical, mental and emotional harm to them. These include various formats and genre that appeal to children and are made available for all ages from early childhood to adolescence; and

d) *Child-viewing hours* — hours which are considered to be appropriate for children to watch television taking into account other activities which are necessary or desirable for their balanced development.

SEC. 4. *Establishment of a National Council for Children's Television.* — There is hereby established a National Council for Children's Television (NCCT), hereinafter referred to as Council, which shall be attached to the Office of the President for purposes of administrative supervision.

The Council shall be composed of five (5) members who shall be appointed by the President for a term of three (3) years: *Provided*, That of the first appointees:

a) the term of the first set of (2) members shall be for three (3) years;

b) the term of the second set of two (2) members shall be for two (2) years; and

c) the term of the remaining members shall be for one (1) year.

The members of the Council shall elect a chairperson from among themselves.

Members of the Council shall be appointed on the basis of their integrity, high degree of professionalism and having distinguished themselves as an authority in the promotion of children's rights to responsible television programming and shall represent the following sectors, namely: academe, broadcast media, child development specialists, parents and child-focused non-government organizations duly registered with the Securities and Exchange Commission (SEC) and with membership preferably in all the cities and provinces throughout the country. The nominees shall be nominated by their respective organizations and the Council for the Welfare of Children in consultation with the Advisory Committee.

The members of the Council shall serve and continue to hold office until their successors shall have been appointed and qualified. Should a member of the Council fail to complete his/her term, the successor shall be appointed by the President, but only for the unexpired portion of the term.

The ranks, emoluments and allowances of the members of the Council shall be in accordance with the Salary Standardization Law and other applicable laws.

SEC. 5. *The Council Secretariat.* — The Council shall organize a secretariat to be headed by an Executive Director and with not more than twenty (20) personnel, as may be determined by the Council. The Council shall determine the secretariat's staffing pattern, determine the qualifications, duties, responsibilities and functions, as well as compensation for the positions to be created by the Council upon recommendation of the Executive Director subject to the National Compensation and Classification Plan and other existing Civil Service rules and regulations.

SEC. 6. *The Advisory Committee and its Composition.* — There is hereby constituted an Advisory Committee which shall assist the Council in the formulation of national policies pertaining to children's broadcast programs and in monitoring its implementation. The Council and the Advisory Committee shall meet at least once every quarter of a year.

The members of the Advisory Committee shall be composed of the following:

- a) the Executive Director of the Council for the welfare of Children;
- b) the Chairman or Executive Director of the National Commission for Culture and the Arts;
- c) The President of the Kapisanan ng mga Brodkaster sa Pilipinas;
- d) the President or Executive Director of the Philippine Association of National Advertisers;
- e) Press Undersecretary/Officer-In-Charge of the Philippine Information Agency;
- f) the Chairman of the Movie and Television Review and Classification Board; and
- g) a representative from the National Telecommunications Commission. Whenever any member of the Advisory Committee is unable to attend, he or she shall designate a representative to attend as his or her alternate.

SEC. 7. *Functions of the Council.* — The Council shall have the following functions:

- a) to formulate and recommend plans, policies and priorities for government and private sector (*i.e.*, broadcasters, producers, advertisers) action toward the development of high quality locally-produced children's television programming, to meet the developmental and informational needs of children;
- b) to promote and encourage the production and broadcasting of developmentally-appropriate television programs for children through the administration of a national endowment fund for children's television and other necessary mechanisms;
- c) to monitor, review and classify children's television programs and advertisements aired during the hours known to be child-viewing hours in order to take appropriate action such as disseminating information to the public and bringing monitoring results to the attention of concerned agencies for appropriate action;

d) to formulate, together with the television broadcast industry, a set of standards for television programs shown during child-viewing hours and work closely with the industry for the adoption and implementation of said standards;

e) to initiate the conduct of research for policy formulation and program development and disseminate its results to broadcasters, advertisers, parents and educators on issues related to television and Filipino children;

f) to promote media education within the formal school system and other non-formal means in cooperation with private organizations;

g) to monitor the implementation of this Act and other existing government policies and regulations pertaining to children's broadcast programs, as well as to recommend and require the appropriate government agencies and/or self-regulatory bodies concerned to enforce the appropriate sanctions for violations of these regulations and policies based on their respective mandates;

h) to recommend to Congress appropriate legislative measures which will grant incentives for independent producers and broadcasters to encourage the production of quality local children's television programs; and

i) to act on complaints committed in violation of this Act with the goal of protecting children from the negative and harmful influences and to cause or initiate the prosecution of violators of this Act.

SEC. 8. *Submission of Comprehensive Media Program for Children.* — Within one (1) year from the effectivity of this Act, the Council in consultation with the Advisory Committee shall submit to Congress a comprehensive development and protection program with the end in view of formulating policies on children's media programs, and recommending plans and priorities for government towards the promotion, development, production and broadcasting of developmentally-appropriate media programs for children. Likewise, it shall prescribe an appropriate set of criteria for evaluating programs with the end in view of establishing a Television Violence Rating Code.

Towards this end, the Council may consider internationally-accepted programs of action for children's television. More particularly, the Council shall be guided by the following standards herein to be known as "The Charter of Children's Television."

a) Children should have programs of high quality which are made specifically for them, and which do not exploit them. These programs, in addition to being entertaining should allow children to develop physically, mentally and socially to their fullest potential;

b) Children should hear, see and express themselves, their culture, languages and life experiences through television programs which affirm their sense of self, community and place;

c) Children's programs should promote an awareness and appreciation of other cultures in parallel with the child's own cultural background;

d) children's programs should be wide-ranging in genre and content, but should not include gratuitous scenes of violence and sex.

e) Children's program should be aired in regular time slots when children are available to view and/or distributed through widely accessible media or technologies;

f) Sufficient funds must be made available to make these programs conform to the highest possible standards; and

g) Government, production, distribution and funding organizations should recognize both the importance and vulnerability of indigenous children's television and the steps to support and protect it.

SEC. 9. *Allotment of Air Time for Educational Children's Programs.* — A minimum of fifteen percent (15%) of the daily total air time of each broadcasting network shall be allotted for child-friendly shows within the regular programming of all network granted franchises or as a condition for renewal of broadcast licenses hereinafter, to be included as part of the network's responsibility of serving the public.

SEC. 10. *Implementing Rules and Regulations.* — The Council, in consultation with all appropriate government agencies and non-government organizations, shall issue the necessary rules and regulations for the implementation of this Act within ninety (90) days after its effectivity.

SEC. 11. *Penalty.* — In the exercise of its administrative functions, the Council shall petition the proper government agencies and/or appropriate self-regulatory bodies to suspend, revoke or cancel the license to operate television stations found violating any provision of this Act and its implementing rules and regulations.

SEC. 12. *The National Endowment Fund for Children's Television.* — The creation of a National Endowment Fund for Children's Television, hereinafter referred to as the Fund, is created for the promotion of high standards of indigenous program development in children's television and media specifically intended for Filipino children. An amount of Thirty million pesos (P30,000,000) sourced from the income of lotto operations of the Philippine Charity Sweepstakes Office (PCSO) and another Thirty million pesos (P30,000,000) from the gross income of the Philippine Gaming Corporation (PAGCOR) shall form part of the Fund.

a) The Fund shall be created for the purpose of developing and producing high quality television programs that are culturally-relevant and developmentally-appropriate for children.

b) The Fund is intended to contribute to the development of media programs that contribute to Filipino children's awareness and appreciation for their cultural identity, national heritage and social issues that will in turn help them grow to be productive and nationalistic citizens.

c) Access to the Fund shall be provided by the Council through a grant application process for qualified producers and organizations with proven track record in the production of high quality children's television programs. Necessary requirements are to be submitted to the Council for approval.

d) Copyright for programs and products to be developed with assistance from the Fund will be jointly owned by the Council and the producers.

e) Priority shall be given to independent producers and organizations or institutions including youth organizers who do not have access to the resources of a national network.

f) The Council is authorized to accept grants, contributions, or donations from private corporations and international donors for the National Endowment Fund for Children's Television: *Provided*, That such grants, contributions, or donations are exempted from donor's donee's taxes: *Provided, further*, That these funds will be used strictly for the endowment fund.

SEC. 13. *Appropriations.* — For the initial operating expenses of the Council, the amount of Five million pesos (P5,000,000) is hereby appropriated out of the funds of the National Treasury not otherwise appropriated. Thereafter, it shall submit to the Department of Budget and Management its proposed budget for inclusion in the General Appropriations Act, approved by Congress.

SEC. 14. *Separability Clause.* — If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions thereof.

SEC. 15. *Repealing Clause.* — All laws, decrees, executive orders, presidential proclamations, rules and regulations or parts thereof contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 16. *Effectivity Clause.* — This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved: Oct. 28, 1997.

(13) Recent Legislation Affecting Children and the Youth

These include, *inter alia*:

1. AM 00-4-07-SC-Re: Proposed Rule on Examination of a Child Witness (Effective Dec. 15, 2000)

This Rule governs the examination of child witnesses who are victims of crime. It shall apply in all criminal proceedings and non-criminal proceedings involving child witnesses.

The objectives of this Rule are to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.

This Rule shall be liberally construed to uphold the best interests of the child and to promote maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.

2. **RA 8972 – “Solo Parents Welfare Act of 2000” (Approved on Nov. 7, 2000)**

It is the policy of the State to promote the family as the foundation of the nation, strengthen its solidarity and ensure its total development.

Towards this end, it shall develop a comprehensive program of services for solo parents and their children to be carried out by interrelated government agencies (such as: DSWD, DOH, DECS, DILG, CHED, TESDA, NHA, DOLE) and NGOs.

3. **RA 8980 – “Early Childhood Care and Development Act” (Approved on Dec. 5, 2000)**

It is the declared policy of the State to promote the rights of children to survival, development, and special protection with full recognition of the nature of childhood and its special needs, and to support parents in their roles as primary caregivers and as their children’s first teachers.

The State shall institutionalize a National System for Early Childhood Care and Development (ECCD) that is comprehensive, integrative, and sustainable — that involves multi-sectoral and inter-agency collaboration at the national and local levels among: government, service providers, families, communities, public sectors, private sectors, non-governmental organizations, professional associations, and academic institutions.

This System shall promote the inclusion of children with special needs and advocate respect for cultural di-

versity. It shall be anchored on complementary strategies for ECCD that include service delivery for children from conception to age 6, educating parents and caregivers, encouraging the active involvement of parents and communities in ECCD programs, raising awareness about the importance of ECCD, and promoting community development efforts that improve the quality of life for young children and families.

Chapter 2

THE FAMILY HOME

Art. 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)

COMMENT:

Reason — When creditors seize the family house, they virtually shatter the family itself.

Art. 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)

COMMENT:

The family enjoys the exemption afforded by Art. 153 under the conditions therein stated.

**Manacop v. CA
85 SCAD 491 (1997)**

There is no need to constitute the same judicially or extra-judicially as required under 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 head of the family who owns the home.

Art. 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)

COMMENT:

While those in Nos. 1 and 2 mentioned in Art. 154 are all referred to as *beneficiaries*, the family home is composed of the spouses or unmarried head of the family (no. 1 abovementioned) and the dependents (no. 2 abovementioned). Included by the way as beneficiaries are the grandparents and grandchildren.

Art. 155. The family home shall be exempt from execution, forced sale or attachment except:

(1) For nonpayment 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)

COMMENT:**(1) General Rule**

Generally, a family is exempt from execution, forced sale, or attachment. Exceptions are set forth under Art. 155.

(2) Case

People v. Chaves
L-19521, Oct. 30, 1964

FACTS: For allegedly violating Rep. Act 145 (regarding veteran's benefits) a criminal information was *filed* against the accused. After the filing of the case, the accused *extrajudicially* created his family home. Much later, he was *convicted*.

ISSUE: May the family home be attached to pay for the indemnity he was ordered to pay?

HELD: Yes, because this debt or obligation was incurred not at the time of conviction, but at the date of the misappropriation. The fact of the conviction did not cause the debt to arise; it merely established the fact of appropriation beyond controversy and reasonable doubt. The judgment sentencing the accused to indemnify the offended party was *not* the source of his duty to return, any more than a judgment on a promissory note would be the origin of the promisor's duty to pay. In fact, it is only the claim in Art. 247 of the Civil Code (now Art. 160, Family Code) which must be reduced first to a judgment, not the claims mentioned in Art. 243 of the Civil Code (now Art. 155, Family Code). To hold otherwise would be to enable the debtor to escape payment of his just debts, leaving the creditors holding an empty bag.

N.B.: Creditors should take the necessary precautions to protect their interest before extending credit to the spouses or head of the family who owns the home. (*See Modequillo v. Brevia, GR 86355, May 31, 1990*).

Art. 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)

COMMENT:

Note that property purchased under an ongoing installment plan may be constituted as a family home.

Art. 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)

COMMENT:

Note the maximum values of P300,000 (in urban areas) and P200,000 (in rural areas).

N.B.: The last paragraph of Art. 157 defines rural and urban areas. (*See Sec. 450, Local Government Code of 1991*).

Note: Under the Tax Code, a decedent's family home enjoys a tax exemption from estate tax. (*See Sec. 79[a], National Internal Revenue Code*).

Art. 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)

COMMENT:

There can be no further need for concurrence if all the beneficiaries are not deemed "*of legal age.*"

Art. 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)

COMMENT:

This Rule is applicable regardless of whoever owns the property or constituted the family home.

Art. 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)

COMMENT:

Under this Article, creditors who cannot make the family home liable to satisfy their claims can have recourse.

Art. 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)

COMMENT:

This Rule provides for only one person who may constitute and be the sole beneficiary of a family home.

Art. 162. The provisions in this Chapter shall also govern existing family residences insofar as said provisions are applicable. (n)

COMMENT:

Article 162 simply provides 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. Art. 162 does not state that the provisions of Chapter 2, Title V have a retroactive effect. (*Modequillo v. Breva, GR 86355, May 31, 1990*).

Title VI

PATERNITY AND FILIATION

Chapter 1

LEGITIMATE CHILDREN

Art. 163. The filiation of children may be by nature or by adoption. Natural filiation may be legitimate or illegitimate. (n)

COMMENT:

(1) Distinction Between ‘Paternity’ and ‘Filiation’

While *paternity* (maternity) is the civil status relationship of the father (mother) to the child, *filiation* is the civil status or relationship of the child to the father or mother.

(2) Classification of Filiation

- (a) By nature (legitimate or illegitimate)
- (b) By adoption

(3) Distinctions Between Legitimate and Illegitimate Children

<i>Legitimate Children</i>	<i>Illegitimate Children</i>
1. <i>Use of Surname</i> – Right to Bear Surname of Father	1. Required to Use Mother’s Surname
2. <i>Parental Authority</i> – Joint Authority of Parents	2. Under the Sole Parental Authority of Mother

3. <i>Support</i> — Preferential Right to Support Over Mother If Father Has No Sufficient Means to Meet Both Claims	3. No Such Preference
4. <i>Successional Right</i> — Entitled to Inheritance	4. Entitled to 1/2 of Legitimate Child's Inheritance
5. <i>Beneficiary Right Under the SSS and GSIS</i> — Primary Beneficiaries	5. Not Primary Beneficiaries
6. <i>Paternity Leave</i> — Father Is Entitled to Paternity Leave of 7 days With Full Pay	6. No Such Benefit

(4) Law Governing Paternity and Filiation

This is the Family Code and which 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. Under the Family Code's Title VI or Paternity and Filiation (Arts. 172, 173, and 175 or proof of filiation), there are only two (2) classes of children: (1) legitimate and (2) illegitimate. The fine distinctions between and among the various types of illegitimate children have been eliminated. (*See Castro v. CA, GR 50974-75, May 31, 1989*).

Note: The aforesaid case (*Castro v. CA, supra*) must be read in relation to Art. 175, second par. *re* proof of filiation of an illegitimate child where the supposed father had already died.

(5) Paternity Investigation Liberalized

The Civil Code and the Family Code have both liberalized the rule allowing the investigation of the paternity of a child. (*Mendoza v. CA, 201 SCRA 675 [1991]*).

[NOTE: “Paternity” or “filiatory” or the lack of it, is a relationship that must be judicially-established. (*Arbolario v. CA*, 401 SCRA 360 [2003]). Filiation may be established by holographic as well as notarial wills. (*Potenciano v. Reynoso*, 401 SCRA 391 [2003]).

Art. 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)

COMMENT:

(1) ‘Legitimate Child’ Defined

One conceived or born during the marriage of the parents, unless its status is impugned for causes provided for in the law.

NOTE: If there is no presumption about the validity of the marriage, the child concerned cannot invoke the presumption of legitimacy. (*Board of CID v. de la Rosa*, 197 SCRA 853 [1991]).

(2) A ‘Birth Certificate’ Is the Best Evidence of a Person’s Date of Birth

A birth certificate is the best evidence of a person’s date of birth and that late registration by the mother of her child’s birth does not affect its evidentiary value. (*Arfila v. Arellano*, 482 SCRA 280 [2006]).

Under Art. 164 of the Family Code, children conceived or born during the marriage of the parents are legitimate. Impugning the legitimacy of a child is a strictly personal right of the husband or, in exceptional cases, his heirs. A birth cer-

tificate signed by the father is a *competent evidence* of paternity. (*Social Security System v. Aguas*, 483 SCRA 383 [2006]). Upon the other hand, a mere photocopy of a birth certificate which was not verified in any way by the civil register cannot be given probative weight. (*Ibid.*) Note that a record of birth is merely *prima facie* evidence of the facts contained therein. Only “legally-adopted” children are considered dependent children. (*Ibid.*)

(3) Test-tube Babies

The second paragraph deals with “test-tube” babies or those conceived as a result of artificial insemination. For such a child to be *legitimate*, the parents must have —

- (a) authorized or ratified such insemination;
- (b) in a written instrument;
- (c) executed and signed by them *before* the birth of the child.

(4) ‘Artificial Insemination’ Defined

According to a medico-legal practitioner, *artificial insemination*, as applied to human beings, is a medical procedure by which the semen is introduced into the vagina by means other than copulation for the purpose of procreation. Some physicians, in fact, consider the words “therapeutic insemination” as a more suitable terminology for the process. (*See Pedro Solis, Legal Medicine, p. 601*).

Art. 165. Children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this Code. (n)

COMMENT:

There is now no more distinction between the *natural* and *spurious* children under the Family Code, unlike in the Civil Code, where the —

- (a) natural children were those born outside wedlock with parents who were *capacitated* to marry each other at the time of the conception of the child.
- (b) spurious children (if otherwise).

[NOTE: The spurious child was referred to in the Civil Code as an *illegitimate child other than natural*.]

Art. 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;

(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)

COMMENT:

(1) Re Par. 1 – Physical Impossibility

- (a) Reason for the “120 days of the 300 days which immediately preceded the birth of the child.”

ANSWER: 300 minus 120 equals 180 days or 6 months, which may be at the earliest, the intrauterine life of the child. Upon the other hand, if the child was conceived on the 1st day of said 120 days, it must have had an intrauterine existence of 300 days or 10 months, which may be the maximum duration of its existence in the maternal womb.

- (b) living separately — note that here, sexual intercourse must not be possible. If the husband and wife live in foreign countries or far provinces and there had been no visit between them during the period in which conception could have taken place, the presumption of legitimacy does not exist. (*Francisco v. Josen, 60 Phil. 662*). If possible as when they visit each other now and then — this would not be a legal ground for impugning the legitimacy.
- (c) serious illness of the husband (which absolutely prevented sexual intercourse).

Andal v. Macaraig
L-2474, May 30, 1951, 89 Phil. 165

FACTS: The husband was suffering from tuberculosis in such a condition that he could hardly move and get up from his bed, with feet swollen and voice hoarse. The wife had carnal intercourse with a man other than her husband during the first 120 days of the 300 days immediately preceding the birth of the child. The husband soon died, but within 300 days following the dissolution of the marriage, a child was born to the wife. Is the late husband the father of the child despite his illness and despite her intercourse with another man?

HELD: Yes, the child is still his legitimate child. The fact that the husband was seriously sick is not sufficient to overcome the presumption of legitimacy. There are cases where persons suffering from T.B. can do the carnal act even in the most crucial stage of health because then they seem to be more inclined to sexual intercourse. This 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. "Impossibility of access by husband to wife would include absence during the initial period of conception, impotence which is patent, continuing, and incurable; and imprisonment, unless it can be shown that cohabitation took place through corrupt violation of prison regulations." The fact that the wife had illicit intercourse with a man other than her husband during the initial period, does not preclude cohabitation between said husband and wife.

Sayson v. CA
GR 89224-25, Jan. 23, 1992

The legitimacy of the child can be impugned in a direct action brought for that purpose by the proper parties and within the period limited by law. The legitimacy of a child cannot be contested by way of defense or as a collateral issue in another action for different purposes like partition and accounting.

Macadangdang v. CA
L-49542, Sep. 12, 1980
100 SCRA 73

As between the paternity by the husband and the paternity by the paramour, all the circumstances being equal, the law is inclined to follow the former. Thus, the child is given the benefit of legitimacy.

'Impotency' Defined

This is the inability to have sexual intercourse. In respect of the impotency of the husband or the mother of the child, to overcome the presumption of legitimacy based on conception or birth in wedlock or to show illegitimacy, it has been held or recognized that the evidence or proof must be clear or satisfactory and convincing, irresistible and positive. (*Macadangdang v. CA, L-49542, Sep. 12, 1980*).

'Impotency' Distinguished from 'Sterility'

Impotency refers to the physical inability of the male organ to copulate, *i.e.*, to perform its proper function. (*Mac-*

dangdang v. CA, L-49542, Sep. 12, 1980). It does not include sterility. (*Menciano v. San Jose, L-1967, May 28, 1951*).

Stated in another manner, impotency is failure to have an erection; sterility is failure to have a child.

Said the Supreme Court in a leading case: "The illness of the husband must be serious and of such a nature as to exclude the possibility of his having sexual intercourse with his wife such as, when because of sacroiliac injury, he was placed in a plastic cast, and that it was inconceivable to have sexual intercourse without the most severe pain or the illness producing temporary or permanent impotence, making copulation impossible." (*Macadangdang v. CA, L-49542, Sep. 12, 1980*).

(2) Re Par. 2

This deals with biological, ethnic, or other scientific reasons. (*Benitez-Badua v. CA, GR 105625, Jan. 24, 1994, 47 SCAD 496*).

**Janice Marie Jao v. Court of Appeals
L-49162, July 28, 1987**

Blood grouping test can establish conclusively that the man is not the father of the child but not necessarily that a man is the father of a particular child. It may have some probative value if the blood type and the combination in the child is rare. Thus, it is now up to the discretion of the judge whether to admit the results.

**Lee Shing v. Collector of Customs
59 Phil. 147**

It is enough that evidence may be presented that "for biological or scientific reasons," the child could not have been that of the husband. Expert medical testimony may thus be presented. So also, racial dissimilarity may be observed by the court itself.

Marissa Benitez-Badua v. CA
GR 105625, Jan. 24, 1994, 47 SCAD 416

If appellee Marissa Benitez is truly the real, biological daughter of the late Vicente O. Benitez and his wife Isabel Chipongian, why did he and Isabel's only brother and sibling Dr. Nilo Chipongian, after Isabel's death on Apr. 25, 1982, state in the extra-judicial settlement that they executed her estate, "*that we are the sole heirs of the deceased ISABEL CHIPONGIAN because she died without descendants or ascendants?*"

Dr. Chipongian, placed on the witness stand by appellants, testified that it was his brother-in-law, Atty. Vicente O. Benitez who prepared said document and that he signed the same only because the latter told him to do so. But why would Atty. Benitez make such a statement in said document unless appellee Marissa Benitez is really not his and his wife's daughter and descendant and, therefore, not his deceased wife's legal heir?

As for Dr. Chipongian, he lamely explained that he signed said document without understanding completely the meaning of the words "descendant and ascendant." This, we cannot believe, Dr. Chipongian being a practising pediatrician who has even gone to the United States. Obviously, Dr. Chipongian was just trying to protect the interests of appellee, the foster-daughter of his deceased sister and brother-in-law, as against those of the latter's collateral blood relatives.

(3) Re Par. 3

This deals with *vitiated consent* in the matter of "test-tube" babies.

Art. 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress. (265a)

COMMENT:

In the first, the wife may have declared the "illegitimacy" in a fit of anger or jealousy; in the second, she might have already been pregnant at the time she committed adultery as when

having sex with two men, the husband may possibly be the father of the child. (*Macadangdang v. CA, L-49542, Sep. 12, 1980, 100 SCRA 73*).

Art. 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 the three hundred days after the termination of the former marriage. (259a)

COMMENT:

(1) Requisites for the Child to be the Child of the First Marriage

- (a) The child must have been born within 300 days after the *termination* of the first marriage; and
- (b) said child must have been born *within* (or before the end of) 180 days after the *solemnization* of the second marriage.

(2) Examples

- (a) A widow married 100 days after the death of her first husband. A child was born to her 170 days after the celebration of the second marriage. What is the status of the child?

ANSWER: The child is the legitimate child of the first husband because it was born before 180 days had elapsed after the solemnization of the second marriage,

and it was born within 300 days after the death of the first husband.

- (b) A widow married 140 days after the death of her husband. A child was born to her 170 days after the solemnization of the second marriage. What is the status of the child?

ANSWER: The child is the legitimate child of the second husband. The rule established in the first paragraph of Art. 168 is not applicable because under the premises given, the child was born not within but after 300 days after the death of the first husband.

- (c) A widow married 50 days after the death of the first husband. A child was born to her 190 days after the solemnization of the second marriage. What is the status of the child?

ANSWER: The child is the legitimate child of the second husband or of the second marriage, even if it was born within 300 days after the death of the first husband. Under the premises given, the child was born not before but after 180 days following the celebration of the subsequent marriage and is *prima facie* presumed to have been conceived during such marriage, even though it be born within the 300 days after the death of the former husband. (*Art. 168, 2nd par.*).

Art. 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)

COMMENT:

Following the termination of the marriage, no presumptive rule exists with respect to a child born after 300 days. For whoever alleges such legitimacy or illegitimacy must prove the same. In this respect, Art. 169 may be considered as an exception to the rule set forth in Art. 164 that “children conceived or born during the marriage of the parents are legitimate.”

People v. Velasquez
L-36241, Feb. 28, 1983

A child born 10 months and 11 days after a man's sexual intercourse with a woman is probably NOT the result of such sexual relation, unless after said sexual intercourse, several other sexual relations were had.

Art. 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)

COMMENT:

Problems on Procedural Aspects

1. *Legitimacy*

H and *W* are validly married. *W* gives birth to a child *C*.

a. Who can question *C*'s legitimacy?

Answer: Generally, only *H*, the husband. In three cases however, *H*'s heirs may question *C*'s legitimacy:

1. If the husband should die before the expiration of the period fixed for bringing the action.
2. If he should die after the filing of the complaint, without having desisted from the same.

3. If the child should be born after the death of the husband. (*Art. 171*).
- b. Within what period may *C*'s legitimacy be questioned?

ANSWER: The action to impugn the legitimacy of *C* 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. (*Art. 170*).

Lim v. Intermediate Appellate Court
GR 69679, Oct. 18, 1988

Art. 170 is not applicable to an action to claim inheritance as legal heirs of the deceased.

Art. 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)

COMMENT:

- (1) Generally, it is only the husband, *not* the heirs, who may impugn the legitimacy. **HOWEVER**, in the 3 cases given in this Article, the heirs are given the right.
- (2) A child was born to a married couple 170 days after the celebration of the marriage. The husband refused to contest the legitimacy of the child, but the heirs wanted to do so. This state of affairs continued for sometime, until finally the period for bringing the action lapsed. May the husband still bring the action? May the heirs of the husband still bring the action?

ANSWER: The husband may not bring the action because the time limit has already expired. The heirs of the husband cannot bring the action either because not one of the three cases mentioned under Article 171 exists and, besides, the time limit has already lapsed.

- (3) A child was born to a married couple 170 days after the celebration of the marriage, thus making the child disputably legitimate. However, when the child was born, the husband was already dead. The child is therefore a posthumous child. Are the heirs of the husband allowed to contest the legitimacy of the child?

ANSWER: Yes, the heirs of the husband are allowed to contest the legitimacy of the child because the child was born after the death of the husband.

- (4) Meaning of "Heirs" in Art. 171

The term includes testamentary, voluntary, compulsory, or legal heirs. (*See Sanchez Roman, Vol. 5, p. 979*). All kinds of heirs are therefore included, for they are the ones whose right to the succession might be jeopardized by the existence of a legitimate child. But the heirs are merely supposed to substitute or represent the deceased husband, to whom the right is principally given. Thus, if the husband has renounced the right, as when he fails to bring the action before the prescriptive period, or when he voluntarily withdraws an action, to grant the right to the heirs would be subordinating the implied wish of the husband to their own selfish interests. (*See 1 Manresa, 5th Ed., 562*).

Chapter 2

PROOF OF 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; 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)

COMMENT:

(1) What is “Proof of Filiation”?

How is “*filiation*” defined? What is a “filiation proceeding”? What is the documentary evidence referred to in filiation?

“*Filiation*” is the judicial determination of paternity, *i.e.*, the relation of child to father. In civil law, filiation refers to the descent of son or daughter, with regard to his or her *father, mother, and their ancestors*. (*Black’s Law Dictionary, 5th ed.*).

A “*filiation proceeding*” is a special statutory proceeding, criminal in form, but in the nature of a civil action to enforce a civil obligation or duty specifically for the purpose of estab-

lishing parentage and the putative father's duty to support his illegitimate child. (*State v. Morrow*, 158 Or. 412, 75 P.2d 737, 738, 739, 744).

Because documents as evidence consist of writings or any material containing letters, words, numbers, figures, symbols or other modes of written expressions offered as proof of their contents (*Sec. 2, Rule 130 of the Rules of Court*), such apply to filiation as well.

Thus, documentary evidence in proof of filiation do not necessarily include the following:

Photographs. A group photo showing the putative father with his "natural children" is not sufficient evidence of acknowledgment under the Civil Code which requires a record of birth, a will, or other instrument. (*Colorado v. Court of Appeals*, GR 39948, Feb. 28, 1985).

Letters. The complimentary ending "*Su Padre*," is not indubitable acknowledgment of paternity. It merely indicates, considering the context of the entire letter, the writer's solicitude for the well-being of the natural son of his brother who could not support or rear the boy. Filipinos, known for their close family ties, are generally fond of the children. (*Baras, et al. v. Baras*, GR 25715, Jan. 31, 1985).

Birth Certificates. A birth certificate not signed by the alleged father indicated in said certificate is not competent evidence of paternity. (*John Paul E. Fernandez v. CA*, GR 108366, Feb. 16, 1994, 48 SCAD 333). To be sufficient recognition, the birth certificate must be signed by the father and mother jointly, or by the mother alone if the father refuses, otherwise she may be penalized. And if the alleged father did nothing in the birth certificate, the placing of his name by the mother, or doctor or registry is incompetent evidence of paternity of the child. If the birth certificate is not signed by the alleged father, it cannot be taken as record of birth to prove recognition of the child, nor can said birth certificate be taken as a recognition in a public instrument. (*Reyes v. Court of Appeals*, GR 39537, Mar. 19, 1985).

Baptismal certificates. A certificate of baptism is not proof of recognition. It is not necessarily competent evidence of the veracity of entries therein with respect to the child's paternity. (*Fernandez v. CA, GR 108366, Feb. 11, 1944, 48 SCAD 333*). While baptismal certificates may be considered public documents, they are evidence only to prove the administration of the sacraments on the dates therein specified, but not the veracity of the statements or declarations made therein with respect to the baptized person's kinsfolk. (*Reyes v. Court of Appeals, GR 39537, March 19, 1985*).

[NOTE: Even if the rape victim's *filiation* to the accused and minority was neither refuted nor contested by the defense, *proof* thereof is *critical* in view of the penalty of death imposed for qualified rape. (*People v. Gavino, 399 SCRA 285 (2003)*)].

Heirs of Cabals, et al. v. Court of Appeals GR 106314-15

A birth certificate, being a public document, offers *prima facie* evidence of filiation and a high degree of proof is needed to overthrow the presumption of truth contained in such public document. This is pursuant to the rule that entries in official records made in the performance of his duty by a public officer are *prima facie* evidence of the facts therein stated. The evidentiary nature of such document, a baptismal certificate, a private document, which, being hearsay, is not a conclusive proof of filiation. It does not have the same probative value as a record of birth, an official or public document.

In the instant case, the unjustified failure to present the birth certificate instead of the baptismal certificate or to otherwise prove filiation by any of the means recognized by law weigh heavily against *Trinidad, et al.* The lower court erred in giving too much credence in the baptismal certificate of Crisanta to prove that she was the daughter of Caridad and not of Mamerta, the original registered owner of the property under controversy.

School Records. Neither is the child's secondary student permanent record nor the written consent given by the child to the operation of her alleged father be taken as an authentic

writing to prove the child's paternity or the father's recognition, since said documents were neither signed by nor written in the handwriting of the father. (*Reyes v. Court of Appeals, GR 39537, Mar. 19, 1985*).

Marriage Contracts. The marriage contract, wherein it was stated that the alleged father of the bride gave his consent or advice for the bride to marry and that he was the bride's father cannot also be taken as recognition in a public instrument, the same not having been signed by the alleged father of the bride. (*Reyes v. Court of Appeals, GR 39537, Mar. 19, 1985*).

Authentic Writing. An authentic writing does not have to be a public instrument. It is sufficient that it is genuine and not a forgery. It must, however, be signed by the alleged parent unless the whole instrument is in the handwriting of the alleged parent and the facts mentioned therein correspond to actual and real facts. (*Reyes v. Court of Appeals, GR 39537, Mar. 19, 1985*).

(2) Means Allowed By the Rules of Court

- (a) An act or declaration concerning pedigree. (*Sec. 33, Rule 130, Rules of Court*).
- (b) Family reputation or tradition concerning pedigree. (*Sec. 34, Rule 130, Rules of Court*).
- (c) Common reputation respecting pedigree. (*Sec. 35, Rule 130, Rules of Court*).
- (d) Judicial admission. (*Sec. 2, Rule 129, Rules of Court*).
- (e) Admissions of a party. (*Sec. 22, Rule 130, Rules of Court*).
- (f) Admission by silence. (*Sec. 23, Rule 130, Rules of Court*).

NOTE: Oral evidence may be admitted if the needed document cannot be presented. (*Santiago v. Cruz, 19 Phil. 145*). Upon the other hand, physical similarity is not a reliable guide. (*See Chong v. Collector, 38 Phil. 815*).

B. Rodriguez v. CA and C. Agbulos
GR 85723, June 19, 1995
61 SCAD 896

Of interest is that Art. 172 (formerly Art. 283 of the Civil Code), that filiation may be proven by “any evidence or proof that the defendant is his father.”

(3) The Term “Continuous” – What It Does Not Mean

“*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. The possession of such status means that the father has treated the child as his own, directly and thru others, spontaneously and without concealment though without publicity since the relation is illegitimate. There must be a showing of permanent intention of the supposed father to consider the child as his own, by continuous and clear manifestation of paternal affection and care. (*Casimiro Mendoza v. CA, GR 86302, Sep. 14, 1991*).

(4) Case

Marquino v. IAC
GR 72078, June 27, 1994, 52 SCAD 414

In an action for compulsory recognition, the party in the best position to oppose the same is the putative parent himself. 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 peace and harmonious relationship in the family of the putative parent.

Art. 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)

COMMENT:

- (1) **This is the action to CLAIM (not impugn) legitimacy of the child.**
- (2) **Generally, only the child himself may file the action.**

However, his heirs can do so:

- (a) if the child dies during *minority*
- (b) if the child dies during *incapacity*

[In both (a) and (b), the heirs are given five years (from the death) within which to bring the action.]

- (c) if the heir will merely continue the action (survival of the action).

(3) Some Problems

- (a) A child was born 310 days after the death of his father. According to the law, there is no presumption of legitimacy or illegitimacy in his case. During his lifetime, the child did not want to establish his legitimacy. The child died at the age of 25 and was not insane when he died. May the heirs of the child bring the action to establish the legitimacy of the child? If so, what time is given to them? If not, why not?

ANSWER: No, the heirs are not allowed to bring the action because the facts given do not constitute one of the cases when the heirs of the child are allowed to bring such an action.

Here:

- 1) The child did not die during his minority.
 - 2) The child did not die in a state of insanity.
 - 3) The child did not previously bring the action.
- (b) In the preceding question, suppose the child died at the age of 19. May his heirs bring an action to establish the legitimacy of the child?

ANSWER: Yes, in this case the heirs are given five years from the time the child died. The heirs are allowed

to bring the action because the child died during his minority. If within the five-year period no action is brought by the heirs, they are barred from bringing the action in the future.

- (c) The heirs of a deceased child brought an action to establish the legitimacy of the child. But the period of five years granted by the law had already elapsed. Will the action prosper?

ANSWER: No, the action will not prosper in view of the expiration of the period allowed by the law. *Said the Supreme Court:*

“While the action to claim legitimacy could have been brought by the son at any time of his life, it did not have this duration for his heirs as said action is transmitted to the same only when the child dies during minority or in a state of insanity (or if the action had already been commenced by the child). In case where the action is transmitted to the heirs of the child, only a period of five years is allowed in which to institute the action.” (*Basa v. Arquiza, 5 Phil. 187*).

(4) Case

**Eutiquio Marquino and Maria Perenal-Marquino v.
IAC and Bibiana Romano-Pagadora
GR 72078, June 27, 1994
52 SCAD 425**

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.

“Vested right” is a right in property which has become fixed and established and is no longer open to doubt or controversy. It expresses the concept of present fixed interest, which in right reason and natural justice should be protected against arbitrary State action.

Art. 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)

COMMENT:**(1) Use of Surname**

- (a) In the law of surnames, it is provided that “legitimate and legitimated children shall *principally* use the surname of the father.” (Art. 364). But the mother’s surname may also be used (Art. 174, *Family Code*), and it would not be improper to also include the surnames of grandparents or other ascendants.
- (b) Before the Civil Code, if a father has *illegitimate* children, the *legitimate* children cannot prevent said illegitimate children from using the father’s surname. (*Catalina Osmeña de Valencia, et al. v. Emilia Rodriguez, et al.*, 84 *Phil.* 222). The Supreme Court speaking through then Justice Ricardo Paras (later Chief Justice) held: We concede that the plaintiffs may use the surname of their father “Valencia” as a matter of right by reason of the mere fact that they are legitimate children, but we cannot agree to the view that this article grants monopolistic propriety control to the legitimate children over the surname of their father. In other words, said article has marked a right to which legitimate children may not be deprived (even by non-user for a time) but it cannot be interpreted as a prohibition against the use by others of what may happen to be the surname of their father. If plaintiff’s theory were correct, they can stop countless inhabitants

for bearing the surname "Valencia." Furthermore, the father acquiesced in the use of the surname by the illegitimate children, but even had there been an objection, the illegitimate children can still use the disputed surname in the absence of any law granting exclusive ownership over a surname. (*Catalina Osmeña de Valencia v. Rodriguez, supra*).

In the case, however, of *Manuel, et al. v. Republic, L-15811, Mar. 27, 1961*, the Court had occasion to rule that where there is NO evidence that the natural child was duly recognized by his alleged putative father, his petition for change of surname from that of his mother to his father's surname should be DENIED, for he should not be allowed to use a surname which otherwise he is not permitted to employ under the law. The Supreme Court further said that whereas before the effectivity of the New Civil Code, there was *no* specific legal provision regulating the use of surnames, under the present law, there are such provisions, and thus a natural child may use the father's surname only if there has been acknowledgment.

(2) Support

- (a) The right to receive support cannot be renounced, nor can it be transmitted to a third person. Neither can it be compensated with what the recipient owes the obligor. However, support in *arrears* may be compensated and renounced, and the right to demand the same may be transmitted by onerous or gratuitous title.
- (b) Support is everything that is indispensable for sustenance, dwelling, clothing, and medical attendance, according to the social position of the family.

Support also includes the education of the person entitled to be supported until he completes his education or training for some profession, trade or vocation, even beyond the age of majority.

(3) Legitime

- (a) The legitime of each legitimate child is half of the parent's estate divided by the number of children. (*Art. 888, Civil Code*). The legitime must always be given unless the child is validly disinherited for a legal cause. The free portion of the property *may* also be given to the children or to any of them.
- (b) If a child dies ahead of his father, the heir of the child can get the child's legitime from the father's estate in testamentary succession. In legal succession, the heir of the child will get all that the child himself would have inherited had he not died ahead of the father.

Chapter 3

ILLEGITIMATE CHILDREN

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. (289a)

COMMENT:

(1) How Illegitimate Children May Establish Their Filiation —

In the same way and same evidence as legitimate children.

**Dempsey v. RTC
GR 77737-38, Aug. 15, 1988**

As part of the civil liability in its judgment, the trial court required the accused to recognize Christina Marie as his natural child. This should not have been done. The recognition of a child by her father is provided for in the Civil Code and now in the new Family Code.

In this criminal prosecution, where the accused pleaded guilty to criminal charges and the issue of recognition was not specifically and fully heard and tried, the trial court committed reversible error when it ordered recognition of a natural child as part of the civil liability in the criminal case.

Uyguanco v. CA
GR 76873, Oct. 26, 1989

The illegitimate 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 such other kinds of proof admissible under Rule 130 of the Rules of Court.

In the case at bar, since Graciano, however, seeks to prove his filiation under the 2nd par. of Art. 172 of the Family Code, his action is now barred because of his alleged father’s death in 1975. He can no longer be allowed at this time to introduce evidence of his open and continuous possession of the status of an illegitimate child or prove his alleged filiation thru any of the means allowed by the Rules of Court or special laws. The reason is that Apolinario is already dead and can no longer be heard on the claim of his alleged son’s illegitimate filiation.

Teodoro Palmes Hernandez, Jr.
v. Intermediate Appellate Court
GR 73864, May 7, 1992

Generally, both the legitimate and the illegitimate child may establish their filiation during his or her lifetime and therefore even while the parent concerned is still alive.

The action for compulsory recognition is an *ordinary civil action*, not a special proceeding.

Artemio G. Ilano v. CA and Merceditas S. Ilano,
represented by her mother, Leonica de los Santos
GR 104376, Feb. 23, 1994
48 SCAD 432

The rights of an illegitimate child arose not because he was the true or real child of his parents but because under the law, he had been recognized or acknowledged as such a child.

The transgressions of social conventions committed by the parents should not be visited upon the illegitimate children. They were born with a social handicap and the law should help them surmount the disadvantages they face thru the misdeeds of their parents.

**Bienvenido Rodriguez v. CA and
Clarito Agbulos
GR 85723, June 19, 1995
61 SCAD 896**

Art. 175 of the Family Code allows the establishment of illegitimate filiation in the same way and on the same evidence as legitimate children.

(2) When the Action Must Be Brought

This is answered by the second paragraph of the Article.

**Jose E. Aruego, Jr., et al. v. CA and
Antonio Aruego
GR 112193, Mar. 13, 1996
69 SCAD 423**

FACTS: On March 7, 1983, a Complaint for Compulsory Recognition and Enforcement of Successional Rights was filed before Branch 30 of the Regional Trial Court of Manila by the minors, private respondent Antonia F. Aruego and her alleged sister Evelyn F. Aruego, represented by their mother and natural guardian, Luz M. Fabian. Named defendants therein were Jose E. Aruego, Jr. and the five (5) minor children of the deceased Gloria A. Torres, represented by their father and natural guardian, Justo P. Torres, Jr., now the petitioners herein.

In essence, the complaint avers that the late Jose M. Aruego, Sr., a married man, had an amorous relationship with Luz M. Fabian sometime in 1959 until his death on March 30, 1982. Out of this relationship were born Antonia F. Aruego and Evelyn F. Aruego on Oct. 5, 1962 and Sep. 3, 1963, respectively.

The complaint prayed for an Order praying that herein private respondent and Evelyn be declared the illegitimate children of the deceased Jose M. Aruego, Sr.; that herein petitioners be compelled to recognize and acknowledge them as the compulsory heirs of the deceased Jose M. Aruego; that their share and participation in the estate of their deceased father be determined and ordered delivered to them.

The main basis of the action for compulsory recognition is their alleged "open and continuous possession of the status of illegitimate children" as stated in paragraphs 6 and 7 of the Complaint, to wit:

"6. The plaintiffs' father, Jose M. Aruego, acknowledged and recognized the herein plaintiffs as his children verbally among plaintiffs' and their mother's family friends, as well as by myriad different paternal ways, including but not limited to the following:

- (a) Regular support and educational expenses;
- (b) Allowance to use his surname;
- (c) Payment of maternal bills;
- (d) Payment of baptismal expenses and attendance therein;
- (e) Taking them to restaurants and department stores on occasions of family rejoicing;
- (f) Attendance to school problems of plaintiffs;
- (g) Calling and allowing plaintiffs to his office every now and then;
- (h) Introducing them as such children to family friends.

7. The plaintiffs are thus, in *continuous possession of the status of (illegitimate) children* of the deceased Jose M. Aruego who showered them, with the continuous and clear manifestations of paternal care and affection as above outlined."

Petitioners denied all these allegations.

After trial, the lower court rendered judgment, dated June 15, 1992, the dispositive portion of which reads:

“WHEREFORE, judgment is rendered —

1. Declaring Antonia Aruego as illegitimate daughter of Jose Aruego and Luz Fabian;

2. Evelyn Fabian is not an illegitimate daughter of Jose Aruego with Luz Fabian;

3. Declaring that the estate of deceased Jose Aruego are the following:

x x x

x x x

x x x

4. Antonia Aruego is entitled to a share equal to 1/2 portion of share of the legitimate children of Jose Aruego;

5. Defendants are hereby ordered to recognize Antonia Aruego as the illegitimate daughter of Jose Aruego with Luz Fabian;

6. Defendants are hereby ordered to deliver to Antonia Aruego (her) share in the estate of Jose Aruego, Sr.;

7. Defendants to play (sic) plaintiff's (Antonia Aruego) counsel the sum of P10,000.00 as attorney's fee;

8. Cost against the defendants.”

Herein petitioners filed a Motion for Partial Reconsideration of the decision alleging loss of jurisdiction on the part of the trial court over the complaint by virtue of the passage of Executive Order No. 209 (as amended by Executive Order No. 227), otherwise known as the Family Code of the Philippines which took effect on Aug. 3, 1988. This motion was denied by the lower court in the Order, dated Jan. 14, 1993.

Petitioners interposed an appeal but the lower court refused to give it due course on the ground that it was filed out of time.

A Petition for Prohibition and *Certiorari* with prayer for a Writ of Preliminary Injunction was filed by herein petitioners before respondent Court of Appeals, the petition was dismissed

for lack of merit in a decision promulgated on Aug. 31, 1993. A Motion for Reconsideration when filed was denied by the respondent court in a minute resolution dated Oct. 13, 1993.

Hence, this Petition for Review on *Certiorari* under Rule 45 alleging the following grounds:

A

RESPONDENT COURT HAD DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE LAW AND IS DIRECTLY CONTRADICTORY TO THE APPLICABLE DECISION ALREADY ISSUED BY THIS HONORABLE COURT.

B

RESPONDENT COURT ERRED IN HOLDING THAT THE PETITION FILED BY PETITIONERS BEFORE IT DOES NOT INVOLVE A QUESTION OF JURISDICTION.

C

RESPONDENT COURT HAD CLEARLY ERRED IN RULING THAT THERE IS NO PERCEPTIBLE DIFFERENCE BETWEEN THE CIVIL CODE PROVISION AND THOSE OF THE FAMILY CODE ANENT THE TIME AN ACTION FOR COMPULSORY RECOGNITION MAY BE MADE AND THAT THERE IS NO DIFFERENCE UNDER THE CIVIL CODE FROM THAT OF THE FAMILY CODE CONCERNING THE REQUIREMENT THAT AN ACTION FOR COMPULSORY RECOGNITION ON THE GROUND OF CONTINUOUS POSSESSION OF THE STATUS OF AN ILLEGITIMATE CHILD SHOULD BE FILED DURING THE LIFETIME OF THE PUTATIVE PARENT, IN UTTER DISREGARD OF THE RULING OF THIS HONORABLE COURT IN THE *UYGUANGCO* CASE THAT THE CIVIL CODE PROVISION HAD BEEN SUPERSEDED, OR AT LEAST MODIFIED BY THE CORRESPONDING ARTICLES IN THE FAMILY CODE.

D

RESPONDENT COURT ERRED IN DISMISSING PETITIONERS' PETITION FOR PROHIBITION AND IN HOLDING THAT PETITIONERS REMEDY IS THAT OF AN APPEAL WHICH ALLEGEDLY HAD ALREADY BEEN LOST.

Private respondent's action for compulsory recognition as an illegitimate child was brought under Book I, Title VIII of the Civil Code on PERSONS, specifically Article 285 thereof, which state the manner by which illegitimate children may prove their filiation, to wit:

“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.”

Petitioners, upon the other hand, submit that with the advent of the New Family Code on Aug. 3, 1988, the trial court lost jurisdiction over the complaint of private respondent on the ground of prescription, considering that under Article 175, paragraph 2, in relation to Article 172 of the New Family Code, it is provided that an action for compulsory recognition of illegitimate filiation, if based on the “open and continuous possession of the status of an illegitimate child,” must be brought during the lifetime of the alleged parent without any exception, otherwise the action will be barred by prescription. The law cited reads:

“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.”

“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 [during the lifetime of the child], *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.*”

In the case at bench, petitioners point out that, since the complaint of private respondent and her alleged sister was filed on Mar. 7, 1983, or almost one (1) year after the death of their presumed father on Mar. 30, 1982, the action has clearly prescribed under the new rule as provided in the Family Code. Petitioners, further, maintain that even if the action was filed prior to the effectivity of the Family Code, this new law must be applied to the instant case pursuant to Article 256 of the Family Code which provides:

“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.”

ISSUES: Should the provisions of the Family Code be applied in the instant case? As a corollary: Will the application of the Family Code in this case prejudice or impair any vested right of the private respondent such that it should not be given retroactive effect in this particular case?

HELD: The phrase “vested or acquired rights” under Article 256, is not defined by the Family Code. The Committee did not define what is meant by a ‘vested or acquired right,’ thus leaving it to the courts to determine what it means as each particular issue is submitted to them. It is difficult to provide

the answer for each and every question that may arise in the future.

In *Tayag v. Court of Appeals (209 SCRA 665 [1992])*, a case which involves a similar complaint denominated as “Claim for Inheritance” but treated by this court as one to compel recognition as an illegitimate child brought prior to the effectivity of the Family Code by the mother of the minor child, and based also on the “open and continuous possession of the status of an illegitimate child,” we had occasion to rule that:

“Under the circumstances 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 case of *Republic of the Philippines v. 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

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.”

Tayag applies 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 Art. 285 of the Civil Code and not by Art. 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 EO 209, also known as the Family Code of the Philippines.

Our ruling herein reinforces the principle that the jurisdiction of a court, whether in criminal or civil cases, once attached cannot be ousted by subsequent happenings or events, although of a character which would have prevented jurisdiction from attaching in the first instance, and it retains jurisdiction until it finally disposes of the case.

(3) Cohabitation Need Not Be Continuous or Permanent

Rosario Alquilos v. Artemio Villamor CA-GR 57504-R, July 19, 1978

Under Art. 283, par. 3 of the Civil Code, it is not required that the cohabitation be continuous or permanent, so long as the defendant and plaintiff live together as husband and wife even for occasional or shorter period of time and a child is conceived during said period.

Art. 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)

COMMENT:

- (1) Surname – that of the mother**
- (2) Parental Authority – that of the mother**
- (3) Legitime – each illegitimate child gets *one-half* of the legitime of each legitimate child**

[NOTE: Since there is no more distinction between the natural and the spurious child, the former ratio of 5 to 4 (5 for every natural child and 4 for every spurious child) has been abolished.].

[NOTE further that there is no other modification on their successional rights.].

(4) One Category for All Illegitimate Children

Under Article 176 of the Family Code, all illegitimate children are generally placed under one category.

This undoubtedly settles the issue as to whether or not acknowledged natural children should be treated differently, in the negative, for clearly, the term “illegitimate” refers to both natural and spurious.

The case of *Olivia S. Pascual and Hermes S. Pascual v. Esperanza C. Pascual-Bautista, et al.*, GR 84240, Mar. 25, 1992, is apropos. In the case at bar, petitioners Olivia and Hermes both surnamed Pascual are the acknowledged natural children of the late Eligio Pascual, the latter being the full-blood brother of the decedent Don Andres Pascual.

Don Andres Pascual died intestate on Oct. 12, 1973 without any issue, legitimate, acknowledged natural, adopted or spurious children. Adela Soldevilla de Pascual, the surviving spouse of the late Don Andres Pascual, executed an affidavit, to the effect that according to her own knowledge, Eligio Pascual is the younger full-blood brother of her late husband to belie the statement made by the oppositors, that they are not among the known heirs of the deceased Don Andres.

The main issue to be resolved in the case at bar is whether or not Article 992 of the Civil Code of the Philippines, can be

interpreted to exclude recognized natural children from the inheritance of the deceased.

Petitioners contend that they do not fall squarely within the purview of Article 992 and of the doctrine laid down in *Diaz v. IAC* (150 SCRA 645 [1987]) because being acknowledged natural children, their illegitimacy is not due to the subsistence of a prior marriage when such children were under conception. Otherwise stated, they say the term “illegitimate” children as provided in Article 992 must be strictly construed to refer only to spurious children.

Upon the other hand, private respondents maintain that herein petitioners are within the prohibition of Article 992 of the Civil Code and the doctrine laid down in *Diaz v. IAC* is applicable to them.

Pertinent thereto, the Supreme Court, speaking thru Justice Edgardo L. Paras, cited Article 992 of the Civil Code which provides: “An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother, nor shall such children or relatives inherit in the same manner from the illegitimate child.”

The issue in the case at bar, said the Court, had already been laid to rest in the aforecited *Diaz v. IAC*, where this Court, also speaking through the *ponencia* of Justice Paras, ruled: “Article 992 of the Civil Code provides a barrier or iron curtain in that it prohibits absolutely a succession *ab intestato* between the illegitimate child and the legitimate children and relatives of the father or mother of said legitimate child. They may have a natural tie of blood but this is not recognized by law for the purposes of Article 992. Between the legitimate family and illegitimate family, there is presumed to be an intervening antagonism and incompatibility. The illegitimate child is disgracefully looked down upon by the legitimate family; the family is in turn hated by the illegitimate child; the latter considers the privileged condition of the former, and the resources of which it is thereby deprived; the former, in turn, sees in the illegitimate child nothing but the product of sin, palpable evidence of a blemish broken in life; the law does no more than recognize this truth, by avoiding further grounds of resentment.”

In the case at bar, clearly Eligio Pascual is a legitimate child but petitioners are his illegitimate children. Thus, applying the above doctrine of *Diaz v. IAC* to the subject case, respondent IAC did not err in holding that petitioners cannot represent their father Eligio Pascual in the succession of the latter to the intestate estate of the decedent Andres Pascual, full blood brother of their father.

It may be said that the law may be harsh but that is the law (*DURA LEX SED LEX*).

(5) Cases

Mossesgeld v. CA **GR 111455, Dec. 23, 1998, 101 SCAD 928**

ISSUE: Whether or not *mandamus* lies to compel the Local Civil Registrar to register a certificate of live birth of an illegitimate child using the alleged father's surname where the latter admitted paternity?

HELD: *Mandamus* will not lie to compel the local civil registrar to register the certificate of live birth of an illegitimate child using the father's surname, even with the consent of the latter. *Mandamus* does not lie to compel the performance of an act prohibited by law.

Under Art. 176 of the Family Code which 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 the Family Code," such is the rule regardless of whether or not the father admits paternity. The putative father, though a much married man, may legally adopt his own illegitimate child and in such case, the child shall be considered a legitimate child of the adopter entitled to use his surname.

The Family Code has effectively repealed the provisions of Art. 366 of the Civil Code 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.

Leonardo v. CA
410 SCRA 446 (2003)

An illegitimate child born AFTER the effectivity of the Family Code has *no* right to use her father's surname.

The rule applies EVEN IF petitioner's father admits paternity.

[NOTE: Art. 176 of the Family Code repealed Title XIII, Book I of the new Civil Code regarding the Use of Surnames. (*Leonardo v. CA, 410 SCRA 446 {2003}*).].

Chapter 4

LEGITIMATED CHILDREN

Art. 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)

COMMENT:

Legitimated Child Defined

An illegitimate child who is given the rights of a legitimate child, provided the following requisites are present:

- (a) Conceived *and* born outside wedlock of parents who at the time of the *conception* of the child, were *not disqualified* by any impediment to *marry each other*. Being a Catholic priest is not an impediment. (*In Re: Enriquez, 29 Phil. 167*).
- (b) A subsequent valid marriage between the parents [*NOTE: If a marriage is voidable but subsequently annulled, the legitimation remains valid — for after all, a voidable marriage is valid before it is annulled.*]

NOTE: Express recognition of the child is not required.

Art. 178. Legitimation shall take place by a subsequent valid marriage between parents. The annulment of a voidable marriage shall not affect the legitimation. (270a)

COMMENT:

The operative act of legitimation is the subsequent valid marriage between the parents of the natural child or children. The annulment of such marriage which may be voidable will not destroy the legitimation of the child or children which, by the operative act of marriage, had already taken effect. In short, "the annulment of a voidable marriage shall not affect the legitimation." (*Art. 178, 2nd [and last] sentence*).

Art. 179. Legitimated children shall enjoy the same rights as legitimate children. (272a)

COMMENT:

Legitimated children shall have the same status and rights of legitimate children, and with such rights enjoyed as of the time of their birth.

Art. 180. The effects of legitimation shall retroact to the time of the child's birth. (273a)

COMMENT:

Because the act of legitimation produces effects as of the child's birth, for legal purposes, the child is deemed born a legitimate child. Thus, a legitimated child has now a right to participate in a succession opened before the marriage. This is because legitimation, as pointed out by Art. 180, retroacts to the time of the child's birth.

Art. 181. The legitimation of children who died before the celebration of the marriage shall benefit their descendants. (274)

COMMENT:

The former natural child who has been *legitimated* can now inherit by right of representation. He can represent his

deceased father in matters of succession. (*Obispo v. Obispo*, 99 Phil. 960). It is unusual for a legitimated child to use his mother's surname, instead of his father's, if really, he has been legitimated. (*Rodriguez v. Rejos*, 97 Phil. 659).

Art. 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)

COMMENT:

This is done by those prejudiced in their rights within 5 years from the time their cause of action accrues.

Title VII

ADOPTION

Art. 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, EO 91 and PD 603)

COMMENT:

(1) 'Adoption' Defined

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. In the case of *Prasnick v. Republic*, 98 *Phil.* 665, the Supreme Court, thru Mr. Justice Felix Angelo Bautista, held that 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.

The philosophy behind adoption statutes is to promote the welfare of the child and every reasonable intendment should be sustained to promote that objective.

In *Republic of the Phils. v. Hon. Zenaida Elepano*, GR 92542, Oct. 15, 1991, the Supreme Court, speaking thru Justice Edgardo L. Paras, held that “private respondent’s adoption of the minors shall redound to the best interests of the latter.”

On Jan. 3, 1990, private respondent Corazon Santos Punsalan filed a verified petition for adoption before the Regional Trial Court of Calocan City, Branch CXXVIII praying that after due notice and hearing, the minors Pinky Gonzales Punsalan, the daughter of her full blood brother, and Ellyn Mae Punzalan Urbano, the daughter of her full blood sister, be declared her daughters by adoption for all intents and purposes. On Jan. 5, 1990, however, private respondent filed a “MOTION FOR TAKING OF DEPOSITION” on the ground that she received an urgent call from the United Nations Office in Geneva, Switzerland requiring her to report for work on Jan. 17, 1990, so much so that she will not be able to testify at the hearing of her petition yet to be scheduled by the respondent judge. On Jan. 8, 1990, the respondent judge granted the motion and ordered that notice of the taking of the deposition on Jan. 12, 1990 at 10:00 a.m. be furnished to the Office of the Solicitor-General (OSG) (the only known oppositor in the case). On the same date, the respondent judge issued an order setting the hearing for the petition for adoption on Feb. 27, 1990 at 10:00 a.m. and directed the publication of the said order once a week for three (3) consecutive weeks in a newspaper of general circulation in Metro Manila. A copy of said order as well as a copy of the said petition for adoption was likewise sent to the OSG. On Jan. 12, 1990, private respondent’s deposition was taken. Despite notice, no representative from the OSG appeared to oppose the taking of the deposition. The OSG, however, subsequently filed an “Opposition to the Deposition,” averring that Section 1 of Rule 24 of the Rules of Court allows deposition by leave of Court after jurisdiction has been obtained over any defendant or property subject of the action. Since the jurisdictional requirement of publication has not been complied with, the OSG goes on to argue, the lower court had not yet acquired jurisdiction over the defendant so much so that the taking of the deposition cannot yet be allowed at this stage. On Feb. 14, 1990, the respondent judge denied the said Opposition.

Meanwhile, on Feb. 27, 1990, after the notice of the hearing for the petition for adoption had been duly published in *The Manila Chronicle* in accordance with law, counsel for private respondent presented evidence consisting of testimonies of witnesses and documentary exhibits showing: that private respondent is a resident of Caloocan City, but is presently residing at 36 Avenue del tilleuis, 1203 Geneva, Switzerland where she is employed by the United Nations as Statistical Assistant with a monthly salary of 7,500 Swiss Franc; that she seeks to adopt as her children the minors Pinky Gonzales Punsalan and Ellyn Mae Punsalan Urbano who are her nieces of the full blood; that she has been taking care of said minors for the past several years by way of giving them moral, material and spiritual support; that they have grown to love one another; that the parents by nature of the said minors as well as the minors themselves have given their consent to the adoption; and that the Department of Social Welfare and Development social workers have favorably recommended the adoption. Again, despite notice, the OSG failed to appear in the said hearing and in all the subsequent hearings for the petition for adoption. On July 12, 1990, the respondent judge granted the petition for adoption. (*p. 99, Rollo*). The OSG filed a motion for reconsideration of the aforesaid decision but the respondent judge denied the same.

In brief, the argument of the OSG is that depositions should not be allowed in adoption proceedings until the publication requirement has been fully complied with. In support of its position, the OSG cites Rule 24, Section 1 of the Rules of Court, which provides: "Depositions pending action, when may be taken. By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories."

Finding the petition bereft of any merit, the Supreme Court held that the rule cited by the OSG is inapplicable to the case at bar. For while it is true that in an action *in personam*, personal service of summons within the forum or

voluntary appearance in the case is essential for the court to acquire jurisdiction over the person of the defendant, in an adoption case which involves the status of a person, there is no particular defendant to speak of since the action is one *in rem*. In such case, jurisdiction over the person of the defendant is a non-essential condition for the taking of a deposition for the jurisdiction of the court is based on its power over the *res*, to render judgment with respect to such "thing" (or status, as in this case) so as to bar indifferently all who might be minded to make an objection against the right so established.

Indeed, publication of the scheduled hearing for the petition for adoption is necessary for the validity of a decree of adoption but not for the purpose merely of taking a deposition. In taking a deposition, no substantial rights are affected since depositions may or may not be presented or may even be objected to when formally offered as evidence at the trial of the main case later on.

In the instant case, the high court finds no abuse of discretion committed by the respondent judge in allowing the taking of private respondent's deposition. It said: "Due to urgent and compelling reasons beyond her control, private respondent could not be present to testify at the trial of the main case for adoption. The OSG, however, was notified of the scheduled taking of the deposition, as well as of all the hearings of the petition for adoption, but the OSG chose not to attend *ALL* the said hearings, without explanation. The OSG, therefore, has no reason to invoke lack of procedural due process."

Lazatin v. Hon. Judge Campos
L-43955-56, July 30, 1979
92 SCRA 250

Adoption 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. (*Valverde 473*). The fact of adoption is never presumed but must be affirmatively proved by the person claiming its existence. The destruction by fire of a public building in which the adoption papers would have been filed if existent, does not give rise to a presumption of adoption, nor is the destruction of the records

of an adoption proceeding to be presumed. On the contrary, the absence of a record of adoption has been said to evolve a presumption of its non-existence. Where an adoption is effected by a court order, the records of such court constitute the evidence by which such adoption may be established.

Santos v. Republic
L-22523, Sep. 28, 1967

FACTS: A 32-year-old wife and her husband wanted to adopt the wife's sickly four-year-old brother who had been reared by them since the time they were entrusted with his custody by their common parents. With the exception of the relationship, there appeared to be no disqualification.

ISSUE: May the legal adoption prosper?

HELD: Yes, because of the following reasons:

- (a) the child's welfare is the basic criterion;
- (b) there exists no legal disqualification (there is in fact no legal provision prohibiting relatives by blood or affinity from adopting one another);
- (c) the fact that a dual relationship will result (sister-brother, *by nature*; parent and child, *by fiction of law*) is *immaterial*. After all, such double relationship may occur in other cases, *e.g.*, persons who are already related by blood or affinity may still marry, as long as the relationship does *not* fall under the cases where a marriage is prohibited by law.

Minister Mamita Pardo de Tavera, et al. v.
Judge Cacdac, Jr., et al.
GR 76290, Nov. 23, 1988

FACTS: The Gordons sought to adopt the minor, Anthony, a natural child of Adoracion. The petition was set for hearing, with notice published in a newspaper of general circulation. On the date of the hearing, nobody appeared to oppose the petition. The Solicitor General failed to send a representative for the State. So, the trial court appointed the branch clerk of court as commissioner to receive additional evidence.

The Gordons then wrote the MSSD for a travel clearance for Anthony. The Chief of the Passport Division refused to issue a passport without a case study of the MSSD. So the Gordons asked the Court to compel the Passport Division to issue the passport.

The Trial Court ordered the Chief of the Special Child and Welfare Unit of the Ministry of Social Services and Development to issue a travel clearance in favor of the adopted minor. The Department of Social Services challenged this order on the ground that it was issued with grave abuse of discretion.

The Gordons, as British citizens, are allowed by their home country to adopt foreign babies specifically from the Philippines. They are financially secure and can provide for the child's education and support. Anthony's mother gave her consent to the adoption. The case study report of the trial court's social worker favorably recommended the adoption. The trial court then concluded that the Gordons were qualified to adopt, and declared Anthony the lawfully adopted child of the Gordons.

HELD: On the strength of the foregoing circular, the challenged decision of the trial court has to be upheld. Prior to Executive Order No. 91, issued on 17 Dec. 1986, the Social Workers in Regional Trial Courts had authority to conduct a case study of a child to be adopted. While Juvenile and Domestic Relations Courts have been abolished by Batas Pambansa Blg. 129, their functions have been merged with Regional Trial Courts, which were then provided with social workers to assist the court in handling Juvenile and Domestic Relations cases.

Prior to Executive Order 91, amending the Child and Youth Welfare Code, the MSSD did not have the exclusive authority to make a case study in adoption cases. The MSSD did not allege that the social worker report was faulty or incorrect. It thus appears that the objective of trial custody had been substantially achieved, which is, "to assess the adjustment and emotional readiness of the adopting parents for the legal union." (*Art. 35, Presidential Decree 603*). As far as the delegation of the reception of evidence to a commissioner is concerned, that is permissible in the absence of any opposition.

The MSSD could have appealed through the Solicitor General when it learned of the decision, but it did not. Its opposition to the issuance of a travel clearance cannot be equated with a motion for reconsideration, the request for a clearance being directed towards the implementation of the Trial Court's judgment. Its petition for *certiorari* cannot be a substitute for a lost appeal. Even if the Trial Court's judgment was erroneous, the same would not be correctible by *certiorari*, much less can such an extraordinary writ be availed of for the annulment of a final judgment, exclusive appellate jurisdiction over which appertains to the Court of Appeals.

Tomasa Vda. De Jacob v. CA
GR 135216, Aug. 19, 1999

The burden of proof of adoption is upon the person claiming such relationship. This, respondent Pilapil failed to do. Moreover, the evidence presented by petitioner shows that the alleged adoption is a sham.

Social Security System v. Aguas
483 SCRA 383 (2006)

A record of birth is merely *prima facie* evidence of the facts contained therein.

Only "legally-adopted" children are considered dependent children.

(2) Nature of Adoption Proceedings

Adoption proceedings are IN REM, so there must be jurisdiction over the *subject matter*, the *parties*, and the *res* (the personal status of the would-be adopter and the would-be adopted). (*Ellis v. Republic, L-16922, Apr. 20, 1963, 7 SCRA 962*). In view of the *in rem* nature of the action, constructive notice by publication is allowed. (*See Santos v. Aranzanso, L-23828, Feb. 28, 1966*). The Court does not acquire jurisdiction however if the name of the person sought to be adopted is not the name recorded in the Civil Register. (*See Cruz v. Republic, L-20927, July 26, 1966*).

(3) Qualifications of Adopter

- (a) he must be of age (at least 18 years old);
- (b) in possession of *full civil capacity* and *legal rights*;
- (c) in a position to *support* and *care* for his children (legitimate or illegitimate) in keeping with the means of the family;
- (d) *generally* at least 16 years older than the adopted.

(4) Generally, only minors may be adopted

Exception — those of major age may be adopted if allowed under this Title.

(5) When Adopter May Be Less than 16 Years Older than the Adopted

- (a) When the adopter is the parent *by nature* of the adopted.
- (b) When the adopter is the spouse of the legitimate parent of the person to be adopted.

(6) Child's Welfare is Paramount

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 7 years), will not apply where the court finds compelling reasons to rule otherwise. In all controversies regarding the custody of minor, the foremost consideration is the moral, physical and social welfare of the child concerned, taking into account the resources and moral as well as social standing of the contending parents. Never has the Supreme Court deviated from the criterion. (*Cervantes v. Fajardo*, GR 79955, Jan. 27, 1989).

Cervantes v. Fajardo
GR 79955, Jan. 27, 1989

FACTS: The minor Angelie was born to Conrado and Gina, who are common-law husband and wife. Conrado and Gina of-

ferred the child for adoption to Gina's sister and brother-in-law, Zenaida and Nelson, who took care and custody of the child when she was barely two weeks old. An affidavit of consent to the adoption of the child by Zenaida and Nelson was executed by Gina. The petition for adoption filed by Zenaida and Nelson was granted by the court.

Earlier, Nelson and Zenaida received a letter from Conrado and Gina demanding to be paid P150,000, otherwise they would take back their child. The former refused to accede to the demand. As a result, while Nelson and Zenaida were out at work, Gina took the child. When Zenaida and Nelson demanded the return of the child, Gina refused saying that she had no desire to give up her child for adoption and that the affidavit of consent to the adoption was not fully explained to her. She sent word however, that she will return the child if she were paid P150,000.

HELD: Conrado's open cohabitation with Gina, his common-law wife will not accord the minor that desirable atmosphere where she can grow and develop into an upright and moral-minded person. Besides, Gina had previously given birth to another child by another married man with whom she had lived for almost three years but who eventually left her. For a minor to grow up with a sister whose father is not her true father, could also affect the moral outlook and values of said minor. Upon the other hand, Zenaida and Nelson are legally married, appear to be morally, physically, financially and socially capable of supporting the minor and giving her a future better than what the natural mother, who is not only jobless but also maintains an illicit relation with a married man, can most likely give her.

The minor has been legally adopted by Zenaida and Nelson with the full knowledge and consent of Conrado and Gina. 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 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.

(7) Procedure Relative to Adoption

OCA v. Gines
AM RTJ-92-802, July 5, 1993
43 SCAD 76

The only proper and authorized procedure relative to adoption is outlined in the rule on adoption itself. By its very nature and purpose, a decree of adoption can never be made to retroact.

Art. 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, EO 91 and PD 603)

COMMENT:**(1) Re Guardians**

Guardians may adopt their wards only:

(a) *after* approval of their final accounts;

(b) the final accounts must have been rendered upon the termination of the guardianship relation.

(2) Conviction of a Crime Involving Moral Turpitude

There must be a *final* judgment of conviction. A person convicted in the first instance may after all be eventually acquitted.

(3) Re Aliens

- (a) The person to be adopted here must be a relative by *consanguinity* and the adopter must be a *former Filipino citizen*.

Republic v. Vergara
80 SCAD 869
(1997)

Philippine law does not provide for an alien who is married to a former Filipino 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.

- (b) An alien married to a Filipino wife wants to adopt the latter's *illegitimate* child. Will the adoption be allowed? No, because the person to be adopted is the illegitimate (not legitimate) child of the wife.
- (c) The adoption here must be made *jointly* by the alien and the Filipino spouse (the person to be adopted must be a relative by consanguinity of the Filipino).
- (4) Even aliens who cannot ordinarily adopt may do so, if permitted in accordance with the rules on *inter-country* adoption as may be *provided* by law. (*See RA 8043*).

(5) Registrable But Ineffective

Maricada v. Aglubat
GR L-24006, Nov. 25, 1967

The status of adoption once created under the proper foreign law will be recognized in this country, except where public policy or the interests of its inhabitants forbid its enforcement and demand the substitution of the *lex fori* (foreign law).

In light thereof, an adoption created under the law of a foreign country is entitled to registration in the corresponding civil register of the Philippines. Nevertheless, it must be borne in mind that the effects of such adoption shall be governed by the laws of this country.

(6) Some Significant Cases

Bobanovic v. Montes GR 71370, July 7, 1986

Where the adopted is a non-resident alien, he must submit to a family, case study in his home State. Where such study is favorable, then the judgment of adoption by our local court shall be given effect and the rule that the adopted child and adopting parents must live together can apply and *mandamus* will lie for issuance of a travel permit to the child to enable the latter to join the adopting parents abroad.

Republic v. CA and Sps. Hughes GR 100835, Oct. 26, 1993 45 SCAD 496

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 obviously cannot be considered inconsequential to the parties.

This Court is not unmindful of the possible benefits that an adoption can bring not so much for the prospective adopting parents as for the adopted children themselves. In proceedings of this nature, paramount consideration is given to the physical, moral, social, and intellectual welfare of the adopted for whom the law on adoption has in the first place been designed. When, however, the law is clear and no other choice is given, we must obey its full mandate.

Even then, we have to call the attention of the appropriate agencies concerned to the urgency of addressing the issue

on inter-country adoption, a matter that evidently is likewise espoused by the Family Code. (*Art. 184, last par.*).

Art. 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)**

COMMENT:

(1) **Generally, the Husband and Wife MUST JOINTLY Adopt**

Republic of the Phils. v. CA and Spouses Hughes
GR 100835, Oct. 26, 1993
45 SCAD 496

Art. 185 of the Family Code requires a joint adoption by the husband and the wife. This is a condition that must be read along with Art. 184.

Republic v. Toledano
GR 94147, June 8, 1994, 52 SCAD 124

The mandatory joint adoption by husband and wife 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.

Also, Art. 185 insures harmony between the spouses.

(2) Exceptions

(a) **When one spouse seeks to adopt her own illegitimate child.**

Example: A husband is married to a girl who has an *illegitimate* child. If the wife wants to adopt said child, must her husband also adopt the child?

ANSWER: No, because the child is *illegitimate*. Of course, if the husband wants to do so, he may join in the adoption.

- (b) When one spouse seeks to adopt the legitimate child of the other. Here the parent of the child cannot adopt anymore his own legitimate child, for the child is already legitimate, and nothing is gained by adopting his own *legitimate* child.

(3) Circular No. 12

Circular No. 12, dated October 2, 1986, directs Judges of the Regional Trial Courts hearing adoption cases:

(1) to notify the Ministry of Social Services and Development, thru its local agency, of the filing of adoption cases or the pendency thereof with respect to those cases already filed;

(2) to strictly comply with the requirement in Article 33 of Presidential Decree 603 that:

“No petition for adoption shall be granted unless the Department of Social Welfare or the Social Work and Counselling Division, in the case of Juvenile and Domestic Relations Courts (now defunct), has made a case study of the child to be adopted, his natural parents as well as the prospective adopting parents, and has submitted its report and recommendations on the matter to the court hearing such petition. The Department of Social Welfare shall intervene on behalf of the child if it finds, after such case study, that the petition should be denied.”

The Staff Assistant V (Social Worker) of the Regional Trial Courts, if any, shall coordinate with the Department of Social Welfare and Development representatives in the preparation and submittal of such case study.

(3) to personally hear all adoption cases and desist from the practice of delegating the reception of evidence of the petitioner to the clerk of court. (*Minister Mamita Pardo de Tavera, et al. v. Judge Cacdac, Jr., et al., GR 76290, Nov. 23, 1988*).

Art. 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, EO 91 and PD 603)

COMMENT:

(1) Exercise of Joint Parental Authority

Under Art. 186, joint parental authority is exercised by the spouses if: (1) husband and wife jointly adopt; or (2) one spouse adopts the legitimate child of the other.

(2) If Disagreement Ensues

In case there is disagreement in the exercise of such joint parental authority, the father's decision shall prevail, unless, of course, there is a judicial order to the contrary.

Art. 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)

COMMENT:

Par. 1 — here, the person to be adopted is already of legal age — but the conditions given must be present:

- (a) the person to be adopted must be a child by *nature* of the adopter or of the adopter's spouse;
- (b) the child, prior to the adoption, had been consistently considered and treated by the adopter as his or her own child during minority.

Par. 2 — here, the point is to avoid any official contact, direct or indirect with the country with which the Philippines does not have diplomatic relations. Thus, there is the perceived difficulty in terms of negotiating for protection of Filipino citizens in case of problems that necessitate the use of diplomatic channels.

Par. 3 — here, a restatement is made of a fundamental rule against double or multiple adoptions, for it is unnatural for a person to have two or more fathers or mothers.

Art. 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, EO 91 and PD 603)

COMMENT:

(1) Note

- (a) the consent must be written.
- (b) the age of ten (10).
- (c) the difference in requiring consent of:
 - 1) the legitimate or adopted children; and
 - 2) the illegitimate children (these must be living with the adopter and the latter's spouse).

(2) De Facto Guardian Can Give Consent in Adoption Cases**Robin Francis Rodley Duncan,
et al. v. CFI of Rizal
L-30576, Feb. 10, 1976**

FACTS: A child abandoned by his mother (and whose father is unknown), and left in the care of Atty. Corazon Velasquez, was sought to be adopted by a husband and his wife. Under Art. 340 of the Civil Code, the person supposed to give consent to the judicial adoption is “the parent, guardian, or person in charge of the person to be adopted.” Under Sec. 3, Rule 99, Revised Rules of Court, the person to consent is each of the known living parents, provided he or she has not abandoned the child. In the present problem, the mother had not contributed to the care and support of the child.

ISSUE: Would the written consent of Atty. Velasquez, who refuses to identify the mother of the child, suffice?

HELD (thru Mr. Justice Esguerra): Yes, the written consent of Atty. Velasquez is sufficient because she is the *de facto* guardian (person in charge) of the child. The identity and consent of the mother are immaterial under the circumstances in view of the mother’s abandonment of the child. There being no guardian *ad litem*, it is the guardian *de facto* who exercises *patria potestas*.

(3) The Consent in No. (5) Does Not Necessarily Mean that the Consenter is also Adopting the Child

Art. 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, PD 603)

COMMENT:

Set forth under Art. 189 are the effects of adoption.

**Cervantes v. Fajardo
GR 79955, Jan. 27, 1989**

A decree of adoption has the effect, *inter alia*, 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.

**Tamargo v. CA
GR 85044, June 3, 1992**

Parental authority is provisionally vested in the adopting parents during the period of trial custody, *i.e.*, before the issuance of a decree of adoption, precisely because the adopting parents are given actual custody of the child during such trial period.

In the instant case, the trial custody period either had not yet begun or had already been completed at the time of the air rifle shooting. In any event, actual custody of Adelberto was then with his natural parents, not the adopting parents.

Art. 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, PD 603)

COMMENT:

(1) The Article applies only in *legal* or *intestate* succession.

(2) Example of par. 1

An adopted child died intestate survived by his wife and by five (5) legitimate children. If the estate is P12 million, how should it be distributed?

ANSWER: The wife shall have the same right as each of the 5 legitimate children. Hence, the estate will be divided into 6 equal shares with each child inheriting P2 million. The wife shall also inherit P2 million.

(3) Example of par. 2

X and Y are the parents by nature of Z, who is eventually adopted by A. If Z dies with an intestate estate of P18 million, how will the estate be divided?

ANSWER: Half will go to the legitimate parents, so *X* and *Y* will get a total of P9 million (*i.e.*, half of the estate). So *X* and *Y* will get P4.5 million each; *A* the adopter, will inherit P9 million.

(4) Difference Between Paragraphs 3 and 4

In par. 3, the word OR is used (illegitimate children OR surviving spouse); in par. 4, AND is the word used. In par. 3, the estate is divided into 2 parts; in par. 4, 3 parts are involved.

(5) If the Only Survivors are the Adopters

In par. 5, if the only survivors are the adopters, they get the entire estate. Clearly, all indications point out that the adoption shall exclude collateral relatives of the adopted.

(6) When Only Collateral Relatives Survive

In par. 6, the rules are set forth in Arts. 1004-1010 of the Civil Code, *i.e.*, when only collateral relatives survive.

(7) Case

**De la Puerta v. CA
GR 77867, Feb. 6, 1990**

ISSUE: May the adopted represent his adopting parent in the latter's right to inherit from his (adopter) parents or ascendants?

HELD: If the adopting parent should die before the adopted child does, the latter cannot represent the former in the inheritance from the parents or ascendants of the adopter. The adopted child is not related to the deceased in that case, because the filiation created by fiction of law is exclusively between the adopter and the adopted. By adoption, the adopters can make for themselves an heir but they cannot make one for their kindred.

Art. 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, PD 603)

COMMENT:

- (1) The Article speaks of judicial rescission (or cancellation) of the adoption. Grounds – those for the *suspension* or *loss* of parental authority.**
- (2) When adopted child can bring the action by himself –**
When he is at least 18 years of age.
Grounds – same as those for disinheriting an ascendant.

Art. 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, PD 603)**

COMMENT:

The Article speaks of judicial rescission (or cancellation) of the adoption on the *part of the adopters*.

Art. 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 proceeding 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 surname prior to the adoption.

The court shall accordingly order the amendment of the records in the proper registries. (42a, PD 603)

COMMENT:

(1) Reinstatement of Parental Authority

This speaks of *reinstatement* of the parental authority of the parents by nature (unless disqualified or incapacitated).

(2) Effects of Judicial Rescission of Adoption

The second paragraph deals with the effects of judicial rescission of the adoption. Note also the amendment of the record in the proper registries.

(3) Republic Act 8043

AN ACT ESTABLISHING THE RULES TO GOVERN INTER-COUNTRY ADOPTION OF FILIPINO CHILDREN, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Article I

GENERAL PROVISIONS

SECTION 1. *Short Title.* — This Act shall be known as the “*Inter-Country Adoption Act of 1995.*”

SEC. 2. *Declaration of Policy.* — 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 interest, and shall serve and protect his/her fundamental rights.

SEC. 3. *Definition of Terms.* — As used in this Act, the term:

a) *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.

b) *Child* means a person below fifteen (15) years of age unless sooner emancipated by law.

c) *Department* refers to the Department of Social Welfare and Development of the Republic of the Philippines.

d) *Secretary* refers to the Secretary of the Department of Social Welfare and Development.

e) *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.

f) *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.

g) *Matching* refers to the judicious pairing of the adoptive child and the applicant to promote a mutually satisfying parent-child relationship.

h) *Board* refers to the Inter-Country Adoption Board.

Article II

INTER-COUNTRY ADOPTION BOARD

SEC. 4. *The Inter-Country Adoption Board.* — There is hereby created the Inter-Country Adoption Board, hereinafter referred to as the Board, to act as the central authority in matters relating to inter-country adoption. It shall act as the policy-making body for purposes of carrying out the provisions of this Act, in consultation and coordination with the Department, the different child-care and placement agencies, adoptive agencies as well as non-governmental organizations engaged in child-care and placement activities. As such, it shall:

a) Protect the Filipino child from abuse, exploitation trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child;

b) Collect, maintain, and preserve confidential information about the child and the adoptive parents;

c) Monitor, follow up, and facilitate completion of adoption of the child through authorized and accredited agency;

d) Prevent improper financial or other gain in connection with an adoption and deter improper practices contrary to this Act.

e) Promote the development of adoption services including post-legal adoption;

f) License and accredit child-caring/placement agencies and collaborate with them in the placement of Filipino children;

g) Accredit and authorize foreign adoption agency in the placement of Filipino children in their own country; and

h) Cancel the license to operate and blacklist the child-caring and placement agency or adoptive agency involved from the accreditation list of the Board upon a finding of violation of any provision under this Act.

SEC. 5. *Composition of the Board.* — The Board shall be composed of the Secretary of the Department as *ex officio* Chair-

man, and six (6) other members to be appointed by the President for a nonrenewable term of six (6) years: *Provided*, That there shall be appointed one (1) psychiatrist or psychologist, two (2) lawyers who shall have at least the qualifications of a regional trial court judge, one (1) registered social worker and two (2) representatives from non-governmental organizations engaged in child-caring and placement activities. The members of the Board shall receive a *per diem* allowance of One thousand five hundred pesos (P1,500) for each meeting attended by them. *Provided, further*, That no compensation shall be paid for more than four (4) meetings a month.

SEC. 6. *Powers and Functions of the Board.* — The Board shall have the following powers and functions:

- a) to prescribe rules and regulations as it may deem reasonably necessary to carry out the provisions of this Act, after consultation and upon favorable recommendation of the different agencies concerned with child-caring, placement, and adoption;
- b) to set the guidelines for the convening of an Inter-Country Adoption Placement Committee which shall be under the direct supervision of the Board;
- c) to set the guidelines for the manner by which selection/matching of prospective adoptive parents and adoptive child can be made;
- d) to determine a reasonable schedule of fees and charges to be exacted in connection with the application for adoption;
- e) to determine the form and contents of the application for inter-country adoption.
- f) to formulate and develop policies, programs and services that will protect the Filipino child from abuse, exploitation, trafficking and other adoption practice that is harmful, detrimental and prejudicial to the best interest of the child;
- g) to institute systems and procedures to prevent improper financial gain in connection with adoption and deter improper practices which are contrary to this Act;

h) to promote the development of adoption services, including post-legal adoption services;

i) to accredit and authorize foreign private adoption agencies which have demonstrated professionalism, competence and have consistently pursued non-profit objectives to engage in the placement of Filipino children in their own country: *Provided*, That such foreign private agencies are duly authorized and accredited by their own government to conduct inter-country adoption: *Provided, however*, That the total number of authorized and accredited foreign private adoption agencies shall not exceed one hundred (100) a year;

j) to take appropriate measures to ensure confidentiality of the records of the child, the natural parents and the adoptive parents at all times;

k) to prepare, review or modify, and thereafter, recommend to the Department of Foreign Affairs, Memoranda of Agreement respecting inter-country adoption consistent with the implementation of this Act and its stated goals, entered into, between and among foreign governments, international organizations and recognized international non-governmental organizations;

l) to assist other concerned agencies and the courts in the implementation of this Act, particularly as regards coordination with foreign persons, agencies and other entities involved in the process of adoption and the physical transfer of the child; and

m) to perform such other functions on matters relating to inter-country adoption as may be determined by the President.

Article III

PROCEDURE

SEC. 7. Inter-Country Adoption as the Last Resort. — 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. Towards this end, the Board shall set up the guidelines to ensure

that steps will be taken to place the child in the Philippines before the child is placed for inter-country adoption: *Provided, however,* That the maximum number that may be allowed for foreign adoption shall not exceed six hundred (600) a year for the first five (5) years.

SEC. 8. *Who May Be Adopted.* — Only a legally free child may be the subject of inter-country adoption. In order that such child may be considered for placement, the following documents must be submitted to the Board:

- a) Child study;
- b) Birth certificate/foundling certificate;
- c) Deed of voluntary commitment/decreed of abandonment/death certificate of parents;
- d) Medical evaluation/history;
- e) Psychological evaluation, as necessary; and
- f) Recent photo of the child.

SEC. 9. *Who May Adopt.* — 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 counselor 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. 10. *Where to file Application.* — 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.

The application shall be supported by the following documents written and officially translated in English:

- 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 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. 11. *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. The clearance, as issued by the Board, with the copy of the minutes of the meetings, shall form part of the records of the child to be adopted. When the Board is ready to transmit the Placement Authority to the authorized and accredited inter-country adoption agency and all the travel documents of the child are ready, the adoptive parents, or any one of them, shall personally fetch the child in the Philippines.

SEC. 12. *Pre-adoptive Placement Costs.* — The applicant(s) shall bear the following costs incidental to the placement of the child:

a) The cost of bringing the child from the Philippines to the residence of the applicant(s) abroad, including all travel expenses within the Philippines and abroad; and

b) The cost of passport, visa, medical examination and psychological evaluation required, and other related expenses.

SEC. 13. *Fees, Charges and Assessments.* — Fees, charges, and assessments collected by the Board in the exercise of its functions shall be used solely to process applications for inter-country adoption and to support the activities of the Board.

SEC. 14. *Supervision of Trial Custody.* — The governmental agency or the authorized and accredited agency in the country of the adoptive parents which filed the application for inter-country adoption shall be responsible for the trial custody and the care of the child. It shall also provide family counseling and other related services. The trial custody shall be for a period of six (6) months from the time of placement. Only after the lapse of the period of the trial custody shall a decree of adoption be issued in the said country, a copy of which shall be sent to the Board to form part of the records of the child.

During the trial custody, the adopting parent(s) shall submit to the governmental agency or the authorized and accredited agency, which shall in turn transmit a copy to the Board, a progress report of the child's adjustment. The progress report shall be taken into consideration in deciding whether or not to issue the decree of adoption.

The Department of Foreign Affairs shall set-up a system by which Filipino children sent abroad for trial custody are monitored and checked as reported by the authorized and accredited inter-country adoption agency as well as the repatriation to the Philippines of the Filipino child whose adoption has not been approved.

SEC. 15. *Executive Agreements.* — The Department of Foreign Affairs, upon representation of the Board, shall cause the preparation of Executive Agreements with countries of the foreign adoption agencies to ensure the legitimate concurrence of said countries in upholding the safeguards provided by this Act.

Article IV

PENALTIES

SEC. 16. *Penalties.* — a) Any person who shall knowingly participate in the conduct or carrying out of an illegal adoption, in violation of the provisions of this Act, shall be punished with a penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and/or a fine of not less than Fifty thousand pesos (P50,000), but not more than Two hundred thousand pesos (P200,000), at the discretion of the court. For purposes of this Act, an adoption is illegal if it is effected in any manner contrary to the provisions of this Act or established State policies, its implementing rules and regulations, executive agreements, and other laws pertaining to adoption. Illegality may be presumed from the following acts:

- 1) consent for adoption was acquired through, or attended by coercion, fraud, improper material inducement;
- 2) there is no authority from the Board to effect adoption;

3) the procedures and safeguards placed under the laws for adoption were not complied with; and

4) the child to be adopted is subjected to, or exposed to danger, abuse and exploitation.

b) Any person who shall violate established regulations relating to the confidentiality and integrity of records, documents and communications of adoption applications, cases and processes shall suffer the penalty of imprisonment ranging from one (1) year and one (1) day to two (2) years, and/or a fine of not less than Five thousand pesos (P5,000), but more than Ten thousand pesos (P10,000), at the discretion of the court.

A penalty lower by two (2) degrees than that prescribed for the consummated felony under this article shall be imposed upon the principles of the attempt to commit any of the acts herein enumerated.

Acts punishable under this Article, when committed by a syndicate or where it involves two or more children shall be considered as an offense constituting child trafficking and shall merit the penalty of *reclusion perpetua*.

Acts punishable under this Article are deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any of the unlawful acts defined under this Article. Penalties as are herein provided shall be in addition to any other penalties which may be imposed for the same acts punishable under other laws, ordinances, executive orders, and proclamations.

SEC. 17. *Public Officers as Offenders.* — Any government official, employee or functionary who shall be found guilty of violating any of the provisions of this Act, or who shall conspire with private individuals shall, in addition to the above-prescribed penalties, be penalized in accordance with existing civil service laws, rules and regulations: *Provided*, That upon the filing of a case, either administrative or criminal, said government official, employee or functionary concerned shall automatically suffer suspension until the resolution of the case.

Article V**FINAL PROVISION**

SEC. 18. *Implementing Rules and Regulations.* — The Inter-Country Adoption Board, in coordination with the Council for the Welfare of Children, the Department of Foreign Affairs, and the Department of Justice, after due consultation with agencies involved in child-care and placement, shall promulgate the necessary rules and regulations to implement the provisions of this Act within six (6) months after its effectivity.

SEC. 19. *Appropriations.* — The amount of Five million pesos (P5,000,000) is hereby appropriated from the proceeds of the Lotto for the initial operations of the Board and subsequently the appropriations of the same shall be included in the General Appropriations Act for the year following its enactment.

SEC. 20. *Separability Clause.* — If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SEC. 21. *Repealing Clause.* — Any law, decree, executive order, administrative order or rules and regulations contrary to, or inconsistent with the provisions of this Act are hereby repealed, modified or amended accordingly.

SEC. 22. *Effectivity Clause.* — This Act shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

Approved: June 7, 1995.

(4) Republic Act 8552**AN ACT ESTABLISHING THE RULES AND POLICIES
ON THE DOMESTIC ADOPTION OF FILIPINO
CHILDREN AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

Article I
GENERAL PROVISIONS

SECTION 1. *Short Title.* — This Act shall be known as the “*Domestic Adoption Act of 1998.*”

SEC. 2. *Declaration of Policies.* —

(a) It is hereby declared the policy of the State to ensure that every child remains under the care and custody of his/her parent(s) and be provided with love, care, understanding and security towards the full and harmonious development of his/her personality. Only when such efforts prove insufficient and no appropriate placement or adoption within the child’s extended family is available shall adoption by an unrelated person be considered.

(b) In all matters relating to the care, custody and adoption of a child, his/her interest shall be the paramount consideration in accordance with the tenets set forth in the United Nations (UN) Convention on the Rights of the Child; UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption, Nationally and Internationally; and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. Toward this end, the State shall provide alternative protection and assistance through foster care or adoption for every child who is neglected, orphaned, or abandoned.

(c) It shall also be a State policy to:

(i) Safeguard the biological parent(s) from making hurried decisions to relinquish his/her parental authority over his/her child;

(ii) Prevent the child from unnecessary separation from his/her biological parent(s);

(iii) Protect adoptive parent(s) from attempts to disturb his/her parental authority and custody over his/her adopted child.

Any voluntary or involuntary termination of parental authority shall be administratively or judicially declared

so as to establish the status of the child as “legally available for adoption” and his/her custody transferred to the Department of Social Welfare and Development or to any duly licensed and accredited child-placing or child-caring agency, which entity shall be authorized to take steps for the permanent placement of the child;

(iv) Conduct public information and educational campaigns to promote a positive environment for adoption;

(v) Ensure that sufficient capacity exists within government and private sector agencies to handle adoption inquiries, process domestic adoption applications, and offer adoption related services including, but not limited to, parent preparation and post-adoption education and counseling; and

(vi) Encourage domestic adoption so as to preserve the child’s identity and culture in his/her native land, and only when this is not available shall inter-country adoption be considered as a last resort.

SEC. 3. *Definition of Terms.* — For purposes of this Act, the following terms shall be defined as:

(a) “*Child*” is a person below eighteen (18) years of age.

(b) “*A child legally available for adoption*” refers to a child who has been voluntarily or involuntarily committed to the Department or to a duly licensed and accredited child-placing or child-caring agency, freed of the parental authority of his/her biological parent(s) or guardian or adopter(s) in case of rescission of adoption.

(c) “*Voluntarily committed child*” is one whose parent(s) knowingly and willingly relinquishes parental authority to the Department.

(d) “*Involuntarily committed child*” is one whose parent(s), known or unknown, has been permanently and judicially deprived of parental authority due to abandonment; substantial, continuous, or repeated neglect, abuse, or incompetence to discharge parental responsibilities.

(e) “*Abandoned child*” refers to one who has no proper parental care or guardianship or whose parent(s) has deserted him/her for a period of at least six (6) continuous months and has been judicially declared as such.

(f) “*Supervised trial custody*” is a period of time within which a social worker oversees the adjustment and emotional readiness of both adopter(s) and adoptee in stabilizing their final relationship.

(g) “*Department*” refers to the Department of Social Welfare and Development.

(h) “*Child-placing agency*” is a duly licensed and accredited agency by the Department to provide comprehensive child welfare services including, but not limited to, receiving applications for adoption, evaluating the prospective adoptive parents, and preparing the adoption home study.

(i) “*Child-caring agency*” is a duly licensed and accredited agency by the Department that provides twenty-four (24)-hour residential care services for abandoned, orphaned, neglected, or voluntarily committed children.

(j) “*Simulation of birth*” is the tampering of the civil registry making it appear in the birth records that a certain child was born to a person who is not his/her biological mother, causing such child to lose his/her true identity and status.

Article II

PRE-ADOPTION SERVICES

SEC. 4. *Counseling Services*. — The Department shall provide the services of licensed social workers to the following:

(a) *Biological Parent(s)*. — Counseling shall be provided to the parent(s) before and after the birth of his/her child. No binding commitment to an adoption plan shall be permitted before the birth of his/her child. A period of six (6) months shall be allowed for the biological parent(s) to reconsider any decision to relinquish his/her child for adoption before the decision becomes

irrevocable. Counseling and rehabilitation services shall also be offered to the biological parent(s) after he/she has relinquished his/her child for adoption.

Steps shall be taken by the Department to ensure that no hurried decisions are made and all alternatives for the child's future and the implications of each alternative have been provided.

(b) *Prospective Adoptive Parent(s)*. — Counseling sessions, adoption fora and seminars, among others, shall be provided to prospective adoptive parent(s) to resolve possible adoption issues and to prepare him/her for effective parenting.

(c) *Prospective Adoptee*. — Counseling sessions shall be provided to ensure that he/she understands the nature and effects of adoption and is able to express his/her views on adoption in accordance with his/her age and level of maturity.

SEC. 5. *Location of Unknown Parent(s)*. — It shall be the duty of the Department or the child-placing or child-caring agency which has custody of the child to exert all efforts to locate his/her unknown biological parent(s). If such efforts fail, the child shall be registered as a foundling and subsequently be the subject of legal proceedings where he/she shall be declared abandoned.

SEC. 6. *Support Services*. — The Department shall develop a pre-adoption program which shall include, among others, the above-mentioned services.

Article III

ELIGIBILITY

SEC. 7. *Who May Adopt*. — The following may adopt:

(a) 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 in caring for children, at least sixteen (16) years older than the adoptee, and who is 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 adopter and adoptee may be waived when the adopter is the biological parent of the adoptee, or is the spouse of the adoptee's parent;

(b) 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; or

(c) 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 his/her own illegitimate 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 one 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.

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 has 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).

SEC. 9. *Whose Consent is Necessary to the Adoption.* — After being properly counseled 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.

Article IV

PROCEDURE

SEC. 10. *Hurried Decisions.* — In all proceedings for adoption, the court shall require proof that the biological parent(s) has been properly counseled to prevent him/her from making hurried decisions caused by strain or anxiety to give up the child, and to sustain that all measures to strengthen the family have been exhausted and that any prolonged stay of the child in his/her own home will be inimical to his/her welfare and interest.

SEC. 11. *Case Study.* — No petition for adoption shall be set for hearing unless a licensed social worker or the Department, the social service office of the local government unit, or any child-placing or child-caring agency has made a case study of the adoptee, his/her biological parent(s), as well as the adopter(s), and has submitted the report and recommendation on the matter to the court hearing such petition.

At the time of preparation of the adoptee's case study, the concerned social worker shall confirm with the Civil Registry the real identity and registered name of adoptee. If the birth of the adoptee was not registered with the Civil Registry, it shall be the responsibility of the concerned social worker to ensure that the adoptee is registered.

The case study on the adoptee shall establish that he/she is legally available for adoption and that the documents to support this fact are valid and authentic. Further, the case study of the adopter(s) shall ascertain his/her genuine intentions and that the adoption is in the best interest of the child.

The Department shall intervene on behalf of the adoptee if it finds, after the conduct of the case studies, that the petition should be denied. The case studies and other relevant documents and records pertaining to the adoptee and the adoption shall be preserved by the Department.

SEC. 12. *Supervised Trial Custody.* — No petition for adoption shall be finally granted until the adopter(s) has been given by the court a supervised trial custody period for at least six (6)-month within which the parties are expected to adjust psychologically and emotionally to each other and establish a bonding relationship. During said period, temporary parental authority shall be vested in the adopter(s).

The court may *motu proprio* or upon motion of any party reduce the trial period if it finds the same to be in the best interest of the adoptee, stating the reasons for the reduction of the period. However, for alien adopter(s), he/she must complete the six (6)-month trial custody except for those enumerated in Sec. 7(b)(i)(ii)(iii).

If the child is below seven (7) years of age and is placed with the prospective adopter(s) through a pre-adoption placement authority issued by the Department, the prospective adopter(s) shall enjoy all the benefits to which biological parent(s) is entitled from the date the adoptee is placed with the prospective adopter(s).

SEC. 13. *Decree of Adoption.* — If, after the publication of the order of hearing has been complied with, and no opposition has been interposed to the petition, and after consideration of the case studies, the qualifications of the adopter(s), trial custody report and the evidence submitted, the court is convinced that the petitioners are qualified to adopt, and that the adoption would redound to the best interest of the adoptee, a decree of adoption shall be entered which shall be effective as of the date the original petition was filed. This provision shall also apply in case the petitioner(s) dies before the issuance of the decree of adoption to protect the interest of the adoptee. The decree shall state the name by which the child is to be known.

SEC. 14. *Civil Registry Record.* — An amended certificate of birth shall be issued by the Civil Registry, as required by the Rules of Court, attesting to the fact that the adoptee is the child of the adopter(s) by being registered with his/her surname. The original certificate of birth shall be stamped “cancelled” with the annotation of the issuance of an amended birth certificate in its place and shall be sealed in the civil registry records. The new

birth certificate to be issued to the adoptee shall not bear any notation that it is an amended issue.

SEC. 15. *Confidential Nature of Proceedings and Records.* — All hearings in adoption cases shall be confidential and shall not be open to the public. All records, books, and papers relating to the adoption cases in the files of the court, the Department, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential.

If the court finds that the disclosure of the information to a third person is necessary for purposes connected with or arising out of the adoption and will be for the best interest of the adoptee, the court may merit the necessary information to be released, restricting the purposes for which it may be used.

Article V

EFFECTS OF ADOPTION

SEC. 16. *Parental Authority.* — Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parent(s) and the adoptee shall be severed and the same shall then be vested on the adopter(s).

SEC. 17. *Legitimacy.* — The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.

SEC. 18. *Succession.* — In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her parent(s) had left a will, the law on testamentary succession shall govern.

Article VI

RESCISSION OF ADOPTION

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 adopter(s): (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 not 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.

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 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.

Article VII

VIOLATIONS AND PENALTIES

SEC. 21. *Violations and Penalties.* —

(a) The penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and/or a fine not less than Fifty thousand pesos (P50,000.00), but not more than Two hundred thousand pesos (P200,000.00) at the discretion of the

court shall be imposed on any person who shall commit any of the following acts:

- (i) obtaining consent for an adoption through coercion, undue influence, fraud, improper material inducement, or other similar acts;
- (ii) non-compliance with the procedures and safeguards provided by the law for adoption; or
- (iii) subjecting or exposing the child to be adopted to danger, abuse, or exploitation.

(b) Any person who shall cause the fictitious registration of the birth of a child under the name(s) of a person(s) who is not his/her biological parent(s) shall be guilty of simulation of birth, and shall be punished by *prision mayor* in its medium period and a fine not exceeding Fifty thousand pesos (P50,000.00).

Any physician or nurse or hospital personnel who, in violation of his/her oath of office, shall cooperate in the execution of the abovementioned crime shall suffer the penalties herein prescribed and also the penalty of permanent disqualification.

Any person who shall violate established regulations relating to the confidentiality and integrity of records, documents, and communications of adoption applications, cases, and processes shall suffer the penalty of imprisonment ranging from one (1) year and one (1) day to two (2) years, and/or a fine of not less than Five thousand pesos (P5,000.00) but not more than Ten thousand pesos (P10,000.00), at the discretion of the court.

A penalty lower by two (2) degrees than that prescribed for the consummated offense under this Article shall be imposed upon the principals of the attempt to commit any of the acts herein enumerated.

Acts punishable under this Article, when committed by a syndicate or where it involves two (2) or more children shall be considered as an offense constituting child trafficking and shall merit the penalty of *reclusion perpetua*.

Acts punishable under this Article are deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any of the unlawful acts defined under this Article. Penalties as are herein provided, shall be in addition to any other penalties which may be imposed for the same acts punishable under other laws, ordinances, executive orders, and proclamations.

When the offender is an alien, he/she shall be deported immediately after service of sentence and perpetually excluded from entry to the country.

Any government official, employee or functionary who shall be found guilty of violating any of the provisions of this Act, or who shall conspire with private individuals shall, in addition to the above-prescribed penalties, be penalized in accordance with existing civil service laws, rules and regulations: *Provided*, That upon the filing of a case, either administrative or criminal, said government official, employee, or functionary concerned shall automatically suffer suspension until the resolution of the case.

SEC. 22. Rectification of Simulated Births. — A person who has, prior to the effectivity of this Act, simulated the birth of a child shall not be punished for such act: *Provided*, That the simulation of birth was made for the best interest of the child and that he/she has been consistently considered and treated by that person as his/her own son/daughter: *Provided, further*, That the application for correction of the birth registration and petition for adoption shall be filed within five (5) years from the effectivity of this Act and completed thereafter: *Provided, finally*, That such person complies with the procedure as specified in Article IV of this Act and other requirements as determined by the Department.

Article VIII

FINAL PROVISIONS

SEC. 23. Adoption Resource and Referral Office. — There shall be established an Adoption Resources and Referral Office under the Department with the following functions: (a) moni-

tor the existence, number, and flow of children legally available for adoption and prospective adopter(s) so as to facilitate their matching; (b) maintain a nationwide information and educational campaign on domestic adoption; (c) keep records of adoption proceedings; (d) generate resources to help child-caring and child-placing agencies and foster homes maintain viability; and (e) do policy research in collaboration with the intercountry Adoption Board and other concerned agencies. The office shall be manned by adoption experts from the public and private sectors.

SEC. 24. *Implementing Rules and Regulations.* — Within six (6) months from the promulgation of this Act, the Department, with the Council for the Welfare of Children, the Office of Civil Registry General, the Department of Justice, Office of the Solicitor General, and two (2) private individuals representing child-placing and child-caring agencies shall formulate the necessary guidelines to make the provisions of this Act operative.

SEC. 25. *Appropriations.* — Such sum as may be necessary for the implementation of the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 26. *Repealing Clause.* — Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule, or regulation contrary to, or inconsistent with the provisions of this Act is hereby repealed, modified, or amended accordingly.

SEC. 27. *Separability Clause.* — If any provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SEC. 28. *Effectivity Clause.* — This Act shall take effect fifteen (15) days following its complete publication in any newspaper of general circulation or in the Official Gazette.

Approved, Feb. 25, 1998.

(5) Philippines – A State Party to the Convention of the Rights of the Child

In such capacity, the Philippines accepts the principle that adoption is impressed with social and moral responsibility, and that its underlying intent is geared to favor the adopted child. (*Lahom v. Sibulo*, 406 SCRA 135 [2003]).

(6) What RA 8552 or the Domestic Adoption Act of 1998 Affirms

It is the legitimate status of the adopted child not only in his new family but also in society as well. (*Lahom v. Sibulo*, 406 SCRA 135 [2003]). The new law withdraws the right of an adoption to rescind the adoption decree and gives to the adopted child the sole right to sever the legal ties created by adoption. (*Ibid.*)

Title VIII

SUPPORT

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

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work. (290a)

COMMENT:

(1) Kinds of Support

- (a) *As to amount*
 - 1) Natural (bare necessities of life).
 - 2) Civil (in accordance with financial standing). (*1 Manresa 626*).
- (b) *As to source of obligations*
 - 1) Legal (from provision of law).
 - 2) Voluntary (from agreement or from provision of a will). (*1 Manresa 627*).
- (c) *Special kind* — *Alimony pendente lite* (pending litigation).

(2) What Support Includes

- (a) Food or sustenance

- (b) Dwelling or shelter
- (c) Clothing
- (d) Medical attendance
- (e) Education
- (f) Transportation

(3) Effect of Reaching Age of Majority

If a person is of age and no longer studies, he is still entitled to support unless there are just reasons for the extinguishment of the right. (*Javier v. Lucero, 94 Phil. 634*). If, upon the other hand, he has not yet finished his studies even if already of age, he is still entitled generally to be supported. Of course, if the person supporting dies, the obligation ceases. (*Falcon v. Arca, L-18135, July 31, 1963*).

Art. 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)**

COMMENT:

(1) Par. 1 – Spouses – The People Obligated to Support Each Other

- (a) The duty arises from the fact that a marriage exists (*Pelayo v. Lauron, 12 Phil. 453*), and includes the duty to pay a doctor who attended the wife's pregnancy, even

if the doctor was called by the husband's father. (*Pelayo v. Lauron*, 12 Phil. 453). The duty subsists even if the spouse is "gainfully employed," so long as there is still financial need for support. (*Canonizado v. Almeda-Lopez, et al.*, L-13005, Sep. 30, 1960). Future support between the husband and wife cannot be the object of a compromise. (*Mendoza v. Court of Appeals*, 19 SCRA 756).

- (b) If the marriage is DENIED by the defendant, there can be no alimony *pendente lite* because here the basis for the support is precisely in issue. (*Yangco v. Rhode*, 1 Phil. 404).
- (c) If the marriage has been annulled, the obligation to support ends. (See *Mendoza v. Parungao*, 49 Phil. 271).
- (d) If the wife commits adultery, she loses the right to be supported. So if the wife claims support and the husband sets up adultery as a defense, he should be allowed to introduce preliminary evidence as to why support should not be granted. (*Mangoma v. Macadaeg and Bautista*, 90 Phil. 508).

[NOTE: In said case, the husband filed an action for separation of property and the consequent liquidation and dissolution of the conjugal partnership but shortly before trial began, the wife asked for alimony *pendente lite*. The husband said she had committed adultery, but when he was about to present preliminary proof of this, the judge did not allow him to do so. On appeal, the Supreme Court held that he should be allowed to do so, so the case was remanded for further proceedings.]

**Teodoro Lerma v. Court of Appeals
and Concepcion Diaz
L-33352, Dec. 20, 1974**

FACTS: Husband Teodoro Lerma sued his wife and a certain Teddy Ramirez for adultery. Sometime later, the wife sued Lerma for legal separation with an urgent motion for support *pendente lite*. Lerma opposed the motion setting up the wife's alleged adultery as a defense.

ISSUE: Is the adultery a valid defense?

HELD: Yes, the alleged adultery of the wife is a valid defense if there is a good chance that this adultery can be proved. And this is true, whether what is asked is support from the husband's capital or from the conjugal partnership property, because even in the latter case where conjugal assets are involved, the right to a separate maintenance is granted only if there is justifiable cause for it, not when the person asking is, to all appearances, guilty of adultery. (Here, guilt in the adultery had been the verdict of the lower court, and at the time support was asked, the adultery case was on appeal.)

Reyes v. Hon. Inez Luciano
L-48219, Feb. 28, 1979

FACTS: A wife asked for support *pendente lite* but the husband claimed she had committed adultery. What steps must be done by the court?

HELD: The mere allegation of adultery will not bar the wife from support *pendente lite* because the adultery must be proved by competent evidence. The amount needed must be ascertained, but it is not essential to go fully into the merits of the case. Here, the amount of P4,000 a month granted by the judge was *not* considered excessive considering inflation and the financial ability of the husband.

- (e) If the husband and the wife commit concubinage and adultery, can the wife still demand support from the husband?

HELD: Yes, because they are *in pari delicto* (mutually guilty), and therefore, it is as if both acted in good faith. (*Almacen v. Baltazar*, 103 Phil. 1147).

- (f) If instead of bringing their case to court, a husband and a wife settle their arguments about support, extra-judicially with the help of lawyers, said lawyers are entitled to compensation, for after all, they worked. (*See Wing v. Vera*, 66 Phil. 130).

**In the Matter of the Petition for
Habeas Corpus of Aquilino del Rosario, Jr., et al.
v. Juanita Olidar Vda. de Mercado
L-25710, Aug. 28, 1969**

FACTS: When a husband, Orencio Mercado, was murdered, the widow filed and signed the criminal complaint. The defendants who were being detained because of the complaint asked for the privilege of the writ of *habeas corpus* on the theory that the complaint had been signed and filed illegally because the widow was neither the offended party herself nor the proper public peace officer or official authorized by law to sign and file the complaint.

ISSUE: May the complaint be legally signed by the widow herself?

HELD: Yes, because in a sense, the widow herself may be considered an “offended party” since she has been *deprived*, among other things, of *marital consortium* and *of support*. The marital injury to the widow cannot therefore be denied.

**Santero v. CFI
GR 61700-03, Sep. 14, 1987**

The right of the surviving spouse and the children to receive support during the liquidation of the estate of the deceased cannot be impaired by Rule 83, Sec. 3 of the Rules of Court which is a procedural rule. With respect to “spouse,” the same must be the “legitimate spouse” (not common-law spouse).

(2) Par. 2 – Legitimate Ascendants and Descendants

- (a) If the relationship is in issue, there should be no support *pendente lite* till the relationship is clearly established. (*Francisco v. Zandueta*, 61 Phil. 752).
- (b) Abandonment of the child by the parent is cause for the ceasing of the obligation of the former to support the latter, no matter how financially desperate is the present

situation of said parent. (*Castillo v. Castillo, C.A. 39 O.G. 968*).

Dempsey v. RTC
GR 77737-38, Aug. 15, 1988

Article 141 of Presidential Decree 603 defines an abandoned child as “one who has no parental care or guardianship or whose parents or guardians have deserted him for a period of at least six continuous months.” Article 161 cannot be applied to a case where the child is not an abandoned child in the strict sense of the word as she is still in the custody and care of her mother.

In criminal prosecutions for violations of Art. 46 of the Child and Youth Welfare Code [PD 603, as amended] (withholding support from a minor child) and Art. 59 of the same Code (abandonment of a minor child), the trial court cannot require the accused to recognize the minor as his natural child. The recognition of a child by her father is now provided for in the new Family Code.

In such criminal prosecution, where the accused pleaded guilty to criminal charges and the issue of recognition was not specifically and fully heard and tried, it is reversible error for the trial court to order recognition of the natural child as part of the civil liability in the criminal case.

- (c) If the child is the adulterous child of the wife, the husband is not duty-bound to support said child, and evidence of the commission of said adultery may be given as a defense in an action for support by the child. (*Sanchez v. Zulueta, 68 Phil. 110*). If the husband is unable to prove the adultery, the child is presumed to be his, and would therefore be entitled to support. (*Sanchez v. Zulueta, supra*).
- (d) If the child has property of his own, his father, as guardian, can *charge* expenses for the child’s food, clothing, and education to the child’s property because, while it is true that a father must support his child, still the right of support does not arise from mere relationship but from imperative necessity. If the child has sufficient property of

his own, his right to be supported does not exist. (*Jocson v. Empire Insurance Co.*, 103 Phil. 580).

- (e) The term “*descendants*” in par. 2 should be understood to refer only to “*legitimate descendants*,” for had the intention of the law been otherwise, the law would have adopted the form used in Nos. 3 and 4 of Art. 195.

(3) Abandoned Illegitimate Offspring’s Right to Sue Father for Support

**Artemio Ilano v. CA
GR 104376, Feb. 23, 1994, 48 SCAD 432**

After the great flood, man was commanded to go forth, be fertile, multiply, and fill the earth. Others did not heed the sequence of this command because they multiply first and then go. Corollarily, it is now commonplace for an abandoned illegitimate offspring to sue her father for recognition and support.

As a necessary consequence of the finding that private respondent is the spurious child of petitioner, she is entitled to support. Thus, in awarding support to her, respondent court took into account the following: “The obligation to give support shall be demandable from the time the person who has a right to recover the same needs it for maintenance, but it shall not be paid except from the date of judicial or extra-judicial demand.”

Art. 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)

COMMENT:

The Article applies when the brothers and sisters are not legitimately related. If they are legitimately related, par. 5 of the preceding Article (*Art. 195*) applies.

Art. 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)

COMMENT:

Here, only the *separate* property of the supporter is generally answerable. If needed, absolute community assets or conjugal property will *advance* the support, but subject to reimbursement at the *liquidation* of the absolute community or the conjugal partnership.

Art. 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)

COMMENT:

Spouses and their children shall be supported from the properties of the absolute community or the conjugal partnership: (1) during the proceedings for legal separation; (2) for annulment of marriage; and (3) for declaration of nullity of marriage.

The obligation of mutual support between the spouses ceases after final judgment granting the petition.

In case of legal separation, however, the court may order that the guilty spouse shall give support to the innocent one. The terms of such order must be specified.

Quintana v. Lerma
24 Phil. 285

A party may set up the special defense of adultery to defeat an action for support.

Art. 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)**

COMMENT:

In a situation where two or more persons are obliged to give support, liability shall devolve upon the following in this order, thus: (1) spouse; (2) descendants in the nearest degree; (3) ascendants in the nearest degree; and (4) brothers and sisters.

Art. 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)

COMMENT:

Whenever obligation to give support evolves upon two or more persons, payment of the same is divided between them in proportion to the resources of each.

In case of urgent necessity and by special circumstances, the judge may order only one of them to furnish the support provisionally. This is without prejudice to his right to claim from other obligors the share due from them.

Under the 3rd (and last) paragraph of Art. 200, whenever 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 under Art. 199 shall be followed, unless concurrent obligees should be the spouse and a child subject to parental authority, in which case the latter shall be given preference.

Art. 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)

COMMENT:

The amount of support is dependent on the giver's resources and recipient's needs.

Art. 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)

COMMENT:**(1) Proportionate Support**

As much as possible, the law does not want to encourage separation of the spouses. Therefore, a large amount for separation maintenance should be rarely given. (*Panuncio v. Sula*, 34 O.G. No. 86, p. 1291).

Ledesma Silva, et al. v. Peralta
L-13114, Aug. 29, 1961

FACTS: A putative father alleged that a judgment for support of his son should be limited to what the Income Tax Law allows, a deduction for the support of the child.

HELD: The contention is without merit. Income tax deductions do not constitute a reasonable basis for the amount of support, since the said income tax deduction merely represents the amount that the state is *willing to exempt* from taxation.

(2) Change in Amount of Support

- (a) A wife was being given support by the husband by virtue of judicial order of a competent court. The wife was living apart from the husband. May the amount of allowance being given be modified by the court?

ANSWER: Yes, the allowance may be changed by the court in case sufficient reasons exist for the change. (*Gorayeb v. Hashim, 47 Phil. 87*).

- (b) A wife was living apart from her husband and had been granted allowance by the court. It turned out that the amount allowed her was far in excess of her needs. One day, when the wife asked for her regular monthly support, the husband claimed that in view of excessive payments already made to her, her current claim for support could not be considered favorably. In other words, the husband wanted her to get her current support from the excessive payments previously made to her. Is the husband's contention correct or should the wife be given her current allowance?

ANSWER: The wife should be given her current allowance. Excessive payments made under valid although erroneous orders cannot compensate or offset claims for current support. (*Gorayeb v. Hashim, 47 Phil. 87*).

- (c) In view of the fact that the amount of support granted in a judgment may still be changed from time to time, in this sense, the judgment for support never becomes final.

(*Gorayeb v. Hashim*, 47 Phil. 87; *Advincula v. Advincula*, L-19065, Jan. 31, 1964).

- (d) Whether or not the spouse asking for support is engaged in a gainful occupation is immaterial; what is important is if she still needs financial assistance. (*Canonizado v. Almeda-Lopez, et al.*, L-13805, Sep. 30, 1960).

Atienza v. Almeda-Lopez, et al.
L-18327, Aug. 24, 1962

FACTS: A wife sued her husband from whom she had been living separately, for support. They entered into a compromise whereby the wife would get P20 every 15 days by way of support, and the husband further agreed to give her “a portion of his retirement pay.” One and a half year later, the wife filed a motion alleging that her husband was about to retire from the Manila Railroad Company, and was about to receive retirement benefits. She therefore prayed that she be given one-half of said benefit. The lower court granted the motion and required the husband to deliver to the wife one-half of the retirement benefits. The husband appealed on the theory that the order is null and void because in effect this amended the previous decision based on the compromise agreement, which he claims, is already final and executory.

HELD: The previous award for support may of course still be *modified* under Arts. 296 and 297 (now Arts. 201 and 202 of the Family Code). However, regarding the split in the retirement pay ordered by the trial court, the Supreme Court said that said order, which had been made without any proof or allegation as to the respective needs of the spouses, had in effect either established a *separation of property*, between said spouses, or *liquidated their conjugal partnership*, neither of which is authorized by the facts of record or by the pleadings therein, the wife not having prayed for either remedy. What is more, as head of the family — even though actually separated from his wife, petitioner is legally entitled to the possession of the FULL amount of said benefits and to administer the same,

the wife being merely entitled by way of support to share in the fruits or profits resulting from the investment of the proceeds of his retirement pay.

**Amurao v. Court of Appeals
GR 83942, Dec. 29, 1988**

An increase in the child's support is proper.

(3) No Final Judgment In Support

**Malabang v. Abeto
74 Phil. 13**

This is because support depends not only on varying conditions affecting the ability of the obligor to pay the amount fixed but also upon the ever-changing needs of the beneficiary.

Art. 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 extrajudicial 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, or when the recipient dies, his heirs shall not be obliged to return what he has received in advance. (298a)

COMMENT:

(1) When the Right to Support Begins

Such only accrues the moment one needs it. Nonetheless, it shall be paid only from the date of judicial or extra-judicial demand.

(2) How Support 'Pendente Lite' May be Claimed

This can be done in accordance with Secs. 1-6, Rule 61 of the Rules of Court.

(3) When Payment for Support Must Be Made

In addition to the support payment that must be made and with a fixed date, Art. 203's last paragraph speaks of the effect of death of the recipient upon support paid in advance, *i.e.*, "when the recipient dies, his heirs shall not be obliged to return what he has received in advance."

(4) Example

A father needed support from his son. But for two years, the father hesitated to ask his son. Later, he summoned enough courage to require his son to support him. The son refused to listen to him, whereupon the father took the case to court and filed a complaint for support against his son. The father, needless to say, won his case. The question is: Should the father receive support —

- (a) From the time he needed it?
- (b) Or from the time he asked his son extra-judicially?
- (c) Or from the time judicial demand was made; in other words, from the time the complaint was filed in court?

ANSWER: The law says that support should be paid, under the premises given, from the date of extra-judicial demand. (See *Baltazar v. Serfino*, L-17315, July 31, 1965 — where the Court held that the support must be paid, not necessarily from the time the child was born, but from the date of extrajudicial demand.)

(5) Cases

Ledesma Silva, et al. v. Peralta **L-13114, Aug. 29, 1961**

An action for support may still prosper despite an error in selecting a more favorable venue.

Trinidad Florendo v. Rufina Organo **90 Phil. 483**

(Judgment for support does not prescribe, but installments do prescribe if uncollected; remedy is motion for execution).

FACTS: Husband and wife separated in 1909. In 1935, the wife sued for support which was granted. Came 1943, and the husband sued for *divorce*, but the wife, as *counterclaim*, asked for *unpaid* installments for support given by the court in 1935. The divorce case was dismissed since the husband failed to prosecute. The counterclaim was also dismissed for the reason that the wife's remedy was not in that instant case.

ISSUES: (a) What is the wife's proper remedy?

(b) Does a judgment for support prescribe?

HELD: (a) The wife's proper remedy is a simple motion for execution of the judgment, which is more expeditious than a counterclaim, but there is nothing wrong for a counterclaim to be set up at this point so that all disputes may be settled in one proceeding.

(b) A judgment for support or alimony does not become dormant; much less does it prescribe except as to installments not recovered within a period of ten years. This is so both by law and authority, as well as the very nature of this kind of judgment. The authorities are in harmony that a money decree for alimony is not a judgment in the full legal meaning of the term and does not become stale simply because of the failure to issue execution thereon within the period limited by statute for the execution of a judgment. Installments into which an alimony is divided may lapse by prescription, but the judgment itself does not. The judgment remains in effect indefinitely, but unpaid installments that are more than ten years old are uncollectible. As installments become payable one at a time, so also do they prescribe in the same progression successively, as they are allowed to reach the ten-year limitation period without any action being taken to collect them.

[*NOTE:* The doctrine in this case was reiterated in *San Pedro v. Almeda-Lopez, et al., L-16655, July 26, 1960*, where the Court said that where the judgment sought to be executed is one for alimony and not one rendered in an ordinary action, a writ of execution may still be issued even if the period of five years (the period within which to ask for the execution of a judgment by a *mere motion*) has already elapsed since it was rendered, especially when the defeated party had already made partial payments of the alimony adjudged against him.]

Olayvar v. Olayvar
98 Phil. 52

The pendency of an action for legal separation on account of a wife's alleged adultery will give rise to the *dismissal* of an action for support filed by the wife against the husband because in both cases the infidelity of the wife is involved; in the first, because such infidelity would be a valid defense in an action for support; and in the second because such infidelity would extinguish the obligation to support.

Olympia Baltazar v. Sergio Serfino
L-17315, July 31, 1965

Where the duty to support is admitted, but in spite of demands, the duty is not complied with, and the person to be supported has to resort to court for the enforcement of his right, the person obliged to give support must pay reasonable attorney's fees. (*See also Mercado v. Ostrand, 37 Phil. 179; Fanlo de Peyer v. Peyer, 77 Phil. 366*). Indeed, in action for legal support, even in the absence of stipulation, attorney's fees are recoverable. (*Par. 6, Art. 2208, Civil Code*).

Margaret Versoza, et al. v. Jose Ma. Versoza
L-25609, Nov. 27, 1968

FACTS: Margaret Versoza and her children sought support (past, present, and future) from the husband, Jose Ma. Versoza on the ground that he had abandoned them, and was maintaining illicit relations with another woman. Defendant husband sought dismissal of the case on the ground that the complaint did NOT STATE that earnest efforts have been made towards a compromise.

HELD: The case should be allowed to continue in view of the following reasons:

(1) While the case involves past, present, and future support, it should be noted that FUTURE SUPPORT is also asked for. This is something on which there can be NO COMPROMISE. (*Art. 2035*). Hence, there is *no necessity* of alleging in the complaint that there were earnest efforts to arrive at a compromise.

(2) The rule that such efforts at a compromise should have been made as a condition precedent before the suit between members of the same family can be entertained. (*Art. 222, Civil Code, now Art. 151 of the Family Code* applies only to cases that can be compromised). (*Mendoza v. Court of Appeals, 63 O.G., 10105*). Similarly, Sec. 1(j), Rule 16 of the Rules of Court, which states that failure to exert earnest efforts at a compromise is a ground for a motion to dismiss — likewise applies only to cases which can be compromised.

(3) Even if it was error on the part of the plaintiffs to have failed to allege the earnest efforts at a compromise — still in the interest of substantial justice, the plaintiffs should be allowed to *amend the complaint*. This is *not a case of lack of jurisdiction*; this merely seeks to *complete the statement of a cause of action*.

Art. 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)

COMMENT:

(1) Option Given to Supporter

The person obliged to give support (not the recipient) is given an option:

- (a) To pay the allowance fixed.
- (b) To receive and maintain the recipient in the family dwelling.

(2) Characteristics of the Option

- (a) The option is not absolute (that is, he cannot choose to keep the recipient in his house if there is a *moral* or *legal* obstacle thereto.)

Examples of obstacles:

- 1) The fact that the man is married to a woman who is not the mother of his *illegitimate* child, said child, being the recipient. (*Pascual v. Martinez, C.A. 37 O.G. 2418*).
 - 2) The fact that the husband maltreated the wife and as a consequence she was compelled to leave the conjugal abode. (*Goitia v. Campos Rueda, 35 Phil. 252*).
 - 3) When a father offers to bring his child to his own home as a result of his being pressed for overdue allowances, and it is shown that the father had previously treated the child severely. (*Pascual v. Martinez, supra*). Here the Court said that the child would not find in the father's home the satisfaction, enjoyment and affection so vitally necessary for his unhampered development and for the assurance of his future.
 - 4) The fact that the father has been criminally guilty of seduction. (*U.S. v. Alvir, 9 Phil. 576*).
- (b) The option *may be waived*

If the husband has already agreed that his wife would have the care and custody of their minor children, obligating himself to pay for their support and maintenance, there is a waiver of his right to exercise the option, and therefore he cannot now ask that the minor children be transferred to his home. (*Estrella v. Court, 62 Phil. 429*).

(3) Meaning of 'Obstacle'

If the husband is living with his in-laws, will the presence of the in-laws be considered an *obstacle* referred to in the Article?

ANSWER:

- (a) Yes, according to the *Court of Appeals* in the case of *Del Rosario v. Del Rosario*. Here, the wife was held

justified in leaving the conjugal abode because of constant quarrels between her and her mother-in-law. (*Del Rosario v. Del Rosario, C.A., 46 O.G. No. 12, p. 6122*).

- (b) No, according to an *obiter* by the Supreme Court in the case of *Atilano v. Chua Ching Beng, 103 Phil. 255*.

[NOTE: In this case, the ruling on the point was only an *obiter* because the husband was willing to establish a separate home for himself and his wife but still the wife refused. The Court further said that *misunderstanding* with in-laws who may be considered third parties to the marriage, is not the moral or legal obstacle that the law-makers contemplated in the drafting of said provisions. The law in giving the husband authority to fix the conjugal residence does not prohibit him from establishing the same at the patriarchal home; nor is it against any recognized norm of morality, especially if he is not fully capable of meeting his obligation as such head of a family without the aid of his elders. But even granting *arguendo* (for the sake of argument) that it might be “illegal” for him to persist in living with his parents over the objection of his wife, this argument becomes *most academic* or useless in the present case in view of the defendant’s manifestation that he is willing to establish a residence separate from his parents, if the plaintiff so desires. While there is no provision of law compelling the wife to live with her husband, still, without legal justification she establishes her residence apart from that of her husband, she should not be allowed any support from said husband.]

Torres v. Hon. Teodoro
L-10093 and 19356, Apr. 30, 1957

FACTS: A father was ordered by the court to give each of his three minor children P100 monthly support, the same to be deposited with the clerk of court on the first day of each month. He did not, however, make such deposits, although he had sufficient means. What is his offense?

HELD: He had committed contempt of court and may be punished for the same with fine or imprisonment. Such order is violated *every time* he fails to make the deposit corresponding to each month. His conviction for contempt for failure to deposit for one month does not prevent subsequent convictions for subsequent failures.

(4) Retroactive Effect of Art. 2217

Art. 2217 of the Civil Code on moral damages can have a retroactive effect on actions for support. (*Co Tao v. Court of Appeals, L-9194, Apr. 25, 1957*).

(5) When Obligation to Give Support Ceases

The obligation to furnish support ceases upon the death of the obligor, even if he may be bound to give it in compliance with a final judgment. The obligation to give support shall also cease:

- a. Upon the death of the recipient;
- b. When the resources of the obligor have been reduced to the point where he cannot give the support without neglecting his own needs and those of his family;
- c. When the recipient may engage 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;
- d. When the recipient, be he a forced heir or not, has committed some acts which give rise to disinheritance;
- e. When the recipient is a descendant, brother or sister of the obligor and the need for support is caused by his or her bad conduct or by the lack of application to work, so long as this cause subsists. (*Art. 303, Civil Code*).

Art. 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)

COMMENT:

Exemption from attachment or execution is justified by reason of sound public policy. This is because support is necessary for one's survival, *i.e.*, instinct of self-preservation.

Art. 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)

COMMENT:

Culled from Art. 2164 of the Civil Code on Quasi-Contracts, Art. 206 is based on the principle that no one shall unjustly enrich himself at the expense of another.

Art. 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 particularly apply when the father or mother of a child under the age of majority unjustly refuses to support or fails to give support to the child when urgently needed. (2166a)

COMMENT:

Taken from Art. 2166 of the Civil Code on Quasi-Contracts also on the principle against unjust enrichment, legal restrictions on the application or extent of Art. 207 are indicated.

Art. 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)

COMMENT:

Excess amount beyond that required for legal support is subject to levy on attachment or execution. This holds true in two situations: in case of contractual support OR that given by will.

Contractual support is subject to adjustment whenever any modification is needed owing to changes of circumstances manifestly beyond the parties' contemplation. Thus, this happenstance may come about upon the recipient's improvement of his financial capability while the opposite is being experienced by the giver in a reversal of fortune.

Title IX
PARENTAL AUTHORITY

Chapter 1

GENERAL PROVISIONS

Art. 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)

COMMENT:

(1) ‘Parental Authority’ (*Patria Potestas*) Defined

It is the sum total of the right of parents over the persons and property of their children. (*2 Manresa 8*).

Not all of us may not have realized it yet, but the fact is that the country’s future depends mainly on the security and stability of our family relationship. For a nation, no matter how outwardly prosperous, is as strong and as steadfast only as its families are strong and steadfast. Destroy the love and affection that should exist between husbands and wives, between parents and children, between brothers and sisters — and you destroy, cruelly and thoughtlessly, one of our greatest safeguards against the communist way of life.

Too long have we labored under the appalling delusion that our natural resources, so eloquently referred to in the fundamental law of the land, consist merely of undeveloped agricultural concessions, of mineral lands awaiting full exploitation, of forests in the wilds of our southern islands, still

untapped, still unexplored, of streams and rivers, potentially super-abundant in water power. Too long have we forgotten that the most important and the most natural of our natural resources — the richest and the most soul-satisfying — lies in our children: in their health and their native ability, so often underestimated, to comprehend, and thresh out the problems of common-day living.

We who are their elders can guide them in the happy adventure of living life the way it should be lived; of understanding life, whole and complete. To this sacred end, we have been given, under our laws, what lawyers and laymen alike refer to as “*patria potestas*” or parental authority. In fact our Supreme Court has had occasion to remark that “when children are brought into the world due to the intimate relations of their father and mother, the parents have the tremendous responsibility of seeing that their children will grow to be useful men and women. Responsibility cannot be exercised without authority, hence authority is an imperative necessity. Parental authority has for its purpose not only the sound physical development of the children but also the cultivation of their intellectual perceptions, and the nourishment of their appetitive and sensitive faculties.” (*Reyes v. Alvarez*, 8 Phil. 732).

A child comes into this world completely helpless. Alone he cannot conceivably survive. We who are responsible for his existence cannot shun the difficult task of bringing him up. The child needs his mother and his father not only in his infant years, not only during the formative years of young adolescence, but also during his gradual transition into full manhood. Thus, the law requires his parents to intervene in his contractual relations (*Arts. 316 and 320, Civil Code*), to support him (*Art. 291, id.*), to correct him and punish him moderately. (*Art. 316[2], id.*). The law further orders the parents to imbue the child, by precept and by example, with highmindedness, love of country, veneration for the national heroes, fidelity to democracy as a way of life, and attachment to the ideals of permanent world peace. (*Art. 358, id.*).

Correspondingly, the law requires every child to obey and honor his parents or guardian, to respect his grandparents, old relatives, and persons holding substitute parental authority; to exert his utmost for his education and training, and to cooper-

ate with the family in all matters that make for the good of the same. (*Art. 357, id.*)

Parental authority, like every other power, is capable of being abused. When this happens, the law ordains that tribunals of justice “may deprive the parents of the authority, or suspend the exercise of the same if they should treat their children with excessive harshness, or should give them corrupting orders, counsels or examples, or should make them beg or abandon them.” (*Art. 332, id.*)

Indeed true parental authority is necessarily intelligent and morally upright parental authority.

If today we see around us men and women living together without benefit of marriage, it is perhaps because we have in recent years been considering marriage and its implications very lightly. Society has grown cold and indifferent to marital indiscretions. If they are talked about, it is not because of scorn and ridicule — it is because such indiscretions have today formed the choicest parts of our daily conversation: gossip, which necessarily contains intimations of envy. True parental authority cannot be premised on a foundation of illegitimate affection. If today we see parents who do not have enough income for the needs of the family, it is perhaps because education has miserably failed them: education has not freed them from technical ignorance; education has not emancipated them from the luxury of laziness; education has not taught them that extravagance — and the love for the things one cannot afford — can only result in iniquitous waste. True parental authority can be deserved only by parents who can earn, and who having earned, can save what they have earned.

As I see it then, the resurgence of true, valid, and competent parental authority can help resolve the changing family patterns, the changing family problems in an Eternal Philippines. For the Philippines itself has remained unchanged. It is we, the elders of our race, the counsellors of our young, who have perhaps changed. For while we continue to sacrifice for our children, we have not exacted from them their reciprocal duties; we have not adequately taught them that good children can always find their own rewards.

We have not compelled them to strive further because perhaps we know, deep in our hearts, that we ourselves have not been the completely desirable, the intensely lovable parents an Infinite God had destined us to be.

(2) Purpose of Parental Authority

It has for its purpose not only the sound physical development of the children, but also the cultivation of their intellectual perceptions, and the nourishment of their appetitive and sensitive faculties. (*Reyes v. Alvarez*, 8 *Phil.* 723).

(3) Kinds of Parental Authority

- (a) Over the *Persons*; and
- (b) Over the *Property*.

(4) Duty to Pay Damages in Case of Parricide

People v. Santiago Manos
L-27791, Dec. 24, 1970

ISSUE: If a son kills his father, is he still bound to pay indemnity to the latter's heirs (including the criminal's mother and brother), even if said heirs had unsuccessfully testified in his favor because of natural affection?

HELD: Yes, for such indemnity is required by the law. The indemnification to the heirs should of course *exclude* payment by the *criminal to himself* (although he himself is an heir of the deceased).

(5) Parental Authority over Legitimate and Illegitimate Children

Dempsey v. RTC
GR 77737-38, Aug. 15, 1988

It is error for the trial court to hold that parental authority to which certain parental obligations are attached pertains only to legitimate and adopted children. Reliance on Article 17 of Presidential Decree No. 603, which defines the joint parental authority of parents over their legitimate or adopted children is

wrong because the law itself protects even illegitimate children. Illegitimate children have rights of the same nature as legitimated and adopted children. This is enunciated in Article 3, Presidential Decree 603 which provides that “all children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, region, political antecedents, and other factors. Rights must be enforced or protected to the extent that it is possible to do so.”

(6) Any Distinction Between Legitimate or Adopted Children and Acknowledged Illegitimate Children Now Erased

**Dempsey v. Regional Trial Court
GR 77737-38, Aug. 15, 1988**

The new Family Code promulgated as Executive Order 209, July 17, 1987, erases any distinction between legitimate or adopted children on one hand and acknowledged illegitimate children on the other, insofar as joint parental authority is concerned. Article 211 of the Family Code merely formalizes into statute the practice on parental authority.

(7) Parental Custody

Children, because of the inevitable role they play in the society of the future are not only loved, cared for, and protected by their parents but are held in high value by the State. And “parents’ custody,” which means the right to exercise parental authority over them, is therefore deemed unquestionable and incontestable at all times by the State.

As explicitly provided for by both the Family Code and the Child and Youth Welfare Code (Presidential Decree 603, as amended), “parental authority” (or “*patria potestas*”) is the absolute right of parents to watch over the person and property of their children.

The basic purpose of parental authority is not only to ensure the sound physical development of the children but also to see to the cultivation of their intellect and the nourishment of their spiritual and creative faculties.

In the case of separated parents disputing authority over and custody of children, the rule is that the law confers upon the courts the power to award the care, custody, and control of a minor child to either of the parents acknowledging him, and specifically one that the child prefers to live with, unless the parent so chosen is unfit.

In one case, a man had carnal knowledge with a married woman resulting in her begetting a child. He insured himself, named the child as his beneficiary and designated his brother to act as trustee if after his death the child was still a minor. Sure enough, upon the death of the insured, the benefits from the insurance policy were given to the brother to administer, and not to the mother of the child. The mother sought to act as trustee and thus administer the indemnity. The Supreme Court ruled in the affirmative when the case was elevated to it, contending that "what is important is the child's welfare, and who can better care for the child but the mother since she has custody over him. A mother is less likely to betray a father's trust than an uncle."

Note that the child's welfare is most important, and this has been honored by the law in order to avoid the tragedy of a mother having her baby torn away from her. No man can see the true depths of a mother's sorrow when she is deprived of her child, especially one of tender age. The exception allowed by the rule is embodied in the phrase, "for compelling reasons," that is, the child may be taken from the mother for the good of the child. These cases are rare, however, with the law unwilling to hurt a mother unduly. If she has erred, as in the commission of adultery, the penalty of imprisonment and the imposition of "relative divorce" decree (or legal separation) will ordinarily be sufficient punishment for her. Moreover, her moral dereliction will not have any effect upon a very young child, who as yet would not be able to understand the situation.

The right of a parent or parents to have custody of their child being foremost in the eyes of the law, another salient rule laid down is that no court should make this right subservient to the desire of the grandparents to take care of a child claimed by his parents. This means that even though a child since birth has been taken care of by his grandparents, say, on the mater-

nal side, with great love and affection; once his father claims him, the court must give in. This happened in a case where a father sought custody of a child, already three months in the care of grandparents. It was held that while the separation of the child from his grandparents would cause the latter tremendous mental suffering, and though it is impossible that the child would be much better off under their care, nevertheless, since the father of the child has parental authority over him, he should have custody of the child. Sentimental reasons and the material and spiritual welfare of the child are not decisive factors in determining the question of custody.

Parenthetically, although parents may or may not allow children below 18 to work for wages, the parents can still claim custody of their children after a period of working as servants of their creditors.

The legal doctrine that parents should never be deprived of the custody and care of their children except for cause has universal acceptance because it belongs to the realm of natural justice. There are exceptions to this rule, of course. In one celebrated case, the Supreme Court awarded custody of the child whose parents were separated — legally or *de facto* — to the closest suitable kin. It appeared that both parents were improper persons, to whom the care, custody, and control of the child could not be entrusted. In a case like this, the court may either designate the paternal or maternal grandparents of the child, or his oldest brother or sister or some reputable and discreet person, as custodian of the child. Or the Court may commit him to any suitable asylum, children's home, or benevolent society.

In another case, the Supreme Court likewise disallowed a mother from gaining custody of her child. Records of the case revealed that the mother had abandoned her child since infancy and eloped with another man who is not her husband. This was in direct contrast with the behavior of the maternal grandfather, who had voluntarily taken care of the child. The Court, thereupon, ruled that the latter should prevail in any action for the child's custody, and may be appointed guardian thereof. The Court further observed that the child no longer recognized the mother.

(8) What the Philippine Constitution Says

“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.”
(Art. II, Sec. 12 [2nd sentence], 1987 Phil. Const.)

(9) Case

People v. David Silvano
GR 127356, June 29, 1999, 108 SCAD 282

FACTS: The victim testified that accused-appellant told her that she will be punished for coming home late at night and the punishment is to have sex with him.

HELD: This ratiocination is the product of a sick mind of an equally sick parent who does not deserve to be such. It is clear from the provisions of Art. 209 that from the mere status of being a parent flows one’s “natural right and duty” not only of the “caring for” and the “rearing of” their unemancipated children but above all “the development of their moral, mental, and physical character and well-being.”

Although the Family Code recognizes the parents’ rights and duties to “impose discipline” on their unemancipated children; supervise their activities, recreation and association with others; and prevent them from acquiring habits detrimental to their morals,” it does not authorize them to force their offspring to copulate with them under the mask of discipline, or invade their honor and violate their dignity nor does it give them the license to ravish the product of their marital union. Appellant’s way of punishment comes not in the form of correction but of an insane sexual gratification. Having sex with one’s own child is *per se* abhorrent and can never be justified as a form of parental punishment.

(10) Query

Would it be against the spirit of the law if financial consideration were to be the paramount consideration in deciding whether to deprive a person of parental authority over his/her children?

ANSWER: Since the primary consideration in adoption is the best interest of the child, it follows that the financial capacity of prospective parents should also be carefully evaluated and considered.

Art. 210. Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law. (313a)

COMMENT:

(1) Parental Authority a Right and a Duty

- (a) A right; and
- (b) A duty. (*Reyes v. Alvaran, 8 Phil. 793*).

(2) Consequences

- (a) It is intransmissible because it is *purely personal*.
- (b) Thus if the parents die, the administrator of their estate does not exercise parental authority over the children. (*Abiera v. Orin, 8 Phil. 193*).
- (c) It cannot, as a rule, be *waived*. It can be waived only in four cases, namely:
 - 1) When there is *guardianship* approved by the court. (*Art. 210, Family Code*).
 - 2) When there is *adoption* approved by the court. (*Art. 210, Family Code*).
 - 3) When there is emancipation by concession. (*Art. 210, Family Code*).
 - 4) When there is a surrender of the child to an orphan asylum. (*Act 3094*).
- (d) Just because the mother delivers a minor child to his godfather for maintenance and education does not mean that there is a waiver of *patria potestas*. (*De la Cruz v. Lim Chai Lay, [C.A.] G.R. No. 14080-R, Aug. 15, 1955*).

- (e) If an illegitimate child of an American soldier and a Filipino woman is given to a friend under a document which says, "I hereby entrust to Mrs. Soledad Cafuir my son... I hereby designate her as the real guardian of my son," all because at the time of surrender she was still a minor and in no position to take care of the child, can the mother still get by means of the *writ of habeas corpus*, the child from Mrs. Soledad Cafuir?

HELD: Yes, because there was no waiver at all of *patria potestas*, for the word "entrust" and the words "real guardian" suggest merely a temporary custody, not a renunciation. (*Celis v. Cafuir*, 86 Phil. 555).

[*NOTE:* Even if there was a definite renunciation, still this would not be allowed under the provisions of the Civil Code. (*Art. 313, now Art. 210, Family Code*).]

- (f) While abandonment is VOID and is not equivalent to a waiver, one effect of such an action is to deprive the abandoning parent of the right to support in view of this forgetfulness of natural, moral, and legal obligations. (*Castillo v. Castillo*, [C.A] 39 O.G. 968). Moreover, abandonment can cause deprivation of parental authority (*now Art. 229, Family Code*).

Balatbat v. Balatbat de Dairocas
98 Phil. 998

When a mother has abandoned her child since infancy and eloped with another man not her husband, as between her and the maternal grandfather, who had taken care of the child, the latter should prevail in an action for the custody of the child, and may be appointed guardian thereof. In this case, the court also observed that the child could no longer recognize the mother.

In Re: Guardianship of I. Ponce
L-8488, Nov. 21, 1955

In the guardianship proceedings of a minor, does the step-grandmother have to be notified?

HELD: No, since she is not one of those who can inherit by legal succession (who are the only ones entitled to notice). And this is so because only blood relatives (except the surviving spouse) inherit by legal succession.

Chua v. Cabangbang
L-23253, Mar. 28, 1969

FACTS: In May, 1958, Bartolome Cabangbang and his wife, a childless couple, acquired the custody of a child Betty who was then four months old. Since then, they had brought up the child as their own; they even had her christened as Grace Cabangbang on Sep. 12, 1958. Now then, this Betty was the illegitimate child of a night club hostess, Pacita Chua, with Victor Tan Villareal; this child was given to the Cabangbang spouses by Villareal with the consent of Pacita Chua. On June 6, 1963, Pacita asked the couple to surrender the child to her. Failing to obtain such custody, she filed on June 14, 1963 a petition for *habeas corpus* with the Rizal CFI praying that the court grant her custody, and recognize her parental authority over the girl.

Pacita's thesis is that pursuant to Art. 363 of the Civil Code, she cannot be separated from her child who was less than 7 years of age (at the time the petition was filed); and that she cannot be deprived of her parental authority over the child for no justifiable cause exists (her being not exactly an upright woman being, strictly speaking, not a proper legal ground for deprivation of parental authority). Pacita further contends that under Art. 313 of the Civil Code "Parental authority cannot be renounced or transferred except in cases of guardianship or adoption approved by the court, or emancipation by concession." She finally alleges that the reason she did nothing for more than 3 years to recover her child was that the Cabangbangs were powerful and influential.

The Cabangbangs were however, able to prove that Pacita had agreed that they could keep the child provided they give her (Pacita) a jeep and some money.

ISSUE: Can Pacita get back the child?

HELD: No, Pacita cannot get back her child in view of the following reasons:

- (1) The child being already eleven (11) years old at the time the decision by the Supreme Court was promulgated, Art. 363 of the Civil Code, which prohibits the separation of a child under 7 years of age from her mother “unless the court finds compelling reasons” has no immediate relevance, the issue on this point is now moot and academic.
- (2) Pacita’s immorality is not, strictly speaking, a ground for depriving her of parental authority; BUT the fact is, aside from being immoral, she also ABANDONED her child, and this abandonment is sufficient ground under Art. 332 (*Civil Code*) for depriving her of parental authority.
- (3) While it is true that the mere acquiescence by Pacita to the giving by Villareal of her child to the Cabangbangs is *not by itself* sufficient to cause abandonment, still, there are many other factors which indicate that in fact there has been such abandonment.
 - (a) She waited for several years before taking any action to recover the child. Her reason for inaction (that the Cabangbangs were powerful and influential) is incredible; a mother who really loves her child would go to any extent to be reunited with her. Yet, she did nothing.
 - (b) At the pre-trial, she expressed her willingness that the child remain with the Cabangbangs provided the *latter would in exchange give her (Pacita) a jeep and some money*. This indicates her mercenary character.
- (4) The Cabangbangs, upon the other hand, can have the custody of the child, despite the absence of kinship (whether by affinity or consanguinity). Sec. 6, Rule 99, Rules of Court allows custody in favor of “some reputable and discreet person.” Incidentally, Art. 363, Civil Code which says that “in all questions on

the care, custody, education and property of children, the latter's welfare shall be paramount" applies not only to a litigation between father and mother, but also to a suit (involving a child's custody) between a PARENT and a STRANGER.

- (5) Pacita's contention that the *answer* of the Cabangbans contains no prayer for the retention by them of the child's custody is *devoid of merit*. The several moves taken by them are clear and definitive enough —
- (a) first, they asked for her custody *pendente lite*;
 - (b) secondly, they sought dismissal of Pacita's petition for lack of merit;
 - (c) thirdly, they added a general prayer for other reliefs just and equitable in the premises.

Art. 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 towards their parents and are obliged to obey them as long as the children are under parental authority. (17a, PD 603)

COMMENT:

Joint parental authority is exercised by both father and mother, respectively. Unless there is a judicial order to the contrary, the father's decision prevails in case of any disagreement.

So long as children falls under parental authority, they are obligated always to observe respect and reverence towards their parents as well as obliged to obey them at all times. Of course, the obedience referred to pertains to lawful and moral orders exacted by the parents.

Art. 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. (n)

COMMENT:

The first sentence speaks of absence or death of either parent whereby the parent present shall continue exercising parental authority.

The second sentence gives the effect of a remarriage.

Art. 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over 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.

COMMENT:

(1) Use of the Word ‘Separation’

It is unclear if what is referred to is “legal” separation or “extra-legal” separation.

(2) Cases

**Luna v. IAC
GR 68374, June 18, 1985**

In custody cases, the execution of a final judgment of the appellate court awarding custody to the child’s biological parents (parents by nature) may be stayed, if during the hearing on execution, the child manifested that she would kill herself and escape if she would be given to the custody of her biological parents.

The child’s best interest can override not only procedural rules but also the parents’ rights to the child’s custody. When the

very life and existence of the minor child is at stake and the child is of such age as to enable her to exercise an intelligent choice, courts can do no less than respect that choice and uphold the child's right to live in an atmosphere conducive to her physical, moral, and intellectual development.

Cervantes v. Fajardo
GR 79955, Jan. 27, 1989

In all cases involving the custody, care, education, and property of the children — the latter's welfare is paramount. The provision that no mother shall be separated from a child under (then) 5 (now 7) years old, will not apply where the court finds compelling reasons to rule otherwise. In all controversies regarding the custody of minors, the foremost consideration is the moral, physical, and social welfare of the child concerned — taking into account the resources and moral as well as social standing of the contending parents. Never has the Supreme Court deviated from this criterion.

Cervantes v. Fajardo
GR 79955, Jan. 27, 1989

One compelling reason to separate the child from the mother is when she has a common-law (or "live-in") relationship with another man.

Such a scenario will not afford the minor child that desirable atmosphere where she can grow and develop into an upright and moral-minded person.

Panlilio v. Salonga
GR 13087, June 27, 1994, 52 SCAD 541

The doctrine of judicial stability or non-interference bars the Makati Court from entertaining the *habeas corpus* case on account of the previous assumption by the Cavite Court and the designation of petitioners as guardian *ad litem* of the ward.

Certiorari is the appropriate relief against deviation from judicial comity. And certainly, given the propensity of the Makati Court to intrude and render nugatory an order or deci-

sion of another co-equal court, *certiorari* is the appropriate relief against deviation from the doctrine of judicial comity.

The alleged improper issuance of guardian's appointment and parental authority of mother under the Family Code are matters of defense invocable at the Cavite Court.

**Reynaldo Espiritu and Guillerma
Layug v. CA and Teresita Masanding
GR 115640, Mar. 15, 1995
59 SCAD 631**

The argument that moral laxity or the habit of flirting from one man to another does not fall under "compelling reasons" is neither meritorious nor applicable in this case.

The illicit or immoral activities of the mother had already caused emotional disturbances, personality conflicts, and exposure to conflicting moral values, not to mention her conviction for the crime of bigamy, which from the records appears to have become final.

**Leouel Santos, Sr. v. CA and
Spouses Leopoldo and Ofelia Bedia
GR 113054, Mar. 16, 1995
59 SCAD 672**

The considerations relied upon by the Court of Appeals (*e.g.*, the grandparents' financial ability and the love and affection showered on the boy) are insufficient to defeat petitioner's parental authority and right to custody.

Otherwise put, private respondents' demonstrated love and affection for the boy notwithstanding, the legitimate father is still preferred over the grandparents. To award the father custody would help enhance the bond between parent and son. It would also give the father a chance to prove his love for his son and for the son to experience the warmth and support which a father can give.

Art. 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, PD 603)

COMMENT:

Substitute parental authority is exercised by the surviving grandparent in case of death, absence, or unsuitability of the parents.

Taking into account the same considerations mentioned in Art. 213, the one designated by the court, in case several survive, exercises authority.

Art. 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)

COMMENT:

- (1) The descendant cannot be compelled, but if he wants to testify here, he may do so.

N.B.: Under the Rules on Evidence, “no person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants.” (*Rule 130, Sec. 25, Rules of Court, as amended*). Thereupon, should a conflict arise between this provision and Art. 215, the latter prevails. *Reason:* A procedural rule cannot impair substantive law. (*See Art. VIII, Sec. 5[5], 1987 Phil. Const.*.)]

- (2) The Article applies to a criminal, not to a civil case.

Chapter 2

SUBSTITUTE AND SPECIAL PARENTAL AUTHORITY

Art. 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)

COMMENT:

An aunt by virtue of the relationship alone, is not included in the Article. (*See Ortiz v. Del Villar, 57 Phil. 19.*)

Macazo v. Nuñez 105 Phil. 55

FACTS: The elder brother of a minor girl placed the latter under the employ of a married couple. Upon discovering that the sister subsequently indulged in adulterous and scandalous relations with her married employer, the brother asked her to return to their home but the girl *expressed preference for remaining* with her employer. The brother sued for a writ of *habeas corpus* to obtain custody of the sister.

HELD: The writ of *habeas corpus* will be granted despite the desire of the girl to remain with her married employer. A minor cannot choose to continue an illicit and immoral relationship. The elder brother, wielding substitute parental authority, may thus obtain custody over the erring sister.

Bagajo v. Marawe
L-33345, Nov. 20, 1978

FACTS: A teacher whipped a student with a bamboo stick causing severe bruises on the legs and thighs. The teacher did this to punish the latter who had tripped a classmate, causing her to hit the edge of a desk with her knee hitting a nail of the desk. Is the teacher liable criminally?

HELD: No, because of lack of criminal intent. This is without prejudice to a civil or administrative case. (Dissenters opined that only parents can inflict corporal punishment. Besides, the whipping violates human rights.)

Art. 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)

COMMENT:

Here, there must be *summary* judicial proceedings before entrustment is made.

Art. 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 or outside the premises of the school, entity or institution. (349a)

COMMENT:

Note that the authority and responsibility shall apply to all *authorized activities* whether INSIDE or OUTSIDE the premises.

Art. 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)

COMMENT:

- (1) Note who are *principally* and who are subsidiarily liable.
- (2) Note also the defense of having exercised *proper diligence*.
- (3) Note finally the reference to the provisions of the Civil Code on *quasi-delicts* (*culpa aquiliana* or acts of negligence).

Jose S. Angeles v. Hon. Rafael Sison
L-45551, Feb. 16, 1982

The true test of a school's right to investigate, or otherwise suspend or expel a student for a misconduct committed outside the school premises and beyond school hours is not the time or place of the offense, but its effect upon the moral and efficiency of the school and whether it, in fact, is adverse to the school's good order, welfare and the advancement of its students. The power of the school over its students does not cease absolutely when they leave the school premises, and that conduct outside of school hours may subject a student to school discipline if

it directly affects the good order and welfare of the school or has a direct and immediate effect on the discipline or general welfare of the school.

The pendency or the dismissal of the criminal action against an erring student does not abate the administrative proceedings which involves the same cause of action. The administrative action before the school authorities can proceed independently of the criminal action because these two actions are based on different considerations. In the former, the student's suitability or propriety as a student is the paramount concern and interest of the school; while in the latter, what is at stake is his being a citizen who is subject to the penal statutes and is the primary concern of the State.

It is the better view that there are instances when the school might be called upon to exercise its power over its student or students for acts committed outside the school and beyond school hours in the following: (1) In case of violations of school policies or regulations occurring in connection with a school-sponsored activity off-campus; or (2) In case where the misconduct of the student involves his status as a student or affects the good name or reputation of the school.

As a defense by the defendants sued, the latter may claim that they exercised the proper diligence required by the particular circumstances. This is not exactly the diligence of a good father of the family. It is more or less a flexible rule and may be equated with Article 1173, first paragraph and first sentence which provides: "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."

Amadora, et al. v. Court of Appeals, et al.
L-47745, Apr. 15, 1988

FACTS: Like any prospective graduate, Alfredo Amadora was looking forward to the commencement exercises where he would ascend the stage and in the presence of his relatives and friends receive his high school diploma. These ceremonies were scheduled on Apr. 16, 1972. As it turned out, though, fate would

intervene and deny him that awaited experience. On April 13, 1972, while they were in the auditorium of their school, the Colegio de San Jose-Recoletos, a classmate, Pablito Daffon, fired a gun that mortally hit Alfredo, ending all his expectations and his life as well. The victim was only seventeen years old.

Daffon was convicted of homicide thru reckless imprudence. Additionally, the herein petitioners, as the victim's parents, filed a civil action for damages under Article 2180 of the Civil Code against the Colegio de San Jose-Recoletos, its rector, the high school principal, the dean of boys, and the physics teacher, together with Daffon and two other students, through their respective parents. The complaint against the students was later dropped. After trial, the Court of First Instance of Cebu held the remaining defendants liable to the plaintiffs in the sum of P294,984.00, representing death compensation, loss of earning capacity, costs of litigation, funeral expenses, moral damages, exemplary damages, and attorney's fees. On appeal to the respondent court, however, the decision was reversed and all the defendants were completely absolved.

In its decision, which is now the subject of this petition for *certiorari* under Rule 45 of the Rules of Court, the respondent court found that Article 2180 was not applicable as the Colegio de San Jose-Recoletos was not a school of arts and trades but an academic institution of learning. It also held that the students were not in the custody of the school at the time of the incident as the semester had already ended, that there was no clear identification of the fatal gun, and that in any event the defendants had exercised the necessary diligence in preventing the injury.

HELD: 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.

The school can show that it exercised proper measures in selecting the head or its teachers and the appropriate supervision over them in the custody and instruction of the pupils pursuant to its rules and regulations for the maintenance of discipline among them. In almost all cases now, in fact, these measures are effected through the assistance of an adequate security force to help the teacher physically enforce those rules upon the students. This should bolster the claim of the school that it has taken adequate steps to prevent any injury that may be committed by its students.

A fortiori, the teacher himself may invoke this defense as it would otherwise be unfair to hold him directly answerable for the damage caused by his students as long as they are in the school premises and presumably under his influence. In this respect, the Court is disposed not to expect from the teacher the same measure of responsibility imposed on the parent, for their influence over the child is not equal in degree. Obviously, the parent can expect more obedience from the child because the latter's dependence on him is greater than on the teacher. It need not be stressed that such dependence includes the child's support and sustenance whereas submission to the teacher's influence, besides being co-terminous with the period of custody, is usually enforced only because of the students' desire to pass the course. The parent can instill more lasting discipline on the child than the teacher and so should be held to a greater accountability than the teacher for the tort committed by the child. Then there should all the more be justification to require from the school authorities less accountability as long as they can prove reasonable diligence in preventing the injury. After all, if the parent himself is no longer liable for the student's acts because he has reached majority age and so is no longer under the former's control, there is then all the more reason for leniency in assessing the teacher's responsibility for the acts of the student.

(Concurring Opinion)

J. Hugo Gutierrez, Jr.:

Except for kindergarten, elementary, and perhaps early high school students, teachers are often no longer objects of

eneration who are given the respect due to substitute parents. Many students in their late teens or early adult years view some teachers as part of a bourgeois or reactionary group whose advice on behavior, deportment, and other non-academic matters is not only resented but actively rejected. It seems most unfair to hold teachers liable on a presumption *juris tantum* of negligence for acts of students even under circumstances where, strictly speaking, there could be no *in loco parentis* relationship. Why do teachers have to prove the contrary of negligence to be freed from solidary liability for the acts of bomb-throwing or pistol packing students who would just as soon hurt them as they would other members of the so-called establishment?

Pasco v. CFI of Bulacan
GR 54357, Apr. 25, 1988

FACTS: On Aug. 24, 1979, at about 5:00 o'clock in the afternoon, petitioner, together with two companions, while walking inside the campus of private respondent Gregorio Araneta University (GAU), after attending classes in said university, was accosted and mauled by a group of Muslim students led by Abdul Karim Madidis alias "Teng." Said Muslim group were also students of GAU. Petitioner was subsequently stabbed by Abdul and as a consequence he was hospitalized at the Manila Central University (MCU) Hospital where he underwent surgery to save his life.

On Oct. 5, 1979, petitioner assisted by his father, Pedro Pasco, filed a complaint for damages against Abdul Karim Madidis and herein private respondent GAU. Said school was impleaded as party defendant. Twenty-one days later (Oct. 26), respondent school filed a Motion to Dismiss premised on three (3) grounds, to wit:

1. The penultimate paragraph of Art. 2180 of the Civil Code under which it (school) was sued applies only to vocational schools and not to academic institutions.
2. That every person criminally liable for a felony is also civilly liable under Art. 100 of the Revised Penal Code. The civil liability in this case arises from a criminal action which the defendant GAU has not committed.

3. Since this is a civil case, a demand should have been made by the plaintiff, thus, it would be premature to bring an action for damages against defendant GAU.

On May 12, 1980, respondent court issued an Order granting said Motion to Dismiss. Petitioner moved to reconsider the Order of Dismissal but the motion was likewise denied on the ground that there is not sufficient justification to disturb its ruling. Hence, this instant Petition for *Certiorari* under Republic Act No. 5440, praying that judgment be rendered setting aside the questioned order of May 12, 1980 dismissing the complaint as against respondent school and the order of July 17, 1980 denying the reconsideration of the questioned order of dismissal, with costs against respondent school.

HELD: We find no necessity of discussing the applicability of the Article to educational institutions (which are not schools of arts and trades) for the issue in this petition is actually whether or not, under the article, the school or the university itself (as distinguished from the *teachers* or *heads*) is liable. We find the answer in the *negative*, for surely the provision concerned speaks only of "*teachers* or *heads*."

Chapter 3

EFFECTS OF PARENTAL AUTHORITY UPON THE PERSONS OF THE CHILDREN

Art. 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)

COMMENT:**(1) Some Duties and Rights of Parents**

- (a) To support (even after reaching the age of majority).
- (b) To have the children in their company (for this purpose, the writ of *habeas corpus* may be availed of, if the children are in the company of others who refuse to surrender them, and this is so even when the children voluntarily desire to be with said others). (*Salvana v. Gaela*, 55 Phil. 680).

[NOTE: Parents may or may not allow children below 18 to be employed. (*Rep. Act 679*).].

[NOTE: Even if the parents allow the children to work as servants of others to pay off what the parents OWE the said others, still the parents can get back the custody of said children. (*Canua v. Zalameda*, 70 Phil. 466).].

Banzon v. Alviar, et al.
97 Phil. 98

FACTS: The father entrusted his child to the custody of a relative, and then the father left for abroad. Meantime, the mother claims custody, but the relative refuses on the ground that the child had been left to him by the father.

HELD: The mother can get the child, for in default of the father, the mother can assume custody and authority over the minor.

- (c) To educate and instruct them within their means.
- (d) To *represent* them in all actions which may redound to their benefit. [Thus, the parents of a 17-year-old girl may *withdraw* an appeal to the higher court, filed on behalf of said girl by an uncle. (*Ubaldo v. Salazar*, 101 Phil. 1249)]. The lack of a formal appointment of the minor's parent as guardian *ad litem* may be overlooked and disregarded because it is her or his duty "to represent them in all ac-

tions which may redound to their benefit.” The Court will not prevent the mother from representing her children specially when her capacity to sue in their behalf has not been questioned during the trial. (*Araneta Vda. de Liboon v. Luzon Stevedoring Co., L-14893, May 31, 1962*). [Donations and inheritances may be received by parents in behalf of their children. (*See Arts. 741, 1044*).].

- (e) To correct and punish them moderately (this includes a bit of corporal punishment because cruelty on this point can result in criminal liability under the Revised Penal Code, as well as in the deprivation or suspension of parental authority). (*See Art. 332*).

(2) Solo Parents’ Welfare Act

The “Solo Parents’ Welfare Act of 2000,” otherwise known as RA No. 8972, was approved on Nov. 7, 2000.

The law’s declared policy provides that “[i]t is the policy of the State to promote the family as the foundation of the nation, strengthen its solidarity, and ensure its total development.” (*Sec. 2, RA No. 8792*).

The term “solo parent” (or “single parent”) defined by law as falling under any of the following categories, thus:

1. a woman who gives birth as a result of rape and other crimes against chastity even without a final conviction of the offender, provided that the mother keeps and raises the child (*Sec. 3[a][i], id.*);
2. parent left solo or alone with the responsibility of parenthood:
 - a) due to death of spouse (*Sec. 3[a][2], id.*);
 - b) while the spouse is detained or is serving sentence for a criminal conviction for at least one year (*Sec. 3[a][3], id.*);
 - c) due to physical and/or mental incapacity of spouse as certified by a public medical practitioner (*Sec. 3[a][4], id.*);

- d) due to legal separation or *de facto* separation from spouse for atleast one year, as long as he/she is entrusted with the custody of the children (*Sec. 3[a][5], id.*);
 - e) due to declaration of nullity or annulment of marriage as decreed by a court or by a church as long as he/she is entrusted with the custody of the children (*Sec. 3[a][6], id.*); and
 - f) due to abandonment of spouse for atleast one year (*Sec. 3[a][7], id.*);
3. any other person who solely provides parental care and support to a child or children (*Sec. 3[a][9], id.*);
 4. unmarried mother/father who has preferred to keep and rear her/his child/children instead of having others care for them or give them up to a welfare institution (*Sec. 3[a][8], id.*); and
 5. any family member who assumes the responsibility of head of family as a result of the death, abandonment, disappearance, or prolonged absence of the parents or solo parent. (*Sec. 3[a][10], id.*)

Note: A change in the status or circumstances of the parent claiming benefits, such that he/she is no longer left alone with the responsibility of parenthood, shall terminate his/her authority for these benefits. (*Sec. 3[8][last sentence], id.*)

Benefits are available to solo parents.

Examples:

- a) comprehensive package of social development and welfare services, to initially include:
 - (1) livelihood development services (*Sec. 5[a], id.*);
 - (2) counselling services (*Sec. 5[b], id.*);
 - (3) parent effectiveness services (*Sec. 5[c], id.*);

- (4) critical incidence debriefing (*Sec. 5[d], id.*); and
- (5) special projects for individuals in need of protection (*Sec. 5[e], id.*);
- b) flexible work schedule (*Sec. 6, id.*);
- c) no work discrimination on account of status (*Sec. 7, id.*);
- d) parental leave, in addition to leave privileges (*Sec. 8, id.*);
- e) educational benefits (*Sec. 9, id.*);
- f) housing benefits (*Sec. 10, id.*); and
- g) medical assistance. (*Sec. 11, id.*)

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. (2180[2]a and [4]a)

COMMENT:

This speaks of the *civil liability* of those exercising parental authority for the *acts* and *omissions* of the unemancipated children.

**Tamargo v. CA
GR 85044, June 3, 1992**

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 commit a tortious act, the parents were negligent in the performance of their legal and natural duty closely to supervise the child who is in their custody and control. Parental liability is in other words, anchored 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 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.

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. Art. 58 of the Child and Youth Welfare Code, re-enacted this rule: “Art. 58. *Torts*. — Parents and guardians are responsible for the damage caused by the child under their parental authority in accordance with the Civil Code.’ Art. 221 of the Family Code of the Philippines has similarly insisted upon the requisite that the child, doer of the tortious act, shall have been in the actual custody of the parents sought to be held liable for the ensuing damage.”

Art. 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 requires. (317)

COMMENT:

Whenever the best interests of the child are at stake, courts may appoint a guardian of the child’s property, or a guardian *ad litem*. Thus, a guardian *ad litem* is one appointed by the court to prosecute or defend a case for the minor child’s interest.

Art. 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)

COMMENT:

Note that there is a possibility the plaintiff (complainant) may, in the proper case, also be punished.

Art. 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)

COMMENT:

Under Art. 224, measures referred to in Art. 223 may include the commitment of the child for not more than 30 days in entities or institutions engaged in child care or in children's homes duly accredited by the proper governmental agency.

The parent exercising parental authority shall provide for his support but shall not interfere with the care of the child whenever committed. The court may terminate the commitment of the child whenever just and proper. This is upon proper petition or at its own instance.

Chapter 4

EFFECT OF PARENTAL AUTHORITY UPON THE PROPERTY OF THE CHILDREN

Art. 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. All such incidents and issues shall be decided in an expeditious and inexpensive manner without regard to technical rules.

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)

COMMENT:**(1) What is Clear From the Article**

Luz Pineda, et al. v. CA, et al.
GR 105562, Sep. 27, 1993
45 SCAD 30

It is clear from Art. 225 of the Family Code that regardless of the value of the unemancipated common child's property, the father and mother *ipso jure* become the legal guardian of the child's property. However, if the market value of the property or the annual income of the child exceeds P50,000, a bond has to be posted by the parents concerned to guarantee the performance of the obligations of a general guardian.

It must, however, be noted that the second paragraph of Art. 225 of the Family Code speaks of the "market value of the property or the annual income of the child," which means, therefore, the aggregate of the child's property or annual income; if this exceeds P50,000, a bond is required. There is no evidence that the share of each of the minors in the proceeds of the group policy in question is the minor's only property. Without such evidence, it would not be safe to conclude that, indeed, that is his only property.

(2) Legal Guardianship by the Father

- (a) No need of a court appointment as guardian of the property of the child.
- (b) If the father is *absent* or *incapacitated*, it is the mother who shall be the legal guardian.

(3) Bond Requirement

If the child's property or annual income exceeds P50,000.

(4) Amount of the Bond

At least 10% of the value of the property or annual income.

(5) Cases**Elena Lindain, et al. v. CA
GR 95305, Aug. 20, 1992**

The powers and duties of the widow as legal administrator of her minor children's property as provided in Rule 84 of the Rules of Court entitled "General Powers and Duties of Executors and Administrators" are only powers of possession and management. Her power to sell, mortgage, encumber or otherwise dispose of the property of her minor children must proceed from the court, as provided in Rule 89 which requires court authority and approval.

**Visaya, et al. v. Saguitan, et al.
GR L-8300, Nov. 18, 1955**

The mother, as the legal administrator of the property of her minor children, has no power to compromise their claims, for a compromise has always been deemed equivalent to an alienation (*transigere est alienara*), and is an act of strict ownership that goes beyond mere administration.

**Badillo v. Ferrer
152 SCRA 407**

The surviving widow has no authority or has acted beyond her powers in conveying to the vendees the undivided share of her minor children in the property, as her powers as the natural guardian covers only matters of administration and cannot include the power of disposition.

**Cabanas v. Pilapil
L-25843, July 25, 1974**

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 Art. 320 of the Civil Code (now Art. 225 of the Family Code).

Art. 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)

COMMENT:

- (1) This refers to property acquired by the child**
 - (a) with his work, or industry, OR
 - (b) by onerous or gratuitous title.
- (2) Owner (naked-owner) – the child**
- (3) Use – for the *support* and *education* of the child UNLESS provided otherwise by –**
 - (a) the title, or
 - (b) the transfer (transferror).

Art. 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)

COMMENT:

- (1) Here, the unemancipated child is the *manager* or *administrator of any of the parent's properties*.**
- (2) Ownership – belongs to the parents**

(3) Mandatory Compensation for the Child —

He will be given by the parents a *reasonable monthly allowance* (not less than that which might be given to a stranger).

HOWEVER — The parents may grant the *entire proceeds* to the child.

(4) Not Chargeable to the Child's Legitime

Whether the proceeds be given —

- (a) in whole, or
- (b) in part.

Chapter 5
SUSPENSION OR TERMINATION
OF PARENTAL AUTHORITY

Art. 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)**

COMMENT:

The “*patria potestas*” here is terminated PERMANENTLY.

Art. 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)**

COMMENT:

Here, the terminated parental authority may be subsequently REVIVED by a *final judgment*.

**Pacita Chua v. Mr. and Mrs. Bartolome Cabangbang
L-23253, Mar. 28, 1969**

FACTS: Pacita, when still in the prime of youth, supported herself by working in nightclubs as a hostess. And sexual liaison she had with man after man without benefit of marriage. She first lived with a certain Chua Ben in 1950 by whom she had a child who died in infancy. She afterwards cohabited with Sy Sia Lay by whom she had two children named Robert and Betty Chua Sy. The latter child was born on Dec. 15, 1957. Shortly after the birth of Betty, Pacita Chua and Sia Lay separated. Finding no one to fall back on after their separation, Pacita Chua lingered in and around nightclubs and gambling joints, until she met Victor Tan Villareal. In due time she became the latter's mistress.

In 1960, another child, a girl was born to her. In 1961, when this last child was still an infant, she and Villareal separated. Without means to support the said child, Pacita Chua gave her away to a *comadre* in Cebu. Sometime in May, 1958, Bartolome Cabangbang and his wife, a childless couple, acquired the custody of the child Betty who was then barely four months old. They have since brought her up as their own. They had her christened as Grace Cabangbang on Sept. 12, 1958. The lower court found that the child was given to the Cabangbang spouses by Villareal with the knowledge and consent of Pacita Chua. Later, Pacita Chua by a letter dated June 6, 1963, copy furnished Villareal demanded the surrender to her of the custody of the child. Failing to secure such custody, she filed a petition for *habeas corpus*, asserting her parental authority over the child. The lower court rendered a decision, dismissing the petition and concluding that it would be for the welfare of the child known as Grace Cabangbang to be under the custody of the Cabangbangs. Pacita Chua appealed.

HELD: While mere acquiescence by Pacita Chua to Villareal's giving of the child to the Cabangbangs without more, is not sufficient to constitute abandonment of the child, the record yields a host of circumstances which, in their totality, unmistakably betray the petitioner's (Pacita's) settled purpose and intention to completely forego all parental responsibilities and forever relinquish all parental claim in respect of the child.

She surrendered the custody of her child to the Cabangbangs in 1958. She waited until 1963, or after the lapse of five long years, before she brought action to recover custody. Her claim that she did not take any step to recover her child because the Cabangbangs were powerful and influential, does not deserve any modicum of credence. A mother who really loves her child would go to any extent to be reunited with her. The natural and normal reaction of the petitioner (Pacita Chua) — once informed as she alleged that her child was in the custody of the Cabangbangs — should have been to move heaven and earth, to use a worn-out but still respectable cliché, in order to recover her. Yet, she lifted not a finger.

Indeed, the petitioner's attitude, to our mind, does nothing but confirm her intention to abandon the child — from the very outset when she allowed Villareal to give her away to the Cabangbangs. It must be noted that the abandonment took place when the child, barely four months old, was at the most fragile stage of life and needed the outmost care and solicitude of her mother. And for five long years thereafter, she did not once move to recover the child. She continuously shunned the natural and legal obligations which she owed to the child; completely withheld her presence, her love, her care, and the opportunity to display maternal affection; and totally denied her support and maintenance. Her silence and inaction have been prolonged to such a point that her abandonment of the child and her total relinquishment of parental claim over her, can and should be inferred as a matter of law. The judgment of the lower court is affirmed.

Contrast to the petitioner's attitude with that of the respondents Cabangbang especially Flora Cabangbang who, from the moment the child was given to them, took care of her as if she were her own flesh and blood, had her baptized, and when she reached school age, enrolled her in a reputable exclusive school for girls. Ironically enough, the real heart rending tragedy in this case would consist not in taking the child away from the Cabangbangs but in returning her to the custody of the petitioner. This is not to say that with the Cabangbang spouses, a bright and secure future is guaranteed for her. For life is beset at every turn with snares and pitfalls. But the records indubitably picture the Cabangbang spouses as a childless couple of consequence in the community, who

have given her their name and are rearing her as their very own child and with whom there is every reason to hope she will have a fair chance of normal growth and development into respectable womanhood.

Verily, to surrender the girl to the petitioner would be to assume quite incorrectly — that only mothers are capable of parental love and affection. Upon the contrary, this case precisely underscores the homiletic admonition that parental love is not universal and immutable like a law of natural science. The absence of any kinship between the child and the Cabangbangs alone cannot serve to bar the lower court from awarding her custody to the Cabangbangs. Indeed, the law provides that in certain cases, the custody of the child may be awarded even to strangers, as against either the father or the mother or against both.

Art. 230. Parental authority is suspended upon conviction of the parent or the person exercising the same of a crime which carries with it the penalty of civil interdiction. The authority is automatically reinstated upon service of the penalty or upon pardon or amnesty of the offender. (330a)

COMMENT:

Here, there is only a *suspension* of the parental authority.

**De la Cruz v. Lim Chai Say
GR L-14080-R, Aug. 15, 1955**

Conviction in a criminal case does not automatically result in suspension or loss of parental authority. There must be meted out a penalty of civil interdiction or a declaration that the accused is deprived of parental authority.

Art. 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)

COMMENT:

This Article also speaks of *suspension* or deprivation of the parental authority.

Art. 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).

COMMENT:

Any person exercising parental authority and who has subjected the child or allowed him to be subjected to sexual abuse, shall be permanently deprived by the court of any such authority.

Art. 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)

COMMENT:**(1) Corporal (or Physical) Punishment is Prohibited****Bagajo v. Hon. Geronimo R. Marave
L-33345, Nov. 20, 1978**

As a matter of law, petitioner did not incur any criminal liability for her act of whipping her pupil, Wilma, with the bamboo stickpointer, in the circumstances proven in the record. Independently of any civil or administrative responsibility for such act she might be found to have incurred by the proper authorities, we are persuaded she did not do what she had done with criminal intent.

That she meant to punish Wilma and somehow make her feel such punishment may be true, but we are convinced that the means she actually used was moderate and that she was not motivated by ill-will, hatred or any malevolent intent. The nature of the injuries actually suffered by Wilma, a few linear bruises at most (4 inches long and 1/4 cm. wide) and the fact that petitioner whipped her only behind the legs and thigh, show, to our mind, that indeed she intended merely to discipline her. And it cannot be said, that Wilma did not deserve to be disciplined. In other words, it was farthest from the thought of petitioner to commit any offense. *Actus non facit reum, nisi mens sit rea.*

(2) Solo Parenthood

Although some years back society *decried* SOLO PARENTHOOD and *de facto* separated couples as an affront to the conventional wisdom of a model family, recent social justice legislation has compassionately redefined the concept of family to include single mothers and their children regardless of the mother's civil status, otherwise no single parent would be employed by the government service, and that would be discriminatory, if not to say, unconstitutional. (*Estrada v. Escitor, 408 SCRA 1 [2003]*).

Title X

EMANCIPATION AND AGE OF MAJORITY

Art. 234. Emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of twenty-one years.

Emancipation also takes place:

(1) By the marriage of the minor; or

(2) By the recording in the Civil Register of an agreement in a public instrument executed by the parent exercising parental authority and the minor at least eighteen years of age. Such emancipation shall be irrevocable. (397a, 398a, 400a, 401a)

COMMENT:

Today, the age of majority is 18. (*See RA 6809*). Exceptions thereto are set forth under Art. 236.

Art. 235. The provisions governing emancipation by recorded agreement shall also apply to an orphaned minor and the person exercising parental authority but the agreement must be approved by the court before it is recorded. (4042, 4052, 406a)

Art. 236. Emancipation for any cause shall terminate parental authority over the persons and property of the child who shall then be qualified and responsible for all acts of civil life. (412a)

Art. 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 paren-

tal 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)

COMMENT:

(1) How Emancipation Takes Place

- (a) Marriage of the minor.
- (b) Attainment of the age of majority.
- (c) Parental concession (child must be at least 18, and must consent). This must be thru the recording in the Civil Register of an agreement in a public instrument executed by the parent exercising parental authority and the minor at least 18 years of age. Such emancipation shall be irrevocable.

(This would now be useless since at 18, the child is already emancipated.)

- (d) Judicial concession (child must be at least 18, and must consent, and the concession must be deemed convenient for the minor).

[NOTE — Emancipation is final or irrevocable.].

[NOTE: Here again, this judicial concession would be useless, since at 18, the child is already emancipated.].

(2) Effects of Emancipation by Marriage or by Voluntary Concession

- (a) Parental authority over the PERSON is completely extinguished.
- (b) Parental authority over the PROPERTY:
 - 1) he can administer;
 - 2) BUT he *cannot* BORROW MONEY, ALIENATE or ENCUMBER *real* property, or SUE without parental assistance.

(3) Article 236 as Repealed by RA 6809

Art. 236. Emancipation shall terminate parental authority over the person and property of the child who shall then be qualified and responsible for all acts of civil life, save the exception established by existing laws in special cases.

Contracting marriage shall 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 paragraphs of Article 2180 of the Civil Code. (*RA 6809*).

Another provision of RA 6809 provides:

Upon the effectivity of this Act, existing wills, bequests, donations, grants, insurance policies and similar instruments containing references and provisions favorable to minors will not retroact to their prejudice. (*Sec. 4, RA 6809, approved Dec. 13, 1989*).

Note:

RA 6809 has also repealed Arts. 235 and 237 of the Family Code. (*See Sec. 2, RA 6809, approved Dec. 13, 1989*).

Title XI

**SUMMARY JUDICIAL PROCEEDINGS
IN THE FAMILY LAW**

Chapter 1

SCOPE OF APPLICATION

Art. 238. Until modified by the Supreme Court, the procedural rules provided for 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)

COMMENT:

Summary court procedures may be modified by the Supreme Court. In all instances provided for under the Family Code requiring such summary court proceedings, they shall be decided speedily without regard to technicalities. Thus, summary proceedings under this Code cover: (1) cases of separation in fact between husband and wife laid down under Art. 239; (2) those set forth under Art. 249; and (3) those enumerated under Art. 253.

Chapter 2

SEPARATION IN FACT

Art. 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)

COMMENT:

Art. 239 says that a verified petition may be filed in court with the necessary alleged facts.

Art. 240. Claims for damages by either spouse, except costs of the proceedings, may be litigated only in a separate action. (n)

COMMENT:

Regarding claims for damages, there must be a SEPARATE ACTION.

Art. 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)

COMMENT:

The proper court here is the Regional Trial Court (RTC) of the place where *either* of the spouses resides. (*See Sec. 19, BP 129*).

Art. 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)

COMMENT:

Notification to the other spouse is required.

Art. 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)

COMMENT:

At the initial conference, no counsel is allowed.

Art. 244. In case of non-appearance of the spouse whose consent is sought, the court shall inquire into the reasons for his failure to appear, and shall require such appearance, if possible. (n)

COMMENT:

The court shall inquire into the reasons for the non-appearance.

Art. 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)

COMMENT:

The court may proceed *ex parte* and render judgment as the facts and circumstances warrant, if, despite all efforts, attendance of the non-consenting spouse is not secured.

In any event, the judge shall endeavor to protect the non-appearing spouse's interest.

Art. 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)

COMMENT:

If a petition is left unresolved at the initial conference, the former shall be decided in a summary hearing based on: (a) affidavits, (b) documentary evidence, or (c) oral testimonies at the court's sound discretion.

Now, if testimony is needed, the court shall specify the witnesses to be heard as well as the subject-matter of their testimonies to be given. The parties are thereupon directed to present said witnesses.

Art. 247. The judgment of the court shall be immediately final and executory. (n)

COMMENT:

No further appeal from the summary judgment is allowed

under Art. 247 which renders the judgment final and executory considering the summary nature of the proceedings.

At any rate, an appeal by *certiorari* to the Supreme Court may lie in the presence of abuse of discretion amounting to lack of jurisdiction.

Art. 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)

COMMENT:

Also to be governed by the rules is 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 family's support.

Chapter 3
**INCIDENTS INVOLVING PARENTAL
AUTHORITY**

Art. 249. The following rules shall govern summary hearings in all petitions filed under Articles 223, and 239 of this Code involving parental authority shall be verified.

COMMENT:

Verification is required here.

Art. 250. Such petitions shall be verified and filed in the proper court of the place where the child resides. (n)

COMMENT:

Verified petitions falling under Arts. 223, 225, and 235 are filed in the RTC of the place where the child resides. As already adverted to, Art. 235 has been repealed by RA 6809.

Art. 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)

COMMENT:

Parents or, in their absence or incapacity, individuals, entities, or institutions exercising parental authority over the child shall be notified by the court upon filing of the petition.

Art. 252. The rules in Chapter 2 hereof shall also govern summary proceedings under this Chapter insofar as they are applicable. (n)

COMMENT:

The judge personally conducts the proceedings in a summary hearing. Here, the child may be assisted by counsel chosen by the child himself or appointed by the court.

The judge, however, may, pursuant to Art. 243, order the parties to be heard with assistance of counsel. But in this eventuality, the judge shall give assurance that the child's interest is appropriately safeguarded.

Chapter 4

OTHER MATTERS SUBJECT TO SUMMARY PROCEEDINGS

Art. 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)

COMMENT:

In the different articles herein abovementioned under Art. 253, summary proceedings are contemplated likewise.

Title XII

FINAL PROVISIONS

Art. 254. Titles III, IV, V, VI, VII, VIII, IX, XI and XV of Book 1 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.

COMMENT:

Art. 254 contemplates an express repeal and implied repeal. Examples are those provisions of the Civil Code and the Child and Youth Welfare Code that have been expressly repealed by the Family Code.

The same goes for all laws, decrees, executive orders, and the like which are inconsistent with the Family Code and are deemed impliedly repealed.

Art. 255. If any provision of this Code is held invalid, all the other provisions not affected thereby shall remain valid.

COMMENT:

In the eventuality that any provision of the Family Code is held invalid, this shall not affect any other provisions not affected thereby and which shall remain valid.

Art. 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.

COMMENT:

(1) Family Code Has Retroactive Effect

Being substantive in nature and in the process, creating new rights, the provisions of the Family Code are given retroactive effect by express mandate of Art. 256. Thus, the Family 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.” (*Art. 256*).

(2) Fact of Filing of Petition

**Republic v. CA
GR 92326, Jan. 2, 1992**

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. Such right can no longer be prejudiced or impaired by the enactment of a new law.

(3) Right of Action of Minor Child

This has been vested by the filing of complaint in court under the regime of the Civil Code and prior to the effectivity of the Family Code. (*See Tayag v. CA, GR 95229, June 9, 1992*).

(4) Judicial Declaration of Nullity of a Previous Marriage

**Lupo Almodiel Atienza v. Judge Francisco F.
Brillantes, Jr., MTC, Br. 20, Manila
AM MTJ-92-706, Mar. 29, 1995
60 SCAD 119**

Under the Family Code, there must be a judicial declaration of the nullity of a previous marriage before a party thereto can enter into a second marriage.

Article 40 of said Code provides that the absolute nullity of a previous marriage may be invoked for the purpose of remarriage on the basis solely of a final judgment declaring such previous marriage void. Art. 40 is applicable to remarriages entered into after the effectivity of the Family Code on Aug. 3, 1988 regardless of the date of the first marriage.

Besides, under Art. 256 of the Code, said article is given “retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.” This is particularly true with Art. 40, which is a rule of procedure.

The fact that procedural statutes may somehow affect the litigants’ rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. (*Gregorio v. CA*, 26 SCRA 229 [1968]). The reason is that, as a general rule no vested right may attach to, nor arise from, procedural laws. (*Billones v. CIR*, 14 SCRA 674 [1965]).

(5) Phrase “Vested” or “Acquired Rights” Is Left Undefined

Jose E. Aruego, Jr., et al. v. CA and Antonia Aruego
GR 112193, Mar. 13, 1996
60 SCAD 423

The phrase “vested or acquired rights” under Art. 256 of the Family Code is not defined, thus leaving it to the courts to determine what it means as each particular issue is submitted to them. It is difficult to provide the answer for each and every question that may arise in the future.

Art. 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)

Done in the City of Manila, this 6th day of July, in the year of Our Lord, nineteen hundred and eighty-seven.

COMMENT:

(1) Effectivity of the Family Code

The Family Code became effective on Aug. 3, 1988. It was published completely in the Aug. 4, 1987 issue of the *Manila Chronicle*.

(2) Memo Circular 8

**OFFICE OF THE PRESIDENT
OF THE PHILIPPINES
Malacañang**

**MEMORANDUM CIRCULAR 8
CLARIFYING THE EFFECTIVITY DATE
OF THE FAMILY CODE OF THE PHILIPPINES**

Article 257 of Executive Order No. 209, series of 1987, otherwise known as "The Family Code of the Philippines," provides that the Code shall take effect one (1) year after the completion of its publication in a newspaper of general circulation, as certified by the Executive Secretary, Office of the President.

Records of this Office show that publication of "*The Family Code of the Philippines*" in the Manila Chronicle, a newspaper of general circulation, was completed on August 4, 1987. Accordingly, "The Family Code of the Philippines" should have taken effect as of August 3, 1988 (*People v. Ramos, L-25265, May 9, 1978*), instead of August 5, 1988, as was inadvertently declared in a Certification dated October 7, 1988.

For the guidance of all concerned, it is hereby clarified and certified that the publication of "The Family Code of the Philippines" in a newspaper of general circulation was completed on August 4, 1987, and the Code became effective on August 3, 1988.

This Circular modifies the Certification issued on October 7, 1988, insofar as the effective date of “The Family Code of the Philippines” is concerned.

By authority of the President

(Sgd.) CATALINO MACARAIG, JR.
Executive Secretary

Manila, November 7, 1988.

CONTINUATION OF BOOK I, CIVIL CODE

The following provisions have *not* been repealed by the Family Code:

Title X. — Funerals

Title XII. — Care and Education of Children

Title XIII. — Use of Surnames

Title XIV. — Absence

Title X. — FUNERALS (n)

Art. 305. The duty and the right to make arrangements for the funeral of a relative shall be in accordance with the order established for support, under Article 294 (now Article 199 of the Family Code). In case of descendants of the same degree, or of brothers and sisters, the oldest shall be preferred. In case of ascendants, the paternal shall have a better right.

COMMENT:

Funeral Arrangements — A Duty and a Right

- (a) The making of funeral arrangement is both a *duty* and a *right*.
- (b) Note that the order of preference is the same as the order of support under Art. 199, Family Code.

Art. 306. Every funeral shall be in keeping with the social position of the deceased.

COMMENT:**(1) Funeral in Accordance With Social Position**

The higher the social standing of the deceased in life, the more dignified and expensive should his funeral be, as a general rule. The Revised Penal Code, however, prohibits the pompous and elaborate funeral of a criminal who has been given the death penalty. This is for the purpose of not giving undue publicity to the notoriety in life of the criminal.

In this connection, it is worthwhile to note the provisions of Art. 2165: “When funeral expenses are borne by a third person, without the knowledge of those relatives who were obliged to give support to the deceased, said relatives shall reimburse the third person should the latter claim reimbursement.”

(2) Funerals – The Concept

The incidents of funerals are governed by the law of the country where the body is to be buried. If the burial of a foreigner will take place in this country, our laws have to be complied with. Under the Civil Code, the duty and the right to make arrangements for the funeral of a relative devolve on the persons obliged to support the deceased while still alive. (*Art. 305*). Every funeral shall be in keeping with the social position of the deceased. (*Art. 306*). The higher the social standing of the deceased in life, the more dignified and expensive should his funeral be, as a general rule. Prohibited, nonetheless, is pompous and elaborate funeral of a criminal on whom the DEATH penalty has been inflicted. (*Art. 85, Revised Penal Code*).

Incidental to funerals are the so-called “funeral expenses,” *i.e.*, the money expended in procuring the interment, cremation, or other disposition of a corpse, including suitable monument, perpetual care of burial lot and entertainment of those participating in the wake. (*Black’s Law Dictionary, abridged fifth ed., p. 344*). Nonetheless, paupers should not be denied the benefit of a proper funeral. The Supreme Court in *Hon. Jejomar C. Binay & The Mun. of Makati v. Hon. Eufemio Domingo of the Commission on Audit, G.R. No. 92389, Sep. 11, 1991*, speaking thru Justice Edgardo Paras in an *en banc* decision, held: “Resolution No. 60, reenacted under Resolution No. 243, of the

Municipality of Makati, is a paragon of the continuing program of our government towards social justice. The Burial Assistance Program is a relief of pauperism, though not complete the loss of a member of a family is a painful experience, and it is more painful for the poor to be financially burdened by such death. Resolution No. 60 vivifies the very words of the late President Ramon Magsaysay, “those who have less in life, should have more in law.”

(3) Some Definition of Terms

- (a) BURIAL — interment of remains in a grave, tomb or the sea. (*See Implementing Rules and Regulations of Chapter XXI — “Disposal of Dead Persons” of the Sanitation Code of the Phils. [PD 856], dated Sep. 30, 1996, issued by the Secretary of Health.*)
- (b) BURIAL GROUNDS — cemetery, memorial park or any place duly authorized by law for permanent disposal of the dead. (*Ibid.*).
- (c) CATACOMB — place of burial consisting of galleries or passages with side recesses for tombs. (*Ibid.*).
- (d) CEMETERY — public or private land used for the burial of the dead and other uses dedicated for cemetery purposes, to include landscaped grounds, driveways, walks, columbaria, crematories, mortuaries, mausoleums, niches, graveyards and public comfort rooms. (*Ibid.*).
- (e) CINERARY REMAINS/CREMAINS — the ashes resulting from cremation of a dead body. (*Ibid.*).
- (f) CREMATION — a process that reduces human remains to bone fragments of fine sand or ashes through combustion and dehydration. (*Ibid.*).
- (g) CREMATORIUM — any designated place duly authorized by law to cremate dead persons. (*Ibid.*).
- (h) EMBALMING — preparing, disinfecting and preserving a dead body before its final disposal. (*Ibid.*).
- (i) FUNERAL ESTABLISHMENT — includes funeral parlors, funeral chapels and any similar place used in the

preparation, storage and care of the body of a deceased person for burial or cremation. (*Ibid.*).

- (j) MEMORIAL PARK — a cemetery with well kept landscaped lawns and wide roadways and footpaths separating the areas assigned for ground interments, tombs, mausoleums and columbaria; with or without a mortuary chapel; and provided with systematic supervision and maintenance. (*Ibid.*).
- (k) MORGUE — a place in which dead bodies are temporarily kept pending identification or burial. (*Ibid.*).
- (l) NICHE — interment space for remains. (*Ibid.*).
- (m) PUBLIC CEMETERY — a burial ground, government or privately-owned, open for general use of the public. (*Ibid.*).
- (n) PRIVATE BURYING GROUND OR PLACE OF ENSHRINEMENT — a family or individual or other similar exclusive burial ground established and authorized subject to these rules and regulations. (*Ibid.*).
- (o) REMAINS — the body or parts of the body of a dead person including the cremated remains. (*Ibid.*).
- (p) UNDERTAKER — a duly licensed person who practices undertaking. (*Ibid.*).
- (q) UNDERTAKING — the care, transport and disposal of the body of a deceased person by any means other than embalming. (*Ibid.*).

(4) Burial Requirements

- (a) *Death Certificate Requirements*
 - (1) No remains shall be buried or cremated without a death certificate;
 - (2) The death certificate must be issued by the attending government or private physician;
 - (3) In extreme cases, where no physician in attendance, it shall be issued by the:

- a) City/municipal health officer,
- b) Mayor, or
- c) The secretary of the municipal board, or
- d) A councilor of the municipality where the death occurred.

The basis of the death certificate shall be an affidavit duly executed by a reliable informant stating the circumstances regarding the cause of death; and

- (4) The death shall be reported to the local health officer within 48 hours after death and the death certificate shall be forwarded to the local civil registrar concerned within 30 days after death for registration.

(b) *Shipment of Remains*

The following are the requirements in the shipment or transfer of cadaver from one place to another:

- (1) Death certificate must be secured;
- (2) Transfer permit must be secured from the local health authority of the point of origin;
- (3) The remains must be properly embalmed;
- (4) Transit permit shall also be secured from places where the remains will pass if local ordinances of such places so require; and
- (5) Shipments of remains to and from abroad shall be governed by the rules and regulations of the National Quarantine Office.

(c) *Grave Requirements*

- (1) Graves where remains are buried shall be at least one and one half (1.5) meters deep and filled well and firmly; and
- (2) No remains shall be buried in a grave where water table is less than two (2) meters deep from the natural ground surface.

(d) *Cost of Burial*

- (1) The cost of burial of a dead person shall be borne by the nearest kin in the following order:
 - a) The spouse;
 - b) The descendants in the nearest degree;
 - c) The ascendant in the nearest degree; and
 - d) The brothers and sisters.
- (2) In the absence of the nearest kin above or if the kin is not financially capable of defraying the expenses, the cost shall be borne by the city or municipal government.
- (3) Every funeral shall be in keeping with the customs and traditions of the deceased and in accordance with the expressed wishes and religious beliefs of the deceased provided it is in accordance with law.

(e) *Burial of Remains*

The burial of remains in city or municipal burial grounds and similar burial grounds like cemetery/memorial parks, etc. shall not be prohibited on account of race, nationality, religion or political persuasion.

(f) *Medico-Legal Cases*

If the local health officer who issues a death certificate has reasons to believe or suspect that the cause of death was due to violence or crime, he shall notify immediately the authorities of the Philippine National Police or National Bureau of Investigation concerned.

Art. 307. The funeral shall be in accordance with the expressed wishes of the deceased. In the absence of such expression, his religious beliefs or affiliation shall determine the funeral rites. In case of doubt, the form of the funeral shall be decided upon by the person obliged to make arrangements for the same, after consulting the other members of the family.

COMMENT:**How the Funeral Rites Shall Be Conducted – Order of Preference**

- (a) Expressed wishes of the deceased,
- (b) Religious beliefs or affiliation, and
- (c) Desire of person obliged to make funeral arrangements – after consulting the other members of the family.

Art. 308. No human remains shall be retained, interred, disposed of or exhumed without the consent of the persons mentioned in Articles 294 (now Article 199 of the Family Code) and 305.

COMMENT:**(1) Disposition of the Remains**

This Article, does not concern itself with the funeral rites, but with the:

- (a) Retaining,
- (b) Interring,
- (c) Disposing, and
- (d) Exhuming of the human remains.

(2) Additional Rules

See Secs. 1089, 1096, 1097 of the Revised Administrative Code.

Art. 309. Any person who shows disrespect to the dead, or wrongfully interferes with a funeral shall be liable to the family of the deceased for damages, material and moral.

COMMENT:**Disrespect and Wrongful Interference**

Notice that damages which may be claimed may be either material or moral. In case damage to property has been com-

mitted, not only a civil action but even a criminal action may be brought. Libel may be committed on a “person, living or dead.” (*Revised Penal Code*).

Art. 310. The construction of a tombstone or mausoleum shall be deemed a part of the funeral expenses, and shall be chargeable to the conjugal partnership property, if the deceased is one of the spouses.

COMMENT:

(1) Expenses for Mausoleum

Who pays for the mausoleum of the *widow*?

ANSWER: Her own property, for here conjugal partnership had long been dissolved.

[*NOTE:* ARTS. 311-355, Title XI — Parental Authority, has been REPEALED by THE FAMILY CODE (*Art. 254*).].

(2) Where Award of Actual Damages For Funeral Expenses Is Deleted

**People v. Taliman, et al.
GR 109143, Oct. 11, 2000**

This is because the claim is not supported by any receipt. The rule is that every pecuniary loss must be established by credible evidence before it may be awarded. (*People v. Canasares, GR 123102, Feb. 29, 2000; People v. Enguito, GR 128812, Feb. 28, 2000; and People v. Mindanao, GR 123095, July 6, 2000*).

Title XII

CARE AND EDUCATION OF CHILDREN (ALL NEW PROVISIONS)

[NOTE: See Presidential Decree 603, the Child and Youth Welfare Code — found in the Appendix of this Volume I].

Art. 356. Every child:

- (1) **Is entitled to parental care;**
- (2) **Shall receive at least elementary education;**
- (3) **Shall be given moral and civic training by the parents or guardian;**
- (4) **Has a right to live in an atmosphere conducive to his physical, moral and intellectual development.**

COMMENT:

Rights of Children in General

This Article enumerates some rights of children.

The granting of at least an elementary education to every child is an unquestioned need in every democracy. That every child should be given moral and civic training is likewise beyond dispute. That one child has a right to live in a favorable atmosphere is a principle that cannot be over-emphasized. (*Report of the Code Commission, p. 50*).

[NOTE: Under Presidential Decree 603, we have the following Declaration of Policy and Enumeration of Rights:

Article 1. *Declaration of Policy.* — The Child is one of the most important assets of the nation. Every effort should be

exerted to promote his welfare and enhance his opportunities for a useful and happy life.

The child is not a mere creature of the State. Hence, his individual traits and aptitudes should be cultivated to the utmost insofar as they do not conflict with the general welfare.

The molding of the character of the child starts at the home. Consequently, every member of the family should strive to make the home a wholesome and harmonious place as its atmosphere and conditions will greatly influence the child's development.

Attachment to the home and strong family ties should be encouraged but not to the extent of making the home isolated and exclusive and unconcerned with the interests of the community and the country.

The natural right and duty of parents in the rearing of the child for civic efficiency should receive the aid and support of the government.

Other institutions, like the school, the church, the guild, and the community in general, should assist the home and the State in the endeavor to prepare the child for the responsibilities of adulthood.

x x x

Art. 3. *Rights of the Child.* — All children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors.

(1) Every child is endowed with the dignity and worth of a human being from the moment of his conception, as generally accepted in medical parlance, and has, therefore, the right to be born well.

(2) Every child has the right to a wholesome family life that will provide him with love, care and understanding, guidance and counseling, and moral and material security.

The dependent or abandoned child shall be provided with the nearest substitute for a home.

(3) Every child has the right to a well-rounded development of his personality to the end that he may become a happy, useful and active member of society.

The gifted child shall be given opportunity and encouragement to develop his special talents.

The emotionally disturbed or socially maladjusted child shall be treated with sympathy and understanding, and shall be entitled to treatment and competent care.

The physically or mentally handicapped child shall be given the treatment, education and care required by his particular condition.

(4) Every child has the right to a balanced diet, adequate clothing, sufficient shelter, proper medical attention, and all the basic physical requirements of a healthy and vigorous life.

(5) Every child has the right to be brought up in an atmosphere of morality and rectitude for the enrichment and the strengthening of his character.

(6) Every child has the right to an education commensurate with his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowmen.

(7) Every child has the right to full opportunities for safe and wholesome recreation and activities, individual as well as social, for the wholesome use of his leisure hours.

(8) Every child has the right to protection against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social and moral development.

(9) Every child has the right to live in a community and a society that can offer him an environment free from pernicious influences and conducive to the promotion of his health and the cultivation of his desirable traits and attributes.

(10) Every child has the right to the care, assistance, and protection of the State, particularly when his parents or guardians fail or are unable to provide him with his fundamental needs for growth, development, and improvement.

(11) Every child has the right to an efficient and honest government that will deepen his faith in democracy and inspire him with the morality of the constituted authorities both in their public and private lives.

(12) Every child has the right to grow up as a free individual, in an atmosphere of peace, understanding, tolerance, and universal brotherhood, and with the determination to contribute his share in the building of a better world.

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Art. 47. *Family Affairs.* — Whenever proper, parents shall allow the child to participate in the discussion of family affairs, especially in matters that particularly concern him.

In cases involving his discipline, the child shall be given a chance to present his side.

Art. 48. *Winning Child's Confidence.* — Parents shall endeavor to win the child's confidence and to encourage him to conduct with them on his activities and problems.

Art. 49. *Child Living Away from Home.* — If by reason of his studies or for other causes, a child does not live with his parents, the latter shall communicate with him regularly and visit him as often as possible.

The parents shall see to it that the child lives in a safe and wholesome place and under responsible adult care and supervision.

Art. 50. *Special Talents.* — Parents shall endeavor to discover the child's talents or aptitudes, if any, and to encourage and develop them.

If the child is especially gifted, his parents shall report this fact to the National Center for Gifted Children or to other agencies concerned so that official assistance or recognition may be extended to him.

Art. 51. *Reading Habit.* — The reading habit should be cultivated in the home. Parents shall, whenever possible, provide the child with good and wholesome reading material, taking into consideration his age and emotional development.

They shall guard against the introduction in the home of pornographic and other unwholesome publications.

Art. 52. *Association with Other Children.* — Parents shall encourage the child to associate with other children of his own age with whom he can develop common interests of useful and salutary nature. It shall be their duty to know the child's friends and their activities and to prevent him from falling into bad company. The child should not be allowed to stay out late at night to the detriment of his health, studies or morals.

Art. 53. *Community Activities.* — Parents shall give the child every opportunity to form or join social, cultural, educational, recreational, civic or religious organizations or movements and other useful community activities.

Art. 54. *Social Gatherings.* — When a party or gathering is held, the parents or a responsible person should be present to supervise the same.

Art. 55. *Vices.* — Parents shall take special care to prevent the child from becoming addicted to intoxicating drinks, narcotic drugs, smoking, gambling, and other vices or harmful practices.

Art. 56. *Choice of Career.* — The child shall have the right to choose his own career. Parents may advise him on this matter but should not impose on him their own choice.

Art. 57. *Marriage.* — Subject to the provisions of the Civil Code, the child shall have the prerogative of choosing his future spouse. Parents should not force or unduly influence him to marry a person he has not freely chosen.]

Art. 357. Every child shall:

- (1) Obey and honor his parents or guardian;**
- (2) Respect his grandparents, old relatives, and persons holding substitute parental authority;**
- (3) Exert his utmost for his education and training;**
- (4) Cooperate with the family in all matters that make for the good of the same.**

COMMENT:**(1) Duties of Children**

While Art. 356 gives some rights of the child, Art. 357 enumerates some of his duties.

(2) Responsibilities and Duties of the Child Under Presidential Decree 603

Art. 4. *Responsibilities of the Child.* — Every child, regardless of the circumstances of his birth, sex, religion, social status, political antecedents and other factors shall:

(1) Strive to lead an upright and virtuous life in accordance with the tenets of his religion, the teachings of his elders and mentors, and the biddings of a clean conscience;

(2) Love, respect and obey his parents, and cooperate with them in the strengthening of the family;

(3) Extend to his brothers and sisters his love, thoughtfulness, and helpfulness, and endeavor with them to keep the family harmonious and united;

(4) Exert his utmost to develop his potentialities for service, particularly by undergoing a formal education suited to his abilities, in order that he may become an asset to himself and to society;

(5) Respect not only his elders but also the customs and traditions of our people, the memory of our heroes, the duly constituted authorities, the laws of our country, and the principles and institutions of democracy;

(6) Participate actively in civic affairs and in the promotion of the general welfare, always bearing in mind that it is the youth who will eventually be called upon to discharge the responsibility of leadership in shaping the nation's future; and

(7) Help in the observance of individual human rights, the strengthening of freedom everywhere, the fostering of cooperation among nations in the pursuit of their common

aspirations for progress and prosperity, and the furtherance of world peace.

(3) Rights of Parents Which Child Must Respect Under Presidential Decree 603

Art. 43. *Primary Right of Parents.* — The parents shall have the right to the company of their children and, in relation to all other persons or institutions dealing with the child's development, the primary right and obligation to provide for their upbringing.

Art. 44. *Rights Under the Civil Code.* — Parents shall continue to exercise the rights mentioned in Articles 316 to 326 of the Civil Code over the person and property of the child.

Art. 45. *Right to Discipline Child.* — Parents have the right to discipline the child as may be necessary for the formation of his good character, and may therefore require from him obedience to just and reasonable rules, suggestions and admonitions.

Art. 358. Every parent and every person holding substitute parental authority shall see to it that the rights of the child are respected and his duties complied with, and shall particularly, by precept and example, imbue the child with highmindedness, love of country, veneration for the national heroes, fidelity to democracy as a way of life, and attachment to the ideal of permanent world peace.

COMMENT:

(1) Duties of Parents and Those Exercising Substitute Parental Authority

The Article applies to those possessed of:

- (a) Parental authority.
- (b) Substitute parental authority.

(2) Rules Under Presidential Decree 603

Art. 46. *General Duties.* — Parents shall have the following general duties toward their children:

- (1) To give him affection, companionship and understanding;
- (2) To extend to him the benefits of moral guidance, self-discipline and religious instruction;
- (3) To supervise his activities, including his recreation;
- (4) To inculcate in him the value of industry, thrift and self-reliance;
- (5) To stimulate his interest in civic affairs, teach him the duties of citizenship, and develop his commitment to his country;
- (6) To advise him properly on any matter affecting his development and well-being;
- (7) To always set a good example;
- (8) To provide him with adequate support, as defined in Article 290 of the Civil Code; and
- (9) To administer his property, if any, according to his best interests, subject to the provisions of Article 320 of the Civil Code.

Art. 47. *Family Affairs.* — Whenever proper, parents shall allow the child to participate in the discussion of family affairs, especially in matters that particularly concern him.

In cases involving his discipline, the child shall be given a chance to present his side.

Art. 48. *Winning Child's Confidence.* — Parents shall endeavor to win the child's confidence and to encourage him to conduct with them on his activities and problems.

Art. 49. *Child Living Away from Home.* — If by reason of his studies or for other causes, a child does not live with his parents, the latter shall communicate with him regularly and visit him as often as possible.

The parents shall see to it that the child lives in a safe and wholesome place and under responsible adult care and supervision.

Art. 50. *Special Talents.* — Parents shall endeavor to discover the child's talents or aptitudes, if any, and to encourage and develop them.

If the child is especially gifted, his parents shall report this fact to the National Center for Gifted Children or to other agencies concerned so that official assistance or recognition may be extended to him.

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Art. 52. *Association with Other Children.* — Parents shall encourage the child to associate with other children of his own age with whom he can develop common interests of useful and salutary nature. It shall be their duty to know the child's friends and their activities and to prevent him from falling into bad company. The child should not be allowed to stay out late at night to the detriment of his health, studies or morals.

Art. 53. *Community Activities.* — Parents shall give the child every opportunity to form or join social, cultural, educational, recreational, civic or religious organizations or movements and other useful community activities.

Art. 54. *Social Gatherings.* — When a party or gathering is held, the parents or a responsible person should be present to supervise the same.

Art. 55. *Vices.* — Parents shall take special care to prevent the child from becoming addicted to intoxicating drinks, narcotic drugs, smoking, gambling, and other vices or harmful practices.

Art. 56. *Choice of Career.* — The child shall have the right to choose his own career. Parents may advise him on this matter but should not impose on him their own choice.

Art. 57. *Marriage.* — Subject to the provisions of the Civil Code, the child shall have the prerogative of choosing his future

spouse. Parents should not force or unduly influence him to marry a person he has not freely chosen.

(3) Liability of Parents for Acts of Children

**Maria Teresa Y. Cuadra
v. Alfonso Monfort
L-24101, Sep. 30, 1970**

FACTS: Because of a playful prank inside a school yard, Maria Teresa Cuadra was hit by a girl's headband thrown at her by a classmate, Maria Teresa Monfort, 13 years of age. Cuadra became *blind* in one eye, and damages were asked of Monfort's father.

ISSUE: Is the father liable for his child's playful prank?

HELD: No, because in this case "there is nothing from which it may be inferred that the defendant could have prevented the damage by the observance of due care, or that he was in any way remiss in the exercise of his parental authority in failing to foresee such damage. On the contrary, his child was at school where she was, as he had the right to expect her to be, under the care and supervision of the teacher. . . The victim, no doubt, deserves no little commiseration and sympathy for the tragedy that befell her. But if the defendant is at all obligated to compensate her suffering, the obligation has no legal sanction enforceable in court, but only the moral compulsion of good conscience."

Dissenting (by Justice Antonio Barredo): There being no evidence that he had properly advised his daughter to behave properly, and not to play dangerous jokes on her classmates and playmates, the father can be held liable under Art. 2180 of the Civil Code. There is nothing in the record to show that he had done anything at all to even try to minimize the damage caused upon the plaintiff child.

[*NOTE:* In this case, neither the school nor the teacher was sued].

(4) Liabilities of Parents Under Presidential Decree 603 for Torts and Crimes

Art. 58. *Torts*. — Parents and guardians are responsible for the damage caused by the child under their parental authority in accordance with the Civil Code.

Art. 59. *Crimes*. — Criminal liability shall attach to any parent who:

(1) Conceals or abandons the child with intent to make such child lose his civil status.

(2) Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.

(3) Sells or abandons the child to another person for valuable consideration.

(4) Neglects the child by not giving him the education which the family's station in life and financial conditions permit.

(5) Fails or refuses, without justifiable grounds, to enroll the child as required by Article 72.

(6) Causes, abates, or permits the truancy of the child from the school where he is enrolled. "*Truancy*" as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.

It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.

(7) Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.

(8) Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignations and other excessive chastisement that embarrass or humiliate him.

(9) Causes or encourages the child to lead an immoral or dissolute life.

(10) Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.

(11) Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive.

“*Parents*” as here used shall include the guardian and the head of the institution or foster home which has custody of the child.

Art. 60. *Penalty.* — The acts mentioned in the preceding article shall be punishable with imprisonment from two to six months or a fine not exceeding five hundred pesos, or both, at the discretion of the Court, unless a higher penalty is provided for in the Revised Penal Code or special laws, without prejudice to actions for the involuntary commitment of the child under Title VIII of this Code.

Art. 359. The government promotes the full growth of the faculties of every child. For this purpose, the government will establish whenever possible:

- (1) Schools in every barrio, municipality and city where optional religious instruction shall be taught as part of the curriculum at the option of the parent or guardian;**
- (2) Puericulture and similar centers;**
- (3) Councils for the Protection of Children; and**
- (4) Juvenile courts.**

COMMENT:

Promotion of Child’s Growth

Note that “optional religious instruction” shall be taught. Thus, whether to take it or not is optional; but once taken, it becomes “part of the curriculum.”

Art. 360. The Council for the Protection of Children shall look after the welfare of children in the municipality. It shall, among other functions:

- (1) Foster the education of every child in the municipality;**
- (2) Encourage the cultivation of the duties of parents;**
- (3) Protect and assist abandoned or mistreated children, and orphans;**
- (4) Take steps to prevent juvenile delinquency;**
- (5) Adopt measures for the health of children;**
- (6) Promote the opening and maintenance of playgrounds;**
- (7) Coordinate the activities of organization devoted to the welfare of children, and secure their cooperation.**

COMMENT:

(1) Functions of the Council for the Protection of Children

Art. 360 enumerates the functions of this Council. The enumeration is not exclusive.

(2) Rules Under Presidential Decree 603

Art. 86. *Ordinances and Resolutions.* — Barangay Councils shall have the authority to enact ordinances and resolutions not inconsistent with law or municipal ordinances, as may be necessary to provide for the proper development and welfare of the children in the community, in consultation with representatives of national agencies concerned with child and youth welfare.

Art. 87. *Council for the Protection of Children.* — Every barangay council shall encourage the organization of a local Council for the Protection of Children and shall coordinate with the Council for the Welfare of Children and Youth in drawing

and implementing plans for the promotion of child and youth welfare. Membership shall be taken from responsible members of the community including a representative of the youth, as well as representatives of government and private agencies concerned with the welfare of children and youth whose area of assignment includes the particular barangay and shall be on a purely voluntary basis.

Said Council shall:

- (1) Foster the education of every child in the barangay;
- (2) Encourage the proper performance of the duties of parents, and provide learning opportunities on the adequate rearing of children and on positive parent-child relationship;
- (3) Protect and assist abandoned or maltreated children and dependents;
- (4) Take steps to prevent juvenile delinquency and assist parents of children with behavioral problems so that they can get expert advice;
- (5) Adopt measures for the health of children;
- (6) Promote the opening and maintenance of playgrounds and day-care centers and other services that are necessary for child and youth welfare;
- (7) Coordinate the activities of organizations devoted to the welfare of children and secure their cooperation;
- (8) Promote wholesome entertainment in the community, especially in movie houses; and
- (9) Assist parents whenever necessary in securing expert guidance counseling from the proper governmental or private welfare agency.

In addition, it shall hold classes and seminars on the proper rearing of the children. It shall distribute to parents available literature and other information on child guidance. The Council shall assist parents, with behavioral problems whenever necessary, in securing expert guidance counseling from the proper governmental or private welfare agency.

Art. 88. *Barangay Scholarships.* — Barangay funds may be appropriated to provide annual scholarships for indigent children who, in the judgment of the Council for the Protection of Children, deserve public assistance in the development of their potentialities.

Art. 89. *Youth Associations in Barangays.* — Barangay councils shall encourage membership in civic youth associations and help these organizations attain their objectives.

Art. 90. *Aid to Youth Associations.* — In proper cases, barangay funds may be used for the payment of the cost of the uniforms and equipment required by these organizations.

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Art. 139. *Curfew Hours for Children.* — City or municipal councils may prescribe such curfew hours for children as may be warranted by local conditions. The duty to enforce curfew ordinances shall devolve upon the parents or guardians and the local authorities.

Any parent or guardian found grossly negligent in the performance of the duty imposed by this article shall be admonished by the Department of Social Welfare or the Council for the Protection of Children.

Art. 361. Juvenile courts will be established, as far as practicable, in every chartered city or large municipality.

COMMENT:

Establishment of Juvenile Courts

In the City of Manila, the “Juvenile and Domestic Relations Court,” with the rank and category of a Court of First Instance, has been established. A similar court was also set up in Quezon City.

Rosete, et al. v. Rosete
L-15055, July 21, 1961

Sec. 38-E of Rep. Act 409, otherwise known as the Charter of the City of Manila, as amended by Rep. Act 1401, which

created the Juvenile and Domestic Relations Court, provides that decisions and orders of that court shall be appealed in the same manner and subject to the same conditions as appeals from Courts of First Instance. Since the present appeal involves largely questions of fact, the constitutional questions not being substantial, the same comes within the jurisdiction of the Court of Appeals, pursuant to Sec. 2 of Rep. Act No. 2613 amending the Judiciary Act of 1948.

Nota Bene:

Due to the abolition of the Juvenile and Domestic Relations Courts, the Regional Trial Courts have taken their place. Section 19 of Batas Pambansa Blg. 129 (“An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and For Other Purposes”) provides: “Regional Trial Courts shall exercise exclusive original jurisdiction in all civil actions and special proceedings falling within the exclusive jurisdiction of Juvenile and Domestic Relations Courts as now provided by law.” Moreover, under Sec. 23 of the Act: “The Supreme Court may designate certain branches of the Regional Trial Courts to handle exclusively juvenile and domestic relations cases which do not fall under the jurisdiction of quasi-judicial bodies and agencies in the interest of a speedy and efficient administration of justice.” Furthermore, under Sec. 24 of the Act, whenever a Regional Trial Court takes cognizance of juvenile and domestic relations cases, the special rules of procedure applicable under present laws to such cases shall continue to be applied, unless subsequently amended by law or by rules of court promulgated by the Supreme Court.

Art. 362. Whenever a child is found delinquent by any court, the father, mother, or guardian may in a proper case be judicially admonished.

COMMENT:

Admonition for Parental Delinquency

In most cases, juvenile delinquency is the result of *parental* delinquency.

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.

COMMENT:

(1) Child's Welfare Paramount; Rule if Child is Under Seven Years of Age

“The general rule is recommended in order to avoid many 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 as 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 has 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*).

(2) Rule under Presidential Decree 603, Re Separation of Child From Mother

Art. 117 of the Child and Youth Welfare Code provides:

“In case of separation of his parents, no child under *five* years of age shall be separated from his mother, unless the court finds compelling reasons to do so.”

**Lim v. Soa Pin Lim
L-41405, Oct. 22, 1975**

FACTS: A wife separated in fact from her husband, brought a *habeas corpus* case against the latter to obtain custody of their 11-month-old child. During the pendency of the case, the two entered into a compromise whereby the wife would have temporary custody of the child (subject to visito-

rial rights on the part of the husband), pending the outcome of another case between the two, which had been filed by the husband to compel the wife to live with him. Is the compromise or temporary arrangement valid?

HELD: Yes, for under Art. 363 of the Civil Code and Art. 8 of PD 603, "in all questions on the care, custody, education and property of children, the latter's welfare shall be paramount." Besides, Art. 17 of PD 603 states that "in case of separation of his parents, no child under five years of age shall be separated from his mother, unless the Court finds compelling reasons to do so."

Melchora Cabanas v. Francisco Pilapil
L-25843, July 25, 1974

FACTS: A man had carnal knowledge with a married woman, resulting in her begetting a child. He insured himself, named the child as his insurance beneficiary, and designated his brother to act as trustee, while the child remained a minor. Upon the death of the insured, the insurance indemnity was given to the brother, not to the mother of the child. The mother wants to act as trustee and get the indemnity. Will she be allowed to do so?

HELD: Yes, for what is important is the welfare of the child, who can be better cared for by the mother since he is under her custody. A mother is less likely to betray a father's trust than an uncle.

(3) Creation of Council for the Welfare of Children and Youth under Presidential Decree 603

Art. 205. *Creation of the Council for the Welfare of Children.* — A Council for the Welfare of Children is hereby established under the Office of the President. The Council shall be composed of the Secretary of Social Welfare as Chairman, and seven members, namely: The Secretary of Justice, the Secretary of Labor, the Secretary of Education and Culture, the Secretary of Health, the Presiding Judge of the Juvenile and Domestic Relations Court, City of Manila, and two representatives of

voluntary welfare associations to be appointed by the President of the Philippines, each of whom shall hold office for a term of two years.

There shall be a permanent Secretariat for the Council headed by an Executive Director, to be appointed by the Chairman and approved by a majority of the members of the Council.

For actual attendance at regular meetings, the Chairman and each member of the Council shall receive a *per diem* of one hundred pesos for every meeting actually attended, but the total amount of *per diem* that the Chairman and a member may receive in a month shall in no case exceed five hundred pesos.

Art. 206. *Appropriation.* — The sum of five million pesos is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, for the operation and maintenance of the Council for the Welfare of Children and Youth during the fiscal year. Thereafter, such sums as may be necessary for its operation and maintenance shall be included in the General Appropriations Decree.

Art. 207. *Powers and Functions.* — The Council for the Welfare of Children and Youth shall have the following powers and functions:

(1) To coordinate the implementation and enforcement of all laws relative to the promotion of child and youth welfare;

(2) To prepare, submit to the President and circulate copies of long-range programs and goals for the physical, intellectual, emotional, moral, spiritual, and social development of children and youth, and to submit to him an annual report of the progress thereof;

(3) To formulate policies and device, introduce, develop and evaluate programs and services for the general welfare of children and youth;

(4) To call upon and utilize any department, bureau, office, agency, or instrumentality, public, private or voluntary, for such assistance as it may require in the performance of its functions;

- (5) Perform such other functions as provided by law.

Art. 208. *Offices to Coordinate with the Council for Welfare of Children.* — The following offices and agencies shall coordinate with the Council for the Welfare of Children and Youth in the implementation of laws and programs on child and youth welfare:

- (1) Department of Justice
- (2) Department of Social Welfare
- (3) Department of Education and Culture
- (4) Department of Labor
- (5) Department of Health
- (6) Department of Agriculture
- (7) Department of Local Government and Community Development;
- (8) Local Councils for the Protection of Children; and such other government and private agencies which have programs on child and youth welfare.

Existing as well as proposed programs of the above-named agencies as well as other government and private child and youth welfare agencies as may be hereafter created shall be implemented by such agencies: *Provided*, That with the exception of those proposed by the Local Councils for the Protection of Children, all long-range child and youth welfare programs shall, before implementation, be indorsed by the agencies concerned to their respective departments, which shall in turn indorse the same to the Council for the Welfare of Children and Youth, for evaluation, cooperation and coordination.

Art. 209. *Implementation of this Code and Rule-Making Authority.* — The enforcement and implementation of this Code shall be the primary responsibility of the Council for the Welfare of Children. Said Council shall have authority to promulgate the necessary rules and regulations for the purpose of carrying into effect the provisions of this Code.

(4) Final Provisions under Presidential Decree 603

Art. 210. *General Penalty.* — Violations of any provisions of this Code for which no penalty is specifically provided shall be punished by imprisonment not exceeding one month or a fine not exceeding two hundred pesos, or both such fine and imprisonment at the discretion of the court, unless a higher penalty is provided for in the Revised Penal Code or special laws.

Art. 211. *Repealing Clause.* — All laws or parts of any law inconsistent with the provisions of this Code are hereby repealed or modified accordingly: *Provided*, That the provisions of the Dangerous Drugs Act of 1972 and amendments thereto shall continue to be in force and shall not be deemed modified or repealed by any provision of this Code.

Art. 212. *Separability Clause.* — If any provision of this Code is held invalid, the other provisions not affected thereby shall continue in operation.

Art. 213. *Effectivity Clause.* — This Code shall take effect six months after its approval.

Done in the City of Manila, this 10th day of December, in the year of Our Lord, nineteen hundred and seventy-four.

(5) Witnesses and Youthful Offenders**People v. Santos
501 SCRA 325 (2006)**

ISSUE: May child witnesses be allowed to testify in narrative form and leading questions be propounded by the trial court?

HELD: Yes, and such may be allowed in all stages of the examination if the same will further the interest of justice. The trend in procedural law, after all is to give a wide latitude to the courts in exercising control over the questioning of a child witness.

(6) Senior Citizens Act (RA 7432) as Expanded by RA 9257

The Senior Citizen Act is a law that has benefited to a great extent our “senior citizen” (our elderly) which shall refer to any resident citizen of the Philippines at least 60 years of age.

The abovementioned law has been amended and modified by RA 9257, otherwise known as the “Expanded Senior Citizen’s Act of 2003.” Nevertheless, the privileges granted to these senior citizens remain. Thus, among the most notable of these benefits include, *inter alia*:

1. the grant of a 20% discount from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants, and recreation centers, and purchases of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of the senior citizens;
2. a minimum of 20% discounts on admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals, and other similar places of culture, leisure, and amusement for the exclusive use or enjoyment of senior citizens;
3. exemption from the payment of the individual income taxes, provided that their annual income does not exceed the property level as determined by the NEDA (National Economic Development Authority) for that year;
4. free medical and dental services, diagnostic and laboratory fees such as, but not limited to, x-rays, computerized tomography scans and blood tests, in all government facilities, subject to the guidelines issued by the Dept. of Health (DOH) in the coordination with the Phil. Health Insurance Corp. (PHIL-HEALTH);
5. the grant of 20% discount on medical and dental services and diagnostic and laboratory fees, includ-

ing professional fees (PF) of attending doctors in all private hospitals and medical facilities, in accordance with the rules and regulations issued by the DOH in coordination with the PHILHEALTH;

6. the grant of 20% discount in fare for domestic air and sea travel for the exclusive use or enjoyment of senior citizens; and
7. the grant of 20% in public railways, skyways, and bus fare for the exclusive use or enjoyment of senior citizens.

Title XIII
USE OF SURNAMES
(ALL NEW PROVISIONS)

Art. 364. Legitimate and legitimated children shall principally use the surname of the father.

COMMENT:

Surname to be Used by Legitimate and Legitimated Children

- (a) Before the effectivity of the Civil Code, there was no legal provision regulating the use of surnames. (*Manuel v. Republic, L-15811, June 30, 1961*).
- (b) Art. 364 applies even if the mother has divorced the father and is now married to another man. The evident purpose is to avoid confusion in paternity.

Moore v. Republic
L-18407, June 26, 1963

FACTS: An American husband and wife had a child named William M. Velarde (the father's surname being Velarde). After the couple divorced each other, and the woman married another man (Mr. Moore), the child continued to live with the mother (and the second husband). Said second husband treated the child as if he were the child's real father. Because of this harmonious relationship, the second husband brought this action in behalf of the child to enable the minor to use the surname Moore.

HELD: Petition should be denied. Art. 364 specifically provides that legitimate children shall principally use the surname of their father. Moreover, if the child should be allowed to bear the surname of the second husband of the mother, there may result confusion as to his real paternity (in case of another divorce, or even in case of the death of Moore). In the last analysis, the child, would be prejudiced if the change in surname would be allowed.

- (c) An illegitimate child, using the mother's surname, if *legitimated subsequently*, may use the surname of the father even *without judicial decree* — since after all, he is already allowed to use such surname under Art. 364. However, if the child still desires a judicial decree for the change in surname, would such a decree be granted?

ANSWER: Yes, for there is no legal prohibition against obtaining a *judicial confirmation of a legal right*. It may indeed be a superfluity, but it is NOT against the law, customs, or morals. (*Asensi v. Republic, L-18047, Dec. 26, 1963*).

Art. 365. An adopted child shall bear the surname of the adopter.

COMMENT:

Surname of Adopted Child

Example: A married woman, with the consent of her husband, adopted a child. The child will bear the surname (family name of the girl *before marriage*) of the woman, not that of the man. This is so to eliminate confusion considering the fact that the adopted child has generally the rights of a legitimate child. Besides, if the child were to use the surname of the adopter's husband, the public may be misled into believing that the husband had also adopted the child, and the child can inherit from said husband in case of death. (*Johnston v. Republic, L-18284, Apr. 30, 1963*).

Art. 366. (repealed)

Art. 367. (repealed)

Art. 368. Illegitimate children shall bear the surname of the mother. (*Revilla Law*)

Art. 369. Children conceived before the decree annulling a voidable marriage shall principally use the surname of the father.

Art. 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."

COMMENT:

(1) Surnames for a Married Woman

Example: Josefa Reyes married Renato Cruz. Josefa may use any of the following names:

- (a) Josefa Reyes Cruz
- (b) Josefa Cruz
- (c) Mrs. Renato Cruz

NOTE: She cannot use *Mrs. Josefa Cruz* for this would be illegal and ungrammatical, the term "Mrs." being the abbreviation of "Mistress." While she is the mistress of Renato, she is NOT the mistress of Josefa. However, if she wants to, she may still use *Mrs. Josefa Cruz* provided that "Mrs." is enclosed in parenthesis. She would then be using the form in Art. 370 (No. 2) and the term "Mrs." which should be enclosed would be merely descriptive of her marital status.

(2) Exclusive Use of Said Surnames

The right of the wife to use the husband's surname is exclusive in the sense that another woman should not misrep-

resent herself as the wife by using the husband's name with the prefix "Mrs." (*Silva v. Peralta*, L-13114, Nov. 25, 1960).

Tolentino v. Court of Appeals
L-41427, June 10, 1988

The issue in this petition for review on *certiorari* is whether or not a woman who has been legally divorced from her husband may be enjoined by the latter's present wife from using the surname of her former husband.

Be it noted that on this point, Philippine law is understandably silent. There being no provisions for divorce in Philippine laws, consequently the use of surnames by a divorced wife is not provided for. Notwithstanding, there is no usurpation of the petitioner's name and surname in this case so that the mere use of the surname Tolentino by the private respondent cannot be said to have injured the petitioner's right. Considering the circumstances of this petition, the age of the respondent who may be seriously prejudiced at the stage of her life, having to resort to further legal procedures in reconstituting documents and altering legal transactions where she used the surname Tolentino, and the effects on the private respondent who, while still not remarried, will have to use a surname different from the surnames of her own children, it is but just and equitable to leave things as they are, there being no actual legal injury to the petitioner save a deep hurt to her feelings which is not a basis for injunctive relief.

Art. 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 former husband's surname, unless:

- (1) **The court decrees otherwise, or**
- (2) **She or the former husband is married again to another person.**

COMMENT:**Effect if Marriage is Annulled**

Note that the law distinguishes if the former wife is *guilty* or *innocent*. Note further that annulment *dissolves* the marriage.

Art. 372. When legal separation has been granted, the wife shall continue using her name and surname employed before the legal separation.

COMMENT:**Rule if Legal Separation Occurs**

Notice that the law does not distinguish whether the woman is the guilty spouse or not, unlike in the case of annulment of marriage, because in legal separation the marriage ties still subsist.

Laperal v. Republic
L-18008, Oct. 30, 1962

FACTS: Elisa L. Santamaria, legally separated from her husband Enrique R. Santamaria, petitioned for a change of name to Elisa Laperal, her maiden name, under Rule 103 of the Rules of Court (for change of name) on the ground that she was already legally separated from her husband, that they had for many years now ceased to live together, and that the continued use of her husband's surname may cause undue confusion in her finances and the eventual liquidation of the conjugal assets.

HELD: The change of name cannot be granted. *Firstly*, the Rules of Court on change of name in *general* cannot prevail over the specific provisions of Art. 372 which specifically deals with wives who are legally separated. *Secondly*, even under Rule 103, the fact of legal separation alone does NOT justify a change of name, otherwise Art. 372 can easily be circumvented. *Thirdly*, the decree of legal separation had already dissolved the conjugal partnership which previously existed.

Art. 373. A widow may use the deceased husband's surname as though he were still living, in accordance with Article 370.

COMMENT:

Surname to be Used by a Widow

Although here, the marriage ties have been dissolved, still the widow may desire to cherish her deceased husband's memory by the continued use of his surname. However, if she does not want to, she is allowed to use her maiden surname again. Notice the use of the word "may" by the law.

Art. 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.

COMMENT:

Use of Additional Name or Surname

Reason: To avoid confusion.

Art. 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.

COMMENT:

When "Junior" may be Used

This Article restricts the use of "Junior." Social usage allows the use of "Junior" also for daughters, not for granddaughters.

Art. 376. No person can change his name or surname without judicial authority.

COMMENT:

(1) No Change of Name or Surname Without Judicial Authority

Change of name under judicial authorization is governed by Rule 103 of the Rules of Court. Under Sec. 1 of said rule: "A person desiring to change his name shall present the petition to the Court of First Instance of the province in which he resides, or in the City of Manila, to the Juvenile and Domestic Relations Court." The state has an interest in the names borne by individuals and entities for purposes of identification. A change of name is a *privilege* and not a matter of right, therefore, before a person can be authorized to change his name (given him either in his birth certificate 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. (*Ong Peng Oan v. Republic, 102 Phil. 468*). Justifiable causes include the following:

- (a) When the name is ridiculous, tainted with dishonor, or is extremely difficult to write or pronounce;
- (b) When the request for change is a consequence of a change of status, as when a natural child is acknowledged or legitimated;
- (c) When the change is necessary to avoid confusion (not a confusion caused by petitioners' own use of an unauthorized alias). (*Yu Chi Han v. Republic, L-22040, Nov. 29, 1965*). Thus, the surname "Rotaquio" was allowed by the Supreme Court to be changed to "Rota," since the true surname was often taken by people to be the petitioner's Christian name — he having been addressed as "Taquio" or "Tags" or "Takoy" or "Akoy." The change cannot therefore be considered as arbitrary, or whimsical, especially if, as in said case, no claim has been made that petitioner seeks the change to achieve some unlawful purpose. (*In*

the Matter of the Change of Name of Abundio Rotaquio, L-18971, Jan. 29, 1968).

- (d) A sincere desire to adopt a Filipino name to erase signs of a former alien nationality — provided there is no prejudice to the State or to any individual. (*Candido Uy v. Republic, L-22712, Nov. 29, 1965).*

Calderon v. Republic
L-18127, Apr. 5, 1967

FACTS: A mother who had a natural child by legal fiction, subsequently married a man *other than* the child's father.

ISSUE: May the child successfully petition to change, his surname from the real father's name to that of the stepfather, who has *no* objection thereto?

HELD: Yes, for an illegitimate child need not bear the stigma of illegitimacy during his whole lifetime. After all, the stepfather was willing. Moreover, the change of name allowed in Rule 103 of the Rules of Court does not alter one's status, rights, duties, or citizenship. It merely changes the appellation by which a person is known, identified or distinguished from others.

Teresita Llaneta (also known as Teresita Llaneta Ferrer and Teresita Ferrer) v. the Honorable Corazon Juliano Agrava
L-32054, May 15, 1974

FACTS: Atanacia Llaneta was married to Serafin Ferrer, with whom she had a child named Victoriano Ferrer. The husband died and four years later, Atanacia had relations with another man, out of which, Teresita was born. Shortly after Teresita's birth, the mother brought her and Victoriano to Manila where all of them lived with Atanacia's mother-in-law, Victoria Vda. de Ferrer. Teresita was raised in the Ferrer household, using the surname Ferrer in all her dealings and throughout her schooling. When she was 20 years old, she discovered her

registered name was Llaneta, not Ferrer, and that she was an illegitimate child of Atanacia and an unknown father. Because she felt that the continued use of Llaneta would cause confusion, she petitioned for change of name from Teresita Llaneta to Teresita Llaneta Ferrer. The Juvenile and Domestic Relations Court of Manila denied the petition on the ground that under *three* decisions of the Supreme Court, a change of name will be disallowed if it would give the false impression of family relationship.

HELD: Generally, said principle disallowing the change because of the false impression that would arise remains *valid*, but only to the extent that the proposed change of name would in great probability cause prejudice or future mischief to the family whose surname is involved or to the community in general. In the present case, however, the Ferrer family even earnestly supports the petition. Its members are proud to share their name with Teresita. Even the Office of the Solicitor-General has expressed no objection. Accordingly, the petition for change of name should be granted.

Go v. Republic
L-31760, May 25, 1977

Change of name is a privilege and is a matter of public interest because serious consequences may arise. So the petitioner for such name must justify the use of the new name. Here, petitioner Gil Go was not able to justify its change to Henry Yao. His claim that he had been using Yao was belied by his school records. Besides, he was not able to give valid “business reasons.”

In the Matter of the Change of Names
of Secan Kuh and Marilyn Se
L-27621, Aug. 30, 1973

ISSUE: If a husband is able to change his name in a judicial proceeding but fails to include his wife and minor children, can said wife and children get a change of name by merely filing a petition in said proceeding (even

if the decision has long been final) (for after all, are they not entitled to bear the husband's surname) or should a separate action be brought?

HELD: A separate civil action must be brought, otherwise the government will be deprived of the additional filing fees, and the essential requirements for filing such a petition would not be complied with (e.g., recitals in the title of the petition, the publication of the petition to apprise persons who may be in possession of adverse information or evidence against the grant of the petition).

Pabellar v. Republic
L-27298, Mar. 4, 1976

FACTS: Petitioner Pabellar, an illegitimate child, erroneously used for more than 30 years the surname of his father Carandang, without objection on the part of the father. When he discovered from his baptismal certificate that his true name was Pabellar, he petitioned to have the name changed to Carandang. However, he did not present the birth certificate in court.

ISSUE: Will his petition be granted?

HELD: No, the petition will not be granted because he did not present the birth certificate. Only the name recorded in the Civil Registry may be changed. Besides, inasmuch as he has been using the name Carandang since childhood, he is allowed to use the same under Com. Act 142 (the Anti-Alias Law). In his concurring opinion, Justice Felix Antonio opined that the petition is unnecessary for after all, he already had the right to use the surname Carandang.

Milagros Llerena Telmo v. Republic
L-28649, Sep. 23, 1976

FACTS: A wife filed a petition with the CFI to have her husband's surname "Telmo" changed to "Thelmo" (so that she might use the latter name). Although the husband executed an affidavit stating that he had no objection

to the petition, he did not join her as co-petitioner. Will the petition prosper?

HELD: No, the petition will not prosper. In cases of this nature, it is imperative that the husband should initiate the proceedings. Even if the court were inclined to grant the petition, still the husband and the children would not be prevented from using the old name or the old spelling, since no authority would have been granted them to use the new name. This would result in confusion and error.

Republic of the Phils. v. CA and Maximo Wong
GR 97906, May 21, 1992

A change of name does not define or effect a change in one's existing family relations or the rights and duties flowing therefrom. It does not alter one's legal capacity, civil status or citizenship; what is ALTERED is only the name.

Hatima C. Yasin, represented by her
Attorney-in-Fact,
Hadji Hasan S. Centi v. Hon. Judge
Shari'a District Court Third Shari'a
Judicial District, Zamboanga City
GR 94986, Feb. 23, 1995
59 SCAD 191

FACTS: Petitioner's registered name is Hatima Centi Y. Saul. In the instant petition, petitioner does not seek to change her registered maiden 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 Hadji Idris Yasin, by virtue of a decree of divorce granted in accordance with Muslim law. When petitioner married her husband, she did not change her name but only her civil status. Neither was she required to secure judicial authority to use the surname of her husband after the marriage as no law requires it.

HELD: The true and real name of a person is that given to him and entered in the civil register. (*Chomi vs. Local Civil Registrar of Manila, 99 Phil. 1004 [1956]; Ng Yao Siong vs. Republic, 16 SCRA 483 [1966]; Rendora vs. Republic, 35 SCRA 262 [1970]; Pabellar vs. Republic, 70 SCRA 16 [1976]*). While it is true that under Article 376 of the Civil Code, no person can change his name or surname without judicial authority, nonetheless, the only name that may be changed is the true and official name recorded in the Civil Register.

The divorce becomes irrevocable after observance of a period of waiting called *idda* (*Art. 56, PD 1086*) the duration of which is 3 monthly courses after termination of the marriage by divorce. (*Art. 57[b], PD 1083*). Under Article 187, PD 1083, the Civil Code of the Philippines, the Rules of Court and other existing laws, insofar as they are not inconsistent with the provisions of this Code (the Code of Muslim Personal Laws), shall be applied suppletorily. Even under the Civil Code, the use of the husband's surname during the marriage (*Art. 370, Civil Code*), after annulment of the marriage (*Art. 371, Civil Code*), and after the death of the husband (*Art. 373, Civil Code*) is permissive and not obligatory except in case of legal separation. (*Art. 372, Civil Code*).

When a woman marries a man, she need not apply and/or seek judicial authority to use her husband's name by prefixing the word "Mrs." before her husband's full name or by adding her husband's surname to her maiden first name. The law grants her such right. (*Art. 370, Civil Code*). Similarly, when the marriage ties or *vinculum* no longer exists as in the case of death of the husband or divorce as authorized by the Muslim Code, the widow or divorcee need not seek judicial confirmation of the change in her civil status in order to revert to her maiden name as the use of her former husband's name is optional and not obligatory for her. (*Art. 373, Civil Code*).

Republic v. Lim
419 SCRA 123
(2003)

Issue: Is judicial authority required for the continued use of a surname?

Co v. Civil Register of Manila
423 SCRA 420
(2003)

Art. 412 does not qualify as to the kind of entry to be changed or corrected or distinguished on the basis of the effect that the correction or change may be — such entries include not only those clerical in nature but also substantial errors.

[*NOTE:* The proceedings in Rule 108 of the Rules of Court are summary if the entries in the civil register sought to be corrected are clerical or innocuous in nature, but where such entries are substantial, *i.e.*, the status and nationality of the petitioners, or the citizenship of their parents, the proceedings are adversarial in nature. (*Co v. Civil Register of Manila, supra.*.)]

(2) Baptism Not Required

A person, on valid justifiable reasons, may successfully ask for a change of name to one with which he had *not* been baptized. Baptism is *not* a condition *sine qua non* before one may ask for a change of name. If this were so, many petitions, if not all, would have to be denied for after all the applicants desire a name with which they had NOT been baptized. (*Ong Te v. Republic, L-15549, June 30, 1962.*)

(3) Effect of Criminal Record

- (a) No person can change his name or surname without judicial approval. This is particularly true when he has a criminal record, in which case he obviously desires to obliterate said unsavory record. The mere fact that he has for a time been using a different name and has become

known by it, does *not*, of itself constitute proper and reasonable justification to legally authorize a change of name for him. (*Ong Peng Oan v. Republic*, 102 Phil. 468; *Ong Te v. Republic*, L-15549, June 30, 1962).

- (b) If there are prior criminal convictions, it is the court's duty to consider carefully the consequences of the change of name, and to deny the same unless weighty reasons are shown. The state indeed has an interest in the names borne by individuals and entities for the purpose of identification; and it is a legal truism that a change of name is a privilege, and *not* a matter of right. (*Ong Peng Oan v. Republic*, *supra*).

(4) Effect of Use of Name Since Childhood

An individual is *authorized* to use a name by which he had been known *since childhood*. Such use need not be judicially authorized. What the law forbids is the use of any name "different from the one with which he was *christened*, or by which he has been *known since his childhood*, or *such substitute name as may have been authorized by a competent court*."

Therefore, if an individual has been known since childhood by the name "Uy Jui Pio alias Juanito Uy," he cannot be held guilty of violating the law, even if he had not been judicially authorized to use said name. (*People v. Uy Jui Pio*, 102 Phil. 679).

(5) Use of an Alias

A petitioner seeking to change his name or to use an alias must show to the satisfaction of the Court proper reasons therefor. An order allowing or disallowing it is a matter of judicial discretion, not of right. Hence, if the use of an alias will create more confusion, the petition ought to be denied. The fact that the petitioner intends to become a naturalized Filipino is an added reason against the grant of an alias, for Filipinos generally use only one name for both ordinary and business transaction. (*Yu Kheng Chuan v. Republic*, L-4022, Dec. 28, 1959). (The mere fact that several individuals use the same name is NOT a valid reason for a change thereof in the

absence of evidence showing that prejudice to the applicant had been caused by such duplication. (*Ong Te v. Republic*, L-15549, June 30, 1962).

Ng v. Republic
95 SCRA 188

If a person's registered name includes an alias, and he uses said alias, he is not guilty of violating the Anti-Alias Law.

(6) How to Register a Change of Name

If a change of name is authorized, the original entry must not be erased or cancelled. The proper way would be to make the proper marginal corrections or annotations. (*Go v. Republic*, L-20160, Nov. 29, 1965).

Art. 377. Usurpation of a name and surname may be the subject of an action for damages and other relief.

COMMENT:

Usurpation of Name Prohibited

The Article allows, among others, an action for damages.

Art. 378. The unauthorized or unlawful use of another person's surname gives a right of action to the latter.

COMMENT:

Effect of Using Another's Surname

The Article allows a right of action, but only if the use is *unauthorized or unlawful*.

Art. 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.

COMMENT:**Use of Pen Names or Stage Names**

- (a) One may use a pen name or a stage name even without judicial approval as long as it is done in good faith (without malice) and provided third persons are not prejudiced. The law provides that these kinds of names cannot be usurped. A movie actor can ordinarily successfully petition the Commission on Elections to be voted for under either his true name or movie name.
- (b) Meaning of “cannot be usurped” – “*should not* be usurped, otherwise liability for damages may lie.”

Art. 380. Except as provided in the preceding article, no person shall use different names and surnames.

COMMENT:**(1) Use of Different Names and Surnames**

- (a) Ordinarily, the use of different names and surnames cannot be allowed. The preceding Article (*Art. 379*) gives the *exception*.
- (b) The use of a name with which one was christened or baptized is expressly authorized by law. (*People v. Uy Jui Pio*, 102 Phil. 679; *Lim Hok Albano v. Republic*, 104 Phil. 795; *Hao Bing Chiong v. Republic*, L-13526, Nov. 24, 1959). However, strictly speaking, the real name of a person is that given him in the Civil Register, not the name by which he was baptized in his church or by which he has been known in the community or which he has adopted. (*Chomi v. Local Civil Registrar*, 99 Phil. 1004; *Jayme S. Tan v. Republic*, L-16384, 1962).

(2) Nature of Petitions for Change of Name

Petitions for a change of name are proceedings *in rem*. Therefore, strict compliance with the requirements of publication is essential, for it is by such means that the Court acquires

jurisdiction. If the petitioner's name is spelled "Jaymer" but the published order spells it as "Jaimer" the error is SUBSTANTIAL because the publication did *not* correctly identify the party to said proceedings. The difference of one letter in a name may indeed mean the distinction of identities of different persons. (*Jayme S. Tan v. Republic, L-16384, Apr. 26, 1962*).

(3) Rule on the Use of Father's Surname

Leonardo v. CA
410 SCRA 446
(2003)

An illegitimate child born after the effectivity of the Family Code has no right to use her father's surname. This Rule applies even if petitioner's father admits paternity.

Held: While judicial authority is required for a change of name or surname, there is no such requirement for the continued use of a surname which a person has already been using since childhood.

Title XIV

ABSENCE

Chapter 1

PROVISIONAL MEASURES IN CASE OF ABSENCE

Art. 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)

COMMENT:

(1) Use of Mere Provisional Measures In Case of Absence

Notice that the heading of this chapter is *Provisional Measures in Case of Absence*, implying that the measures here are not permanent, and that in case a person is declared absent by the courts, another procedure will have to be followed. In case therefore of the disappearance of a person from his domicile, a representative may be appointed to act in his behalf in the meantime.

A wife, in view of the absence of her husband, brought an action in court regarding certain separate properties of her husband. No allegation was made in the complaint she filed showing that she had been appointed in accordance with the provisions of law, to administer the property of her absent husband, nor to maintain an action with reference to the same.

In the absence of such allegations, it is clear that she did not have capacity to maintain an action. Before an action can be brought on behalf of an absent person, the complaint must contain allegations sufficient to show that the provisions of the Civil Code regarding declaration of absence, etc., have been complied with. (*Abaling v. Fernandez*, 25 Phil. 33).

(2) Stages of Absence

- (a) Provisional Absence (*Art. 381*)
- (b) Declaration of Absence (*Art. 384*)
- (c) Presumption of Death (*Arts. 390, 391*)

(3) Where Petition is to be Filed

The petition shall be filed with the Court of First Instance (now Regional Trial Court) of the place where the absentee resided before his disappearance. In the City of Manila or in Quezon City, the petition shall be filed in the Juvenile and Domestic Relations Court (now Regional Trial Court). (*See Sec. 1, Rule 107, Revised Rules of Court*).

Art. 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)

COMMENT:

Necessary Measures to be Taken by the Judge

This Article states what the judge must do in case of provisional appointments.

Art. 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)

COMMENT:

(1) Preference Given to Spouse Present

Note that the spouse who is present (as distinguished from the absent spouse) is preferred, provided:

- (a) She is of age.
- (b) There is no legal separation between the spouses.

(2) Necessity of Judicial Appointment

Appointment by the court is *essential to capacitate* the wife to represent the absentee, otherwise she cannot, for example, dispose of conjugal property (*Ward v. Delfin, C.A., 45 O.G. 2941*); nor can she accept payment of the salary of the absent spouse. (*Garrido v. Camarines Lumber Co., C.A. 44 O.G. 440*).

Chapter 2

DECLARATION OF ABSENCE

Art. 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)

COMMENT:

When Absence May Be Judicially Declared

Notice the distinction in the kinds of absence, as follows:

- (a) Absence *without* administrator
- (b) Absence *with* administrator

For the first, only two years' time would be sufficient to elapse before a declaration of absence can be made; in the second, five years. The reason for the longer period of time is the greater probability that the estate or property is being well-taken cared of, if a manager or administrator had been left in charge of the property. The action to declare a person absent is vastly different from one where his presumptive death is asked for, which declaration as we have already seen, cannot be granted by the court except if there are property rights to be resolved and adjudicated. (*In Re: Szatraw, supra*).

Art. 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)

COMMENT:

Persons Who May Ask for the Declaration of Absence

All of those mentioned under Art. 385 are presumptive heirs or have interests in the property of the absentee conditioned upon his death; hence, they are given the right to ask for a declaration of the latter's absence.

Art. 386. The judicial declaration of absence shall not take effect until six months after its publication in a newspaper of general circulation. (186a)

COMMENT:

When Judicial Declaration of Absence Becomes Effective

The period of six months is given to enable those who may have heard of the absentee in the meantime to give their information to the parties or persons concerned, and if said absentee should reappear within such a period, then the judicial declaration of his absence will not have any effect at all.

Chapter 3
ADMINISTRATION OF THE PROPERTY
OF THE ABSENTEE

Art. 387. An administrator of the absentee's property shall be appointed in accordance with Article 383. (187a)

COMMENT:

Appointment of Administrator for Absentee's Property

Note the cross reference to Art. 383 where preference is given to the spouse present.

Art. 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)

COMMENT:

Rights of Wife as Administratrix

The wife here who is appointed administratrix because of the judicial declaration of her husband's absence must always obtain judicial permission or authority in order that:

- (a) She can alienate or encumber her husband's property.
- (b) She can alienate or encumber the conjugal property.

Art. 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)

COMMENT:

(1) When Administration of Absentee's Property Ceases

Art. 389 enumerates the instances when the administration ceases.

Example: A husband has been declared judicially absent. Shortly afterwards, the husband reappears. The administration already granted on account of his absence will then cease. The same will apply even if the husband does not appear personally but through an agent because in this case, the man is really constructively present; that is, he will be acting through his agent.

(2) Effect If Death is Proved

In the preceding case, if the death of the husband is proved, then the administration will cease and instead there will be the settlement of his estate, whether he had previously executed a will or not.

Chapter 4

PRESUMPTION OF DEATH

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. (n)

COMMENT:

(1) When a Person is Presumed Dead

Note very well the purpose of the presumption stated in this Art. 390 (ordinary absence), and its natural consequent effects, as follows:

- (a) If the person absent has been absent for seven years or more, and it is not known whether he is still alive or not, then he is presumed dead for all purposes except that of succession. This means that his property will not yet be distributed among his heirs till after a lapse of three more years; hence, a total of ten years.
- (b) The rule is different in case the person who disappeared was, on his disappearance, more than 75 years old, in which case five years is sufficient for all purposes, including that of succession. The reason is his age, which really does not make his remaining years of life seem long.

(2) Computation of the Period of Absence

The computation of the seven-year period begins not from the declaration of absence, nor from the publication in the *Official Gazette*, but from the date on which the last news concerning the absentee is received. (*Jones v. Hortiguela*, 64 *Phil.* 179).

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)

COMMENT:

(1) Two Kinds of Absence

There are two kinds of absence, namely:

- (a) Ordinary absence. (*Art. 390*).
- (b) Qualified or extraordinary absence. (*Art. 391*).

(2) Ordinary Absence

In *ordinary* absence, when is death presumed to have occurred?

ANSWER: European Rule – On the *last day* of the period. (This is the rule which I think should generally be followed in our country.) The American Rule does *not* state any such date.

(3) Extraordinary Absence

In the case of qualified or extraordinary absence, when is death presumed to have occurred?

ANSWER: At the *beginning* of the period (because of the danger of death). (*Judge Advocate General v. Gonzales, et al., C.A. 48 O.G. No. 12, p. 5329.*)

Example: In 2001, an airplane with X as passenger disappeared. In 2005, he will be presumed to *have died in 2001.*

(4) When the Article Cannot Apply

Art. 391 cannot apply if the vessel was not lost or missing but instead destroyed by fire and washed ashore. Moreover, if it is established as a fact that the missing person had jumped overboard and since then has not been heard from, the rule on presumption of death cannot apply. Instead, the rule on preponderance of evidence applies to establish the fact of death. (*Madrugal Shipping Co. v. Baens del Rosario, et al., L-13130, Oct. 31, 1959; Victory Shipping v. Workmen's CC, 106 Phil. 550.*)

Art. 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)

COMMENT:**(1) Recovery of Property by Absentee**

This gives the right to *recover*. This is because succession has *not* really taken place. However, *extraordinary prescription* (real property — 30 years; personal property — 8 years; counted from the time the heir is in possession in the *concept of owner*) may prevent recovery. In other words, the heir may have acquired the property not by succession but by prescription.

Be it noted that the prescription required is EXTRAORDINARY PRESCRIPTION in view of the absence of *just title* (*titulo colorado*).

(2) Non-Return of Fruits or Rents

The fruits or rents are not to be returned, since the recipient is supposed to have been a possessor in good faith.

Chapter 5

EFFECT OF ABSENCE UPON THE CONTINGENT RIGHTS OF THE ABSENTEE

Art. 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)

COMMENT:

Right Pertaining to a Person Whose Existence is not Recognized (Presumed Dead Therefore)

Example: X was presumed dead in 2002. If Y later alleges that he purchased property from X in 2003 (when the existence of X was no longer recognized), Y has to prove that X was still alive in 2002.

Art. 394. Without prejudice to the provision 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 a representative. They shall all, as the case may be, make an inventory of the property. (196a)

COMMENT:

Effect if an Absentee is Supposed to Inherit

- (a) A man, Y, died. His heirs are X and S. X, however, has been declared an absentee or, for that matter, he may have already been presumed dead under the law. Who will get the share of X in the estate of Y?

ANSWER: The share of *X* will accrue to *S*, unless the heirs of *X*, or the assigns or representatives of *X*, will claim such property. If they do this, whoever gets the property that should have gone to *X* must make an inventory of such property.

- (b) If it turns out that the absentee-heir had already died ahead (a case of predecease) of the deceased, said absentee-heir, if a voluntary heir, transmits no rights to his own heir. (*Art. 856*).

Art. 395. The provisions of the preceding article are understood to be without prejudice to the action of petition for inheritance or other rights which are vested in the absentee, his representative 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 the real estate which accrues to the co-heirs, the circumstance of its being subject to the provisions of this article shall be stated. (197)

COMMENT:

Right to Claim Inheritance by Absentee or His Representatives

Example: In his will, a testator gave a parcel of land to *X*, *Y* and *Z*. When the testator died, *X* was absent, but *X* himself has a child *R*. *R* in the meantime got *X*'s share. In default of *R*, the other heirs or devisees, *Y* and *Z*, can have the land registered in their name. If *X* turns out to be alive, his share can still be recovered from *Y* and *Z*, unless *X* loses the right by prescription.

Art. 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)

COMMENT:**Rights to Use the Fruits**

The right to the fruits is given to the person who was awarded the property in the inheritance proceedings as long as the person declared absent has not reappeared and as long as no action on the matter has been brought by the absentee's representatives or successors in interest. The right to the fruits naturally ceases when either the absentee reappears or the proper action has been brought.

[*NOTE:* Arts. 397-406, Title XV — Emancipation and Age of Majority. Book 1, Civil Code, has been REPEALED by THE FAMILY CODE. (*Art. 254*).].

Title XVI

CIVIL REGISTER

Comments of the Code Commission

Act No. 3753, which established a civil register, is amended in some particulars, but it is to continue in force as to other particulars. Some acts or events affecting civil status, which are to be registered, have been added. (*Report of the Code Commission, p. 93*).

Declaring as a National State Policy the Registration of Births, Deaths, Marriages and Foundlings (Proc. No. 326, s. 1994)

Whereas, statistics show that the present estimate of level of registration of vital events in the country is only eighty-five percent;

Whereas, there is a need for the attainment of one hundred percent registration of births, deaths, marriages and foundlings to develop a comprehensive information system of civil status as a basis for the effective implementation of the various programs of the government;

Now, therefore, I, Fidel V. Ramos, President of the Philippines, by virtue of the powers vested in me by Book I, Chapter 7, Sec. 27, of the Administrative Code of 1987, do hereby declare that the registration of births, deaths, marriages and foundlings as a national State policy.

All concerned department, agencies and local government units are hereby encouraged to advance and promulgate measures for the adoption of effective registration procedures, including the elimination of registration fees, in accordance with the Civil Registry Law and other existing laws.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 14th day of February, in the year of Our Lord, nineteen hundred and ninety-four.

Art. 407. Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register. (325a)

COMMENT:

(1) Purpose of the Civil Register

The Civil Register (or Registry) has for its object the recording of *acts, events, and judicial decrees* concerning CIVIL STATUS.

(2) Probative Value of Entries in the Civil Registry

Although the Civil Registry is an official record, still the entries made therein are only *prima facie* evidence of the facts stated. Consequently, the correction and cancellation thereof, in proper cases and by judicial order, is allowed. (*Malicdem v. Republic, L-19141, Oct. 31, 1964*). Thus, testimonial evidence may be given to prevail over an entry (as in the surname of a child) if the facts so warrant after a case has been tried. [*Ibid.*].

(3) Rule Under Presidential Decree 603 Regarding Non-Disclosure of Birth Records

Art. 7. Non-disclosure of Birth Records. — The records of a person's birth shall be kept strictly confidential and no information relating thereto shall be issued except on the request of any of the following:

- (1) The person himself, or any person authorized by him;
- (2) His spouse, his parent or parents, his direct descendants, or the guardian or institution legally in charge of him if he is a minor;

(3) The court or proper public official whenever absolutely necessary in administrative, judicial or other official proceedings to determine the identity of the child's parents or other circumstances surrounding his birth; and

(4) In case of the person's death, the nearest of kin.

Any person violating the prohibition shall suffer the penalty of imprisonment of at least two months or a fine in an amount not exceeding five hundred pesos, or both, in the discretion of the court.

(4) Where Mandamus Does Not Lie

**Mossesgeld v. CA
GR 111455, Dec. 23, 1998**

Mandamus will not lie to compel the local civil registrar to register the certificate of live birth of an illegitimate child using the father's surname, even with the consent of the latter. *Mandamus* does not lie to compel the performance of an act prohibited by law.

(5) Registration of Marriage Not An Element of Marriage; It Is the Duty of Solemnizing Officer

**Tomasa Vda. De Jacob v. CA
GR 135216, Aug. 19, 1999**

FACTS: Respondent Pedro Pilapil places emphasis on the absence of an entry pertaining to 1975 in the Books of Marriage of the Local Civil Registrar of Manila and in the National Census and Statistics Office (NCSO). He finds it quite "bizarre" for petitioner to have waited 3 years before registering their marriage.

HELD: On both counts, he proceeds from the wrong premise. In the *first place*, failure to send a copy of a marriage certificate for record purposes does not invalidate the marriages. In the *second place*, it was not the petitioner's duty to send a copy of the marriage certificate to the civil registrar. Instead, this charge fell upon the solemnizing officer.

Art. 408. The following shall be entered in the civil register:

(1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulment of marriages; (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)

COMMENT:

(1) The Specific Events or Acts to be Recorded

The Article enumerates what specifically must be recorded.

Natividad Cabacug v. Placido Lao
L-27036, Nov. 26, 1970
36 SCRA 92

The Court ruled:

- (a) That a woman who marries a Chinese national loses her Philippine citizenship. (*C.A. No. 63, Sec. 1[7]; Yee v. Director, L-16924, Apr. 29, 1963, 7 SCRA 832*). [*NOTE: This was prior to the 1973 Constitution.*].
- (b) That if her husband dies, she can reacquire Philippine citizenship by *repatriation* which can be done by merely taking the *oath of allegiance* to the Republic and *registration* in the proper Civil Registry.

(2) The Recording of Names

The name that appears in the Civil Register should be considered as the *real name* of a person, for all legal purposes. (*Lim v. Republic, L-20811, July 26, 1966*). When there is a change of name, the old name is not erased or corrected; the new name is simply annotated in the Registry. To the same effect, the supplying of a name that had been left BLANK in the

original recording of birth may be done by judicial order after due publication of the petition and proper hearing. (*Matias v. Republic*, L-26982, May 8, 1969).

(3) Value of Certification

People v. Vellor
105 SCRA 797
L-54063, July 24, 1981

A certification of live birth of a child is not a conclusive evidence of birth; it is only *prima facie* or *disputable*. This is because the Local Civil Registrar merely receives the information given him. He does not make any verification.

(4) 'Death Certificate' Defined

It is a document issued by the attending physician or, in his absence, by the city/municipal health officer or other duly authorized government official, using the prescribed form certifying the death of a person.

Art. 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)

COMMENT:

Duty of the Clerk of Court

This Article speaks of what the clerk of court must do. An adoption created under the law of a foreign country is entitled to registration in the corresponding civil register of the Philippines. This is so even if there is no judicial order regarding said adoption. While it is true that Art. 409 speaks of a judicial order regarding the adoption, still this order refers to adoptions effected in the Philippines. (*Ramirez Marcaida v. Aglubat*, L-24006, Nov. 25, 1967).

Art. 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)

COMMENT:

Nature of the Books and Documents

This speaks of their PUBLIC NATURE. In view of the “*prima facie*” nature of the facts contained in the books, it is understood that same may be REBUTTED in the proper proceedings. (See *Malicdem v. Republic, L-19141, Oct. 31, 1964*).

Art. 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)

COMMENT:

Civil Responsibility of the Registrar

Note the *civil* responsibility for UNAUTHORIZED ALTERATIONS.

**Republic v. Valencia
GR 32181, Mar. 5, 1986**

Persons who must be made parties to a petition to allow substantial changes in the Civil Registry records are: (1) the civil registrar, and (2) all persons who have or claim any interest which would be affected thereby.

Art. 412. No entry in a civil register shall be changed or corrected, without a judicial order. (n)

COMMENT:**(1) Errors Contemplated**

The errors which can be corrected in mere summary proceedings are clerical or typographical errors, not those on such important things as legitimacy or nationality or other controversial matters. (*Chomi v. Registrar*, 99 Phil. 1004; *Brown v. Republic*, 99 Phil. 818; *Ansaldo v. Republic*, 102 Phil. 1046; *Chua Tian Sang v. Republic*, L-15101, Sept. 30, 1960; *Castro v. Republic*, L-17431, Apr. 30, 1963; *Lui Lim v. Republic*, L-18213, Dec. 24, 1963; *Reyes, et al. v. Republic*, L-17642, Nov. 27, 1964; *Ceferina V. David v. Republic*, L-21316, Nov. 29, 1965). Similarly, the changing of an allegedly erroneous name registered is a SUBSTANTIAL change because the identity of a parent is affected. The proper step would be an appropriate proceeding, not a summary one. Be it noted therefore that if the error is a *substantial* or *material* one, same can still be corrected by a court judgment — provided that the action is not summary in nature. More detailed and appropriate proceedings are required. (See *Matias v. Republic*, L-26982, May 8, 1969).

A harmless change in a name that has been clearly misspelled may however be allowed under Art. 312. (*Barillo v. Republic*, L-14823, Dec. 28, 1961). Where the name appearing in the Civil Registry is not *incorrect* but merely incomplete, such incompleteness is *not* sufficient to authorize correction thereof, especially if the purpose is to secure authority to use an alias. (*Ong, et al. v. Republic*, L-14359, Jan. 29, 1960). However, where no controversial issue exists, and the correction has for its purpose to have the records state a fact *already established by competent authority*, the same should be granted. (*Lim v. Republic*, L-8932, May 31, 1957). A petition should also be granted when in matters of paternity, the registrar had NO right to record the name of the alleged father, when it was only the mother who appeared at the office of the Civil Registrar and she had no authority to reveal the name of the said father. (*Roces v. Local Civil Registrar*, 102 Phil. 1050). However, ordinarily, so long as the entry could properly be made by the Registrar, “one’s filiation or parentage appearing in a public record where the law requires it to be entered, may not be changed except in a proper proceeding where the person concerned is given an

appropriate time to be heard.” (*Beduya v. Republic*, L-17639, May 29, 1964).

Tin v. Republic
94 Phil. 321

FACTS: Petitioner Tin alleges that although he is really a Filipino citizen, the attending doctor made it appear in the birth certificate of his children that he, as father, was a Chinese. Relying on Art. 412, he now asks that the mistake allegedly made in the civil register be corrected.

HELD: The petition cannot be granted since what he wants is not a correction of a mere clerical error in the civil register, but something that involves citizenship and this is a delicate matter which cannot and should not be threshed out in a summary proceeding under Art. 412 of the Civil Code. An appropriate action should have been brought. The philosophy behind this requirement lies in the fact that 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 contained, and if the entries in the civil register could be corrected or changed thru a mere summary proceeding and not thru an appropriate action wherein all the parties who may be affected by the entries are notified or represented, we would set wide open the door to fraud or other mischief, the consequence of which might be detrimental and far-reaching.

Tan v. Republic
102 SCRA 666
L-27713, Feb. 10, 1981

In a petition to correct entries in the Civil Registry, the correction of *civil status* or citizenship of a person cannot be ordered.

Wong v. Republic
L-29376, July 30, 1982
116 SCRA 496

1. To correct a civil registry entry from “Filipino” to “Chinese” is *not* a mere clerical error. Thus, summary proceedings will not suffice.

2. Even in clerical errors, proof should be adequate to prove the alleged error.

Republic v. Caparasso
107 SCRA 67
L-32746, Aug. 31, 1981

A summary proceeding is not the proper remedy to change a person's nationality in the Civil Registry. The proper remedy depends on the particular issue involved. The doctrine regarding clerical errors was stated as early as 1964 in the leading case of *Ty Kong Tin v. Republic of the Philippines* (94 Phil. 321).

**In Re: Petition for Correction of Entry of
Certificate of Birth of the Minor Chua Tan Chaun**
L-25439, Mar. 28, 1969

FACTS: An illegitimate child of a Chinese father and a Filipino mother was registered in the Civil Registry as Chinese. She filed a petition for the correction of the entry to make her citizenship read as "Filipino" in view of the absence of a marriage between her parents. Will the petition prosper?

HELD: No, the petition will not prosper, because although ostensibly this is a mere petition for a clerical correction, still in substance, what is sought is a judicial declaration of Philippine citizenship. (See *Reyes v. Republic*, L-17642, Nov. 27, 1964).

Lim v. Republic
L-8932, May 31, 1957

FACTS: Lim filed a petition to correct mistakes made in the birth certificate of his two sons: errors in his own citizenship and birthplace (made to appear as Chinese), and attributable to the fault of their maid who had given the erroneous facts to the person in charge of the delivery ward of the hospital. At the hearing of the petition, Lim presented a decision of the Deportation Board adjudging Lim to be a Filipino citizen from the moment of his birth.

QUESTION: May the petition to correct the citizenship prosper?

HELD: Yes, because the citizenship of Lim is not an issue, but a fact already established by the Deportation Board. The courts are duty-bound to respect this decision because the Board has the necessary power to pass upon the evidence that may be presented, and to determine in the first instance if the petitioner is a Filipino citizen or not, and the factual decisions of immigration officers and the Board are final decisions if supported by substantial evidence. Clearly, the error here is a clerical one which was made by making entries contrary to existing facts.

[NOTE: In the *Tin v. Republic* case (94 Phil. 321), there was no official proof of Philippine citizenship and the petitioner merely tried to prove his citizenship in the course of the trial of the petition. This state of things differ from the facts in the case of *Lim v. Republic*, L-8932, May 31, 1957.]

Henry Tiong, et al. v. Republic
L-20715, Nov. 27, 1965

FACTS: Tiong Sim was at first a Chinese citizen. However, he later became a Filipino thru naturalization. He was able to successfully petition for a change of name. His legitimate children now wish to have certain entries in the Local Civil Registry, *e.g.*, the change of citizenship — for they were minors when their father was naturalized — and the new surnames corrected.

HELD: The corrections may be made:

- (a) *Firstly*, they are not controversial matters, and the facts are supported by indubitable evidence.
- (b) *Secondly*, since they are legitimate, they can carry the surname of the father.
- (c) *Thirdly*, under Art. 407 of the Civil Code “acts, events, and judicial decrees concerning the civil status of persons shall be recorded in the Civil Register.”

Ceferina V. David v. Republic
L-21316, Nov. 29, 1965

FACT: This was a petition to correct certain alleged errors and in effect to change the names of the children and to regard them as illegitimate — in view of the *denial* of the existence of a certain marriage.

HELD: Being substantial and controversial, the alleged errors cannot be corrected in a summary proceeding. Moreover, in this case, the facts were supplied either by petitioner herself or by her grandmother.

Barretto v. Local Civil Registrar of Manila
L-29060, Dec. 10, 1976

FACTS: Domingo Barretto wanted to correct his name from Rosario B. to Domingo B. and to change entry of sex from “female” to “male.”

HELD: Petition for correction is not warranted because the alleged error is not clerical in nature. We must determine if Rosario and Domingo are the same person, and the cause for the alleged error.

In the Matter for the Correction of An Entry
v. Abubakar, Civil Registrar, et al.
L-25168, Jan. 31, 1981

FACTS: In a petition before the Court of First Instance to correct the designation of the sex of the minor Bio Heong Wing (by changing the letter “M” to “F” to mean “female”) in the record of birth of the minor, the Court granted the same, and ordered the Local Civil Registrar to make the correction. The Registrar refused on the ground that the correction was not merely clerical, and that the proceeding was summary in character.

HELD: The correction, though not merely clerical can be allowed, the proceeding being not merely summary since the Solicitor General and other interested parties were notified and the needed publication was duly complied with.

Republic v. IAC
L-70513, Oct. 13, 1986

The finding by the appellate court that the evidence established sufficient justification for a change of name, *i.e.*, there is a sincere desire on the respondent's part to adopt a Filipino name to erase signs of his former nationality which will unduly hamper his social and business life; his change of name will do away with aliases which should be discouraged, apart from the fact that it will avoid confusion and will be "for the convenience of the world at large in addressing him, or in speaking of or dealing with him" — is a finding of fact binding on the Supreme Court.

(2) Provision in the Rules of Court

Rule 108 of the Revised Rules of Court provides for the "Cancellation or Correction of Entries in the Civil Registry." It is interesting to note that the petition is *in rem*, requiring PUBLICATION. (*Sec. 4*).

Tolentino v. Paras
L-43906, May 30, 1983

FACTS: Serafia Tolentino, wife of deceased Amado Tolentino, sought to correct the death certificate of her husband so that she would appear as the surviving spouse, not Maria Clemente, who was the registered spouse, but who was really the 2nd wife of Amado in a marriage that was *void* and *bigamous*. The defendants in the action brought by Serafia were the local civil registrar and Maria Clemente. There was no publication of the complaint. Serafia presented as proof Amado's admission of the bigamous marriage, and his subsequent conviction for bigamy. Will the suit prosper?

HELD: Yes. The remedy is proper because the same is not a mere summary proceeding, but one of an adversary character. Serafia is asserting a right against Clemente, who has an interest in upholding the asserted right. Both Clemente and the local civil registrar have been made party defendants. The publication required under Rule 108 of the Rules of Court is not absolutely necessary, for no other person is involved. Besides, assuming

this to be a case under Rule 108, it is the Court that is called upon to order the publication. In the ultimate analysis, Courts are not concerned so much with the form of actions as with their substance. On the merits, it is clear that the remedy or correction should be granted because under the facts, it is Serafia who is the legitimate widow. Thus, correction in the registry is hereby ordered.

Republic v. Valencia
GR 32181, Mar. 5, 1986

Rule 108 of the Rules of Court provides only the procedure or mechanism for the proper enforcement of the substantive law embodied in Art. 412 of the Civil Code. Proceedings under Rule 108 are not anymore “summary” once all its requisites are complied with. It becomes adversary. For truth is best ascertained under an adversary system of justice. Thereupon, substantial errors in the Civil Registry may be corrected provided that appropriate remedy is availed of. Changes in the birth entry regarding a person’s citizenship are now allowed, as long as adversary proceedings are held.

Republic of the Phils. v. CFI of Camarines
Sur and Neola
L-36773, May 31, 1988

Until the *Republic of the Phils. v. Valencia, et al.* ruling in 1986 (L-32181, Mar. 5, 1986), it has been the uniform jurisprudence of the Court since 1954, before and after the adoption of Rule 108 of the Revised Rules of Court, that the changes and corrections authorized under the summary procedure sanctioned by Article 412 of the new Civil Code, refer only to the corrections of innocuous or clerical errors that are visible to the eye or obvious to the understanding, or a mistake in copying or writing.

Republic v. CA and Agcaoili
GR 104678, July 20, 1992

In *Republic v. Valencia (141 SCRA 462)*, the Court held that even substantial changes in the civil registry can be made

under Rule 108 of the Rules of Court as long as they are justified in “appropriate adversarial proceedings.” This doctrine was reiterated in *Lim v. Zosa* (146 SCRA 366), where the lower court was ordered to hold a trial on the merits of the changes sought, also regarding the petitioner’s citizenship, likewise under Rule 108.

In the case at bar, the petitioner submitted documentary evidence in support of his claim, including his election of Philippine citizenship upon his attainment of majority age, his oath of allegiance, and his mother’s affidavit that she and the petitioner’s father were not married.

**Republic of the Phils. v. CA and
Maximo Wong
GR 97906, May 21, 1992**

FACTS: Petitioner seeks to set aside the judgment of respondent Court of Appeals in affirmance of the decision of the court *a quo* granting the petition filed by herein private respondent Maximo Wong for the change of his name to Maximo Alcala, Jr. which was his name prior to his adoption by Hoong Wong and Concepcion Ty Wong.

Upon reaching the age of twenty-two, herein private respondent, by then married and a junior Engineering student at Notre Dame University, Cotabato City, filed a petition to change his name to Maximo Alcala, Jr. It was averred that his use of the surname Wong embarrassed and isolated him from his relatives and friends, as the same suggests a Chinese ancestry when in truth and in fact, he is a Muslim Filipino residing in a Muslim Community, and he wants to erase any implication whatsoever of alien nationality; that he is being ridiculed for carrying a Chinese surname, thus hampering his business and social life; and that his adoptive mother does not oppose his desire to revert to his former surname.

On July 2, 1986, the matter was resolved in favor of private respondent, the trial court decreeing that, the jurisdictional requirements having been fully complied with, petitioner’s prayer to change his name from Maximo Wong to Maximo Alcala, Jr. was granted. On appeal to respondent court, and

over the opposition of petitioner Republic thru the Solicitor General, the decision of the court below was affirmed in full, hence this petition for review on *certiorari*.

ISSUE: Whether or not the reasons given by private respondent in his petition for change of name are valid, sufficient and proper to warrant the granting of said petition.

HELD: The testimony of private respondent in the lower court bears out the existence of valid cause in his bid for change of name. We discern that said appellee was prompted to file the petition for change of name because of the embarrassment and ridicule his family name 'Wong' brings in his dealings with his relatives and friends, he being a Muslim Filipino and living in a Muslim community. Another cause is his desire to improve his social and business life. It has been held that in the absence of prejudice to the state or any individual, a sincere desire to adopt a Filipino name to erase signs of a former alien nationality which only hamper(s) social and business life, is a proper and reasonable cause for change of name.

Justice dictates that a person should be allowed to improve his social standing as long as in doing so, he does not cause prejudice or injury to the interest of the State or other persons. Nothing whatsoever is shown in the record of this case that such prejudice or injury to the interest of the state or of other persons would result in the change of petitioner's name. Concordantly, we heretofore hold that change of name does not define or effect a change in one's existing family relations or the rights and duties flowing therefrom. It does not alter one's legal capacity, civil status or citizenship; what is altered is only the name.

Republic v. Hernandez
GR 117209, Feb. 9, 1996
68 SCAD 279

1. The official name of a person whose birth is registered in the civil register is the name appearing therein. If a change in one's name is desired, this can only be done by filing and strictly complying with the substantive and procedural

requirements for a special proceeding for change of name under Rule 103 of the Rules of Court, wherein the sufficiency of the reasons or groups therefor can be threshed out and accordingly determined.

2. A change of name is a privilege, not a matter of right, addressed to the sound discretion of the court which has the duty to consider carefully the consequences of a change of name and to deny the same unless weighty reasons are shown.

3. Under Rule 103, a petition for change of name shall be filed in the Regional Trial Court of the province where the person desiring to change his name resides. It shall be signed and verified by the person desiring his name to be changed or by some other person in his behalf and shall state that the petitioner has been a *bona fide* resident of the province where the petition is filed for at least three years prior to such filing, the cause for which the change of name is sought, and the name asked for.

4. A petition for change of name being a proceeding *in rem*, strict compliance with all the requirements therefor is indispensable in order to vest the court with the jurisdiction for its adjudication.

5. Before a person can be authorized to change his name, that is, his true or official name or that which appears in his birth certificate or is entered in the civil register, he must show proper and reasonable cause or any convincing reason which may justify such change.

6. Jurisprudence has recognized, *inter alia*, the following grounds as sufficient to warrant a change of name: (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence of legitimation or adoption; (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) when the change is based on a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudice to 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.

7. A petition for change of name grounded on the fact that one was baptized by another name, under which he has been known and which he used, has been denied inasmuch as the use of baptismal names is not sanctioned. For, in truth, baptism is not a condition *sine qua non* to a change of name. Neither does the fact that the petitioner has been using a different name and has become known by it constitute proper and reasonable cause to legally authorize a change of name.

8. A name given to a person in the church records or elsewhere or by which he is known in the community when at variance with that entered in the civil register — is unofficial and cannot be recognized as his real name.

9. It is only upon satisfactory proof of the veracity of the allegations in the petition and the reasonableness of the causes for the change of name that the court may adjudge that the name be changed as prayed for in the petition, and shall furnish a copy of said judgment to the civil registrar of the municipality concerned who shall forthwith enter the same in the civil register.

10. Changing the given or proper name of a person as recorded in the civil register is a substantial change in one's official or legal name and cannot be authorized without a judicial order. The purpose of the statutory procedure authorizing a change of name is simply to have, wherever possible, a record of the change, and in keeping with the object of the statute, a court to which the application is made should normally make its decree recording such change.

**Republic of the Phils. v. CA,
Jaime B. Caranto and Zenaida P. Caranto
GR 103695, Mar. 15, 1996
69 SCAD 548**

FACTS: This is a petition for review on *certiorari* of the decision of the Court of Appeals which affirmed *in toto* the de-

cision of the Regional Trial Court of Cavite, granting private respondents' petition for the adoption of Midael C. Mazon with prayer for the correction of the minor's first name "Midael" to "Michael."

On May 30, 1989, the RTC rendered its decision holding that the correction of names in the civil registry is not one of the matters enumerated in Rule 108, Sec. 2 of the Rules of Court as "entries subject to cancellation or correction." According to the trial court, the error could be corrected in the same proceeding for adoption to prevent multiplicity of actions and inconvenience to the petitioners. On Jan. 23, 1992, the Court of Appeals affirmed *in toto* the decision of the RTC. Like the trial court, it held that to require the petitioners to file a separate petition for correction of name would entail "additional time and expenses for them as well as for the Government and the Courts." Hence, this petition for review.

HELD: The trial court was clearly in error in holding Rule 108, Sec. 2 to be applicable only to the correction of errors concerning the civil status of persons. Said proviso plainly states: "Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separation; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name."

This case falls under letter "(o)," referring to "changes of name." Indeed, it has been the uniform ruling of this Court that Art. 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 correction of a name that is clearly misspelled." (*Ansaldo v. Republic*, 102 Phil. 1046 [1958]; *Barillo v. Republic*, 113 Phil. 695 [1961]; *Tan v. Republic*, 114 Phil. 1070 [1962]; *Yu v. Republic*, 21 SCRA 1018 [1967]; *Labayo-Rowe v. Republic*, 168 SCRA 294 [1988]).

In *Yu v. Republic* (21 SCRA 1018 [1967]), it was held that “to change ‘Sincio’ to ‘Sencio’ which merely involves the substitution of the first vowel ‘i’ in the first name into the vowel ‘e’ amounts merely to the righting of a clerical error.” In *Labayo-Rowe v. Republic* (168 SCRA 294 [1988]), 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.”

Rule 108 thus applies to the present proceeding. Rule 108, Sec. 3 provides that “when cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.”

The local civil registrar is required to be made a party to the proceeding. He is an indispensable party, without whom no final determination of the case can be had. As he was not impleaded in this case much less given notice of the proceeding, the decision of the trial court, insofar as it granted the prayer for the correction of entry, is void. The absence of an indispensable party in a case renders ineffectual all the proceedings subsequent to the filing of the complaint including the judgment.

Nor was notice of the petition for correction of entry published as required by Rule 108, Sec. 4 which reads: “Upon filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.”

While there was notice given by publication in this case, it was notice of the petition for adoption made in compliance with Rule 99, Sec. 4 and which reads: “If the petition and consent filed are sufficient in form and substance, the court, by an order reciting the purpose of the petition, shall fix a date and place for the hearing thereof, which date shall not be more than 6 months after the entry of the order, and shall direct that a

copy of the order be published before the hearing at least once a week for 3 successive weeks in some newspaper of general circulation published in the province, as the court shall deem best.”

In that notice only the prayer for adoption of the minor was stated. Nothing was mentioned that in addition the correction of his name in the civil registry was also being sought. The local civil registrar was thus deprived of notice and, consequently, of the opportunity to be heard. The necessary consequence of the failure to implead the civil registrar as an indispensable party and to give notice by publication of the petition for correction of entry was to render the proceeding of the trial court, so far as the correction of entry was concerned, null and void for lack of jurisdiction both as to party and as to the subject matter.

Be this as it may, involved in the case at bar is an obvious clerical error in the name of the child sought to be adopted. In this case the correction involves merely the substitution of the letters “ch” for the letter “d,” so that what appears as “Midael” as given name would read “Michael.” Even the Solicitor General admits that the error is a plainly clerical one. For that matter, changing the name of the child from “Midael C. Mazon” to “Michael C. Mazon” cannot possibly cause any confusion, because both names “can be read and pronounced with the same rhyme (*tugma*) and tone (*tono, tunog, himig*.)” The purpose of the publication requirement is to give notice so that those who have any objection to the adoption can make their objection known. That purpose has been served by publication of notice in this case. For this reason we hold that the RTC correctly granted the petition for adoption of the minor Midael C. Mazon and the Court of Appeals, in affirming the decision of the trial court, correctly did so.

(2) When a Proceeding Is Deemed An ‘Adversary’ or ‘Appropriate’ Proceeding

Three (3) instances are present before a proceeding is deemed *adversary* or *appropriate*, to wit: (1) As long as the relevant facts have been fully and properly developed; (2) Where

the opposing counsel is given the opportunity to demolish the opposite party's case; and (3) Evidence is thoroughly weighed and considered. (*Republic v. CFI, L-36773, May 31, 1988*).

Republic v. Hon. Bautista
L-35316, Oct. 26, 1987

The proceedings under Art. 412 of the Civil Code and Rule 108 of the Rules of Court may either be summary or adversary in nature.

Republic v. Labrador
GR 132980, Mar. 25, 1999, 105 SCAD 223

Where the effect of a correction in a civil registry is substantial like when the civil status of children are changed from one of legitimacy to illegitimacy, the same cannot be granted except only in adversarial proceedings.

An *adversarial proceeding* is one having opposing parties, contested, as distinguished from an *ex parte* application; one in which the party seeking relief has been given legal warning to the other party and afforded the latter an opportunity to contest it.

In the case at bar, said petition for substantial correction or change of entries in the Civil Registrar should have as respondents the Civil Registrar himself/herself as well as other persons who have or claim to have any interest that would be affected thereby. It further mandates that a full hearing, not merely summary proceedings be conducted.

(3) Query

Is the matter of granting or denying petitions for change of name and the corollary issue of what is proper and reasonable cause therefor discretionary on the court's part?

ANSWER: Yes, altho certain requisites are needed. Secs. 2 and 3, Rule 103 of the Rules of Court prescribe the procedural and jurisdictional requirements for a change of name. And non-compliance with these requirements would be fatal

to the jurisdiction of the lower court to hear and determine a petition for change of name. (*Republic v. Bolante*, 495 SCRA 729 [2006]).

The *in rem* nature of a change of name proceeding necessitates strict compliance with all jurisdictional requirements, particularly on publication, in order to vest the court with jurisdiction thereover. For it is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it. (*Ibid.*)

According to the Supreme Court —

the State has an interest in the names borne by individuals for purposes of identification and that, changing one's name is a privilege and not a right. (*Ibid.*)

In light thereof, publication is valid if the following requisites concur, thus:

- a) the petition and the copy of the order indicating the date and place for the hearing must be published;
- b) the publication must be at least once a week for three successive weeks;
- c) the publication must be in some newspaper of general circulation published in the province, as the court shall deem best; and
- d) another validating ingredient relates to the *caveat* against the petition being heard within 30 days prior to an election or within 4 months after the last publication of the notice of the hearing. (*Ibid.*)

Art. 413. All other matters pertaining to the registration of civil status shall be governed by special laws. (n)

COMMENT:

(1) Special Laws on Registration

We have Act 3753 or the Civil Registry Act, the provisions of which should not be circumvented by a petition for the correction of alleged mistake in the Registry. (*See Dy Kim Liong*

v. Republic, L-18608, Dec. 26, 1963). There is also PD 651 requiring the registration of births and deaths in the Philippines which occurred from Jan. 1, 1974 and thereafter.

Perez v. COMELEC
GR 133944, Oct. 28, 1999, 115 SCAD 81

Since the prevailing doctrine is that the evidence or alleged lack of residence qualification is weak or inconclusive, and such clearly appears that the purpose of the law would not be thwarted by upholding the right to the office, the will of the electorate should be respected.

In the instant case, considering the purpose of the residency requirement, *i.e.*, to ensure that the person elected is familiar with the needs and problems of his constituency, there can be no doubt that this candidate is qualified, having been governor of the entire province for 10 years.

(2) Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname by Municipal Civil Registrar or Consul General

Republic Act 9048

AN ACT AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT A CLERICAL OR TYPOGRAPHICAL ERROR IN AN ENTRY AND/OR CHANGE OF FIRST NAME OR NICKNAME IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER AMENDING FOR THIS PURPOSE ARTICLES 376 AND 412 OF THE CIVIL CODE OF THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.* — 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 civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.

SEC. 2. *Definition of Terms.* — As used in this Act, the following terms shall mean:

(a) “City or municipal civil registrar” refers to the head of the local civil registry office of the city or municipality, as the case may be, who is appointed as such by the city or municipal mayor in accordance with the provisions of existing laws.

(b) “Petitioner” refers to a natural person filing the petition and who has direct and personal interest in the correction of a clerical or typographical error in an entry or change of first name or nickname in the civil register.

(c) “Clerical or typographical error” refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however,* That no correction must involve the change of nationality, age, status or sex of the petitioner.

(4) “Civil register” refers to the various registry books and related certificates and documents kept in the archives of the local civil registry offices, Philippine Consulates and of the Office of the Civil Registrar General.

(5) “Civil registrar general” refers to the administrator of the National Statistics Office which is the agency mandated to carry out and administer the provision of laws on civil registration.

(6) “First name” refers to a name or a nickname given to a person which may consist of one or more names in addition to the middle and last names.

SEC. 3. *Who May File the Petition and Where.* — 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.

The petitions filed with the city or municipal civil registrar or the consul general shall be processed in accordance with this Act and its implementing rules and regulations.

All petitions for the correction of clerical or typographical errors and/or change of first names or nicknames may be availed for only once.

SEC. 4. Grounds for Change of First Name or Nickname.

— The petition for change of first name 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 names or nicknames in the community; or

(3) The change will avoid confusion.

SEC. 5. Form and Contents of the Petition. — The petition shall be in the form of an affidavit, subscribed and sworn to before any person authorized by law to administer oaths. The affidavit shall set forth facts necessary to establish the merits of

the petition and shall show affirmatively that the petitioner is competent to testify to the matters stated. The petitioner shall state the particular erroneous entry or entries which are sought to be corrected and/or the change sought to be made.

The petition shall be supported with the following documents:

(1) A certified true machine copy of the certificate or of the page of the registry book containing the entry or entries sought to be corrected or changed;

(2) At least two (2) public or private documents showing the correct entry or entries upon which the correction or change shall be based; and

(3) Other documents which the petitioner or the city or municipal civil registrar, or the consul general may consider relevant and necessary for the approval of the petition.

In case of change of first name or nickname, the petition shall likewise be supported with the documents mentioned in the immediately preceding paragraph. In addition, the petition shall be published at least once a week for two (2) consecutive weeks in a newspaper of general circulation. Furthermore, the petitioner shall submit a certification from the appropriate law enforcement agencies that he has no pending case or no criminal record.

The petition and its supporting papers shall be filed in three (3) copies to be distributed as follows: first copy to the concerned city or municipal civil registrar, or the consul general; second copy to the Office of the Civil Registrar General; and the third copy to the petitioner.

SEC. 6. Duties of the City or Municipal Civil Registrar or the Consul General. — The city or municipal civil registrar or the consul general to whom the petition is presented shall examine the petition and its supporting documents. He shall post the petition in a conspicuous place provided for that purpose for ten (10) consecutive days after he finds the petition and its supporting documents sufficient in form and substance.

The city or municipal civil registrar or the consul general shall act on the petition and shall render a decision not later

than five (5) working days after the completion of the posting and/or publication requirement. He shall transmit a copy of his decision together with the records of the proceedings to the Office of the Civil Registrar General within five (5) working days from the date of the decision.

SEC. 7. Duties and Powers of the Civil Registrar General.

— The civil registrar general shall, within ten (10) working days from receipt of the decision granting a petition, exercise the power to impugn such decision by way of an objection based on the following grounds:

- (1) The error is not clerical or typographical;
- (2) The correction of an entry or entries in the civil register is substantial or controversial as it affects the civil status of a person; or
- (3) The basis used in changing the first name or nickname of a person does not fall under Section 4.

The civil registrar general shall immediately notify the city or municipal civil registrar or the consul general of the action taken on the decision. Upon receipt of the notice thereof, the city or municipal civil registrar or the consul general shall notify the petitioner of such action.

The petitioner may seek reconsideration with the civil registrar general or file the appropriate petition with the proper court.

If the civil registrar general fails to exercise his power to impugn the decision of the city or municipal civil registrar or of the consul general within the period prescribed herein, such decision shall become final and executory.

Where the petition is denied by the city or municipal civil registrar or the consul general, the petitioner may either appeal the decision to the civil registrar general or file the appropriate petition with the proper court.

SEC. 8. Payment of Fees. — The city or municipal civil registrar or the consul general shall be authorized to collect reasonable fees as a condition for accepting the petition. An indigent petitioner shall be exempt from the payment of the said fee.

SEC. 9. *Penalty Clause.* — A person who violates any of the provisions of this Act shall, upon conviction, be penalized by imprisonment of not less than six (6) years but not more than twelve (12) years, or a fine of not less than Ten thousand pesos (P10,000.00) but not more than One hundred thousand pesos (P100,000.00), or both, at the discretion of the court.

In addition, if the offender is a government official or employee he shall suffer the penalties provided under civil service laws, rules and regulations.

SEC. 10. *Implementing Rules and Regulations.* — The civil registrar general shall, in consultation with the Department of Justice, the Department of Foreign Affairs, the Office of the Supreme Court Administrator, the University of the Philippines Law Center and the Philippine Association of Civil Registrars, issue the necessary rules and regulations for the effective implementation of this Act not later than three (3) months from the effectivity of this law.

SEC. 11. *Retroactivity Clause.* — This Act shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code and other laws.

SEC. 12. *Separability Clause.* — If any portion or provision of this Act is declared void or unconstitutional, the remaining portions or provisions thereof shall not be affected by such declaration.

SEC. 13. *Repealing Clause.* — All laws, decrees, orders, rules and regulations, other issuances, or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 14. *Effectivity Clause.* — This Act shall take effect fifteen (15) days after its complete publication in at least two (2) national newspapers of general circulation.

Approved: March 22, 2001

(Sgd.) GLORIA MACAPAGAL-ARROYO
President of the Philippines

**(3) Rules and Regulations governing the implementation of
Republic Act 9048**

**Republic of the Philippines
OFFICE OF THE CIVIL REGISTRAR GENERAL
National Statistic Office
Manila**

**ADMINISTRATIVE ORDER NO. 1,
SERIES OF 2001**

Subject : RULES AND REGULATIONS GOVERNING THE IM-
PLEMENTATION OF REPUBLIC ACT NO. 9048

Pursuant to Section 10 of R.A. No. 9048, which took effect on 22 April 2001, the following rules and regulations are hereby promulgated for the information, guidance and compliance of all concerned parties.

PRELIMINARY STATEMENT

Article 376 of the Civil Code provides that *“No person can change his name or surname without judicial authority.”* Article 412 of the same Code provides that *“No entry in a civil register shall be changed or corrected, without a judicial order.”*

Republic Act No. 9048 amended Articles 376 and 421. Section 1 of this amendatory law provides: *“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 civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.”*

As provided under Section 10 of Republic Act No. 9048, the Civil Registrar General promulgated these rules and regulations, in consultation with the representatives from the Department of Justice, Department of Foreign Affairs, Office of the Supreme Court

Administrator, University of the Philippines Law Center and Philippine Association of Civil Registrars.

IMPLEMENTING RULES AND REGULATIONS

Rule 1. *Authority to correct clerical or typographical error and to change first name or nickname.* — The city/municipal civil registrar, Consul General, including the Clerk of the Shari'a Court in his capacity as District or Circuit Registrar of Muslim Marriages, Divorces, Revocations of Divorces and Conversions, are hereby authorized to correct clerical or typographical error and to change first name or nickname in the civil register.

Rule 2. *Definition of terms.* — As used in this Order, the following terms shall mean:

2.1. City or Municipal Civil Registrar (C/MCR) — Refers to the head of the local civil registry office (LCRO) of the city or municipality, as the case may be, who is appointed by the city or municipal mayor in accordance with the provisions of existing laws.

2.2. Consul General (CG) — Refers to an official of the Department of Foreign Affairs who has been issued the consular commissions by the President and/or the Secretary of Foreign Affairs. In a foreign service establishment of the Philippines where there is no Consul General, the civil registration function and duties herein provided for the Consul General shall be exercised and performed by the Consul or Vice Consul who should be similarly issued consular commissions by the President and/or the Secretary of Foreign Affairs.

2.3. District/Circuit Registrar (D/CR) — Refers to the Clerk of the Shari'a District or Circuit Court acting in the performance of its civil registration function with regard to Muslim Marriages, Divorces, Revocations of Divorces and Conversions under Title VI, Book Two of Presidential Decree No. 1083 which is otherwise known as the *Code of Muslim Personal Laws*.

2.4. Civil Registrar General (CRG) — Refers to the Administrator of the National Statistics Office (NSO) which is the agency mandated to carry out and administer the provisions of laws on civil registration.

2.5. Local Civil Registry Office (LCRO) — Refers to an office or department in the city or municipal government that is mandated to perform civil registration function.

2.6. Petitioner — Refers to a natural person filing the petition and who has direct and personal interest in the correction of a clerical or typographical error in an entry or change of first name or nickname in the civil register.

2.7. Indigent petitioner — Refers to a destitute, needy and poor individual who is certified as such by the social welfare and development office of the city/municipal government.

2.8. Clerical or typographical error — Refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however,* That no correction must involve the change of nationality, age, status or sex of the petitioner.

2.9. First name — Refers to the name or nickname given to a person which may consist of one or more names in addition to the middle and last names.

2.10. Civil Register — Refers to the various registry books and related certificates and documents kept in the archives of the LCROs, Philippine Consulates, Office of the Civil Registrar General, and Shari'a District/Circuit Courts.

2.11. Newspaper of general circulation — Refers to a newspaper that is published for the dissemination of local news and general information; that has a *bona fide* subscription list of paying subscribers; and that is published at regular intervals.

2.12. Record-keeping civil registrar (RKCR) — Refers to the C/MCR in whose archive is kept the record, which contains the error to be corrected or the first name to be changed. This term shall be used only in cases involving migrant petitioner.

2.13. Petition-receiving civil registrar (PRCR) — Refers to the C/MCR of the city or municipality where the petitioner resides

or is domiciled and who receives the petition on behalf of the RKCR in the case of a migrant petitioner.

2.14. Migrant petitioner (MP) — Refers to a petitioner whose present residence or domicile is different from the place where the civil registry record to be corrected was registered.

2.15. Spouse — Refers to one's legal wife or legal husband.

2.16. Guardian — Refers to a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person, who, for defect of age, understanding, or self-control, is considered incapable of administering his own affairs. This term may refer also to those who, under Article 216 of the Family Code, are authorized to exercise substitute parental authority over the child in default of parents or a judicially appointed guardian. These persons are the following:

2.16.1. The surviving grandparent, as provided in Article 214 of the Family Code;

2.16.2. The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and

2.16.3. The child's actual custodian, over twenty-one years of age, unless unfit or disqualified.

Rule 3. *Who may file the petition.* — Any person of legal age, 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 the petition. A person is considered to have direct and personal interest when he is the owner of the record, or the owner's spouse, children, parents, brothers, sisters, grandparents, guardian, or any other person duly authorized by law or by the owner of the document sought to be corrected: *Provided, however,* That when a person is a minor or physically or mentally incapacitated, the petition may be filed on his behalf by his spouse, or any of his children, parents, brothers, sisters, grandparents, guardians, or persons duly authorized by law.

Rule 4. *Where to file the petition.* — The verified petition may be filed, in person, with the LCRO of the city or municipality or with the Office of the Clerk of the Shari'a Court, as the case may

be, where the record containing the clerical or typographical error to be corrected, or first name to be changed, is registered.

When the petitioner had already migrated to another place within the Philippines and it would not be practical for such party, in terms of transportation expenses, time and effort to appear in person before the RKCR, the petition may be filed, in person, with the PRCR of the place where the migrant petitioner is residing or domiciled.

Any person whose civil registry record was registered in the Philippines, or in any Philippine Consulate, but who is presently residing or domiciled in a foreign country, may file the petition, in person, with the nearest Philippine Consulate, or in accordance with Rule 3.

Rule 5. *Processing of the petition.* – The C/MCR shall:

5.1. Examine the petition as to completeness of requirements and supporting documents as required under Rule 8.

5.2. Determine whether or not the civil registry document, which is the subject of the petition, forms part of the civil register of his office. If it is part of the civil register of his office, he shall assume jurisdiction, otherwise, Rule 6 shall apply.

5.3. Receive the petition upon payment of the prescribed fees by the petitioner.

5.4. Ensure the posting or publication requirement is complied with in accordance with Rule 9.

5.5. Investigate and consider any third party intervention to the petition.

5.6. Enter all petitions in the appropriate record book, as may be prescribed by the CRG, indicating therein, among others, the following information:

5.6.1. Petition number

5.6.2. Name of petitioner

5.6.3. Type of petition

5.6.4. Date of petition

5.6.5. Date of receipt

5.6.6. Entry sought to be corrected/changed

5.6.7. Correction/Change made

5.6.8. Action taken or decision

5.7. Act on the petition within five (5) working days after completion of the posting and/or publication requirement. In case the C/MCR, CG or D/CR approves the petition, he shall render his decision in a prescribed form in triplicate copies, indicating therein the entry sought to be corrected or the first name sought to be changed in the civil register, and the corresponding correction or change made.

5.8. Deny the petition for correction of clerical or typographical error based on any of the following grounds:

5.8.1. The supporting documents are not authentic and genuine.

5.8.2. The C/MCR has personal Knowledge that a similar petition is filed or pending in court or in any other LCRO.

5.8.3. The petition involves the same entry in the same document, which was previously corrected or changed under this Order.

5.8.4. The petition involves the change of the status, sex, age or nationality of the petitioner or of any person named in the document.

5.8.5. Such other grounds as the C/MCR may deem not proper for correction.

5.9. In the case of petition for change of first name or nickname, the C/MCR shall deny the petition based on any of the following grounds, in addition to Rule 5.8.1 to Rule 5.8.3:

5.9.1. The first name or nickname sought to be changed is neither ridiculous, nor tainted with dishonor nor extremely difficult to write or pronounce.

5.9.2. The new first name or nickname sought to be adopted has not been habitually and continuously used by the petitioner, and he has not been publicly known by that first name or nickname in the community.

5.9.3. There is no confusion to be avoided or created with the use of the registered first name or nickname of the petitioner.

5.10. Record the decision in the appropriate record book as mentioned in Rule 5.6, and shall transmit said decision together with the records of proceedings to the OCRG within five (5) working days after the date of decision.

Insofar as applicable, Rule 5 shall be observed also by the CG and D/CR.

Rule 6. *Procedures for migrant petitioner.* – When the petition is for or from a person who is resident or domiciled in a place different from the place where the document sought to be corrected was registered, the following procedures shall be observed:

6.1. The PRCR shall perform the following:

6.1.1. Examine the petition as to completeness of requirements and supporting documents as required under Rule 8.

6.1.2. Receive the petition upon payment by the petitioner of prescribed fees as required under Rule 18.

6.1.3. Ensure that posting or publication of the petition as required under Rule 9 is complied with.

6.1.4. Endorse the petition and its supporting documents, including the filing fee in postal money order or in any other mode of payment to the RKCR.

6.2. The RKCR shall perform the following:

6.2.1. Examine the petition as to completeness of requirements and supporting documents as required under Rule 8 and as transmitted by the PRCR.

6.2.2. Observe the procedures under Rule 5.5 to Rule 5.9.

Insofar as applicable, Rule 6 shall be observed also by the CG and D/CR.

Rule 7. *Availment of the privilege.* – The correction of clerical or typographical error shall be availed of only once with respect to a

particular entry or entries in the same civil registry record. However, with regard to the change of first name or nickname in the birth certificate, the privilege shall be availed of only once subject to Rule 12 hereunder.

Rule 8. *Form and content of the petition.* — The petition shall be in the prescribed form of an affidavit, subscribed and sworn to before any person authorized by law to administer oath. The affidavit shall set forth facts necessary to establish the merits of the petition and shall show affirmatively that the petitioner is competent to testify to the matters stated. The petitioner shall state the particular erroneous entry or entries sought to be corrected or the first name sought to be changed, and the correction or change to be made.

8.1. The petition for the correction of clerical or typographical error shall be supported with the following documents:

8.1.1. A certified true machine copy of the certificate or of the page of the registry book containing the entry or entries sought to be corrected or changed;

8.1.2. At least two (2) public or private documents showing the correct entry or entries upon which the correction or change shall be based;

8.1.3. Notice or certification of posting;

8.1.4. Other documents which the petitioner or the C/MCR, or the CG, or D/CR may consider relevant and necessary for the approval of the petition.

8.2. In case of change of first name or nickname, the petition shall be supported with the following documents and shall comply with the following requirements:

8.2.1. Documents required under Rule 8.1.

8.2.2. A clearance or a certification that the owner of the document has no pending administrative, civil or criminal case, or no criminal record, which shall be obtained from the following:

8.2.2.1. Employer, if employed

8.2.2.2. National Bureau of Investigation

8.2.2.3. Philippine National Police

8.2.3. Affidavit of publication from the publisher and a copy of the newspaper clipping.

8.3. The C/MCR, CG or D/CR shall not accept a petition unless all requirements and supporting documents are complied with by the petitioner.

8.4. The petition and its supporting documents shall be filed in three (3) copies, and upon acceptance, shall be distributed as follows:

8.4.1. First copy to the concerned, C/MCR, CG or D/CR,

8.4.2. Second copy to the OCRG, and

8.4.3. Third copy to the petitioner.

Rule 9. *Posting and publication of the petition.* — The petition shall be posted by the concerned C/MCR, CG or D/CR in a conspicuous place provided for that purpose for ten (10) consecutive days after he finds the petition and its supporting documents sufficient in form and substance.

For a change of first name, the petition shall, in addition to the above-stated posting requirements, be published at least once a week for two (2) consecutive weeks in a newspaper of general circulation. As proof of publication, the petitioner shall attach to the petition of clipping of the publication and an affidavit of publication from the publisher of the newspaper where publication was made.

In the case of migrant petitioner, the petition shall be posted first at the office of the PRCR for ten (10) consecutive days before sending it to the RKCR. Upon receipt, the RKCR shall post again the petition in his office for another ten (10) consecutive days. When the petition is for a change of first name, the migrant petitioner shall publish the petition in a newspaper of general and national circulation.

In the case where a person's civil registry record or records were registered in the Philippines or in any of the Philippine Consulates, but the persons presently resides or is domiciled in a foreign country, posting and/or publication, as the case may be, shall be done in the

place where the petition is filed and in the place where the record sought to be corrected is kept.

Rule 10. *Duties of the C/MCR.* — The C/MCR shall have the following duties:

10.1. Examine the petition and its supporting documents.

10.2. If necessary, conduct investigation by interviewing and asking probing questions to the petitioner.

10.3. Post the petition in a conspicuous place provided for that purpose for ten (10) consecutive days after he finds the petition and its supporting documents sufficient in form and substances.

10.4. Act on the petition and render a decision not later than five (5) working days after the completion of the posting and/or publication requirement.

10.5. Transmit a copy of the decision together with the records of the proceeding to the OCRG within five (5) working days after the date of the decision.

10.6. Perform such other duties and functions as may be necessary to carry out the provisions of RA 9048.

Insofar as applicable, the CG and the D/CR shall perform the duties of the C/MCR as provided for under this Rule.

Rule 11. *Duties and powers of the CRG.* — The CRG shall have the following duties and powers:

11.1. Impugn the decision of the C/MCR or CG or D/CR within ten (10) working days after receipt of the decision granting the petition based on any of the following grounds:

11.1.1. The error is not clerical or typographical.

11.1.2. The correction of an entry in the civil register is substantial or controversial as it involves the change of the age, sex, nationality or civil status of a person.

11.1.3. The petition for correction of clerical or typographical error was not posted, or the petition for change of first name was not published as required under Rule 9.

11.1.4. The basis used in changing the first name or nickname of the person does not fall under any of the following circumstances:

11.1.4.1. The name or nickname is ridiculous, tainted with dishonor or extremely difficult to write or pronounce.

11.1.4.2. 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.

11.1.4.3. The change of first name or nickname will avoid confusion.

11.1.5. The C/MCR does not have authority to take cognizance of the case.

11.2. Notify the C/MCR or the CG or the D/CR of the action taken on the decision not later than ten (10) working days from the date of impugning or approving the decision.

11.3. Act on all appeals or reconsideration duly filed by the petitioner.

11.4. Devise or cause to be devised the forms necessary or required for the effective implementation of this Order.

11.5. Perform such other duties and functions as may be necessary to carry out the provisions of RA 9048.

Rule 12. *Effect of approving the petition for change of name.*
— When the petition for a change of first name is approved by the C/MCR or CG or D/CR and such decision has not been impugned by the CRG, the change shall be reflected in the birth certificate by way of marginal annotation. In case there are other civil registry records of the same person which are affected by such change, the decision of approving the change of first name in the birth certificate, upon becoming final and executory, shall be sufficient to be used as basis in changing the first name of the same person in his other affected records without need for filing a similar petition. In such a case, the successful petitioner shall file a request in writing with the concerned C/MCR, CG or D/CR to make such marginal annotation, attaching thereto a copy of the decision.

Rule 13. *Effect of denying the petition.* — Where the petition is not granted by the C/MCR, CG or D/CR, as the case may be, the petitioner may either appeal the decision to the CRG within ten (10) working days from receipt of the decision, or file the appropriate petition with the proper court. In case the petitioner opts to appeal the decision to the CRG, the latter shall render decision within thirty (30) calendar days after receipt of the appeal. The CRG shall furnish the C/MCR, CG or D/CR a copy of the decision not later than ten (10) working days after the date of the decision.

Rule 14. *Appeal.* — When the petition is denied by the C/MCR, the petitioner may appeal to decision to the CRG, in which case, the following guidelines shall be observed:

14.1. The adversely affected petitioner shall file the notice of appeal to the concerned C/MCR within ten (10) working days after the receipt, of the latter's decision.

14.2. The C/MCR shall, within five (5) working days after the receipt of the notice of appeal from the petitioner, submit the petition and all supporting documents to the CRG.

14.3. The CRG shall render decision on the appeal within thirty (30) calendar days after receipt thereof. The decision of the CRG shall be transmitted to the concerned C/MCR within ten (10) working days after the date of the decision. Within ten (10) working days after receipt of the decision, the C/MCR shall notify the petitioner and shall carry out the decision.

14.4. When the petitioner fails to seasonably file the appeal, the decision of the C/MCR disapproving the petition shall become final and executory, and the only option left for the petitioner shall be to file the appropriate petition with the proper court.

14.5. The petitioner may file the appeal to the CRG on any of the following grounds:

14.5.1. A new evidence is discovered, which when presented, shall materially affect, alter, modify or reverse the decision of the C/MCR.

14.5.2. The denial of the C/MCR is erroneous or not supported with evidence.

14.5.3. The denial of the C/MCR is done with grave abuse of authority or discretion.

Insofar as applicable, Rule 14 shall be observed in the case of a petition denied by the CG or D/CR.

Rule 15. *Failure of the CRG to impugn.* — If the CRG fails to impugn the decision of the C/MCR, CG, or D/CR within ten (10) working days after receipt of the decision granting the petition, such decision shall become final and executory.

Rule 16. *Effect of impugning the decision.* — Where the decision of the C/MCR, CG or D/CR is impugned by the CRG; the petitioner may appeal the decision by way of reconsideration with the latter within fifteen (15) working days from receipt of the decision and shall be based only on the ground of new evidence discovered, or file the appropriate petition with the proper court. The decision which shall be rendered by the CRG within thirty (30) calendar days after receipt of the appeal shall be final and executory.

Rule 17. *Recording, filing and retrieval of decision.* — The CRG shall prescribe the proper recording, filing and retrieval system of the decisions.

Rule 18. *Authority to collect filing and other fees.* — The C/MCR or the D/CR is hereby authorized to collect from every petitioner a filing fee in the amount of one thousand pesos (P1,000.00) for the correction of clerical or typographical error, and three thousand pesos (P3,000.00) for change of first name or nickname. An indigent petitioner as defined under Rule 2.7, shall be exempt from the payment of said fee.

In the case of a petition filed with the CG, a filing fee of fifty U.S. dollars (\$50.00) or its equivalent value in local currency for the correction of clerical or typographical error, and one hundred fifty U.S. dollars (\$150.00) or its equivalent value in local currency for the change of first name, shall be collected.

In the case of a migrant petitioner for correction of clerical or typographical error, there shall be a service fee of five hundred pesos (P500.00) to be collected by the PRCR. In case the petition is for change of name, the service fee is one thousand pesos (P1,000.00). The service fee shall accrue to the city or municipal government of

the PRCR. The PRCR shall also collect the filing fee from the migrant petitioner, which shall be in the form of postal money order or other form of payment which shall be payable to and transmitted to the RKCR, together with the petition and supporting documents.

When the petitioner files petition for correction of clerical or typographical error, simultaneously with a petition for change of first name, and the same document is involved, the petitioner shall pay only the amount corresponding to the fee for the petition for change of first name.

The local legislative body shall ratify the fees herein prescribed upon effectivity of this Order. Prior to ratification by the local legislative body, all fees collected in connection with this Order shall go to the LCRO trust fund: *Provided, however*, That the fees prescribed herein shall be uniform in all cities and municipalities in the country, and in Philippine Consulates.

Rule 19. *Penalty clause.* — A person who violates any of the provision of R.A. No. 9048 and of this Order shall, upon conviction be penalized by imprisonment of not less than six (6) years but not more than twelve (12) years, or a fine of not less than ten thousand pesos (P10,000.00) but not more than one hundred thousand pesos (P100,000.00) or both, at the discretion of the court. In addition, if the offender is a government official or employee, he shall suffer the penalties provided under existing civil service laws, rules and regulations.

Rule 20. *Periodic review.* — The Civil Registrar General may call for periodic review of the IRR as may be necessary.

Rule 21. *Retroactivity clause.* — The Order shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code and other laws.

Rule 22. *Separability clause.* — If any portion or provision of this Order is declared void or unconstitutional, the remaining portions or provisions thereof shall not be affected by such declaration.

Rule 23. *Repealing clause.* — All circulars, memoranda, rules and regulations or parts thereof inconsistent with the provisions of this Order are hereby repealed or modified accordingly.

Rule 24. *Effectivity clause.* — This Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

APPROVE this 24th day of July 2001:

For the Office of the Civil Registrar General:

(Sgd.) CARMELITA N. ERICTA

In consultation with:

For the Department of Justice:

(Sgd.) ANTONIO A. ABANILLA

For the Department of Foreign Affairs:

(Sgd.) FRANKLIN M. EBDALIN

For the Office of the Supreme Court Administrator:

(Sgd.) WILHELMINA D. GERONGA

For the University of the Philippines Law Center:

(Sgd.) GISELLA DIZON-REYES

For the Philippine Association of Civil Registrars:

(Sgd.) RAMON M. MATABANG

APPENDICES

Appendix A

COMMONWEALTH ACT NO. 63

AN ACT PROVIDING FOR THE WAYS IN WHICH PHILIPPINE CITIZENSHIP MAY BE LOST OR REACQUIRED.

Section 1. *How citizenship may be lost.* — A Filipino citizen may lose his citizenship in any of the following ways and/or events:

- (1) By naturalization in a foreign country;
- (2) By express renunciation of citizenship;
- (3) By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more: Provided, however, That a Filipino may not divest himself of Philippine citizenship in any manner while the Republic of the Philippines is at war with any country.
- (4) By rendering services to, or accepting commission in, the armed forces of a foreign country, and the taking of an oath of allegiance incident thereto, with the consent of the Republic of the Philippines, shall not divest a Filipino of his Philippine citizenship if either of the following circumstances is present:
 - (a) The Republic of the Philippines has a defensive and/or offensive pact of alliance with the said foreign country; or
 - (b) The said foreign country maintains armed forces on Philippine territory with the consent of the Republic of the Philippines: Provided, That the Filipino citizen concerned, at the time of rendering said service, or acceptance of said commission, and taking the oath of allegiance incident thereto states that he does so only in connection with his service to said foreign country: And, Provided, finally, That any Filipino citizen who is rendering service to, or is commissioned in, the armed forces of a foreign country under any of the circumstances mentioned in paragraph (a) or (b), shall not be permitted to participate nor vote in any election of the Republic of the Philippines during the period of his service suspended to, or commission in, the armed

forces of said foreign country. Upon his discharge from the service of the said foreign country, he shall be automatically entitled to the full enjoyment of his civil and political rights as a Filipino citizen (*As amended by R.A. 106, R.A. 2639 and R.A. 3834*);

- (5) By cancellation of the certificates of naturalization;
- (6) By having been declared by competent authority, a deserter of the Philippine armed forces in time of war, unless subsequently, a plenary pardon or amnesty has been granted; and
- (7) In the case of a woman, upon her marriage to a foreigner if, by virtue of the laws in force in her husband's country, she acquires his nationality.

The provisions of this section notwithstanding, the acquisition of citizenship by a natural born Filipino citizen from one of the Iberian and any friendly democratic countries or from the United Kingdom shall not produce loss or forfeiture of his Philippine citizenship if the law of that country grants the same privilege to its citizens and such had been agreed upon by treaty between the Philippines and the foreign country from which citizenship is acquired.

Sec. 2. How citizenship may be reacquired. — Citizenship may be reacquired:

- (1) By naturalization: *Provided*, That the applicant possess none of the disqualifications prescribed in section two of Act Numbered Twenty-nine hundred and twenty-seven.
- (2) By repatriation of deserters of the Army, Navy or Air Corps: *Provided*, That a woman who lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of this Act after the termination of the marital status; and
- (3) By direct act of the National Assembly.

Sec. 3. Procedure incident to reacquisition of Philippine citizenship. — The procedure prescribed for naturalization under Act Numbered Twenty-nine hundred and twenty-seven, as amended, shall apply to the reacquisition of Philippine citizenship by naturalization provided for in the next preceding section: *Provided*, That the qualifications and special qualifications prescribed in sections three and four of said Act shall not be required: *And, Provided, further*:

- (1) That the applicant be at least twenty-one years of age and shall have resided in the Philippines at least six months before he applies for naturalization;
- (2) That he shall have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines,

in his relations with the constituted government as well as with the community in which he is living; and

(3) That he subscribes to an oath declaring his intention to renounce absolutely and perpetually all faith and allegiance to the foreign authority, state or sovereignty of which he was a citizen or subject.

Sec. 4. Repatriation shall be effected by merely taking the necessary oath of allegiance to the Commonwealth of the Philippines and registration in the proper civil registry.

Sec. 5. The Secretary of Justice shall issue the necessary regulations for the proper enforcement of this Act. Naturalization blanks and other blanks required for carrying out the provisions of this Act shall be prepared and furnished by the Solicitor General subject to approval of the Secretary of Justice.

Sec. 6. This Act shall take effect upon its approval.

Approved: October 21, 1936.

Appendix A-1

REPUBLIC ACT NO. 9225

AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRE FOREIGN CITIZENSHIP PERMANENT, AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 63, AS AMENDED, AND FOR OTHER PURPOSES.

Section 1. *Short Title.* — This Act shall be known as the “*Citizenship Retention and Re-acquisition Act of 2003.*”

Sec. 2. *Declaration of Policy.* — It is hereby declared the policy of the State that all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act.

Sec. 3. *Retention of Philippine Citizenship.* — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

“I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.”

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

Sec. 4. *Derivative Citizenship.* — The unmarried child, whether legitimate, illegitimate or adopted, below eighteen (18) years of age, of those who re-acquire Philippine citizenship upon effectivity of this Act shall be deemed citizens of the Philippines.

Sec. 5. *Civil and Political Rights and Liabilities.* — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and

political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

(1) Those intending to exercise their right of suffrage must meet the requirements under Sec. 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as “The Overseas Absentee Voting Act of 2003” and other existing laws;

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

(3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: provided, that they renounce their oath of allegiance to the country where they took that oath;

(4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and

(5) That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

(a) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or

(b) are in active service as commissioned or non-commissioned officers in the armed forces of the country which they are naturalized citizens.

Sec. 6. *Separability Clause.* — If any Sec. or provision of this Act is held unconstitutional or invalid, any other Sec. or provision not affected thereby shall remain valid and effective.

Sec. 7. *Repealing Clause.* — All laws, decrees, orders, rules and regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 8. *Effectivity Clause.* — This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or two (2) newspapers of general circulation.

Approved: August 29, 2003.

Appendix A-2

REPUBLIC ACT NO. 8171

AN ACT PROVIDING FOR THE REPATRIATION OF FILIPINO WOMEN WHO HAVE LOST THEIR PHILIPPINE CITIZENSHIP BY MARRIAGE TO ALIENS AND OF NATURAL-BORN FILIPINOS.

Section 1. Filipino women who have lost their Philippine citizenship by marriage to aliens and natural-born Filipinos who have lost their Philippine citizenship, including their minor children, on account of political or economic necessity, may reacquire Philippine citizenship through repatriation in the manner provided in Section 4 of Commonwealth Act No. 63, as amended: *Provided*, That the applicant is not a:

- (1) Person opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing organized government;
- (2) Person defending or teaching the necessity or propriety of violence, personal assault, or association for the predominance of their ideas;
- (3) Person convicted of crimes involving moral turpitude; or
- (4) Person suffering from mental alienation or incurable contagious diseases.

Sec. 2. Repatriation shall be effected by taking the necessary oath of allegiance to the Republic of the Philippines and registration in the proper civil registry and in the Bureau of Immigration. The Bureau of Immigration shall thereupon cancel the pertinent alien certificate of registration and issue the certificate of identification as Filipino citizen to the repatriated citizen.

Sec. 3. All laws, decrees, orders, rules and regulations, or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

Sec. 4. This Act shall take effect thirty (30) days after its publication in a newspaper of general circulation.

Approved: Lapsed into law on October 23, 1995, without the signature of the President, in accordance with Article VI,

Section 27(1) of the Constitution.

Appendix A-3

COMMONWEALTH ACT NO. 473 (Revised Naturalization Law)

AN ACT TO PROVIDE FOR THE ACQUISITION OF PHILIPPINE CITIZENSHIP BY NATURALIZATION, AND TO REPEAL ACTS NUMBERED TWENTY-NINE HUNDRED AND TWENTY-SEVEN AND THIRTY-FOUR HUNDRED AND FORTY-EIGHT.

Sec. 1. Title of Act. — This Act shall be known and may be cited as the “Revised Naturalization Law.”

Sec. 2. *Qualifications.* — Subject to Section four of this Act, any person having the following qualifications may become a citizen of the Philippines by naturalization:

First. He must be not less than twenty-one years of age on the day of the hearing of the petition;

Second. He must have resided in the Philippines for a continuous period of not less than ten years;

Third. He must be of good moral character and believes in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as with the community in which he is living.

Fourth. He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have some known lucrative trade, profession, or lawful occupation;

Fifth. He must be able to speak and write English or Spanish and any one of the principal Philippine languages; and

Sixth. He must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where the Philippine history, government and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines

required of him prior to the hearing of his petition for naturalization as Philippine citizen.

Sec. 3. *Special qualifications.* — The ten years of continuous residence required under the second condition of the last preceding Sec. shall be understood as reduced to five years for any petitioner having any of the following qualifications:

1. Having honorably held office under the Government of the Philippines or under that of any of the provinces, cities, municipalities, or political subdivisions thereof;
2. Having established a new industry or introduced a useful invention in the Philippines;
3. Being married to a Filipino woman;
4. Having been engaged as a teacher in the Philippines in a public or recognized private school not established for the exclusive instruction of children of persons of a particular nationality or race, in any of the branches of education or industry for a period of not less than two years;
5. Having been born in the Philippines.

Sec. 4. *Who are disqualified.* — The following cannot be naturalized as Philippine citizens:

1. Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;
2. Persons defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success and predominance of their ideas;
3. Polygamists or believers in the practice of polygamy;
4. Persons convicted of crimes involving moral turpitude;
5. Persons suffering from mental alienation or incurable contagious diseases;
6. Persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos;
7. Citizens or subjects of nations with whom the United States and the Philippines are at war, during the period of such war;
8. Citizens or subjects of a foreign country other than the United States whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof.

Sec. 5. *Declaration of intention.* — One year prior to the filing of his petition for admission to Philippine citizenship, the applicant for Philippine citizenship shall file with the Bureau of Justice, a declaration under oath that it is bona fide his intention to become a citizen of the Philippines. Such declaration shall set forth name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel or aircraft, if any, in which he came to the Philippines, and the place of residence in the Philippines at the time of making the declaration. No declaration shall be valid until lawful entry for permanent residence has been established and a certificate showing the date, place, and manner of his arrival has been issued. The declarant must also state that he has enrolled his minor children, if any, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government, and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen. Each declarant must furnish two photographs of himself.

Sec. 6. *Persons exempt from requirement to make a declaration of intention.* — Persons born in the Philippines and have received their primary and secondary education in public schools or those recognized by the Government and not limited to any race or nationality, and those who have resided continuously in the Philippines for a period of thirty years or more before filing their application, may be naturalized without having to make a declaration of intention upon complying with the other requirements of this Act. To such requirements shall be added that which establishes that the applicant has given primary and secondary education to all his children in the public schools or in private schools recognized by the Government and not limited to any race or nationality. The same shall be understood to be applicable with respect to the widow and minor children of an alien who has declared his intention to become a citizen of the Philippines, and dies before he is actually naturalized.

Sec. 7. *Petition for citizenship.* — Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition in triplicate, accompanied by two photographs of the petitioner, setting forth his name and surname; his present and former places of residence; his occupation; the place and date of his birth; whether single or married and the father of children, the name, age, birthplace and residence of the wife and of each of the children; the approximate date of his or her arrival in the Philippines, the name of the port of debarkation, and, if he remembers it, the name of the ship on which he came; a declaration that he has the qualifications required by this Act, specifying the same, and that he is not disqualified for naturalization under the provisions of this Act; that he has complied with the requirements of Sec. five of this Act; and that he will

reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship. The petition must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable, and that said petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines and is not in any way disqualified under the provisions of this Act. The petition shall also set forth the names and post-office addresses of such witnesses as the petitioner may desire to introduce at the hearing of the case. The certificate of arrival, and the declaration of intention must be made part of the petition.

Sec. 8. *Competent court.* — The Court of First Instance of the province in which the petitioner has resided at least one year immediately preceding the filing of the petition shall have exclusive original jurisdiction to hear the petition.

Sec. 9. *Notification and appearance.* — Immediately upon the filing of a petition, it shall be the duty of the clerk of the court to publish the same at petitioner's expense, once a week for three consecutive weeks, in the Official Gazette, and in one of the newspapers of general circulation in the province where the petitioner resides, and to have copies of said petition and a general notice of the hearing posted in a public and conspicuous place in his office or in the building where said office is located, setting forth in such notice the name, birthplace and residence of the petitioner, the date and place of his arrival in the Philippines, the names of the witnesses whom the petitioner proposes to introduce in support of his petition, and the date of the hearing of the petition, which hearing shall not be held within ninety days from the date of the last publication of the notice. The clerk shall, as soon as possible, forward copies of the petition, the sentence, the naturalization certificate, and other pertinent data to the Department of the Interior, the Bureau of Justice, the Provincial Inspector of the Philippine Constabulary of the province and the Justice of the Peace of the municipality wherein the petitioner resides.

Sec. 10. *Hearing of the petition.* — No petition shall be heard within thirty days preceding any election. The hearing shall be public, and the Solicitor-General, either himself or through his delegate or the provincial fiscal concerned, shall appear on behalf of the Commonwealth of the Philippines at all the proceedings and at the hearing. If, after the hearing, the court believes, in view of the evidence taken, that the petitioner has all the qualifications required by, and none of the disqualifications specified in this Act and has complied with all requisites herein established, it shall order the proper naturalization certificate to be issued and the registration of the said

naturalization certificate in the proper civil registry as required in Section Ten of Act Numbered Three thousand seven hundred and fifty-three.

Sec. 11. *Appeal.* — The final sentence may, at the instance of either of the parties, be appealed to the Supreme Court.

Sec. 12. *Issuance of the Certificate of Naturalization.* — If, after the lapse of thirty days from and after the date on which the parties were notified of the Court, no appeal has been filed, or if, upon appeal, the decision of the court has been confirmed by the Supreme Court, and the said decision has become final, the clerk of the court which heard the petition shall issue to the petitioner a naturalization certificate which shall, among other things, state the following: The file number of the petition, the number of the naturalization certificate, the signature of the person naturalized affixed in the presence of the clerk of the court, the personal circumstances of the person naturalized, the dates on which his declaration of intention and petition were filed, the date of the decision granting the petition, and the name of the judge who rendered the decision. A photograph of the petitioner with the dry seal affixed thereto of the court which granted the petition, must be affixed to the certificate.

Before the naturalization certificate is issued, the petitioner shall, in open court, take the following oath:

“I, _____, solemnly swear that I renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to the _____ of which at this time I am a subject or citizen; that I will support and defend the Constitution of the Philippines and that I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities of the Commonwealth of the Philippines; [and I hereby declare that I recognize and accept the supreme authority of the United States of America in the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.

“So help me God.”

Sec. 13. *Record books.* — The clerk of the court shall keep two books; one in which the petition and declarations of intention shall be recorded in chronological order, noting all proceedings thereof from the filing of the petition to the final issuance of the naturalization certificate; and another, which shall be a record of naturalization certificates each page of which shall have a duplicate which shall be duly attested by the clerk of the court and delivered to the petitioner.

Sec. 14. *Fees.* — The clerk of the Court of First Instance shall charge as fees for recording a petition for naturalization and for the proceedings

in connection therewith, including the issuance of the certificate, the sum of thirty pesos.

The Clerk of the Supreme Court shall collect for each appeal and for the services rendered by him in connection therewith, the sum of twenty-four pesos.

Sec. 15. *Effect of the naturalization on wife and children.* — Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines.

Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof.

A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a Philippine citizen, and a foreign-born minor child, who is not in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he begins to reside permanently in the Philippines when still a minor, in which case, he will continue to be a Philippine citizen even after becoming of age.

A child born outside of the Philippines after the naturalization of his parent, shall be considered a Philippine citizen, unless within one year after reaching the age of majority, he fails to register himself as a Philippine citizen at the American Consulate of the country where he resides, and to take the necessary oath of allegiance.

Sec. 16. *Right of Widow and Children of Petitioners who have Died.* — In case a petitioner should die before the final decision has been rendered, his widow and minor children may continue the proceedings. The decision rendered in the case shall, so far as the widow and minor children are concerned, produce the same legal effect as if it had been rendered during the life of the petitioner.

Sec. 17. *Renunciation of Title or Orders of Nobility.* — In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the Kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court, unless with the express consent of the National Assembly.

Sec. 18. *Cancellation of Naturalization Certificate Issued.* — Upon motion made in the proper proceedings by the Solicitor-General or his representative, or by the proper provincial fiscal, the competent judge may cancel the naturalization certificate issued and its registration in the Civil Register:

1. If it is shown that said naturalization certificate was obtained fraudulently or illegally.

2. If the person naturalized shall, within the five years next following the issuance of said naturalization certificate, return to his native country or to some foreign country and establish his permanent residence there: *Provided*, That the fact of the person naturalized remaining for more than one year in his native country or the country of his former nationality, or two years in any other foreign country, shall be considered as *prima facie* evidence of his intention of taking up his permanent residence in the same;

3. If the petition was made on an invalid declaration of intention;

4. If it is shown that the minor children of the person naturalized failed to graduate from a public or private high schools recognized by the Office of Private Education of the Philippines, where Philippine history, government and civics are taught as part of the school curriculum, through the fault of their parents either by neglecting to support them or by transferring hem to another school or schools. A certified copy of the decree cancelling the naturalization certificate shall be forwarded by the clerk of the Court to the Department of the Interior and the Bureau of Justice.

5. If it is shown that the naturalized citizen has allowed himself to be used as a dummy requiring Philippine citizenship as a requisite for the exercise, use or enjoyment of a right, franchise or privilege.

Sec. 19. *Penalties for violation of this Act.* — Any person who shall fraudulently make, falsify, forge, change, alter, or cause or aid any person to do the same, or who shall purposely aid and assist in falsely making, forging, falsifying, changing or altering a naturalization certificate for the purpose of making use thereof, or in order that the same may be used by another person or persons, and any person who shall purposely aid and assist another in obtaining a naturalization certificate in violation of the provisions of this Act, shall be punished by a fine of not more than five thousand pesos or by imprisonment for not more than five years, or both, and in the case that the person convicted is a naturalized citizen his certificate of naturalization and the registration of the same in the proper civil registry shall be ordered cancelled.

Sec. 20. *Prescription.* — No person shall be prosecuted, charged, or punished for an offense implying a violation of the provisions of this Act, unless the information or complaint is filed within five years from the detection or discovery of the commission of said offense.

Sec. 21. *Regulation and blanks.* — The Secretary of Justice shall issue the necessary regulations for the proper enforcement of this Act. Naturaliza-

tion certificate blanks and other blanks required for carrying out the provisions of this Act shall be prepared and furnished by the Solicitor-General, subject to the approval of the Secretary of Justice.

Sec. 22. *Repealing clause.* — Act Numbered Twenty-nine hundred and twenty-seven as amended by Act Numbered Thirty-four hundred and forty-eight, entitled “The Naturalization Law,” is repealed: Provided, That nothing in this Act shall be construed to affect any prosecution, suit, action, or proceedings brought, or any act, thing, or matter, civil or criminal, done or existing before the taking effect of this Act, but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the laws, or parts of laws repealed or amended by this Act are continued in force and effect.

Sec. 23. *Date when this Act shall take effect.* — This Act shall take effect on its approval.

Approved: June 17, 1939.

Appendix A-4

REPUBLIC ACT NO. 530

AN ACT MAKING ADDITIONAL PROVISIONS FOR NATURALIZATION

Section 1. The provisions of existing laws notwithstanding, no petition for Philippine citizenship shall be heard by the courts until after six months from the publication of the application required by law, nor shall any decision granting the application become executory until after two years from its promulgation and after the court, on proper hearing, with the attendance of the Solicitor General or his representative, is satisfied, and so finds, that during the intervening time the applicant has (1) not left the Philippines, (2) has dedicated himself continuously to a lawful calling or profession, (3) has not been convicted of any offense or violation of Government promulgated rules, (4) or committed any act prejudicial to the interest of the nation or contrary to any Government announced policies.

Section 2. After the finding mentioned in section one, the order of the court granting citizenship shall be registered and the oath provided by existing laws shall be taken by the applicant, whereupon, and not before, he will be entitled to all the privileges of a Filipino citizen.

Section 3. Such parts of Act Numbered Four hundred seventy-three as are inconsistent with the provisions of the present Act are hereby repealed.

Section 4. This Act shall take effect upon its approval, and shall apply to cases pending in court and to those where the applicant has not yet taken the oath of citizenship: *Provided, however,* That in pending cases where the requisite of publication under the old law and already been complied with, the publication herein required shall not apply.

Approved: June 16, 1950.

Appendix A-5

COMMONWEALTH ACT NO. 625

AN ACT PROVIDING THE MANNER IN WHICH THE OPTION TO ELECT PHILIPPINE CITIZENSHIP SHALL BE DECLARED BY A PERSON WHOSE MOTHER IS A FILIPINO CITIZEN

Be it enacted by the National Assembly of the Philippines:

Section 1. The option to elect Philippine citizenship in accordance with subsection (4), section 1, Article IV, of the Constitution shall be expressed in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines.

Section 2. If the party concerned is absent from the Philippines, he may make the statement herein authorized before any officer of the Government of the United States authorized to administer oaths, and he shall forward such statement together with his oath of allegiance, to the Civil Registry of Manila.

Section 3. The civil registrar shall collect as filing fees of the statement, the amount of ten pesos.

Section 4. The penalty of *prision correccional*, or a fine not exceeding ten thousand pesos, or both, shall be imposed on anyone found guilty of fraud or falsehood in making the statement herein prescribed.

Section 5. This Act shall take effect upon its approval.

Approved, June 7, 1941.

Appendix B

REPUBLIC ACT NO. 7719

AN ACT PROMOTING VOLUNTARY BLOOD DONATION, PROVIDING FOR AN ADEQUATE SUPPLY OF SAFE BLOOD REGULATING BANKS, AND PROVIDING PENALTIES FOR VIOLATION THEREOF.

Section 1. *Title.* — This act shall be known as the “National Blood Services Act of 1994”.

Sec. 2. *Declaration of Policy.* — In order to promote public health, it is hereby declared the policy of the state:

(a) to promote and encourage voluntary blood donation by the citizenry and to instill public consciousness of the principle that blood donation is a humanitarian act;

(b) to lay down the legal principle that the provision of blood for transfusion is a professional medical service and not a sale of a commodity;

(c) to provide for adequate, safe, affordable and equitable distribution of supply of blood and blood products;

(d) to inform the public of the need for voluntary blood donation to curb the hazards causes by the commercial sale of blood;

(e) to teach the benefits and rationale of voluntary blood donation in the existing health subjects of the formal education system in all public and private school, in the elementary, high school and college levels as well as the non-formal education systems;

(f) to mobilize all sectors of the community to participate in mechanisms for voluntary and non-profit collection of blood;

(g) to mandate the Department of Health to establish and organize a National Blood Transfusion Service Network in order to rationalize and improve the provision of adequate and safe supply of blood;

(h) to provide for adequate assistance to institutions promoting voluntary blood donation and providing non-profit blood services, either through a system of reimbursement for costs from patients who can afford to pay or donations from governmental and non governmental entities;

- (i) to require all blood collection units and blood banks/centers to operate on a non-profit basis;
- (j) to establish scientific and professional standards for the operation of blood collection units and blood banks/centers in the Philippines;
- (k) to regulate ensure the safety of all activities related to the collection, storage and banking of blood; and
- (l) to require upgrading of blood banks/centers to include preventive services an education to control spread of blood transfusion transmissible diseases.

Sec. 3. *Definitions.* — For purposes of this Act, the following terms shall mean:

- (A) Blood/blood product — refers to human blood, processes or un-processed and includes blood components, its products and derivatives;
- (B) Blood bank/center — a laboratory or institution with the capability to recruit and screen blood donors, collect, process, store, transport and issue blood for transfusion and provide information and/or education on blood transfusion transmissible diseases;
- (C) Commercial blood bank — a blood bank that exists for profit;
- (D) Hospital-based blood bank — a blood bank which is located within the premises of a hospital and which can perform compatibility testing of blood;
- (E) Blood collection unit — an institution or facility duly authorized by the Department of Health to recruit and screen donors and collect blood;
- (F) Voluntary blood donor — one who donates blood on one's own volition or initiative and without monetary compensation;
- (G) Department — the Department of Health;
- (H) Blood transfusion transmissible disease — diseases which may be transmitted as a result of blood transfusion, including AIDS, Hepatitis-B, Malaria and syphilis;
- (I) Secretary of Health — the Secretary of Health or any other person to whom the Secretary delegates the responsibility of carrying out the provisions of this Act;
- (J) Walking Blood Donor — an individual included in the list of qualifies voluntary blood donors, referred to in Section 4, paragraph (e), who is ready to donate blood when needed in his/her community.

Sec. 4. *Promotion of Voluntary Blood Donation.* — In order to adequate supply of human blood, voluntary blood donation shall be promoted through the following:

(A) *Public Education* — Through an organized and sustained nationwide public education campaign by the Department, the Philippine National Red Cross (PNRC) and the Philippine Blood Coordinating Council (PBCC), as the lead agencies, other government agencies, local government units (particularly the barangays), non-government organizations, all medical organizations, all public and private hospitals, all health and health — related institutions, print and broadcast media as well other sectors. The Department is hereby authorized to set aside funds and generate financial support for all sectors involved in the collection and processing of blood from voluntary blood donors through a system of reimbursement for costs for patients who can afford to pay or from donations from government and private institutions. Voluntary donors shall likewise be provided non-monetary incentives as may be determined by the Department.

(B) *Promotion in Schools.* — The benefits and rationale of voluntary blood donation shall be included and given emphasis in health subjects of schools, both public and private, at the elementary, high school and college levels. The Department of Education, Culture and Sports shall also require inclusion in its non-formal education curricula.

(C) *Professional Education.* — The Department, the PBCC, the Philippine Society of Hematology and Blood Transfusion (PSHBT), the Philippine Pathologists (PSP), the Philippine Medical Association (PMA), the Philippine Association of Medical Technologists (PAMET) and the Philippine Nursing Association (PNA) are encouraged to conduct for their respective members and as part of the continuing medical education, trainings on the rational use of blood and blood products including the merits of voluntary blood donation.

(D) *Establishment of Blood Services Network.* — Blood centers shall be strategically established in every province an city nationwide within the framework of a National Blood Transfusion Service Network spearheaded by the Department, in coordination with the PNRC. The collection in various areas in the community, such as schools, business enterprises, barangays, and military camps shall be promoted.

The Secretary shall set the standards for the scientific and professional establishment and operation of blood banks/centers and collection units. The Department shall provide training programs and technical assistance to enable communities, schools, industrial and business sites, barangays, military camps and local government units to implement their own voluntary donation programs.

(E) Walking Blood Donors. — In areas where there may be inadequate blood banking facilities, the walking blood donor concept shall be encouraged and all government hospitals, rural-health units, health centers and barangays in these areas shall be required to keep at all times a list of qualifies voluntary blood donors with their blood typing.

Sec. 5. *National Voluntary Blood Services Program.* — The Department, in cooperation with the PNRC and PBCC and other government agencies and non-government organizations shall plan and implement an National Voluntary Blood Services Program (NVBSP) to meet in an evolutionary manner, the needs for blood transfusion in all regions of the country. Funds for this purpose shall be provided for the Government through the budgetary allocation of the Department, by the Philippine Charity Sweepstakes Office (PCSO) with an initial amount of at least Twenty-five million pesos (P25,000,000), by the Philippine Amusement and Gaming Corporation (PAGCOR) with an initial amount of at least Twenty-five million pesos (P25,000,000), by at least trust liability account of the Duty Free Shop (Duty Free Philippines) with an initial amount of at least Twenty-five million pesos (P25,000,000) and through contribution of other agencies such as civic organization.

Sec. 6. *Upgrading of Services and Facilities.* — All blood banks/centers shall provide preventive health services such as education and counseling on blood transfusion transmissible diseases. All government hospitals, including those that have been devolved, shall be required to establish voluntary blood donation programs and all private hospitals shall be encouraged to establish voluntary blood donation programs.

The Department, in consultation with the PSHBT and the PSP, shall also establish guidelines for the rational use of blood and blood products.

Sec. 7. *Phase-out of Commercial Blood Banks.* — All commercial blood banks shall be phased-out over a period of two (2) years after the effectivity of this Act, extendable to a maximum period of two (2) years by the Secretary.

Sec. 8. *Non-profit Operation.* — All blood banks/centers shall operate on a non-profit basis: *Provided*, That they may collect service fees not greater than the maximum prescribed by the Department which shall be limited to the necessary expenses entailed in collecting and processing of blood. Blood shall be collected from healthy voluntary donors only.

Sec. 9. *Regulation of Blood Services.* — It shall be unlawful for any person to establish and operate a blood bank/center unless it is registered and issued a license to operate by the Department: *Provided*, That in case of emergencies, blood collection and transfusion under the responsibility of the attending physician shall be allowed in hospitals without such license under certain conditions prescribed by the Department. No license shall be

granted or renewed by the Department for the establishment and operation of a blood bank/center unless it complies with the standards prescribed by the Department. Such blood bank/center shall be under the management of a licensed and qualified physician duly authorized by the Department.

Sec. 10. *Importation of Blood Bank Equipment, Blood Bags and Reagents.* — Upon the effectivity of this Act, blood bags and reagents used for the screening and testing of donors, collection and processing and storage of blood shall be imported tax-and duty-free by the PNRC, blood banks and hospitals participating actively in the National Voluntary Blood Services Program. This provision shall be implemented by the rules and regulations to be promulgated by the Department in consultation and coordination with the Department of Finance.

Sec. 11. — The implementation of the provisions of this Act shall be in accordance with the rules and regulations to be promulgated by the Secretary, within sixty (60) days from the approval hereof. The existing Revised Rules and Regulations Governing the Collection Processing and Provision of Human Blood and Establishment and Operation of Blood Banks shall remain in force unless amended or revised by the Secretary. The rules and regulations shall prescribed from time to time the maximum ceiling for fees for the provision of blood, including, its collection, processing and storage, professional services and a reasonable allowance for spoilage.

Sec. 12. *Penalties.* — Upon complaint of any person and after due notice and hearing, any blood bank/center which shall collect charges and fees than the maximum prescribed by the Department shall have its license, suspended or revoked by the Secretary.

Any person or persons who shall be responsible for the above violation shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day nor more than twenty (20) years or a fine of not less than Fifty thousand pesos (P50,000) nor more than Five hundred thousand pesos (P500,000) or both at the discretion of the competent court.

The Secretary, after due notice and hearing, may impose administrative sanctions such as, but not limited to fines, suspension, or revocation of license to operate a blood bank/center and to recommend the suspension or revocation of the license to practice the profession when applicable.

The head of the blood bank and the necessary trained personnel under the head's direct supervision found responsible for dispensing, transfusing and failing to dispose, within forty-eight (48) hours, blood which have been proven contaminated with blood transfusion transmissible diseases shall be imprisoned for ten(10) years. This is without prejudice to the filing of criminal charges under the Revised Penal Code.

Sec. 13. *Separability Clause.* — If any provisions of this Act is declared invalid, the other provisions hereof not affected thereby shall remain in force and effect.

Sec. 14. *Repealing Clause.* — This Act supersede Republic Act No.1517 entitled “Blood Bank Act.” The provisions of any law, executive order, presidential decree or other issuances inconsistent with this Act hereby repealed or modified accordingly.

Sec. 15. *Effectivity Clause.* — This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in two (2) national newspapers of general circulation.

Approved: May 5, 1994.

Appendix C

A.M. NO. 02-11-11-SC

MARCH 15, 2003

RE: PROPOSED RULE ON LEGAL SEPARATION

R E S O L U T I O N

Acting on the letter of the Chairman of the Committee on Revision of the Rules of Court submitting for this Court's consideration and approval the Proposed Rule on Legal Separation, the Court Resolved to APPROVED the same.

The Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003

March 4, 2003

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr. and Azcuna, JJ.

Ynares-Santiago, on leave,

Corona, officially on leave.

RULE ON LEGAL SEPARATION

Section 1. *Scope.* — This Rule shall govern petitions for legal separation under the Family Code of the Philippines.

The Rules of Court shall apply suppletorily.

Sec. 2. *Petition.* —

(a) Who may and when to file. — (1) A petition for legal separation may be filed only by the husband or the wife, as the case may be within five years from the time of the occurrence of any of the following causes:

(a) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

(b) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;

(c) 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;

(d) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;

(e) Drug addiction or habitual alcoholism of the respondent;

(f) Lesbianism or homosexuality of the respondent;

(g) Contracting by the respondent of a subsequent bigamous marriage, whether in or outside the Philippines;

(h) Sexual infidelity or perversion of the respondent;

(i) Attempt on the life of petitioner by the respondent;

(j) Abandonment of petitioner by respondent without justifiable cause for more than one year.

(b) *Contents and form.* — The petition for legal separation shall:

(1) Allege the complete facts constituting the cause of action.

(2) State the names and ages of the common children of the parties, specify the regime governing their property relations, the properties involved, and creditors, if any. If there is no adequate provision in a written agreement between the parties, the petitioner may apply for a provisional order for spousal support, custody and support of common children, visitation rights, administration of community or conjugal property, and other similar matters requiring urgent action.

(3) Be verified and accompanied by a certification against forum shopping. The verification and certification must be personally signed by the petitioner. No petition may be filed solely by counsel or through an attorney-in-fact. If the petitioner is in a foreign country, the verification and certification against forum shopping shall be authenticated by the duly authorized officer of the Philippine embassy or legation, consul general, consul or vice-consul or consular agent in said country.

(4) Be filed in six copies. The petitioner shall, within five days from such filing, furnish a copy of the petition to the City or Provincial Prosecutor and the creditors, if any, and submit to the court proof of such service within the same period.

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

(c) *Venue.* — The petition shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing “or in The case of a non-resident respondent, where he may be found in the Philippines, at the election of the petitioner.

Sec. 3. *Summons.* — The service of summons shall be governed by Rule 14 of the Rules of Court and by the following rules:

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

(b) The summons to be published shall be contained in an order of the court with the following data; (1) title of the case; (2) docket number; (3) nature of the petition; (4) principal grounds of the petition and the reliefs prayed for, and (5) a directive for respondent to answer within thirty days from the last issue of publication.

Sec. 4. *Motion to Dismiss.* — No motion to dismiss the petition shall be allowed except on the ground of lack of jurisdiction over the subject matter or over the parties; provided, however, that any other ground that might warrant a dismissal of the case may be raised as an affirmative defense in an answer.

Sec. 5. *Answer.* — (a) The respondent shall file his answer within fifteen days from receipt of summons, or within thirty days from the last issue of publication in case of service of summons by publication. The answer must be verified by respondent himself and not by counsel or attorney-in-fact.

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

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

Sec. 6. *Investigation Report of Public Prosecutor.* — (a) Within one month after receipt of the court order mentioned in paragraph (c) of the preceding section, the public prosecutor shall submit a report to the court on whether the parties are in collusion and serve copies on the parties and their respective counsels, if any.

(b) If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within ten days from receipt of copy of the report. The court shall set the report for hearing and if convinced that parties are in collusion, it shall dismiss the petition.

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

Sec. 7. *Social Worker.* — The court may require a social worker to conduct a case study and to submit the corresponding report at least three days before the pre-trial. The court may also require a case study at any stage of the case whenever necessary,

Sec. 8. *Pre-trial.* —

(a) *Pre-trial mandatory.* — A pre-trial is mandatory. On motion or motu proprio, the court shall set the pre-trial after the last pleading has been served and filed, or upon receipt of the report of the public prosecutor that no collusion exists between the parties on a date not earlier than six months from date of the filing of the petition.

(b) *Notice of Pre-trial.* —

(1) The notice of pre-trial shall contain:

(a) the date of pre-trial conference; and

(b) an order directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure the receipt thereof by the adverse party at least three days before the date of pre-trial.

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

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

Sec. 9. *Contents of pre-trial brief.* — The pre-trial brief shall contain the following:

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

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

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

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

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

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

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

Sec. 10. *Effect of failure to appear at the pre-trial.* — (1) If the petitioner fails to appear personally, the case shall be dismissed unless his counsel or a duly authorized representative appears in court and proves a valid excuse for the non-appearance of the petitioner.

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

Sec. 11. *Pre-trial conference.* — At the pre-trial conference, the court may refer the issues to a mediator who shall assist the parties in reaching an agreement on matters not prohibited by law.

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

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

Sec. 12. *Pre-trial order.* — (a) The proceedings in the pre-trial shall be recorded. Upon termination of the pre-trial, the court shall issue a pre-trial order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed on the pleadings, and, except as to the ground of legal separation, the agreements or admissions made by the parties on any of the matters considered, including any provisional order that may be necessary or agreed upon by the parties.

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

- (1) Facts undisputed, admitted, and those which need not be proved subject to Section 13 of this Rule;
- (2) Factual and legal issues to be litigated;
- (3) Evidence, including objects and documents, that have been marked and will be presented;
- (4) Names of witnesses who will be presented and their testimonies in the form of affidavits; and
- (5) Schedule of the presentation of evidence.

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

(c) The parties shall not be allowed to raise issues or present witnesses and evidence other than those stated in the pre-trial order. The order shall control the trial of the case unless modified by the court to prevent manifest injustice.

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

Sec. 13. *Prohibited compromise.* — The court shall not allow compromise on prohibited matters, such as the following:

- (1) The civil status of persons;
- (2) The validity of a marriage or of a legal separation;
- (3) Any ground for legal separation;
- (4) Future support;
- (5) The jurisdiction of courts; and
- (6) Future legitime.

Sec. 14. *Trial.* — (a) The presiding judge shall personally conduct the trial of the case. No delegation of the reception of evidence to a commissioner shall be allowed except as to matters involving property relations of the spouses.

(b) The grounds for legal separation must be proved. No judgment on the pleadings, summary judgment, or confession of judgment shall be allowed.

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

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

Sec. 15. *Memoranda.* — The court may require the parties and the public prosecutor to file their respective memoranda in support of their claims within fifteen days from the date the trial is terminated. 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.

Sec. 16. *Decision.* — (a) The court shall deny the petition on any of the following grounds:

- (1) The aggrieved party has condoned the offense or act complained of or has consented to the commission of the offense or act complained of;
- (2) There is connivance in the commission of the offense - or act constituting the ground for legal separation;
- (3) Both parties have given ground for legal separation;
- (4) There is collusion between the parties to obtain the decree of legal separation; or
- (5) The action is barred by prescription.

(b) If the court renders a decision granting the petition, it shall declare therein that the Decree of Legal Separation shall be issued by the court only after full compliance with liquidation under the Family Code.

However, in the absence of any property of the parties, the court shall forthwith issue a Decree of Legal Separation which shall be registered in the Civil Registry where the marriage was recorded and in the Civil Registry where the Family Court granting the legal separation is located.

(c) The decision shall likewise declare that:

- (1) The spouses are entitled to live separately from each other but the marriage bond is not severed;
- (2) The obligation of mutual support between the spouses ceases; and

(3) The offending spouse is disqualified from inheriting from the innocent spouse by intestate succession, and provisions in favor of the offending spouse made in the will of the innocent spouse are revoked by operation of law.

(d) 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 also be published once in a newspaper of general circulation.

Sec. 17. *Appeal.* —

(a) Pre-condition. — No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within fifteen days from notice of judgment.

(b) 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 upon the adverse parties.

Sec. 18. *Liquidation, partition and distribution, custody, and support of minor children.* — 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 and support of common children, under the Family Code unless such matters had been adjudicated in previous judicial proceedings.

Sec. 19. *Issuance of Decree of Legal Separation.* — (a) The court shall issue the Decree of Legal Separation after:

(1) registration of the entry of judgment granting the petition for legal separation in the Civil Registry where the marriage was celebrated and in the Civil Registry where the Family Court is located; and

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

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

Sec. 20. *Registration and publication of the Decree of Legal Separation; decree as best evidence.* —

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

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

(c) *Best evidence.* — The registered Decree shall be the best evidence to prove the legal separation of the parties and shall serve as notice to third persons concerning the properties of petitioner and respondent.

Sec. 21. *Effect of death of a party; duty of the Family Court or Appellate Court.* — (a) In case a party dies at any stage of me proceedings before the entry of judgment, the court shall order the case closed and terminated without prejudice to the settlement of estate proper proceedings in the regular courts.

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

Sec. 22. *Petition for revocation of donations.* — (a) Within five (5) years from the date the decision granting the petition for legal separation has become final, the innocent spouse may file a petition under oath the same proceeding for legal separation to revoke the donations in favor of the offending spouse.

(b) The revocation of the donations shall be recorded in the Register of Deeds of Deeds in the places where the properties are located.

(c) Alienations, liens, and encumbrances registered in good faith, before the recording of the petition for revocation in the registries of property shall be respected.

(d) After the issuance of the Decree of Legal Separation, the innocent spouse may revoke the designation of the offending spouse as a beneficiary in any insurance policy even if such designation be stipulated as irrevocable. The revocation or change shall take effect upon written notification thereof to the insurer.

Sec. 23. *Decree of Reconciliation.* — (a) If the spouses had reconciled, a joint manifestation under oath, duly signed by the spouses, may be filed in the same proceeding for legal separation.

(b) If the reconciliation occurred while the proceeding for legal separation is pending, the court shall immediately issue an order terminating the proceeding.

(c) If the reconciliation occurred after the rendition of the judgment granting the petition for legal separation but before the issuance of the Decree, the spouses shall express in their manifestation whether or not they agree to revive the former regime of their property relations or choose a new regime.

The court shall immediately issue a Decree of Reconciliation declaring that the legal separation proceeding is set aside and specifying the regime of property relations under which the spouses shall be covered.

(d) If the spouses reconciled after the issuance of the Decree, the court, upon proper motion, shall issue a decree of reconciliation declaring therein that the Decree is set aside but the separation of property and any forfeiture of the share of the guilty spouse already effected subsists, unless the spouses have agreed to revive their former regime of property relations or adopt a new regime.

(e) In case of paragraphs (b), (c), and (d), if the reconciled spouses choose to adopt a regime of property relations different from that which they had prior to the filing of the petition for legal separation, the spouses shall comply with Section 24 hereof.

(f) The decree of reconciliation shall be recorded in the Civil Registries where the marriage and the Decree had been registered.

Sec. 24. Revival of property regime or adoption of another. —

(a) In case of reconciliation under Section 23, paragraph (c) above, the parties shall file a verified motion for revival of regime of property relations or the adoption of another regime of property relations in the same proceeding for legal separation attaching to said motion their agreement for the approval of the court.

(b) The agreement which shall be verified shall specify the following:

(1) The properties to be contributed to the restored or new 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.

(c) The creditors shall be furnished with copies of the motion and the agreement.

(d) The court shall require the spouses to cause the publication of their verified motion for two consecutive weeks in a newspaper of general circulation.

(e) After due hearing, and the court decides to grant the motion, it shall issue an order directing the parties to record the order in the proper registries of property within thirty days from receipt of a copy of the order and submit proof of compliance within the same period.

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

Appendix D

Family Courts Act (Republic Act No. 8369)

AN OVERVIEW

The “Family Courts Act of 1997,” otherwise known as RA No. 8369, was approved on Oct. 28, 1997.

The law national policy statement is for the State to “protect the rights and promote the welfare of children in keeping with the mandate of the Constitution and the precepts of the UN Convention on the Rights of the Child. The State shall provide a system of adjudication for youthful offenders which takes into account their peculiar circumstances.” (*Sec. 2, RA No. 8369*).

Moreso, “[t]he State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. The courts shall preserve the solidarity of the family, provide procedures for the reconciliation of spouses and the amicable settlement of family controversy.” (*Ibid.*).

Establishment of Family Courts

“There shall be established a Family Court in every province and city in the country. In case where the city is the capital of the province, the Family Court shall be established in the municipality which has the highest population.” (*Sec. 3, ibid.*)

In furtherance of a Family Court judge, “[t]he Supreme Court shall provide a continuing education program on child and family laws, procedure, and other related disciplines to judges and personnel of such courts.” (*Sec. 4 [last par.], id.*).

Jurisdiction of Family Courts

Family Courts have exclusive original jurisdiction to hear and decide:

a) criminal cases where one or more of the accused is below 18 years of age but not less than 9 years of age or where one or more of the victims is a minor at the time of the commission of the offense. If the minor

is found guilty, the court shall promulgate sentence and ascertain any civil liability which the accused may have incurred. (*Sec. 5[a], id.*)

b) petitions for:

(1) guardianships, custody of children, *habeas corpus* in relation to the latter;

(2) adoption of children and the revocation thereof;

(3) support and/or acknowledgment;

(4) declaration of status of children as abandoned, dependent or neglected children;

(5) voluntary or involuntary commitment of children; and

(6) the constitution of the family home. (*Sec. 5[b][c][e][g][h], id.*)

c) complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains. (*Sec. 5[d], id.*)

d) summary judicial proceedings brought under the provisions of Executive Order 209, otherwise known as the “Family Code of the Philippines.” (*Sec. 5[f], id.*)

e) the suspension, termination, or restoration of parental authority and other cases cognizable under PD 603, EO 56 (Series of 1986), and other related laws. (*Sec. 5[g], id.*)

f) cases against minors recognizable under the Dangerous Drugs Act, as amended. (*Sec. 5[i], id.*)

g) instances (or cases) of domestic violence against women (*Sec. 5[k][l], id.*) and children (*Sec. 5[k][2], id.*)

Be it noted that “[I]f an act constitutes a criminal offense, the accused or batterer shall be subject to criminal proceedings and the corresponding penalties.” (*Sec. 5[6th par.], id.*). Thus, “[I]f any question involving any of the above matters should arise as an incident in any case pending in the regular courts, said incident shall be determined in that court.” (*Sec. 5[last par.], id.*)

Use of Income

All Family Courts are allowed the use of 10% of their income derived from filing and other court fees under Rule 141 of the Rules of Court for research, and other operating expenses, including capital outlay. This benefit

is likewise enjoyed by all Court of Justice. The Supreme Court shall promulgate the necessary guidelines to effectively implement the provisions of this income re the use of income. (*See Sec. 6, id.*)

Special Provisional Remedies

There are three (3) special provisional remedies:

1. in cases of violence among immediate family members living in the same domicile or household, the Family Court may issue a restraining order against the accused or defendant upon verified application by the complainant or the victim for relief from abuse (*Sec. 7[last par.], id.*);
2. the court may order the temporary custody (*Sec. 7[2nd par.], id.*);
3. the court may also order support *pendente lite*, including deduction from the salary and use of conjugal home and other properties in all civil actions for support. (*Sec. 7[2nd par.][last sentence], id.*).

Special Rules of Procedure

The Supreme Court shall promulgate special rules of procedure for a three-pronged purpose, to wit:

1. for the transfer of cases to the new courts during the transition period;
2. for the disposition of family cases with the best interests of the child; and
3. for the protection of the family as primary consideration taking into account the UN Convention on the Rights of the Child. (*Sec. 13, id.*).

Appeals

Decisions and orders of the court shall be appreciated in the same manner and subject to the same conditions as appeals from the ordinary Regional Trial Courts (RTCs). (*Sec. 14, id.*).

Appendix E

A.M. NO. 02-11-10-SC

MARCH 4, 2003

RE: PROPOSED RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES.

R E S O L U T I O N

Acting on the letter of the Chairman of the Committee on Revision of the Rules of Court submitting for this Court's consideration and approval the Proposed Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, the Court Resolved to APPROVE the same.

The Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003

March 4, 2003

Davide, C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr. and Azcuna

Ynares-Santiago, on leave

Corona, on official leave

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

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

The Rules of Court shall apply suppletorily.

Sec. 2. *Petition for declaration of absolute nullity of void marriages.* —

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

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

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

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

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

Sec. 3. Petition for annulment of voidable marriages. —

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

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

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

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

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

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

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

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

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

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

(2) It shall state the names and ages of the common children of the parties and specify the regime governing their property relations, as well as the properties involved.

If there is no adequate provision in a written agreement between the parties, the petitioner may apply for a provisional order for spousal support, the custody and support of common children, visitation rights, administration of community or conjugal property, and other matters similarly requiring urgent action.

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

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

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

(2) it shall state the names and ages of the common children of the parties and specify the regime governing their property relations, as well as the properties involved.

If there is no adequate provision in a written agreement between the parties, the petitioner may apply for a provisional order for spousal support, custody and support of common children, visitation rights, administration

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

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

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

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

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

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

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

(2) The summons to be published shall be contained in an order of the court with the following data: (a) title of the case; (b) docket number; (c) nature of the petition; (d) principal grounds of the petition and the reliefs prayed for; and (e) a directive for the respondent to answer within thirty days from the last issue of publication.

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

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

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

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

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

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

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

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

Sec. 11. *Pre-trial.* —

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

(2) Notice of pre-trial. —

(a) The notice of pre-trial shall contain:

(1) the date of pre-trial conference; andchan robes virtual law library

(2) an order directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure the receipt thereof by the adverse party at least three days before the date of pre-trial.

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

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

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

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

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

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

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

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

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

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

Sec. 13. *Effect of failure to appear at the pre-trial.* — (a) If the petitioner fails to appear personally, the case shall be dismissed unless his counsel or a duly authorized representative appears in court and proves a valid excuse for the non-appearance of the petitioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The civil status of persons;
- (b) The validity of a marriage or of a legal separation;
- (c) Any ground for legal separation;

- (d) Future support;
- (e) The jurisdiction of courts; and
- (f) Future legitime.

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

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

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

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

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

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

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

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

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

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

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

Sec. 20. *Appeal.* —

(1) *Pre-condition.* — No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within fifteen days from notice of judgment.

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

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

Sec. 22. *Issuance of Decree of Declaration of Absolute Nullity or Annulment of Marriage.* — (a) The court shall issue the Decree after:

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

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

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

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

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

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

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

(c) The registered Decree shall be the best evidence to prove the declaration of absolute nullity or annulment of marriage and shall serve as notice to third persons concerning the properties of petitioner and respondent as well as the properties or presumptive legitimes delivered to their common children.

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

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

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

Appendix F

A.M. No. 02-11-12-SC

RE: PROPOSED RULE ON PROVISIONAL ORDERS

R E S O L U T I O N

Acting on the letter of the Chairman of the Committee on Revision of the Rules of Court submitting for this Court's consideration and approval the Proposed Rule on Provisional Orders, the Court Resolved to APPROVE the same.

The Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.

March 4, 2003.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., and Azcuna, JJ., concur.

Ynares-Santiago, J., on leave.

Corona, J., on official leave.

RULE ON PROVISIONAL ORDERS

Section 1. *When Issued.* — Upon receipt of a verified petition for declaration of absolute nullity of void marriage or for annulment of voidable marriage, or for legal separation, and at any time during the proceeding, the court, motu proprio or upon application under oath of any of the parties, guardian or designated custodian, may issue provisional orders and protection orders with or without a hearing. These orders may be enforced immediately, with or without a bond, and for such period and under such terms and conditions as the court may deem necessary.

Sec. 2. *Spousal Support.* — In determining support for the spouses, the court may be guided by the following rules:

(a) In the absence of adequate provisions in a written agreement between the spouses, the spouses may be supported from the properties of the absolute community or the conjugal partnership.

(b) The court may award support to either spouse in such amount and for such period of time as the court may deem just and reasonable based on their standard of living during the marriage.

(c) The court may likewise consider the following factors: (1) whether the spouse seeking support is the custodian of a child whose circumstances make it appropriate for that spouse not to seek outside employment; (2) the time necessary to acquire sufficient education and training to enable the spouse seeking support to find appropriate employment, and that spouse's future earning capacity; (3) the duration of the marriage; (4) the comparative financial resources of the spouses, including their comparative earning abilities in the labor market; (5) the needs and obligations of each spouse; (6) the contribution of each spouse to the marriage, including services rendered in home-making, child care, education, and career building of the other spouse; (7) the age and health of the spouses; (8) the physical and emotional conditions of the spouses; (9) the ability of the supporting spouse to give support, taking into account that spouse's earning capacity, earned and unearned income, assets, and standard of living; and (10) any other factor the court may deem just and equitable.

(d) The Family Court may direct the deduction of the provisional support from the salary of the spouse.

Sec. 3. *Child Support*. — The common children of the spouses shall be supported from the properties of the absolute community or the conjugal partnership.

Subject to the sound discretion of the court, either parent or both may be ordered to give an amount necessary for the support, maintenance, and education of the child. It shall be in proportion to the resources or means of the giver and to the necessities of the recipient.

In determining the amount of provisional support, the court may likewise consider the following factors: (1) the financial resources of the custodial and non-custodial parent and those of the child; (2) the physical and emotional health of the child and his or her special needs and aptitudes; (3) the standard of living the child has been accustomed to; (4) the non-monetary contributions that the parents will make toward the care and well-being of the child,

The Family Court may direct the deduction of the provisional support from the salary of the parent.

Sec. 4. *Child Custody*. — In determining the right party or person to whom the custody of the child of the parties may be awarded pending the petition, the court shall consider the best interests of the child and shall give paramount consideration to the material and moral welfare of the child,

The court may likewise consider the following factors: (a) the agreement of the parties; (b) the desire and ability of each parent to foster an open; and loving relationship between the child and the, other parent; (c) the child's health, safety, and welfare; (d) any history of child or spousal abuse by the person seeking custody or who has had any filial relationship with the child, including anyone courting the parent; (e) the nature and frequency of contact with both parents; (f) habitual use of alcohol or regulated substances; (g) marital misconduct; (h) the most suitable physical, emotional, spiritual, psychological and educational environment; and (i) the preference of the child, if over seven years of age and of sufficient discernment, unless the parent chosen is unfit.

The court may award provisional custody in the following order of preference: (1) to both parents jointly; (2) to either parent taking into account all relevant considerations under the foregoing paragraph, especially the choice of the child over seven years of age, unless the parent chosen is unfit; (3) to the surviving grandparent, or if there are several of them, to the grandparent chosen by the child over seven years of age and of sufficient discernment, unless the grandparent is unfit or disqualified; (4) to the eldest brother or sister over twenty-one years of age, unless he or she is unfit or disqualified; (5) to the child's actual custodian over twenty-one years of age, unless unfit or disqualified; or (6) to any other person deemed by the court suitable to provide proper care and guidance for the child.

The custodian temporarily designated by the court shall give the court and the parents five days notice of any plan to change the residence of the child or take him out of his residence for more than three days provided it does not prejudice the visitation rights of the parents.

Sec. 5. *Visitation Rights.* — Appropriate visitation rights shall be provided to the parent who is not awarded provisional custody unless found unfit or disqualified by the court.

Sec. 6. *Hold Departure Order.* — Pending resolution of the petition, no child of the parties shall be brought out of the country without prior order from the court,

The court, motu proprio or upon application under oath, may issue *ex-parte* a hold departure order, addressed to the Bureau of Immigration and Deportation, directing it not to allow the departure of the child from the Philippines without the permission of the court.

The Family Court issuing the hold departure order shall furnish the Department of Foreign Affairs and the Bureau of Immigration and Deportation of the Department of Justice a copy of the hold departure order issued within twenty-four hours from the time of its issuance and through the fastest available means of transmittal.

The hold-departure order shall contain the following information:

(a) the complete name (including the middle name), the date and place of birth, and the place of last residence of the person against whom a hold-departure order has been issued or whose departure from the country has been enjoined;

(b) the complete title and docket number of the case in which the hold departure was issued;

(c) the specific nature of the case; and

(d) the date of the hold-departure order,

If available, a recent photograph of the person against whom a hold-departure order has been issued or whose departure from the country has been enjoined should also be included.

The court may recall the order, *motu proprio* or upon verified motion of any of the parties after summary hearing, subject to such terms and conditions as may be necessary for the best interests of the child.

Sec. 7. Order of Protection. — The court may issue an Order of Protection requiring any person:

(a) to stay away from the home, school, business, or place of employment of the child, other parent or any other party, and to stay away from any other specific place designated by the court;

(b) to refrain from harassing, intimidating, or threatening such child or the other parent or any person to whom custody of the child is awarded;

(c) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety, or welfare of the child;

(d) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(e) to permit a designated party to enter the residence during a specified period of time in order to take personal belongings not contested in a proceeding pending with the Family Court;

(f) to comply with such other orders as are necessary for the protection of the child.

Sec. 8. Administration of Common Property. — If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the court may, upon application of the aggrieved party under oath, issue a provisional order appointing the applicant or a third person as receiver or sole administrator of the common property subject to such precautionary conditions it may impose.

The receiver or administrator may not dispose of or encumber any common property or specific separate property of either spouse without prior authority of the court.

The provisional order issued by the court shall be registered in the proper Register of Deeds and annotated in all titles of properties subject of the receivership or administration.

Sec. 9. *Effectivity.* — This Rule shall take effect on March 15, 2003 following its publication in a newspaper of general circulation not later than March 7, 2003.

Appendix G

A.M. NO. 00-04-07-SC

RULE ON EXAMINATION OF A CHILD WITNESS

Section 1. *Applicability of the Rule.* — Unless otherwise provided, this Rule shall govern the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to crime. It shall apply in all criminal proceedings and non-criminal proceedings involving child witnesses.

Sec. 2. *Objectives.* — The objectives of this Rule are to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.

Sec. 3. *Construction of the Rule.* — This Rule shall be liberally construed to uphold the best interests of the child and to promote maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.

Sec. 4. *Definitions.* —

(a) A “child witness” is any person who at the time of giving testimony is below the age of eighteen (18) years. In child abuse cases, a child includes one over eighteen (18) years but is found by the court as unable to fully take care of himself or protect himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

(b) “Child abuse” means physical, psychological or sexual abuse and criminal neglect as defined in Republic Act No. 7610 and other related laws.

(c) “Facilitator” means a person appointed by the court to pose questions to a child.

(d) “Record regarding a child” or “record” means any photograph, videotape, audiotape, film, handwriting, typewriting, printing, electronic recording, computer data or printout, or other memorialization, including any court document, pleading, or any copy or reproduction of any of the foregoing, that contains the name, description, address, school or any other

personal identifying information about a child or his family and that is produced or maintained by a public agency, private agency or individual.

(e) A “guardian ad litem” is a person appointed by the court where the case is pending for a child who is a victim of, accused of, or a witness to a crime to protect the best interests of the said child.

(f) A “support person” is a person chosen by the child to accompany him to testify at or attend a judicial proceeding or deposition to provide emotional support for him.

(g) “Best interests of the child” means the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the child and most encouraging to his physical, psychological, and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.

(h) “Developmental level” refers to the specific growth phase in which most individuals are expected to behave and function in relation to the advancement of their physical, socio-emotional, cognitive, and moral abilities.

(i) “In-depth investigative interview” or “disclosure interview” is an inquiry or proceeding conducted by duly trained members of a multi-disciplinary team or representatives of law enforcement or child protective services for the purpose of determining whether child abuse has been committed.

Sec. 5. *Guardian ad litem.* —

(a) The court may appoint a guardian ad litem for a child who is a victim of, accused of, or a witness to a crime to promote the best interests of the child. In making the appointment, the court shall consider the background of the guardian ad litem and his familiarity with the judicial process, social service programs, and child development, giving preference to the parents of the child, if qualified. The guardian ad litem may be a member of the Philippine Bar. A person who is a witness in any proceeding involving the child cannot be appointed as a guardian ad litem.

(b) The guardian ad litem:

(1) shall attend all interviews, depositions, hearings, and trial proceedings in which a child participates;

(2) shall make recommendations to the court concerning the welfare of the child;

(3) shall have access to all reports, evaluations, and records necessary to effectively advocate for the child, except privileged communications;

(4) shall marshal and coordinate the delivery of resources and special services to the child;

(5) shall explain, in language understandable to the child, all legal proceedings, including police investigations, in which the child is involved;

(6) shall assist the child and his family in coping with the emotional effects of crime and subsequent criminal or non-criminal proceedings in which the child is involved;

(7) may remain with the child while the child waits to testify;

(8) may interview witnesses; and

(9) may request additional examinations by medical or mental health professionals if there is a compelling need therefor.

(c) The guardian ad litem shall be notified of all proceedings but shall not participate in the trial. However, he may file motions pursuant to Sections 9, 10, 25, 26, 27 and 31(c). If the guardian ad litem is a lawyer, he may object during trial that questions asked of the child are not appropriate to his developmental level.

(d) The guardian *ad litem* may communicate concerns regarding the child to the court through an officer of the court designated for that purpose.

(e) The guardian ad litem shall not testify in any proceeding concerning any information, statement, or opinion received from the child in the course of serving as a guardian ad litem, unless the court finds it necessary to promote the best interests of the child.

(f) The guardian ad litem shall be presumed to have acted in good faith in compliance with his duties described in Sub-section (b).

Sec. 6. *Competency.* — Every child is presumed qualified to be a witness. However, the court shall conduct a competency examination of a child, *motu proprio* or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court.

(a) *Proof of necessity.* — A party seeking a competency examination must present proof of necessity of competency examination. The age of the child by itself is not a sufficient basis for a competency examination.

(b) *Burden of proof.* — To rebut the presumption of competence enjoyed by a child, the burden of proof lies on the party challenging his competence.

(c) *Persons allowed at competency examination.* — Only the following are allowed to attend a competency examination:

- (1) The judge and necessary court personnel;
- (2) The counsel for the parties;
- (3) The guardian ad litem;
- (4) One or more support persons for the child; and
- (5) The defendant, unless the court determines that competence can be fully evaluated in his absence.

(d) *Conduct of examination.* — Examination of a child as to his competence shall be conducted only by the judge. Counsel for the parties, however, can submit questions to the judge that he may, in his discretion, ask the child.

(e) *Developmentally appropriate questions.* — The questions asked at the competency examination shall be appropriate to the age and developmental level of the child; shall not be related to the issues at trial; and shall focus on the ability of the child to remember, communicate, distinguish between truth and falsehood, and appreciate the duty to testify truthfully.

(f) *Continuing duty to assess competence.* — The court has the duty of continuously assessing the competence of the child throughout his testimony.

Sec. 7. *Oath or affirmation.* — Before testifying, a child shall take an oath or affirmation to tell the truth.

Sec. 8. *Examination of a child witness.* — The examination of a child witness presented in a hearing or any proceeding shall be done in open court. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

The party who presents a child witness or the guardian ad litem of such child witness may, however, move the court to allow him to testify in the manner provided in this Rule.

Sec. 9. *Interpreter for child.* —

(a) When a child does not understand the English or Filipino language or is unable to communicate in said languages due to his developmental level, fear, shyness, disability, or other similar reason, an interpreter whom the child can understand and who understands the child may be appointed by the court, *motu proprio* or upon motion, to interpret for the child.

(b) If a witness or member of the family of the child is the only person who can serve as an interpreter for the child, he shall not be dis-

qualified and may serve as the interpreter of the child. The interpreter, however, who is also a witness, shall testify ahead of the child.

(c) An interpreter shall take an oath or affirmation to make a true and accurate interpretation.

Sec. 10. *Facilitator to pose questions to child.* —

(a) The court may, *motu proprio* or upon motion, appoint a facilitator if it determines that the child is unable to understand or respond to questions asked. The facilitator may be a child psychologist, psychiatrist, social worker, guidance counselor, teacher, religious leader, parent, or relative.

(b) If the court appoints a facilitator, the respective counsels for the parties shall pose questions to the child only through the facilitator. The questions shall either be in the words used by counsel or, if the child is not likely to understand the same, in words that are comprehensible to the child and which convey the meaning intended by counsel.

(c) The facilitator shall take an oath or affirmation to pose questions to the child according to the meaning intended by counsel.

Sec. 11. *Support persons.* —

(a) A child testifying at a judicial proceeding or making a deposition shall have the right to be accompanied by one or two persons of his own choosing to provide him emotional support.

(1) Both support persons shall remain within the view of the child during his testimony.

(2) One of the support persons may accompany the child to the witness stand, provided the support person does not completely obscure the child from the view of the opposing party, judge, or hearing officer.

(3) The court may allow the support person to hold the hand of the child or take other appropriate steps to provide emotional support to the child in the course of the proceedings.

(4) The court shall instruct the support persons not to prompt, sway, or influence the child during his testimony.

(b) If the support person chosen by the child is also a witness, the court may disapprove the choice if it is sufficiently established that the attendance of the support person during the testimony of the child would pose a substantial risk of influencing or affecting the content of the testimony of the child.

(c) If the support person who is also a witness is allowed by the court, his testimony shall be presented ahead of the testimony of the child.

Sec. 12. *Waiting area for child witnesses.* — The courts are encouraged to provide a waiting area for children that is separate from waiting areas used by other persons. The waiting area for children should be furnished so as to make a child comfortable.

Sec. 13. *Courtroom environment.* — To create a more comfortable environment for the child, the court may, in its discretion, direct and supervise the location, movement and deportment of all persons in the courtroom including the parties, their counsel, child, witnesses, support persons, guardian ad litem, facilitator, and court personnel. The child may be allowed to testify from a place other than the witness chair. The witness chair or other place from which the child testifies may be turned to facilitate his testimony but the opposing party and his counsel must have a frontal or profile view of the child during the testimony of the child. The witness chair or other place from which the child testifies may also be rearranged to allow the child to see the opposing party and his counsel, if he chooses to look at them, without turning his body or leaving the witness stand. The judge need not wear his judicial robe.

Nothing in this section or any other provision of law, except official in-court identification provisions, shall be construed to require a child to look at the accused.

Accommodations for the child under this section need not be supported by a finding of trauma to the child.

Sec. 14. *Testimony during appropriate hours.* — The court may order that the testimony of the child should be taken during a time of day when the child is well-rested.

Sec. 15. *Recess during testimony.* —

The child may be allowed reasonable periods of relief while undergoing direct, cross, re-direct, and re-cross examinations as often as necessary depending on his developmental level.

Sec. 16. *Testimonial aids.* — The court shall permit a child to use dolls, anatomically-correct dolls, puppets, drawings, mannequins, or any other appropriate demonstrative device to assist him in his testimony.

Sec. 17. *Emotional security item.* — While testifying, a child shall be allowed to have an item of his own choosing such as a blanket, toy, or doll.

Sec. 18. *Approaching the witness.* — The court may prohibit a counsel from approaching a child if it appears that the child is fearful of or intimidated by the counsel.

Sec. 19. *Mode of questioning.* — The court shall exercise control over the questioning of children so as to (1) facilitate the ascertainment of the truth; (2) ensure that questions are stated in a form appropriate to the

developmental level of the child; (3) protect children from harassment or undue embarrassment; and (4) avoid waste of time.

The court may allow the child witness to testify in a narrative form.

Sec. 20. *Leading questions.* — The court may allow leading questions in all stages of examination of a child if the same will further the interests of justice.

Sec. 21. *Objections to questions.* — Objections to questions should be couched in a manner so as not to mislead, confuse, frighten, or intimidate the child.

Sec. 22. *Corroboration.* — Corroboration shall not be required of a testimony of a child. His testimony, if credible by itself, shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.

Sec. 23. *Excluding the public.* — When a child testifies, the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made to protect the right to privacy of the child or if the court determines on the record that requiring the child to testify in open court would cause psychological harm to him, hinder the ascertainment of truth, or result in his inability to effectively communicate due to embarrassment, fear, or timidity. In making its order, the court shall consider the developmental level of the child, the nature of the crime, the nature of his testimony regarding the crime, his relationship to the accused and to persons attending the trial, his desires, and the interests of his parents or legal guardian. The court may, *motu proprio*, exclude the public from the courtroom if the evidence to be produced during trial is of such character as to be offensive to decency or public morals. The court may also, on motion of the accused, exclude the public from trial, except court personnel and the counsel of the parties.

Sec. 24. *Persons prohibited from entering and leaving courtroom.* — The court may order that persons attending the trial shall not enter or leave the courtroom during the testimony of the child.

Sec. 25. *Live-link television testimony in criminal cases where the child is a victim or a witness.* —

(a) The prosecutor, counsel or the guardian ad litem may apply for an order that the testimony of the child be taken in a room outside the courtroom and be televised to the courtroom by live-link television.

Before the guardian ad litem applies for an order under this section, he shall consult the prosecutor or counsel and shall defer to the judgment of the prosecutor or counsel regarding the necessity of applying for an order. In case the guardian ad litem is convinced that the decision of the prosecutor

or counsel not to apply will cause the child serious emotional trauma, he himself may apply for the order.

The person seeking such an order shall apply at least five (5) days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(b) The court may *motu proprio* hear and determine, with notice to the parties, the need for taking the testimony of the child through live-link television.

(c) The judge may question the child in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian ad litem, prosecutor, and counsel for the parties. The questions of the judge shall not be related to the issues at trial but to the feelings of the child about testifying in the courtroom.

(d) The judge may exclude any person, including the accused, whose presence or conduct causes fear to the child.

(e) The court shall issue an order granting or denying the use of live-link television and stating the reasons therefor. It shall consider the following factors:

- (1) The age and level of development of the child;
- (2) His physical and mental health, including any mental or physical disability;
- (3) Any physical, emotional, or psychological injury experienced by him;
- (4) The nature of the alleged abuse;
- (5) Any threats against the child;
- (6) His relationship with the accused or adverse party;
- (7) His reaction to any prior encounters with the accused in court or elsewhere;
- (8) His reaction prior to trial when the topic of testifying was discussed with him by parents or professionals;
- (9) Specific symptoms of stress exhibited by the child in the days prior to testifying;
- (10) Testimony of expert or lay witnesses;
- (11) The custodial situation of the child and the attitude of the members of his family regarding the events about which he will testify; and

(12) Other relevant factors, such as court atmosphere and formalities of court procedure.

(f) The court may order that the testimony of the child be taken by live-link television if there is a substantial likelihood that the child would suffer trauma from testifying in the presence of the accused, his counsel or the prosecutor as the case may be. The trauma must be of a kind which would impair the completeness or truthfulness of the testimony of the child.

(g) If the court orders the taking of testimony by live-link television:

(1) The child shall testify in a room separate from the courtroom in the presence of the guardian ad litem; one or both of his support persons; the facilitator and interpreter, if any; a court officer appointed by the court; persons necessary to operate the closed-circuit television equipment; and other persons whose presence are determined by the court to be necessary to the welfare and well-being of the child.

(2) The judge, prosecutor, accused, and counsel for the parties shall be in the courtroom. The testimony of the child shall be transmitted by live-link television into the courtroom for viewing and hearing by the judge, prosecutor, counsel for the parties, accused, victim, and the public unless excluded.

(3) If it is necessary for the child to identify the accused at trial, the court may allow the child to enter the courtroom for the limited purpose of identifying the accused, or the court may allow the child to identify the accused by observing the image of the latter on a television monitor.

(4) The court may set other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the best interests of the child.

(h) The testimony of the child shall be preserved on videotape, digital disc, or other similar devices which shall be made part of the court record and shall be subject to a protective order as provided in Section 31(b).

Sec. 26. Screens, one-way mirrors, and other devices to shield child from accused. —

(a) The prosecutor or the guardian ad litem may apply for an order that the chair of the child or that a screen or other device be placed in the courtroom in such a manner that the child cannot see the accused while testifying. Before the guardian ad litem applies for an order under

this Section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of Section 25(a) of this Rule. The court shall issue an order stating the reasons and describing the approved courtroom arrangement.

(b) If the court grants an application to shield the child from the accused while testifying in the courtroom, the courtroom shall be arranged to enable the accused to view the child.

Sec. 27. *Videotaped deposition.* —

(a) The prosecutor, counsel, or guardian ad litem may apply for an order that a deposition be taken of the testimony of the child and that it be recorded and preserved on videotape. Before the guardian ad litem applies for an order under this Section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of Section 25(a).

(b) If the court finds that the child will not be able to testify in open court at trial, it shall issue an order that the deposition of the child be taken and preserved by videotape.

(c) The judge shall preside at the videotaped deposition of a child. Objections to deposition testimony or evidence, or parts thereof, and the grounds for the objection shall be stated and shall be ruled upon at the time of the taking of the deposition. The other persons who may be permitted to be present at the proceeding are:

- (1) The prosecutor;
- (2) The defense counsel;
- (3) The guardian *ad litem*;
- (4) The accused, subject to sub-section (e);
- (5) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child;
- (6) One or both of his support persons, the facilitator and interpreter, if any;
- (7) The court stenographer; and
- (8) Persons necessary to operate the videotape equipment.

(d) The rights of the accused during trial, especially the right to counsel and to confront and cross-examine the child, shall not be violated during the deposition.

(e) If the order of the court is based on evidence that the child is unable to testify in the physical presence of the accused, the court may direct the latter to be excluded from the room in which the deposition is

conducted. In case of exclusion of the accused, the court shall order that the testimony of the child be taken by live-link television in accordance with Section 25 of this Rule. If the accused is excluded from the deposition, it is not necessary that the child be able to view an image of the accused.

(f) The videotaped deposition shall be preserved and stenographically recorded. The videotape and the stenographic notes shall be transmitted to the clerk of the court where the case is pending for safekeeping and shall be made a part of the record.

(g) The court may set other conditions on the taking of the deposition that it finds just and appropriate, taking into consideration the best interests of the child, the constitutional rights of the accused, and other relevant factors.

(h) The videotaped deposition and stenographic notes shall be subject to a protective order as provided in Section 31(b).

(i) If, at the time of trial, the court finds that the child is unable to testify for a reason stated in Section 25(f) of this Rule, or is unavailable for any reason described in Section 4(c), Rule 23 of the 1997 Rules of Civil Procedure, the court may admit into evidence the videotaped deposition of the child in lieu of his testimony at the trial. The court shall issue an order stating the reasons therefor.

(j) After the original videotaping but before or during trial, any party may file any motion for additional videotaping on the ground of newly discovered evidence. The court may order an additional videotaped deposition to receive the newly discovered evidence.

Sec. 28. Hearsay exception in child abuse cases. — A statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding subject to the following rules:

(a) Before such hearsay statement may be admitted, its proponent shall make known to the adverse party the intention to offer such statement and its particulars to provide him a fair opportunity to object. If the child is available, the court shall, upon motion of the adverse party, require the child to be present at the presentation of the hearsay statement for cross-examination by the adverse party. When the child is unavailable, the fact of such circumstance must be proved by the proponent.

(b) In ruling on the admissibility of such hearsay statement, the court shall consider the time, content and circumstances thereof which provide sufficient indicia of reliability. It shall consider the following factors:

- (1) Whether there is a motive to lie;
- (2) The general character of the declarant child;

- (3) Whether more than one person heard the statement;
 - (4) Whether the statement was spontaneous;
 - (5) The timing of the statement and the relationship between the declarant child and witness;
 - (6) Cross-examination could not show the lack of knowledge of the declarant child;
 - (7) The possibility of faulty recollection of the declarant child is remote; and
 - (8) The circumstances surrounding the statement are such that there is no reason to suppose the declarant child misrepresented the involvement of the accused.
- (c) The child witness shall be considered unavailable under the following situations:
- (1) Is deceased, suffers from physical infirmity, lack of memory, mental illness, or will be exposed to severe psychological injury; or
 - (2) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.
- (d) When the child witness is unavailable, his hearsay testimony shall be admitted only if corroborated by other admissible evidence.
- Sec. 29. Admissibility of videotaped and audiotaped in-depth investigative or disclosure interviews in child abuse cases.* — The court may admit videotape and audiotape in-depth investigative or disclosure interviews as evidence, under the following conditions:
- (a) The child witness is unable to testify in court on grounds and under conditions established under Section 28(c).
 - (b) The interview of the child was conducted by duly trained members of a multi-disciplinary team or representatives of law enforcement or child protective services in situations where child abuse is suspected so as to determine whether child abuse occurred.
 - (c) The party offering the videotape or audiotape must prove that:
 - (1) the videotape or audiotape discloses the identity of all individuals present and at all times includes their images and voices;
 - (2) the statement was not made in response to questioning calculated to lead the child to make a particular statement or is clearly

shown to be the statement of the child and not the product of improper suggestion;

- (3) the videotape and audiotape machine or device was capable of recording testimony;
- (4) the person operating the device was competent to operate it;
- (5) the videotape or audiotape is authentic and correct; and
- (6) it has been duly preserved.

The individual conducting the interview of the child shall be available at trial for examination by any party. Before the videotape or audiotape is offered in evidence, all parties shall be afforded an opportunity to view or listen to it and shall be furnished a copy of a written transcript of the proceedings.

The fact that an investigative interview is not videotaped or audiotaped as required by this Section shall not by itself constitute a basis to exclude from evidence out-of-court statements or testimony of the child. It may, however, be considered in determining the reliability of the statements of the child describing abuse.

Sec. 30. *Sexual abuse shield rule.* —

(a) *Inadmissible evidence.* — The following evidence is not admissible in any criminal proceeding involving alleged child sexual abuse:

- (1) Evidence offered to prove that the alleged victim engaged in other sexual behavior; and
- (2) Evidence offered to prove the sexual predisposition of the alleged victim.

(b) *Exception.* — Evidence of specific instances of sexual behavior by the alleged victim to prove that a person other than the accused was the source of semen, injury, or other physical evidence shall be admissible.

A party intending to offer such evidence must:

- (1) File a written motion at least fifteen (15) days before trial, specifically describing the evidence and stating the purpose for which it is offered, unless the court, for good cause, requires a different time for filing or permits filing during trial; and
- (2) Serve the motion on all parties and the guardian ad litem at least three (3) days before the hearing of the motion.

Before admitting such evidence, the court must conduct a hearing in chambers and afford the child, his guardian ad litem, the parties, and their

counsel a right to attend and be heard. The motion and the record of the hearing must be sealed and remain under seal and protected by a protective order set forth in Section 31(b). The child shall not be required to testify at the hearing in chambers except with his consent.

Sec. 31. *Protection of privacy and safety.* —

(a) *Confidentiality of records.* — Any record regarding a child shall be confidential and kept under seal. Except upon written request and order of the court, a record shall only be released to the following:

- (1) Members of the court staff for administrative use;
- (2) The prosecuting attorney;
- (3) Defense counsel;
- (4) The guardian ad litem;
- (5) Agents of investigating law enforcement agencies; and
- (6) Other persons as determined by the court.

(b) *Protective order.* — Any videotape or audiotape of a child that is part of the court record shall be under a protective order that provides as follows:

(1) Tapes may be viewed only by parties, their counsel, their expert witness, and the guardian ad litem.

(2) No tape, or any portion thereof, shall be divulged by any person mentioned in Sub-section (a) to any other person, except as necessary for the trial.

(3) No person shall be granted access to the tape, its transcription or any part thereof unless he signs a written affirmation that he has received and read a copy of the protective order; that he submits to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, he will be subject to the contempt power of the court.

(4) Each of the tape cassettes and transcripts thereof made available to the parties, their counsel, and respective agents shall bear the following cautionary notice:

“This object or document and the contents thereof are subject to a protective order issued by the court in (case title), (case number). They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any person, except as provided in the protective order. No additional copies of the tape or any of its portion shall be made, given, sold, or shown

to any person without prior court order. Any person violating such protective order is subject to the contempt power of the court and other penalties prescribed by law.”

(5) No tape shall be given, loaned, sold, or shown to any person except as ordered by the court.

(6) Within thirty (30) days from receipt, all copies of the tape and any transcripts thereof shall be returned to the clerk of court for safekeeping unless the period is extended by the court on motion of a party.

(7) This protective order shall remain in full force and effect until further order of the court.

(c) *Additional protective orders.* — The court may, motu proprio or on motion of any party, the child, his parents, legal guardian, or the guardian ad litem, issue additional orders to protect the privacy of the child.

(d) *Publication of identity contemptuous.* — Whoever publishes or causes to be published in any format the name, address, telephone number, school, or other identifying information of a child who is or is alleged to be a victim or accused of a crime or a witness thereof, or an immediate family of the child shall be liable to the contempt power of the court.

(e) *Physical safety of child; exclusion of evidence.* — A child has a right at any court proceeding not to testify regarding personal identifying information, including his name, address, telephone number, school, and other information that could endanger his physical safety or his family. The court may, however, require the child to testify regarding personal identifying information in the interest of justice.

(f) *Destruction of videotapes and audiotapes.* — Any videotape or audiotape of a child produced under the provisions of this Rule or otherwise made part of the court record shall be destroyed after five (5) years have elapsed from the date of entry of judgment.

(g) *Records of youthful offender.* — Where a youthful offender has been charged before any city or provincial prosecutor or before any municipal judge and the charges have been ordered dropped, all the records of the case shall be considered as privileged and may not be disclosed directly or indirectly to anyone for any purpose whatsoever.

Where a youthful offender has been charged and the court acquits him, or dismisses the case or commits him to an institution and subsequently releases him pursuant to Chapter 3 of P.D. No. 603, all the records of his case shall also be considered as privileged and may not be disclosed directly or indirectly to anyone except to determine if a defendant may have his sentence suspended under Article 192 of P.D. No. 603 or if he may be

granted probation under the provisions of P.D. No. 968 or to enforce his civil liability, if said liability has been imposed in the criminal action. The youthful offender concerned shall not be held under any provision of law to be guilty of perjury or of concealment or misrepresentation by reason of his failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him for any purpose.

“Records” within the meaning of this Sub-section shall include those which may be in the files of the National Bureau of Investigation and with any police department or government agency which may have been involved in the case. (*Art. 200, P.D. No. 603*)

Sec. 32. *Applicability of ordinary rules.* — The provisions of the Rules of Court on deposition, conditional examination of witnesses, and evidence shall be applied in a suppletory character.

Sec. 33. *Effectivity.* — This Rule shall take effect on December 15, 2000 following its publication in two (2) newspapers of general circulation.

Appendix H

REPUBLIC ACT NO. 7192

AN ACT PROMOTING THE INTEGRATION OF WOMEN AS FULL AND EQUAL PARTNERS OF MEN IN DEVELOPMENT AND NATION BUILDING AND FOR OTHER PURPOSES.

Section 1. *Title.* — This Act shall be cited as the “*Women in Development and Nation Building Act.*”

Sec. 2. *Declaration of Policy.* — The State recognizes the role of women in nation building and shall ensure the fundamental equality before the law of women and men. The State shall provided women rights and opportunities equal to that of men.

To attain the foregoing policy:

(1) A substantial portion of official development assistance funds received from foreign governments and multilateral agencies and organizations shall be set aside and utilized by the agencies concerned to support programs and activities for women;

(2) All government departments shall ensure that women benefit equally and participate directly in the development programs and projects of said department, specifically those funded under official foreign development assistance, to ensure the full participation and involvement of women in the development process; and

(3) All government departments and agencies shall review and revise all their regulations, circulars, issuances and procedures to remove gender bias therein.

Sec. 3. *Responsible Agency.* — The National Economic and Development Authority (NEDA) shall primarily be responsible for ensuring the participation of women as recipients in foreign aid, grants and loans. It shall determine and recommend the amount to be allocated for the development activity involving women.

Sec. 4. *Mandate.* — The NEDA, with the assistance of the National Commission on the Role of Filipino Women, shall ensure that the different government departments, including its agencies and instrumentalities

which, directly or indirectly, affect the participation of women in national development and their integration therein:

(1) Formulate and prioritize rural or countryside development programs or projects, provide income and employment opportunities to women in the rural areas and thus, prevent their heavy migration from rural to urban or foreign countries;

(2) Include an assessment of the extent to which their programs and/or projects integrate women in the development process and of the impact of said programs or projects on women, including their implications in enhancing the self-reliance of women in improving their income;

(3) Ensure the active participation of women and women's organizations in the development programs and/or projects including their involvement in the planning, design, implementation, management, monitoring and evaluation thereof;

(4) Collect sex-disaggregated data and include such data in its program/project paper, proposal or strategy;

(5) Ensure that programs and/or projects are designed so that the percentage of women who receive assistance is approximately proportionate to either their traditional participation in the targeted activities or their proportion of the population, whichever is higher. Otherwise, the following should be stated in the program/project paper, proposal or strategy;

(a) The obstacle in achieving the goal;

(b) The steps being taken to overcome those obstacles; and

(c) To the extent that steps are not being taken to overcome those obstacles, why they are not being taken.

(6) Assist women in activities that are of critical significance to their self-reliance and development.

Sec. 5. *Equality in Capacity to Act.* — Women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances.

In all contractual situations where married men have the capacity to act, married women shall have equal rights.

To this end:

(1) Women shall have the capacity to borrow and obtain loans and execute security and credit arrangement under the same conditions as men;

(2) Women shall have equal access to all government and private sector programs granting agricultural credit, loans and non-material resources and shall enjoy equal treatment in agrarian reform and land resettlement programs;

(3) Women shall have equal rights to act as incorporators and enter into insurance contracts; and

(4) Married women shall have rights equal to those of married men in applying for passport, secure visas and other travel documents, without need to secure the consent of their spouses.

In all other similar contractual relations, women shall enjoy equal rights and shall have the capacity to act which shall in every respect be equal to those of men under similar circumstances.

Sec. 6. *Equal Membership in Clubs.* — Women shall enjoy equal access to membership in all social, civic and recreational clubs, committees, associations and similar other organizations devoted to public purpose. They shall be entitled to the same rights and privileges accorded to their spouses if they belong to the same organization.

Sec. 7. *Admission to Military Schools.* — Any provision of the law to the contrary notwithstanding, consistent with the needs of the services, women shall be accorded equal opportunities for appointment, admission, training, graduation and commissioning in all military or similar schools of the Armed Forces of the Philippines and the Philippine National Police not later than the fourth academic year following the approval of this Act in accordance with the standards required for men except for those minimum essential adjustments required by physiological differences between sexes.

Sec. 8. *Voluntary Pag-IBIG, GSIS and SSS Coverage.* — Married persons who devote full time to managing the household and family affairs shall, upon the working spouse's consent, be entitled to voluntary Pag-IBIG (Pagtutulungan — Ikaw, Bangko, Industriya at Gobyerno), Government Service Insurance System (GSIS) or Social Security System (SSS) coverage to the extent of one-half (1/2) of the salary and compensation of the working spouse. The contributions due thereon shall be deducted from the salary of the working spouse.

The GSIS or the SSS, as the case may be, shall issue rules and regulations necessary to effectively implement the provisions of this section.

Sec. 9. *Implementing Rules.* — The NEDA, in consultation with the different government agencies concerned, shall issue rules and regulations as may be necessary for the effective implementation of Sections 2, 3 and 4, of this Act within six (6) months from its effectivity.

Sec. 10. *Compliance Report.* — Within six (6) months from the effectivity of this Act and every six (6) months thereafter, all government departments, including its agencies and instrumentalities, shall submit a report to Congress on their compliance with this Act.

Sec. 11. *Separability Clause.* — If for any reason any section or provision of this Act is declared unconstitutional or invalid, the other sections or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Sec. 12. *Repealing Clause.* — The provisions of Republic Act No. 386, otherwise known as the Civil Code of the Philippines, as amended, and of Executive Order No. 209, otherwise known as the Family Code of the Philippines, and all laws, decrees, executive orders, proclamations, rules and regulations, or parts thereof, inconsistent herewith are hereby repealed.

Sec. 13. *Effectivity Clause.* — The rights of women and all the provisions of this Act shall take effect immediately upon its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved: February 12, 1992.

Appendix I

REPUBLIC ACT NO. 6972

AN ACT ESTABLISHING A DAY CARE CENTER IN EVERY BARANGAY, INSTITUTING THEREIN A TOTAL DEVELOPMENT AND PROTECTION OF CHILDREN PROGRAM, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

Section 1. *Title.* — This Act shall be known as the “*Barangay-Level Total Development and Protection of Children Act.*”

Sec. 2. *Declaration of Policy.* — It is hereby declared to be the policy of the State to defend the right of children to assistance, including proper care and nutrition, and to provide them with special protection against all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.

Filipino children up to six (6) years of age deserve the best care and attention at the family and community levels. Towards this end, there is hereby established a day care center in every barangay with a total development and protection of children program as provided in this Act instituted in every barangay day care center.

Sec. 3. *Program Framework.* — The total development and protection of children for day care centers shall be provided for children up to six (6) years of age with consent of parents: *Provided, however,* that in case of abused, neglected or exploited children, such consent shall not be required. The program shall include the following:

(a) Monitoring of registration of births and completion of the immunization series for prevention of tuberculosis, diphtheria, pertussis, tetanus, measles, poliomyelitis and such other diseases for which vaccines have been developed for administration to children up to (6) years of age;

(b) Growth and nutritional monitoring, with supplementary nutritional feeding and supervision of nutritional intake at home;

(c) Care for children of working mothers during the day and, where feasible, care for children up to six (6) years of age when mother are working at night: *Provided,* That the day care center need to take care of the children in a particular place but shall develop network of homes where

women may take care of the children up to six (6) years of age of working mothers during work hours, with adequate supervision from the supervising social welfare officer of the Department of Social Welfare and Development: *Provided, further*, That where young children are left to the care of paid domestic, an elderly relative or older children without adequate and competent adult supervision, the supervising social welfare officer shall provide such training and adult supervision until the children's care meets adequate standards whereby the children under their care will develop normally as healthy, happy and loved children even in the absence of their mothers during working hours;

(d) Materials and networks of surrogate mothers-teachers who will provide intellectual and mental stimulation to children, as well as supervise wholesome recreation, with a balanced program of supervised play, mental stimulation activities, and group activities with peers;

(e) A sanctuary for abused, neglected or exploited children either in one child institution in the barangay and/or a network of sanctuary homes which will take in children in urgent need of protection due to a situation which endangers the child or which has exposed the child to cruelty and abuse: *Provided*, That the day care center, with the help and support of the barangay chairman and their barangay level support system, may call upon law enforcement agencies when the child needs to be rescued from unbearable home situation;

(f) A referral and support system for pregnant mothers for prenatal and neonatal care and, in the proper case, for delivery of the infant under conditions which will remove or minimize risk to mother and child. *Provided*, That high-risk mothers shall be referred to the proper tertiary or secondary care service personnel and children who are at risk from any condition or illness will be brought for care: *Provided, further*, That the day care center shall be alert to illegal abortions and incompetent and untrained hilots so that they are provided the needed basic training for normal delivery and are trained to recognize high-risk pregnancies which should be referred to competent obstetrical and pediatric medical care for mother and child who are at risk; and

(g) A support system and network of assistance from among the members of the barangay for the total development and protection of children.

Sec. 4. *Implementing Agency*. — The program shall be implemented by the barangay.

The Sangguniang barangay may call upon private volunteers, who are responsible members of the community, and utilize them to assist in the care of children and provide consultative services for medical, educational and other needs of children.

Sec. 5. *Functions of the Department of Social Welfare and Development.* — The Department shall:

- (a) Formulate the criteria for the selection, qualifications, training and accreditation of barangay day care workers and the standards for the implementation of the total development and protection of children program;
- (b) Coordinate activities of non-government organizations with the day care workers and other social workers of the Department in order that their services may be fully utilized for the attainment of the program goals; and
- (c) Protection and assist abused, neglected or exploited children and secure proper government assistance for said children.

Sec. 6. *Funds for the Center, the Program and Day Care Workers.* —

- (a) The funds for the establishment, maintenance and operation of barangay day care centers shall be appropriated from the national budget and shall be included in the Annual General Appropriations Act as part of the budget of the Department of Social Welfare and Development;
- (b) The province, city or municipality concerned shall provide financial assistance for the establishment of every barangay day care with their respective locality;
- (c) Barangay day care workers in accredited day care centers shall receive a monthly allowance of not less than Five Hundred Pesos (P500.00) to be charged to the annual appropriations of the Department of Social Welfare and Development;
- (d) In order to carry out the provisions of this Act the amount needed for the program and day care worker shall be appropriated in the General Appropriations Act of the year following its enactment into law; and
- (e) A portion of health programs available to the Philippines under official debt arrangements from foreign countries, the amount to be determined by the Office of the President, shall extended in support of the day care centers.

Sec. 7. *Repealing Clause.* — All laws, decrees, rules and regulations, and executive orders contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 8. *Effectivity.* — This Act shall take effect upon its approval and completion of its publication in at least two (2) national newspapers of general circulation.

Approved: November 23, 1990.

Appendix J

REPUBLIC ACT NO. 8044

AN ACT CREATING THE NATIONAL YOUTH COMMISSION, ESTABLISHING A NATIONAL COMPREHENSIVE AND COORDINATED PROGRAM ON YOUTH DEVELOPMENT, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

SECTION 1. *Title.* — This Act shall be known as the “*Youth in Nation-Building Act.*”

Sec. 2. *Policy.* — The State recognizes its responsibility to enable the youth to fulfill their vital role in nation-building and hereby establishes the National Comprehensive and Coordinated Program on Youth Development, creates the structures to implement the same and appropriates adequate funds to provide support for the program and implementing structures on a continuing sustained basis.

The State hereby declares that “Youth” is the critical period in a person’s growth and development from the onset of adolescence towards the peak of mature, self-reliant and responsible adulthood comprising the considerable sector of the population from the age of fifteen (15) to thirty (30) years.

The State further declares the National Comprehensive and Coordinated Program on Youth Development shall be based on the following principles:

(a) Promotion and protection of the physical, moral, spiritual, intellectual and social well-being of the youth to the end that the youth realize their potential for improving the quality of life;

(b) Inculcation in the youth of patriotism, nationalism and other basic desirable values to infuse in them faith in the Creator, belief in the sanctity of life and dignity of the human person, conviction for the strength and unity of the family and adherence to truth and justice;

(c) Encouragement of youth involvement in character-building and development activities for civic efficiency, stewardship of natural resources, agricultural and industrial productivity, and an understanding of world economic commitments on tariffs and trade and participation in structures

of policy-making and program implementation to reduce the incidence of poverty and accelerate socioeconomic development; and

(d) Mobilization of youth's abilities, talents and skills and redirecting their creativity, inventive genius and wellspring of enthusiasm and hope for the freedom of our people from fear, hunger and injustice.

Sec. 3. *Development Program.* — In order to attain the declared national policy, there is hereby established the "National Comprehensive and Coordinated Program on Youth Development," hereinafter referred to as the "Development Program."

The components of the development program are the following:

(a) Formulation, approval and implementation of the Medium-Term Youth Development Program for four (4) years following the approval of this Act and every three (3) years thereafter, which shall be aligned to and shall complement the Medium-Term Philippine Development Plan for the corresponding period, taking into account the existing National Youth Development Plan as provided for in Executive Order No. 176, series of 1994;

(b) A national study on the "Situation of Youth in the Philippines," for the period up to the approval of this Act, and every three (3) years thereafter which identifies priority needs, prevailing attitudes and values of youth, the existing services, and the gaps in services delivery of the basic needs of youth;

(c) A "National Review, Evaluation and Reform" of all organizations delivering services to youth for the period up to the approval of this Act and every three(3) years thereafter;

(d) Activities to operationalize the implementing structures of the Development Program, preparations and participation in activities of youth of global significance including World Youth Day, and provide leadership and support therefor on a continuing sustained basis;

(e) The comprehensive, coordinated nationwide service delivery system comprising (i) existing public and civic services for youth which after review and reform or realignment fully support the policy and program framework under this Act; and (ii) innovative services and delivery systems institutionalized in areas without or with inadequate services and which are responsive to needs, following pilot demonstration projects to test the validity and feasibility of the services; and

(f) The participation of Filipino youth in the Biennial World Youth Day starting 1997 in Paris, France and every two (2) years thereafter.

Sec. 4. *Definition of Terms.* — For purposes of this Act. the following terms are hereby defined:

- (a) "Youth" shall refer to those persons whose ages range from fifteen (15) to thirty (30) years old;
- (b) "Youth Organizations" shall refer to those organizations whose membership/composition are youth;
- (c) "Youth-Serving Organizations" shall refer to those registered organizations or institutions whose principal programs, projects and activities are youth-oriented and youth-related; and
- (d) "Commission" shall refer to the National Youth Commission.

Sec. 5. National Youth Commission. — There is hereby created the "National Youth Commission," hereinafter referred to as the "Commission."

It shall be composed of the following:

- (a) A chairman;
- (b) One commissioner representing Luzon;
- (c) One commissioner representing Visayas;
- (d) One commissioner representing Mindanao;
- (e) Two (2) commissioners to be chosen at large; and
- (f) The President of the Pambansang Katipunan ng mga Sangguniang Kabataan, as commissioner, who shall serve in an *ex officio* capacity.

The first set of chairman and commissioners, which shall have a term of four (4) years, shall be constituted by the President of the Philippines from among the list of nominees submitted by youth organizations or institutions with national or regional constituencies and which have been in existence for at least three (3) years as of the approval of this Act.

The succeeding chairman and the two (2) commissioners to be chosen at large shall be appointed by the President from a list of at least three (3) but not more than five (5) nominees for each position, submitted by youth and youth-serving organizations or institutions with national constituencies duly registered with the Commission.

The succeeding commissioners representing Luzon, Visayas and Mindanao, respectively, shall be appointed by the President from a list of at least three (3) but not more than five (5) nominees for each position, submitted by youth and youth-serving organizations or institutions in their respective areas duly registered with the Commission.

The chairman and the appointive commissioners shall serve for a term of three (3) years, with reappointment for another term. The chairman shall have the rank and privileges of a department undersecretary, and the

appointive commissioner shall have the rank and privileges of assistant secretaries of a department. The ex officio commissioner shall also have the rank and privileges of assistant secretary of a department.

Sec. 6. *Status and Nature of the Commission.* — The Commission shall be independent and autonomous and shall have the same status as that of national government agency attached to the Office of the President.

The Commission shall exercise corporate powers. It shall have a seal, may sue and be sued, and shall be the sole policy-making coordinating body of all youth-related institutions, programs, projects and activities of the government.

Sec. 7. *Qualifications of the Chairman and the Commissioners.* — The chairman shall not be more than forty-five (45) years of age, and the appointive commissioners no more than forty (40) years of age, at any time during their incumbency; natural-born citizens of the Philippines; have occupied positions of responsibility and leadership in duly registered youth and youth-serving organizations or institutions; of good moral character and not have been convicted of any crime involving moral turpitude.

The chairman shall serve as the chief executive officer of the Commission.

Sec. 8. *Objectives of the Commission.* — The objectives of the Commission are:

(a) To provide the leadership in the formulation of policies and in the setting of priorities and direction of all youth promotion and development programs and activities;

(b) To encourage wide and active participation of the youth in all government and nongovernmental programs, projects and activities affecting them;

(c) To harness and develop the full potential of the youth as partners in nation-building; and

(d) To supplement government appropriations for youth promotion and development with funds from other sources.

Sec. 9. *Powers of the Commission.* — The Commission shall have the following powers:

(a) To appoint the officers and other personnel of the Commission and fix their compensation, allowances and other emoluments, subject to the civil service and other existing applicable laws, rules and regulations;

(b) To suspend, dismiss, or otherwise discipline for cause, any employee, and/or to approve or disapprove the appointment, transfer or detail of employees, subject to the provisions of existing laws and regulations;

- (c) To enter into contracts;
- (d) To acquire, use and control any land, building, facilities, equipment, instrument, tools, and rights required or otherwise necessary for the accomplishment of the objectives of the Commission;
- (e) To acquire, own, possess and dispose of any real or personal property;
- (f) To accept donations, gifts, bequests, and grants;
- (g) To ensure the implementation by various government departments and agencies of their youth developmental projects and activities as indicated in their respective annual budgets;
- (h) To issue rules and regulations in pursuance of the provisions of this Act; and
- (i) To perform any and all other acts incident to or required by virtue of its creation.

Sec. 10. *Functions of the Commission.* — The Commission shall have the following functions:

- (a) To formulate and initiate the national policy or policies on youth;
- (b) To plan, implement, and oversee a national integrated youth promotion and development program;
- (c) To establish a consultative mechanism which shall provide a forum for continuing dialogue between the government and the youth sector on the proper planning and evaluation of policies, programs and projects affecting the youth, convening for the purpose, representatives of all youth organizations and institutions, including the sangguniang kabataan from barangay, municipal, city, provincial and national levels;
- (d) To assist and coordinate with governmental and nongovernmental organizations or institutions in the implementation of all laws, policies, programs and projects relative to youth promotion and development;
- (e) To seek or request the assistance and support of any government agency, office or instrumentality including government-owned or -controlled corporations, local government units as well as nongovernmental organizations or institutions in pursuance of its policies, programs and projects;
- (f) To conduct scientific interdisciplinary and policy-oriented researches and studies on youth-related matters, as well as trainings, seminars and workshops that will enhance the skills and leadership potentials of the youth, instilling in them nationalism and patriotism, with particular emphasis on Filipino culture and values;

(g) To establish and maintain linkages with international youth and youth-serving organizations or institutions and counterpart agencies of foreign governments in order to facilitate and ensure the participation of Filipino youth in international functions and affairs;

(h) To administer youth exchange programs as well as monitor and coordinate all foreign-sponsored youth programs and projects such as the Ship for Southeast Asia Youth Program and other similar exchanges and goodwill missions;

(i) To establish such organizational structures including regional offices, as may be required to effectively carry out its functions;

(j) To conduct promotion and fund-raising campaigns in accordance with existing laws;

(k) To allocate resources for the implementation of youth programs and projects;

(l) To extend and provide support or assistance to deserving youth and youth organizations including scholarship grants;

(m) To register, establish and/or facilitate and help in the establishment of the youth organizations and youth-serving organizations;

(n) To participate in international youth fora, symposia and organizations such as the International Youth Forum, Asian Youth Council, ASEAN Youth Forum, United Nations Commission for International Youth Year (IYY) and other similar bodies;

(o) To provide training and a national secretariat for the Sangguniang Kabataan National Federation pursuant to R.A. No. 7160, otherwise known as the Local Government Code;

(p) To submit an annual report on the implementation of this Act to the President and to Congress; and

(q) To perform such other functions as may be necessary to effectively and efficiently carry out the provisions of this Act.

Sec. 11. *The Secretariat and the Executive Director.* — The Commission shall organize a secretariat to be headed by an executive director who shall serve as the chief operating officer.

The executive director shall be appointed by the President of the Philippines upon the recommendation of the national commission for a term of three(3) years with reappointment for another term, and must have the qualifications, rank and privileges of a bureau director. He must not be more than forty-five (45) years of age during his incumbency, and must possess executive and management experience of at least three (3) years

and with considerable exposure to youth affairs, projects and programs management. He shall be responsible for the effective implementation of the policies promulgated by the Commission and shall also direct and supervise the day-to-day operations of the Commission.

The first executive director shall have a term of four (4) years.

The staffing pattern and compensation schedule of the secretariat shall be drawn up in accordance with existing laws, rules and regulations.

Sec. 12. *Duties and Responsibilities of the Secretariat.* — The Secretariat shall be responsible for:

- (a) Ensuring an effective and efficient performance of the functions of the Commission and prompt implementation of the programs;
- (b) Proposing specific allocation of resources for projects instated under the approved programs;
- (c) Submitting periodic reports to the Commission on the progress and accomplishment of programs and projects;
- (d) Preparing an annual report on all activities of the Commission;
- (e) Providing and performing general administrative and technical staff support; and
- (f) Performing such other functions as the Commission may deem necessary.

Sec. 13. *Parliament of Youth Leaders.* — There is hereby constituted the “Youth Parliament.” The “Youth Parliament” shall be initially convened not later than six (6) months upon the full constitution of the Commission, and shall meet at the call of the National Commission, and thereafter be convened every two (2) years. The Youth Parliament shall have a regular session from two (2) to three (3) days every time it is convened, but may form task forces which may meet during the period between the convening thereof.

Delegates to the Youth Parliament shall be chosen by the Commission taking into consideration equal and geographical representation among men and women. All delegates shall be of good moral character, able to read and write, has not been convicted of any crime involving mortal turpitude, and shall not be more than thirty (30) years of age on the day of election to the position by virtue of which he qualifies as a delegate and on the day the Parliament is convened. The delegates shall elect the President of the Youth Parliament who shall preside during the session of the Youth Parliament.

The Youth Parliament at the end of each regular session shall present its proceedings, declarations and resolutions to the Commission.

Sec. 14. *Advisory Council.* — There shall be an Advisory Council which shall be composed of the Secretary of the Department of Education, Culture and Sports (DECS), as chairman, and the Secretaries of the Department of Budget and Management (DBM), the Department of Social Welfare and the Development (DSWD), the Department of the Interior and Local Government (DILG), the Department of Agriculture (DA), the Department of Foreign Affairs (DFA), Department of Labor and Employment (DOLE), the Department of Environment and Natural Resources (DENR), Director-General of the National Economic and Development Authority (NEDA), the Chairman of the Philippine Charity Sweepstake Office (PCSO), and the chairman of both Senate and House committees dealing with youth and sports development, and the Philippine Sports Commission (PSC), as members.

The Council shall meet once every three (3) months, or as often as may be necessary upon call of its chairman, advise and be consulted by the Commission on important matters relating to youth affairs, welfare and development.

The Council may form task forces which shall convene between the meetings of the Council. The Commission shall provide the technical support and the secretariat required by the Council to function according to this Act.

Sec. 15. *Appropriations.* — There is hereby authorized to be appropriated the amount of Fifty million pesos (P50,000,000) as additional funding for the Commission to be charged against the unexpended contingency funds of the Office of the President.

Thereafter, the amount needed for the operation and maintenance of the Commission shall be included in the annual General Appropriations Act: Provided, That operating expenses of the Commission itself shall not exceed fourteen percent (14%) of the annual appropriation and that at least eighty-six percent (86%) of said annual appropriation shall be disbursed for the national youth development program, projects and activities.

Sec. 16. *Transfer of Assets, Properties and Funds.* — Assets, properties, and funds of the Pambansang Katipunan ng Kabataang Barangay and that of the Presidential Council for Youth Affairs under the Office of the President pursuant to Executive Order No. 274, series of 1987 and of all other youth-serving agencies under said Office shall be transferred to the Commission.

Sec. 17. *Effect of Separation from the Service as a Result of this Act.* — Any official or employee of the Presidential Council for Youth Affairs created under Executive Order No. 274 or any other personnel of the national or local government separated from the service as a result of the operation and effect of this Act may be absorbed, if qualified, by the Commission for

the good of the service, or where qualified therefor, may opt to transfer to another office or elect to apply for separation pay or retirement benefits: Provided, That the official or employee who may be absorbed by the Commission shall not suffer any loss or diminution of pay, seniority or rank; Provided, further, that benefits for separation or retirement of an official or employee of the Presidential Council for Youth Affairs shall be derived from the funds of said Council transferred to the Commission.

Sec. 18. *Tax Deduction or Exemption of Donations and Contributions.* — Any donation, contribution, bequest and grant which may be made to the Commission shall constitute as allowable deduction from the income of the donor for income tax purposes and shall be exempt from donor's tax, subject to such conditions as provided under the National Internal Revenue Code, as amended.

Sec. 19. *Presidential Land Grant.* — The provisions of any existing law to the contrary notwithstanding, the President may, upon the authority of Congress, grant by donation, sale, lease, or otherwise to the Commission, portion of the land of the public domain as may be necessary for the establishment of youth development and training centers in all regions of the country and for the accomplishment of any of its purposes.

Sec. 20. *Stamps and Gold Coins for the Youth.* — The Philippine Postal Corporation and the Bangko Sentral ng Pilipinas are hereby authorized to print paper stamps and mint gold coins which shall depict youth events and such other motif as they may decide at the expense of the Commission.

Sec. 21. *Separability Clause.* — If for any reason or reasons, any part or provision of this Act shall be held to be unconstitutional or invalid, other parts or provisions thereof not affected thereby shall continue to be in full force and effect.

Sec. 22. *Repealing Clause.* — Presidential Decrees Nos. 604 and 1191, Executive Order No. 274, Series of 1987, and all other laws, decrees, rules and regulations, other issuance or parts thereof which are inconsistent with this Act are hereby repealed or modified accordingly.

Sec. 23. *Effectivity Clause.* — This Act shall take effect upon its publication in at least one(1) national newspaper of general circulation.

Approved: June 7, 1995.

Appendix K

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE

AN OVERVIEW

The “*Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act*,” otherwise known as RA No. 7610, was approved on June 17, 1992.

The law’s declared policy is for “the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation, and discrimination, and other conditions prejudicial to their development, including child labor and its worst forms.” (*Sec. 2, RA No. 7610*). Another policy is to “provide sanctions for their commission and carry out a program for prevention and deterrence of the crisis intervention in situations of child abuse, exploitation, and discrimination.” (*Ibid.*) Still another declared policy is for “[t]he State [is][to] intervene on behalf of the child when the parent, guardian, teacher, or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation, and discrimination or when such acts against the child are committed by the said parent, guardian, teacher, or person living care and custody of the same.” (*Sec. 2[1st par.], id.*) Lastly, is the State policy “to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.” (*Sec. 2[2nd par.], id.*)

The best interests of children shall be the paramount consideration in all actions concerning them:

1. whether undertaken by public or private social welfare institutions;
2. courts of law;
3. administrative authorities; and
4. legislative bodies. (*Sec. 2[last par.], id.*)

All actions concerning the children’s best interests shall be “consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child.” Thus, “[e]very effort shall be

exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.” (*As amended by Sec. 1, RA No. 9231*).

Meaning of Children

Children refers to persons below 18 years of age or those over but are unable to fully take care of themselves or protect themselves from:

1. abuse;
2. neglect;
3. cruelty;
4. exploitation; or
5. discrimination.

Because of a physical *or* mental disability or condition. (*Sec. 3[a], op. cit.*).

Child Abuse Defined

This has reference to the maltreatment, whether habitual or not of the child. (*Sec. 3[b], id.*).

Kinds of ‘Child Abuse’

There are four (4), thus:

1. psychological and physical abuse, neglect, cruelty, sexual abuse, and emotional maltreatment (*Sec. 3[b][1], id.*);
2. any act by deeds or words which debases, degrades, or demeans the worth and dignity of a child as a human being (*Sec. 3[b][2], id.*);
3. unreasonable deprivation of basic needs for survival, such as food and shelter (*Sec. 3[b][3], id.*);
4. failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death. (*Sec. 3[b], id.*).

What the Phrase “Comprehensive Program Against Child Abuse, Exploitation, and Discrimination Refers To”

Said phrase refers to the coordinated program of services and facilities to protect children against:

1. child prostitution and other sexual abuse. (*Sec. 3[d][1], id.*). Children, whether male or female, who for money, profit, or any other con-

sideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct — are deemed to be children exploited in prostitution and other sexual abuse. (*Sec. 5, id.*)

2. child trafficking. (*Sec. 3[d][2], id.*) This occurs whenever a person “shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter. (*Sec. 7, id.*) Under the following circumstances are attempts to commit child trafficking:

a. when a child travels alone to a foreign country without valid reason therefor and without clearance issued by the Dept. of Social Welfare and Development (DSWD) or written permit or justification from the child’s parents or legal guardian. (*Sec. 8[a], id.*)

b. when a pregnant mother executes an affidavit of consent for adoption for a consideration. (*Sec. 8[b], id.*)

c. when a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking. (*Sec. 8[c], id.*)

d. when a doctor, hospital, or clinic official or employee, nurse, midwife, local civil registrar, or any other person simulates birth for the purpose of child trafficking (*Sec. 8[d], id.*); and

e. when a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day care centers, or other child-caring institution who can be offered for the purpose of child trafficking. (*Sec. 8[e], id.*)

3. obscene publications and indecent shows. (*Sec. 3[d][3], id.*) Such referral to a comprehensive program of services and facilities to protect children against obscene publications and indecent shows is addressed to “[a]ny person who shall hire, employ, use, persuade, induce, or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, pose, or model in obscene publications or pornographic material or to sell or distribute the said materials.” (*Sec. 9, id.*)

4. other acts of abuse. (*Sec. 3[d][4], id.*) Examples:

a. commission of any act or acts prejudicial to the child’s development. (See *Sec. 10[a], id.*, read together with *Art. 59, PD 603*, as amended, but not covered by the Revised Penal Code).

b. to keep or have in his/her company a minor, 12 years or under or who is 10 years or more his/her junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places. (*Sec. 10[b], id.*)

c. inducing, delivering, or offering a minor to any person prohibited by this Act to keep or have in his company. (*See Sec. 10[c], id.*)

d. “[a]ny person, owner, manager, or one entrusted with the operations of any public or private place of accommodation, whether for occupancy, food, drink, or otherwise — including residential places — who allows any person, to take along with him to such place or places said [subject] minor.” (*Sec. 10[d], id.*)

e. “[a]ny person who shall use, coerce, force, or intimidate a stretchchild or any other child to [b]eg, or use begging as a means of living (*Sec. 10[e][1], id.*); [a]ct as conduit or middlemen in drug trafficking or pushing (*Sec. 10[e][2], id.*); or [c]onduct any illegal activities.” (*Sec. 10[e][3], id.*)

NOTE: The victim of the acts committed under the foregoing section (*Sec. 10, id.*) shall be entrusted to the care of the DSWD. (*Sec. 10[last par.], id.*)

Prohibition Against Worst Forms of Child Labor

The phrase “worst forms of child labor,” shall refer to any of the following:

1. all forms of slavery (as defined under the “Anti-Trafficking in Persons Act of 2003,” or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labor, including recruitment of children for use in armed conflict. (*Sec. 12-D[1], id.*)

2. the use, procuring, offering, or exposing of a child for prostitution, for the production of pornography or for pornographic performances. (*Sec. 12-D[2], id.*)

3. the use, procuring, or offering of a child also for illegal or illegal activities, including the production and trafficking of dangerous drugs and volatile substances prohibited under existing laws (*Sec. 12-D[3], id.*); or

4. work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety, or minds of children, such that it:

a. debases, degrades, or demeans the intrinsic worth and dignity of a child as a human being; and

b. exposes the child to physical, emotional or sexual abuse, or is found to be highly-stressful psychologically or may prejudice morals; or

c. is performed underground, underwater, or at dangerous heights; or

- d. involves the use of dangerous machinery, equipment, and tools such as power-driven or explosive power-activated tools; or
- e. exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortions, or which requires the manual transport of heavy loads; or
- f. is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents, or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations; or
- g. is performed under particularly difficult conditions; or
- h. exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes, and other parasites; or
- i. involves the manufacture or handling of explosives and other pyrotechnic products. (*As added by Sec. 3, RA No. 9231. (Sec. 12-D[4][a-1], id.)*).

No Discrimination for Children

Children of indigenous cultural communities shall not be subjected to any and all forms of discrimination. (*Sec. 20[1st par.], id.*). Instead, indigenous cultural communities, thru their duly-designated or appointed representatives — shall be involved in planning, decision-making, implementation, and evaluation of all government programs affecting children of indigenous cultural communities. Indigenous institutions shall be recognized and respected. (*Sec. 21, id.*)

Children in Situation of Armed Conflict

The state shall be responsible in resolving armed conflicts so as to promote the goal of children as zones of peace. To attain this objective, children shall: (1) not be the object of attack (*Sec. 22[a], id.*), (2) be entitled to special respect (*Ibid.*), (3) be protected from any form of threat, assault, torture or other cruel, inhumane, or degrading treatment (*Ibid.*), (4) not be recruited to become members of the Armed Forces of the Philippines (AFP) or its civilian units or other armed groups nor be allowed to take part in the fighting or used as guides, couriers, or spies. (*Sec. 22[b], Id.*). For that matter, the affected children's education "shall be kept unhampered." (*Sec. 22[c], Id.*)

Rights of Children Arrested for Reasons Related to Armed Conflict

Any child who has been arrested for reasons related to armed conflict, either as combatant, courier, guide or spy is entitled to the following rights:

- a. separate detention from adults except where families are accommodated as family units (*Sec. 25[a], Id.*);
- b. immediate free legal assistance (*Sec. 25[b], Id.*);
- c. immediate motion of such arrest to the parents or guardian of the child (*Sec. 25[c], Id.*); and
- d. release of the child on *recognizance* within 24 hours to the custody of the DSWD or any responsible member of the community as determined by the court. (*Sec. 25[d], Id.*)

VIOLENCE AGAINST WOMEN AND CHILDREN ACT

Overview

The “*Anti-Violence Against Women and their Children Act of 2004*,” otherwise known as Republic Act (RA) No. 9262 which was approved on March 8, 2004 is a relatively new law but which has imparted on Philippine society, with several cases awaiting court/verdict.

The law’s declared policy is that of the State “valu[ng] the dignity of women and children and guarantee[ing] full respect for human rights ... [and where] [t]he State also recogniz[ing] the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.” (*Sec. 2, RA No. 9262*). “Towards this end, the State shall exert efforts to address violence committed against women and children in keeping up with the fundamental freedom guaranteed under the [Philippine] Constitution and the provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, and other internattional human rights instruments of which the Philippines is a party.” (*Ibid.*)

As used in this law, the phrase “violence against women and their children” has reference to “any acts or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse, including *inter alia*:

- a. threats of such acts;
- b. battery;
- c. assault;
- d. coercion;
- e. harassment;

- f. arbitrary deprivation of liberty;
- g. physical violence (acts that include bodily or physical harm);
- h. sexual violence (act which is sexual in nature, committed against a woman as her child). It includes, but is not limited to:
 - 1. rape
 - 2. sexual harassment;
 - 3. acts of lasciviousness;
 - 4. treating a woman or her child as a sex object;
 - 5. making demeaning; and
 - 6. sexually-suggestive remarks;
 - 7. physically-attacking the sexual parts of the victim's body;
 - 8. forcing him/her to watch obscene publication and indecent shows;
 - 9. forcing the woman or her child to do indecent acts and/or make films thereof;
 - 10. forcing the wife and mistress/lover to live in the conjugal home;
 - 11. sleep together in the same room with the abuser;
 - 12. acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;
 - 13. prostituting the woman or her child.
- i. psychological violence (acts or omissions causing or likely to cause mental or emotional suffering) of the victim such as that but not limited to:
 - 1. intimidation;
 - 2. harassment;
 - 3. stalking;
 - 4. damage to property;
 - 5. public ridicule;
 - 6. humiliation;
 - 7. repeated verbal abuse, marital infidelity. This includes:
 - (i) causing or allowing the victim to witness the physical, sexual, or psychological abuse of a member of the family to which the victim belongs.

- (ii) To witness pornography in any form or to witness abusive injury to pets; or
- (iii) To unlawful or unwanted deprivation of the right to custody and or visitation of common children;
- j. Economic abuse (acts that make or attempt to make a woman financially dependent which includes, but is not limited to:
 - 1. withdrawal of financial support;
 - 2. preventing the victim from engaging in any legitimate profession or activity, except in cases wherein the other spouse/partner objects on valid, serious, and moral grounds as defined in Art. 73 of the Family Code;
 - 3. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal community or property owned in common;
 - 4. destroying household property;
 - 5. controlling the victim's own money or properties or solely controlling the conjugal money or properties. (*Sec. 3, RA No. 9262*).

Some Definitions Operational Used

1. *Battery* — an act of inflicting physical harm upon the woman or her child resulting to physical and psychological or emotional distress. (*Sec. 3[b], id.*).
2. *Battered Woman Syndrome* — a scientifically-defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse. (*Sec. 3[c], id.*).
3. *Stalking* — an intentional act committed by a person who, knowingly and without lawful justification follows the woman or her child or places the woman or her child under surveillance directly or indirectly or a combination thereof. (*Sec. 3[d], id.*).
4. *Dating relationship* — a situation wherein the parties live as husband and wife without the benefit of marriage or are romantically-involved over time and on a continuing basis during the course of the relationship. A casual acquaintance or ordinary socialization between two individuals in a business or social context is not a dating relationship. (*Sec. 3[e], id.*).
5. *Sexual relations* — a single sexual act which may or may not result in the bearing of a common child. (*Sec. 3[f], id.*).
6. *Safe Place or Shelter* — any home or institution maintained or managed by the DSWD or by any other agency or voluntary organization

accredited by the DSWD for the purpose of this Act (*RA No. 9262*) or any other suitable place the resident of which is willing temporarily to receive the victim. (*Sec. 3[g], id.*)

7. *Children* — those below 18 year of age or older but are incapable of taking care of themselves as defined under RA No. 7610. As used in this Act (RA No. 9262), it includes the biological children of the victim and other children under her care. (*Sec. 3[h], id.*)

8. *Protection order* — one issued for the purpose of preventing further acts of violence against a woman or her child specified in Sec. 5 of RA No. 9262 and granting other necessary relief. The kinds of protection orders to be enforced by law enforcement agencies, include:

- a. the barangay protection order (BPO);
- b. the temporary protection order (TPO); and
- c. the permanent protection order (PPO). (*Sec. 8, id.*)

Venue

The Regional Trial Court (RTC) designated as a Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offense was committed, the case shall be filed in the RTC where the crime or any of its elements was committed at the option of the complainant. (*Sec. 7, id.*)

Penalties and Damages

Depending on the rules violated, the crime of violence against women and their children are punishable. (*See Sec. 6, id.*) Any victim of violence under this law “shall be entitled to actual, compensatory moral and exemplary damages.” (*Sec. 36, id.*)

Some Observations

1. If the acts of violence are committed while the woman or child is pregnant or committed to the presence of her child, the penalty to be applied shall be the maximum period of the prescribed penalty. (*Sec. 6, id.*)

2. The issuance of a Barangay Protection Order (BPO) or the pendency of an application for a BPO shall not preclude a petitioner from applying for, or the court from granting a Temporary Protection Order (TPO) or Permanent Protection Order (PPO). (*Sec. 8[last par.], id.*)

3. Included among those who may file a petition for the protection orders (*e.g.*, BPO, TPO, or PPO) are therapists and healthcare providers. (*Sec. 9[g], id.*)

4. All TPOs and PPOs shall be enforceable anywhere in the Philippines and a violation thereof shall be punishable with a fine ranging from P5,000 to P50,000 and/or imprisonment of 6 months. (*Sec. 12, id.*)

5. Legal representation of petitioners for a Protection Order, if so requested, shall come from the Public Attorney's Office (PAO) upon order of the court. (*See Sec. 13, id.*)

6. Failure to act on an application for a protection order within the reglementary period without justifiable cause shall render the official or judge administratively liable. (*Sec. 10, id.*)

7. In cases of legal separation, where violence as specified in this Act is alleged, Art. 58 of the Family Code (which provides that "an action for legal separation shall in no case be tried before 6 months shall have elapsed since the filing of the petition") shall not apply. The court shall proceed on the main case and other incidents of the case as soon as possible. The hearing on any application for a protection order filed by the petitioner must be conducted within the specified mandatory period of this Act. (*See Sec. 19, id.*)

8. As a general rule, "[t]he Court may order any person against whom a protection is issued to give a bond to keep the peace, to present two sufficient sureties who shall undertake that such person will not commit the violence sought to be prevented." (*Sec. 23[1st par.], id.*)

9. Violence against women and their children shall be considered a public crime. (*See Sec. 25, id.*)

10. The so-called "battered woman syndrome" may be used as a defense. Thus, victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code. In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the same, the courts shall be assisted by expert psychiatrists/psychologists. (*Sec. 26, id.*)

11. Being under the influence of alcohol, any illicit drug, or any other mind-altering substance shall not be a defense. (*Sec. 27, id.*)

12. The woman victim of violence shall be entitled to the custody and support of her child/children. Children below 7 years old or older but with mental or physical disabilities shall automatically be given to the mother, with right to support, unless the court finds compelling reasons to order otherwise. (*Sec. 28[1st par.], id.*)

13. Additional to their rights under existing laws, victims of violence against women and their children shall have the following rights:

- a. to be treated with respect and dignity (*Sec. 35[a], id.*);
 - b. to avail of legal assistance from the PAO of the Dept. of Justice or any public legal assistance office (*Sec 35[b], id.*);
 - c. to be entitled to support services from the DSWD and local government units (LGUs) (*Sec. 35[c], id.*);
 - d. to be entitled to all legal remedies and support as provided for under the Family Code (*Sec. 35[d], id.*); and
 - e. to be informed of their rights and the services available to them including their rights to apply for a protection order. (*Sec. 35[e], id.*);
14. For those prosecuted for having violated RA No. 9262, the court shall issue a hold departure order (*See Sec. 37, id.*); and
15. Everything that has to do with cases of violence against women and their children shall be treated in confidence. Thus, any person found violating this rule on confidentiality “shall suffer the penalty of 1 year imprisonment and a fine of not more than P500,000.” (*Sec. 44, id.*).

RAPE VICTIM ASSISTANCE AND PROTECTION ACT

The “*Rape Victim Assistance and Protection Act of 1998*,” otherwise known as RA No. 8505, was approved on Feb. 13, 1998.

The law’s declared policy is for “the State to provide necessary assistance and protection for rape victims. Towards this end, the government shall coordinate its various agencies and non-government organizations to work hand-in-hand for the establishment and operation of a rape crisis center in every province and city that shall assist and protect rape victims in the litigation of their cases and their recovery. (*Sec. 2, RA No. 8505*).

Mandated by law to establish rape crisis centers in every city and province all over the country are the following:

1. the DSWD which “shall be the lead agency” (*Sec. 3[last sent.], id.*);
2. the DOH;
3. the DILG
4. the DOJ; and
5. a lead NGO with proven track record or experience in handling sexual abuse cases.

Note that a rape crisis center shall be “located in a government hospital or health clinic or in any other suitable place” for the purpose of

providing legal aid, psychological counselling, medical services, training program, and the like. (*See Sec. 3, id.*)

Protective measures are made in favor of both the offended party and the accused, respectively, re the recognition of the right to privacy. (*See Sec. 5, id.*) Moreso, “the proceedings can be conducted in a language or dialect known or familiar” to the concerned parties. (*Sec. 5[last par.], id.*)

Quite a significant aspect of this law is the presence of a “rape shield.” This means that “[i]n prosecution for rape, evidence of complainant’s past sexual conduct, opinion thereof or of his/her reputation shall not be admitted unless, and only to the extent that the court finds, that such evidence is material and relevant to the case.” (*Sec. 6, id.*)

Mail-Order Bride Act

The “*Mail-Order Bride Act*,” otherwise known as RA No. 6955, was approved on June 31, 1990.

The complete title of this aforementioned law is “An Act to Declare Unlawful the Practice of Matching Filipino Women for Marriage to Foreign Nationals on a Mail-Order Basis and Other Similar Practices, Including the Advertisement, Publications, Printing or Distribution of Brochures, Fliers, and Other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefor.”

The State’s policy is “to ensure and guarantee the enjoyment of the people of a decent standard of living [and] [t]owards this end, the State shall take measure to protect Filipino women from being exploited in utter disregard of human dignity in their pursuit of economic upliftment.” (*Sec. 1, RA No. 6955*).

Pursuant thereto, the law declares unlawful:

1. For a person (natural or juridical), association, club or any other entity to commit (directly, or indirectly), any of the following acts:
 - a. to establish or carry on a business which has for its purposes the matching of Filipino women for marriage to foreign nationals either on a mail-order basis or thru personal introduction;
 - b. 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 sub-paragraph;
 - c. to solicit, enlist, or in any manner attract or induce any Filipino woman to become a member in any club or association whose objective is to match women for marriage to foreign nationals either on a mail-order basis or thru personal introduction for a fee; and

d. to use the postal service to promote the prohibited acts in sub-par. 1 hereof. (*Sec. 2[a][1-4], id.*).

2. For the manager or officer-in-charge or advertising manager or any newspaper, magazine, television or radio station, or other media, or of an advertising agency, printing company or other similar entities to knowingly allow, or consent to the acts prohibited in the preceding paragraph. (*Sec. 2[b], id.*).

Penal Sanction for Violators

Any person found guilty shall suffer imprisonment or fine or both. If the offender happens to be “a foreigner, he shall immediately deported and barred forever from entering the country after serving his sentence and payment of fine.” (*See Sec. 4, id.*).