TABLE TURNERS

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Civil Code of the Philippines
Preliminary Title
Chapter 1 – Effect and Application of Laws

Article 1. This Act shall be known as the Civil Code of the Philippines

Points

Republic Act Number 386: “An Act to Ordain and Institute the Civil Code of the Philippines.”

- Main draft prepared by the Roxas Code Commission, created via E.O. No. 48 of March 20, 1947 by President Roxas.
  - Commission Chairman: Dr. Jorge C. Bocobo
  - Members: Judge Guillermo Guevarra, Dean Pedro Ylagan, Francisco Capistrano, and Arturo Tolentino (replaced by Dr. Carmelino Alvendia)
  - May 8, 1947 → Commission started working
  - December 15, 1947 → Ended
  - January 26, 1949 → Congress passed R.A. No. 386

Class Discussion

- Point to Consider: All the members for the commission were males. Moreover, changes in the family code came from advocacies on gender equality.

Article 2. Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided.

Previously:

Laws shall take effect 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 publication.

Points

Effectivity of the Civil Code

- August 30, 1950 - 1950 Civil Code took effect
- During her Revolutionary Government, Article 2 was amended by President Corazon Aquino through E.O. 200 on June 18, 1987. It was acknowledged that the previous Article 2’s requirement of publishing in the official Gazette has entailed some problems such as Tañada, et al vs. Tuva, et al., due to its erratic release and limited readership, and that newspapers of general circulation could better communicate the laws to the people as they are more easily available, have a wide circulation, and come out regularly.

Effectivity of Laws

- When a statute does not provide for its effectivity, it shall become effective on the expiration of the fifteen-day period following the specifications of Article 2.
- Publication is necessary to enable the people to become familiar with the statute. No one shall be charged with notice of the statute's provisions until the said publication is completed in full and the fifteen-day period has expired. After this, people are deemed to have been conclusively notified of the law
- Covered by this rule are:
  - Presidential decrees, executive orders promulgated by the president in the exercise of legislative powers whenever the same are validly delegated by legislature, or conferred by the Constitution.
  - Administrative rules and regulations, if their purpose is to enforce or implement existing law pursuant also to valid delegation.
o Charter of a new city.
o All Presidential decrees
o Circulars by the Monetary Board, if they are meant to “fill in the details” of the Central Bank Act which it is supposed to enforce.

• Parenthetically, municipal ordinances are not covered by this but by the Local Government Code.

The Clause “Unless it is otherwise provided.”
• Solely refers to the fifteen-day period and not to the requirement of publication. As publication is indispensable requisite for a law to be effective.
  o In Tañada v. Tuvera: Publication may not be dispensed with because doing so would offend due process insofar as it would deny the public of the laws that are supposed to govern it. If they were not published, it is not unlikely for persons not aware of them to be prejudiced as a result, not because of failure to comply but of lack of knowledge of its existence.
• If the law provides for a different period shorter or longer than the fifteen-day period provided by Sec. 1 of E.O. No. 200, then such a period will prevail. If it is to take effect immediately, it will only do so AFTER the publication, with the 15-day period being dispensed with.

Laws
• Sec. 1 of E.O. 200 uses the word “laws.” Hence, effectivity of provision refers to all statutes, including those local and private laws, unless there are special laws providing a different effectivity mechanism for particular statutes.

CLASS DISCUSSION
• Point to Consider: Newspapers of general circulation are not limited to big name papers, tabloids count as well.

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

POINTS
Reason
• Applies only to mandatory and prohibitory laws
• Founded not only on expediency and policy but on necessity.
• It is a conclusive presumption that everyone knows the law.
• After a law is published and effective, the public is always put on a constructive notice of its existence; even when they have no actual knowledge of such a law.
• To allow ignorance to be a valid defense of offenders would foment disorder in society.

Relation to Article II
• Necessary consequence of the mandatory provision that all laws must be published. Otherwise there would be no basis for the legal maxim: “ignorantia legis non excusat”
• Would be unjust to punish or burden a citizen for the violation of a law of which he had no notice, not even a constructive one.

CLASS DISCUSSION
• Point to Consider:
  o Generally, we learn about a law when it takes effect. However, learning about a new law is possible even earlier during the Congress’ first and second reading on the bill.
  o Laws are published for the benefit of the people because non-compliance leads to sanctions.

Article 4. Laws shall have no retroactive effect, unless the contrary is provided.
POINTS

Non-Retroactivity of Laws

- Laws are future-oriented and have no retroactive effect unless legislature gives such an effect to some legal provisions.
- Statutes are to be construed as having only prospective operation, unless a retrospective effect is expressly declared or is necessarily implied from the language used. In case of ambiguity it will be against the retrospective effect.

Retroactive Application

1. When the law expressly provides for retroactivity
   - Example: Article 256, Family Code of the Philippines (August 3, 1988) – “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.”

2. Curative or remedial
   - Legislature has power to pass healing acts which do not impair the obligations of contracts nor interfere with vested rights.
   - Remedial: by curing defects or adding to the means of enforcing existing obligations.
   - Rule: If the thing omitted or failed to be done, and which constitutes the defect sought to be removed or make harmless, is something which the legislature might have dispensed with by previous statutes, it may do so by subsequent ones. If the irregularity consists in doing some act, or doing it in the mode which the legislature might have made immaterial by an express law, it may do so by a subsequent one.

3. Procedural
   - When a statute deals with procedure only, prima facie, it applies to all actions – accrued, pending, or future ones.
   - Changes in substantive law or SC judicial doctrines interpreting the application of a particular law cannot be applied retroactively, especially when the party that followed the earlier law or judicial doctrine will be prejudiced. This is to avoid possible injustice.

4. Penal in character and favourable to the accused. (Article 22 of the RPC)
   - Even if at the time of publication, the final sentence has been pronounced and the convict is serving the same.
   - However, he/she must not be a habitual delinquent.
   - Defined in Article 62 of the RPC: if within 10 years from date of release or last conviction of a crime, he is found guilty of any said crimes a third time or oftener.

- Facts: DBP purchased 159 lots from the PHHC for its housing project pursuant to R.A. No. 85.
- Issue: Whether such a purchase was legal.
- Held: Made legal by R.A. No. 3147
- Ratio: Such act was passed as a retrospective legislation or curative statute to correct any invalidity on said acquisition. Obvious from the fact that said act was enacted on July 17, 1961, at a time when the legality of the acquisition was under question.
- Laws which regulate the registration of instruments affecting titles to land may be held to apply to deeds dated before as well as after their enactment when a reasonable time is given within which the effect of such statute, as applied to existing conveyances, may be avoided and rendered harmless in respect to vested rights.
### Article 5. Acts executed against the provisions of mandatory and prohibitory laws shall be void, except when the law itself authorizes their validity.

**POINTS**

**Mandatory Laws**
- The omission of which renders the proceeding or acts to which it relates generally illegal or void.
- Example: prescriptive periods for filing particular suits. From the Family Code, husbands who are to impugn the legitimacy of a child must file a case within a year from the knowledge of the birth or its recording in the civil register. Failure to do so leads to a dismissal of the case.

**Prohibitory Laws**
- contain positive prohibitions and are couched in the negative terms importing that the act required shall not be done otherwise than designated.
- Example: Under the Family Code, “No decree of legal separation shall be based upon a stipulation of facts or a confession of judgement.

**Exception**
- If the law expressly provides for the validity of acts committed in violation of a mandatory or prohibitory provision of a statute, such act shall be considered valid or enforceable.

### Article 6. Rights may be waived, unless the waiver is contrary to law, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

**POINTS**

**Waiver**
- intentional relinquishment of a known right
- not presumed but must be clearly and convincingly shown, either by express stipulation or acts admitting no other reasonable explanation
- A right to be validly waived, must be in existence at the time of the waiver, and must be exercised by a duly capacitated person actually possessing the right to make the waiver.
- Presupposes that the party has knowledge of its rights, but chooses not to assert them. No knowledge of a right, no basis for the waiver. Cannot be established under a consent given under a mistake or misapprehension of fact.

**Prohibition Against Waiver**
- Conditions enumerated within the article.
- **Gongon vs. Court of Appeals**
  - Issue: Whether petitioner’s preferential right can be waived.
  - Held: Tenants’ preferential rights to purchase public land, under **Commonwealth Act No. 539**, cannot be validly waived
  - Ratio: Precedent comes from **Juat vs. Land Tenure Administration** (January 28, 1961), here Court ruled that “avowed policy behind such measures is to provide the landless elements of the population with lots which they can live on, cultivate, and derive a livelihood from without being beholden to any man. Such measure is in line with
the Constitution’s policy on social justice to address the concentration of landed estates in the hands of a few by giving to the landless elements a piece of land they can call their own.” Being contrary to public policy, alleged waiver must be considered null and void.

- Law does not consider as valid any agreement to receive less compensation than the worker is entitled to recover under the law.
- Acceptance of benefits such as separation pay and terminal leave benefits wouldn’t amount to waiver of rights of employee to contest his illegal dismissal.
- Rights, protections, and advantages conferred by statutes may be generally waived; unless the object of a statute is to promote great public interests, liberty and morals (e.g. Private agreement between spouses that concubinage/adultery is permitted, by waiving their rights to live with each other, is a void agreement.)

**CLASS DISCUSSION**

- Point to Consider: You can only waive those that are already yours by right. Examples:
  - Right to future inheritance cannot be waived as it isn’t with you yet. And it is also against public policy and good customs.
  - Right to your salary cannot be waived. Under the Labor Code, work performed entitles to a salary lest it become similar to slave-like situation.

**POINTS**

**Repeal**

- Legislative act of abrogating through a subsequent law the effects of a previous statute or portions thereof.
- May be either express or implied;
  - Implied repeal – new law contains provisions contrary to or inconsistent with those of a former without expressly repealing them. Although implied repeals or amendments are not favoured.
  - Express repeal – literally declared by a new law, either in specific terms, as where particular laws and provisions are named and identified and declared to be repealed, or in general terms, as where a provision in a new law declares all laws and parts of laws inconsistent therewith to be repealed.
  - However in, *Iloilo Palay and Corn Planters Association*
    - Held: Repealing clause in an Act which provides that “all laws and parts therof inconsistent with the provisions of this Act are hereby repealed or modified accordingly” is certainly not an express repeal.
    - Ratio: Fails to designate the Act or Acts that are intended to be repealed. Rather, it’s a clause which predicates the intended repeal upon finding a substantial conflict in existing and prior acts. Presumption against implied repeals and the rule against strict construction regarding them apply *ex proprio vigore*
  - Well established rule in statutory construction: special statute, providing for a particular case or class of cases, is not repealed by a subsequent statute, general in its...
terms, provisions and applications; unless the intent to 
repeal or alter is manifest.

**Unconstitutional Statutes**

- Constitution – supreme, organic and fundamental law of the 
  land. No ordinary statute can override it.
- In deciding statute’s constitutionality, its validity is presumed 
  and favoured; whenever possible, statutes should be given a 
  meaning that will not make them conflict with the Constitution.
- Its constitutionality or unconstitutionality also depends upon 
  factors other than those existing at the time of its enactment, 
  unaffected by the acts or omissions of law enforcing agencies, 
  particularly those that take place subsequently to the passage 
  or approval of law.

**Partial Unconstitutionality of Statutes**

- If a portion is rendered unconstitutional, and the remainder 
  valid; the parts will be separated and the constitutional portion 
  upheld
- However in, **Lidasan v. COMELEC**
  - Held: when the parts of a statute are so interdependent 
    and interconnected, as to warrant a belief that 
    legislature intended them as a whole, and that if all 
    couldn’t come into effect, they would not pass the 
    residue independently, then if some parts are 
    unconstitutional, all must fall with them.
  - Ratio: General rule is that where part of a statute is 
    void, while another part is valid, the valid portion may 
    stand if separable. Such portion must be so far 
    independent that it’s fair to assume that Legislature 
    would’ve enacted it by itself if they had supposed that 
    they could not constitutionally enact the other. Enough 
    must remain to make a complete, intelligible and valid 
    statute, which carries out the legislative intent.

**Rules and Regulations/ Administrative and Executive Acts**

- Rules and regulations when promulgated in pursuance of the 
  procedure or authority conferred upon the administrative 
  agency by law, partake of the nature of a sanction provided in 
  the law. Laws are in general terms. Often times the details and 
  manner are left to administrative agency, tasked with its 
  enforcement.
- Rule is binding on the courts so long as the procedure fixed for 
  its promulgation is followed and it’s with the statutory authority 
  granted to it, despite the court’s own opinion of the policy.
- By such regulations, of course, the law itself cannot be 
  extended, so long, however as the regulations relate solely to 
  carrying into effect the provisions of the law, they are valid. 
  Hence rules and regulations or any administrative and executive 
  act that are violative of the law or Constitution are invalid. Thus:
  - **Teoxon v. Members of the Board of Administrator**
    - Held: There must be strict compliance with the 
      legislative enactment. Its terms must be 
      followed. The statute requires adherence to, 
      not departure from, its provisions. No deviation 
      is allowed.
    - Ratio: The Constitution limits the authority of 
      the President, or the Chief Executive body, to 
      take care that laws be faithfully executed; so no 
      lesser body, contrary to the constitution, can 
      assert for itself a more extensive prerogative. 
      Administrative agencies cannot amend and act 
      of Congress.

**CLASS DISCUSSION**

- Point to Consider:
  - Implied repeals are frowned upon because it is subject 
    to conflict or discussion. Express repeals are clear that a
certain provision is no longer valid or is changed to mean something else.

- Example of implied repeal: Statute abolishing the death penalty is an implied repeal on all penal laws that have it as a consequence.

**Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.**

**POINTS**

**Judicial Construction and Interpretation**

- Court’s principal function is not only to resolve legal controversies but also to interpret and construe vague provisions of law relative to a particular dispute.
- It gives meaning and expounds on a law’s application when the given case is not explicitly provided for in the law.

**Judicial decisions**

- Although in themselves not laws, they assume the same authority as the statute itself.
- “Legis interpretatio legis vim obtinet” – interpretation placed upon the written law by a competent court has the force of law.
- SC decisions – authoritative and precedent-setting. Inferior courts and Court of Appeals – merely persuasive.

**When Judicial Decisions Deemed Part of the Law**

- SC’s application and interpretation establishes the contemporaneous legislative intent that the construed law purports to carry into effect.

- However, in *People v. Jabinal*
  - Fact: Accused was appointed as a secret confidential agent and authorized to possess a firearm pursuant to a prevailing doctrine then.
  - Issue: Whether or not the accused is liable for possession of firearm without a permit.

- Held: Accused should be absolved of the crime charged.
- Ratio: When a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

- *Apiag v Cantero*
  - Fact: Judge entered into 2nd marriage without having his first void marriage judicially declared a nullity.
  - Held: Second marriage can’t be the basis of administrative liability against the judge for immorality.
  - Ratio: At that time, there was no need for judicial declaration of nullity by jurisprudence. Subsequent marriage was solemnized before the SC decided the case of *Wiegel v. Sempio Dy*, declaring a need for a declaration of nullity of a void marriage.

**CLASS DISCUSSION**

- Point to Consider:
  - Is this article not a conflict between judiciary and legislature?
    - No, primary purpose of judiciary is to interpret laws and to carry out the intent of legislature, which is found in the ‘whereas’ clause and their journals.
  - Judicial legislation occurs when the judiciary goes beyond their mandate and they take it upon themselves to amend. Laws.

**Article 9. No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.**
**Duty of Judges**

- Judges are tasked with the dispensation of justice in accordance with the constitutional precept that no person shall be deprived of life, liberty, and property without due process of law.
- Must always be guided by equity, fairness, and a sense of justice in situations as those stipulated in Art. 9. When his decision isn’t without logic or reason, he cannot be said to have been incompetent.
- In a case where paraphernal property of a wife was demolished to give way for the construction of a new building, where the claim of the wife to be reimbursed was resisted due to the silence of the law *(Article 1404, par. 2 of Civil Code)* requiring reimbursement that can be made by conjugal partnership at the time of liquidation; SC ruled: Such contention is dismissed and wife was to be reimbursed. *Ninguno non deue enriquecerse tortizamente con dano de otro* – When the statutes are silent or ambiguous, this is one of those fundamental principles which the courts invoke in order to arrive at a solution that would respond to the vehement urge of conscience.

**Judicial Legislation**

- Judiciary is tasked with resolving legal controversies and interpreting statutes. It cannot legislate by virtue of the separation of powers between the three branches.
- However in *Floresca v. Philex Mining Corporation*, SC held that such a myth is exploded by the Art. 9 of the Civil Code’s content.
- Justice Holmes – [Courts] “do and must legislate” to fill in 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.

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**Doubtful Statutes**

- When the law is clear, applied strictly without anything added or reduced; Construction and interpretation come only after it is determined that application is impossible or inadequate.
- Ambiguity in law requires fidelity to the legislative purpose in interpreting it; it must always be in sync with the end sought to be attained by Congress. A literal interpretation is to be rejected if it would be unjust or lead to absurd results.

**Customs**

- Rule of conduct formed by repetition of acts, uniformly observed (practiced) as a social rule, legally binding and obligatory.
- Local customs as a source of right must be proved and properly established by competent evidence.
- Juridical custom – can supplement statutory law or applied in the absence of such statute.
- Social custom – can’t supplement statutory law or applied in the absence of statute.
- Custom, even if proven, cannot prevail over a statutory rule or even a legal rule enunciated by the SC.
CLASS DISCUSSION

- Point to Consider:
  - It is relevant to include customs in the Civil Code because indigenous groups as well as autonomous Muslim regions have their own customs and laws that govern them outside regular laws.
  - Must also distinguish between juridical customs which fill in the gaps of the law unlike social customs.

**Article 13.** When the law speaks of years, months, days or nights, it shall be understood that years are of 365 days each; months, of 30 days; days, of 24 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.

**POINTS**

**Year**

- **Garvida v. Sales**
  - Fact: Sec. 428 of the Local Government Code provides that SK officials should not be more than 21 years of age on the day of their election
  - Issue: Whether or not petitioner’s claim that being 21 on the day of their election is acceptable
  - Held: “Not more than 21 years old” is not equivalent to “less than 22 years old.”
  - Ratio: Sec. 428 is clear. It speaks of years, not months, nor days. When the law speaks of years, it is understood that it is 365 days. In computing years, the first year is reached after completing the first 365 days. After the 365th day, the first day of the second 365-day cycle begins. A person turns 21 years old on the 365th day of his 21st 365-day cycle. On his 21st birthday, he has completed the entire span of 21 365-day cycles. After his birthday, the 365-day cycle for his 22nd year begins. “Not more than 21 years of age” means not beyond 21 years or 21 365-day cycles. A day or fraction of it would be more than 21 365-day cycles, and the law does not state that the candidate be less than 22 years on election day.

**Months and Leap Years**

- **National Marketing Corporation v. Tecson**
  - Fact: Pursuant to Article 1144(3) of the Civil Code, an action upon a judgment “must be brought within ten years from the time the right of action accrues,” which in the language of Article 1152 of the same Code, “commences from the time the judgment sought to be revived has become final.” This took place on December 21, 1955 or 30 days from the notice of the judgement which was received by the defendants herein on November 21, 1955 – no appeal having been taken therefrom. The issue is thus confined to the date on which ten (10) years from December 21, 1955 expired.
  - Issue: Whether 10 years from said date means December 21, 1955, counting by calendar years, or December 19, 1965, counting a 365-day cycle for a year.
  - Held: Appellant’s position that it is December 21, 1955 cannot be upheld
  - Ratio: Appellant’s theory regarding the leap years, constituting a 366-day year contravenes against the explicit provision of Article 13 of the Civil Code of the Philippines which limits a “year” to 365 days. Prior to the approval of the Civil Code of Spain, the courts have held that when the law spoke of months, it meant a “natural” month or “solar” month, in absence of
express provision to the contrary. Pursuant of the Article 7 of the Civil Code of Spain, “whenever months are referred to in the law, it shall be understood that months are 30 days,” not the “natural,” “solar,” or “calendar” months, unless they are designated by name, in which case “they shall be computed by the actual number of days they have. Such concept was modified by Sec. 13 of the Revised Administrative Code, which reverted “months” to mean “calendar” months. In People v. Del Rosario however, this court found that with the approval of the Civil Code of the Philippines, the pertinent provision from the Civil Code of Spain were reverted to in terms of “months” being 30 days and not otherwise. Moreover, ours has added the term “years” to mean 365 days. Hence theory of plaintiff-appellant cannot be upheld without ignoring, or nullifying Article 13 of the Civil Code and reviving Sec. 13 of the RAC, which would be repealing an act of Congress. If the public interest demands a reversion to the said policy, this may be done by legislative process, not judicial decree.

- If the law provides that a particular tax shall be paid in January 1998, it means, anytime within the 31 days of January.

Day, Night and Period
- If a law states that a particular statute is to be effective on the 20th day from its publication and publication was made on February 3, 1998, the first day (February 3, 1998) is excluded while the last day (February 23, 1998) is included.

CLASS DISCUSSION
- Case discussed: CIR v. Primetown (G.R. 162155) – Corona, J.
  o Facts: Respondents suffered losses and are seeking a tax refund. It submitted proper documents but claim was not acted upon whereby it filed a petition for review in the CTA. CTA dismissed petition because the 2-year prescriptive period had lapsed when it counted the leap year of 2000 as having added one more day. CA reversed the decision as leap years were not counted
  o Case: Petition for review on Certiorari seeks to set aside the August 1, 2003 decision of the CA and its Feb. 9, 2004 resolution denying reconsideration.
  o Issue: Whether or not respondents filed within the prescriptive period; subsequently, was CA correct in reversing the decision.
  o Held: Conclusion of CA was correct and respondents filed within the 2-year period however CA’s basis is incorrect.
  o Ratio: Pursuant to Sec. 31 Chapter VIII, Book 1 of the 1987 Administrative Code, the definition of years in legal periods is to be understood as “twelve calendar months.” A calendar month is “a month designated in the calendar without regard to the number of days it may contain.” It is the period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day of the next month, and if there is not a sufficient number of days in the next month, then up to and including the last day of the month. As such one calendar month from April 14, 1998 (date respondent filed its final adjusted return), is from April 15, 1998 to May 14, 1998. Following the same principle, 24 calendar months from the same day ends on April 14, 2000; hence, respondents were within the prescriptive period. This law impliedly repealed Article 13 of the Civil Code regarding years through Section 27, Book VII.
- Points to Consider:
  o Do not include leap years in counting.
  o Similar cases are in favor of taxpayer and against the government
1987 Administrative Code is later but less substantial because it is an executive act, whereas civil code is a legislative act. Civil code covers all relations between people. Family Code was also by E.O., but Congress had not convened then hence it functions as a Republic Act.

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

**POINTS**

**Obligatory Force of Penal Laws**
- Citizens and foreigners are subject to all penal laws. Will even attach regardless whether or not a foreigner is merely sojourning in Philippine territory
- Exception: They may liable yet immune from suit, and therefore, cannot be criminally prosecuted in the Philippines in certain cases where the Philippine government has waived its criminal jurisdiction over them on the basis of the principles of public international law and treaty stipulations
- 1961 Vienna Convention on Diplomatic Relations – provided that the person of the diplomatic agent shall be inviolable and he shall not be liable to any form of arrest or detention (Article 29). He shall enjoy immunity from criminal jurisdiction of the receiving state (Article 31).
- Heads of state who are officially visiting here are immune from criminal jurisdiction

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

**POINTS**

**Nationality Rule**
- Regardless of where a Philippine citizen is, he or she will be governed by Philippine laws with respect to his or her family rights and duties, status, condition and legal capacity.
- Example: Getting an absolute divorce decree. Pursuant to Article 26 of the Family Code, the only absolute divorce which the Philippines recognizes is one which is procured by the alien spouse of the Philippine citizen. Should he/she marry again, Filipino spouse can be said to have committed concubinage (husband) or adultery (wife) if he/she procured the divorce abroad (Tenchavez v. Escano).

**CLASS DISCUSSION**
- Point to Consider:
  - Nationality rule follows you wherever you go. Art. 26 of the Family Code has further stipulations.

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

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

**POINTS**

**Law Governing Real Properties**
- In a case where a citizen of Turkey made out a last will and testament providing that his property shall be disposed of pursuant to Philippine laws, the SC ruled that such provision is illegal and void, pursuant to Article 16 (then Article 10) of the
Civil Code, the his national law should govern and apply not Philippine Law.

- Bellis v. Bellis
  - Fact: foreigner executed a will in the Philippines but, who, at the time of his death, was both domiciled and a national of the US
  - Held: The Philippine law on legitimes cannot be applied to the testacy of Amos G. Bellis
  - Ratio:
    1. Article 16, par. 2 and Article 1039 of the Civil Code render the applicability of National Law of decedent, in intestate or testamentary succession, with regard to – (a) Order of succession, (b) Amount of successional rights, (c) Intrinsic validity of the provisions of the will, and (d) Capacity to succeed. Appellant’s case on Article 17, “that prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country” as the exception to aforementioned provision is incorrect. Congress specifically removed that exception derived from Article 10 and 11 of the old Civil Code when it incorporated it as the current Article 16 and 17 in the new one. It must have been their purpose to make the second paragraph of Article 16 a specific provision in itself which must be applied to testate and intestate successions. Further given effect by Article 1039, “Capacity to succeed is governed by the law of the nation of the decedent.” Specific provisions must prevail over general ones.

- (2) Appellant’s argument on the intention of the decedent in leaving two wills to govern his Texas and Philippine estate, is that he intended Philippine law to govern his Philippine estate. Such argument would not alter the law as this Court ruled in Minciano v. Brimo, a provision in a foreigner’s will to the effect that his properties shall be distributed in accordance with Philippine law and not with his national law, is illegal and void, for his national law cannot be ignored pursuant to Article 16.

- (3) Texan law states there are no forced heirs or legitimes. And such foreign law shall apply.

**Article 17.** The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.

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

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

**POINTS**

**Extrinsic Validity**
- If act is valid where it is executed, even if said act won’t be valid here, it will be deemed as valid, nonetheless.
Acts Before Diplomatic and Consular Officials
- Diplomatic and consular officials are representatives of the state; therefore any act or contract made in a foreign country before diplomatic and consular officials must conform to the solemnities under Philippine law.
- Philippine law should prevail if act is executed before a diplomat, in a foreign country.
  - Basis: by rules of international law, host country where diplomat is assigned, waives its jurisdiction over the premises of the diplomatic office of another country located in the said host country.

Prohibitive Laws
- Considering that the only ways to terminate a marriage in the Philippines are by nullifying marriage or annuling the same on the basis of the specific grounds exclusively enumerated under the Family Code of the Philippines, and by filing an affidavit of reappearance for the purpose of terminating a subsequent marriage solemnized under Article 41 of the same code.
- Filipinos who procures an absolute divorce abroad will remain, in the eyes of Philippine law, as not having been divorced. Should said person marry again, his or her spouse can file a legal separation case on the grounds of adultery.

CLASS DISCUSSION
- Point to Consider:
  - Forms and solemnities under Philippine law are followed in executing a will in the Philippines. However the manner of disposition is still based on his nationality.
  - Legitime = compulsory inheritance. Like a child against a parent. Parent can’t execute a will excluding his or her child.
  - Foreigners cannot obtain Philippine real property by will or succession.

POINTS

Suppletory Nature
- Insular v. Sun Life
  - Held: no perfection of a life annuity because there was no acceptance of the contract.
  - Ratio: SC applied the rules on contracts under the Civil Code in view of the absence of any provision in the Insurance Act relative to the manner by which a contract is perfected. As given by Article 1802, that describes a contract of life annuity markedly similar to the considered one which gives clues on how to the proper disposition of the case. In Article 1262, providing that “consent is shown by the concurrence of offer and acceptance with respect to the thing and consideration which are to constitute the contract. An acceptance made by letter shall not bind the person making the offer except from the time it came to his knowledge. The contract, in such case, is presumed to have been entered into at the place where the offer was made.” This article is in opposition to the provisions of Article 54 of the Code of Commerce. In enacting a new law on insurance, it expressly repealed the provisions in the Code of Commerce on the same subject, having thus left a void on the matter, it is only logical to turn to the only pertinent provision of law found in the Civil Code, closely related to the chapter concerning life annuities.
- Word “loss” in Section 3(6) of the Carriage of Goods by Sea Act is determinable by the concept given in the Civil Code. However not all deficiency can be supplied by the Civil Code:

Article 18. In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code.
Dole Philippines, Inc. v. Maritime Co. of the Philippines

Held: Rejected the contention of the petitioner that the one-year prescriptive period for making a claim for loss or damage under Section 3, par. 6 of the Carriage of Goods by Sea Act was tolled by making an extrajudicial demand pursuant to Article 1155 of the Civil Code which should be applied in a suppletory nature pursuant to Article 18.

Ratio: The question has already received definite answer in Yek Tong Lin Fire & Marine Insurance Co., Ltd. v. American President Lines, Inc. where, in a parallel situation, this Court rejected the contention that an extrajudicial demand tolled the prescriptive period provided for in the Carriage of Goods by Sea Act. It has been decided that in a case governed by the Carriage of Goods by Sea Act, the general provisions of the Code of Civil Procedure on prescription should not be made to apply. Similarly, general provisions of the new Civil Code (Article 1155), cannot be made to apply, as doing so would extend the one-year period of prescription fixed in the law.

For suits not predicated upon loss or damage but on alleged misdelivery or conversion of the goods, the applicable rule on prescription is that found in the Civil Code, namely, either ten years for breach of a written contract or four years for quasi-delict, and not the rule on the prescription in the Carriage of Goods by Sea Act.

Chapter 2 – HUMAN RELATIONS

Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

POINTS

Honesty and Good faith, acts contrary to law, and against morals, good customs and public policy

- Rule of conduct necessary between and among men and women.
- Codifies the concept of what is justice and fair play so that the abuse of right by a person will be prevented.
- Principle of abuse of rights which sets standards not only in the exercise of one’s rights but also of duties. Standards such as:
  - Act with Justice
  - Give everyone his due
  - Observe honesty and good faith
- In the exercise of all rights, norms of human conduct in Article 19 must be observed. When it is not, a legal wrong is committed for which the wrongdoer must be held responsible.
- Elements of abuse of right:
  - There is a legal right or duty
  - Which is exercised in bad faith
  - For the sole intent of prejudicing or injuring another

CLASS DISCUSSION

Point to Consider:
- Article is a mandate. Non-compliance can lead to damages
Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

**POINTS**

- 1947 Committee stated that said rule enunciated in the article pervades the entire legal system. Renders that all who suffer damage from a violator of legal provision will find relief.
- Development Bank of the Philippines v. Court of Appeals
  - Malice or bad faith is at the core of said provision. Good faith is presumed and he who alleges bad faith has the duty to prove the same.
    - Good faith – state of mind manifested by acts of the individual concerned that abstains from taking an unconscionable and unscrupulous advantage of another
    - Bad faith – not just bad judgment or negligence, dishonest purpose or some moral obliquity and conscious doing of wrong, but a breach of known duty due to some motives or interest or ill-will that partakes of the nature of fraud. Malice connotes ill-will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith.
- Albenson Enterprises Corp. v. Court of Appeals
  - Speaks of the general sanction for all the other provisions of law which do not especially provide their own sanction.

**CLASS DISCUSSION**

- Point to Consider:
  - In acting negligently, intent doesn't matter because it is contrary to law. It is *mala prohibita*

Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

**POINTS**

1947 Code Committee’s Discussion

- Stated that it was designed to fill in the “countless gaps of the statutes, which leave so many victims of moral wrongs helpless, even though they have actually suffered material and moral injury.”
  - Example: ‘A’ seducing the nineteen-year old daughter of ‘X’ and a promise of marriage cannot be determined. Article vouchsafes the adequate legal remedy for the untold moral damage incurred by family of ‘X.’
- But it may be asked, would not this proposed article obliterate the boundary line between morality and law?
  - Answer: In the last analysis every good law draws its breadth of life from morals, from those principles which are written with words of fire in the conscience of man. Proposed rule is an earnest of justice in the face of the impossibility of enumerating all wrongs which cause damage. Moral norms, being more unchanging and constant than legal rules would impart an enduring quality to the legal system.

Deals with acts *contra bonus mores*

- Has the following elements:
  - There is an act which is legal
  - But which is contrary to morals, good customs, public order, or public policy
  - And it is done with intent to injure.
- Presupposes loss or injury, material or otherwise, which one may suffer as a result of such violation
Article 19, Article 20, Article 21: POINTS

- Related to each other, and under these articles, an act which causes injury to another may be made the basis for an award of damages.
- Common Element: act must be intentional. However, Article 20 does not distinguish: “willfully” or “negligently”
- Cases where a government employee was singled out by the deputy administrator and strictly subjected to the rules for obtaining benefits after retirement while employees similarly situate were liberally granted their benefits for as long as the rules were substantially complied with by them. SC ruled in favour of awarding damages to said employee based on Article 19.
  - Petitioner’s acts were “legal” but not acted on good faith.
  - Unjustly discriminated against Mr. Curio who compared to the other three employees were similarly circumstanced.
  - No defense that motivator had no ill will since facts speak for themselves.
  - In the case of Velayo v. Shell Co. of the Philippines, defendant was liable for disposing of its property – a perfectly legal act – in order to escape the reach of a creditor.
  - In Sevilla v. Court of Appeals and Valenzuela v. Court of Appeals, principal was liable in terminating his agency – again, a legal act – when terminating the agency would deprive the agent of his legitimate business.
- Following the same principle, though a person may not have acted criminally, he or she can nevertheless undertake acts which injure another
  - Philippine National Bank v. Court of Appeals
    - Facts: A sugar quota was mortgaged to the PNB and a lease of such sugar quota allotment made by the debtor to a third person required the consent of the PNB, and where the responsible officers of the same told the lessor and the lessee that PNB will approve the lease if the amount thereof was increased from P2.50 to P2.80 per picul and whereupon, the lessor and the lessee agreed to the increase. The PNB Board of Directors twice turned down the approval of the least because it wanted to raise the consideration to P3.00 per picul, resulting to the loss by the lessee of the amount of P2,800
  - Issue: Is the petitioner liable for the damage caused to Tapnio?
  - Held: Petitioner is liable for damages
  - Ratio: The unreasonableness of the position adopte by the petitioner’s Board of Directors is shown by the fact that the difference of P2.80/picul and P3.00/picul only amounts to P200.00. Furthermore, Rita Tapnio, by her history of being granted several sugar crop loans over the years, as well as the securing of the Bank of some of her wealth, showed that she had the means to pay the loan. Hence there’s no basis to deny the loan. The petitioner failed to act with justice, give everyone his due, and observe honesty and good faith in the performance of his duties. It certainly knew that agricultural year was about to expire, and by disapproving the lease, the respondent would be unable to utilize the sugar quota in question.
- In a case where a person sold a parcel of land to another, transferring the title; and same transferor claimed and misrepresented that the title was lost during WWII, which enabled him to procure another title of the same land to sell to
another. This was done with the participation of the register of deeds and the lawyer-son of the said register who knew of the first sale.

- Both register and lawyer-son are held civilly liable for failure to observe honesty and good faith in the performance of their duties as a public officer and as member of the Bar (Art 19) or for wilfully or negligently causing damage to another (Article 20), or for wilfully causing loss or injury to another in a manner that is contrary to morals, good customs and/or public policy (Article 21).

- In the same vein, where the petitioners were denied irrigation water for their farm lots in order to make them vacate their landholdings. Held that defendants violated plaintiff’s rights and caused prejudice to the latter. Awarded damages by Article 21.

- Creditors are protected in cases of contracts intended to defraud them. Further, any third person who induces another to violate his contract shall be liable for damages to the other contracting party under Article 20 & 21.

- In a case where a driver’s group, claiming to protect the interest of all drivers of a particular transportation company and in protest of certain policies therein, decided to interrupt the jeepney service in the Cogeo-Cubao route without the authorization from the Public Service Commission and in violation of the right of the company to operate its services in the said route.

  - Held: damages in favour of the company (Article 21)
  - Ratio: the manner of exercise of the petitioner of their constitutional right to redress their grievance, should not undermine public peace and order nor should it violate the legal rights of other people. Clear from facts that the barricade and take over of motor units and personnel of the company paralyzed their usual activities and earnings during the ten-day period. This goes against their legal rights.

  - While a breach of promise to marry is not actionable, walking out when the matrimony was about to be solemnized is a different matter. It is contrary to good custom for which the defendant must be held accountable in accordance with Article 21. In the same way for a married man to force his way to a woman, not his wife, constitutes clear violation of rights and the woman can claim damages under Article 21.

  - Similarly seen in, Gashem Shookat Baksh v. Court of Appeals

  - Facts: Petitioner’s fraudulent and deceptive protestations of love for and promise to marry plaintiff made her surrender her virtue and womanhood and to live with him. Likewise, promise to marry led plaintiff’s parents to agree to them living together.

  - Held: Petitioner is held liable for damages

  - Ratio: Where a man’s promise to marry is in fact a subtle scheme or deceptive device to obtain her consent to sexual act, could justify award of damages pursuant to Article 21. Not because of such promise to marry but because of the fraud and deceit behind it and the wilful injury to her honor and reputation. Pari delicto (in equal fault, in similar offense or crime, equal in guilt or in legal fault) does not apply here as the respondent, although not impelled by the purest of intentions, submitted herself not out of lust but of moral seduction by petitioner. Further evidenced by the fact of her leaving him once she found out that his promise to marry was false. At most she is merely in delicto.

  - No damages can be recovered under Articles 19 and 21 where the sexual act is a product of voluntariness and mutual desire.

  - Constantino v. Mendez
• Issue: Can damages be awarded to the woman on the grounds that she was deceived by the man’s promise to have his current marriage annulled and marry her instead?
• Held: No damages awarded to the woman
• Ratio: The woman admits to have been attracted to the man and continued to have sex with him even after learning that he is married. No damages can be awarded because attraction was the reason she surrendered her womanhood. Had she been deceived because of promise to marry, she would have severed ties with him but she declares herself that they had intercourse again 3 months after the initial encounter; this proves that passion and not promise to marry was the moving force for her.

CLASS DISCUSSION
• Point to Consider:
  o For both Articles, damages here are caused by a legal act but with malice. Manner itself was executed with malice. Must always prove that there was malice and injustice committed.
  o Art. 21’s “willfully” = no illegality to the act.

**Article 22.** Every person who through an act or 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.

**POINTS**
• Prevention of unjust enrichment. No person can claim, nor profit from, what is not validly and legally his or hers.

• In the case where an original buyer bought 170 cavans of palay from the seller which, although partly unpaid, was sold and delivered to a third person. Having been informed that it was not fully paid for, was reimbursed of the amount of money he paid the original buyer but refused to return the cavan of palay.
  o Having been repaid the purchase price by Chan Lin, the sale between them was rescinded and petitioner-defendant was divested of any claim to the rice. Chan Lin, who was ready to return rice to the seller, Sandoval, denies that the rice has been returned to him. Hence petitioner-defendant must return the rice to Sandoval or the value thereof since he was not paid the price.

• In a case where the receiver of certain properties, without approval of the court that appointed him as receiver, entered in an indemnity agreement whereby he bound himself liable as principal to the obligations of the corporation under receivership, such that the creditor of the corporation sought payment of the construction materials and improvements made on a theatre owned by the corporation under receivership from the said receiver who evaded payment on the ground that the theatre was adjudicated in another court case as belonging to him and not the corporation under receivership, the SC held that it is but just that said owner-receiver should reimburse the creditor of the cost of improvements made on the theatre as he benefited from it.
  o It is only simple justice that Pajarillo should pay for the said claim; otherwise he would be enriching himself without paying the plaintiff for the cost of certain materials that went into its construction. Even if he did so only as a receiver, all the properties of Leo enterprises passed on to him by virtue of the judgment of Civil Case No. 50210. Nemo cum alterius detrimento locupletari potest is embodied in Article 22, 2142 to 2175 of the New Civil Code.
Early as 1903, in *Perez v. Pomar*, Court has ruled that where one has rendered services to another, and these services have been accepted, in the absence of proof that the service was rendered gratuitously, it is but just that he should pay a reasonable renumeration therefor.

**Republic v. Ballocanag (November 28, 2008)**

- **Facts:** Person in good faith invested money to develop and grow fruit-bearing trees on land which he believed to be his own but which turned out to be timberland owned by the State.
- **Held:** SC recognizes State’s ownership of the land but orders it to pay the person of the value of the actual improvements he made.
- **Ratio:** To order Reyes to merely surrender his trees due to the unassailable ownership of the State of the land would result in an unjust enrichment of the State at the expense of Reyes. The requisites for the application of **Article 22** are present in the case. There is enrichment on the part of the state and impoverishment on the part of Reyes as he stands to lose the improvements he has made. There is a lack of valid cause for the State to acquire these improvements as Reyes introduced the improvements in good faith. Such prohibition against unjust enrichment applies to the government as well. In *Republic v. Lacap* (March 2, 2007) where the contractor engaged by the government was found to have an expired license, the court ruled that he must still be given compensation for his rendered services to the full satisfaction and acceptance by petitioner.

**CLASS DISCUSSION**

- **Point to Consider:**
  - Articles does not necessarily follow a commission of a crime. Classic example is a cow.

**Article 23.** Even when an act or event causing damage to another’s property was not due to the fault or negligence of the defendant, the latter shall be liable for indemnity if through the act or event he was benefited.

**POINTS**

- Also seeks to prevent unjust enrichment.
- **Example:** Without ‘A’’s knowledge, a flood drives his cattle to the cultivated highland of ‘B’; the cattle are saved but not B’s crops. Even if A is not at fault, he was still benefitted and hence must indemnify B.

**Article 24.** In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

**POINTS**

- **Court Vigilance**
  - Courts must render justice and, therefore, they must be very vigilant in protecting the rights of the disadvantaged with the end in view that any decision will be in consonance with what is right and legal.
  - **De Lima v. Laguna Tayabas Company**
    - Facts: pauper litigants were the aggrieved parties in a collision case which was pending in the courts for a long time, appealed to the Court of appeals the decision of the lower
courts on some points of the law but not on the interest which they believe must be awarded to them. SC decided to adopt a liberal view and decide on the issue on the said interest anyway.

- **Held:** Heirs to the said judgment must be afforded equitable relief.
- **Ratio:** Heirs of the victim chose not to appeal in the hope that the transportation company would pay the damages awarded by the lower court but, who appealed to the Court of Appeals instead. Step was obviously dilatory and oppressive of the rights of the said claimants. Case has been prolonged for around 30 years and as an exception to the general rule, heirs to the judgment must be given equitable relief. The claim for legal interest and increase in the indemnity should be entertained in spite of the failure of the claimants to appeal the judgment.

- In cases where the parties executed a contract, implemented it for a lengthy period of time pursuant to its unambiguous provision and benefited from the same, SC rejected one party’s claim that they were disadvantaged pursuant to Article 24 because the parties undertook lengthy negotiations before the contract was finalized and that the said party was good in business.

__Points__

**Extravagance during emergency**
- to prevent inconsiderate and ostentatious activities during times of emergency
- specifically provides for the entities which are given legal standing to seek an injunction:
  - any government or
  - private charitable institution

**Class Discussion**

- **Point to Consider:**
  - “Pleasure and display” — someone must see it and be offended.

**Article 26.** Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:
  1. Prying into the privacy of another’s residence
  2. Meddling with or disturbing the private life or family relations of another
  3. Intriguing to cause another to be alienated from his friends
  4. Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

__Points__

**Protection of Human Dignity**

- **Explanation of the 1947 Code Commission to inclusion of Article 26**
  - Sacredness of human personality is a concomitant of every plan for human amelioration.
The touchstone of every system of laws, of the culture and civilization of every country, is how far it dignifies man.

If human personality is not properly exalted – then the laws are indeed defective.

Instances will not be specified:

Privacy of one’s home is an inviolable right yet the laws in force do not effectively protect it.

Acts in No. 2 are multifarious, and yet many are not given due consideration by law:

- Alienation of the affection of another’s wife or husband absent of concubinage or adultery
- Other numerous acts short of criminal unfaithfulness where one party breaks the marital vows and morally hurts the other.
- Meddling of the so-called friends to poison the mind of one or more members of a family against the others

Same nature for acts in no. 3: intriguing to cause another to be alienated from his friends

For Acts 4, the penal laws against defamation and unjust vexation are glaringly inadequate.

- Religious freedom does not authorize anyone to heap obloquy and disrepute upon another by reason of religion.
- Many of the rich treat the poor in contempt because of the latter’s lowly station in life. Although such tendencies might be inevitable, there must be a limit. Due regard for decency and propriety, and not social equality, are what the legal provision seeks.
- Place of birth, physical defect and other personal conditions, are too often the pretext for humiliation cast upon persons. Such cases should be made the cause of civil action.

RCPI v. Verchez (January 31, 2006)

- Fact: family in Sorsogon sent a telegram to another member of a family in Manila asking for money for their ill mother; and where the telegram-company was negligent in failing to send the telegram on time and in not immediately informing the family of the reason for the delay, thereby causing filial disturbance on the part of the family as they blamed each other for failing to respond immediately to the emergency involving their mother.
- Held: SC awarded damages to the families on the basis of Article 26(2) of the Civil Code
- Ratio: the act or omission of the telegraph company disturbed the peace of mind of the family.

CLASS DISCUSSION

Point to Consider:

- Effective only if a complaint is filed.
- Meddling must violate the family home.
- (1) and (2) talk more about family home.
- (3) and (4) is more general

Article 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.

POINTS

Relief against Public Officials

- Public official is supposed to be an agent or at least a representation of the government and, therefore, the law
exacts on him or her an obligation to be very vigilant and just so that the public can be assured that the government is truly effective in servicing their needs.

• A case where the president of a state college, in bad faith and despite the decision and directives of the Office of the Bureau of Public Schools Refused to graduate a student with honors, an award which the student honestly earned and deserved.
  o Held: SC ruled that award of damages in favour of the said student under Article 27 was proper. Defendant was liable for damages in his personal capacity.
  o Ratio: Petitioner had a duty to enforce the Director’s decision and had ample time to do so since he received it April 27, 1966. He moreover, should have had the decency to meet with Mr. Delmo, the father who tried several times to see defendant in his office, and inform him of the decision. He neglected to do these things in bad faith. Even if he could not furnish Miss Delmo a copy of the decision, he should have merely informed her or directed the inclusion of Miss Delmo’s honor in the ceremony. He disobeyed his superior by refusing to give the honors due Miss Delmo, on the grounds that he will be embarrassed, in the prejudice of and complete disregard of Miss Delmo’s rights.

• Vda. De Laig v. Court of Appeals
  o Facts: register of deeds assisted in the fraudulent procurement of a certificate of title in violation of the Land Registration Act (Act No. 496).
  o Held: Register of deeds is liable for damages under Article 27
  o Ratio: His refusal to follow the directive of law was conduct injurious to petitioner. In the same way that a chief of police would be liable for refusing to give assistance to the complainants or a municipal mayor is liable for neglecting to perform his official functions.

• Correa v. CFI of Bulacan
  o Held: Mayor was personally held liable for illegally dismissing policemen even if such mayor had relinquished his position
  o Ratio: Principle of personal liability has been applied to cases where a public officer removes another officer or discharges an employee wrongfully, the reported cases saying that by reason of non-compliance with the requirements of law in respect to removal from office, the officials were acting outside of their official authority.

CLASS DISCUSSION

• Point to Consider:
  o In Criminal Law, there is a related violation: dereliction of duty. By this article however, it is possible to file a civil case distinctly apart from such a criminal action.
  o In a corporate setting:
    Public servant = a managerial position
    Public employee = rank and file class
    Intention of making a distinction is to cover everybody within government.
  o Important factor here is the phrase “without just cause.” Liability depends on the case.

Article 28. Unfair competition in agricultural, commercial or industrial enterprises, or in labor, through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.

POINTS

Unfair Competition

• Justification by the 1947 Civil Code commission:
It is necessary in a system of free enterprise. Democracy becomes a veritable mockery if any person or group of persons by any unjust or highhanded method may deprive others of a fair chance to engage in business or earn a living.

Article 29. When the accused in 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.

POINTS

Civil Action

- Proof beyond Reasonable Doubt – amount of proof which forms an abiding moral certainty that the accused committed the crime charged. Not absolute certainty, but such degree of proof is more exacting than what is needed in a civil case, which is:
- Preponderance of Evidence as a whole, evidence adduced by one side outweighs that of the adverse party.
- If the guilt of the accused is not proven beyond reasonable doubt, a civil action to prove the civil liability can still be filed where only preponderance of evidence is needed. If the guilt is not proven beyond reasonable doubt, it must be expressly stated in the criminal decision. Otherwise, it can be inferred from the decision.

Case where accused was acquitted of estafa after a civil case was filed against the accused arising from the same transaction for purposes of civil liability.
- Held: SC overruled the decision of the trial court dismissing the civil complaint
- Ratio: Nowhere in the decision rendered in Criminal Case No. 3219 of the Court of First Instance in Nueva Ecija is found an express declaration that the fact from which the civil action might arise did not exist. Decision contains no express declaration that acquittal is beyond reasonable doubt. As such, it may be inferred from the test of the decision, and a close consideration of the language used in said decision, particularly the findings above, which are of similar import as the phrase, “that the guilt of the defendant has not been satisfactorily established.” Such phrase was held to be equivalent to a declaration that the acquittal was based on reasonable doubt from Philippine National Bank v. Catipan where court held that the acquittal of the accused of the charge of estafa predicated on the conclusion “that the guilt of the defendant has not been satisfactorily established,” is equivalent to one on reasonable doubt and does not preclude a suit to enforce the civil liability for the same act or omission under Article 29 of the new Civil Code. Likewise in, Republic of the Philippines v. Asaad, that judgment of acquittal does not constitute a bar to a subsequent civil action involving the same subject matter, even in regard to a civil action brought against the defendant by the State, nor is it evidence of his
innocence in such action, and is not admissible in evidence to prove that he was not guilty of the crime with which he was charged. The declaration in the decision in Criminal Case No. 3219 to the effect that “any obligation which the defendant may have incurred in favour of Gaudencio T. Mendoza is purely civil in character, and not criminal,” amounts to a reservation of the civil action in favour of the offended party. Hence it falls under the exception to the general rule, where it can be filed independently of the criminal action.

CLASS DISCUSSION

• Case discussed: People of the Philippines vs. Heinrich Ritter (G.R. 88582) – Gutierrez, Jr., J.
  o Facts: Ritter, a visiting Austrian, brought 2 streetchildren, one boy and one girl, to his hotel room on Oct. 10, 1986. There he fondled the boy, Jessie Ramirez, and had intercourse with the girl, Rosario Baluyot. In the morning, he paid both children and left. Rosario told Jessie that Ritter placed a foreign object inside her vaginal canal. The next day she claimed it was gone but soon after, she complained of great pain in her abdominal region. This allegedly continued till on May 14, 1987 when she was found by a Gaspar Alcantara who took pity on her and brought her to a hospital. After several examinations, it was found that her organs were inflamed and infected because of a foreign object that was lodged far up her vaginal canal. She was operated on and the object was removed, but she later died due to cardio-respiratory arrest secondary to her already existing condition.
  o Case: Appellant challenges his conviction of the crime involving a young girl of about 12 years old who had been allegedly raped and who later died because of a foreign object left inside her vaginal canal.
  o Issue: whether or not to uphold trial court’s conviction of the accused.
  o Held: Appealed judgment is reversed and set aside. Ritter is acquitted on grounds of reasonable doubt. Appellant is ordered to pay P30,000.00 by way of moral and exemplary damages to the heirs of Rosario Baluyot. Commission of Immigration and Deportation is directed to institute proper deportation proceedings against the appellant and to immediately expel him thereafter with prejudice to re-entry into the country.
  o Ratio: Reasonable doubt was due to the inadequacy of the prosecution to prove that (1) deceased was less than 12 years old at the time of the alleged rape; (2) no proof that any force, intimidation, or deprivation of reason occurred during the intercourse, in fact it appeared to be with consent; Moreover, (3) Ramirez testimony regarding Ritter being the actual person who placed the vibrator inside Rosario is hearsay and contradictory; (4) It was improbable according to expert medical testimony for such affliction, as experienced by Rosario, to arise months later the said exposure to foreign object; (5) gynecologist who attended to Rosario testified that Rosario claimed that a Negro was the one who placed the thing inside her, which Ritter is not. Accused is also saved by the constitutional right that he is presumed innocent until proven otherwise and since guilt beyond reasonable doubt was not proven, he must be acquitted. However, pursuant to Article 29 and Article 21 of the Civil Code, he is liable for the damages towards the deceased’s family caused by his exploitation of her. Such an evil cannot be overlooked,
and in the absence of criminal laws that protect streetchildren from such abuse, action must be taken against offenders like Ritter.

- Point to Consider:
  - When you file a criminal case, civil liability is always attached to it.
  - A civil action is allowed despite such condition due to the difference in the standards regarding evidence:
    - Criminal: Proof beyond reasonable doubt.
    - Civil: Preponderance of evidence.

**Article 30.** When a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of.

**POINTS**

**Civil Obligation arising from a Criminal Offense**

- Even if the civil obligation arose from a criminal offense, the required quantum of evidence in a civil suit to claim such civil obligation is not proof beyond reasonable doubt but merely preponderance of evidence.

**CLASS DISCUSSION**

- Point to Consider:
  - Article 30 is related to 35, regarding the absence of criminal proceedings. In such a situation, aggrieved/injured party only opts for a civil action for the time being despite act itself being criminal.

**Article 31.** When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.

- Does not provide for an independent civil action. An independent civil action is an action that is based upon the same criminal act as in the case of Articles 32, 33, and 34.
- Example: A is prosecuted for the crime of reckless imprudence resulting in homicide. The heirs of the deceased institute a civil action for damages against him based upon quasi-delict under Article 2177, which is separate and distinct from criminal negligence punished as a crime or delict under the RPC.
- Code Commission Chairman Bocobo, took the distinction from modern authorities in civil law. The distinction is explained when we consider the exact nature of criminal and civil negligence.
  - Criminal – violation of the criminal law
  - Civil – distinct and independent negligence which is culpa aquiliana or quasi delict, having always had its own foundation and individuality, separate from criminal negligence.
o Such distinction between criminal negligence and ‘culpa extra-contractual’ or ‘quasi-delito’ has been sustained by decisions of the SC of Spain and maintained as clear, sound, and perfectly tenable by Maura, an outstanding Spanish jurist.

• Article 31 also applies to *culpa contractual*.

  o In a case where due to reckless imprudence of the driver of a bus company, the bus being driven fell off a deep precipice resulting in the death of and injuries to certain passengers and where the driver later acquitted in the criminal case for double homicide thru reckless imprudence on the ground that his guild was not proven beyond reasonable doubt. The civil case against the bus company for failure of the said company to carry passengers safely to their destination was upheld by the SC even if the driver was acquitted in the criminal case.

  o This provision evidently refers to a civil action based, not on the act or omission complained of as felony, but on a law or contract; such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter. Although it is clear that a civil action based on contractual liability of a common carrier is distinct from criminal action instituted based on criminal negligence. This first is governed by Civil Code, and not those of Revised Penal Code, and it being entirely separate and distinct from criminal action, the same may be instituted and prosecuted independently of, and regardless of the result of the latter.

**CLASS DISCUSSION**

• Point to Consider:

  o “When you buy a ticket from a transportation company, it is a silent agreement that the company will get you to the agreed upon destination safely (*culpa contractual* liability).

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

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

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

Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and mat 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.

POINTS

Particular Wrong or Injury

- Liwayway Vinzons Chato v. Fortune Tobacco Corporation: the Supreme Court had occasion to discuss the applicability of article 32 in relation to public officers.
- There are two kinds of duties by public officers: the “duty owing to the public collectively” and the “duty owing to particular individuals.”

- Of duties to the public – the first of these classes embraces those officers whose duty is owing primarily to the public collectively – to the body politic – and not to any particular individual; who act for the public at large, and who are ordinarily paid out of the public treasury. The officers whose duties fall wholly or partially within this class are numerous and the distinction will be readily recognized.
- Of duties to Individuals – the second class above referred to includes those who, while they owe to the public the general duty of a proper administration of their respective offices, yet become, by reason of their employment by a particular individual to do some act for him in an official capacity under a special and particular obligation to him as an individual. They serve individuals chiefly and usually receive their compensation from fees paid by each individual who employs them.
- The exception to this rule occurs when the complaining individual suffers a particular or special injury on account of the public officer’s improper performance or non-performance of his public duty.

Separate Civil Action for Violation of Constitutional Rights

- The creation of an absolutely separate and independent civil action for the violation of civil liberties is essential to the effective maintenance of democracy for these reasons:
  - (1) In most cases, the threat to freedom originates from abuses of power of government officials and peace officers. Heretofore, the citizen had to depend upon the prosecution attorney for the institution of criminal proceedings, in order that the wrongful act might be punished under the Penal Code and the civil liability exacted.
  - (2) Even when the prosecuting attorney filed a criminal action, the requirement of proof beyond reasonable doubt often prevented the appropriate punishment. On the other hand, an independent civil action, as proposed in the
Project of Civil Code, would afford the proper remedy by preponderance of evidence.

- (3) Direct and open violation of the Penal Code trampling upon the freedoms named are not so frequent as those subtle, clever, and indirect ways which do not come within the pale of the penal law.

- **Aberca v. Ver (160 SCRA 590)**
  - Issue: Whether the military raiding team were liable for damages, in undertaking said raid, employed using defectively issued search warrants.
  - Held: The plaintiffs have a cause of action against the defendants (raiding team) on the basis of Article 32 of the Civil Code.
  - Ratio: The Supreme Court said that the codal provision is to provide a sanction to the deeply cherished rights and freedoms enshrined in the Constitution. Its message is clear: no man may seek to violate these sacred rights with impunity. In the language of Article 32, the law speaks of an officer or employee or person directly or indirectly and responsible of the violation of the constitutional rights and liberties of another. Thus it is not the actor alone, who must answer for damages under article 32, the person indirectly responsible (raiding team) has also to answer for the damages or injury caused to the aggrieved party.

### Good Faith not a Defense

- Issue: Whether the fiscal who order the impounding of a motor launch without a valid search warrant and where a detachment commander of the province faced with a possible disciplinary action hesistantly seized the motor launch, as ordered by the fiscal is acting in good faith and without malice.
- Held: The Supreme Court rejected the good faith defense of the fiscal.
- Ratio: To be liable under article 32 of the NCC, it is enough that there was a violation of the constitutional rights of the plaintiffs and it is not required that defendants should have acted with malice or bad faith. The very nature of Article 32 is that the wrong may be civil or criminal.

### Judges

- The last sentence of article 32 provides: “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 statutes.
- **Esguerra v. Gonzales-Asdala, the Supreme Court held that:** Judges cannot be subjected to liability – civil, criminal, or administrative – for any of their official acts, no matter how erroneous, so long as they act in good faith. It is only when they act fraudulently or corruptly, or with gross ignorance, may they be held criminally or administratively responsible.
- In **Ang v. Quilala the Supreme Court held that:** Judges are not liable to respond in a civil action for damages and are not otherwise administratively responsible for what they may do in the exercise of their judicial functions when acting within their legal powers and jurisdiction.

### CLASS DISCUSSION

- Point to Consider:
  - Important point: also affects private individuals.
  - Judges are excluded because it would make him vulnerable to the whims and caprice of the accused or the relevant parties. It would also make all of his errors actionable.
  - The exception to the exception: judge **knowingly** renders and unjust judgment. The liability comes from the fact that in doing something criminal, it could lead to damages.
Article 33. In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

**POINTS**

**Rationale**
- Code Commission: the underlying purpose of the principles under consideration is to allow the citizen to enforce his rights in a private action brought by him, regardless of the action of the State attorney. It is not conducive to civic spirit and to individual self-reliance and initiative to habituate the citizens to depend upon government for the vindication of their own private rights.

**Defamation, Fraud, and Physical Injuries**
- The terms fraud, defamation, and physical injuries must be understood in their ordinary sense. Hence fraud can include estafa; defamation can include libel. Physical injuries can include death or the crime of homicide. (Dyogi v. Yatco) But it cannot include reckless imprudence resulting in homicide (Marcia v. Court of Appeals).

**POINTS**

**Members of the Police Force**
- It is the duty of police officers to see to it that peace and order are maintained in the community. Hence should a citizen go to them to seek assistance, their failure or refusal to render the needed assistance to maintain lawful order can be a basis for claiming damages against them. The city or municipality shall be subsidiarily responsible therefor.

Article 35. When a person, claiming to be injured by a criminal offense, charges another with the same, for which no independent civil action is granted in this Code or any special law, but the justice of the peace finds no reasonable grounds to believe that a crime has been committed, or the prosecuting attorney refuses or fails to institute criminal proceedings, the complaint 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.

**POINTS**

**RESERVATION OF CIVIL ACTIONS**
- See full text in book, p. 68-71

Article 36. Pre-judicial questions which must be decided before any criminal prosecution maybe 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.
**POINTS**

**PRECEDENCE**
- The general rule is that where both civil and a criminal case arising from the same facts are filed in court, the criminal case takes precedence.
- An exception to this general rule would be if there exist prejudicial questions which should be resolved first before action could be taken in a criminal case and when the law provides that both civil and criminal case can be instituted simultaneously such as that provided under article 33 of the NCC. (Benitez v. Concepcion)

**PREJUDICIAL QUESTION**
- A prejudicial question is one that arises in a case, the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal.
- In prejudicial question matters, there are always two cases involved, a civil and a criminal one.
- The criminal is always suspended because the issue in the civil is determinative of the outcome of the criminal case.
- **Elements of Pre-Judicial question:**
  1. The previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action
  2. The resolution of such issue determines whether or not the criminal action may proceed.
- **Jimenez v. Averia**
  1. Issue: Whether the criminal case (estafa) should be suspended that the issues of the civil case posed a pre-judicial question
  2. Held: There is no pre-judicial question
  3. Ratio: The alleged pre-judicial question is not determinative of the guilt or innocence of the parties charged with estafa.
- **Landicho v. Relova**
- Issue: whether a spouse criminally charged with bigamy followed by another civil case of annulment of marriage constitutes a pre-judicial question
- Held: There is no pre-judicial question
- Ratio: The civil suit does not constitute a pre-judicial question because prior to the annulment of marriage the same cannot be considered as without effect and there shall be presumed to be validly existing.
Article 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person, and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.

POINTS

Juridical Capacity and Capacity to Act

• Juridical capacity – acquired upon birth of a person and terminated only upon death. In some cases, even the unborn inside a mother’s womb is given a provisional personality and entitled to be supported or to receive donation. (Arts. 40, 41, 742, 854),
• Capacity to act is not inherent in a person, only attained or conferred.

CLASS DISCUSSION

Points to Consider

• Opposite of a natural person is a juridical person.
  o Natural persons have juridical capacity inherent in them by mere fact of existing.
  o Juridical person are given legal personality by law.
• Difference between Juridical Capacity and capacity to act
  o Juridical capacity is not a right but a capacity. When you are born, father has capacity to act to donate. I am the subject of the donation. Subject of a juridical act which produces an effect; that is my juridical capacity.

Questions to Ponder on

• Does an unborn child have juridical capacity? If pregnant parents starve themselves, who will sue them to eat more?

Article 38. Minority, insanity or imbecility, the state of being deaf-mute, prodigality and civil interdiction are mere restrictions on the 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.

Article 39. The following circumstances, among others, modify or limit capacity to act: age, insanity, imbecility, the state of being 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, 21 years of age or over, is qualified for all acts of civil life, except in cases specified by law.

POINTS

Significance

• Article 38: Restricts the capacity to act.
• Article 39: broader in scope, but enumerates situations which merely modify the capacity to act.
• Objective of both: Make an overview of the situation that qualifies a person’s power to undertake acts which can produce legal effects.
• Consequences of these restrictions and modifications in a person’s capacity to act are provided by the Civil Code itself, other codes, special laws and the Rules of Court.
Chapter 2 – NATURAL PERSONS

**Article 40.** Birth determines personality; but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born later with the conditions specified in the following article.

**Article 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 7 months, it is not deemed born if it dies within 24 hours after its complete delivery from the maternal womb.

**POINTS**

**Commencement of Civil Personality**

- Article 40 amended by Article 5 of P.D. No. 603 or the “Child and Youth Welfare Code.” It now reads:

  *The civil personality of the child shall commence from the time of his conception for all purposes favourable to him, subject to the requirements of Article 41 of the Civil Code.*

- **Quimiguing v. Icao** on the concept of civil personality and Article 41:

  - Facts: Carmen Quimiguing was repeatedly forced to have intercourse with the married Felix Icao and as a result she became pregnant and had to stop studying. She claimed support of P120.00 per month, damages and attorney’s fees. Trial judge dismissed petition for lack of cause of action since complaint did not allege that a child was born. Plaintiff’s move to amend complaint to add mention to a baby girl was not allowed. Hence, complainant appealed directly here.

  - Held: lower court’s decisions are untenable.

- Ratio: Based on Article 40 of the Civil Code, a conceived child, although unborn, is given a provisional personality for all purposes favourable to it and has a right to support from its progenitors. Even as unborn, it may receive donations. As likewise prescribed in Article 742. Being ignored by the defendant-appellee may result in pretorition of a forced heir that annuls the institution of the testamentary heir even if such child should be born after the death of the testator as provided in Article 854 of the Civil Code. Thus clear that lower Court’s theory that Article 291 declaring that “support is an obligation of parents and illegitimate children” does not contemplate “support to children as yet unborn,” violates Article 40 besides imposing a condition that nowhere appears in the text of Article 291.

- Proviso of Article 40 (provided it be born later with the conditions specified in the following article), is not a condition precedent to the right of the conceived child; else, the first part of the Article would be useless and ineffective.

- In inheritance and succession: Article 1025 provides that “a child already conceived at the time of the death of the decedent is capable of succeeding, provided that it be born later under the conditions prescribed in Article 41.

- **Geluz v. Court of Appeals**

- Held: a parent can’t invoke “provisional personality” of a conceived child to obtain damages for and on behalf of an aborted child considering that Arts. 40 and 41 were not met. BUT the parents can obtain damages in their own right against the doctor who caused the abortion on account of distress and anguish attendant to its loss and disappointment of their parental expectation. Although parents must be shown not to have given consent.

**Birth Certificate**
Persons and Family Relations Law

Professor Amparita Sta. Maria

- Best evidence of the fact of birth. Once registered with the office of the local civil registrar, it becomes a public document. Entries are only ‘prima facie’ evidence of the facts contained therein, may be rebutted by competent evidence as is pertinently provided by Sec. 4 of the Civil Registry Law Act No. 3753

Confidentiality of Birth Records
- Mere filing of such with the Office of the Local Civil Registrar is not a constructive notice to all persons of such documents or the facts therein because these are confidential by law and should remain private. But they still maintain their nature as public documents, because, following the proper legal procedure, they can be obtained by those interested therein.

- Article 7 of P.D. No. 603, as amended, provides that birth records are strictly confidential, and the contents can’t be revealed except upon request of any of the ff:
  - Person himself, or any person authorized by him
  - His spouse, parent/s, his direct descendants, orguardian or institution legally in charge of him if he is a minor
  - The court or proper public official whenever needed in administrative, judicial or other official proceedings to determine the identity of the child’s parents or other circumstances surrounding his birth
  - In case of person’s death, the nearest of kin.

**Article 42. Civil Personality is extinguished by death. The effect upon the rights and obligations of the deceased is determined by law, by contract and by will.**

**POINTS**

Death
- It puts an end to civil personality. So in a case where testator owned one-sixth of a certain property and died, leaving it to his heirs, his heirs had rights of redemption of said property when it was sold not by virtue of being heirs but their personal rights as co-owners of the whole property.

Death Certificate
- The office of the local civil registrar of a municipality or a city must also have in its custody the death certificate of the persons who died in its locality as is provided by Sec. 6 of the Civil Registry Law (Act No. 3753): “No human body shall be buried unless the proper death certificate has been presented and recorded in the office of the local civil registrar.” And that those who attended the deceased must “report the [death] to the local health authorities.” “During epidemics, bodies may be buried, provided the proper death certificates have been secured, which shall be registered not later than five days after the burial of the body.

Contracts, Will and the Law
- The rights and obligations of a dead person can still be regulated by contract, will or the law. Hence creditors can still claim from the estate of the deceased any obligation due to them before it is passed unto heirs. Testator, through an express provision in a will, can disinherit any of his heirs under any valid grounds provided by law.
- Any person showing disrespect to the dead, or wrongfully interferes with a funeral, shall be liable to the family of the deceased for damages, material and moral (Article 309 of the Civil Code)

**Article 43. If there is doubt, as between 2 or more persons who are called to succeed each other, as to which of them died first, whoever alleges the death of one prior to the other, shall prove the same; 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.**
Proof of Death

• Article 43 applies only to person who are called to succeed each other. Proof of death must be established by positive evidence or circumstantial evidence derived from facts. It cannot be established from mere inference arising from another inference or from presumptions and assumptions.
  o In Juaquin v. Navarro
    ▪ Facts: Mother and her son died during a massacre in the war.
    ▪ Held: Son died before the mother
    ▪ Ratio: Speculation that it is the other way around is plausible but must give way to the more rational deduction from proven facts that the son died before the mother. The son, Joaquin Navarro, Jr. was killed running in front of, and 15 meters from, the German Club. At his prime, he would’ve covered such distance in five seconds or less and must have died within such interval. When the son, together with his father and wife, fled from the building, the mother was alive inside as she would not go and even tried to dissuade them from leaving. She most likely died from the collapse of the building that according to the witness’ testimony, occurred 40 minutes after his son left the building and was shot, and not of the other causes speculated by the CA. Presumption that the mother, Angela Joaquin de Navarro, died before her son is based purely on surmises, speculations, and conjectures. Gauged by the doctrine of preponderance of evidence by which civil cases are decided, this inference ought to prevail.

Chapter 3 – Juridical Persons

Article 44. The following are juridical persons:
(1) The state and its political subdivisions
(2) Other corporations, institutions and entities for public interest or purpose, created by law, their personality begins as soon as they have been constituted according to law
(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

Article 45. Juridical persons mentioned in Nos. 1 and 2 of the preceding article are governed by the laws creating or organizing 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)

Article 46. Juridical persons may acquire and possess property of all kinds, as well as incur obligations and bring civil or criminal actions, in conformity with the laws and regulations of the organization.

POI N TS

Juridical Person
• A being of legal existence susceptible of rights and obligations, or of being the subject of juridical relations.

State
• State and its political subdivision are juridical persons. State is a sovereign person with the people composing it viewed as an organized corporate society under a government with the legal competence to exact obedience of its commands.
• As a juridical person, a state can enter into treaties and contracts, the Civil Code also provides that in the default of persons entitled to succeed to the estate of a deceased person, the State shall inherit his whole estate (Article 1011).

• As a fundamental rule (Article XVI, Sec. 2 of the Constitution), the State cannot be sued without its express consent by laws. However, consent is implied when the government enters into business contracts. Also, when the state files a complaint, it opens itself to counter claim.
  
  o Distinction between suability and liability:
    ▪ Suability: depends on the consent of the state to be sued
    ▪ Liability: depends on the applicable law and the established facts.

    Even if a state is suable, does not mean it is liable. It can’t be liable if it does not consent to be sued.

    When the state waives it sovereign immunity, it only gives plaintiff the chance to prove that the defendant is liable.

• Philrock v. Board of Liquidators
  
  o Held: even when the government has been adjudged liable in a suit to which it has consented, it does not necessarily follow that the judgment can be enforced by execution against its funds for, as held in Republic v. Villasor, every disbursement of public funds must be appropriated by legislation. The State “may limit claimant’s action only up to the completion of proceedings anterior to the state of execution and that the powers of the Courts end when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments.”

• Political subdivisions
  
Comprise of: municipal corporations, provinces, cities and municipalities.

• Municipal corporations exist in dual capacity and have two-fold functions. In one, they exercise the right springing from sovereignty, and their official acts and duties are political and governmental, which is extended to their officers and agents who act as officers, agents and servants of the state. However, they exercise private, proprietary or corporate right, arising from their existence as legal persons, and not as public agencies; in such a manner, the agents and officers in performance of such functions act in behalf of the municipalities in their corporate or individual capacity, and not for the state of sovereign power.

  o Thus, in a case where a municipality was sought to be held liable for the damages caused by its employee (a driver), the SC exonerated the municipality because the employee was undertaking governmental activities, and “should enjoy the sovereign immunity from suit.” Nevertheless, because their charter provides that then can be sue and be sued, they are subject to suit even in the performance of such function.
    ▪ Held: death of the passenger imposes no duty on the municipality to pay monetary compensation.
    ▪ Ratio: It must also be determined in the test of liability whether or not the driver, acting on behalf of the municipality is performing governmental or proprietary functions. In Torio v. Fontanilla, it was established that such a distinction must be made to determine liability of the municipality for the acts of its agents which result in an injury to third persons. Municipalities are generally not liable for torts committed by them in the discharge of governmental functions and can be held.

\[\text{\(\because\)}\]
answerable only if it can be shown that they were acting in a proprietary capacity. Failing to prove this, the claimant cannot recover. In the current case, the driver was on his way to Naguilian river to get a load of sand and gravel for the repair of San Fernando’s municipal streets; such performance is found pursuant to Sec. 3(m) of Rule 131 of the Revised Rules of Court and is found to be an official duty or task pertaining to the office of the driver. This is in line with the ruling on Palafox, et al. v. Province of Ilocos Norte, the District Engineer, and the Provincial Treasurer that “the construction or maintenance of roads in which the truck and the driver worked at the time of the accident are admittedly governmental activities.”

Corporation
• Public corporations (government) are governed by B.P. Blg. 68, a.k.a. Corporation Code of the Philippines (effective May 1, 1980). Partnerships and associations for private interest are governed by Title IX of the Civil Code.
• Corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incident to its existence (Sec. 2 B.P. Blg. 68).

Partnership
• 2 or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves. They may also form a partnership for the exercise of a profession (Article 1767 of the Civil Code).

Distinct Personality and Exceptions
• Corporations, partnerships and associations for private interest and purpose may be granted by law ajuridical personality, separate and distinct from that of each shareholder, partner or member. Hence, obligation of a corporation is not obligation of stockholder, and vice versa.
  o Saw v. Court of Appeals
    ▪ Facts: shareholders sought to intervene in a case involving their corporation.
    ▪ Held: Shareholders had no personality to intervene in a litigation which involved corporate liability because the shareholders’ interest in the corporation was merely inchoate.
    ▪ Ratio: Interest of petitioners-movants is indirect, contingent, remote, etc... at the very least, it is purely inchoate, or in a sheer expectancy of a right in the management of the corporation and to share in the profits thereof and in the properties and assets thereof on dissolution, after payment of the corporate debts and obligations. Share of stock vests no legal right or title to any of the property since such interest is equitable or beneficial in nature. Shareholders are not the legal owner of corporate property which is owned by the corporation as a legal entity.
  o Cease, et al. v. Court of Appeals, SC summarized a rule on disregarding or piercing the veil of corporate fiction and making liable the shareholders in the liability of a corporation.
    ▪ Held: Rich store of jurisprudence established the doctrine of disregarding or piercing the veil of corporate fiction. By virtue of a corporation’s separate personality, it generally may not be held to answer for acts or liabilities of its
stockholders. And vice versa. However, this separate and distinct personality is merely a fiction created by law for convenience and to promote the ends of justice. So it may not be used or invoked for ends subversive of the policy and purpose behind its creation or which couldn’t be intended by law in its creation. Particularly, in cases where such fiction is used to:

- defeat public convenience,
- justify wrong,
- protect fraud,
- defend crime,
- confuse legitimate legal or juridical issues, and
- perpetrate deception or otherwise circumvent the law.

And where the corporate entity is being used as an alter ego, adjunct or business conduit for the sole benefit of the stockholders or of another corporate entity.

In all such cases, the doctrine will be applied and the corporation will be treated as an association of persons. In cases of two corporations, they will be merged as one, the other being regarded as a part or instrumentality of the other.

**POINTS**

**Dissolution**

- Dissolution of a private corporation is governed by **Title IV of the Corporation Code**.
- Corporations for public interest or purposes created by a charter, it is governed in accordance with the provisions of their respective charters. In the absence of which, it shall fall to the provisions in the Corporation Code.
- Partnerships’ dissolution is by **Title IX, Chapter 3 of the Civil Code**

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**Article 47.** Upon the dissolution of corporations, institutions and other entities for public interest or purpose mentioned in No. 2 of Art 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.
Article 48. The following are citizens of the Philippines
(1) Those who were citizens of the Philippines at the time of the adoption of the Constitution of the Philippines
(2) Those born in the Philippines of foreign parents who, before the adoption of said Constitution, had been elected to public office in the Philippines
(3) Those whose fathers are citizens of the Philippines
(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship
(5) Those who are naturalized in accordance with law.

POINTS

Citizenship
• Article IV of the 1987 Constitution governs the rule on citizenship:
  o Section 1 The following are citizens of the Philippines:
    (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution
    (2) Those whose father and mothers are citizens of the Philippines
    (3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
    (4) Those who are naturalized in accordance with law.
  o Section 2 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.
  o Section 3 Philippine citizenship may be lost or reacquired in the manner provided by law
  o Section 4 Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it.
  o Section 5 Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.

Jus Sanguinis
• Philippine Constitution highlights in Sec. 1 (2) that in this jurisdiction, jus sanguinis as opposed to jus soli is followed. The former refers to citizenship by blood, and the latter is citizenship on the basis of place of birth.

Article 49. Naturalization and the loss and reacquisition of citizenship of the Philippines are governed by special laws.

POINTS

Acquisition of Citizenship
• Law that governs this matter is Commonwealth Act No. 473, as amended. What it provides is that for a foreigner to become a Philippine citizen, a proper petition is filed in the proper court, which, after due hearing, shall issue the certificate of naturalization.
Qualifications as given by Sec. 2 of C.A. No. 473
(1) First, Not be less than 21 on day of hearing of petition
(2) Second, Must have resided in Philippines for a continuous period of not less than 10 years
(3) Third, of good moral character and believes in the principles underlying the Constitution. Proper conduct and irreproachable manner during residence in the Philippines
in his relation with the constituted government as well as with the community in which he’s living;

(4) *Fourth*, Must own real estate in Philippines worth not less than P5,000.00, Philippine currency, or must have some known lucrative trade, professions or lawful occupation.

(under present constitution, no alien may own land except through hereditary succession, **Article 12, Sec. 7 of the Constitution**)

(5) *Fifth*, Able to speak and write in English or Spanish and any one of the principal Philippine languages

(6) *Sixth*, Must have enrolled his minor children of school age, in any public or private school 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.

Special Qualifications as given by **Sec. 3** where 10 years continuous residence may be reduced to 5 years if he has any of the following qualifications:

(1) Honorably held office under the Government in any of its political subdivisions

(2) Established a new industry or introduced a useful invention in the Philippines

(3) Being married to a Filipino woman

(4) Engaged as a teacher in Philippines in a public or recognized private school not established for 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 2 years

(5) Born in the Philippines

Who are disqualified of Naturalization as given by **Section 4**

(a) Opposed to organized govt or affiliated with any association who uphold or teach doctrines opposing all organized governments

(b) Defend or teach the necessity or propriety of violence, personal assault, or assassination for the success and predominance of their ideas

(c) Polygamists or believers in practice of polygamy

(d) Convicted of crimes involving moral turpitude

(e) Suffering from mental alienation or incurable contagious diseases

(f) During residence, has not mingled socially with Filipinos, or who have not evinced a sincere desire to learn and embrace all customs, traditions, and ideals of Filipinos

(g) Citizens of nations with whom (the US and) the Philippines are at war, during the period of war

(h) Citizens of foreign country (other than US), whose laws do not grant Filipinos the right to become naturalized citizens or subject thereof.

**Loss and Reacquisition of Citizenship**

- Governed by C.A. No. 63 as amended by R.A. No. 106.
- Grounds for the loss of citizenship:
  1. Naturalization in foreign country
  2. Express renunciation of citizenship
  3. Oath of allegiance to support constitution of a foreign country upon being 21 years old. *Provided*, however, that a Filipino may not divest himself of Philippine citizenship in any manner while RP is at war with any country
  4. Render service, or accept commission in the armed forces of a foreign country. *Provided*, such action 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. RP has a defensive and/or offensive pact of alliance with foreign country

b. Said foreign country maintains armed forces on Philippine territory with consent of RP. Provided, that the concerned Filipino citizen 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 commission in, the armed forces of a foreign country under any of the circumstances in par (a) and (b), shall not be permitted to participate or vote in any election of RP during period of service or commission in the armed forces of said country. Upon discharge, he shall automatically be entitled to the full enjoyment of his civil and political rights as a Filipino citizen.

5. cancellation of certificate of naturalization

6. declared by competent authority a deserter of Philippine armed forces in time of war, unless plenary pardon or amnesty granted

7. in case of a woman, upon her marriage to a foreigner if by virtue of laws in force in her husband’s country, she acquires his nationality.

- Grounds for reacquisition of Citizenship
  1. By naturalization. Provided, he doesn’t have any of the disqualifications prescribed.
  2. Repatriation of deserters of army, navy or air corps. Provided, woman who lost her citizenship by reason of marriage with alien, be repatriated in accordance with the provisions of C.A. No. 63, as amended, after termination of marital status
  3. By direct act of the Congress of the Philippines

**Article 51.** When the law creating or recognizing them, or any other provision does not fix the domicile of juridical persons, the same shall be understood to be the place where their legal representation is established or where they exercise their principal functions.

**POINTS**

**Domicile**

- Domicile denotes a fixed permanent residence to which, when absent, one has the intention of returning for an unlimited time.
  - Residence used to indicate a place of abode, whether permanent or temporary. No length of residence, even as a registered voter, without intention to remain will constitute domicile.
  - One may have many residences in other places, but only one domicile.

- A minor follows the domicile of his parents. Domicile of origin can only be lost and a change of domicile occurs when the following requisites are present:
  - An actual removal or an actual change of domicile
  - A bona fide intention of abandoning the former place of residence establishing a new one
  - Acts which correspond with the purpose.

- Under the Family Code, the husband and wife shall fix the family domicile. In case of disagreement, the Court shall decide (Article 69 of the Family Code).

**Article 50.** For the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is the place of their habitual residence.
THE FAMILY CODE OF THE PHILIPPINES

Executive Order No. 209

- July 6, 1987 – President Aquino signed E.O. No. 209 (Family Code of the Philippines) into law. Reason and objective is set out in its whereas clauses:
  - Whereas, ... “experience under said [Civil Code] as well as pervasive changes and developments have necessitated revision of its provisions on marriage and family relations to bring them closer to Filipino customs, values and ideals and reflect contemporary trends and conditions;”
  - Whereas, ... “there is a need to implement policies now embodied in the new Constitution that strengthen marriage and the family as basic social institutions and ensure quality between men and women.”
  - Committee which drafted the Family Code include: Justice Jose Reyes, Justice Eduardo Caguioa and Justice Ricardo Puno; all well-renowned civilists.
  - E.O. No. 277 further amended Arts. 26, 36, and 39 of this executive order.
- October 20, 1989 – R.A. 6809 was passed by Congress and approved by President Aquino
- December 18, 1989 – R.A. 6809 took effect, it amended Title X of the Family Code dealing with emancipation and the age of majority.

Title 1. – MARRIAGE
Chapter 1 – REQUISITES OF MARRIAGE

Article 1. Marriage is a special contract of permanent union between a man and a woman entered into in accordance with the 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 the code.

POINTS

Nature and Importance of Marriage

- Contract of marriage: man and woman enter a joint life acting, living and working as one. Whether under common law or under the civil law, upon marriage, the couple become one single moral, spiritual and social being, not only for procreation but also for mutual help and protection physically, morally and materially.
- Marriage is one of the “basic civil rights of man,” fundamental to our very existence and survival.
- The freedom to marry has been recognized as a vital personal right towards the pursuit of man’s happiness.
- Despite being a sacred obligation, it is still considered as a special civil contract regulated by law due to the high state interest in protecting and safeguarding the family.
- A contract to marry, unlike other contracts, cannot be modified or changed. Once it is executed a relation is formed between the parties that cannot be altered. The law steps in to hold or bind the parties together. It is more like the social relation between parent and child, the obligations of which don’t arise from agreement and consensus, but are the creation of the law itself.
• It is an institution in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family, and of society. The marital relation, unlike ordinary contractual relations, is regarded by the laws as the basis of the social organization. The Preservation of that relation is deemed essential to public welfare.
  o Case: the petitioner filed for annulment on the ground that he never had intention to marry the respondent because his main consideration was to give a name to the child in respondent’s womb which however was never born, and therefore clearly proving a failure of consideration of the marriage contract warranting the annulment of the same.
    ▪ Held: Such an annulment cannot be granted on such a ground.
    ▪ Ratio: Not only because such grounds are not among those provided in the marriage laws of that state but also because the policy of the law clearly was against such an annulment considering that a marriage is not at most a civil contract but it is at least a civil contract, with status and a kind of fealty to the State as well. Not possible to have a marriage for one purpose and no marriage at all for other purposes.
      “There is no authority permitting two persons to split up the incidents and obligations of marriage to suit themselves in this way, nor any, even in civil law, which permits two people to enter into a contract for the “ostensible” purpose of affecting the rights of a child and having done so to recede from it at pleasure and without recourse. The fact is they intended the marriage to be ostensible as it concerned themselves but real as it concerned the child.”
  
• Marriage as a special contract cannot be restricted by discriminatory policies of private individuals or corporations.
  o **Philippine Telegraph and Telephone Company v. NLRC**
    ▪ Facts: company’s policy disqualified from work any woman worker who contracts marriage
    ▪ Held: SC invalidated such policy
    ▪ Ratio: Not only runs afoul of the constitutional provision on equal protection but also on the fundamental policy of the State toward marriage, which purpose is an “inviolable social institution and, ultimately, of the family as the foundation of the nation.” Such discriminatory conduct derogatory of the laws of the lands should be interdicted here is not only in order but imperatively required.
  o Its special quality is even highlighted by the fact that **Article 350 of the Revised Penal Code** provides that: the penalty of *prision correccional* in its medium and maximum periods shall be imposed upon anyone who contracts marriage knowing that the legal requirements have not been complied with or that marriage is in disregard of a legal impediment. **Article 349** separately penalizes bigamy. Likewise, **Sec. 37 to 45 of the Marriage Law of 1929** provides for criminal penalties for erring persons who are authorized to solemnize a marriage are the only remaining provisions in the said law which have not been repealed by any law, including the Family Code.

**Mail-order Bride**
• That marriage is vested with public interest can be seen by legislature enacting a law making it a criminal offense for any person, natural or juridical, association, club or any entity to commit, directly or indirectly to any of the following acts:
(1) Establish or carry on a business that matches Filipino women for marriage to foreign nationals either through mail-order basis or personal introduction

(2) Advertise, publish, print or distribute or cause the advertisement, publication, printing or distribution of any material calculated to promote the prohibited acts in the preceding subparagraph

(3) Solicit, enlist or in any manner attract or induce any Filipino women to become a member of any association whose objective is aligned with (1)

(4) To use the postal service to promote the prohibited acts in (1)
   • Unlawful for manager or OIC or advertising manager of any publication of media form or of any advertising agency, print company or similar entities to knowingly allow or consent to the acts prohibited above.

Trafficking in Women
• Under Sec. 4, R.A. No. 9208, the Anti Trafficking in Persons Act of 2003, the following acts are considered trafficking:
  o Introduce or match for money, profit, or material, economic or other consideration, any person, or as provided for under R.A. No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage.
  o Offer or contract marriage, real or simulated, for the purposes enumerated above.

Marriage between Rapist and Raped Victim
• A subsequent valid marriage between the rapist and raped extinguishes the criminal action against, or penalty of, the rapist. In case of a legal husband raping his own wife, the forgiveness of the offended party shall extinguish the criminal action or the penalty, provided that the marriage is not void ab initio, in which case, such criminal action remain.

Marriage as a Status
• Marriage creates a social status, having more to do with the morals and civilization of a people than any other institution, which the state is interested in protecting. It is a case where a double status is created, involves and affects two persons.
• One is married, never in abstract or a vacuum, but always to someone else. So a juridical decree on the marriage status of a person necessarily reflects on the status of another and the relation between them.
• Must be noted that: whenever a peculiar status is assigned by law to members of any particular class of persons, affecting their general position in or with regard to the rest of the community, no one belonging to such class can vary by any contract the rights and liabilities incident to this status.

Marriage in International Law
• Right to marry is a fundamental human right under international law.
• Sec. 16 of the Universal Declaration of Human Rights declares that men and women of full age without any limitation due to race, nationality or religion have the right to marry and found a
family. Entitling them equal rights as to marriage, during marriage and after its dissolution. Furthermore, marriage shall be entered into only with the free and full consent of the intending parties. Declares that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

- **Article 10** of the *International Covenant on Economic, Social and Cultural Rights*, signed by the Philippines on December 19, 1966, ratified on May 17, 1974, and took effect, January 3, 1976, provides similar declarations to the one above.

- **Article 23** of the *International Covenant on Civil and Political Rights*, signed by the Philippines on December 19, 1966, ratified on February 28, 1986, and took effect on January 23, 1987, provides the same provisions on family and marriage stated in the UDHR.

No doubt therefore that the institution of marriage is universally regarded as fundamentally important, deserving the full protection of all states of whatever ideology or political persuasions. Such consideration on international law to the Philippines is given credence by **Article II, Sec. 2** of the 1987 Constitution.

### Constitutional Protection

- **Sec. 12, Article II** of the 1987 Constitution provides that, “the State recognizes the sanctity of family life and shall protect and strengthen” it.

- To highlight the importance of family and marriage, the Constitution further provides a separate **Article 15** exclusively dealing with the family. Providing that:
  - State recognizes the Filipino family as the foundation of the nation and shall strengthen its solidarity and actively promote its total development (**Sec.1, Article 15**).
  - The state also recognizes marriage as an inviolable social institution and the foundation of the family and shall be protected by the state (**Sec. 2, Article 15**).

- “The right to marry, establish a home and bring up children is a central part of the liberty protected by the due process clause.” Such right is also within the ambit of the constitutional right of association.

- A married couple also has a right to privacy, protected against undue and unwarranted government intrusion.

- The constitutional provisions on marriage however do NOT mean that legislature cannot enact a law allowing absolute divorce, especially if no functional marital life exists; hence there is no marriage to preserve at all. Marriage is subject to the control of the legislature but it must not contravene mandates of Constitution.

- While a lawful marriage seeks to create a permanent union between man and woman, it does not shed the spouses’ integrity or their privacy as individuals.

  - **Zulueta v. Court of Appeals**
    - Facts: to get proof of her husband’s infidelity, a wife ransacked his office for evidence
    - Held: SC ruled that the wife cannot use such documents as evidence
    - Ratio: Documents were obtained in violation of the husband’s constitutional right to privacy. “the privacy of communication and correspondence” is no less applicable just because it is against a man’s wife. The only exception to this is if a court issues a lawful order or when public safety requires otherwise, as prescribed by law.” Any such violation of this makes such evidence inadmissible. Marriage does not shed any right to privacy as an individual to both husband and wife. The law
insures absolute freedom of communication between spouses by making it privileged. Neither the husband or wife can testify for or against the other while the marriage holds; or to examine any communication between each other, save for specified exceptions. Freedom of communication is one thing, quite another is a compulsion for each other to share what one knows to each other. This has nothing to do with the duty of fidelity that both parties owe each other.

- **Duncan v. Glaxo**
  - Fact: employment contract requiring an employee to disclose to management any existing or future relationship by consanguinity or affinity with co-employees or employees of competing drug companies and requiring such employees to resign should management find that such relationship poses a possible conflict of interest
  - Held: such policy not a violation of equal protection clause of the constitution
  - Ratio: considering that said stipulation is reasonable under the circumstances because such relationship would compromise the company’s interests. Such requirement was aimed against the possibility that a competitor company will gain access to its secrets and procedures. Such policy is not an absolute prohibition on relationships.

- **Star Paper Corporation v. Simbol**
  - Facts: company policy provided that, in case two of their employees decide to get married to each other, one of them should resign from said company
  - Held: Act of the company in enforcing such policy is illegal
  - Ratio: fails to prove a legitimate business concern in imposing said policy especially when it is premised on the mere fear that employees married to each other will be less efficient. Failed to show that union of employees of different positions and roles can be detrimental to business operations.

### Legislative Control of Marriage

- Constitution does not establish parameters of state protection to marriage and family, as it remains the task of legislature to define all legal aspects of marriage and prescribe the strategy and the modalities to protect it and put into operation the constitutional provision that protect the same. This was accomplished with the Family Code, with its definitions, limitations, corresponding legal effects of marriage and family; and grounds for declaration of nullity and legal separation of marriage.
- Marriage has always been subject to the control of legislature. Since in marriage, parties assume new relation to each other and the State touches on nearly all aspect of life and death, in a real sense there are three parties to civil marriage: two willing spouses and an approving State.
- Relations, duties, obligations, and consequences flowing from the marriage contract are so important to the peace and welfare of society as to have placed it under the control of special municipal regulations, independent of the will of the parties, and it has always been the subject of legislative control.
- State is concerned not only with the validity of marriage but also the maintenance of a harmonious and healthy family life brought about by such marriage.
It is a generally accepted doctrine that legislature may impose restriction upon marital relation as the laws of God and the laws of propriety and morality and social order demand, provided, such regulations are not prohibitory.

- This include safeguards against ill-advised unions. Thus waiting periods, medical examinations, age restrictions, marriage with degrees of consanguinity, and such have been universally imposed by state legislatures to preserve and maintain the utmost purity and integrity of marriage.

- The laws regulating civil marriages are necessary to serve the interest, safety, good order, comfort or general welfare of the community and the other parties can waive nothing essential to the validity of the proceedings.

- However, legislative regulation of marriage must not but it must not contravene mandates of Constitution. For example, violating the “equal protection clause” by forbidding certain marriages on the basis of race or political inclination.

- By legislation, marriage can be made a statutory basis for limiting one’s capacity to act or for affecting one’s right to acquire property. So if a person attests the execution of a last will and testament, to whose spouse a devise or legacy is given by such will, such devise or legacy shall, so far only as concerns such spouse or anyone claiming under such spouse, be void, unless there are three other competent witnesses to such will (Article 823 of the Civil Code). In such a case, the fact of marriage played a role against the devisee-spouse/legatee-spouse.

- According to Article 874 of the Civil Code, an absolute condition not to contract a first or subsequent marriage made in a last will and testament on an instituted voluntary heir, legatee, or devisee shall be considered as not written unless such condition has been imposed on the widow or widower by the deceased spouse, or by the latter’s ascendants or descendants. Must be pointed out that, in case the heir, legatee, or devisee falls under the exception, the contravention of such a condition in a will imposed on them will nevertheless not make the marriage void but will only make ineffective the grant, devise or legacy.

### Property Relations

- Only property relations may be fixed and arranged in a marriage settlement executed prior to the marriage ceremony. Marriage settlements are governed by laws and not subject to stipulations; however it must still follow the mandatory provisions of the Family Code.

- For example, a couple who avails of the conjugal partnership property arrangement, cannot stipulate that such property regime shall commence anytime other than the precise moment that the marriage was celebrated. Arts. 107 in relation to 88, makes such stipulation void.

- Article 77 also provides that marriage settlement and modification thereof shall be in writing, signed by the parties and executed before the celebration of marriage. Any further modification must be approved by court.

### Law Governing Validity of Marriage

- To create the relation of husband and wife, and give rise to mutual rights, duties, and liabilities from such relation, there must be a valid marriage. The requisites are provided by law. It is to be tested by the law in force at the time the marriage was contracted.

- In Gomez v. Lipana, SC confronted by issue on whether or not a second marriage is void and could be subject of a collateral attack. In determining the validity of the marriage, the SC did not apply the 1950 Civil Code which was effective at the time. They applied the law
that was in force during the time of the celebration of said marriage. Since second marriage was solemnized in 1935, SC said the controlling law was Marriage Law of 1929, which was later superseded by the Civil Code. Such practice is highlighted by the general rule that the nature of the marriage already celebrated cannot be changed by a subsequent amendment to the law. To avoid consequence from declaring particular kinds of prohibited or irregular marriages void, or voidable, legislatures have sometimes enacted statutes expressly making such marriages valid. Such statutes are constitutional even though retroactive. The judiciary have no authority to declare such a statute void if it is just and reasonable and conducive to the public good.

- Under the 1950 Civil Code, marriage between step-siblings was void. Such marriage no longer void under the new Family Code. However it does not apply retroactively to the void marriages solemnized during the effectivity if the 1950 Civil Code.

- In the Family Code, Article 53, which considers a subsequent marriage void if, before contracting the same, the former spouses, in violation of Article 52, failed, among others, to liquidate their property of the previous marriage after the finality of a nullity or annulment decree and to deliver the presumptive legitime of their children. Such grounds did not exist in the 1950 Civil Code, and hence cannot be applied by people who, after obtaining a decree of nullification or declaration of void of his marriage, wants to again nullify his subsequent marriage due to the introduction of said articles.

- “Mistake in identity” was an instance of fraud which was grounds to declare a marriage null and void (valid until terminated) under the Civil Code. Under the Family Code, it is grounds to declare marriage void from the beginning. Such grounds do not apply for people who contracted marriages prior to the effectivity of the Family Code. Likewise, it does not make such marriages void upon the effectivity of the Family code, such validation or invalidation must be express as any ambiguity or doubt in the law should follow the general rule that marriages are governed by the law enforced at the time of its celebration and interpretation must always be made upholding the validity of marriage.

- Article 265 of the Family Code provides that law shall have a retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code and other laws, this retroactivity clause is a general one and does not expressly and directly validate a previously void marriage under the Civil code. Moreover, void marriages can never be ratified. Also, though a marriage is void, vested rights can be acquired from such a relationship like those which may refer to property relationships and, therefore, a clear and direct legislative mandate to validate a void marriage must expressly be enacted if the legislature really intends such a curative measure.

- There is one clear case where the Family code allows the filing of a petition to declare a marriage void even if the grounds was not statutorily provided as a basis for a void marriage under the civil code. Prior to Article 39 of the Family Code’s amendment, it provides that in cases of marriage celebrated before the effectivity of the Family Code and falling under the said Code’s Article 36, which makes a marriage void because either or both of the contracting spouses are psychologically incapacitated to perform the essential marital obligation, an action or a defense to declare the marriage void shall prescribe in ten years after the effectivity of the Family Code. This means that a spouse, who, prior to the effectivity of the Family Code in August 3, 1988, got married to an individual who is psychologically incapacitated under Article 36, may file a case to declare such marriage void under the said article of the New Family Code despite the fact that such ground did not exists as a legal basis.
for nullity of marriage at the time his or her marriage was celebrated when the Civil Code was in effect. Later R.A. No. 8533 amended Article 39 by deleting the prescriptive period of 10 years. Hence, if the ground for nullity is Article 36, there is no more prescriptive period whether or not marriage has been celebrated before or after August 3, 1988.

-o Balogbog v. Court of Appeals

- Facts: it was contended that a particular marriage should have been proven in accordance with Arts. 53 and 54 of the Spanish Civil Code of 1889 because this was the law in force at the time of the alleged marriage
- Held: SC ruled that said articles never took effect in the Philippines
- Ratio: Articles were suspended by the Spanish Governor General of the Philippines shortly after the extension of the Spanish Civil Code to this country. Moreover, since this case was brought in the lower court in 1968, the existence of the marriage must be determined in accordance with the present civil code, which repealed the provision of the former civil code, except as they related to vested rights, and the rules of evidence.

CLASS DISCUSSION

Points to Consider

- It is not just a simple contract because it is an inviolable social institution that is considered the foundation of the family and society.

Questions to Ponder on

- Does marriage have an expiration date? Why?

Article 2. No marriage shall be valid, unless three essential requisites are present:

1.) Legal capacity of the contracting parties who must be a male and a female;

2.) Consent freely given in the presence of the solemnizing officer

Article 3. The formal requisites of marriage are:

1.) Authority of the solemnizing officer;

2.) A valid marriage license except in the cases provided for Chapter 2 of this Title

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.

Article 4. The absence of any of the essential or formal requisites shall render the marriage void ab initio except as stated in Article 35(2).

A defect in any of the essential requisites shall render the marriage voidable as provided in Article 45.

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

Article 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.
Article 6. No prescribed form or religious rite for the solemnization of the marriage is required. It shall be necessary, however, for the contracting parties to appear personally before the solemnizing officer and declare in the presence of not less than two witnesses of legal age that they take each other as husband and wife. This declaration shall be contained in the marriage certificate which shall be signed by the contracting parties and their witnesses and attested by the solemnizing officer.

In case of 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.

**POINTS**

**Legal Capacity**

- Under the New Family Code, the marrying age is 18 years old and above. This is likewise the age of majority.
- If any of the parties is below 18 years, the marriage is void even if the consent of the parents has been previously obtained.
- Contracting parties must also not be related to each other (referring to incestuous marriages provided under Article 37 and Article 38 which refers to marriage void for reasons of public policy)
- Legal capacity to marry is related to capacity to act under Article 39 of the NCC because it is limited by family relations.
- Hence an already married person cannot marry unless his previous marriage has been nullified, annulled, or his/her case falls under the valid bigamous marriage under Article 41 of the Family Code.

**Contracting parties must be of different sex**

- Marriage is a union founded on the distinction of sex.
- The law likewise provides that the contracting parties must be a male and a female.

**Effects of Sex Change**

- **Silverio vs. Republic**
  - Issue: Whether a person who had a biological sex change from male to female through sex reassignment surgery can amend his birth certificate to reflect a change in sex to get married to his partner.
  - Ratio: The SC rejected said petition and ruled that the sex is determined by visually looking at the genitals of a baby at the time of his birth is immutable and that there is no law legally recognizing sex reassignment.

- **Republic v. Cagandahan**
  - Issue: Whether a person afflicted with the Congenital Adrenal Hyperplasia (CAH) which is a condition where the person afflicted has both male and female characteristics and organs, that though genetically a female, secreted male hormones and had no breast, can sought to amend the birth certificate from female to male.
  - Ratio: The SC considered the person as an intersex individual and granted the preference of the person to be considered as a male person, thereby allowing the amendment of the birth certificate of the person from female to male.

**Authority of the Solemnizing Officer**

- The solemnizing officer may be one of those enumerated in Article 7 of the New Family Code.
- It must be observed that it is not the presence or absence of the solemnizing officer which constitutes the formal requirement but it is the absence or presence of the authority of such solemnizing officer.
- Under the Local Government Code, the mayor of a city/municipality is empowered to solemnize a marriage, any provision of law to the contrary notwithstanding.
The authority of the officer or clergyman shown to have performed a marriage ceremony will be presumed in the absence of any showing to the contrary.

Solemnizing officer is not duty bound to know whether a marriage license has been duly and regularly issued by the local civil registrar, all he needs to know is that the license has been issued by a competent official. (People v. Janssen)

Considering that the consent of the State is given through a solemnizing officer duly authorized by the law his or her very position as a marriage solemnizer is affected by public interest that criminal penalties are even imposable against a person who solemnizes a marriage without authority.

Valid Marriage License
- A valid marriage license must be issued by the local civil registrar of the place where the marriage application was filed.
- It has a lifetime of 120 days from the date of issue and is effective in any part of the Philippines.
- Date of issue is the date of signing of the marriage license of the local civil registrar.
- Deemed cancelled at the expiration of the 120 day period.
- Marriage license not effective if it will be used as the marriage license to be able to solemnize marriages abroad.
- Other requirements of marriage license are merely directory. (people v. Janssen)
- The fact that a party to whom a license is issued is represented therein by a name other than his true name or had his name spelled wrongly will not invalidate a marriage solemnized in the authority of such license. (Matturo v. Matturo)
- Commission of perjury or deception on the part of the contracting party as to their age in order to avoid the statutory requirement of parental consent is not a cause to invalidate the marriage obtained through such license. (Payne v. Payne)

Marriage Ceremony
- The Family Code only recognizes ceremonal marriages
- This means marriages which are solemnized by persons duly authorized by the State.
- The Family Code does not prescribe any particular form of a marriage ceremony.
- Minimum requirement is that the contracting parties appear personally before the solemnizing officer and declare that they take each other as husband and wife with at least 2 witnesses of legal age.
- Declaration of consent need not to be vocally expressed. It can be shown by other manifestation or signs of approval and consent.
- It has been held that a marriage between a man and a woman appearing before a justice of the peace and signed a statement that they agree to marry each other is valid. (Martinez v. Tan)
- While the law provides that the declaration shall be contained in the marriage certificate, the marriage certificate itself is not an essential nor formal requirement of marriage. Failure to sign a marriage certificate or absence of the marriage certificate itself does not render the marriage void nor annulable. (Madridejo v. De Leon)

Witnesses in a Marriage Ceremony
- Article 3(3) expressly provides that, as part of the marriage ceremony which is a formal requirement, there must be no less than 2 witnesses of legal age in attendance.
- The SC ruled that the absence of witnesses is merely an irregularity which will not render a marriage void. (Balogbog v. Court of Appeals)
- Issue: Whether the absence of witnesses would be a serious flaw and would therefore result in an irregularity.
- Ratio: To prove the validity of marriage, it was enough that there was a proof that a wedding took place where an exchange
of vows can be presumed though the presence of witnesses will not necessarily be presumed.

**Common Law Marriages not Recognized in the Philippines**

- A common law marriage may be defined as a non-ceremonial or informal marriage by agreement, entered into by a man and a woman having the capacity to marry ordinarily without compliance with such statutory formalities as those pertaining to marriage licenses. (Re: Zimmick)
- Such agreement must be coupled by consummation, which includes at least cohabitation as husband and wife, and reputation in such a way that the public will recognize the marital status. (Huard v. Mcteigh)
- Common law marriages recognized in England and the US have never been and are still not recognized in the Philippines. (Enriquez v. Enriquez)
- This is so because the NCC and the Family Code is expressly and mandatorily provide that the intervention in a valid marriage ceremony of an ecclesiastical or civil functionary authorized by the State to solemnize marriage constitutes one of the indispensable requisites for a valid marriage in the Philippines.

**Absence, Defect, Irregularities in Essential and Formal Requirements**

- Generally, absence of any of the essential or formal requirements of a marriage renders such marriage null and void.
- A marriage license which has already automatically expired is not a valid marriage license, thereby making any marriage undertaken on the basis of such alleged license void. In such a case, there is absence of valid marriage license.
- Marriage by proxy solemnized here in the Philippines is likewise void because of the absence of the essential requisite that consent freely given must be made in the presence of a solemnizing officer and the absence of the formal requisite that the contracting parties must personally declare that they take each other as husband and wife.
- Marriages except from the marriage license requirement:
  1.) Marriages in articulo mortis
  2.) Marriages of 2 contracting parties living in places where there are no means of transportation to enable them to appear personally before the local civil registrar
  3.) Marriages among Muslims and other ethnic cultural minorities performed in accordance with their practices
  4.) Marriages of couples without any impediment to get married living together as husband and wife for at least 5 years.
- Another exception is a marriage solemnized by a person without the authority to solemnize a marriage provided that either one of the parties believed in good faith that such solemnizer had the proper authority. (Article 35(2), Family Code)
- Defects in the essential requirements of marriage make the marriage merely annulable or voidable. Specifically, these defects are enumerated in Articles 45 and 46 of the Family Code.
- Irregularities in the formal requisites do not affect the validity of the marriage.
- A judge who solemnizes a marriage without having been shown a valid marriage license and merely requires the submission of the marriage license after the marriage ceremony acts improperly. (Cosca v. Palaypayon)
- Some Irregularities which do not affect the validity of a marriage:
  1.) Absence of two witnesses of legal age during the marriage ceremony (Meister v. Moore)
2.) Absence of a marriage certificate (People v. Janssen)
3.) Marriage solemnized in a place other than the public chambers of a judge or in open court, in church, chapel, or temple, or in the office of the consul-general, consul, or vice-consul;
4.) Issuance of a marriage license in city or municipality not the residence of either of the contracting parties (Alcantara v. Alcantara)
5.) Unsworn application for a marriage license
6.) Failure of the contracting parties to present original birth certificate or baptismal certificate to the local civil registrar who likewise failed to ask for the same
7.) Failure of the contracting parties between the ages of 18 and 21 to exhibit consent of parents or persons having legal charge of them to the local civil registrar
8.) Failure of the contracting parties between the ages of 21 and 25 to exhibit advice of parents to local civil registrar
9.) Failure of the undergo marriage counselling
10.) Failure of the local civil registrar to post the required notices
11.) Issuance of a marriage license despite absence of publication or prior to the completion of the 10 day period for publication (Alcantara v. Alcantara
12.) Failure of the contracting parties to pay the prescribed fees for the marriage license
13.) Failure of the person solemnizing the marriage to send copies of the marriage certificate to the local civil registrar (Madridejos v. De Leon)
14.) Failure of the local civil registrar to enter the applications for marriage licenses filed with him in the registry book in the order in which they were received.

Breach of Promise to Marry
- Breach of promise to marry is not an actionable wrong but the preparation for the marriage and the publicity is palpably and unjustifiably contrary to good customs and thus there can be adjudication for damages (Wassmer v. Velez)

CLASS DISCUSSION

Points to Consider
- What is prohibited under trafficking laws is making commodities out of women.
- Law assumes trafficking is an overt act but of course it is covert.
- Marriage is a status because you are not married in a vacuum. When you change your status, there’s a need to inform the world since you are married to somebody.
- Divorce = marriage subsists. Annulment = no longer exists.
- A nullity = void ab initio. An annulment = valid until annulled.
- Certain emphasis on sex versus gender.
  - “Male and female” = gender
  - “man and woman” = sex (genitalia is emphasized)
- Distinctions open the doors for gender identities. Legal capacity goes into being male and female.
- For cases of “mistake of identity,” what is being affected is the aspect of “consent.”
- Formal requisites may be waived in marriages solemnized abroad. Act of solemnizing however is never waived (sheds light on void nature of common-law and proxy marriages).
Article 7. Marriage may be solemnized by:
(1) Any incumbent member of the judiciary within the court's jurisdiction;
(2) Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, acting within the limits of the written authority granted 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 case 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;
(5) Any consul-general, consul or vice-consul in the case provided in

POINTS

Authorized Solemnizers of Marriage
- Marriage contracts have always been considered as involving questions of public policy and the interests of other than those of the contracting parties and should therefore be construed in accordance with such policy. (Cunningham v. Cunningham)
- The institution of marriage is so directly concerned with the public welfare that the state is a third party thereto. (Tramwell v. Vaughan)

Judges
- Judges can solemnize marriage only within their court's jurisdiction.
- Judges who are appointed to specific jurisdictions may officiate in weddings only within said areas and not beyond. (Navarro v. Domagtoy)
- After solemnizing a marriage, it is highly irregular for a judge to collect fees for the ceremony. It is reprehensible, by such an act, a judge cheapens his/her noble office as well as the entire judiciary in the eyes of the public. (Dysico v. Dacumos)

Priest, Rabbi, Imam, or Minister of any Church or Religious Sect
- For a priest, rabbi, imam, or minister of any church or religious sect to legally solemnize a marriage, the following requisites must be present:
  1.) Must be duly authorized by his/her religious sect
  2.) Must act within the limits of the written authority granted to him or her by the church or religious sect
  3.) Must be registered with the civil registrar general;
  4.) At least one of the contracting parties whose marriage he or she is to solemnize belongs to his or her church or religious sect.

Ship Captain or Airplane Chief
- For a ship captain or airplane chief to be able to validly solemnize a marriage, the following requisites must be present:
  1.) The marriage must be in articulo mortis
  2.) The marriage must be between passengers or crew members
  3.) The ship must be at sea or the plane must be in flight

Military Commander
- For a military commander to be able to solemnize a marriage, the following requites must concur:
  1.) He/she must be a military commander of a unit
  2.) He or she must be a commissioned officer
  3.) A chaplain must be assigned to such a unit
  4.) The said chaplain must be absent at the time of the marriage
  5.) The marriage must be one in articulo mortis
  6.) The contracting parties, whether members of the armed forces or civilians, must be within the zone of military operation.

Consul-General, Consul, or Vice-Consul
Heads of consular posts are divided into 4 classes: 1.) consul-general; 2.) consul; 3.) vice-consul; 4.) consul agents. (Article 9, Vienna Convention of 1963)

A marriage between a Filipino and a foreigner abroad solemnized by a Philippine consul appears to be void.

**Mayor**

- Mayors can solemnize marriages pursuant to the Local Government Code
- An Acting Mayor or Vice Mayor of a City/Municipality can still solemnize marriages since he discharges all the duties and wields the powers appurtenant to said office. (People v. Bustamante)

**CLASS DISCUSSION**

**Points to Consider**

- Marriage ceremony implies some ritual, not just signing. What is important is that there is valid authority of the solemnizing officer.
- For military commanders, what makes you think of a “battalion” is the word “unit.”
  - The point of having a chaplain is that the activities being done are dangerous enough to need him.
- For marriages by judge, justices are beyond the restriction of jurisdiction. That only applies to judges.
- For marriages by priests, if priest believes in good faith that he had authority, and parties believed the same, the marriage is still valid but it does not exempt priest from liability as defense of good faith in this circumstance applies only to the contracting parties as given in Article 35 (2).

**Questions to Ponder on**

- In *articulo mortis*, what is being dispensed with?

**Article 8.** The marriage shall be solemnized publicly in the chambers of the judge or in open court, in the church, chapel or temple, or in the office the consul-general, consul or vice-consul, as the case may be, and not elsewhere, except in cases of marriages contracted on 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.

**POINTS**

- Venue is directory in nature
- It will not invalidate the marriage but can subject the person or persons who cause the violation to civil, criminal, or administrative liability.
- Exceptions to this rule are marriages in articulo mortis and marriages in remote places

**Article 9:**

A marriage license shall be issued by the local civil registrar of the city or municipality where either contracting party habitually resides, except in marriages where no license is required in accordance with Chapter 2 of this Title.

**POINTS**

**Place of Issue**

- The contracting parties should get a marriage license from the local civil registrar of the city or municipality where either of them resides.
- If the contracting parties obtain a marriage license in a place other than the place where either of them reside, it is merely an irregularity which will not render null and void the marriage celebrated on the basis of such license. (People v. Janssen)
Article 10. Marriages between Filipino citizens abroad may be solemnized by a consul-general, consul or vice-consul of the Republic of the Philippines. The issuance of the marriage license and the duties of the local civil registrar and of the solemnizing officer with regard to the celebration of marriage shall be performed by said consular official.

POINTS

Consul Officials
- The duties of the local civil registrar and the solemnizing officer are performed by the consul-general, consul, or vice-consul of the RP abroad.
- Hence, he/she issues the marriage license and likewise solemnizes the marriage of the contracting parties which must be both Filipinos.

CLASS DISCUSSION

Points to Consider
- In cases where not both parties are Filipino citizens, authority to marry doesn’t come from the country’s national laws but of a movement of authority from consul respecting foreign laws and foreign laws granting authority to the same.

Article 11. Where a marriage license is required, each of the contracting parties shall file separately a sworn application for such license with the proper local civil registrar which shall specify the following:
(1) Full name of the contracting party;
(2) Place of birth;
(3) Age and date of birth;
(4) Civil status;
(5) If previously married, how, when and where the previous marriage was dissolved or annulled;
(6) Present residence and citizenship;
(7) Degree of relationship of the contracting parties;
(8) Full name, residence and citizenship of the father;
(9) Full name, residence and citizenship of the mother; and
(10) Full name, residence and citizenship of the guardian or person having charge, in case the contracting party has neither father nor mother and is under the age of twenty-one years.

The applicants, their parents or guardians shall not be required to exhibit their residence certificates in any formality in connection with the securing of the marriage license.

POINTS

Purpose of Documentary Requirements
- It is the concern of the state to make marriages the secure and stable institution they should be (Kilburn v. Kilburn)
- Documentary proofs are accomplished to the local civil registrar to secure publicity. (State v. Walker)
- Its purpose is also to discourage deception and seduction prevent illicit intercourse under the guise of matrimony and relieve from doubt the status of parties who live together as man and wife (State v. Walker)

Marriage Application
- A marriage application can be filed by anybody
- Once it is signed and sworn by the parties and thereafter filed, the local civil registrar has no choice but to accept the application and process the same up to the time of the issuance of the marriage license.
- If the local civil registrar has some knowledge of some legal impediment, he/she cannot discontinue processing this application. He must only note down the legal impediments in the application and thereafter issue the marriage license unless otherwise stopped by the court.
Article 12. The local civil registrar, upon receiving such application, shall require the presentation of the original birth certificates or, in default thereof, the baptismal certificates of the contracting parties or copies of such documents duly attested by the persons having custody of the originals. These certificates or certified copies of the documents 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.

Article 13. In case either of the contracting parties has been previously married, the applicant shall be required to furnish, instead of the birth or baptismal certificate required in the last preceding article, the death certificate of the deceased spouse or the judicial decree of the absolute divorce, or the judicial decree of annulment or declaration of nullity of his or her previous marriage.

In case the death certificate cannot be secured, the party shall make an affidavit setting forth this circumstance and his or her actual civil status and the name and date of death of the deceased spouse.

Article 14. In case either or both of the contracting parties, not having been emancipated by a previous marriage, are between the ages of eighteen and twenty-one, they shall, in addition to the requirements of the preceding articles, exhibit to the local civil registrar, the consent to their marriage of their father, mother, surviving parent or guardian, or persons having legal charge of them, in the order mentioned. Such consent shall be manifested in writing by the interested party, who personally appears before the proper local civil registrar, or in the form of an affidavit made in the presence of two witnesses and attested before any official authorized by law to administer oaths. The personal manifestation shall be recorded in both applications for marriage license, and the affidavit, if one is executed instead, shall be attached to said applications.

**POINTS**

**No Emancipation by Marriage**

- There is no more emancipation by marriage under the Family Code. Emancipation is attained if the child reaches the age of 18 years. (Article 234, as amended by RA 6809)
- Consent from the parent, guardian, or persons having legal charge of the contracting parties between 18 but below 21 is required before a marriage license can be issued.
Parental consent does not add anything to the legal capacity of the contracting parties as the law itself declares that people 18 years and above can legally and validly contract marriage. (Cushman v. Cushman)

Preference is given to the father to give consent.

Article 15. Any contracting party between the age of twenty-one and twenty-five shall be obliged to ask their parents or guardian for advice upon the intended marriage. If they do not obtain such advice, or if it be unfavorable, the marriage license shall not be issued till after three months following the completion of the publication of the application therefor. A sworn statement by the contracting parties to the effect that such advice has been sought, together with the written advice given, if any, shall be attached to the application for marriage license. Should the parents or guardian refuse to give any advice, this fact shall be stated in the sworn statement. (62a)

Article 16. In the cases where parental consent or parental advice is needed, the party or parties concerned shall, in addition to the requirements of the preceding articles, attach a certificate issued by a priest, imam or minister authorized to solemnize marriage under Article 7 of this Code or a marriage counselor duly accredited by the proper government agency to the effect that the contracting parties have undergone marriage counseling. Failure to attach said certificates of marriage counseling shall suspend the issuance of the marriage license for a period of three months from the completion of the publication of the application. Issuance of the marriage license within the prohibited period shall subject the issuing officer to administrative sanctions but shall not affect the validity of the marriage.

Should only one of the contracting parties need parental consent or parental advice, the other party must be present at the counseling referred to in the preceding paragraph.

Points:
- Absence of parental advice does not affect the marriage. It does not even make the marriage annulable, as non-advice is not a ground for annulment provided in Article 45 of the family Code. While it is not a formal or essential requirement under Article 2 and 3.

Points:
- After filling and submitting marriage application, it is their duty to post a notice informing the public of the impending marriage. The purpose of which is so that persons having knowledge of any impediment to the marriage can inform the local civil registrar. It is to be posted for 10 consecutive days on a bulletin board outside the office.

Points:
- The marriage license shall be issued after the period of publication. Except if contracting parties of age 21 to 25 do not obtain parental advice or obtain an unfavorable one; or where a certification of participation in marriage counseling, in the instances covered by Article 16, is not attached to the application, issuance of the marriage license will be after 3 months following the completion of the publication of the application.
• It’s possible to issue license within the 3 months and marriages contracted with it are still valid, not even annulable. But issuing officer is liable of administrative sanctions.

**Article 18.** In case of any impediment known to the local civil registrar or brought to his attention, he shall note down the particulars thereof and his findings thereon in the application for 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 issuances of the order. (64a)

**Article 19.** The local civil registrar shall require the payment of the fees prescribed by law or regulations before the issuance of the marriage license. No other sum shall be collected in the nature of a fee or tax of any kind for the issuance of said license. It shall, however, be issued free of charge to indigent parties, that is those who have no visible means of income or whose income is insufficient for their subsistence, a fact established by their affidavit, or by their oath before the local civil registrar. (65a)

**POINTS**

**Investigative Power of Local Civil Registrar and Court Intervention**

- If an impediment is made known to the civil registrar he shall merely note it down but he must nonetheless issue the license, because he’s still duty bound to issue it after payment (exempted in cases of indigence), and necessary procedures have been accomplished. This is because the impediments may not be valid at all.
- Joint meeting of committees of Civil and Family Code explains as follows: “law doesn’t restrain local civil registrar from investigating any impediment on the part of the contracting parties, but he is only generally prohibited from withholding the marriage license despite the legal impediment.” The purpose of **Article 18** is to eliminate opportunity for extortion and a possible source of graft.
- Only court intervention can empower local civil registrar to validly refuse to issue said license. Court action may be brought by the latter or any interested party, such as relatives or those which may be prejudiced by the marriage. In such action, there are no filing fees for petitions nor bonds required in the issuance of the order.
- If the marriage license was issued despite court intervention, the marriage will still be valid but the parties responsible may be criminally or administratively liable since it is an irregularity.

**Criminal Liability of Local Registrar** (from the few provisions of the **Marriage Law of 1929** which have yet to be repealed)

- **Sec. 37.** Influencing parties in religious aspects. Any municipal secretary or clerk of the Municipal Court (now the local civil registrar) who directly or indirectly attempts to influence any contracting party to marry or refrain from marrying in any church, sect, or religion or before any civil authority, shall be guilty of a misdemeanour and shall, upon conviction thereof, be punished by imprisonment for not more than one month and a fine of not more than two hundred pesos.
- **Sec. 38.** Illegal issuance or refusal of license. Any municipal secretary (now local civil registrar) who issues a marriage license unlawfully or who maliciously refuses to issue a license to a person entitled thereto or fails to issue the same within twenty-four hours after the time when, according to law, it was proper to issue the same, shall be punished by imprisonment for not less than one month nor more than 2 years, or by a fine of not less than 2000 pesos nor more than 2000 pesos.
Article 20. The license shall be valid in any part of the Philippines for a period of one hundred twenty days from the date of issue, and shall be deemed automatically cancelled at the expiration of the 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)

**POINTS**

**Marriage License and Date of Issue**

- The marriage license is only valid within the Philippines and not abroad.
- It is good for 120 days from the date of issue or the date of signing of them marriage license by the local civil registrar.
- If not claimed within the 120-day period from date of issue, it shall automatically become ineffective.

Article 21. When either or both of the contracting parties are citizens of a foreign country, it shall be necessary for them before a marriage license can be obtained, to submit a certificate of legal capacity to contract marriage, issued by their respective diplomatic or consular officials.

Stateless persons or refugees from other countries shall, in lieu of the certificate of legal capacity herein required, submit an affidavit stating the circumstances showing such capacity to contract marriage. (66a)

**POINTS**

**Certificate or Affidavit of Legal Capacity**

- Citizens of any foreign country may contract marriage in the Philippines through any of the solemnizing officers, provided that they secure a marriage license here. Before a license can be issued, they must submit a certificate of legal capacity as that is required by the law.
- A certificate of legal capacity is meant to show that a foreigner is capacitated to marry in his or her country. The Philippines adheres to the national law of the contracting parties with respect to their legal capacity to contract marriage.
  - If a 16-year old USA citizen wants to marry anyone here, he must show a certificate of legal capacity stating that in the US, 16-year olds can be validly married. After showing the same to the local civil registrar of where he resides, a license will subsequently be issued.
  - However, if a license is issued without such certificate, and it is used to celebrate a marriage, it shall not affect the validity of the same, as it is only an irregularity with a formal requirement.
  - For stateless persons or refugees, they shall be required to file an affidavit stating the circumstances showing such capacity to contract marriage in lieu of the certificate of legal capacity.
  - But if both are citizens of a foreign country and they are married by their consul-general, who is officially assigned here in the Philippines, there is no need to follow the requirement of marriage in the Philippines, only those of their country.

Article 22. The marriage certificate, in which the parties shall declare that they take each other as husband and wife, shall also state:

1. The full name, sex and age of each contracting party;
2. Their citizenship, religion and habitual residence;
3. The date and precise time of the celebration of the marriage;
4. That the proper marriage license has been issued according to law, except in marriage 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 marriage settlement, if any, attaching a copy thereof. (67a)
Article 23. It shall be the duty of the person solemnizing the marriage to furnish either of the contracting parties the original of the marriage certificate referred to in Article 6 and to send the duplicate and triplicate copies of the certificate not later than fifteen days after the marriage, to the local civil registrar of the place where the marriage was solemnized. Proper receipts shall be issued by the local civil registrar to the solemnizing officer transmitting copies of the marriage certificate. The solemnizing officer shall retain in his file the quadruplicate copy of the marriage certificate, the original of the marriage license and, in proper cases, the affidavit of the contracting party regarding the solemnization of the marriage in place other than those mentioned in Article 8. (68a)

POINTS

Presumption of Marriage

- Presumption is always in the favor of the validity of marriage but may be contradicted and overcome by evidence (Rule 131, Section 5[aa], New Rules of Court of the Philippines).
- Law and public policy favor matrimony as it is the basis of human society throughout the civilized world and must aid acts to validate it. This presumption of legality is said to be one of the strongest known to law and gains strength over time, especially if the children's legitimacy is involved, as the law presumes morality over immorality, marriage over concubinage, legitimacy over bastardy.
  - Especially true if two people living in apparent matrimony, must be held to be married in the absence of contrary evidence. Otherwise, their living together would be a constant violation of decency and law.
- Also, when the celebration of the marriage is once shown, the contract of marriage, the capacity of the parties, and, in fact, everything necessary to the validity of the marriage, in the absence of proof to the contrary, will be presumed.

- If credible testimony is given that a wedding took place, the presumption is that there was an exchange of vows and a declaration that they take each other as husband and wife. It’s a settled law that once a marriage has been consummated in accordance with the forms of law, it is presumed that there were no legal impediments. And even if one of the parties was previously married, it must be assumed that it was dissolved or annulled. The burden of showing otherwise rests on those seeking to impeach the latest marriage. Semper Presumitur Pro Matrimonio (always presume marriage).

Proof of marriage

- In proving whether a marriage was contracted in litigation, it may be proved by evidence of any kind.
- Primary or best evidence: Marriage contract or certificate. Mere photostat copy of which is worthless but if presented in court, accepted by opposing party, and admitted by the court, it shall be sufficient proof. If it emanated and Office of the Local Registrar and was duly certified by the local registrar as an authentic copy of the records, it shall be made admissible as evidence from the start.
- Failure to present marriage certificate is not fatal to in a case where marriage is in dispute, as parties can still rely on presumption of marriage.
  - As in Rivera v. IAC
    - Fact: where Adelaido couldn’t present his parent’s certificate as marriage records of 1942 were burned during the war.
    - Held: he could rely on presumption of marriage
    - Ratio: since it isn’t denied that Venancio Rivera and Maria Jocson lived together as husband and wife for many years, begetting 7 children.
Delgado Vda. de la Rosa v. Heirs of Mariciana Rustia Vda. de Damian

- Fact: absence of a record of the contested marriage was asserted to assail the existence of the marriage
- Held: SC rejected such assertion
- Ratio: First, even in the absence of a contract, other evidence may be presented to support presumption of marriage. The same need not directly establish the marriage. Certificate of identity to Josefa Delgado as Mrs. Guillermo Rustia, the passport issued to her as Josefa D. Rustia, the declaration under oath of no less than Guillermo Rustia that he was married to Josefa Delgado and the title to the properties in the name of “Guillermo Rustia married to Josefa Delgado,” as public documents, which are prima facie evidence of the facts, more than adequately support the presumption. No sufficient evidence was given to prove otherwise.
- Second, Elisa Vda. de Anson, petitioner’s own witness whose testimony they primarily relied on to support their position confirmed that there was a proposal of marriage and that the two had lived together as husband and wife. This strengthens presumption.
- Third, Baptismal certificate was conclusive proof only of the fact that the priest baptized the child. It is no proof of the veracity of the declarations and statements therein, such as the alleged single or unmarried civil status of Josefa Delgado who had no hand in its preparations.
- Petitioners failed to rebut the presumption of marriage. Law must lean towards legitimizing matrimony.

- Other good evidences: Family bible (where the names of spouses have been entered as married), Baptismal, birth certificates of kids borne by the spouses, Judicial decisions, public and open cohabitation as husband and wife after marriage, and statements of such marriage in subsequent documents.
- Mere cohabitation is not direct proof of marriage; must be proved by proper documents or by oral testimony in case these have been lost. The conduct of the parties, in order to constitute evidence of marital consent must be more than mere living together; must be an association, consciously and openly, as husband and wife.
- Whatever presumption of marriage there may have been by cohabitation of one claiming to share in the estate of the decedent as his wife, and the decedent, based upon their cohabitation between 1905 and 1914, was considered destroyed, the light of lack of any documentary evidence of marriage by the conduct of the parties during and after the time.

- Proved by parol evidence: Testimonies of parties, witness, solemnizing officers that are credible and likewise must come from a credible witness.
- In People vs. Ignacio, fact of marriage of accused appellants to the victim in the crime of parricide was established by SC on the basis of oral testimonies of the witnesses. Appellant declared victim as her fourth husband and married before a judge in Motalban, Rizal. Victim’s son and appellant’s daughter also testified that the two parties were married. Such admission is a confirmation of simper praesumitur pro matrimonio.

- In a case where complainant alleged in an administrative case that the marriage took place on March 15, 1993 but in court records and pleadings in previous cases, it was stated to be on June 9, 1993, SC ruled that such allegation in the administrative case cannot be accepted to disprove that the marriage was on June 9, 1993. SC held that complainant himself admitted in his petition in a case for annulment of marriage, which he previously filed, that his marriage was celebrated on the latter
date, and is bound to such admission. Moreover, all other evidence led to conclusion that the marriage could not have been on March 15, 1993: Affidavit in Lieu of Legal Capacity to Contract Marriage for American Citizens issued on May 19, 1993 was sworn to before the USA Consul on the same date by complainant himself, and Pre-marriage Counseling, issued on May 25, 1993. Difficult to believe that the marriage could have happened in March, when the documents necessary for its validity were available only in later months. Entries in official records made in the performance of a duty by a public officer of the Philippines, or people enjoined by law are prima facie evidence of the facts therein stated.

- For marriage ceremony, testimony of eyewitness is sufficient to disclose not only the performance of the ceremony by someone, but that all circumstances attending to it were such as to constitute it a legal marriage. Fact that marriage has been solemnized gives the presumption there was an exchange of marital vows.

- Evidence that cannot prove marriage (especially when petitioner has submitted a certification from the local registrar concerned that the alleged marriage was not registered and a letter from the judge alleged to have solemnized the marriage that he has not solemnized said alleged marriage): Transfer Certificates of Title, Residence Certificates, passports, and similar documents.

- Also, a certificate of marriage made years after the marriage is inadmissible as evidence, especially where there’s no register of the marriage in the official records.

- Any solemnizing officer failing to deliver to either contracting parties one of the copies of marriage contract or to forward the other copy to the authorities within the period fixed by law, shall be punished with imprisonment for not more than 1 month or by a fine of not more than 300 pesos, or both, in the discretion of the court (Sec. 41 of the Marriage Law of 1929).

**Proof to Attack Validity of Marriage**

- Anyone assailing validity of marriage is required to make plain the truth of law and fact that the marriage was not legal, against the constant pressure of the presumption of legality. Evidence must be strong, distinct and satisfactory.
  - Statement of civil status of a person in a certificate of title issued to him is not conclusive to show that he is not actually married to another. Weak and insufficient to rebut the presumption that persons living together as husband and wife are married to each other. There must be cogent proof in proving a marriage’s illegitimacy.

- In a case where petitioner failed to assert the absence of a marriage license as a ground for nullity in her petition based solely on psychological incapacity under Article 36 and where she only invoked such absence of a marriage license in her appeal to the SC, the SC made an exception to the general rule that litigants cannot raise an issue for the first time on appeal, and consequently, declared the marriage void due to the absence of a marriage license. SC said that, in order to protect the substantive rights of the parties, it was making an exception to the application of the said general rule considering that the marriage contract itself, which was presented as evidence, clearly showed that the solemnization of the marriage occurred when there was no marriage license.

- Obtaining a marriage license, in a place not the place of residence of either party is merely an irregularity and does not invalidate marriage. Such circumstance is indicative that the license may be spurious or non-existent, which should necessitate further investigations as to its authenticity. Upon certification by the local civil registrar of the alleged place of issuance that there are no records of the said marriage license or is faulty, after all efforts were exerted to locate such, it is convincing evidence to destroy the validity of the marriage on the ground of absence of a valid marriage license.
If however the local civil registrar attest that there was no marriage license but admits that due to the work load of the said office, it cannot give full force in locating the marriage license compounded by the fact that the custodian already retired, the SC did not allow the nullity of the marriage on the ground of absence of marriage license considering that the circumstances and the certification do not categorically and with absolute certainty show and state that the marriage license cannot be found and that there were earnest efforts to look for the same.

Held also that a marriage, followed by 40 years of uninterrupted marital life, should not be impugned and discredited after the death of the husband and administration of his estate, through an alleged prior Chinese marriage, save upon proof so clear, strong, and unequivocal as to produce a moral conviction of the existence of such an impediment.

Held however that any presumption of marriage from the fact that there was cohabitation between a man and a woman many years ago may be considered offset by the fact that, for the last 35 years of their lives, they lived separately and several thousand of miles away from each other.

Case where one party, to prove existence of a marriage, introduced as evidence, a birth certificate indicating the status of the child of the parties as legitimate and therefore implying a valid marriage of the child’s parents, and another party, to disprove the existence of marriage, introduced as pieces of evidence a death certificate of the alleged husband indicating that he was a widower at the particular time material to the suit, a transfer certificate of title indicating also that h was a widower at such a time, and the record of marriage of the local civil registrar which did not reflect any marriage of the parties after he became a widower.

Held: while a birth certificate can prove the fact of marriage between parties, the evidences disproving the existence of marriage also have probative values, such that the evidence, if weighed against each other, preponderated in favor of the assertion that there was no marriage.

Declaratory Relief
• When the parties are not certain whether, under the law, they can proceed with marriage, they can petition for declaratory relief, to seek from the court a judgment on their capacity to marry.
• A petition for declaratory relief may be brought by any person interested under a deed, will, contract, or other written instrument, or whose rights are affected by a statute, executive order, regulation, ordinance, or other governmental regulation for the purpose of determining any question of construction or validity arising therefrom, and for a declaration of his or her rights or duties thereunder, provided that the action is brought before any violation or breach.
• Clearly, the legal status of a person to marry, his or her rights and duties are governed by law or contract and therefore can be a subject of a petition for declaratory relief.

Article 24. It shall be the duty of the local civil registrar to prepare the documents required by this Title, and to administer oaths to all interested parties without any charge in both cases. The documents and affidavits filed in connection with applications for marriage licenses shall be exempt from documentary stamp tax. (n)

Article 25. The local civil registrar concerned shall enter all applications for marriage licenses filed with him in a registry book strictly in the order in which the same are received. He shall record in said book the names of the applicants, the date on which the marriage license was issued, and such other data as may be necessary. (n)
POINTS
Effect of Duty of Local Civil Registrar
- The local civil registrar is the government official charged with the preparation and the keeping of all the official documents in connection with marriage, any certification issued by him in connection with the matter of any individual in his jurisdiction is given high probative value.
- Held that a certification of the local civil registrar that no records exist of an alleged spouse’s marriage license is enough to prove the marriage void due to absence of a formal requirement.

Marriage Register
- Office of the local civil registrar keeps a marriage register of all persons married in its locality. In the marriage register, there shall be entered the following:
  - Full name, address, and ages of each contracting party
  - the place and date of the solemnization of the marriage
  - Names, addresses of the witness
  - Full name, address and relationship with the contracting parties of the person or persons who gave their consent to the marriage
  - Full name, title, and address of the solemnizing officer.

Validation Provision
- This Code expressly provides that, except for marriages prohibited under Arts. 35(1), (4), (5) and (6), 36, 37, 38, marriages solemnized abroad and which are valid there as such are recognized as valid here.
- AS A GENERAL RULE, PHILIPPINES Follows **LEX LOCI CELEBRATIONIS**.
  - The sanctity of the home and every just enlightened sentient require uniformity in the recognition of the marriage status – persons legally married in one jurisdiction are recognized as married in another, likewise for the legitimacy of the children.
  - It is a general principle of international and interstate law that the validity of a marriage, as far as it depends upon the preliminaries, and the manner or mode of its celebration, is to be determined in reference to the law of the place where it is celebrated. Where there is *bona fide* attempt on parties to effect a legal marriage, every assumption will be in favour of the marriage. The converse of which is also true. A marriage void here is void elsewhere. However, such statement is subject to many exceptions and won’t be enforced where the circumstances afford a reasonable ground for the course taken and show a *bona fide* attempt to effete a marriage.

A Matter of International Comity
- Legal effect which may be given by one state to the marriage laws of another state is merely because of comity, or because public policy and justice demand the recognition of such laws, and no state is bound by comity to give effect in its courts to laws which are repugnant to its own laws and policy.
- Every sovereign state is the conservator of its own morals and the good order of society. Each sovereign state has the right to
declare what marriages it will or will not recognize, regardless of whether the participants are domiciled within or without its borders and notwithstanding such marriages' validity under the laws of a foreign state where such marriages were contracted.

- Applying the first paragraph of Article 26, marriages without a license solemnized abroad, and proxy marriages abroad shall be valid in the Philippines if such marriages are valid in accordance with that country’s laws.
- Foreign marriages solemnized by a professor of law shall be valid in the Philippines if legally valid in the country where it was celebrated.
- If the foreign marriage is to be solemnized inside the Philippine Consulate abroad, such marriage must observe the forms and solemnities established by Philippine laws.

(Article 17)

Exceptions

- Under the Family Code, if either or both contracting parties are Filipinos and they are below 18 years of age, their marriage solemnized abroad won’t be recognized regardless of its validity pursuant to that country’s laws, since marrying capacity adheres to the Nationality Rule.
- Article 26 of the Family Code taken together with Article 15 of the Civil Code express the “extra-territorial effect of the exception.”
- Article 17 (3) of the Civil Code is likewise applicable here.

- The Family Code does not give a precise solution when the party below 18 years of age is a foreigner whose laws grant him the capacity to marry at such age.
- Article 35(1) however provides that a marriage is void ab initio if “contracted by any party below 18 years of age.” Since the law states “any party” it can be construed as a blanket exception that should likewise apply to a foreign spouse below 18 years of age. Problem with this construction is that it conflicts with Article 21 where a foreigner under 18 years of age can be married in the Philippines if he obtains the appropriate certificate of legal capacity from his diplomatic mission in the Philippines. In this scenario, such a marriage will be considered valid here but not if it is celebrated in the country of the foreigner; which should not be the case.
- Better rule is that the exception under Art 26 referring to Article 35(1) should be construed as referring to a situation where the marriage abroad is between a Filipino and a Filipina and not between a Filipino and an alien married in the alien’s state where the alien, though below 18, is incapacitated to marry.

- Bigamous and polygamous though valid abroad is not recognized here.
- Bigamous marriage is committed by a person who contracts a second marriage before the former one was dissolved or before absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceeding.
- Polygamy is the act or state of a person who, knowing that he has 2 or more spouses, marries another.
- Article 41 of the Family Code however, recognizes “bigamous” marriage when the subsequent marriage follows the absence of a spouse for 4 consecutive years to 2 consecutive years in cases where there is danger of death, and the spouse present has well-found belief that the absent spouse was already dead. Present spouse may obtain a judicial declaration of presumptive death and subsequently marry again. 2nd marriage is valid without prejudice to the reappearance of the absentee spouse.
- Marriage abroad where there is mistake of identity of the other contracting party is also not recognized in the Philippines. True even if one who committed the mistake is the foreigner-spouse.
• If a spouse is able to annul or to declare as null and void his or her marriage but failed to record the judicial decree with the local civil registrar, to partition and distribute their properties and to deliver the presumptive legitime of their children, any subsequent marriage, whether here or abroad, of either spouse shall be void. (Article 53 of the Family Code).
• A marriage by a Filipino to a person who is psychologically incapacitated to perform the essential marital obligations abroad, even if valid in the foreign country where it was solemnized, shall not be valid here. Likewise the same if the Filipino was the psychologically incapacitated person.
• Marriages between ascendants and descendants of any degree as well as between brothers and sisters, whether of the full or half blood are likewise not considered as valid here even if such marriages are allowed in the country where they were celebrated. Void as they are incestuous.
• Marriages declared void under Philippine laws for being against public policy will not be recognized here even if such marriage are not against public policy or not illegal in the country where it was solemnized. Such marriages are enumerated under Article 38 of this Code.

Are Common-law Marriages Obtained Abroad By Filipinos valid in the Philippines?
• Article 26 of the Family Code apparently does not specifically include common-law marriages contracted by Filipinos abroad as one of the exception to the general rule that marriages solemnized abroad is generally valid here if valid where they were solemnized.
• Common-law marriages obtained by Filipinos abroad should not be recognized here. Article 26 clearly used the word “solemnized” and not “contracted” of “performed.”
  o “Solemnization,” as used in marriage statues, has a very technical and limited meaning. It means the performance of the formal act or ceremony by which a man and a woman contract marriage, through the officer or minister who “solemnizes” the marriage, and assume the status of husband and wife
• Rule in Statutory construction that words and phrases having special and technical meaning are to be considered as having been used in their technical sense. Such words or phrases who have acquired a peculiar and appropriate meaning in law are presumed to have been used by legislature according to their legal meaning, and those who are or should be learned in the law are supposed to understand them in such a manner, including the courts.
• Solemnization implies a ceremonial marriage and not a “contract” or performed through agreement of the parties as with common-law marriages. Formality inherent in the ceremonial marriage distinguishes it from common law marriage.
• “Solemnized” and “contracted” are not the same. As the former has a narrower meaning and the latter is broader and may include as one of its modes, the process of solemnization. Such distinction has a practical and legal significance. In marriage statutes in other jurisdiction having similarly worded comity provisions, it has been held that if the term used by statute is “solemnized,” the law precludes local recognition of common law marriages, which did not undergo the process of solemnization, contracted in another state.
  o SC of Utah in Re Veta’s case
    ▪ Issue: Do these two sections (Sec. 40-1-2(3) – declares marriage void when not solemnized by an authorized person – and Sec. 40-1-4 of U.C.A. 1943 – “marriages solemnized in any other country, state or territory, if valid where solemnized, are valid here”) evidence a legislative intent to recognize a marriage in another state between parties domiciled in Utah only if it is formally entered – “solemnized” – before a person
authorized by the laws of such state to perform a marriage ceremony.

- Held: persons domiciled in Utah may not go into another state, there contract a common-law marriage, and, returning here, have such marriage recognized as valid.

- Ratio: purpose of the solemnization is to protect the parties to the marriage contracts in the rights flowing therefrom, their offsprings, as well as the interests of 3\textsuperscript{rd} parties in dealing with either spouse. In a case where a person goes to a neighboring state to contract a common-law marriage, the protection aforementioned that the statute is designed to effect, would not result should such attempted marriage be considered here. As such objects are effected only if the marriage was “solemnized before an authorized person.” The use of the word “solemnized” in the given provisions indicate as such.

- Jurisprudence laid down in the aforequoted case may well be applicable here. The legislative history of the provision supports this view. The first time a validation or comity provision existed in Philippine law history was when the US introduced the same via Sec. 5 of General Order No. 68, providing that, “All marriages contracted without these Islands which would be valid by the law of the country in which the same were contracted, are valid in these Islands.”

- Thereafter, Sec. 19 of Act 3613 (Philippine Marriage Law of 1929), provided that, “All marriages performed outside the Philippine Islands in accordance with the laws in force in the country where they were performed and valid there as such, shall also be valid in these Islands.” The word “contracted” was changed to “performed.”

- Subsequently, above provision was incorporated in Sec. 71 of the Civil Code of 1950 with substantial exceptions, “All marriages performed outside the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country, except bigamous, polygamous, or incestuous marriages as determined by Philippine law.”

- This validation provision was re-enacted in the Family Code in Article 26(1), with substantial change. The term “performed” was changed to “solemnized” and the exceptions were amended to read thus: “except those prohibited under Arts. 35(1), (4), (5), and (6), 36, 37, 38.”

- Change in wording is very significant. The change appears to signify the framers’ intent to limit the scope of the provision so as not to include common-law marriage appears to be consistent with the jurisprudence laid down in Enriquez v. Enriquez stating that the Philippines, even during Spanish rule, has never recognized common-law marriages.

- Second paragraph of Article 26 also uses the term “celebrated.” Again, this connotes a ceremonial marriage where solemnization is inherently involved. This is clearly consistent with the usage of “solemnized” in the first paragraph of Article 26.

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**Same Sex Marriage of Filipinos Abroad Invalid**

- Public policy in the Philippines mandates that only a man and woman can marry each other as evidenced by Arts. 1 and 2(1). In fact this code is replete with terms and articles clearly indicating, that marriage is a heterosexual relationship. A person only has legal capacity to marry the opposite sex in the Philippines. Same sex marriage is therefore not allowed in the Philippines.

- If such a marriage was contracted abroad whether with a Filipino or foreigner, it shall not be recognized; moreover so because it is a public policy matter which can’t be rendered
indefinite by any foreign law; pursuant to nationality rule in Article 15, and by Article 17.

**Proof Of Foreign Marriage**
- To establish a valid marriage pursuant to the comity provision of Article 26, it is necessary to prove the foreign law and then prove the celebration of marriage.
- Presumption arises on proof of a marriage in another jurisdiction, that such marriage was performed in accordance with the law of that jurisdiction. If such law of the other state is not pleaded nor proved and for the purpose of determining the validity of a marriage in the said state, the laws of such state, in the absence of proof to the contrary, will be presumed by the court to be the same as the laws of its own state.
  - Case where Chinese woman alleged that she was married to a Filipino and that their marriage in China was solemnized by a village leader, but the said woman failed to show proof of the marriage laws in China
    - Held: the Chinese woman’s marriage to the said Filipino, even if true, cannot be recognized here
    - Ratio: SC ruled that marriage laws in China were presumed to be the same as domestic laws on the subject. Considering that Philippine law only recognized a marriage celebrated before any of the officers mentioned in the law, and a village leader was not one of them, it was clear that it couldn’t be recognized here.
- In previous cases decided by the SC prior to 1991, it has been held that the burden of proof to show the fact of marriage and the foreign marital law is upon the one who asserts the validity of the marriage celebrated abroad. However in 1991, SC decided Board of Commissioners (CID) v. Dela Rosa, where it held that, considering that in case of doubt, all presumptions favor the solidarity of the family and every intendment of the law or facts leans toward the validity of marriage, “he who asserts that the marriage is not valid under the law bears the burden of proof to present the foreign law.” This case therefore shifted the burden of proof from the one who asserts the validity of the marriage to the one assailing the validity of the marriage.
  - In this case particularly, “the lack of proof of Chinese law cannot be blamed on Santiago Gatchalian nor William Gatchalian, who was then a 12-year old minor, as they were not pressed by the Citizenship Investigation Board for such. Testimonies of Santiago and Francisco Gatchalian before the Philippine consular and immigration authorities regarding their marriages, birth and relationship to each other are not self-serving but were sufficient as evidence as statements or declarations regarding family relation, reputation or tradition in matters of pedigree. As ever intendment of law or facts leans toward the validity of marriage and the legitimacy of children.”
- Justice Florentino Feliciano strongly registered his dissent in the aforequoted ruling by stating that “the rule that a foreign marriage valid in accordance with the law of the place where it was performed shall be valid also in the Philippines, cannot begin to operate until after the marriage was performed abroad and its compliance with the requirements for validity under the marriage law of the place where performed, are first shows as factual matters.”

**Absolute Divorce**
- Absolute divorce is not recognized in the Philippines; only way to end their relationship is if one of them has a cause of action to declare the marriage void or to annul the marriage.
- Even if the couple was married abroad the divorce will not be recognized here if one of them is a Filipino since their marriage status follows them there. Divorce initiated by a Filipino is against public policy.
  - Case where a Filipina wife obtained a divorce from her Filipino husband in Nevada, USA. The divorce though
recognized elsewhere, was not recognized in the Philippines. Hence, her entering into another marriage with an American constituted adultery according to Philippine law. SC anchored its decision on Article 15 and 17 of the New Civil Code.

• States recognize divorces of aliens obtained in other states as a matter of international comity. Aliens may obtain divorces abroad, which may be recognized in the Philippines, provided, they are valid according to their national law.

• Foreign marital law and the divorce decree must be duly proven and cannot be taken judicial notice of. Our civil law adheres to the nationality rule on the matter of status or legal capacity of a person, even foreigners.

• Second paragraph of Article 26 of the Family code provides the recognition in the Philippines of a particular absolute divorce obtained in another country which will allow the divorced Filipino to remarry; where there is a valid marriage between Filipino and foreigner, when foreigner spouse obtains divorce abroad, the Filipino is likewise given the capacity to remarry under Philippine law. This provision is a codification of the jurisprudence laid down in the 1985 case of Van Dorn v. Romillo.

  • Also applies to a situation where originally, at the time of the marriage ceremony, both parties were Filipinos, but at the time of the divorce, one of the parties was a citizen of a foreign country that allowed absolute divorce. The determinative point when the foreigner who procured the divorce should be a foreigner is at the time of the divorce and not at the time of the marriage ceremony.

• Although not expressly stated in Article 26, the Filipino spouse who did not procure the divorce, must be a Filipino at the time of the issuance of the divorce decree for Article 26 to be applicable. Else, if he had become a foreigner through marriage, their divorce would be recognized not because of this article but because of the nationality principle with respect to the status of a person.

  • Nationality principle = as to the legal capacity of a person, the Philippines shall adhere or follow the law of the country of the person involved.

  • In the example, it must be remembered that at the time of the divorce decree, the Filipino had already become a foreign citizen, and therefore Philippine laws no longer govern his status. If a former Filipino, naturalized as a foreign citizen, returns here and reacquires Philippine citizenship, the divorce decree will still be recognized here because at the time of the filing of the petition for divorce and not at the time of the issuance of the decree of divorce, he was not a citizen of the Philippines. His status will not be changed just because he reacquires Philippine citizenship.

• If the marriage is between two Filipinos and one of them obtains an absolute divorce abroad after he has been naturalized as a citizen of a foreign country where absolute divorce is recognized, such naturalized foreigner, who was formerly a Filipino, can come back to the Philippines and validly remarry. The nationality rule shall likewise apply to him. Article 26 will not apply but the law of the country where he was naturalized.

• If it’s the Filipino who obtains an absolute divorce, it will not be recognized here. In so far as the foreigner is concerned, it will be recognized since the Philippines follows nationality rule.

  • Thus, even if after an absolute divorce decree obtained in another country by the Filipino spouse has been decreed, a foreigner-spouse cannot claim that he or she still has an interest in the property acquired by the Filipino after the
Persons and Family Relations Law

Professor Amparita Sta. Maria

divorce on the ground that, as to Philippine laws, his or her marriage to the Filipino is not considered terminated. As to the foreigner, he or she shall be considered divorced and, therefore, will not have any interest in properties acquired by the Filipino after the divorce.

- If Filipino spouse decides to have sexual intercourse with another person, foreigner-spouse cannot file a criminal case for adultery since he has no legal standing as he is no longer considered married to her. Under Philippine criminal law, only a spouse can file such a criminal case for adultery and, because as to legal capacity, the Philippines follows the nationality rule, the Philippines shall consider the foreigner as a divorced man and not a spouse that can file the case.

- Divorce recognized under Article 26 was prompted by the lamentable experiences and disadvantageous position of many Filipinos who, before the effectivity of the Family Code and though divorced by their alien-spouses abroad, could not validly marry again, thereby forcing them to live, in the eyes of Philippine law, in illicit relationships with others in the event they decide to “remarry” abroad.

Proving Foreign Divorce

- In Bayot v. Court of Appeals
  - Held: where SC affirmed the dismissal of a case for declaration of nullity on the ground that the petitioner thereof already obtained a divorce in another country, which can be recognized in the Philippines
  - Ratio:

Validity of Divorce Decree

- First, at the time of divorce, Rebecca chose her American citizenship to govern her marital relationship.
- Second, she secured personally said divorce as an American citizen as evident in the text of the Civil Decrees.
- Third, being an American citizen she was bound by American national laws, which allow divorce.
- Fourth, Property relations of Vicente and Rebecca were properly adjudicated through their Agreement executed on December 14, 1996 after Civil Decree No. 362/96 was rendered on February 22, 1996, and duly affirmed by Civil Decree No. 406/97 issued on March 4, 1997.
  - Veritably, the foreign divorce secured by Rebecca was valid. Court has taken stock of the holding in Garcia v. Recio that a foreign divorce can be recognized here provided that divorce decree is proven as fact and as valid under the national law of the alien spouse. Rebecca being an American citizen, her presentation of a copy of foreign divorce decree duly authenticated by the foreign court issuing said decree, is sufficient.
  - Although both parties had sufficient time to oppose the foreign judgment in any respect or the decree of partition of their conjugal property, no action was taken. As the court explains in Roehr v. Rodriguez, “before our courts can give the effect of res judicata to a foreign judgment [of divorce], it must be shown that the parties opposed to the judgment had been given ample opportunity to do so on grounds allowed under Rule 39, Section 50 of the Rules of court.” It is essential that an opportunity to challenge the foreign judgment is given, in order for the court to determine its efficacy.
  - As the records show, both parties were assisted and represented by their counsel in aid proceedings. As things stand, the foreign divorce decrees rendered and issued by the Dominican Republic court are valid, and consequently, bind both Rebecca and Vicente.
  - Finally, the fact that Rebecca may have been duly recognized as a Filipino citizen by force of the June 8,2000 affirmation by Sec. of Justice Tuquero of the October 6, 1995 Bureau Order of Recognition will not, standing alone, work to nullify or invalidate the foreign
divorce secured by Rebecca as an American citizen on February 22, 1996. As the reckoning point for citizenship of parties to be considered in divorce is at the time a valid divorce is obtained.

**Legal Effects of the Valid Divorce**

- Given the validity and efficacy of the divorce, it shall be given *res judicata* effect in this jurisdiction. An obvious result is that the marital *vinculum* between Rebecca and Vicente is considered severed; both are free from bond of matrimony and are free to remarry after completing the legal requirements.

- Consequent to the dissolution of the marriage, Vicente could no longer be subject to a husband’s obligation under the Civil Code. He can’t for instance, be obliged to live with, observe respect and fidelity, and render support to Rebecca.

- The divorce decree in question also brings into play the second paragraph of Article 26. In *Republic v. Orbedico III*, we gave twin elements for its applicability:
  1. There is a valid marriage that has been celebrated between Filipino citizen and a Foreigner
  2. A valid divorce is obtained abroad by the alien spouse capacitating the latter to remarry.

- Reckoning point regarding their citizenship is at the time a valid divorce is obtained abroad by the alien spouse, and not at the time of the celebration of marriage. Both elements obtain in present case.

- Civil Decree No. 406/97 and the Agreement executed on December 14, 1996 bind both parties as regards their property relations (only their family home). This property settlement was affirmed by the divorce court and parties are ordered and directed to “comply with each and every provision of said agreement.”

- Rebecca has not repudiated the property settlement contained in the Agreement. She is thus stopped by her representation before the divorce court from asserting that her and Vicente’s conjugal property was not limited to their family home in Ayala Alabang.

**No Cause of Action in the Petition for Nullity of Marriage**

- Rebecca lacks, under the premises, cause of action. In *Philippine Bank of Communications v. Trazo*, it is explained:

  - **A cause of action** is an act or omission of one part in violation of the legal right of the other. A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint. The allegations in a complaint are sufficient to constitute a cause of action against the defendants if, hypothetically admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.

  - From a perusal of Rebecca’s underlying petition before the RTC, Vicente’s motion to dismiss and Rebecca’s opposition thereof, with the documentary evidence attached therein: The petitioner lacks a cause of action for declaration of nullity of marriage, a suit which presupposes the existence of a marriage.
To sustain a motion to dismiss for lack of cause of action, the movant must show that the claim for relief does not exist rather than that a claim has been defectively staged or is ambiguous, indefinite, or uncertain. With the valid foreign divorce secured by Rebecca, there is no more marital tie binding her to Vicente. There is in fine no more marriage to be dissolved or nullified.

**Void and Voidable Foreign Marriages**

- In the event that a Filipino contracts a foreign marriage which is null and void under the laws of the state where it has been solemnized, such marriage shall likewise be null and void in the Philippines (derived from Article 26 of the Family Code). In this regard, a civil case can be filed in the Philippines to nullify a foreign marriage using as basis the legal grounds for nullity provided by the marriage laws of the state where the marriage was celebrated.

- Implicit in the first paragraph of Article 26 is also the recognition that a Filipino’s foreign marriage, which is invalid under the law where such a marriage has been solemnized but which would have been valid had such marriage been celebrated in the Philippines, is likewise invalid here.

- If a Filipino contracts a marriage solemnized in the residence of the solemnizing judge in a country where the law provides that a marriage shall be void if celebrated in a place other than the chambers of the solemnizing judge, such marriage shall be considered void in the Philippines although such marriage would have been valid had the celebration been performed in the Philippines; since here the venue of the marriage ceremony can be anywhere within the judge’s jurisdiction.

- In case of voidable or annulable marriage, the same rule as in null and void marriages applies. Under the general rules of private international law on marriage, it is a rule that, as to the extrinsic and intrinsic requirements of a marriage, the law where the marriage has been solemnized shall apply.

**CLASS DISCUSSION**

**Points to Consider**

- Parties here are both Filipinos
- We surrender formalities not out of diminishing sovereignty but of comity.
- In exceptions we do not waive solemnization. For foreigners, we only require a certificate of legal capacity. With it, most conditions are overlooked for them.
- For Article 26(2), for a Filipino to be capacitated to remarry, foreign decree must provide that the divorced spouses are capacitated to marry.

**Chapter 2 – MARRIAGES EXEMPT FROM THE LICENSE REQUIREMENT**

**Article 27.** In case either or both of the contracting parties are at the point of death, the marriage may be solemnized without necessity of a marriage license and shall remain valid even if the ailing party subsequently survives. (72a)

**Article 28.** If the residence of either party is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar, the marriage may be solemnized without necessity of a marriage license. (72a)

**Article 29.** In the cases provided for in the two preceding articles, the solemnizing officer shall state in an affidavit executed before the local civil registrar or any other person legally authorized to administer oaths that the marriage was performed in articulo mortis or that the residence of either party, specifying the barrio or barangay, is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar and that the officer
took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of legal impediment to the marriage. (72a)

| Article 30. The original of the affidavit required in the last preceding article, together with the 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. (75a) |
| Article 31. A marriage in articulo mortis between passengers or crew members may also be solemnized by a ship captain or by an airplane pilot not only while the ship is at sea or the plane is in flight, but also during stopovers at ports of call. (74a) |
| Article 32. A military commander of a unit, who is a commissioned officer, shall likewise have authority to solemnize marriages in articulo mortis between persons within the zone of military operation, whether members of the armed forces or civilians. (74a) |
| Article 33. Marriages among Muslims or among members of the ethnic cultural communities may be performed validly without the necessity of marriage license, provided they are solemnized in accordance with their customs, rites or practices. (78a) |
| Article 34. No license shall be necessary for the marriage of a man and a woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage. (76a) |

**POINTS**

**Exemption from Marriage License**
- Articles 27, 28, 31, 32, 33 and 34 are situations where the contracting parties need not obtain a marriage license prior to getting validly married.
- The reasons for the exceptions are mainly anchored on necessity and practicality such as in the case of marriages in articulo mortis where at least one of the parties is at the brink of death and of marriages in remote places; on the respect and recognition of the customs and practices of Muslims and ethnic minorities; and on the policies of the state to, as much as possible, validate or legitimize illicit cohabitation between persons who do not suffer any legal impediment to marry.

**Far areas**
- 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.
- A sacred institution like marriage should always be encouraged.
- Without this provision, illicit relationships may proliferate only because the parties could not get a marriage license with really no fault on their part.

**Solemnizing Officers under Article 7 and the Mayor**
- On the basis of Article 27, all those who are authorized to solemnize a marriage enumerated in article 7 and the mayor are empowered to act as the solemnizer of a marriage even without a marriage license.

**Chief Pilot and Ship Captains**
- A chief pilot of ship captain may only solemnize marriage in articulo mortis while the plane is in flight or the ship is at sea and even during stopovers and ports of call.
Military Commander
- The military commander must be a commissioned officer which means that his or her rank must be at least a second lieutenant, ensign or above.
- He or she must be a commander of a unit, which means any subdivision of an army whose strength is laid down by regulations.
- He can only solemnize marriages in articulo mortis and in the absence of a chaplain.

Muslims and Ethnic Groups
- It is interesting to note that under the Civil Code, for as long as marriages of ethnic groups, pagans, and Muslims were performed in accordance with their customs, rights, and practices, such marriages were considered valid.
- Under RA 6766, the Organic Act for the Cordillera Autonomous Region, Article X, Sec. 2 provides: “Marriages solemnized between or among members of the indigenous tribal group or cultural community in accordance with the indigenous customary laws of the place shall be valid, and the dissolution thereof in accordance with these laws shall be recognized.

Cohabitation for Five Years
- With respect to persons cohabiting for at least 5 years under Article 34 of the Family Code, it must be observed that their living together as husband and wife must meet two distinct conditions:
  - They live as such for at least 5 years characterized by exclusivity and continuity that is unbroken.
  - They must be without legal impediment to marry each other.
- The second condition as to the absence of any legal impediment must be construed to refer only to the time of the actual marriage celebration.
- It must be noted that under Article 76 of the NCC, which has been repealed by Article 34 of the Family Code, there are three conditions for the exemption to apply:
  - The contracting parties must have lived as husband and wife.
  - They must have attained the age of majority.
  - They must be unmarried.
- **Cosca vs. Palaypayon**
  - Issue: whether a judge can solemnize a marriage involving a party who was only 18 years of age without a marriage license on the basis of an affidavit where the parties indicated that they lived together as husband and wife for 6 years already.
  - Held: The judge acted improperly.
  - Ratio: the judge should have conducted first an investigation as to the qualification of the parties. The judge should have been alerted by the fact that the child was 18 years old at the time of the marriage ceremony, which means that the parties started living together when the 18 year old was barely 13 years of age. There was a probability that the affidavit was forged. Nevertheless, the SC did not state that the marriage was void because clearly at the time of the marriage ceremony, the parties had no legal impediment to marry.
- **De Castro v. Assiado-De Castro**, the SC ruled the nullity of a marriage on the ground of absence of a valid marriage licence upon evidence that there was in fact no cohabitation for five years contrary to the statements in the falsified affidavit executed by the parties. The falsity of the affidavit cannot be
considered to be a mere irregularity considering that the 5 year period is a substantial requirement of the law to be exempted from obtaining a marriage license.
THE FAMILY CODE OF THE PHILIPPINES
Title I. – Marriage
Chapter 3 – VOID AND VOIDABLE MARRIAGES

Article 35. The following marriages shall be void from the beginning:
(1) Those contracted by any party below eighteen years of age even with the consent of parents or guardians;
(2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;
(3) Those solemnized without license, except those covered 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.

POINTS

Void Marriage
- Void marriages are those marriages that are void from its inception
- The grounds for a void marriage may co-exist in one case.
- A petition for declaration of nullity, without any other incidental prayers like support, deals with only one cause of action, which is the invalidity of the marriage from the beginning. Hence, a petition may contain many grounds for nullity of marriage, such as absence of consent, no marriage license, psychological incapacity of the parties and bigamy, but it has only one cause of action, which is the nullity of the marriage. (Mallion v. Alcantara)

Void and Voidable Marriage
- A marriage that is annulable is valid until otherwise declared by the court;
- Whereas a marriage that is void ab initio is considered as having never to have taken place and cannot be the source of rights.
- Void marriages can never be ratified or cured by any act of any of the contracting parties. Neither could estoppels or acquiescence apply to remedy the infirmity.
- Mallion v. Alcantara
- Issue: whether the petitioner, after being denied the nullity of his marriage via a petition based on psychological incapacity, can subsequently file another petition for nullity of marriage based on the absence of marriage license
- Held: The SC directed the dismissal of the subsequent case
- Ratio: Because the petitioner violated the rule on splitting – a cause of action, that the rule of res judicata applied and that the petitioner waived the defect. The SC said that a case for nullity of marriage involved only one cause of action which was to declare the marriage void.

Bad Faith or Good Faith in Void Marriages
- As a general rule, good faith and bad faith are immaterial in determining whether or not a marriage is null and void.
- Chi Ming Tsoi v. Court of Appeals
- Issue: whether the ground for psychological incapacity under Article 36 of the Family Code was properly invoked to nullify a marriage and where evidence showed that the spouses did not engage in sexual intercourse but there was no finding as to who between the husband and the wife refused to have sexual intercourse
- Held: Absence of such a finding is immaterial
Persons and Family Relations Law

- Ratio: The action to declare a marriage void may be filed by either party, even the psychologically incapacitated one.
- Two exceptions to the general rule that good faith and bad faith are not relevant in void marriages:
  - First, article 35(2) states that if either of the contracting parties is in good faith in believing that a solemnizing officer has authority to solemnize a marriage through he or she actually has none, the marriage will still be considered valid.
  - Second, in the case provided in Article 41, referring to a person whose spouse disappears for four years or two years, in the proper cases, the present spouse may validly marry again if he or she: (1) has a well founded belief that his/her spouse is dead; (2) procures a judicial declaration of presumptive death; (3) at the time of the subsequent marriage ceremony, is in good faith together with the subsequent spouse; otherwise, the subsequent marriage shall be considered void in accordance with Article 44.

Bad Faith Affecting Property Disposition
- In determining the disposition of properties in a void marriage, good faith and bad faith of one of the parties at the time of the marriage ceremony are material.
- As a general rule, in a void marriage, the property regime, the property regime is one of co-ownership.
- In the disposition of the co-ownership at the time of liquidation, whether or not one of the parties is in bad faith is a basic consideration.

Collateral and Direct Attack
- As a general rule, a void marriage can be collaterally attacked. This means that the nullity of a marriage can be asserted even if it is not the main or principal issue of a case and that no previous judicial declaration of nullity is required by law with respect to any other matter where the issue of the voidness of a marriage is pertinent or material either directly or indirectly.
- De Castro v. Assidao-De Castro
- Issue: whether a petitioner who filed a complaint for support against her husband to compel the latter to support their child is validly done. When the husband interposed a defense claiming that petitioner and she were not married.
- Held: Lower Court can make a declaration that the marriage was void
- Ratio: The SC rejected the contention that a separate case for judicial declaration of nullity must be filed first before the lower court, in a case for support, can rule that the marriage was void.
- In Ninal v. Bayadog, the SC said that for purposes other than remarriage, no judicial declaration of nullity is necessary.
- Direct Attack is also required when it falls under Articles 50 in relation to Articles 43(3) and in Article 86(1) of the Family Code.

Below 18 Years of Age
- An individual below 18 years of age is declared by law as not possessing the legal capacity to contract marriage. The consent of the parents is immaterial in the sense that, even if present, it
will not make the marriage valid. Neither can subsequent parental consent ratify such a void marriage. The legal capacity to marry both for male and female is 18 years of age.

**Good Faith Marriage**
- If the marriage were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so when in fact he or she has none, then the marriage shall be considered valid.
- Putative Marriage is applied to a matrimonial union which has been solemnized in due form and good faith on the part of one or both of the parties but which by reason of some legal infirmity is either void or voidable. The essential basis of such marriage is the belief that it is valid.
- Like a putative marriage, the good faith marriage under Article 35(2) is not founded on the actual marriage or the ceremonial marriage, but on the reasonable belief by one or both of the parties that they were honestly married.

**Bigamous or Polygamous Marriage**
- Except those allowed under special laws such as the Muslim Code or under Article 41 of the Family Code, the law prohibits a married man

### Article 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. (As amended by Executive Order 227)

**POINTS**

**Psychological Incapacity**
- Law doesn’t define what it is. It’s left to the discretion of the courts depending on the facts of the case.
- From the Committee deliberations, absence is clearly intentional because situations vary from one case to another.
  - Justice Caguioa: “A Code should not have so many definitions, because a definition straight-jackets (in reference to Republic v. Molina) the concept and, therefore, many cases that should go under it are excluded by definition. That’s why we leave it up to the court to determine the meaning.”
- It is not equated to insanity or total mental inability to function in all aspects of human life. It is specific as a psychological incapacity “to comply with the essential marital obligations.”
  - Malady of spouse/s must be so serious as to prevent them from having a functional and normal marital life “clearly conducive to bringing up a healthy personal inter-marital relationship within the family which is necessary for growth.”
- It must be an illness affecting a party even before the celebration of marriage.
- It involves a senseless, protracted, and constant refusal to comply with essential marital obligations despite being physically capable, especially in other aspects of life.
  - The fact that a person loves his spouse and children is not a bar to invoke this ground if it is shown that despite this love, he is absolutely indifferent with respect to his duties as parent or partner that would foster such love.
- It is not just a stubborn refusal but can be attributed to psychological causes.
  - Justice Caguioa: “This particular ground refers to the “lack of appreciation of one’s marital obligation” and that “psychological incapacity does not refer to mental faculties and has nothing to do with consent; it refers to obligations attendant to marriage”
Insanity can be a good indicator of psychological incapacity but it isn’t a prerequisite.

Psychological incapacity must be present at the time of the marriage ceremony, but can be manifested later on during the marriage. It is considered a ground to nullify a marriage. Such a marriage cannot be cured by cohabitation considering that it is void; therefore, ratification cannot apply.

Justice Puno: Bearing of children and cohabitation are not sign that the psychological incapacity has been cured.

**Santos v. CA and Julia Rosario Bedia-Santos**

- First case by SC which discussed the scope and meaning of Art. 36
- Case: Petition for review on certiorari, at the instance of Leouel Santos. He insists on the application of Art. 36 to declare his marriage with respondent Julia Bedia-Santas a nullity.
- Facts: Santos (then a First Lieutenant in the Philippine Army) met Julia in Iloilo City. They eventually got married and had a son. They often quarreled due to conflicts involving both their parents.
  
  On May 18, 1988, Julia left for the USA to work as a nurse despite Santos’ pleas. Seven months later, she called to promise to return home after the expiration of her contract. She never did and despite petitioners’ efforts to locate her when he went there himself, all efforts were to no avail.
  
  Having been unable to get her to come home, he filed a case with the RTC of Negros Oriental to void his marriage based on Art. 36. On May 31, 1991, Julia sent her answer through counsel that petitioner was the one who had been irresponsible and incompetent.
  
  Despite several attempts to set pre-trial conferences, Julia filed a manifestation that she would neither appear nor submit evidence. Wherefore, the court dismissed complaint for lack of merit.
  
  Santos later appealed to CA but was also denied for non-compliance with Circular 28-91, which requires a certification of non-forum shopping and for lack of merit.
  
  Santos asserts that wife’s failure to communicate and inform her husband on her whereabouts for five years show that she is psychologically incapacitated to comply with the essential marital obligations of marriage.

- Held: Nullity case based on Article 36 is denied; petition failed to show that Julia met these standards.
- Ratio: Psychological incapacity being undefined, it might help to look at the deliberations of the Family Code Revision Committee.
  - Whether or not it is similar to insanity and which was graver.
  - A lot of arguments on whether or not psychological incapacity is a vice of consent or simply refers to lack of understanding of the essential obligations of marriage.
  - With regards to whether or not it involves consent, Justice Caguioa points out that there is a difference in validity of the marriage celebration and the obligations attendant to marriage since they require a different capacity.
  - Justice Caguioa wanted to use, “wanting in the sufficient use” rather than “wanting in sufficient use of judgment”, stressing that a person is lacking in the exercise of judgment, not lacking in judgment.
  - Argument on whether or not psychological incapacity is curable
Concern that people would use this to get out of marriage by feigning “psychological incapacity.”

Its similarity with an alike provision in Canon Law. Judge Diy: Allowing retroactivity with this law is their answer to the problems of church annulments of marriages, which are still valid under Civil Law.

Arguments on whether it should be retroactive or prospective in nature. A 10-year prescriptive period of when to file with the court such cases was arrived at as compromise.

In sum, by deciding to be less specific, it designed the law to allow some resiliency in its application. As according to Justice Sempio-Diy, a member of the Code Committee, “The Committee did not give any examples of psychological incapacity for fear that it would limit the applicability of the provision under the principle of ejusdem generis. Committee would like the judge to interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decision of church tribunals, which, although not binding on the civil courts, may be given persuasive effect since the provision was taken from Canon Law (Canon 1095, par. 3).”

According to Ladislas Orsy, S.J., regarding the aforementioned provision from Canon Law, it cannot be concluded from the changing of “psycho-sexual” to “psychological nature” in this provision that the cause of the incapacity need not be some kind of psychological disorder; after all, normal and health person should be able to assume the ordinary obligations of marriage. From the book “Canons and Commentaries on Marriage,” the mere difficulty of assuming these obligations, which could be overcome by normal effort, obviously does not constitute incapacity. The canon contemplates a true psychological disorder which incapacitates a person from giving what is due.

Justice Sempio-Diy cites Dr. Gerardo Veloso, a former presiding judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila, who opines that psychological incapacity must be characterized by:

(a) gravity – so serious such that party would be incapable of carrying out the ordinary duties required in marriage

(b) juridical antecedence – must be rooted in history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage.

(c) incurability – or even if otherwise, the cure would be beyond the means of the party involved. Obvious that looking at the foregoing disquisitions that “psychological incapacity” under Art. 36 was not meant to comprehend all possible cases of psychoses as, likewise mentioned by some ecclesiastical authorities, extremely low intelligence, immaturity, and like circumstances. This phrase must be construed along with the existing precepts in our law on marriage. Thus correlated, it should refer to no less than a mental incapacity that causes a party to be truly incogent...
must be assumed and discharged by the parties to
the marriage which, as so expressed by Art. 68 of
this Code, include their mutual obligations to live
together, observe love, respect and fidelity and
render help and support. There is hardly any doubt
that the intendment of the law has been to confine
the meaning of “psychological incapacity” to the
most serious cases of personality disorders clearly
demonstrative of an utter insensitivity or inability to
give meaning and significant to marriage. It must
exist at the time marriage is celebrated. Other forms of psychoses - drug addiction, habitual
alcoholism, lesbianism or homosexuality – if existing
at the inception of marriage, makes contract
voidable (Art. 46, Family Code). If should occur
during marriage, they become mere grounds for
legal separation (Art. 55, Family Code). Given the high place our laws and Constitution
place upon marriage, it is a tenet we must hold on
to. Factual settings in the case do not come close to
the standards required to decree a nullity of
marriage.

Constitutional Consideration

- Antonio v. Reyes
  - SC discussed the proper perspective by which Art. 36 is
to be implemented.
  - The courts have frequently cited Art. XV, Sec. 1 and 2 of
the Constitution on how the State highlights the
importance of the family and the constitutional
protection accorded to the institution of marriage.
  - Constitution doesn’t expound on these parameters of
state protection, and it is left to the province of
legislature to do so, based on whatever socio-political
influences it deems proper; limited only by the
Constitution and Bill of Rights. Which it has done by the
adoption of the Family Code.
  - While it appears that a judicial denial of a petition for
declaration of nullity is reflective of the constitutional
mandate to protect marriage, such action in fact merely
enforces a statutory definition of marriage, not a
constitutionally ordained decree of what marriage is.
  - Art. 36 should be seen as an implement of this
constitutional protection of marriage. Given the State’s
interest in promoting marriage as the foundation of the
family and then of the nation, it should also defend
against marriages ill-equipped to promote family life.
  - Void ab initio marriages do not further the initiatives of
the State concerning marriage and family, as they
promote wedlock among persons who, for reasons
independent of their will, are not capacitated to
understand or comply with the essential obligations of
marriage.

Proving Psychological Incapacity

- Unlike other grounds for declaration of nullity and the grounds
for annulment and legal separation which generally constitute
clearly definable physical acts or situations such as impotency,
non-age, physical violence, infidelity, etc., psychological
incapacity is psychosomatic and deals with a state of mind.
- It is proven only by indicators or external manifestations of the
person claimed to be psychologically incapacitated. Such
indicators must be clearly alleged in the complaint filed in court.
  - In a case where plaintiff made a general description in
the complaint of the indicators, essentially repeating
the wording of Art. 36, SC ruled that the following
allegation made in a bill of particulars is sufficient as
averring ultimate facts constituting psychological
incapacity, to wit: “At the time of their marriage,
respondent was psychologically incapacitated in that
she failed to understand and accept the demands of his
profession – newly qualified doctor of medicine – on
petitioner’s time and efforts. She frequently complained
of his lack of attention to her even to her mother,
whose intervention caused petitioner to lose his job.”

- One should also see if husband or wife observes their duties
towards one another, their children, and family. **Art. 68 of Family Code** : “husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.” This includes procreation based on the “universal principle that procreation of children through sexual cooperation is the basic end of marriage. Constant non-fulfillment will finally destroy the integrity or wholeness of the marriage.”

- **Arts. 220, 221, and 225 of the Code** also enumerates rights,
duties, and liabilities of parents relative to their parental
authority over their children. Failure to comply with these is a good indicator of psychological incapacity. The fear of a wife who is afraid of children and thus afraid to engage in sexual intercourse is an indicator of psychological incapacity. Senseless and protracted refusal is attributed to psychological incapacity by the Catholic marriage tribunals.

- Unreasonable attachment by a spouse to his family (father, mother, siblings) or to his friends, such that the importance and devotion which should be given to his spouse and children are subordinated to the said attachment is also a good indicator. However, separation or abandonment alone is not conclusive proof of psychological incapacity.

- Mere isolated idiosyncrasies of a spouse are not of themselves manifestations of psychological incapacity to perform the essential marital obligations.
  - Must be attributed to a psychological illness, not just a physical one.
  - Must not be just refusal or neglect but downright incapacity to perform.
  - Mere incompatibility or irreconcilable differences is not enough.

- Totality of marriage life is affected by the gross irresponsibility and utter disregard by the subject spouse towards family life as manifested by his or her actions and utter disregard by the subject spouse toward family life as manifested by his or her actions must be taken in consideration.

- This ground is also a very personal and limited one. It doesn’t mean that just because a person is psychologically incapacitated with his present spouse, this would also be the case with any other person.

- **Republic v. Hamano**
  - The fact that person alleged to be psychologically incapacitated is a foreigner does not negate the existence of such incapacity.
  - “Medical and clinical rules to determine psychological incapacity were formulated on the basis of studies of human behavior in general. Hence the norms used for determining it should apply to any person regardless of nationality.”

- **Te v. Te**
  - Fact: Parties’ relationship lasted more or less six months, at the end of which they married but parted.
  - Held: Nullity of marriage was granted.
  - Ratio: Petitioner Edward was suffering from dependent personality disorder and respondent Rowena was suffering from narcissistic and anti-social personality disorder, both consistent with psychological incapacity to perform the essential marital obligation. Respondent threatened to commit suicide if petitioner left her.
By the very nature of Art. 36, courts, despite having the primary task and burden of decision-making, must not discount but, instead, must consider as decisive evidence the expert opinion on the psychological incapacity to perform the essential marital obligation. **Fr. Adolfo Dacanay**'s work and interpretations were quoted, highlighting that the intendment of the law is consistent with Catholic Canon Law. **Justice Romero explains in Molina:**

“Professional opinion of a psychological expert became increasingly important in such cases. Such opinions are rarely challenged and tended to be accepted as decisive evidence of lack of valid consent. The Church points out that in including this ground into its own laws, doesn’t mean that their adding new ground but rather it is an accommodation to advances made in psychology during the past decade. There was now the expertise to provide the all-important connecting link between marriage breakdown and premarital causes. The reason is that it could no longer be assumed in annulment cases that a person who could intellectually understand the concept of marriage could necessarily give valid consent to marry. The ability to both grasp and assume the real obligations of a mature, lifelong commitment are now considered a necessary prerequisite to valid matrimonial consent.

Marriage is not merely cohabitation or the right of the spouses to each other’s body for heterosexual acts, but is, in its totality the right to the community of the whole of life (the right to a developing lifelong relationship.) Rotal decisions since 1973 have refined the meaning of psychological or psychic capacity for marriage as presupposing the development of an adult personality; as meaning the capacity of the spouses to give themselves to each other and to accept the other as a distinct person; that the spouses must be ‘other oriented’ since the obligations of marriage are rooted in a self-giving love; and that the spouses must have the capacity for interpersonal relationship because marriage is more than just a physical reality but involves a true intertwining of personalities. The marital capacity of one spouse is not considered in isolation but in reference to the fundamental relationship to the other spouse. **Fr. Green in Catholic Mind listed 6 elements necessary to the mature marital relationship:**

1. permanent and faithful commitment to the marriage partner
2. openness to children and partner
3. stability
4. emotional maturity
5. financial responsibility
6. ability to cope with the ordinary stresses and strains of marriage, etc.

Some of the psychological conditions that lead to failed marriages:

1. antisocial personality with its fundamental lack of loyalty to persons or sense of moral values
2. hyperesthesia, where individual has no real freedom of sexual choice
3. inadequate personality where personal responses consistently fall short of reasonable expectations

**Psychological grounds are the best approach for anyone who doubts whether he has a case for an annulment on other terms as anything that doesn’t fit in the tradition categories often fits very easily here.**

A shift occurred in this ground. It was originally focused on parties’ inability to exercise proper judgment at the
time of marriage (lack of due discretion). Now it is more concentrated on parties’ incapacity to assume or carry out their responsibilities and obligations as promised (lack of due competence). The advantage of this shift is that at the time the marriage was entered into civil divorce and breakup of the family almost always is proof of someone’s failure to carry out marital responsibilities as promised at the time the marriage was entered into.

- **Hernandez v. CA**
  - Case emphasized the importance of presenting expert testimony to establish the precise cause of a party’s psychological incapacity, and to show that it existed at the inception of the marriage.

- **Marcos v. Marcos**
  - There is no requirement that the person declared psychologically incapacitated is personally examined by a physician, if the totality of evidence presented is enough to sustain a finding of psychological incapacity. The evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself.

**Regards to presentation of expert proof:**

It presupposes a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, sever and incurable presence of psychological incapacity.

**The Encyclopedia of Mental Health**

Discusses personality disorder as follows – It is a group of disorders involving behaviors or traits that are characteristic of a person’s recent and long-term functioning. Patterns of perceiving and thinking are not usually limited to isolated episodes but are deeply ingrained, inflexible, maladaptive and severe enough to cause the individual mental stress or anxieties or to interfere with interpersonal relationships and normal functioning. Personality disorders are often recognizable by adolescence or earlier, continue through adulthood and become less obvious in middle or old age. An individual may have more than one personality disorder at a time.

A common factor among individuals who have personality disorders, despite a variety of character traits, is the way in which the disorder leads to pervasive problems in social and occupational adjustment. Some individuals with personality disorders are perceived by others as overdramatic, paranoid, obnoxious or even criminal, without an awareness of their behaviors. Such qualities lead to trouble getting along with others as well as difficulties in other areas of life and often a tendency to blame others for their problems. Other individuals might not be difficult or unpleasant but are lonely, isolated or dependent. Such traits can lead to interpersonal difficulties, reduced self-esteem and dissatisfaction with life.

**Causes of Personality Disorders**

Different mental health viewpoints (Freudian, genetic factors, neurobiologic theories and brain wave activity) propose variety of causes.

**Freudian** – Fixation at certain stages of development lead to certain personality types. Some disorders are derived from his oral, anal and phallic character types. Demanding and dependent behavior was thought to derive from fixation at the oral stage. Characteristics of
obsessionality, rigidity and emotional aloofness were thought to derive from fixation at the anal stage; fixation at the phallic stage was thought to lead to shallowness and an inability to engage in intimate relationships. Later researchers have found little evidence to support this theory.

Genetic Factors – Researchers have found that there might be a genetic factor involved in the etiology of antisocial and borderline personality disorders; there is less evidence of inheritance of other personality disorders. In some families, adoption and twin studies suggest that schizotypal personality may be related to genetic factors.

Neurobiologic Theories – Individuals who have borderline personality, researchers have found that low cerebrospinal fluid 5-hydroxyindoleacetic acid (5-HIAA) negatively correlated with measures of aggression and a past history of suicide attempts. Schizotypal personality has been associated with low platelet monoamine oxidase (MAO) activity and impaired smooth pursuit eye movement.

Brain Wave Activity – Abnormalities in electroencephalograph (EEG) have been reported in antisocial personality for many years; slow wave is the most widely reported abnormality. A study of borderline patients reported that 38% had at least marginal EEG abnormalities, compared with 19% in a control group.

Types of Disorders
According to American Psychiatric Associations’ *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III-R), personality disorders are categorized into 3 major clusters:

**Cluster A:** Paranoid, schizoid and schizotypal personality disorders. Individuals who have these disorders often appear to have odd or eccentric habits and traits

**Cluster B:** Antisocial, borderline, histrionic and narcissistic personality disorders. Individuals who have these disorders often appear overly emotional, erratic and dramatic.

**Cluster C:** Avoidant, dependent, obsessive-compulsive and passive-aggressive personality disorders. Individuals who have these disorders often appear anxious or fearful.

DSM-III-R also lists another category, “personality disorder not otherwise specified,” than can be used for other specific personality disorders or for mixed conditions that do not qualify as any of the specific personality disorders.

Individuals with diagnosable personality disorders usually have long-term concerns, and thus therapy may be long-term.

**Dependent Personality Disorder**
Personality disorders characterized by a pattern of dependent and submissive behavior. Such individuals usually lack self-esteem and frequently belittle their capabilities; they fear criticism and are easily hurt by others’ comments. At times they actually bring about dominance by others through a quest for overprotection. It usually begins in early adulthood. Such individuals may be unable to make everyday decisions without advice or reassurance from others, may allow others to make most of their important
decisions, tend to agree with people even when they believe they are wrong, have difficulty starting projects or doing things in their own, volunteer to do things that are demeaning in order to get approval from other people, feel uncomfortable or helpless when alone and are often preoccupied with fears of being abandoned.

**Antisocial Personality Disorder**
Characteristics show consistent patterns of behavior that is intolerant of the conventional behavioral limitations imposed by a society, an inability to sustain a job over a period of years, disregard for the rights of others (either through exploitive or criminal behavior), frequent physical fights and, quite commonly, child or spouse abuse without remorse and a tendency to blame others. There is often a façade of charm and even sophistication that masks disregard, lack of remorse for mistreatment of others and the need to control others. These characteristics not only describe criminals, but also befit some individuals prominent in business or politics, whose habits of self-centeredness and disregard for the rights of others may be hidden prior to a public scandal.

In the 19th century this was referred to as “moral insanity,” describing immoral guiltless behavior that was not accompanied by impairments in reasoning.

**Back to the case at bar:**
The seriousness of the diagnosis and the gravity of the disorders considered, the Court, in this case, find as decisive the psychological evaluation made by the expert witness and, thus rules that the marriage of the parties is null and void on ground of both parties’ psychological incapacity. We further consider that the trial court, which had a first-hand view of the witnesses’ deportment, arrived at the same conclusion. Indeed petitioner, from his disorder, followed everything dictated to him by the persons around him. He is insecure, weak and gullible, has no sense of his identity as a person, has no cohesive self to speak of, and has no goals and clear direction in life. Respondent, on her part, is impulsive and domineering; she had no qualms in manipulating petitioner with her threats of blackmail land of committing suicide.

Both parties being afflicted with grave, severe and incurable psychological incapacity, the precipitous marriage which they contracted on April 23, 1966 is thus, declared null and void.

- **Halili v. Halili**
  - SC likewise granted nullity of marriage based on the finding that petitioner was suffering from “mixed personality disorder from self-defeating personality disorder to dependent personality disorder.”

**Expert Testimony**
- In the course of proceedings, expert testimonies of a psychologist/psychiatrist evaluating the behavioral pattern of the alleged psychologically incapacitated are extremely helpful.
  - In Marcos v. Marcos, SC ruled that “the personal medical or psychological examination of respondent is not a requirement for a declaration of psychological incapacity” and that it is not a “condition sine qua non.”
  - Court may or may not accept the testimony of such witness because the decision must be based on the totality of the evidence. Nevertheless, the testimony of an expert witness, if credible and if consistent with the totality of the evidence, which is also credible must be given great weight.
Persons and Family Relations Law

Professor Amparita Sta. Maria

- **Azcueta v. Azcueta**, SC in granting nullity under Art. 36 due to dependent personality disorder of the respondent as reliably assessed by the competent psychiatrist who did not personally examine the respondent said that “by the very nature of Art. 36, courts, despite having the primary task and burden of decision-making, must not discount but, instead, must consider as decisive evidence the expert opinion on the psychological and mental temperaments of the parties.”

- **Antonio v. Reyes**, SC adhered to the medical and clinical findings of the psychiatrist and psychologist who did not personally examine the subject but were given reliable data about the respondent and read the pertinent court records in coming up with a more reliable assessment that the respondent was a pathological liar, as against the faulty clinical and medical findings of the psychiatrist of the respondent who examined the respondent and claimed that the respondent was not suffering from psychological incapacity. Hence, mere fact that a psychiatrist personally examined the subject person is not an assurance that his or her findings would be sustained.

- **Ting v. Ting**, SC did not grant nullity and overturned the decision of the lower court. As between psychiatrist presented by the petitioner and the one present by respondent, SC adhered to findings of the latter that respondent was not psychologically incapacitated. They favored the latter as he not only analyzed the transcripts of respondent’s deposition, but was also able to consider the finding of another psychiatrist who personally examined the respondent and also to interview respondent’s brothers. The psychiatrist of the petitioner, however, merely evaluated the respondent by only analyzing his deposition.

- **So v. Valera**, SC rejected the findings of the psychologist as unreliable. As in examining his report they found that the ‘Particulars’ and the ‘Psychological Conclusions’ disproportionate with one another; the conclusions appear to be exaggerated extrapolations, derived from isolated incidents. ‘Particulars’ were merely snapshots rather than a running account of respondent’s life. Hence such an assessment is unreliable as it is not comprehensive enough.

- **Rumbaua v. Rumbaua**, SC denied petition for nullity of marriage on the ground that the psychological report was very general and did not state specific linkages between the personality disorder and the behavioral pattern of the spouse during the marriage.

- **Krohn v. CA**, A husband, in a hearing for nullity of marriage under Art. 36, sought to introduce the confidential psychiatric evaluation report made by the psychiatrist with respect to his wife. Though respondent and her lawyer objected to it as it went against the privileged communication rule between doctor and patient, SC ruled that it did not since the one testifying isn’t the doctor but husband. They also ruled that neither is his testimony a circumvention of the prohibition because his testimony cannot have the force and effect of the testimony of the physician who examined the patient and executed the report. Moreover, counsel for petitioner indulged heavily in objecting to the testimony of private respondent on the ground that it was privileged. In his Manifestation before the trial court, he invoked the rule on privileged communications but never questioned the testimony as hearsay. It was a fatal mistake. For, in failing to object to the testimony on the ground that it was hearsay,
Persons and Family Relations Law

Professor Amparita Sta. Maria

counsel waived his right to make such objection, and consequently, the evidence offered may be admitted.

- **Najera v. Najera.** Testimony of the psychologist was inadequate and, in fact, did not conform to one of the persuasive evidence, which is the decision of the church matrimonial tribunal that nullified the marriage, not on psychological incapacity but on a different church ground, the SC ruled against the nullity of the marriage.

### Lifted from Canon Law

- This particular ground of nullity was essentially lifted from the Canon Laws of the Catholic Church. The learned opinion of Canon Law experts are greatly helpful in understanding Art. 36. **Fr. Gerald Healy, S.J.** was invited during discussions of the Civil Law Committee on psychological incapacity.

  - Example: Apparently, in a case where a woman submits herself to sexual intercourse just because she is obliged to do so, if it happens right from the beginning it could be an indicator of a psychological problem.

- Decisions of the Catholic tribunal on this matter are greatly helpful and as a matter of fact are persuasive. In **Te v. Te**, the SC highlighted this point by saying that the intendment of the law is consistent with Canon Law.

- The SC quoted the explanation of the eminent and foremost Jesuit Canon Law expert in the Philippines, **Fr. Adolfo Dacanay S.J.** on the matter:
  - **The meaning of Incapacity to Assume:** A distinction must be made between grave lack of discretionary judgment and the incapacity to assume the essential obligation. The latter does not deal with the psychological process of giving consent because it has been established a priori that both parties have such a capacity to give consent, and they both know well the object of their consent. Rather it deals with the object of the consent/contract which does not exist. The contract is invalid because it lacks its formal object. The consent as a psychological act is both valid and sufficient but it is directed towards an object which is not available. The person may be able of positing a free act of consent, but he is not capable of fulfilling the responsibilities he assumes as a result of the consent he elicits.

  There is increasing trend to understanding as a ground of nullity the incapacity to assume the essential obligations of marriage, especially the incapacity which arises from sexual anomalies. The evidence from empirical sciences is abundant that there are certain anomalies of a sexual nature which may impel a person towards sexual activities which are not normal, either with respect to its frequency [nymphomania, satyriasis] or to the nature of the activity itself [sadism, masochism, homosexuality]. However, these anomalies notwithstanding, it is altogether possible that the higher faculties remain intact such that a person so afflicted continues to have an adequate understanding of what marriage is and of the gravity of its responsibilities. In fact, he can choose to marry freely. The question though is whether such a person can assume those responsibilities which he cannot fulfill, although he may be able to understand them. In this latter hypothesis, the incapacity to assume the essential obligations of marriage issues from the incapacity to posit the object of consent, rather than the incapacity to posit consent itself.

  In considering whether or not a person of such condition’s intellect is continuously under such an irresistible compulsion, it would be possible and more reasonable to think that there are certain cases in which one who is sexually hyperaesthetic can understand...
perfectly and evaluate quite maturely what marriage is and what it implies; his consent would be juridically ineffective for this one reason that he cannot posit the object of consent, the exclusive jus in corpus to be exercised in a normal way and with usually regularity. It would seem more correct to say that the consent may indeed be free, but is juridically ineffective because the party is consenting to an object that he cannot deliver.

- **Incapacity as an Autonomous Ground:** According to Sabatanni, the distinction between inability to give consent and inability to fulfill the object of the consent may be understood by looking at it from the point of view of a nymphomaniac. It’s his opinion that nymphomaniacs usually understand the meaning of marriage, and they are usually able to evaluate its implications. They would have no difficulty with positing a free and intelligent consent. However, such persons, capable as they are of eliciting an intelligent and free consent, experience difficulty in another sphere: delivering the object of the consent.

- **Incapacity as Incapacity to Posit the Object of Consent:** From the jurisprudence laid out, it becomes clear that incapacity to assume the essential obligations of marriage (that is to say, the formal object of consent) can coexist in the same person with the ability to make a free decision, an intelligent judgment, and a mature evaluation and weighing of things. From Sabatanni’s example, it affirms that a nymphomaniac spouse can have difficulty not only with regard to the moment of consent but also, and especially, with regard to the matrimonium in facto esse. The decision concludes that a person in such a condition is incapable of assuming the conjugal obligation of fidelity, although she may have no difficulty in understanding what the obligations of marriage are, nor in the weighing and evaluating of those same obligations.

- **Indications of Incapacity:** There is incapacity when either or both of the contractants are not capable of initiating or maintaining this consortium (such as when one of them is so narcissistic that he is unable to begin a union with another person). The second incapacity could be due to the fact that the spouses are incapable of beginning or maintaining a heterosexual consortium, which goes to the very substance of matrimony. Another incapacity could arise when a spouse is unable to concretize the good of himself or of the other party. A spouse who is capable only of realizing or contributing to the good of the other party qua persona rather than qua conjunx would be deemed incapable of contracting marriage. Such would be the case of a person who may be quite capable of procuring the economic good and the financial security of the other, but not capable of realizing the bonum conjugale of the other. Stankiewicz clarifies that the maturity and capacity of the person as regards the fulfillment of responsibilities is determined not only at the moment of decision but also and especially during the moment of execution of decision. When this is applied to the constitution of the marital consent, it means that the actual fulfillment of the essential obligations of marriage is a pertinent consideration that must be factored into the question of whether a person was in a position to assume the obligations of marriage in the first place. Interpersonal relationships are invariably disturbed in the presence of this personality disorder. A lack of empathy is common. A sense of entitlement, unreasonable expectation, especially favorable treatment, is usually present. Likewise common is interpersonal exploitativeness, in
which others are taken advantage of in order to achieve one’s ends.

**An example of an Essential Matrimonial Obligation:**
Right to the *communion vitae*. This and their corresponding obligations are basically centered around the good of the spouses and of the children. Serious physical anomalies, which do not have to be necessarily incurable, may give rise to the incapacity to assume any, or several, or even all of these rights. There are some cases in which interpersonal relationship is impossible. Some characteristic features of inability for interpersonal relationships in marriage include affective immaturity, narcissism, and antisocial traits.

**Marriage and Homosexuality** — Based on recent rotal jurisprudence, homosexuality, which was not clear under what rubric it invalidated marriage, was understood as incapacity to assume the obligations of marriage. Hence by 1978, it became an autonomous ground of nullity. This ground seems the more adequate juridical structure to account for homosexuality as one of such disposition is not necessarily impotent, because normally, they are capable of full sexual relations with the spouse. Neither is it mental infirmity, and a person so afflicted does not necessarily suffer from a grave lack of due discretion because this sexual anomaly does not by itself affect the critical, volitive, and intellectual faculties. Rather, the homosexual person is unable to assume the responsibilities of marriage because he is unable to fulfill this object of the matrimonial contract. In other words, the invalidity lies, not so much in the defect of consent, as in the defect of the object of consent.

**Causes of Incapacity** — Pompedda proffers the opinion that it is with reference to the psychic part of the person. It is only when there is something in the psyche or in the psychic constitution of the person which impedes his capacity that one can then affirm that the person is incapable according to the hypothesis contemplated by this ground. A person is judged incapable in this juridical sense only to the extent that he is found to have something rooted in his psychic constitution which impedes the assumption of these obligations. A bad habit deeply engrained in one’s consciousness would not seem to qualify to be a source of this invalidating incapacity. The difference being that there seems to be some freedom, however remote, in the development of the habit, while one accepts as given one’s psychic constitution. It would seem then that the law insists that the source of the incapacity must be one which is not the fruit of some degree of freedom.

- The meaning of *incapacity to assume* is conceptually distinct between the grave lack of discretionary judgment and the incapacity to assume the essential obligation. It is the lack of the formal object. “Both (Jose and Carmela, examples of parties) have the capacity to give consent, and they both know well the object of their consent [the house and its particulars]. Rather, C.1095.3 (incapacity to assume the essential obligation) deals with the object of the consent/contract which does not exist. The contract is invalid because it lacks the formal object”. Furthermore, “it would seem more correct to say that the consent may indeed be free, but is juridically ineffective because the party is consenting to an object that he cannot deliver. The house he is selling was gutted down by fire”.

**Jurisprudential Guidelines**
• Republic of the Philippines v. CA and Molina, SC enumerated the guidelines in invoking and proving psychological incapacity under Art. 36.

(1) Burden of proof to show the nullity of the marriage belongs to the plaintiff, any doubt should be resolved in favor of the continuation of the marriage and against its dissolution. This is rooted on the constitutional and statutory protection afforded to marriage and the unity of the family. The Family Code echoes this by emphasizing the permanence, inviolability and solidarity of marriage and the family.

(2) Root cause of psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts, and (d) clearly explained in the decision. Art. 36 of the Family Code requires that the incapacity must be psychological – although its manifestations and/or symptoms may be physical. Evidence must convince the court that one or both parties was mentally or psychically ill to such an extent that the person didn’t have known the obligations he or she was assuming or, knowing them, couldn’t have given valid assumption thereof. Although no example of such incapacity is given, such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrist and clinical psychologists.

(3) Incapacity must be proven to be existing at “the time of the celebration” of the marriage. The evidence must show that the illness was existing when the parties exchanged their “I do’s.” The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. It may be absolute or even relative only in regard to the other spouse. Such incapacity must also be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. “Mild characteriological peculiarities, mood changes, occasional emotional outburst” cannot be root causes. Illness must be downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. There must be an adverse integral element in the personality structure of a person that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) Essential marital obligations must be those embraced by Arts. 68 to 71 of the Family Code as regards to husband and wife and Arts. 220, 221 and 225 in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Art. 36 was taken from Canon 1095 of the new Code of Canon Law (“The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature.”) Since purpose of adopt to Family Code is to harmonize our civil law with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally – subject to our law on evidence – what is decreed as canonically invalid should also be decreed civilly void. This is one instance where
contemporaneous religious interpretation is to be given persuasive effect. State and Church, remaining independent and separate, shall walk towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(8) Trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the State.

- Certification of the Solicitor General is not anymore needed pursuant to SC En Banc resolution in A.M. 00-11-01-SC.
- **Te v. Te**, SC stressed that each case on psychological incapacity must be seen on its own merit.
  - It may have been inappropriate for the Court to impose a rigid set of rules as the one in **Molina**, in resolving all cases of psychological incapacity. As a deluge of petitions for dissolution of marital bounds flooded the court. The unintended consequence of **Molina** has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. Far from the courts’ intention, **Molina** has become a strait-jacket, forcing all sizes to fit into and be bound by it. **Molina** has allowed diagnosed sociopaths, schizophrenics, and the like, to continuously debase and pervert the sanctity of marriage.
  - Let it be noted that in **Article 36**, there is no marriage to speak of as it is **void ab initio**.
  - The prospect of a possible remarriage by the freed spouses should not pose too much of a concern for the Court. First and foremost, because it is none of its business. And second, because the judicial declaration of psychological incapacity operates as a warning or a lesson learned. On one hand, the normal spouse would become more vigilant in marrying a person with a personality disorder again. On the other hand, a would-be spouse of the psychologically incapacitated runs the risk of the latter’s disorder recurring in their marriage.
  - We are not however suggesting the abandonment of **Molina** here. Simply declaring that there is a need to emphasize other perspectives as well which should govern the disposition of petitions for declaration of nullity under Art. 36.

**Damages**
- **Buenaventura v. CA**
  - SC disallowed the award of moral damages, exemplary damages and attorney’s fees on the ground that the very nature of psychological incapacity which is non-cognizance of one’s essential marital obligation at the time of them marriage ceremony, negates bad faith, which is an essential element in awarding moral damages in contracting marriage. Consequently, no award of exemplary damages and attorney’s fees can also be made in the absence of a showing of bad faith.

**Article 37.** Marriages between the following are incestuous and void from the beginning, whether the relationship between the parties be legitimate or illegitimate:
(1) Between ascendants and descendants of any degree; and
(2) Between brothers and sisters, whether of the full or half blood.

**(81a)**

**POINTS**

**Reasons for Prohibition of Incestuous Marriage**
- Such marriages are universally condemned as grossly indecent, immoral, and inimical to the purity and happiness of the family and the welfare of future generations.
- Reasons include the fact that they are abhorrent to the nature, not only of civilized men, but of barbarous and semi-civilized...
peoples; secondly, that they tend to the confusion of rights and duties incident to family relations.

- Child of incestuous union creates a special problem of social placement because its status is so confused, as is that of its parents. Example, if the child is born to a union between father and grandmother, then its father is simultaneous its grandfather. Its brother is also its uncle. Similar is the case if the child is the offspring of a brother-sister union, or a mother-son union.

- Science and experience have established that such intermarriages very often result in a deficient and degenerate offspring, which if occurring to any great extent, would amount to a serious deterioration of the race.

- In breeding yields increased probability of homozygosity (offspring receives an identical genetic contribution from each parent) with respect to a particular trait. If the pedigree contains a recessive abnormality such as a genetic defect that doesn’t appear in an individual unless parents transmit the appropriate determinant, there may be tragic consequences.

- Another reason deals with the social and psychological aspects of such marriage. Social prohibitions against incest promote the solidarity of the nuclear family.

- Essentials of nuclear family are a man and a woman in a relation of sexual intimacy and bearing a responsibility for the upbringing of the woman’s children. This institution is the principal context for socialization of the individual. A critical component of that process is the channeling of the individual’s erotic impulses into socially acceptable patterns. The incest prohibition regulates erotic desire in 2 ways that contribute to preservation of the nuclear family:

  1. Prohibition controls sex rivalries and jealousies within the family unity
  2. By ensuring suitable role models, the incest restriction prepares the individual for assumption of familial responsibility as an adult

It is worth noting also that the theory of the relation of incest to the nuclear family is consistent with Freudian psychology, which posits interfamily sexual attraction as one of the basic facts of mental life and attributes much psychic disturbance to failure of the personality to resolve the internal conflict between such desires and societal repression of them.

Article 38. The following marriages shall be void from the beginning for reasons of public policy:

1. Between collateral blood relatives whether legitimate or illegitimate, up to the fourth civil degree;
2. Between step-parents and step-children;
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. (82)

POINTS

Reasons for the Prohibition of Void Marriages

- It is against public policy.
- It won’t serve the fundamental objective of the State to nurture a stable family unit that can effectively be the foundation of society.
- The enumeration in this article is exclusive.
• Therefore a guardian may marry his ward and a step-brother his step-sister.

**Collateral Blood Relatives by Consanguinity**

- The dangers and confusion are attendant in incestuous marriages under Art. 37, though not of the same gravity.
- There are genetic reasons for advising against marriage of related persons to prevent their offspring from having any deleterious recessive genes. Relationship by consanguinity is not capable of dissolution.
- The mere fact that common ancestor dies, does not sever blood relationships.
- To determine whether or not two (2) people are relatives up to the 4th civil degree, they must consider their nearest and immediate common ancestor and then count the number of relatives from one of them to the common ancestor and from the common ancestor to the other one.

• Illustration: Blood-relation diagram of Juan Junior to some other persons within his blood relationship

(1) Anita – 1st cousin and is related in the 4th collateral civil degree. To connect the blood relationship of the two, count the number of immediate relatives excluding the reckoning point (in this case Juan Junior) towards the common ancestor.

Juan Junior  1 Juan Senior  2 Lolo Carding (the common ancestor)  3 Pedro  4 Anita.

Juan Junior is related to them in the following manner:

Anita = Consanguinity in the 4th civil degree (collateral line)
Pedro Senior = 3rd civil degree (collateral line)
Lolo Carding = 2nd civil degree (in the direct ascending line)
Juan senior = 1st civil degree (in the direct line)

They cannot validly marry.

(2) Jane – collateral relative by blood in the 3rd Civil Degree. Immediate and nearest common ancestor is Juan Senior. They cannot validly marry.

(3) Roberta – collateral relative by blood in the 4th Civil Degree. Immediate and nearest common ancestor is Victoria. They cannot validly marry.

(4) Dolores – collateral relative by blood in the 5th Civil Degree. Immediate and nearest common ancestor is Lolo Carding. They can validly marry, because she is not a collateral blood relative up to the 4th civil degree.

(5) Leonor – relative by blood in the 5th Civil Degree but in the direct ascending line. They cannot marry her pursuant to **Art. 37 (1)** which provides that a marriage between an ascendant and a descendant of any degree is void.

**Collateral Half-blood Relatives by Consanguinity**

- Prohibition extends to the collateral blood relatives up to the 4th Civil Degree which include one’s uncle, aunt, niece, nephew,
and first cousins. It is not provided by law that collateral relatives by half-blood are prohibited to marry.

- Illustration:

Here, Xeres is the son of Diana and Angel. Lea is the daughter of Yolanda who is the daughter of Angel and Bea. Angel is the nearest and immediate common ascendant of Xeres and Lea. The two are relatives by consanguinity in the 3rd civil degree. However they are only related by half-blood, because they have different mothers. Xeres is therefore the half-blood uncle of Lea.

There are 2 significant American cases which advance 2 different views as to whether or not such marriages are void:

- **Audley v. Audley,**
  - Issue: Whether or not the provision in a marital statute prohibiting marriages between uncles and nieces or aunts and nephews also include “half-blood relationships”.
  - Held: SC appellate Division of New York ruled that it was prohibited.
  - Ratio:
    In 1880 the decision of the US Circuit Court for the Northern District of New York, **Campbell v. Crampton,** the Court construed a similar provision as the prohibition extending to relatives of the half-blood as well as relatives of whole blood. It is therefore a reasonable inference that Legislature, which enacted the law in 1893, was aware of this decision, and deemed it necessary to specify whether the relationship was of the half or whole blood.
    Moreover, in other jurisdictions it has been held that statutes prohibiting such marriages and making them criminal and containing reference to whether the prohibition extended to relatives of the whole or half-blood, embraces relatives of the half-blood as well as those of the whole blood; and that is the general rule of construction applied to such statutes.

    The specification for brother-sister may have been incorporated for the reason that brothers and sisters of the half-blood are commonly referred to as half-brother or half-sister, whereas in speaking of uncles and nieces and aunts and nephews, no distinction is made with respect to whether they are of the whole or half-blood.

    It may also be that, in view of the fact that the former legislature had by Subdivision 2 expressly provided that the prohibition as to brothers-sisters was intended to relate to relatives of the half as well as whole blood, it was considered that the public policy of making no distinction between relatives of the whole and half blood in legislating on questions of marriage and incest was sufficiently shown, and that it was not deemed necessary to repeat that specification of relationship.

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• It is impossible to be full blood, so the term does not apply.

• **In Re Simms Estate**
  - Held: NY Court of Appeals stated that a marriage between uncle and niece by the half blood is not incestuous and void.
  - Ratio: Court’s reason was that such marriage is not specifically included by law as a void marriage and therefore, cannot be considered as such. This omission would ordinarily be understood as inclusive of “half-blood” relationships were it not for the express distinction made in **Sec. 2** on “whole-blood” and “half-blood” brothers and sisters.
  
  It seems reasonable to think that if legislature had intended to prohibit such marriages between uncles and aunts-nephews, it would have used the same language. Its failure to do so in immediate context in dealing with a more remote relationship than brother and sister, suggests that it did not intend to put this limited class within the interdiction
  
  Despite the ruling in **Audley v. Audley**, the term is of common usage and meaning where the parent of the nephew or niece is not a full brother or sister of the contracting party. If the legislature had intended that its interdiction on this type of marriage should extend to the rather more remote relationship of half blood between uncle-niece, it could have made suitable provision. Absence of which suggests it may not have intended to carry the interdiction this far.

  The second case of **In Re Simms Estate** appears to be the proper view. All doubts must be construed in favor of marriage. Only those expressly prohibited by law as void shall be treated as such. Also, since what is involved in **Art. 38 (1)** has been categorized as a marriage against public policy, it must be strictly construed in favor of the contracting parties and against its illegality.

**Relationship by Affinity**

• Step-parents and step-children as well as parents-in-law and children-in-law are related by affinity. The doctrine of affinity grew out of the canonical maxim that marriage makes husband and wife one. The husband has the relation, by affinity, to his wife’s blood relatives as she has to them by consanguinity and vice versa.

• Affinity is a connection formed by marriage. It is used in contra-distinction to consanguinity. It is no real kindred. Affinity arises from marriage, by which each party becomes related to all the **consanguinei** of the other party to the marriage, but in such case these respective **consanguinei** do not become related by affinity to each other.

• Only marriages by affinity prohibited in the Family Code are marriages between step-parents and step-children as well as parents-in-law and children-in-law.
  - Such marriages could most likely destroy the peacefulness of the family relations and also cause disturbance within the family circle. It is strongly believed that it would be scandalous for them to marry because it is more in keeping with Philippine customs and traditions that parents-in-law treat children-in-law just like their own children and vice versa.

• Step-brother and step-sister can, however, marry each other as this relationship by affinity is not included in the prohibition.

**Effect of Termination of Marriage on the “Affinity Prohibition”**

• In the event that a marriage is annulled or nullified in accordance with law. Relationship by affinity between step-parents and step-children as well as parents-in-law and
children-in-law is terminated as said persons become strangers to each other. Hence they may then marry each other legally.

- **Back v. Back**
  - Issue: Marriage between a deceased husband and the daughter of his former wife by another man of a previous marriage was assailed as void under a statute providing that the marriage between a husband and his wife’s daughter is incestuous and, therefore, criminally punishable.
  - Held: SC of Iowa held that marriage between them is valid.
  - Ratio: It seems settled by unanimous concurrence of authorities on the subject that the relationship by affinity terminates with the termination of the marriage either by death or divorce which gave rise to the relationship of affinity between two (2) parties. The relationship of affinity between decedent and plaintiff which existed during the continuance of the marriage relation between decedent and plaintiff’s mother terminated when the latter procured a divorce from decedent, and after that time, plaintiff was not the daughter of decedent’s wife, and the marriage between them was valid.

- In case a marriage is terminated by death of one of the spouses, there are conflicting views.
  - Some believe that relationship by affinity does not terminate regardless of the presence of children borne from the marriage.
  - However, the better view supported by most judicial authorities in other jurisdictions is that, if the spouses have no living issues or children and one of them dies, the relationship by affinity is dissolved. On the other hand, this relationship continues where there are living issues or children of the marriage “in whose veins the blood of the parties are commingled, since the relationship of affinity was continued through the medium of the issue of the marriage.”

**Adoptive Relationship**

- Relationship created in adoption is merely of parent and child. Void marriages in an adoptive relationship are specifically and expressly limited by law to those mentioned in Art. 37 (4), (5), (6), (7), and (8).
  - Adopter cannot marry the adopted and the surviving spouse of the adopted.
  - Adopted cannot marry any of the following: adopter, surviving spouse of adopter, legitimate child of the adopter, other adopted children of the adopter.
  - While by law adopted is not related to any of the enumerated above, the law makes an express declaration that they cannot marry each other, as the same will be considered void.
  - An adopted can valid marry the following: parents, illegitimate child, and other relatives, whether by consanguinity or affinity, of the adopter. There is not prohibition of adopted marrying the illegitimate child as it will not most likely destroy tranquility of the family home and the artificial family since an illegitimate child does not usually lie in the same house as where the adopted or legitimate children are living.
  - Adopter can validly marry the legitimate, illegitimate or adopted child, the natural parent, and other relatives, whether by consanguinity or affinity, of the adopted.
  - Since Art. 38 qualifies the spouse of either the adopted or the adopter as a surviving spouse, this can only imply that the marriage between the surviving spouse of either the adopted or the adopter has been terminated by death. Hence, if the marriage of the adopter and his or her spouse is judicially annulled and barring any other ground to make the marriage void, the adopted can validly marry the previous spouse of the
adopter because such spouse is not a surviving spouse but a former one, who after the finality of the annulment or nullity decree has become a complete stranger to the adopter. The same holds true for the adopter and the former spouse of the adopted with the same conditions.

Intentional Killing of Spouse

• Art. 38 (9) is highly criminal, involving grave moral turpitude, destructive not only of the family but the whole society itself. Indeed, if the guilty spouse can undertake a sinister scheme to kill his or her spouse in order to marry another person and can eventually becomes successful at it, there is no guarantee that he won’t do the same evil act to his subsequent spouse in order to marry a third time.

• However, in killing his spouse, the guilty party must be animated by an intention to remarry. Thus, if a wife kills her husband because he’s an incorrigible philanderer and thereafter marries her lawyer who’s defending her in the criminal case, the marriage is valid since the reason for killing her husband wasn’t to marry the lawyer.

• No prior criminal conviction by the court for the killing is required by the law. Justice Caguioa even said that mere preponderance of evidence is required to prove the killing.

• Also to come within the purview of Art. 38(a), Justice Puno explained that it can be a unilateral intention and need not be shared by the other spouse so that even the unknowing party will be affected by the void character of the marriage.

• Reasons for a spouse killing his own spouse to marry another and thus making the subsequent marriage void, likewise applies to persons who kill the spouse of another to marry the latter.

Article 39. The action or defense for the declaration of absolute nullity shall not prescribe. However, in case of marriages celebrated before the effectivity of this Code and falling under Article 36, such action or defense shall prescribe in ten years after this Code shall taken effect. (As amended by Executive Order 227)

POINTS

Prescriptive Period

• The time within which to file an action for declaration of nullity of a marriage or to invoke such nullity as a defense, whether in a direct or collateral manner, does not prescribe.

• A judicial decree of nullity of marriage does not legally dissolve a marriage because such a marriage is invalid from the beginning and therefore, being non-existent, cannot be dissolved.

• Judicial decree merely declares or confirms the voidness, non-existence, or incipient invalidity of a marriage. Hence the decree is known as a judicial declaration of nullity of marriage decree.

• Ninal v. Bayadog (328 SCRA 122)

  o Issue: Whether the petition for the declaration of nullity of marriage filed by the children of the deceased contracting party only after the latter’s death can still proceed.

  o Held: The Petition can still proceed

  o Ratio Decidendi: The SC justified its decision by stating that a void marriage is considered as having never to have taken place and will be treated as non-existent by the courts. As such, the petition is imprescriptible and can be filed by the children even after the death of the contracting party, who was their father. The SC said that “if the death of either party would extinguish the cause of action or the ground for defense, then the same
cannot be considered imprescriptible” which should not be the case.

- In an SC en banc resolution which took effect on March 15, 2003, the Ninal ruling was no longer applicable, said SC resolution provides that only the husband and the wife can file the case and if filed, will be closed or terminated during its pendency, either the husband and the wife should die.

- Under A.M. (Administrative Matter) No. 02-11-10, the heirs can no longer file a case for the nullity of marriage of their parents or of their parent with their step-parent. (Enrico v. Heirs of Medinceli)

- Class Note: Therefore, the SC circular amends Article 39. There is now a prescriptive period for the action or defense for the declaration of absolute nullity, which is during the lifetime of either of the contracting parties.

- Under EO 227, if the ground for the declaration of nullity of marriage is that the spouse is psychologically incapacitated to perform essential marital obligations and the marriage ceremony celebrated prior to the effectivity of the Family Code which was on August 3, 1988, such action or defense must be filed or invoked within 10 years from August 3, 1988, or more specifically up to August 1, 1998.

- If the marriage is celebrated after the effectivity of the Family Code, the action/defense shall not prescribe. RA 8533 further amended Article 39 by deleting the prescriptive period of 10 years.

- As it now stands, there is no prescriptive period to nullify a marriage under Article 36 even if the marriage was celebrated before August 3, 1988. All void marriage under the Family Code do not prescribe.

### Parties

- While the Family Code is silent to who can file a petition to declare the nullity of marriage (Nina v. Bayadog) only the husband or the wife can file a court case declaring the marriage void (Carlos v. Sandoval).

- It has been authoritatively been opined that the equitable doctrine of unclean hands where the court should not grant relief to the wrongdoer is not a rule as applied in nullity actions because it is merely judge-made and has no statutory basis (Faustin v. Lewis)

- Previously, a father can file a case for declaration of nullity of a bigamous marriage entered into by his daughter and a married man (Cojuangco v. Romilo).

- Likewise, the legitimate heirs can file a suit against their stepmother for the declaration of nullity of marriage with their deceased father to protect their successional rights (Ninal v. Bayadog)

- Under the new rules, parents cannot file a case for nullity in relation to the marriage of their children. Neither can an heir file such a case in relation to the marriage of his/her parent with another. (Enrico v. Medinceli)

#### Perez v. Court of Appeals

- Issue: Whether the second wife can file a petition for intervention in the declaration of nullity of marriage case filed by her husband in relation to the latter’s first marriage.

- Held: The SC denied such intervention

- Ratio decidendi: Since the divorce obtained by her husband in the Dominican Republic from the first wife to be able to marry the second wife was not recognized
in the Philippines, Philippine law does not recognize the second marriage of her husband to her (the second wife).

- However, a void marriage can still be collaterally attacked by any interested party in any proceeding where the determination of the validity of marriage is necessary to give rise to certain rights or negate certain rights. This can occur for example in an intestate proceeding where certain heirs can attack the validity of the marriage of the deceased parent so that the children of the deceased parent can be considered illegitimate for purposes of inheritance.

**Article 40.** The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void. (n).

**POINTS**

**Historical Background of the Need for Judicial Declaration of Nullity**

- The decision for the need for a judicial declaration of nullity for remarriage kept changing before it became final in the Family Code.
  - 1954 to 1957 (People v. Mendoza and People v. Aragon): No
  - 1986 (Wiegel v. Sempio-Diy): Yes
  - Later in 1986 (Yap v. CA): No

- The changing rules affected the status of the subsequent marriages, since the rules during the celebration of the marriage holds.
- **Domingo v. CA**

- The Court discusses the reasons for the declaration of absolute nullity.
  - A cause of action or ground of defense
  - Where absolute nullity is sought for the purpose of contracting a subsequent marriage, as a sole basis acceptable in law as final judgment declaring the previous void
  - Legal protection for the spouse who seeks remarriage after a previous void marriage

- Justice Caguiao: One cannot determine for himself whether or not his marriage is valid; thus court action is needed
- Professor Bautista argued that this would do away with collateral attack; thus reworded Article 39 to limit the provision to remarriage

**Judicial Declaration of Nullity**

- If a marriage between two contracting parties is void from the beginning, any one of them cannot contract a subsequent valid marriage without a previous judicial declaration of nullity of the previous void marriage is in itself void ab initio in accordance with Articles 40, 52, and 53.

- As far as Article 40 is concerned, if a judicial declaration of nullity were obtained and not registered with the local civil registrar and the liquidation, partition, and distribution of properties, if any, were also not recorded in the property registry of property in accordance with Article 52 and 53 of the Family Code, any subsequent marriage is void ab initio.

- **Article 40** of the Family Code, which is a rule of procedure in effect states that the only acceptable proof of the nullity of a first marriage for purposes of remarriage is a judicial declaration of nullity. (Domingo v. Court of Appeals)

- In De Castro v. Assidao-De Castro, the SC ruled that in a case for support, a lower court can declare a marriage void even without
prior judicial declaration of nullity of a void marriage filed in a separate action considering that the determination of the issue on the validity of the marriage was important in the resolution of the right of the child to be supported.

**Article 40 and Bigamy**
- If the first marriage is void and a party to that first marriage subsequently remarries without obtaining a judicial declaration of nullity of it first marriage, there is no doubt that the subsequent marriage is likewise void. It is not void not because it is bigamous but because it failed to comply with the requirements under Article 40, and pertinently, Articles 52 and 53.
- A subsequent void bigamous marriage contemplates a situation where such subsequent marriage was contracted at the time when the first marriage, which is valid in all respects, was still subsisting. A void bigamous therefore involves a situation where the first marriage is not void but completely valid or at least annullable.
- In other words, in a bigamous void marriage, the subsisting first marriage is valid, while in Article 40 in relation to Article 52 and 53, the subsisting first marriage is void.

**Article 40 and Criminal Bigamy**
- The crime of bigamy under our laws is committed by any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceeding (Article 349, RPC).
- Mercado v. Mercado (G.R. No. 137110)
  - The SC held that the criminal offense of bigamy is committed for as long as a subsequent marriage was contracted by a person without him or her obtaining a judicial declaration of nullity of his/her first marriage pursuant to Article 40 of the Family Code.
  - Dissenting opinion of Justice Vitug: While the accused may have violated Article 40, such violation is not a bar in invoking the nullity of the first marriage because article 40 merely aims to put certainty as to the void status of the subsequent marriage and is not aimed as a provision to define bigamy under the Family Code or the criminal bigamy under the RPC. The only effect of the non-observance of Article 40 is to make the subsequent marriage void pursuant to Articles 52 and 53.
- People v. Cobar
  - Ruling conforms with Justice Vitug’s opinion.
  - A party who remarries without the previous marriage judicially declared null is criminally liable under Article 350 of the RPC, wherein the accused Cobar knowingly did not comply with the requirements for marriage (and NOT under Article 349, which criminalizes bigamy, and NOT under Article 350, as under the information charging him with bigamy).
  - Before the Family Code took effect, there was no criminal liability and the subsequent marriage would be valid. This is no longer true. Article 40 was not meant to change the definition of bigamy and its concepts.

**Article 41.** A marriage contracted by any person during 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 has a well-founded belief that the absent spouse was already dead. In case of
disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient. For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse. (83a)

**Article 42.** The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void ab initio. A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed. (n)

**POINTS**

**Bigamous Marriage**

- As a general rule, a marriage contracted during the lifetime of the first spouse is null and void (Gomez v. Lipana).
- A person who marries another, knowing that the latter is already married and that his marriage is valid and subsisting, can be prosecuted for bigamy. (People v. Archilla).

**Exception**

- A bigamous marriage may be considered valid if, prior to the subsequent marriage and without prejudice to the effect of the reappearance of the other spouse, the present spouse obtains a judicial declaration of presumptive death via a summary proceeding in a court of competent jurisdiction.

- Before such declaration can be obtained, it must be shown that the prior spouse had been absent for 4 consecutive years and the present spouse had a well-founded belief that the absent spouse is dead.
- The period is shortened to two (2) years in case of disappearance where there is danger of death under the circumstance set forth in Article 391 of the Civil Code.

**Termination of the Subsequent Marriage**

- Unless there is a judgment annulling the previous marriage or declaring it void ab initio, automatic termination of the subsequent marriage can be obtained by the recording of the affidavit of reappearance of the absent spouse in the civil registry the registry of the residence of the parties to the subsequent marriage pursuant to Article 42.
- It is the only instance marriage is terminated extra-judicially.
- In case the reappearance is disputed, the same shall be subject to judicial determination.
- If the spouse reappears, and neither the spouse nor any interested parties file an affidavit or sworn statement with the civil registrar – there will be technically two valid marriages, and at this point the existence of a valid “bigamous” marriage.

**Liquidation of the Properties of the First Marriage**

- Under Article 41 of the Family Code, the judicial declaration of presumptive death should be issued for the purpose of contracting the subsequent marriage.
- After the issuance of this judicial declaration, the properties of the first marriage should be liquidated using by analogy the provisions of Articles 103 (governing absolute community of property) and 130 (governing conjugal partnership property) of the Family Code if the marriage to be liquidated is in itself valid.
• **Notes:** If there is no liquidation and the spouse marries again, property distribution of the first shall follow complete separation.

**Well Founded Belief of Death**

• There are crucial difference between Article 41 and Article 83 (3) of the repealed Civil Code.
• The time required for the presumption of death to arise has been shortened to four years.
• The Family Code imposes stricter standards – under Article 83 or the Civil Code it merely required that there be no news that such absentee was still alive, or the absentee was generally considered to be dead and believed to be so by the spouse present, or was presumed dead under Articles 390 and 391.
• Article 41 now prescribes “well-founded belief”.
• Republic v. Nolasco (220 SCRA 20)
  o The SC discusses the concept of “well-founded belief”.
  o Facts: Janet Monica Parker was the British wife of respondent Nolasco. In the respondent’s attempt to ascertain his spouse’s location after discovering her departure from San Jose, Antique, instead of seeking help from local authorities or the British Embassy, secured another seaman’s contract to go to London “with a simple hope of somehow bumping” into her there. Respondent’s testimony further reveals that he confused London for Liverpool, which is three hundred fifty (350) km apart. Respondent further alleged that the letters he sent to her and they were returned, but they suggest refusal of the spouse to respond rather than her death. Respondent also claimed to have inquired with friends for his spouse’s whereabouts, but again the testimony was weak because he failed to identify these friends.
  o Issue: Whether a Filipino seaman can get a judicial declaration of presumptive death from the court relative to his missing English spouse.
  o Held: Petition rejected.
  o Ratio: Petitioner failed to conduct a search for the missing wife with such diligence to give rise to a well-founded belief.
• Republic v. Court of Appeals
  o Issue: whether the person seeking a judicial declaration presented only the Barangay Captain, but did not present the persons from whom he allegedly made inquiries, and did not even make inquiries with his parents-in-law who knew of his wife’s abandonment of the conjugal abode.
  o Ratio: The SC ruled that there was a failure to prove a well-founded belief that the wife is already dead.

**Judicial Declaration of Presumptive Death**

• No judicial declaration of presumptive death is required as such presumption arises from law.
• Under Articles 390 and 391 of the Civil Code, it is provided that an absence of seven years, it being unknown whether or not the absentee lives, a person shall be presumed dead for all purposes except for those of succession, in which case the absentee shall not be presumed dead until after an absence of 10 years. It is shortened to five years if the person disappears after the age of seventy-five (75).
• It is only in Article 41 that a judicial declaration of presumptive death is mandatorily required by law to be obtained only for the purpose of allowing the present spouse to marry.
• Judicial declaration of presumptive death is the best evidence of a person’s “well-founded belief” of the spousal death.
It immunizes him or her from charges against bigamy, adultery or concubinage.

**Sworn Statement of Reappearance**

- If the absent spouse reappears, such spouse can easily terminate the subsequent marriage by executing a sworn statement or affidavit of the fact and circumstance of such reappearance and recording the same with due notice to the spouses of the subsequent marriage.
- The subsequent marriage is automatically terminated.
- Any interested party can file the sworn statement: parents, children, present spouses and subsequent spouse’s parents and children of the other spouse of the subsequent marriage.
- **Social Security System v. Jarque Vda. De Bailon**
  - Issue: The SC ruled on the case that an absentee’s reappearance, even when made known to the spouses of the subsequent marriage will not terminate such marriage. Such presumption of death of the former spouse continues in spite of the spouse’s physical appearance, and by fiction of law, he or she must still be regarded as legally an absentee until the subsequent marriage is terminated as provided by law.
- It is submitted that the better view provides that if the reappearance is authentic, the judicial declaration of presumptive death is immediately rendered functus officio.
- The termination of the subsequent marriage is without prejudice to the outcome of any judicial proceeding questioning such reappearance.
- Without a sworn statement, the previous and subsequent marriages are valid. The law shall continue to protect the subsequent marriage.

- If the previous spouse wants to preserve his or her right then he needs to file the affidavit of reappearance.
- The filing of a sworn statement serves as the best evidence to show that the State is also prepared to return the preference to the previous marriage.
- Until the sworn statement is filed, the reappearing spouse cannot remarry, unless he or she files a nullity case.
- If there are no grounds for nullity, then the reappearing spouse will remain married to the other forever.
- Many complications arise if the reappearing spouse does not file the affidavit. One confusing situation arises where a subsequent new spouse may file for legal separation based on sexual infidelity against the present spouse if the latter, without filing for the reappearance of the absentee spouse, decides to have an amorous relationship with the reappearing spouse whose marriage is still subsisting with him or her.
- Therefore the affidavit is an important maintenance for an ordered and harmonious family relationship.

**Criminal Liability**

- **Article 349** of the Revised Penal Code provides that the penalty of prision mayor shall be imposed upon any persons who shall contract a second or subsequent marriage.

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**Article 43.** The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:

1. The children of the subsequent marriage conceived prior to its termination shall be considered legitimate, and their custody and support in case of dispute shall be decided by the court in a proper proceeding;
2. The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either
spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;

(3) Donations by reason of marriage shall remain valid, except that if the donee contracted the marriage in bad faith, such donations made to said donee are revoked by operation of law;

(4) The innocent spouse may revoke the designation of the other spouse who acted in bad faith as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable; and

(5) The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession. (n)

Article 44. If both spouses of the subsequent marriage acted in bad faith, said marriage shall be void ab initio and all donations by reason of marriage and testamentary dispositions made by one in favor of the other are revoked by operation of law. (n)

POINTS

Status of Children
- Under Article 43, children conceived during the subsequent marriage contemplated in Article 41 in cases of presumptive death of one of the spouses and before termination of the same shall be considered legitimate, even if one is in bad faith.
- This is so because the children have been conceived either inside a valid bigamous marriage or inside a valid marriage despite the non-observance of Articles 40, 52, and 53.

Effect of the Termination of the Property Regime
- The effect of the termination of the subsequent marriage on the property regime, whether absolute community or conjugal partnership, is the same. The property shall be dissolved and liquidated.
  - After payment of all debts and obligations, the property shall be divided equally or in accordance with the sharing stipulated in a valid marriage settlement.
  - If either of spouses acted in bad faith, the guilty spouse shall not get his share in the net profits of the property regime. His or her share shall be forfeited in favor of the common children.
  - If there are no common children, the property shall be given to the children of the person in bad faith. Without any children, the property shall be given to the innocent spouse.

Donations by Reason of Marriage
- Donations are essentially gratuitous. Hence, if both parties are in good faith, the donation by reason of marriage shall be valid even in the event that the subsequent marriage has been terminated.
  - It shall also be valid even if the donor acted in bad faith in contracting the marriage.
  - Article 44 however, provides that, where both parties acted in bad faith, testamentary dispositions made by one in favor of the other are revoked by operation of law.
  - Since both are at fault it can be argues that neither may recover what he or she has given by virtue of the contract pursuant to the ordinary rules on contract under the Civil Code.

Designation as Beneficiary in Insurance Policy
- The innocent spouse can revoke or maintain the other as a beneficiary.
- The innocent spouse can revoke even if the designation as beneficiary is irrevocable.

Disqualification as to Inheritance
- The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession.
- Justice Puno: Law provides that succession can be up to the fifth degree. If there is a subsequent marriage within the fifth degree and there is bad faith, is the spouse who contracted the subsequent marriage in bad faith disqualified from inheritance from the innocent spouse?
  - Yes. Disqualification is by a voluntary act done in bad faith. Sub paragraph (4) will apply even if the parties are mutual heirs. The innocent spouse can still succeed.

Marriage Contracted in Bad Faith
- If the subsequent marriage in cases under Article 41 were contracted where only one of the parties, whether the present spouse or the new spouse to the subsequent marriage was in, bad faith, the said marriage is still valid.
- According to Article 44, the marriage shall be considered void only if both spouses in the subsequent marriage are in bad faith.
- If there is one party acting in good faith, the marriage is valid. Good faith must be present at the time of celebration.
- **Class Notes:** Although the doctrine of unclean hands generally does not apply in determining the nullity of a marriage (Chi Ming Tsoi v. CA), Article 44 states that if both spouses of the marriage pursuant to Article 41 (in assuming presumptive death) acted in bad faith, their marriage is VOID. This is significant because a subsequent marriage carried out in good-faith marriage would otherwise be declared terminated. In determining the property regime for liquidation and distribution, a bad-faith marriage would follow the complete separation of properties, while a good-faith marriage (even by one spouse) would follow either absolute community or conjugal partnership of gains (CPG).
- **Class Notes: The Case of Mr. Santos**
  - **Issue:** Mr. Santos marries his paramour, W, who had a previous husband, H, who had been missing for 4 years.
  - W executes an affidavit of presumptive death of H, allowing her to marry Mr. Santos. Mr. Santos fakes the marriage license and immediately marries W.
  - However, H reappears the next day after the marriage and files an affidavit of reappearance, thus automatically terminating the marriage between Mr. Santos and W.
  - Neither Mr. Santos nor W has the chance to liquidate properties with their respective former spouses.
  - **Lesson:** Even with a decree of nullity or annulment, one must distribute and liquidate his or her properties. A widow (W’s husband was presumably dead) that does not liquidate her properties and deliver the presumptive legitime from the previous marriage (required under Article 43) **will follow the complete separation of property upon remarriage** (to Mr. Santos), so as not to confuse the co-mingling of properties.
  - If there is a reappearance (of H), the subsequent marriage (W with Mr. Santos) is terminated, and there is a complete separation of properties under that subsequent marriage.
Article 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:
(1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, 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)

(4) Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage.
No other misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage. (86a)

POINTS

Public Policy Consideration
- The State is interested in the permanency of the marriage relation. The preservation of that relation is deemed essential to public welfare. The fundamental policy of the state, which regards marriage as indissoluble and sacred, being the foundation upon which society rests, is to be cautious and strict in granting annulment of marriage.
- A clear and undeniable proof is needed to annul marriage.

Exclusivity of Grounds for Annulment
- Any ground not provided for by law cannot annul a marriage. The State always pursues the permanence of marriage.
- Therefore, non-cohabitation is not a ground.

No Parental Consent
- Persons between the ages of eighteen (18) and twenty one (21) lack the degree of maturity. This avoids the unpreparedness of the parties to contract the marriage.

Unsound Mind
- To successfully invoke unsoundness of mind as a ground for annulment, there must be such a derangement of the mind to prevent the party from comprehending the nature of the contract and from giving it to his free and intelligent consent.
- It must relate specifically to the contract of marriage.
It is not just any form of mental disease, and marriage is not invalidated by weakness or dullness of the mind, eccentricities or partial dementia.

The precise contemplation involves whether or not the mind could and did act rationally at the time of marriage.

Larson v. Larson
- Facts: The wife was committed to the hospital in 1952 for two (2) years after the marriage.
- In 1954, she recovered her mind and regained all her rights. However, in 1956, she was again committed to the hospital. She lived regularly together with the husband except for times when she was confined to the hospital. According to the doctor’s opinion, a patient of her type may have lucid intervals for months or years, and that it was not certain that she would never be cured. She might even be legally all right, and not “legally insane”.
- Issue: Whether or not the wife may be declared to have been insane at the time of marriage.
- Ratio: No. The plaintiff has not satisfied the burden of proving, clearly and definitely, that the defendant was an “insane person” at the particular time of marriage, and incapable of understanding the nature of the act. Hence the marriage was not invalidated.

Fraud
- Under the Family Code, fraud refers to the non-disclosure or concealment of certain circumstances which materially affect the essence of marriage. Hence there is no fraud when there is no concealment or there is disclosure.

These instances as grounds for annulment are limited to those mentioned in Article 46.

Circumstances when there is fraud:
- Non-disclosure of previous conviction by final judgment involving a crime of moral turpitude
- Concealment of Pregnancy
- Concealment of Drug Addiction and Habitual Alcoholism
- Concealment of Homosexuality or Lesbianism

Non-disclosure of Previous Conviction as Fraud
- It must be a final judgment involving a crime of moral turpitude. Turpitude refers to the inherent baseness, vileness and depravity of the act, and everything contrary to justice, honesty and good morals.
- Generally crimes punishable in the RPC are crimes of moral turpitude, such as homicide.

Concealment of Pregnancy
- This fraud is limited only to the wife and not the husband, on the grounds that the husband may be misled in devoting his attention to a child that is not his.
- The concealment of pregnancy must be done in bad faith. If the wife believed that she was not preggers ;), then the marriage cannot be annulled. Pregnancy at the time of marriage is not enough to annul the same.
- If the condition was readily apparent to the man, he cannot claim lack of knowledge. However, a woman four (4) months pregnant cannot immediately be apparent to be so, and the husband may still claim the grounds.

Aquino v. Delizo
- Conchita Delizo was fat, so it was not obvious that she was pregnant. Respondent also attempted to conceal
the pregnancy. He marriage was annulled by grounds of fraud.

- **Foss v. Foss**
  - The husband knew of the unchaste character of the wife, whom he had an extra-marital affair with and whom he married after. If at the time of marriage she was pregnant and assured him that the child was his although it could not have been, there cannot be grounds for annulment.
  - Plaintiff did not come to court with clean hand. Furthermore, he should have investigated the matter. He knew she was unchaste, so he should not complain.

- If a woman pretends to be pregnant in order to convince the man to marry her, this cannot be grounds for annulment as there is no pregnancy to conceal.
- According to the author, fraud should also be imputed on a husband who did not disclose at the time of marriage that he impregnated someone else. It is discriminatory law to impute only the wife.

**Concealment of Sexually Transmitted Disease**

- Unlike the grounds of STD mentioned in Art. 45 as a ground itself for the annulment of marriage, in the cases of fraud, the nature or gravity of the STD is irrelevant.
- That the STD is less virulent and more correctly described as local, does not bar this ground.
- Consummation is not required for this ground to exist.

**Concealment of Drug Addiction and Habitual Alcoholism**

- These are new circumstances of fraud.
- For habitual alcoholism, there is no exact meaning. It generally refers to the persistent habit of becoming intoxicated, and the nature and extent to which that a person has a fixed and irresistible habit of drunkenness. It is where the person has lost the power or will to control his appetite for liquor.
- Annulment is on the grounds that it disqualifies the party from attending to business and more importantly renders him unfit for the duties of marriage, and to properly care for the children.

**Concealment of Homosexuality or Lesbianism**

- A lesbian or homosexual disposed to the same sex may find that having relations with the other sex is repugnant to his or her being. Therefore it is possible that they may not serve the purpose of the law mandating a heterosexual relationship.
- The ground is not for homosexuality *per se* but its concealment and the latter must be duly proven.
- The element of bad faith must be present.
- The concealment is a ground for annulment and not nullity and allows for ratification of the marriage. Therefore the law indicates that the parties can in fact eventually accept each other and lead a family life of their own.
- **Class Notes:** Bisexuality does not immediately assume that heterosexual intercourse is repugnant to the other, and like with homosexuality and lesbianism there is still a chance of the former accepting the latter and leading a family with children. (Also, the framers of the FC probably did not think that far forward). In any case, there is still something to be said for lumping homosexuality and lesbianism as if it was on the same degree as drug addiction and alcoholism.

**Vitiating Consent**

- One of the essential requisites for a valid marriage is that the consent of both parties must be freely given. Consent must not be obtained by force, intimidation, or undue influence.
• To determine the degree of intimidation, one must take into account the age, sex, and condition of the person.
• Prosecuting someone for a crime she committed in not intimidation.
• This is proven by a preponderance of evidence (Donato v. Luna)
• Villanueva v. CA
  o The SC explained the nature or vitiated consent again. Petitioner Orlando only took serious steps to annul his marriage on the ground of vitiated consent after four years and eight months. It was found that he wanted to use this case to bolster his defense for a pending case against him for bigamy.
• Criminal liability attaches to anyone who compels the other to marriage by vitiated consent under Article 350 of the RPC, and is punished by prision correctional in its maximum period.

Incapacity to Consummate
• Incapacity to consummate denotes the permanently inability on the part of one of the spouses to perform the complete act of sexual intercourse.
• An adult male is presumed to have normal powers of virility (People v. Fontanilla).
• Whoever alleges the incapacity has the burden of proving the same.
• All causes for non-consummation, even on psychological grounds, may be used. Physical or structural defects, chronic inhibitions or fears from psychogenic causes, may prove.
• Epilepsy and mere refusal to consummate is not covered.

POINTS

Nature of Annulment Case
• Annulment cases are actions in rem, because they concern the status of the parties, and status affects or binds the whole world. The “res” (Latin: object, matter, affair) is the relation between the said parties, or their marriage tie.
• Jurisprudence over the same by the proper Regional Trial Court depends upon the nationality or domicile of the parties, not the place of the celebration of the marriage, or locus celebrationis (Latin: place where marriage is celebrated) [Rayray vs. Chae Kyung Lee, 18 SCRA 450] Thus, where plaintiff, a Filipino, is domiciled in the Philippines, the lower court has jurisdiction to annul his marriage to a Korean girl contracted by him in Korea.

Grounds, Parties, Prescriptive Period
• What is Prescriptive Period? A “prescriptive period” is the time within which a case can be filed in court. After the lapse of the prescriptive period, the case cannot be filed anymore.
<table>
<thead>
<tr>
<th>GROUND</th>
<th>PARTY TO FILE THE SUIT</th>
<th>PRESCRIPTION PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. No Parental Consent</td>
<td>a. Parent or Guardian having Legal Charge of “no-consent party”</td>
<td>Anytime before “no-consent party” reaches age of twenty one (21)</td>
</tr>
<tr>
<td></td>
<td>b. “No-Consent” Party</td>
<td>Within 5 years after attaining 21</td>
</tr>
<tr>
<td>2. Insanity</td>
<td>a. Sane Spouse without knowledge of insanity</td>
<td>At any time before death of either party</td>
</tr>
<tr>
<td></td>
<td>b. Relative, guardian or person having legal charge of insane</td>
<td>At any time before the death of either party</td>
</tr>
<tr>
<td></td>
<td>c. Insane Spouse</td>
<td>During lucid interval or after regaining sanity</td>
</tr>
<tr>
<td>3. Fraud</td>
<td>Injured Party</td>
<td>Within 5 years after discovery of fraud</td>
</tr>
<tr>
<td>4. Vitiated Consent</td>
<td>Injured Party</td>
<td>Within 5 years from time force, intimidation or undue influence disappeared or ceased</td>
</tr>
<tr>
<td>5. Incapability to consummate/ Sexually transmissible disease</td>
<td>Injured Party</td>
<td>Within 5 years after the marriage ceremony</td>
</tr>
</tbody>
</table>

- The law clearly provides the person or persons who can file a case for annulment depending on the grounds involved.

1. With regards parents, guardians or persons having legal charge of child:

   a. Parents, guardian or person exercising substitute only if the ground invoked is that the child is 18 and above but below 21 and he/she or both got married w/o parental consent

   b. Parents, guardian or person having legal charge of the child can never file an annulment case on a ground other than those provided in Article 45 (1) and (2) even if he or she alleges a cause of action for and on behalf of the child.

   c. Even if the ground is under Article 45 (1), the parents, guardian or person having legal charge of the child can only file it anytime before the child reaches the age of 21. If the child is 21 years old or over, the parents, guardians or person having legal charge of the child has no more legal standing to file the annulment case.

   d. (Siman vs. Leus, 37 Phil. 967)

      i) It is not enough for plaintiff-parent to allege a cause of action in favor of someone; he/she must show that cause exists in favor of himself/herself.

      ii) After reaching 21 years old, the child or contracting party does not need a guardian ad litem in order to bring the suit.

2. In case of insanity:

   a. The sane spouse;

      i) If the sane spouse knew that his/her spouse has already been insane previous to the marriage, such
sane spouse cannot file the suit for annulment as he/she is already estopped.

- **Estoppel**: A bar or impediment preventing a party from asserting a fact or a claim inconsistent with a position that party previously took, either by conduct or words, especially where a representation has been relied or acted upon by others.
  
  ii) If sane spouse only knew of the insanity after the marriage ceremony, he/she is given legal standing to file the suit at anytime prior to the death of the insane spouse

b. Relative, Guardian or Person having legal charge is also given legal standing to file for annulment.

c. The insane spouse himself/herself can file during lucid interval.

3. In case of fraud or force or intimidation, only the “injured party”, which means the aggrieved spouse and not the parents, guardians can file the case for annulment.

In cases provided for under Article 45 (3), (4), (5), and (6), the person given legal standing is the “injured party”. In these cases, no other person can file the case for the injured party.

E.g. if an injured party were married because of force or intimidation and thereafter, such party became insane, the parents or legal guardian of such aggrieved party who eventually became insane, cannot file a case for annulment for him/her.

- Personal Opinion: The ground for filing of annulment is important but so is the legal standing of parties involved. The law is clear on this (refer to example above).

- The starting points of the Prescriptive Period differ depending on the ground invoked.
  
  1. For “non-consent”:
     
     a. Parents, Guardians or Persons having legal charge of the child can file any time after the marriage ceremony but before the child reaches 21 years old.
     
     b. Child him/herself can file the case within 5 years after reaching the age of 21. [It can be argued that the lowering of majority age from 21 to 18 by Republic Act 6809 amending Article 234 of the Family Code has extended the prescriptive period in favor of the child. He/she is emancipated upon reaching 18 years old, thereby qualifying him/her to do all acts of civil life with the exceptions established by existing laws in special cases (Article 236)].
  
  2. For insanity: Those with legal standing can file a case of annulment at any time before the death of either party.
  
  3. For vitiated consent: 5 years from the time of the disappearance of the force, intimidation, or undue influence
  
  4. For fraud: 5 years from discovery of the fraud
  
  5. For incurable impotency and sexually transmissible disease: 5 years begin from the time of marriage ceremony

- Remember: Except for grounds of incurable physical incapacity to consummate and incurable sexually transmissible disease, other grounds are subject to the rule of ratification. Hence, for example, even if the aggrieved party has 5 years from discovery of fraud within which to file for annulment, if it is shown that at anytime during that 5 years, he or she freely co-habited with the other as husband or wife, annulment will not succeed.

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1 Article 45 (3) Fraud, (4) Force, Intimidation, Undue Influence, (5) Incurable physical incapacity, & (6) Incurable Sexually Transmissible Disease

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**Article 48.** In all cases of annulment or declaration of absolute nullity of marriage, the court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent
collusion between the parties and to take care that evidence is not fabricated or suppressed.

In all cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment. (88a)

Article 49. During the pendency of the action and in the absence of adequate provisions in a written agreement between the spouses, the court shall provide for the support of the spouses and the custody and support of their common children. The Court shall give paramount consideration to the moral and material welfare of said children and their choice of the parent with whom they wish to remain as provided for in Title IX. It shall also provide for appropriate visitation rights of the other parent. (n)

b. Defendant answers, the issues of the case are considered joined.

- Remember: In both cases, the Court shall order the full blown hearing of the case and the fiscal shall appear on behalf of the State to make sure that there is no collusion between the parties or the evidence is not fabricated. All parties are duty-bound to prove their grounds by preponderance of evidence. Summary proceedings are not allowed.
- A counterclaim seeking to annul defendant’s marriage to petitioner, though not denied or resisted by the latter, cannot be decided by summary judgment proceeding;
  - First, because such action is not “one to recover upon a claim” or “to obtain a declaratory relief”,
  - Second, because it is the avowed policy of the State to prohibit annulment of marriages by summary proceedings (Roque v. Encarnacion).
- Even if the allegations in the petition as to the grounds for annulment are categorically admitted by the respondent, judgment on the pleadings cannot be decreed by the court. In actions for declaration of nullity or annulment of the marriage or legal separation, the material facts alleged in the complaint shall always be proved. (Section 1, Rule 34 of 1997 Rules of Procedure).

** The fundamental policy of the State (predominantly Catholic and considers marriage indissoluble) is to be
cautious and strict in granting annulment.

- If, erroneously, the Court renders a default judgment in an annulment case, this would not prevent the decree from having legal effect. “An erroneous judgment is not avoid judgment.” (See De La Cruz v. Ejercito, citing Chereau v Fuentabella)
- No suspension of the case can be made for the purpose of compromise upon the question of validity of marriage. An annulment case cannot be terminated by way of compromise agreement. No valid compromise is legally possible on the issue of validity of marriage (Mendoza v CA).

Role of Fiscal and Solicitor General

- In annulment and nullity cases, the prosecuting attorney or the fiscal must be present.
- **Article** 48 does not mention, but the Office of the Solicitor General can intervene in the proceeding and may be required to submit a memorandum.
  - Why can he intervene? Issue of the validity of marriage is vested with public interest (Republic v. Iyoy).
  - Duties of the Fiscal and the Solicitor General
    - Make sure there is no collusion
    - Make sure evidence are not fabricated
    - Expose an invalid marriage (Sin v. Sin)
- The prosecuting attorney must actively participate (Republic v. Cuison-Melgar). In the case of Sin v. Sin, where the fiscal merely filed a manifestation that there was no collusion and where he merely entered his appearance at certain hearings of the case but was not heard of anymore, the Supreme Court remanded the case for further proceeding even if the judge of the lower court already denied the petition for nullity.

However, if the annulment or declaration of nullity case were strongly opposed and heatedly contested in that the defendant filed his answer, was represented by a counsel who filed several pleadings and actively participated in the case and even cross examined the witnesses of the plaintiff...
  → it is clear that the litigation was characterized by a no-holds-barred contest and not by collusion.

Under these circumstances, the non-intervention of the fiscal or prosecuting attorney to assure lack of collusion between the contending parties is not fatal to the validity of the proceedings in court especially when it was not shown that evidence was suppressed or fabricated by any parties.

These kinds of situations do not call for the strict application of Articles 48 and 60 of the Family Code (Tuason v. CA).

- **Property:** In Maquilan vs. Maquilan, the Supreme Court ruled that a partial voluntary separation of property agreed upon by the parties via a compromise agreement duly approved by the court prior to the judicial declaration of nullity of marriage is valid. It cannot be voided by the non-participation of the fiscal or office of the Solicitor General. The main task of the prosecuting attorney or fiscal or Solicitor General is to determine if the parties colluded or fabricated evidence to get a nullity or annulment of marriage. If there is no showing that the compromise agreement for the separation of property touched on the merits of the nullity or annulment, active participation of fiscal or Solicitor General is not needed.

Collusion

- Collusion occurs where, for purposes of getting an annulment or nullity decree, the parties come up with an agreement making it appear that the marriage is defective due to the existence of any of the grounds for the annulment of marriage or the declaration of its nullity provided by law and agreeing to represent such false or non-existent cause of action before the proper court with the objective of facilitating the issuance of a decree of annulment or nullity of marriage.
The commission of a matrimonial offense, or the creation of the appearance of having committed it, with the consent and privity of the other party, or under an agreement between the spouses, has been held to be collusion. (9 R.C.L 789).

Collusion implies a corrupt agreement between the husband and wife and, therefore, renders disposable any annulment or nullity cases initiated through the same.

The failure to file an answer by the defendant or his/her failure, whether deliberate or not to appear in court or be represented by counsel after the filing of his/her answer cannot of itself be taken against the plaintiff as conclusive evidence of collusion. In any case, the fiscal is ordered to represent the government precisely to prevent such collusion (Aquino v. Delizo).

However, failure to answer, in connection with other circumstances such as an agreement between parties, duly proven in court, that the respondent shall withdraw his/her opposition or shall not defend the action, can be evidence of collusion (2 ALR 705) but is not THE evidence of collusion.

Point Blank: Even if there is an agreement between the parties to file for annulment or nullity case, collusion will not exist if the grounds relied upon for the annulment or nullity truly exist and not simply concocted or conjured.

Ocampo v. Florenciano
- This was a case for legal separation but undeniably applicable in annulment and nullity cases in so far as collusion is concerned.
- There can only be collusion if the parties had arranged to make it appear that a ground existed or had been committed although it was not, or if the parties had connived to bring a matrimonial case even in the absence of grounds therefor.
- In this connection, it has been held that collusion may not be inferred from the mere fact that the guilty party confesses to the offense and thus enables the other party to procure evidence necessary to prove it (Williams v. Williams.)
- Proof that the defendant desires the divorce and makes no defense, is not by itself collusion (Pohlman v. Pohlman).

To say that mere agreement is collusion and therefore enough to dismiss the case is dangerous because this could very well leave the fate of the proceeding to the defendant who would, if he/she wishes to proceed with the case, deny an agreement, or who, if he/she desires to terminate the case, merely invoke that the parties agreed to file the suit even though there is real ground for the matrimonial case.

Nutshell: Collusion has to be directly an intended deceit, agreeing with the other to conjure a ground which does not exist. If there is a real ground, there can never be a collusion.

A judge who does not order an investigation for collusion when the situation falls squarely within the rules for him to order such investigation can be subject to administrative sanction (Corpus v. Ochotorena).

Stipulation of Facts or Confession of Judgment
- Cardenas v. Cardenas
  - An annulment or nullity decree cannot be issued by the court on the sole basis of a stipulation of facts, or a confession of judgment.
  - Stipulation of facts: practically an admission by both parties made in court agreeing to the existence of the act constituting the ground for annulment or for the declaration of nullity of the marriage
  - Confession of judgment: admission made in court by the respondent or defendant admitting fault as invoked by the plaintiff to sever the marriage ties
- Tolentino v. Villanueva
  - The prohibition expressed in the aforesaid laws and rules is predicated on the fact that the institutions of
marriage and of the family are sacred and, therefore, are as much the concern of the State as of the spouses; because the state and the public have vital interest in the maintenance and preservation of these social institutions against desecration by collusion between parties or by fabricated evidence. The prohibition against annulling a marriage based on the stipulation of facts or by confession of judgment or by non-appearance of the defendant stresses the fact that marriage is more than a mere contract between parties; and for this reason when the defendant fails to appear, the law enjoins the court to direct the prosecuting officer to intervene for the State in order to preserve the integrity and sanctity of the marital bonds.

- However, stipulation of facts or confession of judgment, if sufficiently supported or corroborated by other independent substantial evidence to support the main ground relied upon, may warrant an annulment of a marriage or the declaration of nullity of the same.
- With regard to interpreting the provision under the Civil Code pertaining to confession of judgment and stipulation of facts, the Supreme Court, in 
  Ocampo v. Florenciano, stated:
  
  As we understand the article it does not exclude as evidence, any admission or confession made by the defendant outside the court. It merely prohibits a decree of separation upon a confession of judgment. Confession of judgment 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. This did not occur.

  Yet, even supposing that the above statement of defendant constituted practically a confession of judgment, inasmuch as there is evidence of the adultery independently of such statement, the decree may and should be granted, since it would not be based on her confession, but upon evidence presented by plaintiff. What the law prohibits is a judgment based exclusively or mainly on defendant’s confession. If a confession defeats the action ipso facto, any defendant who opposes the separation will immediately confess judgment, purposely to prevent it.

  The mere circumstance that defendant told the fiscal that she “liked also” to be legally separated from her husband, is no obstacle to the successful prosecution of the action. When she refused to answer the complaint, she indicated her willingness to be separated. Yet, the law does not order the dismissal. Allowing the procedure to continue, it takes precaution against collusion, which implies more than consent or lack of opposition to the agreement.

- Personal Thought: It is important to look into the very merits of the case and the essence of the action filed, and to go beyond “procedural” and go “substantive.”
- Cardenas vs. Cardenas and Rinen

  o Facts: The first wife filed for annulment with respect to the subsequent marriage of her husband with a “second wife” and where, during the hearing, there was a stipulation of facts entered into by the first wife and the defendants, whereby the parties agreed that the first wife was married to her husband prior to his marriage to the “second wife,” and where the marriage certificates of the first and second marriages were duly attached to the stipulation of facts.

  o Held: The SC ruled that the stipulation of facts and the attached marriage certificates were sufficient to declare as null and void the second marriage;

  o In disposing of this appeal we did not overlook Article 88 of the New Civil Code which provides that “no judgment annulling a marriage shall be promulgated upon a stipulation of facts.” This Article and Article 101 on legal separation of the same Code contemplate the
annulment of marriage or their legal separation by collusion. In this case, the possibility of such collusion is remote, because the interest of the two wives are conflicting. Apart from this, the marriage certificates attached to the stipulation of facts are evidence and cannot be deemed as stipulation of facts.

- **Personal Thought:** We go back to the very essence of the Code and how marriage is an integral aspect of society and nation-building thus its nullity is to be extreme measure and with the strictest parameters. This is the measuring stick even to the earlier decisions. Here, the very presence of the valid marriage certificates is truly enough to prove marriage validity.

**Support of Spouses and Custody of Children**

- While the annulment of marriage or declaration of nullity suit is being tried, the support of the spouses and the custody and support of the common children shall be governed by whatever agreement the parties have made with respect to the same.
- Principally, the spouses and their children shall be supported from the properties of the absolute community of property or the conjugal partnership of gains as the case may be during the pendency of the suit for annulment or nullity of marriage in proper cases (Article 198 of the Family Code).
- Support **pendente lite** and custody **pendente lite** can be ordered.
- The Court, if it finds the agreement inadequate, may disregard the same and make the necessary provisions which, to its sound discretion, would be adequate under the circumstances.
- In nullity cases where the court provisionally gives support **pendente lite** to a spouse who, at the end of the case, has been found out not to be entitled to the support because his/her marriage with the one giving the support is void **ab initio**, the court shall order the recipient to return the support to the person who furnished the support the amounts already paid with legal interest from the dates of actual payment (Section 7, Rule 61 of the 1997 Rules of Civil Procedure).
- Unless there are other reasons later proven to show non-entitlement to the support, the support given to one of the spouses during the pendency of an annulment-of-marriage case need not be reimbursed because, in such cases, the marriage is valid up to the time it is dissolved.
- The Court shall give extra attention on the issue relative to the support and custody of the 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. In making its decision as to the custody.
- The sex and age of the children are indeed very important considerations; however, the court must go beyond these to consider the characteristics and needs of each child, including their emotional, social, moral, material and educational needs; their respective home environments offered by the parties; the characteristics of those seeking custody, including age, character, stability, mental and physical health; the capacity and interest of each parent to provide for the emotional, social, moral, material, and educational needs of the children; the interpersonal relationship between the child and the parent; the interpersonal relationship between the children; the effect on the child of disrupting or continuing an existing custodial status; the preference of each child, if the child is of sufficient age and maturity; the report and recommendation of any expert witness or other independent investigator; available alternatives; and any other relevant matter the evidence may disclose (Ex Parte Devine).
- Pertinently, Article 213 of the Family Code provides that “no child under 7 years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise.”

**Visitation Rights**

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1 **Pendente Lite:** *latin* for roughly “while a suit is pending”

2 **Ab Initio:** *latin* for roughly “from the start”
While custody of a child may be awarded to a particular parent, this does not deprive the other parent from exercising his/her visitorial rights unless the court, for some compelling reason, deprives him/her of this right.

Even if a parent has been legally deprived of his/her visitorial right, this can be reinstated if it can be shown that the grounds for deprivation have become too harsh or are not present anymore.

**Silva v. CA**

- Parents have the natural right, as well as the moral and legal duty, to care for their children, see to their proper upbringing and safeguard their best interest and welfare. This authority and responsibility may not be unduly denied the parents; neither may it be renounced by them. Even when the parents are estranged and their affection for each other is lost, the attachment and feeling for their offsprings invariably remain unchanged. Neither the law nor the courts allow this affinitiy to suffer absent, of course, any real, grave and imminent threat to the well-being of the child.

- Facts: Carlitos E. Silva, married businessman, and Suzanne T. Gonzales, an unmarried local actress, cohabited without the benefit of marriage. The union saw the birth of 2 children: Ramon Carlos and Rica Natalia. Not very long after, a rift in their relationship surfaced. According to Silva, it as when Gonzales decided to resume her acting career over his vigorous objections which Gonzales quickly refuted by saying she, in fact, never stopped working throughout their relationship. At any rate, the 2 eventually parted ways.

- The instant controversy was spawned, in February 1986, when Gonzales refused to allow Silva, in apparent contravention of a previous understanding, to have the children in his company on weekends. Silva filed a petition for custodial rights over the children before the RTC Branch 78 of Quezon City. The petition was opposed by Gonzales who averred that Silva often engaged in “gambling and womanizing” which she feared could affect the moral and social values of the children.

- In an order, dated 07 April 1989, trial court adjudged: “WHEREFORE, premises considered, judgment is rendered directing respondent to allow herein petitioner visitorial rights to his children during Saturdays and/or Sundays, but in no case should he take out the children without the written consent of the mother or respondent herein. No pronouncement as to costs.” (Rollo, p. 29)

- Silva appeared somehow satisfied with the judgment for only Gonzales interposed an appeal from the RTC’s order to the CA.

- In the meantime, Gonzales got married to a Dutch national. The newly-weds emigrated to Holland with Ramon Carlos and Rica Natalia.

- On 23 September 1993, the appellate tribunal ruled in favor of Gonzales. It held: “In all questions, regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration” – not the welfare of the parents (Article 8, PD 603). Under the predicament and/or status of both petitioner-appellee and respondent-appellant, we find it more wholesome morally and emotionally for the children if we put a stop to the rotation of custody of said children. Allowing these children to stay with their mother on weekdays and then with their father and the latter’s live-in partner on weekends may not be conducive to a normal upbringing of children of tender age. There is no telling how this kind of set-up, no matter how temporary
and/or remote, would affect the moral and emotional conditions of the minor children. Knowing that they are illegitimate is hard enough, but having to live with it, witnessing their father living with a woman not their mother may have a more damaging effect upon them.

"Article 3 of PD 603, otherwise known as the Child and Youth Welfare Code, provides in part:

**Article 3. Rights of the Child – xxx**

(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.

(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.

"With Articles 3 and 8 of PD 603, in mind, We find it to the best interest of the minor children, to deny visitorial and/or temporary custodial rights to the father, even at the expense of hurting said parent. After all, if indeed his love for the children is genuine and more divine than the love for himself, a little self-sacrifice and self-denial may bring more benefit to the children. While petitioner-appellee, as father, may not intentionally prejudice the children by improper influence, what the children may witness and hear while in their father's house may not be in keeping with the atmosphere of morality and rectitude where they should be brought up.

"The children concerned are still in their early formative years of life. The molding of the character of the child starts at home. A home with only one parent is more normal than two separate houses - (one house where one parent lives and another house where the other parent lives). After all, under Article 176 of the Family Code, illegitimate children are supposed to use the surname of and shall be under the parental authority of their mother.

"The child is one of the most important assets of the nation. It is thus important we be careful in rearing the children especially so if they are illegitimates, as in this case.

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered giving due course to the appeal. The Order of the Regional Trial Court of Quezon City dated April 7, 1989 is hereby reversed. Petitioner-appellee's petition for visitorial rights is hereby denied.

"SO ORDERED." (Rollo, pp. 22-23)

**Held:** The SC ruled:

- The issue before us is not really a question of child custody; instead, the case merely concerns the visitation right of a parent over his children which the trial court has adjudged in favor of petitioner by holding that he shall have visitorial rights to his children during Saturdays and/or Sundays, but in no case (could) he take out the children without the written consent of the mother x x x." The visitation right referred to is the right of access of a noncustodial parent to his or her child or children.

There is, despite a dearth of specific legal provisions, enough recognition on the inherent and natural right of parents over their children. **Article 150 of the Family Code expresses that **(f)amily relations include those x x x (2) (b)etween parents and children; x x x." **Article 209, in relation to Article 220, of the Code states that it is the natural right and duty of parents and those exercising parental authority to, among other things, keep children in their company and to give them love and affection, advice and counsel, companionship and
understanding. The Constitution itself speaks in terms of the "natural and primary rights of parents in the rearing of the youth." There is nothing conclusive to indicate that these provisions are meant to solely address themselves to legitimate relationships. Indeed, although in varying degrees, the laws on support and successional rights, by way of examples, clearly go beyond the legitimate members of the family and so explicitly encompass illegitimate relationships as well.

Then, too, and most importantly, in the declaration of nullity of marriages, a situation that presupposes a void or in-existent marriage, Article 49 of the Family Code provides for appropriate visitation rights to parents who are not given custody of their children.

There is no doubt that in all cases involving a child, his interest and welfare is always the paramount consideration. The Court shares the view of the Solicitor General, who has recommended due course to the petition, that a few hours spent by petitioner with the children, however, could not all be that detrimental to the children. Similarly, what the trial court has observed is not entirely without merit; thus:

"The allegations of respondent against the character of petitioner, even assuming as true, cannot be taken as sufficient basis to render petitioner an unfit father. The fears expressed by respondent to the effect that petitioner shall be able to corrupt and degrade their children once allowed to even temporarily associate with petitioner is but the product of respondent's unfounded imagination, for no man, bereft of all moral persuasions and goodness, would ever take the trouble and expense in instituting a legal action for the purpose of seeing his illegitimate children. It can just be imagined the deep sorrows of a father who is deprived of his children of tender ages."

The Court appreciates the apprehensions of private respondent and their well-meant concern for the children; nevertheless, it seems unlikely that petitioner would have ulterior motives or undue designs more than a parents natural desire to be able to call on, even if it were only on brief visits, his own children. The trial court, in any case, has seen it fit to understandably provide this precautionary measure, i.e., "in no case (can petitioner) take out the children without the written consent of the mother."

WHEREFORE, the decision of the trial court is REINSTATED, reversing thereby the judgment of the appellate court which is hereby SET ASIDE. No costs. SO ORDERED.

Article 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 Article 102 and 129. (n)

Article 51. In said partition, the value of the presumptive legitimes of all common children, computed as of the date of the final judgment of the trial court, shall be delivered in cash, property or sound securities, unless the parties, by mutual agreement judicially approved, had already provided for such matters.

The children or their guardian, or the trustee of their property, may ask for the enforcement of the judgment. The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitimes. (n)

### POINTS

**Judgment of Annulment or Nullity of Marriage**

- The judgment of annulment or nullity of marriage shall state the factual and the legal basis for its dispositive conclusion.
- A court cannot grant any relief which is not based on the allegation of the petition unless issues related to the main case were presented without objection from any party.
- Should a court render a judgment which is not in conformity with the allegations in a pleading or which grants a relief which is not based on the pleadings, judgment is void for being coram non judice (one who is not a judge, indicating no jurisdiction).  

  5 Coram non judice is a Latin phrase which means “not in the presence of a judge”. It is a legal term typically used to indicate a legal proceeding held without a judge, with improper venue such as before a court which lacks the authority to hear and decide the case in question, or without proper jurisdiction.

- However, even if the judgment is void if it is not assailed in a motion for reconsideration and therefore not made an issue on appeal;
  - Such void judgment shall not be set aside and will continue to be effective (Lam v. Chua).
- The finding of the trial court as to the existence or non-existence of a party’s psychological incapacity at the time of the marriage is final and binding on the Supreme Court unless it can be sufficiently shown that the trial court’s factual findings and evaluation of the testimonies and the pieces of evidence presented are clearly and manifestly erroneous (Tuason v. CA).
- The liquidation, partition and distribution of the same shall be provided for in the said judgment unless such matters had been adjudicated in previous judicial proceedings or the parties had agreed in their marriage settlement executed prior to the marriage (pre-nuptial agreement) that the regime of separation of property governed their marriage.
- **Domingo vs. Court of Appeals**
  - Held: The Supreme Court ruled that, based on the second paragraph of Article 50 and the effects of a nullity decree of a void marriage which are contained in paragraphs (2), (3), (4) & (5) of Article 43; The private respondent’s prayer for separation of property will simply be one of the necessary consequences of the judicial declaration of absolute nullity of their marriage. The petitioner’s suggestion that in order for their properties to be separated, an ordinary civil action has to be instituted for that purpose is baseless.
- Effects of the declaration of nullity of marriage, one of which is the separation of property according to the regime of property relations governing them, are clearly provided in the Family Code and stands to reason that the lower court before whom the issue of nullity of a first marriage is brought is likewise clothed with
jurisdiction to decide the incidental questions regarding the couple’s properties.

- In so far as void marriages are concerned, paragraphs (2), (3), (4) and (5) of Article 43 exceptionally apply only to void subsequent marriages that occur as a result of the non-observance of Article 40.
- Specifically, they apply only to the subsequent void marriage contracted by a spouse of a prior void marriage before the latter is judicially declared void (Valdez v. RTC). This is the clear mandate of Article 50.
- In this case, though the subsequent marriage is void, the property shall be liquidated as if there is a conjugal partnership of gains or an absolute community of property.
- In all other cases of a void marriage other than the void subsequent marriage that occurs as a result of the non-observance of Article 40, the property regime shall be governed by the rule on co-ownership provided for in Article 147 & 148, as the case may be, and not the conjugal partnership of gains or the absolute community of property.
- Valdes v. RTC
  - In cases where Article 147 or 148 will apply, the property regime shall be liquidated pursuant to the ordinary rules on co-ownership pursuant to the Civil Code provided they are not contrary to the Family Code. However;
- Carino v. Carino
  - The SC ruled that a subsequent marriage celebrated in violation of Article 40 is void because it is bigamous and therefore the property regime in the said subsequent void marriage is co-ownership under Article 148 of the Family Code. If this is the case, then the presumptive legitime need not be delivered as it now follows the general rule.
- This Nicdao-Carino ruling is inaccurate. The legal rationale of the Supreme Court in the Valdez ruling must still be followed considering that it is a clear application of what Article 50 provides. (Note: we discussed this in Atty. Mel Sta. Maria’s class last Saturday)
- Significantly, the Supreme Court En Banc Resolution in A.M. No. 02-11-10-SC which took effect on March 15, 2003 provides in Section 21 thereof that, after the entry of judgment as a consequence of the finality of a nullity or annulment decree, the presumptive legitime of the common children shall be delivered “pursuant to Article 50 and 51 of the Family Code.”
- The wordings of the said rule referring to Article 50 does not detract from the Valdez ruling.
- The new rules seem to have acknowledged that, for purposes of a void marriage, the presumptive legitime shall be delivered in accordance with Article 50 which, in turn expressly provides that, the proper case of a void marriage referred to is only the one under Article 40 which is the subsequent void marriage resulting from the failure to get a judicial declaration of nullity of the first void marriage.
- In case the marriage has been annulled under Article 45 or in case the marriage is the void subsequent marriage that occurs as a result of the non-observance of Article 40 in relation to Article 52 and 53
  - The partition of the conjugal dwelling and the lot on which it is situated, Article 102 (6) (on the absolute community of property regime) and Article 129 (9) (on the conjugal partnership of gains regime).
  - Pertinently, Articles 102(6) and 129(9) identically provides that:
    
    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 interest of the children.

- In other cases of a void marriage (e.g. not the void subsequent marriage referred in Article 40 in relation to Articles 52 & 53), the above provision is not applicable. The rule to apply is the rule on co-ownership (Valdez v. RTC).
- The dwelling shall be co-owned equally in the absence of any evidence that it is exclusive property of only one party in accordance with the rules on co-ownership.
- In case of liquidation, it can be sold and the proceeds thereafter are divided equally between co-owners or to whoever party mentioned.
- In order that their interest will be amply protected, all the creditors of the spouses as well as of the absolute community or the conjugal partnership shall be notified of the liquidation proceeding.
- If in the dissolution and partition, one of the parties decides to waive his/her rights, shares or interest in the community or conjugal property in favor of the other party or any other person, the creditors of the one who makes the waiver can seek the rescission of the waiver to the extent of the amount sufficient to cover the amount of their credit. (Articles 89 & 107)

**Entry of Judgment and Decree of Nullity or Annulment**
- Unless there is a motion for reconsideration or an appeal is made after the decision, such decision will become final upon the expiration of 15 days from receipt of the parties of the decision.
- Upon finality, the Entry of Judgment shall be issued.
- Subsequently, a Decree of Absolute Nullity of Marriage or Annulment of Marriage shall be issued. This decree shall be the best evidence of nullity or annulment of Marriage.
- However, the decree will issue only after the registrations of the Entry of judgment in the proper local civil registries and of the approved partition and distribution of properties of the spouses in the proper registry of deeds, and the delivery of the presumptive legitime.

**Presumptive Legitime**
- What is Legitime? Legitime is that part of the testator’s property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs (Article 886 of Civil Code).
- The decree of annulment or nullity of marriage shall also provide that the presumptive legitime of the common children shall also provide that the presumptive legitime of the common children shall be delivered to the same in cash, property or sound securities, unless parties, by mutual agreement judicially approved, had already provided for such matter.
- During the hearing on the Family Code in the Senate, Justices JBL Reyes and Puno had these remarks as to purpose of the delivery of the presumptive legitime;
  
  Justice Reyes pointed out that he had 2 main reasons for protecting the legitime of the children. First was against the result of subsequent marriages that might be contracted after an annulment or its declaration as void. It is construed as presumptive, no strict certitude of what and how much. His second point is that it is a matter of recovery. Since legitime is a matter of values and not of specific property.

  Justice Puno talked about the topic’s not being new to the law. It is contained even in the past constitutions. Focus as well to the “presumption” standing of legitime. This is not to forget the children and possible legal heirs.
• **Personal Interpretation**: Both Justices bank their concern as a protective measure that in these cases, the children of the subsequent void marriages have something saved for them and their future by right of legal succession.

• The presumptive legitime shall be computed as of the date of the final judgment of the trial court.

• It shall be delivered in cash, property, or sound securities unless the parties, by mutual agreement judicially approved, had already provided for such matters.

• The judicial proceeding for the approval of the mutual agreement of the spouses shall be summary in nature in accordance with Article 253.

• The law provides that the delivery of the presumptive legitime will 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.

• In case the marriage is annulled, the presumptive legitime of the common children, if there are any, must be delivered to them. However, in void marriages, the delivery of the presumptive legitime is generally not required except only in the void subsequent marriage resulting from the non-observance of Article 40 in relation to Articles 52 and 53.

• Valdez v. RTC
  
  o The SC ruled that, as a general rule, in case of void marriages, the special rules on co-ownership under Articles 147 and 148, as the case may be, are applicable and, in case of liquidation and partition of such co-ownership, the ordinary rules of co-ownership under the Civil Code are applicable and not Articles 50, 51, and 52 of the Family Code.

Observe that:

a. **Article 50**, among others, requires the delivery of the presumptive legitime.

b. **Article 51** provides how, in the delivery of the presumptive legitime, the same shall be valued.

c. **Article 52**, among others, requires the recording of the delivery of the presumptive legitime in the proper registry of property.

• In the ordinary liquidation and partition rules of co-ownership under the Civil Code as well as in Article 147 and 148 which are generally applicable to void marriages, there is no provision requiring the delivery of the presumptive legitime similar to Articles 50, 51 and 52 of the Family Code.

• Following the rationale of the Valdez ruling, delivery of the presumptive legitime is not required as a general rule in void marriages; but, as an exception to this general rule, the Valdez ruling also states that paragraphs (2), (3), (4), and (5) of Article 43 relates only, by the explicit terms of Article 50, to voidable marriages under Article 45 and, exceptionally, to void marriages under Article 40 of the Family Code, namely, the declaration of nullity of a subsequent marriage contracted by a spouse of a prior void marriage before the latter is judicially declared void.

• Paragraph 2 of Article 43 provides for the liquidation of the conjugal partnership of gains or the absolute community of property. Hence, the liquidation of the property of the void subsequent marriage referred to in Article 40 will be done as if the property relationship is the absolute community of property or the conjugal partnership of gains.

• It shall therefore follow the liquidation procedures under Article 102 referring to the absolute community of property and Article 129 referring to the conjugal partnership of gains, which expressly include the mandatory delivery of the presumptive legitime in accordance with Article 51.

• The exception, following the spirit of the Valdez ruling, Articles 50, 51, and 52 requiring the delivery of the presumptive legitime...
legitimate, exceptionally applies to a subsequent void marriage resulting from the non-observance of Article 40.

- Again, the case of Nicdao-Carino v. Nicdao, *which is a “stray”*, the Supreme Court ruled that a subsequent marriage celebrated in violation of Article 40 is void because it is bigamous and therefore the property regime in the said subsequent void marriage is co-ownership under Article 148 of the Family Code.

*** The legal rationale of the Supreme Court in the *Valdez* ruling must still be followed considering that it is a clear application of what Article 50 provides.

- While the common children are not parties to the annulment case relative to voidable marriages under Article 45 or a nullity case relative to a subsequent void marriage under Article 40, but considering that they are materially affected by the nullity or annulment judgment in so far as the presumptive legitime is concerned, they are specially granted by law legal standing to seek enforcement of the judgment.

The children’s guardian or the trustee of their property may likewise ask for the enforcement for and on behalf of the children. Delivery of the presumptive legitime can be done by filing a summary court proceeding praying for such delivery. (Article 253 in relation to Chapter 2 of Title XI of Family Code)

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**Article 52.** The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses, and the delivery of the children’s presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect third persons. (n)

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**Article 53.** Either of the former spouses may marry again after complying with the requirements of the immediately preceding Article; otherwise the subsequent marriage shall be null and void. (n)

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**Article 54.** Children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory, shall be considered legitimate. Children conceived or born of the subsequent marriage under Article 53 shall likewise be legitimate.

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**POINTS**

### Liquidation and Partition of Properties

- In case of nullity of marriage, the properties shall be liquidated in accordance with the ordinary rules of co-ownership.
- **Valdez v. RTC**
  - The SC ruled that the liquidation process provided under the chapters on absolute community of property and the conjugal partnership of gains will not apply in a void marriage except in one exceptional case which is the subsequent void marriage under Article 40 of Family Code.
  - In voidable marriage, the properties shall be liquidated in accordance with the rules provided for under the chapters in the absolute community of property and the conjugal partnership of gains.

- **Maquilan v. Maquilan**
  - The SC ruled that partial voluntary separation of property agreed upon by the parties via a compromise agreement duly approved by the court prior to the judicial declaration of nullity of marriage is valid.

### Recording in the Civil Registry and Registry of Property

- The recording in the civil registry and in the registry of property of the judgment of annulment or of absolute nullity of the marriage and the partition and distribution, as well as the delivery of the presumptive legitimes of the common children in an annulled marriage based on Article 45 or a nullified subsequent marriage under Article 45 or a nullified subsequent marriage under Article 52 and 53 are necessary to bind third persons.
Such records are necessary for parties to be to validly contract a subsequent marriage.

Non-compliance with requirements mandated under Article 52 of the Family Code shall not affect third persons and therefore renders any subsequent marriage null and avoid pursuant to Article 53.

Except in the subsequent void marriage that may arise due to the non-observance of Article 40 in relation to Article 52 and 53, there is no need for the delivery of the presumptive legitime after a marriage is judicially declared void.

Non-compliance with the liquidation and partition requirements, as well as the delivery of the presumptive legitime shall be a cause for the non-issuance of a decree of nullity or annulment.

The observance or non-observance of the requirements of liquidation, partition, distribution and the delivery of the presumptive legitimes is crucially material in determining whether or not the subsequent marriage is void only if the previous marriage has been judicially nullified or annulled in accordance with law.

If the first marriage were terminated by the death of one of the spouses and the surviving spouse remarried, complying with all the essential and formal requirements of Article 2 and 3 of the Family Code for a marriage, such subsequent marriage is valid even if there has been no previous liquidation, partition, and distribution of the properties of the 1st marriage as well as no delivery of the presumptive legitimes or actual legitime of the children.

Failure to liquidate in this instance will only be determinative of the property regime that will govern the subsequent marriage. Articles 103 & 130 of the Family Code provide, among others, that if a surviving spouse subsequently remarries without liquidating the community or conjugal properties of the 1st marriage, the mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.

Appropriate Civil Registry and Registries of Property

- When Article 52 requires that the judgment of annulment or the judicial declaration of nullity shall be recorded in the appropriate civil registry, it refers;
  - To the local civil registry of the city or municipality where the court that issued the decision is functioning (Article 409 of Civil Code); and
  - To the local civil registry of the city or municipality where the marriage was solemnized. (Section 7 of the Civil Registry Law, Act No. 3753)

- Upon finality of judgment, an entry of judgment and a Decree of Nullity or annulment shall be issued which shall be registered in the local registries;
  - Where the marriage was recorded; and
  - Where the court granting the petition is located.

- It shall be the duty of the successful petitioner to send the copy of the final decree of the court to the proper local civil registrars.

- It shall be the duty of the clerk of 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 the said decree to the civil registry of the city or municipality where the court is functioning. (Article 409 of the Civil Code).

- On the other hand, the registries of property referred to in Article 52 refer to the registries of properties where the properties are located.

- If there are many properties located in various places, registration must be made in each of the registries of properties where each property is located.

Status of Children
Generally, children
- Conceived and born outside a valid marriage → Illegitimate
- Conceived or born inside an annulable or voidable marriage → Legitimate
- Conceived and born inside a void marriage → Illegitimate except as provided for in Article 54 of the Family Code.

Hence, if the marriage is null and void because one of the parties is psychologically incapacitated to perform the essential marital obligations or because the parties to the subsequent marriage have not complied with the mandatory recording and distribution requirements under Article 52 in relation to Article 53, the children conceived or born inside a void marriage under Article 36 and before finality of the judgment of nullity in psychological incapacity case, or those conceived or born in a marriage which does not comply with Article 52 in relation to Article 53, shall be considered legitimate.

The Juridical Decree of Nullity becomes final after the lapse of 15 days from receipt of the parties of the said decree, unless in the meantime the decree has been appealed to a higher court.

If, only after 2 days from receipt of a judicial nullity decree on the basis of Article 36, the parties, whose marriage was the subject of nullification, met and had sexual intercourse which resulted in the conception of the child, the said child shall still be considered their legitimate child after birth.

Under Article 53, if either of the former spouses does not comply with the requirements under Article 52 and he/she remarries, the subsequent marriage is void but the children conceived or born inside the said void marriages are legitimate.

Hence, if a marriage of A and B are annulled and A, even before the liquidation of his conjugal properties with B and without delivering the presumptive legitime of their common legitimate child, subsequently marries X, the said marriage is void but any child conceived or born inside such void marriage is legitimate.

* RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES (SC en banc A.M. 02-11-10)* pp. 337 – 351.
Article 55. A petition for legal separation may be filed on any of the following grounds:
(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
(2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
(3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
(4) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
(5) Drug addiction or habitual alcoholism of the respondent;
(6) Lesbianism or homosexuality of the respondent;
(7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
(8) Sexual infidelity or perversion;
(9) Attempt by the respondent against the life of the petitioner; or
(10) Abandonment of petitioner by respondent without justifiable cause for more than one year.
For purposes of this Article, the term "child" shall include a child by nature or by adoption. (9a)

POINTS

Legal Separation
- Decree of Legal Separation or relative divorce does not affect the marital status, there being no severance of the vinculum.
- Not a dissolution, involves nothing more than bed-and-board separation (a mensa et thoro) of the spouse. In fact, it is terminable at the will of the parties by filing a manifestation in court, since the marriage still operates continuously despite it.

- This Code does not admit absolute divorce except under par. 2 of Article 26 of the Family Code.
- Strictly speaking, “divorce” means dissolution of matrimonial bond, based on the theory of a valid marriage, for some cause arising after the marriage; “annulment” is maintained upon the theory that, for some cause existing at the time of the marriage ceremony, the marriage is terminable.

Exclusivity of Grounds for Legal Separation
- Only those enumerated in Article 55 and may or may not exist at the time of the marriage ceremony. General rule: usually occurs after the marriage celebration. No other grounds can be invoked.
- Furtherance of State policy to foster unity in and to preserve marital relation since it’s essential to public welfare.
- Lacson v. San Jose-Lacson
  - Ratio: Separation by the spouses is a “state which is abnormal and fraught with grave danger to all concerned.” We would like to douse the momentary seething of emotions of couples who, at the slightest ruffling of domestic tranquility – brought by “mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion” without more – would be minded to separate from each other.

Related Physical Violence
- Frequency of physical violence inflicted upon petitioner, common child, or petitioner’s child warrants this decree.
- However, this ground does not include repeated physical violence towards respondent’s child. Such behavior may be cause to suspend or terminate the parental authority of the respondent upon his own minor child with another person, depending on the severity of the violence. (Article 231(1) of the Family Code)
• Frequency of act not severity is the determinative factor under this ground, even if it is not severe. It must however be inflicted with bad faith and malice.
  o Original draft of the Civil Law and Family Code committees: the phrase was “habitual physical violence.” Justice Caguioa objected to “habitual” since it connotes a length of time. Justice Reyes’ suggestion of “repeated” was thereby adopted.

**Grossly Abusive Conduct**
• However even if act isn't repeated or does not involve physical violence, it may constitute grossly abusive conduct on the part of the respondent which may warrant decree of legal separation.
• No exact definition and so it is determined on a case-to-case basis. Such as the following:
  o Singular but serious act of squeezing of neck, pulling of hair and the like without the intent to kill
  o Continued manifestation by one spouse of indifference or aversion to the other coupled with persistent neglect of duties incident to marital relation. (which is cruelty enough to warrant divorce according to American jurisprudence) Provided that such behavior does not stem from psychological incapacity given in Article 36.
  o Where spouse has deliberately adopted as a course of conduct, the use of offensive language toward the other, continuously calling him or her vile and opprobrious names, with the intent and fixed purpose of causing unhappiness (which is considered legal cruelty or abusive treatment justifying divorce in American courts.)
  o If indifference and manifestation of psychological incapacity exists and if at the time of marriage it is grave and incurable, this can even be a ground for nullity.

**Compulsion by Physical Violence or Moral Pressure to Change Religious or Political Affiliation**
• Justice Puno commented on this ground:
  o On the suggestion to omit “political affiliation,” I would like to call attention to par. 1. “Physical violence” therein stated is for any purpose. No matter how insignificant as long as repeated physical violence exists, there will be ground for legal separation. Hence, even if such phrase is removed, it would fall under par. 1.
  o What we did is to equate it to religious conviction, so that with one attempt, once incident of physical violence or moral pressure to compel the change in religious or political affiliation, it can be a ground.
  o All due respect, we believe that political ideas are just as important as religious ideas. To have unity in the family, couples should learn to live with each other’s political ideas. That is the main context of reconciliation. If they cannot live together within the family, how can we live together as a nation sharing different political ideals? We feel this is an answer to the human rights concept which includes among others, the right to accept one another’s political belief.
  o Finally, this isn't divorce. It is just a separation from bed and board but they remain married, to open the possibility that reconciliation will enable them to restore their family life. That was the main point that moved committee members to include “political affiliation” in par. 2.

**Corruption or Inducement to Engage in Prostitution**
• Parents and those exercising parental authority have the duty, among others, to provide their un-emancipated children with moral and spiritual guidance, to instruct them by right precept and good example, and to protect them from bad company and
Persons and Family Relations Law

Professor Amparita Sta. Maria

prevent them from acquiring habits detrimental to their health, studies and morals.

- If one of the spouses induces petitioner, common child, or child of petitioner to engage in prostitution or if such spouse connives in such corruption or inducement, a valid legal separation decree may issue to prevent the guilty spouse from exercising such morally depraved acts detrimental to the growth of the children and family as a whole. Children here referred to may or may not be emancipated.
- Immoral and corrupt act and the inducement referred to is prostitution only. It cannot be anything else. Otherwise, the undue stretching of the import of the article will not serve the policy of the law of discouraging legal separation.
- Mere attempt is enough to be a ground. Success in corruption or inducement, or connivance in such, is unimportant.
- This ground doesn’t include as subjects the respondent’s child or the guilty spouse with another person. Such act towards the former may be cause to suspend or terminate the parental authority of the respondent upon his own minor child with another person, pursuant to Article 231(1) of the Family Code. If the corruption, inducement, or connivance is successful, it can even give cause of action to permanently terminate parental authority under Article 232.

Final Judgment Involving More Than Six Years of Imprisonment

- Offense for which a spouse is sentenced by final judgment of more than 6 years imprisonment can be towards anybody; and need not be necessarily against the other spouse, their common children or the petitioner’s children.
- Ground can be invoked even if guilty spouse is pardoned.
  - Civil Code and Family Law joint meetings: Justice Reyes and Caguioa stated that the idea is the stigma created by one spouse being sentenced to imprisonment for more than 6 years.

- Judgment must be final. Hence, no ground if criminal conviction is still on appeal since at this time, erring spouse is still presumed innocent and there is still possibility of reversal by higher court.

Drug Addiction, Habitual Alcoholism, Lesbianism and Homosexuality

- Extent and nature of such grounds are same as those in annulment cases. The difference being that in the latter, they are instances of fraud which must exist at the time of the celebration of marriage. In legal separation, it may exist after the marriage ceremony.
- Cases where spouse engaged in homosexual activities despite other spouse’s repeated demands to desist from doing so, American courts usually grant divorce decree. Such activity by such spouse is within the purview of the statutory ground of “cruelty,” as the continued acts can create serious mental anguish on the part of the innocent spouse as to endanger her life and health.
- Must be noted that law shouldn’t equate lesbianism and homosexuality to drug addiction and habitual alcoholism since they are clearly different in nature. The first two are not afflictions and are sexual orientations that do not by themselves affect a person’s mental state in relation to his judgment. The latter two do affect a person’s mental state that’s detrimental to ones social and personal well-being as well as to the society as a whole as they prevent the afflicted one from properly exercising their judgment.

Bigamy

- Bigamy is taken in its common understanding or under the conditions of Article 41, where spouse present, did not obtain judicial declaration of presumptive death before contracting his subsequent marriage.
- Whether the illegal subsequent marriage has been solemnized in the Philippines or abroad is immaterial. So long as there has
been a second bigamous marriage, wherever celebrated, a legal separation may issue.

- However, if bigamous marriage were committed abroad, the guilty party cannot be criminally prosecuted for bigamy in the Philippines as our penal statutes are territorial in nature.

**Sexual Infidelity**

- Husband and wife are obliged to observe mutual love, respect and fidelity.
- Act need not amount to adultery and concubinage so long as such acts constitute a clear betrayal of the trust of his or her spouse by having intimate love affairs with other persons.
- Husband’s single act of sexual intercourse with another woman warrants the issuance of decree of legal separation.
  - This is a drastic departure from the civil code where husband must have committed concubinage which is done in the following manner:
    - (a) maintaining a mistress in the conjugal dwelling
    - (b) sexual intercourse with another woman under scandalous circumstances; and
    - (c) co-habiting with her in any other place.
- A Filipina who obtains absolute divorce abroad and marries a foreigner and cohabits with the same has technically committed “intercourse with another person other than her husband,” considering that such divorce is not recognized in the Philippines and subsequent marriage is considered bigamous.

**Perversion**

- Includes engaging in such behavior not only with third persons but also with the spouse.
  - Join Civil Code and Family Law revision committees: It would include sexual perversion with one’s spouse and other sexual practices like oral sexual intercourse; but if one condones sexual infidelity or perversion, he is stopped from raising it as a ground for legal separation because condonation would be tantamount to consent.

- In the US, certain acts of perversion such as bestiality are not only grounds for relative divorce but also for absolute divorce under “cruelty” against other spouse as they exert such an unsettling effect not only on the marital relationship but on the mental condition of the other spouse, as it can create great psychological and physical agony on the part of the said innocent spouse.

- Prather v. Prather
  - Facts: In a case where wife and her relatives saw her husband engage in carnal relations with a cow and, when confronted about it, husband was evasive and resorted to foul language, necessitating the wife to separate from the husband.
  - Held: American court ruled that for the wife to continue living with erring spouse can seriously impair the wife’s health and imperil her life, and therefore, the divorce is justified.

**Attempt on Life**

- Criminal attempt to kill a spouse is clearly an act of moral depravity which warrants a decree of legal separation. Such attempt must proceed from evil design and not from any justifiable cause like: self-defense, or catching the other spouse in flagrante delicto having carnal knowledge with another person.
- No previous criminal conviction is required for the legal separation case to prosper. Such attempt can be proven by preponderance of evidence in the civil case for legal separation.
- If the guilty spouse has been criminally convicted by a competent court, the innocent spouse or their children can disinherit the other even if no legal separation case has been filed (Article 921 of the Civil Code). Unless there is reconciliation between them (Article 920 (8)).
If the innocent spouse had previously made provision in a will in favour of the guilty party, a legal separation decree will have the effect of revoking such provision by operation of law (Article 63(4)).

Unjustified Abandonment

Such abandonment/desertion must be willful.

- Act is willful when there is design to forsake the other spouse intentionally, or without cause and, therefore, break up the marital union; deliberate intent to cease living with the other spouse; abnegation of all duties of the marriage relation, not to return.

- Mere severance of the relation is not sufficient. There must be a wrongful intent to desert, continued for the statutory period. It must be abandonment without justifiable cause.
  - In a case where wife left the conjugal abode due to being battered by her husband, SC ruled that such act was a justifiable cause and therefore cannot be ground for legal separation.

- Physical separation alone is not the full meaning of the term “abandonment,” if husband or wife, despite his or her voluntary departure from the society of his or her spouse, neither neglects the management of the conjugal partnership nor ceases to give support to his wife or husband. There must be absolute cessation of marital relations, duties and rights, with the intention of perpetual separation.

- Abandonment implies a total renunciation of his or her duties.
  - Dela Cruz v. Dela Cruz: The fact that the defendant never ceased to give support to his wife and children negatives any intent on his part not to return to the conjugal abode and resume his marital duties and rights.
  - In People v. Schelske, it was held that where husband, after leaving his wife, continued to make small contributions at intervals to her support and that of their minor child, he wasn’t guilty of their “abandonment,” which is an act of separation with intent that it shall be perpetual, since contributing to their support negative such intent.
  - In re Hoss’ Estate, supra, it was ruled that a father did not abandon his family where the evidence disclosed that he almost always did give his wife part of his earnings during the period of their separation and that he gradually paid some old rental and grocery bills.

- Act of separation, and the continued intent to remain separate, must be wrongful in the sense that there is no reasonable excuse for the one who separated.
  - It has been held to be abandonment by a husband where he forces his wife to leave his home by his refusal to leave with her unless she gets rid of children by a former marriage whom he knows are entirely dependent on her and where he had agreed when he married her that she might bring them to his home.

- A separation in which both parties willingly concur is not, in any sense of the word, a willful desertion of one by the other.

- Has been held that where a husband used reasonable remonstrance and has endeavored without avail to dissuade his wife from leaving, the fact that he had submitted to the inevitable and has rendered her some assistance in connection with her going, should not be construed to imply consent to the separation.

- Abandonment must be for more than one year to warrant a decree of legal separation. Will not be granted, however, as against a spouse who became insane after the initial act of desertion or abandonment, but before the statutory period had expired, the general rule being that, in computing such period, the time during which the offending spouse has been insane cannot be included.
Rule is grounded on the theory that desertion must continue to be willful or intentional for the full statutory period, and that an insane person cannot be said to have or maintain such an intention, and, in addition, if he had retained the power of reason, he might have repented and returned before the expiration of the full period.

- The spouse who 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 (Arts. 101 and 128 of the Family Code)

### Article 56
The petition for legal separation shall be denied on any of the following grounds:

1. Where the aggrieved party has condoned the offense or act complained of;
2. Where the aggrieved party has consented to the commission of the offense or act complained of;
3. Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation;
4. Where both parties have given ground for legal separation;
5. Where there is collusion between the parties to obtain decree of legal separation; or
6. Where the action is barred by prescription. (100a)

### Article 57
An action for legal separation shall be filed within five years from the time of the occurrence of the cause. (102)

### Points

**Condonation**

- Act of forgiving the offense after its commission. However, it has been held that it implies a condition of future good behavior by the offending spouse. Subsequent offense on his part revokes or nullifies the condonation and revives the original offense.

- Where condonation of adultery has been obtained by a false pretense of repentance, the original offense may be revived, although there is only a presumption, and no strict proof, of a subsequent matrimonial offense.

- **Ocampo v. Florenciano**
  - Held: SC held that failure of husband to actively look for his adulterous wife after she left the conjugal home does not constitute condonation or consent to the wife’s adulterous acts.
  - Ratio: Must be remembered that she “left” him after having sinned with Arcalas and after he discovered her dates with other men. Consequently, it was not his duty to search for her to bring her home. Hers was the obligation to return.

- Act of giving money to erring wife and the fact that no action was taken against her before the courts of justice are sufficient to establish forgiveness amounting to condonation, for condonation is the forgiveness of one of the married parties of an offense which he knows the other has committed against the other and at any rate, pardon or condonation does not require sexual intercourse and it may be express or implied.

**Consent**

- There is consent when either of the spouses agreed to or did not object, despite full knowledge, to the act giving rise to a ground for legal separation, before such act was in fact committed.

  - An agreement between the parties that they agree to live separately from each other, and that they will not object to the other’s act of sexual infidelity, adultery, or concubinage has been declared by SC as void but, though void, is nevertheless an expression of their clear consent to the commission of the sexual infidelity.
People v. Sensano
- Facts: Where husband, knowing that his wife resumed living with his paramour, did nothing to interfere with their relations or to assert his rights as husband and, instead, left for the Hawaii where he remained for 7 years, totally abandoning his wife and child.
- Held: Husband cannot file a case for adultery against the wife.
- Ratio: Acts of husband constituted consent to the adulterous acts of the wife. Consent may be deduced from his actions.

Connivance
- Greene v. Greene
  - Held: Connivance, or procurement, denotes direction, influence, personal exertion, or other action with knowledge and belief that such action would produce certain results and which results are produced.
  - The basis of the defense of connivance are the following:
    - Maxim ‘violenti non fit injuria,’ or that one is not legally injured if he has consented to the act complained of or was willing that it should occur.
    - Doctrine of unclean hands
- It has also been held where a husband employed agents to induce, persuade and coerce his wife into participating in illicit sexual activities, this act of the husband be considered as active connivance. “When a husband lays a lure for his wife, either acting in person or through an agent, his will necessarily concurs in her act.”

Recrimination or Equal Guilt
- The reason for this rule lies in the equitable maxim that he who comes into equity must come with clean hands.
- Rule also that when two people acted in bad faith, they should be considered as having acted in good faith. They are in pari delicto. Plaintiff-spouse cannot invoke the guilt of the other if such plaintiff-spouse is guilty of giving grounds for legal separation.
- Ong v. Ong
  - Facts: Husband who had subjected his wife to physical beatings sought the dismissal of the case for legal separation filed against him by the wife on the ground of equal guilt contending that the wife abandoned him.
  - Held: SC rejected such position and stated that there was no equal guilt involved.
  - Ratio: Law specifically provides that for abandonment to be a ground for legal separation, it must have been without justifiable cause. In the case of this battered wife, her separation from her husband was clearly with a just cause.

Collusion
- Collusion and connivance are closely related. The difference is that collusion is a corrupt agreement, while connivance is a corrupt consenting.
- Seems well-settled, despite courts not being careful with such distinction, that for there to be collusion, there must be an agreement between husband and wife looking to the procuring of the divorce.
- Ocampo v. Florenciano
  - SC further expounds on the concept of collusion
  - Mere circumstance that defendant told the Fiscal that she ‘liked also’ to be legally separated from her husband, is not obstacle to the successful prosecution of the action. When she refused to answer the complainant, she indicated her willingness to be separated. Yet, the law does not order the dismissal. Allowing the proceeding to continue, it takes...
precautions against collusion, which implies more than consent or lack of opposition to the agreement.

- Needles to say, when the court is informed that defendant equally desire the separation and admitted the commission of the offense, it should be doubly careful lest the collusion exists.
- Collusion in divorce or legal separation means the agreement between husband and wife for one of them to commit, or to appear to commit, a matrimonial offense, or to suppress evidence of a valid defense, for the purpose of enabling the other to obtain a divorce. This agreement, it not express, may be implied from the acts of the parties. It is a ground for denying divorce.
- In this case, there would be collusion if the parties had arranged to make it appear that a matrimonial offense had been committed although it was not, or if the parties had connived to bring about a legal separation even in the absence of grounds therefor.
- Here, the offense of adultery had really taken place according to the evidence. The defendant could not have falsely told the adulterous acts to the Fiscal, because her story might send her to jail the moment her husband requests the Fiscal to prosecute. She could not have practiced deception at such a personal risk.
- In this connection, it has been held that collusion may not be inferred from the mere fact that the guilty party confesses to the offense and thus enables the other party to procure evidence necessary to prove it.
- Proof that the defendant desires the divorce and makes no defense, is not by itself collusion.

**Prescription**
- An action for legal separation must be filed within five years from the occurrence of the cause. After the lapse of the five-year period, the case cannot be filed.

- Time of discovery of the ground for legal separation is not material in counting the prescriptive period.
  - Hence, if a wife commits sexual infidelity and the husband discovered such ground only after 6 years from the time it was actually committed, the husband cannot anymore file the legal separation case as the filing of the same has already prescribe.
- During the Senate Committee Hearing on the Family Code, Justice Puno had the occasion to explain the reason for the prescriptive period:
  - This provision is to answer to certain objections in the 1950 Code, where “discovery” was one of the starting points of prescription.
  - In the 1950 Code, law says that the “action for legal cause must be filed within one year from the discovery of the cause, but not later than 5 years from the occurrence of the cause.” Discovery, however, could only serve to shorten but not to lengthen the period. So that if there is discovery before the 5-year period, immediately the period for prescription commences to run and it lapses after one year. If discovery occurs after the occurrence, the discovery no longer serves to affect the prescriptive period.
  - So, this is really an improvement over the 1950 Code provision because now, we made the 5-year limitation an absolute prescriptive period so that irrespective of when it was discovered, it is the occurrence that will govern and, therefore, it will always be for five years. It will never be shortened to 1 year.
  - Since the law wants to preserve marriage rather than destroy it, we therefore make this 5-year limitation a uniform period of prescription. The danger though is that discovery may be years later and will make the stability of the marriage very precarious. The law
assumes that if you discover it after 5 years, forgiveness is already the order of the day and no longer recrimination.

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<th>Article 58. An action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition. (103)</th>
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<th>Article 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)</th>
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<th>Article 60. No decree of legal separation shall be based upon a stipulation of facts or a confession of judgment. In any case, the Court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed. (101a)</th>
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<th>Article 61. After the filing of the petition for legal separation, the spouses shall be entitled to live separately from each other. The court, in the absence of a written agreement between the spouses, shall designate either of them or a third person to administer the absolute community or conjugal partnership property. The administrator appointed by the court shall have the same powers and duties as those of a guardian under the Rules of Court. (104a)</th>
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<th>Article 62. During the pendency of the action for legal separation, the provisions of Article 49 shall likewise apply to the support of the spouses and the custody and support of the common children. (105a)</th>
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### POINTS

**Procedure**

- **Upon filing of the complaint for legal separation by the plaintiff, the defendant shall be required to answer within 15 days from receipt of the summons and a copy of the petition.**
- **If the defendant fails to answer, he or she cannot be defaulted and the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is a collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated.**
- **Even if the party answers, the fiscal is also mandated to be present during the trial to further make sure that there is no collusion and the evidence is not fabricated.**
- **Whether or not the defendant files an answer to the complaint, no hearing on the merits shall be set by the courts for six months. This six month period is designed to give the parties enough time to further contemplate their positions with the end in view of attaining reconciliation between them.**
- **Pacete v. Carriaga**
  - Issue: Whether the legitimate wife who filed a case with two causes of action namely: to nullify the bigamous marriage between her husband and the latter’s mistress and, at the same time, to obtain a legal separation decree against her husband, and where the trial court, without observing the required 6 month cooling off period, tried the case on the merits and rendered a judgment voiding the bigamous marriage and issuing a legal separation decree.
  - Ratio: The SC set aside the decision on the ground that the six (6) month cooling off period is a mandatory requirement and its compliance made the decision infirm.
• What is prevented from being heard during the six (6) month period is the hearing on the merits with respect to the validity or invalidity of the ground for legal separation.
• Any other incident such as the determination of the custody of the children, alimony, and support pendente lite may be heard inside the 6 month cooling off period.
• 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.
• In actions for legal separation, the material facts alleged in the complaint shall always be proved. (Section 1, Rule 34, of the 1997 Rules of Civil Procedure)

Management of Properties During Suit
• 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.

Article 63. The decree of legal separation shall have the following effects:
(1) The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;
(2) The absolute community or the conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2);
(3) The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code; and
(4) The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law. (106a)

POINTS
Effect of Decree of Legal Separation
• Macadangdang v. CA
  o The effects of a decree of legal separation are closely set out by law. When the decree itself is issued, the finality of the separation is complete after the lapse of the period to appeal the decision to a higher court even if the effects, such as the liquidation of property, have not yet been commenced nor terminated.
  o Even if they can legally live apart, a spouse can still be held criminally liable for bigamy, concubinage or adultery even if he or she commits the act.
• According to Article 213, in case of the 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.
• The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession.

Article 64. After the finality of the decree of legal separation, the innocent spouse may revoke the donations made by him or by her in favor of the offending spouse, as well as the designation of the latter as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable. The revocation of the donations shall be recorded in the registries of property in the places where the properties are located. Alienations, liens and encumbrances registered in good faith before the recording of the complaint for revocation in the registries of property shall be respected. The revocation of or change in the designation of the insurance beneficiary shall take effect upon written notification thereof to the insured.
The action to revoke the donation under this Article must be brought within five years from the time the decree of legal separation become final. (107a)

POINTS

Donations and Beneficiary in Insurance

- Donations and acts of the innocent party in designating the guilty spouse as a beneficiary in an insurance are also essentially acts of liberality.
- The law gives the option to the innocent party whether or not he/she will revoke the donation or the designation as beneficiary of the guilty party in an insurance.
- As far as insurance is concerned, even when the designation as beneficiary is deemed “irrevocable”, it shall be considered revoked upon a written notification.
- In donations, if the innocent spouse decides to revoke, he must file for an action of revocation within 5 years from time that the decree of legal separation has become final.
- However, if the donation is void, such as in the case of a donation in violation of Article 87, the right to bring an action to declare the nullity of the donation does not prescribe.
  - Personal Note: Read the footnote below; Article 87
- The deliberations of the Civil Code and Family Law committees, which drafted the Family Code, on this particular article are very enlightening. The discussions started with the “original text” ending with the final version as follows, to wit:
  - The innocent spouse, after judgment of legal separation has been granted, may revoke donations or any insurance made by him to the offending party even if the latter’s designation as a beneficiary is irrevocable. The revocation of the donation shall be recorded in the places where the properties are located. Alienations and mortgages made before the notation of the complaint for revocation in the Registries of Property shall be valid. In case of insurance, notice of the revocation of the beneficiary clause shall be given to the insurer.
    - The right to revoke under this Article prescribes after five (5) years.
    - Justice Puno: Suggested the use of “insurance policy” in the first sentence to which Justice Caguioa objected to the phrase. His contention was that what was being revoked was the insurance beneficiary. Professors Bautista and Baviera proposed the phrase, “any insurance benefit.”
    - After proposals and counter-proposals from the members of the Committee especially Justices Puno, Reyes and Caguioa, Judge Diy, Prof. Bautista, and Dean Gupit, the first sentence of Article 64 shall read:
      - “After the finality of the decree of legal separation, the innocent spouse may revoke the donations made by him or by her in favor of the offending spouse, as well as the designation of the latter as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable.”
    - The Committee approved the 2nd sentence as it is.
    - The 3rd sentence of the 1st paragraph of Article 64 underwent a number of revisions on terms (from “mortgages” to “encumbrances”, “recorded” to “registered” and “notation” to “recording”; additions like “liens”), the element of “good faith”, and the clarification on the recording of the (1) alienations, liens, and encumbrances and (2) of the complaint for revocation – both of which

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1 **Article 87.** Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. The prohibition shall also apply to persons living together as husband and wife without a valid marriage. (133a)
should be in good faith. Justice Puno would call the
Committee’s attention to Article 1544 of the Civil Code\(^2\) and
suggested to simply do away with 3\(^{rd}\) sentence since it is
covered in the general rules on registration. Justice Caguioa,
however, opined that it would be best to keep it in Article
64. After the Committee approved of the revisions, the 3\(^{rd}\)
sentence read:
o “Alienations, liens and encumbrances registered in good
faith before the recording of the complaint for
revocation in the registries of property shall be
respected.”
o On the last paragraph, the Committee agreed to simply
eliminate it. And after a brief discussion, Justice Caguioa
proposed that the following sentence be added to the
paragraph:
o “In case of insurance, the change of beneficiary shall be
governed by the insurance law.”
o Justice Puno suggested that information for both
beneficiary and insurer should be clarified in the provision.
Thus, after further deliberations, the Committee approved
the proposal to add the last sentence of the 1\(^{st}\) paragraph to
read:
“The revocation of or change in the designation of the
insurance beneficiary shall take effect upon written
notification thereof to the insurer.”
o For the last paragraph, the Committee agreed for the need
of clarity for the prescription period. After suggestions from
Justices Puno and Caguioa, the approved 2\(^{nd}\) paragraph of
Article 64 read:
“The action to revoke the donation under this Article
must be brought within five years from the time the
decree of legal separation become final. (107a)”

- IMPORTANT: From the deliberation of the Code, the revocation
of, or change in, the designation of the insurance beneficiary
shall take effect upon written notification thereof to the insurer
and not “to the insured” as provided for in the law itself.
- This means that there was a mistake, a discrepancy
between the final version of the provision as
deliberated upon and the one signed by the President
into law! The former states notification to the “insurer
and the latter states notification to the “insured”.
- Notification to the insurer is indeed more practical (and
important) because it is the insurer who will be liable
for the insurance. It is thus important to notify the
insurer so that there will be no way for the insured or
the beneficiary to get the proceeds after the policy has
been revoked.
- There is nothing wrong in making the revocation
effective upon notification to the insured as provided by
law but this is very impractical and prejudicial to the
insurer. It may happen that, after the revocation of the
insurance by notification to the insured as provided by
the law, the insurer, who has no knowledge of the
revocation might, by its mistake, or by its ignorance of

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\(^2\) **Article 1544.** If the same thing should have been sold to different
vendees, the ownership shall be transferred to the person who may
have first taken possession thereof in good faith, if it should be movable
property.
Should it be immovable property, the ownership shall belong to the
person acquiring it who in good faith first recorded it in the Registry of
Property.
Should there be no inscription, the ownership shall pertain to the
person who in good faith was first in the possession; and, in the absence
thereof, to the person who presents the oldest title, provided there is
good faith. (1473)
the revocation or by the fraudulent act of the insured, pay the proceeds of the insurance to the former beneficiary. Inconvenience will result on the part of the insurer in seeking the return of the proceeds unduly given.

o Clearly, there has been a mistake in the printing of the final version signed by the President. The correct procedure as deliberated should have been proper notification to the insurer and not the insured. Be that as it may, since the law states “notification thereof to the insured” and not the insurer, that law must be applied as written up to such time the same is effectively amended. There might be some inconvenience to the insurer but the purpose of revocation can be achieved.

(1) The properties to be contributed anew to the restored regime;
(2) Those to be retained as separated properties of each spouse; &
(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 measure to protect the interest of creditors and such order shall be recorded in the proper registries of properties.

The recording of the ordering 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)

### POINTS

**Effect of Reconciliation**

- If the spouses decide to reconcile and indeed reconcile, they can file a joint manifestation of reconciliation in court.
- If the legal separation case is still pending, it shall be terminated.
- If the decree has been issued already, whether with finality or not, it shall be set aside.
- The order containing the termination of the case or the setting aside of the decree, as the case may be, shall be recorded in the proper civil registries.
- However, with respect to the separation of properties which, in the meantime, had been made, it shall subsist.
- The parties can enter into an agreement, which would be approved by the court, reviving their previous property regime. This agreement shall contain a list of which properties shall remain separate and which properties shall be contributed to the revived property regime.
• The agreement shall also contain the names and addresses of the creditors and the amounts of the credit. The creditors must be furnished the motion seeking the approval of the agreement.
• 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 registry of property.
• 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.

Revival and Adoption
• It is important to note that the reconciling spouses can revive their original property regime.
• Significantly the new rules promulgated by the Supreme Court for legal separation cases, Supreme Court En Banc Resolution A.M. effective March 15, 2003, allow in Sections 23 (e) and 24 thereof not only the revival of the previous property regime but also they provide a new rule allowing “the adoption of another regime of property relations different from that which they had prior to the filing of the petition for legal separation.”
• This new rule is not contained in Articles 66 and 67 of the Family Code.
• Question: Does this new rule go beyond the substantive law provided in Articles 66 and 67 of the Family Code which clearly refer only to revival of previous property regime?

1. NO LEGAL BASIS
   o Articles 66 & 67 are the substantive-law-provisions of the Family Code dealing with the property regime upon reconciliation and refer only to revival of former property regime. It is restrictive and therefore no other property regime can be judicially applied for. The new rule allowing the adoption of a different property regime is an undue extension of the substantive law and therefore illegal.
   o The adoption of a new property regime is not a revival and thus should not be allowed.
   o In case of conflict, the substantive law, which is the Family Code, should prevail.
   o Moreover, if the framers of the Family Code intended to allow it, they could have easily inserted a provision in the Family Code to allow it yet they did not. The clear inference of this omission is that the adoption of another property regime is not allowed.
   o This point is further fortified by Article 88 in relation to absolute community property regime and Article 107 in relation to conjugal partnership property regime in the Family Code which provide the substantive rule that any stipulation, express or implied, for the commencement of either the absolute community of property regime or the conjugal partnership property regime at any other time other than at the precise moment that the marriage is celebrated shall be void.
   o The fact is, while the Family Code provides in Article 67 the statutory basis for the manner by which revival can be made, the same Family Code does not provide for

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3 Article 88. No judgment annulling a marriage shall be promulgated upon a stipulation of facts or by confession of judgment.
4 Article 107. The innocent spouse, after a decree of legal separation has been granted, may revoke the donations by reason of marriage made by him or by her to the offending spouse. Alienation and mortgages made before the notation of the complaint for revocation in the Registry of Property shall be valid. This action lapses after four years following the date the decree became final. (n)
the procedure for the adoption of any other regime, highlighting the fact that only revival is allowed.

2. IT IS ACCEPTABLE
   o A second point of view is that, though **Article 66 (2)** refers only to revival, it does not expressly provide that a different property regime cannot be applied for by the parties. **Article 66** is therefore not restrictive. These provisions must be construed to allow what they do not disallow. The new rule allowing the adoption of a different property regime is therefore acceptable.
   o However, considering the marriage bond is still intact and has never been cut, this new rule cannot include allowing a change from the absolute community to the conjugal partnership and vice versa, again rationale of **Article 88** and **107**.
   o The new rule can allow only a change to a different property regime other than the absolute community or conjugal partnership.
   o Example, it can allow a different kind of regime devised by the parties themselves. The fact that, unlike **Article 67** on revival, there is nothing in the Family Code providing for the procedure on how the adoption of a new regime can be made in court, allows the Supreme Court to fill in these procedural gaps.

3. AS LONG AS THE COURT APPROVES
   o The third view is that, provided there is court approval, the parties can request for any other different regime. This view does not take into consideration he limitations on property relations in the Family Code, specifically, **Articles 88** and **107**.

**Inheritance**
- If the innocent spouse had disinherited the guilty spouse, their subsequent reconciliation renders ineffectual any disinheritance that may have been made (**Article 922 of Civil Code**).
  - However, there is nothing in the Family Code which provides for the revival of the revoked provisions in a will originally made in favor of the offending spouse as a result of the legal separation decree.
  - As a matter of fact, the law does not provide that it is one of the effects of the setting aside of a legal separation decree.
  - This absence gives the innocent spouse the option of again reinstating the provisions in a will previously made to the guilty spouse, but was revoked by operation of law by the issuance of the decree of legal separation.
  - This is in harmony with the provision that the parties are given by the law the power to decide which properties they want to maintain as their own separate property in any agreement for revival of the property regime.
- **IN A NUTSHELL.** _Even in reconciliation, the innocent spouse is given the leeway and option to choose what to reinstate and what to keep separate of the provisions of the will in favor of the guilty spouse revoked by the original decree of separation._
- A setting aside of the decree of legal separation does not automatically mean revival of all revoked provisions in a will (inheritance) originally in favor of the guilty spouse.

**Recording of the Order of Revival**
- If the order of revival has not at all been recorded in the proper civil registry, the creditors will not be prejudiced whether or not they are listed in the order or they have been notified.

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5 **Article 922.** A subsequent reconciliation between the offender and the offended person deprives the latter of the right to disinherit, and renders ineffectual any disinheritance that may have been made. (856)
It is the recording of the order, the listing or non-listing of the creditors in the said recorded order, and the notification of the creditors which will have an effect on the creditors’ claims as provided for in the last paragraph of Article 67.

- Thus, the recording of the order of revival in the proper registry of property shall prejudice those creditors listed in the order or those notified of the motion for revival and of the order.
- Those creditors not listed in the order or not notified shall not be prejudiced by the recording of the order except if the debtor-spouse has sufficient separate properties to satisfy the creditor’s claim.

A and B decide to reconcile after a decree of legal separation.

1. Their separate properties (liquidated when they filed for, and granted legal separation) shall remain separate properties of each of them even after the setting aside (or dissolution) of their decree of legal separation.
2. If they decide to revive their conjugal partnership property, they can do so by filing a motion (in court) for that purpose and notify their creditors.

- If A and B decide to put all their separate properties in the conjugal fund to constitute their revived conjugal partnership properties, an order (by the court) can be issued to that effect subject to certain reservations which the court may issue for the protection of the creditors. Hence, the court can set aside certain separate properties of each spouse for purposes of paying off or protecting the interests of each of the spouses’ respective creditors.
- If no properties were set aside for the listed creditors who were notified but did not file their claims to protect their interests, they shall be prejudiced by the recording of the order in the registry of property.

Concrete example:

- Before A and B reconciled, A was ordered to pay X, his creditor. X could only execute (take as payment) for the satisfaction of the judgment debt A’s house. But then a court revives the spouses’ conjugal partnership properties that included the said A’s house. This will legally prejudice X in case he was notified of the motion for revival and listed in the revival-order as a creditor or notified of the revival-order. X can no longer, upon default of A to pay the obligation, execute on the house because now it is co-owned by both A and B (no longer A’s alone).
- What X should have done was file an opposition in court or claim in the court proceeding which heard the motion for revival and issued the revival-order so that the said court could make provisions to protect X’s interests.
- BUT, if X was not listed as a creditor in the recorded-order nor notified of the proceedings and the consequent order, then, upon the default of A to pay his obligation, X can still foreclose the house as if it is still a separate property of A. However, if there are still separate properties owned by A no included in the revived conjugal partnership properties and enough to satisfy X’s claim, X will be prejudiced (pertaining to the house) even if he is not listed in the recorded order as a creditor or if he has not been notified. He can no longer run after A’s house or any other assets of A that has become part of the conjugal partnership properties of A and B.
The FAMILY CODE OF THE PHILIPPINES
Title III. – RIGHTS AND OBLIGATIONS BETWEEN HUSBAND AND WIFE

Article 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support. (109a)

POINTS

Duties and Obligations

- Lacson v. San Jose-Lacson
  - The husband and wife are obliged to live together, observe mutual respect and fidelity, and render mutual help and support. There is, therefore, virtue in making it as difficult as possible for married couples – impelled by no better cause than their whims and caprices – to abandon each other’s company.
  - “…It must be carefully remembered that the general happiness of the married life is secured by its indissolubility. When people understand that they must live together, except for a very few reasons known to law, they learn to soften by mutual accommodation that yoke which they know they cannot shake off: they become good husbands and good wives; for necessity is a powerful master in teaching the duties which it imposes.”
- Procreation is also an essential marital obligation. From universal principle that basic end of marriage is procreation through sexual cooperation.

No Compulsion

- Only moral obligation can make them observe the aforementioned duties and obligations which are highly personal.
- Power and purview of the court in the matter extends solely to issues of support. In the experience of countries where husband and wife are compelled to cohabit together under one roof by the court, the policy of such practice is questionable at best.
- Also, a wife’s domestic assistance and conjugal companionship are purely personal and voluntary acts which neither the spouses may be compelled to render.

Damages for Failure to Comply with Obligations

- Ty v. CA
  - Facts: In a case where husband filed for nullity of their marriage, the wife also sought damages against the husband for filing a baseless complaint and causing her mental anguish, anxiety, besmirched reputation, social humiliation and alienation from her parents.
  - Held: The SC denied both petitions. It ruled that if they granted her prayer, there would be a situation where the husband pays the wife damages from conjugal funds. To do so would make the application of the law absurd. Logic, if not common sense, militates against such incongruity.
  - There is no action for damages for breach of marital obligations. There are other remedies.
- If a spouse in bad faith refuses to comply with above-mentioned duties and obligations, and if the property regime is separation of property, he or she may be held liable under Arts. 19, 20, or 21 of the Civil Code since such provisions deal with abuse of right doctrine. Thus, it has been held that the desertion and securing of an invalid divorce decree of one consort entitles the other to recover damages and attorney’s fees.
- Any person who likewise deprives a spouse of the consortium or services of the other spouse can be held liable for damages.
- Lilius v. Manila Railroad Company
  - However, how this deprivation must be fully proven.
  - Facts: Plaintiff Aleko Lilius has not presented any evidence showing the existence of domestic services and their nature, rendered by his wife, Sonja Lilius as
translator and secretary for the company, prior to the accident, in order that it may serve as a basis in estimating their value.

- Ratio: “Under the law and doctrine of this court, one of the husband’s right is to count on his wife’s assistance. This assistance comprises the management of the home and the performance of household duties, including the care and education of the children and attention to the husband upon whom primarily devolves the duty of supporting the family of which he is the head.”

- “…With women now demanding more civil rights to be more useful to society and to be man’s equal in all activities of life, spending their time outside the home, engaged in their businesses or professions, and entrusting the care of their home to a housekeeper, and their children, if not to a nursemaid, to public or private institutions which take charge of young children while their mothers are at work, marriage has ceased to create the presumption that a woman complies with the duties to her husband and children, which the law imposes upon her.”

- “… And he who seeks to collect indemnity for damages resulting from deprivation of her domestic services must prove such service.”

**Marital Rape**

- Under Philippine Law, a husband can be held liable for raping his wife. However, in case it is the legal husband who is the offender, subsequent forgiveness by the wife as the offended party extinguishes criminal action or the penalty: Provided, that the crime shall not be extinguished or the penalty shall not be abated if the marriage is void ab initio (**Article 226-C** of the **RPC**, as amended by **R.A. 8353**. See same provisions for Rape definitions, nature and scope.)

- Rape is also an act of violence against a woman, including the wife. (**Sec. 3 of R.A. 9262 – VAWC law**)

- Prior to amendment of the **RPC**, there was disagreement whether or not a husband can rape his wife. **As such case was considered the “matrimonial exemption” to the crime of rape through force.** Reasons for such is as follows:

  1. Upon marriage, a man and woman no longer retained separate legal existence. So in convicting the husband, in effect, he was raping himself.

  2. In entering the marriage contract, wife consents to sexual intercourse with her husband, and the law doesn’t allow her to retract such consent. So a husband is legally incapable of raping his wife, since the existence of a marital relationship bears as an evidentiary matter upon the element in the rape statute of lack of consent. A wife is irrebuttably presumed to consent to sexual relations with her husband even if forcible and without consent.

- Presently, this matrimonial exemption is no longer a universal and absolute rule. As jurisprudence abroad shows a growing shift to decide situations of marital rape through force on a case-to-case basis, thereby eroding the full acceptability of the previously mentioned justifications for matrimonial exceptions.

  - On the first justification: it has been argued that rape statutes have always aimed to protect the safety and personal liberty of women. Especially, during these modern times, women have been recognized as possessing rights and privileges completely separable from their husbands.

  - Philippine laws on family relations have been amended to give wives certain rights which they did not have under the Civil Code. Also, our **RPC** has been amended by **R.A. 8353**, which reclassifies rape as a crime against person.

  - On the second justification:
State of New Jersey v. Albert Smith

Held: If a wife can exercise a legal right to separate from her husband and eventually terminate the marriage “contract,” may she not also revoke a “term” of that contract, namely, consent to intercourse? Just as a husband has no right to imprison his wife because of her marriage vow to him, he has no right to force sexual relations upon her will. If her repeated refusals are a “breach of marriage contract” his remedy is in a matrimonial court, not in violent and forceful self-help.

Changes in divorce laws have significantly affected judicial and legislative construction of marital exemption rules. Some jurisdictions have recognized that consent to intercourse does not automatically continue until a marriage is officially ended. They have refused to exempt husbands from the charge of rape where a judicial decree of separation has been entered, where a spouse has filed for divorce or separate maintenance, or where the spouses are simply living apart.

Amendment by R.A. 8353 makes it clear that a husband can be criminally liable for raping his own wife.

Domicile

In exercising civil rights and the fulfillment of civil obligations, the domicile of natural persons is the place of their habitual residence (Article 50 of Civil Code).

Spouses then can only have one domicile but many residences. It is where they intend to have their permanent residence with the intention of always returning even if they have left it for some time.

Minor follows his parent’s domicile. And the spouses must fix the family domicile by agreement.

A marked departure from repealed Article 100 of Civil Code where husband, being the legal administrator of property, has the sole power to decide.

Family Code recognizes the revolutionary changes in women’s rights in the intervening years by making the choice of domicile a product of mutual agreement between spouses.

In case of disagreement, the courts will decide through summary proceedings in accordance with Article 253 of the Family Code.

A spouse may validly live away or separately from the other only if the latter should live abroad or for other valid and compelling reasons for such exemption.

Example for “other valid and compelling reason” given in the Civil Code and Family Law Committees’ meetings:

Covers the case where one spouse has to work in the mines in the Mountain Province and the like.

In finding the existence of any said grounds, the court may validly issue an order exempting one spouse to live with the other. But such exemption shall not apply if the same is not compatible with the solidarity of the family. Judicial proceeding shall be summary in nature in accordance with Article 253 of the Family Code.

Article 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide. The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family. (110a)
Article 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from the separate properties. (111a)

Article 71. The management of the household shall be the right and the duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70. (115a)

Article 72. When one of the spouses neglects his or her duties to the conjugal union or commits acts which tend to bring danger, dishonor or injury to the other or to the family, the aggrieved party may apply to the court for relief. (116a)

POINTS

Expenses for Support and Household Management

- **Support is a very important duty, emphasized by the Family Code’s frequent reference to it.**
- **Whole Title VIII on Support under the Family Code highlights the importance of this duty.**
- **Article 70** provides that spouses shall be jointly liable for the family’s support.
- **Article 68** states that the husband and wife are obliged to support each other.
- **Arts. 94 and 121** provide that the absolute community of property and conjugal partnership of gains, respectively shall be liable for the support of the spouses, their common and legitimate children of either spouse.
- **Article 49** provides that in an annulment or nullity of marriage case, the court shall provide for the support of the spouses and the custody and support for their children.

- **Article 198** provides that during the proceedings for legal separation or for annulment of marriage, and for declaration of nullity of marriage, spouses and their children shall be supported from the properties of the absolute community or the conjugal partnership.
- **Article 220** provides that parents and those exercising parental authority shall have with respect to their unemancipated children or wards the duty to support them.
- **Arts. 70 and 71** provide that in absence of community property, the expenses for support and other conjugal obligations, including the expenses for the management of the household, shall be taken from the income or fruits of their separate properties.
  - The last paragraphs of **Arts. 94 and 121** provide that, if community property or the conjugal partnership is insufficient to cover the liabilities for which they are liable, the spouses shall be solidarily liable for the unpaid balance with their separate properties.
- **Article 146** provides that in a separate properties regime, liability of the spouses to creditor for family expenses shall, however, be solidary.

Management and Relief

- Regardless of property regime, **management of the household shall be the right and duty of both spouses.** Hence, even if the family house is separable owned by one of the spouses, the other spouse still has that duty.
- In the event that 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. **Relief may take in many forms:**
  - **nullifying a marriage based on Art. 36 if neglect is such that it does not create a functional marital life.**
Petitioning the court for receivership for judicial separation of property or for authority to be the sole administrator of the community property or the conjugal partnership subject to such precautionary conditions as the court may impose (Arts. 101, 128).

**Article 73.** Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious, and moral grounds. In case of disagreement, the court shall decide whether or not:

1. The objection is proper; and
2. Benefit has occurred 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)

**POINTS**

**Legitimate Profession**

- Spouses can engage in any lawful enterprise or profession. Though natural to consult each other regarding the matter, the law does not require them to get prior consent of the other before entering into any legitimate profession, occupation, or activity.
- If a husband compels the wife from pursuing or entering a profession or from any conduct which the wife has the right to engage in for the purpose or effect of controlling or restricting her movement, it is considered violence against women under R.A. 9262 – VAWC law.
- Exercise by a spouse of a legitimate profession, occupation, business or activity is always considered to redound to the family’s benefit.

- But an isolated transaction of a spouse such as being a guarantor for a third person’s debt is not per se considered as redounding to the benefit of the family and, therefore, to hold the absolute community or the conjugal partnership property liable for any loss resulting from such isolate activity, proofs showing a direct benefit to the family must be presented.

- **Go v. Court of Appeals**
  - Facts: It was proven that the wife was the only one who entered into a video contract with the aggrieved parties and who was the only one responsible for the breach of contract.
  - Held: SC ruled that husband cannot be solidarily liable with the wife for the damages resulting from the breach.
  - Ratio: Under the law, any of the spouses may exercise any legitimate activity without the consent of the other spouses which actually happened in the case and also pursuant to the principle that contracts produce effect only as between the parties who execute them.
  - In the case, the video contract was an isolated activity entered into by the wife.
  - However, if the wife is really engaged in the business of video filming or it is her profession or occupation, such undertaking shall be considered as redounding to the benefit of the family or the absolute community or the conjugal partnership and, therefore, any loss shall be shouldered by the absolute community of property or the conjugal partnership of gains.
  - In a disagreement between spouses of the profession engaged in by one of them, it must be anchored only on valid, serious and moral grounds and will be decided by the courts. Such judicial proceeding will be summary in nature in accordance with Article 253.
Husband cannot object to his wife’s undertaking her profession as a lawyer simply because she meets a lot of men as clients in the exercise thereof.

- If the court finds it objectionable, the exercise of the business can be judicially stopped.
  - If a husband opens a massage parlor which is actually a prostitution business, it can be validly stopped as it is serious and immoral.
- Civil Code and Family committees agreed: the rule that “what is legal is moral and what is moral is legal” may not apply in the above provision since there are occupations, like escort service, which are legal and immoral.

**Separate Property Liability**

- Law provides, in case of disagreement, the court shall decide whether or not the benefit has accrued to the family prior to the objection or thereafter.
- The general rule holds that debts and obligations, regardless of when they were incurred before or after the marriage ceremony but redounding to the benefit of the family, shall be chargeable to the conjugal partnership of gains or the absolute community property and not to the separate property of the spouse incurring the obligation.
- The general rule is that the obligation incurred as a result of a spouse’s exercise of his or her legitimate profession/occupation or as a result of spouse’s undertaking of his or her own legitimate business, is an obligation redounding to or for the benefit of the family or the conjugal partnership or the absolute community property and, therefore, shall be shouldered by the conjugal partnership or community property.
- The exception to the general rule is Article 73, par. 2, item number 2, which provides that, “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.”

In case of professions which are seriously invalid and immoral, the separate property of the erring spouse shall be liable for all obligations relating to such exercise of profession even if benefits actually accrued in favor of the family. This is a way of penalizing said spouse for engaging in a seriously invalid and immoral profession or occupation.

- This is so, even if there is no objection yet from the other spouse so that the law will serve to deter any spouse from attempting to undertake such an immoral activity.
- For the exception to apply, innocent spouse must have no knowledge of the other’s engagement in an immoral activity such that he could not have interposed any objection.
  - If said spouse knew beforehand that the other spouse undertook such profession and merely interposed a specious objection later (in that he actually used the money obtained from such profession for family needs), such objections is of no consequence, as the innocent spouse would be deemed to have agreed with the other spouse’s seriously immoral endeavors.
  - In this case, there was actually no disagreement. It will not however bar the acquiescing spouse from interposing an authentic objection later because, considering that the profession is immoral, the other spouse should be given the widest latitude to stop the erring spouse from undertaking his unwholesome profession.
  - Example: A is married to B. A borrows money from C to go abroad and work as a prostitute. C is aware of A’s purpose. B uses money A sends back for the family without knowing it came from an immoral profession. A’s separate property alone will be liable to the creditor-C if C demands payment.
If C is not however aware of A’s purpose, and believes it will be used for a legitimate business, he will not be prejudiced and can collect from the community or conjugal property by demanding from B the payment of the obligation.

If B finds out of A’s actions and thereafter objects, any obligation incurred by A, which redounded to the family’s benefit, shall be borne by the community or conjugal property. It would be unfair if B, after obtaining knowledge of the immoral profession, thereafter, interposed his objection but at the same time made use of the “immoral money” to benefit the family.

Error in Printing

- Exception to the general rule aforementioned might not have been intended, though justifiable such exception may be, after examining the deliberation of this particular provision contained in the minutes of the 161st Joint Meeting of the Civil Code and Family Law Committees on November 8, 1986, Pages 7 to 9 appears to show an error in the printing of Article 73, par. 2, item number 2.

Running proposal by Justice Puno for the provision to read as: (2) “Whether benefit has accrued to the family prior to objection or thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the community property. If the benefit accrued thereafter, such obligation shall be enforced only against the separate property of the spouse who has not obtained consent.

- Justice Reyes and Justice Puno agreed that there should be no estoppel on the husband, who knew of but did not object to his wife’s immoral occupation, and that the husband should be allowed to rectify the immorality at any given time. The rule is that estoppels cannot sanction immorality or legality.

Final proposed wording on Article 73 read as follows:

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,
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 community property. If benefit accrued thereafter, such obligation shall be enforced against the separate property of the spouse who has not obtained consent.

Considering that, what was printed in the final text relative to Article 73, par. 2, item number 2 was completely different from that which was finally proposed during the committee deliberations and considering that the printed text under the statute was the one contained in the Family Code when the President signed the same into law, there appears to be no alternative but to apply the provision as it is printed in the law.
THE FAMILY CODE OF THE PHILIPPINES
Title IV. – Property Relations between Husband and Wife
Chapter 1 – GENERAL PROVISIONS

Article 74. The property relationship 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)

Article 75. The future spouses may, in the marriage settlements, agree upon the regime of absolute community, conjugal partnership of gains, complete separation of property, or any other regime. In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community of property as established in this Code shall govern. (119a)

Article 76. In order that any modification in the marriage settlements may be valid, it must be made before the celebration of the marriage, subject to the provisions of Articles 66, 67, 128, 135 and 136. (121)

Article 77. The marriage settlements and any modification thereof shall be in writing, signed by the parties and executed before the celebration of the marriage. They shall not prejudice third persons unless they are registered in the local civil registry where the marriage contract is recorded as well as in the proper registries of properties. (122a)

POINTS
Property Relations and Pre-Nuptial Agreements

- Article 1490 of the New Civil Code provides that the husband and the wife cannot sell property to each other except when a separation of property was agreed upon in the marriage settlement or when there has been a judicial separation of property.
- There is generally no right of accretion in cases of donation made to several persons, but it is not applicable when a donation is made jointly to the husband and wife.
- Between husband and wife there shall be a right to accretion, unless the donor has provided otherwise.
- Property relations are primarily governed by their marriage settlement.
- It must be in writing, signed, and made prior to the celebration. If it is not in writing, it shall not be enforceable.
- For ante-nuptial agreements, they must be in writing for enforceability and validity.
- An oral marriage settlement is void and cannot be ratified.
- The contracting parties can stipulate or agree on any arrangement in their marriage settlement that is not contrary to law and public policy and is within the limits provided in the Family Code.
- However, by way of example also, the parties cannot stipulate that the conjugal partnership of gains or the absolute community of property will start at a date other than the precise moment of the celebration of marriage because such agreement is void under Articles 88 and 107.
- They cannot agree to allow substantial donations under Article 87.
- They cannot have a property regime other than complete separation if the previous marriage is not liquidated (Article 103 and 130).
- The parties may likewise design their own property regime which is not in violation of law.
  - Such as a “mixed-up property regime” where the spouses retain all their income separately and fruits of the real estate, but the property is shared.
Prejudice to Third Parties

- Marriage settlement must be registered in the local civil registrar where the marriage is recorded, and in the proper registries if property.
- Example:
  - A and B settle under the absolute community of property. B however, borrowed money from Y prior to the marriage, and it did not redound to the benefit of the marriage. If the property settlement between A and B is registered, Y will be prejudiced. Y cannot execute the property by having the court sheriff sell the same to satisfy the judgment debt.
  - ACP is only liable for community debts. And this is especially if B has sufficient separate properties.
  - If the property is not registered, Y is not prejudiced by the settlement, and Y can execute on the conjugal property.
  - If the debt of B redounded to the benefit of the marriage, however, ACP property is liable.
- This is not to be confused with Article 94(9), where a spouse’s exclusive debts and subsequent repayments with ACP property shall be considered as advances to be deducted from the share of the debtor upon liquidation of the ACP. This situation refers to which may or may not prejudice a creditor regarding antenuptial debts as a result of the registration of a marriage settlement.

Fairness in Marriage Settlements

- In weighing the fairness and reasonableness of the provision, the following, among other things depending on the particular case must be considered: the relative situation of the parties, their respective ages, health, and experience, their respective properties, their family ties and connections, the spouses’ needs and such factor which tend to show that the agreement was understandingly made.
- Even if the conditions were not fair and reasonable, it can still be maintained if it is proven that the other spouse, in signing, knew that his or her rights were being waived or prejudiced.
- The burden of proof to show invalidity falls to the person alleging it, but if there is prima facie evidence that the contract is unreasonable and a presumption of concealment arises, the burden of proof shifts, and it is incumbent on the latter party to prove its validity.

Exceptions

- Articles 103 and 130: these two Articles provide that in the event that a marriage is terminated by the death of one of the spouses and the surviving spouse marries again without initiating any judicial or extrajudicial settlement of the properties of his or her previous marriage within one (1) year from the death of the deceased spouse, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.

Modifications

- The general rule is that modifications are valid only at the beginning, except in Arts. 66, 67, 128, 135, 136 – although this needs juridical approval.

Local Customs

- When the parties stipulate in their marriage settlement that the local custom shall apply or that the absolute community of property regime shall not govern their property relations but fail to stipulate what property regime shall be applied, the only recourse would be to apply the local custom.
- The local custom must also be proved according to the Rules of Evidence.
Article 78. A minor who according to law may contract marriage may also execute his or her marriage settlements, but they shall be valid only if the 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)

Article 79. For the validity of any marriage settlement executed by a person upon whom a sentence of civil interdiction has been pronounced or who is subject to any other disability, it shall be indispensable for the guardian appointed by a competent court to be made a party thereto. (123a)

Article 80. In the absence of a contrary stipulation in a marriage settlement, the property relations of the spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence. This rule shall not apply:
(1) Where both spouses are aliens;
(2) With respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and
(3) With respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situated in a foreign country whose laws require different formalities for its extrinsic validity. (124a)

Article 81. Everything stipulated in the settlements or contracts referred to in the preceding articles in consideration of a future marriage, including donations between the prospective spouses made therein, shall be rendered void if the marriage does not take place. However, stipulations that do not depend upon the celebration of the marriages shall be valid. (125a)

POINTS

Consent By Those Designated by Law
- Article 78 was lifted from Article 120 of the Civil Code
  o Applicability is now in doubt because of the new age of majority of eighteen (18) years, and marriages contracted by a minor are void *ab initio*
- Article has been impliedly repealed
- Article 37 of the RPC states that civil interdiction shall deprive the offender during the time of his sentence of the rights of parental authority, guardianship, either as a person or property of any ward, of marital authority, or the right to manage his property, and of the right to dispose of such property by any act or any conveyance *inter vivos*.
- Article 41 or the RPC include civil interdiction along with the penalties of *reclusion perpetua* and *reclusion temporal*.
- Article 40, when not executed because of commutation or pardon carries perpetual absolute disqualification and that of civil interdiction during thirty (30) years following the date of the sentence (unless remitted during pardon).

Rules Governing Property Relations
- The rules set forth in the first paragraph of Article 80 are not applicable where both spouses are aliens married in the Philippines.
- The consideration of a marriage settlement is the marriage itself. If the marriage does not take, the marriage settlement is generally rendered void.

Efficacy of Marriage Settlement
- The consideration of a marriage settlement is the settlement itself, and if it doesn’t take place, it is generally void.
- Stipulations that do not depend on the celebration of the marriage will be valid even if the marriage does not occur.
  o Regardless of the celebration of marriage, parents are obligated to support their legitimate and illegitimate children.
Chapter 2 – DONATIONS BY REASON OF MARRIAGE

Article 82. Donations by reason of marriage are those which are made before its celebration, in consideration of the same, and in favor of one or both of the future spouses. (126)

Article 83. These donations are governed by the rules on ordinary donations established in Title III of Book III of the Civil Code, insofar as they are not modified by the following articles. (127a)

Article 84. If the future spouses agree upon a regime other than the absolute community of property, they cannot donate to each other in their marriage settlements more than one-fifth of their present property. Any excess shall be considered void. Donations of future property shall be governed by the provisions on testamentary succession and the formalities of wills. (130a)

POUNTS
Donate Propter Nuptias

- Donation by reason of marriage is known as donation *propter nuptias*. Donation *propter nuptias* are without onerous consideration, the marriage being merely the occasion or motive for the donation not its “causa.”

- **Mateo v. Lagua**
  - Being liberalities, they remain subject to reduction for inofficiousness upon the donor’s death, if they should infringe the legitime of a forced heir.

- **Garcia v. Sangil**
  - It is indispensable that such a donation must be made prior to the celebration of the marriage.

- Donation *propter nuptias* can even be contained in a marriage settlement. For a donation of present property to be valid, the rules governing ordinary donations under Title III of Book III of the Civil Code must be observed.

  - In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

  - Donation *propter nuptias* of future property shall be governed by the provisions on testamentary succession and the formalities of a will. The document containing the donation of future property may be handwritten.

  - If one of the would-be spouses wants to validly make a donation *propter nuptias*, the following requisites must concur:
    - There must be a valid marriage settlement
    - The marriage settlement must stipulate a property regime other than the absolute community of property
    - The donation contained in the marriage settlement must not be more than one fifth (1/5) of his or her present property
    - The donation must be accepted by the would-be spouse
    - It must comply with the requisites established in Title III of Book III of the Civil Code on donations.

ARTICLE 85. Donations by reason of marriage of property subject to encumbrances shall be valid. In case of foreclosure of the encumbrance and the property is sold for less than the total amount of the obligation secured, the donee shall not be liable for the deficiency.
If the property is sold for more than the total amount of said obligation, the donee shall be entitled to the excess. (131a)

**POINTS**

**Donation with Encumbrance**
- Definition: *Encumbrance* is a mortgage or other charge on property or assets.
- If the object of the donation is subject of an encumbrance, it is still valid.
- If the object of the donation has been foreclosed to answer for the unpaid debt of the donor and;
  1. The amount obtained as a result of the foreclosure is less than the amount of the debt of the donor which was supposed to be satisfied by the foreclosure → The donee shall not be liable for any deficiency in the event.
  2. If the property is sold and the resulting money obtained is more than the amount of the liability of the donor → The excess shall properly go to the donee.

- This is because, being owner of the property, the donee is entitled to whatever value of the property which can be obtained.
- The donation is a conveyance of pure liberality of the donor, and thus the donee cannot seek reimbursement from the donor for the amount which was taken away by creditors as a result of the foreclosure sale.

**Article 86.** A donation by reason of marriage may be revoked by the donor in the following cases:

1. If the marriage is not celebrated or judicially declared void *ab initio* except donations made in the marriage settlements, which shall be governed by Article 81;
2. When the marriage takes place without the consent of the parents or guardian, as required by law;
3. When the marriage is annulled, and the donee acted in bad faith;
4. Upon legal separation, the donee being the guilty spouse;
5. If it is with a 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)

**POINTS**

**Marriage Not Celebrated**
- Definition: *Donation propter nuptias* is “a gift on account of marriage”. The marriage, being the very reason for the donation, must be celebrated.
- In case of non-marriage, the donor has the option to revoke or maintain the donation.
- If the donation *propter nuptias* is contained in a marriage settlement executed prior to the marriage and the marriage ceremony does not take place, such donation shall be considered void pursuant to Article 81.¹
- There is no prescriptive period within which to donor can exercise the right to revoke or recover the donation given. But under Article 1149 of the Civil Code states that *actions whose***

¹ Article 81. Everything stipulated in the settlements or contracts referred to in the preceding articles in consideration of a future marriage, including donations between the prospective spouses made therein, shall be rendered void if the marriage does not take place. However, stipulations that do not depend upon the celebration of the marriages shall be valid. (125a)
periods are not fixed in this Code or in other laws must be brought within five (5) years from the time the right of action accrues.

- Thus, if marriage is not celebrated, the right of action accrues from the moment the marriage is not solemnized on the fixed date.
- But, if the marriage is void as it is contained in a marriage settlement, period within which to declare the donation void does not prescribe.
- If it is clear from marriage settlement that the donation does not depend on the celebration of the marriage (thus, not donation propter nuptias), such donation shall remain effective provided it complies with all the statutory requirements for a valid donation under this title.

**Marriage Judicially Declared Void**

- Mere fact that a marriage is declared void by law is not enough for the donor to have the right to revoke the donation. There must first be a judicial declaration that the marriage is void.
- There are five (5) possible situations that can arise depending on the reason for the nullity of the marriage.
  - If subsequent marriage is void pursuant to Article 40 in relation to Article 52 & 53 because it has been contracted by a spouse of a prior void marriage before the latter is judicially declared void, the donation shall be revoked by operation of law if the donee-spouse contracted the subsequent void marriage in bad faith.
  - i.e. The marriage of A and B is void because of “mistake in identity”. A, without obtaining a judicial declaration of nullity of his marriage with B, marries C. A knows all along that without the declaration, his marriage to C is void.
  - Prior to the marriage, C gives A a donation propter nuptias. Upon the finality of the judicial declaration of nullity between A and C, the donation shall be revoked by operation of law pursuant to Article 50, which provides that paragraph (3) of Article 43 shall also apply in proper cases to marriages which are declared void ab initio under Article 40.
  - If the donee does not want to return the donated property, donor should file an action to recover and his/her right of action to file starts from the finality of the judicial declaration of nullity as it is only from that time that the right of action accrues.
  - Prescriptive period to file action to recover:
    - Movable property → 8 yrs. from time of possession lost
    - Real Property → 30 yrs. deemed “lost” after finality of judgment
  - In case of bad faith on the part of both parties in a subsequent marriage where one previously obtained a judicial declaration of presumptive death under Article 41 to be able to remarry, Article 44 provides that such subsequent marriage is void and thus all donations shall be revoked by operation of law.
  - In all other cases where marriage has been judicially declared void on grounds other than Article 40 in relation to Article 52 & 53 & under Article 44, Article 86(1) shall govern. In this case bad faith or good faith is irrelevant.
  - Donor, after finality of judicial declaration, can opt to revoke or not pursuant to Article 86(1).
    - i.e. Example, (1) marriage was celebrated without a marriage license, the donation may be revoked upon finality of judicial declaration regardless if donee was in good or bad faith. (2) innocent spouse was falsely made to believe she/he was marrying the real spouse when, in fact, it was an impostor, and gave a donation propter nuptias to said impostor. Such marriage, on ground of “mistake in identity” [Article 35(5)], is declared void and
after the finality of the judicial declaration of nullity, the donor may or may not revoke the donation.

- If A is validly married to B and subsequently married X while first valid marriage is subsisting, the subsequent marriage is bigamous and thus, all donations propter nuptias given by X to A may or may not be revoked by X after the finality of judicial declaration of nullity of the bigamous marriage.

- However, any donation propter nuptias given by A (married person) to X may be considered void if A and X were already guilty of adultery or concubinage at the time of donation [Article 739(2)]. It is also void if made at the time when A and X were already living as husband and wife without a valid marriage (Article 87).

- If in this case, the marriage of A and B is in itself void and no declaration of nullity has been obtained prior to marriage of A and X, such subsequent void marriage of A and X is what is contemplated in Article 40, therefore the donation by X shall be revoked by operation of law upon finality of the judicial declaration of nullity of X’s marriage to A.

- If both spouses are in good faith, the donor, after the finality of the judicial declaration, is likewise given the option to revoke pursuant to Article 86(1).

- Example, subsequent marriage of man and woman without complying with the mandatory recording and distribution requirements under Article 52 believing in good faith that the marriage is valid as they have respectively procured their nullity decrees from their former spouses, shall still be void and can be judicially declared as such. However, upon finality of the judicial declaration of nullity, any donation propter nuptias may or may not be revoked as they both contracted marriage in good faith.

- The donor is given only 5 years from time of finality of judicial declaration within which to file for recovery.

**No Consent of Parents or Guardian**

- Articles 14, 45, and Paragraph 2 of Article 236 require that contracting parties 18 years old and above but below 21 must obtain consent from either parents, guardians, persons having substitute parental authority before they can marry.

- Consent absent → marriage is voidable → donation revocable.

- Unlike Article 86(3), 86(2) does not require that the marriage should be annulled first before the donor may revoke the donation.

- Thus, the donor has five (5) years from the time he/she knew that consent was not given within which to revoke the donation.

- Knowledge in this case can only be on or after the marriage because if donor knew before the marriage he still cannot revoke since needed parental consent may be given at the last minute or so.

- In the instance of no marriage or marriage does not take place, Article 86(1) or Article 81 will apply to the proper cases.

**Annulled Marriage and Donee Acted in Bad Faith**

- An irreconcilable conflict between:

  - Article 86(3) – donation merely revocable by donor in case marriage is annulled and donee is proven in bad faith in contracting the marriage; and

  - Article 50 in -- one of the effects of annulment decree is relation to donation propter nuptias is considered revoked by operation of law if donee is found in bad faith in contracting the marriage.
Both provisions does not specify if the donor as the other spouse acted in good faith.

While rule in statutory construction is that in cases of irreconcilable conflict between 2 provisions in a statute, the provision last in the order of position prevails being the latest expression of legislative will, it does not apply if the prior section/provision is more in harmony with the general purpose or intent of the act (82 C.J.S. 717).

Hence, the restrictive grounds for annulment of marriage in Article 45 are provided by law to give parties a chance to terminate a marital relationship due to (1) absence of parental consent, (2) highly defective consent, (3) incurable impotency, (4) incurable STD.

The particular spouse who acted in bad faith in procuring the marriage should not be allowed to profit or gain by any mean whatsoever from this act of bad faith.

Thus, it is more in keeping with the spirit of the law to consider donations propter nuptias revoked by operation of law in case marriage is annulled and donee acted in bad faith.

Such ipso jure revocation is consistent with the fact that, had the innocent spouse known of the guilty party’s bad faith prior to or even at the time of the marriage ceremony, he/she would not have entered into such annulable marriage or at least would not have made such a donation.

On the other hand, giving the innocent party the option to revoke the donation or not may lead to unwholesome consequences that would defeat the very purpose of an annulment case. For example, the guilty party may just bargain with the innocent party that the former will not oppose the annulment case as long as the donation will not be revoked. This may truly lad to collusion.

Moreover, unlike where the law already provides ipso jure revocation, the option given to the innocent spouse will not be a good deterrent for those who regard marriage merely as a way to get rich.

If Article 86(3) is to be applicable because it came later, then donor has only 5 years from finality of annulment decree within which to file for recovery. However, if one adheres to the view that donations propter nuptias are revoked by operation of law, there is no need to file an action for revocation. Just like in marriages judicially declared void where donee acted in bad faith, refusal of donee to return the donation gives the donor the right to file for action to recover which would start from the finality of the judicial decree of annulment as it is only from that time that the right of action accrues.

There are also instances that marriage is annulable but the spouses are not in bad faith even if Article 47 refers to an “injured party”. Example, donee-spouse, prior to marriage, informed the 3rd party donor and the other spouse (or donor-spouse, if he/she is donor and no 3rd party donor), that donee-spouse is suffering from an incurable STD, such donee-spouse is not in bad faith. Hence, even if the marriage is later on annulled, the donation propter nuptias remains effective and irrevocable.

**Legal Separation**

A legal separation decree does not terminate the marital bond between husband and wife. They are merely separated from bed and board.

But since there is a possibility still for reconciliation, the donor may opt to revoke his/her donation or maintain it.

If donor wishes to revoke, he/she has 5 years from the finality of the decree of legal separation within which to file such case of recovery. (Article 64)

If the ground for the legal separation is sexual infidelity (adultery for the wife and/or concubinage for the husband), the donation shall be void. [See Article 739(1)]
Resolutory Condition
- A donation *propter nuptias* with a resolutory condition and such condition is complied with, the donation may or may not be revoked by donor.
  - i.e. if the father of one of the spouses gives a donation *propter nuptias* (car) to the couple with the provision that such donation will be revoked if the couple migrates to another country, such condition is complied with once the couple leave the Philippines.
- If donor wishes to revoke the donation, he/she must do so within 5 years from the happening of the resolutory condition as it is only from that time that the right of action accrues.
- If donation is made validly by one spouse to the other, there is no prescriptive period because of Article 1109 (no prescription between husband and wife).

Acts of Ingratitude
- Instances of Ingratitude are provided for in Article 765 of the Civil Code;
  - Article 765. The donation may also be revoked at the instance of the donor, by reason of ingratitude in the following cases:
    (1) If the donee should commit some offense against the person, the honor or the property of the donor, or of his wife or children under his parental authority;
    (2) If the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it, unless the crime or the act has been committed against the donee himself, his wife or children under his authority;
    (3) If he unduly refuses him support when the donee is legally or morally bound to give support to the donor.

Void Donations
- Donations made by persons who were guilty of adultery or concubinage at the time of the donation is void. (Article 739 of Civil Code)
- *Agapay v. Palang*
  - Facts: Husband transferred a property to his second wife at the time his first marriage was still subsisting.
  - Held: Supreme Court ruled that the transfer was in fact a donation and therefore void under both Article 739 and Article 87 prohibiting donations among those living as husband and wife even without the benefit of marriage.

ARTICLE 87. Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. The prohibition shall also apply to persons living together as husband and wife without a valid marriage.

Reason for the Prohibition
- The law considers void any donation in violation of Article 87 except moderate gifts which spouses may give to each other on the occasion of any family rejoicing. Moderate gifts will depend on a case-to-case basis especially considering the financial capacity of the donor.
In the deliberation on this particular subject in the Civil Code and Family Law committees, according to Justice Puno, it was agreed to let the law make such donation immediately void so that the “intended benefit does not have to be proven anymore.”

This same prohibition also applies to persons living together as husband and wife without a valid marriage.

Matabuena v. Cervantes, 38 SCRA 284
- Supreme Court decision states that “if the policy of the law is, according to Justice J.B.L. Reyes, ‘to prohibit donations in favor of the consort and his descendants because of fear of undue and improper pressure or influence upon the donor, a prejudice deeply rooted in our ancient law;’ then there is every reason to apply the same prohibitive policy to those living together as husband and wife without benefits of nuptials. As Ulpian pointed out, ‘it would not be just, as marriage remains the cornerstone of our family law, reason and morality alike demand that disabilities attached to marriage should likewise attach to concubinage.”
- Donation given by a person to his/her alleged partner to fall under the last paragraph of Article 87, it must be shown that said donation was made at a time when they were still living together as husband and wife without benefit of marriage.

Agapay v. Palang, 276 SCRA 34
- Facts: Husband sold a property to his wife of a subsequent bigamous marriage for the purpose of removing property from the effects of Article 148.
- The testimony of the notary public, Atty. Constantino Sagun, testified that the so-called house and lot that Erlinda “bought” was actually purchased and paid for by Miguel Palang and instructed the lawyer to put Erlinda’s name as buyer.

The transaction is thus properly a donation of Miguel to Erlinda but one which is clearly void and inexisten by express provision of the law because it was made between parties guilty of adultery and concubinage at the time of donation under Article 739 of the Civil Code. In addition, Article 87 expressly prohibit donations between spouses that now applies to people living together as husband and wife even without valid marriage.

Held: The Supreme Court ruled that the conveyance of the property was not by way of sale but a donation and therefore void.

Effect of Donation
- Donation between spouses, directly or indirectly, are void.
- Article 87 repealed Articles 133 and 134, and is broader in scope by including direct and indirect donations. In Article 134, indirect donations were merely “voidable” or “annullable” but now under Article 87 these donations are void ab initio.
- Article 87 includes the following donations of a spouse:
  1. To a stepchild who has no compulsory and/or legal heirs, such as his/her children, other than the other spouse at the time of the donation;
  2. To a common child who has no compulsory &/or legal heirs other than the other spouse at the time of donation;
  3. To the parents of the other spouse;
  4. To the other spouse’s adopted child who has no compulsory &/or heirs or, in cases when, a the time of the donation, the only surviving relative of the adopted is the other spouse (parent of the adopted);

2 “donations during the marriage by one of the spouses to the children whom the other spouse had by another marriage, or to persons of whom the other spouse is a presumptive heir at the time of the donation are voidable, at the instance of the donor’s heirs after death.”
5. To a common adopted child who has no compulsory &/or legal heirs.
- The above donations for the donees are indirect donations to the spouse of the donor-spouse, because once they (donees) die, the spouse of the donor inherits. Even if the direct donee gives birth to a compulsory and/or legal heir, it will not cure the invalidity because the donation is void ab initio from inception.
- However, donations of both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational (in a sense educational purpose) course or other activity for self-improvement are valid.
- The amount for such donations must come from the absolute community of property or the conjugal partnership of gains. (Article 94 [8] and Article 121 [8]).
- Donations for any other purpose to the common legitimate children who have no other compulsory &/or legal heirs will fall under the prohibition because they will be self-serving for the spouses who will be the children’s heirs if the children die.

Persons Who Can challenge Validity of Transfer
- Anyone who has absolutely no relation to the parties to the transfer at the time it occurred and has no rights or interests inchoate, present, remote, or otherwise, in the property in question at the time transfer occurred, shall and cannot question the validity of the donation or transfer.
- Certain transfers from wife to husband and/or husband to wife are prohibited. Such prohibition can be taken advantage of only by those persons who bear such a relation to the parties making the transfer or to the property itself that such transfer interferes with their rights and interests. Unless such relationship appears, the transfer cannot be attacked.

Personal Note: For the bullet point above, refer to the case below. Because transfers (or donations) between spouses are prohibited, interested parties to the transaction can use such prohibition to their advantage (defeating the very purpose of the prohibition), like what

**the wife did in the case below. She tried to retake her property but the SC ruled that since she was in a sort of “connivance” and thus in bad faith, the transfer stands even if there was indirect donation.**
- Rodriguez v. Rodriguez, 20 SCRA 908
  - Facts: A mother sells her exclusive property to her daughter who later sold it to her father for the purpose of converting such property of the mother to conjugal property, thereby vesting half-interest on the husband and evading the prohibition against donations.
  - Held: The Supreme Court ruled that the transactions were indeed designed to circumvent the legal prohibition regarding donations between spouses but refused to grant relief to the wife who filed for nullifying the transactions on the ground that all of them, the parties know of the illicit purpose of the scheme and therefore no one can recover what was given by virtue of the contract. The Supreme Court applied the rule in pari delicto non oritur action, denying all recovery to the guilty parties inter se.

Effects on Reserva Troncal
- Definition: Reserva Troncal – provides that the ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which came. The reason for this is to keep property within the same bloodline.
- Example of reserve troncal:
  - X and A are married. Y is their only son. X, before he died, donated to his son Y a Pasig property. X has 2 living brothers, D and M. Thereafter Y died without any descendant-heir. Before his death, X donated to his son Y a Pasig property.
o This Pasig-property will be inherited by the mother of Y., A. When the mother inherits, it becomes her property.

o If the mother dies, the property will not go to the other heirs of the mother, like her parents and/or brothers/sisters, but to D and M, living brothers of X and the same time uncles to Y. D and M are within the 3º degree from Y.

o Under the New Family Code, the moment X donated to Y, it was void from the start. This is another example of “indirect donation”.

o Nobody can file a nullity case here except those who are of interest in the same. D and M, at the time of the donation, did not have rights yet.

o Reserva Troncal is operational though the donation was void.
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)

POINTS

Absolute Community of Property

- “ALL properties owned by the contracting parties BEFORE the marriage ceremony and those which they may ACQUIRE THEREAFTER shall comprise the ACP regime.”
- In a Partial Separation of Property Regime, everything not agreed upon as separate pertains to the absolute community (Art. 144)
- Effect: Spouses becomes co-owners of everything therein
  - But no waiver of rights, interests, shares and effects of the absolute community of property can be made except upon judicial separation of property.
- Excluded: (1) those stipulated in marriage settlement, (2) those enumerated under Art. 92
- ACP more in consonance with “traditional oneness of the Filipino family.” In the Philippines, husband and wife consider themselves co-owners of all the property brought into and acquired during marriage. Law ought to be based on real and actual conditions. Hence, current provision in Civil code of presumption for relative community or conjugal partnership of gains should be abolished in favor of ACP. (Report of the 1950 Civil Code Commission, acknowledging merits of ACP)

Alien Married to Filipino

- In both ACP and CPG, alien spouse cannot have any interest in the community or partnership property.
- Matthews v. Taylor,
  - Facts: Filipina spouse entered into lease agreement without consent of foreigner spouse.
  - Issue: Lease is assailed as void as there was no consent from foreigner spouse in obtaining such encumbrance
  - Held: SC rejected such position
  - Ratio: Considering leased property as conjugal and therefore any encumbrance should have been with the consent of the foreigner spouse will be circumventing the proscription in the Constitution regarding aliens being prohibited from acquiring property in the Philippines.
  - Aliens, whether individual or corporation, are disqualified from acquiring lands of the public domain. And subsequently by virtue of that constitutional provision, are prohibited from acquiring private lands as well.
  - Purpose is conservation of national patrimony. Only Filipino citizens or corporations, at least 60% of capital of which is Filipino-owned, have this right to acquire land.
- Krivenko v. Register of Deeds,
  - Art. XIII, Sec. 1 of the Constitution state the prohibition on alienation of natural resources except public agricultural land; the latter’s alienation is limited to Filipino citizens. This provision might be defeated by Filipinos alienating their own agricultural lands in favor of aliens hence to prevent this, Sec. 5 is included in Art. XIII which states that “save in cases of hereditary succession, no private agricultural land will be transferred or assigned except to individuals,
corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.”
  o Private agricultural land must be construed as including residential lots or lands not strictly agricultural to conserve the spirit of the Constitutional provision.
  o Rule is clear and inflexible: aliens are absolutely not allowed to acquire public or private lands in the Philippines, save only in constitutionally recognized exceptions. There is no rule more settled than this constitutional provision.

• **Ting Ho, Jr. v. Teng Gui,**
  o Felix Ting Ho, a Chinese citizen, “acquired” a parcel of land together with improvements thereon. On his death, his heirs (petitioners) claimed it as part of the estate of their deceased father and sought the partition of said properties among themselves. Court excluded the land as Felix never became the owner because of the constitutional prohibition.

• **Muller v. Muller,**
  o Facts: Petitioner Elena Buenaventura and respondent Helmet Muller were married in Germany. Respondent purchased parcel of land in Antipolo City and constructed a house thereon. Property was registered under the name of the petitioner.
  o Issue: After separating, respondent filed petition for separation of property, specifically, seeking reimbursement of the funds he paid for acquisition of said property.
  o Held: Case was decided in favor of petitioner (Elena).
  o Ratio: Respondent was aware that as an alien he was prohibited from owning Philippine land, in fact because of this, he had it titled to petitioner. So we deny his attempt at subsequently asserting a right to the said property in the form of a claim of reimbursement. Neither did the Court declare that an implied trust was created by operation of law in view of petitioner’s marriage to respondent. To rule otherwise would circumvent the constitutional prohibition.

• **Frenzel v. Catito,**
  o Facts: Petitioner, an Australian citizen, married to Teresita Santos; while respondent, a Filipina was married to Klaus Muller. Petitioner and respondent met and cohabited in a common-law relationship, during which, petitioner acquired real properties; and since he was disqualified, respondent’s name appeared as the vendee in the deed of sales.
  o Issue: When the relationship turned sour, petitioner sought the recovery of the properties, claiming that he was the real owner.
  o Held: Court refused to declare petitioner as owner
  o Ratio: Mainly due to the constitutional prohibition. Additionally, being a party to an illegal contract, he could not come to court and ask to have his illegal objective carried out. One who loses his money or property by knowingly engaging in an illegal contract may not maintain an action for his losses.

• **Cheesman v. Intermediate Appellate Court,**
  o Facts: Petitioner Benjamin, an American citizen, and Criselda Cheesman acquired a parcel of land that was later registered in the latter’s name. Criselda sold said land to a third person without the knowledge of petitioner.
  o Issue: Petitioner Benjamin sought the nullification of sale as he did not give his consent.
  o Held: Court upheld the Agreement of Lease’s validity and that Benjamin has no right to nullify the Agreement of Lease between Joselyn and Criselda.
  o Ratio: Though petitioner Benjamin’s intention was to purchase the lot with his wife, he nevertheless acquired no rights over the property by virtue of that purchase and in

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important case
attempting to acquire a right or interest in land, vicariously and clandestinely, he knowingly violated the Constitution; thus the sale as to him was null and void. Being an alien, he is absolutely prohibited from acquiring private and public lands in the Philippines.

As the designated vendee, Criselda was the sole owner of the land despite the fact that Benjamin provided the funds for acquisition. And by entering into a contract knowing that it was illegal, no implied trust was created in his favor; no reimbursement allowed; no declaration can be made that such property was part of a conjugal/community property of the spouses.

He has no capacity or personality to question the lease on the theory that he is exercising the prerogative of a husband over the property. Because if the property were to be declared or considered conjugal, this would accord the alien husband substantial interest and right over the land, as he would have a decisive vote as to its transfer or disposition, a right not permitted by the Constitution.

Commencement

- ACP commences at the precise moment of the celebration of the marriage. Any stipulation, whether express or implied, for the commencement of the community regime shall be void.
- Thus it cannot be stipulated in the marriage settlement that the property regime will be CPG but on the fifth wedding anniversary it will automatically convert to ACP. This stipulation is void because it makes the commencement of ACP at a time other than the precise moment of the celebration of marriage.

Art. 89. No waiver of rights, 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)

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)

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)

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)

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. (160)
**POINTS**

**Special Type of Co-ownership**

- ACP is a special type of co-ownership. Hence law provides that provisions on ordinary co-ownership shall apply to ACP in all matters not provided for in the Family Code.
- Example of provisions that apply: (1) each co-owner may use the thing owned in common provided he or she does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights (Art. 486 of Civil Code), (2) any one of the co-owners may bring an action for ejectment (Art. 487 of Civil Code).
- However, unlike ordinary co-ownership “no waiver of rights, interests, shares and effects of the ACP during the marriage can be made except in case of judicial separation of property” – because unlike in CPG, interest of the parties in the community properties is merely inchoate or an expectancy prior to liquidation.
  - When a waiver takes place upon 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 phrase “upon judicial separation” in the second paragraph of Art. 89 covers the time period DURING and AFTER judicial separation.
  - 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. For example, A and B had their ACP of P1-M dissolved in accordance with the law. Upon judicial separation of property, B is entitled to get P500-K as her share. If B is indebted to X in the amount of P100-K and B decides to waive her entire share in favor of A, X can seek the rescission of the waiver to the extent of P100-K to protect his interest.
  - If the waiver takes place without a judicial separation of property decree, it will be void as it is contrary to law and public policy pursuant to Art. 6 of the Civil Code and because it will be an act against a clearly prohibitory provision (Art. 89 of the Family Code) pursuant to Art. 5 of the Civil Code.
- Under the Civil Code, if there is no property regime agreed upon, the default would be CPG. However, this was change by the Family Code to be ACP in the absence of any agreement to the contrary.

**Exclusions**

- The four statutory exclusions are provided in Art. 92. Art. 91 provides for the other exclusions dependent on the will of the parties that may be provided for in the marriage settlement.

**Marriage Settlement – 1st exclusion**

- Exclusions in the marriage settlement are provided for in accordance with Art. 1 of the Family Code, “marriage settlements may fix the property relations during the marriage within the limits provided by this Code.”

**Gratuitous Title – 2nd exclusion**

- Second exclusion is property acquired by gratuitous title, but it must be a valid gratuitous acquisition during the marriage.
  - Donation by a spouse to the other of separate properties agreed upon in the marriage settlement as not to be included in the community property is not a valid transfer by gratuitous title because of the prohibition in Art. 87 on direct or indirect donations.
  - Included in this provision are fruits as well as income of the subject matter acquired. However the donor, testator or grantor may provide that the property and fruits as well as the income thereof shall form part of the community property.
Based on the original draft of the provision appears to refer to the fruits and the income of the property as the matters referred to in the phrase “unless it is expressly provided by the donor, testator or grantor that they shall form part of the community property.”

The deliberation of the Civil Code and the Family Law Committees shows that the original draft did not include an immediate reference to the fruits and income. However, as Dean Carale opined the above line properly belonged to subparagraph 1 because they could not expect any income from property for personal and exclusive use of either spouse.

**Personal and Exclusive Use – 3rd exclusion**
- It is property for personal and exclusive use of either of the spouses, except jewelry which shall form part of the community property.
- These properties may have been brought into the marriage or acquired during the marriage.
- Only exception: jewelry that must involve a substantial amount. Exception meant to highlight that “property for personal and exclusive use” referred to in the general rule must be interpreted in terms of value.
  - If a spouse has an expensive car worth millions, but is considered for “personal and exclusive use,” it must be considered as part of the ACP if the net worth of the family shows that the spouses are not even very rich to just simply afford a car like that.

**Property from a Previous Marriage – 4th exclusion**
- Property, as well as fruits and income of such property, acquired by either spouse before the marriage who has legitimate descendants by a former marriage.
- Includes ALL LEGITIMATE descendants and not just own children.

If previous marriage was declared null and void because the previous spouses were collateral blood relatives of the first degree, then the children are illegitimate and properties acquired after liquidation shall also become part of the ACP of the new valid marriage.

If the previous marriage falls under Art. 36 or because one of the parties did not comply with the provisions of Art. 52 and 53, children are still legitimate. In which case, property acquired thereafter by the spouse who has such children shall not belong to the ACP. It belongs to said spouse or to the children of the previous marriage as presumptive legitimes as the case may be.

- If previous marriage is terminated by death and surviving spouse validly remarries without liquidating the property regime of the previous marriage, subsequent marriage will be governed by Complete Separation of Property and the property owned by said spouse prior to subsequent marriage will be separately owned by him or her during the subsequent marriage. (Art. 103)
  - If there was liquidation, the property regime of the subsequent marriage will be ACP, if there was no settled regime or in void cases.
  - If there are legitimate descendants, properties of the previous marriage shall remain separate in accordance with Art. 92(3) despite the fact that ACP governs.

**Nature of Acquired Property Using Separate Properties**
- Despite the provision in Art. 109(4) of the Family Code regarding exclusive properties of the spouse that is purchased with the exclusive money of husband or wife under CPG, no such rule exists under Art. 92. This highlights the intention of the Family Code to make the spouse truly a single community.
- If in a marriage settlement the husband, who won P1-M before the marriage, provides that said winnings remains separate during the marriage but uses the money to buy a house that
becomes the family home. House becomes part of the ACP. This is so not only because of the absence of a counterpart provision of Art. 109(4) in CPG but more importantly because Art. 93 provides that “property acquired during the marriage is presumed to belong to the community unless it is proved as one of those excluded therefrom.” Moreover in Art. 91, “unless otherwise provided in this chapter or in the marriage settlement, the community property shall consist of all the properties owned by the spouses at the time of the celebration of the marriage or ACQUIRED THEREAFTER.”

- 2 exclusions are (1) marriage settlement (2) and those contained in this chapter under Art. 92. There are no other exclusions provided by law. So in the above example, the money as it is, is the husband’s own property which he can undertake any act of dominion over.
  - By using it to buy the house, what is considered now is not the money but the house; and the latter is not an excluded property in the marriage settlement.
  - Neither could the house be considered to have been acquired by the husband through gratuitous title as the husband paid it using his own money.
  - Nor can it be considered for his own “personal and exclusive use” as it is the family home.
  - Likewise, he has no legitimate descendant of a previous marriage and therefore cannot fall under Art. 92(3)

The law on ACP does not provide for such an exception.

- The same scenario applies if it is the other way around. If a house was donated to the husband solely and after becoming owner, sells it to a third party. The money from the sale has been acquired during the marriage and does not fall under any exclusions under Art. 92. So it is part of the ACP. The same result will be reached in case money is obtained from selling personal and exclusive properties under Art. 92

  - Reason for this is if the intention of the law is to preserve the property of the previous marriage so that it will not be merged with the properties of the subsequent marriage, then with more reason should the owner-spouse not alienate the same.
  - Same still applies if such a property is exchanged or merely bartered for another property for the same reasons, unless new property falls under Art. 92 (2). So unlike Art. 109(3) stating that properties acquired by barter or exchange with property belonging to only one of the spouses shall be excluded in the CPG, there is glaringly no counterpart in the rules of ACP.
  - Despite the apparent unfairness, it is not unlike a rich person marrying a poor person under ACP whereby the poor person becomes the co-owner of all the properties of the rich spouse. Hence according to the Code Commission of the Civil Code, the ACP and its effects might still be “revolutionary” to some and appears iniquitous on its face. However, the underlying intent, to make the husband and wife one in all respects, can best be served by recognizing these consequences arising from the law.
    - Intent therefore is to foster essential unity of spouse and make the family a unified and strong nuclear unit which is the foundation of society overrides all other consequences from property relations. In fact, these consequences serve rather than negate such public policy considerations.

- The other point of view is that the property purchase from separate money or money received by selling separate property will not necessarily make these objects part of the community property. This view, however, finds no support in the Family Code itself. Likewise, there is no circumvention because for the matters or properties in Art. 92 to remain separate, they must subsist and be maintained as such.
  - Art. 92(1), Here it refers only to the “property acquired” by gratuitous title with provisions as to fruits and
Persons and Family Relations Law

Professor Amparita Sta. Maria

income. Nothing in the law which provides that if it is sold, bartered, or exchanged, the proceeds of the same shall still be considered separate. Likewise the case for (2) and (3). In the event that owner-spouse sells the “property” involved in the exclusions, that is his or her prerogative. Although in doing so, he or she parts with the “property.” The proceeds and objects received thereafter are entirely a different property, object, or subject matter that no longer has the protection or exclusion under Art. 92.

- The Family Code favors the ACP rather than the separation of property.

### 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. Ante-nuptial debts of either spouse insofar as they have redounded to the benefit of the family;
8. The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement;
9. Ante-nuptial debts of either spouse other than those falling under paragraph (7) of this Article, the support of illegitimate children of either spouse, and liabilities incurred by either spouse by reason of a crime or a quasi-delict, in case of absence or insufficiency of the exclusive property of the debtor-spouse, the payment of which shall be considered as advances to be deducted from the share of the debtor-spouse upon liquidation of the community; and
10. Expenses of litigation between the spouses unless the suit is found to be groundless.

If the community property is insufficient to cover the foregoing liabilities, except those falling under paragraph (9), the spouses shall be solidarily liable for the unpaid balance with their separate properties. (161a, 162a, 163a, 202a-205a)

### POINTS

**Liability of the Absolute Community of Property**

- Charges upon and obligations of the ACP are specified in Art. 94.

**Support – (1)**

- Support is the most sacred and important of all obligations imposed by law and is imposed with overwhelming reality
- Others may sometimes fail but this one should never fail unless with valid cause.
Comprises: everything indispensable for sustenance, dwelling clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.
  o Education of the person entitled to support shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority.
  o Transportation: includes expenses in going to and from school, or to and from the place of work. (Art. 194 of the Family Code).

Support for Illegitimate Children: governed by provision on Support under the Family Code. It shall be taken from the separate property of the parent-spouse. In case of insufficiency or absence of exclusive property of the parent, the ACP shall pay such support but the payments shall be considered as advances to be deducted from the share of the parent concerned upon liquidation of the community.

Debts and Obligations – (2), (3) and (7)
- If one of the spouse is declared administrator of the property during the marriage, and said spouse contracts a debt or obligation for the benefit of the community, ACP shall be liable for it. Consent of the other is not needed here. But, there must be proof that it redounded to the benefit of the family.
  o Requirement is indicative of the solicitude and tender regard that the law manifests for the family as a unit. Its interest is paramount; its welfare uppermost in the minds of the codifiers and legislators.
- Even if it wasn’t for the benefit of the community, ACP would still be liable if debt or obligation was contracted during the marriage by both spouses, or either of them with consent of the other. Consent may be express or implied.
  o In Marmont Resort Hotel Enterprises v. Guiang where the consent of one spouse was in dispute, SC said that the Second Memorandum Agreement, although ostensibly contracted solely by Aurora Guiang with Maris Trading, was also signed by her husband Federico, as one of the witnesses thereto. This circumstance indicated not only the latter’s presence during the execution of the agreement but also that he had, in fact, given his consent to it. Otherwise, he wouldn’t have appended his signature thereto as witness. Respondent spouses cannot now disown the second Memorandum of Agreement as their effective consent thereto is sufficiently manifested in the document itself.
- In the case of no-consent by one spouse, the ACP shall be liable to the extent that the family may have been benefitted. If such debt or obligation were used to defray some of the expenses for the maintenance of the family and the education of the children, which obviously redounded to the benefit of the family, the community property shall be liable therefor to the extent that the family was benefitted.
- If such debt or obligation were contracted prior to the marriage, the ACP shall be liable for as long as the same redounded to the benefit of the family. If it did not, the separate property of the debtor-spouse shall be liable. In case of absence or insufficiency of the exclusive property of the debtor spouse, the ACP shall pay the obligation but such payments shall be considered advances to be deducted from the share of the debtor spouse upon liquidation of the community.
- Any loss resulting from the exercise of a profession or family business by either spouse shall be chargeable to the ACP. Any personal undertaking, such as making himself a surety or a guarantor in relation to an obligation of a 3rd person, cannot be presumed to be for the benefit of the family as any advantage that may arise therefore is merely indirect.

Taxes, Liens, Charges, Repairs – (4)
- All taxes, liens, charges and expenses, including major or minor repairs, upon the community property shall be chargeable to it.
This can be done even without the consent of the other spouse following the general rules of co-ownership.

**Taxes, Expenses for Preservation of Separate Property – (5)**

- Accountability of the ACP for expenditures incurred for purposes of preservation of the separate property of any of the spouses is premised on the fact that such separate property has been used or is being used by the family during the marriage.

**Expenses or Donation for Self-Improvement Activities – (6) and (8)**

- Essentially, expenses given to either spouse for education and training are within the ambit of the support for which ACP is liable.
- Law provides that 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 profession or vocation course or other activity for self-improvement shall be chargeable to the ACP.
  - Donation must be by both spouses. If only one donates, this may fall under the prohibition under Art. 87 since a donation by one spouse to a common child who has no descendants or compulsory heir other than his parents is an indirect donation to the other spouse.

**Liabilities by Reason of a Crime or Quasi-delict – (9)**

- The separate property of the erring spouse and not the ACP will be liable to pay the obligation or debt arising from the crime or quasi-delict of said spouse. In case of absence or insufficiency of the exclusive property, the ACP shall pay but these shall be considered advances to be deducted from the share of the debtor spouse upon liquidation of the community.
- Art. 100 of the RPC provides that every person criminally liable for a felony is also civilly liable.
  - A spouse who commits a crime shall likewise be liable to pay civil damages.
- With respect to quasi-delicts, Art. 2176 of Chapter 2, Title XVII of the Civil Code provides that “whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between parties, is called quasi-delict and is governed by the provisions of this Chapter. The following are provided by law as quasi-delicts:
  1. **Art. 2189 of the Civil Code:** a proprietor of a building or structure is responsible for the damages resulting from its total or partial collapse if it should be due to the lack of necessary repairs.
  2. **Art. 2193 of the Civil Code:** Head of a family that lives in a building or part thereof is responsible for damages caused by things thrown or falling from the same.
  3. **Art. 2187 of the Civil Code:** Manufacturers and processors of foodstuffs, drinks, toilet articles and similar goods shall be liable for death or injuries caused by any noxious or harmful substance used, although no contractual relation exists between them and the consumers.
- Obligations imposed by Art. 2176 are demandable not only for one’s own acts or omissions, but also for those persons for whom one is responsible. For example,
  - The owner and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions. (Art. 2180 of the Civil Code).
  - Other quasi-delicts and their effects are provided for in Articles 2177 up to 2194 of the Civil Code.

**Expenses of Litigation – (10)**

- Requirements: (1) suit is between husband and wife, and (2) case is not groundless
- Possible for ACP to be liable for expenses of litigation in a suit not involving a case between spouses for as long as suit benefits the family.
Seva v. Nolan

- Facts: Wife was criminally sued by husband for adultery and the wife had to spend attorney’s fees to defend herself
- Issue: whether or not legal fees should be charged to the community property
- Held: SC ruled that legal fees which she spent during litigation, wherein she was subsequently acquitted, can be charged to the community property.
- Ratio: Her act of defending herself in a criminal case for adultery “was as necessary as a claim for support, inasmuch as the right to a good name and reputation and the right to personal liberty are, at least, as vital and deserving of protection as the right to existence which is, in the last analysis, the meaning of the right to support.”

- SC has had occasion to rule in Recto v. Harden, that the stipulation in a lawyer-client agreement stating, “I hereby agree to pay said Attorney Claro M. Recto 20% of the value of the share and participation which I may receive in the funds and properties of the conjugal partnership of myself and the defendant Fred M. Harden, as a result of the liquidation thereof either by death, divorce, judicial separation, compromise or by any means or method by virtue of which said partnership is or may be liquidated” does not seek to bind the conjugal partnership. SC reasoned out that by virtue of said contract, Mrs. Harden merely bound herself – or assumed the personal obligation to pay, by way of contingent fees, 20% of her share in said partnership. The contact neither gives, nor purports to give to the appellee any right whatsoever, personal or real, in and to her aforesaid share. The amount thereof is simply the basis for the computation of said fees.

Solidary Liability of Spouses

- Solidary obligations: those where several creditors or debtors or both concur, and where each creditor has the right to demand and each debtor is bound to perform, in its entirety, the prestation constituting the object of the obligation.
- Example, in an ordinary contract, if 2 debtors solidarily owe a creditor an amount of money, the creditor may demand payment from both debtors or he may choose to ask payment from anyone of the debtors. In both cases, the creditor can ask for the full amount of the obligation, not only the part constituting the share of each of the debtors with respect to the debt.
- In the Family Code, the last paragraph of Art. 94 provides that the spouses shall be solidarily liable for unpaid balance with their separate properties if the community property is insufficient to cover the liabilities for which the ACP is liable. This solidary liability shall not, however, include ante-nuptial debts not redounding to the benefit of the family, the support of illegitimate children by either spouse and liabilities incurred by the spouse by reason of a crime or quasi-delic.

Insolvency of Spouses

- So long as the ACP subsists, its property shall not be among the assets to be taken possession of by the assignee for the payment of the insolvent debtor’s obligations, except insofar as the latter have redounded to the benefit of the family (Art. 2238 of the Civil Code).
- In an insolvency proceeding filed in the proper court, an assignee is appointed. He or she represents the insolvent and the creditors in insolvency proceedings, whether voluntary or involuntary. He takes all properties of the insolvent and obtain title thereto. He shall as speedily as possible convert the estate, real or personal, into money (Sec. 39 of Insolvency Law, Act No. 1956) for the purposes of the settlement of the debts of the debtor.
Under **Art. 206 of the Civil Code** on ACP, which was repealed by the Family Code, ownership, administration, possession and enjoyment of the common property belong to both spouses jointly and in case of disagreement, the courts shall settle the difficulty.

- Though administration is joint, administration of the conjugal partnership or absolute community may, by order of the court, be transferred to the wife or to a third person other than the assignee.
- Reason is to prevent the husband, who usually acts as actual administrator, from dissipating or transferring the assets of the community property which may be held liable for the insolvent-husband’s debts.

Under the new Family Code, administration likewise jointly belongs to both spouses with the husband’s decision prevailing in case of disagreement, but the wife can seek the annulment of the contract if she so desires. (**Art. 96**).

- Though repealed, the second sentence of **Art. 2238** should still apply under the Family Code, especially so when there is in the said law an explicit provision that the husband’s decision will prevail in the meantime.
- If both spouses maintain their joint administration, and one of them becomes insolvent, the right of the insolvent spouse to jointly administer the community property MAY BE legally curtailed by the court, thereby making the other non-insolvent spouse the sole administrator. The court can likewise appoint a third person, other than the assignee, as administrator.
Article 95. Whatever may be lost during the marriage in any game of chance, betting, sweepstakes, or any other kind of gambling, whether permitted or prohibited by law, shall be borne by the loser and shall not be charged to the community but any winnings therefrom shall form part of the community property.

POINTS

Gains and Losses in Games of Chance

- Engaging in any game of chance, betting, sweepstakes, or any kind of gambling, whether permitted or prohibited, will most likely deplete the resources of the community property, which must principally answer for the important and necessary expenditures covered in Article 94.
- These highly risky and purely speculative activities shall be borne by the loser.
- Winnings expressly form part of the community property.
- For example, if a stranger gave a sweepstake ticket to one of the spouses during the marriage, it is separate property under Article 92(1) unless the donor expressly provided that it forms part of the ACP.
- The winning prize may be considered income belonging to the separate property.
- This is because, according to the National Internal Revenue Code, “gross income” includes the prize and winnings derived from whatever source (the winning ticket included).

Section 4. Ownership, Administrative, Enjoyment and Disposition of the Community Property

Article 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of 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 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.

POINTS

Joint Administration and Enjoyment

- Joint administration and enjoyment highlight the fact that the spouses are co-owners.
- However, administration can only be delegated to one.
- Joint management or administration does not mean that the husband and wife always act together.
- For instance, verification and certification of non-forum shopping in a petition or a complaint filed in court must be signed by all petitioners – however; with spouses, the signature of one spouse is substantial compliance (even when both spouses are petitioners of the case).
- Each of the spouses may be reasonably presumed to have personal knowledge of the filing or non-filing by the other spouse of any action or claim.
Each may act individually even without the consent of the other in case of repairs to the property as these matters may require immediate decisions.

Improving or embellishing property is to be decided by both.

Preservation may be made by one spouse but if practicable, the spouse should notify the other.

If the alteration redounds to the benefit of the family, the ACP will be held liable under Article 94(2), and implies that making such alteration is valid.

Rules on co-ownership apply only suppletory in character.

For example, if A repairs the roof, G’s consent is not needed. If A beautifies the roof, he or she needs the consent of G.

If G disapproves, A incurs liability which will apply to the separate property unless G ratifies it.

If not, G can demand that the roof be removed and the original returned at the expense of A.

If it redounds to the benefit of the family because it has prevented the complete decay of the old leaking roof, the alteration will be paid through the absolute community even without G’s consent.

Under the rules of co-ownership, would have been invalid.

When there is a disagreement, the husband’s decisions shall prevail (an intermediate modus vivendi before going to court).

In very serious matters concerning the family, it is usually the husband who makes the ultimate choices.

It is subject to recourse by the wife, which must be availed of within (5) years.

It will be a summary proceeding pursuant to Article 253 of the Family Code.

The assumption of powers of a spouse is limited and restricted, and no longer includes disposition, alienation or encumbrance.

The power to administer is broadly treated in the first paragraph of Article 96 but may be limited by law as in the case of the second paragraph.

Effect of Alienation and Encumbrance

Any disposition by one spouse of the said properties, completely without the knowledge or consent of the other is null and void.

Under the Civil Code, it was voidable only.

There is no prescriptive period as such contract is null and void.

If a Transfer Certificate of Title (TCT) of real estate indicates that the person named therein is single when he is married, and the buyer believed in good faith that it was true, it cannot be voided.

The remedy is to compel the erring spouse to account for the proceeds of the sale.

If buyer acts in bad faith, then the sale can be voided.

If there was knowledge by one spouse but there was no consent, it is voidable.

Within (5) years, the wife can ask that the contract be annulled.

But if the wife ratifies it, expressly or impliedly, then there is no more cause of action.

The contract will be deemed to suffer no legal infirmities.

The wife can nullify the whole contract, and not just her share in the property involved.

If it was the decision of the wife implemented, the husband can file an injunction suit to stop the implementation of the contract as not being enforceable, as the wife did not have his authority.

The husband may likewise file an action to nullify the contract as contrary to law and public policy.

Effect of Incapacity of one of the Spouses on Administration

If one spouse is incapacitated, then the other can assume the sole powers of administration.

Appointment as sole administrator may be made through summary proceeding.
According to **Article 253**, if the spouse is absent or separated or has abandoned the other, the other may be appointed sole administrator through summary proceeding.

If the spouse is an incompetent who is comatose or semi-comatose – the remedy is judicial guardianship

If the administrating spouse decides to sell real property, he must observe the procedure for sale of the ward’s estate required of judicial guardians under **Rule 95** of the Revised Rules of Court.

The administrating spouse cannot dispose or encumber property without judicial approval or the written consent of the incapacitated spouse. Otherwise, it is void.

The only legal significance of such transaction is to treat the same as a continuing offer on the part of the consenting parties

Perfection as a binding contract can only be attained upon written acceptance by the other or authorization by the court before the offer is withdrawn by either.

**Article 97. Either spouse may dispose by will of his or her interest in the community property.**

**POINTS**

**Disposition by Will**

- A person is permitted, with the formalities prescribed by law, to control a certain degree the disposition of his estate which will take effect after death.
- The grants cannot encroach on the legitimes of his compulsory heirs.
- The legitime is part of the testator’s property which cannot be disposed of because the law has reserved it for certain heirs.
- The spouse can only dispose of his interest in the absolute community and not in a specific property.

**Article 98. Neither spouse may donate any community property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the community property for charity or on occasions of family rejoicing or family distress.**

**POINTS**

**Reason for Prohibiting Donations**

- The prohibition on gifts and donations is intended to protect the latter spouse’s share therein from the prodigality of a reckless or faithless spouse.
- Donations by both or one will generally be valid, although it will be subject to revocation or reduction if the donations turn out to inofficiously infringe on the legitime of the compulsory heirs.
- Even with consent of the other, the spouse cannot make a substantial donation because it will be void under **Article 87**.
- The spouses can make moderate donations, depending on the financial capabilities of the spouses.
- The value of donations is chargeable to the absolute community.

**Section 5. Dissolution of Absolute Community Regime**

**Article 99. The absolute community terminates:**

1. Upon the death of either spouse;
2. When there is a decree of legal separation;
3. When the marriage is annulled or declared void; or
4. In case of judicial separation of property during the marriage under Articles 134 to 138.
POINTS

Dissolution of Absolute Community Regime

- The dissolution of ACP does not mean the termination of marriage. However, the termination of marriage results in termination of ACP.
- After dissolution, there is liquidation and partition. There are four ways by which to terminate or dissolve ACP.

1. **Death of Either Spouse**
   - Civil personality is extinguished at death.
   - The effect of death on a person is determined by law, contract and will.
   - The community or property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

2. **Legal Separation Decree**
   - The absolute community will be dissolved and liquidated, but the offending spouse shall have no right to share in the net profits of the absolute community or conjugal property.
   - Such property shall be forfeited in accordance with Article 43(2) and 63(2).
   - The spouses can agree to revive the regime, subject to Article 67.

3. **Annulment Decree**
   - Final judgment in an annulment shall provide for the liquidation, partition and distribution of the properties of the spouses, custody and support of the common children, and the delivery of their presumptive legittimes.
   - The properties shall be partitioned and liquidated.
   - If one of the spouses is in bad faith, the share of net profits will be forfeited in accordance with Article 43(2) in relation to Article 50.

Nullity Decree

- Technically there is no absolute community in a void marriage
- As such, the void marriage is governed by Article 147 and 148 of the Family Code.
- The exception is Article 40.

4. **Judicial Separation of Property**
   - Judicial separation of property may be voluntary or involuntary.
   - After approval, the spouses can file for revival, but once revived, no voluntary separation of property may thereafter be granted.
   - If the judicial separation of property is involuntary, it must be for sufficient cause and receive court approval under Article 135.

   **Article 135.** Any of the following shall be considered sufficient cause for judicial separation of property:
   
   1. That the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction;
   2. That the spouse of the petitioner has been judicially declared an absentee;
   3. That loss of parental authority of the spouse of petitioner has been decreed by the court;
   4. That the spouse of the petitioner has abandoned the latter or failed to comply with his or her obligations to the family as provided for in Article 101;
   5. That the spouse granted the power of administration in the marriage 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.
Liquidation after Affidavit of Reappearance

- The reappearing spouse or party in interest in Article 41 files an affidavit of reappearance to terminate the subsequent marriage.
- Under Article 43, such termination results in dissolution of property.

Article 100. The separation in fact between husband and wife shall not affect the regime of absolute community except that:
1. The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported;
2. When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding;
3. In the absence of sufficient community property, the separate property of both spouses shall be solidarily liable for the support of the family. The spouse present shall, upon proper petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share.

**POINTS**

**Effect of Separation in Fact**
- In the effect of separation in fact, generally, the absolute community will not be affected.
- However, the ACP will still be liable for all the obligations incurred by either spouse for the benefit of the family, as well as all the charges incurred under Article 94.
- Separate property will still be held liable in the event of insufficiency of the absolute community.
- **Article 100** is the exception to the rule.

**No Support**
- The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall have no right to be supported by the absolute community. However, fault must always be proven.
- It cannot be presumed.
- If the spouse left for valid cause, then he or she can be supported from the absolute community.
- Separation de facto will not affect absolute community.
- Leaving without just cause incurs a drastic penalty for disrupting the unity of the family.
- However, the absolute community may still be held liable for obligations he or she contracted for the benefit of the family (especially Article 94).

**Court Authorization**
- Judicial Authorization shall be obtained in a summary manner.
- Any of the spouses, whether or not he or she was the one who left, can seek judicial relief.
- An example where the husband left in bad faith, but needs money in order to pay the matriculation fee of the common child, and wherein the only way to have enough money to pay for the same is selling the car which is part of the absolute community;
- He may seek judicial authorization if the innocent spouse does not consent or cannot give consent.

**Solidarily Liable and Administration of Separate Property**
- In the absence of sufficient communal property, the separate property is still liable.
- This paragraph reiterates **Article 94**.
- To enforce the solidary nature of the separate properties, the spouse present shall, upon proper petition in court, be given judicial authority through summary proceedings to administer or encumber any specific property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share.
- **Only the present spouse has standing to file this petition**.
• This enables the present spouse to satisfy the other spouse’s share in the obligations used to support the family if the absolute community of property is insufficient.
• For example, if the children were able to pay their fees because the family borrowed money from a creditor, in the absence of sufficient communal property, the creditors can go against the separate property of the present spouse and the spouse who left the conjugal home.
• If the spouses are separated de facto, the creditors can go against their property at the same time or against one of them only.
• If the creditor only goes against the present spouse, the same should pay the total amount due the creditor.
• The present spouse can do so by filing a judicial summary proceeding to be made administrator of the property of the other spouse.
• The present spouse, as administrator, can administer or encumber the property for such purpose.
• If the present spouse does not want to pay it alone, she can, prior to payment, file the said summary proceeding so that by the time the creditor asks for the money, she will have enough.
THE FAMILY CODE OF THE PHILIPPINES
Title IV. – Property Relations between Husband and Wife
Chapter 3 – SYSTEM OF ABSOLUTE COMMUNITY
Section 5. DISSOLUTION OF ABSOLUTE COMMUNITY REGIME

Article 101. If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property or for authority to be the sole administrator of the absolute community, subject to such precautionary conditions as the court may impose.

The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.

A spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without intention of returning. The spouse who has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be prima facie presumed to have no intention of returning to the conjugal dwelling. (178a)

POINTS

SPOUSE (Without Just Cause)
1. Abandons the other spouse
2. Does not comply with his/her obligations to the family

Abandonment: leaving conjugal dwelling with no intention of returning.

Aggrieved SPOUSE (may petition the Court for)
1. Receivership
2. Judicial Separation of Property
3. Authority to be sole administrator of absolute community

ABANDONMENT

- In this section, Article 101 (exactly the same as Article 128) refers to the Absolute Community of Property.
- The main issue is the definition of ABANDONMENT which the Supreme Court explained as;

  “Abandonment implies a departure by one spouse with the avowed intent never to return, followed by prolonged absence without just cause, and without in the meantime providing in the least for one’s family although able to do so. There must be absolute cessation of marital relations, duties, & rights with the intention of perpetual separation. This idea is clearly expressed in the above-quoted provision, which states that ‘a spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without any intention of returning.’”

- Example:

  As early as 1942, respondent was already rejected by petitioner, not even allowed entry into their conjugal home in Dumaguete City when she returned from Zamboanga. This non-admission to their home was already a clear proof that he had no intention of resuming their conjugal partnership. Moreover, since 1968 until final determination by the Court of the action for support in 1988, respondent refused to give financial support to petitioner. This physical separation plus the refusal of respondent to give support, suffice to constitute abandonment as ground for judicial separation of property.

- Courts must therefore be careful in appreciating evidence to show/prove that abandonment really exists.
- Abandonment must not only be physical estrangement but also amount to financial and moral desertion. As stated in Dela Cruz v. Dela Cruz:
“judgment ordering the division of conjugal assets where there has been no real abandonment, the separation not being wanton and absolute, may altogether slam shut the door for possible reconciliation. The estranged spouses may drift irreversibly farther apart; the already broken family solidarity may be irretrievably shattered; and any flickering hope for a new life may be completely and finally extinguised.”

- Aside from judicial separation of property, under Articles 101 and 128, aggrieved party may also petition the courts for:
  - Receivership
  - Authority to be sole administrator of:
    - The absolute community property;
    - The conjugal partnership of gains.

- Articles 101 and 128 provide a presumption: both articles identically provide that a spouse who has left the conjugal dwelling for at least 3 months or failed during that period to give his/her whereabouts shall be prima facie presumption of no intention of returning.

**FAILURE TO COMPLY WITH FAMILY OBLIGATIONS**

- The reliefs provided in Article 101 apply only when one of the spouse’s fails to comply with the obligations to the family.
- Obligations to the family refers to marital, parental, or property relationship.
- Again, in *Dela Cruz v. Dela Cruz*;
  “For ‘abuse’ to exist, it is not enough that the husband performs an act or acts prejudicial to the wife. Nor is it sufficient that he commits acts injurious to the partnership, for these may be the result of mere inefficient or negligent administration. Abuse connotes willful and utter disregard of the interest of the partnership, evidenced by a repetition of deliberate acts &/or omissions prejudicial to the latter.”

- Take note that both Article 101 & 128 use the phrase “fails to comply”. So, if negligence or inefficiency is not merely isolated, but so gross that it is likewise constantly done without effort or only with a token effort to improve, this is also a failure to comply with the family obligations and thus reliefs provided by Articles 101 & 128 can be applied.
- If such failure to comply with the obligations of a family constitutes a psychological incapacity to perform the essential marital obligations, which existed at the time of the marriage, such marriage can be considered void under Article 36.
- If the abandonment without just cause is for more than one year, another remedy is filing for legal separation under Article 55 (10).

**Section 6. LIQUIDATION OF THE ABSOLUTE COMMUNITY ASSETS & LIABILITIES**

**Article 102.** Upon dissolution of the absolute community regime, the following procedure shall apply:
(1) An inventory shall be prepared, listing separately all the properties of the absolute community and the exclusive properties of each spouse.
(2) The debts and obligations of the absolute community shall be paid out of its assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties in accordance with the provisions of the second paragraph of Article 94.
(3) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.
(4) The net remainder of the properties of the absolute community shall constitute its net assets, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements, or unless there has been a
voluntary waiver of such share provided in this Code. For purpose of computing the net profits subject to forfeiture in accordance with Articles 43, No. (2) and 63, No. (2), the said profits shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution.

(5) The presumptive legitimes of the common children shall be delivered upon partition, in accordance with Article 51.

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

**POINTS**

**Dissolution Procedure:**

**STEP 1**
**INVENTORY:**
1. Properties of Absolute Community
2. Exclusive properties of each spouse

**STEP 2**
**DEBTS AND OBLIGATIONS:**
1. Of Absolute Community → paid from ASSETS
2. Insufficient ASSETS → paid from separate properties governed by Art. 94

**STEP 3**
**REMAINDER:**
- **Exclusive Properties shall be delivered to each of the spouses**
- **REMAINDER:** *Net of Absolute Community*
  1. Divide equally between spouses except if
     a. with previous marriage settlement
     b. voluntary waiver as provided in Code
  2. Computation: in accord w/ Art. 43, 63 (2)
     * Net Profit = Value of Property (at time of dissolution) minus (−) Value of Property

**LEGITIMES:**
The presumptive legitimes of common children shall be delivered upon partition in accord with Art. 51

**CONJUGAL DWELLING:**
The conjugal home is to be adjudicated in favor of the spouse to whom majority of the children shall live with. In case of no majority, court shall decide.

**LIQUIDATION PROCEDURE**
- Dissolution of the absolute community property occurs as enumerated in Article 99.
- Article 102 discusses the manner and procedure to settle the affairs of the dissolution. (see _Dela Rama v. Dela Rama_, 7 Phil. 754).
- In a voluntary judicial separation of property, the liquidation may be governed by the agreement of the parties as approved by the court.

**INVENTORY**
- All properties at the time of dissolution must be inventoried. They are itemized and then valued. It is wrong to determine the amount to be divided between the spouses by simply adding the profits which have been made each year of the community’s continuance and saying that the result is such. (_Dela Rama v. Dela Rama_)
- Appraisal of properties is of the current market or assessed value of such items when liquidated and not the purchase value. (_Prado v. Natividad, 47 Phil. 745_)
- The process of liquidation takes some time. If such process takes a long time and the values suffer some alterations, there is nothing to prevent a new valuation when the last stage is
reached, i.e. the actual division or partition comes. What is important is that the properties are newly appraised in reference to the same period of time.

- There is no law or doctrine that a prior appraisal is conclusive upon the parties and the courts. (*Padilla v. Paterno, 93 Phil. 884*)

**PAYMENT OF DEBTS**

- After inventory, the next step is to ascertain that all debts for which the absolute community property is liable must be paid. This includes those enumerated in Article 94 of the Civil Code.
- Article 94 (9), however states, that any payment made taken from the absolute community property for the ante-nuptial debts (that did not redound to the family’s benefit or for the support of illegitimate children) of the debtor spouse because his/her separate property was insufficient shall be considered advances to be deducted from his/her share upon the liquidation of the community property. The same principle applies to liabilities incurred by reason of a crime or quasi-delict committed by the same debtor-spouse.
- In cases of insufficiency of the absolute community property for debts the community property is liable for, the spouses shall be solidarily liable for the unpaid balance with their separate properties.

**DELIVERY OF EXCLUSIVE PROPERTIES**

- After settling the advances made by the absolute community property and the obligations of the same absolute community property for which the separate properties were made solidarily liable, the next step is to deliver whatever remains of the exclusive properties of the spouses to each of them.
- These exclusive properties are those stipulated in the marriage settlement as exclusive properties or even during the marriage (Article 91) and to the 3 exclusions referred in Article 92.

**PARTITION OF NET ASSETS**

- After the **1st** 3 steps provided in this article, the interest of the parties are now limited to these net assets or net remainders.
- This next step is to divide equally the net assets, which is the net remainder of the community property.
- Obviously, until such time a liquidation is made, it is impossible to say whether or not there will be a remainder to be divided between parties. (*Nable Jose v. Nable Jose, 41 Phil. 713*)
- Equal sharing will not apply if there is a different proportion agreed upon in the marriage settlement or unless there has been a voluntary waiver of share as provided in this Code.

The waiver mentioned above should be **valid**. If such waiver of rights was made during the subsistence of the absolute community of property, it is invalid and ineffective because it is prohibited under Article 89.

A valid waiver can only occur upon a judicial separation of property or after the marriage has been dissolved or annulled and it must be contained in a public instrument as provided in Article 89(2).

- In the normal case of annulment of marriage, this process of dissolution and liquidation happens. But if either spouse contracted such marriage in bad faith, his/her share of the net profits of the conjugal partnership property shall be forfeited in favor of the common children, or if there being none, the children of the guilty spouse by a previous marriage, or in default of children, the innocent spouse [Article 50 in relation to Article 43(2)].
- In case the marriage is judicially nullified and when the informal civil relationship is governed by Article 147 and when only one party to the void marriage is in good faith, the share of the party in bad faith in the co-ownership shall forfeit 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 will belong to the innocent spouse.

In all cases, forfeiture shall take place only upon termination of co-habitation.

This same rule shall apply to instances governed by Article 148.

- However, this rule will not apply to a subsequent void marriage as a result of non-observance Article 40 in relation to Article 52 & 53.

In this case, Article 50 in relation to Article 43(2), which is the forfeiture rule in case of the liquidation of the absolute community of property, will apply.

**DELIVERY OF THE PRESUMPTIVE LEGITIME**

- Presumptive Legitime shall only be delivered after finality of the judicial decree of annulment on grounds provided in Article 45 or of nullity of a subsequent void marriage under Article 40 in relation to Articles 52 & 53.

- The law clearly provides that such delivery should only be “in accordance with Article 51,” which only refers to the termination of marriage either by annulment or nullity judgment in the proper cases.

So, delivery of presumptive legitime need not be made in cases of legal separation or in case of a judicially declared void marriage other than in a subsequent void marriage as a result of non-observance of Article 40.

- Since delivery of presumptive legitime will only be provided for after final judgment, the children or their guardian, or the trustee of their property may ask for the enforcement of such judgment in accordance with the last paragraph of Article 51. This can be made via a summary judicial proceeding pursuant to Article 253.

- The value of the presumptive legitime of all the children, computed as of the date of final judgment of the trial court shall be delivered in cash, property, or sound securities, unless the parties, by mutual agreement judicially approved, had previously provided for such matters (Article 51).

**Article 103. Upon the termination of the marriage by death, the community property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.**

If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the community property either judicially or extra-judicially within six months from the death of the deceased spouse. If upon the lapse of the six months period, no liquidation is made, any disposition or encumbrance involving the community property of the terminated marriage shall be void.

Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage. (n)

**POINTS**

**LIQUIDATION UPON DEATH**

- Section 2, Rule 73 of the Rules of Court provides: “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 estate or intestate proceedings of the deceased spouse. Of both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either.”

- However, if the decedent spouse left no will and no debts, and all the heirs are of age, or the minors duly represented by their judicial or legal representatives, the parties may, without
securing letters of administration from the court, divide the estate among themselves as they fit by means of a public instrument filed in the office of the registry of deeds.

If they disagree, they may do so in an ordinary action for partition.

If there is only 1 heir, he/she may adjudicate to himself/herself the entire estate by means of affidavit filed in the office of the register of deeds. (Section 1, Rule 74 of the Rules of Court).

- This Article also provides that when the one-year period from death of a spouse has lapsed and no liquidation made, any disposition or encumbrance involving the community property of the terminated marriage shall be void.
- It must be stated that any disposition or encumbrance of any specific property before the process of liquidation has been completed and therefore before the lapse of the 1-year period is premature, and thus, void.
- Upon the death of a spouse, only the interest to the property and not any physical and definite property is vested on the heirs. If there are creditors of the decedent, the interest will only vest after payment of the debts.
- Only after liquidation and partition, when specific properties are definitely and physically determined, that a sale of such allotted property can be made. So, even though, after the death of the decedent, his/her heirs can sell, waive, or even alienate their interest to the property they inherit, they cannot sell a specific property as it can only be determined after liquidation and partition.

NATURE OF INTEREST OF HEIRS PRIOR TO LIQUIDATION

- Article 103 is identical to Article 130 in reference to the rules on the conjugal partnership of gains.
- While the spouses have an interest in the absolute community or conjugal partnership, he/she cannot claim any definite property at the time when the absolute community property or conjugal partnership is still in existence.
- Upon the death of a spouse which causes the dissolution of the absolute community property or conjugal partnership, the rights of the heirs vest.

In Reganon v. Imperial, 22 SCRA 80, it has been ruled that “the right of succession of a person are transmitted from the moment of death, and where, as in this case, the heir is of legal age and the estate is not burdened with any debts, said heir immediately succeeds, by force of law, to the dominion, ownership, and possession of the properties of his predecessor and consequently stands legally in the shoes of the latter.”

- If the deceased spouse is survived by a spouse and compulsory heirs, like the legitimate children, the absolute community property or conjugal partnership, which is dissolved by such death of the spouse, evolves into a co-ownership between the surviving spouse on one hand, and the heirs on the other. (Marigsa v. Macabuntoc, 17 Phil 107)

Example: In Hagosojos v. Court of Appeals, 155 SCRA 175, the Supreme Court ruled:

xxx ...it follows that upon the death of Jacinta, the conjugal partnership evolved into co-ownership between the surviving spouse, Anastacio, and her 3 children... Anastacio became the owner of 5/8 of the mass of properties while each of the 3 children, of 1/8.

In addition, in Maria Lopez v. Magdalena Gonzaga Vda. De Cuaycong, 74 Phil 610, citing Manresa, Volume 3, pp.486-87, 3rd ed.;

...co-owners own the whole, and over it exercises rights of dominion, but at the same time he/she is owner of a share which is abstract because until division is effected, such share is
not concretely determined. The rights of the co-owners are, therefore, as absolute as dominion requires because they may enjoy and dispose of the common property without limitation other than they should not, in the exercise of their right, prejudice the general interest of the community, and possess, in addition, the full ownership of their share, which they may alienate, convey or mortgage, which share we repeat will not be certain until the community ceases.”

As co-owner, the spouse or the heirs can undertake any act of dominion over their interest, share or participation but they do not have a concrete specific property.

In Article 493 of the Civil Code, each co-owner has full ownership over his part and fruits and benefits thereto. He may alienate, assign, mortgage it, but the effects of such action, with respect his/her co-owners, is limited to the portion that will/may be allotted to him/her after liquidation and partition.

- Also, prior to liquidation and partition, interests of an heir in the estate of the deceased may be attached for purposes of execution, even if the estate is in the process of settlement before the courts. (De Borja v. De Borja, 2 SCRA 1131)

Section 7(e), Rule 57 of the 1997 Rules of Civil Procedure allows the above process and provides further that one of the properties that can be attached for purposes of execution is the “interest of the party against whom attachment is issued in property belonging to the estate of the decedent, whether as heir, legatee, or devisee by serving the executor or administrator or other personal representative of the decedent with a copy of the writ and notice that said interest is attached.” (Gotauco & Co. v. Register of Deeds of Tayabas, 59 Phil 756)

Still, the said attachment is subject to the administration of the estate. The administrator retains control over the properties and will have the power to sell them, if needed, for the payment of the deceased’s debts.

- Again, it is only after liquidation that definable property can be claimed by and adjudged to them from the remainder of their properties after satisfaction of all obligations attached to the community property.
- Specific and concrete properties cannot be donated by any co-heir prior to liquidation and partition. (Hagosojos case)
- Also, in Anderson v. Perkins, 1 SCRA 387, where the special administrator of the deceased sought to sell certain properties allegedly owned by the deceased, the Supreme Court issued an order stopping such sale on the ground, among others, that the widow claimed that the properties were either conjugally owned by the deceased and the widow or separately owned by the widow.
  “…surviving spouse allege that she is entitled to a large portion of the personal properties in question, either because they were conjugal property of her and the deceased, or because they were her own, exclusive, personal property. Records show that up to the time the said sale was asked for the court to approve, no proceeding has yet been undertaken to segregate alleged property of deceased and widow. Until such time the issue of ownership of properties sought to be sold is heard and decided and an agreement is to be reached, the proposed sale is clearly premature…”

CLAIM AGAINST THE ESTATE
- Upon the death of either spouse, the absolute community of property or the conjugal partnership of gains is dissolved or terminated.
- Complaints for collection of indebtedness chargeable to the community or conjugal properties can never be brought against the surviving spouse (Alipio v. Court of Appeals, 341 SCRA 441;
Ventura v. Militante, 316 SCRA 226; Calma v. Tanedo, 66 Phil 594) unless he/she committed to be solidarily liable for the claims against the absolute community or conjugal partnership property. (Imperial Insurance v. David, 133 SCRA 317)

- If a claim is filed against a surviving spouse who did not commit to be solidarily liable and is judged to pay the obligation, such judgment is void.
- All debts chargeable against the community or conjugal partnership, already dissolved, must therefore be claimed and paid in the settlement of estate proceedings of the deceased.
- Upon death of a spouse, the power of administration of the surviving spouse ceases and is passed to the administrator appointed by the court having jurisdiction over the case. The surviving spouse is not even a de facto administrator. Any conveyances made by him/her of any property belonging to the partnership (or community property) prior to liquidation of the properties is void. (Alipio v. Court of Appeals, 341 SCRA 441)

MANDATORY COMPLETE SEPARATION OF PROPERTY

- This Article’s last paragraph in relation to absolute community property and the last paragraph of Article 130 are identical.
- They only apply when the 1st marriage is terminated by death of a spouse, and not when the first marriage is judicially annulled or declared void. They identically provide that if the surviving spouse validly remarries without any liquidation of the properties of the previous marriage, mandatory regime of complete separation of property shall govern the subsequent marriage’s property relation.
  
  This is an exception to the general rule that in the absence of a marriage settlement providing for any other property regime, the absolute community of property regime shall govern.

- This is to avoid confusion of the properties of the 1st and 2nd marriages.

- Even if, prior to the subsequent marriage, the parties execute a marriage settlement stipulating conjugal partnership property regime or absolute community of property shall govern, it shall be invalid as it is against the law.
- Article 1 of the Family Code is clear to provide, “marriage settlements may fix the property relations during marriage within the limits provided by this Code”. So clearly, both last paragraphs of Article 103 and 130 constitute 2 limitations in relation to execution or stipulations in a marriage settlement that must be strictly observed.

Article 104. Whenever the liquidation of the community properties of two or more marriages contracted by the same person before the effectivity of this Code is carried out simultaneously, the respective capital, fruits and income of each community shall be determined upon such proof as may be considered according to the rules of evidence. In case of doubt as to which community the existing properties belong, the same shall be divided between the different communities in proportion to the capital and duration of each. (189a)

POINTS

SIMULTANEOUS LIQUIDATION

- The Article refers to at least 2 marriages contracted prior to August 3, 1988 and involves a situation where the community properties of each marriage are to be liquidated simultaneously.
- Determination of which of the inventoried properties, with their fruits and income, belong to which community property regime depends upon the proofs presented by the contending claimants in accordance with the rules of evidence.
- In case of doubt, properties inventoried shall be divided between or among the different communities in proportion to the capital and duration of each.
Here are five (5) foreseeable scenarios in case a situation is doubtful. *Dealing only with 2 marriages by way of illustration.*

**Scenario 1:**
- **Info: (a) Inventoried Asset: P15,000.00**
- (b) Duration of each marriage: *equal duration*
- (c) Assets per marriage: unknown

**Decision:** P15,000.00 divided equally upon the heirs of each of the marriages. P7,500 for the 1st and P7,500 for the 2nd.

**Scenario 2:**
- **Info: (a) Inventoried Asset: P15,000.00**
- (b) Duration of marriage:
  - i. 1st marriage – 2 years
  - ii. 2nd marriage – 3 years
- (c) Assets per marriage: unknown

**Decision:**
- Marriage 1: share of two-fifths (2/5) of P15,000.00
  - P6,000.00 to heirs of the 1st marriage
- Marriage 2: share of three-fifths (3/5) of P15,000.00
  - P9,000.00 to heirs of the 2nd marriage

**Scenario 3:**
- **Info: (a) Inventoried Asset: P15,000.00**
- (b) Duration: *equal duration*
- (c) Asset per marriage:
  - i. 1st marriage – P1,000.00
  - ii. 2nd marriage – P2,000.00

**Decision:**
- Marriage 1: share of one-third (1/3) of P15,000.00
  - P5,000.00 to heirs of 1st marriage
- Marriage 2: share of two-third (2/3) of P15,000.00
  - P10,000.00 to heirs of 2nd marriage

**Scenario 4:**
- **Info: (a) Inventoried Asset: P15,000.00**
- (b) Duration:
  - i. 1st marriage – 2 years
  - ii. 2nd marriage – 3 years
- (c) Asset per marriage: *equal*

**Decision:**
- Marriage 1: share of two-fifths (2/5) of P15,000.00
  - P6,000.00 to heirs of the 1st marriage
- Marriage 2: share of three-fifths (3/5) of P15,000.00
  - P9,000.00 to heirs of the 2nd marriage

**Scenario 5:**
- **Info: (a) Inventoried Asset: P15,000.00**
- (b) Duration:
  - i. 1st marriage – 2 years
  - ii. 2nd marriage – 3 years
- (c) Asset per marriage:
  - i. 1st marriage – P1,000.00
  - ii. 2nd marriage – P2,000.00

**Decision:**
- Marriage 1: share of two-eights (2/8) of P15,000.00
  - P3,750.00 to heirs of the 1st marriage
- Marriage 2: share of six-eights (6/8) of P15,000.00
  - P11,250.00 to heirs of the 2nd marriage
The duration of each marriage shall be multiplied to the assets in that marriage and then prorated with the assets to be liquidated.

- Under the present Family Code, Article 92(3) expressly provides that properties acquired, together with its fruits and income, in a previous marriage with legitimate descendants by either spouse shall be excluded from the absolute community of the subsequent marriage.
- The law protects the properties of the previous marriage from possibly mixing with the properties of the second marriage whether or not liquidation of properties of the previous marriage has already been terminated by the time of the subsequent marriage's celebration.
- In the absence of legitimate descendants for the previous marriage with also no liquidation of its properties, the mandatory property regime in case the termination of the first marriage is by death will govern the property relationship of the subsequent marriage. Mixing up is likewise prohibited.
- If the termination is by nullity or annulment, the property regime in the subsequent marriage is co-ownership because the subsequent marriage is void pursuant to Article 52 & 53 of the Family Code. Similarly, property acquired before the marriage will not be included in the co-ownership.
## Article 105. In case the future spouses agree in the marriage settlements that the regime of conjugal partnership of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application. (n)

The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between the spouses before the effectivity of this Code without prejudice to vested rights already acquired in accordance with the Civil Code or other laws as provided in Article 256. (n)

## Article 106. Under the regime of conjugal partnership of gains, the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance, and upon dissolution of the marriage or of the partnership, the net gains or benefits obtained by either or both spouses shall be divided equally between them, unless otherwise agreed in the marriage settlements. (142a)

**POINTS**

**Conjugal Partnership of Gains**
- The spouses shall place in a COMMON FUND the fruits of their separate property the income from their work or industry
- “Paraphernal Properties” form part of the assets of the conjugal partnership and are subject to the payment of debts and expenses BUT not to the payment of personal obligation unless it redounded to the benefit of the family
  - Paraphernal Properties – The term used under the Civil Code to describe the separate property of the wife
- The law refers to “effort” and “chance”

- Effort – an activity or undertaking which may or may not be rewarded
- Chance – activities like gambling or betting
- No unilateral declaration by one spouse can change the character of the conjugal property. It is determined by LAW
- Upon dissolution, the net gains or benefits shall be divided equally between the spouses
  - Unless they have stipulated another proportion in the marriage settlement
- If the spouses were already under the conjugal partnership of gains before the effectivity of the Family Code, then that property regime shall continue but it shall now be governed by the Family Code
  - Unless vested rights have already been acquired under the Civil Code or any other law

## Article 107. The rules provided in Articles 88 and 89 shall also apply to conjugal partnership of gains. (n)

**Commencement**
- The conjugal partnership of gains shall commence at the precise moment the marriage is celebrated.
  - We consider the HOUR not the date of the marriage

**Prohibition on Waiver**
- No waiver of rights, interests, shares, and effects of the conjugal partnership of gains can be made during the marriage except upon JUDICIAL SEPARATION OF PROPERTY
- Rationale: to avoid undue pressure and influence exerted upon the weaker spouse who may be persuaded or coerced into parting with his or her interests in the conjugal partnership
**Article 108.** The conjugal partnership shall be governed by the rules on the contract of partnership in all that is not in conflict with what is expressly determined in this Chapter or by the spouses in their marriage settlements. (147a)

**POINTS**

**Special Type of Partnership**

- The absolute community of property relies on the rules of co-ownership as a supplement
- The conjugal partnership shall be governed by the rules on CONTRACT PARTNERSHIP in all that is not in conflict with what is expressly determined in this chapter or by the spouses in their marriage settlements
- In case of conflict between the Civil Code (rules on partnership) and the Family Code (conjugal partnership of gains), the latter shall prevail
- Examples: These instances might come up on the test, though tangentially
  - Any stipulation which excludes the partners from any share of the profits and losses of the partnership is void (Art 1799 Civil Code)
  - A partner is a co-owner with his other partner of specific partnership property (Art 1811 Civil Code)
  - Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partner from any transaction connected with the formation, conduct, liquidation of the partnership or from any use by him or her of its property (Art 1807)
  - Without the consent of the other partner, a partner cannot assign the partnership property in trust for creditors or on the assignee’s promise to pay the debts of the partnership, confess a judgment, enter into a compromise concerning a partnership claim or liability, submit a partnership claim or liability to arbitration and renounce a claim of partnership. No act of a partner in contravention of a restriction on authority shall bind the partnership to person having knowledge of the restriction (Art 1818 Civil Code)
  - Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with authority of his co-partner, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act (Art 1822 Civil Code)

- **Carandang v. Heirs of Quirino A. De Guzman**
  - Facts: The right of one spouse to bring an action to recover loaned money was assailed on the ground that the other spouse should have been made party in the action
  - Issue: Is the other spouse an indispensable party?
  - Held: No she is not, therefore the suit is not dismissed
  - Ratio:

    Article 147 of the Civil Code states “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”

    This is nearly synonymous to the above Article 108 of the Family Code. As such, a partner is a co-owner with the other partners of specific partnership property. Being co-owners, spouses may bring an action independently without need of joining all other co-owners (in this case, the other spouse) because the suit is presumed to be filed FOR THE BENEFIT OF ALL CO-OWNERS
Chapter 4 – Conjugal Partnership of Gains
Section 2. Exclusive Property of Each Spouse

Article 109. The following shall be the exclusive property of each spouse:

1) That which is brought to the marriage as his or her own;
2) That which each acquires during the marriage by gratuitous title;
3) That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the spouses; and
4) That which is purchased with exclusive money of the wife or of the husband

POINTS
Properties Brought into the Marriage

- All properties brought into the marriage by the parties belong to each of them EXCLUSIVELY
- Hence, they can exercise all rights of dominion or of ownership over these exclusive properties.
- The said properties cannot be encumbered, alienated nor disposed of by the other spouse without the consent of the owner-spouse.
- The nature of the property as SEPARATE PROPERTY shall remain unless the contrary is proved by positive and convincing evidence
- **Del Mundo v. Court of Appeals**
  - Facts: Isidra owned a lot before marrying Agripino.
  - Issue: Can Agripino or his heirs claim rights to the property?
  - Held: No!
  - Ratio: Evidence clearly shows that the land was Isidra’s exclusive property. From witnesses, to the deeds of sale and even Agripino’s own admission, no evidence to the contrary can be found.
- **PNB v. Court of Appeals**
  - Facts: Pragmacio and Maximo Vitug claim that the property of Donata Montemayor (their mother) is of conjugal nature
  - Issue: Can they still assert their rights despite not having done so for 17 years?
  - Held: No
  - Ratio: They are estopped from doing so and are guilty of laches. Knowing this to be separate property for 17 years, they should have asserted their rights at the earliest possible time.
- **Plato v. Yatco**
  - Facts: Spouse A purchased property before the marriage using his exclusive funds then had the property registered under his and his spouse’s name after the marriage
  - Issue: Is this property part of the conjugal partnership of gains?
  - Held: No
  - Ratio: The registration only creates a trust. Since the property was purchased with spouse A’s exclusive funds, it shall be restored to him upon liquidation
- **Penanra v. Register of Deeds of Rizal**
  - Facts: The title under consideration had a patent which only had the wife’s name on it
  - Issue: Is this conjugal property?
  - Held: No
  - Ratio: Had the husband and wife acquired the land by virtue of joint efforts, the patent should have so indicated. Still, it is only granted to the wife therefore it is presumed that she acquired this thru her occupation while she was still single
These exclusive property shall be used for:
- Payment of personal debts, not redounding to the family, contracted before the marriage
- Support of illegitimate children
- In the event that the assets of the conjugal partnership would be insufficient to pay the obligations of the partnership at the time of the liquidation of the same, the spouses shall be solidarily liable for the unpaid balance with their separate property

Property Acquired By Gratuitous Title
- Anything received by each spouse from any source by way of an act of liberality of the giver shall belong EXCLUSIVELY to the spouse recipient
- These includes:
  - Moderate gifts from one spouse to the other during special occasions
  - Honorarium, defined as something given not as a matter of obligation but in appreciation for services rendered or a voluntary donation in consideration of services which admit no compensation in money
  - By succession, WHETHER acquired before or after the marriage
- WARNING ABOUT FRUITS AND INCOME!
  - Unlike the absolute community of property, the income and fruits of the property acquired by gratuitous title shall be considered conjugal

Redemption, Barter and Exchange
- In case of REDEMPTION, the property shall belong to the spouse who has the RIGHT to redeem regardless of whether or not he or she uses personal funds
  - HOWEVER, when conjugal funds are used to effect the redemption, the spouse making the redemption through conjugal fund shall be liable to the conjugal partnership for the reimbursement of the amount
- The conjugal partnership shall have a lien for the amount paid by it
- If however, there is NO RIGHT of redemption belonging to EITHER spouse, whoever buys or procures something using his or her own funds shall exclusively own what was purchased

Rosete v. Provincial Sheriff of Zambales
- Facts: Four parcels of land owned by conjugal property were executed upon and sold to answer for the indemnity due heirs of a murder victim. Two of the lands sold were redeemed by the wife using money given to her by her father.
- Issue: Is the land part of the conjugal partnership? Can it be executed upon again?
- Held: No and No
- Ratio: The wife did not acquire the property on behalf of the husband but she acquired it by right of redemption as successor-in-interest. The property has therefore become the exclusive property of the wife

- In the absence of proof that the right of redemption pertained to any of the spouses, the property involved, or the rights arising therefrom, must be PRESUMED, therefore, to form part of the conjugal partnership
- EXCHANGE made by one spouse using his or her exclusive property shall remain the separate property of such spouse.
- BARTER is limited to goods
- HOWEVER, if the separate property is used as part of the purchase price of a new property in addition to the conjugal funds spent for it then the new addition shall be considered conjugal

Abella de Diaz v. Erlander S. Galinger, Inc.
- Facts: Wife owned an automobile. She turned in the automobile to serve as part of the payment for the
purchase of a new car for the conjugal partnership, using the conjugal funds
- Issue: Does this still constitute as paraphernal property?
- Held: No
- Ratio: Refer next preceding major bullet point

This provision on right of redemption, barter and exchange has no counterpart rule in the absolute community of property (Art 92)

**Property Purchased with the Exclusive Money of Either Spouse**
- Property purchased using the exclusive money of one spouse shall belong to such spouse.
- However, when property is purchased using exclusive money but the title is taken in the spouse’s joint names, the circumstances shall determine whether it shall result in a GIFT from one spouse or a TRUST in favor of such spouse.

**Article 110.** The spouses retain the ownership, possession, administration and enjoyment of their exclusive properties. Either spouse may, during the marriage, transfer the administration of his or her exclusive property to the other by means of a public instrument, which shall be recorded in the registry of property of the place where the property is located (137a, 168a, 169a)

**POINTS**

**Administration of Exclusive Properties**
- Administration shall include:
  - Entering into contracts regarding the use of the property
  - Engaging in litigation
  - The collection of fruits, profits and income arising from separate property
- The owner spouse may, during the marriage, transfer the administration of his or her property to the other spouse provided the proper recording in the civil registry is made.

- Even when there is a transfer of administration owner spouse may still donate, encumber or alienate the property.
- He or she may also transfer administration to a stranger, even without the consent of the other spouse.
- **Naguit v. Court of Appeals**
  - Facts: The exclusive property of the wife was sold upon execution by the sheriff for the satisfaction of a particular decision finding her husband liable for a personal obligation.
  - Issue: May the wife file a separate action to annul the sale?
  - Held: Yes.
  - Ratio: The wife, whose exclusive property was wrongfully levied upon, can be considered a third person and is deemed “a stranger to the action wherein the writ of execution was issued and is therefore justified in bringing an independent action to vindicate her right of ownership over the subject property.

**Article 111.** A spouse of age may mortgage, encumber, alienate or otherwise dispose of his or her exclusive property, without the consent of the other spouse, and appear alone in court to litigate with regard to the same. (n)

**Article 112.** The alienation of any exclusive property of a spouse administered by the other automatically terminates the administration over such property and the proceeds of the alienation shall be turned over to the owner-spouse. (n)

**POINTS**

**Termination of Administration**
- Any spouse who alienate his or her exclusive separate property will terminate the administration of the other spouse over such
property and the proceeds of the alienation shall be turned over to the owner-spouse.

- **Article 127** In a case where the spouses are separated in fact, the spouse present shall, upon petition in a summary proceeding, be given authority to administer or encumber any specific SEPARATE PROPERTY in the event that the separate properties are solidarily held liable for the obligation of the conjugal partnership.

- The owner spouse, who is a party to the summary proceeding, cannot revoke the judicially approved administration of the present spouse over his or her specific property. If he or she wants to alienate the property, he or she needs the consent of the administrator spouse or if the latter does not give his or her consent then the approval of the court.
  - This restriction is necessary so that the solidary nature attached to the separate properties of the spouses will be better served and effected.

**Article 113.** Property donated or left by will to the spouses, jointly and with designation of determinate shares, shall pertain to the donee-spouse as his or her own exclusive property, and in the absence of designation, share and share alike, without prejudice to the right of accretion when proper. (150a)

**Article 114.** If the donations are onerous, the amount of the charges shall be borne by the exclusive property of the donee-spouse 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. (151a)

**POINTS**

**Property Donated or Left by Will to Spouses**
- Donor or testator may donate or provide in a will property to the spouses JOINTLY.
- He may also designate the respective shares to each spouse.
- In the absence thereof, share and share alike.
- The property of the donation will then be considered separate.

**Accretion in Case of Donation**
- Accretion is the incorporation or addition of property to another property.
- The GENERAL RULE of joint donation is that one could not accept independently of his co-donee for there is no right of accretion unless expressly provided
  - This does not apply to donations made to husband and wife
- SO if a donation gives the husband ¾ of the property and ¼ to the wife, each of them shall own the respective shares. BUT if the wife waives her right to the donation, the husband will get her interest by virtue of accretion. HOWEVER if the donor provides in the deed of donation that no right of accretion shall be available to the husband, the latter will only get his original ¾ share.
- If there is not designation of determinate shares, the same rule will apply.

**Accretion in Case of Property Left by Will**
- If by will, for accretion to apply, it shall be necessary that the husband and the wife be called to the same inheritance and that one of the spouses thus called dies before the testator or renounces the inheritance, or be incapacitated to receive.
- Pro indiviso – Undivided part

**Payment Using Conjugal Funds**
- If conjugal funds are used to pay the obligations attached to an onerous donation, the donee-spouse shall reimburse the conjugal partnership but the property remains exclusive.
- However, taxes and expenses made during the marriage upon the property for preservation shall be chargeable to the conjugal partnership of gains.
Article 115. Retirement benefits, pensions, annuities, gratuities, usufructs and similar benefits shall be governed by the rules on gratuitous or onerous acquisitions as may be proper in each case. (n)
single and registered only after the marriage ceremony (Metropolitan Bank and Trust Company v. Tan).

- In case property is registered in both names, the presumption that it is conjugal arises.
- HOWEVER, the property may be shown to be really of either spouse.
- The underlying reason is the confidential relation between husband and wife, hence most of the time, certificates of title are secured in both names even though true ownership may be different.
- It is thus but fair that on liquidation of the partnership, the trust should be recognized and enforced, so that real ownership of the property may be established.
- For as long as it is proven that the property had been acquired during the marriage, the presumption applies even though the spouses are living separately. Evidence must be clear to overcome this presumption (Wong v. IAC).
- Belcodero v. Court of Appeals
  - Facts: A husband bought property and paid for it in installments and thereafter left his family to marry bigamously. He registered the property under the name of the second wife after full payment.
  - Issue: Is this the property of the other woman?
  - Held: No.
  - Ratio: The property is the conjugal partnership of the legitimate first marriage on the strength of the provisions of the New Civil Code and the old Civil Code that “all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains EXCLUSIVELY to the husband or the wife”, and which presumption had not been rebutted.
- Plata v. Yatco

- Facts: The wife conveyed the property to a third person and the third person reconveyed it to her several months afterwards.
- Issue: Does this transform the property to conjugal property?
- Held: No.
- Ratio: There is an absence of proof that the money paid in the reconveyance came from conjugal funds.

- After proof of acquisition during the marriage has been shown, the presumption of conjugality attaches even if the property is registered in the name of one or both of the spouses (Villanueva v. Court of Appeals).
- Proofs consisting of tax declaration are not evidence of acquisition, and hence are not sufficient to give rise to the presumption that the property is conjugal (Petiano-Anno v. Anno).

### Article 117. The following are conjugal partnership properties:

1. Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;
2. Those obtained from the labor, industry, work or profession of either or both of the spouses;
3. The fruits, natural, industrial, or civil, due or received during the marriage from the common property, as well as the net fruits from the exclusive property of each spouse;
4. The share of either spouse in the hidden treasure which the law awards to the finder or owner of the property where the treasure is found;
5. Those acquired through occupation such as fishing or hunting;
6. Livestock existing upon the dissolution of the partnership in excess of the number of each kind brought to the marriage by either spouse; and
(7) Those which are acquired by chance, such as winnings from gambling or betting. However, losses therefrom shall be borne exclusively by the loser-spouse. (153a, 154a, 155, 159)

POINTS

Acquisition by Onerous Title from Common Fund – (1)
- If object is acquired by right or redemption or by exchange with other property belonging to only one spouse or it is purchased by one spouse’s own fund, it necessarily belongs exclusively to such spouse. It necessarily follows then that that which is acquired with money from the conjugal partnership belongs or forms a part of it. True, even if acquisition is for partnership or for only one spouse.
- “Damages granted by the court in favor of any of the spouses arising out of a contract solely financed by the conjugal partnership of gains and consequently unduly breached by a third party belongs to the CPG.”
  - *Zulueta v. Pan American World Airways Inc.* → SC held that contract of carriage was entered into, and damages claimed were incurred, during the marriage. Rights accruing from said contract, including those resulting from the breach thereof by the defendant are presumed to belong to the conjugal partnership of Mr. and Mrs. Zulueta. Fact that it includes a quasi-delict is an aggravating circumstance that can’t possibly deprive the conjugal partnership of such rights.
- Damages resulting from illegal detention of a spouse’s exclusive property pertains to the conjugal partnership if such detention deprives it of the use and earnings of the same (*Bismorte v. Aldecoa*).
- BUT, damages awarded resulting from physical injuries inflicted by a third party belong solely to injured spouse.
  - *Lilius v. Manila Railroad Co.* SC held that “patrimonial and moral damages awarded to a young and beautiful woman by reason of a scar in consequence of an automobile injury which disfigured her face and fractured her left leg as well as caused permanent deformity, are personal to her.

Property Acquired Through Industry, Labor and Profession and through Occupation – (2) and (5)
- Legally, anything obtained from the abovementioned is conjugal, even those through occupation of fishing or hunting.
- Justice Puno explained that the need to separate the two provisions comes from the fact that in those under (2), one is sure to earn but there is an element of chance for those under (5) since one can be in the sea or forest for a long time without catching anything. Hence, work is not commensurate with result (from the Deliberations of the Family Code).

Fruits and Earning from Properties – (3)
- Fruits of common property & net fruits of exclusive property are part of conjugal partnership.
  - Net fruits → Remaining balance after fruits from separate property first pay for administration expenses of said property.

Hidden Treasure – (4)
- Contemplates artifacts or objects which have undergone transformation from their original raw state, such as earrings, necklace, bracelets and the like.
- *Article 439 of the Civil Code*, “treasure is understood, for legal purposes, any hidden and unknown deposit of money, jewelry, or other precious objects, the lawful ownership of which does not appear.”
- *Article 519 of the Civil Code*, “mining claims and rights and other matters concerning minerals and mineral lands are governed by special laws.” Hence, gold nuggets, precious stones in their raw state, oil and the like are therefore not treasure.
Livestock – (6)
- With respect to livestock, Justice Puno thus comments: “in case A has 40 cows and as a result of marrying B, it becomes 60. 20 cows constitute the conjugal partnership property. If the original stock can’t be identified anymore, it may be resolved by identifying the debtor and creditor. In this scenario, the debtor is the conjugal partnership that needs to deliver the 40 cows to A. The general rule for this is that the debtor cannot offer the worst, while the creditor, A, cannot demand the best.” Although not made part of the provision, the committee agreed that it be taken up in commentaries (Minutes of Joint Meeting of Civil Code Revision and Family Law Committees)

Chance – (7)
- Article 117(7) implies situation that spouse engaged in such activity has parted with a valuable consideration.
- If a spouse is given a sweepstakes ticket by a third person and then wins P1-M, the money shall be deemed income and will belong to the CPG. Income, though not defined in the Family Code, Sec. 32[a](9) of the National Internal Revenue Code defines “gross income” of a person as including prize and winnings derived from whatever source.
- In Alvarez v. Espiritu, friar lands, bought by a woman before the marriage, were her separate properties though some installments were paid by the conjugal funds during her marriage. Such funds used would be entitled to reimbursement for the expense because, under Friar Lands Act No. 1120, the ownership passes to purchaser the moment the first installment is paid and a certificate of sale is issued. Although the bare naked title is reserved in favor of the government to protect the land from being disposed before the price has been paid in full. Hence outside from this protection, the government retains no ownership rights over it.
- Jovellanos v. Court of Appeals → where, in a contract to sell or conditional sale of a parcel of land by installment and where ownership vests only upon last installment, SC held that since such was made during the valid second marriage through conjugal funds thereof, said property rightfully belongs to the second marriage. True even if it was partly paid through the conjugal funds of the first marriage and through exclusive funds of the husband. However, pursuant to Article 118, the proper reimbursements should be done.
- Law is silent of situations where property is bought during marriage and the purchase was funded partly by exclusive money of either or both of the spouses and partly by conjugal funds. However...
  - Castillo, Jr. v. Pasco → where the Court decided such an issue, it was held that where the litigated fishpond was
Persons and Family Relations Law

Professor Amparita Sta. Maria

purchased partly with paraphernal funds and partly with conjugal funds, justice requires that property be held to belong to both patrimonies in common, in proportion to the contributions of each to the total price of P6,000. An undivided one-sixth should be deemed paraphernal, and the remaining five-sixths held property of the conjugal partnership of spouses Marcelo Castillo and Macaria Pasco.

- Applicability of above case is QUESTIONABLE now, given Article 118. Clearly, the reason for Article 118 is to give life to the state’s public policy of, as much as possible, creating a unified ownership of properties between spouses. Objective is clearly the essential ideal consequence of the permanent union established by marriage. While above article covers a property bought prior to marriage, public policy that it seeks to achieve must necessarily be carried into effect in cases of properties bought during marriage as well. Hence, such situation should result to the property belonging to the CPG subject to the reimbursement scheme under Article 118. Such view is supported by Article 109(4) that states property bought with exclusive money of buyer-spouse is his or her own separate property. Since here it is partly bought with conjugal funds, it cannot be said to be exclusively bought by exclusive money of either spouse and thus, must be considered conjugal.

Reimbursement upon Liquidation of Partnership
- Reason for this necessity: Justice Caguioa remarked that there can be no absolute sharing until after liquidation. Clarified that if there’s voluntary reimbursement even before an issue arises, it will be held in abeyance since it is only upon liquidation of the partnership that the share of each spouse will be known. (Joint Meeting of the Civil Code and Family Law Committees)

Article 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)

POINTS

Payment of Credit in Favor of Spouse
- Interest on the principal falling due during the marriage belongs to the conjugal partnership, as interest is considered a fruit derived from a particular property and is, therefore, included under Article 117(3).
- Deliberations of the committee about Article 119 (see p.522).

Article 120. The ownership of improvements, whether for utility or adornment, made on the separate property of the spouses at the expense of the partnership or through the acts or efforts of either or both spouses shall pertain to the conjugal partnership, or to the original owner-spouse, subject to the following rules:

When the cost of the improvement made by the conjugal partnership and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of one of the spouses shall belong to the conjugal partnership, subject to reimbursement of the value of the property of the owner-spouse at the time of the improvement; otherwise, said property shall be retained in ownership by the owner-spouse, likewise subject to reimbursement of the cost of the improvement.

In either case, the ownership of the entire property shall be vested upon the reimbursement, which shall be made at the time of the liquidation of the conjugal partnership. (158a)

POINTS

Source of Funds Used for Improvements
- If value of improvement and any resulting increase in value are more than the value of the separate property at the time of
improvement, the entire property of one of the spouses shall belong to the conjugal partnership.

- Ownership shall vest only upon reimbursement to the owner-spouse which shall be made at the time of the liquidation of the conjugal partnership.
- Proof, therefore is needful at the time of the making or construction of the improvements and the source of the funds used therefore, in order to determine the character of the improvements as belonging to the conjugal partnership or to one spouse separately.
- **Ferrer v. Ferrer**,
  - Facts: prior to death of husband, he sold his lot over which an improvement was built by conjugal funds was constructed
  - Issue: Surviving spouse sought reimbursement of half of the amount of the improvement from the new owner on the basis of **Article 120 of the Family Code**
  - Held: SC rejected claim for reimbursement
  - Ratio: **Article 120** does not give a cause of action on the part of the surviving spouse to claim from subsequent buyers of the property of the deceased husband. It only allows claims from the husband if he is still the owner of the lot upon liquidation.

**Usufructuary**

- Prior to reimbursement at the time of liquidation, it’s been held that conjugal partnership may use both land and improvement but it does so not as owner but in the exercise of a usufruct. Ownership of land remains the same til the value of the land is paid and this payment can only be demanded in the liquidation of the partnership.
- Prior to liquidation, owner-spouse still owns her separate property and therefore, the same can’t be levied upon to satisfy a conjugal debt, unless the conjugal funds are insufficient in which case the separate property can be held solidarily liable.

- **In re Padilla** → SC discussed nature of the usufructuary relationship arising from **Article 1404 of the Civil Code** and now **Article 120**: “Ownership of land retained by the wife till she is paid its value as a result of the liquidation of the conjugal partnership. Mere construction of a building from common funds does not automatically convey the ownership of the wife’s land to the conjugal partnership; it is merely a mode of using the land which is an exercise of the right of usufruct pertaining to the conjugal partnership over the wife’s land. As consequence of this usufructuary right, conjugal partnership is not bound to pay any rent during the occupation of the wife’s land because if the lot were leased to a third person, instead of being occupied by the new construction from the partnership funds, the rent from the third person would belong to the conjugal partnership. Therefore, before payment of the value of the land is made from common funds, inasmuch as the owner of the land is the wife, all the increase or decrease in its value must be for her benefit or loss. She may only demand payment at the liquidation of the partnership because up to that time, it’s neither necessary nor appropriate to transfer to the partnership the dominion over the land, which is lawfully held in usufruct by the conjugal partnership during the marriage.
- If reimbursement is not made. Ownership is retained by owner-spouse, likewise subject to reimbursement of the cost of the improvement. If property is worth more than the improvement, the entire improvement shall belong to the owner-spouse subject to reimbursement at the time of liquidation in favor of the conjugal partnership.

**Computation**

- Sample of how the second paragraph works:

<table>
<thead>
<tr>
<th>Building worth</th>
<th>P 50,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land worth</td>
<td>P 100,000*</td>
</tr>
<tr>
<td>Total</td>
<td>P 150,000</td>
</tr>
</tbody>
</table>
Total value of house and lot due to improvement --- P 180,000
"Plus Value" --- P 30,000

Total value of building and "plus value" -------------- P 80,000*

*Since Land is P100,000 and is still more than total improvement of P80,000, it would still be a case of ordinary accession.

Although there were objections to the computations, the above method amply fits the application of the final version of the last paragraph of Article 120. Hence here, the owner-spouse must reimburse the conjugal partnership at the time of liquidation the amount of P50,000 which is the cost of the improvement.

(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 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)

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**Chapter 4 – Conjugal Partnership of Gains**

**Section 4. Charges Upon and Obligations of the Conjugal Partnership**

**Article 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 benefited;
4. All taxes, liens, charges, and expenses, including major or minor repairs upon the conjugal partnership property;
5. All taxes and expenses for mere preservation made during the marriage upon the separate property of either spouse;
6. Expenses to enable either spouse to commence or complete a professional, vocational, or other activity for self-improvement;
7. Ante-nuptial debts of either spouse insofar as they have redounded to the benefit of the family;
8. The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement; and
9. Expenses of litigation between the spouses unless the suit is found to groundless.

**POUNTS**

Charges and Obligations

- Except for instances specified in Article 94(9) which is incorporated in Article 122, the liabilities enumerated in Article 121 for CPG are the same as those provided in Article 94 for ACP. Hence the explanations are the same.
- Liabilities are chargeable to the conjugal partnership if it benefits the same. Such rule highlights the underlying concern of the law for the conservation of the conjugal partnership.
- When making reference to any advantage or benefit to the family, the law interchangeably uses the phrase "redounded to the benefit of," “benefited from,” and “for the benefit of.” All mean the same thing.
- Burden of proof that a debt was contracted for the benefit of the conjugal partnership lies with creditor. And benefit must be a direct result of the obligation. Can’t be just a by-product or spin-off of the obligation or loan.
  - Indirect benefits that might accrue to the husband in his signing a surety or guarantee agreement not in favor of the family but in favor of his employer-corporation, such as the possibility of prolonging his employment or of increasing the value of the shares of stock of some members of the family in the corporation in case of
rehabilitation, and enhancing his prestige in the corporation, are not the benefits that give direct advantage. Creditors therefore can’t go after the conjugal partnership to satisfy the obligation of the surety agreement.

- Contrary view would put in peril the conjugal partnership property by allowing it to be given gratuitously as in cases of donation of conjugal partnership property which is prohibited.

- Redounding to the benefit of the family must always be proven and can’t be presumed, the burden of proof must always be on the person claiming that the transaction benefited the family.

  - Bare allegation that loan to finance housing units obtained by one spouse redounded to the benefit of the family, absent any evidence to prove such benefit, cannot give rise to a claim on the conjugal assets and doesn’t create conjugal liability (Homeowners Savings and Loan Bank v. Dalio).

- Cobb-Perez v. Lantin → SC said that debts incurred for a commercial enterprise for gain or in the exercise of the industry or profession by which the husband, as administrator of the property contributes to the support of the family, can’t be deemed to be his exclusive and private debts. CPG shall be liable for the same. Under Family Code, spouses are joint administrators of the CPG unless the marriage settlement or the courts, in proper cases, designates one of them as the administrator.

- Luzon Surety Co v. De Garcia → A husband in acting as guarantor or surety for another in an indemnity agreement does not act for the benefit of the conjugal partnership, considering that the benefit is clearly for the third party. The prestige he gains in the business community is too remote and fanciful to come within the view of Article 121.

- Ayala Investment & Development Corp v. Court of Appeals → SC tackled the question: “What debts and obligations contracted by the husband alone are considered for the benefit of the conjugal partnership which are chargeable to the conjugal partnership? Is a surety agreement or an accommodation contract entered into by the husband in favor of his employer within the contemplation of the said provision?” SC said:

  - If husband is the principal obligor in the contract (or the one receiving the money or service), such contract falls within the term “…obligations for the benefit of the conjugal partnership.” No actual benefit may be proved. It is enough that benefit to the family is apparent at the time of signing. From the very nature of the contract of loan or services, the family stands to benefit since it will be rendered to the business or profession of the husband. It is immaterial, if at the end, such enterprise fails. Where the husband contracts obligations on behalf of the family business, the law presumes, and rightly so, that such obligation will redound to the benefit of the conjugal partnership.

  - If husband was the surety or guarantor (or the one giving the money or service to another), the contract, by itself, does not fall within the contest of “…obligation for the benefit of the conjugal partnership.” Since the benefit of the contract is intended for principal debtor and not for the surety or his family. No presumption of redounding to the benefit of the family is present here, proof must be presented to establish such benefit.

    - By signing such agreement, his reputation or esteem might have increased or he might have earned the confidence of the business community, such benefit is too remote to come within the purview of Article 121.
• Mere signing of a person to act as surety or guarantor of another person doesn’t make him automatically engaged in the profession or business of suretyship or guaranty such that any loss arising from the same should be chargeable to the conjugal partnership. HOWEVER, if both spouses signed the surety agreement, then the conjugal partnership shall be liable.

**Obligation of Husband and Wife**

• Conjugal property is also liable for obligations contracted by husband and wife. If a creditor, C, has a claim of indebtedness of P1,000 against spouses A and B which they contracted or which, though only one of them contracted, benefitted their family, it is the conjugal property which is liable. C can’t consider both A and B jointly liable so that he gets P500 from each of their separate properties. Neither can he hold them strictly solidarily liable so that he gets P1000 from either of A or B’s separate properties. C must enforce the liability against the conjugal property and not their separate properties. The latter shall be solidarily liable only if the conjugal partnership is insufficient to pay of the indebtedness.

• **Carandang v. Heirs of Quirino A. De Guzman** → SC ruled that, in so far as conjugal obligations are concerned: when spouses are sued for the enforcement of an obligation they entered, they are impleaded in their capacity as representatives of the conjugal property and not as independent debtors. Hence, either may be sued for the whole amount similar to solidary liability, but amount is chargeable to conjugal partnership.

• **Pelayo v. Perez**, SC held that wife’s signature as mere witness and not as party to the contract nevertheless showed her consent to the contract of sale executed by her husband. Moreover, human experience shows that a spouse would be aware of the affairs of his or her spouse and that it is a presumption in the law of evidence that, unless rebutted by credible proofs, a person takes ordinary care of his or her concerns.

**Solidary Obligation**

• In case of insufficiency of conjugal partnership for the liabilities in **Article 121**, creditors may demand payment from either or any of the spouses with their respective separate properties. The person who pays may claim from the other spouse only the share which corresponds to each, with interest for the payment already due. If the payment is made before the debt is due, no interest for the intervening period may be demanded (**Article 1217 of the Civil Code**).

• Separate properties of the spouses may also be solidarily liable if both of them expressly made themselves liable in a solidary manner in any obligation contracted by them for the benefit of the ACP or CPG.

**Insolvency of Spouses**

• So long as conjugal partnership subsists, its property shall not be among the assets to be taken possession of by the assignee for the payment of the insolvent debtor’s obligations, except insofar as the latter have redounded to the benefit of the family (**Article 2238 of the Civil Code**).

*See insolvency commentaries under ACP.

**Changes**: provision regarding CPG under Civil Code (**Article 165**) repealed by **Article 124 of the Family Code**.

**Article 122.** The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal properties partnership except insofar as they redounded to the benefit of the family.

Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.

However, the payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse,
may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purpose above-mentioned. (163a)

**POINTS**

**Debts, Fines, Pecuniary Indemnities Incurred Before or During the Marriage.**

- As long as debts or obligations redound to the benefit of the family (such as medical expenses of the spouses), they shall be charged to the conjugal partnership.
  - Benefits under Article 121 and 122 need not be quantified into peso or square meters of real property. Enough that the transaction results to some DISCERNABLE ADVANTAGE or GOOD to the conjugal partnerships, directly or indirectly.
    - Example: health and well-being of spouses. Since advancement of the interests of the conjugal partnership depends in great measure on the soundness of the body and mind of the partners.
  - SC construed this provision (then Article 161 of the Civil Code) in Lacson v. Diaz as such:
    - As a general rule, debts contracted by either spouse prior to marriage, as well as fines and pecuniary indemnities imposed thereon, are not chargeable to the conjugal partnership. [For the third paragraph to apply, it must be shown that obligations under Article 121]¹ have been covered and the debtor-spouse has insufficient or no exclusive properties to pay the debt or obligation involved.

- Fines and pecuniary indemnities imposed upon either spouse MAY be charged against the partnership assets even before the liquidation of the partnership. Though, such payment must comply with Article 122 but it should not be applied with rigidity as to negate the claims of the aggrieved creditors.
- Court clarified the applicability of Arts. 121 and 122 of the Family Code (then Arts. 161 and 163 of the Civil Code) in People v. Lagrimas:
  - Quite plain in the provision that the period during such liability may be enforced presupposes that the conjugal partnership is still existing. Law speaks of “partnership assets.” Contemplates that responsibilities under (Article 121) must be complied with first. Thus obvious that the termination of the conjugal partnership is not contemplated as a prerequisite. Whatever doubt should be extinguished by the portion that says, “that at the time of the liquidation of the partnership such spouse shall be charged of what has been paid for the purposes above-mentioned.
  - Fundamental postulate of our law that ever person criminally liable is also civilly liable. The accused Froilan Lagrimas, was, as noted, found guilty of the crime of murder and sentenced to reclusion perpetua as well as to pay the indemnification to satisfy the civil liability incumbent upon him. If the appealed order were to be upheld, he would be exempt therefrom, the heirs of the offended party being made to suffer still further.

Persons and Family Relations Law

Professor Amparita Sta. Maria

- The provision thus minimizes the possibility that such additional liability of an accused would be rendered nugatory. In doing justice to the heirs of the murdered victim, no injustice is committed against the family of the offender. It is made a condition that the responsibilities under (Article 121) be satisfied first. Hence the legal scheme cannot be susceptible to the charge that for a transgression of the law by either spouse, the rest of the family may be made to bear the burdens of an extremely onerous character.
- The next question is how practical effect would be given this particular liability of the conjugal partnership for the payment of fines and indemnities imposed upon either spouse? Without departing from the principle thus announced, we make this further observation. Considering that the obligations mentioned in (Article 121) are peculiarly within the knowledge of the husband or of the wife whose conjugal partnership is made liable, the proof required of the beneficiaries of the indemnity should not be of the most exacting kind, ordinary credibility sufficing. Otherwise, the husband or the wife, as the case may be, representing the conjugal partnership, may find the temptation to magnify its obligation irresistible so as to defeat the right of recovery of the family of the offended party. The result is to be avoided. The lower court should be on the alert, therefore, in the appraisal of whatever evidence may be offered to assure compliance with this codal provision.

**Difference from the Absolute Community Rule**

- Unlike in CPG, the absolute community regime may be charged for such liabilities only in case the separate property of the spouse is insufficient. Reason is that in absolute community regime, the spouses have fewer, if any at all, exclusive properties with which to meet their personal obligations. Thus, it is no longer required that all the charges upon the absolute community be satisfied before such personal obligations may be paid by the community.
- **Spouses Buado v. Court of Appeals,**
  - Facts: husband opposed the execution of conjugal properties by the sheriff to satisfy damages incurred by his spouse as a result of criminal liability
  - Issue: Whether or not the husband can be considered a “third party” for purpose of satisfying the requirement of the Rules of Court that only a third party can file a claim against the execution
  - Held: Filing of a separate action by respondent is proper and jurisdiction is thus vested on Branch 21. Petitioners failed to show that CA committed Grave abuse of discretion in remanding the case to Branch 21 for further proceedings.
  - Ratio: Apart from the remedy of terceria available to third-party claimant or to a stranger to the foreclosure suit against the sheriff or officer effecting the writ by serving on him an affidavit of his title and a copy thereof upon the judgment creditor, a third-party claimant may also resort to an independent separate action, the object of which is the recovery of ownership or possession of the property seized by the sheriff, as well as damages arising from wrongful seizure and detention of the property. If a separate action is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ.
  - A third-party claim must be filed by a person other than the judgment debtor or his agent. In other words, only a stranger to the case may file a third-party claim.
Now, is the husband, who was not a party to the suit but whose conjugal property is being executed on account of the other spouse being the judgment obligor, considered a “stranger?”

In determining this, character of the property must be taken into account. In Mariano v. CA, which was later adopted in Spouses Ching v. CA, this Court held that the husband of the judgment debtor cannot be deemed as a “stranger” to the case prosecuted and adjudged against his wife for an obligation that has redounded to the benefit of the conjugal partnership. In Naguit v. CA and Sy v. Discaya, Court stated that a spouse is deemed a stranger to the action wherein the writ of execution was issued and is therefore justified in bringing an independent action to vindicate her right of ownership over his exclusive or paraphernal property.

Pursuant to Mariano however, it must further be settled whether the obligation of the judgment debtor redounded to the benefit of the conjugal partnership or not. Petitioner argues that the obligation of the wife arising from her criminal liability is chargeable to the conjugal partnership. We do not agree.

No dispute that property is conjugal. Article 122 explicitly provides the conditions. Unlike the counterpart provision under ACP however, the CPG has no duty to make advance payments for the liability of the debtor-spouse.

By no stretch of imagination can it be concluded that the civil obligation arising from the crime of slander committed by Erlinda redounded to the benefit of the conjugal partnership.

Finally, in Guadalupe v. Tronco, this Court held that the car which was claimed by the third party complainant to be conjugal property was being levied upon to enforce “a judgment for support” filed by a third person, the third-party claim of the wife is proper since the obligation which is person to the husband is not chargeable to the conjugal property but to his own.

**Personal Obligations of Spouses during the Marriage**

- Personal obligations of either spouses incurred during the marriage which do not redound to the benefit of the family or don’t have the consent of the other spouses shall be borne only by the spouse-debtor and his or her separate property.
- **BA Finance Corporation v. CA,**
  - Held: SC held that where evidence shows a spouse incurred the obligation for his sole benefit, it should not be charged to the CPG.
  - Ratio: There is no dispute that A & L Industries was established during the marriage of Augusto and Lily Yulo and is presumed conjugal. Fact that it is registered in the name of only one spouse does not destroy its conjugal nature. For the said property to be liable though, the obligation contracted by the husband must have redounded to the benefit of the conjugal partnership under [Art 121 of the Family Code]. In the present case, the obligation which the petitioner is seeking to enforce against the conjugal property managed by private respondent Lily Yulo was undoubtedly contracted for his own benefit because at the time he incurred the obligation, he had already abandoned his family and left their conjugal home. Worse, he made it appear that he was duly authorized by his wife in behalf of A & L Industries to procure such loan from the petitioner. Clearly, to make A & L Industries liable now for the said loan would be unjust and contrary to the express provision of this Code.
- Personal obligations for which the debtor-spouse should only be held liable aren’t given by law the same advance-
reimbursement mechanism provided for under Article 122. In short, the CPG has no duty to make payments in advance for the liability of the spouse-debtor which shall be reimbursed or paid at the time of liquidation. In so far as debts are concerned, the 3rd paragraph of Article 122 clearly limits the application of this advance-reimbursement mechanism to personal debts not redounding to the benefit of the family contracted by either of the spouses before the marriage and not during the marriage.

**Computations for the last paragraph of Article 122**

- Sample computation given by Justice Caguioa:
  - Husband’s share: P 50,000
  - Wife’s share: P 50,000
  - Amount advanced by the partnership for personal debt of the husband to be taken from his share: P 10,000
  - Husband’s share: P 50,000
  - Less: amount advanced: P 10,000
  - Balance of husband’s share: P 40,000

  The P10,000 will then go to the partnership assets, which shall be divided again between the spouses.

- Professor Baviera’s version of the computation:
  - Net remainder of conjugal properties: P 110,000
  - Amount advanced for husband’s personal debt: P 10,000
  - Basis of sharing: P 110,000

  =P 55,000 share of each spouse

  - Husband’s share: P 55,000
  - Less: amount advanced for husband’s personal debt: P 10,000
  - Balance of husband’s share: P 45,000

  - Net remainder of conjugal properties: P 100,000
  - Less: Husband’s share: P 45,000
  - Wife’s share: P 55,000

- However, Justice Caguioa explains that his computation resulted in the same figures above since the P10,000 will go to the partnership assets, which shall be divided again between the spouses as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wife’s share</td>
<td>P 50,000</td>
</tr>
<tr>
<td>Add: ½ of P10,000</td>
<td>P 5,000</td>
</tr>
<tr>
<td>Total</td>
<td>P 55,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband’s share</td>
<td>P 40,000</td>
</tr>
<tr>
<td>Add: ½ of P10,000</td>
<td>P 5,000</td>
</tr>
<tr>
<td>Total</td>
<td>P 45,000</td>
</tr>
</tbody>
</table>

- Result of the computation will not change by considering the amount advanced by the conjugal partnership for personal debts of the husband as partnership assets and that the only difference between the two is procedure of computation.
- Under Article 129 relative to the liquidation of the conjugal partnership, it must be noted that after the inventory, 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 (Article 129(1) and (2)). This is even prior to the determination of the net remainder (Article 129(7)). Nonetheless, the result will basically be the same as the above and the comment of Justice Caguioa will still be relevant and applicable.
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)

POINTS

Game of Chance
- Winnings can be considered as income of the common property and income of the separte property, which therefore, make them part of the conjugal partnership of gains.
- The conjugal partnership property must not be put to risk, therefore losses shall be borne by the loser only and shall not be chargeable to the conjugal partnership property.

Section 5. ADMINISTRATION OF THE CONJUGAL PARTNERSHIP PROPERTY

Art. 124. The administration of and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband’s decision shall prevail, subject to recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (165a)

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 in distress.

POINTS

Identity of Provisions
- If the marriage settlement provides for the conjugal partnership of gains as governing the property relationship within a marriage but the same stipulates that the sharing will not be equal upon liquidation, such unequal sharing will not affect the joint administration of the spouses during marriage.
- Any alienation made by the husband without the consent of his wife prejudices here in so far as it includes a part or the whole of the wife’s half and is, to that extent, invalid.
- In cases of disposition of property by the husband over the objection of the wife, the wife is given the right to file a case to nullify or annul a part of or the entire contract as a whole.
- If the husband sells or encumbers property without knowledge of the wife, such sale is void.
- If the sale was with knowledge but without approval of the wife, such sale is annulable at the instance of the wife within 5 years from the implementation of the contract.
- If buyers knew the property was conjugal but still bought it from the husband without consent of the wife, such sale is totally void and the purchase price has to be returned to the buyers with interest.
- Any alienation or encumbrance by a capacitated spouse of any conjugal property without the consent of the incapacitated spouse or without court approval is void.
Nature of Proceedings
- Summary procedure pursuant to Title XI of the Family Code shall apply to the first paragraph of Article 124 involving annulment of the husband’s decision in the administration and enjoyment of the conjugal property in case the husband’s decision is in conflict with the wife’s.
- **Uy vs. Court of Appeals**

Facts: Gilda Jardeleza as the wife of Ernesto Jardeleza (comatose after suffering a stroke) wanted to dispose of a parcel of land with its improvements, worth more than 12 million pesos.

Issue: WON the wife could dispose of such property with the approval of the court in a summary proceeding.

Held: SC agrees with the Court of Appeals. The Court of Appeals ruled that with the condition of the husband, the rules on summary proceedings in relation to Article 124 of the Family Code are not applicable. This is because the husband is unable to take care of himself and manage the conjugal property due to illness. The proper remedy was the appointment of a judicial guardian under Rule 93, Section 1, 1964 Revised Rules of Court.

**Termination of the Conjugal Partnership**
- Article 126 is exactly the same as Article 99 and so the explanations under the latter article are likewise applicable to this article.
- When for any cause, the conjugal partnership establishes upon the basis of community property is dissolved, all the provisions based upon the existence of that partnership ceases to apply.
- Whatever is acquired by the surviving spouse on the dissolution of the partnership by death or by presumption of death, or by either of the spouse on termination of the partnership of other reasons and when this latter no longer exists, whether the acquisition be made by his or her labor, or industry, or whether by onerous or lucrative title, it forms part of his or her own capital, in which the other consort, or his or her heirs can claim no share. *(Nable Jose v. Nable Jose, 41 Phil. 713)*

**Section 6. DISSOLUTION OF CONJUGAL PROPERTY 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 and 138. *(175a)*

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)*
Points

Effect of Separations

- Article 127 is exactly the same as Article 100, hence the explanations of the latter is also applicable to this article.
- 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. The guilt of the party in leaving the house is immaterial. The one who unjustifiably separated from the other spouse may also avail of this remedy provided by law.
- For item (3) of this article, any debt incurred for the support of the family is a liability of the conjugal partnership of gains.

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 the receivership, for judicial separation of property, or for authority to be the sole administrator of his 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 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)

Abandonment

- Article 128 is exactly the same as article 101 and so the explanations made in the latter are applicable to this article.
- Articles 101 and 128 give an aggrieved spouse the right to bring an action to protect his or her interest and her right thereto even before the liquidation or dissolution of the conjugal partnership of gains or the absolute community of property. *(Enriquez v. Court of Appeals, 104 SCRA 656)*

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 has 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 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 interest of said children. (181a, 182a, 183a, 184a, 185a)

### Points

#### Liquidation of Partnership
- The conjugal partnership may be liquidated by extrajudicial settlement, ordinary action of partition, or by way of testate or intestate proceedings. (*Villocino v. Dyon*, 63 SCRA 460)

#### Inventory
- All properties or assets at the time of the dissolution, whether belonging to the conjugal partnership or separate property of the spouses, must be inventoried.
- In the appraisal of properties, it is not the purchase but the market or, in default thereof, the assessed value at the time of the liquidation that must be taken into account.
- If the proceedings take a long time and the values have suffered some alterations, there is nothing to prevent a new valuation when the last stage is reached. There is no law or doctrine that a prior appraisal is conclusive upon the parties and the courts.

#### Credits in Favor of Partnership
- Any amount advanced during the marriage by the conjugal partnership in favor of any of the spouses shall be credited to the conjugal partnership as an asset.
- Advances made by the conjugal partnership of gains in paying the support of the illegitimate child of either spouse, the personal debts contracted before the marriage which did not redound to the benefit of the family and the payments of fines and pecuniary indemnities for which the spouse was made liable and which did not redound to the benefit of the family, shall be considered as assets.
- In cases of property bought by installments under Article 118 where conjugal funds and separate funds were used and where the property was owned separately by either spouses, the amount of conjugal funds used for completing the installment purchase shall likewise be considered as an asset of the conjugal partnership of gains.

#### Reimbursement in Favor of Spouse
- If separate funds of any of the spouses are used to buy conjugal property, such amount shall be reimbursed to the spouse.
- *In re Padilla:*
  Facts: A building separately owned by the wife was torn down to make way for the construction of new buildings owned by the conjugal partnership property.
  Issue: WON the value of the torn building should be paid by the conjugal partnership to the wife at the time of liquidation considering that the tearing down of the building benefited the partnership.
  Held: The value of the old building at the time it was torn down should be paid to the wife. It is certain that the old buildings had some value, though small. It is the duty of the commissioners mentioned in the judgment appealed from to assess that value.
Payment of Debts and Obligations of Partnership
- The reimbursement of the spouses for advances they made in favor of the conjugal partnership or for the value of their separate property which, by law, was vested to the partnership, has to be paid first before paying other debts and obligations of the conjugal partnership.
- Construction of tombstones or mausoleums shall be part of funeral expenses and shall be chargeable to the conjugal partnership property if the deceased is one of the spouses.
- In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties.

Delivery of Separate Properties
- The exclusive properties are owned by either spouses and should be delivered to them so they can immediately use what they respectively own.

Division of Net Remainder
- The net remainder constitutes the profits of the conjugal partnership property.
- The sharing will be equal unless there is a different proportion or division agreed upon in the marriage settlement or if there is a valid voluntary waiver of such share. A valid waiver can only occur upon a judicial separation of property or after the marriage has been dissolved or annulled and must be contained in a public instrument.
- In case of annulment of marriage, if either spouse is in bad faith in contracting the marriage, his/her share of the net profits of the 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.
- In cases of legal separation and annulment, the party in bad faith shall forfeit his share in the net profits.

- In case the marriage is judicially nullified and when only one of the parties 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 the absence of descendants, such share shall belong to the innocent party.

Delivery of the Presumptive Legitime
- The presumptive legitime is delivered only after the finality of a judicial decree of annulment on grounds provided in Article 45 or nullity of a subsequent void marriage under article 40.
- Delivery of the presumptive legitime need not be made in cases of legal separation or in case of a void marriage not as a result of the non-observance of Article 40 in relation to Articles 52 and 53.

Conjugal Dwelling
- 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, unless otherwise agreed upon by the parties.
- Children below 7 years of age are deemed to have chose the mother, unless the court has decided otherwise.
- In case there is no majority, the court shall decide, taking into consideration the best interests of the children.

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 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 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)

**POINTS**

**Identity of Provisions**
- Article 130 relative to the conjugal partnership of gains and Article 103 in connection with the absolute community of property are identical. Explanations under Article 103 are applicable here.
- The statement in a Transfer Certificate of Title describing the owner as married to somebody does not by itself give rise to the presumption of conjugality. The absence of proof that the property was acquired during the marriage deems the said property to be considered as owned by the person stated in the certificate. It shall not be considered conjugal. Accordingly, in case of death of the owner, this exclusive property shall be co-owned by the surviving spouse and his/her heirs. (*Estonia v. Court of Appeals*, 266 SCRA 627)

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 and among the different partnerships in proportion to the capital and duration of each. (189a)

**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 the Chapter. (187a)**

**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 the amount received for the support which exceeds the fruits or rents pertaining to them**

**POINTS**

**Advancement**
- When a spouse dies, the surviving spouse and the children become co-heirs of the estate left by the deceased. The amount for support which they are allowed to get must at least be
equivalent to the fruits or rents arising from the share which they will eventually obtain after liquidation.

- If what they go exceeded the fruits of their share, the excess shall be taken from the part of property which has been given to them as their separate property after liquidation.
- If the fruits are insufficient because their advances exceeded the amount of the fruits, then the excess shall be taken from the particular share delivered to them after liquidation.
- Only the surviving spouse and the children are entitled to get allowance for support. Other heirs are not included.
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.

POINTS
Judicial Separation of Property

- Absent any WRITTEN marital agreement stipulating that separation of property (SP) regime will govern, alterations to property relations after marriage to a SP regime can only be made with MANDATORY judicial approval.
  - Applies to separation by agreement under Art. 136 and by sufficient cause under Art. 135
- According to SC in Garcia v. Manzano on SP regime under the Civil Code, the requirements under this provision is consistent with the “policy of discouraging a regime of separation as it is not in harmony with the unity of the family and the mutual help and protection expected of the spouses.”
- Most cases judicial approval of SP is sought because spouses have already separated.

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)

Civil Interdiction – (1)

- FINAL DECISION of the court rendered against erring spouse embodying the penalty of civil interdiction is enough for the court to approve a judicial separation of property
- Definition: spouse sentenced to a penalty attached with an ACCESSORY PENALTY of civil interdiction.

Declaration of Absence – (2)

- FINAL DECISION of the court declaring the spouse absent is for the court to approve a judicial separation of property in this case.
- Grounds: Absence may be declared by EITHER: [1] 2 years lapsed without news about absentee or since the receipt of last news, or [2] 5 years in case absentee left a person in charge of the administration of property. (Art. 384 of the Civil Code)
some right over absentee’s property subordinated to the condition of absentee’s death. (Art. 385 of the Civil Code)

- Effectivity: Declaration of absence shall not take effect until 6 months after its publication in a newspaper of general circulation (Art. 386 of the Civil Code).

**Loss of Parental Authority – (3)**

- Requirements: To avail of the separation of property, petitioning spouse must show prior judicial declaration of loss of parental authority of the other spouse.
- FINAL DECISION of the court terminating parental authority is enough for the court to approve a judicial separation of property in this case.
  - Generally: it should indicate malice abuse, bad faith or culpable negligence on the part of the guilty spouse.
  - Example: sexually abusing a common child.

**Abandonment and Failure to Comply with Obligations to the Family – (4)**

- Concept here is the same as those under Art. 101.
- Abandonment: left the conjugal dwelling without intention of returning and with intent to absolutely forego his or her family duties. Leaving for a period of 3 months or failure within the same to provide any information to his or her whereabouts is prima facie presumed to have no intention of returning.
- Obligations to the Family: martial, parental or property relations.

**Abuse of Administration – (5)**

- Administration over property regime may be granted in favor of either spouse in the marriage settlement.
- Purpose: in cases of abuse, judicial SP may be availed of by aggrieved spouse in order to avoid further depletion of his or her interest in the properties.
- Grounds for Abuse: willful and utter disregard of the interests of the partnership, evidenced by repetition of deliberate acts and/or omissions prejudicial to the latter.
- Must be enough to constitute “ABUSE”
  - Basis of [1] and [2] is that it may be the result of mere inefficient or negligent administration
Separation in Fact – (6)
- Grounds: Time of PETITION, spouses must have been separated in fact for at least ONE YEAR and reconciliation is highly improbable.

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)

POINTS

Voluntary Separation
- Must have COURT APPROVAL to effect separation of either ACP of CPG, absent such, an agreement to separate shall be void.
- NEED NOT STATE ANY REASONS to separate such regimes. Agreement by the parties is enough.
  - If a reason is stated and is against public policy, the Court must reject such agreement.
- Petition for approval to separate may contain the plan or scheme as to how the properties are to be separated, and if not contrary to law or public policy, shall be granted by the court.
- Division must be equal unless there is a different agreement in the marriage settlement or there is a valid waiver of such share as provided in Arts. 102 (4) and 129(7) in the Family Code.
- Agreement for voluntary separation takes effect from the time of the judicial order decreeing the separation of the properties and NOT from the signing of the agreement.
- Toda Jr. v. Court of Appeals.

Creditors
- In case of a waiver of one of the spouses, any creditor of the spouse who made such waiver may petition the court to rescind the waver to the extent of the amount sufficient to cover the amount of the credit (Art. 89 and 107).
- In the case below, the SC was interpreting the provision on notice to creditors in Art. 191 of the Civil Code which was essentially adopted in par. 2 of Art 136 of the Family Code.
- De Ugalde v. De Yasi.
  - Issue: When judgment by way of compromise agreement on dissolving CPG become final and executory, does the fact that creditors were not notified, invalidate the judgment?
  - Held: No, judgment is upheld
  - Ratio: A judgment upon a compromise agreement has all the force and effect of any other judgment, and conclusive only upon parties thereto and their privies.
and not binding on third persons who are not parties to it.

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)

Liquidation

• “in conformity of this Code”: processes laid down in Arts. 102 and 129 must be observed.
  o EXCEPT: delivery of presumptive legitimes. It specifically applies only in case a marriage is annulled under Art. 45 or declared void for non-observance of Art. 40.

• Division must be equal unless there is a different agreement in the marriage settlement or there is a valid waiver of such share as provided in Arts. 102 (4) and 129(7) in the Family Code.

• Maquilan v. Maquilan, SC ruled that a PARTIAL VOLUNTARY SEPARATION OF PROPERTY agreed upon by the parties via a compromise agreement duly approved by the court prior to the judicial declaration of nullity of marriage is valid.

Art. 138. After dissolution of the absolute community or of the conjugal partnership, the provisions on complete separation of property shall apply. (191a)

• Properties acquired or expenses incurred by either spouse after the finality of the decree shall belong exclusively to either of them independently of the community properties or the conjugal partnership properties.

Art. 139. The petition for separation of property and the final judgment granting the same shall be recorded in the proper local civil registries and registries of property. (193a)

Art. 140. The separation of property shall not prejudice the rights previously acquired by creditors. (194a)

Rights of Creditors

• Purpose of the provision: Recording of petition and final judgment is to aid present and future creditors in determining whether an asset of a spouse is conjugal or really separate.

• In case of a waiver of one of the spouses, any creditor 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 the credit (Art. 89 and 107)

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)

**POINTS**

**Revival of Previous Property Regime**
- Termination of the causes under Art. 135 constitutes the grounds to be able to revive the previous property regime as set out in Arts. 141 (1) to (6).
- Parties can file for another petition for judicial separation of property once there are grounds again to initiate the same even if the ground invoked were the same ground previously used.
- In case the previous regime was separated by voluntary agreement, the parties can revive the same upon petition in Court (Art. 142 (7)). Afterwards, no more voluntary separation may be granted but if either spouse gives a cause for involuntary separation under Art. 135, proper proceedings for judicial separation invoking any of the grounds therein can be initiated and a proper decree of separation granted.

**Judicial Proceeding for Revival**
- Where: Spouses should file a motion in the same court proceeding where separation was decreed for a decree reviving the property regime.
- Agreement to revive the former property regime shall be executed UNDER OATH and shall specify: [1] properties to be contributed anew, [2] those to be retained as separate, [3] names and addresses of all their known creditors, and the amounts owing to each.
- Copies of the agreement of revival and the motion for its approval shall be furnished to the creditors named therein. After the hearing, court shall, in its order, take measures to protect the interest of creditors.
- Order shall be recorded in the proper registries of property (Art. 67).

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)

**POINTS**

**Guardian – (1)**
- When a spouse is judicially appointed guardian of his or her spouse, he or she may likewise be constituted as the administrator of the estate of the other spouse. This is so because the he or she is already obliged by law to live with and take care of the other spouse.

**Absentee and Civil Interdiction – (2) and (3)**
- Exactly the same as in Art. 135 (1) and (2), same explanations.

**Fugitive from Justice – (4)**
- Definition: “one who having committed or being accused of a crime in one jurisdiction is absent for any reason from that jurisdiction; specifically, one who flees to avoid punishment.”
Separation in Fact

- Recall that under Art. 100 (3) and 127(3), separation in fact shall not affect ACP or CPG as the case may be except that in the absence of sufficient funds in either regime, the separate properties of both spouses shall be solidarily liable for the support of the family.
- Spouse present shall, upon petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other and use the fruits and proceeds thereof to satisfy the latter’s share.

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)

POINTS

Suppletory Character
- To validly be governed by SP regime, it must be stipulated in the marriage settlement. The marriage settlement shall principally govern the SP regime and the Family Code shall be suppletory.

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)

POINTS

Properties Included
- Parties may agree on the extent of their SP regime. May involve present or future property or both. May be total or partial. If it is partial, the property not agreed upon as separate shall pertain to the absolute community.

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 liabilities of the spouses to creditors for family expenses shall, however, be solidary. (215a)

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
Persons and Family Relations Law

Professor Amparita Sta. Maria

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 all cases, the forfeiture shall take place upon termination of the cohabitation. (144a)

POINTS

Informal Civil Relationship

• There’s an informal civil relationship which entitles parties to some right though no technical marital partnership between persons living as husband and wife without being lawfully married or under a void marriage.

• Property relationship that is created under Arts. 147 and 148 is a special kind of co-ownership.
  o Co-ownership is a form of trust and every co-owner is a trustee for the other.

• Qualify under Art. 147, man and woman must: [1] capacitated to marry, [2] live exclusively with each other as husband and wife, [3] be without the benefit of marriage or under a void marriage. All requisites must CONCUR.
  o Example: live-in relationship between man and woman without the benefit of the marriage, if all requisites are present. Absence of any of the requisites will remove the contracting parties from Art. 147.

• Person with legal capacity to marry: defined in Art. 5 not under any impediments in Arts. 37 and 38

  o Informal civil partnerships where parties are below 18 or are incestuous void marriages or for reasons of public policy, can’t fall under Art. 147.
  o Must have reference to Art. 39 of the Civil Code stating that family relation limits a person’s capacity to act. Such as how a married man may not remarry without terminating the first marriage.

• Consequently, provided there are no other circumstances to make the marriage void under Arts. 37, 38, 35(1) and (4) which refer to marriages between persons below 18 and bigamous or polygamous marriage not falling under Art. 41, respectively, void marriages referred to under Art. 147 include void marriages under Art. 36 and void marriages where there is absence of an essential or formal requisite of marriage. (Art. 4)

• STRUCTURE of the property relationship under Art. 147:
  1. Salaries and wages = owned in equal shares
  2. Property acquired through exclusive funds = owned exclusively by buyer-spouse PROVIDED there is proof that he acquired it by exclusive funds
  3. Property acquired by both of them through work or industry = governed by rules of co-ownership. Either spouse may alienate his or her share in the property in favor of the other.
  4. Property acquired while they live together = presumed to have been obtained through joint efforts, work or industry and owned in equal share. A party who did not directly participate in the property’s acquisition shall be deemed to have contributed jointly in the same if the former’s efforts consisted in the care and maintenance of the family and of the household.
  5. Fruits of separate property = not included in co-ownership
  6. Property acquired after separation = exclusively owned by acquiring-party.
7. 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. However either may alienate in favor of the other his or her share. No one can donate or wave any interest in the co-ownership that would constitute an indirect or direct grant of gratuitous advantage to the other which is void pursuant to Art. 87.

8. When only one spouse in a void marriage is in good faith, share of the party in bad faith shall be forfeited in favor of the common children. If any or all of the common children or their descendants default or waives, each vacant share shall belong to the respective surviving descendants. In the absence of which, share shall belong to the innocent party. Forfeiture takes place upon termination of cohabitation.

- **Valdes v. RTC, SC stated that**...
  - in void marriage, property regimes are provided in Arts. 147 or 148 as the case may be.
  - Liquidation of the co-ownership shall be in accordance with the provisions on co-ownership under the Civil Code which aren’t in conflict with Arts. 147 and 148.
  - Arts. 50, 51 & 52 in relation to Arts. 102 and 129 of the Family Code won’t apply in liquidation and partition.
  - Arts. 102 (6) and 129 (9) which provide that conjugal home goes to the parent whom majority of children choose to remain is not applicable here. In a void marriage, conjugal home shall be equally divided during liquidation in accordance with rules on co-ownership.
  - Pars. 2, 3, 4, and 5 of Art. 43 relates only to voidable marriages under Art. 45 and exceptionally to void marriages under Art. 40.
  - If void marriage involved is the subsequent void marriage that may occur for non-observance of Art. 40, spouse in bad faith shall forfeit only his or her share of the NET PROFITS of the property regime in favor of common children, or children of guilty spouse by a previous marriage, or the innocent spouse. This is in accordance with Art. 43(2) in relation to 50.
  - Forfeiture of any other void marriage other than the one above-mentioned shall be governed by Arts. 147 and 148. Under Art. 147, not just net profits of spouse in bad faith but ALL HIS OR HER SHARES in the co-ownership shall be forfeited to the same parties. Under Art. 148, 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 marriage; and 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 Art. 147.

**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)

POINTS

Property Regime
- If any of the requirements under Art. 147 is absent, Art. 148 shall apply.
- Parties are deemed co-owners of property acquired during cohabitation only upon proof of actual contribution to its acquisition. Absence of proof, co-ownership cannot rise.
  o Fact that other party administered the property is irrelevant to prove co-ownership
- Relationships contemplated under Art. 148:
  o Man and woman living together as husband and wife but are NOT CAPACITATED to marry
  o Adulterous relationship even if it occurred prior to the effectivity of the Family Code
  o Bigamous or polygamous marriage
  o Incestuous void marriages under Art. 37
  o Void marriages by reason of public policy under Art. 38.
- Structure of the property regime (which is a LIMITED CO-OWNERSHIP) under Art. 148:
  1. Salaries and wages = separately owned. And if either is married, such salary is the property of the CPG of such legitimate marriage.
  2. Property through exclusive funds = belongs exclusively to such party
  3. Properties acquired by both parties through actual joint contribution of money, property, or industry = owned in common in proportion to the respective contribution.
  4. Respective shares of common property presumed to be equal. Proofs may be shown that their contribution and respective shares are not equal. Absent proof of actual contribution, no presumption of co-ownership and equal sharing.

5. Rule and presumption in #4 shall apply to joint deposits of money and evidences of credit.
6. If one spouse is validly married to another, his share in co-ownership shall accrue to the ACP or CPG existing in such valid marriage.
   ▪ If the party who acted in bad faith is not validly married, his share shall be forfeited in manner provided in the last paragraph of Art. 147. Foregoing rules on forfeiture shall apply also if both of them are in bad faith.

- Manila Surety & Fidelity Co., Inc. v. Teodoro,
  o Facts: Filipino spouses procured absolute divorce abroad and one of them contracted another marriage in Hong Kong
  o Issue: Can the liability of spouse who remarried be levied on the fruits of the separate property of his new “spouse”?
  o Held: No it may not be.
  o Ratio: Considering that such fruits were acquired by the new “spouse” prior to the solemnization of the second bigamous marriage, such fruits did not belong to the relationship that resulted from said bigamous marriage.
- Juaniza v. Jose,
  o Issue: woman living bigamously with a married man sought to be held liable for an accident involving a vehicle driven by her “husband” and where vehicle was registered under husband’s name
  o Held: Woman cannot be held liable as co-owner of the vehicle.
  o Ratio: Vehicle must be considered the conjugal property of the bigamous husband and his legitimate spouse.
- Belcodero v. Court of Appeals,
  o Facts: husband bought property in installments and thereafter left his family to bigamously marry another
woman. Said property was then put under the name of the woman after full payment.

- Issue: to whom does the property belong?
- Held: Property was conjugal partnership of the legitimate first marriage

- Ratio: Relying on the strength of the provisions in the Civil Code that “all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or wife,” and which presumption had not been convincingly rebutted. Hence no co-ownership between the husband and the woman over the property was made.

- Under the new Family Code, if the said property were bought through the joint contribution of money, property, or industry by both parties to the bigamous relationship, the share of the bigamous husband shall accrue to the absolute community or conjugal partnership existing in his or her legitimate marriage.

- Agapay v. Palang,
  - Facts: Sale of riceland in Binalonan, Pangasinan on May 17, 1973 was made in favor of Miguel and Erlinda, who at that time were cohabiting as husband and wife under a void marriage as Miguel’s marriage to Carlina was still subsisting.
  - Issue: Is Erlinda a co-owner of the Riceland?
  - Held: No, in bigamous marriage, Art. 148 applies especially when it was never shown that one of the spouses actually contribute to the co-ownership
  - Ratio:
    - Under Art. 148, actual contribution is required in contrast with Art. 147 stating that efforts in the care and maintenance of the family and household counts as contributions to the acquisition of the common property by one who has no salary or income or work or industry. If actual contribution is not proved, there will be no co-ownership and no presumption of equal shares.
  - Case at hand, though Erlinda tried to establish that she had a business, she failed to persuade us that she actually contributed money to buy the subject Riceland. Moreover, on the date of conveyance, she was only around 20 years old while Miguel Palang was 64 and a pensioner of the US government.
  - Considering this, it is unrealistic to conclude that in 1973 she contributed P3750 as her share in the purchase of subject property, there being no proof of the same.
  - Even assuming that property was bought before they co-habited, it would still fall under rules of co-ownership and proof of actual contribution would still be essential.
  - Absent proof of actual contribution, Riceland should, as correctly held by Court of Appeals, revert to the conjugal partnership property of the deceased Miguel and the private respondent Carlina Palang.

- Borromeo v. Descaller,
  - Facts: title of immovable property was registered under name of a Filipina wife considering that her Austrian husband, who acquired and fully financed the purchase of the same during cohabitation, was constitutionally prohibited from owning property in the Philippines. And where Filipina was already married to another person prior to marriage to the Austrian, Wilhelm Jambrich.
  - Issue: is the sale of said property by Jambrich to a third person valid?
  - Held: Sale is affirmed, registration of the title under wife’s name did not confer upon her absolute
ownership against convincing evidence that the property was financed exclusively by the Austrian.

- Ratio:
  - Respondent wife was still legally married to another when she and Jambrich lived together. In such an adulterous relationship, no co-ownership exists between the parties.
  - Necessary to prove actual contribution to common property as presumption of co-ownership and equal distribution do not apply.
  - Registration in wife’s name alone does not necessarily, conclusively and absolutely make her the owner. Registration is only a means of confirming the fact of the existence of ownership with notice to the world at large. Certificate of titles are not sources of right, as they merely imply that the title is quiet, perfect, absolute and indefeasible.
  - Rule on indefeasibility of title does not apply however to respondent as there are well-defined exceptions to this rule such as when transferee is not a holder in good faith and did not acquire the subject properties for a valuable consideration.
  - Such is that case now, it having been determined that the Austrian is the true buyer of said property, and respondent not contributing a single centavo. She had no income of her own at the time, nor savings.
  - Court is well-aware of the constitutional prohibition against foreigners directly or indirectly acquiring private land as embodied in Sec. 7, Art. XII.
  - As the rule now stands, the transfer of land from Agro-Macro Development Corporation to Jambrich would have been declared invalid if challenged, had Jambrich not conveyed the properties to petitioner who is a Filipino citizen.

- As provided in United Church Board for World Ministries v. Sebastian, if land is invalidly transferred to an alien who subsequently becomes a Filipino citizen or transfers it to a Filipino, the flaw in the original transaction is considered cured and the title of the transferee is rendered valid.
  - Applying the provision, the trial court was correct in upholding the sale by Jambrich in favor of petitioner and ordering the cancellation of the TCTs in the name of the respondent.
  - Reason for ruling in United Church Board for World Ministries case in the first place is that since ban on aliens is intended to preserve the nation’s land for future generations of Filipinos, that aim is achieved by making lawful the acquisition of real estate by aliens who became Filipino citizens by naturalization or those transfers made by aliens to Filipino citizens. As the property in dispute is already in the hands of a qualified person, a Filipino citizen, there would be no more public policy to be protected. The object of the constitutional provision having been achieved.

- Nicdao Cariño v. Cariño, SC recognized first marriage as void for lack of marriage license still considered second marriage bigamous, since though first marriage is void, it is presumed valid. Accordingly, SC applied Art. 148 as property regime.
  - Such decision however is confusing at it removes the distinction between Arts. 40 and 41, because if all subsequent marriage shall be considered void on the ground of bigamy anyway, what then would be the use of Art. 40 especially in light of the doctrine in Valdez v. RTC describing void marriage under 40 as very exceptional.
  - Submitted therefore that despite the Cariño decision, basic difference between 40 and 41 should be
Persons and Family Relations Law

Professor Amparita Sta. Maria

maintained. Better rule therefore is that pursuant to Art. 50, void marriage under Art. 40 shall have either ACP or CPG as the case may be and not co-ownership under Art. 148.

Forfeiture

- In case both parties acted in bad faith, such as if a spouse and his bigamous wife who happens to be a relative by consanguinity within the first civil degree of the former, jointly contribute to their co-ownership while living together, with both contributing their salaries, the co-ownership shall be liquidated as follows: share of the spouse who is obviously in bad faith shall accrue to the absolute community or conjugal partnership of his existing valid marriage while the share of the bigamous-cousin-wife who is also in bad faith shall be forfeited in favor of the common children. In case of default or waiver of their common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of which, share shall belong to the innocent party. Since there is no innocent party, the share of the bigamous-cousin-wife shall be given to said bigamous-cousin-wife.

- In this regard and for purposes of the share of the bigamous-cousin-wife only and considering further that both spouses are in bad faith, they shall be considered as if they are both in good faith and therefore the share of the bigamous-cousin-wife shall go to her.

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)

POINTS

Paramount Importance

- The state recognizes the Filipino family as the foundation of the nation.
- 1987 Constitution: “the State recognizes the sanctity of family life and shall protect and strengthen the family as a basic social institution” (Section 12, Article II)

Destructive Agreements

- No custom, practice or agreement destructive of the family shall be recognized or given effect.
- Example: An agreement that, while a marriage is subsisting, the husband can have a concubine or the wife can enter into an adulterous relationship is void. Such void agreement’s only legal significance is to invoke it as an evidence showing ‘consent’ to the sexual infidelity of the husband or the wife in cases of legal separation.

Parties in Court Case

- Section 4, Rule 3, 1997 Rules of Civil Procedure: ‘husband and wife shall sue or be sued jointly except as provided by law’. ‘Jointly’ means that they shall be sued together and does not refer to the nature of the liability.
- The necessity of being sued jointly is also because generally the spouses are joint administrators of either the ACP or the CPG.
- In Carandang v. Heirs of Quirino A. De Guzman, the SC allowed only one of the spouses to file a cases for recovery of property considering that a spouse is a co-owner of partnership property, he or she can therefore undertake anything beneficial to the partnership, including the filing by himself or herself alone of a case for the recovery of partnership property. The other spouse is neither an indispensable nor a necessary party.
- Article 111 of the FC provides that a spouse may appear alone in court if what is involved in the litigation is his or her separate and exclusive property.
• Joint management or administration does not require that the husband and wife always act together.
• The signature of the husband or wife alone is substantial compliance with the requirement that a verification and certification of non-forum shopping must be signed by the petitioners in a case.

Art. 150. Family Relations include those:
1) Between husband and wife;
2) Between parents and children;
3) Among other ascendants and descendants; and
4) Among brothers and sisters, whether of the full or half-blood.

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. (217a)

POINTS
Application
• Any person non included in the enumeration cannot be considered as within the term ‘family relations.’
• Collateral relatives who are not brothers and sisters are not included in the term ‘family relations.’ So are a husband and his sister-in-law.
• Article 151 need not be observed for parties which are not within the term ‘family relations’ or ‘family members.’

Earnest Efforts to Compromise
• Before a suit can be filed by a person against another belonging to the same family (Art 150), earnest efforts must first be made to settle the case amicably. Otherwise, the suit is dismissable.

Exemption
• The duty to engage in earnest efforts to compromise, however, is not required if included in the suit between family members is a stranger not of the same family as the interest of such stranger may differ from the interest of members of the same family.
• The rule will also not apply in cases enumerated in Art 2035 of the Civil Code which provides that no compromise upon the following questions shall be valid: 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.
• The rule on earnest efforts also does not apply to special proceedings like a petition for the settlement of estate guardianship and custody of children, and habeas corpus. The term ‘suit’ implies only civil actions.

Exemption from Criminal Liability in Crimes Against Property
• Art 332 of the RPC provides that no criminal, but only civil liability, shall result from the commission of the crime of theft, swindling or malicious mischief committed or caused mutually by the following persons: (1) spouses, ascendants and descendants, or relatives by affinity in the same line; (2) the widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and (3) brothers and sisters and brothers-in-law and sisters-in-law, if living together;
• The exemption in Art 332 shall not be applicable to strangers participating in the commission of the crime.

Running of Prescriptive Periods
• Art 1109 of the Civil Code: Prescription does not run between husband and wife, even though there be a separation of
property agreed upon in the marriage settlements or by judicial decree.

Neither does prescription run between parents and children, during the minority or insanity of the latter, and between guardian and ward during the continuance of the guardianship.

**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)

**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)

**POINTS**

**Constitution**
- A family home is deemed constituted on a house and land from the time it is actually occupied as a family residence. This stresses the element of permanence.
- The occupancy must be actual and not constructive.
- All residential houses used as a family home, with or without having been judicially or extrajudicially constituted as such prior to the effectivity of the FC, are deemed constituted by operation of law as a family home on Aug 3, 1988 (date of effectivity of the FC).
- A family home cannot be constituted by the husband or wife alone. It must be done jointly.

- An unmarried head of the family can constitute by himself or herself alone.
- A family home is not affected by the type of property regime of the spouses or by the fact that the marriage has been nullified.

**Exempt from Execution**
- The exemption from execution, forced sale or attachment provided by law is effective from the time of the constitution of the family home as such, and lasts so long as any of its beneficiaries actually resides therein.
- The exemption is not absolute. Under Art 155, the whole amount obtained from the sale of the family home may be taken by the creditor or obligee.
- Art 160 provides that a judgment creditor whose claim is not one among those provided in Art 155 may apply for the family home’s execution if he/she has reasonable ground to believe that the family home is worth more than the amount fixed in Art 157.
- In *People v. Chavez*, SC stated: ‘certainly, the ‘humane considerations’, for which the law surrounded the family home with immunities from levy, did not include the intent to enable a debtor to thwart the just claims of its creditors.’

**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 support. (226a)

**Beneficiaries**
- The actual occupancy of the beneficiaries may constitute the family home provided that their actual occupancy of the house
and lot is with the consent of either the husband and/or wife who own the house and lot or of the unmarried person who is the head of the family who likewise owns the house and lot, even if said owners do not actually reside therein.

- Requisites to be a beneficiary of the family home: (1) they must be among the relationships enumerated in Art 154 of the FC; (2) they live in the family home; and (3) they are dependent for legal support upon the head of the family.
- The beneficiaries are the people who are most likely to be affected by the constitution of the family home and its disposition.
- The enumeration in Art 154 may include the in-laws where the family home is constituted jointly by the husband and the wife. But the law definitely excludes maids and overseers.

Art. 155. The family home shall be exempt from execution, forced sale or attachment except:

1) For non-payment of taxes;
2) For debts incurred prior to the constitution of the family home;
3) For debts secured by mortgages on the premises before or after such constitution; and
4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building. (243a)

POINTS

Taxes
- Taxes are the lifeblood of the government and must be paid immediately and without delay.

Debts
- The term ‘debt’ used in the law, especially under Art 155(2) is not qualified and must therefore be used in its generic sense, which is ‘obligations’ in general. The whole value of the family home may be used to pay off the obligations in Art 155.
- In Gomez v. Sta. Ines, the SC ruled that because a home which was not a family home prior to the effectivity of the FC became a family home by operation of law upon the effectivity of the FC, the debt therefore can be considered as having been incurred before the constitution of the family home and hence can be subject to execution.

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 installment where ownership is reserved by the vendor only to guarantee payment of the purchase price may be constituted as a family home. (227a, 228a)

POINTS

Family Home
- The family home must be constituted at a place where there is a fixed and permanent connection with the persons constituting it.
- It must be part of the of the properties of the ACP or the CPG, 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.

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 bases of the evaluation.

For the purpose 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.

**POINTS**

**Value of the Family Home**
- If at the time of the constitution, the home was more than the value fixed by the law, such home is not a family home; therefore it is not exempted from execution, forced sale or attachment.
- The limits imposed are justified in that those who can afford more expensive homes do not need any protection and that the law is intended to protect the middle-class and to discourage them from spending all their money in a family home.
- However, it would be better to amend the law by not making the values in Art 157 as determinative of whether or not a home is family home but only to make such values as reserved amounts which cannot be reached by creditors as in the case provided in Art 160.

**Increase in Value of Family Home**
- The value provided for in Art 157 refer only to the value at the time of the constitution made after the effectivity of the FC.
- If after the constitution, the value of the house increased due to improvements or renovations to an amount more than that fixed by the law at the time of the constitution, such family home will remain a family home.

**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.

**Disposition of Family Home**
- The law specifically provides that the family home cannot be sold, alienated, donated, assigned or encumbered without the written consent of the following: (1) person constituting the same; (2) the latter’s spouse; and (3) a majority of the beneficiaries 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)

**Limitation After Death**
- The security of the family is a concern of the law and is the basis for this provision.
- The purpose of Art 159 is to avert the disintegration of the family unit following the death of its head.
- Even if the family home has passed by succession to the co-ownership of the heirs, or has been willed to any one of them, this fact alone cannot transform the family home into an ordinary property.

**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 the subsequent voluntary improvements 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 costs. The excess, if any, shall be delivered to the judgment debtor. (247a, 248a)

**POINTS**

**Judgment Creditor**

- There is a need under Article 160 for a court decision before a judgment creditor can avail of the privilege under Article 160 of the FC.
- Example: Suppose a creditor has a judgment in his favor directing the debtor to pay P500,000 and said debtor owns a family home worth P1M. Bidders cannot bid below P300,000. If the family home was sold for P700,000 only, the sheriff had to first give the debtor the amount of P300,000 and give the balance of P400,000 to the judgment creditor.
- The idea in having the house immune as to P300,000 is for the judgment debtor to be able to build a new family home so he/she will not be homeless.
- However, the judgment-claim and the judgment creditor making the claim should not be one of those mentioned in Art 155. So if for example, the creditors are laborers and the judgment amount of P500,000 represents the amount due them for services or materials for the construction of the family home, the whole amount of P700,000 shall first be applied to their claim. Hence, the amount P500,000 shall be given to them first and the excess P200,000 to the debtor. If the family home was sold for exactly P500,000, then all of it will go to the laborers and nothing to the debtor.

**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)

**Art. 162.** The provisions in this Chapter shall also govern family residences insofar as said provisions are applicable.

**POINTS**

**Application of Article 162**

- In *Modequillo v. Breva*, the contention of the petitioner that it should be considered a family home from the time it was occupied by petitioner and his family in 1969 is not well-taken. Art 162 simply means that all existing family residences at the time of the effectivity of the FC are considered family homes and are prospectively entitled to the benefits accorded to a family home under the FC. It does not mean that Art 152 and 154 of said code have a retroactive effect such that all existing family residences are deemed to have been constituted as family homes at the time of the occupation prior to the effectivity of the FC and are exempt from execution for the payment of obligations incurred before the effectivity of the FC.
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)

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. (55a, 258a)

Art. 165. Children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in this Code. (n)

POINTS
Policy of the Family Code
- Status of children can never be compromised because of the importance of filiation in family relations.
- Policy: Liberalize rule on the investigation of the paternity of children, especially illegitimate ones, without prejudice to the right of alleged parent to resist the claimed status with his own defenses, including evidence now obtainable through facilities of modern medicine and technology.

Paternity and Filiation
- Refers to the existing between parents and children.
- 2 classes of children now: LEGITIMATE and ILLEGITIMATE.
  - 5 distinctions of illegitimate children (natural child, natural child by legal fiction, acknowledged/recognized natural child, spurious child, or adulterous child) in the Civil Code have been eliminated.

Natural Children
- Considered legitimate if conceived or born during valid marriage.
- Presumption of legitimacy: arises upon CONVINCING PROOF that his parents were legally married and child’s conception or birth occurred during the marriage’s subsistence.
- Conception v. CA,
  - Facts: wife bigamously married another, and child was born in said union. Bigamous marriage declared null and void.
  - Issue: Father of the child?
  - Held: Child was in effect born of the wife in the first subsisting marriage and in the eyes of the law, the father of the child was the FIRST HUSBAND.
  - Ratio: The assertion that in the child’s birth certificate had stated the second husband as the father, which created a presumption of fact which should have been rebutted, was rejected by the Court stating that: “in case of conflict between a presumption of law that a child born inside a valid marriage is legitimate and a presumption of fact arising from the statement of filiation in a birth certificate, presumption of law prevails.”

Illegitimate Children
- Conceived and born outside of valid marriage or in a void marriage. BUT, there are exceptions when the law expressly provides for it as in Art. 54 of the Family Code:
- Legitimate/illegitimate filiation is fixed by law and can’t be left to will of the parties or declaration of any physician or midwife.
- Child’s filiation may be by NATURE or by ADOPTION.
Children conceived or born before judgment of annulment or nullity (Art. 36 – psychological incapacity), has become final and executory, shall be legitimate.

- Children born from subsequent void marriage due to non-compliance with Art. 52 and 53 shall be legitimate.

Artificial Insemination
- 2 Types: HOMOLOGOUS and HETEROLOGOUS
- Homologous: wife is artificially impregnated with husband’s semen. Procedure is called AIH (Artificial Insemination Husband)
- Heterologous: wife is artificially impregnated with 3rd party-donor’s semen. Procedure is called AID (Artificial Insemination Donor) and may be “CONSENSUAL” – with husband’s consent, or “NON-CONSENSUAL” – without husband’s consent.

Status of an Artificially Inseminated Child
- Legitimate, provided that par. 2, Art. 164 is complied with.
- If authorization or ratification therein was obtained through mistake, fraud, violence, intimidation or undue influence, husband may impugn the child’s legitimacy on said grounds.
- Because both spouses gave full consent to such:
  - Despite moral or religious objections in this method of conception (especially through AID), they do not stigmatize the child as a bastard.
  - Neither is there a need to adopt the child to confer full privilege of the rights of a legitimate child.
  - There is no marital infidelity as well. Child is not born outside the marriage.
  - Child is not “begotten” by a father, not the husband because in most cases, donor is anonymous and wife did not have sexual relations with the same.
- Father who consents to the production of a child through artificial insemination knows that it carries the legal responsibilities of fatherhood. It is not a temporary relation to be assumed and disclaimed at will.
- On the deliberations regarding provisions on artificial insemination and the ramifications of such to its legality, Justice Caguioa had the following to say:
  - ...we are not concerned with the legality/illegality or morality/immorality of artificial insemination. What we are concerned with is the status of the child. We can’t deny that this method exists and is being employed. And so, we cannot let the status of a child born in that method remain uncertain or in limbo. Moreover, in listing down who are “illegitimate,” we aren’t approving or legalizing having children out of wedlock. We are not concerned with the act, only the child’s status.
  - If par.2, Art. 164 is not complied with, and the husband does not impugn child’s legitimacy within the prescriptive period, child shall still be considered legitimate because he has been conceived or born during the valid marriage of the parents pursuant to par. 1, Art. 164.

No Criminal Liability for Adultery of Wife Artificially Inseminated without Consent of Husband
- Crime of adultery as defined in Art. 333 of the RPC is committed by any married woman who shall have sexual intercourse with a man not her husband. Though the gist of the provision is the danger of introducing illegitimate heirs to the family, artificial insemination does not involve sexual intercourse which is an essential element of adultery.
- Criminal statutes are strictly construed: no person should be brought within their terms who is not clearly within them nor should any act be pronounced criminal when it is not made so.
- Framers of RPC could not have contemplated artificial insemination as the time RPC took effect on January 1, 1932, this scientific procedure did not even exist in the Philippines.
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)

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. (256a)

### Points

**Applicability of Articles 166 and 167**

- **Art. 166** presupposes valid marriage. Only the HUSBAND and, in proper cases provided in **Art. 171**, the HEIRS can invoke the grounds in this article.
  - As a consequence of this condition *sine qua non* for the application of **Art. 166**, legitimacy of the child can be questioned on the ground that the marriage is void except if ground for nullity is **Art. 36** or **53**.
- In the event any of the grounds in **Art. 166** is proven, child will not be legitimate or illegitimate with respect to the father as they would have no relation whatsoever, not being a participant in the child’s procreation. For the mother, child is illegitimate.
- **Art. 167** makes it impossible for the wife to impugn child’s legitimacy because even if the wife knows that the child is of another man not her husband, her declaration that child is illegitimate or her being sentenced as an adulteress has no bearing and can never affect the legitimate status of the child born or conceived inside a valid marriage.
- Both **166** and **167** do not apply to a situation where alleged mother did not deliver the child herself, or did not come from her own womb. Woman being the child’s natural mother is a condition *sine qua non* for these articles to apply.
  - In an inheritance case where person claims to be the son of the alleged woman and decedent whose properties are being liquidated and such person-claimant was not delivered by the alleged mother, She can validly declare that said person is not related to her in any way. (Chua Keng Giap v. IAC)
- **Benitez-Badua v. Court of Appeals**
  - Facts: Person claims to be the only daughter of deceased couple whose estate was under consideration. Oppositors presented evidence to show that the alleged “daughter” could not have been that of the deceased because deceased-spouses could not physically procreate and claimant’s birth certificate was false as it was made because the couple desperately desired to treat the claimant as their child and wanted all documents to reflect this.
  - Issue: Should the trial court’s ruling in favor of said “daughter,” relying on Arts. 166 and 170 of the Family Code, be upheld?
  - Held: upholds the CA decision reversing the trial court’s ruling.
Applicability of Arts. 164, 166, 170 and 171 to the case at bench cannot be sustained. Careful reading of these provisions show that they do not contemplate a situation where alleged child is not a natural or biological child of the couple. Appellate court did not err when it refused to apply these articles to the case at bench. The case at bench is not one where the heirs of the late Vicente are contending that petitioner is not his child by Isabel. Rather, their clear submission is that petitioner was not born to Vicente and Isabel.

This legal provision refers to actions to impugn legitimacy. The case however is an action to claim inheritance as legal heir.

Macadangdang v. Court of Appeals clearly explained the nature and reason for the provisions mentioned in the above case:

Held: Rolando is presumed to be the legitimate son of respondent and her spouse

Ratio: presumption is conclusive, absent proof of impossibility of access between spouses in the first 120 days of the 300 which preceded the birth of the child. Presumption of legitimacy is based on assumption that there is sexual union in the marriage, particularly during the period of conception.

Modern rule: to overthrow the presumption, must be shown beyond reasonable doubt that there was no access as could have enabled the husband to be the father of the child. Where personal access is not disproved and unless such presumption is rebutted by evidence to the contrary, sexual intercourse is presumed; notwithstanding husband’s denial of having intercourse with his wife. If sexual intercourse is presumed, husband is taken to be the father of the child. Circumstance which makes sexual relations improbable does not defeat presumption of legitimacy but may be proved as circumstance to corroborate proof of physical impossibility of access.

Impotence is inability of the male organ to copulate or perform its proper function, or the physical inability to have sexual intercourse. Not synonymous with sterility as latter refers to inability to procreate. In respect of the impotency of the husband, 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.

Separation between spouses must be such as to make sexual access impossible. Such as: residing in different countries or provinces and never being together at the time of conception. Or husband is in prison during time of conception unless it appears that sexual union took place through corrupt violation of, or allowed by, prison regulations.

Illness of husband must be of such nature as to exclude possibility of intercourse with his wife such as a sacroiliac injury, where it’s inconceivable to have sexual intercourse due to severe pain; or illness causing temporary or permanent impotence making copulation impossible.

American courts have ruled that policy of the law is to confer legitimacy upon children born in wedlock when access of the husband at the time of conception was not impossible and there is presumption of legitimacy despite wife being guilty of infidelity at the time of conception. Presumption obtains notwithstanding voluntary separation.

Rule in Art. 167 for 2 reasons: (1) in a fit of anger, or to arouse jealousy in the husband, the wife
may have made this declaration. (2) Article is a guaranty in favor of the child whose condition shouldn’t be under the mercy of the passions of their parents. Husband whose honor is offended, by being aware of wife’s adultery, may obtain from the guilty spouse by coercion, a confession against the legitimacy of the child which may really be only a confession of her guilt. Or the wife, out of vengeance and spite, may declare the child as not her husband’s although the statement be false. There is another reason which is more powerful, demanding the exclusion of proof of confession or adultery, and it is that, at the moment of conception, it can’t be determined when a woman cohabits during the same period with two men, by whom the child was begotten, it being possible that it be the husband himself.

Hence in general, good morals and public policy require that a mother should not be permitted to assert the illegitimacy of a child born in wedlock in order to obtain some benefit for herself.

It has, therefore, been held that admission of the wife’s testimony on the point would be unseemly and scandalous, not only because it reveals immoral conduct on her part, but also because of the effect it may have on the child, who is in no fault, but who nevertheless must be the chief sufferer thereby. In the case of a child born or conceived in wedlock, evidence of the infidelity or adultery of the wife and mother is not admissible to show illegitimacy, if there is no proof of the husband’s impotency or non-access to his wife.

Declaration of Legitimacy

- Family Code amended old provisions in the Civil Code dealing with the legitimacy of children depending on when they were conceived or born. It provided declarations whereas the Civil Code gave presumptions. Be that as it may, it is clear that presumptions of legitimacy and paternity exist independently of statute, whether or not they are declarations.
- Presumption does not only flow from declaration in statute but is based on broad principles of justice and supposed virtue of the mother. To resolve the doubt in favor of the husband would be to determine that the wife had adulterous relations at the time of conception. This cannot be presumed as the law, “gives a confidence in the mother as if she were chastity itself.” Indeed the presumption is a branch of that general rule of equity and justice which assumes the innocence of a person until there is proof of guilt; and whenever it is not consistent with the facts proved, this presumption is controlling.

Rebutting Presumption

- Justice Cardozo in In re Findlay, correctly stated: while presumption is strong, still, if reason and experience dictates that it should not hold, then the presumption should be disregarded but only upon convincing evidence.
  - “The presumption does not consecrate as truth the extravagantly improbable, which may be one, for ends juridical, with the indubitably false.”
  - When the presumption is overcome by sordid facts, the courts must deal with the situation in a common sense way.
- In Art. 166, the exclusive grounds to impugn legitimacy which the husband or in proper cases, the heirs can invoke. Question of legitimacy concerns the infant, and it is in the jealous protection of his rights that the court must require clear and convincing proof of illegitimacy beyond the factual proof of adulterous intercourse.
120-300 Day Period

- Ordinarily and though actual date of conception can’t be determined, a woman carries a child approximately 270-280 days after its conception. Generally, experience shows that the average longest period of gestations is 300 days. Possible for it to exceed 300 and quite possible to be less.
- The law, in effect states that when a child is born within a marriage, sexual intercourse or access is presumed to have occurred between spouses within the first 120 days of the 300 day period immediately preceding the birth of the child and that any day within the 120-period is deemed a possible conception date. Experience has shown that a child may be born without any defect whatsoever even if the gestation period is only 6 months (or the 180-day time span between the 120th and 300th).

Physical Incapacity

- Presumption of legitimacy is so strong that evidence must be so convincing and persuasive to justify the bastardization of a child.
  - In a case where a man’s penis was cut, leveling his stomach, such that it was necessary to insert a metal instrument for him to urinate, thereby claiming physical incapacity; Court still ruled that presumption of legitimacy was not overcome. Despite the cut, it was still 3 inches, long enough to copulate, and also in light of evidence that he has engaged in sexual intercourse with other women. (Tarleton v. Thompson)
  - Fact that a husband, who was never separated from his wife, has been absolutely stiff at the hips at the time of conception, was not conclusive enough to overcome presumption of legitimacy.

Living Separately

- Must have lives separately in such a way that sexual intercourse is not possible.
- “Access” in the Civil Code was changed to “Sexual intercourse” although change was insignificant as it was always held to mean the same.
- Mere remoteness of wife from the husband is not sufficient to disavow paternity. Need to show that sexual intercourse was not possible because of such distance and non-cohabitation.
  - However, child born about 11 years after the mother left the husband in England and came to America with her paramour was proof that the child of the mother was not the legitimate son of the husband.
  - Moreover, Where a child was born in Italy almost 6 years after the husband left and emigrated to the US, and he never returned the country and his wife never left Italy, the court held that no presumption of legitimacy could be indulged.

Serious Illness

- Illness of the husband must be serious enough to prevent him from engaging in sexual intercourse.
- **Goss v. Froman**, Facts: where husband suffered from Bright’s disease and dropsy of the bowels, scrotum and thighs seriously causing the general excessive accumulation of fluid in the scrotum and in the skin of the penis, so much so that the penis proper could not be seen upon an examination, but that the orifice was visible and the general condition of the husband grew steadily worse even at the time when the alleged sexual intercourse with the wife occurred.
  - Issue: Is this sufficient evidence against paternity?
Held: Ruled that it was good evidence showing that the husband could not have begotten the child.

Ratio: Mere nature of the disease is good indicator. It is specially supported by the positive testimony from the doctor who examined the husband that he was physically incapable of performing the sexual act in that it was not possible for him to enter a woman so as to bring the semen in the tract in such a manner that the spermatozoa could find their way to the ova.

Biological and Scientific Reasons
- Paternity can be successfully impugned if, for biological and scientific reasons, the offspring could not have been that of the husband.
- Has been held that by laws of nature: a white couple cannot produce a black child. BUT, it is important to present evidence showing that neither of the spouses had black child ancestry as this would make it possible for them to beget such offspring.

Sterility
- Relative condition both as to degree and as to time.
- Medically as to a man’s sperm count, 60 million per cubic centimeter is normal and a count of 10 million per cubic centimeter is the minimum to impregnate at a high probability.
- Also, it takes only one sperm to successfully fertilize.
- For it to constitute proof of non-paternity on the ground of biological or scientific reasons, husband must be shown to be completely sterile at the time when the child was conceived.
  - Medical evidence showing that he was sterile 7 years before the birth of the alleged child and another one 4 years after the child’s birth indicating the same, it was deemed insufficient to displace the child’s legitimacy.
  - Case where husband cohabited in only a short period of time during which the alleged conception took place.
  - Medical evidence showing that he was sterile 7 years before the birth of the alleged child and another one 4 years after the child’s birth indicating the same, it was deemed insufficient to displace the child’s legitimacy.

Vasectomy
- Involves the removal of about an inch of the tubes or vas deferens which is the passage way of the sperm from the testicle to the urethra and tying the remaining ends.
- Fact that husband underwent vasectomy is not enough proof to rebut presumption of legitimacy. Since despite it, sperm can rechannel itself and effect fertilization.
- Fact of vasectomy must be coupled with concrete proof that husband was entirely sterile and rechannelization didn’t occur.

Scientific Testing
- Rationale for providing a ground to disprove paternity on scientific reasons is explained by Justice Reyes: “by recent date, certain biological tests, especially the Leukocyte test, enable scientist to determine within narrow limits the identity of the father and, therefore, we have admitted that the paternity of a person should be determinable by scientific evidence and not only by presumption.”
  - Present civil Code doesn’t admit of possibly investigating the paternity which have been permitted now by science. And it has been shown that these test are effective in determining actual paternity.
Leukocyte antigen test: provides an analysis of the blood of the parents and of the child to determine whether the suspect person is or is not the father.

- Number of blood grouping tests to determine paternity, such as the A-B-O test. However these test involve limited number of variables and are generally recognized as being accurate only in excluding paternity.
  - Hence they cannot accurately indicate if a particular person is the father – such as when alleged father and child have identical phenotypes, in many cases they can establish that an alleged father could not have been the sire – such as when none of the putative father’s phenotype(s) are present in the child’s blood type.
  - Absence of a father’s phenotype in the child’s would make his paternity biologically untenable.

- The Human Leukocyte Antigen (HLA) Test, referred to by Justice Reyes has been shown to prove paternity with a probability exceeding 98%, in addition to proving exclusion in numerous cases in which the A-B-O test would produce inconclusive results.
  - HLA test is a tissue typing test which was developed as a means of reducing the incidence of rejection of organ transplants. Test is generally performed on white blood cells but may be done with other body tissues.
  - It is based on identification and typing of antigen markers found in white blood cells and other tissues of the body.
  - Basic theory is that by identifying the antigen markers of a child and of the mother, the child’s antigen genetic markers which could only be inherited from the father can generally be determined, thereby identifying the father to a high degree of certainty.
  - Test is widely accepted by scientific communities because in cases involving organ transplants it is used to match the donor and the recipient. Accuracy is essential when dealing with the lives of patients.
  - This test however, is far more expensive than the standard blood grouping tests. But the possibility of this respondent being excluded if he has been incorrectly named is somewhat better than 90%.

- Scientific test that is dependable in determining filiation is the DNA Test. DNA is short for deoxyribonucleic acid which refers to the chain of molecules found in every cell of the body, except in the red blood cells, which transmit hereditary characteristics among individuals. DNA Testing is synonymous to DNA typing, DNA fingerprinting, DNA profiling, genetic testing or genetic fingerprinting. SC has held that the use of DNA testing is a valid procedure for determining paternity.
  - “analysis is based on the fact that the DNA of a person has 2 copies, one from the mother and the other from the father. The DNA from the mother, the alleged father and child are analyzed to establish parentage. Of course, being a novel scientific technique, the use of DNA test as evidence is still open to challenge. Eventually as the appropriate case comes, courts shouldn’t hesitate to rule on the admissibility of DNA evidence. For it was said, that courts should apply the results of science when competently obtained in aid of situations presented, since to reject said result is to deny progress. Though it is not necessary in this case to resort to DNA testing, in the future it would be useful to all concerned in the prompt resolution of parentage and identity issues.”
  - DNA result that excludes the putative father from paternity is CONCLUSIVE PROOF of non-paternity. If the probability of paternity resulting from DNA is 99.9%, this creates a refutable presumption of paternity, if it is less than 99.9%, it is merely corroborative.
Vitiated Consent in Artificial Insemination

- As provided in Art. 166(3), mistake, fraud, violence, intimidation, or undue influence in obtaining authorization or ratification of either parent can be exerted by not only the spouses against each other but also by third persons on both of the spouses or any one of them.
- However, legitimacy can only be impugned in the husband, as provided in Art. 170, and the heirs in special cases, as provided in Art. 171. Either party may allege that the wife was subjected to these causes (mistake, fraud, etc…), or the husband was himself subjected to the same, or both spouses were so subjected. However, even if the wife was indeed subjected, she can’t file a case to impugn the legitimacy for lack of legal standing pursuant to Arts 170, 171, and 167.

Non-observance of Procedure Relative to Artificial Insemination

- Law does not provide that non-observance of these procedures laid down by par. 2, Art. 164 is a ground to impugn the child’s legitimacy. In fact, the grounds in Art. 166 are EXCLUSIVE.
- In a case of a husband who consents to artificial insemination using his own sperm but later impugns the child’s legitimacy on the ground of non-compliance of the procedure, his case will fail. Law therefore binds the husband to his consent so that a legitimate status can be given to the child for the latter’s benefit. The husband in this case must simply accept the fact that the child is legitimate as he was born inside a valid marriage. Moreover, the child is technically his anyway, as the same was conceived by his sperm in his wife’s womb.
- If the wife obtains sperm from her husband which the latter donated to the sperm bank, and used the same to be artificially inseminated without the husband’s consent, the husband can impugn the legitimacy of the child under any of the grounds mentioned in Art. 166, subparagraph 1(a), (b), (c) and subparagraph 2, contending that it was physically impossible for him to have sexual intercourse with the wife at the time when the child was conceived.
- If the husband accedes to AID, and fails to comply with the procedure in par. 2 Art. 164, and he let the prescriptive period for impugning the child’s legitimacy lapse, the child will be considered the legitimate child of said husband and wife by virtue of par. 1, Art. 164.
- However, if it is AID and the husband, who because of his objection to artificial insemination, does not comply with the procedure in Art. 164, can impugn the child’s status by invoking any of the grounds under Art. 166, subparagraph 1(a), (b), (c) and subparagraph 2.
  - Same course of action can be taken if the husband initially acceded to the artificial insemination but failed or refused to comply with the requirements under Art. 164 and later on decided to impugn the child’s legitimacy. He should however impugn within the prescriptive period provided in Art. 170.
- If the husband agreed to AID, and all the requirements of law have been observed, the husband cannot anymore impugn the legitimacy of the child. He cannot invoke the grounds under Art. 166 (1), (2), and (3) because he precisely knew that the sperm was not his before acceding to the process of artificial insemination, thereby consenting to make the child as his legitimate child in accordance with the law. Moreover, Art. 166(2) provides that biological or other scientific reasons cannot be invoked to impugn legitimacy in cases of artificial insemination where par. 2 of Art. 164 has been observed.

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)

**POINTS**

**Access Presumed Prior to Termination of Marriage**  
- Access between spouses is presumed during the marriage and this presumption holds even immediately before the official termination of the marriage.  
- The law fixes the period of 300 days as the longest gestation period for a child inside the womb of the mother.

**Access NOT Presumed After Termination of Marriage**  
- When a marriage is terminated by decree of annulment or declaration of nullity or declared void from the beginning, access cannot be anymore presumed.  
- Under article 54, if a child is conceived or born before the finality of a decree of annulment based on art 45 or a decree of nullity based on art 36, a child shall be considered legitimate.  
- A decision or a decree of court becomes final after the lapse of fifteen days from receipt of such decision.

**Presumption of Filiation in Case of Two Marriages**  
- The rules in Art 168 will not apply in cases there are convincing proofs of filiation that the father of the child is the previous husband or the subsequent husband, as the case may be.

- The rules do not give any presumption as to legitimacy or illegitimacy but merely state when the child is considered to have been conceived.

**Proof to the Contrary**  
- Art 168 will only apply in the absence of proof to the contrary.  
- Once filiation is proved, the presumption of legitimacy attaches.  
- Alleged father can still impugn such legitimacy on the basis of the grounds laid down in art 166 and within the prescriptive periods provided in art 170.

**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)

**POINTS**

- In the absence of any subsequent marriage after the termination of the first marriage, the father of a child born after 300 days from such termination can be ANYBODY.  
- Whoever alleged the paternity of the child, whether legitimate or illegitimate, must prove such allegation. (People vs. Velasquez, 120 SCRA 847)

**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
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)

**POINTS**

**Parties**

- Impugning the legitimacy of the child is strictly a personal right.
- Legitimacy cannot be collaterally attacked or impugned. It can be impugned only in a direct suit precisely filed for the purpose of assailing the legitimacy of the child.
- Principally, only the husband can file a direct action to impugn the legitimacy of the child. This is true even if the child was conceived through heterologous artificial insemination or by a donor of sperm not the husband.
- The law exclusively made the husband, and under special circumstances his heirs, the sole judge of determining whether or not to file a proceeding, or continue such proceeding already filed, to dispute the legitimacy of a child born of the husband’s wife, since only the husband can know that he isn’t the father of the child.
- For example, a wife gives birth to a child of her paramour, the said child is born inside the valid marriage of the wife and the husband. If the paramour files an action for the custody of the child contending that he is the natural father, the action shall be dismissed because ONLY THE HUSBAND can claim that the child is illegitimate.
- **Tison v Court of Appeals:** A niece filed a case for reconveyance of the property of her aunt as the niece is one of the aunt’s heirs. The niece presented evidence that she was the legitimate daughter of her father, who was the aunt’s brother. The respondent filed a demurrer to evidence but the SC ruled that the niece could still avail of the presumption of legitimacy since respondent is not the ‘husband’ referred to in the law.
- **Babiera v Catotal:** A legitimate child filed a suit to cancel the birth certificate of her housemaid’s child who claimed to be her sister and therefore also a legitimate child of her parents. It was proven however, that the said child was not given birth by the mother of the legitimate child and that such birth certificate has been forged. Petitioner contends that respondent has no standing because the law states that the child’s filiation can impugned only by the father. This argument is incorrect because the real party in interest is the one ‘who stands to be benefited or injured by the judgment in the suit.’ Moreover, the above provision presumes that the child was the undisputed offspring of the mother. In this case, there is no blood relation to impugn because the legitimate child’s mother is not even the housemaid’s child’s natural mother.
- The heirs of the husband are mere substitutes of the husband and therefore cannot file any action to impugn the legitimacy of the child while the husband lives. They can file after the death of the husband but within the prescriptive period set in Article 170. ALL kinds of heirs are contemplated by law.
- The law does not give the mother the standing to file an action to impugn the filiation or legitimacy of her children because maternity is never uncertain.
Reason for the Limitation of Parties with Legal Standing

- The reason for preventing disavowal of paternity except within extremely narrow limits is based upon a desire to protect innocent children against attacks upon paternity.
- The state has an interest in protecting and preserving the integrity of the family unit and in protecting the best interest of the child.
- It has been decided that the biological father’s rights are subordinate to the collective rights of the child, the mother, the presumed father, and the family unit.
- This is also to prevent a child from repudiating his own legitimacy.

Prescriptive Periods

- The prescriptive periods for the husband or his heirs to impugn the legitimacy of the child are relatively short compared to the periods of other actions to avoid leaving in dispute for a long period of time the status of the child. It is as follows:
  - From knowledge of the birth or its recording in civil register, if impugner resides in the same city/municipality of birth or was recorded:
    - 1 year
  - Resides in a city/municipality of birth or recording for the same or abroad:
    - 2 years
  - Resides abroad:
    - 3 years
- If the birth of the child has been concealed from or was unknown to the husband or his heirs, period shall be counted from discovery or knowledge of the birth of the child or of the fact of registration of the birth, whichever is earlier.

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.

POINTS

Filiation Established

- SC has observed that “parentage, lineage and legitimacy can’t be made to depend upon parental physiognomy or bodily marks of similarity. There’s scarcely a family among any nationalities where there are a number of children, due to heredity, do not resemble either of the immediate parents. Lineage can’t depend
wholly upon presence or absence of paternal similarity of physical appearance.”
  o Resemblance between parent and child can be competent and material evidence to establish parentage if coupled with strong evidence, whether direct or circumstantial to prove filiation.
• In light of genetic profiling and DNA analysis, extremely subjective test of physical resemblance/similarity of features will not suffice as evidence to prove paternity and filiation before the courts of law.
• While Art. 172 refers to proof of legitimacy, the same may be used to prove illegitimacy as provided in Art. 175.
• Legitimate or illegitimate filiation doesn’t arise from the statements and admissions made in the documents mentioned in Art. 172(1) and (2) but from the fact that the children were conceived or born inside a valid marriage in case of legitimacy or from the fact that children were conceived and born outside a valid marriage or in a void marriage, in case of illegitimacy.
  o Art. 172, by providing documentary evidence establishing filiation, does not derogate the declaration made by law in Art. 164 regarding the child’s legitimacy. It only provides means to prove claims of filiation. Hence it may pale in legal significance upon clear showing that children were born inside a valid marriage in case of legitimate filiation and in case to the contrary.
• Probative value of the said documents attains great weight and significance over all other evidences where the child was born 300 days following the termination of marriage and no subsequent marriage was entered into because in this case there is neither declaration nor presumption of legitimacy or illegitimacy.
  o According to Art. 169, legitimacy or illegitimacy shall be proved by whoever alleges the same.

Record of Birth
• Record of birth appearing in the civil register is good proof as it proceeds from an official government source.
• Considered a public document. It is prima facie evidence of the facts contained therein.
  o As prima facie evidence, the statements therein may be rebutted. But in the absence of evidence to disprove the facts, presumption holds and the children will be considered legitimate.
• If the certificate of live birth is signed by the parents and more particularly the father, the same and those other modes in par. 1, Art. 172 are self-authenticating and are consummated acts and therefore no need to file any action for acknowledgement.
  o If the alleged father did not sign, placing of his name by the mother, doctor or registrar, is incompetent evidence of paternity of said child.
• Between presumption of fact created by record of birth and presumption or declaration of law in Art. 164, the latter prevails.

Final Judgment
• It’s a judicial decision bearing on the status of the child as legitimate hence, binding and conclusive. This is likewise a public document.
  o As such, final judgment arising from an action to claim legitimacy under Art. 173 is proof of filiation.
• Discussion of Civil Code and Family Law committees on the meaning of “final judgment”:
  o Justice Reyes: how will provision apply in case of a statement in a court of record referring to one as his or her legitimate child?
    ▪ Justice Caguioa: falls under “any other means allowed by Rules of Court”
▪ Justice Puno: there would be a distinction between a reportorial statement by the court of what happened and a finding by the court, the former isn’t a judgment.
  o Justice Puno: supposing court makes a finding but it is an obiter dictum, how will provision apply?
  ▪ Justice Reyes, which was concurred in by others: in this case, it is not part of the judgment and does not establish filiation.

• Final judgment based on compromise agreement where parties stipulated and agreed on the status of a person is void. As contractually agreeing and establishing civil status of a person is against the law and public policy. (Art. 2035[1] of Civil Code)

• In Rivero v. Court of Appeals, SC said that “paternity and filiation, or lack thereof, is a relationship that must be judicially established. It is for the court to determine its existence or absence. It can’t be left to the will or agreement of the parties.

Admission in Public or Private Handwritten Document
▪ Admission of legitimate filiation therein, signed by parent concerned is a complete act of recognition without need of court action. If it is a mere instrument, NOT in the alleged parent’s handwriting or it is not a public instrument, it will not qualify under the law.
  o Hence, child’s written consent to the operation of her alleged father is not proof of filiation.
  o Secondary student permanent record or a marriage contract stating that advice of alleged father was obtained, but was not signed by the father are not adequate proofs of filiation.

• In Lim vs. Court of Appeals, the following were convincing evidence to show filiation of petitioner-father:
  o Petitioner was the one who paid the hospital bills of the mother when she gave birth
  o He was the one that cause the registration of the name of the child using his surname in the birth certificate
  o He wrote handwritten letters to mother and child “promising to be a loving & caring husband and father”
  o When mother was pregnant, he advised her in a letter to take a lot of rest.
  o Also there were pictures of the petitioner on various occasions cuddling the child.

Open and Continuous Possession of Legitimate Status
▪ Absence of foregoing evidence, legitimate or illegitimate filiation can be proved by open and continuous possession of the status of a legitimate child.

• In Mendoza v. Court of Appeals, SC explained what continuous possession means
  o “Continuous” doesn’t mean that concession of status shall continue forever but only that it won’t be of an intermittent character while it continues.
  o “Possession of the status” means that the father has TREATED the child as his own, directly and not through others, spontaneously and without concealment but without publicity. Must be showing of permanent intention by supposed father to consider the child as his own, by continuous and clear manifestation of paternal affection and care.

• A higher standard of proof is needed in proving filiation using continuous possession as proof. Evidence must be clear and convincing.

• Paternal affection and care must not be attributed to pure charity. “Such acts must be of such a nature that they reveal not only the CONVICTION of paternity, but also the APPARENT DESIRE to have and treat the child as such in all relations in society and in life, not accidentally, but continuously.”
Jison v. Court of Appeals, held that the following overt acts and conduct satisfy the requirement: "Sending child to school, paying for her tuition fees, school uniforms, books, board and lodging at the Colegio del Sagrado de Jesus, defraying appellant's hospitalization expenses, providing her with monthly allowance, paying for the funeral expenses of appellant's mother, acknowledging appellant's paternal greetings and calling appellant his "hija" or child, instructing his office personnel to give appellant's monthly allowance, recommending appellant for employment at the Miller, Cruz & Co., allowing appellant to use his house in Bacolod, and paying for her long distance telephone calls, having appellant spend her vacation in his apartment in Manila and also at his Forbes residence, allowing appellant to use his surname in her scholastic and other records."

When the requirement above-mentioned for continuous possession has NOT been adequately shown:

- Alleged father met respondent only 4 times to give him money. SC ruled that for "continuous possession" to exist, father's conduct toward his son must be spontaneous and uninterrupted which is not the case here. (Ong v. Court of Appeals)
- Birth certificate unsigned by the father, claimant's student and governmental records purporting to show that alleged father was her father, and wedding pictures showing that alleged father gave her hand in marriage as proofs of filiation. (Angeles v. Maglaya)

Evidence under the Rules of Court and Special Laws

- Held: pictures, typewritten letters, and affidavits do not constitute proof of filiation.

Fact alone that a person used the surname of his father, after the latter's death, without his assent or consent, DOES NOT constitute proof of filiation.

In Mendoza v. Court of Appeals, SC held that "means allowed by the Rules of Court and special laws" consist of: baptismal certificate, a judicial admission, a family bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, the testimony of witnesses and such other kinds of proof admissible under Rule 130 of the Rules of Court.

- However, in earlier cases, canonical records, such as baptism record or certificate, do not constitute proofs of filiation. Such records are "simply proof of the only act to which the priest may certify by reason of his personal knowledge, an act don by himself or in his presence... it is no proof of the declarations in the record with respect to parentage of the baptized child or of prior and distinct facts which require separate and concrete evidence."

- Accordingly, for baptismal certificate to be proofs of filiation, must be shown that father therein participated in the preparation of the same. Birth certificate, unsigned by the father, is not competent proof.

- In Fernandez v. Court of Appeals, where a priest who officiated the baptism claimed he can recognize the father of the child as he was there during the baptism but at the same time testified that he had to be shown by the mother a picture of him to be able to recognize the father is not concrete testimony to prove filiation.

Rule has been summarized in Jison v. Court of Appeals:

- If the alleged father did not intervene in the birth certificate, e.g. supplying the information himself, the inscription of his name by any other person is null and void. Mere certificate by the registrar without the
father’s signature is not proof of voluntary acknowledgement on the latter’s part.

- The same lack of intervention or lack of participation in the preparation of baptismal certificate and school records, render them incompetent to prove paternity. Despite the inadmissibility to prove paternity, the school records may be admitted as part of the daughter’s testimony to corroborate her claim that her father spent for her education.

DNA Testing

- It is a valid means of determining paternity and whose significance was explained by the SC in *Herrera v. Alba*:

**DNA Analysis as Evidence**

DNA is the fundamental building block of a person’s entire generic make-up. The analysis is a procedure where DNA extracted from a biological sample is examined and processed to generate a pattern, or a DNA profile for the individual. This DNA profile is unique for each person, except for identical twins. It is found in every cell in the body and is unchanging throughout life.

  Chemical structure of DNA has 4 bases: A (adenine), G (guanine), C (cytosine), and T (thymine). The order in which the 4 bases appear in an individual’s DNA determines his physical makeup. And since DNA is a double-stranded molecule, it is composed of 2 specified paired bases, A-T or T-A and G-C or C-G. These are called genes.

  Every gene has a certain number f the above base pairs distributed in a particular sequence. This gives the person his genetic code. Somewhere in the DNA framework, nonetheless, are sections that differ. They are known as “polymorphic loci,” which are the areas analyzed in DNA typing (profiling, tests, fingerprinting, or analysis/DNA fingerprinting/genetic tests or fingerprinting). In other words, DNA typing simply means determining the “polymorphic loci.”

  Just like in fingerprint analysis, in DNA typing, “matches” are determined. When DNA or fingerprint tests are done to identify a suspect in a criminal case, the evidence collected from the crime scene is compared with the “known” print. If a substantial amount of the identifying features are the same, the DNA or fingerprint is deemed to be a match. But then, even if only 1 feature of the DNA or fingerprint is different, it is deemed not to have come from the suspect.

  Certain regions of human DNA show variations between people. In each of these regions, a person possesses 2 genetic types called “allele,” one inherited from each parent. In a paternity test, after a DNA profile is made of both mother and child and are examined together, you determine which half came from the mother. The other half must have been inherited from the biological father. Alleged father’s profile is then examined to ascertain whether he has the DNA type in his profile. If the DNA types match, then he is NOT EXCLUDED as the father, otherwise he is excluded.

**Admissibility of DNA Analysis as Evidence**

Although the court was wary towards DNA testing in the 1997 case of Pe Lim, it was considered in the 2002 case of *People v. Vallejo*, where the DNA profile from the vaginal swabs taken from the rape victim matched the accused’s DNA profile. We affirmed the accused’s conviction of rape with homicide and sentenced him to death. What was discussed in this case was the probative value and not the admissibility of DNA evidence. By 2002, there was no question on the validity of the use of DNA analysis as evidence. The Court moved from the issue of according “official recognition” to DNA analysis as evidence to the issue of observance of procedures in conducting the analysis.
In 2004, there was another case that had significant impact on jurisprudence on DNA testing. In the case of In re: The Writ of Habeas Corpus for Reynaldo de Villa, the convict-petitioner presented DNA test results to prove that he is not the father of the child conceived at the time of commission of the rape. The Court ruled that a difference between the DNA profile of the convict-petitioner and of the victim’s child does not preclude the convict-petitioner’s commission of rape.

In the present case, the various pleadings filed by petitioner and respondent refer to US jurisprudence on the admissibility of DNA analysis of evidence.

In Frye v. U.S., the standard formulated was of GENERAL ACCEPTANCE, such that admissibility of a new scientific principle or discovery depends on whether or not it has gained general acceptance in the particular field.

In State v. Schwartz, the Frye standard was modified stating that though generally accepted, admissibility of DNA typing hinges on the laboratory’s compliance with appropriate standards and controls, and the availability of their testing data and results.

Daubert v. Merrell Dow Pharmaceuticals, Inc. further modified the Frye-Schwartz standard. Now in federal trials, the Federal Rules of Evidence are said to have superseded the Frye standard. Aside from the standards under Rules 401, 402 and 702 of the Federal Rules of Evidence, the court further provided other factors to determine admissibility such as: (1) whether the test or theory can be tested, (2) whether it was subjected to peer review and publication, (3) the known or potential rate of error, (4) existence and maintenance of standards controlling the technique’s operation and (5) whether the theory or technique is generally accepted in the scientific community.

Kumho Tires Co. v. Car-michael, further modified the Daubert standard which led to the amendment of Rule 702 which added the qualifiers governing expert testimony. Such as if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Going back to the case at bench to determine the applicability in this jurisdiction of these American cases, we hold that the Frye-Schwartz and the Daubert-Kumho standards are not controlling in the Philippines and are merely persuasive. Here evidence is admissible when it is relevant to the fact in issue and is not otherwise excluded by statute or the Rules of Court. Evidence is relevant when it has such a relation to the fact in issue as to induce belief in its existence or non-existence. Moreover, Sec. 49 of Rule 130 governs admissibility of expert testimony. This rule does not pose any legal obstacle to the admissibility of DNA analysis as evidence.

In our jurisdiction, the Frye-Schwartz and the Daubert-Kumho standards contribute to the weight of the evidence and not to its admissibility.

**Probative Value of DNA Analysis as Evidence**

Despite our liberal rules on admissibility, trial courts should nonetheless be cautious in giving credence to DNA analysis as evidence. As we stated in Vallejo, in assessing the probative value of DNA evidence, therefore courts should consider, among other things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the test.

Going back to DNA analysis used in paternity tests, it is not enough to state that the child’s DNA profile matches that of the putative father; as a complete match does not necessarily establish paternity. For this reason, following the highest
standard adopted in an American jurisdiction, trial courts should require at least 99.9% as a minimum value of the Probability of Paternity (“W”) prior to a paternity inclusion. W is a numerical estimate for the likelihood of paternity of a putative father compared to the probability of a random match of 2 unrelated individuals. An appropriate reference population database is required to compute for W. Due to probabilistic nature of paternity inclusions, W will never equal to 100%. However the accuracy of W estimates is higher when the putative father, mother and child are subjected to DNA analysis compared to those conducted between father and child alone.

DNA analysis excluding the putative father from paternity should be conclusive proof of non-paternity. If the value of W is less than 99.9%, the results of the DNA analysis should be considered as corroborative evidence. If the value of W is 99.9% or higher, then there is refutable presumption of paternity. This refutable presumption of paternity should be subjected to the Vallejo standards.

Art. 172. Persons and Family Relations Law

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)

POUNTS

Action to Claim Legitimacy

• Right of action for legitimacy devolving upon the child is of a personal character and generally pertains exclusively to him.
• Only the child may exercise it at any time during his lifetime with the exception of 3 cases: (1) if he died during his minority, or (2) while insane, or (3) after action had already been instituted.
• Inasmuch as the right of action accruing to the child to claim his or her legitimacy lasts during his whole lifetime, he may exercise it either against the presumed parents, or his or her heirs.

Art. 174. Legitimate children shall have the right:

(1) To bear the surname 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 legitimate and other successional rights granted to them by the Civil Code. (264a)

POUNTS

Rights of the Legitimate Child

• Like the 1950 Civil Code and 1889 Spanish Code, the Family Code, establishes differences in rights of children according to the circumstances that surround their conception or birth. The greatest and preferential sum of rights is given to legitimate children.
• In filing an action to claim legitimacy/illegitimacy: Legitimate child – has his whole lifetime to file an action to claim his legitimacy regardless of what proofs he proves for in Art. 172.
Illegitimate child – has his whole lifetime to file an action to claim illegitimacy ONLY if he uses proofs under par. 1, Art. 172. If he uses those under par. 2, he could bring the action only during the parent’s lifetime.
• Right to file an action to claim legitimacy/illegitimacy: Legitimate child – right may be transmitted to his or her heirs as provided for in Art. 173.
Illegitimate child – right to claim his status as such is not transmissible to his heirs.

- Regards to support in the DIRECT LINE of relationship:
  Legitimate child – entitled to receive support from ascendants and descendants in accordance with the priority set by law (Art. 195 and 199).
  Illegitimate child – entitled to receive support only up to his or her grandparents and his grandchildren as provided for in Art. 195(2) and (3).

- Successional rights:
  Illegitimate child – legitimes shall be one-half of the legitimes of a legitimate child.

- Surname:
  Legitimate child – principally bear the father’s surname
  Illegitimate child – generally bear the mother’s surname

- Inheriting ab intestato:
  Legitimate child – right to inherit from the legitimate children and relatives of his father or mother (Art. 992 of the Civil Code)
  Illegitimate child – no such right.

Example: X has a legitimate child Y who, in turn, has 2 children, A (legitimate) and B (illegitimate)

If Y predeceases X, and X later dies, A may inherit from X by right of representation vis-à-vis Y who should have inherited it had he not predeceased X (Arts. 970-973 of the Civil Code). B, however, cannot inherit by right of representation because Art. 992 of the Civil Code states that an illegitimate child cannot inherit from legitimate relatives such as X (his father’s father), though X is his own grandfather as well.

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)

POINTS

Claim of Illegitimate Children

- Art 175 contemplates a situation where a child born outside a valid marriage or inside a void marriage, except those provided for in Art 54 of the Family Code, seeks to claim his or her illegitimate status.
- If a child is born inside a valid marriage, such child is legitimate, even if the child’s biological father is not the mother’s husband, and it is up to the husband to file a case to impugn the legitimacy of the child.
- The child cannot be allowed to file the action to claim his illegitimate status in the above example.
- Only the wife’s spouse and his heirs, in special cases, are given legal standing to file an action to impugn the legitimacy of the child.

Proofs

- The same proofs as provided for in Art 172 for legitimate children may be used by illegitimate children in proving their filiation.
- Mendoza v Court of Appeals: An illegitimate child is allowed to establish his claimed filiation by ‘any other mans allowed by the Rules of Court.’ The following are the requisites that have to be complied with before the act or declaration regarding pedigree may be admitted in evidence: (1) the declarant is dead or
unable to testify; (2) the pedigree must be in issue; (3) the declarant must be a relative of the person whose pedigree is in issue; (4) the declaration must be made before the controversy; (5) the relationship between the declarant and the person whose pedigree is in question must be shown by evidence other than such declaration.

- The proof of illegitimate filiation must be clear and convincing.
- **Jison v Court of Appeals:** Entries in family bibles or other family books or charts, engravings on rings, family portraits and the like may be received as evidence of pedigree. Private letters and notes do not fall under the above mentioned.
- **Verceles v Posada:** Admitted loves letters of the petitioner in his own handwriting and declaring that he will have no regrets and that they should rejoice in the responsibilities should the respondent become pregnant qualifies as a private handwritten instrument that can establish filiation.

**Prescriptive Period**

- If the proofs to be used are those under the 1st paragraph of Art 172, the illegitimate child has his/her whole lifetime to bring the action to claim his/her illegitimate status.
- If the proofs to be used are those under the 2nd paragraph of Art 172, the illegitimate child may only bring the action during the lifetime of the alleged parent.
- A party must be allowed to adduce the proof of his illegitimacy to be able to know whether he or she falls under the first or second paragraph of Art 172.

**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. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. **Provided,** the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of the each illegitimate child shall consist of one-half of the legitime of the legitimate child. (As amended by Republic Act 9255)

### POINTS

**Rights of an Illegitimate Child**

- The rights of an illegitimate child are not equal or the same with that of a legitimate child.
- The illegitimate child will generally use the surname of the mother and his or her legitime shall consist of half of that of the legitimate child.

**Parental Authority**

- The illegitimate child shall be under the parental authority of the mother.
- The father is not given parental authority notwithstanding his recognition that the child is his.
- However, if the alleged father admits and acknowledges that the child is his and it is conclusively shown, and the father lives together with the child and the child’s mother under a void marriage or without the benefit of marriage, Art 211 of the FC will apply.
- Art 211 of the FC: The father and the mother shall jointly exercise parental authority over the person of their common children. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.

**Surname**

- The illegitimate child shall use the surname of his/her mother.
- Illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an
admission in a public document or private handwritten instrument is made by the father. Nevertheless, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime.

Chapter 4 – LEGITIMATED CHILDREN

Art. 177. Children conceived and born outside of wedlock of parents who, at the time of conception of the former, were not disqualified by any impediment to marry each other, or were so disqualified only because either or both of them were below eighteen (18) years of age, may be legitimated. (as amended by RA 9858)

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)

Art. 179. Legitimated children shall enjoy the same rights as legitimate children. (272a)

Art. 180. The effects of legitimation shall retroact to the time of the child’s birth. (273a)

POINTS

Statutory Creation

- Legitimation is purely a statutory creation.
- Before a child can be legitimated, the requirements of the law must be strictly complied with.
- Laws providing for the process of legitimation are remedial in character and may be applied retroactively.

Requirements

- The following are the essential and mandatory requirements that must be present in the process of legitimation:
  1) The parents do not suffer any legal impediment or are disqualified to marry because either one or both of them are 18 yrs of age at the time of the conception of the child by the mother;
  2) The child has been conceived and born outside of a valid marriage.
  3) The parents subsequently enter into a valid marriage. This is the last step which by operation of law will finally legitimate the child. The annulment of a voidable marriage shall not affect the legitimation.
- Acknowledgement of the father is no longer a condition for legitimation of the child (it was a condition before the effectivity of the Family Code)
- A legitimating statute adopted after the birth of an illegitimate child will not affect property rights which have already been vested.
- Legitimation cannot occur if either or both of the parents, at the time of the conception of the child, are disqualified by any impediment to marry each other (except if such impediment is that they are below 18 yrs of age).
- Adulterous children cannot be legitimated.
- Children of bigamous marriages cannot be legitimated.

Effects of Legitimation

- The effects of legitimation retroact to the child’s birth.
- Legitimated children shall enjoy the same rights as legitimate children.
- Legitimation creates for the legitimated child the total and full extent of the blood-relationship existing within the family to include all descendants, ascendants, and collateral relatives.

Art. 181. The legitimation of children who died before the celebration the marriage shall benefit their descendants. (274a)

POINTS
Benefit to Descendants

- The reason of the provisions of this article is to give the children what they should have enjoyed during the lifetime of their father or mother.
- (1) Under the law, legitimate ascendants and descendants are obliged to support each other. For example, in the legitimate direct line, a great grandparent is obliged to support his great-grandchild.
- (2) Under the law also, if there is an illegitimate child, parents are only obliged to support their illegitimate child and the illegitimate or legitimate children of their illegitimate child.
- Legitimation of children who died before the celebration of the marriage shall benefit their descendants. Thus, the obligation of support shall extend to cover that stated in (1).

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.

POINTS

Prescriptive Period

- The term ‘rights’ generally refers to successional rights.
- The persons who can be prejudiced in their rights by the process of conferring someone all rights of a legitimate child are the legal heirs of the parents.
- The cause of action to impugn the legitimation accrues only upon the death of the parents of the legitimated child because it is only at that time when the successional rights to the legitime will vest.
- Even an adopted child can be a prejudiced heir not only of his/her adopter but also of his/her natural parents in case a child of the said parents is legitimated.
TITLE VIII - SUPPORT

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

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work. (290a)

POINTS

Support

• Support includes whatever is necessary to keep a person alive.
• The clause “in keeping with the financial position of the family” determines the amount of support to be given.
• Natural support is to basic necessities while civil support refers to anything beyond the basic necessities. The clause above removes this distinction.
• Schooling refers to formal education while training refers to non-formal education.

Article 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

1) The spouses;
2) Legitimate ascendants and descendants;
3) Parents and their legitimate children and the legitimate and illegitimate children of the latter; and
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)

POINTS

Mandatory Nature

• Support is a mandatory obligation.
• The SC has even said that support is the most sacred and important of all obligations imposed by law and it is imposed with overwhelming reality.
• The waiver, renunciation, transmission or compensation of the right to receive support cannot still be undertaken as such acts are contrary to law, public policy, morals or good customs pursuant to Art 6 of the Civil Code.
• De Asis v Court of Appeals: A mother in a previous support-case manifested that it was useless to claim further support for her son from the defendant who denied paternity and where she agreed to the dismissal of the said case provided that the defendant did not pursue his counterclaim, the SC held that such manifestation did not bar the mother from filing a subsequent case for support on behalf of the child.

Between Spouses

• Duty to support & the right to be supported presupposes a valid marriage between the parties. This is based on their obligation to mutually help each other created by matrimonial bond.
• Dadivas de Villanueva v Villanueva: A husband cannot, by his own wrongful acts, relieve himself from the duty to support his wife. The SC allowed separate maintenance to be given to the wife by the husband.
• But adultery of the wife is a valid defense against an action for support.
• Also, a spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported from the CPG or ACP.
• When the validity of the marriage is in issue, the aggrieved party cannot be given support pendente lite by the other spouse immediately without due hearing.
Pending the proceedings for legal separation or annulment of marriage, the spouses shall be supported by the ACP or the CPG. Once a marriage is annulled or declared void ab initio, the obligation to give support ceases. In legal separation, support ceases unless the court orders the guilty spouse to support the innocent spouse.

Between Ascendants and Descendants
- All members of the family in the direct legitimate ascending and descending line are obliged to support each other.
- The purpose of this is to ensure that members of the family make sure that the other members of the same family do not become a burden to society.
- A valid defense to refuse by a husband to a child claiming support is that such child is the fruit of an adulterous relationship.

Between Parents and Their Legitimate Children and the Legitimate and Illegitimate Children of the Latter
- Parents are obliged to support their children and their grandchildren whether legitimately or illegitimately related to their legitimate children and vice versa.
- The persons obliged to support each other are limited from the grandparents to the grandchildren only and vice versa.

Between Parents and Their Illegitimate Children and the Legitimate and Illegitimate Children of the Latter
- Parents are obliged to support their illegitimate children and their grandchildren whether legitimately or illegitimately related to their illegitimate children and vice versa.
- The persons obliged to support each other are limited from the grandparents to the grandchildren only and vice versa.
- It has been held that when the status of a child is in issue in a hearing for support pendente lite, the alleged child can get support in the meantime from the alleged parent if his status as such has been proven provisionally by prima facie evidence.
- Quimiging v Icao: A conceived child yet unborn is given by law a provisional personality of its own for all purposes favorable to it. The unborn child has a right to support from its progenitors.

Between Legitimate Brothers and Sisters, Whether Full or Half-Blood
- Uncles, aunts, nephews, nieces are not obliged to support each other.

Article 196. Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth in Article 194, except only when the need for support of the brother and sister, being of age, is due to a cause imputable to the claimant’s fault or negligence. (291a)

POINTS

Illegitimate Brothers and Sisters
- If an illegitimate brother or sister is of age and the need for his or her support is due to his or her fault or negligence, support does not become a demandable right.

Article 197. For the support of legitimate ascendants; descendants, whether legitimate or illegitimate; and brothers and sisters, whether legitimately or illegitimately related, only the separate property of the person obliged to give support shall be answerable provided that in case the obligor has no separate property, the absolute community or the conjugal partnership, if financially capable, shall advance the support, which shall be deducted from the share of the spouse obliged upon the liquidation of the absolute community or of the conjugal partnership. (n)
POINTS

Source

- The source of support for the obligor’s legitimate ascendants, legitimate or illegitimate descendants, brothers and sisters whether legitimately or illegitimately related, shall be the separate property of the person obliged to give support.
- If the legitimate descendants are the common children of the spouses or the legitimate children of either spouse, the ACP or CPG shall be principally charged for their support.
- The ACP or CPG, if financially capable, shall advance the support, which shall be deducted from the share of the spouse obliged upon the liquidation of the ACP or CPG, if there is NO (not merely insufficient) separate property of the obligor.
- Mere insufficiency of the separate property is enough to make the ACP liable in the meantime for the support of ILLEGITIMATE CHILDREN.
- Principally, the ACP or CPG shall be liable for the support of the spouses.
- In the absence of ACP or CPG, support of the spouse can be taken from the income or fruits of the separate property of the obligor-spouse, and in case of insufficiency/absence of income or fruits, from the property itself.

Support Pendente Lite

- Pending litigation, if there is ACP or CPG, support for the spouses and the children shall be drawn from the ACP or CPG.
- Adultery by the wife is a good defense in an action of support, if proven and sustained properly.
- Lerma v Court of Appeals: A wife convicted of adultery filed a case against her husband for legal separation. She invoked art 198 for support but husband said that the wife’s adultery is a defense for him to resist giving her support pendente lite. The SC ruled that the right to separate support or maintenance, even from the conjugal partnership property, presupposes the existence of a justifiable cause for the spouse claiming such right to live separately. A petition in bad faith cannot be considered as within the intendment of the law granting support.

Article 198. During the proceedings for legal separation or for annulment of marriage, and for declaration of nullity of marriage, the spouses and their children shall be supported from the properties of the absolute community or the conjugal partnership. After 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)

Article 199. Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:

1) The spouse;
2) The descendants in the nearest degree;
3) The ascendants in the nearest degree; and
4) The brothers and sisters. (294a)

Article 200. When the obligation to give support falls upon two or more persons, the payment of the same shall be divided between them in proportion to the resources of each.

However, in case of urgent need and by special circumstances, the judge may order only one of them to furnish the support.
provisionally, without prejudice to his right to claim from the other obligors the share due from them.

When two or more recipients at the same time claim support from one and the same person legally obliged to give it, should the latter not have sufficient means to satisfy all claims, the order established in the preceding article shall be followed, unless the concurrent obliges should be the spouse and a child subject to parental authority, in which case the child shall be preferred. (295a)

**POINTS**

**Order of Priority**

- Example: in the presence of the spouse, the descendants nearest in degree are not obliged to give support.
- **Mangonan v Court of Appeals**: The court ordered the well-off grandfather to support his grandchildren because the parents were not capable of supporting the said children.

**Article 201.** The amount of support, in the cases referred to in Articles 195 and 196, shall be in proportion to the resources or means of the giver and to the necessities of the recipient. (296a)

**Article 202.** Support in the cases referred to in the preceding article shall be reduced or increased proportionately, according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to furnish the same. (297a)

**POINTS**

**Proportionality**

- The law is not unreasonable to contemplate a situation where the one giving the support shall be compelled to make such support to the detriment of his or her own being and existence.

**Support must be based on the necessities of the recipient and the resources or means of the person obliged to give support.**

**Provisional Character of Support Judgment**

- Any judgment for support DOES NOT become final because of the changing needs of the recipient and the changing ability of the provider.
- **Samson v Yatco**: If the petitioners’ right of support had already been recognized by the court or the respondent, an order of dismissal of the action for support on some other grounds cannot be with prejudice as this would deprive the petitioners the right to present and future support.
- **Velayo v Velayo**: The judgment for support does not become dormant. The support under the judgment becomes due from time to time as provided.

**Article 203.** The obligation to give support shall be demandable from the time the person who has a right to receive the same needs it for maintenance, but it shall not be paid except from the date of judicial or 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. When the recipient dies, his heirs shall not be obliged to return what he has received in advance. (298a)

**POINTS**

**Demand**

- Payment of the amount for support starts only from the time support has been judicially or extra-judicially demanded.
- **Jocson v Empire Insurance Co.**: Support must be demanded and the right to it established before it becomes payable.
- **Baltazar v Serfino:** An illegitimate child was born in 1943 and the extrajudicial demand for support was made only in 1959, the SC held that payment of support should begin only from 1959. The obligation to give support shall be demandable from the time the person who had a right to receive the same needed it for maintenance.
- **Baltazar v Court of Appeals:** The SC held that the child is entitled to support in arrears for a period of 12 years to cover the previous expenses in her education and until she reaches majority.

**Support in Arrears**

- **Mangonan v Court of Appeals:** The SC allowed the payment of support in arrears considering that the children, who should have been given support, must have already finished their schooling by the time the decision was rendered. The amount of support to be paid was computed from the time they entered college until they had finished their respective studies.

**Article 204.** The person obliged to give support shall have the option to fulfill the obligation either by paying the allowance fixed, or by receiving and maintaining in the family dwelling the person who has a right to receive support. The later alternative cannot be availed in case there is a moral or legal obstacle thereof. (299a)

**POINTS**

**Option**

- The right to elect the manner of support is conferred by law upon the person obliged to give support.
- **Mangonan v Court of Appeals:** The grandfather obliged to support his grandchildren was not allowed to take custody of the children because his relationship with the said children has already turned sour.

**Article 205.** The right to receive support under this Title as well as any money or property obtained as such support shall not be levied upon on attachment or execution. (302a)

**Exemption from Attachment or Execution**

- Anything obtained by way of support necessarily implies provisions made for the survival and well-being of the recipient and can therefore not be attached nor be subject to execution.
- 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.

**Article 206.** When, without the knowledge of the person obliged to give support, it is given by a stranger, the latter shall have a right to claim the same from the former, unless it appears that he gave it without intention of being reimbursed.

**Article 207.** When the person obliged to support another unjustly refuses or fails to give support when urgently needed by the latter, any third person may furnish support to the needy individual, with a right of reimbursement from the person obliged to give support. This Article shall apply particularly when the father or mother of a child under the age of majority unjustly refuses to support or fails to give support to the child when urgently needed. (2166a)
Quasi-Contract

- The relationship between the stranger and the person obliged to give support is a quasi-contract.
- Whoever advances the support shall be entitled to reimbursement unless the grantor gives it as an act of liberality of without intending to be reimbursed, but requirements under art 206 must be present.
- Ramirez and De Marcaida v Redfern: A spouse obtained money from her sister. The said sister and the sister’s husband sued the husband of the said spouse for reimbursement. The requirements for one to recover are (1) support has been furnished a dependent of one bound to give support but who fails, (2) the support was given by a stranger, (3) the support was given without the knowledge of the person charged with the duty.
- The requisites of Art 207 are: (1) there is an urgent need to be supported on the part of the recipient, (2) the person obliged to support unjustly refuses or fails to give support, (3) a third person furnishes the support to the needy individual. If all the requisites are present, the third person shall have a right of reimbursement.

Article 208. In case of contractual support or that given by will, the excess in amount beyond that required for legal support shall be subject to levy on attachment or execution. Furthermore, contractual support shall be subject to adjustment whenever modification is necessary due to changes in circumstances manifestly beyond the contemplation of the parties. (n)

POINTS
Contractual and Testamentary Support

- Legal support is that which is mandated by law to be given and that which is provided in Art 194.
- Contractual support is one which is entered into by the parties usually with reciprocal duties and obligations. It is not mandated by law.
- In case of contractual support and that given by will, the excess in amount beyond that required for legal support shall be subject to levy on attachment or execution.

TITLE IX. – PARENTAL AUTHORITY
Chapter 1 – GENERAL PROVISIONS

Article 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing of such children for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being. (n)

POINTS
Natural Right
- Natural affection between parent and child is a recognized inherent natural right. “It is cardinal that the custody, care and the nurture of the child reside first in the parents whose primary function and freedom include the preparation for obligations the state can neither supply nor hinder.”

Parental Authority
- “Involves a mass of rights and obligation which the law grants for the purpose of the children’s physical preservation and development, as well as the cultivation of their intellect and the education of their hearts and senses. There is no power, but a
task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the minor’s welfare.” (Cong v. CA)

Article 210. Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law. (313a)

POINTS

Renunciation and Transfer of Parental Authority

- Because the child’s upbringing is a sacred duty entrusted to parents, it cannot just simply be renounced.
- Santos v. CA
  - Facts: father who wasn’t shown to be unfit took away his son from the custody of the grandparents through deceit, false pretensions, and trickery
  - Issue: Who has lawful custody?
  - Held: Father has the rightful custody of his child
  - Ratio: Right attached to parental authority, being purely personal, the law allows a waiver of parental authority only in cases of adoption, guardianship and surrender to a children’s home or an orphan institution.

  Entrusting the custody of a minor, such as to a friend or godfather, even in a document, is only temporary custody and not a renunciation. Even if it was a manifest renunciation, the law disallows the same. Only in case of the parent’s death, absence, or unsuitability may substitute parental authority be exercised by the surviving parents.

  In present case, there’s no proof that father can’t support the child. Fact that he wasn’t able to support him financially for 3 years doesn’t strip him of custody nor his being a soldier & going around the country. His efforts to get the child and take care of him construed as an act to rectify his past misdeeds. The father’s employment of trickery, though unjustifiable is not a ground to wrest custody from him.

- Parental authority can be terminated for causes provided in Arts. 228 to 232 of the Family Code.
  - An omission to discharge parental duties is a public wrong which the state, under police power, may prevent. Each parent also has an equal duty to support and protect the child and can’t stand passively by and refuse to do so when it is reasonably within his power.
  - Duty of care not dependent on custody. Mother may care for a child who is in the custody of the father.

Article 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.

Children shall always observe respect and reverence towards their parents and are obliged to obey them as long as the children are under parental authority. (311a)

POINTS

Joint Parental Authority

- Precept is in accord with the natural order of life. Parents aren’t expected to have compartmentalized concern over their children or their parental love to be split up to serve different purposes.
- Unlike in the Civil Code where joint parental authority was to be exercised over an acknowledged natural child as opposed to the other classifications of legitimate children, the court ruled in Dempsey v. RTC, that the provisions of the then soon-to-be effected Family Code erases any distinction between legitimate
and adopted on one hand, & acknowledged illegitimate children on the other insofar as joint parental authority is concerned.

- Clear therefore that Article 211 applies to both legitimate and illegitimate children. The very wording of “common children” shows the non-distinction. Quite different from the repealed provisions of old laws (Article 17 of the Child and Youth Welfare Code, and Article 311 of the Civil Code) where illegitimate children were not recognized.
- Change shows the acknowledgement of that illegitimate children are also the concern of the State and must be accorded rights and privileges that merely do not equal those of a legitimate child’s.

**For 211 to apply to illegitimate children, 2 requisites: (1) father is certain. (2) illegitimate children living with said father and mother who are cohabiting without benefit of marriage or under a void marriage not falling under Arts. 36 and 53.**

- This interpretation is to harmonize 211 with 176. Hence illegitimate children falling under the parental authority of the mother only applies in 2 cases: (1) where paternity is uncertain. Or (2) though paternity is certain, the father isn’t living with the mother and the child.
- Thus in David v. CA,
  - Facts: a married man living with his legitimate family got hold of his illegitimate son from the latter’s mother, who was not living with him.
  - Held: the child is under the parental authority of the mother only and is therefore entitled to have custody of him.
  - Ratio: Application of Article 176
- However, in Briones v. Miguel, Article 211 was not taken into consideration though the father recognized him as his. It is submitted though that harmonization between the two articles is the better rule.

**Preferential Choice of the Father**

- When the father’s decision prevails, it is presumed that his decision is for the child’s best interest; it doesn’t mean however that the mother’s isn’t.
- If both decisions have merit and to prevent a void that might be detrimental to the child’s welfare, the decision of the father as head of the family is given preference.
- Law is designed to provide a mechanism by which conflicts are resolved internally by the people within the family. Hence, the mother and child’s decisions must defer to the father’s.
- Binding force of father’s decision is highlighted by the fact that only a court order can alter it.
- Basis for altering the father’s decision must be substantial, important and serious ground for the paramount interest of the children; “otherwise the court may unduly supplant the parental prerogative of the father and ultimately negate the primary duty of the parents in the upbringing of their own children.”
  - Mere fact that mother doesn’t want the children to study in a particular school because they do not like it is not enough reason. Unless of course the school does not evidently provide good instruction or does not teach children right moral values.

**Duties of Children**

- Provision in Article 211 goes corollarily with Article 357 of the Civil Code which effectively provides that “every child shall obey and honor his or her parents or guardian; respect his or her grand-parents, old relatives, and persons holding substitute parental authority; exert his utmost for his or her education
and training; and cooperate with the family in all matters that make for the good of the same.”

**Responsibilities of a Child under Presidential Decree No. 63**

- Under the Child and Youth Welfare Code, as amended, the responsibilities of children are enumerated in **Article 4** stating, “Every child, regardless of the circumstances of his birth, sex, religion, social status, political antecedents & 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; &
  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 programs and prosperity, and the furtherance of world peace.”

**Article 212.** In case of absence or death of either parent, the parent present shall continue exercising parental authority. The remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children. (n)

**POINTS**

**Remarriage of the Parent**

- New spouse by virtue of his or her marrying the surviving spouse does not automatically possess parental authority over the latter’s children unless he or she adopts the same.
- Another person may be appointed by the Court to be the guardian of the children or property if by reason of remarriage, the surviving parent cannot undertake the necessary devotion, care, loyalty and concern towards the children.

**Article 213.** In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit. (n)

**POINTS**

**Separation**

- Though the court may designate the exercise of parental authority on the part of one parent, this designation doesn’t mean that the parental authority of the other is necessarily terminated or suspended. Since it may only be terminated if the court so decrees on a valid basis.
- **Cang v. CA**
  - Facts: In a legal separation case, parties agreed that custody shall be awarded to the mother who was the
innocent party, leading the court to issue the legal separation decree with such custody arrangement. Mother then decided to have children to be adopted without father’s consent.

- Issue: Mother contends that since she was designated to exercise parental authority by the court in the legal separation case, there is no more need to obtain father’s consent.
- Held: Father’s consent is still needed as his parental authority was not terminated by the legal separation.
- Ratio: By Article 213, only the exercise of parental authority was given to the mother. Hence she shall have right to the children’s service and earnings and the right to direct their activities and make decisions regarding their care and control, education, health and religion. However, the delegation did not excuse her from obtaining the needed consent of the father in the adoption of the children considering he still had parental authority over them. No factual finding in the legal separation case of any cause to deprive the father of the same.

Custody of the Children
- Parents are never deprived of the custody and care of the children except for cause. This is a universal rule of all systems of law, as beneficent to both parents and children.
- Almost a natural right incident to parenthood, which is supported by law and sound public policy. It is inherent and is not created by the State or court decisions but by the very nature of the parental relationship.
- Custody cases: Best interest of the child is the “cardinal principle” and the “paramount consideration” and not the rights of parents.

- It is the duty of the courts to “respect, enforce and give meaning and substance to a child’s natural and legal right to live and grow in the proper physical, moral and intellectual environment” when the welfare of a helpless child is at stake in a separation case.
- Despite the choice being given to a child of over seven years (7), the court may still award his custody to the other parent or a third person if the interest of the child so dictates.
- If there is no showing that the selected parent is in any way unfit to have custody, the child should be awarded to the same.

Custody Hearings
- Procedure now governed by Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors (A.M. No. 03-04-04-SC) promulgated by the Supreme Court.
- Habeas corpus case may be availed to secure custody of the child in case the parents are separated from each other, or by a parent towards a third person even if the child is with such person freely.
- Question of identity is material and relevant in habeas corpus proceedings, subject to the usual presumptions including those as to identity of the person.
- Tijing v. CA
- Facts: real parent-petitioner filed a habeas corpus case against imposter-parent-private-respondent who kidnapped the child from the real parents and caused the issuance of a falsified birth certificate indicating that the child was hers and that of her live-in partner despite the fact that they were sterile
- Held: Child belongs to real parents
- Ratio: SC made the following observations as to identity that sufficiently established that John Lopez is actually Bienvenida’s missing son, Edgardo Tijing Jr,
First, Angelita admitted that she underwent ligation before she cohabited with Tomas Lopez. And though claiming that she had the ligation removed, there is still no showing that she gave birth between 1978-1988. Midwife who allegedly delivered the child was not presented in court. No clinical records, log book or discharge order from the clinic were ever submitted.

Second, there’s strong evidence that Tomas Lopez is incapable of siring a son. Benjamin, his brother, declared in court that Tomas was sterile after his accident and that the same had admitted to him that John Lopez was merely adopted. Moreover, Tomas and his legal wife, Maria, had no children after almost 15 years together. Though he lived with Angelita for 14 years, they likewise had no children together.

Third, it’s unusual that John Lopez’ birth certificate was filed by Tomas instead of midwife and 4 months after the alleged birth of the child. Under the law, it is the midwife that should cause the registration and only in the default of the midwife can the parent do so themselves. And the same must be filed within 30 days after birth. Moreover, in the birth certificate it was indicated that Tomas and Angelita were married although the latter had admitted being a “common-law wife.”

Fourth, trial court observed that Bienvenida and the child had great physical similarities. And resemblance between a minor and his alleged parent is competent and material evidence to establish parentage. Trial court’s conclusion should be given high respect, it having opportunity to observe the two.

Fifth, Lourdes Vasquez testified that she assisted in Bienvenida’s birth to Edgardo Tijing Jr., at her clinic. Unlike respondent, she presented clinical records consisting of a log book, discharge order and the signature of the petitioners.

All these considered, we are constrained to rule that subject minor is indeed the son of petitioners.

• In child custody hearings, equity may be invoked for the best interest of the child.
  o Dacasin v. Dacasin, SC ruled as void a custodial agreement providing that the child below seven years shall be under the joint custody of both separated parents, the SC, instead of dismissing the case for lack of cause of action, remanded the case to the lower court for the determination of the child’s custody. “As the question of custody is already before the trial court and the child’s parents, by executing the Agreement, initially showed inclination to share custody, it is in the interest of swift and efficient rendition of justice to allow the parties to take advantage of the court’s jurisdiction, submit evidence on the custodial arrangement best serving Stephanie’s interest, and let the trial court render judgment. This disposition is consistent with the settled doctrine that in child custody proceedings, equity may be invoked to serve the child’s best interest.”

Parental Preference Rule

• Natural parents, who are of good character and who can reasonably provide for the child, are ordinarily entitled to the custody as against all persons.
• Right of custody spring from the exercise of parental authority. Accordingly, such parents are entitled to the custody of their children as against foster or prospective adoptive parents, or even their own relatives, or an agency or institution.
• “Every court recognizes the deep and enduring affection which parents have for their children and their willingness to make
sacrifices and endure hardships in their interests which a stranger would not simply consider. No court would deprive a parent of his child simply because someone else might give it better care and attention than the means of the parents permit.”

Maternal Preference

- Universally recognized that mother is the natural custodian of her young. Application of this doesn’t deny nor abridge the equality of rights of the father because, as previously stated, the rights of the parents are not the paramount issue here.
- Mother is favored if she is fit and proper to have custody of her children so that they may not only receive her attention, care, supervision and kindly advice, but also may have the advantage and benefit of a mother’s love and devotion for which there is no substitute.
- Recognition that the mother is God’s own institution for the rearing and upbringing of the child, and puts a premium on child culture in the hands of an expert.
- Same rule in Article 363 of the Civil Code which is the precursor of this provision. In applying this rule, child must be under seven years of age at the time either parent is given the custody or at the time the decision is rendered. Also known as TENDER-AGE PRESUMPTION
- Espiritu v. CA,
  - Facts: Time of filing, children were below 7 years. They chose to go with the father and expert psychologist and social workers all determined that they would be better off with him. Despite this, CA awarded custody to the mother, who was convicted of bigamy, reasoning that children of tender years should be awarded to the mother even if the latter is a prostitute or unfaithful as moral dereliction has no effect on a baby unable to understand the situation. Time of this decision, children were already above 7 years.
  - Issue: Was it a proper ruling?
  - Held: SC reversed the CA decision and determined that the children’s welfare was better served with the father
  - Ratio: CA was swayed by an abstract presumption of law rather than by an appreciation of the relevant facts. In all custody controversies, the sole and foremost consideration is the best interest of the child taking into account the respective resources and social and moral situations of the contending parents. Whether over or under 7 years, criterion must always by child’s interest.
- Adultery of the parent during child’s formative years may likewise be considered in questions involving custody of children. Since the prime duty of a mother is to educate her children in basic moral principles, one who does not possess them can hardly be expected to teach them to others.
- The prohibition on the separation of the mother and the child of tender years must always be for valid and compelling reasons.
  - Thus any agreement by the parties unduly depriving the mother of custody of children of tender age in the absence of any compelling reason to warrant the same is null and void for being contrary to law. (Dacasin v. Dacasin)

Exception to Maternal Preference

- Maternal preference is intended to serve as “tie-breaker” when parental qualities are so equally balanced between litigants that resort to the preference is necessary.
- What constitutes “compelling reasons” for the court to validly issue custody against the mother must be shown by positive and clear evidence of the unfitness of the mother and its determination is left to the sound judgment of courts.
To show unfitness of the mother to the care and custody of the children, not enough to show fault of character or bad habits; must be shown that her condition in life, or her character and habits are such that provision for the child’s ordinary comfort and contentment, or for its intellectual and moral development, can’t be reasonably expected at the mother’s hand.

- In David v. CA, though the father was well-off compared to the mother but the latter could still decently support her children, the Court awarded custody to the mother, especially since it was shown that she had been able to rear and support them on her own since they were born.
- In Pablo-Gualberto v. Gualberto V, SC said that mere fact that mother is a lesbian is not enough justification to remove the child from her custody.
- In Castelo v. Estacio,
  - Facts: mother filed habeas corpus case to get custody of her 2 children of tender age from the father
  - Issue: custody of the children?
  - Held: CA ruled that situation and behavior of the mother clearly showed compelling reasons to grant the children to the father though they were of tender age.
  - Ratio: It was positively and convincingly shown that the mother can hardly attend to the said children by the following facts: she was selling jewelry at an average of more than 13 hours a day; that she desired to have the children adopted by her aunt in exchange for monetary consideration; that she used prohibited drugs which made her violent; she lived in a house with only one room without partition and toilet facilities and which practically was surrounded by stagnant water infested by mosquitoes.

Whereas father who had custody lived in a well-furnished surrounding with the paternal grandparents and who was shown to have taken care of the children very well. And that, when the mother took the children they almost always ended up getting sick without the mother having them get checked by a doctor; in fact she waited for the father to pick them up so he can take them instead.

- General rule: courts will indulge the presumption that the interests of young children are best served when they are in the custody of their mother. HOWEVER, the controlling consideration is always the welfare of the children.

Custody Granted to Others
- May even be granted to persons who are strangers to the family if such award would best serve the paramount interest of the child.
- Thus in proceedings involving a child whose parents are separated – either legally or de facto – and where it appears that both parents are improper persons to whom to entrust the care, custody and control of the child, “the court may either designate the paternal or maternal grandparents of the child, the oldest sibling, or some reputable and discreet persons to take charge of such child, or commit it to any suitable asylum, children’s home, or benevolent society.”

No Finality of Custody Judgment
- Decisions of courts, even the SC, on custody are always open to adjustments as the circumstances relevant to the matter may demand in the light of the inflexible criterion, namely, the paramount interest of the children.
- Luna v. IAC,
  - Facts: trial court awarded custody to grandparents. The CA reversed it and instead awarded custody to the
Persons and Family Relations Law

natural parents. The SC affirmed the CA decision and remanded the case to the trial court for execution. The trial court issued a writ of execution to deliver the child to the natural parents.

- **Issue:** child manifested that she would kill herself if she were delivered to her natural parents instead of letting her stay with her grandparents
- **Held:** Initial decision reversed. Custody awarded by trial court should be maintained instead.
- **Ratio:** Paramount consideration is the interest of the child.

• In **Viesca v. Gilinsky**, SC explained what a court can do in relation to an equivocal compromise agreement that resultantly caused disagreement between the parties.
  - **Issue:** Can the trial court modify, by motion of one of the parties, a Compromise Judgment?
  - **Held:** Rule in the negative
  - **Ratio:** a compromise judgment has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery which private respondent does not allege in this case.

More importantly, and as correctly pointed out by petitioner, it is settled that neither court nor quasi-judicial bodies can impose upon the parties a judgment different from their compromise agreement or against the very terms and conditions of their agreement without contravening the universally established principle that a contract is the law between the parties. Courts can only approve the agreement of parties. They can’t make a contract for them.

Nevertheless, the trial court and this Court sees wisdom in providing the specifics in the said indefinite portion of the Compromise Judgment, since as held in **Hernandez v. Colayco**, “if the parties and their counsel are unable to do it, the judge is expected to assist them in attaining precision and accuracy of language that would more or less make it certain that any disputes as to the matters being settled would not recur, much less give rise to a new controversy.”

Resultantly, a remand of this case is necessary to allow the parties themselves to resolve the matter regarding the implementation of Clause II(b) of the Compromise Judgment. In this regard, the rule on immutability for purposes of execution does not attach to a judgment that is materially equivocal or which suffers from either patent or latent ambiguity. To obviate further discord between them and to preclude their recourse to the trial court every time one of them perceives a violation committed by the other of Clause II(b) of the Compromise Judgment, we direct the trial court to be on guard and ensure that the parties would lay out in concrete, specific details the terms of their agreement as to this specific matter as well as of the appointment of Louis Maxwells accompanying guardian.

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**Article 214.** In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority. (355a)

**POINTS**

**Substitute Parental Authority of Grandparents**

- Grandparents are the most natural, suitable and logical persons to exercise parental authority.
It is a biological fact that grandparents are bound to their grandchildren by the unbreakable links of heredity. There is a special relationship between children and their grandparents.

**Article 215.** No descendant shall be compelled, in a criminal case, to testify against his parents and grandparents, except when such testimony is indispensable in a crime, against the descendant or by one parent against the other. (315a)

**POINTS**

**Reason for the Filial Privilege**
- The reason for this privilege is to foster family unity and tranquility. Absence of this article does violence to the most sacred feelings of the family.
- The exception to the rule is when the testimony is indispensable in a crime against the descendant or by one parent against the other. (This is based on the recognition that such type of crime destroys the sanctity and tranquility of the family and marriage.)

**Marital Privilege**
- Rule 130 of the Rules of Court: The husband or the wife, during or after the marriage, can not be examined without the consent of the other xxx except in a civil case by one against the other, or in a criminal case for a crime directly committed by one against the other of the latter’s direct descendants or ascendants.
- This is because the husband and wife are considered as but one person.
- TAKE NOTE of exception [INDISPENSABLE TESTIMONY] in above rule!!!
- Reason for exception: In such a situation, the security and confidence of private life which the law aims at protecting will be nothing but ideals which, through their absence, merely leave a void in the unhappy live. *People v. Francisco*, 78 Phil 694
- *Ordoño v Daguigan*: A mother can validly testify against the father in a criminal case of rape committed against the daughter. The SC ruled that because of the close bond between mother and child, the crime committed against the daughter is a crime committed against the mother.
- *Alvarez v Ramirez*: The SC allowed the wife to testify against the husband in an arson case where the husband set fire to the house of the wife’s sister, knowing that the wife was inside the house. In this case there was nothing to preserve anymore in the marriage.

**CHAPTER 2 – SUBSTITUTE AND SPECIAL PARENTAL AUTHORITY**

**Article 216.** In default of parents or a judicially appointed guardian, the following persons shall exercise substitute parental authority over the child in the order indicated:

1) The surviving grandparent, as provided in Article 214;
2) The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and
3) The child’s actual custodians, 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)

**POINTS**

**Substitute Parental Authority**
- Persons undertaking substitute parental authority have all the rights of parents enumerated in Article 220.
They shall be civilly liable for the injuries and damages caused by the acts or omissions of the unemancipated children living in their company and under their parental authority.

A person not related to a child may be liable for all the injuries and damages the child may cause another person (even if child is not adopted by said person with parental authority), but at the same time will not inherit from the said child upon child’s death because he/she is not an heir.

The order in Art 216 is NOT mandatory. It is still based on the child’s paramount interest.

**Article 217.** In case of foundlings, abandoned, neglected or abused children and other children similarly situated, parental authority shall be entrusted in summary judicial proceedings to heads of children’s homes, orphanages and similar institutions duly accredited by the proper government agency. (314a)

**POINTS**

**Unfortunate Children**
- Foundling – a newborn child abandoned by its parents who are unknown.
- Abandoned child – one who has no proper parental care or guardianship, or whose parents/guardians have deserted him/her for a period of at least 6 continuous months.
- Neglected child – one whose basic needs have been deliberately unattended or inadequately attended.
  - (1) Physical neglect – malnourishment, absence of proper shelter, unattended/ left by himself/without proper supervision, etc.
  - (2) Emotional neglect – maltreatment, rape, seduction, overwork, made to beg, exploited, moral danger, exposure to gambling, prostitution or other vices, etc.
- Abused child – can come within the second kind of a neglected child (emotional neglect)
- Dependent child – one who is without a parent, guardian, or custodian; or one whose parent, guardian, or custodian desires to be relieved of his care and custody, for good cause; and is dependent upon the public for support.

**Child Welfare Agency**
- No private person, natural or juridical, shall establish, temporarily or permanently, any child welfare agency without first securing a LICENSE from the Department of Social Welfare. Such license is NOT transferable.
- The purpose or function of the agency should be clearly defined and stated in writing. (Or else NO LICENSE)
- Definition includes geographical area, children to be accepted, services provided.

**Transfer of Parental Authority**
- The transfer of parental authority over children can be done either voluntarily or involuntarily.
- Involuntary transfer – Sec of Dept of Social Welfare/ his authorized representatives/ any duly licensed child-placement agency may file verified petition to the proper court for involuntary commitment of a child to the care of any duly licensed child-placement agency.
- Voluntary transfer – The parent/guardian of a dependent, abandoned or neglected child may voluntarily commit the child to the Dept of Social Welfare or any duly licensed child-placement agency. Child must be surrendered in writing by the parents/guardians.
- In case of death or legal incapacity of either parent or abandonment of the child for a period of at least one year, the
other parent alone shall have the authority to make the commitment.

• Once a child is committed to the Dept of Social Welfare/any duly licensed child-placement agency, the rights of his parents, guardian, or other custodian to exercise parental authority over him shall cease.

**Article 218.** The school, its administrators and teachers, or the individual, entity or institution engaged in child care shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody.

Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution. (349a)

**Article 219.** Those given the authority and responsibility under the preceding Article shall be principally and solidarily liable for damages caused by the acts or omissions of the unemancipated minor. The parents, judicial guardians or the person 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)

**POINTS**

**Liability of Persons Possessing Special Parental Authority**

• Special parental authority can be exercised only over minors while under their (persons with special parental authority) supervision, instruction or custody.

• They are civilly liable for acts and omissions of the unemancipated minor. Liabilities shall NOT apply if it is proved that they exercised the proper diligence required under the particular circumstances.

• There is no distinction whether the school is academic or non-academic (e.g. arts, trades)

• The liability attaches while the minor child is under their supervision, instruction and custody and also to all authorized activities whether inside or outside the premises of the school, entity or institution.

• Amadora v Court of Appeals: The term ‘custody’ is explained. As long as it can be shown that the student is in the school premises in pursuance of a legitimate student objective, in the exercise of a legitimate student right, and even in the enjoyment of a legitimate student privilege, the responsibility of the school authorities over the student continues.

**Liability of Parents or Persons Exercising Substitute Parental Authority**

• Parents, judicial guardians or the persons exercising parental authority over the minor shall be subsidiarily liable.

• The liability is subsidiary because, while in school or in an institution engaged in child care, the said persons do not have the direct custody of their children.

**Defense of Persons with Special Parental Authority**

• The liability under Art 219 will not apply if it is proved that they exercised the proper diligence required under the particular circumstances.

• Ylarde v Aquino: A reasonably prudent person would have foreseen that bringing children to an excavation site, and more so, leaving them there all by themselves, may result in an accident.

• Amadora v Court of Appeals: The school can show that it exercised proper measure in selecting the head or its teachers
and the appropriate supervision over them in the custody and instruction of pupils. 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. 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.

Quasi Delict

- Article 2180 of the Civil Code provides that ‘teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices so long as they remain in their custody.’
- Liability shall only attach upon a clear showing of negligence or laxness in the enforcement of discipline.
- This article applies if the students, pupils or apprentices are not anymore minor children.

Quasi Delict

- Article 220 of the Civil Code provides that ‘teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices so long as they remain in their custody.’
- Liability shall only attach upon a clear showing of negligence or laxness in the enforcement of discipline.
- This article applies if the students, pupils or apprentices are not anymore minor children.

**Duties of Parents Under Presidential Decree No. 603**

- Art 46 of the Child and Youth Welfare Code (PD 603 as amended) also provides that parents shall have the following duties towards their children
  - To give them affection, companionship and understanding
  - To extend to them the benefits of moral guidance, self-discipline and religious instruction
  - To supervise their activities, including recreation
  - To inculcate in them the value of industry, thrift and self-reliance
  - To stimulate their interest in civic affairs, teach them the duties of citizenship and develop their commitment to their country
  - To advise them properly on any matter affecting their development and well-being

**POINTS**

Parental Rights and Duties

- Parents possess what a child lacks in maturity, experience and capacity for judgment required for making life’s difficult decisions.
- It has been recognized that natural bonds of affection lead parents to act in the best interest of the child.
To always set a good example
To provide them with the adequate support as defined in
the law particularly the Family Code
To administer their property, if any, according to their best
interest subject to the provisions of the Family Code, Art
225
Whenever proper, parents shall allow the child to participate in
the discussion of family affairs, especially in matters that
particularly concern him.
If by reason of studies or other cause, a child does not live with
his parents, the latter shall communicate with him/her regularly
and visit him/her.
Parents shall encourage and develop their children’s talents and
report to the National Center for Gifted Children if their child is
gifted.
Parents shall promote the children’s physical, mental and
emotional health.
Parents shall encourage the children to associate with other
children of his own age with whom he can develop common
interests of useful and salutary nature.
Parents shall take care to prevent the child from becoming
addicted to intoxicating drinks, narcotic smoking, gambling and
other vices and harmful practices.

Representative of the Children
Parents shall have the duty to represent the unemancipated
children in all matters affecting their interest.
It has been held that the offer to redeem a particular property
made by the father on behalf of his children is valid. (Wenceslao
v Calimon, 46 Phil. 906). Also, a case where a mother filed for
and on behalf of her child a petition for change of name is not
disposable. (Tse v Republic, 20 SCRA 1261)

Disciplinary Actions

• Children shall always observe respect and reverence toward
their parents and are obliged to obey them as long as children
are under parental authority. (Art 211, FC)
• Parents may inflict a reasonable measure of corporal
punishment on their children.
• Roe v Doe: A minor, in full possession of her faculties, has been
fully supported by her parents in terms of allowances and
schooling but she wasted such money on drugs and other such
activities against her parents’ will. She then abandoned her
parents’ home to avoid parental control. She then files an action
to compel her father to support her. It has been held that the
father of a minor is chargeable with the discipline and support
of that child. The father in return may establish and impose
reasonable regulations for his child. In this case, the child’s
actions and in leaving her parents’ home forfeits her right to
support.

Rights of the Children
• Article 356 of the Civil Code of 1950 effectively provides that
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; and
  4) Has a right to live in an atmosphere conducive to his
physical, moral and intellectual development.
• The child’s welfare should not be subject to the parents’ say-so
or mutual agreement alone.
• ***Read Article 3 of PD 603 on Rights of a child. (Pages 817 to
819)
under their parental authority subject to the appropriate defenses provided by law. (2180(2)a and (4)a)

POINTS

Primary Liability of Parents

- For liabilities on the part of the parents to attach, unemancipated child must be living in their company AND under their parental authority.
- The SC explained the rationale in Tamargo v. Court of Appeals,
  - principle of parental liability is a species designated as vicarious liability or the doctrine of “IMPUTED NEGLIGENCE” where a person is not only liable for torts committed by himself, but also for torts committed by others with whom he has a certain relationship and for whom he is responsible.
    - Reason: moral responsibility consists in having failed to exercise due care in one’s own acts or in having failed to exercise due care in the selection and control of one’s agents or servants, or in the control of persons who, by reasons of their status, occupy a position of dependency with respect to the person made liable for their conduct.
  - Thus parental liability is made a natural and logical consequence of the dereliction of such duties and responsibilities of parents — their parental authority — which includes the instructing, controlling and disciplining of the child.
  - Civil law assumes that when tort is committed by unemancipated children, 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 dereliction is only presumed and the presumption can be overturned under Article 2180 of the Civil Code by proof that the parents had exercised all the diligence of a good father of a family to prevent the damage.
- Thus where a child was subject of an adoption proceeding but he was still in the custody of the natural parents when he shot another person, the adopting parents were not held liable as Article 35 of P.D. No. 603 (now Sec. 13 of RA 8552) provides that adoption decrees shall be effective as of the date of the filing of the petition and can’t apply in issues of vicarious liability of parents which can only attach if, at the time of the incident, the child were under their custody and parental authority.

Diligence of a Good Father of a Family

- To remove themselves from liability, parents must show that they exercised the diligence of a good father of a family.
- Libi v. IAC,
  - Facts: father appeared to have negligently left his gun in a safety deposit box and it was proved that the minor son knew the location of it. And strong circumstantial evidence showed that he took the gun and used the same to kill his ex-girlfriend & then killed himself.
  - Issue: Are the parents liable?
  - Held: SC affirmed CA decisions that parents of the minor son are vicariously liable for the death of the ex-girlfriend.
  - Ratio: No sufficient evidence was presented to show that they exercised the diligence of a good father of the family. Amelita Libi, mother of Wendell, testified herself that she and her husband had the only keys to the deposit box and that hers was always in her bag, all of which was known to Wendell. Moreover, on the fateful night, she admitted that the gun was no longer there.
Certainly, Wendell could not have gotten hold of the gun unless one of the keys to the safety deposit box was negligently left lying around or he had free access to the mother’s bag where the other key was.

The diligence of a good father of the family consists, to a large extent, of the instruction and supervision of the child. Petitioners were gravely remiss in their duties as parents in not diligently supervising the activities of their son; so much so that it was only upon Wendell’s death that they discovered he was a CANU agent and that Cresencio’s gun was missing from the safety deposit box.

**Article 222.** The courts may appoint a guardian of the child’s property or a guardian ad litem when the best interests of the child so requires. (317)

**POINTS**

**Guardian**

- Trust relation of the most sacred character, in which the “guardian,” acts for another, called the “ward,” whom the law regards as incapable of managing his own affairs.
- Guardians *ad litem* are considered officers of the court in a limited sense. His office is to represent the interest or the incompetent or the minor.
- The ward is often so young as to be entirely dependent on his guardian. The guardian is sometimes the ward’s father or mother and, if not, sustains a quasi-parental relation. The government itself is, in a sense, the supreme guardian, whom the individual guardian represents in its solicitude for the welfare of the wards. The law looks at him as a trustee.

**Selection**

- Appointment of a guardian *ad litem* is through sound discretion of the court and designed to assist the court in the determination of the best interest of the child.
- In selecting a guardian, an appointment which probably will keep together the family, or those remaining, will, as a general rule, be preferred to one which will bring their separation.
- Court may consider the financial situation, business acumen, physical condition, morals, character, and conduct, and present and past history of a prospective appointee of guardianship, as well as probability of his being able to exercise the powers and duties of guardian for the full period during which guardianship will be necessary.
- Court may not appoint a guardian who isn’t personally subject to its jurisdiction.
- Parent’s right to guardianship may be forfeited or abandoned. But any right is still subordinate to the paramount consideration of the welfare and best interests of the child.

**Article 223.** The parents or, in their absence or incapacity, the individual, entity or institution exercising parental authority, may petition the proper court of the place where the child resides, for an order providing for disciplinary measures over the child. The child shall be entitled to the assistance of counsel, either of his choice or appointed by the court, and a summary hearing shall be conducted wherein the petitioner and the child shall be heard. However, if in the same proceeding the court finds the petitioner at fault, irrespective of the merits of the petition, or when the circumstances so warrant, the court may also order the deprivation or suspension of parental authority or adopt such other measures as it may deem just and proper. (318a)
Article 224. The measures referred to in the preceding article may include the commitment of the child for not more than thirty days in entities or institutions engaged in child care or in children's homes duly accredited by the proper government agency. The parent exercising parental authority shall not interfere with the care of the child whenever committed but shall provide for his support. Upon proper petition or at its own instance, the court may terminate the commitment of the child whenever just and proper. (391a)

POINTS

Aid from the Court

- Comes from principle duty of parents to undertake disciplinary measures over their children. State recognizes this unless they treat the child inhumanly or beyond what is absolutely needed.
- If the child remains incorrigible, parents are given right to seek aid from the court to impose more drastic disciplinary measures for the child’s improvement and which the court may provide as warranted under the premises.
- The child in such scenario is entitled to counsel such that if he proves that his parents are the ones who have been seriously mistreating him, parental authority may be suspended or terminated.
- Entities or institutions, especially children’s homes, that the child may be committed in must be duly accredited by the proper government agency.

Chapter 4 – EFFECT OF PARENTAL AUTHORITY UPON THE PROPERTY OF THE CHILDREN

Article 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.
Where the market value of the property or the annual income of the child exceeds P50,000, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten per centum (10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.
A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or, if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.
The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.
The ordinary rules on guardianship shall be merely suppletory 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)

POINTS

Legal Guardian

- Clear from Article 225 that regardless of the value of the unemancipated common child’s property, the parents ipso jure become the legal guardian of the child’s property.
- Reason: parents are presumed to act only for the best interest of the child and are capacitiated to reasonably undertake activities for the children’s benefit. Moreover, children have the greatest natural confidence in their parents.

Prohibition
• 2 cases where parent can’t be the administrator as provided in the law of succession in the Civil Code,

1. **Article 923:** “Children and descendants of the person disinherited shall take his or her place and shall preserve the rights of compulsory heirs with respect to the legitime, but a disinherited parent shall not have the usufruct or administration of the property which constitutes the legitime.”

   Example: A → B → C. A disinherits B and bequeaths all his property to C. Upon A’s death, his net estate is P100,000. C, as his grandson and only heir, stands to gain the whole thing. By law (Article 888 of the Civil Code), C’s legitime is P50,000 as his capacity as a compulsory heir. The other P50,000 he inherits is the “free portion” that he gets as an instituted voluntary heir in A’s will. By Article 923, B can’t administer the P50,000 legitime but he can administer the other P50,000 that is C’s inheritance as voluntary heir.

2. **Article 1035:** “if the person excluded from the inheritance by reason of incapacity should be a child or descendant of the decedent and should have children or descendants, the latter shall acquire his right to the legitime.”

   Example: A → B → C and D. B groundlessly accused A of murder which accusation made him incapacitated to succeed due to unworthiness (Article 1032[3] of the Civil Code). Time of A’s death, net estate is P100,000. His grandchildren and only heirs, C and D, stand to gain all of it. Absent a will, C and D divide it equally between them. (Article 979 of the Civil Code). Pursuant to 1035, B cannot enjoy the usufruct or administer either P50,000 of C and D.

• Reason for P50,000 benchmark: “committee considers it an amount when the property is valuable enough to require a bond on the basis of the current valuation, considering the possible abuse by the parents and the expensiveness of the bond” (Joint meeting of Civil and Family code committees)

• Law also 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.

• For **Article 225** to apply, there must be “evidence that the share of each minors in the proceeds of the group policy in question (like, insurance gains over the death of a parent), is the minor’s only property. Absent such evidence, it wouldn’t be safe to conclude that indeed, that is his only property. (Pineda v. CA)

• Usually held that the giving of such a bond, the “qualification” of the guardian as it is called, is a condition precedent to the vesting of his authority. Such that, any act done without or before the giving of the bond is a nullity.

   o Where the natural guardian is empowered to take possession of and administer on the assets of his ward upon giving bond, the giving of the required bond is a prerequisite to this right to exercise such power.

**Bond and Duties of a Guardian**

• Purpose: guarantee the performance of the obligations prescribed for general guardians.

• **Jocson v. Empire Insurance Co**

   o Issue: guardian-father’s bond was sought to be forfeited on the ground, that although he had court approval to use some of the money the children inherited from the mother for the children’s clothing and education, such expenditure was illegal since he, as father, is obligated to support the children with his own property.
o Held: Guardian-father’s use of the children’s money was valid and therefore, bond can’t be forfeited.

o Ratio: Support is dependent on the need of recipient and that, for payment thereof, demand was a necessary requisite. Considering there was no demand, the use of the children’s money for the purposes mentioned, which was made with court approval, is valid.

Furthermore, the “claim for support should be enforced in a separate action and not in these guardianship proceedings.

Alienation and Encumbrance
• Parent’s authority as legal-guardian over the estate of the ward does not extend to acts of encumbrance or disposition as distinguished from acts of management or administration.

• Case where mother didn’t seek court approval of the sale of her minor children’s properties, the SC declared the sale as void since “a guardian has no authority to sell real estate of his ward, merely by reason of his general powers, and in the absence of any special authority to sell conferred by will, statute, or order of the court.”

• An abdicative waiver of rights by a guardian is an act of disposition. It cannot bind his ward, being null and void as to the ward unless duly authorized by the proper court. Parent has no right to compromise his child’s claim as compromise is equivalent to alienation, and is an act of strict ownership that goes beyond mere administration. Court approval is necessary to enter into compromises.

• Thus parent-guardian can’t waive the rights of her children over property inherited from the father.

Summary Proceeding
• Parents are required to immediately take care of the affairs of the unemancipated children. Day-to-day management shouldn’t be derailed by long court proceedings. Hence, for bonds, they are left summary in nature.

• Reason also is that law already constitutes parents as legal guardian; hence presumed that they will only act to preserve the interest of the child and that the bond filed with the court is in such amount as will be enough to protect the child. Court still has discretion to determine what a reasonable amount is, but in no case may it be less than 10%.

• All other incidents and issues shall be decided in an expeditious and inexpensive manner without regard to technical rules in the same proceeding where the bond was approved.

• Phrase “all incidents and issues” may include alienation, disposition, mortgaging or otherwise encumbering of the property beyond P50,000.

• Justice Caguioa in the deliberations clarified that obligation to obtain authority on the part of the general guardian to sell or mortgage is limited to real properties which exceeds the value of P50,00; however, for purpose of this article, it includes personal properties.

Guardianship Proceedings
• Reason for the last paragraph of Article 225 is that persons other than parents can’t be expected to have the same sense of devotion and loyalty to the child not their own and, therefore, more protection and safeguards are needed.

• Thus where there was dispute of who should manage the proceeds of an insurance policy the child received by the death of the father. SC ruled in favor of the mother over the child’s uncle as the former is “likely to lavish more care on and pay greater attention to the child.” Especially absent any circumstances that would militate against this presumption.
Article 226. The property of the unemancipated child earned or acquired with his work or industry or by onerous or gratuitous title shall belong to the child in ownership and shall be devoted exclusively to the latter's support and education, unless the title or transfer provides otherwise. The right of the parents over the fruits and income of the child's property shall be limited primarily to the child's support and secondarily to the collective daily needs of the family. (321a, 323a)

POINTS

Ownership of Child’s Property
- Being a part of the family which the State tries to strengthen, if the child’s property is more than sufficient to maintain said child, the said properties may be used to defray the collective daily needs of the family.
- Child is also obliged to support his parents in accordance with Article 195 of the Family Code. Such support can be taken from his separate properties if the parents need it AND if the child can afford it.

Allowance of Unemancipated Child
- Parents only get the net proceeds because the unemancipated child shall first be given the monthly allowance taken from the gross proceeds of the property for the said month. Also, all the other administrative and management expenses shall be taken from the proceeds. The balance left after this is the net proceeds which go to the parents.
  - Exception: when the parent-owner decides to grant the entire proceeds to the child.
- Term “allowance” is used by the law instead of “compensation”
  - In a joint meeting, Justice Reyes commented that “compensation” refers to an employer-employee relationship while the idea in “allowance” is that it’s a family relation.
- In the last sentence of 227, “in whole” refers to the “entire proceeds” while “in part” refer to the “allowance.”

Article 227. If the parents entrust the management or administration of any of their properties to an unemancipated child, the net proceeds of such property shall belong to the owner. The child shall be given a reasonable monthly allowance in an amount not less than that which the owner would have paid if the administrator were a stranger, unless the owner, grants the entire proceeds to the child. In any case, the proceeds thus give in whole or in part shall not be charged to the child’s legitime. (322a)

POINTS

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Chapter 5 – SUSPENSION OR TERMINATION OF PARENTAL AUTHORITY

<table>
<thead>
<tr>
<th>Article 228. Parental authority terminates permanently:</th>
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<tr>
<td>1) Upon the death of the parents;</td>
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<tr>
<td>2) Upon the death of the child; or</td>
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<tr>
<td>3) Upon emancipation of the child. (327a)</td>
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</tbody>
</table>

**POINTS**

**Death of Parent or Child**
- Civil personality is extinguished by death. The death of parents or children terminates parental authority.
- Art 20 of PD 603 (Child and Youth Welfare Code) provides that the court, upon the death of the parents and in cases mentioned in Art 328 to 332 of the Civil Code, can appoint a guardian for the person and property of the child, on petition of any relative or friend of the family or the DSWD.
- Art 328 to 332 refer to the termination or suspension of parental authority, which in turn, have already been repealed by Chapter 5, Title IX of the FC.

**Emancipation**
- A child is emancipated upon reaching the age of majority – 18 years old.
- Upon emancipation, the child is qualified to do all acts of civil life save for exceptions established by existing laws in special cases.

**Effect of Article 228**
- This article contemplates a situation where the events happen with no fault on the part of the parents. (Justice Caguioa)
- Parental authority cannot be revived in these situations, obviously.

<table>
<thead>
<tr>
<th>Article 229. Unless subsequently revived by a final judgment, parental authority also terminates:</th>
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<tr>
<td>1) Upon adoption of the child;</td>
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<td>2) Upon appointment of a general guardian;</td>
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<tr>
<td>3) Upon judicial declaration of abandonment of the child in a case filed for the purpose;</td>
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<tr>
<td>4) Upon final judgment of a competent court divesting the party concerned of parental authority; or</td>
</tr>
<tr>
<td>5) Upon judicial declaration of absence or incapacity of the persons exercising parental authority. (327a)</td>
</tr>
</tbody>
</table>

**POINTS**

**Effects of Article 229**
- In these cases, termination of parental authority is not permanent and can be revived by court order.
- Also, the ground in this article are events without the fault of the parents or with the fault of the parents but without malice. (Justice Caguioa)

**Judicial Termination of Parental Authority**
- Termination of parental authority is such a drastic step that it can only be allowed on the basis of the legal grounds provided by law.
- *Salvana and Saliendra v Gaela*: This happened at the time when minors were allowed to legally marry with the consent of parents. The issue is WON parents can be deprived of their parental authority over their unemancipated child because they interfered with ‘the personal liberty of their own daughter by inducing her to make a cruel sacrifice, namely, to marry a man she does not care for, and against her will.’ The SC ruled that neither the act of compelling their unemancipated minor daughter to marry against her will, nor the act of refusing to give their consent to her marriage, is included in the causes given by law for depriving parents of patria potestas and the custody of their unemancipated minor children, unless the minor is compelled with moral or physical sufferings.

**Adoption**
- 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 be vested on the adopter(s) upon the finality of a judicial adoption decree.

- In case the adoption decree is rescinded, such rescission of the adoption shall extinguish all reciprocal rights and obligations between the adopters and the adopted and the parental authority of the biological parents, if known, or the legal capacity of the DSWD, if adoptee is still a minor, shall be restored.

**Guardianship**
- A guardian appointed by the court shall generally have the care and custody of the person of his or her ward and the management of his or her estate.

**Judicial Declaration of Abandonment**
- Abandonment is neglect or refusal to perform natural and legal obligation of care and support for the child.
- Abandonment imports any conduct on the part of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child.
- The judicial decision arises from a case precisely filed for the declaration of abandonment because of the phrase ‘a case filed for the purpose.’

**Divestment by Final Court Judgment**
- A decree of termination must be issued only upon clear, convincing and positive proofs.
- Lassiter v Department of Social Services of Durham County: A parent’s desire for and right to the companionship, care, custody, and management of his/her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection.
- Santosky v Kramer: Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. When the state moves to destroy weakened family bonds, it must provide the parents with fundamentally fair procedure.

### Judicial Declaration of Absence or Incapacity
- Parental authority cannot be expected from an absence or one who is incapacitated.
- A separate case can be filed using the judicial declaration of absence or incapacity to terminate parental authority.

**Article 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)**

### POINTS

**Civil Interdiction**
- Civil interdiction is an accessory penalty imposed on an accused found guilty of certain crimes.
- There is really no judicial declaration of civil interdiction and this ground is distinct because there is automatic revival of parental authority. (Justice Caguioa)

**Article 231. The court in an action filed for the purpose or in a related case may also suspend parental authority if the parent or the person exercising the same:**

1. Treats the child with excessive harshness or cruelty;
2. Gives the child corrupting orders, counsel or example;
3. Compels the child to beg; or
4. Subjects the child or allows him to be subjected to acts of lasciviousness.

The grounds enumerated above are deemed to include cases which have resulted from culpable negligence of the parent or the persons 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. (323a)

### POINTS

**Court Proceeding**
- The suspension or deprivation under Art 231 can be judicially decreed in a case specifically filed for that purpose or in a related case. It may be an independent or collateral proceeding.

**Excessive Harshness or Cruelty**
- Parents have a duty to discipline their children which authorizes them to inflict some form of corporal punishment, but this should not be excessive.
- **William H. Blore v John Z. and Susan Z.**: Evidence was strong that the father by force inserted a toy telephone into the mouth of the child, almost killing him, that the father forced very hot liquid into the child’s mouth causing serious burns, that the child had received numerous bruises and five fracture ribs, and that the treatment was likely to continue. The SC of Dakota upheld the ruling of the lower court terminating the parental rights of the parents over the child.
- **Hutchkinson v Hutchinson**: The father frequently struck his children with things such as a teacup, frying pan, a strap, cane, iron hammer, poker, his fist. The court ruled that his parental rights should be terminated and that a guardian be appointed.

**Corrupting Orders, Counsel, or Example**
- Parents should provide their children with moral and spiritual guidance, inculcate in them honesty, integrity, and self discipline, and stimulate them in their interest in civil affairs.
- If the parents themselves teach the children how to steal or like or hurt others, these parents cannot be expected to be good examples.

**Compels the Child to Beg**
- It is the duty of the parents to inculcate in the children self-reliance through lawful activities.
- Teaching a child to beg destroys the child’s potential of being a productive citizen.

**Acts of Lasciviousness**
- Such acts can cause great emotional, psychological and physical harm to the child.

**Culpable Negligence**
- The grounds in Art 231 are deemed to include cases which have resulted from culpable negligence of the parent or the person exercising parental authority.
- Example: A stepfather forces his stepson to beg and the mother does not care about this. The mother can be considered culpably negligent, warranting the suspension of parental authority.

**Suspension, Deprivation, Revival**
- The grounds in this article are grounds to suspend parental authority. However, it also provides that if the grounds under the said article exists such that 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.
- The suspension or deprivation may be revoked and the parental authority be revived in a case filed for the purpose if found that the cause has terminated and will not be repeated.

**Article 232.** If the person exercising parental authority has subjected the child or allowed him to be subjected to sexual abuse, such person shall be permanently deprived by the court of such authority. (n)
Sexual Abuse

- For a parent to sexually abuse his/her child or allow said child to be subjected to sexual abuse is clearly a serious act of moral depravity and corruption.
- Re Van Vlack: A 10 yr old girl was sexually molested by her adoptive father and the natural mother was aware but failed to take steps to prevent this. The mother separated from her husband but returned after less than a month. The court ordered the termination of the mother’s parental authority.
- Re Armentrout: Two minor children were sexually molested by the father but the mother refused to believe this despite clear evidence. The mother’s parental authority was ordered to be permanently severed.

Effect of Article 232

- This is to highlight the gravity of sexual abuse as ground for termination of parental authority.
- Parental authority cannot be revived or restored in this case. It is PERMANENT DEPRIVATION. (Even if parents reform or change or abuse ceases)

Grounds for Terminating Parental Authority under the Revised Penal Code

- Article 278 of the RPC provides that it is unlawful for any ascendant, guardian, teacher or person entrusted in any capacity with the care of a child under 16 yrs of age to deliver, either gratuitously or in consideration of any price, compensation or promise, such child to any habitual vagrant or beggar, or to any person who, being an acrobat, gymnast, rope-walker, diver, wild animal tamer or circus manager or engaged in a similar calling who employs said children in exhibitions.
- In case it is the parents who entrust such child, he/she may be deprived, temporarily or perpetually, in the discretion of the court, of their parental authority and shall be punished by the penalty of prison correccional in its minimum and medium periods and a fine not exceeding P500.

Article 233. The person exercising substitute parental authority shall have the same authority over the person of the child as the parents. In no case shall the school administrator, teacher or individual engaged in child care and exercising special parental authority, inflict corporal punishment upon the child. (n)

Corporal Punishment

- Corporal punishment is the infliction of physical disciplinary measures to a student and is absolutely prohibited in the FC.
- Bagajo v Marave: While a teacher may be administratively or civilly liable in the even that he/she inflicts corporal punishment to a student, it has been held that where there was no criminal intent on the part of the teacher who caused slight physical injuries on the student in disciplining said student, the teacher cannot be held feloniously liable.

Right of Parents to Inflict Corporal Punishment

- Only persons exercising special parental authority cannot inflict corporal punishment. Parents and persons w/ substitute parental authority can inflict corporal punishment, but this must not be excessive or cruel.

Criminal Liability of Parents

- It is a crime for parents to seriously mistreat the children. (Aside from termination of parental authority)
- Criminal liability shall attach to any parent, guardian, or the head of the institution or foster home who commits any of the following:
  - Conceals or abandons eh child with intent to make him lose his civil status
  - Abandons the child as to deprive him of love, care and protection
o Sells or abandons the child to another for valuable consideration
o Neglects the child by not giving him education which the family’s station in life and financial conditions permit
o Fails or refuses, without justifiable grounds, to enroll the child
o Causes, abates, or permits the truancy of the child from school where he is enrolled. Truancy is absence w/o cause for more than twenty days, not necessarily consecutive
o Improperly exploits the child by using him for purposes of begging and other acts inimical to his interest and welfare
o Inflicts cruel and unusual punishment upon the child or subjects him to indignation and other excessive chastisement that embarrass or humiliate him
o Causes or encourages child to lead an immoral or dissolute life
o Permits child to possess, handle or carry a deadly weapon, regardless of its ownership
o Allows or requires the child to drive w/o license or w/ license but illegally procured which the parents know about. If another vehicle belongs to parents, it shall be presumed that he permitted or ordered the child to drive
• The above acts are punishable with imprisonment from 2 to 6 months or a fine not exceeding P500 or both

Legislation for the Protection of Children
• On June 17, 1992, Pres. Corazon Aquino approved RA 7610 or the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”
• RA 7610 – page 859 of our book

Title XII – FINAL PROVISIONS

Article 256. This Code shall have a retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.

POINTS

Retroactive Effect
• Jovellanos v Court of Appeals: A husband entered into a conditional sale over installment over a property. He paid for the property partly by conjugal funds of the first valid marriage and partly by his separate exclusive funds. He made his last installment in 1975, during his second valid marriage. The FC took effect in 1988, but since it applies retroactively, the property is part of the conjugal partnership of the second marriage (Art 118, FC).
• Atienza v Brillantes: A judge entered into a void marriage (no marriage license) in 1965 and entered into another marriage in 1991 without getting a judicial declaration of nullity for the first marriage. He claims that Art 40 of the FC is not applicable to him. According to the SC, Art 40 of the FC is applicable to remarriages involving a previously void marriage, whether or not the first marriage was celebrated before or after the effectivity of the FC.

Vested Rights
• The retroactivity of the FC does not apply if vested rights are involved. A vested right is an immediate fixed right of present and future payment.
• Republic v. Court of Appeals: A woman, without her spouse, filed for adoption of a child pursuant to the relevant provisions of the Child and Youth Welfare Code (PD 603). The decree of adoption was granted after the effectivity of the FC, which amended PD 603 and requires that the husband and wife must JOINTLY adopt. The SC held that the adoption decree cannot be
nullified by the failure of the husband to join the petition. Under PD 603, the wife had the right to file a petition for adoption by herself, and such vested right cannot be prejudiced or impaired by the enactment of a new law.

- **Tayag v. Court of Appeals**: An action for the recognition of an illegitimate child was filed before the effectivity of the FC. The SC ruled that the right of action of the minor child has been vested by filing the complaint in court under the regime of the Civil Code and prior to the effectivity of the FC, and this right cannot be prejudiced by the enactment of a new law. *(Marquino v IAC has basically same story line as Tayag case)*
- **Ty v. Court of Appeals**: The petitioner was married to the respondent in 1979. At that time, respondent’s previous marriage had not been judicially declared null and void. Petitioner invoked Art 40 of the FC to nullify her marriage with the respondent. The SC refused to apply Art 40 because on the day of their marriage, the judicial doctrine then prevailing was that there was no need of a judicial declaration of nullity of a void marriage and to apply Art 40 would impair the vested rights of the petitioner and her children with the respondent.
- **The Atienza case had a different ruling from the Ty case. In such cases decided by the SC and until the effectivity of the FC, the SC has been changing occasionally its decision regarding WON a judicial declaration of marriage is necessary for remarriage.**

### CIVIL CODE OF THE PHILIPPINES

**TITLE X – FUNERALS**

**Article 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. 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.

**POINTS**

**Article 306.** Every funeral shall be in keeping with the social position of the deceased.

**Article 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.

**POINTS**

**Kinds of Funeral**

- The wishes of the deceased shall be mainly followed because this is part of the respect to be accorded to the dead.
- In the absence of such expression, his/her religious beliefs or affiliation shall determine the funeral rites because more often than not, the deceased’s concept of death is greatly influenced by his/her religion.
- In case of doubt, the form of funeral shall be decided upon by the person obliged to make arrangements for the same, after consulting other members of the family.
- The law mandates that every funeral shall be in keeping with the social position of the deceased.

**Article 308.** No human remains shall be retained, interred, disposed of or exhumed without the consent of the persons mentioned in Articles 294 and 305.
Article 309. Any person who allows disrespect to the dead, or wrongfully interferes with a funeral shall be liable to the family of the deceased for damages, material and moral.

**POINTS**

Respect for the dead
- Philippine culture and tradition give reverence to the dead.
- Any undertaking that would ‘disturb’ the dead need the consent of those to be affected.
- Damages can be sought against those who allow disrespect to the dead, or wrongfully interfere with a funeral.

Article 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.

**POINTS**

Liability of Conjugal Partnership
- If the deceased is married, the law clearly provides that the tombstone or mausoleum shall be deemed part of the funeral expenses and shall be chargeable to the conjugal partnership property. RA 7610 – page 859 of our book

**TITLE XII – CARE AND EDUCATION OF CHILDREN**

Article 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.

Article 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.

Article 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

Article 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;
Persons and Family Relations Law

(6) Promote the opening and maintenance of playgrounds;
(7) Coordinate the activities of organizations devoted to the welfare of children, and secure their cooperation.

Article 361. Juvenile courts will be established, as far as practicable, in every chartered city or large municipality.

Article 362. Whenever a child is found delinquent by any court, the father, mother, or guardian may in a proper case be judicially admonished.

Article 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.

TITLE XIII – USE OF SURNAMES

Surname and Middle Name
• A person’s name is the designation by which he is known and called in the community in which he lives.
• The name of an individual has two parts:
  o Given or proper name – given to the individual during birth or baptism to distinguish him from other individuals
  o Surname or family name – identifies the family to which he belongs and is continued from parent to child.
• A name is said to have the following characteristics
  o Absolute – intended to protect the individual from being confused with others
  o Obligatory – nobody can be without a name
  o Fixed, unchangeable, or immutable – may be changed only for good cause and by judicial proceedings
  o Outside the commerce of man – inalienable and intransmissible by act inter vivos or mortis causa
  o Imprescriptible
  • Middle names identify the maternal lineage or filiation of a person, and serve to distinguish persons from others with the same first and last name.
  • A middle name cannot be drops without compelling or justifiable reasons.

Article 364. Legitimate and legitimated children shall principally use the surname of the father.

POINTS

Legitimate and Legitimated Children
• Art 174 of the FC provides that legitimate children have the right to bear the surname of the father and mother and Art 179 of the FC provides that legitimated children have the same rights as legitimate children.
• Alfon v Republic: The term ‘principally’ is not equivalent to ‘exclusively’. Therefore, the child may opt to use his/her mother’s surname instead of the father’s. In this case, the SC also found the use of the mother’s surname justified as this was the name already being used by the child in various records.

Article 365. An adopted child shall bear the surname of the adopter.

POINTS

Adopted Child
• Section 17, Art 5 of RA 8553 (Domestic Adoption Act of 1998) provides that the adoptee shall be considered the legitimate son/daughter of the adopter(s) xxx
Article 366. A natural child acknowledged by both parents shall principally use the surname of the father. If recognized by only one of the parents, a natural child shall employ the surname of the recognizing parent.

Article 367. Natural children by legal fiction shall principally employ the surname of the father.

Art 368. Illegitimate children referred to in Article 287 shall bear the surname of the mother.

POINTS
Illegitimate Children
- Under the new FC, there are only two classes of children: legitimate and illegitimate. The five distinctions among various types of illegitimate children under the Civil Code have been eliminated.
- Art 176 of the FC provides that illegitimate children shall use the surname and shall be under the parental authority of the mother.
- However, illegitimate children can use the surname of the father if the father expressly recognizes their filiation through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is provided by the father. Provided, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime.

Article 369. Children conceived before the decree annulling a voidable marriage shall principally use the surname of the father.

POINTS
Conception Inside an Annulable Marriage
- An annulable marriage is valid until annulled or terminated. Therefore, a child conceived inside a marriage prior to its annulment is legitimate.

Article 370. A married woman may use:
1) Her maiden first name and surname and add her husband’s surname, or
2) Her maiden first name and her husband’s surname, or
3) Her husband’s full name, but prefixing a word indicating that she is his wife, such as “Mrs.”

POINTS
Married Woman
- Art 370 is directory and permissive because when a woman gets married, she does not change her name but only her civil status.
- Example: Corazon Cojuangco, married to Benigno Aquino, Jr., may use:
  o Corazon Cojuangco-Aquino
  o Corazon Aquino
  o Mrs. Benigno Aquino, Jr.
- Remo v Honorable Secretary of Foreign Affairs: The SC ruled that a woman who opted to use the surname of her husband in her passport must continue to use it in case of renewal. She cannot revert to using her maiden surname, because according to RA 8239, she can only do so if the marriage were annulled or nullified, or the woman obtained a valid divorce abroad. It has been submitted, though, that the woman should have been allowed to use her maiden name. While it is true that a passport is the property of the State, this is not enough reason to deprive its citizen of a fundamental right to which the State must also protect.

Article 371. In case of annulment of marriage, and the wife is the guilty party, she shall resume her maiden name and surname. If she is the innocent spouse, she may resume her maiden name and surname. However, she may choose to continue employing her former husband’s surname, unless:
1) The court decrees otherwise, or
2) She or the former husband is married again to another person
POINTS

Annulment
• Example: if Maria Clara-Dela Cruz’s marriage to Juan Dela Cruz is annulled and the wife is the guilty party, she should resume using Maria Clara. If she is the innocent spouse, she may use Maria Clara or Maria Clara-Dela Cruz depending on her choice, unless the court decrees otherwise, or unless she marries Sam America in which case she will follow Art 370 of the FC.

Article 372. When the legal separation has been granted, the wife shall continue using her name and surname employed before the legal separation.

POINTS

Legal Separation
• Marriage bond is not severed in legal separation and there is only separation from ‘bed and board’. Hence the wife may use her name and surname employed before the legal separation.

Article 373. A widow may use the deceased husband’s surname as though he were still living, in accordance with Article 370.

POINTS

Widow
• A widow is a person whose husband is dead. She can use the surname of the husband as if he were still living, in accordance with Art 370.

Article 374. In case of identity of names and surnames, the younger person shall be obliged to use such additional name or surname as will avoid confusion.

POINTS

Identity of Names
• So that confusion can be prevented, the law provides that younger people shall use additional names or surnames.

• Example: if parents want to name their son after his godfather who is not related to them, the son must use an additional name or surname. If godfather is Juan de la Cruz, godson may use Juan Pedro de la Cruz.

Article 375. In case of identity of names and surnames between ascendants and descendants, the word “Junior” can be used only by a son. Grandsons and other direct male descendants shall either:
1) Add a middle name or the mother’s surname, or
2) Add the Roman numerals II, III, and so on.

POINTS

Identity of Names Between Ascendants and Descendants
• According to the law, only the son can use “junior” in case of identity of names between ascendants and descendants.
• Hence the son of Juan de la Cruz who has the same name shall use Juan de la Cruz, Junior. Any other direct descendant other the son could either add a middle name or the mother’s surname, or add the Roman numerals II, III, and so on.
• If Juan de la Cruz, Junior, married to Julieta Santos, has a son with the same name, the son may use Juan Ricardo de la Cruz, or Juan Santos-de la Cruz, or Juan de la Cruz III. If the son is named after his grandfather, Roberto de la Cruz, he shall be named Roberto de la Cruz II.
**Article 376. No person can change his name or surname without judicial authority.**

**POINTS**

**Republic Act Numbered 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 Judicial Order. Amending for this Purpose Articles 376 and 412 of the Civil Code of the Philippines.”
- Consolidation of H.B. No. 9797 and S.B. No. 2159
- Signed by President Arroyo on March 22, 2001.

**Complete Text of RA 9048**
- 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.
- Section 2. Definition of Terms – As used in this Act, the following terms shall mean:
  o "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.
  o "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.
  o "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.
  o "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.
  o "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.
  o "First name" refers to a name or nickname given to a person which may consist of one or more names in addition to the middle and last names.
- Section 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 clerical or typographical errors and/or change of first names or nicknames may be availed of only once.

• Section 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 by that first name or nickname in the community: or
  (3) The change will avoid confusion.

• Section 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 the 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 third copy to the petitioner.

• Section 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.

* Section 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.

* Section 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.

  • Section 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.

* Section 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.

* Section 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.

* Section 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.

* Section 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.

* Section 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.

Change of Name and Surname
• Change of name is a privilege, not a right. Hence there must be shown proper or reasonable cause or any compelling reason to justify such change.
• Change and Review: Change can be effected through the office of the local civil registrar reviewable by the office of the Civil Registrar General and finally the courts.
• Change of Surname — matter of judicial discretion and must be exercised in light of the reasons adduced and the consequences to follow.
• Person shouldn’t be allowed to use a surname which his is otherwise not permitted to employ under the law.

Reasons for Allowing Change of Name
• Law’s purpose is to give a person a chance to improve his personality and to promote his best interest
• For change of name/nickname: Grounds are given under Sec. 4 of RA 9048.
  o In Silverio v. Republic,
    ▪ Issue: Name change from “Rommel” to “Mely”
    ▪ Held: Plea is rejected
    ▪ Ratio: Surgical sexual reassignment is not a valid ground to change person’s name since a person’s sex is immutable from birth
  o In Republic v. Cagandahan,
    ▪ Issue: Name change from “Jennifer” to “Jeff”
    ▪ Held: Plea is granted
    ▪ Ratio: Person was found to have suffered from Congenital Adrenal Hyperplasia (CAH). Though he had both male and female organs, he considered his sex to be male and has ordered his life to that effect. It was also a matter that is “innately private” and the Court could not dictate how he was to live his life with his condition.
• For change of surname: Following have been held to be compelling reasons: (1) ridiculous name, name tainted with dishonor, or a name extremely difficult to write or pronounce; (2) change of civil status; (3) a need to avoid confusion; (4) sincere desire to adopt a Filipino name to erase signs of a former alien nationality which unduly hamper social and business life.
  o Moore v. Republic
    ▪ Issue: divorced woman who remarried, seeks to have her child’s surname changed to the surname of the second husband as he had always treated the child with love & affection
    ▪ Held: Plea for change of surname is rejected for being premature
    ▪ Ratio: There is legal barrier to the plea as the law specifically provides in Art. 364 provides that legitimate children shall principally use the surname of the father. Moreover in Art. 369, in case if annulment of voidable marriage, the children conceived before the annulment shall use their father’s surname. The latter provision may be used in analogy to the case at bench wherein the circumstance is that of divorce, such that children conceived prior to such decree should use the surname of the real father.

Changing the surname could also cause confusion as to the real paternity of the child and this may redound to the prejudice of the child in the community. Moreover, the child is still a minor and at present cannot fathom what he would feel about it when he comes of age. When the time comes, he made decide the matter for himself.
Calderon v. Republic

- Issue: WON illegitimate child can adopt a change of surname
- Held: Yes, it should be allowed
- Ratio: Foster father declared in open court his consent for the petitioner, Gertrudes Josefina, to use his surname, especially so because he is the one supporting her. The mother considered her husband’s generous attitude as an opportunity to promote the personality and enhance the dignity of her daughter by eliminating the stigma of illegitimacy which she would continue to bear if her surname is that of her legitimate father.

Though as the Solicitor General that as a natural child by legal fiction (being born from a bigamous marriage), the law provides that she shall use the father’s surname, it does not mean that the child is prohibited from taking another surname through judicial proceedings, especially for valid and reasonable cause. The child should not be made to suffer for being born illegitimate.

The lower court’s judgment is affirmed.

The reasons adduced by petitioner are valid and it will redound to the best interests of the minor who after all is not at fault to have come into this world as an illegitimate child.

Nature of Proceedings

- Change of name: procedure is in Sec. 3 – 7 of RA 9048
- Change of surname: petition is a judicial proceeding in rem and is governed by Rule 103 of the Rules of Court:
  
  SEC. 1. Venue. — A person desiring to change his name shall present the petition to the Regional Trial Court of the province in which he resides, or, in the City of Manila, to the Juvenile and Domestic Relations Court.
  
  SEC. 2. Contents of petition. — A petition for change of name shall be signed and verified by the person desiring his name changed, or some other person on his behalf, and shall set forth:
  
  (a) That the petitioner has been a bona fide resident of the province where the petition is filed for at least three (3) years prior to the date of such filing;
  
  (b) The cause for which the change of the petitioner’s name is sought;
  
  (c) The name asked for.
  
  SEC. 3. Order for hearing. — If the petition filed is 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, and shall direct that a copy of the order be published before the hearing at least once a week for three (3) successive weeks in some newspaper of general circulation published in the province, as the court shall deem best. The date set for the hearing shall not be within thirty (30) days prior to an election nor within four (4) months after the last publication of the notice.
  
  SEC. 4. Hearing. — Any interested person may appear at the hearing and oppose the petition. The Solicitor General or the proper provincial or city fiscal shall appear on behalf of the Government of the Republic.
SEC. 5. Judgment.—Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed and that the allegations of the petition are true, the court shall, if proper and reasonable cause appears for changing the name of the petitioner, adjudge that such name by changed in accordance with the prayer of the petition.

SEC. 6. Service of judgment.—Judgments or orders rendered in connection with this rule shall be furnished the civil registrar of the municipality or city where the court issuing the same is situated, who shall forthwith enter the same in the civil register.

• Although Rule 103 refers to change of name, it should refer to surname given that change of name is now governed by RA 9048

• PUBLICATION of the petition for change of name is essential for the court to acquire jurisdiction. Since it is a notice to the whole world that the proceeding has for its object “to bar indifferently all who might be minded to make an objection of any sort against the right sought to be established.”

Article 377. Usurpation of a name and surname may be the subject of an action for damages and other relief.

Article 378. The unauthorized or unlawful use of another person’s surname gives a right of action to the latter.

POUNTS

Usurpation of Name
• Tolentino v. Court of Appeals
  o Issue: current wife filed an action to prevent the former wife of husband to use his surname. Usurpation?
  o Held: No usurpation involved
  o Ratio: Usurpation of name implies some injury to the interests of the owner of the name. Consists in the possibility of confusion of identity between the owner and the usurper.

Elements of usurpation of name: (1) an actual use of another’s name by the defendant, (2) use is unauthorized, (3) use of another’s name is to designate personality or identity a person.

None of the elements are present in the case. No claim that former wife has impersonated current wife in any way. In fact it is public knowledge that Constancia Tolentino is the legal wife of Arturo Tolentino. Consuelo David-Tolentino never represented herself after the divorce as the legal wife of Arturo. Moreover, they have legitimate children that have every right to use the surname Tolentino, and she can’t be expected to use a different surname from her children.

Mere use of surname Tolentino by former wife can’t be said to injure the current wife’s rights. No legal injury except hurt feelings which isn’t a basis for relief.

Article 379. The employment of pen names or stage names is permitted, provided it is done in good faith and there is no injury to third persons. Pen names and stage names cannot be usurped.

Article 380. Except as provided in the preceding article, no person shall use different names and surnames.

POUNTS

Pen Name or Stage Names
• A person may use a name other than his name, this is called pen name or stage name.
• Journalists and Artists usually use them. But for them to do so, it must be done in GOOD FAITH and without injury to third persons.
• People using pen names/stage names have a vested right on such names as the law provides that it cannot be usurped.

**TITLE XIV – ABSENCE**

**Chapter 1 – PROVISIONAL MEASURES IN CASE OF ABSENCE**

**Article 381.** When a person disappears from his domicile, his whereabouts being unknown, and without leaving an agent to administer his property, the judge, at the instance of an interested party, a relative, or a friend, may appoint a person to represent him in all that may be necessary. This same rule shall be observed when under similar circumstances the power conferred by the absentee has expired. (181a)

**Article 382.** The appointment referred to in the preceding article having been made, the judge shall take the necessary measures to safeguard the rights and interests of the absentee and shall specify the powers, obligations and remuneration of his representative, regulating them, according to the circumstances, by the rules concerning guardians. (182)

**Article 383.** In the appointment of a representative, the spouse present shall be preferred when there is no legal separation. If the absentee left no spouse, or if the spouse present is a minor, any competent person may be appointed by the court. (183a)

**POINTS**

**Court Appointment**

• Necessary that the appointment of a representative of an absentee be made by way of a court order.

• Spouse must likewise file an application for appointment with the courts with respect to the properties of his or her very own absent spouse. If there is no legal separation, the spouse present shall be preferred.

• Phrase “or if the spouse present is a minor” in the second paragraph of Art. 383 has been repealed by RA6809 which lowered the age of emancipation to 18. Thus, a person who marries must necessarily be 18 to validly marry.

**Chapter 2 – DECLARATION OF ABSENCE**

**Article 384.** Two years having elapsed without any news about the absentee or since the receipt of the last news, and five years in case the absentee has left a person in charge of the administration of his property, his absence may be declared. (184)

**Article 385.** The following may ask for the declaration of absence:

1. The spouse present;
2. The heirs instituted in a will, who may present an authentic copy of the same;
3. The relatives who may succeed by the law of intestacy;
4. Those who may have over the property of the absentee some right subordinated to the condition of his death. (185)

**Article 386.** The judicial declaration of absence shall not take effect until six months after its publication in a newspaper of general circulation. (186a)

**POINTS**

**Judicial Declaration of Absence**

• Necessary for interested persons to be able to protect their rights, interests and benefits in connection with the person who has disappeared.

• Also necessary to protect the interest of the absentee.

**Spouse**

• For a spouse, a judicial declaration of absence can be a sufficient cause for an involuntary judicial separation of property under Art. 135 of the Family Code and therefore...
  o A basis for the termination of the ACP or CPG pursuant to Arts. 99, 126, 134 to 138 of the Family Code.
o A ground for the transfer of all classes of exclusive properties of a spouse to his or her other spouse under Art. 142 of the Family Code
o A basis that can be used for the termination of parental authority under Art. 229 of the Family Code.

Testamentary Heirs
• If a person executes a will and he institutes another person as the one who will succeed him or her in his or her property, such person can seek for the judicial declaration of absence of the testator.

Intestate Heirs
• Are those specified in Sec. 2, Subsections 1 to 6, Chapter 3 of Title IV, Book III of the Civil Code relative to the rules of succession.
• General rule (and in proper cases provided in said Title IV): legitimate and illegitimate relatives of the deceased, the spouse, and the collateral relatives are intestate heirs.

Interested Party
• Law provides that those who have some right subordinated to the condition of the absentee’s death on his property may seek the judicial declaration of absence.
• i.e. valid contract premised on absentee’s death of repurchasing absentee’s house upon his death, gives him right to file.
  o This is taken together with Art. 42 of the Civil Code: effect of death upon the rights and obligations of the deceased person is determined, among others, by contract.

Effectivity of Judicial Declaration
• Despite what is stipulated in Art. 386, the absence of the absentee shall be counted not from the effectivity of the juridical decree but from the date on which the last news of the absentee was received.

Chapter 3 – ADMINISTRATION OF THE PROPERTY OF THE ABSENTEE

Article 387. An administrator of the absentee’s property shall be appointed in accordance with article 383. (187a)

Article 388. The wife who is appointed as an administratrix of the husband’s property cannot alienate or encumber the husband’s property, or that of the conjugal partnership, without judicial authority. (188a)

POINTS

Prohibition on Alienation
• Despite Art. 388 referring only to the wife, the husband is likewise prohibited from alienating the wife’s properties without her consent. Since under the Family Code, the rights of the spouses to their respective exclusive properties are to be respected as can be seen in Arts. 111 and 112.

Article 389. The administration shall cease in any of the following cases:
(1) When the absentee appears personally or by means of an agent;
(2) When the death of the absentee is proved and his testate or intestate heirs appear;
(3) When a third person appears, showing by a proper document that he has acquired the absentee’s property by purchase or other title.
In these cases the administrator shall cease in the performance of his office, and the property shall be at the disposal of those who may have a right thereto. (190)

POINTS

Appearance of Absentee
• Since purpose of appointing administrator is to protect the absentee’s properties during his absence, if the owner appears, the very reason for the appointment ceases.
• True also if a duly appointed agent of the owner appears. Since by the contract of agency, a person binds himself to render some service or to do something in representation or on behalf
of another, with the consent or authority of the latter (Art. 1186 of the Civil Code)

Death
• Upon someone’s death, executor mentioned in his or her will shall be usually appointed as the administrator of his or her estate in accordance with the said decedent’s wishes which must be pursuant to law.
• If he dies without a will, intestate proceedings will be instituted where a new administrator of his or her estate shall be appointed.

Superior Interest
• Administrator must always act within his or her mandate and authority.
• Administrator has no right to administer property which does not belong to the owner.
  o If somebody presents any valid or authentic document showing that the property being administered really belongs to somebody else, the administration over such property hall and must necessarily cease.

Chapter 4 – PRESUMPTION OF DEATH

Article 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.

The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened. (n)

Article 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

(1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;
(2) A person in the armed forces who has taken part in war, and has been missing for four years;
(3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.

(n)

Article 392. If the absentee appears, or without appearing his existence is proved, he shall recover his property in the condition in which it may be found, and the price of any property that may have been alienated or the property acquired therewith; but he cannot claim either fruits or rents. (194)

POINTS

Absence
• “absence” here means that a person is not at the place of his domicile and his actual residence is unknown, and it is for this reason that his existence is doubtful, and that, after 7 years of such absence, his death is presumed.
• Removal alone is not enough, disappearance from his domicile and from knowledge of those with whom he could naturally communicate is necessary

Presumption of Death
• Given by Art. 390. Except for the condition in Art. 41, no need to file a case to declare one presumptively dead.
• Petitioning for declaration of presumptive dead (outside the purpose of Art. 41) is unnecessary as such presumption is provided by law. Indeed a pronouncement to that effect would only be a PRIMA FACIE presumption only and is disputable. It being a presumption juris tantum, it can never attain finality.
Proof of actual death of a person presumed dead would have to be made in another proceeding to have such particular fact determined. (In re Szatraw)
Period

- Remarriage under Art. 41: 4 consecutive years, to be judicially declared presumptively dead.
- Other purposes: no need of a judicial declaration but...
  - Generally: 7 years for other purposes
  - Exception: 10 years for opening succession, unless person disappeared after the age of 75, in which case 5 years is enough and will be presumed dead at the end of the 7th year.
- Special circumstance: disappearance under dangerous circumstance in Art. 391
  - Generally: 4 years for all purposes including division of estate among heirs.
  - Exception: 2 years with a judicial declaration of presumptive death for remarriage under Art. 41

Missing Person

- Art. 391 provides specific instances. Hence it can’t be used when a person fell into the sea while on board a vessel and drowns because the vessel “was not lost during a sea voyage.” Same vein that it won’t apply when a person can’t be found in an airplane wreckage as the airplane is not missing.
- Art. 391 (2), person subject of inquiry must have “taken part in the war.”
- In case Art. 391 is applicable, the presumption is that the person died at the time when he was LAST HEARD OF and not at the end of the period.

Chapter 5 – EFFECT OF ABSENCE UPON THE CONTINGENT RIGHTS OF THE ABSENTEE

Article 393. Whoever claims a right pertaining to a person whose existence is not recognized must prove that he was living at the time his existence was necessary in order to acquire said right. (195)

**POINTS**

Proof of Existence

- “If a person is known to be dead and there is a controversy as to the validity of a transaction or contract allegedly entered into by him, the person claiming validity of the transaction, contract or obligation must prove that, at the time it was entered into, the person who entered the contract or incurred the obligation was alive.”
- “If some right exists in favor of a deceased and such right is sought to be enforced, the individual seeking to enforce such right must prove that the right vested in favor of the deceases while the latter was still living.”

**Article 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 coheirs, unless he has heirs, assigns, or a representative. They shall all, as the case may be, make an inventory of the property.** (196a)

**POINTS**

Accretion

- Disposition of inheritance of an absentee shall benefit either his or her co-heirs or his or her own heirs, assigns or representatives.
  - A and B are the sons of X. A is declared an absentee. X dies leaving no will and a P100,000 estate. Since A is an absentee, B gets the full P100,000. If A had children, they will inherit A’s P50,000 by their right of representation.

**Article 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 representatives or successors in interest. These rights shall not be extinguished save by lapse of time fixed for prescription. In the record that is made in the Registry of the real estate which accrues to the coheirs, the...**
 Persons and Family Relations Law

Professor Amparita Sta. Maria

**POINTS**

**Claim**
- Even that the property supposed to be inherited by absentee accrues to the co-heirs, the title or record of the said property in the proper registry of property shall have an annotation stating that, within the prescriptive period provided by law, the property can be subject to the claim of any person having an interest in the said property especially the absentee, or his or her representative or successors. If the absentee reappears, he has the right to file a petition to get his rightful inheritance from the co-heirs.
- Right to claim inheritance by absentee is also given to his representatives or successor, but they must file the petition within the prescriptive period.

**Article 396.** Those who may have entered upon the inheritance shall appropriate the fruits received in good faith so long as the absentee does not appear, or while his representatives or successors in interest do not bring the proper actions. (198)

**POINTS**

**Appropriation of Fruits**
- Anyone who obtains the inheritance of the absentee in accordance with law can make use or appropriate the fruits of the inheritance as long as they are in good faith.
- If the absentee appears or his or her representatives or successors already filed a claim in court, those who may have entered upon the inheritance cannot anymore make such appropriation.

**TITLE XVI – CIVIL REGISTRY**

**Article 407.** Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register. (325a)

**POINTS**

**Duties of the Local Civil Registrar**
- **Sec. 12 of the Civil Registry Law** on their duties:
  (a) file registrable certificates and documents presented to them for entry;
  (b) complete the same monthly and prepare and send any information required of them by the Civil Registrar-General;
  (c) issue certified transcripts or copies of any certificate or document registered upon payment of proper fees;
  (d) order the binding, properly classified, of all certificates or documents registered during the year;
  (e) send to the Civil Registrar-General, during the first ten days of each month, a copy of the entries made during the preceding month for filing;
  (f) index the same to facilitate search and identification in case any information is required, and
  (g) administer oaths, free of charge, for civil register purposes.

**Article 408.** The following shall be entered in the civil register:
(1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filiation; (15) voluntary emancipation of a minor; and (16) changes of name. (326a)

**Article 409.** In cases of legal separation, adoption, naturalization and other judicial orders mentioned in the preceding article, it shall be the duty of the clerk of the court which issued the decree to ascertain whether the same has been registered, and if this has not been done,
to send a copy of said decree to the civil registry of the city or municipality where the court is functioning. (n)

Article 410. The books making up the civil register and all documents relating thereto shall be considered public documents and shall be prima facie evidence of the facts therein contained. (n)

**POINTS**

**Public Documents**

- Those provided in Art. 410 “shall be open to the public during office hours and shall be kept in a suitable safe which shall be furnished to the local civil registrar at the expense of the general fund of the municipality concerned. The local registrar shall not under any circumstances permit any document entrusted to his care to be removed from his office, except by order of a court, in which case the proper receipt shall be taken. The local civil registrar may issue certified copies of any document filed, upon payment of the proper fees required in this Act.” (Sec. 13 of the Civil Registry Law)

- Unlike the filing of documents in the Registry of Deeds where the law expressly provides that such filing is constructive notice to all the documents filed therein (Sec. 52 of PD 1529), the Civil Register Law does not provide for constructive notice to all persons of any document filed in the Office of the Local Civil Registrar or Office of the Civil Registrar General.

- Birth records, including birth certificates, are strictly confidential and the contents therein can’t be revealed except when obtained by those interested therein: (1) person himself, or any person authorized by him; (2) his spouse or parents, direct descendants, or guardian or institution legally in charge of him if he is a minor; (3) 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 person’s death, the nearest of kin. (Art. 7 of PD 603)

**Prima Facie Evidence**

- Proofs, if remains unrebutted or uncontradicted, is sufficient to maintain the fact such evidence seeks to substantiate. It creates a presumption of fact.

- Although an official document (such as a birth certificate), enjoys presumption of regularity, specific facts and sufficient evidence can negate such presumption such as irregularities surrounding the document and the document itself.

**Article 411. Every civil registrar shall be civilly responsible for any unauthorized alteration made in any civil register, to any person suffering damage thereby. However, the civil registrar may exempt himself from such liability if he proves that he has taken every reasonable precaution to prevent the unlawful alteration. (n)**

**Article 412. No entry in a civil register shall be changed or corrected, without a judicial order. (n)**

**POINTS**

**Republic Act Numbered 9048**

- 412 along with 376 have been amended by this act. It deals with corrections in the civil registry which involved merely typographical or clerical errors just like the concept in 412

**Administrative or Judicial Proceeding**

- Except for clerical or typographical errors or change in the name or nickname of a person, a change in the entries in the civil register must always pass through a judicial proceeding.

- Proceeding may be either summary or adversarial. The latter if the changes involve substantial or controversial matters such as those involving a person’s civil status, nationality or citizenship and filiation of the offsprings and parents.

  - Substantial and controversial matters should be threshed out in an appropriate court proceeding instituted for the purpose wherein the State and all parties who may be affected by the entries are notified
or represented to the end that the case may be decided with due process of law and on the basis of the facts proven.

- The resolution of the Office of the Local Civil Registrar can be reviewed by the Office of the Civil Registrar General and finally the courts.
- Typographical and/or clerical errors can be corrected administratively through the office of the local civil registrar by filing the necessary verified petition by any person having direct and personal interest in the correction.
  
  o "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. (Sec. 2[3] of RA 9048)

  o Examples: clearly misspelled name and occupation of parents, or changing of a single vowel.
  
  o What cannot be considered: those which will alter the status of a person from legitimate to illegitimate filiation do not come under Art. 412.

Rule 108 of the Rules of Court
- Provides for procedural rules for the cancellation or correction of entries in the civil registry. Procedure is as follows:
  
  SEC. 1. Who may file petition.—Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Regional Trial Court of the province where the corresponding civil registry is located.
  
  SEC. 2. Entries subject to cancellation or correction.—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 separations; (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.
  
  SEC. 3. Parties.—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.
  
  SEC. 4. Notice and publication.—Upon the 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.
  
  SEC. 5. Opposition.—The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.
  
  SEC. 6. Expediting proceedings.—The court in which the proceedings is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.
SEC. 7. Order.—After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.

• Before, Rule 108 dealt with summary proceedings referred to in Art. 412 in connection with changes of clerical and innocuous errors. But in Republic v. Valencia, Court ruled that: “If all these procedural requirements have been followed, a petition for correction and/or cancellation of entries in the record of birth even if filed and conducted under Rule 108 of the Revised Rules of Court can no longer be described as "summary". There can be no doubt that when an opposition to the petition is filed either by the Civil Registrar or any person having or claiming any interest in the entries sought to be cancelled and/or corrected and the opposition is actively prosecuted, the proceedings thereon become adversary proceedings.”
  o Substantial changes sought were (1) from “Chinese” to “Filipino”; and (2) from “Legitimate” to “Illegitimate.” These can’t be allowed if all the requirements under Rule 108 are fulfilled because in such case the proceedings turned into an adversarial one which is the appropriate judicial proceedings with respect to substantial changes in the entries.

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**Article 413.** All other matters pertaining to the registration of civil status shall be governed by special laws. (n)

**POINTS**

• Act numbered 3753 or Civil Registry Law provides for the registration of documents evidencing the acquisition or termination of a particular civil status such as legitimation, adoption, change of name, marriage, termination of such marriage and others. They have been discussed in this book in the appropriate chapters dealing with the relevant subjects.