

**PERSONS AND FAMILY RELATIONS
MEMORY AID**

ATENEO CENTRAL BAR OPERATIONS 2001

WHEN LAWS TAKE EFFECT

General Rule: 15 days after completion of publication in OG or newspaper of general circulation

Exception: The law can provide its own date of effectivity, *i.e.*, it can provide for a period less than or greater than 15 days after publication before the law takes effect.

- Publication is MANDATORY even if the law provides its own date of effectivity.
- Internal regulations of administrative agencies which bind only the agency need not be published.

COMPLIANCE WITH THE LAW

- Ignorance of the law excuses no one from compliance therewith. (*Ignorantia juris neminem excusat*)

RETROACTIVITY

General Rule: Rules are not retroactive

Exceptions:

1. When the law itself expressly provides
Exception to the exception: *ex facto* law when retroactivity impairs the obligation of contract
2. Remedial statutes
3. Curative statutes
4. Laws interpreting other laws
5. Laws creating new rights
6. Penal laws when favorable to the accused who is not a habitual delinquent

ACTS VIOLATING MANDATORY OR PROHIBITORY LAWS ARE VOID

Exception: When law itself authorizes their validity

REQUISITES FOR A VALID WAIVER:

1. Person making the waiver must have the right he is waiving
 2. He must have the capacity to make the waiver
 3. The waiver must be made in a clear and unequivocal manner
- A right may not be waived if such waiver is contrary to law, public order, public policy, morals or good customs or is prejudicial to third person.

REPEAL OF LAWS

- Express repeal - repeal of repealing law will not revive the old law
- Implied repeal - takes place when the provisions of the subsequent law are incompatible with those of the previous law

Requisites:

1. Both laws cover the same subject matter
2. The latter law is repugnant to the earlier law
→ Repeal of the repealing law revives the old law unless the contrary is expressly provided in the last law.

STARE DECISIS

- Doctrine of *stare decisis* – requires courts to follow the rule established in earlier decisions of the Supreme Court
- The doctrine, however, is not inflexible, so that when in the light of changing conditions, a rule has ceased to be beneficial to the society, the courts may depart from it.

PENAL LAWS

- Penal laws those of public security and safety – obligatory upon all who live or sojourn in the Philippines.

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STATUS LAWS

- Laws relating to family rights and duties or to the status, condition and legal capacity of persons – binding upon Filipino citizens even though living abroad.

CONFLICTS RULES

Real property and personal property	<i>Lex situs</i>
Order of succession Amount of successional rights Intrinsic validity of testamentary provisions	National law of the decedent
Forms/solemnities of wills, contracts & other public instruments	<i>Lex loci celebrationis</i>

ABUSE OF RIGHTS

- There is an abuse of right when it is exercised for the purpose of prejudicing or injuring another.

ACCION IN REM VERSO

- Action for recovery of what has been paid without just cause
- Requisites:
 1. Defendant has been enriched
 2. Plaintiff suffered a loss
 3. Enrichment of defendant is without just or legal ground
 4. Plaintiff has no other action based on contract, quasi contract, crime or quasi-delict
- Distinguished from *solutio indebeti*: Mistake is an essential element in *solutio indebeti* but not in *accion in rem verso*.

CIVIL ACTIONS

- Accused in a criminal case is acquitted because his guilt was not proved beyond reasonable doubt – plaintiff may still file a civil action for damages for the same act or omission.
- Independent civil actions – Articles 31 to 34, 2176
- §31 – based on an obligation arising from act/omission complained of as a felony
- §32 – violation of civil liberties
- §33 – defamation, fraud and physical injuries
- §34 – police refuses or fails to render aid or protection to any person in case of danger to life or property
- §36 – prejudicial questions
 - ➔ Elements :
 1. Civil action involves an issue intimately related to the issue in criminal action
 2. Resolution of issue in civil case determines whether or not the criminal action may proceed
 3. Cognizance of civil case pertains to another tribunal

PERSONS

KINDS OF CAPACITY

1. Juridical capacity – fitness to be the subject of legal relations
2. Capacity to act – power to do acts with legal effect

PERSONALITY

- Birth determines personality
- *BUT* conceived child shall be considered born for all purposes favorable to it provided it be born later under the following conditions:
 1. If it is alive at the time it is completely delivered from the mother's womb
 2. *BUT* if it had an inter-uterine life of at least 7 months, if it lives for at least 24 hours after its complete delivery from the maternal womb
- Civil personality extinguished by death

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DOUBTS AS TO ORDER OF DEATH

- As between 2 or more persons called to succeed each other, if there is doubt as to which of them died first, whoever alleges the death of 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.
- This rule applies only to cases involving succession.

JURIDICAL PERSONS

1. The state and its political subdivisions
2. Other corporations, institutions and entities for public interest or purpose, created by law
3. Corporations, partnerships and associations for private interest or purpose

FAMILY RELATIONS

DEFINITION OF MARRIAGE

1. Marriage is a special contract
2. It is a permanent union
3. The union is between a man and a woman
4. The union must be entered into in accordance with law
5. The purpose of marriage is the establishment of conjugal and family life

ESSENTIAL REQUISITES OF MARRIAGE

1. Legal capacity of contracting parties
2. Consent freely given in the presence of the solemnizing officer

FORMAL REQUISITES OF MARRIAGE

1. Authority of solemnizing officer
2. Valid marriage license (*except* in cases where a marriage license is not required)
3. Marriage ceremony

AUTHORIZED SOLEMNIZING OFFICERS:

1. Incumbent member of the judiciary within the court's jurisdiction
2. Duly authorized priest, rabbi, imam or the minister of any church or religious sect
3. Ship captain or airplane chief
 - Can solemnize marriages only in *articulo mortis* between passenger or crew members while the ship is at sea or the plane is in flight and also during stopover at ports of call
4. Military commander of a unit to which a captain is assigned
 - Can solemnize marriage only if it is in *articulo mortis* between persons within the zone of military operations whether members of the armed forces or civilians and only in the absence of the chaplain
5. Consul-general, consul or vice-consul – can solemnize marriage between Filipinos abroad
6. Mayor (Local Government Code of 1991)

MARRIAGE EXEMPT FROM LICENSE REQUIREMENTS:

1. Marriage in *articulo mortis*
2. 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 civil registrar
3. Marriage in *articulo mortis* in military zones
4. Marriage among Muslims or among members of ethnic cultural communities in accordance with their customs
5. Marriage between persons who have lived together as husband and wife for at least five years and without any legal impediment to marry each other

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FLAW	STATUS OF MARRIAGE
Absence of any essential or formal requisites <i>Except:</i> If the marriage is solemnized by unauthorized person, the marriage will still be valid if either or both contracting parties believed in good faith that the solemnizing officer had legal authority [Article 35 (2)]	<i>Void ab initio</i>
Defect in essential requisite	Voidable
Irregularity in formal requisite	Valid but party responsible for such irregularity shall be civilly, criminally and administratively liable

OTHER REQUIREMENTS

Either or Both Parties is	What is Needed
18 years old and above but below 21	Parental consent
21 years old and above but below 25	Parental advice
18 years old and above but below 25	Marriage counseling

Effects

Lack of parental consent	Marriage is VOIDABLE
Lack of parental advice/lack of marriage counseling	Of NO EFFECT on the validity of marriage <i>However</i> , this will suspend the issuance of the marriage license for a period of 3 months from the completion of publication of the application for marriage license. If the parties get married during the 3-month period without a license, the marriage shall be VOID. On the other hand, if they are able to obtain a license during the 3-month period, the marriage will still be valid but may be held civilly and criminally liable.

Rule on Marriages Solemnized Abroad

General Rule: Marriages solemnized outside the RP in accordance with the law of the foreign country shall be valid in the Philippines (*lex loci celebrationis*)

Exceptions:

1. Marriage between persons below 18 years old
 2. Bigamous or polygamous marriage
 3. Mistake in identity
 4. Marriages void under Article 53
 5. Psychological incapacity
 6. Incestuous marriages
 7. Marriage void for reasons of public policy
- If a Filipino married to a foreigner and the latter subsequently obtains a valid divorce abroad capacitating him./her to remarry, the Filipino spouse shall likewise have the capacity to remarry under the Philippine law.

VOID MARRIAGES

- *Void Ab Initio* under Article 35
 1. Contracted by any party below 18 years old
 2. Solemnized by unauthorized solemnizing officer (*Except* if either or both parties believed in good faith that the officer had authority)
 3. Solemnized without license (*Except* when license not required)
 4. Bigamous or polygamous marriages (*Except* Article 41 – marriage contracted by a person whose spouse has been absent for 4 years (ordinary absence) or 2 years (extraordinary absence) where such person has a well founded belief that

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- his/her absent spouse was already dead and after the absent spouse is judicially is declared presumptively dead
5. Mistake in identity
 6. Subsequent marriage void under Article 53
- Article 53 provides that a person whose marriage has been annulled may remarry as long as he complies with Art. 52 which requires that after the marriage is annulled the properties of the spouses must be partitioned and distributed and the presumptive legitime of the children must be distributed. Furthermore, the judgment of annulment or absolute nullity, the partition and distribution of the spouses' properties and the delivery of the children's presumptive legitime must be recorded in the appropriate civil registry and registries of property. Failure to comply with these requisites will make the subsequent marriage void ab initio.
 - **NOTE:** THE ENUMERATION OF VOID MARRIAGES UNDER Art 35 is not exclusive.
 - *Void under Article 36:* where one party, who at the time of the celebration of the marriage, was psychologically incapacitated to comply with the essential marital obligations.

VOID FOR BEING INCESTUOUS

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

VOID FOR REASON OF PUBLIC POLICY:

1. Between collateral blood relatives up to the 4th civil degree
2. Between step-parents and step-children
3. Between parents-in law and children-in law
4. Between adopting parent and adoptive child
5. Between surviving spouse of the adopter and the adopted
6. Between surviving spouse of the adopted and the adopter
7. Between adopted and legitimate child of adopter
8. Between adopted children of same adopter
9. Between parties where one with the intention to marry the other, killed that the other person's spouse or his/her own spouse

RULE ON BIGAMOUS MARRIAGE (ARTICLE 41)

General Rule: Marriage contracted by any person during the subsistence of a previous marriage is VOID

Exception: If before the celebration of the subsequent marriage, the prior spouse had been absent for 4 consecutive years (ordinary absence) or 2 years (extraordinary absence) and the spouse has a well-founded belief that the absent spouse was already dead. In this case, the subsequent marriage is valid but it shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse.

Exception to Exception: If both spouses of the subsequent marriage acted in bad faith, such marriage is void ab initio.

GROUND FOR ANNULMENT OF MARRIAGE

1. Lack of parental consent
2. Insanity of one of the parties
3. Fraud
 - Circumstances constituting fraud:
 - a. Non-disclosure of conviction by final judgment of crime involving moral turpitude
 - b. Concealment of pregnancy by another man
 - c. Concealment of sexually transmissible disease, regardless of nature, existing at the time of marriage
 - d. Concealment of drug addiction, habitual alcoholism, homosexuality and lesbianism

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4. Force, intimidation or undue influence
5. Impotency
6. Affliction of sexually transmissible disease found to be serious and which appears incurable

ARTICLE 45	ARTICLE 46
The STD is a ground for annulment	The STD is a type of fraud which in turn is a ground for annulment
The STD does not have to be concealed	The STD must be concealed
The STD must be serious and incurable	The STD does not have to be serious and incurable

GROUNDS FOR ANNULMENT	WHO CAN FILE	PRESCRIPTIVE PERIOD	RATIFICATION
Lack of parental consent	a. Party under age b. Parent or guardian	a. Within 5 years after attaining 21 b. Before child reaches 21	Free cohabitation after reaching 21
Insanity of one party	Sane spouse	2 views: Sempio-Diy Before death of other party Dean Del Castillo Within 5 years from the time the right or action accrues	Free cohabitation after insane regains sanity
	Guardian of insane spouse	Anytime before the death of either party	
	Insane spouse	During the lucid interval or after regaining sanity also before death of other party	
Fraud	Injured party	Within 5 years from discovery of fraud	Free cohabitation after knowledge of fraud
Force, intimidation or undue influence	Injured party	Within 5 years from the cessation of cause	Free cohabitation after cause has disappeared
Impotence of one party	Potent party	Within 5 years after marriage	Cannot be ratified but action prescribes
Serious STD	Healthy party	Within 5 years after marriage	Cannot be ratified but action prescribes

EFFECTS OF TERMINATION OF MARRIAGE

	VOIDABLE BIGAMOUS MARRIAGE (ART 41)	DECLARATION OF NULLITY	ANNULMENT
Status of children	Children of subsequent marriage conceived before its termination – legitimate	Illegitimate <i>except</i> Art 36 and Art 53	Children conceived or born before annulment decree – legitimate
Property Relations	ACP/CPG shall be liquidated. Spouse who contracted the marriage in bad faith, his/her share in the net profits of	Same	Same

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	community property shall be forfeited in favor of common children or if there are none, children of the guilty spouse by previous marriage or in default, the innocent spouse		
Donations <i>Propter Nuptias</i>	Shall remain VALID <i>except</i> a. If donee contracted the marriage in bad faith, donations <i>propter nuptias</i> made to the donee are revoked by operation of law. b. If both spouses acted in bad faith, donations <i>propter nuptias</i> made by one in favor of the other are revoked by operation of law.	Same	Same
Insurance	If one spouse acted in bad faith, innocent spouse may revoke his designation as beneficiary in the insurance policy even if such designation be stipulated irrevocable	Same	Same
Succession	If one spouse contracted the marriage in bad faith, he shall be disqualified to inherit from the innocent spouse both testate and intestate	Same	Same

DISTINCTION BETWEEN VOID AND VOIDABLE MARRIAGE

	VOID	VOIDABLE
As to nature	Inexistent from the time of performance	Valid until annulled
As to susceptibility to ratification	Cannot be ratified	Can be ratified either by free cohabitation or prescription
As to effect on property	No community property, only co-ownership (Art 147)	Absolute community exists unless another system is agreed upon in marriage settlement
As to effect on children	Children are illegitimate <i>Exceptions:</i> a. In case of psycho incapacity (Art 36) b. Children born of subsequent marriage (Art 53)	Children are legitimate if conceived before decree of annulment
As to how marriage may be impugned	a. May be attacked directly or collaterally but for purpose of remarriage, there must be judicial declaration of nullity. b. Can still be impugned even after death of parties	a. Cannot be attacked collaterally, only directly, i.e. there must be a decree of annulment b. Can no longer be impugned after death of one of the parties

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GROUND FOR LEGAL SEPARATION

1. Repeated physical violence or grossly abusive conduct directed against petitioner, a common child or a child of the petitioner
2. Physical violence or moral pressure to compel change in religious or political affiliation
3. Attempt to corrupt or induce petitioner to engage in prostitution or connivance in such corruption or inducement
4. Final judgment sentencing respondent to imprisonment of more than 6 years
5. Drug addiction or habitual alcoholism
6. Lesbianism or homosexuality
7. Subsequent bigamous marriage
8. Sexual infidelity or perversion
9. Attempt by despondent against the life of the petitioner
10. Abandonment for more than one year without justifiable cause

GROUND TO DENY LEGAL SEPARATION:

1. Condonation
2. Consent
3. Connivance
4. Mutual fault
5. Collusion
6. Prescription – action for legal separation must be filed within five years from the time of the occurrence of the cause of action

EFFECTS OF SEPARATION:

1. Spouses are entitled to live separately
2. Marriage bond is not severed
3. Dissolution of property regime
4. Forfeiture of the share of the guilty spouse in the net profits of the ACP/CPG
5. Custody of minor children to innocent spouse
6. Guilty spouse is disqualified from intestate succession and provisions made by him in favor of the innocent spouse in a will shall be revoked
7. Innocent spouse may revoke the donation made by him in favor of the offending spouse. However, alienations, liens and encumbrances registered in good faith before the recording of the complaint for revocation in the registries of property shall be respected.
8. Innocent spouse may revoke designation of guilty spouse as beneficiary in insurance policy even if such designation be stipulated as irrevocable

EFFECTS OF RECONCILIATION

1. Legal separation proceedings if still pending shall be terminated
2. Final decree of legal separation shall be set aside but the separation of property and any forfeiture of the share of the guilty spouse shall subsist unless the spouses agree to revive their former property regime

OBLIGATIONS OF HUSBAND AND WIFE

1. Live together
 2. Observe mutual love, respect and fidelity
 3. Render mutual help and support
- Either spouse may exercise any legitimate profession or business without the consent of the other.
 - ➔ The other spouse may object on valid, serious and moral grounds. In case of disagreement, the court shall decide whether
 - a. The objection is proper AND
 - b. Benefit has accrued to the family before and after the objection.
 - If benefit accrued to the family before the objection, the resulting obligation shall be enforced against the ACP.

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- If benefit accrued to the family after the objection has been made, the resulting obligation shall be enforced against the separate property of the spouse who has not obtained consent.

WHAT GOVERNS PROPERTY RELATIONS BETWEEN SPOUSES

1. Marriage settlement – future spouses may agree upon the regime of ACP, CPG or complete separation of property or any other regime
2. Provision of the Family Code – if there is no marriage settlement or when the regime agreed upon is void, the system of ACP shall govern
3. Local custom

REQUISITES OF VALID MARRIAGE SETTLEMENT

1. In writing
2. Signed by the parties
3. Executed before the celebration of marriage
4. If a party executing the settlement needs parental consent, the parent/guardian whose consent is needed must be made a party to the agreement
5. If the party executing the settlement is under civil interdiction or any other disability, the guardian appointed by the court must be made a party to the settlement
6. Registration (to bind 3rd persons)

DONATIONS BY REASON OF MARRIAGE

- Before marriage
General Rule: Future spouses cannot donate to each other more than 1/5 of their present property (excess shall be considered void)
Exception: If they are governed by ACP
- During marriage
General Rule: Spouses cannot donate to each other, directly or indirectly (donations made by spouses to each other during the marriage are void)
Exception: Moderate gifts on the occasion of any family rejoicing
- Applied to common law spouses

GROUND S TO REVOKE DONATION PROPTER NUPTIAS

1. Marriage is not celebrated or is judicially declared void ab initio
2. Marriage without the needed parental consent
3. Marriage is annulled and donee in bad faith
4. If it is with a resolutive condition and the condition is complied with
5. In legal separation and donee is the guilty spouse
6. Donee commits acts of ingratitude such as:
 - a. If the donee commits an offense against the person, honor or property of the donor, his wife or his children under his parental authority
 - b. If the donee imputes to the donor any criminal offense or any act involving moral turpitude unless the crime was committed against the donee himself, his wife or his children under his authority
 - c. If the donee unduly refuses to support the donor when he is legally or morally bound to give such support

PRESCRIPTIVE PERIOD FOR FILING ACTION FOR REVOCATION OF DONATION PROPTER NUPTIAS

1. If marriage is not celebrated (except donations contained in the marriage settlement which are automatically rendered void if the marriage does not take place)
 - Written donation – 10 years
 - Oral donation – 6 years
2. If marriage is declared void ab initio
 - Written donation – 10 years
 - Oral donation – 6 years

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3. When marriage takes place without the required parental consent – 4 years
4. If resolutive condition is complied with
 - Written donation – 10 years
 - Oral donation – 6 years
5. When marriage is annulled – 4 years
6. If donee commits an act of ingratitude – 1 year from donor's knowledge of that fact
7. In cases of legal separation – 5 years from the time the decree of separation has become final

SYSTEM OF ABSOLUTE COMMUNITY

- The community property consists of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.

EXCLUSIONS FROM COMMUNITY PROPERTY

1. Property acquired during the marriage by gratuitous title and its fruits except if its 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 (jewelry forms part of the ACP)
3. Property acquired before the marriage by one with legitimate descendants by former marriage and its fruits and income

CHARGES UPON THE ACP

1. Support of spouses, their common children and legitimate children of either spouse
 2. Debts and obligations contracted during the marriage by designated administrator - spouse, both spouses or by one with the consent of the other
 3. Debts and obligations contracted by either spouse without the consent of the other to the extent that it benefited the family
 4. Taxes, liens, charges and expenses upon community property
 5. Taxes and expenses for mere preservation made during the marriage upon the separate property of either spouse used by the family
 6. Expenses for professional or vocational course
 7. Antenuptial debts which redounded to the benefit of the family
 8. Donated or promised to common legit children for profession, vocational course or self improvement
 9. Other ante-nuptial debts, support of illegitimate child and liabilities for crime, *quasi-delicts* in absence of separate property
 10. Expenses of litigation between spouses unless the suit is found to be groundless
- If the community property is insufficient to cover all these liabilities, except those falling under par. 9, the spouses shall be solidarily liable for the unpaid balance with their separate properties.
 - Administration of community property belongs to both spouses jointly. In cases of disagreement, the decision of the husband prevails. If the wife decides to go to court, she must do so within 5 years from the date of the contract implementing the husband's decision.
 - Both spouses must approve any dispositions or encumbrances and consent of the other spouse regarding the disposition must be in writing, otherwise, the matter should be brought to court and the court will give the authority, if proper. If one spouse acts without the consent of the other or without court approval, such disposition/encumbrance is void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the 3rd person which may be perfected as a binding contract upon acceptance by the spouse or court approval.

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ACP/CPG TERMINATES:

1. Death
2. Legal separation
3. Annulment
4. Judicial separation of property during marriage

PROCEDURE FOR DISSOLUTION OF ACP:

1. Inventory of all properties
2. Debts and obligation of ACP are paid
3. Remains of the separate properties of the spouses are returned to the owner
4. Net remainder of the ACP is divided equally between husband and wife
5. Presumptive legitimes of children are delivered
6. Adjudication of conjugal dwelling and custody of common children

WHAT ARE CONTRIBUTED TO CPG:

1. Proceeds, products, fruits and income of separate properties of spouses
2. Everything acquired by spouses through their efforts
3. Everything acquired by spouses through chance

EXCLUSIVE PROPERTY IN CPG:

1. That brought into the marriage as his/her own
2. That acquired during the marriage gratuitously
3. That acquired by redemption, barter or exchange with exclusive property
4. That purchased with exclusive money of spouse

WHAT CONSTITUTES CPG

1. Those acquired during the marriage with conjugal funds
2. Those obtained from labor, industry, work or profession of either or both spouse
3. Fruits of conjugal property due or received during the marriage and net fruits of separate property
4. Share in the hidden treasure
5. Those acquired through occupation
6. Livestock in excess of what was brought to the marriage
7. Those acquired by chance

CHARGES UPON CPG

1. Support of the spouses, their common children and legit children of either spouse
2. Debts and obligations contracted by one without the consent of the other to the extent that the family benefited
3. Debts and obligations contracted during the marriage by administrator- spouse, both spouses or one with the consent of the other
4. Taxes, liens, charges, expenses upon conjugal property
5. Taxes and expenses for mere preservation of separate property
6. Expenses for professional, vocational or self-improvement courses of either spouse
7. Antenuptial debts to extent family benefited
8. Value of what is donated or promised to common legit children for professional, vocation or self improvement courses
9. Expenses of litigation

PROCEDURE FOR DISSOLUTION OF CPG

1. Inventory of all property
2. Amounts advanced by CP as payment for personal debts and obli of either spouse are credited
3. Reimbursement for use of exclusive funds
4. Debts and obligations of the CP are paid
5. Remains of exclusive properties are returned
6. Indemnify loss of deterioration of movables belonging to either spouse used for the benefit of the family

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7. Net remainder of conjugal property is divided equally
8. Delivery of children's presumptive legitimes
9. Adjudication of conjugal dwelling and custody of children

DISTINCTION BETWEEN ACP AND CPG

ACP	CPG
All the properties owned by the spouses at the time of marriage become community property	Each spouse retains his/her property before the marriage and only the fruits and income of such properties become part of the conjugal properties during the marriage
Upon dissolution and liquidation of the community prop what is divided equally between the spouses or their heirs is the net remainder of the properties of the ACP	Upon dissolution of the partnership, the separate prop of the spouses are returned and only the net profits of the partnership are divided equally between the spouses of their heirs

SEPARATION OF PROPERTY OF THE SPOUSES

- In the absence of an express declaration in the marriage settlements, the separation of property between the spouses during the marriage shall not take place except by judicial order.
- Judicial separation of property may either be voluntary or for sufficient cause.

SUFFICIENT CAUSE FOR JUDICIAL SEPARATION OF PROPERTY

1. Civil interdiction of the spouse of petitioner
2. Judicial declaration of absence
3. Loss of parental authority as decreed by the court
4. Abandonment or failure to comply with family obligation
5. Administrator spouse has abused authority
6. Separation in fact for one year

GROUND FOR REVIVAL OF FORMER PROPERTY REGIME

1. When civil interdiction of the prisoner-spouse terminates
2. When the absentee spouse reappears
3. When the court authorizes resumption of administration by the spouse formerly exercising such power
4. When the spouse who has abandoned the conjugal home returns and resumes common life with the other
5. When parental authority is judicially restored to the spouse previously deprived thereof
6. When spouses agree to revive their former property regime

GROUND FOR TRANSFER OF ADMINISTRATION OF EXCLUSIVE PROPERTY OF EITHER SPOUSE

1. One spouse becomes guardian of the other
2. One spouse judicially declared absent
3. One spouse sentenced to penalty with civil interdiction
4. One spouse becomes a fugitive from justice

UNIONS GOVERNED BY ARTICLE 147

1. When a man and a woman capacitated to marry each other live exclusively with each other as husband and wife without the benefit of marriage
 2. A man and a woman living together under a void marriage (inapplicable to bigamous marriage)
- Rules:
 1. Wages and salaries earned by either spouse during the cohabitation shall be owned by the parties in equal shares
 2. Properties acquired by them through their joint work or industry during the cohabitation shall be governed by the rules of co-ownership

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- Presumption – properties acquired during the cohabitation are presumed to have been acquired through their joint efforts, work or industry
- 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 forger's efforts consisted in the care and maintenance of the family and of the household
- 3. Parties cannot encumber or dispose by acts inter vivos their share in the property acquired during their cohabitation until termination
- 4. In case of void marriage – if only one party is in good faith, the share of the spouse who is in bad faith shall be forfeited
 - a. In favor of their common children
 - b. 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
 - c. In the absence of such descendants, such share belongs to the innocent party

UNIONS GOVERNED BY ARTICLE 148

1. Bigamous marriages
 2. Adulterous relationships
 3. Relationships in a state of concubinage
 4. Relationships where both man and woman are married to other persons
 5. Multiple alliances of the same married man
- Rules:
 1. Only properties acquired by the parties through their actual joint contribution of money, property or industry shall be owned in common in proportion to their respective contributions.
 2. In the absence of proof to the contrary contributions and the share of the parties to the properties acquired during the cohabitation are presumed equal
 3. If one party is validly married to another:
 - a. His/her share in the co-owned properties will accrue to the ACP/CPG of his/her existing valid marriage
 - b. If the party who acted in bad faith is not validly married to another, his/her share shall be forfeited in the same manner as that provided in Art 147
 - c. The same rules on forfeiture shall apply if both parties are in bad faith

THE FAMILY

- Family relations include those between husband and wife, parents and children, among other ascendants and descendants and among brothers and sisters, full or half blood.
- Suit between members of the same family – it should appear from the verified complaint or petition that earnest efforts towards a compromise have been made but failed
- Allegation of “earnest efforts” is JURISDICTIONAL, if its absent, the court can dismiss the case
- But this rule is inapplicable to the following cases:
 1. Civil status or persons
 2. Validity of marriage or legal separation
 3. Any ground for legal separation
 4. Future support
 5. Jurisdiction of courts
 6. Future legitime

DEFINITION OF FAMILY HOME

1. It is constituted jointly by the husband and the wife or by an unmarried head of the family

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2. It is the dwelling house where they and their family reside, and the land on which it is situated
 - Under the FC, a family home is deemed constituted from the time it is occupied as a family residence
 - Actual value of the family home shall not exceed P300,000 in urban areas and P200,000 in rural areas

THE FAMILY HOME IS EXEMPT FROM

1. Execution
2. Forced sale
3. Attachment

EXCEPTIONS TO EXEMPTION OF FAMILY HOME

1. Non-payment of taxes
 2. Debts incurred prior to constitution of home
 3. Debts secured by mortgages on the premises
 4. Debts due laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished materials for the construction of the building
- *NOTE:* The exemption is limited to the value allowed by FC

BENEFICIARIES OF A FAMILY INCOME

1. Husband and wife, or unmarried head of the family
2. Parents, ascendants, brothers and sisters living in home and depend on head of family for support

SALE, ALIENATION, DONATION, ASSIGNMENT OR ENCUMBRANCE OF THE FAMILY HOME

1. The person who constituted the same must give his/her written consent
2. The spouse of the person who constituted the family home must also give his/her written consent
3. A majority of the beneficiaries of legal age must also give their written consent
4. In case of conflict, the court shall decide

REQUISITES FOR CREDITOR TO AVAIL OF THE RIGHT UNDER ARTICLE 160

1. He must be a judgment creditor;
2. His claim is not among those excepted under Article 155, and
3. He has reasonable grounds to believe that the family home is worth more than the maximum amount fixed in Article 157

PROCEDURE TO AVAIL OF RIGHT UNDER ARTICLE 160

1. The creditor must file a motion in the court proceeding where he obtained a favorable writ of execution against the family home.
2. There will be a hearing on the motion where the creditor must prove that the actual value of the family home exceeds the maximum amount fixed by the FC either at the time of its constitution or as a result of improvements introduced thereafter its constitution.
3. If the creditor proves that the actual value exceeds the maximum amount the court will order its sale in execution.
4. If the family home is sold for more than the value allowed, the proceeds shall be applied as follows:
 - a. First, the obligation enumerated in Article 155 must be paid
 - b. Then the judgment in favor of the creditor will be paid, plus all the costs of execution
 - c. The excess, if any, shall be delivered

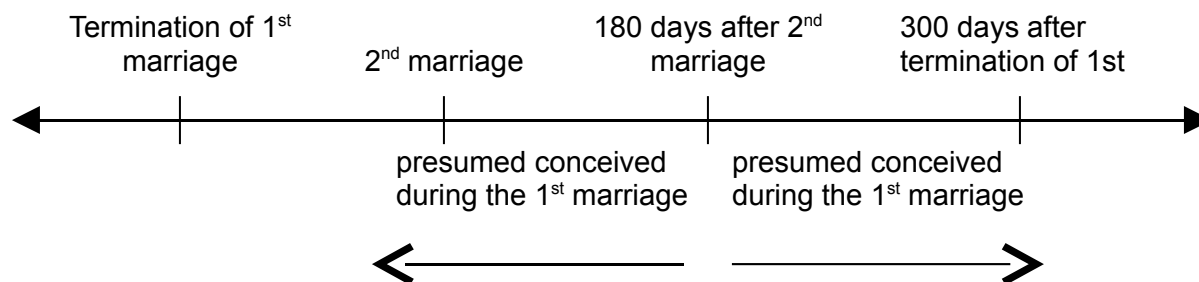
CHILDREN BY ARTIFICIAL INSEMINATION

- A child conceived by artificial insemination is considered legitimate under the following conditions:
 1. The artificial insemination is made on the wife, not on another woman

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2. The artificial insemination of the wife is done with the sperm of the husband or of a donor on both the husband and a donor
 3. The artificial insemination has been authorized or ratified by the spouse on a written instrument executed and signed by them before the birth of the child, and
 4. The written instrument is recorded in civil registry together with the birth certificate of the child
- Presumption regarding the child's filiation if the marriage is terminated and the mother contracts another marriage within 300 days after the termination of the former marriage:



IMPUGNING THE LEGITIMACY OF A CHILD

General Rule: Only the husband can impugn the legitimacy of a child

Exception: The heirs of the husband may impugn the child's filiation in the following cases:

1. If the husband dies before the expiration of period for filing the action
2. If the husband dies after filing without desisting
3. If the child was born after the death of the husband

GR0UNDS TO IMPUGN THE LEGITIMACY OF THE CHILD:

1. 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. 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 intercourse
2. If it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the case of children conceived through artificial insemination
3. 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

PERIODS FOR FILING OF ACTION TO IMPUGN THE LEGITIMACY OF A CHILD

- The action to impugn the legitimacy of the child shall be brought:
 1. If the husband (or his heirs, in proper cases) resides in the city or municipality where the child was born or where his birth certificate was recorded – within 1 year
 2. If the husband (or his heirs) does not reside in the city or municipality where the child's birth took place or was recorded but his residence is in the Philippines – within 2 years
 3. If the child's birth took place or was recorded in the Philippines while the husband has his residence abroad, or vice-versa – within 3 years
- The period shall be counted from the knowledge of the child's birth or its recording in the civil register.

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- HOWEVER, if the child's birth was concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the act of registration of said birth, whichever is earlier.

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ACTION TO CLAIM LEGITIMACY

- The child can bring the action during his lifetime
- If the child dies after reaching majority without filing an action, his heirs can longer file the action after death
- If the child dies during minority in the state of insanity, his heirs can file the action for him within 5 years form the child's death
- If the child dies after commencing the action, the action will survive and his heirs will substitute for him
- If the child is a minor or incapacitated or insane, his guardian can bring the action in his behalf

LEGITIMATE FILIATION MAY BE PROVED BY ANY OF THE FOLLOWING

1. Records of birth or final judgment
2. Admission of legitimate filiation in a public document or in a private handwritten instrument and signed by the parent concerned; in the absence of these evidences, the legitimate filiation may be proved by:
 - a. Open and continuous possession of the status of a legitimate child
 - b. Any other evidence allowed by the Rules of Court

RIGHTS OF LEGITIMATE CHILDREN

1. Bear surname of parents
2. Receive support from parents, ascendants and in proper cases, from brothers and sisters
3. Received legitimate and other successional rights

PERIODS FOR FILING THE ACTION TO ESTABLISH ILLEGITIMATE FILIATION

1. If the action is based on the record of the birth of the child or on admission by the parent of the child's filiation in a public document or in a private handwritten signed document –during the lifetime of the child
2. If the action is based on the open and continuous possession by the child of the status of an illegitimate child, or on other evidences allowed by the Rules of Court and special laws – during the lifetime of the alleged parent

RIGHTS OF ILLEGITIMATE CHILDREN

1. Use the surname of the mother
2. Receive support according to the provision of the FC
3. Receive legitimate (1/2 of that of a legitimate child) and other successional rights

REQUISITES FOR LEGITIMATION

1. The child was conceived and born outside of wedlock;
 2. The parents, at the time of child's conception, were not disqualified by any impediment to marry each other
- Legitimation takes place by the subsequent marriage of the child's parents
 - Effect of legitimation: It confers on the child the rights of legitimate children
 - Effects of legitimation retroact to the time of the child's birth
 - Legitimation may be impugned only those who are prejudiced in their rights within 5 years from the time the cause of action accrues

WHO MAY ADOPT

Any person provided he is:

1. Of age
2. In possession of full civil capacity and legal rights
3. In a position to support and care for his legitimate and illegitimate children, in keeping with the means of the family
4. At least 16 years older than the person to be adopted, unless:
 - a. The adopter is the natural parent of the child to be adopted, or
 - b. The adopter is the spouse of the legitimate parent of the person to be adopted

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WHO MAY NOT ADOPT

1. Guardian with respect to ward before final accounting
2. Person convicted of crime involving moral turpitude
3. Alien

Exceptions (An alien may adopt):

- a. Former Filipino adopting a relative by blood
- b. Alien adopting legitimate child of Filipino spouse
- c. Joint adoption by Alien and Filipino spouse of latter's blood relative
- d. Those allowed by rules on inter-country adoption

WHO MAY NOT BE ADOPTED

1. Person of legal age
Exception: An adult may be adopted if he is:
 - a. A child by nature of adopter or of spouse
 - b. Consistently considered by adopter as his own child during minority
2. Alien whose country has no diplomatic relations with the Philippines
3. Person previously adopted (not yet revoked)

GENERAL RULE: HUSBAND AND WIFE MUST JOINTLY ADOPT

Exceptions

1. One spouse adopts his/her illegitimate child
2. One spouse adopts legitimate child of the other

WRITTEN CONSENT NECESSARY FOR ADOPTION

1. Person to be adopted, if 10 years old or over
2. Natural parents or legal guardian of the person to be adopted
3. Legitimate children of the adopter, 10 years old or over
4. Adopted children of the adopter, 10 years old or over
5. Illegitimate children of the adopter, 10 years old or over and living with him
6. Spouse of the adopted, if married
7. Spouse of the adopter, if married

EFFECTS OF ADOPTION

1. Deemed a legitimate child of the adopter
2. Acquired reciprocal rights and obligations arising from parent-child relationship
3. Right to use surname of the adopter
4. Parental authority of natural parents terminates and vested in adopter
5. Remains intestate heir of natural parents and blood relatives
6. Legitimate brothers and sisters (whether full or half blood)

RULES REGARDING SUPPORT TO ILLEGITIMATE BROTHERS AND SISTERS (WHETHER FULL OR HALF BLOOD)

1. If the one asking for support is below majority age, he is entitled to support from his illegitimate brother or sister to the full extent, without any condition;
2. If the one asking for support is already of majority age, he is entitled to support only if his need for support is not due to a cause imputable to his fault or negligence

PROPERTIES ARE LIABLE FOR THE SUPPORT OF THE RELATIVES

1. Spouses – absolute community or conjugal property
2. Common children of the spouses – absolute community or conjugal property
3. Children of a spouse by another marriage – absolute community or conjugal property
4. Illegitimate children of either spouse:
 - a. *Under the system of absolute community* – separate property of the parent-spouse, if the same is insufficient or there is no such property, the absolute community is liable but the support is considered as advances on the share of the parent to be paid by him to the community at the time of liquidation;
 - b. *Under the system of conjugal partnership* – separate property of the parent-spouse; if the same is insufficient or there is no such property, the conjugal

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property is liable *if financially capable*, but the support paid to the child shall be deducted from the share of the parent-spouse at the time of liquidation of the partnership

5. Legitimate ascendants, other legitimate and illegitimate descendants, and legitimate and illegitimate brothers and sisters – separate property of the obligor-spouse; if the same is not sufficient or there is none, the absolute community or conjugal property shall be liable if financially capable, which support shall be deducted from the share of the spouse upon liquidation of the ACP or CPG

ORDER OF LIABILITY IF 2 OR MORE ARE OBLIGED TO SUPPORT

1. Spouse
2. Descendants in nearest degree
3. Ascendants in nearest degree
4. Brothers and sisters

CONCEPT OF PARENTAL AUTHORITY (*PATRIA POTESTAS*)

- Parental authority is the mass of rights and obligations which parents have in relation to the person and property of their children until their emancipation, and even after under certain circumstances.

CHARACTERISTICS OF PARENTAL AUTHORITY

1. It is a natural right and duty of the parents (Art. 209 FC)
2. It cannot be renounced, transferred or waived except in cases authorized by law (Art 210 FC)
3. It is jointly exercised by the father and the mother (Art. 211, FC)
4. It is purely personal and cannot be exercised through agents
5. It is temporary

WHO EXERCISES PARENTAL AUTHORITY IN CASE OF ABSENCE, DEATH OR REMARRIAGE OF EITHER PARENT, OR SEPARATION OF THE PARENTS

1. In case of absence of either parent – parent present
2. In case of death of either parent – surviving parent
3. In case of remarriage of surviving parent – still the surviving parent, unless the court appoints a guardian over the child
4. In case of separation of parents – parents designated by the court
 - The court shall take into account all relevant considerations, especially the choice of the child over 7 years old, unless the parent is unfit.
 - A child under 7 years of age shall not be separated from the mother unless the court finds compelling reasons to order otherwise.
- In case of death, absence or unsuitability of both parents, the surviving grandparent shall exercise substitute parental authority.

JUDICIAL RESCISSION OF ADOPTION

1. Rescission by the adopted
 - a. If the adopted is at least 18 years old

Grounds: same grounds prescribed for disinheriting an ascendant (Art. 920 Civil Code)

 - i. Parents have abandoned their children or induced their daughter to live a corrupt or immoral life, or attempted against the virtue;
 - ii. Parent or ascendant has been convicted of an attempt against the life of the testator, his or her spouse, descendants or ascendants;
 - iii. Parent or ascendant has accused the testator of a crime for which the law prescribes imprisonment for 6 years or more, if the accusation has been found to be false;
 - iv. Parent or ascendant has been convicted of adultery or concubinage with the spouse of the testator;
 - v. Parent or ascendant by fraud, violence, intimidation or undue influence, causes the testator to make a will or to change one already made;

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- vi. Loss of parental authority
- vii. Refusal to support the children or descendants without justifiable cause;
- viii. Attempt by one of the parents against the life of the other, unless there has been a reconciliation between them
- b. If adopted is a minor or incapacitated
 - Grounds: same grounds prescribed for loss of parental authority (Art. 229-232 FC)
 - Petition may be filed by:
 - i. Any person authorized by the court
 - ii. Proper government instrumentality, acting on behalf of the child
- 2. Rescission by the Adopter
 - Grounds:
 - a. Adopted committed act which is ground for disinheriting a descendant
 - b. Adopted has abandoned the home of the adopters during minority for at least one year
 - c. Adopted committed act which shows that he has definitely repudiated the adoption

EFFECTS OF THE RESCISSION OF THE ADOPTION

1. If the adopted is still a minor, the court shall reinstate the parental authority of the natural parents, unless the latter are disqualified or incapacitated, in which case, the court shall appoint a guardian over the person and property of the minor in the same proceeding
2. If the adopted is physically or mentally handicapped, the court shall appoint a guardian over this person or property or both in the same proceeding
3. All reciprocal rights and obligations between the adopter and the adopted arising from parent-child relationship are extinguished
4. The adopted shall rename his surname prior to the adoption
5. The court shall order the amendment of the records adopted in the civil registries

SUPPORT

- Consists of everything indispensable for:
 1. Sustenance
 2. Dwelling
 3. Clothing
 4. Medical attendance
 5. Education – includes schooling or training for some profession, trade or vocation, even beyond the age of majority
 6. Transportation – includes expenses going to and from school, or to from place of work
- Amount of support shall be in proportion to the means of the giver and to the need of the recipient

THE FOLLOWING ARE OBLIGED TO SUPPORT EACH OTHER TO THE WHOLE EXTENT

1. Spouses
2. Legitimate ascendants and descendants
3. Parents and their legitimate children and the children of the latter (legitimate or illegitimate)
4. Parents and their illegitimate children and the children of the latter (legitimate or illegitimate)

ORDER OF SUBSTITUTE PARENTAL AUTHORITY

1. Surviving grandparent
 2. Oldest brother or sister over 21
 3. Child's actual custodian, over 21
- In case of foundlings, abandoned children, neglected children or abused children, summary judicial proceedings shall be instituted so that they may be entrusted to:
 1. Heads of children's homes

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2. Orphanages, or
3. Similar institutions duly accredited by the proper government agency
- The following exercise special parental authority over the minor child while under their supervision, instruction or custody:
 1. The school, its administrators and teachers, or
 2. The individual, entity or institution engaged in child care

LIABILITY OF THOSE EXERCISING SPECIAL PARENTAL AUTHORITY OVER THE CHILD

1. They are principally and solidarily liable for damages caused by the acts or omissions of the child while under their supervision, instruction or custody.
HOWEVER, this liability is subject to the defense that the person exercising parental authority exercised proper diligence.
2. The parents and judicial guardians of the minor or those exercising substitute parental authority over the minor are subsidiarily liable for said acts and omissions of the minor.

DISTINCTION BETWEEN SUBSTITUTE PARENTAL AUTHORITY AND SPECIAL PARENTAL AUTHORITY

Substitute Parental Authority	Special Parental Authority
It is exercised in case of death, absence, or if unsuitability of parents. Hence, it is not exercised by the parents of parental authority over the minor children.	It is exercised concurrently with the parental authority of the parents and rest on the theory that while the child is in the custody of the person exercising special parental authority, the parents temporarily relinquish parental authority over the child to the latter

LIABILITY OF PARENTS FOR TORTS COMMITTED BY THEIR MINOR CHILDREN

- Parents and other person exercising parental authority are civilly liable for the torts committed by their minor children.
PROVIDED they are living in their company
- This is subject to the appropriate defenses provided by law,

EFFECT OF PARENTAL AUTHORITY UPON THE PROPERTY OF THE CHILD

- The Father and Mother shall jointly exercise legal guardianship over the property of the minor child without court appointment
- In case of disagreement, the father's decision shall prevail, unless there is judicial order to the contrary
- If the market value of the property or the annual income of the child exceeds P50,000, the parent is required to furnish a bond of not less than 10% of the value of the child's property or income

GROUND FORS SUSPENSION OF PARENTAL AUTHORITY

1. Conviction of parent for crime without civil interdiction
2. Treats child with excessive harassment and cruelty
3. Gives corrupting orders, counsel or example
4. Compels child to beg
5. Subjects or allows acts of lasciviousness

GROUND FORS TERMINATION OF PARENTAL AUTHORITY

1. Death of parents
 2. Death of child
 3. Emancipation of child
- If the parents exercising parental authority has subjected the child or allowed him to be subjected to sexual abuse, he shall be permanently deprived of parental authority.

CASES WHERE PARENTAL AUTHORITY MAY BE REVIVED (I.E. "SUSPENDED" PARENTAL AUTHORITY)

1. Adoption of child
2. Appointment of general abandonment

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3. Judicial declaration of abandonment
4. Final judgment divesting parental authority
5. Judicial declaration of absence or incapacity or person exercising parental authority

	CHILD CONCERNED	SURNAME TO BE USED
1	Legitimate child	Father's surname
2	Legitimated child	Father's surname
3	Adopted child	Adopter's surname
4	Illegitimate child	Mother's surname
5	Conceived prior to the annulment of the marriage	Father's surname
6	Conceived after the annulment of the marriage	Mother's surname

	WIFE	SURNAME TO BE USED
1	Valid marriage (before the husband dies)	<ol style="list-style-type: none"> a. maiden's first name and surname + her husband's surname b. maiden's first surname + her husband's surname e.g. Marife Tan c. her husband's full name, but prefixing a word indicating that she is his wife e.g. Mrs. Happy Tan d. retain the use of her maiden name and surname (use of husband's surname is not a duty but merely an option of the wife)
2	<p>Marriage is annulled</p> <p>- wife is the guilty party</p> <p>- wife is the innocent party</p>	<p>she shall resume her maiden name and surname</p> <p>choices:</p> <ol style="list-style-type: none"> a. resume using her maiden name and surname b. continue employing her husband's surname, unless: <ol style="list-style-type: none"> i. the court decrees otherwise, or ii. the wife of the former husband is married again to another person
3	Legally separated	she shall continue using the name and surname she was employing prior to the legal separation (<i>Tolentino v CA</i>)
4	Divorce (at least if they allow it later or for those who got divorced during the Japanese occupation)	choices: same as widowed spouse

BETWEEN PERSONS	younger person is obliged to use such additional name of surname as will avoid confusion
BETWEEN ASCENDANTS AND DESCENDANTS	<ol style="list-style-type: none"> a. son may used the word "Junior" e.g. Marife Lomibao-Tan, Jr. b. grandsons and other male descendants, shall either : <ol style="list-style-type: none"> i. add a middle name e.g. Happy Chris Tan ii. add the mother's surname e.g. Happy Lomibao Tan iii. add the Roman numerals II, III and so on

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PROCEDURAL REQUIREMENTS FOR A PETITION FOR CHANGE OF NAME

1. 3 years residency in the province where change is sought prior to the filing;
2. must not be filed within 30d prior to an election;
3. the petition must be verified

PROPER AND REASONABLE CAUSES THAT MAY WARRANT THE GRANT OF A PETITION FOR CHANGE OF NAME:

1. the petitioner's true and official name is ridiculous;
2. the petitioner's true and official name is tainted with dishonor
3. the petitioner's true and official name is extremely difficult to write or pronounce;
4. when the request for change is a consequence of a change of status, such as when a natural child is acknowledged or legitimated;
5. when the change is necessary to avoid confusion

ELEMENTS OF USURPATION OF NAME

1. there is an actual use of another's name by the defendant
2. the use is unauthorized
3. the use of another's name is to designate personality or to identify a person

REMEDIES AVAILABLE AGAINST THE USURPER TO THE PERSON WHOSE NAME HAS BEEN USURPED

1. civil (insofar as private persons are concerned)
 - a. injunction
 - b. damages (actual and moral)
2. criminal (when public affairs are prejudiced)

WHEN USE OF ANOTHER'S NAME IS NOT ACTIONABLE

- when the name is used as stage, screen, or pen name, provided:
 1. use of name is in good faith; and
 2. by using the name of another, no injury is caused to that person's right (Dean)
 3. when use is motivated by modesty, a desire to avoid unnecessary trouble, or other reason not prohibited by law or morals

KINDS OF ABSENCE

1. Physical absence
2. Legal absence

PROVISIONAL ABSENCE

1. A person disappears from his domicile;
2. His whereabouts are unknown; and
3. a. He did not leave any agent; or
b. He left an agent but agent's power has expired

THE ADMINISTRATION SHALL CEASE IN ANY OF THE FOLLOWING CASES:

1. when the absentee appears personally or by means of an agent;
2. then the death of the absentee is provided and his estate 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

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STAGES OF ABSENCE	WHEN TO FILE	WHO MAY FILE	REMEDY
Provisional absence	after three months from the time of disappearance	spouse	a. receivership (Art 12, FC) b. judicial separation of property (Art 12, FC) c. authority to be sole administrator of the conjugal partnership (Art 12, FC)
Declaration of Absence	<ul style="list-style-type: none"> • without administrator - 2 years from time of disappearance • with administrator - 5 years from time of disappearance 	<ul style="list-style-type: none"> a. the spouse b. voluntary heirs c. intestate heirs b. those who may have over the property of the absentee some right subordinated to the condition of the absentee's death 	Declaration of Absence and Appointment of Administrator (Spouse shall be preferred) but only under the following cases: <ul style="list-style-type: none"> a. when the absentee has properties which have to be taken cared of or administered by a representative appointed by the Court (Art 384, NCC) b. when the spouse of the absentee is asking for separation of property (Art 135, FC) c. when the spouse of the absentee is asking the Court that the administration of all classes in the marriage be transferred to her (Art 142, FC)
Presumption of death	<ul style="list-style-type: none"> • Ordinary absence: - 7 years - 4 years for purposes of remarriage <i>Exception:</i> 1. succession – 10 years 2. 75 years of age – 5 years • Extraordinary Absence: 4 years (2 years for purposes of remarriage) 	spouse	Action to declare a person presumptively dead is proper only when the spouse of the absentee wants to remarry

PERIOD OF ABSENCE UNDER EXTRAORDINARY CIRCUMSTANCES

1. if a person rode an airplane or sea vessel, from the time of loss of the airplane or sea vessel
2. if a person joined the armed forces, from the time he or she is considered missing in action
3. under the circumstances, from time of disappearance

MATTERS RECORDED IN THE CIVIL REGISTER

1. birth
2. marriage
3. death
4. legal separation

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5. annulment of marriage
6. judgments declaring marriage void from the beginning;
7. legitimation
8. adoption
9. acknowledgement of natural children
10. naturalization
11. loss of citizenship
12. recovery of citizenship
13. civil interdiction
14. judicial determination
15. voluntary emancipation of a minor; AND
16. change of time

REQUIREMENTS OF AN ADVERSARIAL PROCEEDING

1. Presence of opposing parties
2. Notice to indispensable parties
3. Relevant facts have been fully and properly developed
4. Opposing counsel was given an opportunity to demolish the opposite party's case (not *ex parte*)
5. Evidence has been thoroughly weighed and considered
6. Compliance with the publication requirement

SOURCES OF SUPPORT

DURING THE MARRIAGE	PENDING LITIGATION	AFTER LITIGATION
SPOUSES From the community property	From the community property assets except if Art 203 applies, that if the claimant spouse is the guilty spouse, he/she will not be entitled to support. if the spouses are under conjugal partnership of gains, support is considered an advance of such spouses' share; the rule does not apply if the spouses are under absolute community of property, based on Art 153	No obligation to support except if there is legal separation, in which case the court may require the guilty spouse to give support
CHILDREN From the community property	From the community property	From the separate property of the spouses

RULES GOVERNING SUPPORT BETWEEN BROTHERS AND SISTERS

1. As long as the need for support is not due to a cause imputable to the claimant's fault or negligence and he is not yet of age the illegitimate brothers / sisters are entitled to support
2. If the claimant is not yet of age, even if the cause is imputable to him or not, he is entitled to support
3. There is a difference in rules concerning support and succession where a barrier exists between legitimate and illegitimate children

SOURCES OF MUTUAL SUPPORT

Spouses	Usually conjugal partnership or absolute community; sometimes the separate property
Common children of spouses	Conjugal partnership or absolute community of the parents
Illegitimate Children	• In Absolute Community – separate property of the

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	<p>parent-spouse concerned; but if the separate property is insufficient, then the absolute property is liable but such support is considered as advances on the share of the parent-spouse</p> <ul style="list-style-type: none"> • In Conjugal Partnership – the separate property of the parent-spouse concerned, but if such is insufficient or there is none, then the conjugal partnership is liable IF all legal obligations have been covered OR can be covered; but such support shall be deducted from the share of the parent-spouse (they are not advances)
Legitimate ascendants	Separate property
Brothers and sisters	Separate property

LEGAL SUPPORT	CONTRACTUAL SUPPORT
Based on law	Based on contract, so it can be between strangers
Exempt from execution and attachment	Not exempt from attachment and execution because it is not a legal obligation EXCEPTION: if the giver contracts with a person whom he is obliged by law to support, in which case only the excess of what is obliged (based on need) can be attached or subject to execution

LEGACY OF SUPPORT	CONTRACTUAL SUPPORT
If contained in a will, apply the rules of contractual support because there is no more obligation to support to speak of since the giver is already dead	Follow rules of contracts which says that obligation must be fulfilled (support must be given) no matter what happens (even if you lose your job). BUT if the change in circumstances are manifestly beyond that contemplation of the parties, support may be adjusted accordingly

OPTIONS OF THE PERSON GIVING SUPPORT

1. To give a fixed monthly allowance; or
 2. To receive and maintain the recipient in the giver's home or family dwelling
- Exception: when there is a legal or moral obstacle thereto