



**ATENELO CENTRAL BAR OPERATIONS 2007**  
**Civil Law**  
**SUMMER REVIEWER**

**LAW ON PERSONS AND FAMILY RELATIONS**

**PRELIMINARY TITLE**

**New Civil Code:** took effect on **August 30, 1950**

**WHEN LAWS TAKE EFFECT:**

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

*Exception:* The law can provide for its own date of effectivity, *i.e.*, less than or greater than 15 days after publication

- Publication is MANDATORY (even if the law provides its own date of effectivity)
- Publication must be in full (otherwise it is not deemed published at all) since its PURPOSE is to inform the public of its contents
  - *Effect of Publication:* The people are deemed to have conclusively been notified of the law even if they have not read them.

**COVERED BY PUBLICATION REQUIREMENT:**

- Presidential Decrees and Executive Orders
- Administrative rules and regulations, if their purpose is to enforce or implement existing law pursuant to a valid legislation

**NOT COVERED BY THE REQUIREMENT OF PUBLICATION:**

- Interpretative regulations and those administrative regulations internal in nature
- Letters of Instructions
- Municipal ordinances (because they are covered by the Local Government Code)

**Compliance with the Law:** Ignorance of the law excuses no one from compliance therewith. (*Ignorantia juris neminem excusat*)

**RETROACTIVITY:** Generally, laws are not retroactive

**Exceptions: PIERCER**

1. **Penal** laws when favorable to the accused who is not a habitual delinquent
2. **Interpretative** statutes
3. When the law itself **expressly** provides
  - *Exception to the exception:*
    - a. *ex post facto* law
    - b. when retroactivity impairs the obligation of contract
4. **Remedial** statutes

5. **Curative** statutes
6. **Emergency** laws
7. Laws creating new **rights**

**Acts Violating Mandatory or Prohibitory Laws are VOID**

**Exception: AVV**

1. When law itself **authorizes** their validity
2. When law makes the act only **voidable** and not void
3. When law makes the act **valid** but punishes the violator

**REQUISITES OF A VALID WAIVER: RCCLF**

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
4. Such waiver is not contrary to **law**, public order, public policy, morals or good customs or is prejudicial to third person.
5. If required, **formalities** must be complied with.

**REPEAL OF LAWS**

1. **Express repeal** - repeal of repealing law will not revive the old law (unless expressly provided)
2. **Implied repeal** - 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

**CUSTOMS** are rules of conduct formed by repetition of acts, uniformly observed as a social rule, legally binding and obligatory

- A local custom as a source of right cannot be considered by a court of justice unless such custom is properly established by competent evidence like any other fact
- *Juridical custom* must be differentiated from *social custom*. Juridical custom can supplement statutory law or applied in the absence of such statute. Not so with social custom.



- Custom, even if proven, cannot prevail over a statutory rule or even a legal rule enunciated by Supreme Court

If the foreign law refers it to a third country, the said country's law shall govern (transmission theory)

### REQUISITES FOR MAKING CUSTOM AN OBLIGATORY RULE: PPOT

1. Plurality of acts or acts have been repeatedly done
2. Generally practised by the great mass of the social group
3. The community accepts it as a proper way of acting, such that it is considered obligatory upon all
4. The practice has been going on for a long period of time

**STARE DECISIS** requires courts to follow the rule established in earlier SC decisions. 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, courts may depart from it.

### LAWS APPLICABLE:

1. Penal Laws – principle of territoriality applies, those of public security and safety – obligatory upon all who live or sojourn in the Philippines.
2. Status Laws – principle of nationality applies, 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.  
Exception: Article 26(2) of Family Code
3. Laws on property – *lex rei sitae*: real property as well as personal property is subject to the law of the country where it is situated
4. Laws on forms and solemnities – *lex loci celebrationis* applies

### RULES ON INSTRINSIC VALIDITY OF CONTRACTS:

1. Law stipulated by parties shall be applied
2. In default thereof and the parties are of the same nationality, their national law shall be applied
3. If the parties are of different nationalities, the law of the place of the perfection of the obligation or of the performance shall govern its fulfillment
4. If the above places are not specified and they cannot be deduced from the nature and circumstances of the obligation, then the law of the passive subject shall apply
5. RENVOL DOCTRINE: Where the conflict rules of the forum refer to a foreign law, and the latter refers it back to the internal law, the latter law (law of forum) shall apply

### CONFLICT RULES

LEX NATIONALIS	LEX RAE SITAE	LEX LOCI CELEBRATIONIS
Art. 15 NCC	Art 16 NCC	Art 17 NCC
Basis: Citizenship	Basis: Law of the place where the property is situated	Basis: Law of the place where the contract was executed
Covers: family rights and duties, status, condition, and legal capacity	Covers: real and personal property	Covers: only forms and solemnities (extrinsic validity)
Exception: Article 26 para. 2 Family Code	Exceptions: 1. Capacity to succeed 2. Intrinsic validity of the will 3. Amount of successional rights 4. Order of succession	Exceptions: 1. Article 26 para. 1 of Family Code (marriage involving Filipinos solemnized abroad, when such are void in the Philippines) 2. Intrinsic validity of contracts

- Formalities for the acquisition, encumbering, and alienation of property shall not be governed not by *lex rei sitae* but *lex loci celebrationis*
- Art. 17(1) speaks of the extrinsic validity of contracts, wills, and other public instruments. It is silent on what law shall govern the intrinsic validity of contracts

### DOCTRINE OF PROCESSIONAL PRESUMPTION

The foreign law, whenever applicable, should be proved by the proponent thereof; otherwise, such law shall be presumed to be exactly the same as the law of the forum.

### RULES ON PROHIBITIVE LAWS

General Rule: Prohibitive laws concerning persons, their acts or property and laws which have for their object public order, public policy or good customs are not rendered ineffective by

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laws, judgments promulgated or conventions agreed upon in foreign country.

Exception: Art. 26 (2) of Family Code

### PRINCIPLE OF ABUSE OF RIGHTS (Art. 19)

When the right is exercised for the purpose of prejudicing or injuring another

#### REQUISITES:

1. There is a legal right or duty;
2. Which is exercised in bad faith;
3. For the sole intent of prejudicing or injuring another

**DOCTRINE OF VOLENTI NON FIT INJURIA** (to which person assents is not esteemed in law as injury)

Pertains to self-inflicted injuries or to the consent to injury which precludes the recovery of damages by one who has knowingly and voluntarily exposed himself to danger, even if he is not negligent in doing so

### ACTS CONTRA BONUS MORES (Art. 21)

presupposes loss or injury, material or otherwise, which one may differ as a result of such violation

#### ELEMENTS:

1. There is an act which is legal;
  2. But which is contrary to morals, good customs, public order, or public policy;
  3. And it is done with intent to injure
- Under Arts. 19 & 21 the act must be done intentionally. However, Art. 20 does not distinguish, the act may be done either willfully or negligently, as long as the act is be contrary to law.
  - While a breach of promise to marry is not actionable, it has been held that to formally set a wedding and go through and spend for all the wedding preparations and publicity, only to walk out of it when the matrimony was about to be solemnized is a different matter. Such act is palpably and unjustifiably contrary to good customs for which the defendant must be held answerable for damages in accordance with Art. 21 of the NCC.

### ACCION IN REM VERSO (Art. 22)

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 indebiti:* Mistake is an essential element in *solutio indebiti* but not in *accion in rem verso*.

### PROTECTION OF HUMAN DIGNITY (Art. 26)

Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons.

**Acts which, though not criminal, produce 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 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

### RELIEF AGAINST PUBLIC OFFICIALS (Art. 27)

A public officer who commits a tort or other wrongful act, done in excess or beyond the scope of his duty, is not protected by his office and is personally liable therefore like any private individuals

### CIVIL ACTIONS

- When accused is acquitted in a criminal case 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
  - Art. 31: based on an obligation NOT arising from felony
  - Art. 32: violation of civil liberties
  - Art. 33: defamation, fraud, and physical injuries
  - Art. 34: police refuses/fails to render aid or protection to any person in case of danger to life or property
  - Art. 2176: quasi-delict
- Art. 36: **Prejudicial Questions**

General Rule : if both criminal and civil cases are filed in court, the criminal case takes precedence.

Exception: When there is a prejudicial question or a question that arises in a case,



the resolution of which is a logical antecedent of the issue involved herein, and the cognizance of which pertains to another tribunal

### 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

### CHAPTER 1: CIVIL PERSONALITY

#### KINDS OF CAPACITIES

Juridical Capacity	CAPACITY TO ACT
Fitness to be the subject of legal relations	Power to do act with legal effects
Passive	Active
Inherent	Merely acquired
Lost only through death	Lost through death and other causes
Can exist without capacity to act	Cannot exist without juridical capacity
Cannot be limited or restricted	Can be restricted, modified, or limited

#### THEORIES ON CAPACITY TO ACT

Theory of General Capacities	Theory of Special Capacities
Applies to natural persons	Applies to juridical persons
One has the ability to do all things with legal effects except only in those specific circumstances where the capacity to act is restrained	The powers of juridical persons are limited only to those that are expressly conferred upon them or those which can be implied therefrom or incidental thereto

**CIVIL PERSONALITY** is the aptitude of being the subject, active or passive of rights and obligations.

#### COMMENCEMENT OF CIVIL PERSONALITY:

##### A. NATURAL PERSONS

General Rule: determined by birth, extinguished by death

Exception: the law considers the conceived child as born for all purposes favorable to it if born alive. Therefore, the child has a presumed personality, which has two characteristics:

1. Limited and
2. Provisional/conditional
  - Concept of provisional personality cannot be invoked to obtain damages for and in behalf of an aborted child.

**BUT a 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 less than 7 months, only if it lives for at least 24 hours after its complete delivery from the maternal womb

**Doubts as to Order of Death:** As between two 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.

#### PROOF OF DEATH

- Applies only to persons who are called to succeed each other. Otherwise, Rules of Court shall apply.
- The proof of death must be established by positive evidence. Proof of death can never be established from mere inference arising from another inference or from presumptions or assumptions

#### B. 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
  - Creation: (1) and (2) are created by the laws creating or recognizing them, private corporations are governed by the Corp. Code (BP 68) and partnership and associations are governed by the provisions of the New Civil Code on partnerships.
  - Extinguished: by termination of existence





### 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:
  1. an actual removal or an actual change of domicile;
  2. a *bona fide* intention of abandoning the former place of residence establishing a new one; and
  3. acts which correspond with the purpose.
    - The husband and the wife shall fix the family domicile. In case of disagreement, the court shall decide.

### Requirements for the acquisition of new domicile:

1. Bodily presence in a new locality
2. Intention to remain therein (*animus manendi*)
3. Intention to abandon the old domicile (*animus non revertendi*)

### Kinds of Domicile

1. Domicile of origin – received by a person at birth
2. Domicile of choice – the place freely chosen by a person *sui juris*
3. Constructive domicile – assigned to a child by law at the time of his birth

### CITIZENSHIP

In the Philippine jurisdiction, what is followed is the concept of *jus sanguinis* (citizenship by blood) as opposed to *jus soli* (citizenship by place of birth).

## CHAPTER 2: MARRIAGE

### FAMILY CODE

#### MARRIAGE is

1. A special contract
2. Of permanent union
3. Between a man and a woman
4. Entered into in accordance with law
5. For the establishment of conjugal and family life

### DUNCAN ASSOCIATION OF DETAILMAN, ET AL v. GLAXO WELLCOME PHILIPPINES, INC. 438 SCRA 343 (2004)

#### FACTS:

Tecson signed a contract of employment with GLAXO saying agreeing to study and abide by the existing company rules which includes disclosure to management any existing or future relationship by consanguinity and affinity with co-employees or

employees of competing drug companies and should management find that such relationship poses a possible conflict of interest, to resign from the company.

Tecson got married to Betsy, an employee of Astra Pharmaceuticals, a competitor of Glaxo. Glaxo then transferred Tecson to Butuan City, Tecson asked the company to reconsider but it was denied. Because they were unable to resolve the issue, Glaxo offered Tecson a separation pay but he declined offer.

#### HELD:

Glaxo's policy on marriage is a valid exercise of management prerogative. This is reasonable under the circumstances because relationships of that nature might compromise the interests of the company. Stipulation is valid because it does **not pose an absolute prohibition to marry**. The Constitution also recognizes the right of enterprises to adopt and enforce such a policy to protect its right to reasonable returns on investments and expansion and growth. Company has right to protect its economic interests

### 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: ALC

1. Authority of solemnizing officer
2. Valid marriage license (*except* in cases where a marriage license is not required), valid only for 120 days from issue in any part of the Philippines
3. Marriage ceremony where the contracting parties appear before the solemnizing officer, with their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age

### EFFECTS:

1. **Absence of essential or formal requisites** – *void ab initio*  
*Except:* 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)]
2. **Defect in any of the essential requisites** – *voidable*
3. **Irregularity in any of the formal requisites** – does not affect the validity of



the marriage but will make the party responsible civilly, criminally, or administratively liable

### **AUTHORIZED SOLEMNIZING OFFICERS:** **JPCCCM**

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 passengers 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)

### **CHAPTER 3: 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 solemnized outside the Philippines where no marriage license is required by the country where it was solemnized
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
  - The 5-year period is to be computed on the basis of cohabitation as husband and wife where the only missing factor is the marriage contract to validate the union. This 5-year period should be the years immediately before the day of the marriage and it should be a period of cohabitation characterized by exclusivity –meaning no third party was involved at

any time within the 5 years and continuity that is unbroken

### **Requisites:**

1. Man and woman must have been living together as husband and wife for at least five years before marriage
2. The parties must have no legal impediment to marry each other
3. The fact of absence of legal impediment between the parties must be present at the time of marriage
4. The parties must execute an affidavit stating that they have lived together for at least five years [and are without legal impediment to marry each other]
5. The solemnizing officer must execute a sworn statement that he had ascertained the qualifications of the parties and that he had found no legal impediment to their marriage

### **AUTHORIZED VENUES FOR MARRIAGE**

General Rule: Must be solemnized publicly, and not elsewhere, in the:

1. Chambers of the judge or in open court
2. Church, chapel or temple
3. Office of consul-general, consul or vice-consul

### **Exceptions:**

1. Marriage at the point of death (*articulo mortis*)
2. Marriage in remote places
3. Marriage at a house or place designated by the parties in a sworn statement upon their written request to the solemnizing officer

### **OTHER REQUIREMENTS:**

Either or Both Parties	Requires
18 years old and above but below 21	Parental <u>consent</u> Marriage counseling
21 years old and above but below 25	Parental <u>advice</u> Marriage counseling

### **EFFECTS:**

Lack of parental consent	Marriage is VOIDABLE
Lack of parental advice or lack of marriage	Of NO EFFECT on the validity of marriage <i>However</i> , this will suspend



counseling	<p>the issuance of the marriage license for a period of 3 months from the completion of publication of the application for marriage license.</p> <ul style="list-style-type: none"> <li>• If the parties get married during the 3-month period without a license, the marriage shall be VOID.</li> <li>• 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.</li> </ul>
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### MARRIAGES SOLEMNIZED ABROAD

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

Exceptions:

1. Where either or both parties are below 18 years old
2. Bigamous or polygamous marriage (except Art. 41 on presumptive death of spouse)
3. Mistake in identity
4. Marriages void under Art. 53 – contracted following the annulment or declaration of nullity of a previous marriage but before partition
5. Psychological incapacity
6. Incestuous marriages
7. Marriage void for reasons of public policy

### DIVORCE BY FOREIGNER-SPOUSE:

- If a Filipino is 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. (Art. 26 para. 2)
- **Requisites:**
  - a.) There is a valid marriage that had been celebrated between Filipino citizen and a foreigner
  - b.) A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry
- The traditional rule: applies when parties at the time of celebration are a Filipino and an alien  
**BUT**

**Republic v. Orbecido III 472 SCRA 114 (2005)**

*The intent of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse.*

*Thus, taking into consideration the legislative intent, Paragraph 2 of Article 26 should be interpreted to include cases involving parties who, at the time of the celebration of the marriage, were Filipino citizens but, later on, one of them becomes naturalized as a foreign citizen and obtains a divorce decree. The Filipino spouse should likewise be allowed to remarry as if the other party was a foreigner at the time of the solemnization of the marriage. To rule otherwise would be to sanction absurdity and injustice.*

### REPUBLIC VS. IYOY G.R. NO. 15277 SEPTEMBER 21, 2005

*For the second paragraph of Article 26 to apply, a spouse who obtained the divorce must not be a Filipino at the time of the divorce. If the obtaining-spouse is still a Filipino at the time of the divorce, then the divorce is not recognized in the Philippines.*

*The root cause in psychological incapacity must still be determined even if there is no requirement that a personal examination of the respondent be made prior to a declaration of nullity of marriage.*

*Office of the Solicitor General has personality to appeal a decision in a declaration-of-nullity of marriage case.*

### REPUBLIC VS. OBRECIDO G.R. NO. 154380 OCTOBER 5, 2005

**Facts:**

Orbecido and Villanueva were married and had 2 children. Wife went to us and was naturalized as an American citizen. He later found that his wife obtained a divorce decree and married a foreigner. He filed a petition for authority to remarry invoking Article 26 of the FC, which the court granted.

**Held:**

*Petition for “authority to marry” was treated as Petition for declaratory relief.*

*The determination of when the spouse who obtained a divorce was a foreigner is at the time of the divorce not at the time of the celebration of the marriage. The proper remedy for the*



*Filipino spouse need not be annulment for this would be long, tedious and not feasible (considering that the marriage appears to have the badges of validity); it is not also legal separation as this will not sever the marriage tie.*

### CHAPTER 4: VOID MARRIAGES

#### **A. Void *ab initio* under Art. 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 marriage license (*Except* when license not required)
4. Bigamous or polygamous marriages
  - *Except:* Art. 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 his/her absent spouse is already dead, and after the absent spouse is judicially declared presumptively dead
5. Mistake in identity
6. Subsequent marriage void under Art. 53
  - Art. 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 legitimes of the children 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 legitimes 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.

**B. 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.

**CARATING-SIAYNCO v. SIAYNCO 441 SCRA 422 (2004)**

#### FACTS:

Juanita and Manuel were married civilly and in the Catholic Church. Discovering that they could not have a baby they adopted a baby boy. After 24 years of marriage, Manuel filed a declaration of nullity on ground of Psychological Incapacity. He alleged that Juanita exhibited an over domineering and selfish attitude towards him which was exacerbated by her extremely volatile and bellicose nature, that she incessantly complained about almost everything and anyone connected with him like his elderly parents, staff, she showed no respect for his prestige and high position as judge in the Municipal Trial Court. Juanita said that Manuel is still living with her at their conjugal home in Bulacan, that he invented malicious stories against her so that he could marry his paramour, that she supported Manuel in all his endeavors despite his philandering, that she was raised in a real happy family and had a happy childhood contrary to what was said by Manuel.

#### HELD:

*Psychological Incapacity must be judged on a case to case basis. It should refer to no less than a mental (not physical) incapacity. It must be characterized by a. gravity b. juridical antecedence c. incurability --- this was not met. Sexual infidelity does not constitute psycho incapacity within contemplation of family code. It must be shown that Manuel's unfaithfulness is a manifestation of a disordered personality which makes him completely unable to discharge the essential marital state and not merely due to his ardent wish to have a child of his own flesh and blood. The negative traits must "paralyze her from complying with the essential obligations of marriage." Unsatisfactory marriage is not a null and void marriage. Mere showing of irreconcilable differences and conflicting personalities DOES NOT constitute psychological incapacity.*

**REPUBLIC v. QUINTERO-HAMANO 428 SCRA 735 (2004)**

#### FACTS:

Hamano, a Japanese national, abandoned his wife and daughter. RTC and CA granted the petition for psychological incapacity. The Office of the Solicitor General appealed to the SC on the ground that respondent was not able to prove the psychological incapacity of Toshio Hamano to perform his marital obligations,





despite respondent's failure to comply with the guidelines laid down in the Molina case.

### ISSUE:

Whether psychological incapacity is a ground for nullity in mixed-marriage?

### HELD:

*Molina doctrine does not require personal medical examination of the person who is psychologically incapacitated to marry. However, evidence of medical and clinical finding of any illness constituting psychological incapacity will greatly help. This can be done by an expert witness. Mere abandonment is not constitutive of psychological incapacity. There must be proof of a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates a person from accepting and complying with the obligations essential to marriage. "In proving psychological incapacity, we find no distinction between an alien spouse and a Filipino spouse. We cannot be lenient in the application of the rules merely because the spouse alleged to be psychologically incapacitated happens to be a foreign national. The medical and clinical rules to determine psychological incapacity were formulated on the basis of studies of human behavior in general. Hence, the norms used for determining psychological incapacity should apply to any person regardless of nationality."*

### **DEDEL v. COURT OF APPEALS 421 SCRA 461 (2004)**

*Mere sexual infidelity or perversion and abandonment do not by themselves constitute psychological incapacity within the contemplation of the Family Code. Neither could emotional immaturity and irresponsibility be equated with psychological incapacity. It must be shown that these acts are manifestations of a disordered personality with make respondent completely unable to discharge the essential obligations of a marital state, not merely to her youth, immaturity or sexual promiscuity. Root cause must be traceable prior to the marriage ceremony.*

### **Buenaventura v. CA GR No. 127358, March 31, 2005**

*It is contradictory to characterize acts as a product of psychological incapacity, hence beyond the control of the party because of an innate inability, while at the same time considering the same set of acts as willful.*

*A finding of psychological incapacity on the part of one spouse negates any award of moral and exemplary damages against him/her. Award of moral damages should be predicated, not on the mere act of entering into the marriage, but on specific evidence that is was done deliberately and with malice by a party who had known of his or her disability and yet willfully concealed the same.*

**PSYCHOLOGICAL INCAPACITY** has no exact definition but is restricted to psychological incapacity to comply with the essential marital obligations of marriage. It involves a senseless, protracted, and constant refusal to comply with the essential marital obligations by one or both of the spouses although he, she, or they are physically capable of performing such obligations (**Chi Ming Tsui v. CA 266 SCRA 234 [1997]**)

### **ELEMENTS:**

1. Mental disposition
2. Applies to a person who is martially-contracted to another
3. Marriage entered into with volition
4. Failure to perform or comply with the essential obligations in marriage
5. Failure to perform is chronic
6. Cause is psychological in nature
7. Cause is serious, with juridical antecedence and must be incurable
8. Incapacity results in the failure of the marriage

### **JURISPRUDENTIAL GUIDELINES: BREIGOIC**

#### **(Republic v. CA & Molina 268 SCRA 198 [1997])**

1. **Burden of proof** to show the nullity of marriage belongs to plaintiff
2. The **root cause** of the psychological incapacity must be:
  - a. Medically or clinically identified
  - b. Alleged in the complaint
  - c. Sufficiently proven by experts
  - d. Clearly explained in the decision
3. The incapacity must be proven to be **existing** at the time of the celebration of the marriage.
4. Such incapacity must be shown to be medically or clinically permanent or **incurable**
5. Such illness must be **grave** enough to bring about the disability of the party to



assume the essential obligations of marriage

6. Essential marital obligations must be those embraced by Art. 68-71, as well as Art. 220, 221, and 225 of the Family Code.
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
8. The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state

### **Antonio v. Reyes GR No. 155800, March 10, 2006**

*Judicial understanding of psychological incapacity may be informed by evolving standards, taking into account the particulars of each case, current trends in psychological and even canonical thought, and experience. It is under the auspices of the deliberate ambiguity of the framers that the Court has developed the Republic v. CA & Molina rules, which have been consistently applied since 1997. Molina has proven indubitably useful in providing a unitary framework that guides courts in adjudicating petitions for declaration of nullity under Article 36. At the same time, the Molina guidelines are not set in stone, the clear legislative intent mandating a case-to-case perception of each situation.*

*It should be noted that the lies attributed to respondent were not adopted as false pretenses in order to induce petitioner into marriage. They indicate a failure on the part of respondent to distinguish truth from fiction, or at least abide by the truth. Petitioner's witnesses and the trial court were emphatic on respondent's inveterate proclivity to telling lies and the pathologic nature of her mistruths, which according to them, were revelatory of respondent's inability to understand and perform the essential obligations of marriage. Indeed, a person unable to distinguish between fantasy and reality would similarly be unable to comprehend the legal nature of the marital bond, much less its psychic meaning, and the corresponding obligations attached to marriage, including parenting. One unable to adhere to reality cannot be expected to adhere as well to any legal or emotional commitments.*

### **MALLION VS, ALCANTARA October 31, 2006 G.R. No. 141528**

Facts:

Petitioner filed a case to declare void the marriage due to psychological incapacity. Petition was denied. Later, he filed a case to again declare his

marriage void because of absence of marriage license. Supreme Court denied the Petition

*HELD:*

***Res Judicata applies.***

*There is only one cause of action which is the nullity of marriage. Hence when the second case was filed based on another ground there is a splitting of a cause of action which is prohibited. Petitioner is estopped from asserting that the first marriage had no marriage license because in the first case he impliedly admitted the same when he did not question the absence of a marriage license.*

### **C. Void for Being Incestuous under Art. 37:**

- Whether relationship is legitimate or illegitimate
1. Between ascendants and descendants of any degree
  2. Between brothers and sisters, whether full or half blood

### **D. Void for Reason of Public Policy under Art. 38:**

1. Between collateral blood relatives up to the 4<sup>th</sup> civil degree
2. Between step-parents and step-children
3. Between parents-in-law and children-in-law
4. Between 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 other person's spouse or his/her own spouse

**NOTES: RA 6995** (Mail Order Bride Act) declares as unlawful the practice of matching Filipino women for marriage to foreign nationals on a mail-order basis and other similar practices including the advertisement, publication, printing or distribution of brochures, fliers, and other propaganda materials in furtherance thereof. Under the new Family Code, the following can now marry each other:

1. Brother-in-law and sister-in-law
2. Stepbrother and stepsister



3. Guardian and ward
4. Adopted and illegitimate child of the adopter
5. Parties who have been convicted of adultery or concubinage

### E. Subsequent marriages

#### 1. Without judicial declaration of nullity of previous void marriage (Art. 40)

- For the purposes of remarriage, the only legally acceptable basis for declaring a previous marriage an absolute nullity is a final judgment declaring such previous marriage void, whereas, for purposes other than remarriage, other evidence is acceptable
- In a case for concubinage, the accused need not present a final judgment declaring his marriage void for he can adduce evidence in the criminal case of nullity of his marriage other than proof of final judgment declaring his marriage void. Hence, the pendency of the civil action for nullity of marriage does not pose a prejudicial question in a criminal case for concubinage.
- However, a judicial declaration of nullity is not needed where no marriage ceremony at all was performed by a duly authorized solemnizing officer as where the parties merely signed a marriage contract on their own. (**Lucio Morigo v. People, G.R. No. 145226. Feb. 06, 2004**)

#### 2. Rule on bigamous marriages (Art. 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:

- a. the previous spouse had been absent for 4 consecutive years (ordinary absence) or 2 years (extraordinary absence) and
- b. the remaining spouse has a well-founded belief that the absent spouse was already dead
- c. judicial declaration of presumptive death
  - 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 the Exception: If both spouses of the subsequent marriage acted in bad faith, such marriage is void *ab initio* (**Art. 44**)

### **TENEBRO v. COURT OF APPEALS 423 SCRA 272 (2004)**

#### FACTS:

Tenebro contracted marriage with private respondent in 1990. In 1991, Tenebro told his wife that he had been previously married in 1986. He then left the private respondent and lived with his first wife. In 1993, he then contracted another marriage. It was here when private respondent confirmed with the first wife that petitioner was indeed previously married. Private respondent then filed a case against petitioner for bigamy. Tenebro claims that he is not guilty of bigamy because:

- That there was no valid second marriage because no marriage ceremony took place to solemnize their union
- That the declaration of the nullity of the second marriage on the ground of Psychological Incapacity, which is an alleged indicator that his marriage to private respondent lacks the essential requisites for validity, retroacts to the date on which the second marriage was celebrated.

#### HELD:

There is no requirement in the law that a marriage contract needs to be submitted to the civil registrar as a condition precedent for the validity of marriage. *The law penalizes the mere act of contracting a second or a subsequent marriage during the subsistence of a valid marriage.* The moment petitioner entered into marriage with private respondent, he already committed bigamy. There is criminal bigamy even if the second marriage is void because of psychological incapacity.

### **MORIGO v. PEOPLE 422 SCRA 376 (2004)**

#### FACTS:

Petitioner contracted marriage with Lucia in 1990. In 1991, Lucia filed with the Ontario Court a petition for divorce against petitioner which was granted and took effect on Feb. 17, 1992. On Oct 4, 1992, petitioner married Maria. Less than a year after such marriage, petitioner filed a complaint of Judicial Declaration of Nullity with Lucia on the ground that no marriage ceremony took place. On Oct 19, 1993, the City prosecutor then charged him with the crime of bigamy and he was subsequently found guilty. While the criminal case was pending in the Court of Appeals, in 1997, the Judicial Declaration of Nullity of marriage between petitioner and Lucia was rendered final and executory.





### HELD:

GENERALLY, even if the first marriage is judicially declared void only after contracting the second marriage, the second marriage is still bigamous. This is true only if the first marriage ostensibly transpired as there was a marriage ceremony. However, if the first marriage is judicially declared void only after contracting second marriage, the second marriage is not bigamous if the first marriage was void due to the fact that **no marriage ceremony was solemnized at all**. The mere signing of a marriage contract bears no semblance to a valid marriage and thus needs no judicial declaration of nullity.

**NOTES:** Where there was failure to record in the civil registry and registry of property the judgment of annulment or absolute nullity of the marriage, the partition and distribution of the property of the spouses, and the delivery of the children's presumptive legitimes, it shall not affect third persons. (Arts. 52-53)

Even if a marriage is void, it must be declared void first before the parties to such void marriage can remarry. The parties cannot decide for themselves the invalidity of their marriage. (Except: when the purpose is other than remarriage, a collateral attack of the marriage is allowed.)

### EFFECTS OF TERMINATION OF SUBSEQUENT MARRIAGE: LDDRI

1. Children of the subsequent marriage conceived prior to its termination shall be considered legitimate
2. The absolute community or conjugal partnership shall be dissolved and liquidated.
  - If either spouse acted in bad faith, his/her share in the net profits shall be forfeited:
    - a. In favor of the common children
    - b. If none, in favor of the children of the guilty spouse by previous marriage
    - c. In default of children, in favor of the innocent spouse
3. Donations by reason of the marriage remain valid except if the donee contracted the marriage in bad faith.
4. The innocent spouse may revoke the designation of the spouse in bad faith as the beneficiary in any insurance policy, and
5. The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate or intestate succession

**NOTE:** The above effects apply in voidable bigamous marriages. Except for (1), the above effects also

apply to marriages which are annulled or declared void *ab initio* under Art. 40.

### REQUISITES FOR DECLARATION OF PRESUMPTIVE DEATH:

1. That the absentee spouse has been missing for 4 consecutive years if the disappearance occurred where there is danger of death under circumstances in Art. 391 of New Civil Code.
2. The present spouse wishes to remarry
3. The present spouse has a well-founded belief that the absentee is dead
4. The present spouse files a summary proceeding for the declaration of presumptive death

### EFFECT OF REAPPEARANCE:

General Rule: The subsequent bigamous marriage under Art. 41 remains valid despite reappearance of the absentee spouse.

Exception: If the reappearance was made in a sworn statement recorded in the civil registry, the subsequent marriage is automatically terminated.

Exception to the Exception: If there was a previous judgment annulling or declaring the first marriage a nullity, the subsequent bigamous marriage remains valid.

### **RP VS. CA G.R. NO. 163604 MAY 6, 2005**

*The summary proceeding to judicially declare a person presumptively dead under Article 41 of the Civil Code is not a special proceeding. Hence appeal in relation to decisions are made only via a Notice of Appeal.*

### **REPUBLIC VS. BERNUDES-LORINO 449 SCRA 57 (2005)**

***Summary proceedings** under the Family Code is final and executory pursuant to Article 247. Hence, a decision judicially declaring a person presumptively dead is non-appealable. If appealed to the Court of Appeals, the latter has no jurisdiction to try the case.*

*There is a big difference between having the supposed appeal dismissed for lack of jurisdiction by virtue of the fact that the RTC decision sought to be appealed is immediately final and executory, and the denial of the appeal for lack of merit. In the former, the supposed appellee can immediately ask for the issuance of an Entry of Judgment in the RTC, whereas, in the latter, the appellant can still raise the matter to this Court on petition for review and the RTC judgment cannot*





be executed until the Court makes the final pronouncement.

### CHAPTER 5: ANNULLABLE MARRIAGES

#### GROUND5 FOR ANNULMENT (Art. 45): PUFFIS

1. Lack of parental consent
2. Either party is of unsound mind
3. Fraudulent means of obtaining consent of either party
  - Circumstances constituting fraud: (Art. 46)
    - 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
4. Force, intimidation or undue influence
5. Physical incapability of either party to consummate the marriage with the other, and such incapacity continues and appears to be incurable
  - **Requisites of Annulment due to Impotence:**
    - a. Impotence exists at the time of the celebration of marriage
    - b. Permanent
    - c. Incurable
    - d. Unknown to the other spouse
    - e. The other spouse must not also be impotent
      - Doctrine of Trenial Cohabitation:  
Presumption that the husband is impotent should the wife still remain a virgin after 3 years of living together with her husband.
6. Affliction of sexually transmissible disease found to be serious and which appears incurable
  - **Elements:**
    - a. Existing at the time of marriage
    - b. Sexually transmissible disease
    - c. Serious
    - d. Appears incurable

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 appears incurable
It is the concealment, and not the STD, which gives rise to the annulment	The STD itself is the ground for annulment

#### SEE:

- Annex A – Effects of Termination of Marriage
- Annex B – Effects of Voidable Marriages, Bigamous Marriages, Declarations of Nullity, and Annulments
- Annex C – Distinctions between Void and Voidable Marriages

#### A.M. No. 02-11-10-SC PROPOSED RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES

##### SCOPE:

- Petitions for declaration of absolute nullity of void marriages and annulment of voidable marriages under the Family Code
- The Rules of Court shall apply suppletorily

##### PETITION FOR DECLARATION OF ABSOLUTE NULLITY:

**Who may file:** solely the husband or wife

**What to allege:** complete facts showing either one is incapacitated from complying with marital obligations at the time of the celebration of the marriage including physical manifestations, if any

- Actions or defenses shall NOT prescribe

##### PETITION FOR ANNULMENT OF VOIDABLE MARRIAGES:

**Who may file:**

1. contracting party whose parent, or guardian, or person exercising substitute parental authority did not give his/her consent, w/in 5 years after attaining the age of 21 unless after attaining the age of 21, such party freely cohabited with the other as husband and wife; or the parent, guardian or person having legal charge of the contracting party at any time before such party has reached the age of 21
2. the sane spouse who had no knowledge of the other's sanity; or by any relative, guardian, or person having legal charge of the insane, at any time before the death of either party; or by the insane spouse during a lucid interval after

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



- regaining sanity, provided that the petitioner, after coming to reason, has not freely cohabited with the other husband and wife;
3. the injured party whose consent was obtained by fraud, w/in 5 years after the discovery of the fraud, provided that said party, with full knowledge of the fact constituting the fraud, has not freely cohabited with the other husband and wife;
  4. the injured party whose consent was obtained by force, intimidation, or undue influence, w/in 5 years from the time the force, intimidation, or undue influence disappeared or ceased, provided that the force, intimidation, or undue influence having disappeared or ceased, said party has not thereafter freely cohabited with the other husband and wife;
  5. the injured party where the other spouse is physically incapacitated of consummating the marriage with the other and such incapacity continues and appears to be incurable, w/in 5 years after the celebration of marriage; and
  6. the injured party where the other party was afflicted with a sexually transmissible disease found to be serious and appears to be incurable, w/in 5 years after the celebration of the marriage.

**A. Venue:** Family Court of the province or city where the petitioner or the respondent has been residing for at least 6 months prior to the date of filing (or non-resident respondent: where he may be found in the Philippines) AT THE ELECTION OF THE PETITIONER.

### **B. Petition shall allege:**

1. complete facts constituting the cause of action;
2. state the names and ages of the common children of the parties and specify the regime governing their property relations, and the properties involved;
3. verified and accompanied by a certification against forum shopping, which must be signed personally by the petitioner
  - Petition may not be signed solely by counsel or through an attorney-in-fact
  - If petitioner is in a foreign country, the verification and certificate against forum shopping shall be authenticated by the duly authorized officer of the Philippine embassy or legation, consul general, consul, vice-consul, or consular agent in said country
4. filed in 6 copies to be served to the office of the Solicitor-General and the Office of the City or Provincial Prosecutor, w/in 5 days from the date of its filing and submit to the court proof of such service w/in the same period

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

### **C. Service of Summons**

- Governed by the Rule 14 of the Rules of Court and the following:
  1. Respondent cannot be located at his given address or his whereabouts are unknown and cannot be ascertained by diligent inquiry:
    - (a) Service of summons by publication once a week for 2 consecutive weeks in a newspaper of general circulation in the Philippines and in such places as the court may order
    - (b) Served at respondent's last known address by registered mail or any other means the court may deem sufficient
  2. Summons to be published shall be contained in a court order with the following data:
    - (a) title of the case
    - (b) docket number
    - (c) nature of the petition
    - (d) principal grounds of the petition and the reliefs prayed for
    - (e) a directive for the respondent to answer w/in 30 days from the last issue of the publication

**D. Motion to Dismiss: not allowed, except** for lack of jurisdiction over the subject matter or over the parties (however, any ground that might warrant a dismissal may be raised as an affirmative defense in an answer)

### **E. Answer**

- verified by the respondent himself filed w/in 15 days from service of summons or from the last issue of publication in case of service of summons by publication
- failure to answer shall NOT make him in default
- court will order the public prosecutor to investigate if there is collusion if no answer is filed or when answer does not tender an issue



### F. Investigation Report of the Public Prosecutor

- to be made w/in 1 month after the receipt of the court order
- shall state whether the parties are in collusion and the basis for such finding and serve copies thereof on the parties and their respective counsels, if any
  - (a) there is collusion – parties shall file their respective comments on the finding of collusion w/in 10 days from receipt of a copy
  - (b) no collusion – set the case for pre-trial
- public prosecutor is duty bound to appear at the pre-trial

**G.** Court may require a social worker to conduct a case study and submit the corresponding report at least 3 days before the pre-trial

### H. Pre-trial

- MANDATORY
- Notice of pre-trial shall be served separately to the parties, their respective counsel and the public prosecutor, containing: date of pre-trial conference and order directing the parties to file pre-trial brief in such manner that ensures the receipt of the adverse party at least 3 days before the date of pre-trial
- Parties should appear personally at the pre-trial
- Notice of pre-trial shall still be sent to respondent even if he did not file an answer
- Failure to file the pre-trial brief or to comply with its required contents shall have the same effect as failure to appear at the pre-trial
- Failure to appear at the pre-trial personally w/o the valid cause: case will be dismissed
- If respondent filed his answer but fails to appear at the pre-trial, the court shall proceed but the public prosecutor will be required to investigate the reason for non-appearance
- Court may refer the issues to a mediator but should this fail or is not allowed, the court shall proceed with the pre-trial conference
- Proceedings shall be recorded
- Public prosecutor shall appear for the state to prevent collusion
- Parties not allowed to raise issues or present witnesses and evidence other than those stated in the pre-trial order
- Parties have 5 days from receipt of pre-trial order to make corrections or modifications

### J. Prohibited Compromise

- (a) Civil status of persons
- (b) Validity of marriage or legal separation
- (c) Any ground for legal separation
- (d) Future support
- (e) Jurisdiction of courts
- (f) Future legitimes

### K. Decision

- Copies will be served on the parties, including the SolGen and public prosecutor
- Final after expiration of 15 days from notice to the parties
- Should be registered in the Civil Registry where the marriage was celebrated and in the Civil Registry of the place where the Family Court is located before decree shall be issued

### L. Appeal

- Not allowed if no motion for reconsideration or new trial is made w/in 15 days from notice of judgment

### M. Death

- Party dies before entry of judgment: court shall order the case closed and terminated w/o prejudice to the settlement of the estate in proper proceedings in the regular courts
- Party dies after the entry of judgment: binding upon the parties and their successors-in-interest in the settlement of the estate in the regular courts.

### N. Date of Effectivity: March 15, 2003

#### **CORPUS v. OCHOTERENA 435 SCRA 446 (2004)**

*In a nullity-of-marriage case, the prior investigation to determine for collusion is a condition sine qua non for further proceedings in the event the defendant does not answer. This is true even if during the hearing the fiscal participated and cross-examined the witnesses.*

## **CHAPTER 6: LEGAL SEPARATION**

### **GROUND: PRC-FAL-BILA**

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 the petitioner to change **religious or political affiliation**



## ATENELO CENTRAL BAR OPERATIONS 2007

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 respondent to imprisonment of more than 6 years (even if pardoned)
5. Drug addiction or habitual alcoholism
6. Lesbianism or homosexuality
7. Subsequent bigamous marriage
8. Sexual infidelity or perversion
9. Attempt by respondent against the life of the petitioner
10. Abandonment for more than 1 year without justifiable cause

### GROUND TO DENY LEGAL SEPARATION:

#### C<sup>4</sup>D-GP-DR

1. Condonation
  - failure of the husband to look for his adulterous wife is not condonation to wife's adultery
2. Consent
3. Connivance
4. Collusion
5. Mutual guilt
6. Prescription – action for legal separation must be filed within five years from the time of the occurrence of the cause of action
7. Death of either party during the pendency of the case (***Lapuz-Sy v. Eufemio 43 SCRA 177 [1972]***)
8. Reconciliation of the spouses during the pendency of the case

### 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 (subject to Art. 213 which provides that parental authority shall be exercised by parent designated by the court)
6. Guilty spouse is disqualified from intestate succession and provisions made by innocent spouse in his favor in a will shall be revoked by operation of law
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 the insurance policy

even if such designation be stipulated as irrevocable

#### **A.M. No. 02-11-11-SC**

#### **PROPOSED RULE ON LEGAL SEPARATION**

- The Rules of Court shall apply suppletorily

**Who may file:** solely the husband or wife

**When to file:** within 5 years from the occurrence of any of the grounds

- Procedure is almost the same as in the Rule on Declaration of Absolute Nullity & Annulment (above)
- Creditors are furnished copies of the petition
- Pre-trial set not earlier than 6 months from filing of the petition for possibility of reconciliation (COOLING OFF PERIOD)
  - Exception: There is no cooling-off period if the ground alleged are those under **RA 9262 (Violence Against Women & Children)**.

#### **RA 9262: "Anti-Violence Against Women and Their Children Act of 2004"**

**Sec. 19: Legal Separation Cases** - In cases of legal separation, where violence as specified in this Act is alleged, **Art. 58 of the Family Code shall not apply**. The court shall proceed in the main case and other incidents of the case as soon as possible. The hearing on any application for a protection order filed by the petitioner must be conducted within the mandatory period specified in this Act.

#### **Decree of Reconciliation:**

- a. If the spouses had reconciled: joint manifestation under oath, duly signed by both, may be filed in the same proceeding for legal separation.
- b. Reconciliation while proceeding is pending: court shall immediately order termination of proceeding.
- c. Reconciliation after judgment granting petition but before the issuance of the decree:
  - spouses express in their manifestation whether or not to revive the former property regime or choose a new regime.
  - court immediately issue decree of Reconciliation setting aside proceeding and specifying the property regime of spouses
- d. Reconciled after the issuance of the decree: court, upon motion, issue decree of reconciliation declaring decree as set aside





- but the separation of property and any forfeiture of the share of the guilty spouse already effected subsists, unless the spouses have agreed to revive their former regime of property relations or adopt a new regime.
- e. In (b), (c), and (d), if choose to adopt different property regime, the spouses shall comply with Sec. 24 of the Rule
- f. Decree of reconciliation: recorded in Civil Registries where marriage and decree of legal separation had been registered

**Date of Effectivity: March 15, 2003**

**Ong Eng Kiam a.k.a. William Ong v. Lucita Ong**  
**G.R. No. 153206, Oct. 23, 2006**

**FACTS:**

Lucita Ong filed a complaint for legal separation before the RTC, alleging that she suffered physical violence, threats, intimidation, and grossly abusive conduct. The RTC and CA decreed the legal separation. William claims that Lucita is guilty of abandonment and should, therefore, be denied legal separation following Art. 56(1).

**ISSUE:**

Whether Lucita is guilty of abandonment and should be denied the decree of legal separation

**Held:**

The claim of William as regards Lucita's abandonment is without merit. ***The abandonment referred to by the Family Code is abandonment without justifiable cause for more than one year. As it was established that Lucita left William due to his abusive conduct, such does not constitute abandonment contemplated by the said provision.***

**CHAPTER 7: RIGHTS AND OBLIGATIONS**  
**BETWEEN HUSBAND AND WIFE**

**OBLIGATIONS OF HUSBAND AND WIFE:**

**L<sup>2</sup>H<sup>2</sup>DS**

1. Live together
2. Observe mutual love, respect and fidelity
3. Render mutual help and support
4. Management of the household
5. Fix the family domicile
6. Joint responsibility for the support of the family

**PROFESSION**

**General Rule:** Either spouse may exercise any legitimate profession/business without the consent of the other

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

**CHAPTER 8: PROPERTY RELATIONS**  
**BETWEEN HUSBAND AND WIFE**

**WHAT GOVERNS PROPERTY RELATIONS**  
**BETWEEN SPOUSES:**

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

**REQUISITES OF A VALID MARRIAGE**  
**SETTLEMENT: WSB-TC-CR**

1. In writing
2. Signed by the parties
3. Executed before the celebration of marriage
4. To fix the terms and conditions of their property relations
5. If a party executing the settlement needs parental consent, the parent/guardian whose consent is needed must be made a party to the agreement
6. 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
7. Registration (to bind 3<sup>rd</sup> persons)

**NOT APPLICABLE:**

1. When both are aliens, even if married in the Phils.
2. As to extrinsic validity of contracts
3. Contrary stipulation



**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)

**Requisites:**

1. Made before celebration of marriage
2. In celebration of marriage
3. In favor of one or both future spouses

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)

Ratio:

1. To protect unsecured creditors from being defrauded
2. To prevent stronger spouse from imposing upon the weaker one the transfer of the latter's property to the former
3. To prevent indirect modification of the marriage settlement

Exception:

1. Moderate gifts on the occasion of any family rejoicing
2. Donation *mortis causa*

- Applied to common law spouses (Art. 87)

**GROUND TO REVOKE DONATION PROPTER NUPTIAS: VICALC**

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 is 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

**DONATION PROPTER NUPTIAS V. ORDINARY DONATION**

Bases	Donations Propter Nuptias	Ordinary Donations
Formalities	Governed by the rules on ordinary donations <i>except</i> that if future property is donated, it must conform with formalities of wills	Governed by rules on donations (Art. 725-773 of NCC)
Present Property	May be donated but up to 1/5 of donor's present property	No limit except that donor shall leave property enough for his support
Future Property	May be included provided donation is <i>mortis causa</i>	Cannot be included
Grounds for revocation	Art. 86 of Family Code	Art. 760, 764, 765 of NCC

**PRESCRIPTIVE PERIOD FOR FILING ACTION FOR REVOCATION OF DONATION PROPTER NUPTIAS:**

If marriage is not celebrated ( <i>except</i> donations contained in the marriage settlement which are automatically rendered void if the marriage does not take place)	5 years (Art. 1149 NCC) from the time marriage is not solemnized on the fixed date
If marriage is judicially declared void, it depends: <ol style="list-style-type: none"> <li>(a) if subsequent marriage is void pursuant to Arts. 52 and 53, because contracted by a spouse before prior void marriage is judicially declared void</li> <li>(b) Judicially declared</li> </ol>	by operation of law if donee-spouse contracted subsequent void marriage in bad faith  5 years from finality of



void on grounds other than Art. 40 in relation to Arts. 52 and 53	judicial declaration of nullity (if action to recover property)
When marriage takes place without the required parental consent	5 years
If resolutive condition is complied with	5 years from happening of condition
When marriage is annulled and donee in bad faith	5 years from finality of decree
If donee commits an act of ingratitude	1 year from donor's knowledge of that fact
In cases of legal separation	5 years from the time the decree of separation has become final

**PROPERTY RELATIONS**

<b>A. SYSTEM OF ABSOLUTE COMMUNITY:</b>
The property regime of the spouses in the absence of a marriage settlement or when the marriage is void. This is so because it is more in keeping with Filipino culture.

*GENERAL RULE: The community property consists of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.*

**EXCEPTIONS: Exclusions from Community Property:**

1. Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage and its fruits and income
2. Property for personal and exclusive use except jewelry
3. Property acquired during the marriage by gratuitous title, except when the donor, testator, or grantor expressly provides otherwise
  - No waiver of rights allowed during the marriage except in case of judicial separation of property. The waiver must be in a public instrument.

**HSLB v. Miguela Dailo** G.R. No. 153802, March 11, 2005  
*Encumbrance or disposition of the community of property without the consent of the other spouse is void. Benefit to the family must always be proven.*

**ADMINISTRATION OF THE COMMUNITY PROPERTY:**

General Rule: It shall belong to both spouses

Exceptions:

1. In cases of disagreement, husband's decision shall prevail
  - Wife can go to court within 5 years
2. In case one spouse is incapacitated or unable to participate in the administration of the common properties, other spouse may assume sole powers.
  - These powers do not include:
    - a. disposition and
    - b. encumbrance
  - Any encumbrance is void if without the written consent of the other spouse.

**Rules on Game of Chance:**

*LOSS:* Borne by the loser spouse and shall not be charged to the community property

*WINNINGS:* Form part of the community property

**CHARGES UPON THE ACP: BDT-SLAPPOD**

1. Debts and obligations contracted by either spouse *without the consent* of the other to the extent that it **benefited the family**
2. **Debts and obligations** contracted during the marriage by designated administrator-spouse, both spouses, or by one *with the consent* of the other
3. **Taxes**, liens, charges and expenses upon *community property*
4. **Support** of spouses, their common children and legitimate children of either spouse
5. Expenses of **litigation between spouses** unless the suit is found to be groundless
6. **Ante-nuptial debts** which redounded to the benefit of the family
7. Taxes and expenses for mere **preservation** made during the marriage upon the *separate property* of either spouse used by the family
8. Expenses for **professional** or vocational course
9. **Other ante-nuptial debts**, support of illegitimate child, and liabilities for crime or *quasi-delicts* in absence of separate property
10. **Donated** or promised to *common legitimate children* for profession, vocational course or self improvement

- If the community property is insufficient to cover all these liabilities, except those falling under (9), spouses shall be solidarily liable for the unpaid balance with their separate properties.
- Administration of community property belongs to both



- Dispute: husband prevails
- If the wife decides to go to court, must do so within 5 years from the contract
- Both spouses must approve any dispositions or encumbrances, and consent of the other spouse must be in writing
  - Otherwise, 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 3<sup>rd</sup> person which may be perfected as a binding contract upon acceptance by the spouse or court approval.

### TERMINATION OF ACP/CPG: DLAS

1. Death of either spouse
2. Decree of legal separation
3. Annulment or declaration of nullity of marriage
4. Judicial separation of property during marriage

### PROCEDURE FOR DISSOLUTION OF ACP:

1. Inventory of all properties
  - a. Inventory of community property
  - b. Inventory of separate property of the wife
  - c. Inventory of separate property of the husband
2. Debts and obligation of ACP are paid
3. Remainder 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

### **B. SYSTEM OF CONJUGAL PROPERTY OF GAINS**

The spouses contribute the following to a common fund:

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: FOLCHIC

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

### Rules in Cases of Improvement of Exclusive Property:

1. Accession – if the cost of the improvement of the plus value is equal to or less than the value of the principal property at the time of the improvement, the entire property remains the exclusive property of the spouse
2. Reverse Accession – if the cost of the improvement and the plus value is more than the value of the principal property at the time of the improvement, the property becomes conjugal (subject to reimbursement)

### CHARGES UPON CPG: BDT-SLAPPD

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





**PROCEDURE FOR DISSOLUTION OF CPG:**

1. Inventory of all property
2. Amounts advanced by CP as payment for personal debts and obligations 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
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

**NOTES:**

- Property bought on installments paid partly from exclusive funds of the spouses and partly from conjugal funds:
  - a. If full ownership is vested before the marriage – it shall belong to the buyer-spouse
  - b. If full ownership was vested during the marriage – it shall belong to the conjugal partnership
- The separate properties shall be solidarily and subsidiarily liable for the obligations if the community or conjugal properties are insufficient
- The ACP shall also be liable for ante-nuptial debts, support of illegitimate children, and liabilities incurred by either spouse by reason of a crime or *quasi-delict* in case of insolvency of the exclusive property of the debtor-spouse. Payment advanced by the ACP, subject to deduction from the share of the debtor-spouse
- The conjugal partnership property shall likewise be liable for the payment of the personal debts of either spouse insofar as they have redounded to the benefit of the family.

**Ayala Investment Corporation v. CA G.R. No. 118305, Feb. 12, 1998**

*Indirect benefits that might accrue to a husband in his signing as a surety or guarantee agreement not in favor of the family but in favor of his employer corporation are not the benefits that can be considered as giving a direct advantage accruing to the family. Hence, the creditors cannot go against the conjugal partnership property of the husband in satisfying the obligation subject of the surety agreement. A 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.*

**ABALOS v. MACATANGAY 439 SCRA 649 (2004)**

*Prior to the liquidation of the conjugal partnership, the interest of each spouse in the conjugal assets is inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until it appears that there are assets in the community as a result of liquidation and settlement. The interest of each spouse is limited to the net remainder resulting from the liquidation of the affairs of the partnerships after its dissolution. Thus, the right of the husband or wife to one-half of the conjugal assets does not vest until the dissolution and liquidation of the conjugal partnership or after dissolution of the marriage, when it is finally determined that, after settlement of conjugal obligations, there are net assets left which can be divided between the spouses or their respective heirs.*

*The Family Code requires WRITTEN consent of the other spouse or authority of the court for the disposition or encumbrance of conjugal partnership by the other spouse if the former spouse is incapacitated or otherwise unable to participate in the administration of the conjugal partnership. Otherwise, the disposition is void.*

**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 <u>only the fruits and income</u> 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 property 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

- 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: CAPAAS

1. Petitioner's spouse has been sentenced to a penalty which carries with it civil interdiction
2. Petitioner's spouse has been declared an absentee
3. Loss of parental authority of petitioner's spouse has been decreed by the court
4. Abandonment by petitioner's spouse or failure to comply with family obligations
5. Spouse granted the power of administration in marriage settlements has abused that power
6. At the time of petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable

### 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, being satisfied that the spouse granted the power of administration in the marriage settlement will not again abuse that power, authorizes resumption of administration by the spouse formerly exercising such power
4. When the spouse, who has left the conjugal home without a decree of legal separation, returns and 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
7. When after voluntary dissolution of ACP or CPG, spouses agree to revive their former property regime

### GROUND FOR TRANSFER OF ADMINISTRATION OF EXCLUSIVE PROPERTY OF EITHER SPOUSE: GACA

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 or is hiding as an accused in a criminal case

### PROPERTY REGIME OF UNIONS WITHOUT MARRIAGE

	<b>Art.147</b>	<b>Art.148</b>
Applicability	<ol style="list-style-type: none"> <li>1. man and woman</li> <li>2. living together as husband and wife</li> <li>3. with capacity to marry (Art.5 without any legal impediment)                             <ul style="list-style-type: none"> <li>• at least 18 years old</li> <li>• <b>not</b> Art. 37 (incestuous void marriage)</li> <li>• <b>not</b> Art. 38 (void marriage by reason of public policy)</li> <li>• <b>not</b> bigamous</li> </ul> </li> <li>4. other void marriages / live-in</li> </ol>	<ol style="list-style-type: none"> <li>1. man and woman</li> <li>2. living together as husband and wife</li> <li>3. <b>NOT</b> capacitated to marry (Art.35(1) under 18 years old)</li> <li>4. adulterous relationship (e.g. concubinage)</li> <li>5. bigamous/polygamous marriage (Art.35(4))</li> <li>6. incestuous marriages under Art.37</li> <li>7. Void marriages by reason of public policy under Art.38</li> </ol>
Salaries and wages	Owned in equal shares	Exclusively owned; married party → property of CPG of legitimate marriage
Properties acquired through exclusive funds	Remains exclusive provided there is proof	Remains exclusive
Properties acquired by both through work or industry	Governed by rules on co-ownership	Owned in common in proportion to respective contribution
Properties acquired while living together	<ul style="list-style-type: none"> <li>• Owned in equal shares since it is presumed to have been acquired through joint efforts</li> <li>• if one party did not participate in acquisition, presumed to have contributed through care and maintenance of family and household</li> </ul>	Presumed to be equal; however, proofs may be shown to show that their contribution and respective shares are not equal
Forfeiture in	When only one of	If one party is



<p>case one party is in bad faith</p>	<p>the parties is in good faith, the share of the party in bad faith shall be forfeited:</p> <ol style="list-style-type: none"> <li>1. In favor of their common children</li> <li>2. In case of default or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants</li> <li>3. In the absence of such descendants, such share belongs to the innocent party</li> </ol>	<p>validly married to another:</p> <ul style="list-style-type: none"> <li>- his/her share in the co-owned properties will accrue to the ACP/CPG of his/her existing valid marriage</li> </ul> <p>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</p> <p>The same rules on forfeiture shall apply if both parties are in bad faith</p>
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adjudicated in an ordinary civil action such as in a case for recovery of property.

**VILLANUEVA v. COURT OF APPEALS 427 SCRA 439 (2004)**

**FACTS:**

Several properties are the subject of dispute between petitioner (illegitimate son) and the legitimate family of Nicolas, the decedent. Petitioner is contending that the subject properties are not part of the conjugal partnership of Nicolas and his legal wife (Eusebia) but under the regime of co-ownership between Nicolas and petitioner's mother.

**HELD:**

*For as long as it is proven that property was acquired during the marriage, the presumption of conjugality will attach regardless in whose name the property is registered.* The presumption is not rebutted by the mere fact that the certificate of title of the property or the tax declaration is in the name of one of the spouses. A reading of Article 148 shows that there must be proof of actual joint contribution by both the live-in partners before the property becomes co-owned by them in proportion to their contribution. The presumption of equality of contribution arises only in the absence of proof of their proportionate contributions, subject to the condition that actual joint contribution is proven first. *Simply put, proof of actual contribution by both parties is required; otherwise there is no co-ownership and no presumption of equal sharing.*

**JOAQUINO v. REYES 434 SCRA 260 (2004)**

**FACTS:**

Respondent Reyes is the widow of Rodolfo Reyes. Reyes had illicit relations with petitioner Joaquino. A property in BF Homes Paranaque was executed in favor of Joaquino. Joaquino had no means to pay for this property. The funds used to purchase this property were earnings of Reyes from his position as corporate executive and from a loan secured from Commonwealth Insurance Corporation. Joaquino and Reyes had 3 illegitimate children.

**HELD:**

*Article 148 is the property regime that will apply in case where the partners have a legal impediment to marry each other.* In this property regime, only the property acquired by them through their actual joint contribution of money, property or industry shall be owned by them in common and in proportion to their respective contributions. The registration of a property in the name of the paramour who had no income whatsoever at the time of the donation by a husband is tantamount to a donation which is void under Article 87 of the Family Code. The paramour then holds the property under a constructive trust under Article 1456 in favor of the conjugal partnership of the husband with the legitimate spouse. Status of an illegitimate child who claimed to be an heir to a decedent's estate could not be

**CHING vs. COURT APPEALS 423 SCRA 371 (2004)**

*The presumption of conjugality arises as long as it is shown that it is acquired during the marriage. It is not even necessary to prove that the properties were acquired with funds of the partnerships. In fact, even when the manner in which the properties were acquired does not appear, the presumption will still apply. The presumption shall subsist in the absence of clear, satisfactory and convincing evidence to overcome the same. "Benefit to the family" must be direct and not just a by-product or a spin-off of the loan itself. Where a husband contracts obligations on behalf of the family business, the law presumes and rightly so that such obligation will rebound to the benefit of the conjugal partnership.*

**Rivera v. Heirs of Romualdo Villanueva G.R. No. 141501 July 21, 2006**

**FACTS:**





From 1927 until her death in 1980, Pacita Gonzales cohabited with Romualdo Villanueva without the benefit of marriage because the latter was married to Amanda Musngi who died in 1963. During the 53 years of their cohabitation they acquired the several properties contested in this case.

In July 1980, Pacita died without leaving a will. On August 1980, Romualdo and Angelina (said to be the illegitimate child of Pacita and Romualdo) executed a deed of extrajudicial partition with sale of a number of properties of Pacita's estate. Petitioners (Pacita's half-brothers, etc.) filed a case for partition of her estate and annulment of titles and damages.

In dismissing the complaint, the RTC made two findings: (1) Pacita was never married to Romualdo even after Amanda's death, and (2) respondent Angelina was Pacita's illegitimate child by Romualdo and therefore her sole heir (to the exclusion of the petitioners). CA affirmed.

### ISSUE:

Whether the real properties acquired during the cohabitation of Pacita and Romualdo are equally owned by them.

### HELD:

**NO.** Pacita and Romualdo lived together without the benefit of marriage and therefore their property relations were governed by Art. 144 of the Civil Code. However, the contending parties agreed that the relationship of Pacita and Romualdo was adulterous, at least until the death of Amanda in 1963.

Because the cohabitation of Pacita and Romualdo from 1927 to 1963 was adulterous, their property relations during those 36 years were not governed by Art. 144 of the Civil Code which applies only if the couple living together is not in any way incapacitated from getting married. According to the doctrine laid down by *Juaniza v. Jose*, no co-ownership exists between parties to an adulterous relationship. In *Agapay v. Palang*, the Court expounded on this doctrine by declaring that in **such a relationship (adulterous), it is necessary for each of the partners to prove his or her actual contribution to the acquisition of property in order to be able to lay claim to any portion of it.** Presumptions of co-ownership and equal contribution do not apply.

The only property acquired after Amanda's death in 1963 and registered in the names of both Villanueva and Gonzales was only one property. This is governed by the rules on co-ownership pursuant to Art. 144 of the Civil Code. Half of it should pertain to Pacita's heirs and the other half, to Romualdo. The rest of the properties registered solely in Pacita's name were also acquired after the death of Amanda in 1963. These properties are governed by co-

ownership under Art. 144 of the Civil Code. Again, half should accrue to Pacita's heirs and the other half, to Romualdo.

Properties registered solely under Pacita's name, although acquired during their cohabitation, accrue to the petitioners.

Properties acquired after Amanda's death in 1963, both those registered under their names and those registered in Pacita's name, will be the only ones governed by the rules on co-ownership pursuant to Art. 144 of the Civil Code.

### FRANCISCO VS. MASTER IRON 451 SCRA 494 FEBRUARY 16, 2005

#### FACTS:

Creditor levied on the property, which were alleged by wife to be solely owned by her, for the debt of Mr. Francisco (husband). She later filed a case for the annulment of their marriage on the ground that Mr. Francisco was already married.

#### HELD:

For Article 148 of the Family Code to give rise to a co-ownership relation between parties, there must be proof of actual joint contribution of money, property or industry and only to the extent of their proportionate share. Co-ownership may ensue in case of cohabitation where one party has pre-existing valid marriage provided that the parties prove their actual joint contribution of money, property. Mrs. Francisco in this case failed to adduce preponderance of evidence that she contributed in the acquisition of the property and hence is not a co-owner.

### HOMEOWNER SAVING & LOAN BANK VS. MIGUELA DAILO, G.R. No. 153802, March 11, 2005.

*Encumbrance or disposition of the community property without the consent of the other spouse is totally void. To say that it is void only as to the share of the spouse who did not give his consent and valid as to the share of the spouse who contracted the encumbrance is erroneous. Benefit to the family must always be proven.*

## CHAPTER 9: FAMILY

**FAMILY** – basic social institution which public policy cherishes and protects

- Hence, no suit between members of the family shall prosper unless compromise between parties has failed

### FAMILY RELATIONS INCLUDE:





1. Between husband and wife
2. Between parents and children
3. Among other ascendants and descendants
4. Among brothers and sisters, full or half blood.

**NOTE:** 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 it is absent, the court can dismiss the case. **BUT** this rule is **inapplicable** to the following cases: **CLV-FJF**

1. Civil status of persons
  2. Any ground for legal separation
  3. Validity of marriage or legal separation
  4. Future support
  5. Jurisdiction of courts
  6. Future legitime
- Under the Family Code, 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 (Art.157)

### **FAMILY HOME**

1. It is constituted
  - a. jointly by the husband and the wife or
  - b. by an unmarried head of the family
2. It is the dwelling house where they and their family reside, and the land on which it is situated

**GENERAL RULE: (Art. 153)** The family home (FH) is exempted from:

1. Execution
2. Forced Sale
3. Attachment

**EXCEPTIONS: (Art. 155)**

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 the Family Code

**GUIDELINES:**

- FH is deemed constituted from time of actual occupation as a family residence
- FH must be owned by person constituting it
- FH must be permanent
- Rule applies to valid and voidable and even to common-law marriages under Arts.147 and 148
- FH continues despite death of one or more spouses or unmarried head of family for 10 years or as long as there is a minor beneficiary (**Art.159**)
- Can only constitute one family home

### **BENEFICIARIES OF A FAMILY HOME**

1. Husband and wife, or unmarried head of the family
2. Parents (may include parent-in-laws), ascendants, brothers and sisters (legitimate/illegitimate) living in the family home and dependent 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 TO EXECUTE: (Art. 160)**

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

### **PROCEDURE:**

1. The creditor must file a motion in the court proceeding where he obtained a favorable for a 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 Family Code, 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 obligations enumerated in Art. 155 must be paid (listed above)
  - a. Then the judgment in favor of the creditor will be paid, plus all the costs of execution
  - b. The excess, if any, shall be delivered

- 1. born of marriages which are void *ab initio* such as bigamous and incestuous marriages and void marriages by reason of public policy
- 2. born of voidable marriages born after the decree of annulment

**ILLEGITIMATE CHILDREN**

Only children conceived AND born outside a valid marriage (Art.164)

**CHAPTER 10: PATERNITY AND FILIATION**

**CHILDREN BY ARTIFICIAL INSEMINATION ARE CONSIDERED LEGITIMATE:**

- 1. The artificial insemination is made on the wife, not on another woman AND
- 2. The artificial insemination on the wife is done with the sperm of the husband, or of a donor, or both the husband and a donor AND
- 3. The artificial insemination has been authorized or ratified by both spouses 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

**WHO MAY IMPUGN THE LEGITIMACY OF A CHILD:**

- 1. *General Rule:* Only the husband can impugn the legitimacy of a child
- 2. *Exceptions:* The heirs of the husband may impugn the child's filiation in the following cases:
  - a. If the husband dies before the expiration of period for filing the action
  - b. If the husband dies after filing without desisting
  - c. If the child was born after the death of the husband

**LEGITIMATE CHILDREN**

Only children conceived OR born during a valid marriage (Art.164)

the child

**EXCEPTIONS:** Those children who are:

- 1. conceived as a result of artificial insemination
- 2. born of a voidable marriage before decree of annulment
- 3. conceived or born before judgment of annulment or absolute nullity under Art. 36 (psychological incapacity) becomes final & executory
- 4. conceived or born of a subsequent marriage under Art. 53 (failure to record the judgment, partition and distribution of properties, and delivery of children's presumptive legitime)
- 5. of mothers who may have declared against their legitimacy or was sentenced as an adulteress (Art.167)
- 6. legally adopted
- 7. legitimated, conceived and born outside of wedlock of parents without impediment at the time of conception and who subsequently married

**Arnel Agustin v CA G.R. No. 162571, June 5, 2005**

DNA Testing is a valid means of determining paternity. It is not against the Constitutional right against self-incrimination nor against the right to privacy.

**Rosendo Herrera v Alba G.R. No. 148220 June 15, 2005)**

Trial Courts should require at least 99.9% as the minimum value of DNA Test Result on Probability of Paternity prior to a paternity inclusion. This rebuttable presumption of paternity is subject to the Vallejo Test

**People v. Vallejo G.R. No. 144656, May 9, 2002 → doctrine reiterated in People v. Yatar G.R. No. 150224, May 19, 2004**

**Vallejo Test:** Factors to consider as to probative value of DNA evidence:

- 1. how samples were collected
- 2. how they were handled
- 3. possibility of contamination of samples
- 4. procedures followed in analyzing the samples
- 5. whether the proper standards and procedures were followed in conducting the test
- 6. qualification of analyst who conducted the test

**EXCEPTIONS:** Those children who are:



**GERARDO CONCEPCION VS. COURT OF APPEALS GR. NO. 123450 August 31, 2005**

*A child born inside a valid marriage is legitimate. Hence a child born inside a bigamous marriage which is void is the child of the first marriage which has not been nullified or annulled.*

*An agreement by parties as to the status of a child is void. Only the law determines legitimacy or illegitimacy. Thus, an admission in pleadings by the wife and his second husband that the child is their legitimate son cannot stand in the face of proof that the first valid marriage of the wife was not annulled or nullified and hence the child is the legitimate child in the eyes of the law of the first husband.*

*Any declaration of the mother that her child is illegitimate has no probative value.*

**GROUND TO IMPUGN THE LEGITIMACY OF THE CHILD: (this list is EXCLUSIVE) PBA**

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 its 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, when 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 LEGITIMACY:**

1. If the husband (or his heirs, in proper cases) resides in the SAME city or municipality: within 1 year from knowledge of the birth OR its recording in the civil register
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

**NOTE:** The period shall be counted from the knowledge of the child's birth or its recording in the civil register.

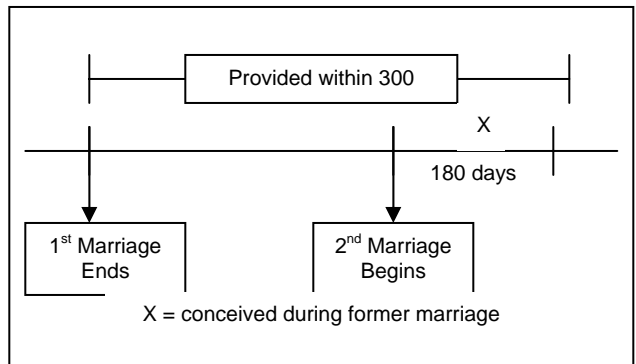
- **HOWEVER**, if the child's birth was concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the act of registration of said birth, whichever is earlier.

**NOTE:** 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.

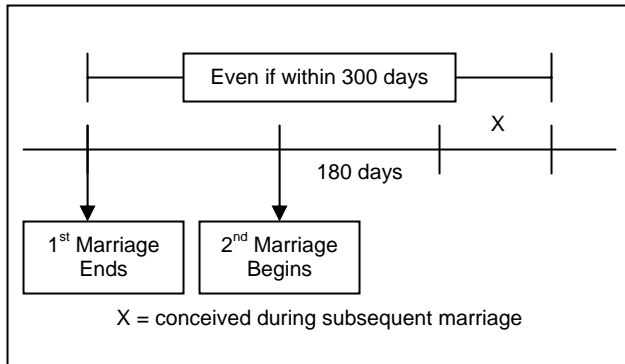
**RULE ON STATUS OF A CHILD BORN WITHIN 300 DAYS AFTER TERMINATION OF FORMER MARRIAGE (Art.168):**

Rules in the absence of proof to the contrary:

1. 1<sup>st</sup> Marriage: if the child was born before the lapse of 180 days after celebration of 2<sup>nd</sup> marriage provided born within 300 days after the termination of the 1<sup>st</sup> marriage



2. 2<sup>nd</sup> Marriage: If the child was born after 180 days following the celebration of the 2<sup>nd</sup> marriage whether born within 300 days after termination of 1<sup>st</sup> marriage or afterwards



### PROOF OF FILIATION

**GENERAL RULE: (Art.172)** Filiation of legitimate (or illegitimate) 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 (or illegitimate) filiation in a public document or a private handwritten instrument and signed by the parent concerned

### **EXCEPTION: (Para. 2, Art.172)**

In the absence of these evidences, the legitimate filiation may be proved by:

3. Open and continuous possession of the status of a legitimate (or illegitimate) child
4. Any other evidence allowed by the Rules of Court and special laws

**IMPORTANT:** For illegitimate children → when the action is based on the para. 2 of Art. 172, the action may be brought **ONLY** during the lifetime of the alleged parent.

### **Mendoza v. Court of Appeals G.R. No. 86302, Sep. 24, 1991**

*Continuous does not mean that the concession of status shall continue forever but only that it shall not be of an intermittent character while it continues. The possession of such status means that the father has treated the child as his own, directly and not through others, spontaneously and without concealment though without publicity. There must be a showing of permanent intention of the supposed father to consider the child as his own by continuous and clear manifestation of paternal affection and care.*

### **Jison v. Court of Appeals G.R. No. 124853 Feb. 24, 1998**

*To prove open and continuous possession of the status of an illegitimate child, there must be evidence of the manifestation of the permanent intention of the supposed father to consider the child as his, by*

*continuous and clear manifestations of parental affection and care, which cannot be attributed to pure charity. Such acts must be of such a nature that they reveal not only the conviction of paternity, but also the apparent desire to have and treat the child as such in all relations in society and in life, not accidentally, but continuously.*

### **CABATANIA vs. COURT OF APPEALS 441 SCRA 96 (2004)**

*A certificate of live birth purportedly identifying the putative father is not competent evidence of paternity when there is no showing that the putative father had a hand in the preparation of said certificate. The local civil registrar has no authority to record the paternity of an illegitimate child on the information of a third person. While a baptismal certificate may be considered a public document, it can only serve as evidence of the administration of the sacrament on the date specified but not the veracity of the entries with respect to the child's paternity. Thus, certificates issued by the local civil registrar and baptismal certificates are per se inadmissible in evidence as proof of filiation and they cannot be admitted indirectly as circumstantial evidence to prove the same.*

The fact that Florencia's husband is living and there is a valid subsisting marriage between them gives rise to the presumption that a child born within marriage is legitimate even though mother may have declared against legitimacy. Presumption of legitimacy doesn't flow out of a declaration in statute but is based on broad principles of natural justice.

### **ECETA vs. ECETA 428 SCRA 204 (2004)**

*The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing is, in itself, a consummated act of acknowledgement of the child, and no further court action is required. In fact, any authentic writing is treated not just a ground for compulsory recognition; it is in itself a voluntary recognition that does not require a separate action for judicial approval.*

### **Rivera v. Heirs of Romualdo Villanueva G.R. No. 141501, July 21, 2006**

#### **FACTS:**

From 1927 until her death in 1980, Pacita Gonzales cohabited with Romualdo Villanueva without the benefit of marriage because the latter was married to Amanda Musngi who died in 1963. During the 53 years of their cohabitation they





acquired the several properties contested in this case.

In July 1980, Pacita died without leaving a will. On August 1980, Romualdo and Angelina (said to be the illegitimate child of Pacita and Romualdo) executed a deed of extrajudicial partition with sale of a number of properties of Pacita's estate. Petitioners (Pacita's half-brothers, etc.) filed a case for partition of her estate and annulment of titles and damages.

In dismissing the complaint, the RTC made two findings: (1) Pacita was never married to Romualdo even after Amanda's death, and (2) respondent Angelina was Pacita's illegitimate child by Romualdo and therefore her sole heir (to the exclusion of the petitioners). CA affirmed.

**ISSUE:**

Whether Angelina is entitled to inherit from Pacita.

**HELD:**

**NO.** Both the TC and the CA ruled that Angelina was the illegitimate daughter of the decedent, based solely on her birth certificate. The CA found this to be adequate proof that respondent Angelina was Pacita's illegitimate child. However, a closer examination of the birth certificate reveals that respondent Angelina was listed as adopted by both Pacita and Romualdo.

**The mere registration of a child in his or her birth certificate as the child of the supposed parents is not a valid adoption, does not confer upon the child the status of an adopted child and the legal rights of such child, and even amounts to simulation of the child's birth or falsification of his or her birth certificate, which is a public document.**

In *Benitez-Badua v. CA*, **it is well-settled that a record of birth is merely a prima facie evidence of the facts contained therein. It is not conclusive evidence of the truthfulness of the statements made there by the interested parties.** Following the logic of *Benitez*, Angelina should have adduced evidence of her adoption, in view of the contents of her birth certificate. The records, however, are bereft of any such evidence.

There are crucial differences between *Benitez-Badua* and this case which ineluctably support the conclusion that Angelina was not Pacita's daughter, whether illegitimate or adopted. Pacita, unlike *Benitez-Badua's* alleged mother Chipongian, was not only 36 years old but 44 years old, and on the verge of menopause at the time of the alleged birth. Unlike Chipongian who had been married to Vicente Benitez for only 10 years, Pacita had been living childless with Romualdo for 20 years. Under the circumstances, we hold that it was not sufficiently established that respondent Angelina was Pacita's

biological daughter, nor even her adopted daughter. Thus, she cannot inherit from Pacita. Since she could not have validly participated in Pacita's estate, the extrajudicial partition which she executed with Romualdo was invalid.

**ACTION TO CLAIM LEGITIMACY:**

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

**RIGHTS OF LEGITIMATE AND ILLEGITIMATE CHILDREN**

	LEGITIMATE	ILLEGITIMATE
Surname	Use of father and mother's surname	Use of mother's surname <b>NOTE: RA 9255</b> amended Art.176 of FC as of March 19, 2004 → can use father's surname
Legitime	Entitled to legitime and other successional rights granted to them by the NCC	Entitled only to 1/2 of legitime of legitimate child
Support	Entitled to receive support from parents, ascendants, and in proper cases, brothers and sisters under Art.174	Receive support according to the provision of the FC
Action for claim for legitimacy or illegitimacy	His/her whole lifetime regardless of type of proofs provided under Art.172	<ul style="list-style-type: none"> <li>• His/her whole lifetime regardless of type of proofs provided under Art.172 para. 1</li> <li>• ONLY lifetime of alleged parent for Art.172 para.</li> </ul>



		2
Transmissible to heirs under Art.173?	Yes	No
Right to inherit <i>ab intesto</i>	Yes	No right to inherit <i>ab intesto</i> from legitimate children and relative of father and mother under Art.992 of NCC

### IMPORTANT:

- Use the surname of the mother if the requisites of RA 9255 are not complied with
- Use the surname of the father (RA 9255, Sec. 1, effective March 19, 2004)

### R.A. No. 9255

Illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father, either through:

1. record of birth in civil register
2. father's admission in public document
3. father's admission in private handwritten document

The father under RA 9255, Sec. 1 has the right to file an action to prove non-filiation during his lifetime.

### LEGITIMATED CHILDREN

#### 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
3. There is a valid marriage subsequent to the child's birth

- Legitimation takes place by the subsequent marriage of the child's parents
- Effect of legitimation:
  - Confers on the child the rights of legitimate children
  - Retroacts to the time of the child's birth
- Legitimation may be impugned only by those who are prejudiced in their rights within 5 years from the time the cause of action

accrues (death of parents of legitimated child)

### CHAPTER 11: ADOPTION

#### R.A. 8552: DOMESTIC ADOPTION ACT

**WHO MAY ADOPT:** Any person provided he is:

##### 1. FILIPINO CITIZEN

- a. of legal age
- b. in possession of full civil capacity and legal rights
- c. of good moral character
- d. has not been convicted of any crime involving moral turpitude, emotionally and psychologically capable of caring for children,
- e. At least 16 years older than the person to be adopted, unless:
  - i. The adopter is the natural parent of the child to be adopted, or
  - ii. The adopter is the spouse of the legitimate parent of the person to be adopted
- f. In possession of full civil capacity and legal rights
- g. In a position to support and care for his legitimate and illegitimate children, in keeping with the means of the family

##### 2. ALIEN

- a. possessing the same qualifications as above stated for Filipino nationals
- b. his/her country has diplomatic relations with the Philippines
- c. he/she has been living in the Philippines for at least 3 continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered EXCEPT when:
  - i. a former Filipino citizen who seeks to adopt a relative within the 4<sup>th</sup> degree of consanguinity or affinity; or
  - ii. one who seeks to adopt the legitimate child of his/her Filipino spouse; or
  - iii. one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative



- within the 4<sup>th</sup> degree of consanguinity or affinity of the Filipino spouse; or
3. **GUARDIAN** - with respect to the ward after the termination of the guardianship and clearance of his/her financial accountabilities

### PRE-ADOPTION SERVICES

The DSWD shall provide for the following services:

1. counseling services for the biological parents, prospective parents, and prospective adoptee
2. exhaust all efforts to locate the biological parents, if unknown

### RULE ON ADOPTION BY SPOUSES

**GENERAL RULE:** Husband and wife shall jointly adopt

#### EXCEPTION:

1. one spouse seeks to adopt the legitimate son/daughter of the other; or
2. one spouse seeks to adopt his/her own illegitimate son/daughter
3. the spouses are legally separated from each other.

### WHO MAY BE ADOPTED

1. Any person below 18 years of age who has been administratively or judicially declared available for adoption;
2. legitimate son/daughter of one spouse by the other spouse;
3. illegitimate son/daughter by a qualified adopter to improve his/her status to that of legitimacy;
4. person of legal age if, prior to the adoption, said person has been consistently considered and treated by the adopter as his/her own child since minority;
5. child whose adoption has been previously rescinded; or
6. child whose biological or adoptive parents have died provided that no proceedings shall be initiated within 6 months from the time of death of said parents.

### WRITTEN CONSENT NECESSARY FOR ADOPTION: A-BLISS-A

1. Adoptee, if 10 years of age or over;
2. Biological parents of the child, if known, or the legal guardian, or the proper government instrumentality which has legal custody of the child;
3. Legitimate children of the adopter, 10 years old or over

4. Illegitimate children of the adopter, 10 years old or over and living with him
5. Spouse of the adopted, if married
6. Spouse of the adopter, if married
7. Adopted children of the adopter, 10 years old or over

### EFFECTIVITY OF DECREE OF ADOPTION

- A decree of adoption effective as of the date the original petition was filed. Also apply in case the petitioner dies before the issuance of the decree of adoption to protect the interest of the adoptee

#### **Tamargo v Court of Appeals G.R. No. 85044, June 3, 1992**

*Where the petition for adoption was granted after the child had shot and killed a girl, the Supreme Court did not consider that retroactive effect may be given to the decree of adoption so as to impose a liability upon the adopting parents accruing at a time when adopting parents had no actual or physically custody over the adopted child. Retroactive affect may perhaps be given to the granting of the petition for adoption where such is essential to permit the accrual of some benefit or advantage in favor of the adopted child. In the instant case, however, to hold that parental authority had been retroactively lodged in the adopting parents so as to burden them with liability for a tortious act that they could not have foreseen and which they could not have prevented would be unfair and unconscionable.*

### EFFECTS OF ADOPTION:

1. Severance of all legal ties between the biological parents and the adoptee and the same shall then be vested on the adopters EXCEPT in cases where the biological parent is the spouse of the adopter
2. Deemed a legitimate child of the adopter
3. Acquired reciprocal rights and obligations arising from parent-child relationship
4. Right to use surname of the adopter
5. In legal and intestate succession, the adopters and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parents had left a will, the law on testamentary succession shall govern.



**LEGALLY-FREE CHILD** is a child who has been voluntarily or involuntarily committed to the Department, in accordance with the Child and Youth Welfare Code

### **GROUND FOR RESCISSION OF ADOPTION:**

#### **MASA**

1. repeated physical and verbal maltreatment by the adopters despite having undergone counseling
  2. attempt on the life of the adoptee
  3. sexual assault or violence
  4. abandonment and failure to comply with parental obligations.
- Adoption, being in the best interest of the child, shall not be subject to rescission by the adopter
  - Only the adoptee is given the right to rescind the decree of adoption
  - However, the adopters may disinherit the adoptee for causes provided in Art. 919 of the NCC

### **EFFECTS OF THE RESCISSION OF THE ADOPTION:**

1. The parental authority of the adoptee's biological parents, if known, OR the legal custody of the DSWD shall be restored if the adoptee is still a minor or incapacitated.
2. The reciprocal rights and obligations of the adopters and the adoptee to each other shall be extinguished.
3. The court shall order the Civil Registrar to cancel the amended certificate of birth of the adoptee and restore his/her original birth certificate.
4. Succession rights shall revert to its status prior to adoption, but only as of the date of judgment of judicial rescission. Vested rights acquired prior to judicial rescission shall be respected.

#### **In the Matter of the Adoption of Stephanie Nathy Astorga Garcia G.R. No. 148311 March 31, 2005**

*An illegitimate child adopted by the natural father may use the surname of the natural mother.*

### **R.A. 8043: INTER-COUNTRY ADOPTION ACT OF 1995**

**INTER-COUNTRY ADOPTION** refers to the socio-legal process of adopting a Filipino child by a foreigner or a Filipino citizen permanently residing abroad where the petition is filed, the supervised trial custody is undertaken, and the decree of adoption is issued outside the Philippines

### **WHO MAY BE ADOPTED:**

Only a legally free child may be the subject of inter-country adoption

- No child shall be matched to a foreign adoptive family unless it is satisfactorily shown that the child cannot be adopted locally

### **WHO MAY ADOPT:**

An alien or a Filipino citizen permanently residing abroad may file an application for inter-country adoption of a Filipino child if:

1. at least 27 years of age and at least 16 years older than the child to be adopted, at the time of application unless the adopter is the parent by nature of the child to be adopted or the spouse of such parent
2. if married, his/her spouse must jointly file for the adoption
3. has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone the appropriate counseling from an accredited counselor in his/her country
4. has not been convicted of a crime involving moral turpitude
5. eligible to adopt under his/her national law
6. in a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted
7. agrees to uphold the basic rights of the child as embodied under Philippine laws, the U.N. Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of this Act
8. comes from a country with whom the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption is allowed under his/her national laws
9. possesses all the qualifications and none of the disqualifications provided herein and in other applicable Philippine laws

### **INTER-COUNTRY ADOPTION BOARD**

- act as the central authority in matters relating to inter-country adoption
- ensure that all possibilities for adoption of the child under the Family Code have been





exhausted and that inter-country adoption is in the best interest of the child.

### TRIAL CUSTODY

- The trial custody shall be for a period of 6 months from the time of placement.
- Starts upon actual physical transfer of the child to the applicant who, as actual custodian, shall exercise substitute parental authority over the person of the child
- The adopting parents shall submit to the governmental agency or the authorized and accredited agency, which shall in turn transmit a copy to the Board, a progress report of the child's adjustment. The progress report shall be taken into consideration in deciding whether or not to issue the decree of adoption.

## CHAPTER 12: SUPPORT

### 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 and from place of work

**NOTE:** Amount of support shall be in proportion to the means of the giver and to the need of the recipient

### PERSONS 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)
5. 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 (e.g. even if cause is imputable to him)
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 (SOURCES OF MUTUAL SUPPORT)

Spouses	absolute community or conjugal property
Common children of the spouses	absolute community or conjugal property
Children of a spouse by another marriage	absolute community or conjugal property
Illegitimate children of either spouse	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
	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 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
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
  - 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, and the obligor does not have sufficient means to satisfy all claims:
    - the order established in the preceding article shall be followed:
      - a. Spouse
      - b. Descendants in nearest degree
      - c. Ascendants in nearest degree
      - d. Brothers and sisters
    - if the concurrent obligees should be the spouse and a child subject to parental authority, the child shall be preferred

	on Art 153	
<b>CHILDREN</b>		
From the community property	From the community property	From the separate property of the spouses

### 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

### SOURCES OF SUPPORT

DURING THE MARRIAGE	PENDING LITIGATION	AFTER LITIGATION
<b>SPOUSES</b>		
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	No obligation to support except if there is legal separation, in which case the court may require the guilty spouse to give support

LEGACY OF 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  <b>EXCEPTION:</b> 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
If contained in a will, apply the rules of contractual support because there is no more obligation of 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

### LAM vs. CHUA 426 SCRA 29 (2004)

*Judgment of support is always provisional in character. Res Judicata does not apply.* The lower court cannot grant a petition based on grounds, such as bigamy, which was not alleged in the petition. Such a decision based on grounds not alleged in the petition is void on the ground of no jurisdiction. However, if the lower court's void decision is not assailed on appeal which dealt only with the matter of support, the losing party is now estopped from questioning the declaration of nullity and the Supreme Court will not undo the judgment of the RTC declaring the marriage null and void for being bigamous. It is axiomatic that while a jurisdictional question may be raised at



any time, this however, admits of an exception where estoppel has supervened.

**CHAPTER 13: PARENTAL AUTHORITY**

**PARENTAL AUTHORITY (PATRIA POTESTAS)** 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)
2. It cannot be renounced, transferred or waived, except in cases authorized by law (Art 210)
3. It is jointly exercised by the father and the mother (Art. 211)
4. It is purely personal and cannot be exercised through agents
5. It is temporary

**RULES AS TO THE EXERCISE OF PARENTAL AUTHORITY:**

1. 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 (Art.211)
2. If the child is illegitimate, parental authority is with the mother.

**BRIONES vs. MIGUEL 440 SCRA 455 (2004)**

*An illegitimate child shall be under the parental authority of the mother regardless of whether the father amidst paternity. The recognition of an illegitimate child by the father could be a ground for ordering the latter to give support to, but not custody of, the child, The law explicitly confers to the mother sole parental authority over an illegitimate child; it follows that only if she defaults can the father assume custody and authority over the minor, Of course, the putative father may adopt his own illegitimate child; in such a case, the child shall be considered legitimate child of the adoptive parent.*

**WHO EXERCISES PARENTAL AUTHORITY**

absence of either parent	parent present
death of either parent	surviving parent
remarriage of	still the surviving parent, unless the

surviving parent	court appoints a guardian over the child parent designated by the court
separation of parents (Art. 213)	The court shall take into account all relevant considerations, especially the choice of the child over 7 years old, unless the parent is unfit
	<b>GENERAL RULE:</b> A child under 7 years of age shall not be separated from the mother <b>UNLESS</b> the court finds compelling reasons to order otherwise.  Paramount consideration in matters of custody of a child is the welfare and well-being of the child ( <b>Tonog v. Court of Appeals G.R. No. 122906, Feb. 7, 2002</b> )

- In case of death, absence or unsuitability of both parents, the surviving grandparent shall exercise substitute parental authority (Art. 214)

**IN THE MATTER OF APPLICATION FOR THE ISSUANCE OF A WRIT OF HABES CORPUS, RICHARD BRIAN THORTNTON FOR AND BEHALFO OF MINOR SEQUEIRA JENNIFER DELLE FRANCISCO THORNTON 436 SCRA 550 (2004)**

**FACTS:**

The Family Courts Act of 1997 gave family courts exclusive original jurisdictions over petitions for habeas corpus. It then impliedly repealed the act which expands the jurisdiction of the CA and the Judiciary Reorganization Act. The Family Code Act also provides that family courts shall have exclusive original jurisdiction to hear and decide petitions for guardianship, custody of children, habeas corpus in relation to the latter. Under this Act, the avowed policy of the State is to "protect the rights and promote the welfare of children." The creation of the FC is geared towards addressing 3 major issues regarding children's welfare cases x x x. Since the primordial consideration is the best interests of the child, the CA and CA are not divested of their jurisdiction over habeas corpus cases involving the custody of minors.

**HELD:**

The Family Court Law ( RA 8369) when it referred to the exclusive jurisdiction of the Family Court to take cognizance of Habeas Corpus cases did not repeal RA 7092 and BP 129 also giving jurisdiction to the Court of Appeals and the



Supreme Court to take cognizance of Habeas Corpus cases.

The Family Courts have concurrent jurisdiction with the Court of Appeals and the Supreme Court in petitions for habeas corpus where the custody of minors is at issue.

To make the Family Court the only court that could hear habeas corpus case involving minors will result in an iniquitous situation, leaving individuals like petitioner without legal recourse in obtaining custody of their children. Individuals who do not know the whereabouts of minors they are looking for would be helpless since they cannot seek redress from family courts whose writs are enforceable only in their respective territorial jurisdictions. Thus if a minor is being transferred from one place to another, which seems to be the case here, the petitioner in a habeas corpus case will be left without legal remedy. This lack of recourse could not have been the intention of the lawmakers when they passed the Family Court act of 1997.

- 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 AND SPECIAL PARENTAL AUTHORITY

SUBSTITUTE PARENTAL AUTHORITY	SPECIAL PARENTAL AUTHORITY
<p>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.</p>	<p>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</p>

### ORDER OF SUBSTITUTE PARENTAL AUTHORITY:

- The surviving grandparent
  - The oldest brother or sister, over 23 years old, unless unfit or disqualified
  - The child's actual custodian, over 21 years old, unless unfit or disqualified
- In case of foundlings, abandoned children, neglected children, or abused children, summary judicial proceedings shall be instituted so that they may be entrusted to:
    - Heads of children's homes
    - Orphanages, or
    - Similar institutions duly accredited by the proper government agency (Art. 217)

### PERSON EXERCISING SPECIAL PARENTAL AUTHORITY:

- school
- administrators and teachers
- individual, entity, or institution engaged in child care

QuickTime™ and a TIFF (Uncompressed) decompressor are needed to see this picture.

### LIABILITY OF THOSE EXERCISING SPECIAL PARENTAL AUTHORITY OVER THE CHILD:

- They are principally and solidarily liable for damages caused by the acts or missions 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.

### LIABILITY OF PARENTS FOR TORTS COMMITTED BY THEIR MINOR CHILDREN:

- Parents and other persons exercising parental authority shall be civily liable for the injuries and damages caused by the acts or omissions of their minor PROVIDED the children are living in their company and under their parental authority
- This is subject to the appropriate defenses provided by law

### NOTES:

- Parental authority and responsibility are inalienable and may not be transferred and renounced except in cases authorized by law
- Parents may exercise parental authority over their child's property

### 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 S FOR S U S P E N S I O N O F P A R E N T A L A U T H O R I T Y : C H O B A**

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 to or allows acts of lasciviousness

**NOTE:** The suspension or deprivation may be revoked and the parental authority revived in a case filed for the purpose or in the same proceeding if the court finds that the cause therefore has ceased and will not be repeated

**GROUND S FOR THE PERMANENT TERMINATION OF P A R E N T A L A U T H O R I T Y :**

1. Death of parents
2. Death of child
3. Emancipation of child
4. Parents exercising parental authority has subjected the child or allowed him to be subjected to sexual abuse

**Jocelyn Pablo Gualberto vs. Crisanto Rafaelito Gualberto G.R. No. 154994 June 28, 2005**

*Lesbianism is not compelling reason to deprive the mother of a child below seven years of age. To deprive the wife custody, the husband must clearly establish that her moral lapses have had an adverse effect on the welfare of the child or have distracted the offending spouse from exercising proper parental care. Writ of habeas corpus have no leg to stand on to deprive the mother of a child below seven years of age, unless there are compelling reasons to do so.*

**CASES WHERE P A R E N T A L A U T H O R I T Y M A Y B E R E V I D E D : -> T E M P O R A R Y**

1. Adoption of child
2. Appointment of general guardian
3. Judicial declaration of abandonment
4. Final judgment divesting parental authority
5. Judicial declaration of absence or incapacity or person exercising parental authority

**CHAPTER 14: FUNERAL**

**GENERAL GUIDELINES:**

1. duty and right to make arrangement in funerals in accordance with Art. 199 of FC:
  - a. Spouse
  - b. Descendants in nearest degree

- c. Ascendants in nearest degree
- d. Brothers and sisters
2. the funeral shall be in keeping with the social position of the deceased
3. the funeral shall be in accordance with the expressed wishes of the deceased
  - a. in the absence of expressed wishes, his religious beliefs or affiliation shall determine
  - b. in case of doubt, the persons in Art. 199 of FC shall decide
4. any person who disrespects the dead or allows the same shall be liable for damages

**CHAPTER 15: USE OF SURNAME**

CHILD CONCERNED	SURNAME TO BE USED
Legitimate child	Father's surname
Legitimated child	Father's surname
Adopted child	Adopter's surname
Illegitimate child	Mother's surname/ Father's name if requisites of R.A. 9255 are complied with
Conceived prior to the annulment of the marriage	Father's surname
Conceived after the annulment of the marriage	Mother's surname

WIFE	SURNAME TO BE USED	
Valid marriage (before the husband dies) Art. 370	a. first name and maiden name + her husband's surname e.g. Lena Hipolito Santiago	
	b. first name + her husband's surname e.g. Lena Santiago	
	c. her husband's full name, but prefixing a word indicating that she is his wife e.g. Mrs. Benito Santiago	
	d. retain the use of her maiden name (use of husband's surname is not a duty but merely an option of the wife) e.g. Lena Hipolito	
Marriage is	wife is the guilty party	she shall resume using her maiden name



Legally separated (Art.372)	she shall continue using the name and surname she was employing prior to the legal separation ( <b>Laperal v. Republic 6 SCRA 357 [1962]</b> )
Divorce (at least if they allow it later or for those who got divorced during the Japanese occupation)	choices: same as widowed spouse (may used deceased husband's surname) → Art. 373

needs court order Change of first name or nickname	legitimated
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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 30 days 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 FIRST NAME/NICKNAME:**

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. new first name or nicknamed has been habitually and continuously used by the petitioner and he has been publicly known by the first names and nicknames in the community
5. when the change is necessary to avoid confusion
6. when the request for change is a consequence of a change of status, such as when a natural child is acknowledged or legitimated

**IDENTITY OF NAMES AND SURNAMES**

<b>BETWEEN PERSONS (Art. 374)</b>	Younger person is obliged to use such additional name OR surname as will avoid confusion
<b>BETWEEN ASCENDANTS AND DESCENDANTS (Art. 375)</b>	<ol style="list-style-type: none"> <li>1. son may use the word "Junior" e.g. Benito Santiago, Jr.</li> <li>2. grandsons and other male descendants, shall either :             <ol style="list-style-type: none"> <li>a. add a middle name e.g. Benito Manuel Santiago</li> <li>b. add the mother's surname e.g. Benito Hipolito Santiago</li> <li>c. add the Roman numerals II, III, and so on e.g. Benito Santiago II</li> </ol> </li> </ol>

**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 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)

**CIVIL REGISTER and COURT PROCEEDING**

TIFF (Uncompressed) decompressor are needed to see this picture.

CIVIL REGISTER	COURT PROCEEDING
Clerical or typographical error - e.g. misspelled name, misspelled birth of place - NOT nationality, age, status, sex →	Change of surname EXCEPT when the request for change is a consequence of a change of status, such as when a natural child is acknowledged or

**WHEN USE OF ANOTHER'S NAME IS NOT ACTIONABLE:**

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

IN RE PETITION FOR CHANGE OF NAME,  
PETITIONER JULIAN LIN ( Carulasan) WANG,  
G.R. NO. 159966 March 30, 2005

*The law does not allow dropping of middle name from registered name unless there are justifiable reasons to do so. Mere convenience is not justifiable.*

*Middle names serve to identify the maternal lineage or filiation of a person as well as further distinguish him from others who may have the same given name and surname as he has.*

*An illegitimate child whose filiation is not recognized by the father bears only a given name and his mother's name, and does not have a middle name, unless legitimated or subsequently recognized by the father.*

*A child can use the surname of the mother instead of the father if there are clear justifiable reasons to do so such as to avoid confusion.*

### **CHAPTER 16: ABSENCE**

#### **KINDS OF ABSENCE:**

1. Physical absence
2. Legal absence

#### **PROVISIONAL ABSENCE**

1. A person disappears from his domicile;
2. His whereabouts are unknown; and
  - 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. when 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

#### **PERIOD OF ABSENCE UNDER EXTRAORDINARY CIRCUMSTANCES:**

1. if a person rode an airplane or sea vessel lost in the course of voyage, from the time of loss of the airplane or sea vessel

2. if a person joined the armed forces who has taken part in war, from the time he is considered missing in action
3. danger of death under other circumstances, from time of disappearance

**SEE: Annex D**

### **CHAPTER 17: CIVIL REGISTRY**

#### **MATTERS RECORDED IN THE CIVIL REGISTER:**

1. birth
2. marriage
3. death
4. legal separation
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
16. change of name

#### **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

**NOTE:** The new law, **RA 9048**, applies only to clerical and typographical errors in entries of name and does not modify the rules mentioned above.



QuickTime™ and a  
TIFF (Uncompressed) decompressor  
are needed to see this picture.