

# CIVIL CODE OF THE PHILIPPINES

RA 386, as amended

## PRELIMINARY TITLE

### CHAPTER 1 EFFECTS AND APPLICATION OF LAWS

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#### ART. 1

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

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#### ORDINARY LAW

Ordinance of reason promulgated for the common good. The principles by which civil society is regulated and held together, by which right is enforced and wrong is determined and punished.

It is the body of rules governing the conduct of persons living in association with others under the guaranty of social compulsion.

#### CIVIL LAW

It is that branch of the law that generally treats of the personal and family relations of an individual, his property and successional rights, and the effects of his obligations and contracts (PARAS, 5).

It is that mass of precepts that determine and regulate the relations of assistance, authority, and obedience among members of a family, and those which exist among members of a society for the protection of private interest, family relations, and property rights (SANCHEZ ROMAN, 70).

#### CIVIL CODE

It is a collection of laws which regulate the private relations of the members of civil society, determining their respective rights and obligations, with reference to persons, things and civil acts (TOLENTINO, 11).

#### CODE

A collection of laws of the same kind; a body of legal provisions referring to a particular branch of law (RABUYA, 1).

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#### ART. 2

Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided. This Code shall take effect one year after such publication.

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#### EFFECTIVITY OF CIVIL CODE (RA No. 386)

According to several cases decided by the Supreme Court, the date of effectivity of the Civil Code was 30 Aug 1950 which was exactly one year after the Official Gazette was released for circulation. This ruling was contrary to the last sentence of the above-mentioned provision (see *Lara v Del Rosario*, GR No. L-6339 [1954]).

Under the Revised Administrative Code (Sec. 11), "for the purpose of fixing the date of issue of the Official Gazette, it is conclusively presumed to be published on the date indicated therein as the date of issue. While it is no doubt desirable that the date of issue should be the same as the date of circulation, still no amount of judicial legislation can or should outweigh the express provision of Sec. 11 (PARAS, 18).

#### WHEN LAWS TAKE EFFECT

Laws may provide for its own effectivity. If the law is silent as to its own effectivity, then it shall take effect only after 15 days following its complete publication.

**NOTE:** The legislative may, in its discretion, provide that the usual 15-day period shall be shortened or extended.

#### PRINT

To cause words or image to appear in paper or other materials.

#### PUBLISH

To make known using some form of medium of expression (*thelaw.com*).

#### COMPUTATION OF THE 15-DAY PERIOD

- "15 days after its publication," the effectivity is on the **15<sup>th</sup> day after** such publication.

*Illustration:*

Sec. 28 of RA 7659 provides "...shall take effect 15 days after its publication..." Thus, RA 7659 took effect on 31 Dec. 1993, that is, 15 days after its publication in the 16 Dec. 1993 newspapers and not on 1 Jan. 1994.

- "After 15 days following the completion of its publication," its effectivity is on the **16<sup>th</sup> day thereafter**.

*Illustration:*

Sec. 8 of RA 7691 provides "...shall take effect 15 days following its publication..." Hence, RA 7691 became effective on 15 April 1994, 15 days following its publication on 30 Mar. 1994.

#### GENERAL RULE

When the law is silent as to its effectivity, then it shall take effect after 15 days following the completion of its publication (16<sup>th</sup> day thereafter).

*Illustration:*

EO 79 was silent as to its effectivity. Hence, it became effective on 7 Jan 1987 which is 15 days following its publication on 22 Dec. 1986, or 16 days thereafter (GSIS v COA, 301 SCRA 731 [1999]).

#### WHEN TO PUBLISH

In the previous decisions, the Supreme Court ruled that publication in the Official Gazette is necessary only in those cases where the legislation itself does not provide for its effectivity date. This ruling was abandoned in the case of *Tañada v Tuvera* (GR No. 63915 [1986]), wherein the Court ruled that the publication requirement in Art. 2 of the Civil Code does not preclude the publication even if the law itself provides for the date of its effectivity since the object of the law is to give the public adequate notice of the various laws which are to regulate their actions and conduct as citizens. Without notice and publication, there would be no basis for the application of the maxim "*ignorantia legis non excusat*."

All laws must be published regardless of the existence of the date of effectivity.

#### WHERE TO PUBLISH

Pursuant to EO No. 200, publication of laws may be in the Official Gazette or in a newspaper of general circulation in the Philippines.

#### NEWSPAPER OF GENERAL CIRCULATION

It means that it is published for the dissemination of local news and general information, that it has a bona fide subscription list of paying subscribers, and that it is published at regular intervals (see *Tañada v Tuvera*, GR No. 63915 [1986]).

**NOTE:** The clause "unless it is otherwise provided" refers to the date of effectivity and not to the requirement of publication itself, which cannot be omitted. The reason is that such omission would offend the due process insofar as it would deny the public knowledge of the laws that are supposed to govern it.

#### EFFECTIVE IMMEDIATELY UPON APPROVAL

This clause is properly interpreted as coming into effect immediately upon publication thereof. Such statute should not be

regarded as purporting literally to come into effect immediately upon its approval or enactment and without need of publication.

**MEANING OF THE TERM “LAWS”**

All statutes, including those of local application and private laws, shall be published as a condition for their effectivity, for all laws relate to the people in general albeit there are some that do not apply to them directly.

- **Presidential Decrees and Executive Orders** are included.
- **Administrative Rules and Regulations** are included if their purpose is to enforce or implement existing laws pursuant also to a valid delegation. Not included if merely interpretative, merely internal and letters of instruction.
- **Monetary Board Circulars** are required to be published if they are meant not merely to interpret but to “fill in the details” of the Central Bank Act which that body is supposed to enforce. Circulars which prescribe a penalty should be published.
- **Municipal ordinances** are not covered by Art. 2 but by the Local Government Code.
- **Supreme Court Decisions** are not included.

**ART. 3**

**Ignorance of the law excuses no one from compliance therewith.**

**NOTE:** Presumption of knowledge of laws is conclusive. Actual notice is not required since constructive notice (the provisions of the law are ascertainable from the public and official repository where they are duly published) is sufficient (*RABUYA, 10*).

**NOTE:** Presumption is established because of the obligatory force of law (*Id.*).

**NOTE:** The presumption of knowledge of the law presupposes publication.

**IGNORANTIA LEGIS NON EXCUSAT**

Art. 3 applies to all kinds of domestic laws, whether civil or penal, and whether substantive or remedial on grounds of expediency, policy and necessity. However, the maxim refers only to mandatory or prohibitive laws (Those which have to be complied with because they are expressive of public policy, *PARAS, 4*), not to permissive or supplementary laws (those which may be deviated from, if the individual so desires, *Id.*) (*Id.*, 20).

**NOTE:** Ignorance of foreign law is not ignorance of the law, but ignorance of fact because foreign laws must be alleged and proved as matters of facts (this process of proving as fact is referred to as *doctrine of processual presumption*, see discussion in Art. 16), there being no judicial notice of said foreign laws (*Adong v Cheong Seng Gee, 43 Phil.43*). Thus, ignorance of foreign law will not be a mistake of law but a mistake of fact.

| IGNORANCE OF LAW                              | IGNORANCE OF FACT  |
|---|--|
| Not an excuse;                                | May excuse a party from legal consequences;                                      |
| Has no well-founded belief;                   | Has a well-founded belief although it was subsequently proved to be erroneous;   |
| May or may not have criminal intent;          | Eliminates criminal intent as long as there is no negligence;                    |
| May or may not vitiate consent in a contract. | Vitiate consent in a contract and make it void ( <i>Art. 1390, Civil Code</i> ). |

**NOTE:** Difficult legal questions has been given the same effect as a mistake of fact (*see Art. 526, Civil Code*). Lawyers cannot be disbarred for an honest mistake or error of law (*In re: Filart, 40 Phil. 205*).

**NOTE:** “Ignorance of the law” refers not only to the literal words of the law, but also to the meaning or interpretation given to said law by our courts of justice (*Adong v Cheong Seng Gee, 43 Phil. 43*).

**NOTE:** Incompetence amounts to ignorance of the law (*Boto v Villena, 10 SCRA 1*).

**ART. 4**

**Laws shall have no retroactive effect, unless the contrary is provided.**

**LATIN MAXIM**

*Lex prospicit, non respicit.*

**PURPOSE OF THE PROVISION**

A law that has not yet become effective cannot be considered as conclusively known by the people (*see discussion in Art. 3*).

**EXCEPTIONS TO THE RULE [PRACuN]**

**1. The law the provides for its retroactivity**

**EXCEPTIONS TO THE EXCEPTION**

- a. *Ex post facto law* – provided in Sec. 22, Art. III, 1987 Constitution. It is one that would make a previous act criminal although it was not so at the time it was committed. *Requisites:*
  - i. Refers to criminal matters;
  - ii. Retroactive in its application;
  - iii. Prejudicial to the accused.
- b. *Non-impairment clause* – provided in Sec. 10, Art. III, 1987 Constitution. Only laws existing at the time of the execution of the contract are applicable thereto and not later statutes, unless the latter are specifically intended to have retroactive effect.

**2. The law is remedial or procedural in nature** – this is because no vested right may attach nor arise from procedural laws, but only operate in furtherance of the remedy or confirmation of rights already existing.

**3. The penal law is favorable to the accused** – penal laws shall have retroactive effect insofar as they favor the person guilty of felony, who is not a habitual delinquent, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

**4. The law is curative** – this is necessarily retroactive for the precise purpose is to cure errors or irregularities, provided that it must not impair vested rights nor affect final judgment.

**5. The law creates new substantive rights** – provided it has not prejudiced another acquired right of the same origin.

**VESTED RIGHT**

A vested right is a consequence of the constitutional guaranty of due process that expresses a present fixed interest which in right reason and natural justice is protected against arbitrary action.

Includes legal or equitable title to the enforcement of a demand and exemptions from new obligations created after the right has become vested.

Rights are considered vested when the right to enjoyment is a present interest, absolute, unconditional and perfect or fixed and irrefutable.

**LOST OF VESTED RIGHT**

One may lose the vested right if there is due process and such deprivation is founded in law and jurisprudence.

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### ART. 5

Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

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#### MANDATORY LAW

Commands that something be done.

#### PROHIBITORY LAW

Commands that something should not be done.

#### PERMISSIVE OR DIRECTORY LAW

If the law commands that what it permits to be done should be tolerated or respected.

#### EXCEPTIONS [PAVE]

1. When the law makes the act valid, but punishes the wrong doer to criminal responsibility;
2. When the law authorizes its validity although generally they would have been void;
3. When the law makes the act merely voidable (valid unless annulled);
4. When the law makes the act void, but recognizes some legal effects flowing therefrom.

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### ART. 6

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

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#### WAIVER

It is an intentional relinquishment of a known right or such conduct as warrants an inference of relinquishment of such right (*Christenson v Carleton*, 69 Vt. 91). It may either be express or implied.

#### RIGHT

The power or privilege given to one person as a rule demandable of another. It denotes an interest or title in an object or property.

#### ELEMENTS OF RIGHTS

1. *Active Subject* – one who is entitled to demand enforcement of the right;
2. *Passive Subject* – one who is duty-bound to suffer its enforcement.
3. *Efficient Cause (Juridical Tie)* – that which binds or connects the parties to the obligation (*DE LEON*, 3).

#### KINDS OF RIGHTS

1. *Political Rights* – those rights referring to the participation of persons in the government of the State;
2. *Civil Rights* – include all others; further classified into:
  - a. *Rights of Personality* – cannot be waived;
  - b. *Family Rights* – cannot be waived;
  - c. *Patrimonial Rights* – can be waived (*RABUYA*, 18-19).

#### TYPES OF PATRIMONIAL RIGHTS

1. *Real Right (jus in re / jus in rem)* – the power belonging over a specific thing without a passive subject individually determined against whom such right may be personally exercised. It is enforceable against the whole world.
2. *Personal Right (jus in personam / jus ad rem)* – the power belonging to one person to demand from another, as a definite subject, the fulfillment of a prestation to give, to do, or not to do.

#### REQUISITES OF A VALID WAIVER [CUE CPF]

1. Full capacity to make the waiver;

2. Waiver must be unequivocal;
3. Right must exist at the time of the waiver;
4. It must not be contrary to law, public order, public policy, morals or good customs;
5. It must not be prejudicial to a third person with a right recognized by law;
6. When formalities are required, the same must be complied with (*see Art. 1270, Civil Code*).

#### RIGHTS THAT CANNOT BE WAIVED [WARN]

1. When waiver is prejudicial to a third person with a right recognized by law;
2. Alleged rights, which really do not exist yet;
3. Those the renunciation of which would infringe upon law, public order, public policy, morals or good customs;
4. Natural rights, such as the right to life.

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### ART. 7

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

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

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

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#### REPEAL OF LAW

It is the legislative act of abrogating through a subsequent law the effects of a previous statute or portions thereof (*STA MARIA*, 11).

#### TYPES OF REPEAL

1. *Express* – one which is literally declared repealed by a new law, either in specific terms, as where particular laws and provisions are named, identified, and declared to be repealed, or in general terms (*Id.*).
2. *Implied* – takes place when a new law contains provisions contrary to or inconsistent with those of a former law without expressly repealing them (*Id.*).

#### REQUISITES OF IMPLIED REPEAL

1. The laws cover the same subject matter;
2. The latter is repugnant to the other.

**NOTE:** Implied repeals are not to be favoured because they rest only on presumptions (*RABUYA*, 20). If both statutes can stand together, there is no repeal (*Lichuanco v Apostol*, GR No. L-19628 [1922]).

**NOTE:** The two laws must be absolutely incompatible, and a clear finding thereof must surface, before the inference of implied repeal may be drawn.

#### LATIN MAXIM

*Interpretare et concordare lequibus est optimus interpretendi*, every statute must be so interpreted and brought into accord with other laws as to form a unified system of jurisprudence.

#### RULE FOR GENERAL AND SPECIAL LAW

1. If the general law was enacted prior to the special law, the latter is considered the exception to the general law (*PARAS*, 47);
2. If the general law was enacted after the special law, the special law remains, unless:
  - a. There is an express declaration to the contrary;
  - b. There is a clear necessary, and irreconcilable conflict;
  - c. Unless the subsequent general law covers the whole subject and is clearly intended to replace the special law on the matter.

**NOTE:** A special law cannot be repealed, amended or altered by a subsequent general law by mere implication (*Laguna Lake Development Authority v CA*, 251 SCRA 421 [1995]).

#### EFFECT OF REPEAL OF THE REPEALING LAW

- **Express Repeal** – the first law repealed shall not be revived, unless expressly so provided.

*Illustration:*

*Law A is expressly repealed by Law B. If Law B is itself repealed by Law C, Law A is not revived, unless Law C expressly so provides.*

- **Implied Repeal** – the repeal of the repealing law revives the prior law, unless the language of the repealing statute provides otherwise.

*Illustration:*

*Law A is impliedly repealed by Law B. Law B is later repealed by Law C. Law A is revived unless Law C provides otherwise.*

#### UNCONSTITUTIONAL STATUTES

The Constitution is the supreme, organic, and fundamental law of the land. It is axiomatic that no ordinary statute can override a constitutional provision (*Floresca v Philex Mining Corp.*, GR No. L-30642 [1985]).

Thus, if a law, administrative or executive acts, orders and regulations are inconsistent with the Constitution, they are considered not valid by competent court through the exercise of the “power of judicial review.”

**NOTE:** The constitutionality of a law or executive order may not be collaterally attacked. They shall be deemed valid unless declared void by a competent court (*NAWASA v Reyes*, GR No. L-28597 [1968]).

#### DOCTRINE OF OPERATIVE FACT

This doctrine means that before an act is declared unconstitutional, it is an operative fact which can be the source of rights and duties (*De Agbayani v PNB*, GR No. L-23127 [1971]).

It nullifies the void law or executive act but sustains its effects.

**NOTE:** Rules and regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and for the sole purpose of carrying into effect its general provisions (*US v Tupasi*, GR No. 9878 [1914]).

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#### ART. 8

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

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#### JUDICIAL DECISIONS

Part of the legal system because they are evidence of what the law means. The interpretation place upon the written law by a competent court has the force of law. They are part of the law as of the date of its enactment since the Court’s application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect.

**NOTE:** The decisions of subordinate courts are only persuasive in nature, and can have no mandatory effect. A conclusions or pronouncement of the Court of Appeals which covers a point of law still undecided may still serve as a judicial guide to the inferior courts (*RABUYA*, 27-28).

#### LATIN MAXIM

*Legis interpretatio legis vim obtinet.* The interpretation placed upon the written law by a competent court has the force of law.

**NOTE:** Only the decisions of the Supreme Court establish jurisprudence or doctrines in the Philippine jurisdiction (*Miranda v Imperial*, 77 Phil. 1066).

#### DOCTRINE OF STARE DECISIS

*Stare decisis et non quieta movere* means “to adhere to precedents, and not to unsettle things which are established” (*Tala Realty Services Corp., Inc. v Banco Filipino Savings & Mortgage Bank*, GR No. 181369 [2016]).

The doctrine enjoins adherence to judicial precedents. The doctrine is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument (*RABUYA*, 28).

When the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same (*LRTA v Pili*, GR No. 202047 [2016]).

**NOTE:** Only the decisions of the Supreme Court are considered in the application of the doctrine of *stare decisis*.

**NOTE:** The principle of prospectivity of statute, original or amendatory, shall apply to judicial decisions (*Co v CA*, 227 SCRA 444, 448-449 [1993]).

#### LEGAL EFFECTS OF JUDICIAL DECISIONS

- No publication required (*De Roy v CA*, GR No. 80718 [1988]).
- Conclusive and binding between parties after the lapse of appeal period (*City of Cebu v Dedamo*, GR No 17852 [2013]).
- Will bind all future cases with indential facts, until reversed by the Supreme Court (*De Mesa v Pepsi Cola Product Phils, Inc.*, GR Nos. 150363-70 [2005]).

#### NO RETROACTIVE EFFECT

When a doctrine of the Supreme Court is overruled and a different view is adopted the new doctrine should be applied prospectively and should not prejudice parties who relied on the old doctrine (*People v Jabinal*, GR No. L-30061 [1974]).

#### HOW JUDICIAL DECISIONS MAY BE ABROGATED

1. By contrary ruling of the Supreme Court;
2. By corrective legislative acts of Congress, although said laws cannot adversely affect those favoured prior to Supreme Court decisions (*PARAS*, 69).

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#### ART. 9

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

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**NOTE:** Art. 9 is applicable to criminal prosecutions.

#### LATIN MAXIM

*Nullum crimen, nulla poena sine lege.* There is no crime when there is no law punishing it.

#### DUTY OF JUDGES

Judges are tasked with dispensation of justice in accordance with the constitutional precept that no person shall be deprived of life, liberty, and property without due process of law. Judges must not evade performance of this responsibility just because of an apparent non-existence of any law governing a particular legal dispute or because the law involved is vague or inadequate (*STA MARIA*, 16).

**NOTE:** Whenever the court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision and shall report to the Chief Executive, though the DOJ, the reasons which induce the court to belief that said act should be made the subject of legislation (*Art. 5, par. 1, RPC*).

In the same way, the court shall submit to the Chief Executive, through the DOJ, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of the Revised Penal Code would result in the imposition of a clearly excessive penalty, taking into

consideration the degree of malice and the injury caused by the offense (Art. 5, par. 2, RPC).

**NOTE:** If the law is silent, obscure, or insufficient, a judge may base his judgment among the following:

1. Customs which are not contrary to law, public order, or public policy (Art. 11 Civil Code);
2. Decision of foreign and local courts on similar cases;
3. Opinions of highly qualified writers and professors;
4. Rules of statutory construction;
5. Principles laid down in analogous instances (PARAS, 83).

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#### ART. 10

**In case of doubt in the interpretation or application of laws, it is presumed that the law making body intended right and justice to prevail.**

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#### WHEN TO APPLY ART. 10

Only in case of doubt.

**NOTE:** It is the sworn duty of the judge to apply the law without fear or favor, to follow its mandate, not to temper with it. What the law grants, the court cannot deny (*Gonzales v Gonzales*, 58 Phil. 67).

**NOTE:** The remedy is clemency from the executive or an amendment of the law by the legislative, but the court cannot but to apply the law (*People v Amigo*, 252 SCRA 43, 53-54 [1996]).

**NOTE:** If there is ambiguity in the law, interpretation of the law requires fidelity to the legislative purpose. What the Congress intended is not to be frustrated. Even if there is doubt as to the meaning of the language employed, the interpretation should not be at war with the end sought to be attained (*Republic Flour Mills, Inc. v Commissioner of Customs*, 39 SCRA 269).

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#### ART. 11

**Customs which are contrary to law, public order or public policy shall not be countenanced.**

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#### ART. 12

**A custom must be proved as a fact, according to the rules of evidence.**

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#### CUSTOMS

Rules of conduct formed by repetition of acts uniformly observed as a social rule. They are legally binding and obligatory (*In re: Authority to Continue Use of Firm Name*, 92 SCRA 12).

**NOTE:** Merely because something is done as a matter of practice does not mean that courts can rely on the same for purposes of adjudication as a juridical custom (*STA MARIA*, 19)

#### REQUISITES IN APPLICATION OF CUSTOMS [POP TIN]

1. Plurality or repetition of acts;
2. The community accepts it as a proper way of acting, such that it is considered as obligatory upon all;
3. Practiced by the great mass of social group;
4. Continued practice for a long period of time;
5. Uniformity or identity of acts or various solutions to the juridical question;
6. Must not be contrary to law, morals, or public order.

**NOTE:** Customs are not subject to judicial notice because they must be proven as a fact, according to the rules of evidence.

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#### ART. 13

**When the law speaks of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each;**

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**months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.**

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

**In computing a period, the first day shall be excluded, and the last included.**

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**NOTE:** The Supreme Court recognized the implied repeal of Art. 13, insofar as the meaning of "year" is concerned, by the provisions of Sec. 31, Ch VIII, Book I of the Admin. Code of 1987 which states that year shall be understood to be twelve (12) calendar months.

#### CALENDAR MONTH

It is the period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day of the next month, then up to and including the last day of that month.

*Illustration:*

*One calendar month from 31 December 2017 will be from 1 January 2018 to 31 January 2018. One calendar month from 5 May 2018 will be from 6 May 2018 to 5 June 2018.*

#### COMPUTATION OF PERIOD

In computing a period, the first day is excluded while the last day is included.

*Illustration:*

*A defendant in a civil case is given a period of 15 days to file his Answer to a Complaint counted from the receipt of the summons. If the summons is received by defendant on 1 January, the 15-day period will expire on 16 January.*

#### IF LAST DAY FALLS ON SAT, SUN OR LEGAL HOLIDAY

- **Under the Rules of Court:** The last day will automatically be considered the next working day, if the act to be performed with the period is prescribed or allowed by (a) the Rules of Court; (b) an order of the court; or (c) any other applicable statute;
- **In an ordinary contract:** the agreement of the parties prevails for obligations arising from contract have the force of law between the contracting parties (*see Art. 1159, Civil Code*).

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#### ART. 14

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

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#### PRINCIPLE OF GENERALITY

Art. 14 of the Civil Code embodies the principle of generality which states that criminal law is binding on all persons who live or sojourn in Philippine territory. It implies obligatory force of penal laws.

#### EXCEPTIONS

1. **Treaty Stipulations** - e.g., Visiting Forces Agreement of 1998 (VFA) between the US and the Philippines.

Rules on Jurisdiction (Art. V)

*Jurisdiction*

- i. *Philippines over US personnel:* offenses committed within the Philippines and punishable under Philippine laws;
- ii. *US over US personnel:* all criminal and disciplinary jurisdiction conferred by the US military law.

*Exclusive Jurisdiction*

- i. *Philippines over US personnel:* offenses with respect to national security of the Philippines or violation of any

law relating to national defense, punishable under Philippine laws but not under US laws;

- ii. *US over US personnel*: offenses with respect to national security of US or violation of any law relating to US national defense, punishable under the US laws but not under Philippines laws.

*Primary Jurisdiction*

*US military authorities over US personnel:*

- i. Against property or security of US;
- ii. Against property or person of US personnel;
- iii. Act or omission done in performance of official duty.

*In case of concurrent jurisdiction*

- *Philippines shall have the primary right* to exercise jurisdiction over all offenses committed by US personnel over all offenses committed by US personnel, except in cases provided for in par I (b), 2 (b) and 3 (b) of Art. V of the VFA.
  - *US shall have the primary right* to exercise jurisdiction over US personnel subject to the military law of the US in relation to offenses
    - o Against property or security of US or property or person of US personnel;
    - o Arising out of any act or omission done in performance of duty.
  - *Either government* may request the authorities of the other government to waive their primary right to exercise jurisdiction in a particular case.
2. **Laws of Preferential Application** – e.g., RA 75 which prohibits the issuance of any warrant of arrest against any
    - a. Ambassador (*received as such by President*);
    - b. Public minister (*received as such by President*);
    - c. Domestics (*registered in the DFA*);
    - d. Domestic servants (*registered in the DFA*).

3. **Principle of Public International Law** – diplomatic representatives (e.g., ambassadors or public ministers and their official retinue) and heads of state possess immunity from the criminal jurisdiction of the country of their sojourn.

*EXCEPTION: consuls*

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**ART. 15**

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

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**NOTE:** RA 6809 changed the legal age of Filipinos to 18.

**STATUS**

Includes personal qualities and relations, more or less permanent in nature, not ordinarily terminable at his own will, such as his being married or not, or his being legitimate or illegitimate (PARAS, 101).

The sum total of a person's rights, duties and capacities (Bouvier's Law Dictionary, p. 3229).

**NOTE:** Art. 15 pertains to *lex nationalii*.

**EXCEPTIONS**

Divorce validly obtained abroad by alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine Law (*see Art. 26, par. 2, Family Code*).

**NOTE:** A divorce obtained abroad by an alien married to a Filipino may be recognized in the Philippines, provided the decree of divorce is valid according to the national law of the foreigner.

**NOTE:** When a foreigner, married to a Filipino citizen, obtained a decree of divorce abroad, he is no longer the husband of the Filipino citizen and therefore loses the standing to sue for adultery (*Pilapil v Ibay-Somera, 174 SCRA 653 [1989]*).

**NOTE:** With respect to aliens, their national law shall govern with respect to their legal capacity, following the nationality principle embodied in Art. 15.

**NOTE:** Once proven that respondent was no longer a Filipino citizen when he obtained the divorce from petitioner, their divorce will be recognized in the Philippines (*RABUYA, 46*).

**RECKONING POINT**

For purposes of determining the validity of absolute divorces obtained abroad, the reckoning point is not the citizenship of the divorcing parties at birth or at the time of marriage, but their citizenship at the time a valid divorce is obtained abroad (*Republic v Orbecido III, 472 SCRA 114 [2005]*).

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**ART. 16**

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

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

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**NOTE:** Art. 16, par. 2 can apply only to properties located in the Philippines (*see Gibbs v Government, 49 Phil. 293*).

**LEX REI SITAE**

Paragraph 1 pertains to the general rule which states that the law of the country where the property is situated shall govern property transactions.

**REASON**

Immovables are part of the country and so closely connect to it that all rights over them have their natural center of gravity there (*RABUYA, 50*).

**NOTE:** The general rule includes all rules governing the descent, alienation and transfer of immovable property and the validity, effect and construction of wills and other conveyances (*Orion Savings Bank v Suzuki, 740 SCRA 345 [2014]*).

**EXCEPTIONS [CIAO]**

1. Capacity to succeed;
2. Intrinsic validity of testamentary provisions;
3. Amount of successional rights;
4. Orders of succession.

**NOTE:** Citizen of Nevada died in the Philippines giving all his property to his neighbour, hence depriving his children. Since the laws of said state allow the testator to dispose of all his property according to his will, his testamentary disposition should be respected (*see Testate Estate of Bohanan v Bohanan, 106 Phil. 997*).

**NOTE:** In case where a citizen of Turkey made out a last will and testament providing that his property shall be disposed of pursuant to Philippine Laws the Court ruled that such provision is illegal and void because, pursuant to Art 16, the national law should govern and therefore Turkish laws and not Philippine laws should apply (*see Minciano v Brimo, 50 Phil. 867*).

## RENOVI DOCTRINE

Literally means referring back; the problem arises when there is a doubt as to whether a reference in our law to a foreign law

- Is a reference to the internal law of said foreign law;
- Is a reference to the whole of the foreign law, including its conflict rules.

Illustration:

If a foreign citizen dies domiciled in the Philippines, the Philippine courts are under Art. 16, par. 2 compelled to apply the national law of the foreign deceased person. But if the country of that person refers back the matter to the Philippines, the Philippine courts has no alternative except to accept the referring back.

## TRANSMISSION THEORY

If the foreign law refers it to a third country, the said country's law shall govern.

## DOCTRINE OF PROCESSUAL PRESUMPTION

If the foreign law is not properly alleged and proved, the presumption is that it is the same as our law (*In re: Estate of Suntay*, GR Nos. L-3087-88 [1954]).

### ART. 17

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

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

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

## LEX LOCI CELEBRATIONIS

The first paragraph of the Article lays down the rule of *lex loci celebrationis* insofar as *extrinsic* validity (forms and solemnities) is concerned.

## LEX CONTRATUS

Intrinsic validity of a contract is governed by the proper law of the contract which may either be:

- Law of the place voluntarily agreed upon by the contracting parties (*lex loci voluntatis*);
- Law of the place intended by them expressly or impliedly (*lex loci intentionis*).

**NOTE:** Intrinsic validity of the provisions of a will shall be governed by the national law of the decedent.

Illustration:

Lorenzo von Matterhorn, a German citizen, enters into a contract with a Filipino Citizen. The contract was executed in Fiji. What law shall govern (1) the formal validity of the contract, (2) the legal capacities of the parties to enter into such contract, and (3) the intrinsic validity of the contract?

- 1) Fijian law (*lex loci celebrationis*, Art. 17).
- 2) Their respective national laws (*lex nationalii*, Art. 15).
- 3) The proper law of the contract (*lex contratus*), which may either be the law of the place voluntarily agreed upon by the contracting parties (*lex loci voluntatis*) or the law of the place intended by them expressly or impliedly (*lex loci intentionis*).

## EXTERRITORIALITY

Even if the act be done abroad, still if executed before Philippine diplomatic and consular officials, the solemnities of the Philippine laws shall be observed. The theory is that the act is being done within an extension of Philippine territory of the principle of *extritoriality* (PARAS, 115).

## REASON RESPECTING PROHIBITIVE LAWS

Public policy in the Philippines prohibits the same.

Illustration:

In country X, prostitution is legal. A contract for the sale of human flesh (prostitution), even if valid where made, cannot be given effect in the Philippines.

A US court allowed a mother living with a man other than her husband to exercise authority over her child with the lawful husband. It was held by the Court that such a decision cannot be enforced in the Philippines (*Querubin v Querubin*, GR No. L-3693).

| LEX NATIONALII<br>Art. 15  | LEX REI SITAE<br>Art. 16  | LEX LOCI<br>CELEBRACIONIS<br>Art. 17                                    |
|--|---|---|
| <b>As to basis</b>   |   |   |
| Citizenship  | Where the property is situated  | Where the contract was executed   |
| <b>As to coverage</b>  |   |   |
| Family rights and duties, status, condition, and legal capacity of persons | Real and personal property  | Forms and solemnities (extrinsic validity)                              |
| <b>As to exceptions</b>  |   |   |
| Art. 16, par. 2, Family Code   | (CIAO)<br>1) <u>C</u> apacity to succeed;<br>2) <u>I</u> ntrinsic validity of the will;<br>3) <u>A</u> mount of successional rights;<br>4) <u>O</u> rder of succession. | 1) Art. 26, par. 1, Family Code;<br>2) Intrinsic validity of contracts. |

### ART. 18

**In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code.**

## CONFLICT BETWEEN THE CIVIL CODE AND OTHER LAWS

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

**NOTE:** Where there is no deficiency in special law or Code of Commerce, the Civil Code cannot be applied.

## CHAPTER 2 HUMAN RELATIONS

**NOTE:** Arts. 19-36 formulates the basic principles that are to be observed for the rightful relationship between human being and for the stability of the social order.

### ART. 19

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

### ART. 20

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

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### ART. 21

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

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**NOTE:** Where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability (*RABUYA*, 68).

#### EXERCISE OF RIGHTS

The exercise of a right must be in accordance with the purpose for which it was established and must not be excessive or unduly harsh; there must be no intention to harm another (*Ardiente v Sps. Pastorfide*, GR No. 161921 [2013]).

#### PRIMORDIAL LIMITATIONS OF ALL RIGHTS

1. To act with justice;
2. To give everyone his due;
3. To observe honesty and good faith.

**NOTE:** A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Art. 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible (*Albenson Enterprises Corp v CA*, GR No. 88694 [1993]).

#### DAMNUM ABSQUE INJURIA

*Damage without injury.* A person who exercises his legal right does no injury. However, it cannot be said that a person exercises a right when he unnecessarily prejudices another or offends morals or good customs (*ABS-CBN v Republic Broadcasting Corp.* GR No. 128690 [1999]).

That damage resulting from the legitimate exercise of a person's rights is a loss without injury for which the law gives no remedy. One who merely exercises one's rights does no actionable injury and cannot be held liable for damages (*Amonoy v Gutierrez* 351 SCRA 731, 736 [2001]).

**NOTE:** This rule is not absolute. It is premised on the valid exercise of a right. This do not apply when there is an abuse of a person's rights, or when the exercise of this right is suspended or extinguished pursuant to a court order (*Id.*).

#### ABUSE OF RIGHT

The principle of abuse of rights departs from the classical theory that "he who uses a right injures no one." The modern tendency is to depart from the classical and traditional theory, and to grant indemnity for damages in cases where there is an abuse of rights, even when the act is not illicit (*RABUYA*, 66-67).

**NOTE:** Abuse of rights is actionable. This is based on the maxim *suum jus summa injuria* (the abuse of a right is the greatest possible wrong) (*JURADO, Civil Law Reviewer* [2009], 33).

#### ELEMENTS OF ABUSE OF RIGHT [LEP]

1. Existence of a legal right or duty;
2. Which is exercised in bad faith;
3. For the sole intent of prejudicing or injuring another (*Albenson Enterprises Corp v CA*, GR No. 88694 [1993]).

**NOTE:** The question of whether or not the principle of abuse of rights has been violated depends on the circumstances of each case (*Globe Machay Cable and Radio Corp. v CA* 176 SCRA 778 [1989]).

**NOTE:** The absence of good faith is essential to abuse of right (*Commercial Co., Inc. v CA*, GR No. 122823 [1999]).

#### VOLENTI NON FIT INJURIA

To which a person assents is not esteemed in law as injury. It refers 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 (*Nikko Hotel Manila Garden v Reyes*, GR No. 154259 [2005]).

**NOTE:** Art. 19 lays down the rule of conduct for the government of human relations and for the maintenance of social order, it does not provide, however, a remedy for its violation. Generally, an action for damages under either Arts. 20 or 21 would be proper.

#### ACTS CONTRARY TO LAW

Every person who, contrary to law, wilfully or negligently causes damage to another, the former shall indemnify the latter for the same (*Art. 20*).

#### ACTS CONTRA BONUS MORES

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

#### ELEMENTS [LCI]

1. There is a legal act;
2. But which is contrary to morals, good customs, public order or public policy;
3. It is done with intent to injure.

**NOTE:** The common element between Arts. 19 and 21 is that the act must be intentional. However, in Art. 20, the act may be either done wilfully or negligently.

#### BREACH OF PROMISE TO MARRY

##### General Rule: Not Actionable

The history of breach of promise suits in the US and in England has shown that no other action lends itself more readily to abuse by designing women and unscrupulous men. It is this experience which has led to the abolition of rights of action in the so-called Heart Balm suits in many of the American states (*Report of the Senate Committees on the Proposed Civil Code*).

#### EXCEPTIONS [FAE]

1. **If there is fraud or deceit** – where a man's promise to marry is in fact the proximate cause of the acceptance of his love by a woman and his representation to fulfil that promise thereafter becomes the proximate cause of the giving of herself unto him in a sexual congress, proof that he had no intention of marrying her and that the promise was only a subtle scheme or deceptive device to entice or inveigle her to accept him and to obtain her consent to the sexual act. This is because of the fraud and deceit behind it and the wilful injury to her honor and reputation which followed thereafter (*RABUYA*, 74-75).
2. **When woman was forcible abducted and raped** – if the offender promised to marry her in order to escape criminal liability, only to thereafter renege on such promise after cohabiting with her, such acts irremissibly constitute acts contrary to morals and good customs.
3. **If expenses are actually incurred** – when plaintiff has actually incurred expenses for the wedding and the necessary incidents thereof, the plaintiff has the right to recover money or property advanced by him upon the faith of such promise (*De Jesus v Syquia*, 58 Phil. 866 [1933]).

#### MALICIOUS PROSECUTION

It is an action filed against the prosecutor.

An action for damages brought by or against whom a criminal prosecution, civil suit or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein (*Diaz v Davao Light and Power Co., Inc.*, GR No. 160959 [2007]).



## BASIS OF ACTION

An action for damages arising from malicious prosecution is anchored on the provisions of Art. 21, 2217 and 2219 (8) of the Civil Code. One cannot be held liable in damages for maliciously instituting a prosecution where he acted with probable cause. Malice and want of probable cause must both exist in order to justify a suit for malicious prosecution (*RABUYA*, 79).

## REQUISITES OF MALICIOUS PROSECUTION [APA]

1. The fact of prosecution and the further fact that the defendant was himself the prosecutor, and that the action finally terminated with an acquittal;
2. That in bringing the action, the prosecutor acted without probable cause;
3. That the prosecutor was actuated or impelled by legal malice, that is, by improper or sinister motive (*Diaz v Davao Light and Power Co., Inc.*, GR No. 160959 [2007]).

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### ART. 22

**Every person who through an act or performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.**

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### ART. 23

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

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## UNJUST ENRICHMENT

*Nemo ex alterius incommode debet lecupletari* – No man ought to be made rich out of another's injury. Exists when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience (*Republic v Lacap*, 517 SCRA 255 [2007]).

## REQUISITES

1. A person is unjustly benefited;
2. Such benefit is derived at the expense of or with damages to another.

## ACCION IN REM VERSO

It is an action for the recovery of what has been paid or delivered without just cause or legal ground (*RABUYA*, 80).

## PURPOSE

To prevent unjust enrichment, which exists when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience (*Id.*).

## APPLICATION

1. When a thing is acquired by or comes into possession of another (delivery or acquisition of things);
2. The acquisition be undue and at the expense of another (without just or legal ground);

## REQUISITES [EL LARI]

1. That the defendant has been enriched;
2. That the enrichment of the defendant is without just or legal ground;
3. That the plaintiff has suffered a loss;
4. That the plaintiff has no other action based on contract, quasi-contract, crime or quasi-delict;
5. There must be a causal relation between the two;
6. The indemnity cannot exceed the loss or the enrichment whichever is less (*PARAS*, 148).

## SOLUTIO INDEBITI

If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises (*Art. 2154*).

## APPLICATION

1. When a payment is made when there exist no binding relation between the payor, who has no duty to pay, and the person who received the payment;
2. When the payment is made through mistake and not through liberality or some other cause.

**NOTE:** Mistake is an essential element in *solutio indebiti* but in *accion in rem verso*, it is not necessary there should have been mistake in the payment (*RABUYA*, 80).

| ACCION IN REM VERSO  | SOLUTIO INDEBITI   |
|--|--|
| It is not necessary that payment was made by mistake; payment could have been made knowingly and voluntarily. Nevertheless, there would be recovery of what has been paid; | Payment made by mistake is an essential element to maintain the action for recovery; |
| Must have a causal relation.   | No binding relation.   |

**NOTE:** An *accion in rem verso* is considered merely an auxiliary action, available only when there is no other remedy on contract, quasi-contract, crime or quasi-delict. If there is an obtainable action under any other institution of positive law, that action must be resorted to, and the principle of *accion in rem verso* will not lie (*UP v Philab Industries, Inc.*, GR No. 152411 [2004]).

## LIABILITY WITHOUT FAULT OR NEGLIGENCE

Even when an act or event causing damage to another's property was not due to the fault or negligence of the defendant, the latter shall be liable for indemnity if through the act or event he was benefited (*Art. 23*). Even when the event producing loss to others may be accidental or fortuitous, so long as another person is benefited through such event or act (*TOLENTINO*, 86).

## Illustration:

*Without A's knowledge, a flood drives his cattle to the cultivated highland of B. A's cattle are saved, but B's crops are destroyed. True, A was not at fault, but he was benefited. It is but right and equitable that he should indemnify B.*

## BASIS

To prevent unjust enrichment. What is contemplated by Art. 23 is an involuntary act or an act which though foreseen could not have been avoided. An involuntary act, because of its character, cannot generally create an obligation; but when by such act its author has been enriched, it is only just that he should indemnify for the damages caused, to the extent of his enrichment (*Id.*).

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### ART. 24

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

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**NOTE:** Literally, *parens patriae* means "father or parent of his country." The phrase refers to the sovereign power of the state in safeguarding the rights of persons under disability, such as the insane and the incompetent (*PARAS*, 152).

**NOTE:** Art. 24 calls on the court to be vigilant in the protection of the rights of those who are disadvantaged in life. It is supplemented by Art. 1332, "When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former" (*RABUYA*, 83).

#### **“VIGILANT FOR HIS PROTECTION”**

The phrase in general means that in case of doubt, the doubt must be resolved in favor of the underdog (*PARAS, 153*).

#### **INTENT OF ART. 24**

The law intended to protect both those who are found weak and uneducated (*Id.*), those at a disadvantaged position by reason of moral dependence, ignorance, indigence, mental weakness, tender age and other handicap. It is designed to implement the principle of *parens patriae*, and the courts, as guardians of rights of the people, are called upon to implement such policy (*ALBANO, 126*).

#### **LAW APPLIED IN A RAPE CASE**

“Where the victims of rape are of tender years, there is a marked receptivity on the part of the courts to lend credence to their version of what transpired, a matter not to be wondered at, since the State, as *parens patriae*, is under obligation to minimize the risk of harm to those who, because of their minority, are not yet able to fully protect themselves” (*People v Casipit, 232 SCRA 638 [1994]*).

**NOTE:** In a case where the parties executed a contract, implemented it for a lengthy period of time pursuant to its unambiguous provisions, and benefited from the same, the Court rejected the claim of one of the parties that said party was disadvantaged pursuant to Art. 24 considering that it was proven that the parties undertook a lengthy negotiations before the contract was finalized and that the said party was good in business (*Sps Domingo v Astorga, GR No. 130982 [2005]*).

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#### **ART. 25**

**Thoughtless extravagance in expenses for pleasure or display during a period of acute public want or emergency may be stopped by order of the courts at the instance of any government or private charitable institution.**

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#### **BASIS OF THE LAW**

One need not stretch his imagination to witness today a continuing carnival of pomp and vanity. The love for display of luxuries, coupled with the glare of vainglories and frivolities, carries with it the corruption of society and the debasement of public morality and decency. Thoughtless and wasteful extravagance not only pollutes the general public but emasculate and feminize the strong fibers of civilization and render stunted the good virtues of the righteous. One of the main causes of unrest among the poor or among the masses is the ostentation of vanity and riches in open disregard of the privation and poverty of the great majority. Hence, the necessity of this new rule of law which aims to curb, if not altogether culminate, this worldly vanity of vanities (*ALBANO, 130*).

#### **THOUGHTLESS EXTRAVAGANCE**

Expending for pleasure during public want or emergency. This may cause hatred among the people, especially those adversely affected by such emergency (*Id.*).

#### **REQUISITES**

1. There must be an acute public want or emergency;
2. The person seeking to stop it must be a government or private charitable institution.

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#### **ART. 26**

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

1. Prying into the privacy of another’s residence;
2. Meddling with or disturbing the private life or family relations of another;
3. Intriguing to cause another to be alienated from his friends;

4. **Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.**
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#### **REASON:**

If in legislation, inadequate regard is observed for human life and safety; if the laws do not sufficiently forestall human suffering or do not try effectively to curb those factors or influences that would the noblest sentiments; if the statutes insufficiently protect persons from being unjustly humiliated, in short, if human personality is not properly exalted – then the laws are indeed defective. Thus, under this article, the rights of persons are amply protected, and damages are provided for violations of a person’s dignity, personality, privacy and peace of mind. (*Concepcion v CA, 324 SCRA 85, 94 [2000]*).

**NOTE:** The violations enumerated are not exclusive but merely examples. Damages are allowable for actions against a person’s dignity, such as profane, insulting, humiliating, scandalous or abusive language (*Id.*).

**NOTE:** Where a family in Sorsogon sent a telegram to another member of a family in Manila asking for money for their ailing mother; and where the telegram-company was negligent in failing to send the telegram on time and in not immediately informing the family of the reason for the delay, thereby causing filial disturbance on the part of the family as they blamed each other for failing to respond immediately to the emergency involving their mother, the Supreme Court awarded damages on the basis of Article 26(2) of the Civil Code considering that the act or omission of the telegraph company disturbed the peace of mind of the family (*RCPI v Verchez, GR No. 164349 [2006]*).

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#### **ART. 27**

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

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**NOTE:** The duty referred to in the law must be a ministerial duty, not a discretionary function (*ALBANO, 135*).

**NOTE:** There must be a wilful or illegal act or omission by a public servant in the performance of his official duty, by reason of which a person suffers either a material or a moral loss (*Id.*).

#### **GENERAL RULE**

As a rule, a public officer, whether judicial, or quasi-judicial or executive, is not personally liable to one injured in consequence of an act performed within the scope of his official authority, and in line of his official duty.

#### **EXCEPTION**

Art. 27.

#### **SCOPE OF ART. 27**

Limited to refusal or neglect to perform official duties. Does not cover malfeasance of misfeasance, but only nonfeasance.

#### **REQUISITES [PuV WiN]**

1. That the defendant be a **public** official charged with the performance of official duties;
2. That there be a **v**iolation of an official duty in favor of an individual;
3. That there be a **w**ilfulness or negligence in the violation of such official duty;
4. That there be an **i**njury to the individual (*TOLENTINO, 113*).

**NOTE:** Art. 27 presupposes that the refusal or omission of a public official is attributable to malice or inexcusable negligence (*Philippine Match Co., Ltd. v City of Cebu* 81 SCRA 99 [1978]).

**NOTE:** There must necessarily be a wrong committed independent of a contract and that this wrong constitutes a breach of duty which this provision, as distinguished from a mere contract, has imposed upon a public servant. The public servant's civil liability must be determined by his own conduct and not merely by his mental state of mind (*ALBANO*, 136).

#### NEGLECT

Implies the absence of care, prudence, and forethought as under circumstances duly required should be given or exercised (*Id.*, 136-137).

#### MALFEASANCE

The unjust performance of some act which the party had no right, or which he had contracted not to do.

#### MISFEASANCE

Erroneous performance of a legal action, most commonly used to refer to a public official committing an error or improper action that is not illegal.

#### NONFEASANCE

A failure to act when one is under a duty to act.

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#### ART. 28

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

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#### JUSTIFICATION OF INCLUSION OF ART. 28

Democracy becomes a veritable mockery if any person or group of persons by any unjust or high-handed method may deprive others of a fair chance to engage in business or earn a living (*Report of the Code Commission*, 31).

#### UNFAIR COMPETITION

The term covers even cases of discovery of trade secrets of a competitor, bribery of his employees, misrepresentation of all kinds, interference with the fulfillment of a competitor's contracts, or any malicious interference with the latter's business (*Willaware Products Corp. v Jesichris Manufacturing Corp.*, 734 SCRA 238 [2014]).

**NOTE:** What is being sought to be prevented is not competition *per se* but the use of unjust, oppressive or high-handed methods which may deprive others of a fair chance to engage in business or to earn a living. What the law prohibits is *unfair* competition and not competition where the means used are fair and legitimate (*Id.*).

#### REQUISITES

1. It must involve an injury to a competitor or trade rival;
2. It must involve acts which are characterized as contrary to good conscience, or shocking to judicial sensibilities, or otherwise unlawful, which may be:
  - a. Force;
  - b. Intimidation;
  - c. Deceit;
  - d. Machination;
  - e. Any other unjust, oppressive or high-handed method.

**NOTE:** The public injury or interest is a minor factor; the essence of the matter appears to be a private wrong perpetrated by unconscionable means (*Id.*).

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#### ART. 29

**When the accused in criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.**

**If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.**

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#### REASON

The evidence required in proving the criminal liability of an accused is different from the degree of proof necessary in a civil case (*ALBANO*, 140).

#### PROOF BEYOND REASONABLE DOUBT

The amount of proof which forms an abiding moral certainty that the accused committed the crime charged. It is not absolute certainty (*Sarmiento v CA*, GR No. 96740 [1999]).

#### PREPONDERANCE OF EVIDENCE

As a whole, the evidence adduced by one side outweighs that of the adverse party (*Id.*).

#### DELICT AS SOURCE OF CIVIL LIABILITY

Under Art. 1157 (4), delict or crime is one of the sources of obligation. The general rule is that "every person criminally liable for a felony is also civilly liable (*Art. 100, RPC*).

#### BASIS OF CIVIL LIABILITY

##### Traditional Theory

When a person commits a crime he offends 2 entities:

1. The society or State whose law he had violated;
2. The individual member of that society whose person, right, honor, chastity or property was injured or damaged by the same punishable act or omission.

##### Pragmatic Theory

What gives rise to the civil liability is the obligation and the moral duty of everyone to repair or make whole the damage cause to another by reason of his own act or omission, done intentionally or negligently, whether or not the same be punishable by law (*RABUYA*, 95).

**NOTE:** Criminal liability will give rise to civil liability only if the same felonious act or omission results in the damage or injury to another and is the direct and proximate cause thereof (*Id.*).

**NOTE:** Damage or injury to another is the foundation of the civil action (*Id.*).

#### TWO KINDS OF ACQUITTAL WITH DIFFERENT EFFECTS ON CIVIL LIABILITY OF THE ACCUSED

- **Not author of Act or Omission** – No civil liability. "The civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist" (*see Rule 111, Rules of Court*).
- **Reasonable Doubt** – Even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability based on delict which may be proved by preponderance of evidence only.

#### ACQUITTAL BASED ON REASONABLE DOUBT

Acquittal extinguishes the liability of the accused for damages only when it includes a declaration that the facts from which the civil liability might arise did not exist.

## REASON FOR ABOVE RULE

The invasion or violation of every private right is proved by preponderance of evidence but the violation of a criminal law is proved beyond reasonable doubt (*see RABUYA, 98*). A judgment of acquittal operates to extinguish the criminal liability. It does not extinguish the civil liability unless there is a clear showing that the act from which the civil liability might arise did not exist (*Padilla v CA, GR No. 39999 [1984]*).

## ARTICLE 29, EXPLAINED

When the offended party opted to institute his civil action based thereon, expressly or impliedly with the criminal action and the accused was acquitted on reasonable doubt as to his guilt, Article 29 automatically reserves for the private offended party the right to institute an independent civil action for damages based on the same act or omission and prove it by a preponderance of evidence despite the fact that the offender was held not to be criminally liable and that the injured party has previously opted to recover his damage ex delicto (*RABUYA, 100*).

**NOTE:** There is no need to file a separate civil action considering that the facts to be proved in the civil case have already been established in the criminal proceedings where the accused is acquitted (*Padilla v CA, GR No. 39999 [1984]*).

**NOTE:** Article 29 emphasizes that a civil action for damages is not precluded by an acquittal of the same criminal act or omission (*Id.*).

**NOTE:** The offended party may, of course, choose to file a separate action (*Id.*).

## CIVIL ACTIONS BASED ON ACQUITTAL

1. Where the Court declares expressly that the liability of the accused is not criminal but only civil in nature;
2. Where civil liability does not arise from or is not based upon the criminal act of which the accused was acquitted.

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### ART. 30

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

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**NOTE:** The civil action may be filed ahead of the criminal action. Plaintiff is required to prove his case by preponderance of evidence (*ALBANO, 145*).

**NOTE:** When the criminal action is subsequently commenced, the pending civil action shall be suspended until final judgment in the criminal action has been rendered. However, if no final judgment has been rendered in the civil action, the same may be consolidated with the criminal action upon application with the court trying the criminal action. If the application is granted, the evidence presented and admitted in the civil action shall be deemed automatically reproduced in the criminal action, without prejudice to the admission of additional evidence that any party may wish to present. In case of consolidation, both the criminal and the civil actions shall be tried and decided jointly (*see Rule 111, Sec. 2(a), Rules of Court*).

## IMPLIED INSTITUTION OF CIVIL ACTION

When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action, unless the offended party:

1. Waives the civil action;
2. Reserves the right to institute it separately;
3. Institute the civil action prior to the criminal action (*Id., Sec. 1, par. 1*).

## WHEN CIVIL ACTION IS RESERVED

The reservation must be made before the prosecution starts presenting its evidence and under circumstances affording the

offended party a reasonable opportunity to make such reservation (*Id., Sec. 1, par. 2*). The separate civil action cannot be instituted until final judgment has been entered in the criminal action (*Id., Sec. 2, par. 1*).

## WHEN CIVIL ACTION IS INSTITUTED PRIOR TO CRIMINAL ACTION

The civil action shall be suspended in whatever stage it may be found before judgment which will last until final judgment in the criminal action.

Before judgment is rendered in civil action, the same may, upon motion of the offended party, be consolidated with the criminal action (*Id., Sec. 2, par. 2*).

## WHEN CIVIL ACTION IS INSTITUTED, BUT NO CRIMINAL ACTION

A preponderance of evidence shall be sufficient to prove the act complained of (*Art. 30*).

**NOTE:** Extinction of the criminal action due to death of the accused pending appeal inevitably signifies the concomitant extinction of the civil liability. *Mors omnia solvi* – Death dissolves all things (*People v Bayotas, 236 SCRA 239 [1994]*).

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### ART. 31

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

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## REASON

The basis of the civil action is no longer the criminal liability of the defendant, but another source, may be a quasi-delict or tort (*ALBANO, 148*).

**NOTE:** This article refers to a civil action which is no longer based on the criminal liability of the defendant, but on an obligation arising from other sources under Art. 1157 (*Id.*).

**NOTE:** Article 31 is not an independent civil action. When the civil action not arising from the act or omission complained of as a felony, such civil action being based upon an obligation not arising from the criminal act but from a different source, is not an independent civil action within the meaning of Arts. 32-34 (*RABUYA, 103*).

## QUASI DELICT AS SEPARATE SOURCE OF OBLIGATION

A quasi delict or *culpa aquiliana* is a separate legal institution with a substantivity on its own, and individuality that is entirely apart and independent from delict or crime. The same negligence causing damages may produce civil liability arising from a crime under the Penal Code, or create an action for *quasi delictos* under the Civil Code (*Id., 104*).

## REQUISITES [AFI ReN]

1. Act or omission by the defendant;
2. Fault or negligence by the defendant;
3. Damage or injury to the plaintiff;
4. Direct relation or connection of cause and effect between the act or omission and the damage;
5. There is no pre-existing contractual relation between the parties (*DE LEON, Comments and Cases on Torts and Damages (2012), 185*).

## FAULT OR NEGLIGENCE

Consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place (*Art. 1173*).

## ACQUITTAL OF ACCUSED, IRRELEVANT IN QUASI DELICT

The extinction of civil liability referred to in Sec. 2 (b), Rule 111, refers exclusively to civil liability founded on Art. 100 of the RPC, whereas the civil liability for the same act considered as a quasi delict

only and not as a crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused (*Tayag v Alcantara*, 98 SCRA 723, 728 [1980]).

**NOTE:** Sec. 2(b) of Rule 111 applies only to a civil action arising from crime (*ex delicto*) and not to a civil action arising from quasi delict (*culpa aquiliana*).

#### **SAME NEGLIGENT ACT MAY PRODUCE TWO KINDS OF CIVIL LIABILITIES**

- *Civil liability ex delicto under Art. 100 of the RPC* – a violation of a criminal law;
- *Civil liability for quasi delict or culpa extra contractual under Arts. 2176 to 2194 of the Civil Code* – a distinct and independent negligence, having always had its own foundation and individuality.

**NOTE:** Either of the 2 types of civil liability may be enforced against the culprit, subject to the caveat of prohibition against double recovery under Art. 2177 (*Jarantilla v CA*, 171 SCRA 429, 436 [1989]).

#### **PROHIBITION AGAINST DOUBLE RECOVERY**

Although a single act or omission may give rise to two different causes of action, the plaintiff cannot recover damages twice for the same act or omission of the defendant (*Art 2177, CC*).

#### **QUASI DELICT COVERS ACTS CRIMINAL IN CHARACTER**

Art. 2176, whenever it refers to “fault of negligence,” covers not only acts “not punishable by law” but also acts criminal in character, whether intentional and voluntary or negligent. *Culpa aquiliana* includes voluntary and negligent acts which may be punishable by law (*Elcano v Hill*, 77 SCRA 98 [1977]).

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#### **ART. 32**

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

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

18. **Freedom from excessive fines, or cruel or unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and**

19. **Freedom of access to the courts.**

**In any of the cases referred to in this article, whether or not the defendant’s act or omission constitute a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.**

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

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

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#### **INDEPENDENT CIVIL ACTIONS**

An action which can proceed independently of the criminal action and shall require only a preponderance of evidence, subject to prohibition for double recovery. **[CD PC]**

1. **Breach of constitutional and other rights (*Art. 32*);**
2. **Defamation, fraud, physical injuries (*Art. 33*).**
3. **Refusal or failure of city or municipal police to give protection (*Art. 34*);**
4. **Quasi delict or culpa aquiliana (*Art. 2177*).**

#### **REASONS FOR THE PROVISION**

- To prevent non-filing of action because of insufficiency of evidence or to disinclination of fiscal to prosecute a fellow public official;
- To prevent non-filing of action because of the requirement of proof beyond reasonable doubt;
- Direct and open violation of the Penal Code trampling upon the freedoms named are not so frequent as those subtle, clever and indirect ways which do not come within the pale of the penal law (*RABUYA, 108-109*).

#### **WHEN PUBLIC OFFICER PERSONALLY LIABLE**

An individual can hold a public officer personally liable for damages on account of an act or omission that violates a constitutional right only if it results in a particular wrong or injury to the former (*Vinzons-Chato v Fortune Tobacco Corp, GR No. 141309 [2008]*).

#### **KINDS OF DUTIES EXERCISED BY PUBLIC OFFICERS**

1. **Duty owing to the public collectively** – who act for the public at large, and who are ordinarily paid out of the public treasury;
2. **Duty owing to particular individuals** – who, while they owe to the public the general duty of a proper administration of their respective offices, yet become, by reason of their employment by a particular individual to do some act for him in an official capacity, under a special and particular obligation to him as an individual. They serve individuals chiefly and usually receive their compensation from fees paid by each individual who employs them.

#### **GENERAL RULE**

The liability of a public officer to an individual or the public is based upon and is co-extensive with his duty to the individual or the public. If to the one or the other he owes no duty, to that one he can incur no liability (*Vinzons-Chato v Fortune Tobacco Corp, GR No. 141309 [2008]*).

#### **EXCEPTION**

When the complaining individual suffers a *particular* or *special injury* on account of the public officer’s improper performance or non-performance of his public duty (*Id.*).

**Restatement of the rule:** An individual cannot have a particular action against a public officer without a particular injury, or a particular right, which are the grounds upon which all actions are found (*Id.*).

**Restatement of Article 32:** An individual can hold a public officer personally liable for damages on account of an act or omission that violates a constitutional right *only* if it results in a particular wrong or injury to the former (*Id.*).

**NOTE:** Good faith is not a defense under Article 32 for it is not necessary that the defendant should have acted with malice or bad faith. To make such a requisite would defeat the main purpose of said article which is effective protection of individual rights (*RABUYA, 120*).

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#### ART. 33

**In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party, such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.**

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#### ARTICLE 33, EXPLAINED

Art. 33 contemplates a civil action for recovery of damages that is entirely unrelated to the purely criminal aspect of the case. This is the reason why only a preponderance of evidence and not proof beyond reasonable doubt is deemed sufficient in such civil action.

Thus, the outcome or result of the criminal case, whether of an acquittal or conviction is really inconsequential and will be of no moment in the civil action (*Id.*).

#### ACTION PERTAINS TO EX DELICTO

The civil action for damages which Article 33 allows to be instituted is *ex delicto*. This is manifested from the provision which uses the expressions "criminal actions" and "criminal prosecution" (*Id., 120-121*).

#### REASON

"It is true that in many of the cases referred to in the provision cited, a criminal prosecution is proper, but it should be remembered that while the State is the complainant in the criminal case, the injured individual is the one most concerned because it is he who has suffered directly (*Madeja v Caro, GR No. L-51183 [1983]*).

**NOTE:** In article 33, the words defamation, fraud, and physical injuries are used in their ordinary sense with no relation to those in the RPC (*Carandang v Santiago, 97 Phil. 94, 96-97 [1955]*).

**NOTE:** Criminal negligence is included in Art. 33.

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#### ART. 34

**When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such police officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support action.**

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#### MEMBERS OF POLICE FORCE

It is the duty of police officers to see to it that peace and order are maintained in the community. Hence, should a citizen go to them to seek assistance, their failure or refusal to render the needed assistance to maintain lawful order can be a basis for claiming damages against them. The city or municipality shall be subsidiarily responsible therefor (*STA MARIA, 68*).

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#### ART. 35

**When a person, claiming to be injured by a criminal offense, charges another with the same, for which no independent civil action is granted in this Code or any special law, but the justice of the peace finds no reasonable grounds to believe that a crime has been committed, or the prosecuting attorney refuses or fails to institute criminal proceedings, the complainant may bring a civil action for damages against the alleged offender. Such civil action shall be supported by preponderance of evidence. Upon the defendant's motion, the court may require the plaintiff to file a bond to indemnify the defendant in case the complaint should be found to be malicious.**

**If during the pendency of the civil action, an information should be presented by the prosecuting attorney, the civil action shall be suspended until the termination of the criminal proceedings.**

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**NOTE:** See Rule 111 of the Rules of Court of the Philippines.

**NOTE:** If during the pendency of the civil action, an information should be presented by the prosecuting attorney, the civil action shall be suspended until the termination of the criminal proceedings (*ALBANO, 165*).

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#### ART. 36

**Prejudicial questions, which must be decided before any criminal prosecution may be instituted or may proceed, shall be governed by the rules of court which the Supreme Court shall promulgate and which shall not be in conflict with the provisions of this Code.**

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#### PRECEDENCE

##### General Rule

Where both a civil and criminal case arising from the same facts are filed in court, the criminal case takes precedence.

##### Exception

If there exist prejudicial question which should be resolved first before action could be taken in a criminal case and when the law provides that both civil and criminal case can be instituted simultaneously such as that provided in Art. 33.

#### PREJUDICIAL QUESTION

One which arises in a case, the resolution of which question is logical antecedent of the issue involved in said case.

It is one based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those which the prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would be necessarily be determined (*RABUYA, 123*).

#### ELEMENTS

1. Previously instituted civil action involves an issue similarly or intimately related to the issue raised in the subsequent criminal action;
2. The resolution of such issue determined whether or not the criminal action may proceed (*Sec. 7, Rule 111, Revised Rules of CrimPro*).

**NOTE:** It is the issue in the civil action that is prejudicial to the continuation of the criminal action, and not vice-versa (*Yap v Paras, 205 SCRA 630 [1992]*).

#### SUSPENSION OF PROCEEDINGS

Suspension of criminal action based upon the pendency of prejudicial question may be filed in the office of prosecutor or the court conducting preliminary investigation. When the criminal action has been filed in court for trial, the suspension shall be filed in

the same at any time before the prosecution rests (*Sec. 6, Rule 111, Rules of Court*).

The rule authorizes only the suspension of the criminal action and not its dismissal by reason of prejudicial question (*Yap v Paras, 205 SCRA 630 [1992]*).

**NOTE:** Doctrine of prejudicial question was held inapplicable between administrative case and civil suit (*Ocampo v Buenaventura, 55 SCRA 267 [1974]*).

**NOTE:** A criminal prosecution will not constitute prejudicial question even if the same facts and circumstances are attendant in the administrative proceedings for the disbarment or suspension of a member of the bar because administrative cases against lawyers belong to a class of their own. They are distinct from and they may proceed independently of civil and criminal cases (*Gatchalian Promotions Talents Pool, Inc. v Naldoza, 315 SCRA 406 [1999]*).

## TITLE I CIVIL PERSONALITY

### CHAPTER 1 GENERAL PROVISIONS

#### ART. 37

**Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.**

#### PERSON

Any being, natural or artificial, capable of possessing legal rights and obligations (*PARAS, 221*). It is every physical or moral, real or juridical, and legal being susceptible of rights and obligations or being the subject of legal relations (*Sanchez Roman, 110*).

#### CIVIL PERSONALITY

The aptitude to be the subject, active or passive, of juridical relations (*RABUYA, 128*).

#### TWO KINDS OF PERSONS

- Natural Persons** - human beings created by God through the intervention of parents (*PARAS, 221*).
- Juridical Persons** - artificial beings susceptible of rights and obligations or being the subject of legal relations (*RABUYA, 129*). Those created by law (*PARAS, 221*).

| JURIDICAL CAPACITY<br>( <i>Capacidad Juridica</i> )                                  | CAPACITY TO ACT<br>( <i>Capacidad de Obrar</i> )  |
|--|---|
| <b>As to nature</b>  |   |
| Fitness to be the legal subject of legal relations;                                  | Power to do acts with legal effects;  |
| <b>As to status</b>  |   |
| Passive;   | Active;   |
| <b>As to acquisition</b>   |   |
| It is enough for a person to exist, i.e., it is inherent and ineffaceable attribute; | Intelligence and volition is required and since these do not exist in all men nor to the same extent, the law denies capacity to act absolutely to some and limits it with regards to others; |
| <b>As to condition of the subject</b>  |   |
| Static;  | Dynamic;  |
| <b>As to effect of death</b>   |   |
| Lost only through death;   | Lost through death and restricted by other causes;  |
| <b>As to existence</b>   |   |
| Can exist without capacity to act;   | Always exists with juridical  |

|                                  |  |
|----------------------------------|--|
|                                  | capacity;                                      |
| <b>As to limitation</b>          |  |
| Cannot be limited or restricted; | Can be limited or restricted by circumstances; |

**NOTE:** Juridical capacity is merely the holding or enjoyment of rights; while capacity to act is the aptitude for the exercise of such rights and to consummate juridical acts (*RABUYA, 129*).

**NOTE:** Estate of a decedent is considered by law as a person. Hence, a forgery committed after the death of a man whose name purports to be signed to the instrument may be prosecuted as with intent to defraud the estate (*Limjoco v Estate of Pedro Fragante, GR No. L-770 [1948]*).

**NOTE:** A person is presumed to have capacity to act (*Standard Oil Co. v Arenas, GR No. L-5921 [1911]*).

#### FULL/COMPLETE CIVIL CAPACITY

The union of the two kinds of capacity (*PARAS, 222*).

#### ART. 38

**Minority, insanity, or imbecility, the state of being a deaf-mute, prodigality and civil interdiction are mere restriction on capacity to act, and do not exempt the incapacitated person from certain obligations, as when the latter arise from his acts or from property relations, such as easements.**

#### ART. 39

The following circumstances, among others, modify or limit the capacity to act: age, insanity, imbecility, the state of being a deaf-mute, penalty, prodigality, family relations, alienage, absence, insolvency and trusteeship. The consequences of these circumstances are governed in this Code, other codes, the Rules of Court, and in special laws. Capacity to act is not limited on account of religious belief or political opinion.

**A married woman, twenty-one years of age or over, is qualified for all acts of civil life, except in cases specified by law.**

#### THEORIES ON CAPACITY TO ACT

| THEORY OF GENERAL CAPACITIES   | THEORY OF SPECIAL CAPACITIES   |
|--|--|
| Applies to natural persons;  | Applies to juridical persons;  |
| Effects apply except only in those specific circumstances where the capacity to act is restrained. | This limits the power of juridical persons only to those that are expressly conferred upon them or those which can be implied therefrom or incidental thereto. |

**NOTE:** Article 38 provides only restrictions on one's capacity to act. It does not mean that the person suffering therefrom does not possess capacity to act (*RABUYA, 131*).

**NOTE:** Article 39 enumerates circumstances which modify one's capacity to act. The enumeration is not exclusive (*Id.*).

#### INCAPACITIES TO ACT

Those mentioned in Arts. 38 and 39 are limitations or restrictions on capacity to act. They are based on subjective circumstances of certain persons which compel the law to withhold or suspend for a certain time the capacity to perform certain juridical acts (*Id.*).

#### DISQUALIFICATIONS

Based on reasons or morality. While incapacities restrict the exercise of right; disqualifications or prohibitions restrict the enjoyment of right itself. E.g., prohibitions against spouses from donating (*Art. 87, FC*) or selling (*Art. 1490, CC*) to each other or those mentioned in *Art. 1491 (Id.)*.

## LIABILITY OF INCAPACITATED PERSONS

Incapacitated persons are not exempted from certain obligations, as when these obligations arise from his acts or from property relations, such as easements (*Art. 38*).

E.g., while an insane person is exempt from criminal liability, his civil liability shall devolve upon his parent or guardian, if there was fault or negligence on their part and if none, upon the property of the insane person (*see Art. 101, RPC*).

## RESTRICTIONS ON CAPACITY TO ACT (MIS PC)

1. Minority;
2. Insanity or imbecility;
3. State of being deaf-mute;
4. Prodigality;
5. Civil interdiction.

## MINORITY

A state of a person who is under the age of legal majority and a minor is a person below 18 years of age since majority commences upon attaining the age of 19 (*RA 6809*).

Emancipation of a minor can only now take place by attainment of majority (*RABUYA, 132*).

**NOTE:** When, under Art. 1403, the unenforceable contract is where both parties to the same are incompetent to give consent; the contract can be cleansed of its defect from the moment of the signing or perfection if their parents or guardians would ratify the same.

**NOTE:** When, under Art. 1390, the voidable contract is where one of the parties is incapable of giving consent; the same can be cleansed of its defect from the moment of the signing or perfection if their parents or guardians would ratify the same.

### Illustration:

*A and B are both minors. A sold his sports car to B for 100 pesos for according to A, "pang beer lang." A delivered it and B paid. The contract is unenforceable, but if the parents or guardians of A and B would ratify it, then, it is cleansed of its defect from the moment of perfection of the contract; not from the ratification*

### Illustration:

*A, a minor sold his car to B, a person of age. B paid A and A delivered the car to B. This contract is voidable, but it can be ratified by the parents or guardians of A.*

**NOTE:** The action for annulment shall be brought within 4 years when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases (*see Art. 1391, CC*).

## MISREPRESENTATION OF AGE

When a minor misrepresented his age and mislead the other party into believing that he is of age, the minor on reaching the age of majority can no longer annul the contract on the ground of estoppel. He is not permitted to excuse himself from the fulfil of his obligation (*Sia Suan v Alcantara, GR No. L-1720 [1950]*).

But when a minor did not ask for annulment of his contract upon attainment of majority age, the Court said that knowing his rights, he should have promptly disaffirmed his contract after attaining the age of majority but permitted the other party to continue making payments (*Uy Soo Lim v Tan Unchuan, GR No. 12605 [1918]*).

## IMBECILE

A person who while advanced in age has the mental capacity comparable to that of a child between two or seven years of age. In criminal law, under Art. 12, the imbecile is exempt in all cases from criminal liability (*RABUYA, 140*).

## INSANE

An insane person is one whose mental faculties are diseased. An insane person is not exempt, in criminal law, if it can be shown that he acted during a lucid interval. During lucid interval, the

insane acts with intelligence. The lucid interval must be proved as a fact (*Id.*).

**NOTE:** Insane or demented persons, and deaf-mutes who do not know how to write cannot give consent to contract (*see Art. 1327, no. 2, CC*).

**NOTE:** An insane person cannot make a valid will or testament (*see Art. 798, CC*).

**NOTE:** Contracts entered into by an imbecile, insane, or demented person are voidable (*see Art. 1390, no. 1*).

**NOTE:** The presumption is for the sanity of the person.

**NOTE:** It is only that insanity which prevents a person from knowing the character of the act that he is performing as well as its legal effects which will be ground for annulment, not every kind of insanity (*RABUYA, 141*).

## PRESUMPTION OF SANITY

Every person is presumed to be of sound mind, in the absence of proof to the contrary (*Art. 800*). Mental incapacity to enter into a contract is a question of fact which must be decided by the courts. The burden of proving incapacity at the time of the execution rests upon he who alleges it, is no sufficient proof to this effect is presented, his capacity will be presumed. (*RABUYA, 141*).

## DEAF AND MUTISM

Only deaf-mutes who do not know how to write are declared by law incapable of giving consent (*see Art. 1327*). Contracts entered into by a deaf-mute who knows how to write is perfectly valid (*RABUYA, 141*).

## CIVIL INTERDICTION

An accessory penalty imposed upon an accused who is sentenced to a principal penalty not lower than *reclusion temporal* (12 years and 1 day to 20 years). Produces the following effects of deprivation of: **[PIG MM]**

1. Parental authority;
2. Right to dispose his property by an act *inter vivos*  
*EXCEPTION: right to dispose property by an act mortis causa.*
3. Guardianship of any ward;
4. Marital rights and authority;
5. Management of his property.

## PRODIGALITY

State of squandering money or property with a morbid desire to prejudice the heirs of a person (*Martinez v Martinez, GR No. 445 [1902]*).

Prodigality in itself does not limit the capacity of a person to act. He may enter into contracts and make wills disposing of his property. There is no specific provision which incapacitates him for any particular act. But he may be placed under guardianship as an incompetent under the provisions of Rule 93, Sec. 2 of the Rules of Court. The moment he is under guardianship, his capacity to act then becomes restricted because he can only bind himself in a contract through his guardian (*RABUYA, 142*).

## EASEMENT

A liberty privilege or advantage, which one man may have in the lands of another, without profit; it may arise by deed or prescription. It is the right to use the property of another for a specific purpose.

It is a right where one person or entity may use the land or real property of another for a specific purpose. I.e., the common right of way which allows a neighbour to use a shortcut through the adjoining land which has been used for many years.

## MODIFICATIONS/LIMITATIONS ON CAPACITY TO ACT [F<sup>3</sup>T P<sup>2</sup>A<sup>3</sup>D]

1. Family relations;



2. Insanity;
3. Imbecility;
4. Insolvency;
5. Trusteeship;
6. Penalty (Civil Interdiction);
7. Prodigality;
8. Age;
9. Alienage;
10. Absence;
11. State of being deaf-mute.

## CHAPTER 2 NATURAL PERSONS

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### ART. 40

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

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### ART. 41

**For civil purposes, the fetus is considered born if it is alive at the time it is completely delivered from the mother's womb. However, if the fetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within twenty-four hours after its complete delivery from the maternal womb.**

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**NOTE:** If the conditions specified in Art. 41 are not complied with, the birth and the death of the child will not be recorded in the Civil Registry (*PARAS*, 229).

#### GENERAL RULE

Birth determines actual personality.

#### EXCEPTION

The civil personality of the child shall commence from the time of its conception, for all purposes favorable to him, subject to the requirements of Art. 41 of the Civil Code (*PD 903, Art. 5*). This personality at conception is called **Presumptive Personality**.

#### CHARACTERISTICS OF PRESUMPTIVE PERSONALITY

1. *Limited* – because it only for purposes favorable to the child;
2. *Provisional or condition* – because it depends upon the child being born alive later, such that if it is not born alive, its personality disappears as if it had never existed (*Quimiguing v Icao, GR No. L-26795 [1970]*).

**NOTE:** The requirement that the conceived child must be born is not a condition precedent to the right of the conceived child; for if it were, the first part of Art. 40 would become entirely useless and ineffective (*RABUYA*, 146).

**NOTE:** The concept of provisional personality cannot be invoked to obtain damages for and in behalf of an aborted child (*Geluz v CA, GR No. L-16439 [1961]*).

**NOTE:** A *nasciturus* (conceived child but not yet born) is already entitled to support from its progenitors (*Quimiguing v Icao, GR No. L-26795 [1970]*) and can be acknowledge even before it is born (*De Jesus v Syquia, GR No. L-39110 [1933]*).

#### WHEN A PERSON IS CONSIDERED BORN

**General Rule:** For Civil Purposes, the fetus is considered born if it is alive at the time it is completely delivered from the mother's womb (*Art. 41*).

**Exception:** If the fetus had an intra-uterine life of less than 7 months, it is not deemed born if it dies within 24 hours after its complete delivery from the maternal womb (*Art. 41*).

#### COMPLETE DELIVERY

The cutting of the umbilical cord so that if after the cutting of the umbilical cord the child is alive, even only for a few hours, it is considered a person. This rule only applies only when the fetus had an intra-uterine life of at least 7 months (*RABUYA*, 146).

| Intra-uterine Life                        | When Considered Born   |
|---|--|
| <b>7 months or more (ordinary)</b>        | Alive upon complete delivery even if the child dies within 24 hours. |
| <b>Less than 7 months (extraordinary)</b> | Alive upon complete delivery and at least 24 hours thereafter.       |

**NOTE:** The term “*extraordinary*” was used instead of, for example “*premature*,” for a child with an intra-uterine life of 8 months is still considered premature, it is for the purpose of the article considered an ordinary child (*PARAS*, 232).

#### FAVORABLE SITUATIONS FOR AN UNBORN FETUS PROVIDED BY THE LAW

1. Donations made to conceived and unborn children may be accepted by those who would legally represent them if they are already born (*Art. 742*);
2. Every donation inter vivos, made by a person having no children or descendants, legitimate or legitimated by a subsequent marriage, or illegitimate, may be revoked or reduced as provided in the next article, by the happening of any of these events:
  - a. If the donor, after the donation, should have legitimate or legitimated or illegitimate children, even though they be posthumous (*Art. 760*);
3. The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devises and legacies shall be valid insofar as they are not inofficious (*Art. 854*);
4. A child already conceived at the time of the death of the descendent is capable of succeeding provided it be born later under the conditions prescribe in Article 41 (*Art. 1025, par. 2*);
5. The unborn child has a right to support from its progenitors, even if said child is only *en ventre de sa mere* (*RABUYA*, 146).

#### WHEN TO APPLY ARTICLES 40 AND 41

Arts. 40-42 must be applied in relation to Art. 37. There is no need to establish the civil personality of the unborn child if his/her juridical capacity and capacity to act as a person are not in issue and the case is not whether the unborn child has acquired any rights or incurred any obligations prior to his/her death that were passed on to or assumed by the child's parents. Hence, when the issue in a case pertains directly to the rights of the parents of the unborn child, the above-mentioned provisions do not apply (*RABUYA*, 152-153).

#### RULE IN CASE OF ABORTIVE INFANTS

If a physician operates on a pregnant woman and succeeds in aborting the fetus, the parents would normally be entitled only to moral damages and exemplary damages, if warranted, but not to actual damages (*PARAS*, 229).

**NOTE:** Art. 2206 of the Civil Code does not cover the case of an unborn fetus, since this is not endowed with personality (*Geluz v CA, L-16439 [1961]*).

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### ART. 42

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

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## DEATH

The cessation of life. The ceasing to exist.

## CIVIL DEATH

The state of a person who, though possessing a natural life has lost all his civil rights, and as to them, is considered as dead (*ALBANO, 189*).

**NOTE:** Art. 42 refers to physical death and not presumed death. In case of presumed death, the person is merely presumed dead because of his absence. But in case of reappearance, he can recover his properties or the price thereof if they have been distributed (*Id.*).

**NOTE:** Civil interdiction merely restricts, not extinguishes, the capacity to act (*PARAS, 232*).

## EFFECT OF PHYSICAL DEATH IS DETERMINED BY

1. Law;
2. Contract;
3. Will.

**NOTE:** Since the civil or legal personality of a person is extinguished upon death, neither a dead person nor his estate may be a party plaintiff in a court action. A deceased person does not have such legal entity as is necessary to bring action so much so that a motion to substitute cannot lie and should be denied by the court. An action begun by a decedent's estate cannot be said to have been begun by a legal person, since an estate is not a legal entity; such an action is a nullity and a motion to amend the party plaintiff will not likewise lie, there being nothing before the court to amend (*RABUYA, 154-155*).

**NOTE:** Considering that capacity to be sued is a correlative of the capacity to sue, to the same extent, a decedent does not have the capacity to be sued and may not be named a party defendant in a court action (*Id, 155*).

**NOTE:** When the deceased was made a party defendant but there was no objection to the amendment of the complaint to substitute the deceased by impleading her intestate estate as party defendant, there is deemed a waiver of any objection on the personality of the estate of the deceased as party of the action (*Id.*).

**NOTE:** If a person be made a voluntary heir in the will of another and he dies before the testator, he cannot be represented by his own heirs.

**NOTE:** The estate of a deceased is a person that may continue the personality of the deceased even after death - for the purpose of settling debts (*Limjuco v Estate of Pedro Fragante, 45 OG No. 9, p. 397*).

## OTHER EFFECTS OF DEATH

1. Right to support ends;
2. Marriage, whether voidable or valid, ends;
3. Tenure of public office ends;
4. The property or estate left by him should be subject to the tax in generally same manner as if he were alive (*Testate Estate of Fernancez, GR No. L-9441 [1956]*);
5. If a person dies after he authorized another to sell the former's property, the sale after such death is not valid, if made by the agent with knowledge of the principal's death. This is true even if the buyer is in good faith (*Rallos v Felix Go Chan and Sons Realty Cop. GR No. L-24332 [1978]*).

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### ART. 43

If there is a doubt, as between two or more persons who are called to succeed each other, as to which of them died first, whoever alleges the death of one prior to the other, shall prove the same; in the absence of proof, it is presumed that they died at the same time and there shall be no transmission of rights from one to the other.

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**NOTE:** Art. 43 is only used when one is a decedent and the other one is heir or simply stated, where the two deceased are called to succeed each other.

## REQUISITES FOR APPLICATION OF ARTICLE 43

1. The question of survivorship involves persons who are called to succeed each other;
2. Issues involves successional rights.

## PRESUMPTION OF SURVIVORSHIP

If there is doubt as to whom, between or among two or more persons called to succeed each other, died first, the following rules shall apply:

1. Whoever alleges the death of one prior to the other shall prove the same;
2. In the absence of proof, it shall be presumed that they died at the same time, there shall be no transmission of rights from one another.

### Illustration:

*Pepita is the mother of Migelito. They both died because Avatar Korra failed to save them from a tsunami. They died at the same day but the exact hours of their death cannot be ascertained. Then, it is presumed that they died at the same time and there shall be no transmission of rights, one in favor of another.*

*However, if it can be established that Pepita died ahead of Migelito, then, Migelito can inherit from Pepita, but since he is already dead, his heirs can represent him.*

**NOTE:** If the parties are not called to succeed each other, the provisions of Rule 131, Sec. 3 (jj), Rules of Court, shall apply (*PARAS, 235*). xxx xxx xxx, the survivor ship is determined from the probabilities resulting from the strength and the age of the sexes, according to the following rules:

1. If both were under the age of 15 years, the older is deemed to have survived;
2. If both were above the age of 60, the younger is deemed to have survived;
3. If one is under 15 and the other above 60, the former is deemed to have survived;
4. If both be over 15 and under 60, and the sex be different, the male is deemed to have survived, if the sex be the same, the older;
5. If one be under 15 or over 60, and the other between those ages, the latter is deemed to have survived (*Rules 131, Sec. 3 (jj), Rules of Court*).

## CHAPTER 3 JURIDICAL PERSONS

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### ART. 44

The following are juridical persons:

1. The State and its political subdivisions;
  2. Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
  3. Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.
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### ART. 45

Juridical persons mentioned in Nos. 1 and 2 of the preceding article are governed by laws creating or recognizing them.

Private corporations are regulated by laws of general application on the subject.

**Partnerships and associations for private interest or purpose are governed by the provisions of this Code concerning partnerships.**

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**ART. 46**

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

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**ART. 47**

**Upon the dissolution of corporations, institutions and other entities for public interest or purpose mentioned in No. 2 of Art. 44, their property and other assets shall be disposed of in pursuance of law or the charter creating them. If nothing has been specified on this point, the property and other assets shall be applied to similar purposes for the benefit of the region, province, or city or municipality which during the existence of the institution derived the principal benefits from the same.**

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**JURIDICAL PERSONS**

Artificial beings to which the law grants a personality distinct and separate from each individual member composing it and susceptible of rights and obligations, or of being the subject of legal relations. Their personality begins from the moment the law recognizes them or creates them unless the law provides otherwise and such personality is extinguished only in accordance with law (*RABUYA, 157-158*).

**JURIDICAL PERSONS**

1. *State and its political subdivisions;*
2. *Corporations for public interest - governed either by the Corporation Code or their special charters passed by the legislature;*
3. *Corporations, partnerships and associations for private interest.*

**PUBLIC CORPORATIONS vs PRIVATE CORPORATIONS**

Public corporations are those formed or organized for the Government of a portion of the State. Private corporations are those formed for some private purpose, benefit, aim or end, as distinguished from public corporations which have for their purpose the general good and welfare (*PARAS, 237*).

**RIGHTS OF JURIDICAL PERSONS**

1. To acquire and possess property of all kinds;
2. To incur obligations;
3. To bring civil or criminal actions.

**DETERMINATION OF NATIONALITY OF JURIDICAL PERSONS**

**General Rule:** Determined by the place of its incorporation.

**Exceptions:**

1. For the grant of the rights in the Constitution to the operation of public utilities, and for the acquisition of land and other natural resources, a corporation, even if incorporated in the Philippines, cannot acquire said rights unless 60% of its capital be Philippine-owned;
2. During way, we may pierce the veil of corporate identity, and go to the very nationality of the controlling stockholders regardless of where the incorporation had been made. Thus a German-controlled corporation, even if incorporated in the Philippines, was considered an enemy corporation during the way for the purpose of freezing its assets (*Id., 241*).

**NOTE:** For public corporations, the corporate existence shall commence upon the election and qualification of its chief executive and a majority of the members of its sanggunian, unless some other time is fixed therefor by the law or ordinance creating it (*RA 7160*,

*Sec. 14*). For quasi-public corporations, their personality begins as soon as they have been constituted according to law (*Art. 44, par. 2*).

**CORPORATIONS**

Corporations are governed by the Corporation Code. Their personality exists from the moment a certificate of incorporation is granted to it from the Securities and Exchange Commission (*Sec. 19, Corporation Code*).

**NOTE:** A classroom organization, whether for oratorical, debating, literary or social activities, cannot be considered a juridical person because it is essential, to be one, that the association be granted a juridical personality by the law.

**CAPACITY TO ACQUIRE LANDS**

**General Rule:** A religious corporation which is not controlled by Filipinos cannot acquire lands, otherwise alien religious landholdings in this country would be revived (*Register of Deeds v Ung Sui Si Temple, GR No. L-6776 [1955]*).

**Exceptions:**

1. The Roman Catholic Church can acquire lands because the Catholic Church in any country, lawfully incorporated in said country, is an entity or person separate and distinct from the personality of the Pope or the Holy See (*Roman Catholic Apostolic Administration, Inc. v Land Reg. Com. and Reg. of Deeds, GR No. L-8451 [1957]*);
2. An American citizen, under the Parity Amendment, can acquire lands in the Philippines, exploit our natural resources, and operate public utilities, only if in his particular state in the US, Filipinos are granted reciprocal parity rights (*Palting v San Jose Petroleum Inc., GR No. L-14441 [1966]*).

**PARTNERSHIP**

By a contract of partnership, two or more persons binds themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves; or for the exercise of a profession (*Art. 1767*).

Partnership are governed by the contract between partners and the provisions of the Civil Code.

**REQUISITES [2D]**

1. Two or more persons bound themselves to contribute money, property, or industry to a common fund;
2. They intend to divide the profits among themselves.

**Q:** May a Corporation form a Partnership?

**A:** No, because the relationship of trust and confidence which is found in a partnership, is absent in corporations. Moreover, if the corporation can be a partner, any other partner may bind it, and this is contrary to the Corporation Code, which says that a corporation can be bound only by the act of its Board of Directors.

However, it may enter into joint venture with another corporation where the nature of that venture is in line with the business authorized by its charter (*JM Tuason Co. v Bolanos, GR No. L-4935 [1954]*).

**NOTE:** They agreement may be done orally, with the exceptions of the following which requires the agreement to be in a public instrument:

1. When immovable property or real rights are contributed;
2. When the partnership has a capital of P3,000 or more.

**NOTE:** An inventory, signed by the parties and attached to the public instrument, of the immovable property which was contributed is essential for the validity of the contract of partnership (*Art. 1773*).

**NOTE:** The partnership has a juridical personality separate and distinct from that of each of the partners, even in case of failure to comply with the requirements of Art. 1772, first paragraph (*Art. 1768*).

## CAPACITY TO ENGAGE IN RETAIL TRADE

Under RA 1180, persons not citizens of the Philippines; and associations, partnerships, or corporations the capital of which is not owned wholly by citizens of the Philippines, are prohibited from engaging in the retail trade directly or indirectly (*Ichong v Hernandez*, GR No. L-7995 [2000]).

## SOLE PROPRIETORSHIP

A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise (*Juasing Hardware v Hon. Mendoza*, GR No. L-55689 [1982]). It is neither a natural person nor a juridical person (*Navarro v Escobido*, 606 SCRA 1 [2006]).

The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual and requires its proprietor to secure licenses and permits, register its business name, and pay taxes to the national government (*Id.*). The law does not best a separate legal personality on the sole proprietorship or empower it to file or defend an action in court (*Mangila v CA*, 387 SCRA 162 [2002]).

## TITLE II CITIZENSHIP AND DOMICILE

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### ART. 48

The following are citizens of the Philippines:

1. Those who were citizens of the Philippines at the time of the adoption of the Constitution of the Philippines;
  2. Those born in the Philippines of foreign parents who, before the adoption of said Constitution, had been elected to public office in the Philippines;
  3. Those whose fathers are citizens of the Philippines;
  4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship;
  5. Those who are naturalized in accordance with law.
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### ART. 49

Naturalization and the loss and reacquisition of citizenship of the Philippine are governed by special laws.

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### ART. 50

For the exercise of civil rights and the fulfilment of civil obligations, the domicile of natural persons is the place of their habitual residence.

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### ART. 51

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

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## CITIZENSHIP

It is the status of being a citizen, or of owning allegiance to a state for the privilege of being under its protection (*PARAS*, 250).

It is the membership in a political community which is more or less permanent in nature (*ALBANO*, 193).

It denotes possession within that particular political community of full civil and political rights subject to special disqualifications such as minority. Reciprocally, it imposes the duty of allegiance to the political community (*BERNAS*, 629).

**NOTE:** For purposes of the Civil Law and International Law, citizenship and nationality possessed the same meaning (*Id.*).

## KINDS OF CITIZENS

1. **Natural-Born Citizens** - those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with Par. 3, Sec. 1 hereof shall be deemed natural-born citizens (*Art. IV, No. 2, Consti.*).
2. **Naturalized Citizens** - citizens who become such through judicial proceedings;
3. **Citizens by Election** - citizens who become such by exercising the option to elect a particular citizenship, usually within a reasonable time after reaching the age of majority.

## MODES OF ACQUIRING CITIZENSHIP [BiNaMa]

1. **Birth**
  - a. **Jus Sanguinis** - citizens by blood; when a child is born of parents who are both Filipinos, wherever he may be born;
  - b. **Jus Soli** - citizenship is determined by place of birth; so that if a Filipino couple gives birth to a child in a place which adheres to the principle of *jus soli*, then the child is a citizen of such place;
2. **Naturalization** - artificial means (either juridical or administrative) by which a State adopts an alien and gives him imprint and endowment of a citizen of that country (*ALBANO*, 193-194);
3. **Marriage** of a woman to a foreigner whose laws automatically make the wife a citizen of his country.

**NOTE:** The exercise by a person of the rights and/or privileges that are granted only to Filipino citizens is not conclusive proof that he or she is a Filipino citizen (*Paa v Chan*, GR No. L-25945 [1967]).

## CITIZENS OF THE PHILIPPINES

1. Those who are citizens of the Philippines at the time of the adoption of this Constitution;
2. Those whose fathers or mothers are citizens of the Philippines;
3. Those born before 17 Jan. 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority;
4. Those who are naturalized in accordance with law (*Art. IV, Sec. 1, 1987 Constitution*).

## CARAM DOCTRINE

Under the 1935 Constitution, those born in the Philippines of foreign parent, who before the adoption of the Constitution had been elected to public office in the Philippines, are considered Filipino citizens (*Chiongbian v de Leon*, GR No. L-161434 [2004]).

## NATURAL-BORN CITIZENS

1. Citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship;
2. Those born before 17 Jan. 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority (*Art. IV, Sec. 2, 1987 Constitution*).

## FOUNDINGS AS NATURAL-BORN CITIZENS

As a matter of law, foundlings are as a class, natural born citizens. While the 1935 Constitution's enumeration is silent as to foundlings, there is no restrictive language which would definitely exclude foundlings either. The deliberations of the 1934 Constitutional Convention show that the framers intended foundlings to be covered by the enumeration.

Moreover, treaties and international law conventions, which are generally accepted principles of international law, support the presumption of natural-born citizenship of foundlings (*Poe-Llamanzares v COMELEC*, GR Nos. 221697, 221698-700 [2016]).

**NATURALIZATION**

It is the process by which a foreigner acquires voluntarily or by operation of law, the citizenship of another State (CRUZ, 802).

It is the legal act of adopting an alien and clothing him with the rights that belong to a natural-born citizen (BERNAS, 636).

**MODES OF NATURALIZATION**

1. **Direct Naturalization** is effected by:
  - a. Individual proceedings, usually judicial, under general naturalization laws;
  - b. Special act of the legislature, often in favor of distinguished foreigners who have rendered some notable service to the local state;
  - c. Collective change of nationality as a result of cession or subjugation;
  - d. Adoption of orphan minors as national of the State where they are born (CRUZ, 802);
  - e. Administrative proceedings (RA 9139).
2. **Derivative Naturalization** conferred on:
  - a. Wife of the naturalized husband;
  - b. Minor children of naturalized parent;
  - c. Alien woman upon marriage to a nation (CRUZ, *International law*, 154).

**SUBJUGATION/CESSION**

Political changes that result in the establishment of new relations between inhabitants of a territory and the new sovereign.

**DOCTRINE OF INDELIBLE ALLEGIANCE**

An individual may be compelled by municipal law to retain his original nationality even if he was already renounced or forfeited it under the laws of the second state whose nationality he has acquired (NACHURA, *Reviewer*, 268).

*Example: CA No. 63 provides that a Filipino may not divest himself of Philippine citizenship in a manner by subscribing to an oath of allegiance to support the Constitution of the laws of a foreign country when the Philippines in at way with any country (Id.).*

**EFFECTS OF NATURALIZATION**

1. **On the Wife** - it vests citizenship on the wife who might herself be lawfully naturalized; provided that she filed before the Bureau of Immigration and Deportation a petition for the cancellation of her Alien Certificate of Registration;
2. **On the Minor Children**
- 3.

| Born before the naturalization            |  | Born after the naturalization  |
|---|--|--|
| Born in the Philippines                   | Born outside the Philippines   | Born outside the Philippines   |
| Automatically becomes a Filipino citizen. | <b>If residing in the Philippines at the time of naturalization</b> - automatically becomes a Filipino citizen   | The child shall be a Filipino, <i>provided</i> that the child was registered as such before any Philippine consulate within 1 year after attaining majority age and takes oath of allegiance |
|   | <b>If not residing in the Philippines at the time of naturalization</b> - considered citizen only <i>during minority</i> , unless beings to reside permanently in the Philippines. |  |

(SUAREZ, 363)

**LOSS OF PHILIPPINE CITIZENSHIP**

1. By naturalization in foreign countries;
2. By express renunciation of citizenship;

3. By subscribing to an oath of allegiance to support the Constitution or laws of a foreign country upon attaining 21 years of age or more;
4. By rendering service to, or accepting commission in the armed forces of a foreign country;
 

*Exception: When rendering service is done with the consent of the Philippines, if either of the following circumstances is present:*

  - a. *The Philippines has a defensive and/or offensive pact of alliance with the said foreign country;*
  - b. *The said foreign country maintains armed forces on Philippine territory with the consent of the Philippines.*

**REPARATION**

The recovery of the original nationality upon fulfilment of certain conditions.

**DOMICILE**

For the exercise of civil rights and the fulfillment of civil obligations, the domicile of natural persons is the place of their habitual residence (Art. 50).

| RESIDENCE   | DOMICILE  |
|---|---|
| <b>As to definition</b>   |   |
| Indicates a place of abode, whether permanent or temporary;                     | Denotes a fixed permanent residence, which when absent, one has the intention of returning; |
| <b>As to number</b>   |   |
| There can be several places of residence;                                       | There can only be one place of domicile;  |
| <b>As to intention to remain</b>  |   |
| No length of residence without intention of remaining will constitute domicile. | It is residence couple with intention to remain for an unlimited time.                      |

**ELEMENTS OF DOMICILE**

1. Physical presence in a fixed place;
2. Intention to remain permanently in said place or *animus manendi* (Romualdez-Marco v COMELEC, GR No. 119975 [1995]).

**KINDS OF DOMICILE**

1. **Domicile of Origin** - acquired by every person at birth. It is usually the place where the child's parents reside and continues until the same is abandoned by acquisition of new domicile (Coquilla v COMELEC, GR No. 151914 [2002]);
2. **Domicile of Choice** - that which is voluntarily chosen by a *sui juris* as his more or less permanent home; that to which, whenever he is absent, he intends to return (Uytensu v Republic, GR No. L-6379 [1954]).
3. **Domicil by Operation of Law** - attributes to a person a domicile independent of his own intention or actual residence, ordinarily resulting from legal domestic relations, as that of the wife arising from marriage, or the relation of a parent and a child (Ugdoracion v COMELEC, GR No. 179851 [2008]).

**NOTE:** Three basic rules in domicile of choice:

1. A man must have a residence or domicile somewhere;
2. Domicile, once established, remains until a new one is validly acquired;
3. A man can have but one residence or domicile at any given time (Id.).

**REQUISITES OF ACQUISITION OF NEW DOMICILE**

1. Bodily presence in a new locality or the actual removal and actual change of domicile;
2. Intention to remain therein or *animus manendi*;
3. Intention to abandon the old domicile or *animus non revertendi* (Poe v COMELEC, GR No. 221697 [2016]).

**RULES IN DETERMINING THE DOMICILE OF JURIDICAL PERSONS**

1. Get the domicile provided for in the law creating or recognizing them or in their articles of agreement;
2. If not provided for, get the place:
  - a. Where their legal representation is established;
  - b. Where they exercise their principal functions.

**NOTE:** If the corporation has a head office and branch offices, the domicile is the location of the head office (*PARAS, 365*).

# FAMILY CODE OF THE PHILIPPINES

*EO 209, as amended*

## TITLE I MARRIAGE

### CHAPTER 1 REQUISITES OF MARRIAGE

**NOTE:** The Family Code (*EO 209*) was sign into law on 26 July 1987 by the Pres. C. Aquino and took effect on 3 Aug. 1988.

**ART. 1**

**Marriage is a special contract of permanent union between man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during marriage within the limits provided by this Code.**

**ASPECTS OF MARRIAGE**

1. *Special Contract* – it is a civil contract that is entered into by the agreement of the parties;
2. *A status or a relation* – founded on contract and established by law, under which certain rights and duties incident to the relationship come into being, irrespective of the wishes of the parties;
3. *An institution* – regulated and controlled by the State.

**NOTE:** Marriage, as a special contract, cannot be restricted by discriminatory policies or private individuals or corporations (*STA MARIA, 100*).

| MARRIAGE CONTRACT  | ORDINARY CONTRACT   |
|--|---|
| <b>As to dissolution</b>   |   |
| Cannot be revoked, dissolved or otherwise terminated by the parties, but only by annulment and death;                              | Can be dissolved at the instance of the parties involved and by other legal causes;   |
| <b>As to the stipulation of the parties</b>  |   |
| The nature, consequences and incidents of marriage are governed by law and not subject to agreement, except in property relations; | The parties are free to establish such clauses, terms and conditions provided the same are not contrary to law, morals, good customs, public order, or public policy; |
| <b>As to parties involved</b>  |   |
| Only two persons of opposite sex may enter and only one contract may exist at the same time;                                       | May be entered into by any number of persons, whether of the same or different sex;   |
| <b>As to nature</b>  |   |
| A fundamental inviolable social institution.   | Ordinarily just a contract.   |

| As to duration   |  |
|--|--|
| Permanent;   | Parties can fix a period for its efficacy to be ineffective after a few years;         |
| As to actions for breach   |  |
| Breach of obligations of husband and wife does not give rise to an action for damages. The law provides penal and civil sanctions such as prosecution for adultery or concubinage and proceedings for legal separation, action for support, etc. | Breach of ordinary contracts gives rise to an action for damages;                      |
| As to governing law  |  |
| Law on marriage;   | Law on contracts;  |
| As to legal capacity   |  |
| Personal legal capacity is required.   | Minors may contract through their parents or guardians or in some cases by themselves. |

**MARRIAGE AS SOCIAL INSTITUTION**

It is a social institution which the State is vitally interested to maintain its purity, continuity and permanence. The security and stability of the State is largely dependent upon it. It is the interest and duty of each and every member of the community to prevent the bringing about of a condition that would shake its foundation and ultimately lead to its destruction (*Jimenez v Republic, GR No. L-12790 [1960]*).

This interest proceeds from Art. II, Sec. 12 of the Constitution which provides that “the State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution xxx xxx xxx.”

The Art. XV, Sec. 2 of the Constitution also provides that “marriage is an inviolable social institution, is the foundation of the family and shall be protected by the State.”

The State can find no stronger anchor than on good, solid and happy families. The breakup of families weakens our social and moral fabric; hence, their preservation is not the concern along of the family members.

**NATURE, CONSEQUENCES, AND INCIDENTS OF MARRIAGE**

In real sense, there are three parties to every civil marriage: *two willing spouses* and an *approving State*. Thus, the law declares that the nature, consequences and incidents of marriage are to be governed by law and cannot be subject to stipulations, except the property relations during the marriage within the limits provided by the Family Code (*RABUYA, 167*).

**PRESUMPTION OF MARRIAGE**

Rule 131, Sec. 3 (aa) of the New Rules on Evidence provides the presumption of marriage:

*The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:*

xxx xxx xxx  
 (aa) *That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage.*

xxx xxx xxx  
 Once a man and a woman have lived as husband and wife and such relationship is not denied nor contradicted, the presumption of their being married must be admitted as a fact (*Alvadi v City Government of Tacloban, GR No. L-49084 [1985]*).

**NOTE:** Although a marriage contract is considered a primary evidence of marriage, its absence is not always proof that no marriage in fact took place. Once the presumption of marriage arises, other evidence may be presented in support thereof (*Delgado vda. de Dela Rosa v Heirs of Marciana Rustia vda. de Damian, GR No. 155733 [2006]*).

**NOTE:** The presumption in favor of matrimony is one of the strongest known in law (*People v Borromeo, GR No. L-61873 [1984]*).

## BASIS

The reason is that such is the common order of society, and if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and of law (*Adong v Cheong Seng Gee, GR No. 18081 [1922]*).

## SEMPER PRAESUMITUR PRO MATRIMONIO

Always presume marriage.

**NOTE:** The existence of marriage contract renders the presumption of marriage unnecessary. Person dwelling together in apparent matrimony are presumed, in the absence of any counter-presumption or evidence special to the case, to be in fact married (*Republic v Dayot, GR No. 175581 [1991]*).

## PROOF OF MARRIAGE

The best documentary evidence of a marriage is the marriage contract (*Villanueva v CA, GR No. 84464 [1991]*).

While the marriage certificate is considered the primary evidence of a marital union, it is not regarded as the sole and exclusive evidence of marriage (*Añonuevo v Intestate Estate of Jalandoni GR No. 178221 [2010]*).

The following may be presented as proof of marriage:

- Testimony of a witness to the matrimony;
- The couple's public open cohabitation as husband and wife after the alleged wedlock;
- The birth and baptismal certificate of children born during such union;
- The mention of such nuptial in subsequent documents (*Trinidad v CA, GR No. 118904 [1998]*).

## LAW FAVORS THE VALIDITY OF MARRIAGE

It is because the State is interested in the preservation of the family and sanctity of the family is a matter of constitutional concern (*Balogbog v CA, GR No. 83598 [1997]*).

The burden of proof to show the nullity of the marriage rests upon the party seeking its nullity (*Hernandez v CA, GR No. 126010 [1999]*).

Marriage be not impugned and discredited by an alleged prior marriage save upon proof so clear, strong and unequivocal as to produce a moral conviction of the existence of that impediment (*Ching Huan v Cheng GR No. L-3018 [1951]*).

## ACKNOWLEDGEMENT OF OFFSPRING OF CRIME

Persons guilty of rape shall be sentenced to acknowledge the offspring of the crime unless the law should prevent him from doing so (*People v Manahan, GR No. 128157 [1999]*).

## RIGHT TO PRIVACY PRESERVED

The intimacies between husband and wife do not justify any one of them in breaking the drawers and cabinets of the other and in ransacking them for any telltale evidence of marital infidelity. A person by contracting marriage, does not shed his/her integrity or his right to privacy as an individual and the constitutional protection is ever available to him or to her (*Zulueta v CA, GR No. 107383 [1996]*).

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### ART. 2

No marriage shall be valid, unless these essential requisites are present:

- Legal capacity of the contracting parties who must be a male and a female; and
  - Consent freely given in the presence of the solemnizing officer.
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### ART. 3

The formal requisites of marriage are:

- Authority of the solemnizing officer;
- A valid marriage license except in the cases provided for in Chapter 2 of this Title; and
- A marriage ceremony which takes place with the appearance of the contracting parties before the

solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

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## GOVERNING LAW

The law prescribes the requisites of valid marriage. Hence the validity of a marriage is tested according to the law in force at the time of the marriage is contracted (*Ablaza v Republic, GR No. 158298 [2010]*).

**NOTE:** The nature of the marriage already celebrated cannot be changed by a subsequent amendment of the governing law (*Id.*).

## ESSENTIAL REQUISITES OF MARRIAGE [LC]

- Legal capacity of the contracting parties who must be a male and a female; and
- Consent freely given in the presence of a solemnizing officer.

## FORMAL REQUISITES OF MARRIAGE [ALM]

- Authority of the solemnizing officer;
- Valid marriage license;
- 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 2 witnesses of legal age.

## LEGAL CAPACITY [ASA]

- Age requirement;
- Sex of the parties;
- Absence of legal impediments mentioned in Art. 37 and 38.

**NOTE:** Any male or female of the age of 18 years or upwards not under any of the impediments mentioned in Arts. 37-38, may contract marriage (*Art. 5, FC*).

## AGE REQUIREMENT

Must be 18 years or upwards. A marriage contracted by any party below 18 is void *ab initio*, even if such marriage is with the consent of the parents or guardians of the minor (*RABUYA, 174*).

**NOTE:** Parties must be at least 18 at the time of the celebration of the marriage and not at the date of filing of the application for issuance of marriage license. This is because pursuant to Art. 6 in relation to Art. 5, parties contract marriage on the date of the solemnization of the marriage (*Id.*).

**NOTE:** In case either or both of the contracting parties, not having been emancipated by a previous marriage, are between the ages of 18 and 21, they shall, in addition to the requirements of the preceding articles, exhibit to the local civil registrar, the consent to their marriage of their father, mother, surviving parent or guardian, or persons having legal charge of them, in the order mentioned. Such consent shall be manifested in writing by the interested party, who personally appears before the proper local civil registrar, or in the form of an affidavit made in the presence of 2 witnesses and attested before any official authorized by law to administer oaths. Their personal manifestation shall be recorded in both applications for marriage license, and the affidavit, if one is executed instead, shall be attached to said application (*Art. 14, FC*).

## EFFECT OF SEX CHANGE

**General Rule:** A person who had a biological sex change from male to female remains to be male. The Court ruled that sex determined visually by looking at the genitals of a baby at the time of birth is immutable and that there is no law legally recognizing gender sex re-assignment (*Silverio v Republic, GR No. 174689 [2007]*).

**Exception:** If a person was found out to have *congenital adrenal hyperplasia*, which is a condition where the person afflicted has both male and female characteristics and organs, it was shown that the person, though genetically female, secreted male hormones and not female hormones, the Court considered the person as an *intersex*

*individual* and granted the preference of the person to be considered as a male person, allowing the amendment of the birth certificate from male to female (*Republic v Cagandahan, GR No. 16666 [2008]*).

## SEX

The sum of peculiarities of structure and function that distinguish a male from a female. Does not include persons who have undergone sex reassignment.

1. *Female* – the sex that produces ova or bears young;
2. *Male* – the sex that has organs to produce spermatozoa for fertilizing ova.

**NOTE:** Sex is immutable.

## ABSENCE OF IMPEDIMENTS

### Void Incestuous Marriages (*Art. 37*):

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

### Void Marriages because of public policy (*Art. 38*):

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

## CONSENT

The marriage relation or status is founded on the consent of the parties. Consent is necessary in order to create a valid marriage, and without consent the purported marriage is a mere nullity. Consent must be mutual, where one party alone consents to the contract there is no marriage (*RABUYA, 180*).

**NOTE:** The mere fact that the marriage is bogus and fraudulent on the part of one party will not render the same invalid where the other party is deceived and believed it to be a valid marriage. This is especially true where one party was aware that the solemnizer had no legal authority to solemnize a marriage but the other party believed in good faith that the solemnizer had the legal authority to do so (*see Art. 35, no. 2, FC*).

## REQUISITES

1. *Freely given* – the contracting parties willingly and deliberately enter into marriage;
  - a. *Must be real* – it is not vitiated nor rendered defective by any of the vices of consent under Arts. 45-46;
  - b. *Must be conscious or intelligent* – the understanding of the parties should be affected by insanity, intoxication, drugs, or hypnotism (*Republic v Albios, GR No. 198780 [2013]*).
2. *Made in the presence of a solemnizing officer.*

## MANIFESTATION OF CONSENT

There must be physical assent to the contract (*RABUYA, 181*). The contracting parties must appear personally before the solemnizing officer and declare in the presence of not less than 2 witnesses of legal age that they take each other as husband and wife (*Art. 6*).

**NOTE:** A pretended marriage, legal in form but entered into as a joke, with no real intention of entering into an actual marriage status, and with a clear understanding that the parties would not be bound.

Marriages in jest are void *ab initio*, not for vitiated, defective, or unintelligent consent, but for a complete absence of consent (*Republic v Albios, GR No. 198780 [2013]*).

## INTENT OR MOTIVE

### General Rule:

The law will not look behind the appearance of a consent which was clearly manifested to determine its reality. The good faith or the bad faith of the parties does not affect the validity of the marriage so long as the essential and formal requisites are present.

### Exception:

Subsequent marriage in Art. 41 is considered void *ab initio* if both spouses therein acted in bad faith.

**NOTE:** The possibility that the parties in a marriage might have no real intention to establish a life together is insufficient to nullify a marriage freely entered into in accordance with law. Marriages entered into for other purposes, limited or otherwise, such as convenience, companionship, money, status, and title, provided that they comply with all the legal requisites, are equally valid. Love, though the ideal consideration in a marriage contract, is not the only valid cause for marriage (*Id.*).

## AUTHORITY OF THE SOLEMNIZING OFFICER

### General Rule:

If the solemnizing officer is not authorized to celebrate marriage, the same is ordinarily considered void *ab initio*.

### Exception:

If either or both parties believed in good faith that the solemnizer had the legal authority to perform marriages, then the marriage shall remain valid.

## PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES (*Art. 7*)

1. Incumbent member of the judiciary with the court's jurisdiction;
2. Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, acting within the limits of the written authority granted him by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer's church or religious sect;
3. Any ship captain or airplane chief only in the cases mentioned in Art. 31;
4. Any military commander of a unit to which a chaplain is assigned, in the absence of the latter, during a military operation, likewise only in the cases mentioned in Art. 32;
5. Any consul-general, consul, or vice-consul in the case provided in Art. 10;
6. Municipal and City mayors (*RA 7160, Secs. 444-445*).

## VALID MARRIAGE LICENSE

A marriage license is required in order to notify the public that two persons are about to be united in matrimony and that anyone who is aware or has knowledge of any impediment to the union of the two shall make it known to the local civil registrar (*Niñal v Bayadog, GR No. 133778 [2000]*). It is a demonstration of the State's involvement and participation in every marriage (*RABUYA, 185-186*).

## EXCEPTIONS TO THE REQUIREMENT OF MARRIAGE LICENSE [MARCO]

1. Marriages among Muslims or among members of the ethnic communities, provided these are solemnized in accordance with their customs, rites or practices (*Art. 33, FC*);
2. In case either or both of the contracting parties are in *articulo mortis* (*Arts. 27, 31 and 32, FC*);
3. 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 LCR (*Art. 28, FC*);
4. In case of cohabitation for at least 5 years and without any legal impediment to marry each other (*Art. 34, FC*);



5. Solemnized outside the Philippines where no marriage license is required by the country they were solemnized (*Art. 26, par. 1, FC*).

#### MARRIAGE CEREMONY

Solemnization of a marriage comprehends a personal appearance together by the contracting parties before one authorized by law to solemnize marriages, and that the ceremony be entered into and performed by the parties together with a person authorized to perform such in the presence of at least 2 witnesses of legal age (*RABUYA, 186*).

#### COMMON-LAW MARRIAGE

Marriage without formal solemnization or without formalities, which is not recognized in the Philippines. Sometimes called *consensual marriage* or *marriage in fact*.

It is an agreement between a man and a woman who are legally competent to contract a marriage, that they take each other as husband and wife, and such a marriage differed from a ceremonial marriage only in the respect that the agreement does not have to be in the presence of witnesses or pronounced by an official having legal authority to perform marriage ceremonies (*Id., 186-187*).

#### MARRIAGE BY PROXY

The personal appearance of the bride and the groom at the marriage ceremony is essential to a valid marriage, hence, a marriage by proxy in the Philippines is not recognized as valid (*see Art. 6, FC*).

#### WITNESSES

There must be at least 2 witnesses of legal age. This requirement is not mandatory but merely directory so that a failure to comply therewith does not invalidate the marriage (*RABUYA, 187*).

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#### ART. 4

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

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

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

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| EFFECT OF NONCOMPLIANCE WITH THE REQUISITES |                       |        |
|---|-----------------------|--------|
|   | Essential             | Formal |
| Absence                                     | Void <i>ab initio</i> |        |
| Defect                                      | Voidable              |        |
| Irregularity                                |                       | Valid  |

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#### ART. 5

**Any male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38, may contract marriage.**

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NOTE: See RA 6809.

NOTE: Be it remembered that formerly, the marriageable age was 14 years for females and 16 years for males (*PARAS, 345*).

#### REASON FOR INVALIDITY IF BELOW 16 OF AGE

Extreme youth may not lend stability of the marriage and the family (*ALBANO, 243*).

#### REASON FOR GENDER REQUIREMENT

Two males or two females cannot reproduce. It must be remembered that Article 1 of the Family Code that marriage is "for the establishment of *conjugal* and *family life*." When the law speaks of *conjugal* and *family life*, it refers to reproduction of children as one of the purposes of marriage (*Id.*).

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#### ART. 6

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

In case of a marriage in *articulo mortis*, when the party at the point of death is unable to sign the marriage certificate, it shall be sufficient for one of the witnesses to the marriage to write the name of the said party, which fact shall be attested by the solemnizing officer.

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#### CEREMONIAL MARRIAGE

It is not sufficient that the parties enter into an agreement "that take each other as husband and wife" or that consent be given (*RABUYA, 195*).

The law provides that there are no prescribed forms of ceremony in a marriage. The solemnizing officer may do it as he pleases depending upon how he would perform it. But it is required that the parties must *personally appear before the solemnizing officer and declare that they take each other as husband and wife in the presence of not less than 2 witnesses of legal age*. They cannot send somebody else to declare for them that they take each other as husband and wife. The absence of such witnesses does not make the marriage void, because it is merely a formal requirement that does not go into the validity of the marriage (*ALBANO, 245*).

**NOTE:** While the form of ceremony is immaterial, what is important is that, there is actual solemnization of the marriage, otherwise, it would be void even if it is just a formal requisite of marriage. The law says that its total absence makes the marriage void (*Id.*).

#### PRESENCE OF WITNESSES

Personal appearance and declaration of the contracting parties before the solemnizing officer is essential. However, the requirement of witnesses is merely directory and evidentiary. The absence of marriage contract has no effect upon the validity of the marriage; in the same way, the absence of witnesses in the ceremony must not likewise affect its validity (*RABUYA, 204*).

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#### ART. 7

Marriage may be solemnized by:

- Any incumbent member of the judiciary within the court's jurisdiction;
  - Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, acting within the limits of the written authority granted him by his church or religious sect and provided that at least one of the contracting parties belong to the solemnizing officer's church or religious sect;
  - Any ship captain or airplane chief only in the cases mentioned in Article 31;
  - Any military commander of a unit to which a chaplain is assigned, in the absence of the latter, during a military operation, likewise only in the cases mentioned in Article 32;
  - Any consul-general, consul or vice-consul in the case provided in Article 10.
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#### PERSONS WHO MAY SOLEMNIZE MARRIAGE [PICC CoMa]

- Priest, rabbi, imam, or ministers of any church or religious sect;
- Incumbent members of the judiciary within the court's jurisdiction;
- Ship captain or air plane chiefs;
- Commander of a military unit, in the absence of a chaplain;

5. Consul generals, consuls or vice consuls of the Philippines abroad;
6. Municipal and city mayors (RA 7160, Secs. 444-445).

## MEMBERS OF THE JUDICIARY

*Those who have national jurisdiction*

1. Chief Justice and Associate Justices of the Supreme Court;
2. The Presiding Justice and Justices of the Court of Appeals;
3. The Presiding Justice and Justices of the Sandiganbayan;

*Those who have jurisdiction only in their territory:*

4. Judges of the RTC;
5. Judges of the CTA;
6. Judges of the MetTC, MTC and MTCC.

## REQUISITES

1. Must be incumbent members;
2. Must solemnize the marriage with their court's jurisdiction.

## SOLEMNIZED OUTSIDE ITS JURISDICTION

An RTC, MetTC, MTCC and MTC judge who solemnize a marriage outside his jurisdiction is void for lack of a formal requisite: authority of the solemnizing officer. A fortiori, outside of their court's jurisdiction, they are not clothed with authority to solemnize marriages (RABUYA, 206).

**NOTE:** In the case of *Navarro v Domagtoy* (AM No. MTJ-96-1088 [1996]), the Court ruled that a marriage solemnized outside the jurisdiction of the judge is valid for it only consists in the irregularity of the formal requisite. Nonetheless, the *Navarro* case is an administrative case against an erring judge. Hence, the statements made by the Court may be considered merely as *obiter dictum* and do not set a binding precedent (*Id.*).

## OBITER DICTUM

An opinion uttered by the way, not upon the point or question pending, as if turning aside from the main topic of the case to collateral subjects. An opinion of the court which does not embody its determination and is made without argument or full consideration of the point, and is not professed deliberate determinations of the judge himself (*People v Macadaeg*, GR No. L-4316, [1952]).

**NOTE:** In the Civil Code, the jurisdiction of judges of RTC and MTC to solemnize a marriage is not limited by law to their specific territorial jurisdiction. Under the Family Code, however, these judges have the authority to solemnize marriages only "within the court's jurisdiction" (*Id.*).

**NOTE:** If the good faith of the parties consists in their mistaken belief that a judge has the authority to solemnize marriages outside of his court's jurisdiction, the marriage is void *ab initio*. This is a clear case of ignorance of the law (*see Art. 3, CC*). If their good faith, however, consists in their mistaken belief that the solemnizer is a judge of the locality, then good faith may be invoked in this case since this is a clear case of ignorance of fact and can, therefore, be a basis of good faith (*Id.*, 208).

## PRIEST, RABBI, IMAM OR MINISTER

**Requisites:**

1. Duly authorized by his church or religious sect;
2. Registered with the office of the civil registrar general;
3. Acting within the limits of the written authority granted;
4. At least 1 of the parties belongs to the solemnizing officer's church or religious sect (*Art. 7, par. 2, FC*).

**NOTE:** Absence of the foregoing requisites, the religious solemnizing officer is not clothed with authority to solemnize a marriage. Consequently, any marriage solemnized by said officer is void *ab initio* (RABUYA, 208).

## CIVIL REGISTRAR GENERAL

[Director of National Library] shall register and issue the authorization to solemnize marriage to every priest, minister or rabbi

authorized by his denomination, church, sect, or religion to solemnize marriage (*Id.*, 209).

**NOTE:** The issuance of an authorization to solemnize marriage by the Director is a ministerial duty for reasons of public policy (*Jimenez v Rodriguez*, 81 Phil. 303).

**NOTE:** Marriages among Muslims or among members of the ethnic cultural communities may be solemnized only by those solemnizing officers enumerated in Art. 7 and duly registered with the Civil Registrar General. As to whether tribal heads or chieftains should be allowed to register as solemnizing officers would depend on whether, aside from being the social or political leader of their respective tribes, they also stand as their priest or religious head (*DOJ Opinion No. 179, S. 1993*).

## SHIP CAPTAIN OR AIRPLANE CHIEF

**Requisites:**

1. The marriage must be in *articulo mortis*;
2. Must between passengers or crew members;
3. The ship must be at sea or the plane must be in flight; including stopovers at ports of call.

**NOTE:** Assistant pilot has no authority to solemnize a marriage even if main pilot dies (*STA MARIA*, 142).

**NOTE:** Such marriage can be solemnized during stopovers at ports of call, wherein the voyage is not yet terminated and includes instances when there are transit passengers which the others affirmed (*Minutes of the 147<sup>th</sup> joint Civil Code and Family Law committees held on 19 July 1986, p. 10*).

## MILITARY COMMANDER

**Requisites: [OZCAR]**

1. He must be a commissioned officer, or an officer in the armed forces holding rank by virtue of a commission from the President;
2. The marriage must be solemnized within the zone of military operations.
3. The assigned hchaplain to his unit must be absent;
4. The marriage must be in articulo mortis.

**NOTE:** The contracting parties must either be members of the armed forces or civilians (*Art. 32, FC*).

**NOTE:** Unit refers to a battalion under the present table of organization and not a mere company (*Minutes of the Civil Code Revision, p. 4*).

*Illustration:*

*X, a soldier belongs to a military unit headed by Y. While in a place of military operation, X was shot and is at the point of death, so Z, his girlfriend requested Y to solemnize their marriage. The marriage is valid even without marriage license because Y is authorized to solemnize the marriage under the situation.*

*If in the problem above, there was a priest or a chaplain assigned and he was even one of the witnesses, the marriage is not valid because the military commander can only have the authority to solemnize the marriage in the absence of the chaplain.*

*If in the problem above, it was Z, the girlfriend of X who was in articulo mortis, the military commander can likewise solemnize the marriage in the absence of the chaplain assigned. The rule is so because it does not require that the member of the military alone be in articulo mortis. Such marriage is allowed even if a civilian is the one under articulo mortis.*

*But if A, after having been shot was brought to a hospital outside of the military operation, the marriage would be void since the law requires that the marriage must be made during military operation and within the area of military operation.*

## CONSUL GENERALS, CONSULS, OR VICE CONSULS

**Requisites:**

1. The marriage must be only between Filipino Citizens;
2. Said official has the only authority to solemnize marriage abroad;

3. He acts not only as the solemnizing officer; he must also perform the duties of the Local Civil Registrar in the issuance of marriage license

**NOTE:** Ambassadors cannot solemnize marriages anymore. They are excluded by the law (*Albano, 251*).

#### MUNICIPAL OR CITY MAYORS

The term "mayor" includes a vice-mayor who is the "acting mayor" or who is merely acting as a mayor (*People v Bustamante, GR No. L-11598 [1959]*).

**NOTE:** A mayor who had solemnized a marriage outside of his territorial jurisdiction will not affect the validity of the marriage. This is a mere irregularity in the exercise of his authority to solemnize marriages. The Local government Code simply states that mayors are authorized to solemnize marriages without limiting the exercise of such authority to their territorial jurisdiction (*RABUYA, 211*).

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#### ART. 8

The marriage shall be solemnized publicly in the chambers of the judges or in open court, in the church, chapel or temple, or in the office of the consul-general, consul or vice-consul, as the case may be, and not elsewhere, except in cases of marriage contracted at the point of death or in remote places in accordance with Article 29 of this Code, or where both of the parties request the solemnizing officer in writing in which case the marriage may be solemnized at the house or place designated by them in a sworn statement to that effect.

#### VENUE OR PLACE OF MARRIAGE

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

#### EXCEPTIONS [HAR]

1. Marriage at a house or place designated by the parties in a sworn statement to that effect, with the written request of both parties to the solemnizing officer;
2. Marriage is in articulo mortis;
3. Marriage is in remote places (*STA MARIA, 146*).

**NOTE:** This provision is only directory and the requirement that the marriage be solemnized in a particular or a public place is not an essential requisite (*Id.*). Non-compliance therewith will not affect the validity of the marriage since this is a mere irregularity (*Navarro v Domagtoy, AM No. MTJ-96-1088 [1996]*).

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#### ART. 9

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

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#### ART. 10

Marriages between Filipino citizens abroad may be solemnized by a consul-general, consul, or vice-consul of the Republic of the Philippines. The issuance of the marriage license and the duties of the local civil registrar and of the solemnizing officer with regard to the celebration of marriage shall be performed by said consular official.

#### WHO MUST ISSUE MARRIAGE LICENSE

The local civil registrar of the city or municipality where either contracting party habitually resides (*Art. 9, FC*). However, if the marriage is to be celebrated abroad between Filipinos, the license may be issued by the consul-general, consul or vice-consul of the Philippines where the marriage is to be celebrated (*Art. 10, FC*).

**NOTE:** If the marriage license is obtained elsewhere, the validity of the marriage is not affected since this is a mere irregularity in the issuance of the said license (*RABUYA, 213*).

**NOTE:** The issuance of a marriage license in a place, not the residence of either of the contracting parties, and issuance of a marriage license despite of the absence of publication or prior to the completion of the 10-day period for publication are considered mere irregularities that do not affect the validity of the marriage (*Alcantara v Alcantara, GR No. 167746 [2007]*).

**NOTE:** If the marriage is between a Filipino and an alien, the consular officials are not clothed with authority to solemnize such marriage. Likewise, they have no authority to solemnize marriages outside of the country where they hold office (*RABUYA, 214*).

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#### ART. 11

Where a marriage license is required, each of the contracting parties shall file separately a sworn application for such license with the proper local civil registrar which shall specify the following:

1. Full name of the contracting party;
2. Place of birth;
3. Age and date of birth;
4. Civil status;
5. If previously married, how, when and where the previous marriage was dissolved or annulled;
6. Present residence and citizenship;
7. Degree of relationship of the contracting parties;
8. Full name, residence and citizenship of the father;
9. Full name, residence and citizenship of the mother; and
10. Full name, residence and citizenship of the guardian or person having charge, in case the contracting party has neither father nor mother and is under the age of twenty-years.

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

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#### ART. 12

The local civil registrar, upon receiving such application, shall require the presentation of the original birth certificates, or in default thereof, the baptismal certificates of the contracting parties or copies of such documents duly attested by the persons having custody of the originals. These certificates or certified copies of the documents required by this Article need not be sworn to and shall be exempt from the documentary stamp tax. The signature and official title of the person issuing the certificate shall be sufficient proof of its authenticity.

If either of the contracting parties is unable to produce his birth or baptismal certificate or a certified copy of either because of the destruction or loss of the original, or if it is shown by an affidavit of such party or of any other person that such birth or baptismal certificate has not yet been received though the same has been required of the person having custody thereof at least fifteen days prior to the date of the application, such party may furnish in lieu thereof his current residence certificate or an instrument drawn up and sworn to before the local civil registrar concerned or any public official authorized to administer oaths. Such instrument shall contain the sworn declaration of two witnesses of lawful age, setting forth the full name, residence and citizenship of such contracting party and of his or her parents, if known, and the place and date of birth of such party. The nearest of kin of the contracting parties shall be preferred as witnesses, or, in their default, persons of good reputation in the province or the locality.

The presentation of birth or baptismal certificate shall not be required if the parents of the contracting parties appear personally before the local civil registrar concerned and swear to the correctness of the lawful age of said parties, as stated in the application, or when the local civil registrar shall, by merely looking at the applicants upon their personally appearing before

him, be convinced that either or both of them have the required age.

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#### ART. 13

In case either of the contracting parties has been previously married, the applicant shall be required to furnish, instead of the birth or baptismal certificate required in the last preceding article, the death certificate of the deceased spouse or the judicial decree of the absolute divorce, or the judicial decree of annulment or declaration of nullity of his or her previous marriage. In case the death certificate cannot be secured, the party shall make an affidavit setting forth this circumstances and his or her actual civil status and the name and date of death of the deceased spouse.

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#### ART. 14

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

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#### ART. 15

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

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#### ART. 16

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

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

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#### ART. 17

The local civil registrar shall prepare a notice which shall contain the full names and residences of the applicants for a marriage license and other data given in the applications. The notice shall be posted for ten consecutive days on a bulletin board outside the office of the local civil registrar located in a

conspicuous place within the building and accessible to the general public. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local civil registrar thereof. The marriage license shall be issued after the completion of the period of publication.

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#### ART. 18

In case of any impediment known to the local civil registrar or brought to his attention, he shall note down the particulars thereof and his findings thereon in the application for a marriage license, but shall nonetheless issue said license after the completion of the period of publication, unless ordered otherwise by a competent court at his own instance or that of any interested party. No filing fee shall be charged for the petition nor a bond required for the issuance of the order.

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#### ART. 19

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

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#### ART. 20

The license shall be valid in any part of the Philippines for a period of one hundred twenty days from the date of issue, and shall be deemed automatically cancelled at the expiration of said period if the contracting parties have not made use of it. The expiry date shall be stamped in bold characters on the face of every license issued.

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#### ART. 21

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

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

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#### WHERE TO APPLY

Application must be filed in the local civil registrar of the city or municipality where either contracting party habitually resides, although the license obtained elsewhere shall not affect the validity of the marriage (*RABUYA, 218*).

#### DOCUMENTS ACCOMPANYING THE APPLICATION

1. Birth Certificate or Baptismal Certificate;
2. Death Certificate of spouse, divorce decree, etc.;
3. Parental consent or advice;
4. Certificate of marriage counselling;
5. Certificate of legal capacity
6. Certificate of compliance in Family Planning Seminary.

#### GENERAL RULE

The LCR, even if he finds an impediment in the impending marriage, must nevertheless issue the marriage license (*Art. 18, FC*).

#### EXCEPTIONS

1. Where he is judicially restrained from issuing the marriage license as ordered otherwise by a competent court at his own instance or that of any interested party (*Id.*);
2. Where the law clearly provides that, as to the foreigner, the certificate of legal capacity is a necessary requisite before a

marriage license can be obtained by him or her (*STA MARIA, 157*).

3. In case of marriage in *articulo mortis*, and marriage in remote places, the solemnizing officer:
  - a. State in an affidavit executed before the LCR or any person authorized to administer oaths that the marriage was performed in *articulo mortis* or that the residence of either parties, specifying the barrio or barangay, is so located that there is no means of transportation to enable such party to appear personally before the LCR;
  - b. That he took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of legal impediment to the marriage (*Art. 29, FC*).
4. In cases of marriage between a man and a woman living together as husband and a wife for at least 5 years without legal impediment to marry each other, the solemnizing officer must state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage (*Art. 34, FC*).

**NOTE:** If without the certificate of legal capacity, the marriage license was nevertheless issued, the marriage celebrated on the basis of such marriage license will still be considered valid as this is merely an irregularity in complying with the formal requirement of the law in procuring a marriage license (*Garcia v Recio, GR No. 138322 [2001]*, see also *Art. 4, FC*).

#### **PARENTAL CONSENT OR ADVICE?**

The law provides that when a party to the marriage is between 18 to 21 years old, there is a need for parental consent; when a party to the marriage is between 21 to 25 years old, what is needed is parental advice. If the person is 21 years old, should he need a consent or advice? To answer, refer to *Garvida v Sales, Jr (GR No. 124893 [1997])* wherein the Court ruled that law speaks of years, not months nor days. It is understood that years are of 365 days each. Hence, when a person is 20 years, 11 months and 29 days old at the time of the celebration of the marriage, what is needed is the consent of the parents. However, when the person is 21 years and 1 day at the time of the celebration of the marriage, what is needed is parental advice (*Based from the lecture of Dean E. Enginco of DLSL-Col, 6 Aug. 2018*).

**NOTE:** Absence of parental consent renders the marriage voidable for the law states that parental consent is "...in addition to the requirements of the preceding articles..." (*Art. 14, FC*).

**NOTE:** Absence of parental advice does not affect the marriage. However, the marriage license shall not be issued till after 3 months following the completion of publication of the application (*Art. 15, FC*).

#### **MARRIAGE COUNSELING**

This is to enable the parties to find out if they are compatible before they get married. The lack of the certificate of marriage counseling is the same as the lack of parental advice (*SEMPIO-DIY, 21*).

#### **FAMILY PLANNING SEMINARY**

No marriage license shall be issued by the local civil registrar unless the applicants present a Certificate of Compliance issued for free by the local Family Planning Office certifying that they had duly received adequate instructions and information on responsible parenthood, family planning, breastfeeding and infant nutrition (*Sec. 15, RA 10354*). Such is a reasonable exercise of police power by the State (*Imbong v Ochoa, Jr, GR No. 204819 [2014]*).

#### **REASON FOR ARTICLE 21**

A certificate of legal capacity is necessary because the Philippines, insofar as marriage is concerned, adheres to the national law of the contracting parties with respect to their legal capacity to contract marriage (*STA MARIA, 157*).

#### **EXCEPTION TO ARTICLE 21**

Marriage of both foreign citizens solemnized by their country's consul-general assigned in the Philippines, if their country's law allows the same (*Id., 158*).

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#### **ART. 22**

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

1. The full name, sex and age of each contracting party;
  2. Their citizenship, religion and habitual residence;
  3. The date and precise time of the celebration of the marriage;
  4. That the proper marriage license has been issued according to law, except in marriage provided for in Chapter 2 of this Title;
  5. That either or both of the contracting parties have secured the parental consent in appropriate cases;
  6. That either or both of the contracting parties have complied with the legal requirements regarding parental advice in appropriate cases; and
  7. That the parties have entered into marriage settlement, if any, attaching a copy thereof.
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#### **Art. 23**

It shall be the duty of the person solemnizing the marriage to furnish either of the contracting parties the original of the marriage certificate referred to in Article 6 and to send the duplicate and triplicate copies of the certificate not later than fifteen days after the marriage, to the local civil registrar of the place where the marriage was solemnized. Proper receipts shall be issued by the local civil registrar to the solemnizing officer transmitting copies of the marriage certificate. The solemnizing officer shall retain in his file the quadruplicate copy of the marriage certificate, the original of the marriage license and, in proper cases, the affidavit of the contracting party regarding the solemnization of the marriage in a place other than those mentioned in Article 8.

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#### **ART. 24**

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

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#### **ART. 25**

The local civil registrar concerned shall enter all applications for marriage licenses filed with him in a registry book strictly in the order in which the same are received. He shall record in said book the names of the applicants, the date on which the marriage license was issued, and such other data as may be necessary.

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#### **PROOF OF MARRIAGE**

The marriage certificate is the best documentary evidence of a marriage (*Villanueva v CA, GR No. 84464 [1991]*). Nonetheless, it is not regarded as the sole and exclusive evidence of marriage. And it may be proven by other relevant evidence (*Añonuevo v Intestate Estate of Jalandoni, GR No. 178221 [1997]*). The absence of marriage certificate is not proof that no marriage took place (*RABUYA, 225*).

#### **DISTRIBUTION OF COPIES**

1. *Original Copy* – either of the contracting parties;
2. *Duplicate* – LCR of the place where marriage was solemnized;
3. *Triplicate* – LCR of the place where marriage was solemnized;
4. *Quadruplicate* – solemnizing officer, with the *marriage license and affidavit in relation to Art. 8, FC*.

**NOTE:** The mere fact that no record of the marriage exist in the registry of marriage does not invalidate said marriage, as long as in the celebration thereof, all requisites for its validity are present (*People v Borromeo*, GR No. L-61873 [1984]).

| MARRIAGE LICENSE  | MARRIAGE CERTIFICATE/CONTRACT                                    |
|---|--|
| <b>As to necessity</b>  |  |
| Formal requisite;   | Not essential for the validity of marriage;                      |
| <b>As to effect of absence</b>  |  |
| Marriage is void <i>ab initio</i> , except in cases provided under Arts. 27-34; | Best evidence to prove the existence (not validity) of marriage; |
| <b>As to issuing authority</b>  |  |
| Local civil registrar ( <i>Art. 19, FC</i> );                                   | Solemnizing officer ( <i>Art. 23, FC</i> );                      |
| <b>As to time issued</b>  |  |
| Before the marriage.  | After the marriage.  |

#### ART. 26

All marriage solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Arts. 35(1), (4), (5) and (6), 36, 37 and 38.

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law (*As amended by EO 227*).

#### THE FOLLOWING MARRIAGES ARE VOID AB INITIO EVEN IF VALID IN THE PLACE WHERE IT WAS CELEBRATED

1. Both parties are Filipinos and either one or both of them is below 18;
2. If one of the parties to a marriage is a citizen of the Philippines and he or she is below 18;
3. Bigamous or polygamous marriage;
4. Contracted through mistake of one contracting party as to the identity of the other;
5. The other party failed to comply with the requirement of Art. 52 regarding his or her prior annulled or judicially declared void marriage;
6. Psychologically incapacitated to comply with the essential marital obligations of marriage at the time of the celebration;
7. Incestuous marriage;
8. Void by reason of public policy.

**NOTE:** Same sex marriage involving Filipinos celebrated abroad shall not be recognized as valid here in the Philippines even if such kind of marriage is valid in the place of celebration.

**NOTE:** Common law marriages obtained abroad by Filipinos are not valid in the Philippines (*STA MARIA*, 170).

**NOTE:** The existence of the pertinent provision of the foreign marriage law must be shown to prove a foreign marriage. It is necessary to prove the foreign law as a question of fact and then to prove the celebration of marriage pursuant thereto by convincing evidence (*Id.*, 177).

**NOTE:** The Philippine courts cannot take judicial notice of foreign laws. Like any other facts, they must be alleged and proved. Australian marital laws are not among those matters that judges are supposed to know by reason of their judicial function. The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative (*Garcia v Recio*, GR No. 138322 [2001]).

## DIVORCE

**General Rule:** Divorce is not allowed in the Philippines (*Cang v CA*, GR No. 105308 [1998]).

### Exceptions:

1. Between 2 aliens – if valid in their national laws even if marriage was celebrated in the Philippines;
2. Between a Filipino and an alien – if:
  - a. There is a valid marriage celebrated between a Filipino citizen and a foreigner;
  - b. A valid divorce according to the national law of the foreigner is obtained abroad by the alien spouse capacitating him or her to remarry (*Art. 26, FC*).

## HISTORICAL BACKGROUND OF DIVORCE

### 1. *Las Siete Partidas*

Allowed only relative divorce on any of the following grounds:

1. Desire of one of the spouses to enter a religious order, provided that the other granted permission to do so;
2. Adultery committed by either;
3. The fact that either had become a heretic.

### 2. *Act No. 2710 (Divorce Law)*

Enacted by the Philippine Legislature on 11 Mar. 1917. This act repealed the provisions of the *Las Siete Partidas* by providing absolute divorce (*vinculo matrimonii*) on the grounds:

1. Adultery (wife);
2. Concubinage (husband).

### 3. *EO No. 141*

Enacted in 1943 during the Japanese Occupation by the Philippine Executive Commission. It repealed Act. 2710 and allowed absolute divorce on eleven liberal grounds.

### 4. *Proclamation of Gen. McArthur on 23 Oct. 1944*

All laws of any government in the Philippines other than that of the Commonwealth of the Philippines, were null and void and without legal effect in areas free from enemy occupation.

Repealed EO 141 and revived Act. 2710.

### 5. *Civil Code*

The draft included both absolute and relative divorce. Absolute divorce eventually was eliminated and relative divorce was changed to legal separation.

On 17 July 1987, Art. 26 was amended by inserting there a second paragraph which recognizes partial divorce in the Philippines.

| ANNULMENT  | DIVORCE   |
|--|---|
| The dissolution of union for causes arising before or at the time of the marriage. | The dissolution of union for causes arising after the marriage. |

## BASIC TYPES OF DIVORCE

1. Absolute Divorce – *vinculo matrimonii*, terminates the marriage;
2. Limited or Relative Divorce – *a mensa et thoro* (from bed and board), suspends it and leaves the bond in full force

## PROOF OF DIVORCE

Party pleading it must prove divorce as a fact and demonstrate its conformity to the foreign law allowing it, which must be proved as courts cannot take judicial notice of foreign laws. If a valid divorce decree has been obtained abroad, there is not more need to file an action to nullify the marriage. The plaintiff has no more personality to sue since the marriage bond has already been severed (*Amor-Catalan v CA*, GR No. 167109 [2007]).

## DIVORCE MUST BE PROVEN AS A FACT

A divorce obtained by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. Such decree must be proven according to the

rules of evidence for our courts do not take judicial notice of foreign laws and judgments (*Garcia v Recio*, GR No. 138322 [2001]).

**NOTE:** Presentation solely of the divorce decree is insufficient and that proof of its authenticity and due execution must be presented (*Id.*).

#### RECOGNITION OF FOREIGN DIVORCE DECREE

The recognition of the foreign divorce decree may be made in a rule 108 of the Rules of Court proceedings itself, as the object of special proceedings is precisely to establish the status or right of a party or a particular fact. The registration of a foreign divorce decree in the civil registry without the requisite judicial recognition is patently void and cannot produce any legal effect (*Corpuz v Sto. Tomas*, GR No. 186571 [2010]). While the law requires the entry of the divorce decree in the civil registry, the law and the submission of the decree by themselves do not *ipso facto* authorize the decrees registration (*RABUYA*, 239).

**NOTE:** For Philippine courts to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country the petitioner only needs to prove the foreign judgment as a fact under the Rules to Court a copy of the foreign judgment may be admitted in evidence and proven as a fact under Rule 132, Secs. 24-25 in relation to Rule 39, Sec. 48(b) of the Rules of Court (*Fujiki v Marinay*, GR No. 196049 [2013]).

**NOTE:** A.M. No. 02-11-10-SC (Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages) does not apply in a petition to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country (*Id.*). divorce involves the dissolution of a marriage, but the recognition of a foreign divorce decree does not involve the extended procedure under A.M. No. 02-11-10-SC

#### SECTIONS 24 AND 25 OF RULE 132 OF RULES OF COURT

A writing or document may be proven as a public or official country by either:

1. An official publication;
2. A copy thereof attested by the officer having legal custody of the documents.

If the record is not kept in the Philippines, such copy must be:

1. Accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippines foreign service station in the foreign country in which the record is kept;
2. Authenticated by the seal of his office.

**NOTE:** A Filipino who had been divorced by his alien spouse abroad may validly remarry in the Philippines even if the marriage was solemnized before the Family Code took effect. The marriage tie, when severed as to one party, ceases to bind either. A husband without a wife, or a wife without a husband, is unknown to the law (*San Luis v San Luis*, GR No. 134029 [2007]).

**NOTE:** As it is worded, Art. 26 (2) refers to a special situation wherein one of the married couple is a foreigner who divorces his or her Filipino spouse. By its plain and literal interpretation, the said provision cannot be applied to the case when at the time, the spouse obtained her divorce, she was still a Filipino citizen. Thus, pursuant to the nationality principle (*Art. 15, FC*), she was still bound by Philippine laws on family rights and legal capacity, even when she was already living abroad. Philippine laws, then and even until now, do not allow and recognize divorce between Filipino spouses (*Republic v Iyoy*, GR No. 152577 [2005]).

#### APPLICATION OF THE RULE

Art. 26 (2) allowing for divorce applies where parties were Filipino citizens at the time of the marriage was celebrated, and later on one of them becomes naturalized as a foreign citizen and obtains a divorce decree (*Republic v Orbecido III*, GR No. 154380 [2005]).

#### RECKONING POINT OF CITIZENSHIP

The reckoning point is their citizenship at the time the valid divorce is obtained abroad by the alien spouse capacitating the latter to remarry (*Id.*).

#### CAPACITY TO REMARRY MUST BE STATED IN THE DECREE OF DIVORCE

There must be showing that the divorce decree gave the foreigner spouse legal capacity to remarry because in some jurisdictions, remarriage may be limited or prohibited (*Bayot v Bayot*, GR Nos. 155635 and 163979 [2008]).

#### ART. 26 (2) IS APPLICABLE ONLY TO FILIPINO SPOUSE

The legislative intent is for the benefit of the Filipino spouse, by clarifying his or her marital status, settling the doubts created by the divorce decree. Essentially, Art. 26 (2) provided the Filipino spouse a substantive right to have his or her marriage to the alien spouse considered as dissolved, capacitating him or her to remarry (*Corpuz v Sto. Tomas*, GR No. 186571 [2010]).

**NOTE:** A petition for the authority to remarry that may be filed by the Filipino spouse pursuant to Art. 26 (2) actually constitutes a petition for declaratory relief (*Ando v DFA*, GR No. 195432 [2014]).

**NOTE:** A judicial declaration to allow the Filipino spouse to remarry pursuant to Art. 26 (2) is not a condition *sine qua non* for the validity of the subsequent marriage that he or she may enter into. If the decree of divorce obtained by the foreign spouse is valid pursuant to his national law and the same capacitates the foreigner to remarry, the Filipino spouse regains his capacity to marry without need of judicial recognition of the foreign decree of divorce. The purpose of filing a petition for declaratory relief under Art. 26 (2) is merely to clarify the status of the Filipino spouse in order to avoid a possible prosecution for bigamy (*RABUYA*, 248).

#### ART. 26 (2) APPLIES TO FOREIGN JUDGMENT INVOLVING BIGAMY

A.M. No. 02-11-10-SC does not apply in a petition to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country. Moreover, in *Juliano-Llave v Republic* (GR No. 169766 [2011]), this Court held that the Rule in A.M. No. 02-11-10-SC does not apply if the reason behind the petition is bigamy (*Fujiki v Marinay*, GR No. 196049 [2013]). Hence, the principle established in Art. 26 (2) applies.

**NOTE:** To hold that A.M. No. 02-11-10-SC applies to a petition for recognition of foreign judgment would mean that the trial court and the parties should follow its provisions, including the form and contents of the petition, etc. This is absurd because it will litigate the case anew. In recognition of foreign judgments, the Philippine courts are incompetent to substitute their judgment on how a case was decided under foreign law. Thus, the Philippine courts are limited to the question of whether to extend the effect of a foreign judgment in the Philippines under the *lex nationalii* in Art. 15 of the Civil Code (*Id.*).

**NOTE:** A foreign judgment is already presumptive evidence of a right between the parties (*Rule 39, Sec. 48 (b), Rules of Court*). Upon recognition of the foreign judgment, this right becomes conclusive and the judgment serves as the basis for the correction or cancellation of entry in the civil registry (*Id.*).

**NOTE:** It was noted that there is no need to retroactively apply Art. 26 (2) since there is sufficient jurisprudential basis allowing the Court to rule in the affirmative (*San Luis v San Luis*, GR No. 134029 [2007]).

#### VALIDITY OF FOREIGN DECREE OF DIVORCE INITIATED AT THE INSTANCE OF THE FILIPINO SPOUSE

From Art. 26, par. 2, it only requires that there be a divorce validly obtained abroad. The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the

foreign divorce proceeding (*Republic v Manalo*, GR No. 221029, 24 Apr. 2018).

A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. In both instances, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law. There is no real and substantial difference between a Filipino who initiated a foreign divorce proceeding and a Filipino who obtained a divorce decree upon the instance of his or her alien spouse (*Id.*).

## CHAPTER 2 MARRIAGES EXEMPT FROM THE LICENSE REQUIREMENT

### ART. 27

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

### ART. 28

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

### ART. 29

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

### ART. 30

The original of the affidavit required in the last preceding article, together with a legible copy of the marriage contract, shall be sent by the person solemnizing the marriage to the local civil registrar of the municipality where it was performed within the period of thirty days after the performance of the marriage.

### ART. 31

A marriage in *articulo mortis* between passengers or crew members may also be solemnized by a ship captain or by an airplane pilot not only while the ship is at sea or the plane is in flight, but also during stopovers at ports of call.

### ART. 32

A military commander of a unit, who is a commissioned officer, shall likewise have authority to solemnize marriages in *articulo mortis* between persons within the zone of military operation, whether members of the armed forces or civilians.

### ART. 33

Marriages among Muslims or among members of the ethnic cultural communities may be performed validly without necessity

of a marriage license, provided they are solemnized in accordance with their customs, rites or practices.

### ART. 34

No license shall be necessary for the marriage of a man and a woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage.

**NOTE:** Requisites of marriage must be strictly construed. Under the rules of statutory construction, exceptions, as a general rule, should be strictly but reasonable construed. They extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provisions rather than the exceptions (*RABUYA*, 257).

### EXCEPTIONS TO THE LICENSE REQUIREMENT [MARCO]

1. Among Muslims or members of ethnic cultural communities solemnized in accordance with their customs, rites and practices (*Art. 33, FC*);
2. In articulo mortis - marriages remains valid even if spouse at the point of death subsequently survives (*Art. 27, FC*);
3. In remote places - residence of either party is so located that there is no means of transportation to enable them to personally appear before the LCR (*Art. 28, FC*);
4. Ratification by cohabitation - marriage between a man and a woman who have previously cohabited for at least 5 years (*Art. 34, FC*);
5. Solemnized outside the Philippines where no marriage license is require by the country they were solemnized (*Art. 26, par. 1, FC*).

### MARRIAGES IN ARTICULO MORTIS

In this kind of marriage, the solemnizing officer is required to execute an affidavit stating that the marriage was performed in *articulo mortis* and that he took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of legal impediment to the marriage (*Art. 29, FC*). Absence of affidavit will not affect the validity of the marriage (*RABUYA*, 258).

### MARRIAGES IN REMOTE PLACES

In this kind of marriage, the solemnizing officer is likewise required to execute an affidavit stating that the residence of either party is so located that there is no means of transportation to enable such party to appear personally before the LCR and that he took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of legal impediment (*Art. 29, FC*). Absence of affidavit will not affect the validity of the marriage (*RABUYA*, 258).

### AUTHORITY OF SHIP CAPTAIN OR AIRPLANE CHIEF TO SOLEMNIZE MARRIAGES

#### Requisites:

1. The marriage must in *articulo mortis*;
2. The marriage must be between passengers or crew members.

**NOTE:** Art. 31 must be interpreted together with Art. 7(3) wherein the latter provides "airplane chief." Therefore, marriages under Art. 31 are only valid whereby the solemnizing officer is the chief pilot. The assistant pilot is devoid of authority to do such even if the chief pilot is absent or dead.

### AUTHORITY OF MILITARY COMMANDER TO SOLEMNIZE MARRIAGES

#### Requisites: [OZCAr]

5. He must be a commissioned officer, or an officer in the armed forces holding rank by virtue of a commission from the President;



6. The marriage must be solemnized within the zone of military operations.
7. The assigned chaplain to his unit must be absent;
8. The marriage must be in artículo mortis.

### MARRIAGE AMONG MUSLIMS OR ETHNIC CULTURAL COMMUNITIES

In case of a marriage between a Muslim and a non-Muslim, Art. 13(2) of the Code of Muslim Personal Laws (PD 1083) shall apply in case such marriage is solemnized not in accordance with Muslim Law or the Code of Muslim Personal Law.

**NOTE:** This exception only applies to Muslims and members of the ethnic groups of the Cordillera Autonomous Region because they are governed by the Code of Muslim Personal Laws of the Philippines and the Organic Act of the Cordillera Autonomous Region (RA 6766). Other ethnic group are still governed by the Family Code (STA MARIA, 201).

### RATIONALE OF THE EXCEPTION ON COHABITATION

To avoid exposing the parties to humiliation, shame and embarrassment concomitant with the scandalous cohabitation of persons outside a valid marriage due to the publication of every applicant's name for a marriage license. The publicity attending the marriage license may discourage such persons from legitimizing their status (*Niñal v Bayadog, GR No. 133778 [2000]*).

### REQUISITES

1. The man and woman must have been living together as husband and wife for at least five years before the marriage;
2. The parties must have no legal impediment to marry each other;
3. The fact of absence of legal impediment between them 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 (*Borja-Manzano v Sanchez, A.M. No. MTJ-00-1329 [2001]*).

**NOTE:** In case of marriages under Art. 34, the judge, as solemnizing officer, must personally examine the affidavit of cohabitation as to the parties having lived together as husband and wife for at least 5 years and the absence of any legal impediment to marry each other. The judge must also execute a sworn statement that he personally ascertained the parties' qualifications to marry and found no legal impediment to the marriage (*RABUYA, 261-262*).

**NOTE:** The person who notarizes the contracting parties' affidavit of cohabitation cannot be the judge who will solemnize the parties' marriage (*Id., 262*).

### ABSENCE OF AFFIDAVIT OF COHABITATION

If the factual basis required by Art. 34 (*the parties cohabited for not less than 5 years as husband and wife*) existed during the marriage but the parties failed to execute and submit the affidavit of cohabitation, the marriage should remain valid even if celebrated without a marriage license because such marriage still falls under the exception contemplated under Art. 34. The requirement of affidavit of cohabitation in said provisions is not indispensable in the sense that its absence will render the marriage void *ab initio*. Such affidavit is merely a statement of factual basis required by the provision. Absence of affidavit results only to irregularity in a formal requisite (*Id., 262-263*).

### FALSITY OF AN AFFIDAVIT OF COHABITATION

Where the parties have in truth fallen short of the minimum five-year requirement, effectively renders the marriage void *ab initio* for lack of a marriage license (*Republic v Dayot, GR No. 175581 [1991]*).

### COMPUTATION OF THE 5-YEAR PERIOD

The 5-year period should be computed on the basis of a cohabitation as "husband and wife" where the only missing factor is the special contract of marriage to validate the union. In other words, the 5-year common-law cohabitation period, which is counted back from the date of celebration of marriage, should be a period of legal union had it not been for the absence of the marriage (*Niñal v Bayadog, GR No. 133778 [2000]*).

**NOTE:** 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:

1. **Exclusivity** – no legal impediment was present at any time within the 5 years;
2. **Continuity** – unbroken (*Id.*)

**NOTE:** The clause "and without any legal impediment to marry each other" can only refer to the 5-year period of cohabitation required in Art. 34 (*RABUYA, 266*).

**NOTE:** If there was legal impediment during the 5-year period of cohabitation but the same is no longer present at the time of the marriage, the parties can still marry each other but they are not exempt from the requirement of a marriage license (*Id., 267*).

## CHAPTER 3 VOID AND VOIDABLE MARRIAGES

### ART. 35

The following marriages shall be void from the beginning:

1. Those contracted by any party below eighteen years of age even with the consent of parents or guardians;
2. Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;
3. Those solemnized without a license, except those covered by the preceding Chapter;
4. Those bigamous or polygamous marriages not falling under Article 41;
5. Those contracted through mistake of one contracting party as to the identity of the other; and
6. Those subsequent marriages that are void under Article 53.

| VOID MARRIAGE   | VOIDABLE MARRIAGE  |
|---|--|
| Deemed never to have taken place at all and cannot be the source of rights; | Valid and produces all its civil effects, until it is set aside by final judgment of a competent court in an action for annulment;   |
| Can never be ratified;  | Can generally be ratified by cohabitation;   |
| Always void;  | Valid until annulled;  |
| Can be attacked directly or collaterally;                                   | Cannot be assailed collaterally, there must be a direct proceeding;  |
| Can be questioned even after the death of either party;                     | Can be assailed only during the lifetime of the parties and not after death of either, in which case the parties and their offspring will be left as if the marriage had been perfectly valid; |
| Action or defense of nullity is Imprescriptible;                            | Action or defense of annulment prescribes ( <i>Art. 47, FC</i> );  |
| Any proper interested party may attack.                                     | Only the parties to a voidable marriage can assail.  |

(*Niñal v Bayadog, GR No. 133778 [2000]*)

**KINDS OF VOID MARRIAGES [LAPIS]**

1. Those contrary to law or public policy;
2. Absence of essential and formal requisites;
3. Either of the parties is psychologically incapacitated;
4. Incestuous marriages;
5. Void subsequent marriages.

**GENERAL RULE**

Good faith and bad faith are immaterial in determining whether or not a marriage is null and void. Nonetheless, the party who knew that he or she was entering a void marriage before the solemnization may be held liable for damages.

**NOTE:** This means that the nullity of a marriage can be asserted even if it is not the main or principal issue of a case and that no previous judicial declaration of nullity is required by law with respect to any other matter where the issue of the voidness of a marriage is pertinent or material, either directly or indirectly (*STA MARIA, 211*).

**EXCEPTIONS:**

1. Either of the contracting parties is in good faith in believing that the solemnizing officer has authority although he has none in fact (*Art. 35, par. 2, FC*);
2. A person whose spouse disappears for 4 consecutive years, or two years where there was danger of death, the present spouse may validly marry again after he or she:
  - a. Has a well-founded belief that his or her spouse is dead;
  - b. Procures a judicial declaration of presumptive death;
  - c. At the time of subsequent marriage ceremony, is in good faith with the subsequent spouse; otherwise, the subsequent marriage shall be considered void.

**NOTE:** In both exceptions above, it is necessary that both contracting parties be in bad faith in order for the marriage to be considered void (*STA MARIA, 210*).

**NOTE:** No judicial decree is necessary in order to establish the nullity of a marriage. A void marriage does not require a judicial decree to restore the parties to their original rights or to make the marriage void but though no sentence of avoidance be absolutely necessary, yet as well for the sake of good order of society as for the peace of mind of all concerned, it is expedient that the nullity of the marriage should be ascertained and declared by the decree of a court of competent jurisdiction.

**WHO CAN FILE PETITION FOR DECLARATION OF NULLITY**

| MARRIAGES CELEBRATED UNDER THE F.C. AND THE C.C.   | MARRIAGES CELEBRATED AFTER THE PROMULGATION OF A.M. No. 02-11-10-SC  | BIGAMOUS MARRIAGES  |
|--|--|---|
| <p>The plaintiff must still be the party who stands to be benefitted by the suit or the party entitled to the avails of the suit. One having no material interest to protect cannot invoke the jurisdiction of the court as plaintiff in an action (<i>Carlos v Sandoval, GR No. 179922 [2008]</i>).</p> <p>INTEREST - material interest or an interest in issue to be affected by the decree of judgment of the case, as distinguished from mere curiosity about the question involved or a mere incidental interest.</p> | <p>A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife (<i>Sec. 2, par. A, A.M. No. 02-11-10-SC</i>).</p> | <p>The rule in Sec. 2(a) of A.M. No. 02-11-10-SC that only the husband or wife can file a declaration of nullity or annulment of marriage does not apply in bigamy cases for the said rule refers to the husband or the wife of the subsisting or subsequent marriage. The proper party, hence, must be the party injured by the contracting of the subsequent marriage while the prior marriage was existing. Should parties in a subsequent marriage benefit from the bigamous marriage, it would not be expected</p> |

|  |  |  |
|--|--|--|
|  |  | that they would file an action to declare the marriage void and thus the injured spouse who should be given a legal remedy is the one in a subsisting previous marriage ( <i>Juliano-Llave v Republic GR No. 16976 [2011]</i> ). |
|--|--|--|

**IF A.M. No. 02-11-10-SC IS NOT APPLICABLE**

The above AM No. 02-11-10-SC does not apply to:

1. Nullity of marriage cases commenced before the effectivity of the said rule (15 Mar. 2003);
2. Marriages celebrated during the effectivity of the Civil Code.

In such case, a petition to declare the nullity of a marriage, like any other actions, must be prosecuted or defended in the name of the real party-in-interest or of the person to be affected by the decree of judgment of the case

**DECLARATION OF NULLITY IS NOT A PREJUDICIAL QUESTION**

The pendency of the civil action for nullity of the first marriage does not pose a prejudicial question in a criminal case for concubinage (*Beltran v People, GR No. 137567 [2000]*). By analogy, this ruling applies in a case for bigamy since both crimes presuppose the subsistence of a marriage (*Bobis v Bobis, GR No. 138509 [2000]*).

In this case, it was respondent's clear intent to obtain a judicial declaration of nullity of his first marriage and thereafter to invoke that very same judgment to prevent his prosecution for bigamy he cannot have his cake and eat it too. Otherwise, all that an adventurous bigamist has to do is to disregard Art. 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simple claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior declaration of nullity of the first (*Mercado v Tan, GR No. 137110 [2001]*).

**ATTACKING A VOID MARRIAGE**

**General Rule:**

A void marriage can be attacked collaterally.

**Exceptions:**

1. A person in a void marriage who wants to remarry must first file a civil case to obtain a judicial declaration of nullity of the first marriage (*Art. 40, FC*);
2. Obtaining a judicial declaration of nullity for purposes other than remarriage (legitimacy, settlement of estate, criminal case) when the validity of the marriage is an issue;
3. If a donor desires to revoke a donation *propter nuptias* given to one or both the spouses on the ground that the marriage is void (*Art. 50, in relation to Art. 40, par. 3 and Art. 86, par. 1, FC*).

**NOTE:** In relation to the above general rule, in case of concubinage, the accused need not present a final judgment declaring his marriage void, for he can adduce evidence in the criminal case of nullity of his marriage other than proof of final judgment declaring his marriage void (*Beltran v People, GR No. 137567 [2000]*).

**JUDICIAL DECLARATION OF NULLITY**

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

**NOTE:** For purposes other than remarriage such as but not limited to determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime or criminal case, other evidence is acceptable to show the nullity of the marriage and the court may pass upon the validity of marriage so long as it is essential to the determination of the case (*Niñal v Bayadog, GR No. 133778 [2000]*).

## REASON:

Parties to a marriage should not be permitted to judge for themselves its nullity, only competent courts having such authority. Prior to such declaration of nullity, the validity of the first marriage is beyond question (*Landicho v Relova*, GR No. L-22579 [1968]).

## MARRIAGES EXPRESSLY DECLARED VOID UNDER THE CODE

1. Those contracted by any party below 18 years of age (*Art. 35, par. 1, FC*);
2. Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so (*Art. 35, par. 2, FC*);
3. Those solemnized without license (*Art. 35, par.3, FC*);
4. Those bigamous or polygamous marriages (*Art. 35, par. 4, FC*);
5. Those contracted through mistake of one contracting party as to the identity of the other (*Art. 35, par. 5, FC*);
6. Where either of the parties to a subsequent marriage is also a party to a previous marriage which has been annulled or declared a nullity but fails to record the judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses (to a previous marriage) and the delivery of the children's presumptive legitimes, in the appropriate civil registry and registries of property (*Art. 35, par. 6, vis-à-vis Arts. 52 and 53, FC*);
7. Those contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage (*Art. 36*);
8. Those marriages between ascendants and descendants of any degree, whether the relationship between the parties be legitimate or illegitimate (*Art. 37, par. 1, FC*);
9. Those marriages between brothers and sisters, whether of the full or half blood and whether the relationship between the parties be legitimate or illegitimate (*Art. 37, par. 2, FC*);
10. Those marriages between collateral blood relatives whether legitimate or illegitimate (*Art. 38, par. 1, FC*);
11. Those marriages between step-parents and step-children (*Art. 38, par. 2, FC*);
12. Those marriages between parents-in-law and children-in-law (*Art. 38, par. 3, FC*);
13. Those marriages between the adopting parent and the adopted child (*Art. 38, par. 4, FC*);
14. Those marriages between the surviving spouse of the adopting parent and the adopted child (*Art. 38, par. 5, FC*);
15. Those marriages between the surviving spouse of the adopted child of the adopter (*Art. 38, par. 6, FC*);
16. Those marriages between an adopted child and a legitimate child of the adopter (*Art. 38, par. 7, FC*);
17. Those marriages between adopted children of the same adopter (*Art. 38, par. 8, FC*);
18. Those marriages between parties where one, with the intention to marry the other, killed that other person's spouse, or his or her own spouse (*Art. 38, par. 9, FC*);
19. Where either of the parties to a subsequent marriage is also a party to a prior marriage which is void *ab initio* but has not been declared as such in a final judgment by the court (*Art. 40, vis-à-vis Art. 50, FC*);
20. Those subsequent bigamous marriages under Article 41 of the Family Code if both parties therein acted in bad faith (*Art. 44, FC*).

## VOID MARRIAGES UNDER ART. 35 [BALBIV]

1. Contracted by any party below 18 years of age;
2. Solemnized by any person not legally authorized to perform marriages;
3. Solemnized without license;
4. Bigamous or polygamous marriage;
5. Contracted through mistake of identify of the other party;
6. Subsequent marriages that are void under Art. 53.

## UNDER 18 YEARS OF AGE

This rule is absolute and does not admit of any exception, regardless of the place of celebration of the marriage (*Art. 26, par. 1, FC*).

## LACK OF AUTHORITY OF THE SOLEMNIZING OFFICER

### Exception:

Even if the solemnizer has no legal authority to solemnize marriages so long as either or both contracting parties believed in good faith that he had the legal authority to do so, the marriage is still valid (*Art. 35, par. 2, FC*).

## REASON FOR THE EXCEPTION

In line with the public policy that in case of doubt the law and the courts lean towards the validity of the matrimony. *Semper praesumitur pro matrimonio*.

## CONCEPT OF GOOD FAITH IN MARRIAGES

The good faith referred to in this article must necessarily be based on the mistake of fact and not based on ignorance of the law (*see Art. 3, CC*).

If the contracting parties go before a person *not specifically mentioned in the law to solemnize marriage*, the exception in Art. 35(2) does not apply since this is a clear case of ignorance of law and cannot serve as a basis of good faith (*RABUYA, 294*).

If the contracting parties go before a person enumerated in Art. 7 but who is not authorized to perform marriages *for failing to comply with the requirement aid down by the law*, the marriage will still be valid, if either or both of the contracting parties relied in good faith on his apparent authority (*Id., 294-295*).

## CERTIFICATION OF ABSENCE OF MARRIAGE LICENSE

A certification from the Civil Registrar that no marriage license appear in the record of the said civil registrar is sanctioned by Rule 132, Sec. 29 of the Rules of Court and adequate to prove the non-issuance of the alleged marriage license. Absent any circumstances of suspicion, the certification issued by the local civil registrar enjoys probative value, he being the officer charged under the law to keep a record of all data relative to the issuance of a marriage license (*Cariño v Cariño*, GR No. 132529 [2001], *citing Republic v CA*, GR No. 103047 [1994]).

**NOTE:** To be considered void on the ground of absence of license, the law requires that the absence of such marriage license must be apparent on the marriage contract, or at the very least, supported by a certification from the local civil registrar that no such marriage license was issued to the parties (*Alcantara v Alcantara*, GR No. 167746 [2007]).

**NOTE:** The certification abovementioned must categorically state that the document does not exist in his office or the particular entry could not be found in the register despite diligent search. If there is no showing that the local civil registrar exerted diligent efforts to locate the records of the said marriage license, the marriage cannot be declared void (*Sevilla v Cardenas*, GR No. 167684 [2006]).

## BIGAMOUS AND POLYGAMOUS MARRIAGES

Refers to subsequent marriage/s contracted during the subsistence of a previous marriage which must be valid or at least voidable

## ELEMENTS OF BIGAMY

1. A valid prior marriage;
2. The marriage has not been legally dissolved or the absent spouse could not be presumed dead, as the case may be;
3. The offender contracts a subsequent marriage;
4. The subsequent marriage has all the essential requisites for validity (*see Art. 349, RPC*).

## REQUIREMENTS FOR THE DECLARATION OF PRESUMPTIVE DEATH

1. Present spouse must file a summary proceeding for the declaration o the presumptive death of the absentee without prejudice to the latter's reappearance;

2. Absence of the other spouse must have been for 4 consecutive years, or 2 years where there was danger of death under circumstances laid down in Art. 391;
3. Well-founded belief of the present spouse who wishes to remarry that absent spouse is already dead (Art. 41, FC).

**NOTE:** The well-founded belief in the absentee's death requires the present spouse to prove that his belief was the result of diligent and reasonable efforts to locate the absent spouse and that based on these efforts and inquiries, he believes that under the circumstances, the absent spouse is already dead. It necessitates exertion of active effort not a passive one (*Republic v Cantor, GR No. 184621 [2013]*).

#### REASON

This is intended to protect the present spouse from criminal prosecution for bigamy under Art. 349, RPC. However, if the bigamous marriage was committed abroad, the guilty party cannot be criminally prosecuted for bigamy in the Philippines as our penal statutes are territorial in nature (*STA MARIA, 375*).

**NOTE:** If both spouses of the subsequent marriage acted in bad faith, said marriage shall be void *ab initio* and all donations made by one in favor of the other are revoked by operation of law (Art. 44, FC).

#### EFFECT OF REAPPEARANCE OF THE ABSENT SPOUSE

##### General Rule

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

##### Exception

Subsequent marriage is automatically terminated if the reappearance was recorded in a sworn statement in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person with due notice to said spouses, without prejudice to the fact of reappearance being judicially determined in case such fact is disputed (Art. 42, FC).

##### Exceptions to the exception [A ReNoR]

1. If the first marriage has already been annulled or has been declared a nullity (*Id., par. 2*);
2. If the sworn statement of the reappearance is not recorded in the civil registry of the subsequent spouses' residence;
3. If there is no notice to the subsequent spouses;
4. If the fact of reappearance is disputed in the proper courts of law, and no judgment is yet rendered confirming such fact of reappearance (*Santos v Santos, GR No 187061 [2014]*).

**NOTE:** If the absentee reappears but no step is taken to terminate the subsequent marriage either by affidavit or by court action, the absentee's mere reappearance even if made known to the spouses in the subsequent marriage will not terminate such marriage (*SSS v Bailon, GR No. 165545 [2006]*).

| ART. 40  | BIGAMOUS MARRIAGE                                  |
|--|--|
| The prior marriage must be void <i>ab initio</i> ;   | The prior marriage must be valid;                  |
| Absent of the judicial declaration of the first marriage, the subsequent marriage is void. | The subsequent marriage is void <i>ab initio</i> . |

#### DECLARATION OF PRESUMPTIVE DEATH IMMEDIATELY EXECUTORY

By express provision, the judgment of the court in a summary proceeding declaring presumptive death shall be immediately final and executory (*see Art. 247, FC*). Therefore, since the judgment is immediately final and executory appeal is not an available remedy. It goes without showing, however, that an aggrieved party may file a petition for certiorari to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the CA in accordance with the Doctrine of Hierarchy of Courts (*Republic v Tango, GR No. 161062 [2009]*).

#### MISTAKE IN IDENTITY

For the marriage to be rendered void, it is important that the mistake in identity must be with reference to the actual physical identity of the other party, not merely a mistake in the name, personal qualifications, character, social standing, etc. There is here an absence of real consent, which is an essential requisite of a valid marriage, thereby rendering the marriage void *ab initio* (*RABUYA, 300*).

#### REQUIRED PROCEDURE UNDER ARTICLE 52

If a previous marriage has been annulled or declared a nullity in a final judgment, the law requires the recording and registration of the following in the appropriate civil registry and registries of property: [JAN DiD]

1. The judgment of annulment or absolute nullity of the marriage;
2. The partition and distribution of the properties of the spouses;
3. The delivery of the children's presumptive legitimes.

**NOTE:** Only after complying with the foregoing requirements may either of the former spouses be allowed to contract another marriage; otherwise, the subsequent marriage is void *ab initio* (Art. 35, par. 6, FC).

#### ART. 36

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

#### SOURCE

They are incapable of contracting marriage:

xxx xxx xxx

3. Who for causes of psychological nature are unable to assume the essential obligations of marriage (*Canon 1095, New Code of Canon Law*).

#### PSYCHOLOGICAL INCAPACITY AS GROUND FOR NULLITY IS A CLASS BY ITSELF BECAUSE:

1. This is the only ground for nullity of a marriage which is made to apply retroactively to marriages celebrated prior to the Family Code;
2. Said marriage is not without legal effects;
3. Psychological incapacity does not relate to an infirmity in the elements, either essential or formal, in contracting a valid marriage;
4. Unlike the other grounds for nullity of marriage which are capable of relatively easy demonstration, psychological incapacity, being mental state, may not so readily be as evident (*RABUYA, 407-408*).

#### REASON FOR LACK OF CATEGORICAL DEFINITION

Giving of examples would limit the applicability of the provision under the principle of *ejusdem generis*. Rather the Committee would like the judge to interpret the provision on a case-to-case basis guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals which, although not binding on the civil courts, may be given persuasive effect since the provision was taken from the Canon Law (*Salita v Magtolis, GR No. 106429 [1994]*).

#### EJUSDEM GENERIS

Where a general word or phrase follows an enumeration of particular words of the same class, general word or phrase is to be construed to include persons, things of the same class as those specifically mentioned.

#### PSYCHOLOGICAL INCAPACITY AS GROUND FOR NULLITY

These are disorders that result in the utter insensibility or inability of the afflicted party to give meaning and significance to the

marriage he or she has contracted (*Toring v Toring*, GR No. 165321, [2010]).

Psychological incapacity must refer to no less than a mental incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which include their mutual obligations to live together, observe love, respect and fidelity and render help and support (*Santos v CA*, GR No. 112019 [1995], cited in *Nacarro, Jr. v Cecilio-Navarro*, GR No. 162049 [2007]).

#### GUIDELINES IN THE INTERPRETATION AND APPLICATION OF Art. 36 (Molina Doctrine)

1. The burden of proof belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity;
2. The root cause of psychological incapacity must be:
  - a. Medically or clinically identified;
  - b. Alleged in the compliant;
  - c. Sufficiently proven by experts;
  - d. Clearly explained in the decision.

The court must be convinced that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof.

3. The incapacity must be proven to be existing at the time of the celebration of the marriage, when the parties exchanged their I do's. The illness itself must have attached at such moment, or prior thereto;
4. Such incapacity must be shown to be medically or clinically permanent or incurable. Such incapacity must be relevant to the assumption of marriage obligation, not necessarily to those not related to marriage;
5. Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. There is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage;
6. The essential marital obligations must be those embraced by Arts. 68-71 as regards the husband and wife, and Arts. 220, 221 and 225 in regard to parents and their children;
7. Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church of the Philippines 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. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition to the petition. The certification shall be submitted to the court within 15 days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.

**NOTE:** The certification of the Solicitor General required in the Molina case is already dispensed with to avoid delay (*Carating-Siayngco v Siayngco*, GR No. 158896 [2004]).

**NOTE:** The ruling in Molina and Santos applies even if the marriage was contracted between a Filipino and a foreigner. In proving psychological incapacity, we find no distinction between an alien spouse and a Filipino spouse. The medical and clinical rules to determine psychological incapacity were formulated on the basis of studies of human behaviour in general. Hence, the norms used to determining psychological incapacity should apply to any person

regardless of nationality (*Republic v Quintero-Hamano*, GR No. 149498 [2004]).

#### MOLINA DOCTRINE, RESTATED [PROBE PIG]

1. Incapacity must be permanent or incurable;
2. Root cause of the psychological incapacity must be [MASE]:
  - a. Medically or clinically identified;
  - b. Alleged in the compliant;
  - c. Sufficiently proven by experts;
  - d. Clearly explained in the decision.
3. Marital obligations refer to Arts. 68-71, 220, 221 and 225 of the Family Code;
4. Plaintiff has burden of proof;
5. Incapacity proven to be existing at the time of the celebration of the marriage;
6. Trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear for the state;
7. Interpretations of the National Appellate Matrimonial Tribunal of the Catholic Church of the Philippines should be given great respect;
8. Illness is grave enough to bring about disability to assume essential marital obligations

#### REQUIREMENT OF EXPERT OPINION IN PSYCHOLOGICAL INCAPACITY CASES

The Court clarified that there is no requirement that the defendant/respondent spouse should be personally examined by a physician or psychologist as a condition *sine qua non* for the declaration of nullity of marriage based on psychological incapacity, provided that the totality of evidence shows that psychological incapacity exists and its gravity, juridical antecedence, and incurability can be duly established. In view of the dispensed expert opinion, the court considers the totality of evidence presented to prove the existence of psychological incapacity (*Marcos v Marcos*, GR No. 136490 [2000]).

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged (*Sec. 2(d), par. 2, A.M. No. 02-11-10-SC*).

#### RETROACTIVE EFFECT OF THE MOLINA DOCTRINE

The guidelines in Molina Doctrine apply even to cases then already pending, under the reasoning that the courts' interpretation or construction establishes the contemporaneous legislative intent of the law as of the date the statute is enacted. Only a prior ruling of the Court finds itself later overruled that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith (*Pesca v Pesca*, GR No. 136921 [2001]).

#### INTERPRETATION OF ART. 36 SHOULD BE ON CASE-TO-CASE BASIS

The Molina Doctrine, instead of serving as a guideline, became a straightjacket, forcing all cases involving psychological incapacity to fit into and be bound by it, which is not only contrary to the intention of the law but unrealistic as well because, with respect to psychological incapacity, no case can be considered as "all fours" with another.

Each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations, but according to its own facts. Courts should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals (*Ngo Te v Yu-Te*, GR No. 161793 [2009]).

**NOTE:** The Court did not abandon Molina but merely suggested for the relaxation of the stringent requirements set forth therein (*Ting v Velez-Ting*, GR No. 166562 [2009]). The factual milieu of each case must be treated as distinct and each must be decided based on its own set of facts (*Yambao v Republic*, GR No. 184063 [2011]).

**NOTE:** In dissolving marital bonds on account of either party's psychological incapacity, the Court is not demolishing the foundation of families, but it is actually protecting the sanctity of marriage, because it refuses to allow a person afflicted with a psychological disorder, who cannot comply with or assume the essential marital obligations, from remaining in that sacred bond (*Kalaw v Fernandez, GR No. 166357 [2015]*).

#### **UNDERSTANDING THE CONCEPT OF PSYCHOLOGICAL INCAPACITY**

It is not a vice of consent and that spouse may have given free and voluntary consent to a marriage but was nonetheless incapable of fulfilling such rights and obligations. Psychological incapacity is different from physical incapacity of consummating the marriage, which makes the marriage only voidable under Art. 45(5) (*Antonio v Reyes, GR No. 155800 [2006]*).

The notion of psychological incapacity pertains to the inability to understand the obligations of marriage, as opposed to a mere inability to comply with them. It is a malady so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume (*Id.*).

It contemplates downright incapacity or inability to take cognizance of and to assume the basic marital obligations; not a merely refusal, neglect or difficulty, much less, ill will, on the part of the errant spouse (*Republic v Iyoy, GR No. 152577 [2005]*). The incapacity is rooted in some debilitating psychological conditions or illness (*RABUYA, 311*).

It is not enough to prove that spouse failed to meet his responsibility and duty as a married person; it is essential that he must be shown to be incapable of doing so due to some psychological, not physical, illness (*Republic v Cuison-Melgar, GR No. 139676 [2006]*).

**NOTE:** Psychological incapacity is not meant to comprehend all possible cases of psychoses. The fourth guideline in Molina Case requires that the psychological incapacity as understood under Art. 36 must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job (*Tongol v Tongol, GR No. 157610 [2007]*).

**NOTE:** Irreconcilable differences, conflicting personalities, emotional immaturity and irresponsibility, physical abuse, habitual alcoholism, sexual infidelity or perversion, abandonment, physical violence inflicted upon women, although indicative of abnormal behaviour or personality patters does not constitute psychological incapacity (*Suazon v Suazon, GR No. 164493 [2010]*).

#### **SOURCE OF EVIDENCE**

The evidence need not necessarily come from the allegedly incapacitated spouse, but can come from persons intimately related to the spouses, *i.e.*, relatives and close friends, who could clearly testify on the allegedly incapacitated spouse's condition at or about the time of the marriage (*Toring v Toring, GR No. 165321 [2010]*).

#### **TOTALITY OF EVIDENCE**

Psychological incapacity may be established by the totality of the evidence presented. The facts alleged in the petition and the evidence presented, considered in totality, should be sufficient to convince the court of the psychological incapacity of the party concerned (*Marcos v Marcos, GR No. 136490 [2000]*).

#### **CHARACTERISTICS OF PSYCHOLOGICAL INCAPACITY [JIG]**

1. **J**udicial Antecedence;
2. **I**ncurable;
3. **G**ravity.

#### **GRAVITY**

It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. It is the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to

give meaning and significance to the marriage (*Perez-Ferraris v Ferraris, GR No. 162368 [2006]*).

The psychological affliction must be grave and serious as to indicate an utter incapacity to comprehend and comply with the essential objects of marriage, including the rights and obligations between husband and wife (*Mendoza v Republic, GR No. 157649 [2012]*).

A person who is 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 (*Antonio v Reyes, GR No. 155800 [2006]*).

#### **JUDICIAL ANTECEDENCE**

The incapacity must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage (*Santos v CA, GR No. 112019 [1995]*). The incapacity must be proven to be existing at the time of the marriage; when the parties exchanged their "I Do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto (*Republic v CA, GR No. 103047 [1994]*).

The root cause must be identified as a psychological illness and its incapacitating nature must be fully explained. The illness and its root cause must have been there from the inception of the marriage (*Toring v Toring, GR No. 165321, [2010]*).

#### **INCURABLE**

It must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved (*Santos v CA, GR No. 112019 [1995]*). The incapacity must be medically or clinically permanent or incurable. Such incurability must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of profession diagnosing illnesses of children and prescribing medicine to cure them but not to be psychologically capacitated to procreate, bear and raise his own children as an essential obligations of marriage (*Republic v CA, GR No. 103047 [1994]*).

**NOTE:** The recommendation for therapy does not automatically imply curability because recommendations for therapy are given by clinical psychologists, or even psychiatrists, to manage behaviour (*Camacho-Reyes v Reyes, GR No. 185286 [2010]*).

**NOTE:** The statement of the root cause does not need to be in medical terms or be technical in nature, as the root causes of many psychological disorders are still unknown to science. It is enough to merely allege the physical manifestations constituting the root cause of the psychological incapacity (*Toring v Toring, GR No. 165321, [2010]*).

#### **THE COURT RULED THAT THERE IS PSYCHOLOGICAL INCAPACITY IN THE FOLLOWING INSTANCES:**

1. 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 Tsoi v CA, GR No. 119190 [1997]*);
2. A person who is unable to distinguish between fantasy and reality would be unable to comprehend the legal nature of the marital bond much less its psychic meaning and the obligations attached to the marriage, including parenting. One is unable to adhere as well to any legal or emotional commitments (*Antonio v Reyes, GR No. 155800 [2006]*);
3. A person who brings her children to her mah-jong sessions exposed them to gambling that erode their moral fiber; hence, she is suffering from psychological incapacity (*Kalaw v Fernandez, GR No. 166537 [2015]*);
4. A person paranoid personality disorder, more severe than borderline and narcissistic personality disorders, made him distrustful and prone to jealousy and paranoia so extreme and severe that these caused him to poke a gun at petitioner's head, and act of depravity, incapacitating him

to fully comprehend and assume the essential obligations of marriage (*Tani-De La Fuente v De La Fuente*, GR No. 188400 [2017]);

#### APPLICABILITY OF RES JUDICATA

Final judgment denying a petition for nullity on the ground of psychological incapacity bars a subsequent petition for declaration of nullity on the ground of lack of marriage license (*Mallion v Alcantara*, GR No. 141528 [2006]).

#### WHO MAY FILE A PETITION TO NULLIFY MARRIAGE ON THE GROUND OF PSYCHOLOGICAL INCAPACITY

Even the psychologically incapacitated can file the action to declare the marriage void (*SEMPIO-DIY*, 47).

#### NO AWARD OF DAMAGES IN PSYCHOLOGICAL INCAPACITY

The award of damages should be predicated, not on the mere act of entering into the marriage, but on specific evidence that it was done deliberately and with malice by a party who had knowledge of his or her disability and yet willfully concealed the same (*Buenaventura v CA*, GR No. 127358 [2005]).

**NOTE:** Action for declaration of absolute nullity, including those on the ground of psychological incapacity, is not subject to prescription (*Art. 39, as amended by RA No. 8533, FC*).

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#### ART. 37

Marriages between the following are incestuous and void from the beginning, whether relationship between the parties be legitimate or illegitimate:

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

**NOTE:** Even if the marriage is solemnized abroad in accordance with the laws in force in the country where they are solemnized, and valid there as such, such incestuous marriage is not recognized as valid in the Philippines (*Art. 26, par. 1, FC*).

#### FULL BLOOD RELATIONSHIPS

Those existing between persons who have the same father and the same mother (*Art. 967, par. 1, CC*).

#### HALF BLOOD RELATIONSHIPS

Those existing between persons who have the same father but not the same mother, or the same mother, but not the same father (*Art. 967, par. 2, CC*).

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#### ART. 38

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

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

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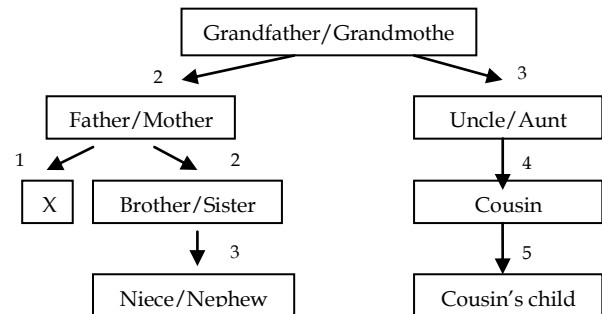
#### COLLATERAL LINE

That constituted by the series of degrees among persons who are not ascendants and descendants, but who come from a common ancestor (*Art. 964, par. 3, FC*). In the counting of degrees in the

collateral line, ascent is made to the common ancestor and then descent is made to the person with whom the computation is to be made. Thus, a person is two degrees removed from his brother, three from his uncle, who is the brother of his father, four from his first cousin, and so forth (*Art. 966, par. 3, FC*).

#### THE FOLLOWING CAN NOW MARRY EACH OTHER [LSG CAC]

1. Brother-in-law and sister-in-law;
2. Stepbrother and stepsister;
3. Guardian and ward;
4. Parties who have been convicted of adultery or concubinage;
5. Adopted and illegitimate child, parents and relatives by consanguinity or affinity of the adopter;
6. Collateral relatives by the half blood (*SEMPIO-DIY*, 45).



Thus, a person (X) is 2 degrees removed from his brother/sister 3 from his uncle/aunt of his father/mother, 4 from his cousin, and so forth (*RABUYA*, 245).

**NOTE:** Relationship by consanguinity is in itself not capable of dissolution. Hence, the mere fact that a common ascendant, a grandfather for example, died does not sever the blood relationship of first cousins.

#### BETWEEN PARENTS-IN-LAW AND CHILDREN-IN-LAW

There are views that once the marriage is annulled or nullified, the persons who used to be parents-in-law and children-in-law become strangers to each other and can now marry each other, since the relationship by affinity is terminated. However, the intention of the law is to prohibit marriages between persons who were once related to each other by affinity as parents-in-law and children-in-law, even if marriages which serves as the source of relationship by affinity, is already dissolved or terminated by reason of death or final judgment of annulment or of absolute nullity (*RABUYA*, 346).

This interpretation is in keeping with Philippine customs and traditions which treat the children-in-law as the parent-in-laws' own children, which treatment must necessarily subsist even after the severance of the marital bond (*Id.*, 346-347).

#### BETWEEN ADOPTING PARENT AND ADOPTED CHILD

Under the law, adopted child is considered the legitimate son or daughter of the adopter for all intents and purposes (*Sec. 17 Domestic Adoption Act of 1998*).

#### BETWEEN THE SURVIVING SPOUSE OF ADOPTING PARENT AND THE ADOPTED CHILD

It appears that the use of the term "surviving spouse" restricts the application of Art. 38 (5) to situations where the marital bond between the adopting parent and his or her spouse is terminated by reason of death. This being the case, if the marital bond is terminated not by reason by death, the marriage between the adopter's previous or former spouse and the adopted is not within the ambit of the prohibition under Art. 38 (5) (*RABUYA*, 348).

**BETWEEN THE ADOPTED CHILD AND LEGITIMATE CHILD OF THE ADOPTER**

Such rule is limited only to the case were the adopted child is prohibited from marrying only the "legitimate child" of the adopting parent (*Id.*).

**BETWEEN THE ADOPTED CHILD OF THE SAME ADOPTER**

As far as the adopted child is concerned, he or she is prohibited from marrying the following:

1. The adopter;
2. The surviving spouse of the adopter;
3. The legitimate children of the adopter;
4. The other adopted children of the same adopter.

The adopter, on the other hand, is prohibited from marrying the following:

1. The adopted child;
2. The surviving spouse of the adopted child.

**INTENTIONAL KILLING OF THE SPOUSE**

A prior criminal conviction for the killing is no longer necessary to render the marriage void (*Id.*, 349). The fact of the killing committed by one of the parties to the marriage can be proved in a civil case.

**VIEWS ON TERMINATION OF MARRIAGE ON THE AFFINITY PROHIBITION**

1. Relationship by affinity is not terminated by the termination of the marriage whether there are children or not in the marriage;
2. Relationship by affinity is dissolved if one of the spouses dies and the spouses have no living issues or children; it does not cease if there are living issues or children of the marriage in whose veins the blood of the parties are commingled, since the relationship of affinity continues through the medium of the issues of the marriage;
3. The Philippines follows the continuing affinity view, which means that the death of one spouse does not terminate the relationship by affinity regardless of whether or not there are children produced under the marriage (*Intestate Estate of vda. Carungcong v People, GR No. 181409 [2010]*).

**ART. 39**

**The action or defense for the declaration of absolute nullity of a marriage shall not prescribe (as amended by RA 8533).**

**WHO CAN FILE PETITION FOR DECLARATION OF NULLITY**

| MARRIAGES CELEBRATED UNDER THE F.C. AND THE C.C.   | MARRIAGES CELEBRATED AFTER THE PROMULGATION OF A.M. No. 02-11-10-SC  | BIGAMOUS MARRIAGES  |
|--|--|---|
| <p>The plaintiff must still be the party who stands to be benefitted by the suit or the party entitled to the avails of the suit. One having no material interest to protect cannot invoke the jurisdiction of the court as plaintiff in an action (<i>Carlos v Sandoval, GR No. 179922 [2008]</i>).</p> <p>INTEREST - material interest or an interest in issue to be affected by the decree of judgment of the case, as distinguished from mere curiosity about the question involved or a mere incidental interest.</p> | <p>A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife (<i>Sec. 2, par. A, A.M. No. 02-11-10-SC</i>).</p> | <p>The rule in Sec. 2(a) of A.M. No. 02-11-10-SC that only the husband or wife can file a declaration of nullity or annulment of marriage does not apply in bigamy cases for the said rule refers to the husband or the wife of the subsisting or subsequent marriage. The proper party, hence, must be the party injured by the contracting of the subsequent marriage while the prior marriage was existing. Should parties in a subsequent marriage benefit from the bigamous marriage, it would not be expected</p> |

|  |  |   |
|--|--|---|
|  |  | that they would file an action to declare the marriage void and thus the injured spouse who should be given a legal remedy is the one in a subsisting previous marriage ( <i>Juliano-Llave v Republic GR No. 169766 [2011]</i> ). |
|--|--|---|

**IF A.M. No. 02-11-10-SC IS NOT APPLICABLE**

The above AM No. 02-11-10-SC does not apply to:

3. Nullity of marriage cases commenced before the effectivity of the said rule (15 Mar. 2003);
4. Marriages celebrated during the effectivity of the Civil Code.

In such case, a petition to declare the nullity of a marriage, like any other actions, must be prosecuted or defended in the name of the real party-in-interest or of the person to be affected by the decree of judgment of the case.

**DIRECT ACTION AFTER DEATH OF ONE OF THE SPOUSES**

| MARRIAGES COVERED BY AM No. 02-11-10-SC   | MARRIAGES COVERED BY THE CIVIL CODE   |
|---|---|
| <p>Closure and termination of the petition in case a party dies;</p> <p>The heirs may collaterally attack the marriage by raising it as an issue in a proceeding for the settlement of the estate of the deceased spouse.</p> | <p>The heirs of a deceased spouse can bring an action for nullity of marriage case against the surviving spouse</p> <p>They also have the right to raise the issue of nullity collaterally in a proceeding for the settlement of the estate of the deceased spouse.</p> |

**REASON FOR THE NECESSITY OF DIRECT ACTION**

To prevent circumvention of the substantive and procedural safeguards of marriage under the Family Code, A.M. No. 02-11-10-SC and other related laws (*Fujiki v Marinay, GR No. 196049 [2013]*).

**COLLATERAL ATTACK OF VOID MARRIAGES**

The validity of a void marriage may be collaterally attacked (*De Castro v Assidao-De Castro, GR No. 160172 [2008]*). The court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case without prejudice to any issue that may arise in the case (*Niñal v Bayadog, GR No. 133778 [2000]*). However, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a marriage an absolute nullity (*RABUYA, 356*). The court also allowed a marriage to be declared void *ab initio* for being bigamous in a Petition for Letters of Administration filed by a compulsory heir (*Garcia-Quiason v Belen, GR No. 189121 [2013]*).

**NOTE:** The trial court had jurisdiction to determine the validity of the marriage in an action for support (*De Castro v Assidao-De Castro, GR No. 160172 [2008]*).

**DECLARATION OF NULLITY OF MARRIAGE AND RULE 108**

If the cause of action is to seek the declaration of a marriage void for being bigamous and impugn the child's legitimacy, such causes of action are governed not by Rule 108 but by AM No. 02-11-10-SC which took effect on 15 Mar. 2003, and Art. 171 of the Family code, respectively, it was held that the petition be filed in a Family Court (*Braza v The City Civil Registrar of Himamaylan City, Negros Occidental, GR No. 181174 [2009]*).

**NOTE:** The Court allowed the cancellation of entries in the marriage contract filed with the NSO (PSA) in the guise of Rule 108 proceeding where the respondent found out that someone stole her identity in contracting marriage to a Korean national. In allowing the correction of the subject certificate of marriage by cancelling the name of the respondent in the wife portion thereof, the Court held that the respondent did not seek the nullification of marriage as there was no



marriage to speak of. While the Court maintain that Rule 108 cannot be availed of to determine the validity of marriage, the Court cannot nullify the proceedings before the trial court where all the parties had been given the opportunity to contest the allegations of respondent (*Republic v Olaybar*, GR No. 189538 [2014]).

**NOTE:** The Court clarified that the ruling in Braza does not apply in a petition for correction or cancellation of a civil registry entry based on the recognition of a foreign judgment nullifying a bigamous marriage where one of the parties is a citizen of the foreign country (*Fujiki v Marinay*, GR No. 196049 [2013]).

**ART. 40**

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

**THE LAW BEFORE THE INCLUSION OF THE PROVISION**

The accused contracted a second marriage during the subsistence of his first marriage. After the death of his first wife, accused contracted a third marriage during the subsistence of the second marriage. The second wife initiated a complaint for bigamy. The Court acquitted the accused on the ground that the second marriage is void, having been contracted during the existence of the first marriage. The Court held that there is no need for a judicial declaration that said second marriage is void. Since the second marriage is void, and the first one terminated by the death of his wife, there are no two subsisting valid marriages (*RABUYA*, 360).

**HISTORICAL BACKGROUND OF THE NEED FOR JUDICIAL DECLARATION OF NULLITY OF A VOID MARRIAGE**

Justice Alex Reyes dissented in *People v Mendoza* (GR No. L-5877 [1954]) and *People v Aragon* (GR No. L-10016 [1957]) in the case abovementioned, stating that “Though the logician may say that where the former marriage was void there would be nothing to dissolve, still it is not for the spouses to judge whether that marriage was void or not. That judgment is reserved to the courts.” Hence, in *Gomez v Lipana* (GR No. L-23214 [1970]), the Court abandoned the ruling in the Aragon and Mendoza cases. The Court stated that “if the nullity or annulment of the marriage is the basis for the application of Art. 1417, there is a need for a judicial declaration thereof, which of course contemplates an action for that purpose” (*Id.*).

Thereafter, in *Odayat v Amante* (A.M. No. 58 [1977]) decided on June 2, 1977 and in *Tolentino v Paras* (GR No. L-43905 [1983]) decided on May 30, 1983, the Supreme Court reverted to the rule that there was no need for a judicial declaration for nullity of a void marriage. Subsequently, in *Wiegel v Sempio-Diy* (GR No. 530703 [1986]) decided later on August 19, 1986, the Supreme Court returned to the rule that there was a need for a judicial declaration of nullity of a void marriage. Then, in a later case, *Yap v. Court of Appeals* (GR No. 40003 [1986]), decided on October 28, 1986, the Supreme Court again reverted to the rule that there was no need for a judicial declaration of nullity of a void marriage. Finally, on August 3, 1988, the Family Code took effect which provides in Article 40 thereof that “the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void”; thus, by statute, the rule now is that there is a need for a judicial declaration of nullity of a void marriage only for purposes of remarriage (*STA MARIA*, 258-259)

**ARTICLE 40, EXPLAINED**

Where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law, for said projected marriage to be free from legal infirmity, is a final judgment declaring the previous marriage void (*Domingo v CA*, GR No. 104818 [1993]). In such instances, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity (*RABUYA*, 362)

Hence, in the instance where a party who has previously contracted a marriage which remains subsisting desires to enter into

another marriage which is legally unassailable, he is required by law to prove that the previous one was an absolute nullity. But this he may do on the basis solely of a final judgment declaring such previous marriage void (*Domingo v CA*, GR No. 104818 [1993]).

**NOTE:** The word “solely” in Art. 40 is meant to qualify the clause “final judgment declaring such previous marriage void” and not the clause “for purposes of remarriage” (*Id.*).

**REASON FOR THE LAW**

If the marriage is void, there is a need to have it declared void is because of the fact that the parties to the marriage cannot judge for themselves the invalidity of their marriage (*Landicho v Relova*, GR No. L-22579 [1968]). This is especially so that no less than the Constitution (see Sec. 12, Art. II, 1987 Constitution) seeks to preserve the sanctity of the marriage, it being the foundation of the family (*ALBANO*, 332). The aim of Art. 40 is to do away with any continuing uncertainty on the status of the second marriage (*Valdez v RTC*, GR No. 122749 [1996]).

**NOTE:** In a case for support, a lower court can declare a marriage void even without prior judicial declaration of nullity of a void marriage filed in a separate action considering that the determination of the issue on the validity of marriage was important in the resolution of the right of the child to be supported. The validity of marriage can be collaterally attacked (*De Castro v Assidao-De Castro*, GR No. 160172 [2008]).

**SUBSEQUENT MARRIAGE WITHOUT JUDICIAL DECLARATION OF NULLITY OF PREVIOUS MARRIAGE, VOID AB INITIO**

Article 40, in relation to Articles 52 and 53, has the effect of making the subsequent marriage void if it were contracted before the declaration of nullity of the first void marriage (*Atienza v Brillantes, Jr., A.M. No. MTJ-92-706 [1995]*).

| ARTICLE 35 (4)   | ARTICLE 40   |
|--|--|
| The prior or first marriage is either valid or voidable;                                     | The prior or first marriage is void <i>ab initio</i> ;   |
| The subsequent marriage is void because it is bigamous;                                      | The subsequent marriage is void for failure to comply with the requirement of Art. 40;                           |
| The dissolution of property for the subsequent void marriage is governed by Art. 148;        | The dissolution of property for the subsequent void marriage is governed by Art. 50, in relation to Art. 43 (2); |
| Children born or conceived of the subsequent marriage are illegitimate pursuant to Art. 165. | Children born or conceived of the subsequent marriage are illegitimate pursuant to Art. 165.                     |

(*Cariño v Cariño* GR No. 132529 [2001] [2013])

| ARTICLE 35 (6)  | ARTICLE 40   |
|---|--|
| There exists a prior voidable or void marriage;   | There exists a prior void marriage;  |
| A party to the prior marriage obtains a judgment of annulment or absolute nullity of the marriage;  | A party to the prior marriage failed to obtain judicial declaration of nullity;  |
| The party eventually contracts a subsequent marriage;   | The party eventually contracts a subsequent marriage;  |
| The subsequent marriage is void for failure to cause the recording or registration in the appropriate civil registry and registries of property: <ul style="list-style-type: none"> <li>1. The judgment of annulment or of absolute nullity of the marriage;</li> <li>2. The partition and distribution of the properties of the</li> </ul> | The subsequent marriage is void for failure to obtain a judicial decree of nullity of the prior marriage before contracting a subsequent marriage; |

|  |  |
|--|--|
| spouses;<br>3. The delivery of the children's presumptive legitimes.   |  |
| Children conceived or born of the subsequent marriage under Art. 53 before the judgment of absolute nullity of the subsequent marriage has become final and executory shall be legitimate (Art. 54, FC); | Children conceived or born of the subsequent marriage are considered illegitimate (Art. 165, FC);                |
| The dissolution of property for the subsequent void marriage is governed by Art. 147.  | The dissolution of property for the subsequent void marriage is governed by Art. 50, in relation to Art. 43 (2). |

RABUYA, 369-371

**NOTE:** If the second or subsequent marriage took place prior to the effectivity of the Family Code, it is clear that Art. 40 is not applicable (*Ty v CA, GR No. 127406 [2000]*). Clearly therefore, Art. 40 is applicable to remarriages entered into after the effectivity of the Family Code on 3 Aug. 1988 regardless of the date of the first marriage (*Atienza v Brillantes, Jr, A.M. No. MTJ-92-706 [1995]*). It is the date of the second marriage which is crucial (*RABUYA, 374*). The provision of Art. 40 should not be applied retroactively for to do so would result in impairment of vested rights (*Jison v Ca, GR No. 124853 [1998]*).

#### QUESTIONABILITY OF THE RETROACTIVE APPLICATION OF ART. 40 MADE IN JARILLO AND MONTAÑEZ

The ruling in *n Jarillo v People (GR No. 164435 [2009])* and *Montañez v Cipriano (GR No. 181089 [2012])* is questionable insofar as the Court authorizes the retroactive application of Art. 40 of the Family Code to subsequent marriages contracted prior to the effectivity of the said code. Note that for civil purposes, the Family Code, in its Art. 256, does not allow its retroactive application if the same will result into prejudice or impairment of vested or acquired rights (*RABUYA, 380*).

If the Court did not apply Art. 40 retroactively to subsequent marriages prior to the Family Code and *Wiegel v Sempio-Diy (GR No. 530703 [1986])* in administrative and civil case because the same would prejudice the vested rights of the parties and children of the subsequent marriage, it is with reason that said article should not be applied retroactively in criminal cases, where the resulting prejudice is much greater and incomparable (*Id., 382*).

Art. 40 is not an ordinary rule of procedure that does not affect vested or acquired rights. In addition to its civil purpose of clarifying the status of the subsequent marriage as void if entered into without a judicial declaration of nullity of the prior void marriage, jurisprudence is also telling us that Art. 40 considers the marital vinculum of the previous marriage to subsist for purposes of remarriage in the absence of a judicial declaration of its nullity and that the crime of bigamy is committed if a second marriage is contracted in the absence of such judicial declaration of the prior void marriage (*Mercado v Tan, GR No. 137110 [2000]*).

**NOTE:** Art. 40 should not be applied retroactively to subsequent marriages contracted prior to the *Wiegel* case. It is a settled principle that when a prior ruling of the Court is overruled, and a different view is adopted, the new doctrine is to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith in accordance therewith (*Ting v Velez-Ting, GR No. 166562 [2009]*).

#### ARTICLE 40 AND BIGAMY

##### Elements of Bigamy

1. A valid prior marriage;
2. The marriage has not been legally dissolved or the absent spouse could not be presumed dead, as the case may be;
3. The offender contracts a subsequent marriage;
4. The subsequent marriage has all the essential requisites for validity (*see Art. 349, RPC*).

#### APPLICATION OF ARTICLE 40 IN BIGAMY CASES

##### 1. *If the first marriage is void*

Though the Art. 349 of the RPC requires the both the prior and subsequent marriages must be valid, Art. 40 applies. The Court held that a judicial declaration of nullity of a previous marriage is necessary before a subsequent one can be legally contracted and one who enters into a subsequent marriage without first obtaining such judicial declaration is guilty of bigamy and that the principle applies even if the earlier union is characterized by statute as void (*Mercado v Tan, GR No. 137110 [2000]*). The crime of bigamy is consummated on the celebration of the subsequent marriage without the previous one having been judicially declared null and void (*Capili v People, GR No. 183805 [2013]*).

The Court did not find it material to focus on the nullity of the first marriage but instead merely reasoned that, for as long as Art. 40 was not complied with, the subsequent marriage will always be criminally bigamous. Criminal bigamy is determined not by the fact that the first marriage is really legally void but by the fact that no judicial declaration of the nullity of the first marriage was obtained prior to the subsequent marriage (*ALBANO, 268*).

##### 2. *If the second marriage is void*

If the second or subsequent marriage is void not because of the existence of the first marriage but for other causes such as lack of license, the crime of bigamy is not committed (*Santiago v People, GR No. 200233 [2015]*, citing *People v de Lawa, CA, 51 O.G., 4079*).

**NOTE:** For the *Mercado* ruling to apply, it is necessary that ostensibly, at least, the first marriage appeared to have transpired, although later declared void *ab initio*. If what has taken place has no semblance to a valid marriage because no marriage ceremony at all was performed by a duly authorized solemnizing officer, the *Mercado* ruling will not apply (*Morigo v People, GR No. 145226 [2004]*).

#### ARTICLE 40, BIGAMY AND PSYCHOLOGICAL INCAPACITY

The rule that the crime of bigamy is not committed if the second marriage is void not because of the existence of the first marriage but for other causes *does not apply* if the reason for the nullity of the second marriage is under Art. 36 (psychological incapacity). Although the judicial declaration of the nullity of a marriage on the ground of psychological incapacity retroacts to the date of the celebration of the marriage insofar as the vinculum between the spouses is concerned, the marriage is not without legal effects. There is therefore a recognition writing into the law itself that such a marriage, although void *ab initio*, may still produce legal consequences and, among these legal consequences, is incurring criminal liability for bigamy (*Tenebro v CA, GR No. 150758 [2004]*).

Nullity of the marriage based on Art. 36 should not be made an excuse in the crime of bigamy because this ground is a class by itself

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#### ART. 41

**A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article. 391 of the Civil Code, an absence of only two years shall be sufficient.**

**For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.**

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#### ART. 42

The subsequent marriage referred to in the preceding article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void *ab initio*.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed.

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#### GENERAL RULE

Any marriage contracted by any person during the subsistence of a previous marriage shall be null and void. Such person shall be guilty of bigamy (RABUYA, 409-410).

#### EXCEPTION

A subsequent bigamous marriage with the following conditions:

1. The prior spouse of the contracting party must have been absent for 4 consecutive years, or 2 years where there is a danger of death under the circumstances stated in Art. 391 at the time of disappearance;
2. The spouse present has a well-founded belief that the absent spouse is already dead;
3. There is a judicial declaration of presumptive death of the absentee for which purpose the spouse present can institute a summary proceeding in court to ask for that declaration (Arts. 40 and 41).

**NOTE:** In marriages contracted prior to the effectivity of the Family Code, judicial declaration of presumptive death is not necessary for the reason that such takes place by operation of law (*Valdez v Republic*, GR No. 180863 [2009]).

**NOTE:** The requirement of presumptive death under Article 41 not only for the validity of the subsequent marriage but also to protect the present spouse from a criminal prosecution for bigamy under Art. 349 of the RPC. Such provision was designed to harmonize civil law and the Art. 349 of the RPC, and put to rest the confusion spawned by the rulings of the Court and comments of eminent authorities on Criminal Law (*Manuel v People*, GR No. 165842 [2005]).

#### REQUISITES OF DECLARATION OF PRESUMPTIVE DEATH [AW BeS]

1. Absent for 4 consecutive years, or 2 years if the disappearance occurred where there is a danger of death under Art. 391 of the CC;
2. Present spouse wishes to remarry;
3. Present spouse has a well-founded belief that the absent spouse is dead;
4. Present spouse files a summary proceeding for the declaration of presumptive death of the absentee (*Republic v Nolasco*, GR No. 94053 [1993]).

**NOTE:** The burden of proof rests on the present spouse to show that all the requisites under Art. 41 of the Family Code are present (RABUYA, 420).

**NOTE:** Upon the issuance of the decision declaring the absent spouse presumptively death, the present spouse's good faith in contracting a second marriage is effectively established and his/her criminal intent in case of remarriage is effectively negated (*Id.*, 425-426).

#### REQUIREMENT OF WELL-FOUNDED BELIEF

It can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts but, more importantly, that the absent spouse is still alive or is already dead (*Republic v Cantor*, 712 SCRA 1 [2003]).

The present spouse must prove that his/her belief was the result of diligent and reasonable efforts and inquiries to locate the absent

spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead (RABUYA, 421).

It requires exertion of active effort and not a mere passive one (*Republic v Cantor*, 712 SCRA 1 [2003]).

**NOTE:** The requirement of "well-founded belief" depends upon the circumstances of each particular case (RABUYA, 421).

**NOTE:** The strict standard approach in the requirement of "well-founded belief" under Art. 41 is to ensure that a the declaration of presumptive death is not used as a tool to conveniently circumvent the laws. The strict standard approach is consistent with the State's policy to protect and strengthen marriage (*Republic v Cantor*, 712 SCRA 1 [2003]).

#### SUMMARY PROCEEDINGS TO OBTAIN JUDICIAL DECLARATION

The judgment of the court in declaration of presumptive death of an absent spouse shall be immediately final and executory as provided in Art. 247 in relation to Arts. 238 and 253 of the Family Code. No appeal can be had. Nonetheless, the aggrieved party may file a petition for *certiorari* to question abuse of discretion amounting to lack of jurisdiction which should be filed in the CA. From the decision of the CA, the losing party may then file a petition for review on *certiorari* under Rule 45 of the Rules of Court with the Supreme Court (RABUYA, 426-427).

#### SUMMARY PROCEEDING

When cases are to be adjudged promptly, without any unnecessary form, the proceedings are said to be summary. In no case can the party be tried summarily unless when such proceedings are authorized by legislative authority except perhaps in the cases of contempt, for the common law is a stranger to such a mode of trial.

#### EFFECTS OF JUDICIAL DECLARATION OF PRESUMPTIVE DEATH

1. The present spouse may contract a subsequent marriage;
2. The previous marriage is presumably terminated;
3. Dissolution of the absolute community regime or of the conjugal partnership (*Id.*, 429-430).

**NOTE:** The present spouse who obtained the judicial declaration of presumptive death is required to liquidate the absolute community property or the conjugal partnership property of the previous marriage within 1 year from the issuance of the judicial declaration of presumptive death prior to contracting a subsequent marriage; otherwise, a mandatory regime of complete separation shall govern (*Id.*, 430).

**NOTE:** The above effects are without prejudice to the effect of the reappearance of the absent spouse in which case, the presumption of death of the absentee is rendered ineffective resulting in the:

1. Automatic termination of the subsequent marriage;
2. Resumption of all the rights, obligation and effects of the previous marriage
3. The subsequent marriage is exceptionally recognized as valid (*Id.*).

#### EFFECTS OF RECORDING OF AFFIDAVIT OF REAPPEARANCE

When the absentee reappears, but no steps is taken to terminate the subsequent marriage, such absentee's reappearance, even if made known to the spouses in the subsequent marriage, will not terminate such marriage. The absentee, though has reappeared, is still regarded as legally an absentee until the subsequent marriage is terminated as provided by law (*SSS v Jarque vda. de Bailon*, GR No. 165545 [2006]).

#### REQUISITES IN ORDER TO TERMINATE THE SUBSEQUENT MARRIAGE IN CASE OF REAPPEARANCE [DARE]

1. Due notice to the spouses of the subsequent marriage of the fact of reappearance;
2. The absence of a judgment annulling the previous marriage or declaring it void *ab initio*;

3. Recording in the civil registry of the residence of the parties to the subsequent marriage of the sworn statement of fact and affidavit of reappearance;
4. The fact of reappearance must either be undisputed or judicially determined (*Santos v Santos*, GR No. 187061 [2014]).

**NOTE:** The requisites above only apply if the termination of the subsequent marriage is by reason of recording of the affidavit of reappearance (*RABUYA*, 432).

#### INSTANCES WHEN THE SUBSEQUENT MARRIAGE SUBSISTS DESPITE OF THE REAPPEARANCE OF THE ABSENTEE

1. If the first marriage has already been annulled or has been declared a nullity;
2. If the affidavit of reappearance is not recorded in the civil registry of the subsequent spouse's residence;
3. If there is no notice to the subsequent spouses;
4. If the fact of reappearance is disputed in the proper courts of law, and no judgment is yet rendered confirming such reappearance (*Santos v Santos*, GR No. 187061 [2014]).

#### TWO WAYS OF TERMINATING THE SUBSEQUENT MARRIAGE

1. Recording of the affidavit of reappearance;
2. Judicial declaration of dissolution or termination of the subsequent marriage (*SSS v Jarque vda. de Bailon*, GR No. 165545 [2006]);
3. If the presumptively dead spouse can prove that both the spouse of the subsequent marriage acted in bad faith, such spouse can file a petition for declaration of nullity of the subsequent marriage (*RABUYA*, 439-440).

**NOTE:** The abovementioned first way is the only instance where the law recognizes as valid an extra-judicial termination of a marriage (*Id.*, 432).

The second way is the available remedy when the declaration of presumption of death was obtained by reason of extrinsic fraud (*Santos v Santos*, GR No. 187061 [2014]).

**NOTE:** In case where there is an extrinsic fraud in obtaining the decree of presumptive death, the remedy should not be the filing of affidavit of reappearance because:

1. It carries with it an admission on the party of the first spouse that his or her marriage to the present spouse was terminated when he or she was declared absent or presumptively dead;
2. The children of the subsequent marriage conceived before the termination shall still be considered legitimate;
3. The property relations of the spouses in the subsequent marriage shall be the same as in valid marriages;
4. A judgment declaring presumptive death is a defense against prosecution for bigamy (*RABUYA*, 433-434).

#### DEATH AS DISSOLUTION OF THE SUBSEQUENT MARRIAGE AND NOT BE REGISTRATION OF AFFIDAVIT OF REAPPEARANCE

Dissolution of valid marriages shall arise (*SSS v Jarque vda. de Bailon*, GR No. 165545 [2006]).

*Illustration:*

*X was judicially declared presumptively dead, hence, Y (the husband of X) contracted marriage with A, whom he just met from almighty social network site, Tinder.*

*If X reappears only after the death of Y, the filing of affidavit of reappearance shall no longer produce the effects provided for in Art. 43 of the Family Code since the marriage between Y and Z had already been terminated by death of Y.*

*In such case, the marriage between Y and Z is exceptionally considered as valid, unless there is a ground for the declaration of its nullity for which reason the interested party may collaterally attack its validity during the settlement of the estate of Y. Hence, it is Z who shall be considered as the surviving spouse for purposes of succession and not X (*RABUYA*, 433).*

#### VALIDITY OF THE SUBSEQUENT MARRIAGE EVEN IF THE JUDICIAL DECLARATION OF PRESUMPTIVE DEATH IS OBTAINED WITH BAD FAITH

Under Arts. 41-44 of the FC, the subsequent marriage under Art. 41 is considered valid if it was celebrated after the present spouse had obtained a judicial declaration of presumptive death of the absentee spouse, regardless of the good faith or bad faith of the present spouse in obtaining the judicial declaration of presumptive death. It is clear from Arts. 43-44 that the subsequent marriage is considered void only if both spouses of the subsequent marriage acted in bad faith in contracting the marriage. Hence, the subsequent marriage remains valid notwithstanding the bad faith of the present spouse in obtaining the judicial declaration of presumptive death and in contracting the marriage so long as the second spouse acted in good faith (*Id.*, 438).

Under Art. 44 (FC), the subsequent marriage is considered bigamous under Art. 35 (4) only if both spouses therein acted in bad faith when they contracted the marriage (*Id.*).

**NOTE:** The provisions of Art. 41 should not be read in isolation but rather must be read in conjunction with the subsequent provisions, Arts. 43-44, which require both spouse of the subsequent marriage to have acted in bad faith before the latter marriage is considered bigamous and void

#### INAPPLICABILITY OF A.M. No. 02-11-10-SC

The rule in A.M. No. 02-11-10-SC that only the husband and wife can file a declaration of nullity or annulment of a marriage does not apply if the reason behind the petition is bigamy. The prior spouse (*presumptively dead spouse*) is clearly the aggrieved party as the bigamous marriage not only threatens the financial and the property ownership aspect of the prior marriage but most of all, it causes an emotional burden to the prior spouse. Being a real party in interest, the prior spouse (*presumptively dead spouse*) is entitled to sue in order to declare a bigamous marriage void (*RABUYA*, 440).

#### WHO CAN FILE AFFIDAVIT OF REAPPEARANCE

Any interested person (*Art. 42, par. 2, FC*).

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#### ART. 43

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

1. The children of the subsequent marriage conceived prior to its termination shall be considered legitimate, and their custody and support in case of dispute shall be decided by the court in a proper proceeding;
2. The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;
3. Donations by reason of marriage shall remain valid, except that if the donee contracted the marriage in bad faith, such donations made to said donee are revoked by operation of law;
4. The innocent spouse may revoke the designation of the other spouse who acted in bad faith as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable; and
5. The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession.

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#### ART. 44

If both spouses of the subsequent marriage acted in bad faith, said marriage shall be void *ab initio* and all donations by reason of

**marriage and testamentary dispositions made by one in favor of the other are revoked by operation of law.**

**STATUS OF CHILDREN**

Even if there is a prior existing marriage, children born or conceived of the subsequent marriage are legitimate. It is believed that if the present spouse disputed the reappearance of the absent spouse and the court rendered a judgment of non-appearance, the subsequent marriage would be reinstated as valid and children conceived or born thereafter would be legitimate (ALBANO, 361). This is so because the children have been conceived either inside a valid bigamous marriage or inside a valid marriage despite the non-observance of Articles 40, 52 and 53. This status of the children will be maintained even if one of the contracting parties is in bad faith (STA MARIA, 285). Hence, if both spouses in the subsequent marriage, however, acted in bad faith, the marriage would be void and the children born inside such marriage are illegitimate.

**EFFECT OF TERMINATION ON THE PROPERTY REGIME**

Upon the termination of the subsequent marriage, the absolute community or the conjugal partnership shall be dissolved and liquidated (RABUYA, 443). After payment of all debts and obligations of the absolute community or conjugal partnership, the spouses shall divide the property equally or in accordance with the sharing stipulated in a valid marriage settlement, unless there has been a voluntary waiver of share by either of the spouses upon the judicial separation of the property (STA MARIA, 286).

If either of the spouses acted in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the:

1. Common children;
2. Children of the guilty spouse;
3. Innocent spouse.

**NOTE:** Net profits refer to the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of dissolution. Net profit do not refer to the capital contributed by each spouse who retains his/her right thereto regardless of bad/good faith (PARAS, 449).

**EFFECT ON DONATION PROPTER NUPTIAS**

Donations *propter nuptias* in subsequent marriages mentioned in Art. 41 shall be valid. However:

1. *One spouse is in bad faith* – donations made to such persons are revoked by operation of law;
2. *Both spouses are in bad faith* – the marriage is void *ab initio* and all donations are revoked by operation of law.

**EFFECT ON DESIGNATION OF ONE SPOUSE AS BENEFICIARY IN INSURANCE POLICY**

If one of the spouses acted in bad faith in contracting the subsequent marriage mentioned in Art. 44 and such spouse had been designated as the beneficiary in any insurance policy of the innocent spouse, the latter has the right to revoked such designation even if the designation be stipulated as irrevocable (RABUYA, 444).

**DISQUALIFICATION TO INHERIT FROM INNOCENT SPOUSE**

Upon the termination of the subsequent marriage, the parties thereto cease to be a legal heir of each other, unless the parties are collateral blood relatives within the 5<sup>th</sup> civil degree (*Id.*).

However, even if the parties to the subsequent marriages are within the 5<sup>th</sup> civil degree but there is bad faith, the guilty spouse is disqualified from inheriting from the innocent spouse (STA MARIA, 287-288).

If both spouses contracted the subsequent marriage in bad faith, in which case the marriage is void *ab initio*, testamentary dispositions made by one in favor of the other are revoked by operation of law (RABUYA, 444).

**NOTE:** The disqualification abovementioned apply only if the subsequent marriage is terminated either y the recording of the affidavit of reappearance of by a judicial declaration of dissolution or

termination of the subsequent marriage by reason of reappearance of the absentee spouse (*Id.*, 444-445).

**WHERE PARTIES ACTED IN BAD FAITH**

1. *Only one party is in bad faith* – marriage is valid;
2. *Both parties are in bad faith* – marriage is void *ab initio*.

**BAD FAITH**

A dishonest purpose or some moral obliquity and conscious doing of wrong – it partakes of the nature of fraud, a breach of a known duty through some motive or interest or ill-will. Hence, there is bad faith in subsequent marriages under Art. 44 when a party thereto knows, at the time of the celebration of the marriage, that the absentee is still alive (*Id.*, 445).

**NOTE:** The judicial declaration of presumptive death is not a guarantee that the spouse present has acted in good faith in contracting the marriage since it is possible that after obtaining such declaration, but prior to the celebration of the subsequent marriage, the spouse present will become aware that the absentee is still alive (*Id.*, 446).

The law requires good faith should last up to the time of the celebration of the subsequent marriage (*Id.*).

**NOTE:** If both parties in said subsequent marriage have acted in bad faith, their marriage is considered bigamous under Art. 35 (4) and they shall be liable for the crime of bigamy notwithstanding the existence of the judicial declaration of presumptive death. The effects applicable to void marriages under Art 35 (4) also apply to the void marriage under Art. 44 (*Id.*).

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**ART. 45**

**A marriage may be annulled for nay of the following causes, existing at the time of the marriage:**

1. **That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;**
2. **That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;**
3. **That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting he fraud, freely cohabited with the other as husband and wife;**
4. **That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;**
5. **That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or**
6. **That either party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable.**

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**ART. 46**

**Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:**

1. **Non-disclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude;**
2. **Concealment by the wife of the fact that at the time of the marriage she was pregnant by a man other than her husband;**

3. Concealment of a sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or
4. Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage.

No other misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage.

#### ART. 47

The action for annulment of marriage must be filed by the following persons and within the periods indicated herein:

1. For causes mentioned in number 1 of Article 45, by the party whose parent or guardian did not give his or her consent, within five years after attaining the age of twenty-one; or by the parent or guardian or person having legal charge of the minor, at any time before such party has reached the age of twenty-one;
2. For causes mentioned in number 3 of Article 45, by the sane spouse who had no knowledge of the other's insanity; or by any relative guardian or person having legal charge of the insane, at any time before the death of either party; or by the insane spouse during a lucid interval or after regaining sanity;
3. For causes mentioned in number 3 of Article 45, by the injured party, within five years after the discovery of the fraud;
4. For causes mentioned in number 4 of Article 45, by the injured party, within five years from the time the force, intimidation or undue influence disappeared or ceased;
5. For causes mentioned in number 5 and 6 of Article 45, but he injured party, within five years after the marriage.

#### VOIDABLE MARRIAGE

A marriage is voidable if there is a defect in consent that was given. A voidable marriage is considered valid and produces all its civil effects until it is set aside by final judgment of a competent court in an action for annulment. It subsists but later ceases to have legal effects (*Id.*, 448).

#### RATIFICATION/CONFIRMATION

It is the act or means by virtue of which efficacy is given to contract which suffers from vice of curable nullity (*Luna v Linatoc*, 74 *Phil.* 15).

It is the act by which a person, entitled to bring an action for annulment, with knowledge of the cause of annulment and after it has ceased to exist, validates the contract either expressly or impliedly (*TOLENTINO*, 600).

#### REQUISITES OF RATIFICATION OR CONFIRMATION [TEKA]

1. The contract should be tainted with a vice which is susceptible of being cured;
2. The confirmation or ratification should be effected by the person who is entitled to do so under the law;
3. It should be effected with the knowledge of the vice or defect of the contract;
4. The cause of the nullity or defect should have already disappeared (*JURADO, Obligations and Contracts*, 11<sup>th</sup> Ed., 539).

#### ANNULMENT

It is a judicial or legal process of invalidating a voidable marriage (*Id.*).

#### CHARACTERISTICS OF VOIDABLE MARRIAGES

1. Valid until annulled;
2. The defect must be in existence at the time of the celebration of the marriage;
3. Cannot be assailed collaterally except in a direct proceeding;
4. Can be assailed only during the lifetime of the parties;

5. Only the parties to a voidable marriage can assail it;
6. The action for annulment is subject to prescription;
7. The defect is subject to ratification, except those mentioned in pars. 5 and 6 of Art. 45.

#### VOIDABLE MARRIAGES [18 U FF P Sex] or (18, Uy FaFa PaSex)

1. Those contracted by 18-21 years and solemnized without parental consent;
2. Unsound mind of either party;
3. Consent was obtained by fraudulent means;
4. Vitiated consent of either party through force, intimidation or undue influence;
5. Physical incapability of either party to consummate the marriage;
6. Sexually transmissible disease of either party found to be serious and appears to be incurable.

#### NO PARENTAL CONSENT

The law deems to be insufficient the consent given by a party who is at least 18 years old by below 21. In the absence of parental consent, the law considers the consent given by such party as defective, thus rendering the marriage voidable (*RABUYA*, 451).

#### WHO MUST GIVE CONSENT

"xxx their father, mother, surviving parent or guardian, or persons having legal charge of them, in the order mentioned xxx" (*Art. 14, FC*).

If the father refuses to give his consent to a contemplated marriage where his consent is required, the mother cannot do anything (*RABUYA*, 451). However, if the party concerned is an illegitimate child, it is the mother who must give her consent to the marriage since illegitimate children are under the parental authority of their mother (*see Art. 176, FC*).

| AGE OF THE PARTY | WHO MAY FILE ANNULMENT |
|------------------|------------------------|
| 18-21 years old; | Parent;                |
| 21-25 years old. | Party to the marriage. |

#### PRESCRIPTIVE PERIOD

| WHEN PARENT WILL FILE THE PETITION  | WHEN PARTY TO THE MARRIAGE WILL FILE THE PETITION   |
|---|---|
| Before the attainment of the age of 21 by the contracting party who needs parental consent. | 5 year after the contracting party in need of parental consent has reached the age of 21. |

#### SUBJECT TO RATIFICATION

The voidable marriage is ratified if the party whose parent did not give consent, after reaching the age of 21, freely cohabits with the other and both lived together as husband and wife (*Art. 45, no. 1, FC*).

**NOTE:** Only the party whose parent did not give consent is entitled to ratify the marriage in the manner required by law. Hence the parent or the other party to the marriage is not required for the ratification to take effect (*see Art. 1395, CC*).

#### UNSOUND MIND

To successfully invoke this ground, it is essential that the mental incapacity of one of the parties must relate specifically to the contract of marriage (*RABUYA*, 453).

#### TESTS

1. Whether the party at the time of the marriage was capable of understanding the nature and consequences of the marriage (*TOLENTINO, Civil Code*, 1990 Ed., 289);
2. Whether the party concerned could intelligently consent; that is, that he know what contract he was entering into (*Hoadley v Hoadley*, 244 NY 424).

**NOTE:** Intoxication which results in lack of mental capacity to give consent is equivalent to unsoundness of mind (*McKnee v McKnee*, 49 *Nev.* 90).

**NOTE:** A person is presumed to be of sound mind at any particular time and the condition is presumed to exist, in the absence of proof to the contrary (*Mendezona v Osamiz, GR No. 143370 [2002]*). The burden of proof rests upon him who alleges insanity or seeks to avoid an act on account of it (*Carillo v Jaoco, 46 Phil 597*).

**WHO MAY FILE ANNULMENT**

1. *The sane spouse* – only in cases where he contracted the marriage without knowledge of the other’s insanity, and prior to the ratification by the insane spouse; otherwise:
  - a. *Any relative or guardian or person having legal charge of the insane;*
  - b. *Insane spouse* – during lucid interval or after gaining sanity.

**PRESCRIPTIVE PERIOD**

Anytime before the death of either party (*see Art. 45, par. 2, FC*).

**SUBJECT TO RATIFICATION**

Only the insane person, after gaining sanity, is authorized to ratify the marriage by freely cohabiting with the sane spouse as husband and wife (*see Art. 45, no. 2, FC*).

**NOTE:** If the insane spouse, after coming into reason, chooses to ratify the marriage, the sane spouse may no longer bring an action for annulment since he is already barred by *res judicata*.

**FRAUD**

That which renders ordinary contract voidable refers to those insidious words or machinations employed by one of the contracting parties in order to induce the other to enter into a contract, which without them he would not have agreed to (*Art. 1338, CC*).

It is the non-disclosure or concealment of some facts deemed material to the marital relations (*RABUYA, 456*).

**WHO MAY FILE ANNULMENT**

The injured party or the party who was not responsible for the fraud (*Art. 47, no. 3, FC*).

**PRESCRIPTIVE PERIOD**

Within five years after the discovery of the fraud (*Id.*).

**SUBJECT TO RATIFICATION**

By freely cohabiting with the guilty spouse as husband and wife after gaining full knowledge of the facts constituting the fraud (*Art. 45, no. 3, FC*).

**NON-DISCLOSURE OF PREVIOUS CONVICTION**

1. There must be conviction by final judgment;
2. The crime must involve moral turpitude.

**MORAL TURPITUDE**

It is any act done contrary to justice, honesty, principle or good morals; or an act of baseness, vileness or depravity in private and social duties which a man owes to his fellowmen or to the society in general, contrary to the accepted and customary rule of rights and duty between man (*In Re: Basa, 41 Phil. 27*).

Includes everythin which is done contrary to justice, honesty, modesty or good morals (*In re: Gutierrez, 58 SCRA 661*).

**CONCEALMENT OF PREGNANCY**

What constitute fraud in this case is the concealment of pregnancy, and not the pregnancy by another man by itself. Hence, if the bride was not aware that she was pregnant by another man at the time of the marriage, or when the groom was aware or could have been aware of the bride’s pregnancy, there is no fraud (*RABUYA, 458*).

**NOTE:** It is only on the 6<sup>th</sup> month of pregnancy that the enlargement of the woman’s abdomen reaches the height above the umbilicus, making the roundness of the abdomen more general apparent (*Aquino v Delizo, 109 Phil. 21*).

**SEXUALLY TRANSMISSIBLE DISEASE**

| SERIOUS AND INCURABLE | MAY OR NOT BE SERIOUS AND INCURABLE  |
|-----------------------|--|
| Ground for annulment; | Not ground for annulment;  |
|                       | <i>UNLESS:</i> the existence of such disease is concealed by the party afflicted from the other party at the time of marriage; |
| Article 45 (6).       | Art. 45 (3), in relation to Art. 46 (3).   |

**CONCEALMENT OF DRUG ADDICTION, HABITUAL ALCOHOLISM, HOMOSEXUALITY OR LESBIANISM**

If such circumstances abovementioned are not concealed and is known to the other party, it is not ground for annulment of the marriage (*RABUYA, 459*).

It is pointed out the ground is not homosexuality or lesbianism per se but the concealment of such sexual orientation. Hence, the element of bad faith on the part of the one making the concealment is essential and must be duly proven (*Almelor v. Regional Trial Court, G.R. No. 179620 [2008]*).

**VIOLENCE**

When in order to wrest consent, serious or irresistible force is employed (*Art. 1335, par. 1, CC*).

**INTIMIDATION**

When one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants, or ascendants, to give his consent (*Id., no. 2*).

**UNDUE INFLUENCE**

Control over one’s will (*PARAS, 452*). It is when a person takes improper advantage of another depriving the latter of reasonable freedom of choice (*Art. 1337, CC*).

**FACTORS TO CONSIDER**

The confidential, family, spiritual and other relations between the parties or the fact that the person alleged to have been unduly influenced was suffering from mental weakness or was ignorant or in financial distress (*Id.*).

**CRIMINAL LIABILITY ATTACHES TO ANYONE WHO USES VIOLENCE, INTIMIDATION AND FRAUD IN CONTRACTING A MARRIAGE**

The penalty of prisión correccional in its medium and maximum periods shall be imposed upon any person who, without being included in the provisions of the next preceding article, shall contract marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment.

If either of the contracting parties shall obtain the consent of the other by means of violence, intimidation or fraud, he shall be punished by the maximum period of the penalty provided in the next preceding paragraph (*Art. 350, RPC*).

**REQUISITES OF DURESS**

1. It must be the determining cause of the contract;
2. It must be unjust;
3. It must be serious or grave;
4. It must produce a reasonable and well-grounded fear from the fact that the person from whom it comes has the necessary means to inflict the threatened injury (*RABUYA, 460*).

**FACTORS TO CONSIDER IN VIOLENCE AND INTIMIDATION:**

1. Age;
2. Sex;
3. Condition of the person.

**NOTE:** Duress which will vitiate a marriage must clearly have dominated throughout the transaction to such an extent that the person influenced could not and did not act as a free agent (*Id.*).

**NOTE:** The force or coercion must have been unlawful (*Id.*).

#### WHO MAY FILE ANNULMENT

It can only be filed by the injured party or the party who was subject to duress (*Art. 47, no. 4, FC*).

#### PRESCRIPTIVE PERIOD

Within 5 years from the time the force, intimidation or undue influence disappeared or ceased (*Id.*).

#### SUBJECT TO RATIFICATION

It is subject to ratification by the injured party by freely cohabiting with the guilty spouse as husband and wife after the disappearance or cessation of force, intimidation or undue influence (*Art. 45, no. 4, FC*).

#### PHYSICAL INCAPABILITY OF CONSUMMATING MARRIAGE

What the law implies is impotency or the physical incapability of sexual intercourse (*RABUYA, 461-462*).

Such may be cause by a physical or structural defect in the anatomy of one of the parties or it may be due to chronic illness and inhibitions or fears arising in whole or in part from psychophysical conditions. It may be caused by psychogenic causes, where such mental block or disturbance has the result of making the spouse physically incapable of performing the marriage act (*Alcazar v Alcaza, GR No. 174451 [2009]*).

**NOTE:** The physical incapacity must have existed at the time of the celebration of the marriage. Impotency caused by a supervening infirmity does not invalidate the marriage (*Id., 462*).

#### IMPOTENCE

Total want of power of copulation, and only as necessary incident thereto the inability for procreation (*RABUYA, 462*).

It is the physical inability to have sexual intercourse (*Menciano v San Jose, 89 Phil. 63*).

#### REQUISITES [CUPIN]

1. Existing at the time of the celebration;
2. Unknown to the other spouse;
3. Permanent;
4. Incurable;
5. Other spouse must not also be impotent.

#### STERILITY

Refers to the inability to procreate (*RABUYA, 462*).

#### COPULATION

The act of gratifying sexual desire by union of sexual organs of two biological entities (*Id.*).

#### PRESUMPTION

The presumption is in favor of potency (*Menciano v San Jose, 89 Phil. 63*). Thus, the burden of proving the existence of impotency is upon him who alleges the existence of such condition (*RABUYA, 463*).

#### DOCTRINE OF TRIENNIAL COHABITATION

If the wife remains a virgin after 3 years of cohabitation, the husband will be presumed impotent, and the burden to overcome such presumption of impotency will be shifted upon him (*Tompkins v Tompkins, 92 MJ 113, 111 At. 599*).

#### REQUISITES OF IMPOTENCY AS GROUND FOR ANNULMENT [ECAU]

1. The incapacity must be existing at the time of the celebration of the marriage;
2. The same continues up to the time of the filing of the action for annulment;

3. The same appears to be incurable;
4. Must be unknown to the other contracting party (*RABUYA, 463*).

#### WHO MAY FILE ANNULMENT

The action can only be filed by the injured party (*Art. 47, no. 5, FC*).

#### PRESCRIPTIVE PERIOD

The action must be filed within 5 years after the celebration of the marriage (*Id.*).

#### NO SUBJECT TO RATIFICATION

The law does not authorize ratification of a voidable marriage under Art. 45 (5).

The reason under this is that there has been an entire and complete failure of the consideration of the marriage contract.

However, while the defect is not subject to ratification, the action for annulment may be barred by prescription (*Id.*).

| ARTICLE 45 (6)  | ARTICLE 46 (3)  |
|---|---|
| The existence of the sexually transmissible disease at the time of the marriage is, in itself, a ground for annulment provided that the disease is found to be serious and appears to be incurable. | The concealment of the sexually transmissible disease at the time of the marriage from the other party is a ground for annulment whatever may be the nature of the disease. |

#### REQUISITES [SEA SU]

1. Sexually transmissible;
2. Existing at the time of the marriage;
3. Appears incurable;
4. Serious;
5. Unknown to the other spouse at the time of the marriage.

#### WHO MAY FILE ANNULMENT

The injured party who was not aware of the existence of such disease at the time of the marriage and who himself or herself was or afflicted with a disease of the same nature (*RABUYA, 465*).

#### PRESCRIPTIVE PERIOD

Within 5 years after the celebration of the marriage and not after the discovery of such disease (*see Art. 47, no. 5*).

#### NOT SUBJECT TO RATIFICATION

The defect of the marriage is not subject to ratification through continuous cohabitation as husband and wife.

#### EFFECTS OF FINAL JUDGMENT OF ANNULMENT

The final judgment of annulment dissolves the special contract of marriage as if it had never been entered into but the effects of the marriage are not totally wiped out (*Suntay v Cojuang-Suntay, 300 SCRA 760, 771 [1998]*).

1. Termination of marital bond *ab initio*, but the effects are not totally wiped out (*Id.*);
2. Children conceived or born before the judgment of annulment has become final and executor are legitimate (*Art. 54, FC*);
3. Property regime is terminated or dissolved and liquidated in accordance with Arts. 102 and 129. The guilty spouse shall have no right to the share of the net profit and will be forfeited in favor of:
  - a. Common children;
  - b. Children of guilty spouse;
  - c. Innocent spouse.
4. Provide for the custody and support of the children and the presumptive legitimes (*considered as advances on their legitimes*), unless the same had been adjudicated in previous judicial proceedings;



5. Donations *propter nuptias* shall remain valid; unless the other spouse acted in bad faith in which case, the donor may revoke the donation;
6. Innocent spouse may revoke the designation of the other spouse who acted in bad faith as beneficiary in any insurance policy;
7. Guilty spouse shall be disqualified to inherit from the innocent spouse by testate and intestate succession;
8. If the wife is the:
  - a. Guilty spouse - she shall resume her maiden name and surname;
  - b. Innocent spouse - she may resumed her maiden name and surname.
 She may continue using her former husband's name unless:
  1. The court decrees otherwise;
  2. She or the former husband is married again to another person.
9. The parties are again free to re-marry after compliance with Art. 52.

#### ACTION FOR ANNULMENT OF VOIDABLE MARRIAGES

| GROUND   | PERSONS WHO MAY SUE   | PRESCRIPTIVE PERIOD   | RETIFICATION   |
|--|---|---|--|
| Absence of parental consent for contracting party below 18 | Parent/legal guardian having charge of the party;               | Anytime before the minor party reach 21;                              | Free cohabitation after reaching age of 21;                                    |
|  | Minor party to the marriage;                                    | Within 5 years after reaching 21;                                     |  |
| Unsound mind   | Sane spouse who has no knowledge of the insanity;               | Anytime before the death of either party;                             | Free cohabitation after insane regains sanity;                                 |
|  | Relative guardian or persons having legal charge of the insane; | Anytime before the death of either party;                             |  |
|  | Insane spouse;  | During lucid interval or after regaining sanity;                      |  |
| Fraudulent means   | Injured party;  | 5 years from discovery of fraud;                                      | Free cohabitation even with full knowledge of facts constituting fraud;        |
| Force, intimidation or undue influence                     | Injured party;  | 5 years from the time force, intimidation, or undue influence ceased; | Free cohabitation after disappearance of force, intimidation, undue influence; |
| Physical Incapability                                      | Injured party;  | 5 years after the celebration of the marriage;                        | No ratification;   |
| Sexually Transmissible Disease                             | Injured party.  | 5 years after the celebration of the marriage.                        | No ratification.   |

#### ART. 48

In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal

assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

In the case referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

#### ART. 49

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

NOTE: Procedures governing petitions for declaration of absolute nullity and annulment of marriages are now governed by the following but only extends to marriages commenced after 15 Mar. 2003:

1. AM No. 02-11-10-SC;
2. AM No. 02-11-12-SC.

NOTE: (It should be noted that presumption of you having read the abovementioned AMs exists)

#### REASON FOR THE LAW

The intention of the law is clear, that is to preserve the marriage. The State has interest in the marriage as the foundation of the family. This law emphasizes the fact that marriage is not a mere contract but an inviolable social institution (ALBANO, 373-374).

NOTE: A party in action for the annulment of marriage cannot be declared in default. Even if there is no answer of the defendant in actions for declaration of nullity of marriage or annulment thereof or even in legal separation, there is an inherent opponent, the State (*Id.*, 374-376).

#### ROLE OF FISCAL AND SOLICITOR GENERAL

While Article 48 does not specifically mention the Office of the Solicitor General, such office nevertheless can intervene in the proceeding considering that the issue of the validity of marriage is vested with public interest (*Republic v. Iyoy, G.R. No. 152577, [2005]*).

It is the duty of the Fiscal SolGen not only to defend a valid marriage, but also to expose an invalid one (*Sin v Sin, GR No. 137590 [2001]*). The prosecuting attorney must actively participate (*Republic v Cuison-Mergal, GR No. 139676 [2006]*).

**Q:** Is the Solicitor General authorized to intervene in proceedings for nullity and annulment of marriages?

**A:** Yes. EO 292 (*Administrative Code of 1987*) appoints the SolGen as the principal law officer and legal defender of the Gov. His Office is tasked to represent the Gov., its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. The intent of Art. 48 is to ensure that the interest of the State is represented and protected in proceedings for annulment and declaration of nullity of marriages (ALBANO, 376).

#### COLLUSION

There will be Collusion only if the parties had arranged to make it appear that a ground existed or had been committed although it was not, or if the parties had connived to bring about a matrimonial case even in the absence of grounds (*De Ocampo v Florenciano, GR No. L-13553 [1960]*).

#### STIPULATION OF FACTS

An admission by both parties made in court agreeing to the existence of the act constituting the ground for annulment or for the declaration of nullity of the marriage (*STA MARIA, 319*). It occurs

when the parties in a suit stipulated on the existence of certain facts and thereafter submits the case for decision based on said stipulation (*RABUYA*, 525).

### CONFESSION OF JUDGMENT

The admission made in court by the respondent or defendant admitting fault as invoked by the plaintiff to sever the marriage ties (*Id.*). It happens when the defendant appears in court and confesses the right of plaintiff to judgment or files a pleading expressly agreeing to the plaintiff's demand (*De Ocampo v Florenciano, GR No. L-13553 [1960]*).

### DUTIES OF COURT DURING PENDENCY OF ACTION FOR ANNULMENT OR DECLARATION OF NULLITY

1. Provide for support of children and spouse;
2. Provide for the custody of the common children;
3. Give paramount consideration to the moral and material welfare of the children and their choice of the parent with whom they want to remain;
4. provide for appropriate visitation rights of the other parent

**NOTE:** The grant of provisional remedies or protection orders by the court, *motu proprio* or application under oath, may be enforced immediately, with or without bond (*RABUYA*, 486).

**NOTE:** The provision for *support to the spouses* is a recognition of the fact that, during the pendency of the action for annulment or declaration of nullity of marriage, the spouses still have the duty to support one another (*STA MARIA*, 379).

**NOTE:** The provision for the *support of the common children* is an implementation of the duty of parents to support their children and it is in keeping with the principle that the best interest of the children is of utmost consideration (*Id.*).

### GENERAL RULE

A child below 7 yrs old cannot be separated from the mother.

### EXCEPTION

If there is a compelling reason to separate the child from the mother (*Id.*). Thus, the Court ruled that the fact that the mother has a common-law relationship with another man is a compelling reason for it will not afford the child that desirable atmosphere where she can grow and develop with an upright and moral-minded person (*Cervantes v Fajardo, GR No. 79955 [1989]*).

**NOTE:** If the child is 7 yrs or older, he has a right of choice of the parent with whom he would like to stay with and the court must consider it. But even if the child has chosen one of his parents, if the best interest of the child would be served if the choice is not considered, the court may give the custody of the child to another (*Id.*).

### RULES IN GRANTING SPOUSAL SUPPORT

1. Absence of written agreement between the spouses, they may be supported from the common properties;
2. The court may award support to either spouse as the court may deem just and reasonable;
3. The court may consider the following factors:
  - a. whether the spouse seeking support is the custodian of a child whose circumstance make it appropriate for the spouse not to seek outside employment;
  - b. time necessary to acquire education and training in order to find employment;
  - c. duration of marriage;
  - d. comparative financial resources;
  - e. needs and obligations of each;
  - f. contribution of each to the marriage;
  - g. age and health of each;
  - h. physical and emotional conditions of each;
  - i. ability of the supporting spouse to give;
  - j. any other factor the court may deem just and equitable;

4. May direct the deduction of the provisional support from the salary of the spouse (*Sec. 2, AM No. 02-11-12-SC*).

### CHILD SUPPORT

Shall be supported from the properties of the absolute community or conjugal partnership (*Sec. 3, AM No. 02-11-12-SC*).

The court may order either or both spouse to give an amount necessary for the support, maintenance and education of the child. It shall be proportion to the means of the giver and the necessities of the recipient (*Id.*).

### FACTORS IN DETERMINING PROVISIONAL CHILD SUPPORT

1. Financial resources of the custodial and non-custodial parent and those of the child;
2. Physical and emotional health, and special needs and aptitudes of the child;
3. Standard of living the child has been accustomed to;
4. Non-monetary contributions of the parents toward the care of the child (*Id.*).

### FACTORS IN DETERMINING CHILD CUSTODY

1. Agreement of the parties;
2. Desire and ability of each parent to foster the child;
3. Child's health, safety and welfare;
4. Any history of child/spousal abuse;
5. Nature and frequency of contact;
6. Habitual alcoholism and drug addiction of the parent;
7. Marital misconduct;
8. Most suitable physical, emotional, spiritual, psychological and educational environment;
9. Preference of the child over 7 yrs old, unless parent is unfit (*Id.*).

### ORDER OF PREFERENCE IN GRANTING CHILD CUSTODY

1. Both parent jointly;
2. Either parent;
3. Surviving grandparent, or if several, to the grandparent chosen by the child over 7 yrs, unless disqualified;
4. Eldest sibling over 21 yrs, unless disqualified;
5. Child's actual custodian over 21 yrs, unless disqualified;
6. Any other person deemed by the court suitable to provide proper care and guidance for the child (*Id., Sec. 4*).

### VISITATION RIGHTS

While custody of a child may be awarded to a particular parent, this does not deprive the other from exercising his or her visitatorial rights unless the court, for some compelling reason, deprives him or her of this right. And even if a parent has been legally deprived of his or her visitatorial rights, this can be reinstated if it can be shown that the grounds for deprivation have become too harsh or are not anymore present (*STA MARIA*, 322).

### REASON

Parents have the natural right, as well as the moral and legal duty, to care for their children, see to their proper upbringing and safeguard their best interest and welfare. This authority and responsibility may not be unduly denied the parents; neither may it be renounced by them. Even when the parents are estranged and their affection for each other is lost, the attachment and feeling for their offsprings invariably remain unchanged. Neither the law nor the courts allow this affinity to suffer absent, of course, any real, grave and imminent threat to the well-being of the child (*Silva v CA, 275 SCRA 604*).

**Q:** Who will pay for attorney's fees and other expenses in annulment cases?

**A:** It depends:

1. *If the annulment is granted* - the absolute community property shall be liable;
2. *If the annulment is not granted* - whoever the action shall pay for the attorney's fees and other litigation expenses.

1. *Art. 147* – for void marriage without legal impediments;
2. *Art. 148* – for unions with legal impediments.

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#### ART. 50

The effects provided for in paragraphs (2), (3), (4) and (5) of Article 43 and in Article 44 shall also apply in proper cases to marriages which are declared void *ab initio* or annulled by final judgment under Articles 40 and 45.

The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of their presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.

All creditors of the spouses as well as of the absolute community or the conjugal partnership shall be notified of the proceedings for liquidation.

In the partition, the conjugal dwelling and the lot on which it is situated, shall be adjudicated in accordance with the provisions of Articles 102 and 129.

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#### ART. 51

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

The children or their guardian, or the trustee of their property, may ask for the enforcement of the judgment.

The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitime.

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#### GENERAL RULE

If the marriage is void *ad ignition*, it is *ipso facto* void without need of any judicial declaration of nullity (*Abunado v People*, 426 SCRA 562, 572 [2004]). For purposes other than remarriage, no judicial action is necessary to declare a marriage an absolute nullity (*Cariño v Cariño*, GR No. 132529 [2001]).

#### EXCEPTION

Art. 40 requires a judicial declaration of nullity of the previous marriage before a subsequent marriage is contracted (*Mercado v Tan*, 337 SCRA 122, 135 [2000]).

#### RETROACTIVITY OF JUDICIAL DECLARATION

##### General Rule:

The judicial declaration of nullity of the marriage retroacts to the date of celebration of the marriage insofar as the vinculum between the spouses is concerned (*Tenebro v CA*, 423 SCRA 272, 284 [2004]).

##### Exception:

If the ground is psychological incapacity, although the judicial declaration of the nullity retroacts to the date of the celebration of the marriage insofar as the vinculum between the spouses is concerned, said marriage may still produce legal consequences (*Id.*).

#### EFFECT ON THE STATUS OF CHILDREN

##### General Rule:

All children conceived and born outside a valid marriage are illegitimate (*Art. 165, FC*).

##### Exception:

Those born of void marriages under Arts. 36 and 53 shall be considered legitimate (*Art. 54, FC*).

#### EFFECT ON PROPERTY RELATIONS

The property of the spouses shall be governed by:

#### GENERAL RULE:

In the liquidation and partition of property in a void marriage governed by Arts. 148 and 148, the provisions of co-ownership shall apply.

#### EXCEPTION:

Art. 50 of the Family Code makes applicable the provisions of par. 2, of Art. 43 to void marriages under Art. 40 of the Family Code.

**NOTE:** In Art. 43, the marriage is governed either by absolute community or conjugal partnership, unless the parties agree to a complete separation of property in a marriage settlement entered into before the marriage (*Diño v Diño*, 640 SCRA 178 [2011]).

#### EFFECT OF DONATIONS PROPTER NUPTIAS

##### General Rule:

Donations *propter nuptias* in a void marriage may be revoked by the donor (*Art. 86, par. 1 FC*).

##### Exception:

In void marriages under Art. 40, the donations *propter nuptias* shall remain valid, except that if the donee contracted the marriage in bad faith, such donations made to said donee are revoked by operation of law (*Art. 50, FC*). And if both the spouses in marriages under Art. 41 shall have acted in bad faith, all donations *propter nuptias* are revoked by operation of law (*Art. 44, FC*).

#### EFFECT IF DESUGBATUIB AS URREVICABKE BENEFICIARY IN INSURANCE POLICY

##### General Rule:

If the designation of the beneficiary in the insurance policy is irrevocable, the insured has no right to change the beneficiary he designated in the policy (*Sec. 11, Insurance Code*).

##### Exception:

The innocent spouse in a void marriage under Art. 40 may revoke the designation of the other spouse who acted in bad faith as a beneficiary in any insurance policy, even if such designation be stipulated as irrevocable (*Art. 50, FC, in relation to Art. 43, par. 3*).

#### EFFECT ON THE RIGHT TO INHERIT

##### General Rule:

If the marriage is judicially declared void, the parties thereto are not to be considered as legal heir of each other in an intestate succession, but not in testate succession.

##### Exception:

If the parties are collateral blood relatives within the 5<sup>th</sup> degree.

##### Exception to the Exception:

If marriage is declared void under Art. 40, the spouses who contracted the marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession (*Art. 43, par. 5*). In void marriages pursuant to Art. 44, testamentary dispositions made by one in favor of the other are revoked by operation of law (*Art. 44*).

#### EFFECT ON PARENTAL AUTHORITY AND CUSTODY OF THE COMMON CHILD

##### General Rule:

Since, children of void marriage are generally illegitimate, they shall be under the parental authority and custody of heir mother (*Art. 176, FC*).

##### Exception:

If marriage is declared void pursuant either to Art. 36 or 53, the children conceived or born before the finality of the judicial

declaration of nullity are considered legitimate, then Art. 213 of the Family Code shall apply (*RABUYA, 501*).

*Illustration:*

*Hi classmate! If ever you're reading this now, pwedeng paki text ako, just for me to know if may nagbabasa ng mga ginagawa ko para kapag wala, di ko na gagaguin sarili ko sa paggawa. salamat! (0920 2820 493)*

**ART. 52**

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

**ART. 53**

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

**ART. 54**

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

**REQUIREMENT OF REGISTRATION**

A decree of declaration of absolute nullity or annulment of marriage shall not be issued unless the following requirements are complied with:

1. Registration of the entry of judgment granting the petition for declaration of nullity or annulment of marriage in the civil registry of the place where the Family Court is located;
2. Registration of the approved partition and distribution of the properties of the spouses, in the proper Register of Deeds where the real properties are located;
3. Delivery of the children's presumptive legitimes in case, property or sound securities (*Sec. 22, pars. 1-3, AM No. 02-11-10-SC*).

**NOTE:** The registered Decree shall be the best evidence to prove the declaration of absolute nullity or annulment of marriage and shall serve as notice to 3<sup>rd</sup> persons concerning the properties of petitioner and respondent as well as the properties or presumptive legitimes delivered to their common children (*Id., Sec. 23, par. c*).

**TITLE II  
LEGAL SEPARATION**

**ART. 55**

A petition for legal separation may be filed on any of the following grounds:

1. Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
2. Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
3. Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
4. Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
5. Drug addiction or habitual alcoholism of the respondent;

6. Lesbianism or homosexuality of the respondent;
7. Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
8. Sexual infidelity or perversion;
9. Attempt by the respondent against the life of the petitioner; or
10. Abandonment of petitioner by respondent without justifiable cause for more than one year.

For purposes of this Article, the term "child" shall include a child by nature or by adoption.

**LEGAL SEPARATION**

A legal remedy available to parties in a valid but failed marriage for the purpose of obtaining a decree from court entitled him or her to certain reliefs such as the right to live separately from each other (without affecting the marital bond), the dissolution and liquidation of their common property and the custody of their minor children (*RABUYA, 505*).

A legal separation involves nothing more than bed-and-board (*a mensa et thoro*) separation of the spouses (*Lapuz v Eufemio, GR No. L-30977 [1972]*).

**GROUND S FOR LEGAL SEPARATION [SAMBA LIPAD]**

The grounds enumerated by law to warrant a judicial decree of legal separation are only those enumerated in Art. 55. They may or may not exist at the time of the marriage ceremony. As a general rule, they usually occur after the celebration of the marriage. No other ground can be invoked by any party than those stated by law (*STA MARIA, 370*).

1. Sexual infidelity;
2. Abandonment without just cause for 1 year;
3. Moral pressure to change religious or political affiliation;
4. Bigamy;
5. Attempt to induce into prostitution;
6. Lesbianism/Homosexuality;
7. Imprisonment for more than 6 years;
8. Repeated physical violence or grossly abusive conduct;
9. Attempt on life;
10. Drug addiction.

**NOTE:** This is in furtherance of the policy of the State to foster unity in and to preserve the marital relations as the same is essential to public welfare (*Id.*).

**PREPONDERANCE OF EVIDENCE**

Mere preponderance of evidence will suffice to prove the existence of these grounds **except** the 4<sup>th</sup> ground, final judgment sentencing the respondent to imprisonment (*PARAS, 503*).

| LEGAL SEPARATION  | DIVORCE                  | ANNULMENT                                     |
|---|--------------------------|---|
| Marital bond is not severed;                              | Marital bond is severed; |   |
| Grounds exist only after the celebration of the marriage. |                          | The grounds exist at the time of celebration. |

**REPEATED PHYSICAL VIOLENCE**

The unjust or unwarranted exercise of force by a spouse against the other spouse or their common child or the child of the other spouse, repeatedly (*RAMIREZ, 171*).

**TYPES OF PHYSICAL VIOLENCE UNDER ART. 55**

1. *Paragraph 1* - should be repeatedly resorted by the respondent spouse and must be directed against the:
  - a. Petitioner;
  - b. Common child;
  - c. Child of the petitioner.

If the physical violence is directed against the wife, a common child or child of the petitioner, the same is *also* punishable under RA 9262, otherwise known as the "Anti-Violence against Women and their Children Act of 2004."

2. **Paragraph 2** – physical violence in order to compel the petitioner to change his or her religious or political affiliation. Noteworthy is it that this should be directed against the petitioner only.
3. **Paragraph 9** – attempt on the life of the petitioner. The physical violence need not be repeated.

**NOTE:** Violence, as a ground for legal separation, need not be physical. In view of the presence of “grossly abusive conduct,” *psychological* and *sexual* violence and *repeated verbal abuse* may likewise qualify as grounds for legal separation under paragraph 1 (*RABUYA, 508*).

#### PSYCHOLOGICAL VIOLENCE

Acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity (*Sec. 3 (a) (C), RA 9262*).

#### SEXUAL VIOLENCE

An act which is sexual in nature, committed against a woman or her child. It includes, but not limited to:

- a. Sexual harassment, acts of lasciviousness, rape, treating a woman or her child as a sex object, etc. (*SART*);
- b. Acts causing or attempting to cause the victim to engage in any sexual activity by force, threat, etc;
- c. Prostituting the woman or child (*Sec. (a) (B), RA 9262*).

#### ECONOMIC ABUSE

Acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

1. Withdrawal of financial support or preventing the victim from engaging in any legitimate profession, etc., except in cases under Art. 73 of the FC;
2. Deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the common property;
3. Destroying household property;
4. Controlling the victim’s own or conjugal money or properties (*RABUYA, 523-524*).

#### FINAL JUDGMENT OF MORE THAN 6 YEARS IMPRISONMENT

This should be understood as without regard to the nature of the crime for which respondent is convicted.

If the respondent is convicted in a final judgment prior to the celebration of the marriage it is a ground for annulment if the crime involves moral turpitude and the conviction was concealed to the other party (*see Art. 46, in relation to Art. 45, FC*).

#### REQUISITES

1. Sentenced imposed is imprisonment of *more than 6 years*;
2. Conviction occurs only *after the celebration* of the marriage.

#### DRUG ADDICTION, HABITUAL ALCOHOLISM, LESBIANISM OR HOMOSEXUALITY

To qualify as a ground for legal separation, the abovementioned circumstances should exist only *after the celebration* of the marriage (*RABUYA, 509*).

#### CONTRACTING A SUBSEQUENT BIGAMOUS MARRIAGE

*Person A and B are validly married. After some time, A contracted a subsequent bigamous marriage with person C. Said subsequent marriage between A and C where declared void ab initio without affecting the validity of the marriage between A and B. The remedy available, therefore, to B is to file a petition for legal separation against A.*

**NOTE:** A plain reading of the said law indicates that the provision considers the mere act of contracting a second or subsequent marriage during the subsistence of the prior valid marriage as a ground for legal separation, regardless of the fact that the second marriage is void *ab initio* on grounds other than the existence of the first marriage (*RABUYA, 510*).

#### SEXUAL INFIDELITY

The Family Code now provides that a single act of sexual intercourse on the part of both the husband and the wife with a person other than their spouse will now be a ground for legal separation.

The law no longer requires that there be sexual intercourse since any sexual act short of the actual sexual intercourse may fall under *sexual infidelity*.

The law no longer requires that the sexual infidelity by a spouse be committed with a person of opposite sex (*RABUYA, 511*).

**NOTE:** A decree of legal separation, on the ground of concubinage, may issue upon proof of preponderance of evidence in the action for legal separation. No criminal proceedings or conviction is necessary (*Gaudionco v Penaranda, GR No. L-7284 [1987]*).

#### SEXUAL PERVERSION

Includes all *unusual* or *abnormal* sexual practice which may be *offensive to the feelings or sense of decency of either the husband or the wife* (*TOLENTINO, 323*).

If the husband uses force or threat of force, physical or other harm, or intimidation, against his wife for the purpose of satisfying his sexual perversion, the same also constitutes a crime under RA 9262 (*RABUYA, 511*).

#### ATTEMPT ON THE LIFE OF THE SPOUSE

It requires presence of “intent to kill.” Thus, if the injury caused to a spouse is merely accidental or not intentional, it will not be a ground for legal separation even if the injury is life-threatening (*Id.*).

#### ABANDONMENT

Act of one spouse voluntarily separating from the other, with the intention of not returning to live together as husband and wife (*Id., 512*).

Implies total renunciation of duties. Physical separation alone is not the full meaning of the term abandonment (*Dela Cruz v Dela Cruz, GR No. L-19565 [1968]*).

#### REQUISITES

1. With justifiable cause;
2. Must be for more than a year.

**NOTE:** Absence or failure to give any information as to his whereabouts of only 3 months shall be *prima facie* presumed to have no intention of returning to the conjugal dwelling. Nonetheless, it is necessary that the same must have lasted for more than a year (*Id.*).

**NOTE:** There must be an absolute cessation of marital relations, duties and rights, with the intention of perpetual separation (*Partosa-Jo v CA, GR No. 82606 [1992]*).

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#### ART. 56

The petition for legal separation shall be denied on any of the following grounds:

1. Where the aggrieved party has condoned the offense or act complained of;
  2. Where the aggrieved party has consented to the commission of the offense or act complained of;
  3. Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation;
  4. Where both parties have given ground for legal separation;
  5. Where there is collusion between the parties to obtain the decree of legal separation; or
  6. Where the action is barred by prescription
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#### ART. 57

An action for legal separation shall be filed within five years from the time of the occurrence of the cause.

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## GROUND FOR DENIAL OF LEGAL SEPARATION [C<sup>4</sup> MPD R]

1. Condonation;
2. Consent;
3. Connivance;
4. Collusion;
5. Mutual guilt;
6. Prescription;
7. Death during pendency;
8. Reconciliation.

### CONDONATION

Forgiveness or remission, by a husband or wife, of a matrimonial offense which the other has committed. It blots an imputed offense against the marital relation so as to restore the offending party to the same position (*RABUYA*, 513).

**NOTE:** Condition may either be *express* or *implied*. Any cohabitation with the guilty party, *after the commission* of the offense, and *with the knowledge* or belief on the part of the injured party of its commission, will amount to conclusive evidence of condonation (*Id.*, 514).

### CONSENT

Agreement or conformity in advance of the commission of the act which would be a ground for legal separation. It may be either *express* or *implied*.

| CONSENT                               | CONDONATION          |
|---------------------------------------|----------------------|
| Given in advance or prior to the act. | Comes after the act. |

(*People v Schneckenburger*, GR No. L-48183 [1941])

**NOTE:** Where the spouses entered into an agreement that each could live with and have carnal knowledge with other person without interference from each spouse, the agreement is *null* and *void* being contrary to law and good morals, but it may be considered consent which bars an action for legal separation (*Id.*).

### CONNIVANCE

Denotes direction, influence, personal exertion, or other action with knowledge and belief that such action would produce certain results and which results are produced (*STA MARIA*, 380).

| CONNIVANCE  | CONSENT     |
|---|-------------|
| Implies agreement, express or implied, by both spouses. | Unilateral. |

| CONNIVANCE   | CONDONATION  |
|--|--|
| Involves criminality on the part of the individual who connives; | May take place without imputing the slightest blame to the party who forgives the injury.          |
| An act of the mind before the offense has been committed.        | Result of the determination to forgive an injury which was not known until after it was inflicted. |

### COLLUSION

An agreement, either express or implied, between husband and wife for one of them to commit, or to appear to commit, or to be represented in court as having committed, a matrimonial offense, or to suppress evidence of a valid defense, for the purpose of enabling the other to obtain a divorce or legal separation (*RABUYA*, 515-516).

**NOTE:** No collusion may not be inferred from the mere fact that the guilty party confesses to the offense and thus enables the other party to procure evidence necessary to prove it (*De Ocampo v Florenciano*, GR No. L-13553 [1960]).

**NOTE:** If there is evidence of the adultery *independently* of such statement, the decree may and should be granted, such it would not be based on her confession, but upon evidence presented by the plaintiff. What the law prohibits is a judgment based exclusively or mainly on defendant's confession (*Id.*).

## RECRIMINATION (Mutual Guilt)

Where both parties have given ground for legal separation, the petition for legal separation must be dismissed.

### PRESCRIPTION

Action must be filed within years from the time of the occurrence of the cause. However, when the wife has not interposed prescription as a defense, the courts may take cognizance thereof, because actions seeking a decree involve public interest and it is the policy of our law that no such decree be issued if any legal obstacles thereto appear upon the record (*Brown v Yambao*, GR No. L-10699 [1957]).

### DEATH OF EITHER PARTY

Since an action for legal separation is purely personal, the death of one party causes the death of the action itself - *action personalis moritur cum persona* (*Lapuz Sy v Eufemio*, GR No. L-30977 [1972]).

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#### ART. 58

**An action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition.**

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#### ART. 59

**No legal separation may be decreed unless the Court has taken steps toward the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation of the spouses ad is fully satisfied, despite such efforts, the reconciliation is highly improbable.**

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### COOLING-OFF PERIOD

Six month period from the filing of the petition designed to give the parties enough time designed to give the parties enough time to further contemplate their positions with the end in view of attaining reconciliation between them. No action for legal separation shall be tried during such period. It is a mandatory requirement and its non-compliance makes the decision infirm (*Pacete v Carriaga*, GR No. 1994).

Even then, the hope that the parties may settle their differences is not all together abandoned. The healing balm of time may aid in the process. Hopefully, the guilty party may mend his or her ways, and the offended party may in turn exhibit magnanimity (*Samosa-Ramos v Vamenta, Jr.*, GR No. L-34132 [1972]).

### MOTION FOR PRELIMINARY INJUNCTION DURING THE COOLING-OFF PERIOD

Even during the 6-month period, however, the court must still provide for the support of the spouses and the children as well as the custody of the children (*Araneta v Concepcion*, GR No. L-9667 [1956]). A question of management of their respective property need not be left unresolved even during such 6-month period (*Samosa-Ramos v Vamenta, Jr.*, GR No. L-34132 [1972]).

### EXCEPTION TO THE COOLING-OFF PERIOD REQUIREMENT

The requirement of the cooling-off period shall not apply in cases of legal separation where violence, as specified in RA 9262 is alleged. The court shall proceed on the main case and other incidents of the case as soon as possible (*Sec. 19, RA 9262*).

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#### ART. 60

**No decree of legal separation shall be based upon a stipulation of facts or a confession of judgment.**

**In any case, the Court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed.**

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**NOTE:** The prohibition expressed in the aforesaid laws and rules is predicated on the fact that the institutions of marriage and of the family are sacred and therefore are as much the concern of the State as the spouses; because the State and the public have vital interest in the maintenance and preservation of these social institutions against desecration by collusion between the parties or by fabricated evidence (*RABUYA*, 524).

#### CONFESSION OF JUDGMENT

When the defendant appears in court and confesses the right of plaintiff to judgment or files a pleading expressly agreeing to the plaintiff's demand (*De Ocampo v Florenciano*, GR No. L-13553 [1960]).

#### STIPULATION OF FACTS

Occurs when the parties in a suit stipulated on the existence of certain facts and thereafter submits the case for decision based on said stipulation (*RABUYA*, 525).

**NOTE:** The law does not exclude, as evidence, any admission or confession made by the respondent in a legal separation case outside of the court (). Even if the ground for legal separation can be proven by other evidence independent of such statement, the decree of legal separation may and should be granted, since it would not be based on respondent's confession, but upon evidence presented by the petitioner (*De Ocampo v Florenciano*, GR No. L-13553 [1960]).

**NOTE:** What the law prohibits is a judgment based *exclusively* or *mainly* on respondent's confession.

#### INTERVENTION OF STATE ATTORNEYS (Sec. 6, AM No. 02-11-11-SC)

- The court shall order the public prosecutor to investigate whether collusion exists where:
  - No answer is filed by respondent; or
  - The answer does not tender an issue.
- The prosecutor shall submit, within 1 month, a report to the court and serve copies to the parties and their counsel. If the prosecutor finds that:
  - With collusion
    - Parties shall file their respective comments within 10 days from receipt;
    - The court shall set the report for hearing, and if convinced that parties are in collusion, dismiss the petition.
  - Without collusion
    - The court shall set the case for pre-trial.

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#### ART. 61

After the filing of the petition for legal separation, the spouses shall be entitled to live separately from each other.

The court, in the absence of a written agreement between the spouses, shall designate either of them or a third person to administer the absolute community or conjugal partnership property. The administrator appointed by the court shall have the same powers and duties as those of a guardian under the Rules of Court.

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#### ART. 62

During the pendency of the action for legal separation, the provisions of Art. 49 shall likewise apply to the support of the spouses and the custody and support of the common children.

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#### RULES IN DETERMINING SPOUSAL SUPPORT

1. The spouses may be supported from the properties of the absolute community or the conjugal partnership, absence of agreement;
2. The court may award support to either spouse;
3. The court may consider the following factors:

- a. Whether the spouse seeking support is the custodian of a child whose circumstance may make the spouse unemployed;
  - b. Time necessary to acquire education/training for employment;
  - c. Duration of marriage;
  - d. Comparative financial resources;
  - e. Needs and obligations of each;
  - f. Contribution of each to the marriage;
  - g. Age and health of each;
  - h. Physical and emotional conditions of each;
  - i. Ability to give support;
  - j. Any other factor that court may deem just and equitable.
4. The court may direct the deduction of the provisional support from the salary of the spouse (*AM No. 02-11-12-SC, Sec. 2*).

#### CHILD SUPPORT

The children shall be supported from the properties of the absolute community or conjugal partnership (*Id.*, Sec. 3).

Either or both spouses may be ordered by the court to give an amount necessary for the support, maintenance and education of the child (*Id.*).

#### FACTORS IN DETERMINING THE AMOUNT OF SUPPORT

1. Financial resources of both parents and the child;
2. Physical and emotional health of the child;
3. Standard of living the child has been accustomed to;
4. Non-monetary contributions of the parents (*Id.*).

#### FACTORS IN DETERMINING CHILD CUSTODY

1. Agreement of the parties;
2. Desire and ability to foster a loving relationship;
3. Child's health, safety and welfare;
4. Any history of the or spousal abuse;
5. Nature and frequency of contact with both parents;
6. Habitual alcoholism or drug addiction;
7. Marital misconduct;
8. Most suitable physical, emotional, spiritual, psychological and educational environment;
9. Preference of the child over 7 years old and of sufficient discernment, unless the parent is unfit (*Id.*).

#### ORDER OF PREFERENCE IN CHILD CUSTODY

1. Both parents jointly;
2. Either parent taking into account all relevant considerations;
3. Surviving grandparent, or if several, grandparent chosen by the child over 7 years old and with discernment;
4. Eldest brother or sister over 21, unless disqualified;
5. Child's actual custodian over 21, unless disqualified;
6. Any other person deemed by the court suitable (*Id.*).

#### ORDER OF PROTECTION (*Id.*, Sec. 7)

1. To stay away from the child, other parent or any other party and specific places designated by the court;
2. Refrain from harassing, intimidating, or threatening such persons above;
3. Refrain from acts of commission or omission that create an unreasonable risk to health, safety, etc.;
4. Permit a parent to visit the child at stated periods;
5. Permit a designated party to enter the resident during a specified period in order to take personal belongings;
6. Comply with such other orders.

#### PROTECTION ORDER IN RA 9262

The use of the gender-neutral word "person" who has or had sexual or dating relationship with the woman encompasses even lesbian relationships. The law does not preclude the application of the principle of conspiracy under the RPC (*Garcia v Drilon*, GR No. 179267 [2013]).

**NOTE:** RA 9262 rests on real substantial distinctions which justify the classification under the law: the unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread bias and prejudice against women (*Id.*).

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**ART. 63**

The decree of legal separation shall have the following effects:

1. The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;
  2. The absolute community or conjugal partnership shall be dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43 (2);
  3. The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code; and
  4. The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law.
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**ART. 64**

After the finality of the decree of legal separation, the innocent spouse may revoke the donations made by him or by her in favor of the offending spouse, as well as the designation of the latter as a beneficiary in any insurance policy, even if such designation be stipulated as irrevocable. The revocation of the donations shall be recorded in the registries of property in the place where the properties are located. Alienations, liens and encumbrances registered in good faith before the recording of the complaint for revocation in the registries of property shall be respected. The revocation of or change in the designation of the insurance beneficiary shall take effect upon written notification thereof to the insured.

The action to revoke the donation under this Article must be brought within five years from the time the decree of legal separation has become final.

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**DISSOLUTION AND LIQUIDATION OF PROPERTY REGIME**

The law mandates the dissolution and liquidation of the property regime upon finality of the decree of legal separation.

The distribution of the net profits of the community property or conjugal partnership property, the offending spouse shall have no right to any share of the same and shall be forfeited to:

1. Common children;
2. Children of the guilty spouse;
3. Innocent spouse.

**NET PROFITS**

The increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution (*Art. 102, par. 4, FC*).

**CUSTODY OF CHILDREN**

- Awarded to the innocent spouse subject to Art. 213 of FC;
- Cannot be awarded to the perpetrator of a woman who is suffering from battered woman syndrome (*Sec. 28, RA 9262*).

**DISQUALIFICATION TO INHERIT**

- Offending spouse shall be disqualified to inherit by *intestate* succession.

- Any provision in the innocent spouse's will existing at the time of the issuance of the decree of legal separation is revoked by operation of law;
- The innocent spouse, however, may name the offending spouse as an heir in his/her will executed *after* the decree of legal separation (*RABUYA, 541*).

**REVOCAION OF DONATIONS**

- The donations *propter nuptias* shall remain valid, however, the innocent spouse is given the option to revoke the same with 5 years from finality of the decree;
- In case the innocent spouse opted for revocation, the same must be recorded in the registries of property in the places where the properties are located in order to bind 3<sup>rd</sup> persons.
- If ground for legal separation is sexual infidelity, donation between the persons guilty thereof is void (*see Art. 739, par. 1, CC*).

**REVOCAION OF INSURANCE BENEFICIARY**

The innocent spouse shall have the right to revoke the designation of the offending spouse as beneficiary, in his or her insurance policy, even if such designation be stipulated as irrevocable. Such revocation shall take effect only upon written notification thereof to the insurer (*RABUYA, 541*).

**NOTE:** While there has been a typographical error in Art. 64, when it uses the word "inured," the obvious intent of the law is to require notice of the revocation to the insurer and not to the insured. It is quite obvious that such notice must necessarily come from the insured; hence, it is not possible that the same notice be also addressed to him (*see RABUYA footnote 91 on page 542*).

**CESSATION OF SUPPORT**

**General Rule**

The obligation of mutual support between the spouses ceases.

**Exception**

The court may, in its discretion, order the guilty spouse to give support to the innocent one (*see Art. 198, FC*).

**WIFE'S USE OF SURNAME**

The wife shall continue to use the name and surname used before the legal separation because the marriage status is unaffected by the legal separation (*RABUYA, 542*).

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**ART. 65**

If the spouses should reconcile, a corresponding joint manifestation under oath duly signed by them shall be filled with the court in the same proceeding for legal separation.

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**ART. 66**

The reconciliation referred to in the preceding Article shall have the following consequences:

1. The legal separation proceedings, if still pending, shall thereby be terminated at whatever stage;
2. Final decree of legal separation shall be set aside, but the separation affected shall subsist, unless the spouses agree to revive their former property regime;

The court's order containing the foregoing shall be recorded in the proper civil registries.

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**ART. 67**

The agreement to revive the former property regime referred to in the preceding Article shall be executed under oath and shall specify:

1. The properties to be contributed anew to the restored regime;



2. Those to be retained as separated properties of each spouse; and
3. The names of all their known creditors, their address and the amounts owing to each.

The agreement of revival and the motion for its approval shall be filed with the court in the same proceeding for legal separation, with copies of both furnished to the creditors name therein. After due hearing, the court shall, in its order, take measures to protect the interest of creditors and such order shall be recorded in the proper registries of properties.

The recording of the offender in the registries of property shall not prejudice any creditor not listed or not notified, unless the debtor-spouse has sufficient separate properties to satisfy the creditor's claim.

#### RECONCILIATION OF LEGALLY SEPARATED SPOUSES

They must file a corresponding joint manifestation under oath, duly signed by them, in the same proceeding from legal separation.

#### EFFECTS OF RECONCILIATION

1. The legal separation proceeding, if still pending, shall be terminated;
2. If the reconciliation occurred *after* the rendition of judgment but *before* the issuance of decree of legal separation, the court shall issue a Decree of Reconciliation declaring:
  - a. Proceedings is set aside;
  - b. Revival of previous property regime, if any.
3. If the reconciliation occurred *after* the issuance of the decree, the court shall issue a Decree of Reconciliation declaring:
  - a. Proceedings is set aside;
  - b. Separation of property and forfeit of shares therein shall subsists, unless the spouses agreed to revive the same (*see RABUYA, 543-544*).

**NOTE:** Reconciliation *de facto* or mere reconciliation of the parties without first obtaining a Decree of Reconciliation shall not have the

effect of setting aside the decree of legal separation previously granted.

#### CONSEQUENCES OF SETTING ASIDE OF THE DECREE OF LEGAL SEPARATION [JIP D BeS]

1. The spouses shall again be entitled to joint custody of their children;
2. Offending spouse shall again be entitled to inherit from innocent spouse by intestate succession;
3. The provisions in the will of the innocent spouse favouring the offending spouse shall be revived automatically, as if the same had not been revoked;
4. Any revocation of donations in favor of the offending spouse, or revocation of the designation of the offending spouse as beneficiary in the innocent spouse's insurance policy, already effected, shall likewise be set aside, as if the same had not been revoked;
5. The separation of property and any forfeiture of the share of the guilty spouse in the net profits already effected shall subsist, unless the spouses agree to revive their former property regime (*Id., 545*).

#### REVIVAL OF PROPERTY REGIME

The former property regime shall not be automatically revived. The parties must execute an agreement under oath to revive the former property regime. The agreement must be submitted in court together with verified motion for its approval. The agreement shall specify

1. The properties to be contributed anew;
2. Those retained to be separate properties;
3. Names of all their known creditors, their addresses and amounts owing to each.

**NOTE:** The parties may even restore the share to the net profits previously forfeited.

#### SUMMARY

| TERMINATED MARRIAGES<br>(Art. 41)  | VOID MARRIAGES  | VOIDABLE MARRIAGES  | LEGAL SEPARATION   |
|--|---|---|--|
| <i>Status of marital ties</i>  |   |   |  |
| Severed  | Severed   | Severed   | Not severed  |
| <i>status of children born and conceived before termination</i>  |   |   |  |
| Legitimate   | Illegitimate<br><b>EXCEPT:</b> Arts. 36 and 53  | Legitimate  | Legitimate   |
| <i>Child custody</i>   |   |   |  |
| Support in case of dispute shall be decided by the court in a separate proceeding for custody but with the same considerations as in declaration of nullity  | During pendency: <ol style="list-style-type: none"> <li>1. Written agreement;</li> <li>2. In the absence thereof, from properties of the absolute community or conjugal partnership, as the case may be;</li> </ol> After decree:<br>Either or both parent may be ordered by court to give an amount necessary for support in proportion to resources or means of the giver and necessities of the recipient. |   |  |
| <i>Donation propter nuptias</i>  |   |   |  |
| <ol style="list-style-type: none"> <li>1. Shall remain valid, unless donee contracted marriage in bad faith, in which case, donation is revoked by operation of law;</li> <li>2. If both spouses of subsequent marriage acted in bad faith, donations <i>propter nuptias</i> made by one in favor of the other are revoked by operation of law.</li> </ol> | <ol style="list-style-type: none"> <li>1. Shall remain valid, unless donee contracted marriage in bad faith, in which case, donation is revoked by operation of law;</li> <li>2. If both spouses of subsequent marriage acted in bad faith, donations <i>propter nuptias</i> made by one in favor of the other are revoked by operation of law;</li> </ol>  | <ol style="list-style-type: none"> <li>1. Shall remain valid, unless donee contracted marriage in bad faith, in which case, donation is revoked by operation of law (<i>Art. 43, par. 3</i>)</li> <li>2. No conflict with Art. 86, par. 2 as such does not require that marriage be annulled first before donor may revoke donation - donor has 5 years from time he had knowledge of law of</li> </ol> | <ol style="list-style-type: none"> <li>1. Donor is given option to revoke; if donor decides to revoke, must do so within 5 years from finality of decree;</li> <li>2. But if ground for legal separation is sexual infidelity, donation between persons guilty thereof at time of donation is void (<i>Art. 739, par. 1, CC</i>).</li> </ol> |

|   |  |   |  |
|---|--|---|--|
|   | <ol style="list-style-type: none"> <li>3. If both spouses in good faith, donor after finality of decree may revoke pursuant to Art. 81 (1);</li> <li>4. If marriage is not celebrated: <ol style="list-style-type: none"> <li>a. Those stipulated in marriage settlement are void (<i>Art. 81</i>);</li> <li>b. Those excluded from marriage settlement or if no such contract, may be revoked by donor (<i>Art. 86, par. 1</i>).</li> </ol> </li> </ol> | <p>consent; cannot revoke if there was knowledge before the marriage;</p> <ol style="list-style-type: none"> <li>3. Conflict with Art. 86, par. 3 but Art. 43, par. 3 prevails - more in harmony with general purpose/intent of act.</li> </ol>   |  |
| <b><i>Insurance policy</i></b>  |  |   |  |
| <p>Innocent spouse may revoke the designation of the other spouse who acted in bad faith as beneficiary even if the designation is stipulated as irrevocable (<i>Art. 43, par. 4, FC</i>).</p>  |  | <p>Innocent spouse may revoke the designation of the offending spouse as beneficiary even if stipulated as irrevocable (<i>Art. 64, FC</i>). Must be brought within 6 years from finality of decree.</p>  |  |
| <b><i>Succession</i></b>  |  |   |  |
| <ol style="list-style-type: none"> <li>1. Spouse in bad faith is disqualified to inherit from innocent spouse by testate or intestate succession;</li> <li>2. If both spouses of subsequent marriage acted in bad faith, testamentary dispositions made by one in favor of the other are revoked by operation of law (<i>Art. 44, FC</i>).</li> </ol> |  | <ol style="list-style-type: none"> <li>1. Offending spouse is disqualified from inheriting from innocent spouse by intestate succession;</li> <li>2. Provisions in favor of offending spouse made in the will of innocent spouse are revoked by operation of law (<i>Art. 62, par. 4, FC</i>).</li> </ol> |  |

**TITLE III  
RIGHTS AND OBLIGATIONS BETWEEN  
HUSBAND AND WIFE**

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**ART. 68**

The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

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**ART. 69**

The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exempting shall not apply if the same is not compatible with the solidarity of the family.

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**ART. 70**

The spouses are jointly responsible for the support of the family. The expenses for such support and the conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from their separate properties.

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**ART. 71**

The management of the household shall be the right and duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

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**ART. 71**

When one of the spouses neglects his or her duties to the conjugal union or commits acts which tend to bring danger, dishonour or injury to the other or to the family, the aggrieved party may apply to the court for relief.

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**ART. 73**

Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious and moral grounds.

In case of disagreement, the court shall decide whether or not:

1. The objection is proper; and
2. Benefit has accrued to the family prior to the object or thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the community property. If the benefit accrued thereafter, such obligation shall be enforced against the separate property of the spouse who has not obtained consent.

The foregoing provisions shall not prejudice the rights of the creditors who acted in good faith. (as amended by RA 10572)

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**RIGHTS AND OBLIGATIONS [LORD SM]**

**1. DUTY TO LIVE TOGETHER**

**Extent of the Duty**

The duty to live together includes cohabitation or consortium and sexual intercourse. Procreation is also an essential marital obligation considering that such obligation springs from the universal principle that procreation of

children through sexual cooperation is the basic end of marriage (*Chi Ming Tsoi, CA, hanapin*).

Act of living together is voluntary act of the spouses which cannot be compelled by any proceeding in court.

While the courts cannot force one of the spouses to cohabit with the other, the law provides for the other remedies and sanctions. For example, if a spouse without just cause abandons the other, the aggrieved spouse may petition the court for receivership, for judicial separation of property or for authority to be the sole administrator of the property. Upon a judicial declaration of abandonment of his or her children, the parent concerned may likewise be deprived of parental authority. The deserted spouse cannot likewise be obliged to give support to the other spouse who refuses to live with him or her without just cause (*Ilusorio v Ilusorio-Bildner, 361 SCRA 427*).

Only the moral obligation of the spouses constitutes the motivating factor for making them observe the said duties and obligations which are highly personal (*Ramirez-Cuaderno v Cuaderno, GR No. L-20043 [1964]*).

If the wife refuses *unjustifiably* to live with her husband, the court will admonish but not order her return; and even if an order is made, contempt proceeding against the wife will not prosper. The only remedy here is for the husband to refuse to grant support (*Arroyo v Arroyo, GR No. L-17014 [1921]*).

**NOTE:** The Family Code obligates the spouses to love one another but this rule sanctions affection and sexual intimacy, as expressions of love, that are both spontaneous and mutual manner and not the kind of unilaterally exacted by force or coercion (*RABUYA, 552*).

**NOTE:** Sexual intercourse, albeit within the realm of marriage, if *not consensual*, is rape. The Court ruled that the definition of rape in Sec. 1 of RA 8353 pertains to:

- i) Rape, as traditionally known;
- ii) Sexual assault;
- iii) Marital rape or that where the victim is the perpetrator's own spouse (*People v Jumawan, GR No. 187495 [2014]*).

**2. DUTY TO OBSERVE MUTUAL LOVE, RESPECT AND FIDELITY;**

**NOTE:** Such duty cannot be compelled, elicited, or imposed by court action. Nevertheless, the law provides sanctions for infidelity, e.g., bigamy (*Art. 349, RPC*), concubinage (*Art. 334, RPC*), adultery (*Art. 334, RPC*) (*RABUYA, 553*).

**3. DUTY TO RENDER MUTUAL HELP AND SUPPORT;**

**NOTE:** Such obligation to support attaches at the inception of the marriage and ordinarily continues as long as the relationship of husband and wife exists (*Id.*).

**4. DUTY TO FIX FAMILY DOMICILE;**

**Rule in fixing the Family Domicile**

- i) Both husband and wife shall fix the family domicile. In case of disagreement, the court shall decide;
- ii) The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family (*Art. 69, FC*).

**5. JOINT RESPONSIBILITY FOR THE SUPPORT OF THE FAMILY;**

*Expenses shall be paid from*

- i) Community or conjugal partnership property;
- ii) Income or fruits of the separate properties of the spouses;
- iii) Separate properties of the spouses.

**Expenses**

One which is incurred for an item which contributes to the family's welfare generally and tends to maintain its integrity (*Id.*, 556).

**6. JOINT MANAGEMENT OF THE HOUSEHOLD**

*Management shall be charged to*

- i) Community or conjugal partnership property;
- ii) Income or fruits of the separate properties of the spouses;
- iii) Separate properties of the spouses.

**EFFECT OF NEGLECT OF DUTY**

When one of the spouses neglects his or her duties to the conjugal union or commits acts which tend to bring danger, dishonour or injury to the other or to the family, the aggrieved party may apply to the court for relief (*Art. 72*).

1. Legal separation;
2. Action for declaration of nullity based on Art. 36 if the neglect is such that it does not create a functional marital life;
3. Petition for receivership, for judicial separation of property, or for authority to be the sole administrator of community property or conjugal partnership (*STA MARIA, 427*).

**EXERCISE OF PROFESSION**

**General Rule:**

Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other (*RA 10572, Sec. 1 amending Art. 73 of FC*).

**Exception**

The other spouse object only on valid, serious and moral grounds (*Id.*).

**RULE IN CASE OF DISAGREEMENT**

In case of disagreement, the court shall decide whether:

- 1) The object is proper;
  - 2) The benefit accrued to the family prior to the object or thereafter (*Id.*). Such is a summary in nature (*STA MARIA, 429*).
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1. **Benefit accrued to family before objection to an immoral or unlawful profession** - if the benefit accrued prior to the objection, the resulting obligation shall be enforced against the community property (*Id.*).
  2. **Benefit accrued after objection** - if the benefit accrued thereafter, such obligation shall be enforced against the separate property of the spouse who has not obtained consent (*Id.*).
  3. **Creditors who acted in good faith are protected** - if spouse transacted with creditor without the consent of the other but creditor had no knowledge thereof, the absolute community property or conjugal partnership of gains shall be liable (*Id.*).

**EFFECT OF COMPULSION**

If a husband compels the wife to desist from pursuing a profession or any other conduct which the wife has the right to engage in, this can be considered as acts of violence against women under RA 9262.

*"I will continue, Oh my God  
to do all my actions for the love of you."  
-La Sallian Prayer*