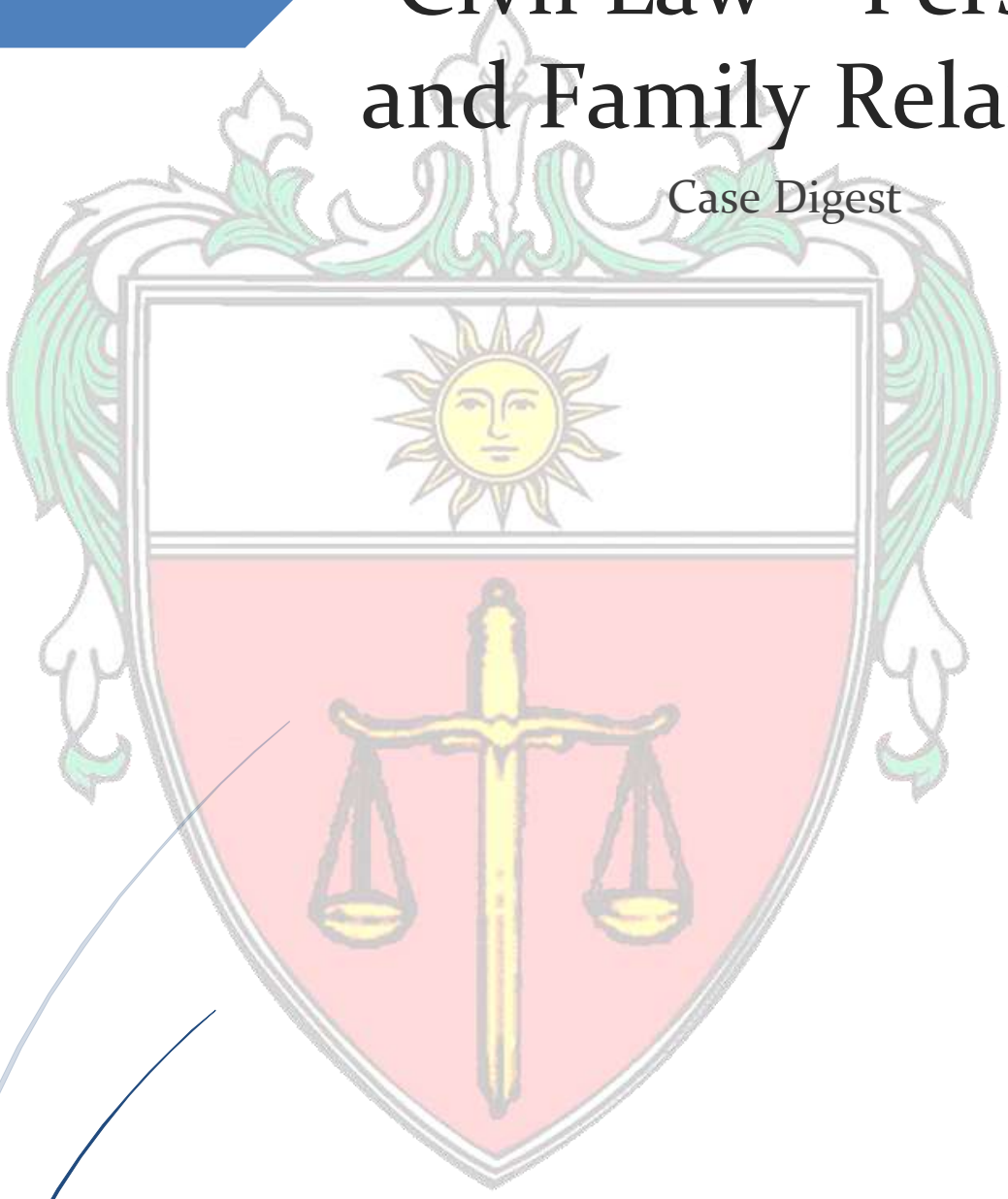
Civil Law – Persons and Family Relations

Case Digest



UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

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CASE DIGEST

TAÑADA v. TUVERA
G.R. No. 63915, EN BANC, April 24, 1985, ESCOLIN, J.

Article 2 of the New Civil Code does not dispense with the publication requirement in the Official Gazette of laws that provide for its own effectivity date. Publication is an indispensable requirement for laws to be valid and enforceable. Publication of presidential decrees which are "of public nature" or "general in application" shall be published in the Official Gazette, otherwise it would violate the due process clause because it would be unjust for people to be not given a notice of the existence of laws which restrict and regulate their acts.

FACTS:
Tañada, et al., seek a wit of mandamus to compel Hon. Tuvera, et al., to publish or cause the publication in the Official Gazette various unpublished presidential decrees by invoking the right to be informed on matters of public concern enshrined in Section 6, Article 4 of the 1973 constitution. However, respondent public officials contended that publication in the official gazette is not a *sine qua non* requirement when the law itself provides for its own effectivity date.Since the presidential issuances in question contain special provisions as to the date they are to take effect, publication in the Official Gazette is not indispensable for their effectivity.

ISSUE:
Whether or not publication in the Official Gazette is a requirement for laws and acts to be valid and enforceable. (YES)

RULING:
Article 2 of the New Civil Code does not dispense with the publication requirement in the Official Gazette of laws that provide for its own effectivity date. Publication is an indispensable requirement for laws to be valid and enforceable. Publication of presidential decrees which are "*of public nature*" or "*general in application*" shall be published in the Official Gazette, otherwise it would violate the due process clause because it would be unjust for people to be not given a notice of the existence of laws which restrict and regulate their acts. Presidential decrees that provide for fines, forfeitures or penalties for their violation or otherwise impose a burden on the people, such as tax and revenue measures, fall within this category. Other presidential issuances which apply only to particular persons or class of persons such as administrative and executive orders need not be published on the assumption that they have been circularized to all concerned.Furthermore, non publication will result in the ineffectivity of the law.

TAÑADA v. TUVERA
G.R. No. L-63915, EN BANC, December 29, 1986, CRUZ, J.

The clause, "unless otherwise provided" refers to the date of effectivity and not to the publication requirement, which cannot in any event be omitted. Publication is indispensable in every case. The clause "unless it is otherwise provided" in Article 2 of the Civil Code meant that the publication required therein was not always imperative; that publication, when necessary, did not have to be made in the Official Gazette.This clause does not mean that the legislature may make the law effective immediately upon approval, or on any other date, without its previous publication, but the legislature may shorten or extend the usual fifteen-day period. It is not correct to say that under the disputed clause publication

may be dispensed with altogether because such omission would offend due process insofar as it would deny the public knowledge of the laws that are supposed to govern it.

FACTS:

In the April 24, 1985 decision of the Supreme Court which affirmed the necessity of publication in the Official Gazette of all unpublished presidential issuances which are general in application, and unless so provided, shall have no binding effect. Petitioners move for consideration or clarification of the decision on various questions.

ISSUE:

1. Whether or not publication is still required in light of the clause, "unless otherwise provided" (YES)
2. Must a distinction be made between laws of general applicability and laws which are not? (NO)
3. What, where and where is the publication to be made?

RULING:

1. Publication is still required. The clause, "unless otherwise provided" refers to the date of effectivity and not to the publication requirement, which cannot in any event be omitted. Publication is indispensable in every case. The clause "unless it is otherwise provided" in Article 2 of the Civil Code meant that the publication required therein was not always imperative; that publication, when necessary, did not have to be made in the Official Gazette.This clause does not mean that the legislature may make the law effective immediately upon approval, or on any other date, without its previous publication, but the legislature may shorten or extend the usual fifteen-day period.

It is not correct to say that under the disputed clause publication may be dispensed with altogether because such omission would offend due process insofar as it would deny the public knowledge of the laws that are supposed to govern it. If the legislature could validly provide that a law shall become effective immediately upon its approval notwithstanding the lack of publication, it is likely that persons not aware of it would be prejudiced as a result; and they would be so not because of a failure to comply with it but simply because they did not know of its existence.

2. Laws should refer to all laws not only to those of general application, for strictly speaking, all laws relate to the people in general albeit there are some that do not apply to them directly. An example is a law granting citizenship to a particular individual. It surely cannot be said that such a law does not affect the public although it unquestionably does not apply directly to all the people. The subject of such law is a matter of public interest which any member of the body politic may question in the political forums or, if he is a proper party, even in the courts of justice. In fact, a law without any bearing on the public would be invalid as an intrusion of privacy or as class legislation or as an *ultra vires* act of the legislature.

3. As to what, publication must be in full or it is no publication at all since its purpose is to inform the public of the contents of the laws. mere mention of the number of the presidential decree, the title of such decree, its whereabouts the supposed date of effectivity, and in a mere supplement of the Official Gazette cannot satisfy the publication requirement. This is not even substantial compliance.

As to when, all statutes shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature. It must be published as soon as possible to give effect to Article 2.

As to where, under Article 2 of the Civil Code, the publication of laws must be made in the Official Gazette, and not elsewhere (now, Official Gazette or Newspaper of General Circulation pursuant to E.O No. 200), as a requirement for their effectivity after fifteen days from such publication or after a different period provided by the legislature.

PHILSA v. CA

G.R. No. 103144, THIRD DIVISION, April 4, 2001, GONZAGA-REYES, J.

Philsa is not liable for illegal exaction since POEA Memorandum Circular 2 and 11 were not published as required by law. In Tañada v. Tuvera, the Court held that xxx Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant to a valid delegation. Applying this doctrine, as POEA Memorandum Circular No. 11 was not published, it must be struck down.

FACTS:

Private respondents Mikin, de Mesa, and Leyson were recruited by Philsa for employment in Saudi Arabia and were required to pay the corresponding placement fees. After the execution of contracts, the three left for Saudi and began to work for Al-Hejailan Consultants A/E, foreign employer.

While in Saudi, the three were allegedly made to sign a second contacts which changed some of the provisions of their original contract. After almost two months, their foreign employer forced them to signed a third contract which increased their work hours. When they refused to sign the third contract, their services were terminated and they were repatriated to the Philippines.

Upon arrival in the Philippines, the three demanded from Philsa the return of their placement fees and payment of their salaries for the unexpired portion of their contract, but Philsa refused. This prompted the three to file a case before the POEA with 1) illegal dismissal; 2) payment of salary differentials; 3) illegal deduction/withholding of salaries; 4) illegal exactions/refunds of placement fees; and 5) contract substitution as causes of action. POEA found Philsa guilty of illegal exaction, which was affirmed by the Secretary of Labor and Employment, as it was supported by substantial evidence. However, Philsa insist that it cannot be held liable for illegal exaction as POEA Memorandum Circular No. 11, Series of 1983, which enumerated the allowable fees which may be collected from applicants, are void for lack of publication

ISSUE:

Whether or not Philsa may be held liable for illegal exaction by virtue of POEA Memorandum Circular No. 11. (NO)

RULING:

Philsa is not liable. In *Tañada v. Tuvera*, the Court held that xxx Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant to a valid delegation. Applying this doctrine, as POEA Memorandum Circular No. 11 was not published, it must

be struck down.

Moreover, POEA Memorandum Circular No. 2, Series of 1983 must likewise be declared ineffective as the same was never published or filed with the National Administrative Register. It provides for the applicable schedule of placement and documentation fees for private employment agencies or authority holders. Under the said Order, the maximum amount which may be collected from prospective Filipino overseas workers is P2,500.00. The said circular was apparently issued in compliance with the provisions of Article 32 of the Labor Code. It is thus clear that the administrative circular under consideration is one of those issuances which should be published for its effectivity, since its purpose is to enforce and implement an existing law pursuant to a valid delegation. Considering that POEA Administrative Circular No. 2, Series of 1983 has not as yet been published or filed with the National Administrative Register, the same is ineffective and may not be enforced.

Furthermore, The fact that the said circular is addressed only to a specified group, namely private employment agencies or authority holders, does not take it away from the ambit of our ruling in *Tañada vs. Tuvera*. In the case of *Phil. Association of Service Exporters vs. Torres*, the administrative circulars questioned therein were addressed to an even smaller group, namely Philippine and Hong Kong agencies engaged in the recruitment of workers for Hong Kong, and still the Court ruled therein that, for lack of proper publication, the said circulars may not be enforced or implemented.

Administrative rules and regulations must be published if their purpose is to enforce or implement existing law pursuant to a valid delegation. The only exceptions are interpretative regulations, those merely internal in nature, or those so-called letters of instructions issued by administrative superiors concerning the rules and guidelines to be followed by their subordinates in the performance of their duties. Administrative Circular No. 2, Series of 1983 has not been shown to fall under any of these exceptions.

UNCIANO PARAMEDICAL v. CA
G.R. No. 100335, SECOND DIVISION, April 7, 1993, NOCON, J.

The ruling in the Non case should not be given a retroactive effect to cases that arose before its promulgation on May 20, 1990, as in this case, which was filed on April 16, 1990. If it were otherwise, it would result in oppression to petitioners and other schools similarly situated who relied on the ruling in the Alcuaz case, promulgated on May 2, 1988, which recognized the termination of contract theory. The new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

FACTS:

In July 1989, Villegas and Magallanes proposed to the school authorities the organization of a student council. Villegas and a certain Barroa were summoned to the office of Dr. Moral and were admonished not to proceed with the proposal as the school does not allow such organization. Villegas and Barroawere then barred from enrollment for violating the school's rules and regulations. Subsequently, they were informed of different reasons for their non-admission.

The students, through their counsel and their mothers filed a petition for injunction with prayer for writ of preliminary mandatory injunction against the school. The RTC then granted the petition, ordering the school to allow the petitioners to enroll for the first semester the following school year.

The CA affirmed the RTC's ruling basing its rationale on the case of *Ariel Non, et al. v. Hon. Dames* which abandon the termination of contract theory found in the case of *Alcuaz, et al. v. PSBA* - the case to which the school anchored its case. In the *Non* case emphasized that the contract between the school and the student is not an ordinary contract as it is imbued with public interest considering the high priority given by the Constitution to education; and that Paragraph 137 of Manual Regulation for Private School pursuant to BP 232 recognizes the right of a student to choose their field of study and to continue the course up to graduation.

ISSUE:

Whether or not the *Non* doctrineshould be applied retroactively to govern and invalidate the legal effects of incidents that took place prior to its adoption which are valid under the *Alcuaz doctrine* which was prevailing at the time said incident took place. (NO)

RULING:

The ruling in the Non case should not be given a retroactive effect to cases that arose before its promulgation on May 20, 1990, as in this case, which was filed on April 16, 1990. If it were otherwise, it would result in oppression to petitioners and other schools similarly situated who relied on the ruling in the Alcuaz case, promulgated on May 2, 1988, which recognized the termination of contract theory.
In the case of People v. Jabinal, it is a settled rule that when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

CUI v. ARELLANO UNIVERSITY
G.R. No. L-15127, EN BANC, May 30, 1961, CONCEPCION, J.

Under the principles relating to the doctrine of public policy, as applied to the law of contracts, courts of justice will not recognize or uphold a transaction which in its object, operation, or tendency, is calculated to be prejudicial to the public welfare, to sound morality, or to civic honesty.

The stipulation on the parties contract which waives Cui's right to transfer to another school without refunding the equaled scholarship cash is null and void for being contrary to public policy.

FACTS:

Cui studied his preparatory law course in Arellano University. After finishing his preparatory law course, he enrolled in the College of Law of the same university and studied there until his first semester of Fourth year because his uncle who was the dean of the College of Law accepted the deanship and chancellorship in the College of Law of Abad Santos. Cui transferred to the College of Law of Abad Santos and graduated there.

Cui, during all the time he was studying law in Arellano, was awarded scholarship grants, for scholastic merit, so that his semestral tuition fees were returned to him after the ends of semesters and when his scholarship grants were awarded to him. In the contract between the parties which was signed by Cui, it was stated that, "In consideration of the scholarship granted to me by the University, I hereby waive my right to transfer to another school without having refunded to the University (defendant) the equivalent of my scholarship cash."

After graduating from Abad Santos University, he applied to take the bar examination. To secure permission to take the bar he needed the transcripts of his records in defendant Arellano University. Plaintiff petitioned the latter to issue to him the needed transcripts. The defendant refused until after he had paid back the P1,033.87 which defendant refunded to him as above stated. As he could not take the bar examination without those transcripts, plaintiff paid to defendant the said sum under protest.

The Director of Private Schools issued Memorandum No. 38, series of 1949 on the subject of "Scholarships" which that the tuition and other fees corresponding to the scholarship should not be charged to the recipient should the latter decides to quit school.

ISSUE:

Whether or not the provision in their contract whereby Cui waives his right to transfer to another school without refunding to the latter the equivalent of his scholarships in cash, is valid. (NO)

RULING:

The stipulation on the parties contract which waives Cui's right to transfer to another school without refunding the equaled scholarship cash is null and void for being contrary to public policy.

Under the principles relating to the doctrine of public policy, as applied to the law of contracts, courts of justice will not recognize or uphold a transaction which in its object, operation, or tendency, is calculated to be prejudicial to the public welfare, to sound morality, or to civic honesty.

If Arellano University understood clearly the real essence of scholarships and the motives which prompted this office to issue Memorandum No. 38, s. 1949, it should have not entered into a contract of waiver with Cui which is a direct violation of the Memorandum and an open challenge to the authority of the Director of Private Schools because the contract was repugnant to sound morality and civic honesty.

The policy enunciated in Memorandum No. 33, s. 1949 is sound policy. Scholarships are awarded in recognition of merit not to keep outstanding students in school to bolster its prestige. In the understanding of that university scholarships award is a business scheme designed to increase the business potential of an educational institution. Thus conceived it is not only inconsistent with sound policy but also good morals.

In these institutions scholarships are granted not to attract and to keep brilliant students in school for their propaganda value but to reward merit or help gifted students in whom society has an established interest or a first lien.

PEOPLE v. JABINAL

G.R. No. L-30061, SECOND DIVISION, February 27, 1974, Antonio, J.

Under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system. . ." The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's

construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate.

The doctrine laid down in Lucero and Macarandang was part of the jurisprudence, hence, of the law, of the land, at the time appellant was found by possession of the firearm in question and when he was arraigned by the trial court. It is true that the doctrine was overruled in the Mapa case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively.

FACTS:

In 1964, Jabinal was found to be in possession of a revolver and the corresponding ammunition without the required license or permit. However, he claimed to be entitled to exoneration because, although he had no license or permit, he had an appointment as Secret Agent from the Provinical Governor of Batangas in 1962 and as Confidential Agent from the PC Provincial Commander in 1964 and the said appointments expressly carried with them the authority to possess and carry the firearm in question.

Jabinal argued that he should be entitled to acquittal based on the Supreme Court's ruling in the cases of *People v. Macarandang*(1959)and *People v. Lucero*(1958). However, the trial court convicted him of the crime charged based on the SC's 1968 ruling in *People v. Mapa.*

ISSUE:

Whether or norJabinal should be acquitted based on the rulings in *People v. Macarandang*and *People v. Lucero.* (YES)

RULING:

Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system. . ." The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate.

The doctrine laid down in *Lucero* and *Macarandang* was part of the jurisprudence, hence, of the law, of the land, at the time appellant was found by possession of the firearm in question and when he was arraigned by the trial court. It is true that the doctrine was overruled in the *Mapa* case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.

VAN DORN v. ROMILLO
G.R. No. L-68470, FIRST DIVISION, October 8, 1985, MELENCIO-HERRERA, J.

Owing to nationality principle enshrined in Article 15 of the NCC, only Filipinos are covered by the policy of absolute divorces as it is considered contrary to the concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. In this case, the divorce in Nevada released Upton from the marriage. Thus, pursuant to his national law, Upton is no longer the husband of Van Dorn. He would have no standing to sue in the case as Van Dorn's husband.

FACTS:

Van Dorn, a Filipino citizen, and Upton, US citizen, were married in Hong Kong. They established their residence in the Philippines and begot two children. After some years, the parties divorced in Nevada, United States. Van Dorn has re-married to Theodore Van Dorn.

A suit then was instituted by Upton stating that petitioner's business is a conjugal property with Upton and prayed that Van Dorn be ordered to render accounting of the business and he be declared with right to manage the conjugal property. Van Dorn moved to dismiss the case as the cause of action is barred by the judgment in the divorce proceedings before the Nevada Court wherein Upton acknowledged that he and Van Dorn had "no community property."

Lower Court denied the motion to dismiss stating that the property is located in the Philippines, and that the Divorce decree from Nevada Court cannot prevail over prohibitive laws of the Philippines.

ISSUE:

Whether or not the foreign divorce is binding in the Philippines where petitioner is a Filipino. (YES)

RULING:

As to Upton, the divorce is binding as an American citizen. Owing to nationality principle enshrined in Article 15 of the NCC, only Filipinos are covered by the policy of absolute divorces as it is considered contrary to the concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. In this case, the divorce in Nevada released Upton from the marriage. Thus, pursuant to his national law, Upton is no longer the husband of Van Dorn. He would have no standing to sue in the case as Van Dorn's husband.

As to Van Dorn, she should not be obliged to live together with observe respect and fidelity, and render support to Upton. She should not be discriminated against in her own country. To maintain that Van Dorn is still considered married to Upton is unjust and the ends of justice cannot be served.

ANDO v. DEPARTMENT OF FOREIGN AFFAIRS
G.R. No. 195432,FIRST DIVISION, August 27, 2014, SERENO, C.J.

Petitioner questions the decision of the RTC, dismissing her petition for the recognition of her second marriage as valid, for failing to comply with the requirements set forth in Art. 13 of the Family Code – that is obtaining a judicial recognition of the foreign decree of absolute divorce in our country. The SC

however ruled that a divorce obtained abroad by an alien may be recognized in our jurisdiction, provided the decree is valid according to the national law of the foreigner. The presentation solely of the divorce decree is insufficient; both the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. Because our courts do not take judicial notice of foreign laws and judgment, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and proven and like any other fact. Hence, instead of filing a petition for the recognition of her second marriage as valid, petitioner should have filed a petition for the judicial recognition of her foreign divorce from her first husband.

FACTS:

On 16 September 2001, petitioner Edelina married Yuichiro Kobayashi, a Japanese National, in a civil wedding solemnized at Candaba, Pampanga. Thereafter, Yuichiro Kobayashi sought in Japan, and was validly granted under Japanese laws, a divorce in respect of his marriage with Edelina. Believing in good faith that said divorce capacitated her to remarry and that by such she reverted to her single status; Edelina married Masatomi Y. Ando in a civil wedding celebrated in Sta. Ana, Pampanga. However, when Edelina applied for the renewal of her Philippine passport to indicate her surname with her husband Masatomi she was told by the DFA that the same cannot be issued to her until she can prove by competent court decision that her marriage with her said husband Masatomi is valid.

Edelina then filed with the RTC a Petition for Declaratory Relief praying that her marriage with Masatomi be declared as valid and to order the DFA to issue a Philippine passport to Edelinander the name of "Edelina Ando y Tungol.

For failure to comply with the requirements set forth in Art. 13 of the Family Code – that is obtaining a judicial recognition of the foreign decree of absolute divorce in our country the RTC dismissed the petition. The RTC further held that since the divorce allegedly obtained by her first husband was never recognized in the Philippines, Edelina is still considered as married to Kobayashi, her first husband. Accordingly, the second marriage with Ando cannot be honored and considered as valid at this time. Hence, this petition.

Edelina argues that assuming a court judgment recognizing a judicial decree of divorce is required under Article 13 of the Family Code, noncompliance therewith is a mere irregularity in the issuance of a marriage license. She contends that any irregularity in the formal requisites of marriage, such as with respect to the marriage license, shall not affect the legality of the marriage.

ISSUE:

Whether or not petitioner's second marriage should be recognized. (NO)

RULING:

Edelina's second marriage should not be recognized. With respect to her prayer for the recognition of her second marriage as valid, Edelina should have filed, instead, a petition for the judicial recognition of her foreign divorce from her first husband.

In *Garcia v. Recio*, the Court ruled that a divorce obtained abroad by an alien may be recognized in our jurisdiction, provided the decree is valid according to the national law of the foreigner. The presentation solely of the divorce decree is insufficient; both the divorce decree and the governing

personal law of the alien spouse who obtained the divorce must be proven. Because our courts do not take judicial notice of foreign laws and judgment, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and proven and like any other fact.

While it has been ruled that a petition for the authority to remarry filed before a trial court actually constitutes a petition for declaratory relief, the Court is still unable to grant the prayer of Edelina. As held by the RTC, there appears to be insufficient proof or evidence presented on record of both the national law of her first husband, Kobayashi, and of the validity of the divorce decree under that national law. Hence, any declaration as to the validity of the divorce can only be made upon her complete submission of evidence proving the divorce decree and the national law of her alien spouse, in an action instituted in the proper forum.

QUITA v. CA

G.R. No. 124862, SECOND DIVISION, December 22, 1998, BELLOSILLO J.

Quita's right to inherit Arturo's estate must still be determined by the trial court. In her motion, she said that Arturo was a Filipino and as such remained legally married to her in spite of the divorce they obtained.Reading between the lines, the implication is that petitioner was no longer a Filipino citizen at the time of her divorce from Arturo. This should have prompted the trial court to conduct a hearing to establish her citizenship. The purpose of a hearing is to ascertain the truth of the matters in issue with the aid of documentary and testimonial evidence as well as the arguments of the parties either supporting or opposing the evidence.

FACTS:

Fe Quita and Arturo Padlan, both Filipinos, were married In 1941 and do not have any children. Eventually, Fe sued Artuto for divorce in San Francisco, California, U.S.A. in 1954, she obtained a final judgment of divorce. After her marriage with Padlan, Quita again married twice. In 1972, Arturo died intestate. BlandinaPadlan who claimed to be the surviving spouse of Arturo with their six children prayed for the appointment of their counsel as administrator.

On the scheduled hearing for the declaration of heirs of deceden and distribution of estate, Blandina and her 6 children failed to appear. Instead, the trial court required the sibmission of the records of birth of the Padlan children. Further, the trial court invoked *Tenchavez v. Escaño*which held that "a foreign divorce between Filipino citizens sought and decreed after the effectivity of the present Civil Code was not entitled to recognition as valid in this jurisdiction, thus, disregarding the divorce between Fe and Arturo. RupertoPadlan, surviving brother of Arturo, was found to be the only surviving intestate heir of Arturo. Later, Blandina and the Padlan children presented proofs as legitimate heirs. Thus, the trial court reconsidered its decision and granted Ruperto with one-half and the Padlan children with the other half. However, Blandina was not declared to be entitled to the estate as it was found that her marriage with Arturo was celebrated during the existence of Arturo's previous marriage making it bigamous, thus void. The CA remanded the case the trial court for further proceedings.

ISSUE:

Whether or not Quita can be declared as an heir as Arturo's surviving spouse.

RULING:

The right of Quita to inherit Arturo's estate must still be determined by the trial court. In her motion, she said that Arturo was a Filipino and as such remained legally married to her in spite of the divorce they obtained.Reading between the lines, the implication is that petitioner was no longer a Filipino citizen at the time of her divorce from Arturo. This should have prompted the trial court to conduct a hearing to establish her citizenship. The purpose of a hearing is to ascertain the truth of the matters in issue with the aid of documentary and testimonial evidence as well as the arguments of the parties either supporting or opposing the evidence. Instead, the lower court perfunctorily settled her claim in her favor by merely applying the ruling in *Tenchavez v. Escaño*.

On the other had, Blandina's claim to heirship was already resolved by the trial court. She and Arturo were married on 22 April 1947 while the prior marriage of petitioner and Arturo was subsisting thereby resulting in a bigamous marriage considered void from the beginning under Arts. 80 and 83 of the Civil Code.Consequently, she is not a surviving spouse that can inherit from him as this status presupposes a legitimate relationship.

There is no dispute exists either as to the right of the six (6) Padlan children to inherit from the decedent because there are proofs that they have been duly acknowledged by him and petitioner herself even recognizes them as heirs of Arturo Padlan; nor as to their respective hereditary shares.

CATALAN v. BRAGANZA
G.R. No. 167109, THIRD DIVISION, February 6, 1998, YNARES-SANTIAGO,J.

It is settled rule that one who alleges a fact has the burden of proving it and mere allegation is not evidence. It was the Felicitas who alleged in her complaint that they acquired American citizenship and that Orlando obtained a judicial divorce decree.

FACTS:

Petitioner Felicitas Amor-Catalan was married to Orlando in 1950. They migrated to the U.S.A and *allegedly*became naturalized citizens. After 38 years of marriage, Felicitas and Orlando divorced in April 1988. Two months after their divorce, Orlando married Merope Braganza. Felicitas filed a petition for declaration of nullity od marriage contending that Merope had a prior subsisting marriage with Eusebio Bristol. Orlando and Merope filed a motion to dismiss on the ground of lakc of cause of action as Felicitas was not a real party-in-interest, but such was denied by the RTC. Orlando and Merope appealed to the CA which reversed the RTC's decision.

ISSUE:

1. Whether or not Orlando and Felicitas had indeed become naturalized American citizen.
2. Whether or not the had actually been judicially granted a divorce decree
3. Whether or not Felicitas has the personality to file the petition.

RULING:

1. Both the RTC and the Court of Appeals found that petitioner and respondent Orlando were naturalized American citizens and that they obtained a divorce decree in April 1988. However, after a careful review of the records, we note that other than the allegations in the complaint and the

testimony during the trial, the records are bereft of competent evidence to prove their naturalization and divorce.

It was the Felicitas who alleged in her complaint that they acquired American citizenship and that Orlando obtained a judicial divorce decree. It is settled rule that one who alleges a fact has the burden of proving it and mere allegation is not evidence.

2. A divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. However, before it can be recognized by our courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it, which must be proved considering that our courts cannot take judicial notice of foreign laws. In this case, no evidence of divorce decree and the foreign law was presented before the court.

3. Without the divorce decree and foreign law as part of the evidence, we cannot rule on the issue of whether petitioner has the personality to file the petition for declaration of nullity of marriage.

The case was remanded to the trial court for proper disposition.

SAN LUIS v. SAN LUIS

G.R. No. 133743, 134029, THIRD DIVISION, February 6, 2007, YNARES-SANTIAGO,J.

In light of this Court's ruling in the Van Dorn case, the Filipino spouse should not be discriminated against in his own country if the ends of justice are to be served. As such, the Van Dorn case is sufficient basis in resolving a situation where a divorce is validly obtained abroad by the alien spouse. With the enactment of the Family Code and paragraph 2, Article 26 thereof, our lawmakers codified the law already established through judicial precedent.

FACTS:

During his lifetime, Felicisimo contracted three marriages. His first marriage was with Virginia Sulit on March 17, 1942 out of which were born six children, namely: Rodolfo, Mila, Edgar, Linda, Emilita and Manuel. On August 11, 1963, Virginia predeceased Felicisimo.

Five years later, Felicisimo married Merry Lee Corwin, with whom he had a son, Tobias. However, on October 15, 1971, Merry Lee, an American citizen, filed a Complaint for Divorce before the Family Court of the First Circuit, State of Hawaii, United States of America, which issued a Decree Granting Absolute Divorce and Awarding Child Custody on December 14, 1973. On June 20, 1974, Felicisimo married respondent Felicidad San Luis, then surnamed Sagalongos. He had no children with respondent, but lived with her for 18 years from the time of their marriage up to his death on December 18, 1992.

Thereafter, respondent Felicidad sought the dissolution of their conjugal partnership assets and the settlement of Felicisimo's estate. She then filed a petition for letters of administration before the Regional Trial Court of Makati City.

Rodolfo, one of the children of Felicisimo by his first marriage, filed a motion to dismiss on the grounds of improper venue and failure to state a cause of action. Rodolfo claimed that the petition

for letters of administration should have been filed in the Province of Laguna because this was Felicisimo's place of residence prior to his death. Further, he claimed that Felicidad has no legal personality to file the petition because she was only a mistress of Felicisimo since the latter, at the time of his death, was still legally married to Merry Lee.

The trial court dismissed the petition for letters of administration. It held that, at the time of Felicisimo's death, he was the duly elected governor and a resident of the Province of Laguna. Hence, the petition should have been filed in Sta. Cruz, Laguna, and not in Makati City. It also ruled that respondent was without legal capacity to file the petition for letters of administration because her marriage with Felicisimo was bigamous, thus, void *ab initio*. It found that the decree of absolute divorce dissolving Felicisimo's marriage to Merry Lee was not valid in the Philippines and did not bind Felicisimo who was a Filipino citizen. It also ruled that paragraph 2, Article 26 of the Family Code cannot be retroactively applied because it would impair the vested rights of Felicisimo's legitimate children. The CA reversed and set aside the orders of the trial court.

ISSUE:

1. Whether or not a Filipino who is divorced by his alien spouse abroad may validly remarry under the Civil Code or Family Code. (YES)
2. Whether or not Felicidad has the legal personality to file the petition for letter of administration. (YES)

RULING:

1. Paragraph 2 of Article 26 traces its origin to the 1985 case of *Van Dorn v. Romillo, Jr*. The *Van Dorn* case involved a marriage between a Filipino citizen and a foreigner. The Court held therein that a divorce decree validly obtained by the alien spouse is valid in the Philippines, and consequently, the Filipino spouse is capacitated to remarry under Philippine law. As such, the *Van Dorn* case is sufficient basis in resolving a situation where a divorce is validly obtained abroad by the alien spouse. With the enactment of the Family Code and paragraph 2, Article 26 thereof, our lawmakers codified the law already established through judicial precedent.

Rodolfo cited Articles 15 and 17of the Civil Code in stating that the divorce is void under Philippine law insofar as Filipinos are concerned. However, in light of this Court's rulings in the cases, the Filipino spouse should not be discriminated against in his own country if the ends of justice are to be served.

The divorce decree allegedly obtained by Merry Lee which absolutely allowed Felicisimo to remarry, would have vested Felicidad with the legal personality to file the present petition as Felicisimo's surviving spouse. However, the records show that there is insufficient evidence to prove the validity of the divorce obtained by Merry Lee as well as the marriage of respondent and Felicisimo under the laws of the U.S.A.

With regard to respondent's marriage to Felicisimo allegedly solemnized in California, U.S.A., she submitted photocopies of the Marriage Certificate and the annotated text of the Family Law Act of California which purportedly show that their marriage was done in accordance with the said law. As stated in *Garcia*, however, the Court cannot take judicial notice of foreign laws as they must be alleged and proved. Therefore, this case should be remanded to the trial court for further reception of

evidence on the divorce decree obtained by Merry Lee and the marriage of respondent and Felicisimo.

2. Felicidad has the legal personality to file the subject petition for letters of administration, as she may be considered the co-owner of Felicisimo as regards the properties that were acquired through their joint efforts during their cohabitation even assuming that Felicisimo was not capacitated to marry Felicidad in accordance with Article 144 and 148 of the Civil Code.

IN THE MATTER OF THE TESTATE ESTATE OF EDWARD E. CHRISTENSEN, DECEASED. ADOLFO C. AZNAR, Executor and LUCY CHRISTENSEN, Heir of the deceased, Executor and Heir-appellees, vs. HELEN CHRISTENSEN GARCIA, oppositor-appellant.
G.R. No. L-16749, EN BANC, January 31, 1963, LABRADOR, J.

The Doctrine of Renvoi is a legal doctrine which applies when a court is faced with a conflict of law and must consider the law of another state, referred to as private international law rules. This can apply when considering foreign issues arising in succession planning and in administering estates.

In this case, the SC found that as the domicile of the deceased Christensen, a citizen of California, is the Philippines, the validity of the provisions of his will depriving his acknowledged natural child, the appellant, should be governed by the Philippine Law, the domicile, pursuant to Art. 946 of the Civil Code of California, not by the internal law of California.

FACTS:

Edward E. Christensen executed a will bequeathing a part of his property located in the Philippines to Maria Helen Christensen his acknowledge daughter. He was a citizen of US and State of California but domiciled in the Philippines at the time of his death. Lucy, his other child, alleged that under the State of California Law acknowledge children shall not inherit. Furthermore, Article 16 of the Civil Code states that in case of testamentary succession 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 deceased. Thus, Helen shall not inherit. Helen Christen on the other hand alleged that since there is no single American law to such issue for the disposition of property located in the domicile of the deceased what shall govern is the State of California Law that under Article 946 of the Civil Code of California, if there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile. Moreover, in accordance therewith and following the doctrine of the renvoi, the question of the validity of the testamentary provision in question should be referred back to the law of the decedent's domicile, which is the Philippines.

ISSUE:

Whether or not the Doctrine of Renvoi shall apply in this case. (YES)

RULING:

The Doctrine of Renvoi is a legal doctrine which applies when a court is faced with a conflict of law and must consider the law of another state, referred to as private international law rules. This can apply when considering foreign issues arising in succession planning and in administering estates.

Thus, Article 16 par. 2 of the Civil Code provides that intestate and testamentary successions with respect to order of succession and amount of successional right is regulated by the national law of the deceased. While California Probate Code provides that a testator may dispose of his property in the form and manner he desires. Furthermore, Art. 946 of the Civil Code of California provides that if no law on the contrary, the place where the personal property is situated is deemed to follow the person of its owner and is governed by the law of his domicile.

These provisions are cases when the Doctrine of Renvoi may be applied where the question of validity of the testamentary provision in question is referred back to the decedent's domicile – the Philippines. The conflicts of law rule in California Law Probate and Art. 946 authorize the return of question of law to the testator's domicile. The court must apply its own rule in the Philippines as directed in the conflicts of law rule in CA, otherwise the case/issue will not be resolved if the issue is referred back and forth between 2 states.

The SC found that as the domicile of the deceased Christensen, a citizen of California, is the Philippines, the validity of the provisions of his will depriving his acknowledged natural child, the appellant, should be governed by the Philippine Law, the domicile, pursuant to Art. 946 of the Civil Code of California, not by the internal law of California.

MARIA REBECCA MAKAPUGAY BAYOT, petitioner, vs. THE HONORABLE COURT OF APPEALS and VICENTE MADRIGAL BAYOT, respondents.
G.R. No. 155635, SECOND DIVISION, November 7, 2008, VELASCO, JR., J.

A divorce obtained abroad by an alien married to a Philippine national may be recognized in the Philippines, provided the decree of divorce is valid according to the national law of the foreigner. In this case, the fact that Rebecca was clearly an American citizen when she secured the divorce and that divorce is recognized and allowed in any of the States of the Union, the presentation of a copy of foreign divorce decree duly authenticated by the foreign court issuing said decree is, as here, sufficient.

FACTS:

Maria Rebecca MakapugayBayot (Rebecca) and Vicente Madrigal Bayot (Vicente) were married on April 20, 1979 in Mandaluyong City. On its face, the Marriage Certificate identified Rebecca to be an American citizen born in Agaña, Guam, USA. Rebecca gave birth to Marie Josephine Alexandra or Alix. From then on, Vicente and Rebecca's marital relationship seemed to have soured as the latter initiated divorce proceedings in the CFI of Dominican Republic which ordered the dissolution of the couple's marriage but giving them joint custody and guardianship over Alix.

Rebecca filed a petition before the Muntinlupa City RTC for declaration of absolute nullity of marriage and also sought the dissolution of the conjugal partnership of gains with application for support pendente lite for her and Alix. Vicente filed a Motion to Dismiss on the grounds of lack of cause of action and that the petition is barred by the prior judgment of divorce. Rebecca interposed an opposition, insisting her Filipino citizenship, therefore, there is no valid divorce to speak of.

The RTC denied Vicente's motion to dismiss and granted Rebecca's application for support pendente lite. The CA dismissed the petition of Rebecca and set aside incidental orders of the RTC issued in relation to the case.

ISSUE:

1. Whether or not Rebecca was a Filipino citizen at the time the divorce judgment was rendered in the Dominican Republic. (NO)
2. Whether or not the judgment of divorce is valid. (YES)

RULING:

1. There can be no serious dispute that Rebecca, at the time she applied for and obtained her divorce from Vicente, was an American citizen and remains to be one, absent proof of an effective repudiation of such citizenship. The following are compelling circumstances indicative of her American citizenship: (1) she was born in Agaña, Guam, USA; (2) the principle of jus soli is followed in this American territory granting American citizenship to those who are born there; and (3) she was, and may still be, a holder of an American passport.

   And as aptly found by the CA, Rebecca had consistently professed, asserted, and represented herself as an American citizen, particularly: (1) during her marriage as shown in the marriage certificate; (2) in the birth certificate of Alix; and (3) when she secured the divorce from the Dominican Republic. Mention may be made of the Affidavit of Acknowledgment in which she stated being an American citizen. The Court can assume hypothetically that Rebecca is now a Filipino citizen. But from the foregoing disquisition, it is indubitable that Rebecca did not have that status of, or at least was not yet recognized as, a Filipino citizen when she secured the February 22, 1996 judgment of divorce from the Dominican Republic.

2. The Court has taken stock of the holding in Garcia v. Recio that a foreign divorce can be recognized here, provided the divorce decree is proven as a fact and as valid under the national law of the alien spouse. Be this as it may, the fact that Rebecca was clearly an American citizen when she secured the divorce and that divorce is recognized and allowed in any of the States of the Union, the presentation of a copy of foreign divorce decree duly authenticated by the foreign court issuing said decree is, as here, sufficient.

   Given the validity and efficacy of divorce secured by Rebecca, the same shall be given a res judicata effect in this jurisdiction. As an obvious result of the divorce decree obtained, the marital vinculum between Rebecca and Vicente is considered severed; they are both freed from the bond of matrimony. In plain language, Vicente and Rebecca are no longer husband and wife to each other. Consequent to the dissolution of the marriage, Vicente could no longer be subject to a husband's obligation under the code.

TESTATE ESTATE OF AMOS G. BELLIS, deceased, PEOPLE'S BANK & TRUST COMPANY, executor, MARIA CRISTINA BELLIS and MIRIAM PALMA BELLIS, oppositors-appellants, vs. EDWARD A. BELLIS, ET AL., heirs-appellees.
G.R. No. L-23678, EN BANC, June 6, 1967, BENGZON, J.P., J.

Whatever public policy or good customs may be involved in our system of legitimes, Congress has not intended to extend the same to the succession of foreign nationals. For it has specifically chosen to leave, inter alia, the amount of successional rights, to the decedent's national Law. Specific provisions must prevail over general ones.

FACTS:

Amos G. Bellis was "a citizen of the State of Texas and of the United States." By his first wife, Mary E. Mallen, he had five legitimate children: Edward A. Bellis, George Bellis (who pre-deceased him in infancy), Henry A. Bellis, Alexander Bellis and Anna Bellis Allsman; by his second wife, Violet Kennedy, who survived him, he had three legitimate children: Edwin G. Bellis, Walter S. Bellis and Dorothy Bellis; and finally, he had three illegitimate children: Amos Bellis, Jr., Maria Cristina Bellis and Miriam Palma Bellis.

Amos G. Bellis executed a will in the Philippines, in which he directed that his distributable estate should be divided in the following manner: (a) $240,000.00 to his first wife; (b) P120,000.00 to his three illegitimate children or P40,000.00 each and (c) after the foregoing two items have been satisfied, the remainder shall go to his seven surviving children by his first and second wives.

Subsequently, Amos G. Bellis died, a resident of San Antonio, Texas, U.S.A.

The People's Bank and Trust Company, as executor of the will, submitted its "Executor's Final Account, Report of Administration and Project of Partition" wherein it reported the satisfaction of the legacy of Mary E. Mallen by the delivery to her of shares of stock amounting to $240,000.00, and the legacies of Amos Bellis, Jr., Maria Cristina Bellis and Miriam Palma Bellis in the amount of P40,000.00 each. In the project of partition, the executor — pursuant to the "Twelfth" clause of the testator's Last Will and Testament — divided the residuary estate into seven equal portions for the benefit of the testator's seven legitimate children by his first and second marriages.

Maria Cristina Bellis and Miriam Palma Bellis filed their respective oppositions to the project of partition on the ground that they were deprived of their legitimes as illegitimate children and, therefore, compulsory heirs of the deceased.

The lower court issued an order approving the executor's final account, report and administration and project of partition.

ISSUE:

Whether or not the Philippine law be applied in the case in the determination of the illegitimate children's successional rights. (NO)

RULING:

In the present case, it is not disputed that the decedent was both a national of Texas and a domicile thereof at the time of his death. So that even assuming Texas has a conflict of law rule providing that the domiciliary system (law of the domicile) should govern, the same would not result in a reference back (renvoi) to Philippine law, but would still refer to Texas law. Nonetheless, if Texas has a conflict of law rule adopting the situs theory (lexreisitae) calling for the application of the law of the place where the properties are situated, renvoi would arise, since the properties here involved are found in the Philippines. In the absence, however, of proof as to the conflict of law rule of Texas, it should not be presumed different from ours. Appellants' position is therefore not rested on the doctrine of renvoi. As stated, they never invoked nor even mentioned it in their arguments. Rather, they argue that their case falls under the circumstances mentioned in the third paragraph of Article 17 in relation to Article 16 of the Civil Code.

Article 16, par. 2, and Art. 1039 of the Civil Code, render applicable the national law of the decedent, in intestate or testamentary successions, with regard to four items: (a) the order of succession; (b) the amount of successional rights; (c) the intrinsic validity of the provisions of the will; and (d) the capacity to succeed.

Appellants would however counter that Article 17, paragraph three, of the Civil Code prevails as the exception to Art. 16, par. 2 of the Civil Code. This is not correct. Precisely, Congress deleted the phrase, "notwithstanding the provisions of this and the next preceding article" when they incorporated Art. 11 of the old Civil Code as Art. 17 of the new Civil Code, while reproducing without substantial change the second paragraph of Art. 10 of the old Civil Code as Art. 16 in the new. It must have been their purpose to make the second paragraph of Art. 16 a specific provision in itself which must be applied in testate and intestate successions. As further indication of this legislative intent, Congress added a new provision, under Art. 1039, which decrees that capacity to succeed is to be governed by the national law of the decedent.

It is therefore evident that whatever public policy or good customs may be involved in our system of legitimes, Congress has not intended to extend the same to the succession of foreign nationals. For it has specifically chosen to leave, inter alia, the amount of successional rights, to the decedent's national Law. Specific provisions must prevail over general ones.

Appellants would also point out that the decedent executed two wills — one to govern his Texas estate and the other his Philippine estate — arguing from this that he intended Philippine law to govern his Philippine estate. Assuming that such was the decedent's intention in executing a separate Philippine will, it would not alter the law, for as this Court ruled in Miciano vs. Brimo, 50 Phil. 867, 870, a provision in a foreigner's will to the effect that his properties shall be distributed in accordance with Philippine law and not with his national law, is illegal and void, for his national law cannot be ignored in regard to those matters that Article 10 — now Article 16 — of the Civil Code states said national law should govern.

The parties admit that the decedent, Amos G. Bellis, was a citizen of the State of Texas, U.S.A., and that under the laws of Texas, there are no forced heirs or legitimes. Accordingly, since the intrinsic validity of the provision of the will and the amount of successional rights are to be determined under Texas law, the Philippine law on legitimes cannot be applied to the testacy of Amos G. Bellis.

PAULA T. LLORENTE, petitioner, vs. COURT OF APPEALS and ALICIA F. LLORENTE, respondents.

G.R. No. 124371, FIRST DIVISION, November 23, 2000, PARDO, J.

Aliens may obtain divorces abroad, provided they are valid according to their national law. In this case, it was proven that Lorenzowas no longer a Filipino citizen when he obtained the divorce from Paula. Therefore, the divorce obtained by Lorenzo was valid and recognized in this jurisdiction.

FACTS:

Lorenzo N. Llorente (Lorenzo) was married to his first wife Paula Llorente (Paula). However, they obtained a divorce because of Paula's infidelity. The divorce was obtained long after Lorenzo was naturalized as American Citizen. He then married his second wife Alice and begot three children. He executed a will in the Philippines and bequeathing his properties situated therein to his second wife

and three children and later on died. Paula then claimed that she was the surviving spouse of Lorenzo and that the divorce was not valid in the Philippines.

ISSUE:

Whether or not the divorce was recognizable in the Philippines. (YES)

RULING:

In long line of cases decided by the SC it ruled that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces, the same being considered contrary to our concept of public policy and morality. In the same case, the Court ruled that aliens may obtain divorces abroad, provided they are valid according to their national law. Once proven that Lorenzo was no longer a Filipino citizen when he obtained the divorce from Paula, the ruling in Van Dorn would become applicable and Paula could very well lose her right to inherit from him. Thus, the divorce obtained by Lorenzo from his first wife Paula was valid and recognized in this jurisdiction as a matter of comity.

ALONZO Q. ANCHETA, petitioner, vs. CANDELARIA GUERSEY-DALAYGON, respondent.
G.R. No. 139868, FIRST DIVISION, June 8, 2006, AUSTRIA-MARTINEZ, J.

While foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice of them; however, petitioner, as ancillary administrator of Audrey's estate, was duty-bound to introduce in evidence the pertinent law of the State of Maryland. This is not a simple case of error of judgment or grave abuse of discretion, but a total disregard of the law as a result of petitioner's abject failure to discharge his fiduciary duties. Respondent was thus excluded from enjoying full rights to the Makati property through no fault or negligence of her own, as petitioner's omission was beyond her control. The end result was a miscarriage of justice. In cases like this, the courts have the legal and moral duty to provide judicial aid to parties who are deprived of their rights.

FACTS:

Spouses Audrey and Richard were American citizens who have resided in the Philippines for 30 years. They have an adopted daughter, Kyle. On July 29, 1979, Audrey died, leaving a will. In it, she bequeathed her entire estate to Richard. The will was admitted to probate before the Orphan's Court of Baltimore, Maryland, U.S.A, which named James N. Phillips as executor. The court also named Atty. Alonzo Q. Ancheta (petitioner) as ancillary administrator.

In 1981, Richard married Candelaria Guersey-Dalaygon (respondent) with whom he has two children.

On July 20, 1984, Richard died, leaving a will, wherein he bequeathed his entire estate to respondent, save for his rights and interests over the A/G Interiors, Inc. shares, which he left to Kyle.

Richard's will was then submitted for probate before the Regional Trial Court of Makati, Branch 138, docketed as Special Proceeding No. M-888. Atty. William Quasha was appointed as ancillary administrator.

On October 19, 1987, petitioner filed in Special Proceeding No. 9625, a motion to declare Richard and Kyle as heirs of Audrey. Petitioner also filed on October 23, 1987, a project of partition of Audrey's estate, with Richard being apportioned the 3/4 undivided interest in the Makati property, 48.333 shares in A/G Interiors, Inc., and P9,313.48 from the Citibank current account; and Kyle, the 1/4 undivided interest in the Makati property, 16,111 shares in A/G Interiors, Inc., and P3,104.49 in cash.

The motion and project of partition was granted and approved by the trial court.

Meanwhile, Atty. Quasha in Special Proceeding No. M-888 also filed a project of partition wherein 2/5 of Richard's 3/4 undivided interest in the Makati property was allocated to respondent, while 3/5 thereof were allocated to Richard's three children. This was opposed by respondent on the ground that under the law of the State of Maryland, "a legacy passes to the legatee the entire interest of the testator in the property subject of the legacy." Since Richard left his entire estate to respondent, except for his rights and interests over the A/G Interiors, Inc, shares, then his entire 3/4 undivided interest in the Makati property should be given to respondent.

The trial court found merit in respondent's opposition, and disapproved the project of partition insofar as it affects the Makati property. The trial court also adjudicated Richard's entire 3/4 undivided interest in the Makati property to respondent.

ISSUE:

Whether or not Audrey's and Richard's estate should be distributed according to their respective wills, and not according to the project of partition submitted by petitioner. (YES)

RULING:

It is undisputed that Audrey Guersey was an American citizen domiciled in Maryland, U.S.A. During the reprobate of her will in Special Proceeding No. 9625, it was shown, among others, that at the time of Audrey's death, she was residing in the Philippines but is domiciled in Maryland, U.S.A.; her Last Will and Testament dated August 18, 1972 was executed and probated before the Orphan's Court in Baltimore, Maryland, U.S.A., which was duly authenticated and certified by the Register of Wills of Baltimore City and attested by the Chief Judge of said court; the will was admitted by the Orphan's Court of Baltimore City on September 7, 1979; and the will was authenticated by the Secretary of State of Maryland and the Vice Consul of the Philippine Embassy.

Being a foreign national, the intrinsic validity of Audrey's will, especially with regard as to who are her heirs, is governed by her national law,i.e., the law of the State of Maryland, as provided in Article 16 of the Civil Code.

While foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice of them; however, petitioner, as ancillary administrator of Audrey's estate, was duty-bound to introduce in evidence the pertinent law of the State of Maryland.

This is not a simple case of error of judgment or grave abuse of discretion, but a total disregard of the law as a result of petitioner's abject failure to discharge his fiduciary duties. Respondent was thus excluded from enjoying full rights to the Makati property through no fault or negligence of her own, as petitioner's omission was beyond her control. The end result was a miscarriage of justice. In cases

like this, the courts have the legal and moral duty to provide judicial aid to parties who are deprived of their rights.

Given that the pertinent law of the State of Maryland has been brought to record before the CA, and the trial court in Special Proceeding No. M-888 appropriately took note of the same in disapproving the proposed project of partition of Richard's estate, not to mention that petitioner or any other interested person for that matter, does not dispute the existence or validity of said law, then Audrey's and Richard's estate should be distributed according to their respective wills, and not according to the project of partition submitted by petitioner. Consequently, the entire Makati property belongs to respondent.

Honorable as it seems, petitioner's motive in equitably distributing Audrey's estate cannot prevail over Audrey's and Richard's wishes.

HUMAN RELATIONS

ALFREDO M. VELAYO, in his capacity as Assignee of the insolvent COMMERCIAL AIR LINES, INC. (CALI), Plaintiff-Appellant, vs. SHELL COMPANY OF THE PHILIPPINE ISLANDS, LTD., Defendant-Appellee, YEK HUA TRADING CORPORATION, PAUL SYCIP and MABASA & CO., intervenors.

G.R. No. L-7817, EN BANC, October 31, 1956, FELIX, J.

A moral wrong or injury, even if it does not constitute a violation of a statute law, should be compensated by damages. In this case, the defendant clearly acted in bad faith when it schemed and effected the attachment of the C-54 plane of its debtor CALI by assigning its credit to its sister company in the US. Therefore, the defendant is liable to pay damages.

FACTS:

Shell supplies fuel needs of CALI. However, due to financial crisis CALI failed to pay Shell and its other creditors. Thus, they entered into an agreement that they would present suits against the corporation but to strive for a pro-rata division of the assets, and only in the case of non-agreement would the creditors file insolvency proceedings. However, when Shell PH assigned the credit to Shell Oil, its American Sister Corporation, the latter filed a case against CALI for the collection of assigned Credit attaching the C-54 plane of CALI which the creditors opposed and filed damages against Shell for breach of their agreement.

ISSUE:

Whether or not Shell shall be liable for damages. (YES)

RULING:

Article 21 of the Civil Code states that 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. This is the legal remedy for that untold numbers of moral wrongs which is impossible for human foresight to provide for specifically in the statutes.

Another rule is expressed in Article 23 which compels the return of a thing acquired 'without just or legal grounds'. This provision embodies the doctrine that no person should unjustly enrich himself at the expense of another, which has been one of the mainstays of every legal system for centuries. Now, if Article 23 of the Civil Code goes as far as to provide that: "Even if an act or event causing damage to another's property was not due to the fault or negligence of the Shell, the latter shall be liable for indemnity if through the act or event he was benefited" with mere much more reason the Shell should be liable for indemnity for acts it committed in bad faith and with betrayal of confidence. Shell taking advantage of his knowledge that insolvency proceedings were to be instituted by CALI if the creditors did not come to an understanding as to the manner of distribution of the insolvent asset among them, and believing it most probable that they would not arrive at such understanding as it was really the case — schemed and effected the transfer of its sister corporation in the United States, where CALI's plane C-54 was by that swift and unsuspected operation efficaciously disposed of said insolvent's property depriving the latter, of the opportunity to recover said plane –to the detriment of the other creditors.

ELIZABETH L. DIAZ, Petitioner, v. GEORGINA R. ENCANTO, ERNESTO G. TABUJARA, GEMINO H. ABAD AND UNIVERSITY OF THE PHILIPPINES, Respondents.
G.R. No. 171303, FIRST DIVISION, January 20, 2016, LEONARDO-DE CASTRO, J.

Abuse of right under Article 19 exists when the following elements are present: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another. In this case, the SC found no traces of bad faith or malice in the respondents' denial of petitioner Diaz's application for sabbatical leave. They processed her application in accordance with their usual procedure – with more leeway, in fact, since petitioner Diaz was given the chance to support her application when she was asked to submit a historical background; and the denial was based on the recommendation of respondent Encanto, who was in the best position to know whether petitioner Diaz's application should be granted or not.

FACTS:

Petitioner Diaz has been a professor in UP since 1963. In 1988, she applied for sabbatical leave with pay for one year. The Chair of the Broadcast Department initially recommended to CMC Dean Encanto that Diaz's sabbatical application be granted. Thereafter, Encanto referred Diaz's sabbatical application to the Secretary of U.P., recommending its denial. Encanto also requested her salary be withheld effective July 1, 1988 until further notice since her sabbatical application has not yet been approved and that she did not teach that semester.

On July 4, 1988, it was recommended that Diaz be granted a leave without pay in order to enable the CMC to hire a substitute. The next day, the U.P.'s Secretary referred to the Vice-President for Academic Affairs, the fact of denial of such sabbatical request, for his own recommendation to the U.P. President. On July 8, 1988, Abad returned the Reference Slip indicating therein that Diaz had promised him to put down in writing the historical backdrop to the latest denial of her sabbatical leave, but she did not do so. On Diaz's request to teach for that semester, the Vice Chancellor for Academic Affairs and the HRDO Director instructed Encanto that until Prof. Diaz officially reports for duty, accomplishes the Certificate of Report for Duty, and the Dean of CMC confirms her date of actual report for duty, she is considered absent without official leave.

On November 8, 1988, Abad, issued a Memorandum to Diaz to confirm as valid Encanto's reason of shortage of teaching staff in denying her sabbatical. Later, he also informed Diaz of her lack of service

during the first semester of AY 1988-89, hence she is not entitled to be paid. While Diaz was able to teach during the second semester of AY 1988-89, she was not able to claim her salaries for her refusal to submit the Report for Duty Form.

Diaz instituted a complaint against U.P., Abueva, Encanto, Tabujara and Abad with the Pasig RTC praying that the latter be adjudged, jointly and severally to pay her damages. She claimed, among others, that they conspired together as joint tortfeasors, in not paying her salaries from July 1, 1988 in the first semester of academic year 1988-89, for the entire period when her sabbatical application was left unresolved, as well as the salaries she earned from teaching in the second semester from November 1988 to May 1989. She likewise claimed moral and exemplary damages and attorney's fees.

The RTC held that Diaz was entitled to a sabbatical leave and that the delay in the resolution of her application was unreasonable and unconscionable but the CA reversed it on appeal, ruling that there was neither negligence nor bad faith in denying her application and withholding her salaries.

ISSUES:

Whether the respondents acted in bad faith when they resolved Diaz's application for leave and are, therefore, liable for damages. (NO)

RULING:

Diaz's complaint for recovery of damages before the RTC was based on the alleged bad faith of the respondents in denying her application for sabbatical leave vis-à-vis Articles 19 and 20 of the Civil Code. Article 19 of the Civil Code "prescribes a 'primordial limitation on all rights' by setting certain standards that must be observed in the exercise thereof." Abuse of right under Article 19 exists when the following elements are present: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.

There are no traces of bad faith or malice in the respondents' denial of petitioner Diaz's application for sabbatical leave. They processed her application in accordance with their usual procedure – with more leeway, in fact, since petitioner Diaz was given the chance to support her application when she was asked to submit a historical background; and the denial was based on the recommendation of respondent Encanto, who was in the best position to know whether petitioner Diaz's application should be granted or not.

On the question of whether or not there was bad faith in the delay of the resolution of petitioner Diaz's sabbatical leave application, the Court still ruled in the negative. "It is an elementary rule in this jurisdiction that good faith is presumed and that the burden of proving bad faith rests upon the party alleging the same." Petitioner Diaz has failed to prove bad faith on the part of the respondents. There is nothing in the records to show that the respondents purposely delayed the resolution of her application to prejudice and injure her. She has not even shown that the delay of six months in resolving a sabbatical leave application has never happened prior to her case. On the contrary, any delay that occurred was due to the fact that petitioner Diaz's application for sabbatical leave did not follow the usual procedure; hence, the processing of said application took time.

Given that the respondents have not abused their rights; they should not be held liable for any damages sustained by petitioner Diaz. "The law affords no remedy for damages resulting from an act

which does not amount to a legal wrong. Situations like this have been appropriately denominated damnumabsqueinjuria.

ALBENSON ENTERPRISES CORP. v. CA
GR No. 88694, DIVISION, January 11, 1993, BIDIN, J.:

Article 19, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties. The elements of an abuse of right under Article 19 are the following: (1) There is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.

In this case, petitioners could not be said to have violated the aforestated principle of abuse of right. What prompted petitioners to file the case for violation of BP 22 against private respondent was their failure to collect the amount of P2,575.00 due on a bounced check which they honestly believed was issued to them by private respondent. Moreover, private respondent did nothing to clarify the case of mistaken identity at first hand. Instead, private respondent waited in ambush and thereafter pounced on the hapless petitioners at a time he thought was propituous by filing an action for damages.

FACTS:

Petitioner Albenson Enterprises Corporation delivered to Guaranteed Industries, Inc. the mild steel plates which the latter ordered. As part payment thereof, Albenson was given by Pacific Banking Corporation Check No. 136361 in the amount of P2,575.00 and drawn against the account of E.L. Woodworks.

When presented for payment, the check was dishonored for the reason "Account Closed." Thereafter, petitioner Albenson, through counsel, traced the origin of the dishonored check. From the records of the Securities and Exchange Commission (SEC), Albenson discovered that the president of Guaranteed, the recipient of the unpaid mild steel plates, was one "Eugenio S. Baltao." In addition, upon verification with the drawee bank, Pacific Banking Corporation, Albenson was advised that the signature appearing on the subject check belonged to one "Eugenio Baltao".

After obtaining the foregoing information, Albensonmade an extrajudicial demand upon private respondent Eugenio S. Baltao, president of Guaranteed, to replace and/or make good the dishonored check.

Respondent Baltao, through counsel, denied that he issued the check, or that the signature appearing thereon is his.

On February 14, 1983, Albenson filed with the Office of the Provincial Fiscal of Rizal a complaint against Eugenio S. Baltao for violation of Batas PambansaBilang 22. It appears, however, that private respondent has a namesake, his son Eugenio Baltao III, who manages a business establishment, E. L. Woodworks, on the ground floor of Baltao Building, 3267 V. Mapa Street, Sta. Mesa, Manila, the very same business address of Guaranteed.

Because of the alleged unjust filing of a criminal case against him for allegedly issuing a check which bounced in violation of Batas PambansaBilang for a measly amount of P2,575.00, respondent Baltao filed before the Regional Trial Court of Quezon City a complaint for damages against herein petitioners Albenson Enterprises, Jesse Yap, its owner, and Benjamin Mendiona, its employee.

ISSUE:

Whether or not petitioners are liable for damages. (NO)

RULING:

Article 19, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties. The elements of an abuse of right under Article 19 are the following: (1) There is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.

Petitioners could not be said to have violated the aforestated principle of abuse of right. What prompted petitioners to file the case for violation of BP 22 against private respondent was their failure to collect the amount of P2,575.00 due on a bounced check which they honestly believed was issued to them by private respondent. Petitioners had conducted inquiries regarding the origin of the check, and yielded the following results: from the records of the SEC, it was discovered that the President of Guaranteed (the recipient of the unpaid mild steel plates), was one "Eugenio S. Baltao"; an inquiry with the Ministry of Trade and Industry revealed that E.L. Woodworks, against whose account the check was drawn, was registered in the name of one "Eugenio Baltao"; verification with the drawee bank, the Pacific Banking Corporation, revealed that the signature appearing on the check belonged to one "Eugenio Baltao".

In a letter dated December 16, 1983, counsel for petitioners wrote private respondent demanding that he make good the amount of the check. Counsel for private respondent wrote back and denied, among others, that private respondent ever transacted business with Albenson Enterprises Corporation; that he ever issued the check in question. Private respondent's counsel even went further: he made a warning to defendants to check the veracity of their claim. It is pivotal to note at this juncture that in this same letter, if indeed private respondent wanted to clear himself from the baseless accusation made against his person, he should have made mention of the fact that there are three (3) persons with the same name, i.e.: Eugenio Baltao Sr., Eugenio S. Baltao, Jr. (private respondent), and Eugenio Baltao III (private respondent's son, who as it turned out later, was the issuer of the check). He, however, failed to do this. The last two Baltaos were doing business in the same building - Baltao Building - located at 3267 V. Mapa Street, Sta. Mesa, Manila. The mild steel plates were ordered in the name of Guaranteed of which respondent Eugenio S. Baltao is the president and delivered to Guaranteed at Baltao building. Thus, petitioners had every reason to believe that the Eugenio Baltao who issued the bouncing check is respondent Eugenio S. Baltao when their counsel wrote respondent to make good the amount of the check and upon refusal, filed the complaint for violation of BP Blg. 22.

Private respondent, however, did nothing to clarify the case of mistaken identity at first hand. Instead, private respondent waited in ambush and thereafter pounced on the hapless petitioners at a time he thought was propituous by filing an action for damages.

GLOBE MACKAY CABLE AND RADIO CORP., and HERBERT C. HENDRY v. THE HONORABLE COURT OF APPEALS and RESTITUTO M. TOBIAS
GR No. 81262, DIVISION, August 25, 1989, CORTES, J.

Articles 19, 20, and 21 of the NCC are known to contain what is commonly referred to as the principle of abuse of rights, which sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. In this case, the petitioners clearly failed to exercise in a legitimate manner their right to dismiss Tobias, giving the latter the right to recover damages under Article 19 in relation to Article 21 of the Civil Code.The imputation of guilt without basis and the pattern of harassment during the investigations of Tobias transgress the standards of human conduct set forth in Article 19 of the Civil Code.

FACTS:

Restituto M. Tobias (Tobias) herein private respondent was an employee of Globe Mackay Cable and Radio Corp (GMCRC) herein petitioner. Herbert Hendry (Hendry) herein petitioner, was the Executive Vice-President and General Manager of GMCRC.

Sometime in 1972, GMCRC discovered fictitious purchases and other fraudulent transactions for which it lost several thousands of pesos. Thereafter, Hendry ordered Tobias to take a force leave so as to have Tobias investigated. Hendry declared that Tobias was their number one suspect in the anomaly. Thus, criminal complaints for estafa were filed against Tobias. These charges were, however, dismissed for lack of probable cause. Subsequently, Hendry dismissed Tobias from employment. Claiming that he was illegally dismissed, Tobias filed a complaint for damages against GMCRC and Hendry with the RTC.

The RTC decided in favor of Tobias. On appeal, the CA affirmed. Now, GMCRC and Hendry assail the decision of the CA. It asseverates that the dismissal of Tobias was in lawful exercise of its right. Hence, this petition.

ISSUE:

Whether or not GMCRC and Hendry exercised lawfully their right to dismiss Tobias. (NO)

RULING:

An employer who harbors suspicions that an employee has committed dishonesty might be justified in taking the appropriate action such as ordering an investigation and directing the employee to go on a leave. Firmness and the resolve to uncover the truth would also be expected from such employer. But the high-handed treatment accorded Tobias by petitioners was certainly uncalled for. The imputation of guilt without basis and the pattern of harassment during the investigations of Tobias transgress the standards of human conduct set forth in Article 19 of the Civil Code. The Court has already ruled that the right of the employer to dismiss an employee should not be confused with the manner in which the right is exercised and the effects flowing therefrom. If the dismissal is done abusively, then the employer is liable for damages to the employee. Under the circumstances of the instant case, the petitioners clearly failed to exercise in a legitimate manner their right to dismiss Tobias, giving the latter the right to recover damages under Article 19 in relation to Article 21 of the Civil Code.

BARONS MARKETING CORP., petitioner, vs. COURT OF APPEALS and PHELPS DODGE PHILS., INC., respondents.

GR No. 126486, DIVISION, February 9, 1998, KAPUNAN, J.

To constitute an abuse of rights under Article 19, the defendant must act with bad faith or intent to prejudice the plaintiff. In the case at bar, petitioner has failed to prove bad faith on the part of private respondent. Petitioner's allegation that private respondent was motivated by a desire to terminate its agency relationship with petitioner so that private respondent itself may deal directly with Meralco is not supported by the evidence. At most, such supposition is considered by the Court merely speculative.

FACTS:

On August 31, 1973, plaintiff [Phelps Dodge, Philippines, Inc. private respondent herein] appointed defendant [petitioner Barons Marketing, Corporation] as one of its dealers of electrical wires and cables effective September 1, 1973. As such dealer, defendant was given by plaintiff 60 days credit for its purchases of plaintiff's electrical products. This credit term was to be reckoned from the date of delivery by plaintiff of its products to defendant.

During the period covering December 1986 to August 17, 1987, defendant purchased, on credit, from plaintiff various electrical wires and cables in the total amount of P4,102,438.30. These wires and cables were in turn sold, pursuant to previous arrangements, by defendant to MERALCO, the former being the accredited supplier of the electrical requirements of the latter. Under the sales invoices issued by plaintiff to defendant for the subject purchases, it is stipulated that interest at 12% on the amount due for attorney's fees and collection. On September 7, 1987, defendant paid plaintiff the amount of P300,000.00 out of its total purchases as above-stated, thereby leaving an unpaid account on the aforesaid deliveries of P3,802,478.20. On several occasions, plaintiff wrote defendant demanding payment of its outstanding obligations due plaintiff. In response, defendant wrote plaintiff on October 5, 1987 requesting the latter if it could pay its outstanding account in monthly installments of P500,000.00 plus 1% interest per month commencing on October 15, 1987 until full payment. Plaintiff, however, rejected defendant's offer and accordingly reiterated its demand for the full payment of defendant's account.

On 29 October 1987, private respondent Phelps Dodge Phils., Inc. filed a complaint before the Pasig Regional Trial Court against petitioner Barons Marketing Corporation for the recovery of P3,802,478.20 representing the value of the wires and cables the former had delivered to the latter, including interest. Phelps Dodge likewise prayed that it be awarded attorney's fees at the rate of 25% of the amount demanded, exemplary damages amounting to at least P100,000.00, the expenses of litigation and the costs of suit.

After hearing, the trial court found Phelps Dodge Phils., Inc. to have preponderantly proven its case. The Court of Appeals rendered a decision modifying the decision of the trial court.

ISSUE:

Whether or not private respondent is guilty of abuse of right. (NO)

RULING:

Petitioner invokes Article 19 and Article 21[8] of the Civil Code, claiming that private respondent abused its rights when it rejected petitioner's offer of settlement and subsequently filed the action for collection.

It is an elementary rule in this jurisdiction that good faith is presumed and that the burden of proving bad faith rests upon the party alleging the same. In the case at bar, petitioner has failed to prove bad faith on the part of private respondent. Petitioner's allegation that private respondent was motivated by a desire to terminate its agency relationship with petitioner so that private respondent itself may deal directly with Meralco is simply not supported by the evidence. At most, such supposition is merely speculative.

Moreover, the SC found that private respondent was driven by very legitimate reasons for rejecting petitioner's offer and instituting the action for collection before the trial court. As pointed out by private respondent, the corporation had its own "cash position to protect in order for it to pay its own obligations." This is not such "a lame and poor rationalization" as petitioner purports it to be. For if private respondent were to be required to accept petitioner's offer, there would be no reason for the latter to reject similar offers from its other debtors. Clearly, this would be inimical to the interests of any enterprise, especially a profit-oriented one like private respondent. It is plain to see that what we have here is a mere exercise of rights, not an abuse thereof. Under these circumstances, the SC did not deem private respondent to have acted in a manner contrary to morals, good customs or public policy as to violate the provisions of Article 21 of the Civil Code.

CALIFORNIA CLOTHING v. SHIRLEY G. QUIÑONES
GR No.175822, DIVISION, October 23, 2013, PERALTA, J.

A person should not use his right unjustly or contrary to honesty and good faith, otherwise, he opens himself to liability. 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. In this case, petitioners obviously abused their rights.It is evident from the circumstances of the case that petitioners went overboard and tried to force respondent to pay the amount they were demanding. In the guise of asking for assistance, petitioners even sent a demand letter to respondent's employer not only informing it of the incident but obviously imputing bad acts on the part of respondent.

FACTS:

On July 25, 2001, respondent, a Reservation Ticketing Agent of Cebu Pacific Air, went inside the Guess USA Boutique of Robinson's Department Store in Cebu City. She fitted four items: two jeans, a blouse and a shorts, then decided to purchase the black jeans. Respondent allegedly paid to the cashier evidenced by a receipt issued by the store. While she was walking through the skywalk connecting Robinson's and Mercury Drug Store, a Guess employee approached and informed her that she failed to pay. She, however, insisted that she paid and showed the employee the receipt. She then suggested that they talk about it at the Cebu Pacific Office located at the basement of the mall.

When she arrived at the Cebu Pacific Office, the Guess employees allegedly subjected her to humiliation in front of the clients of Cebu Pacific and repeatedly demanded payment. They supposedly even searched her wallet to check how much money she had, followed by another argument.

On the same day, the Guess employees allegedly gave a letter to the Director of Cebu Pacific Air narrating the incident, but the latter refused to receive it as it did not concern the office and the same took place while respondent was off duty. Another letter was allegedly prepared and was supposed to be sent to the Cebu Pacific Office in Robinson's, but the latter again refused to receive it. Respondent also claimed that the Human Resource Department of Robinson's was furnished said letter and the latter in fact conducted an investigation for purposes of canceling respondent's Robinson's credit card. With the above experience, respondent claimed to have suffered physical anxiety, sleepless nights, mental anguish, fright, serious apprehension, besmirched reputation, moral shock and social humiliation. She thus filed the Complaint for Damages against petitioners.

The RTC found no evidence to prove bad faith on the part of the Guess employees to warrant the award of damages. On appeal, the CA reversed and set aside the RTC decision.

ISSUE:

Whether or not petitioners are guilty of abuse of right. (YES)

RULING:

The issuance of the receipt notwithstanding, petitioners had the right to verify from respondent whether she indeed made payment if they had reason to believe that she did not. However, the exercise of such right is not without limitations. Any abuse in the exercise of such right causing damage or injury to another is actionable under the Civil Code.

The elements of abuse of rights are as follows: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.

In this case, it is evident from the circumstances of the case that petitioners went overboard and tried to force respondent to pay the amount they were demanding. In the guise of asking for assistance, petitioners even sent a demand letter to respondent's employer not only informing it of the incident but obviously imputing bad acts on the part of respondent.

Petitioners accused respondent that not only did she fail to pay for the jeans she purchased but that she deliberately took the same without paying for it and later hurriedly left the shop to evade payment. These accusations were made despite the issuance of the receipt of payment and the release of the item purchased. There was, likewise, no showing that respondent had the intention to evade payment. Contrary to petitioners' claim, respondent was not in a rush in leaving the shop or the mall. This is evidenced by the fact that the Guess employees did not have a hard time looking for her when they realized the supposed non-payment.

It can be inferred from the foregoing that in sending the demand letter to respondent's employer, petitioners intended not only to ask for assistance in collecting the disputed amount but to tarnish respondent's reputation in the eyes of her employer.

In view of the foregoing, respondent is entitled to an award of moral damages and attorney's fees.

VICENTE RELLOSA, CYNTHIA ORTEGA assisted by husband Roberto Ortega, petitioners ,vs. GONZALO PELLOSIS, INESITA MOSTE, and DANILO RADAM, respondents
G.R. No. 138964, August 9, 2001, THIRD DIVISION, J. VITUG

The abuse of rights rule established in Article 19 of the Civil Code requires every person to act with justice, to give everyone his due; and to observe honesty and good faith. When a right is exercised in a manner which discards these norms resulting in damage to another, a legal wrong is committed for which the actor can be held accountable.

In this instance, the issue is not so much about the existence of the right or validity of the order of demolition as the question of whether or not petitioners have acted in conformity with, and not in disregard of, the standard set by Article 19 of the Civil Code.

At the time petitioners implemented the order of demolition, barely five days after respondents received a copy thereof, the same was not yet final and executory.

FACTS:

Respondents were lessees of a parcel of land owned by Victor Reyes. In 1986, Victor informed respondents that, for being lessees of the land for more than twenty (20) years, they would have a right of first refusal to buy the land. However, in the early part of 1989, without the knowledge of respondents, the land occupied by them was sold to petitioner Cynthia Ortega who was able to ultimately secure title to the property in her name.

After the sale, Cynthia Ortega filed a petition for condemnation of the structures on the land. After due hearing in the condemnation case, the Office of the Building Official issued a resolution ordering the demolition of the houses of respondents. However, due to the timely intervention of a mobile unit of the Western Police District, the intended demolition did not take place following talks between petitioner Rellosa and counsel who pleaded that the demolition be suspended since the order sought to be implemented was not yet final and executory

On 11 December 1989, respondents filed their appeal contesting the order of the Office of the Building Official. On 12 December 1989, petitioners once again hired workers and proceeded with the demolition of respondents' houses.

Resultantly, respondents filed a case praying that petitioners be ordered to pay moral and exemplary damages, as well as attorney's fees, for the untimely demolition of the houses. After trial, the court dismissed the complaint of respondents and instead ordered them to pay petitioners moral damages. On appeal, the Court of Appeals, reversed the decision of the trial court and ordered petitioners to pay respondents moral and exemplary damages and attorney's fees. Hence, the present petition.

ISSUE:

W/N the premature demolition of the respondents' houses entitled them to the award of damages **(YES)**

HELD:

A right is a power, privilege, or immunity guaranteed under a constitution, statute or decisional law, or recognized as a result of long usage, constitutive of a legally enforceable claim of one person against another.

Petitioner might verily be the owner of the land, with the right to enjoy and to exclude any person from the enjoyment and disposal thereof, but the exercise of these rights is not without limitations. The abuse of rights rule established in Article 19 of the Civil Code requires every person to act with justice, to give everyone his due; and to observe honesty and good faith. When a right is exercised in a manner which discards these norms resulting in damage to another, a legal wrong is committed for which the actor can be held accountable. In this instance, the issue is not so much about the existence of the right or validity of the order of demolition as the question of whether or not petitioners have acted in conformity with, and not in disregard of, the standard set by Article 19 of the Civil Code.

At the time petitioners implemented the order of demolition, barely five days after respondents received a copy thereof, the same was not yet final and executory. The law provided for a fifteen-day appeal period in favor of a party aggrieved by an adverse ruling of the Office of the Building Official but by the precipitate action of petitioners in demolishing the houses of respondents (prior to the expiration of the period to appeal),the latter were effectively deprived of this recourse. The fact that the order of demolition was later affirmed by the Department of Public Works and Highways was of no moment. The action of petitioners up to the point where they were able to secure an order of demolition was not condemnable but implementing the order unmindful of the right of respondents to contest the ruling was a different matter and could only be held utterly indefensible.

NATIONAL POWER CORPORATION, petitioner, vs. P
HILIPP BROTHERS OCEANIC, INC., respondent
G.R. No. 126204, [November 20, 2001], THIRD DIVISION, J.SANDOVAL-GUTIERREZ.

The propriety of NAPOCOR's act should therefore be judged on the basis of the general principles regulating human relations, the forefront provision of which is Article 19 of the Civil Code which provides that "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."

The Court is convinced that NAPOCOR's act of disapproving PHIBRO's application for pre-qualification to bid was without any intent to injure or a purposive motive to perpetrate damage. Apparently, NAPOCOR acted on the strong conviction that PHIBRO had a "seriously-impaired" track record. NAPOCOR cannot be faulted from believing so.At this juncture, it is worth mentioning that at the time NAPOCOR issued its subsequent Invitation to Bid, i.e., October 1987, PHIBRO had not yet delivered the first shipment of coal under the July 1987 contract, which was due on or before September 5, 1987. Naturally, NAPOCOR is justified in entertaining doubts on PHIBRO's qualification or capability to assume an obligation under a new contract

Facts:

In October 1987, NAPOCOR advertised for the delivery of coal to its Calaca thermal plant. PHIBRO's application for pre-qualification to bid was disapproved for not meeting the minimum requirements. PHIBRO, however, alleged that the real reason for the disapproval was its purported failure to satisfy NAPOCOR's demand for damages due to the delay in the delivery of the first coal shipment in its

previous contract with NAPOCOR. Thus, PHIBRO filed an action for damages against NAPOCOR alleging that the former's disqualification was tainted with malice and bad faith.

ISSUE:

W/N NAPOCOR abuse its right or act unjustly in disqualifying PHIBRO from the public bidding **(NO)**

RULING:

Owing to the discretionary character of the right involved in this case, the propriety of NAPOCOR's act should therefore be judged on the basis of the general principles regulating human relations, the forefront provision of which is Article 19 of the Civil Code which provides that "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." Accordingly, a person will be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith; but not when he acts with negligence or abuse.

In practice, courts, in the sound exercise of their discretion, will have to determine under all the facts and circumstances when the exercise of a right is unjust, or when there has been an abuse of right. We went over the record of the case with painstaking solicitude and we are convinced that NAPOCOR's act of disapproving PHIBRO's application for pre-qualification to bid was without any intent to injure or a purposive motive to perpetrate damage. Apparently, NAPOCOR acted on the strong conviction that PHIBRO had a "seriously-impaired" track record. NAPOCOR cannot be faulted from believing so. At this juncture, it is worth mentioning that at the time NAPOCOR issued its subsequent Invitation to Bid, i.e., October 1987, PHIBRO had not yet delivered the first shipment of coal under the July 1987 contract, which was due on or before September 5, 1987. Naturally, NAPOCOR is justified in entertaining doubts on PHIBRO's qualification or capability to assume an obligation under a new contract.

Moreover, PHIBRO's actuation in 1987 raised doubts as to the real situation of the coal industry in Australia. It appears from the records that when NAPOCOR was constrained to consider an offer from another coal supplier (ASEA) at a price of US$33.44 per metric ton, PHIBRO unexpectedly offered the immediate delivery of 60,000 metric tons of Ulan steam coal at US$31.00 per metric ton for arrival at Calaca, Batangas on September 20-21, 1987." Of course, NAPOCOR had reason to ponder — *how come PHIBRO could assure the immediate delivery of 60,000 metric tons of coal from the same source to arrive at Calaca not later than September 20/21, 1987 but it could not deliver the coal it had undertaken under its contract?*

SOLEDAD CARPIO, petitioner, vs. LEONORA A. VALMONTE, respondent
G.R. No. 151866, September 9, 2004, SECOND DIVISION, J.TINGA

To find the existence of an abuse of right, the following elements must be present: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent or prejudicing or injuring another. When a right is exercised in a manner which discards these norms resulting in damage to another, a legal wrong is committed for which the actor can be held accountable.

In the case at bar, petitioner's verbal reproach against respondent was certainly uncalled for considering that by her own account nobody knew that she brought such kind and amount of jewelry inside the paper bag. This being the case, she had no right to attack respondent with her innuendos

which were not merely inquisitive but outrightly accusatory. By openly accusing respondent as the only person who went out of the room before the loss of the jewelry in the presence of all the guests therein, and ordering that she be immediately bodily searched, petitioner virtually branded respondent as the thief. Her firmness and resolve to find her missing jewelry cannot justify her acts toward respondent. She did not act with justice and good faith for apparently, she had no other purpose in mind but to prejudice respondent.

FACTS:

Respondent Leonora Valmonte is a wedding coordinator. t about 4:30 p.m. on that day, Valmonte went to the Manila Hotel where the bride and her family were billeted. When she arrived at Suite 326-A, several persons were already there including the bride, the bride's parents and relatives, the make-up artist and his assistant, the official photographers, and the fashion designer. Among those present was petitioner Soledad Carpio, an aunt of the bride who was preparing to dress up for the occasion.

Upon entering the suite, Valmonte noticed the people staring at her. It was at this juncture that petitioner allegedly uttered the following words to Valmonte: "Ikawlanganglumabas ng kwarto, nasaanangdalamong bag? Saankapumunta? Ikawlanganglumabas ng kwarto, ikawangkumuha." Petitioner then ordered one of the ladies to search Valmonte's bag. It turned out that after Valmonte left the room to attend to her duties, petitioner discovered that the pieces of jewelry which she placed inside the comfort room in a paper bag were lost. The jewelry pieces consist of two (2) diamond rings, one (1) set of diamond earrings, bracelet and necklace with a total value of about one million pesos. Valmonte was allegedly bodily searched, interrogated and trailed by a security guard throughout the evening. Later, police officers arrived and interviewed all persons who had access to the suite and fingerprinted them including Valmonte. During all the time Valmonte was being interrogated by the police officers, petitioner kept on saying the words "Siyalanganglumabas ng kwarto." Valmonte's car which was parked at the hotel premises was also searched but the search yielded nothing.

Valmonte filed a suit for damages against her praying that petitioner be ordered to pay actual, moral and exemplary damages, as well as attorney's fees.

The trial court dismissed Valmonte's complaint for damages. CA ruled differently opining that Valmonte has clearly established that she was singled out by petitioner as the one responsible for the loss of her jewelry. Hence, this petition

ISSUE:

W/N Respondent is entitled to damages

RULING:

Incorporated into our civil law are not only principles of equity but also universal moral precepts which are designed to indicate certain norms that spring from the fountain of good conscience and which are meant to serve as guides for human conduct.

First of these fundamental precepts is the principle commonly known as "abuse of rights" under Article 19 of the Civil Code. It provides that "*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." To find the existence of an abuse of right, the following elements must be present: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent or prejudicing or injuring another. When a right is exercised in a manner which discards these norms resulting in damage to another, a legal wrong is committed for which the actor can be held accountable. One is not allowed to exercise his right in a manner which would cause unnecessary prejudice to another or if he would thereby offend morals or good customs. Thus, a person should be protected only when he acts in the legitimate exercise of his right, that is when he acts with prudence and good faith; but not when he acts with negligence or abuse. Complementing the principle of abuse of rights are the provisions of Articles 20 and 21 of the Civil Code.

In the case at bar, petitioner's verbal reproach against respondent was certainly uncalled for considering that by her own account nobody knew that she brought such kind and amount of jewelry inside the paper bag. This being the case, she had no right to attack respondent with her innuendos which were not merely inquisitive but outrightly accusatory. By openly accusing respondent as the only person who went out of the room before the loss of the jewelry in the presence of all the guests therein, and ordering that she be immediately bodily searched, petitioner virtually branded respondent as the thief. True, petitioner had the right to ascertain the identity of the malefactor, but to malign respondent without an iota of proof that she was the one who actually stole the jewelry is an act which, by any standard or principle of law is impermissible. Petitioner had willfully caused injury to respondent in a manner which is contrary to morals and good customs. Her firmness and resolve to find her missing jewelry cannot justify her acts toward respondent. She did not act with justice and good faith for apparently, she had no other purpose in mind but to prejudice respondent. Certainly, petitioner transgressed the provisions of Article 19 in relation to Article 21 for which she should be held accountable.

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, petitioner, vs.
ACT THEATER, INC., respondent.
G.R. No. 147076. June 17, 2004. SECOND DIVISION, J. CALLEJO, SR.

Article 19 of the Civil Code precisely sets the norms for the exercise of one's rights: 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.

When a right is exercised in a manner which discards these norms resulting in damage to another, a legal wrong is committed for which actor can be held accountable.

In this case, the petitioner failed to act with justice and give the respondent what is due to it when the petitioner unceremoniously cut off the respondent's water service connection.

FACTS:

On September 22, 1988, four employees of the respondent Act Theater, Inc., namely, Rodolfo Tabian, Armando Aguilar, Arnel Concha and Modesto Ruales, were apprehended by members of the Quezon City police force for allegedly tampering a water meter in violation of P.D. No. 401, as amended by B.P. Blg. 876. The respondent's employees were subsequently criminally charged (Criminal Case No. Q-89-2412) before the court a quo. On account of the incident, the respondent's water service connection was cut off. Consequently, the respondent filed a complaint for injunction with damages against the petitioner MWSS.

In the civil case, the respondent alleged in its complaint filed with the court a quo that the petitioner acted arbitrarily, whimsically and capriciously, in cutting off the respondent's water service connection without prior notice. Due to lack of water, the health and sanitation, not only of the respondent's patrons but in the surrounding premises as well, were adversely affected. The respondent prayed that the petitioner be directed to pay damages.

The trial court ordered MWSS to pay plaintiff compensatory damages. The CA dismissed the appeal. Hence, the present petition.

ISSUE:

W/N the cutting off the respondent's water service connection without prior notice justifIES the award of damages under Article 19 of the Civil Code.

RULING:

Concededly, the petitioner, as the owner of the utility providing water supply to certain consumers including the respondent, had the right to exclude any person from the enjoyment and disposal thereof. However, the exercise of rights is not without limitations. Having the right should not be confused with the manner by which such right is to be exercised.

> Article 19 of the Civil Code precisely sets the norms for the exercise of one's rights:
>
> 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.

When a right is exercised in a manner which discards these norms resulting in damage to another, a legal wrong is committed for which actor can be held accountable. In this case, the petitioner failed to act with justice and give the respondent what is due to it when the petitioner unceremoniously cut off the respondent's water service connection.
As correctly found by the appellate court:

> While it is true that MWSS had sent a notice of investigation to plaintiff-appellee prior to the disconnection of the latter's water services, this was done only a few hours before the actual disconnection. Upon receipt of the notice and in order to ascertain the matter, Act sent its assistant manager TeoduloGumalid, Jr. to the MWSS office but he was treated badly on the flimsy excuse that he had no authority to represent Act. Act's water services were cut at midnight of the day following the apprehension of the employees. Clearly, the plaintiff-appellee was denied due process when it was deprived of the water services. As a consequence thereof, Act had to contract another source to provide water for a number of days. Plaintiff-appellee was also compelled to deposit with MWSS the sum of P200,000.00 for the restoration of their water services.

Joyce V. ArdienteVs. Spouses Javier and Ma. Theresa Pastofide
G.R. No. 161921. July 17, 2013 J. Peralta

Article 20 provides that "every person who, contrary to law, willfully or negligently causes damage to another shall indemnify the latter for the same." It speaks of the general sanctions of all other provisions

of law which do not especially provide for its own sanction. When a right is exercised in a manner which does not conform to the standards set forth in the said provision and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be responsible. Thus, if the provision does not provide a remedy for its violation, an action for damages under either Article 20 or Article 21 of the Civil Code would be proper.

In the present case, intention to harm was evident on the part of petitioner when she requested for the disconnection of respondent spouses' water supply without warning or informing the latter of such request.

FACTS:

Petitioners, Joyce V. Ardiente and her husband Dr. Roberto S. Ardiente are owners of a housing unit at Emily Homes, Balulang, Cagayan de Oro City.Joyce entered into a Memorandum of Agreement (selling, transferring and conveying in favor of Ma. Theresa Pastorfide all their rights and interests in the housing unit at Emily Homes in consideration of P70,000.00.

For four (4) years, Ma. Theresa's use of the water connection in the name of Joyce Ardiente was never questioned nor perturbed. Later on, the water connection of Ma. Theresa was cut off. Cagayan de Oro Water District (COWD) told Ma. Theresa that she was delinquent for three (3) months corresponding to the months. A certain, Mrs. Madjos later told her that it was at the instance of Joyce Ardiente that the water line was cut off . Ma. Theresa paid the delinquent bills. On the same date, through her lawyer, Ma. Theresa wrote a letter to the COWD to explain who authorized the cutting of the water line. COWD, through the general manager, [respondent] Gaspar Gonzalez, Jr., answered the letter dated March 15, 1999 and reiterated that it was at the instance of Joyce Ardiente that the water line was cut off.

Ma. Theresa Pastorfide and her husband filed a complaint for damages against petitioner, COWD and its manager Gaspar Gonzalez. RTC ruled in favor of respondents. CA affirmed. Petitioner, COWD and Gonzalez filed their respective Motions for Reconsideration, but these were denied by the CA COWD and Gonzalez filed a petition for review on certiorari with this Court. However, based on technical grounds and on the finding that the CA did not commit any reversible error in its assailed Decision, the petition was denied via a Resolution. COWD and Gonzalez filed a motion for reconsideration, but the same was denied with finality. Petitioner, on the other hand, timely filed the instant petition.

ISSUE:

Whether the principle of abuse of rights has been violated resulting in damages under Article 20 or other applicable provision of law

RULING:

It is true that it is within petitioner's right to ask and even require the Spouses Pastorfide to cause the transfer of the former's account with COWD to the latter's name pursuant to their Memorandum of Agreement. However, the remedy to enforce such right is not to cause the disconnection of the respondent spouses' water supply. 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. Otherwise, liability for damages to the injured party will attach. In the present case, intention to harm was evident on the part of petitioner when she requested for the disconnection of

respondent spouses' water supply without warning or informing the latter of such request. Petitioner claims that her request for disconnection was based on the advise of COWD personnel and that her intention was just to compel the Spouses Pastorfide to comply with their agreement that petitioner's account with COWD be transferred in respondent spouses' name. If such was petitioner's only intention, then she should have advised respondent spouses before or immediately after submitting her request for disconnection, telling them that her request was simply to force them to comply with their obligation under their Memorandum of Agreement. But she did not. What made matters worse is the fact that COWD undertook the disconnection also without prior notice and even failed to reconnect the Spouses Pastorfide's water supply despite payment of their arrears. There was clearly an abuse of right on the part of petitioner, COWD and Gonzalez. They are guilty of bad faith.

The principle of abuse of rights as enshrined in Article 19 of the Civil Code provides that 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.

This article, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights, but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. 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 Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.

Corollarilly, Article 20 provides that "every person who, contrary to law, willfully or negligently causes damage to another shall indemnify the latter for the same." It speaks of the general sanctions of all other provisions of law which do not especially provide for its own sanction. When a right is exercised in a manner which does not conform to the standards set forth in the said provision and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be responsible. Thus, if the provision does not provide a remedy for its violation, an action for damages under either Article 20 or Article 21 of the Civil Code would be proper.

The question of whether or not the principle of abuse of rights has been violated resulting in damages under Article 20 or other applicable provision of law, depends on the circumstances of each case.

ORLANDO D. GARCIA, JR., doing business under the name and style COMMUNITY DIAGNOSTIC CENTER and BU CASTRO, petitioners, vs. RANIDA D. SALVADOR and RAMON SALVADOR, respondents

G.R. No. 168512. March 20, 2007, THIRD DIVISION, J. YNARES-SANTIAGO

Article 20 of the New Civil Code provides:

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

Negligence is the failure to observe for the protection of the interest of another person that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury.

Garcia may not have intended to cause the consequences which followed after the release of the HBsAG test result. However, his failure to comply with the laws and rules promulgated and issued for the protection of public safety and interest is failure to observe that care which a reasonably prudent health care provider would observe. Thus, his act or omission constitutes a breach of duty.

FACTS:

As a prerequisite for regular employment, respondent underwent a medical examination at the Community Diagnostic Center (CDC). Garcia who is a medical technologist, conducted the HBs Ag (Hepatitis B Surface Antigen) test and on October 22, 1993, CDC issued the test result indicating that Ranida was "HBs Ag: Reactive."

When Ranida submitted the test result to Dr. Sto. Domingo, the Company physician, the latter apprised her that the findings indicated that she is suffering from Hepatitis B, a liver disease. Thus, based on the medical report submitted by Sto. Domingo, the Company terminated Ranida's employment for failing the physical examination.

When Ranida informed her father, Ramon, about her ailment, the latter suffered a heart attack and was confined at the Bataan Doctors Hospital. During Ramon's confinement, Ranida underwent another HBs Ag test at the said hospital and the result indicated that she is non-reactive. She informed Sto. Domingo of this development but was told that the test conducted by CDC was more reliable because it used the Micro-Elisa Method.

Thus, Ranida went back to CDC for confirmatory testing, and this time, the Anti-HBs test conducted on her indicated a "Negative" result. Ranida also underwent another HBs Ag test at the Bataan Doctors Hospital using the Micro-Elisa Method. The result indicated that she was non-reactive.

Ranida submitted the test results from Bataan Doctors Hospital and CDC to the Executive Officer of the Company who requested her to undergo another similar test before her re-employment would be considered.

Thus, CDC conducted another HBs Ag test on Ranida which indicated a "Negative" result. Ma. Ruby G. Calderon, Med-Tech Officer-in-Charge of CDC, issued a Certification correcting the initial result and explaining that the examining medical technologist (Garcia) interpreted the delayed reaction as positive or reactive.

Thereafter, the Company rehired Ranida.

On July 25, 1994, Ranida and Ramon filed a complaint for damages against petitioner Garcia and a purportedly unknown pathologist of CDC, claiming that, by reason of the erroneous interpretation of the results of Ranida's examination, she lost her job and suffered serious mental anxiety, trauma and sleepless nights, while Ramon was hospitalized and lost business opportunities.

ISSUE:

W/N Garcia is liable for damages for negligently issuing an erroneous HBs Ag result

RULING:

Negligence is the failure to observe for the protection of the interest of another person that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. For health care providers, the test of the existence of negligence is: did the health care provider either fail to do something which a reasonably prudent health care provider would have done, or that he or she did something that a reasonably prudent health care provider would not have done; and that failure or action caused injury to the patient; if yes, then he is guilty of negligence.

Thus, the elements of an actionable conduct are: 1) duty, 2) breach, 3) injury, and 4) proximate causation.

All the elements are present in the case at bar.

Owners and operators of clinical laboratories have the duty to comply with statutes, as well as rules and regulations, purposely promulgated to protect and promote the health of the people by preventing the operation of substandard, improperly managed and inadequately supported clinical laboratories and by improving the quality of performance of clinical laboratory examinations. Their business is impressed with public interest, as such, high standards of performance are expected from them.

From the foregoing laws and rules, it is clear that a clinical laboratory must be administered, directed and supervised by a licensed physician authorized by the Secretary of Health, like a pathologist who is specially trained in methods of laboratory medicine; that the medical technologist must be under the supervision of the pathologist or a licensed physician; and that the results of any examination may be released only to the requesting physician or his authorized representative upon the direction of the laboratory pathologist.

The Court finds that petitioner Garcia failed to comply with these standards.

First, CDC is not administered, directed and supervised by a licensed physician as required by law, but by Ma. Ruby C. Calderon, a licensed Medical Technologist.

Second, Garcia conducted the HBsAG test of respondent Ranida without the supervision of defendant-appellee Castro.

Last, the disputed HBsAG test result was released to respondent Ranida without the authorization of defendant-appellee Castro.

Garcia may not have intended to cause the consequences which followed after the release of the HBsAG test result. However, his failure to comply with the laws and rules promulgated and issued for the protection of public safety and interest is failure to observe that care which a reasonably prudent health care provider would observe. Thus, his act or omission constitutes a breach of duty. HASTCa

Indubitably, Ranida suffered injury as a direct consequence of Garcia's failure to comply with the mandate of the laws and rules aforequoted. She was terminated from the service for failing the physical examination; suffered anxiety because of the diagnosis; and was compelled to undergo several more tests. All these could have been avoided had the proper safeguards been scrupulously followed in conducting the clinical examination and releasing the clinical report.

Article 20 of the New Civil Code provides:

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

The foregoing provision provides the legal basis for the award of damages to a party who suffers damage whenever one commits an act in violation of some legal provision. This was incorporated by the Code Commission to provide relief to a person who suffers damage because another has violated some legal provision.

MANILA ELECTRIC COMPANY and PEDRO YAMBAO, petitioners-appellants,
MANILA ELECTRIC COMPANY and PEDRO YAMBAO, petitioners-appellants,
vs.
THE HONORABLE COURT OF APPEALS and ISAAC CHAVEZ, SR., ISAAC O. CHAVEZ, JR., ROSENDO O. CHAVES, and JUAN O. CHAVES, respondents-appellees.
G.R. No. L-39019, January 22, 1988, SECOND DIVISION, J.YAP.

FACTS:

Private respondents became a customer of defendant MERALCO in the year 1953.

At or about the end of March, 1965, petitioner Pedro Yambao went to the residence of respondents and presented two overdue bills, one for January 11 to February 9,1965, for the sum of P7.90 , and the other for February 9 to March 10, 1965, for the amount of P7.20 . Juana O. Chaves, however, informed Yambao that these bills would be paid at the MERALCO main office

Accordingly, on April 2, 1965, Isaac Chaves went to the defendant's main office at San Marcelino, Manila, but paid only one bill " leaving the other bill Identified unpaid.

Past 2:30 o'clock in the afternoon of April 21,1965, MERALCO caused the electric service in plaintiff's residence to be discontinued and the power line cut off.

The next day, April 22, 1965, at about 9:00 a.m., plaintiff Rosendo O. Chaves went to the MERALCO main office and paid the amount of P7.20 for the bill and the sum of P7.00 for the subsequent bill corresponding to the period from March 10 up to April 8, 1965 after his attention was called to the latter account. Rosendo O. Chaves then sought the help of Atty. Lourdy Torres, one of the defendants' counsel, and, thereafter, the power line was reconnected and electric service restored to the Chaves residence at about 7:00 p.m. of that same day.

Petitioners contend that in the absence of bad faith, they could not be held liable for moral and exemplary damages as well as attorney's fees. The failure to give a notice of disconnection to private respondents might have been a breach of duty or breach of contract, but by itself does not constitute

bad faith or fraud; it must be shown that such a failure was motivated by in or done with fraudulent intent.

In its decision, the respondent Court of Appeals held that MERALCO's right to disconnect the electric service of a delinquent customer "is an absolute one, subject only to the requirement that defendant MERALCO should give the customer a written notice of disconnection 48 hours in advance.

ISSUE:

W/N the absence of notice amounts to a violation of Article 21 of the Civil Code (YES)

RULING:

Failure to give such prior notice amounts to a tort, as held by us in a similar case, where we said:
... petitioner's act in 'disconnecting respondent Ongsip's gas service without prior notice constitutes breach of contract amounting to an independent tort. The prematurity of the action is indicative of an intent to cause additional mental and moral suffering to private respondent. This is a clear violation of Article 21 of the Civil Code which provides that 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 damages. This is reiterated by paragraph 10 of Article 2219 of the Code. Moreover, the award of moral damages is sanctioned by Article 2220 which provides that wilfull injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

SPOUSES CRISTINO and BRIGIDA CUSTODIO and SPOUSES LITO and MARIA CRISTINA SANTOS, petitioners, vs. COURT OF APPEALS, HEIRS OF PACIFICO C. MABASA and REGIONAL TRIAL COURT OF PASIG, METRO MANILA, BRANCH 181, respondents
G.R. No. 116100. February 9, 1996, SECOND DIVISION, J.REGALADO

In order that the law will give redress for an act causing damage, that act must be not only hurtful, but wrongful. There must be damnumetinjuria. If, as may happen in many cases, a person sustains actual damage, that is, harm or loss to his person or property, without sustaining any legal injury, that is, an act or omission which the law does not deem an injury, the damage is regarded as damnumabsqueinjuria.

In the case at bar, although there was damage, there was no legal injury. Contrary to the claim of private respondents, petitioners could not be said to have violated the principle of abuse of right

FACTS:

The plaintiff owns a parcel of land with a two-door apartment erected thereon situated at Interior P. Burgos St., Palingon, Tipas, Tagig, Metro Manila. The plaintiff was able to acquire said property through a contract of sale with spouses MamertoRayos and Teodora Quintero as vendors. Said property may be described to be surrounded by other immovables pertaining to defendants herein. When said property was purchased by Mabasa, there were tenants occupying the premises and who were acknowledged by plaintiff Mabasa as tenants. However, sometime in February, 1982, one of said tenants vacated the apartment and when plaintiff Mabasa went to see the premises, he saw that there had been built an adobe fence in the first passageway making it narrower in width. Said adobe

fence was first constructed by defendants Santoses along their property which is also along the first passageway.

Defendant Morato constructed her adobe fence and even extended said fence in such a way that the entire passageway was enclosed And it was then that the remaining tenants of said apartment vacated the area. Defendant Ma. Cristina Santos testified that she constructed said fence because there was an incident when her daughter was dragged by a bicycle pedalled by a son of one of the tenants in said apartment along the first passageway. She also mentioned some other inconveniences of having (at) the front of her house a pathway such as when some of the tenants were drunk and would bang their doors and windows.

Mabasa filed a case for the grant of an easement of right of way against petitioners before the RTC. RTC ordered defendants to give Mabasa permanent access to the public street. The CA affirmed the RTC with modification awarding damages to Mabasa.

ISSUE:

W/N the CA erred in awarding damages to Mabasa (YES)

RULING:

There is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the injury, and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called*damnumabsqueinjurian*

In order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff — a concurrence of injury to the plaintiff and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law. Thus, there must first be the breach of some duty and the imposition of liability for that breach before damages may be awarded; it is not sufficient to state that there should be tort liability merely because the plaintiff suffered some pain and suffering.

In other words, in order that the law will give redress for an act causing damage, that act must be not only hurtful, but wrongful. There must be *damnumetinjuria.* If, as may happen in many cases, a person sustains actual damage, that is, harm or loss to his person or property, without sustaining any legal injury, that is, an act or omission which the law does not deem an injury, the damage is regarded as *damnumabsqueinjuria*.

In the case at bar, although there was damage, there was no legal injury. Contrary to the claim of private respondents, petitioners could not be said to have violated the principle of abuse of right. In order that the principle of abuse of right provided in Article 21 of the Civil Code can be applied, it is essential that the following requisites concur: (1) The defendant should have acted in a manner that is contrary to morals, good customs or public policy; (2) The acts should be willful; and (3) There was damage or injury to the plaintiff.

The act of petitioners in constructing a fence within their lot is a valid exercise of their right as owners, hence not contrary to morals, good customs or public policy. The law recognizes in the owner the right to enjoy and dispose of a thing, without other limitations than those established by law. It is within the right of petitioners, as owners, to enclose and fence their property. Article 430 of the Civil Code provides that "(e)very owner may enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon.

At the time of the construction of the fence, the lot was not subject to any servitudes. There was no easement of way existing in favor of private respondents, either by law or by contract. The fact that private respondents had no existing right over the said passageway is confirmed by the very decision of the trial court granting a compulsory right of way in their favor after payment of just compensation. It was only that decision which gave private respondents the right to use the said passageway after payment of the compensation and imposed a corresponding duty on petitioners not to interfere in the exercise of said right.

Hence, prior to said decision, petitioners had an absolute right over their property and their act of fencing and enclosing the same was an act which they may lawfully perform in the employment and exercise of said right. To repeat, whatever injury or damage may have been sustained by private respondents by reason of the rightful use of the said land by petitioners is *damnumabsqueinjuria.*

GASHEM SHOOKAT BAKSH, petitioner, vs. HON. COURT OF APPEALS and MARILOU T. GONZALES, respondents.

G.R. No. 97336, February 19, 1993, THIRD DIVISION, J. DAVIDE, JR.

The existing rule is that a breach of promise to marry per se is not an actionable wrong. This notwithstanding, the said Code contains a provision, Article 21, which is designed to expand the concept of torts or quasi-delict in this jurisdiction by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to specifically enumerate and punish in the statute books.

Prior decisions of this Court clearly suggest that Article 21 may be applied-in a breach of promise to marry where the woman is a victim of moral seduction

FACTS:

On 27 October 1987, private respondent, without the assistance of counsel, filed with the aforesaid trial court a complaint for damages against the petitioner for the alleged violation of their agreement to get married. She alleges in said complaint that petitioner courted and proposed to marry her; she accepted his love on the condition that they would get married; they therefore agreed to get married after the end of the school semester, which was in October of that year; petitioner then visited the private respondent's parents in Bañaga, Bugallon, Pangasinan to secure their approval to the marriage; sometime in 20 August 1987, the petitioner forced her to live with him in the Lozano Apartments; she was a virgin before she began living with him; a week before the filing of the complaint, petitioner's attitude towards her started to change; he maltreated and threatened to kill her; as a result of such maltreatment, she sustained injuries, during a confrontation with a representative of the barangay captain of Guilig a day before the filing of the complaint, petitioner repudiated their marriage agreement and asked her not to live with him anymore and; the petitioner is already married to someone living in Bacolod City. Private respondent then prayed for judgment

ordering the petitioner to pay her damages in the amount of not less than P45,000.00, reimbursement for actual expenses amounting to P600.00, attorney's fees and costs, and granting her such other relief and remedies as may be just and equitable.

The lower court applying Article 21 of the Civil Code ruled in favor of respondent. The CA affirmed the decision *in toto.*

ISSUE:

W/N Article 21 is applies to the case at bar

RULING:

The existing rule is that a breach of promise to marry per se is not an actionable wrong. Congress deliberately eliminated from the draft of the New Civil Code the provisions that would have made it so.

This notwithstanding, the said Code contains a provision, Article 21, which is designed to expand the concept of torts or quasi-delict in this jurisdiction by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to specifically enumerate and punish in the statute books.

In the light of the above laudable purpose of Article 21, We are of the opinion, and so hold, that 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 fulfill that promise thereafter becomes the proximate cause of the giving of herself unto him in a sexual congress, proof that he had, in reality, 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, could justify the award of damages pursuant to Article 21 not because of such promise to marry but because of the fraud and deceit behind it and the willful injury to her honor and reputation which followed thereafter. It is essential, however, that such injury should have been committed in a manner contrary to morals, good customs or public policy.

In the instant case, respondent Court found that it was the petitioner's "fraudulent and deceptive protestations of love for and promise to marry plaintiff that made her surrender her virtue and womanhood to him and to live with him on the honest and sincere belief that he would keep said promise, and it was likewise these fraud and deception on appellant's part that made plaintiff's parents agree to their daughter's living-in with him preparatory to their supposed marriage."

In short, the private respondent surrendered her virginity, the cherished possession of every single Filipina, not because of lust but because of moral seduction — the kind illustrated by the Code Commission in its example earlier adverted to.

Prior decisions of this Court clearly suggest that Article 21 may be applied-in a breach of promise to marry where the woman is a victim of moral seduction.

ALFRED FRITZ FRENZEL, petitioner, vs. EDERLINA P. CATITO, respondent.
G.R. No. 143958. July 11, 2003, SECOND DIVISION, J. CALLEJO, SR.

Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

This provision does not apply if, as in this case, the action is proscribed by the Constitution or by the application of the pari delicto doctrine.

FACTS:

Petitioner Alfred Fritz Frenzel is an Australian citizen of German descent.

Sometime in February 1983, Alfred arrived in Sydney, Australia for a vacation. He went to King's Cross, a night spot in Sydney, for a massage where he met respondent EderlinaCatito, a Filipina and a native of Bajada, Davao City. Unknown to Alfred, she resided for a time in Germany and was married to Klaus Muller, a German national.. Alfred followed Ederlina to the Philippines where they cohabited together in a common-law relationship. During the period of their common-law relationship, Alfred acquired in the Philippines real and personal properties valued more or less at P724,000.00. **Since Alfred knew that as an alien he was disqualified from owning lands in the Philippines, he agreed that only Ederlina's name would appear in the deeds of sale as the buyer of the real properties, as well as in the title covering the same.**

Alfred and Ederlina's relationship deteriorated. Alfred wrote Ederlina's father complaining that Ederlina had taken all his life savings and because of this, he was virtually penniless. He further accused the Catito family of acquiring for themselves the properties he had purchased with his own money. He demanded the return of all the amounts that Ederlina and her family had "stolen" and turn over all the properties acquired by him and Ederlina during their coverture. Alfred filed a complaint against Ederlina with the Regional Trial Court, Davao City, for specific performance, declaration of ownership of real and personal properties, sum of money, and damages. The trial court rendered judgment in favor of Ederlina. Alfred appealed the decision to the Court of Appeals which affirmed in toto the decision of the RTC. Hence, the present petition.

ISSUE:

W/N Article 22 of the NCC is applicable to the case at bar(NO)

RULING:

Even if, as claimed by the petitioner, the sales in question were entered into by him as the real vendee, the said transactions are in violation of the Constitution; hence, are null and void ab initio. A contract that violates the Constitution and the law, is null and void and vests no rights and creates no obligations. It produces no legal effect at all. The petitioner, being a party to an illegal contract, cannot come into a court of law and ask to have his illegal objective carried out.

Futile, too, is petitioner's reliance on Article 22 of the New Civil Code which reads:

Art. 22. *Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.*

The provision is expressed in the maxim: "MEMO CUM ALTERIUS DETER DETREMENTO PROTEST" (No person should unjustly enrich himself at the expense of another). An action for recovery of what has been paid without just cause has been designated as an accion in rem verso. This provision does not apply if, as in this case, the action is proscribed by the Constitution or by the application of the pari delicto doctrine. It may be unfair and unjust to bar the petitioner from filing an accion in rem verso over the subject properties, or from recovering the money he paid for the said properties, but, as Lord Mansfield stated in the early case of Holman vs. Johnson: "The objection that a contract is immoral or illegal as between the plaintiff and the defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff."

SPS. CRISTINO & EDNA CARBONELL v. **METROPOLITAN BANK AND TRUST COMPANY**
G.R. No. 178467, April 26, 2017, *BERSAMIN, J.:*

There can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called damnumabsqueinjuria.

FACTS:

An action for damages was filed by Sps. Carbonell alleging that they had experienced emotional shock, mental anguish, public ridicule, humiliation, insults and embarrassment during their trip to Thailand because of the respondent's release to them of five US$ 100 bills that later on turned out to be counterfeit. They claimed that they had travelled to Bangkok, Thailand after withdrawing US$ l ,000.00 in US$ 100 notes from their dollar account at the respondent's Pateros branch; that while in Bangkok, they had exchanged five US$ 100 bills into Baht, but only four of the US$ 100 bills had been accepted by the foreign exchange dealer because the fifth one was "no good;" that unconvinced by the reason for the rejection, they had asked a companion to exchange the same bill at Norkthon Bank in Bangkok; that the bank teller thereat had then informed them and their companion that the dollar bill was fake; that the teller had then confiscated the US$ 100 bill and had threatened to report them to the police if they insisted in getting the fake dollar bill back; and that they had to settle for a Foreign Exchange Note receipt.

The spouses claimed that later on, they had bought jewelry from a shop owner by using four of the remaining US$100 bills as payment; that on the next day, however, they had been confronted by the shop owner at the hotel lobby because their four US$ 100 bills had turned out to be counterfeit; that the shop owner had shouted at them: "You Filipinos, you are all cheaters!;" and that the incident had occurred within the hearing distance of fellow travelers and several foreigners.

The petitioners continued that upon their return to the Philippines, they had confronted the manager of the Metrobank's Pateros branch on the fake dollar bills, but the latter had insisted that the dollar bills she had released to them were genuine inasmuch as the bills had come from the head office; that in order to put the issue to rest, the counsel of the petitioners had submitted the subject US$ 100 bills to the BangkoSentral ng Pilipinas (BSP) for examination; that the BSP had certified that the four US$100 bills were near perfect genuine notes; and that their counsel had explained by letter their

unfortunate experience caused by the respondent's release of the fake US dollar bills to them, and had demanded moral damages of ₱10 Million and exemplary damages.

ISSUE:

Whether or not the spouses are entitled to moral and exemplary damages on account of their suffering the unfortunate experience abroad brought about by their use of the fake US dollar bills withdrawn from the latter.

RULING:

No. It is true that the petitioners suffered embarrassment and humiliation in Bangkok. Yet, we should distinguish between damage and injury. In *The Orchard Golf & Country Club, Inc. v. Yu,* the Court has fittingly pointed out the distinction, *viz.:*

> x xx Injury is the illegal invasion of a legal right, damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called *damnumabsqueinjuria.*

In every situation of *damnumabsqueinjuria,* therefore, the injured person alone bears the consequences because the law affords no remedy for damages resulting from an act that does not amount to a legal injury or wrong. For instance, in *BP I Express Card Corporation v. Court of Appeals* , the Court turned down the claim for damages of a cardholder whose credit card had been cancelled *after several defaults in payment,* holding therein that there could be damage *without injury* where the loss or harm was not the result of a violation of a legal duty towards the plaintiff. In such situation, the injured person alone should bear the consequences because the law afforded no remedy for damages resulting from an act that did notamount to a legal injury or wrong. Indeed, the lack of malice in the conduct complained of precluded the recovery of damages.

Here, although the petitioners suffered humiliation resulting from their unwitting use of the counterfeit US dollar bills, the respondent, by virtue of its having observed the proper protocols and procedure in handling the US dollar bills involved, did not violate any legal duty towards them. Being neither guilty of negligence nor remiss in its exercise of the degree of diligence required by law or the nature of its obligation as a banking institution, the latter was not liable for damages. Given the situation being one of *damnumabsqueinjuria,* they could not be compensated for the damage sustained.

DAVID REYES (Substituted by Victoria R. Fabella), petitioner, vs. JOSE LIM, CHUY CHENG KENG and HARRISON LUMBER, INC.,respondents.
G.R. No. 134241. August 11, 2003, FIRST DIVISION, J.CARPIO

The principle that no person may unjustly enrich himself at the expense of another is embodied in Article 22 of the Civil Code. This principle applies not only to substantive rights but also to procedural remedies. One condition for invoking this principle is that the aggrieved party has no other action based on contract, quasi-contract, crime, quasi-delict or any other provision of law. Courts can extend this condition to the hiatus in the Rules of Court where the aggrieved party, during the pendency of the case, has no other recourse based on the provisional remedies of the Rules of Court

In this case, it was just, equitable and proper for the trial court to order the deposit of the P10 million down payment to prevent unjust enrichment by Reyes at the expense of Lim.

FACTS:

Petitioner Reyes filed a complaint for annulment of contract and damages against respondents alleging that petitioner as seller and respondent Lim as buyer entered into a contract to sell a parcel of land. Lim paid ten million pesos as down payment upon the signing of the contract. However, before the payment of the balance, Lim learned that Reyes had already sold the property to another buyer.

Lim sought the cancellation of the contract to sell and requested in open court that Reyes be ordered to deposit the ten million down payment with the trial court which was granted by the latter. Reyes filed a Motion to Set Aside the Order but the same was denied. Reyes filed a Petition for Certiorari with the Court of Appeals (CA), but it was dismissed. Hence, this petition for review.

ISSUE:

Whether the Court of Appeals erred in finding the trial court could issue the questioned Orders on grounds of equity when there is an applicable law on the matter, that is, Rules 57 to 61 of the 1997 Rules on Civil Procedure (NO)

RULING:

Reyes points out that deposit is not among the provisional remedies enumerated in the 1997 Rules of Civil Procedure. Reyes stresses the enumeration in the Rules is exclusive. Not one of the provisional remedies in Rules 57 to 61 applies to this case. Reyes argues that a court cannot apply equity and require deposit if the law already prescribes the specific provisional remedies which do not include deposit. Reyes invokes the principle that equity is "applied only in the absence of, and never against, statutory law or . . . judicial rules of procedure." Reyes adds the fact that the provisional remedies do not include deposit is a matter of duralexsedlex.

The instant case, however, is precisely one where there is a hiatus in the law and in the Rules of Court. *If left alone, the hiatus will result in unjust enrichment to Reyes at the expense of Lim*. The hiatus may also imperil restitution, which is a precondition to the rescission of the Contract to Sell that Reyes himself seeks. This is not a case of equity overruling a positive provision of law or judicial rule for there is none that governs this particular case. This is a case of silence or insufficiency of the law and the Rules of Court. In this case, Article 9 of the Civil Code expressly mandates the courts to make a ruling despite the "silence, obscurity or insufficiency of the laws." This calls for the application of equity, which "fills the open spaces in the law.

Thus, the trial court in the exercise of its equity jurisdiction may validly order the deposit of the P10 million down payment in court. The purpose of the exercise of equity jurisdiction in this case is to prevent unjust enrichment and to ensure restitution. Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction. Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.

To subscribe to Reyes' contention will unjustly enrich Reyes at the expense of Lim.

The principle that no person may unjustly enrich himself at the expense of another is embodied in Article 22 of the Civil Code. This principle applies not only to substantive rights but also to procedural remedies. One condition for invoking this principle is that the aggrieved party has no other action based on contract, quasi-contract, crime, quasi-delict or any other provision of law. Courts can extend this condition to the hiatus in the Rules of Court where the aggrieved party, during the pendency of the case, has no other recourse based on the provisional remedies of the Rules of Court

NATIONAL DEVELOPMENT COMPANY, *petitioner*, -versus- MADRIGAL WAN HAI LINES CORPORATION, *respondent.*
G.R. No. 148332, THIRD DIVISION, September 30, 2003, SANDOVAL-GUTIERREZ*, J.*

The case at bar calls to mind the principle of unjust enrichment — Nemo cum alterius detrimento locupletari potest. No person shall be allowed to enrich himself unjustly at the expense of others. This principle of equity has been enshrined in our Civil Code, Article 22.

There is no dispute that petitioner was aware of its US tax liabilities considering its numerous communications with the agents of the United States Internal Revenue Service, just prior to the sale of NSCP and the marine vessels to respondent. The NSCP itself made an ambiguous contingent provision in its Unaudited Financial Statements for the year ending December 1993, thereby indicating its awareness of a possible US tax assessment. It bears stressing that petitioner did not convey such information to respondent despite its inquiries. Obviously, such concealment constitutes bad faith on its part.

Justice and equity thus oblige that petitioner be held liable for NSCP's tax liabilities and reimburse respondent for the amounts it paid. It would be unjust enrichment on the part of petitioner to be relieved of that obligation.

FACTS

The National Development Company, petitioner, is a government-owned and controlled corporation. The National Shipping Corporation of the Philippines (NSCP) is a wholly-owned subsidiary of petitioner offering shipping services for containerized cargo between the Far East ports and the U.S. West Coast. On March 1, 1993, petitioner's Board of Directors approved the privatization plan of the NSCP. The Board offered for sale to the public its 100% stock ownership in NSCP worth P150,000.00, as well as its 3 ocean-going vessels. During the public bidding, the lone bidder was herein respondent, Madrigal Wan Hai Lines Corporation, a domestic private corporation.

Petitioner issued a Notice of Award to respondent of the sale of the NSCP shares and vessels for $18.5 million. Petitioner and respondent executed the corresponding Contract of Sale, and the latter acquired NSCP, its assets, personnel, records and its three (3) vessels. On September 22, 1994, respondent was surprised to receive from the US Department of Treasury, Internal Revenue Service (US IRS), a Notice of Final Assessment against NSCP for defciency taxes on gross transportation income derived from US sources for the years ending 1990, 1991 and 1992. Anxious that the delay in the payment of the deficiency taxes may hamper its shipping operations overseas, respondent, assumed and paid petitioner's tax liabilities, including the tax due for the year 1993, in the total amount of $671,653 .00 . These taxes were incurred prior to respondent's take-over of NSCP's management. Respondent likewise paid the additional amount of $16,533.10 as penalty for late

payment. Eventually, respondent demanded from petitioner reimbursement for the amounts it paid to the US IRS. But petitioner refused despite repeated demands. Hence, respondent filed a complaint for reimbursement and damages. RTC rendered a Decision in favor of respondent. The trial court found that even before the sale, petitioner knew that NSCP had tax liabilities with the US IRS, yet it did not inform respondent about it. On appeal, the CA affirmed the trial court's decision. Hence, the petition.

ISSUE

Whether or not the Court of Appeals erred in concurring with the trial court in ordering petitioner to reimburse respondent the deficiency taxes it paid to the US IRS. (NO)

RULING

There is no dispute that petitioner was aware of its US tax liabilities considering its numerous communications with the agents of the United States Internal Revenue Service, just prior to the sale of NSCP and the marine vessels to respondent. The NSCP itself made an ambiguous contingent provision in its Unaudited Financial Statements for the year ending December 1993, thereby indicating its awareness of a possible US tax assessment. It bears stressing that petitioner did not convey such information to respondent despite its inquiries. Obviously, such concealment constitutes bad faith on its part. Bad faith "implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it . . . contemplates a state of mind affirmatively operating with furtive design or ill will.

That petitioner has the obligation to reimburse respondent is likewise clear under the Negotiated Sale Guidelines, which provides:

> "7.0 OFFEROR'S RESPONSIBILITY
>
> 7.01 . . .. Seller gives no warranty regarding the sale of the shares and assets except for a warranty on ownership and against any liens or encumbrances, and the offeror shall not be relieved of his obligation to make the aforesaid examinations and verifications."

The terms of the parties' contract are clear and unequivocal. The seller (petitioner NDC) gives a warranty as to the ownership of the object of sale and against any lien and encumbrance. A tax liability of $688,186.10 was then a potential lien upon NSCP's marinevessels. Being in bad faith for having failed to inform the buyer, herein respondent, of such potential lien, petitioner breached its warranty and should, therefore, be held liable for the resulting damage, i.e., reimbursement for the amounts paid by petitioner to the US IRS.

The Negotiated Sale Guidelines further provides:

> "2.0 TERMS OF SALE
>
> 2.01 The sale of the NSCP and the three vessels shall be strictly on "CASH, AS IS-WHERE IS " basis."

In Hian vs. Court of Tax Appeals, we had the occasion to construe the phrase "as is, where is" basis, thus:

> "We cannot accept the contention in the Government's Memorandum of March 31, 1976 that Condition No. 5 in the Notice of Sale to the effect that 'The above-mentioned articles (the tobacco) are offered for sale 'AS IS' and the Bureau of Customs gives no warranty as to their condition' relieves the Bureau of Customs of liability for the storage fees in dispute. As we understand said Condition No. 5, it refers to the physical condition of the tobacco and not to the legal situation in which it was at the time of the sale, as could be implied from the right of inspection to prospective bidders under Condition No. 1. . . .."

The phrase "as is, where is" basis pertains solely to the physical condition of thething sold, not to its legal situation. In the case at bar, the US tax liabilities constitute a potential lien which applies to NSCP's legal situation, not to its physical aspect. Thus, respondent as a buyer, has no obligation to shoulder the same.

The case at bar calls to mind the principle of unjust enrichment — Nemo cum alterius detrimento locupletari potest. No person shall be allowed to enrich himself unjustly at the expense of others. This principle of equity has been enshrined in our Civil Code, Article 22 of which provides:

> "Art. 22. Every person who through an act or performance by another or by 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."

Justice and equity thus oblige that petitioner be held liable for NSCP's tax liabilities and reimburse respondent for the amounts it paid. It would be unjust enrichment on the part of petitioner to be relieved of that obligation.

ROY PADILLA, FILOMENO GALDONES, ISMAEL GONZALGO and JOSE FARLEY BEDENA, *petitioners*, -versus- COURT OF APPEALS, *respondent.*
G.R. L-39999, EN BANC, May 31, 1984, GUTIERREZ, JR., *J.*

The judgment of acquittal extinguishes the liability of the accused for damages only when it includes a declaration that the facts from which the civil might arise did not exist. Thus, the civil liability is not extinguished by acquittal where the acquittal is based on reasonable doubt (PNB v. Catipon, 98 Phil. 286) as only preponderance of evidence is required in civil cases; where the court expressly declares that the liability of the accused is not criminal but only civil in nature (De Guzman v. Alvia, 96 Phil. 558; People v. Pantig, supra) as, for instance, in the felonies of estafa, theft, and malicious mischief committed by certain relatives who thereby incur only civil liability (See Art. 332, Revised Penal Code); and, where the civil liability does not arise from or is not based upon the criminal act of which the accused was acquitted.

While appellants are entitled to acquittal, they nevertheless are civilly liable for the actual damages suffered by the complainants by reason of the demolition of the stall and loss of some of their properties, The extinction of the penal action does not carry with it that of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. (Rule 111, Sec. 3 (c), Rev. Rules of Court; Laperal v. Aliza, 51 OG.R. 1311, People v. Velez, 44 OG. 1811). In the instant case, the fact from which the civil might arise, namely, the demolition of the stall and loss of the properties contained therein; exists, and this is not denied by the accused. And since there is no showing that the complainants have reserved or waived their right to institute a separate civil action, the civil aspect therein is deemed instituted with the criminal action. (Rule 111, Sec. 1, Rev. Rules of Court)."

FACTS

The Court of First Instance of Camarines Norte rendered a decision which finds the accused, herein petitioners, Roy Padilla, Filomeno Galdonez, Ismael Gonzalgo and Jose Bedena guilty beyond reasonable doubt of the crime of grave coercion. The petitioners appealed the judgement of conviction the Court of Appeals. They contended that the trial court's finding of grave coercion was not supported by the evidence. The petitioners stated that the lower court erred in finding that the demolition of the complainants' stall was a violation of the very directive of the petitioner Mayor which gave the stall owners seventy two (72) hours to vacate the market premises. The Court of Appeals reversed the trial court's judgement of conviction and acquitted the petitioners of the crime of grave coercion on the ground of reasonable doubt but inspite of the acquittal ordered them to pay jointly and severally the amount of P9,000 to the complainant as actual damages. The petitioners filed a motion for reconsideration contending that the acquittal of the defendants-appellants as to criminal liability results in the extinction of their civil liability. The Court of Appeals denied the motion.

ISSUE

Whether or not the Court of Appeals committed a reversible error in requiring the petitioners to pay civil indemnity to the complainants after acquitting them from the criminal charge. (NO)

RULING

In the case before us, the petitioners were acquitted not because they did not commit the acts stated in the charge against them. There is no dispute over the forcible opening of the market stall, its demolition with axes and other instruments, and the carting away of the merchandize. The petitioners were acquitted because these acts were denominated coercion when they properly constituted some other offense suchas threat or malicious mischief.

The respondent Court of Appeals stated in its decision:

> "We rule that the crime of grave coercion has not been proved in accordance with law.
>
> While appellants are entitled to acquittal, they nevertheless are civilly liable for the actual damages suffered by the complainants by reason of the demolition of the stall and loss of some of their properties, The extinction of the penal action does not carry with it that of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. (Rule 111, Sec. 3 (c), Rev. Rules of Court; Laperal v. Aliza, 51 OG.R. 1311, People v. Velez, 44 OG. 1811). In the instant case, the fact from which the civil might arise, namely, the demolition of the stall and loss of the properties contained therein; exists, and this is not denied by the accused. And since there is no showing that the complainants have reserved or waived their right to institute a separate civil action, the civil aspect therein is deemed instituted with the criminal action. (Rule 111, Sec. 1, Rev. Rules of Court)."

Section 1 of Rule 111 of the Rules of Court states the fundamental proposition that when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with it. There is no implied institution when the offended party expressly waives the civil action or reserves his right to institute it separately. (Morte Sr. v. Alvizo, Jr., 101 SCRA 221).

The extinction of the civil action by reason of acquittal in the criminal case refers exclusively to civil liability ex delicto founded on Article 100 of the Revised Penal Code. (Elcano v. Hill, 77 SCRA 98; Virata v. Ochoa, 81 SCRA 472). In other words, the civil liability which is also extinguished upon acquittal of the accused is the civil liability arising from the act as a crime.

Section 3 (c) of Rule 111 specifically provides that:

> "Sec. 3. Other civil actions arising from offenses. — In all cases not included in the preceding section the following rules shall be observed:
>
> (c) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. In other cases, the personentitled to the civil action may institute it in the jurisdiction and in the manner provided by law against the person who may be liable for restitution of the thing and reparation or indemnity for the damage suffered.

The judgment of acquittal extinguishes the liability of the accused for damages only when it includes a declaration that the facts from which the civil might arise did not exist. Thus, the civil liability is not extinguished by acquittal where the acquittal is based on reasonable doubt (PNB v. Catipon, 98 Phil. 286) as only preponderance of evidence is required in civil cases; where the court expressly declares that the liability of the accused is not criminal but only civil in nature (De Guzman v. Alvia, 96 Phil. 558; People v. Pantig, supra) as, for instance, in the felonies of estafa, theft, and malicious mischief committed by certain relatives who thereby incur only civil liability (See Art. 332, Revised Penal Code); and, where the civil liability does not arise from or is not based upon the criminal act of which the accused was acquitted.

Article 29 of the Civil Code also provides that:

> "When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.
>
> "If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground."

More recently, we held that the acquittal of the defendant in the criminal case would not constitute an obstacle to the filing of a civil case based on the same acts which led to the criminal prosecution.

There appear to be no sound reasons to require a separate civil action to still be filed considering that the facts to be proved in the civil case have already been established in the criminal proceedings where the accused was acquitted. Due process has been accorded the accused. He was, in fact, exonerated of the criminal charged. The constitutional presumption of innocence called for more vigilant efforts on the part of prosecuting attorneys and defense counsel, a keener awareness by all witnesses of the serious implications of perjury, and a more studied consideration by the judge of the entire records and of applicable statutes and precedents. To require a separate civil action simply

because the accused was acquitted would mean needless clogging of court dockets and unnecessary duplication of litigation with all its attendant loss of time, effort, and money on the part of all concerned.

We see no need to amend Article 29 of the Civil Code in order to allow a court to grant damages despite a judgment of acquittal based on reasonable doubt. What Article 29 clearly and expressly provides is a remedy for the plaintiff in case the defendant has been acquitted in a criminal prosecution on the ground that his guilt has not been proved beyond reasonable doubt. It merely emphasizes that a civil action for damages is not precluded by an acquittal for the same criminal act or omission. The Civil Code provision does not state that the remedy can be availed of only in a separate civil action. A separate civil case may be filed but there is no statement that such separate filing is the only and exclusive permissible mode of recovering damages.

There is nothing contrary to the Civil Code provision in the rendition of a judgment of acquittal and a judgment awarding damages in the same criminal action. The two can stand side by side. A judgment of acquittal operates to extinguish the criminal liability. It does not, however, extinguish the civil liability unless there is clear showing that the act from which civil liability might arise did not exist.

A separate civil action may be warranted where additional facts have to be established or more evidence must be adduced or where the criminal case has been fully terminated and a separate complaint would be just as efficacious or even more expedient than a timely remand to the trial court where the criminal action was decided for further hearings on the civil aspects of the case. The offended party may, of course, choose to file a separate action. These do not exist in this case. Considering moreover the delays suffered by the case in the trial, appellate, and review stages, it would be unjust to the complainants in this case to require at this time a separate civil action to be filed.

ANTONIO L. DALURAYA, *petitioner*, -versus- MARLA OLIVA, *respondent.*
G.R. No. 210148, FIRST DIVISION, December 8, 2014, PERLAS-BERNABE, *J.*

The acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. However, the civil action based on delict may be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him.

A punctilious examination of the MeTC's Order, which the RTC sustained, will show that Daluraya's acquittal was based on the conclusion that the act or omission from which the civil liability may arise did not exist, given that the prosecution was not able to establish that he was the author of the crime imputed against him. Clearly, therefore, the CA erred in construing the findings of the MeTC, as affirmed by the RTC, that Daluraya's acquittal was anchored on reasonable doubt, which would necessarily call for a remand of the case to the court a quo for the reception of Daluraya's evidence on the civil aspect. Records disclose that Daluraya's acquittal was based on the fact that "the act or omission from which the civil liability may arise did not exist" in view of the failure of the prosecution to sufficiently establish

that he was the author of the crime ascribed against him. Consequently, his civil liability should be deemed as non-existent by the nature of such acquittal.

FACTS

Daluraya was charged in an Information for Reckless Imprudence Resulting in Homicide in connection with the death of Marina Oliva. Records reveal that Marina Oliva was crossing th street when a Nissan Vanette, bearing plate number UPN-172 and traversing EDSA near the Quezon Avenue flyover in Quezon City, ran her over. While Marina Oliva was rushed to the hospital to receive medical attention, she eventually died, prompting her daughter, herein respondent Marla Oliva, to file a criminal case for Reckless Imprudence. Resulting in Homicide against Daluraya, the purported driver of the vehicle. During the proceedings, the prosecution presented as witness Shem Serrano (Serrano), an eye-witness to the incident, who testified that on said date, he saw a woman crossing EDSA heading towards the island near the flyover and that the latter was bumped by a Nissan Vanette bearing plate number UPN-172.

After the prosecution rested its case, Daluraya filed an Urgent Motion to Dismiss (demurrer) asserting, inter alia, that he was not positively identified by any of the prosecution witnesses as the driver of the vehicle that hit the victim, and that there was no clear and competent evidence of how the incident transpired.

MeTC granted Daluraya's demurrer and dismissed the case for insufficiency of evidence. It found that the testimonies of the prosecution witnesses were wanting details and that they failed to sufficiently establish that Daluraya committed the crime. With respect to the civil aspect of the case, the MeTC likewise denied the same, holding that no civil liability can be awarded absent any evidence proving that Daluraya was the person responsible for Marina Oliva's demise. Marla appealed to the RTC. The RTC dismissed the appeal and affirmed the MeTC's ruling, declaring that "the act from which the criminal responsibility may spring did not at all exist." Dissatisfied, Marla elevated the case to the CA via petition for review, maintaining that Daluraya must be held civilly liable. In a decision, the CA granted the petition, ordering Daluraya to pay Marla. The CA held that the MeTC's Order showed Daluraya's acquittal was based on the fact that the prosecution failed to prove his guilt beyond reasonable doubt. As such, Daluraya was not exonerated from civil liability.

ISSUE

Whether or not the Court of Appeals was correct in finding Daluraya civilly liable for Oliva's death despite his acquittal in the criminal case for Reckless Imprudence Resulting in Homicide on the ground of insufficiency of evidence. (NO)

RULING

The petition is meritorious.

Every person criminally liable for a felony is also civilly liable. The acquittal of an accused of the crime charged, however, does not necessarily extinguish his civil liability. In Manantan v. CA, the Court expounded on the two kinds of acquittal recognized by our law and their concomitant effects on the civil liability of the accused, as follows:

Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no delict, civil liability ex delicto is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the delict complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only.

In Dayap v. Sendiong, the Court explained further:

The acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. However, the civil action based on delict may be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him.

In case of an acquittal, the Rules of Court requires that the judgment state "whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist."

A punctilious examination of the MeTC's Order, which the RTC sustained, will show that Daluraya's acquittal was based on the conclusion that the act or omission from which the civil liability may arise did not exist, given that the prosecution was not able to establish that he was the author of the crime imputed against him. Such conclusion is clear and categorical when the MeTC declared that "the testimonies of the prosecution witnesses are wanting in material details and they did not sufficiently establish that the accused precisely committed the crime charged against him." Furthermore, when Marla sought reconsideration of the MeTC's Order acquitting Daluraya, said court reiterated and firmly clarified that "the prosecution was not able to establish that the accused was the driver of the Nissan Vanette which bumped Marina Oliva" and that "there is no competent evidence on hand which proves that the accused was the person responsible for the death of Marina Oliva."

Clearly, therefore, the CA erred in construing the findings of the MeTC, as affirmed by the RTC, that Daluraya's acquittal was anchored on reasonable doubt, which would necessarily call for a remand of the case to the court a quo for the reception of Daluraya's evidence on the civil aspect. Records disclose that Daluraya's acquittal was based on the fact that "the act or omission from which the civil liability may arise did not exist" in view of the failure of the prosecution to sufficiently establish that he was the author of the crime ascribed against him. Consequently, his civil liability should be deemed as non-existent by the nature of such acquittal.

PREJUDICIAL QUESTION

LEONILO DONATO, *petitioner*, -versus- HON. ARTEMON D. LUNA. PRESIDING JUDGE, COURT OF FIRST INSTANCE OF MANILA, BRANCH XXXII; HON. JOSE FLAMNINIANO, CITY FISCAL OF MANILA; PAZ B. ABAYAN, *respondents.*
G.R. No. 5342, EN BANC, April 15, 1998, GANGAYCO*, J.*

Pursuant to the doctrine discussed in Landicho vs. Relova, petitioner Donato cannot apply the rule on prejudicial questions since a case for annulment of marriage can be considered as a prejudicial question to the bigamy case against the accused only if it is proved that the petitioner's consent to such marriage was obtained by means of duress, violence and intimidation in order to establish that his act in the subsequent marriage was an involuntary one and as such the same cannot be the basis for conviction. The preceding elements do not exist in the case at bar.

The requisites of a prejudicial question do not obtain in the case at bar. It must be noted that the issue before the Juvenile and Domestic Relations Court touching upon the nullity of the second marriage is not determinative of petitioner Donato's guilt or innocence in the crime of bigamy. Furthermore, it was petitioner's second wife, the herein private respondent Paz B. Abayan who filed the complaint for annulment of the second marriage on the ground that her consent was obtained through deceit.

FACTS

On January 23, 1979, the City Fiscal of Manila acting thru Assistant City Fiscal Amado N. Cantor filed an information for bigamy against herein petitioner, Leonilo C. Donato with the Court of First Instance of Manila, docketed as Criminal Case No. 43554. The information was filed based on the complaint of private respondent Paz B. Abayan. On September 28, 1979, before the petitioner's arraignment, private respondent filed with the Juvenile and Domestic Relations Court of Manila a civil action for declaration of nullity of her marriage with petitioner contracted on September 26, 1978. Said civil case was based on the ground that private respondent consented to entering into the marriage, which was petitioner Donato's second one, since she had no previous knowledge that petitioner was already married. Petitioner Donato's answer in the civil case for nullity interposed the defense that his second marriage was void since it was solemnized without a marriage license and that force, violence, intimidation and undue influence were employed by private respondent to obtain petitioner's consent to the marriage.

Prior to the date set for the trial on the merits of Criminal Case No. 43554, petitioner filed a motion to suspend the proceedings of said case contending that Civil Case seeking the annulment of his second marriage filed by private respondent raises a prejudicial question which must first be determined or decided before the criminal case can proceed. In an order, Hon. Artemon D. Luna denied the motion to suspend the proceedings in Criminal Case No. 43554 for bigamy. The motion for reconsideration of the said order was likewise denied. Hence, the present petition.

ISSUE

Whether or not the a criminal case for bigamy pending before the Court of First Instance should be suspended in view of a civil case for annulment of marriage pending before the Juvenile and Domestic Relations Court on the ground that the latter constitutes a prejudicial question. (NO)

RULING

A prejudicial question has been defined to be one which arises in a case, the resolution of which question is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal. 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 upon which the criminal 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 necessarily be determined. A prejudicial question usually comes into play in a situation where a civil action and a criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative juris et de jure of the guilt or innocence of the accused in a criminal case.

The requisites of a prejudicial question do not obtain in the case at bar. It must be noted that the issue before the Juvenile and Domestic Relations Court touching upon the nullity of the second marriage is not determinative of petitioner Donato's guilt or innocence in the crime of bigamy. Furthermore, it was petitioner's second wife, the herein private respondent Paz B. Abayan who filed the complaint for annulment of the second marriage on the ground that her consent was obtained through deceit.

Petitioner Donato raised the argument that the second marriage should have been declared null and void on the ground of force, threats and intimidation allegedly employed against him by private respondent only sometime later when he was required to answer the civil action for annulment of the second marriage. The doctrine elucidated upon by the case of Landicho vs. Relova may be applied to the present case. Said case states that:

> "The mere fact that there are actions to annul the marriages entered into by the accused in a bigamy case does not mean that 'prejudicial questions' are automatically raised in civil actions as to warrant the suspension of the criminal case. In order that the case of annulment of marriage be considered a prejudicial question to the bigamy case against the accused, it must be shown that the petitioner's consent to such marriage must be the one that was obtained by means of duress, force and intimidation to show that his act in the second marriage must be involuntary and cannot be the basis of his conviction for the crime of bigamy."

In the case at bar, petitioner has not even sufficiently shown that his consent to the second marriage has been obtained by the use of threats, force and intimidation.

Pursuant to the doctrine discussed in Landicho vs. Relova, petitioner Donato cannot apply the rule on prejudicial questions since a case for annulment of marriage can be considered as a prejudicial question to the bigamy case against the accused only if it is proved that the petitioner's consent to such marriage was obtained by means of duress, violence and intimidation in order to establish that his act in the subsequent marriage was an involuntary one and as such the same cannot be the basis for conviction. The preceding elements do not exist in the case at bar.

Obviously, petitioner merely raised the issue of prejudicial question to evade the prosecution of the criminal case. The records reveal that prior to petitioner's second marriage on September 26, 1978, he had been living with private respondent Paz B. Abayan as husband and wife for more than five years without the benefit of marriage. Thus, petitioner's averments that his consent was obtained by private respondent through force, violence, intimidation and undue influence in entering a

subsequent marriage is belied by the fact that both petitioner and private respondent executed an affidavit which stated that they had lived together as husband and wife without benefit of marriage for five years, one month and one day until their marital union was formally ratified by the second marriage and that it was private respondent who eventually filed the civil action for nullity.

JAMES WALTER CAPILI, *petitioner*, -versus- PEOPLE OF THE PHILIPPINES and SHIRLEY TISMO-CAPILI, *respondents.*

G.R. No. 183805, THIRD DIVISION, July 3, 2013, PERALTA, *J.*

Jurisprudence is replete with cases holding that the accused may still be charged with the crime of bigamy, even if there is a subsequent declaration of the nullity of the second marriage, so long as the first marriage was still subsisting when the second marriage was celebrated. In Jarillo v. People, the Court affirmed the accused's conviction for bigamy ruling that the crime of bigamy is consummated on the celebration of the subsequent marriage without the previous one having been judicially declared null and void.

In the present case, it appears that all the elements of the crime of bigamy were present when the Information was filed on June 28, 2004. It is undisputed that a second marriage between petitioner and private respondent was contracted on December 8, 1999 during the subsistence of a valid first marriage between petitioner and Karla Y. Medina-Capili contracted on September 3, 1999. Notably, the RTC of Antipolo City itself declared the bigamous nature of the second marriage between petitioner and private respondent. Thus, the subsequent judicial declaration of the second marriage for being bigamous in nature does not bar the prosecution of petitioner for the crime of bigamy.

FACTS

On June 28, 2004, petitioner was charged with the crime of bigamy before the RTC of Pasig City. Petitioner thereafter filed a Motion to Suspend Proceedings alleging that: (1) there is a pending civil case for declaration of nullity of the second marriage before the RTC of Antipolo City filed by Karla Y. Medina-Capili; (2) in the event that the marriage is declared null and void, it would exculpate him from the charge of bigamy; and (3) the pendency of the civil case for the declaration of nullity of the second marriage serves as a prejudicial question in the instant criminal case.

In the interim, the RTC of Antipolo City rendered a decision declaring the voidness or incipient invalidity of the second marriage between petitioner and private respondent on the ground that a subsequent marriage contracted by the husband during the lifetime of the legal wife is void from the beginning. Thereafter, the petitioner accused filed his Manifestation and Motion (to Dismiss) praying for the dismissal of the criminal case for bigamy filed against him on the ground that the second marriage between him and private respondent had already been declared void by the RTC. In an Order dated July 7, 2006, the RTC of Pasig City granted petitioner's Manifestation and Motion to Dismiss. Aggrieved, private respondent filed an appeal before the CA. Thus, in a Decision, the CA reversed and set aside the RTC's decision.

ISSUE

Whether or not the subsequent declaration of nullity of the second marriage is a ground for dismissal of the criminal case for bigamy. (NO)

RULING

Article 349 of the Revised Penal Code defines and penalizes the crime of bigamy as follows:

> Art. 349. Bigamy. — The penalty of prision mayor shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

The elements of the crime of bigamy, therefore, are: (1) the offender has been legally married; (2) the marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; (3) that he contracts a second or subsequent marriage; and (4) that the second or subsequent marriage has all the essential requisites for validity.

In the present case, it appears that all the elements of the crime of bigamy were present when the Information was filed on June 28, 2004. It is undisputed that a second marriage between petitioner and private respondent was contracted on December 8, 1999 during the subsistence of a valid first marriage between petitioner and Karla Y. Medina-Capili contracted on September 3, 1999. Notably, the RTC of Antipolo City itself declared the bigamous nature of the second marriage between petitioner and private respondent. Thus, the subsequent judicial declaration of the second marriage for being bigamous in nature does not bar the prosecution of petitioner for the crime of bigamy.

Jurisprudence is replete with cases holding that the accused may still be charged with the crime of bigamy, even if there is a subsequent declaration of the nullity of the second marriage, so long as the first marriage was still subsisting when the second marriage was celebrated. In Jarillo v. People, the Court affirmed the accused's conviction for bigamy ruling that the crime of bigamy is consummated on the celebration of the subsequent marriage without the previous one having been judicially declared null and void, viz.:

> The subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of nullity, the crime had already been consummated.
>
> The outcome of the civil case for annulment of petitioner's marriage to [private complainant] had no bearing upon the determination of petitioner's innocence or guilt in the criminal case for bigamy, because all that is required for the charge of bigamy to prosper is that the first marriage be subsisting at the time the second marriage is contracted.

In like manner, the Court recently upheld the ruling in the aforementioned case and ruled that what makes a person criminally liable for bigamy is when he contracts a second or subsequent marriage during the subsistence of a valid fist marriage. It further held that the parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists. Therefore, he who contracts a second marriage before the judicial declaration of the first marriage assumes the risk of being prosecuted for bigamy.

Finally, it is a settled rule that the criminal culpability attaches to the offender upon the commission of the offense, and from that instant, liability appends to him until extinguished as provided by law.

It is clear then that the crime of bigamy was committed by petitioner from the time he contracted the second marriage with private respondent. Thus, the finality of the judicial declaration of nullity of petitioner's second marriage does not impede the filing of a criminal charge for bigamy against him.

RICARDO QUIAMBAO, *petitioner*, -versus- HON. ADRIANO OSORIO, ZENAIDA GAZA BUENSUCERO, JUSTINA GAZA BERNARDO, and FELIPE GAZA,, *respondents.*
G.R. No. 48157, THIRD DIVISION, March 16, 1988, FERNAN, *J.*

The essential elements of a prejudicial question as provided under Section 5, Rule 111 of the Revised Rules of Court are: [a] the civil action involves an issue similar or intimately related to the issue in the criminal action; and [b] the resolution of such issue determines whether or not the criminal action may proceed.

Equally apparent, is the intimate correlation between said two [2] proceedings, stemming from the fact that the right of private respondents to eject petitioner from the disputed portion depends primarily on the resolution of the pending administrative case. For while it may be true that private respondents had prior possession of the lot in question, at the time of the institution of the ejectment case, such right of possession had been terminated, or at the very least, suspended by the cancellation by the Land Authority of the Agreement to Sell executed in their favor. Whether or not private respondents can continue to exercise their right of possession is but a necessary, logical consequence of the issue involved in the pending administrative case assailing the validity of the cancellation of the Agreement to Sell and the subsequent award of the disputed portion to petitioner. If the cancellation of the Agreement to Sell and the subsequent award to petitioner are voided, then private respondents would have every right to eject petitioner from the disputed area. Otherwise, private respondent's right of possession is lost and so would their right to eject petitioner from said portion.

FACTS

In a complaint for forcible entry filed by herein private respondents Zenaida Gaza Buensucero, Justina Gaza Bernardo and Felipe Gaza against herein petitioner Ricardo Quiambao before the then Municipal Court of Malabon, Rizal, docketed therein as Civil Case No. 2526, it was alleged that private respondents were the legitimate possessors of Lot No. 4, Block 12, by virtue of the Agreement to Sell No. 3482 executed in their favor by the former Land Tenure Administration [which later became the Land Authority, then the Department of Agrarian Reform]. Under cover of darkness, petitioner surreptitiously and by force, intimidation, strategy and stealth, entered into a 400 sq. m. portion thereof, placed bamboo posts "staka" over said portion and thereafter began the construction of a house thereon; and that these acts of petitioner, which were unlawful per se, entitled private respondents to a writ of preliminary injunction and to the ejectment of petitioner from the lot in question.

Petitioner filed a motion to dismiss the complaint, and upon denial thereof, filed his Answer to the complaint, averring that the Agreement upon which private respondents base their prior possession over the questioned lot had already been cancelled by the Land Authority. Petitioner alleged the pendency of, an administrative case before the Office of the Land Authority between the same parties and involving the same piece of land. In said administrative case, petitioner disputed private respondents' right of possession over the property in question by reason of the latter's default in the installment payments for the purchase of said lot. Petitioner asserted that this administrative case was determinative of private respondents' right to eject petitioner from the lot in question; hence a prejudicial question which bars a judicial action until after its termination.

ISSUE

Whether or not the administrative case between the private parties involving the lot subject matter of the ejectment case constitutes a prejudicial question which would operate as a bar to said ejectment case. (YES)

RULING

A prejudicial question is understood in law to be that which arises in a case the resolution of which is a logical antecedent of the issue involved in said case and the cognizance of which pertains to another tribunal. The doctrine of prejudicial question comes into play generally in a situation where civil and criminal actions are pending and the issues involved in both cases are similar or so closely-related that an issue must be preemptively resolved in the civil case before the criminal action can proceed. Thus, the existence of a prejudicial question in a civil case is alleged in the criminal case to cause the suspension of the latter pending final determination of the former.

The essential elements of a prejudicial question as provided under Section 5, Rule 111 of the Revised Rules of Court are: [a] the civil action involves an issue similar or intimately related to the issue in the criminal action; and [b] the resolution of such issue determines whether or not the criminal action may proceed.

The actions involved in the case at bar being respectively civil and administrative in character, it is obvious that technically, there is no prejudicial question to speak of. Equally apparent, however, is the intimate correlation between said two [2] proceedings, stemming from the fact that the right of private respondents to eject petitioner from the disputed portion depends primarily on the resolution of the pending administrative case. For while it may be true that private respondents had prior possession of the lot in question, at the time of the institution of the ejectment case, such right of possession had been terminated, or at the very least, suspended by the cancellation by the Land Authority of the Agreement to Sell executed in their favor. Whether or not private respondents can continue to exercise their right of possession is but a necessary, logical consequence of the issue involved in the pending administrative case assailing the validity of the cancellation of the Agreement to Sell and the subsequent award of the disputed portion to petitioner. If the cancellation of the Agreement to Sell and the subsequent award to petitioner are voided, then private respondents would have every right to eject petitioner from the disputed area. Otherwise, private respondent's right of possession is lost and so would their right to eject petitioner from said portion.

Faced with these distinct possibilities, the more prudent course for the trial court to have taken is to hold the ejectment proceedings in abeyance until after a determination of the administrative case.

If a pending civil case may be considered to be in the nature of a prejudicial question to an administrative case, We see no reason why the reverse may not be so considered in the proper case, such as in the petition at bar. Finally, events occurring during the pendency of this petition attest to the wisdom of the conclusion herein reached. For in the Manifestation filed by counsel for petitioner, it was stated that the intervenor Land Authority which later became the

Department of Agrarian Reform had promulgated a decision in the administrative case, L.A. Case No. 968 affirming the cancellation of Agreement to Sell No. 3482 issued in favor of private respondents. With this development, the folly of allowing the ejectment case to proceed is too evident to need further elaboration.

ISABELP APA, MANUEL APA and LEONILO JACALAN, *petitioners*, -versus- HON. RUMOLDO R. FERNANDEZ, HON. CELSO V. ESPINOSA, and SPS. FELIXBERTO TIGOL, JR. and ROSITA TAGHOY TIGOL, *respondents.*

G.R. No. 112381, SECOND DIVISION, March 20, 1995, MENDOZA, *J.*

A prejudicial question is a question which is based on a fact distinct and separate from the crime but so intimately connected with it that its resolution is determinative of the guilt or innocence of the accused. To justify suspension of the criminal action, it must appear not only that the civil case involves facts intimately related to those upon which the criminal prosecution is based but also that the decision of the issue or issues raised in the civil case would be decisive of the guilt or innocence of the accused.
In the criminal case, the question is whether petitioners occupied a piece of land not belonging to them but to private respondent and against the latter's will. As already noted, the information alleges that "without the knowledge and consent of the owner, ROSITA TIGOL" petitioners occupied or took possession of a portion of " her property"by building their houses thereon and "deprived [her] of the use of a portion of her land to her damage and prejudice." Now the ownership of the land in question, known as Lot 3635-B of the Opon cadastre covered by TCT No. 13250, is the issue in Civil Case 2247-L now pending in Branch 27 of the RTC at Lapu-Lapu City. The resolution, therefore, of this question would necessarily be determinative of petitioners' criminal liability for squatting.

FACTS

Criminal Case No. 012489 is a prosecution for violation of PD 772 otherwise known as the Anti-Squatting Law. The information alleges that petitioners Isabelo Apa, Manuel Apa and Dionisio Jacalan, without the knowledge and consent of the owner, Rosita Tigol, occupied and possessed a portion of her real property, Lot No. 3635-B.

Petitioners moved for the suspension of their arraignment on the ground that there was a prejudicial question pending resolution in another case being tried in Branch 27 of the same court. The case, docketed as Civil Case No. 2247-L and entitled "Anselmo Taghoy and Vicente Apa versus Felixberto Tigol, Jr. and Rosita T. Tigol, et al.," concerns the ownership of Lot No. 3635-B. 1 In that case, petitioners seek a declaration of the nullity of TCT No. 13250 of Rosita T. Tigol and the partition of the lot in question among them and private respondent Rosita T. Tigol as heirs of Filomeno and Rita Taghoy. The case had been filed in 1990 by petitioners, three years before May 27, 1993 when the criminal case for squatting was filed against them.

ISSUE

Whether or not the question of ownership of Lot No. 3635- B, which was pending in Civil Case No. 2247-L, is a prejudicial question justifying suspension of the proceedings in the criminal case against petitioners. (YES)

RULING

A prejudicial question is a question which is based on a fact distinct and separate from the crime but so intimately connected with it that its resolution is determinative of the guilt or innocence of the accused. To justify suspension of the criminal action, it must appear not only that the civil case involves facts intimately related to those upon which the criminal prosecution is based but also that the decision of the issue or issues raised in the civil case would be decisive of the guilt or innocence of the accused. 2 Rule 111, S. 5 provides:

> Sec. 5. Elements of prejudicial question. — The two (2) essential elements of a prejudicial questions are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

In the criminal case, the question is whether petitioners occupied a piece of land not belonging to them but to private respondent and against the latter's will. As already noted, the information alleges that "without the knowledge and consent of the owner, ROSITA TIGOL" petitioners occupied or took possession of a portion of " her property"by building their houses thereon and "deprived [her] of the use of a portion of her land to her damage and prejudice."

Now the ownership of the land in question, known as Lot 3635-B of the Opon cadastre covered by TCT No. 13250, is the issue in Civil Case 2247-L now pending in Branch 27 of the RTC at Lapu-Lapu City. The resolution, therefore, of this question would necessarily be determinative of petitioners' criminal liability for squatting.

In fact it appears that on February 23, 1994, the court trying the civil case rendered a decision nullifying TCT No. 13250 of private respondent and her husbandand declared the lot in question to be owned in common by the spouses and thepetitioners as their inheritance from their parents Filomeno and Rita Taghoy. While private respondents claim that the decision in that case is not yet final because they have filed a motion for new trial, the point is that whatever may be the ultimate resolution of the question of ownership, such resolution will be determinative of the guilt or innocence of petitioners in the criminal case. Surely, if petitioners are co-owners of the lot in question, they cannot be found guilty of squatting because they are as much entitled to the use and occupation of the land as are the private respondent Rosita T. Tigol and her family.

Private respondents argues that even the owner of a piece of land can be ejected from his property since the only issue in such a case is the right to its physical possession. Consequently, the contend, he can also be prosecuted under the Anti- Squatting Law.

The contention misses the essential point that the owner of a piece of land can be ejected only if for some reason, e.g ., he has let his property to the plaintiff, he has given up its temporary possession. But in the case at bar, no such agreement is asserted by private respondent. Rather private respondent claims the right to possession based on her claim of ownership. Ownership is thus the pivotal question. Since this is the question in the civil case, the proceedings in the criminal case must in the meantime be suspended.

MEYNARDO BELTRAN, *petitioner*, -versus- PEOPLE OF THE PHILIPPINES, and HON. JUDGE FLORENTINO TUAZON, JR., being the Judge of the RTC, Branch 139, Makati City, *respondents.*
G.R. No. 137567, SECOND DIVISION, June 20, 2000, BUENA, *J.*

The pendency of the case for declaration of nullity of petitioner's marriage is not a prejudicial question to the concubinage case. For a civil case to be considered prejudicial to a criminal action as to cause the suspension of the latter pending the final determination of the civil case, it must appear not only that the said civil case involves the same facts upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the aforesaid civil action, the guilt or innocence of the accused would necessarily be determined. In Domingo vs. Court of Appeals, the Court ruled that the import of Article 40 of the Family Code is that for purposes of remarriage, the only legally acceptable

basis for declaring a previous marriage an absolute nullity is a final judgment declaring such previous marriage void, whereas, for purposes of other than remarriage, other evidence is acceptable. So that in a case for concubinage, the accused, like the herein petitioner, need not present a final judgment declaring his remarriage void for he can adduce evidence in the criminal case of the nullity of his marriage other than proof of a final judgment declaring his marriage void.

FACTS

On February 7, 1997, after twenty-four years of marriage and four children, petitioner filed a petition for nullity of marriage on the ground of psychological incapacity under Article 36 of the Family Code. In her Answer to the said petition, petitioner's wife Charmaine Felix alleged that it was petitioner who abandoned the conjugal home and lived with a certain woman. Charmaine subsequently filed a criminal complaint for concubinage against petitioner and his paramour before the City Prosecutor's Office who, in a Resolution dated September 16, 1997, found probable cause and ordered the filing of an Information against them.

On March 20, 1998, petitioner, filed a Motion to Defer Proceedings Including the Issuance of the Warrant of Arrest in the criminal case. Petitioner argued that the pendency of the civil case for declaration of nullity of his marriage posed a prejudicial question to the determination of the criminal case. Petitioner submits that the possible conflict of the courts' ruling regarding petitioner's marriage can be avoided, if the criminal case will be suspended, until the court rules on the validity of marriage; that if petitioner's marriage is declared void by reason of psychological incapacity then by reason of the arguments submitted in the subject petition, his marriage has never existed; and that, accordingly, petitioner could not be convicted in the criminal case because he was never before a married man.

ISSUE

Whether or not the review the pendency of the petition for declaration of nullity of his marriage based on psychological incapacity under Article 36 of the Family Code is a prejudicial question that should merit the suspension of the criminal case for concubinage filed against him by his wife. (NO)

RULING

The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

The pendency of the case for declaration of nullity of petitioner's marriage is not a prejudicial question to the concubinage case. For a civil case to be considered prejudicial to a criminal action as to cause the suspension of the latter pending the final determination of the civil case, it must appear not only that the said civil case involves the same facts upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the aforesaid civil action, the guilt or innocence of the accused would necessarily be determined.

Article 40 of the Family Code provides:

"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."

In Domingo vs. Court of Appeals, this Court ruled that the import of said provision is that for purposes of remarriage, the only legally acceptable basis for declaring a previous marriage an absolute nullity is a final judgment declaring such previous marriage void, whereas, for purposes of other than remarriage, other evidence is acceptable.

So that in a case for concubinage, the accused, like the herein petitioner need not present a final judgment declaring his marriage void for he can adduce evidence in the criminal case of the nullity of his marriage other than proof of a final judgment declaring his marriage void.

With regard to petitioner's argument that he could be acquitted of the charge of concubinage should his marriage be declared null and void, suffice it to state that even a subsequent pronouncement that his marriage is void from the beginning is not a defense.

Analogous to this case is that of Landicho vs. Relova cited in Donato vs. Luna where this Court held that:

> ". . . Assuming that the first marriage was null and void on the ground alleged by petitioner, that fact would not be material to the outcome of the criminal case. Parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of the competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists. Therefore, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy."

Thus, in the case at bar it must also be held that parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of the competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists for all intents and purposes. Therefore, he who cohabits with a woman not his wife before the judicial declaration of nullity of the marriage assumes the risk of being prosecuted for concubinage. The lower court therefore, has not erred in affirming the Orders of the judge of the Metropolitan Trial Court ruling that pendency of a civil action for nullity of marriage does not pose a prejudicial question in a criminal case for concubinage.

SPOUSES ANTONIO PAHANG and LOLITA PAHANG, *petitioners*, -versus- HON. AUGUSTINE A. VESTIL, Presiding Judge of Regional Trial Court — Branch 56, Mandaue City, DEPUTY SHERIFF, Regional Trial Court — Branch 56 and METROPOLITAN BANK and TRUST COMPANY, *respondents.*

G.R. No. 148595, SECOND DIVISION, July 12, 2004, CALLEJO, SR., *J.*

A prejudicial question is one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. It generally comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue that must be pre-emptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative juris et de jure of the

guilt or innocence of the accused in the criminal case. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions.

In the present case, the complaint of the petitioners for Annulment of Extrajudicial Sale is a civil action and the respondent's petition for the issuance of a writ of possession of Lot No. 3-A, Block 1, Psd-07-021410, is but an incident in the land registration case and, therefore, no prejudicial question can arise from the existence of the two actions.

FACTS

The petitioners, Spouses Antonio and Lolita Pahang, received a short-term loan of P1,500,000.00 from the respondent Metropolitan Bank & Trust Company. The loan was covered by Non-Negotiable Promissory Note and was, likewise, secured by a real estate mortgage on a parcel of land. As the petitioners failed to pay the loan, the interest and the penalties due thereon, the respondent foreclosed the real estate mortgage extrajudicially. As a consequence, the mortgaged property was sold at public auction to the respondent bank as the highest bidder. Instead of redeeming the property, the petitioners filed a complaint for annulment of extrajudicial sale against the respondent bank docketed as Civil Case No. MAN-3454. Therein, the petitioners alleged that the respondent bloated their obligation of P1,500,000.00 to P2,403,770.73. After the expiration of the one-year redemption period, the respondent consolidated its ownership over the foreclosed property. The respondent filed a Petition for Writ of Possession docketed as LRC Case No. 3. The petitioners, citing the ruling of this Court in Belisario v. The Intermediate Appellate Court, opposed the petition on the ground that the core issue in their complaint in Civil Case No. MAN-3454 constituted a prejudicial question, which warranted a suspension of the proceedings before the court.

RTC granting the petition and ordering the issuance of a writ of possession in favour of the respondent cited the case of Javelosa v. Court of Appeals, and Gawaran v. Court of Appeals, the RTC ruled that since the petitioners failed to redeem the property within one year from the foreclosure, the respondent was entitled to a writ of possession as a necessary consequence of the readjudication of ownership and the corresponding issuance of the original certificate. The CA affirmed the decision of the lower court.

ISSUE

Whether or not the complaint of the petitioners in Civil Case No. MAN-3454 for annulment of extrajudicial sale is a prejudicial question to the petition of the respondent bank for the issuance of a writ of possession. (NO)

RULING

A prejudicial question is one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. It generally comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue that must be pre-emptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative juris et de jure of the guilt or innocence of the accused in the criminal case. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions.

In the present case, the complaint of the petitioners for Annulment of Extrajudicial Sale is a civil action and the respondent's petition for the issuance of a writ of possession of Lot No. 3-A, Block 1, Psd-07-021410, is but an incident in the land registration case and, therefore, no prejudicial question can arise from the existence of the two actions.

The focal issue in Civil Case No. MAN-3454 was whether the extrajudicial foreclosure of the real estate mortgage executed by the petitioners in favor of the respondent bank and the sale of their property at public auction for P2,403,770.73 are null and void, whereas, the issue in LRC Case No. 3 was whether the respondent bank was entitled to the possession of the property after the statutory period for redemption had lapsed and title was issued.

Our ruling in Belisario has no application in this case because in the said case, no prejudicial question was involved. We merely held therein that the filing of an action to enforce redemption within the period of redemption is equivalent to a formal offer to redeem, and should the Court allow the redemption, the redemptioner should then pay the amount already determined. In fine, the filing of an action by the redemptioner to enforce his right to redeem does not suspend the running of the statutory period to redeem the property, nor bar the purchaser at public auction from procuring a writ of possession after the statutory period of redemption had lapsed, without prejudice to the final outcome of such complaint to enforce the right of redemption.

It bears stressing that the proceedings in a petition and/or motion for the issuance of a writ of possession, after the lapse of the statutory period for redemption are summary in nature. The trial court is mandated to issue a writ of possession upon a finding of the lapse of the statutory period for redemption without the redemptioner having redeemed the property. It cannot be validly argued that the trial court abused its discretion when it merely complied with its ministerial duty to issue the said writ of possession.

CIVIL PERSONALITY

ANTONIO GELUZ, *petitioner*, -versus- THE HON. COURT OF APPEALS and OSCAR LAZO, *respondents.*

G.R. No. L-16439, EN BANC, July 20, 1961, REYES, J.B.L., *J.*

The Supreme Court believed that the minimum award of P3000 for the death of the person, does not cover the case of an unborn foetus that is not endowed with personality. Since an action for pecuniary damages on account of personal injury or death pertains primarily to the one injured, it is easy to see that if no action for such damages could be instituted on behalf of the unborn child on account of the injuries it received, no such right of action could derivatively accrue to its parents or heirs. In fact, even if a cause of action did accrue on behalf of the unborn child, the same was extinguished by its pre-natal death, since no transmission to anyone can take place from one that lacked juridical personality (or juridical capacity, as distinguished from capacity to act). It is no answer to invoke the provisional personality of a conceived child (conceptus pr nato habetur) under Article 40 of the Civil Code, because that same article expressly limits such provisional personality by imposing the condition that the child should be subsequently born alive: "provided it be born later with the conditions specified in the following article". In the present case, there is no dispute that the child was dead when separated from its mother's womb. The prevailing American jurisprudence is to the same effect; and is generally held that recovery can not be had for the death of an unborn child.

FACTS

The litigation was commenced by respondent Oscar Lazo, the husband of Nita Villanueva, against petitioner Geluz, a physician. Nita Villanueva came to know the defendant Antonio Geluz for the first time in 1948 through her aunt. In 1950 she became pregnant by her present husband before they were legally married. Desiring to conceal her pregnancy from her parent, she had herself aborted by the defendant. After her marriage with the plaintiff, she again became pregnant. As she was then employed in the Commission on Elections and her pregnancy proved to be inconvenient, she had herself aborted again by the defendant. Less than two years later, she again became pregnant. On February 21, 1955, she again repaired to the defendant's clinic. Nita was again aborted, of a two-month old foetus, in consideration of the sum of fifty pesos, Philippine currency. The plaintiff was at this time in the province of Cagayan, campaigning for his election to the provincial board; he did not know of, nor gave his consent to, the abortion. It is the third and last that constitutes plaintiffs basis in filing the action and award of damages. The trial court and the CA predicated the award of damages in the sum of P3000 upon the provisions of the initial paragraph of Article 2206 of the Civil Code.

ISSUE

Whether or not Oscar Lazo, the husband of the woman who voluntarily procured her abortion, could recover damages from the physician who cased the same.

RULING

The Supreme Court believed that the minimum award of P3000 for the death of the person, does not cover the case of an unborn foetus that is not endowed with personality. Since an action for pecuniary damages on account of personal injury or death pertains primarily to the one injured, it is easy to see that if no action for such damages could be instituted on behalf of the unborn child on account of the injuries it received, no such right of action could derivatively accrue to its parents or heirs. In fact, even if a cause of action did accrue on behalf of the unborn child, the same was extinguished by its pre-natal death, since no transmission to anyone can take place from one that lacked juridical personality (or juridical capacity, as distinguished from capacity to act). It is no answer to invoke the provisional personality of a conceived child (conceptus pr nato habetur) under Article 40 of the Civil Code, because that same article expressly limits such provisional personality by imposing the condition that the child should be subsequently born alive: "provided it be born later with the conditions specified in the following article". In the present case, there is no dispute that the child was dead when separated from its mother's womb. The prevailing American jurisprudence is to the same effect; and is generally held that recovery can not be had for the death of an unborn child.

This is not to say that the parents are not entitled to collect any damages at all. But such damages must be those inflicted directly upon them, as distinguished from the injury or violation of the rights of the deceased, his right to life and physical integrity. Because the parents can not expect either help, support or services from an unborn child, they would normally be limited to moral damages for the illegal arrest of the normal development of the spes hominis that was the foetus, i.e. on account of distress and anguish attendant to its loss, and the disappointment of their parental expectations (Civ. Code, Art. 2217), as well as to exemplary damages, if the circumstances should warrant them (Art. 2230). But in the case before us, both the trial court and the Court of Appeals have not found any basis for an award of moral damages, evidently because the appellee's indifference to the previous abortions of his wife, also caused by the appellant herein, clearly indicates that he was unconcerned with the frustration of his parental hopes and affections. The lower court expressly found, and the

majority opinion of the Court of Appeals did not contradict it, that the appellee was aware of the second abortion; and the probabilities are that he was likewise aware of the first. Yet despite the suspicious repetition of the event, he appeared to have taken no steps to investigate or pinpoint the causes thereof, and secure the punishment of the responsible practitioner. Even after learning of the third abortion, the appellee does not seem to have taken interest in the administrative and criminal cases against the appellant. His only concern appears to have been directed at obtaining from the doctor a large money payment, since he sued for P50,000 damages and P3,000 attorneys fees, an "indemnity" claim that, under the circumstances of record, was clearly exaggerated.

It is unquestionable that the appellant's act in provoking the abortion of appellee's wife, without medical necessity to warrant it, was a criminal and morally reprehensible act, that can not be too severely condemned; and the consent of the woman or that of her husband does not excuse it. But the immorality or illegality of the act does not justify an award of damages that, under the circumstances on record, have no factual or legal basis.

CITIZENSHIP

REPUBLIC OF THE PHILIPPINES, *petitioner*, -versus- CHULE Y. LIM, *respondent.*
G.R. No. 153883, FIRST DIVISION, January 13, 2004, YNARES-SANTIAGO, *J.*

The Republic avers that respondent did not comply with the constitutional requirement of electing Filipino citizenship when she reached the age of majority. It cites Article IV, Section 1(3) of the 1935 Constitution, which provides that the citizenship of a legitimate child born of a Filipino mother and an alien father followed the citizenship of the father, unless, upon reaching the age of majority, the child elected Philippine citizenship. Likewise, the Republic invokes the provision in Section 1 of Commonwealth Act No. 625, that legitimate children born of Filipino mothers may elect Philippine citizenship by expressing such intention "in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines."

Plainly, the above constitutional and statutory requirements of electing Filipino citizenship apply only to legitimate children. These do not apply in the case of respondent who was concededly an illegitimate child, considering that her Chinese father and Filipino mother were never married. As such, she was not required to comply with said constitutional and statutory requirements to become a Filipino citizen. By being an illegitimate, child of a Filipino mother, respondent automatically became a Filipino upon birth. Stated differently, she is a Filipino since birth without having to elect Filipino citizenship when she reached the age of majority.

FACTS

In her petition, respondent claimed that she was born on October 29, 1954 in Buruan, Iligan City. Her birth was registered in Kauswagan, Lanao del Norte but the Municipal Civil Registrar of Kauswagan transferred her record of birth to Iligan City. She alleged that both her Kauswagan and Iligan City records of birth have four erroneous entries, and prays that they be corrected.

During the hearing, respondent testified thus:

First, she claims that her surname "Yu" was misspelled as "Yo". She has been using "Yu" in all her school records and in her marriage certificate. She presented a clearance from the National Bureau of Investigation (NBI) to further show the consistency in her use of the surname "Yu". Second, she claims that her father's name in her birth record was written as "Yo Diu To (Co Tian)" when it should have been "Yu Dio To (Co Tian)." Third, her nationality was entered as Chinese when it should have been Filipino considering that her father and mother never got married. Only her deceased father was Chinese, while her mother is Filipina. She claims that her being a registered voter attests to the fact that she is a Filipino citizen. Finally, it was erroneously indicated in her birth certificate that she was a legitimate child when she should have been described as illegitimate considering that her parents were never married.

The trial court granted respondent's petition. The Republic of the Philippines appealed the decision to the CA which affirmed the trial court's decision.

ISSUE

Whether or not the CA erred in ordering the correction of the citizenship of respondent from "Chinese" to "Filipino" despite the fact that respondent never demonstrated any compliance with the legal requirements for election of citizenship.

RULING

To digress, it is just as well that the Republic did not cite as error respondent's recourse to Rule 108 of the Rules of Court to effect what indisputably are substantial corrections and changes in entries in the civil register. To clarify, Rule 108 of the Revised Rules of Court provides the procedure for cancellation or correction of entries in the civil registry. The proceedings under said rule may either be summary or adversary in nature. If the correction sought to be made in the civil register is clerical, then the procedure to be adopted is summary. If the rectification affects the civil status, citizenship or nationality of a party, it is deemed substantial, and the procedure to be adopted is adversary. This is our ruling in Republic v. Valencia where we held that even substantial errors in a civil registry may be corrected and the true facts established under Rule 108 provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. An appropriate adversary suit or proceeding is one where the trial court has conducted, proceedings where all relevant facts have been fully and properly developed, where opposing counsel have been given opportunity to demolish the opposite party's case, and where the evidence has been thoroughly weighed and considered.

The Republic avers that respondent did not comply with the constitutional requirement of electing Filipino citizenship when she reached the age of majority. It cites Article IV, Section 1(3) of the 1935 Constitution, which provides that the citizenship of a legitimate child born of a Filipino mother and an alien father followed the citizenship of the father, unless, upon reaching the age of majority, the child elected Philippine citizenship. Likewise, the Republic invokes the provision in Section 1 of Commonwealth Act No. 625, that legitimate children born of Filipino mothers may elect Philippine citizenship by expressing such intention "in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines."

Plainly, the above constitutional and statutory requirements of electing Filipino citizenship apply only to legitimate children. These do not apply in the case of respondent who was concededly an

illegitimate child, considering that her Chinese father and Filipino mother were never married. As such, she was not required to comply with said constitutional and statutory requirements to become a Filipino citizen. By being an illegitimate, child of a Filipino mother, respondent automatically became a Filipino upon birth. Stated differently, she is a Filipino since birth without having to elect Filipino citizenship when she reached the age of majority.

This notwithstanding, the records show that respondent elected Filipino citizenship when she reached the age of majority. She registered as a voter in Misamis Oriental when she was 18 years old. The exercise of the right of suffrage and the participation in election exercises constitute a positive act of election of Philippine citizenship.

In its second assignment of error, the Republic assails the Court of Appeals' decision in allowing respondent to use her father's surname despite its finding that she is illegitimate. The Republic's submission is misleading. The Court of Appeals did not allow respondent to use her father's surname. What it did allow was the correction of her father's misspelled surname which she has been using ever since she can remember. In this regard, respondent does not need a court pronouncement for her to use her father's surname. While judicial authority is required for a change of name or surname, there is no such requirement for the continued use of a surname which a person has already been using since childhood. The doctrine that disallows such change of name as would give the false impression of family relationship remains valid but only to the extent that the proposed change of name would in great probability cause prejudice or future mischief to the family whose surname it is that is involved or to the community in general. In this case, the Republic has not shown that the Yu family in China would probably be prejudiced or be the object of future mischief. In respondent's case, the change in the surname that she has been using for 40 years would even avoid confusion to her community in general.

CASAN MACODE MAQUILING, *petitioner*, -versus- COMMISSION ON ELECTIONS, ROMMEL ARNADO and LINOG BALUA, *respondents.*
G.R. No. 195649, EN BANC, July 2, 2013, SERENO, *J.*

There is likewise no doubt that the use of a passport is a positive declaration that one is a citizen of the country which issued the passport, or that a passport proves that the country which issued it recognizes the person named therein as its national.

It is unquestioned that Arnado is a natural born Filipino citizen, or that he acquired American citizenship by naturalization. There is no doubt that he reacquired his Filipino citizenship by taking his Oath of Allegiance to the Philippines and that he renounced his American citizenship. It is also indubitable that after renouncing his American citizenship, Arnado used his U.S. passport at least six times.

If there is any remaining doubt, it is regarding the efficacy of Arnado's renunciation of his American citizenship when he subsequently used his U.S. passport. The renunciation of foreign citizenship must be complete and unequivocal. The requirement that the renunciation must be made through an oath emphasizes the solemn duty of the one making the oath of renunciation to remain true to what he has sworn to. Allowing the subsequent use of a foreign passport because it is convenient for the person to do so is rendering the oath a hollow act. It devalues the act of taking of an oath, reducing it to a mere ceremonial formality.

FACTS

Respondent Arnado is a natural born Filipino citizen. However, as a consequence of his subsequent naturalization as a citizen of the United States of America, he lost his Filipino citizenship. Arnado applied for repatriation under Republic Act (R.A.) No. 9225 before the Consulate General of the Philippines in San Franciso, USA and took the Oath of Allegiance to the Republic of the Philippines on 10 July 2008. On the same day an Order of Approval of his Citizenship Retention and Re-acquisition was issued in his favour. On 3 April 2009 Arnado again took his Oath of Allegiance to the Republic and executed an Affidavit of Renunciation of his foreign citizenship. On 30 November 2009, Arnado filed his Certificate of Candidacy for Mayor of Kauswagan, Lanao del Norte. On 28 April 2010, respondent Linog C. Balua (Balua), another mayoralty candidate, filed a petition to disqualify Arnado and/or to cancel his certificate of candidacy. Balua presented a travel record indicating that Arnado has been using his US Passport in entering and departing the Philippines. The said record shows that Arnado left the country on 14 April 2009 and returned on 25 June 2009, and again departed on 29 July 2009, arriving back in the Philippines on 24 November 2009.

The COMELEC First Division granted the Petition for Disqualification. Arando sought reconsideration of the Resolution from the COMELEC En Banc, wherein petitioner Maquiling intervened. The COMELEC En Banc reversed and set aside the ruling of the First Division. Hence, the petition for certiorari assailing the Resolution of the COMELEC En Banc, and raising the issue of whether or not the use of foreign passport after renouncing foreign citizenship affects one's qualifications to run for public office., in which the Supreme Court held in affirmative. Thus, the present Resolution which resolves the Motion for Reconsideration filed by respondent for the reversal of the Court's decision dated April 16, 2013.

ISSUE

Whether or not respondent was able to advance any argument to support his plea for the reversal of the Court's Decision dated April 16, 2013. (NO)

RULING

Respondent failed to advance any argument to support his plea for the reversal of this Court's Decision dated April 16, 2013. Instead, he presented his accomplishments as the Mayor of Kauswagan, Lanao del Norte and reiterated that he has taken the Oath of Allegiance not only twice but six times. It must be stressed, however, that the relevant question is the efficacy of his renunciation of his foreign citizenship and not the taking of the Oath of Allegiance to the Republic of the Philippines. Neither do his accomplishments as mayor affect the question before this Court.

Respondent cites Section 349 of the Immigration and Naturalization Act of the United States as having the effect of expatriation when he executed his Affidavit of Renunciation of American Citizenship on April 3, 2009 and thus claims that he was divested of his American citizenship. If indeed, respondent was divested of all the rights of an American citizen, the fact that he was still able to use his US passport after executing his Affidavit of Renunciation repudiates this claim.

The Court cannot take judicial notice of foreign laws, which must be presented as public documents of a foreign country and must be "evidenced by an official publication thereof."

American law does not govern in this jurisdiction. Instead, Section 40 (d) of the Local Government Code calls for application in the case before us, given the fact that at the time Arnado filed his certificate of candidacy, he was not only a Filipino citizen but, by his own declaration, also an American citizen. It is the application of this law and not of any foreign law that serves as the basis for Arnado's disqualification to run for any local elective position.

With all due respect to the dissent, the declared policy of Republic Act No. (RA) 9225 is that "all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act." This policy pertains to the reacquisition of Philippine citizenship. Section 5 (2) requires those who have re-acquired Philippine citizenship and who seek elective public office, to renounce any and all foreign citizenship.

This requirement of renunciation of any and all foreign citizenship, when read together with Section 40 (d) of the Local Government Code which disqualifies those with dual citizenship from running for any elective local position, indicates a policy that anyone who seeks to run for public offie must be solely and exclusively a Filipino citizen. To allow a former Filipino who reacquires Philippine citizenship to continue using a foreign passport — which indicates the recognition of a foreign state of the individual as its national — even after the Filipino has renounced his foreign citizenship, is to allow a complete disregard of this policy.

Further, we respectfully disagree that the majority decision rules on a situation of doubt. Indeed, there is no doubt that Section 40 (d) of the Local Government Code disqualifies those with dual citizenship from running for local elective positions.

There is likewise no doubt that the use of a passport is a positive declaration that one is a citizen of the country which issued the passport, or that a passport proves that the country which issued it recognizes the person named therein as its national.

It is unquestioned that Arnado is a natural born Filipino citizen, or that he acquired American citizenship by naturalization. There is no doubt that he reacquired his Filipino citizenship by taking his Oath of Allegiance to the Philippines and that he renounced his American citizenship. It is also indubitable that after renouncing his American citizenship, Arnado used his U.S. passport at least six times.

If there is any remaining doubt, it is regarding the efficacy of Arnado's renunciation of his American citizenship when he subsequently used his U.S. passport. The renunciation of foreign citizenship must be complete and unequivocal. The requirement that the renunciation must be made through an oath emphasizes the solemn duty of the one making the oath of renunciation to remain true to what he has sworn to. Allowing the subsequent use of a foreign passport because it is convenient for the person to do so is rendering the oath a hollow act. It devalues the act of taking of an oath, reducing it to a mere ceremonial formality.

The dissent states that the Court has effectively left Arnado "a man without a country". On the contrary, this Court has, in fact, found Arnado to have more than one. Nowhere in the decision does it say that Arnado is not a Filipino citizen. What the decision merely points out is that he also possessed another citizenship at the time he filed his certificate of candidacy. It must be stressed that what is at stake here is the principle that only those who are exclusively Filipinos are qualified to run for public office. If we allow dual citizens who wish to run for public office to renounce their foreign citizenship and afterwards continue using their foreign passports, we are creating a special privilege

for these dual citizens, thereby effectively junking the prohibition in Section 40 (d) of the Local Government Code.

MARRIAGE

VIRGINIA D. CALIMAG, *petitioner*, -versus- HEIRS OF SILVESTRA N. MACAPAZ, represented by ANASTACIO P. MACAPAZ, JR., *respondents.*
G.R. No. 191936, THIRD DIVISION, June 1, 2016, REYES, *J.*

Jurisprudence teaches that the fact of marriage may be proven by relevant evidence other than the marriage certificate. Hence, even a person's birth certificate may be recognized as competent evidence of the marriage between his parents. Here, in order to prove their legitimate filiation, the respondents presented their respective Certificates of Live Birth issued by the National Statistics Office where Fidela signed as the Informant in item no. 17 of both documents.

FACTS

This case pertains to an action for annulment of deed of sale and cancellation of title with damages. Petitioner Virginia D. Calimag co-owned the property, the subject matter of this case, with Silvestra N. Macapaz. On the other hand, Respondents Anastacio P. Macapaz, Jr. and Alicia Macapaz-Ritua are the children of Silvestra's brother, Anastacio Macapaz, Sr. and Fidela O. Poblete Vda. de Macapaz. The subject property was duly registered in the names of petitioner Calimag and Silvestra under TCT No. 183088. In said certificate of title, appearing as Entry No. 02671 is an annotation of an Adverse Claim of Fidela asserting rights and interests over a portion of the said property.

On November 11, 2002, Silvestra died without issue. On July 7, 2005, TCT No. 183088 was cancelled and a new certificate of title, TCT No. 221466, was issued in the name of the petitioner by virtue of a Deed of Sale dated January 18, 2005 whereby Silvestra allegedly sold her 99-sq-m portion to the petitioner. On September 16, 2005, Fidela passed away.

On December 15, 2005, Anastacio, Jr. filed a criminal complaint for two counts of falsification of public documents against the petitioner. However, said criminal charges were eventually dismissed. Subsequently, the respondents, asserting that they are the heirs of Silvestra, instituted the action for *Annulment of Deed of Sale and Cancellation of TCT No. 221466 with Damages* against the petitioner and the Register of Deeds of Makati City.

Petitioner averred in her Answer that the respondents have no legal capacity to institute said civil action on the ground that they are illegitimate children of Anastacio, Sr. As such, they have no right over Silvestra's estate pursuant to Article 992 of the Civil Code which prohibits illegitimate children from inheriting intestate from the legitimate children and relatives of their father and mother. After trial, the RTC ruled in favor of the respondents, which the CA sustained. Both RTC and CA ruled that the cancellation of TCT No. 183088 and the issuance of TCT No. 221466 in the name of the petitioner were obtained through forgery. As to the legal capacity of the respodents, both courts ruled that the best proof of marriage between man and wife is a marriage contract. In this case, a certificate of marriage as well as a copy of the marriage contract were duly submitted in evidence by the respondents to prove that they are legal heirs of Silvestra and thus have the legal capacity to institute the action.

ISSUE

Whether or not the respondents are legal heirs of Silvestra. (YES)

RULING

While it is true that a person's legitimacy can only be questioned in a direct action seasonably filed by the proper party, as held in *Spouses Fidel v. Hon. CA, et al*., 559 SCRA 186 (2008), this Court however deems it necessary to pass upon the respondents' relationship to Silvestra so as to determine their legal rights to the subject property. Besides, the question of whether the respondents have the legal capacity to sue as alleged heirs of Silvestra was among the issues agreed upon by the parties in the pretrial.

It is well-settled that other proofs can be offered to establish the fact of a solemnized marriage. Jurisprudence teaches that the fact of marriage may be proven by relevant evidence other than the marriage certificate. Hence, even a person's birth certificate may be recognized as competent evidence of the marriage between his parents. Thus, in order to prove their legitimate filiation, the respondents presented their respective Certificates of Live Birth issued by the National Statistics Office where Fidela signed as the Informant in item no. 17 of both documents.

In a catena of cases, it has been held that persons 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. 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. A presumption established by our Code of Civil Procedure is 'that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.' *Semper praesumitur pro matrimonio* - Always presume marriage. Furthermore, as the established period of cohabitation of Anastacio, Sr. and Fidela transpired way before the effectivity of the Family Code, the strong presumption accorded by then Article 220 of the Civil Code in favor of the validity of marriage cannot be disregarded. Thus: Art. 220. In case of doubt, all presumptions favor the solidarity of the family.

LEONCIA BALOGBOG and GAUDIOSO BALOGBOG, *petitioners*, -versus- HONORABLE COURT OF APPEALS, RAMONITO BALOGBOG and GENEROSO BALOGBOG, *respondents.*
G.R. No. 83598, SECOND DIVISION, March 7, 1997, MENDOZA, *J.*

Although a marriage contract is considered primary evidence of marriage, the failure to present it is not proof that no marriage took place. Other evidence may be presented to prove marriage. Here, private respondents proved, through testimonial evidence, that Gavino and Catalina were married in 1929; that they had three children, one of whom died in infancy; that their marriage subsisted until 1935 when Gavino died; and that their children, private respondents herein, were recognized by Gavino's family and by the public as the legitimate children of Gavino.

FACTS

Petitioners Leoncia and Gaudioso Balogbog are the children of Basilio Balogbog and Genoveva Arzibal who died intestate in 1951 and 1961, respectively. They had an older brother, Gavino, but he died in 1935, predeceasing their parents. In 1968, private respondents Ramonito and Generoso Balogbog brought an action for partition and accounting against petitioners, claiming that they were the legitimate children of Gavino by Catalina Ubas and that, as such, they were entitled to the one-third share of Gavino in the estate of their grandparents. Respondents presented two witnesses, a

former Mayor of Asturias and a family friend, who both testified that they knew Gavino and Catalina to be husband and wife. Also, Catalina Ubas testified concerning her marriage to Gavino. In their answer, petitioners denied knowing private respondents. They alleged that their brother Gavino died single and without issue in their parents' residence at Tag-amakan, Asturias, Cebu.

Thereafter, the trial court rendered judgment for private respondents, ordering petitioners to partition the estate and deliver to private respondents one-third of the estate of Basilio and Genoveva. Petitioners filed a motion for new trial and/or reconsideration, contending that the trial court erred in not giving weight to the certification of the Office of the Municipal Treasurer of Asturias to the effect that no marriage of Gavino and Catalina was recorded in the Book of Marriages for the years 1925-1935. Their motion was denied by the trial court, as was their second motion for new trial and/or reconsideration based on the church records of the parish of Asturias which did not contain the record of the alleged marriage in that church. On appeal, the CA affirmed the ruling of the trial court, holding that petitioners failed to overcome the legal presumption that a man and a woman deporting themselves as husband and wife are in fact married, that a child is presumed to be legitimate, and that things happen according to the ordinary course of nature and the ordinary habits of life. Hence, this petition.

ISSUE

Whether or not the marriage between Gavino and Catalina is valid even in the absence of marriage certificate. (YES)

RULING

Under the Rules of Court, the presumption is that a man and a woman conducting themselves as husband and wife are legally married. This presumption may be rebutted only by cogent proof to the contrary.

Although a marriage contract is considered primary evidence of marriage, the failure to present it is not proof that no marriage took place. Other evidence may be presented to prove marriage. Here, private respondents proved, through testimonial evidence, that Gavino and Catalina were married in 1929; that they had three children, one of whom died in infancy; that their marriage subsisted until 1935 when Gavino died; and that their children, private respondents herein, were recognized by Gavino's family and by the public as the legitimate children of Gavino.

Furthermore, an exchange of vows can be presumed to have been made from the testimonies of the witnesses who state that a wedding took place, since the very purpose for having a wedding is to exchange vows of marital commitment. It would indeed be unusual to have a wedding without an exchange of vows and quite unnatural for people not to notice its absence. The law favors the validity of marriage, because the State is interested in the preservation of the family and the sanctity of the family is a matter of constitutional concern.

PEREGRINA MACUA VDA. DE AVENIDO, *petitioner*, -versus- TECLA HOYBIA AVENIDO, *respondent.*

G.R. No. 173540, SECOND DIVISION, January 22, 2014, PEREZ, *J.*

In Adong v. Cheong Seng Gee, the Court elucidated on the rationale behind the presumption of marriage: The basis of human society throughout the civilized world is that of marriage. Marriage in this

jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony. Persons 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. 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. A presumption established by our Code of Civil Procedure is that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage. (Sec. 334, No. 28) Semper –praesumitur pro matrimonio – Always presume marriage. Here, the establishment of the fact of marriage between Tecla and Eustaquio was completed by the testimonies of the witnesses; the unrebutted fact of the birth within the cohabitation of Tecla and Eustaquio of four (4) children coupled with the certificates of the children's birth and baptism; and the certifications of marriage issued by the parish priest.

FACTS

This case involves a contest between two women both claiming to have been validly married to the same man, now deceased. Respondent Tecla Hoybia Avenido instituted a Complaint for Declaration of Nullity of Marriage against Peregrina Macua Vda. de Avenido on the ground that she (Tecla), is the lawful wife of the deceased Eustaquio Avenido. In her complaint, Tecla alleged that her marriage to Eustaquio was solemnized on 30 September 1942 in Talibon, Bohol in rites officiated by the Parish Priest of the said town. According to her, the fact of their marriage is evidenced by a Marriage Certificate recorded with the Office of the Local Civil Registrar (LCR) of Talibon, Bohol. However, due to World War II, records were destroyed. Thus, only a Certification was issued by the LCR. During the existence of Tecla and Eustaquio's union, they begot four (4) children. Sometime in 1954, Eustaquio left his family and his whereabouts was not known. In 1958, Tecla and her children were informed that Eustaquio was in Davao City living with another woman by the name of Buenaventura Sayson who later died in 1977 without any issue. In 1979, Tecla learned that her husband Eustaquio got married to another woman by the name of Peregrina, which marriage she claims must be declared null and void for being bigamous - an action she sought to protect the rights of her children over the properties acquired by Eustaquio. In her Answer, Peregrina claimed that Tecla is not the legal wife, but was once a common law wife of Eustaquio. Also, Peregrina was able to present a Marriage Contract between her and the late Eustaquio showing the date of marriage on 3 March 1979 and an affidavit of Eustaquio executed on 22 March 1985 declaring himself as single when he contracted marriage with the petitioner although he had a common law relation with one Tecla Hoybia with whom he had four (4) children.

Thereafter, the trial court rendered a Decision denying Tecla's petition for the Declaration of Nullity of Marriage, as well as Peregrina's counterclaim. The trial court, in ruling against Tecla's claim of her prior valid marriage to Eustaquio relied on Tecla's failure to present her certificate of marriage to Eustaquio. In the absence of the marriage contract, the trial court did not give credence to the testimony of Tecla and her witnesses as it considered the same as mere self-serving assertions. Upon appeal, the CA ruled in favor of Tecla by declaring the validity of her marriage to Eustaquio, while pronouncing on the other hand, the marriage between Peregrina and Eustaquio to be bigamous, and thus, null and void. The CA concluded that there was a presumption of lawful marriage between Tecla and Eustaquio as they deported themselves as husband and wife and begot four (4) children.

ISSUE

Whether or not the evidence presented during the trial proves the existence of the marriage of Tecla to Eustaquio. (YES)

RULING

In *Añonuevo v. Intestate Estate of Rodolfo G. Jalandoni*, the Court held that 'while a marriage certificate is considered the primary evidence of a marital union, it is not regarded as the sole and exclusive evidence of marriage. Jurisprudence teaches that the fact of marriage may be proven by relevant evidence other than the marriage certificate. Hence, even a person's birth certificate may be recognized as competent evidence of the marriage between his parents.'

Here, as correctly stated by the appellate court, the celebration of marriage between Tecla and Eustaquio was established by the testimonial evidence furnished by the witness presented who appears to be present during the marriage ceremony, and by Tecla herself as a living witness to the event. The loss was shown by the certifications issued by the NSO and LCR of Talibon, Bohol. These are relevant, competent and admissible evidence. Since the due execution and the loss of the marriage contract were clearly shown by the evidence presented, secondary evidence - testimonial and documentary - may be admitted to prove the fact of marriage. The establishment of the fact of marriage was completed by the testimonies of Adelina, Climaco and Tecla; the unrebutted fact of the birth within the cohabitation of Tecla and Eustaquio of four (4) children coupled with the certificates of the children's birth and baptism; and the certifications of marriage issued by the parish priest of the Most Holy Trinity Cathedral of Talibon, Bohol.

In *Adong v. Cheong Seng Gee*, the Court elucidated on the rationale behind the presumption of marriage: The basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony. Persons 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. 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. A presumption established by our Code of Civil Procedure is that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage. (Sec. 334, No. 28) *Semper –praesumitur pro matrimonio* – Always presume marriage.

TOMASA VDA. DE JACOB, as Special Administratrix of the Intestate Estate of Deceased Alfredo E. Jacob, *petitioner*, -versus- COURT OF APPEALS, PEDRO PILAPIL, THE REGISTER OF DEEDS for the Province of Camarines Sur, and JUAN F. TRIVINO as publisher of "Balalong", *respondents.*

G.R. No. 135216, THIRD DIVISION, August 19, 1999, PANGANIBAN, *J.*

The prima facie presumption is that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage. Here, given the undisputed, even accepted, fact that Dr. Jacob and petitioner lived together as husband and wife, the Court finds that the presumption of marriage was not rebutted in this case.

FACTS

Petitioner claimed to be the surviving spouse of deceased Dr. Alfredo E. Jacob and was appointed Special Administratix for the various estates of the deceased by virtue of a *reconstructed* Marriage Contract between herself and the deceased. Respondents on the other hand, claimed to be the legally-adopted son of Alfredo. During the proceeding for the settlement of the estate of the deceased Alfredo, herein defendant-appellee Pedro Pilapil sought to intervene therein claiming his share of the deceased's estate as Alfredo's adopted son and as his sole surviving heir. Pedro questioned the validity of the marriage between appellant Tomasa and his adoptive father Alfredo. In her defense, petitioner claims that the marriage between her and Alfredo was solemnized by one Msgr. Florencio C. Yllana but she could not however present the original copy of the Marriage Contract stating that the original document was lost when Msgr. Yllana allegedly gave it to Mr. Jose Centenera for registration. In lieu of the original, Tomasa presented as secondary evidence a *reconstructed* Marriage Contract issued in 1978.

During the trial, the court a quo observed the following irregularities in the execution of the reconstructed Marriage Contract, to wit:

1. No copy of the Marriage Contract was sent to the local civil registrar by the solemnizing officer thus giving the implication that there was no copy of the marriage contract sent to, nor a record existing in the civil registry of Manila;
2. In signing the Marriage Contract, the late Alfredo Jacob merely placed his "thumbmark" on said contract purportedly on 16 September 1975 (date of the marriage). However, on a Sworn Affidavit executed between appellant Tomasa and Alfredo a day before the alleged date of marriage or on 15 September 1975 attesting that both of them lived together as husband and wife for five (5) years, Alfredo affixed his customary signature. Thus the trial court concluded that the "thumbmark" was logically "not genuine". In other words, not of Alfredo Jacob's;
3. Contrary to appellant's claim, in his Affidavit stating the circumstances of the loss of the Marriage Contract, the affiant Msgr. Yllana never mentioned that he allegedly "gave the copies of the Marriage Contract to Mr. Jose Centenera for registration". And as admitted by appellant at the trial, Jose Centenera (who allegedly acted as padrino) was not present at the date of the marriage since he was then in Australia. In fact, on the face of the reconstructed Marriage Contract, it was one "Benjamin Molina" who signed on top of the typewritten name of Jose Centenera. This belies the claim that Msgr. Yllana allegedly gave the copies of the Marriage Contract to Mr. Jose Centenera;
4. Appellant admitted that there was no record of the purported marriage entered in the book of records in San Agustin Church where the marriage was allegedly solemnized.

The trial court ruled for defendant-appellee sustaining his claim as the legally adopted child and sole heir of deceased Alfredo and declaring the reconstructed Marriage Contract as spurious and non-existent. On appeal, the CA affirmed the decision of the trial court; hence, this petition for review.

ISSUE

Whether or not the marriage between the plaintiff Tomasa Vda. De Jacob and deceased Alfredo E. Jacob was valid. (YES)

RULING

Respondent Pedro Pilapil argues that the marriage was void because the parties had no marriage license. This argument is misplaced, because it has been established that Dr. Jacob and petitioner lived together as husband and wife for at least five years. An affidavit to this effect was executed by Dr. Jacob and petitioner. Clearly then, the marriage was exceptional in character and did not require a marriage license under Article 76 of the Civil Code. The Civil Code governs this case, because the questioned marriage and the assailed adoption took place prior the effectivity of the Family Code.

If the original writing has been lost or destroyed or cannot be produced in court, upon proof of its execution and loss or destruction, or unavailability, its contents may be proved by a copy or recital of its contents in some authentic document, or by recollection of witnesses. The execution of a document may be proven by the parties themselves, by the swearing officer, by witnesses who saw and recognized the signatures of the parties; or even by those to whom the parties have previously narrated the execution thereof. Here, since the due execution and the loss of the marriage contract were clearly shown by the evidence presented, secondary evidence–testimonial and documentary–may be admitted to prove the fact of marriage. Also, failure to send a copy of a marriage certificate for record purposes does not invalidate the marriage.

Persons dwelling together in apparent matrimony are presumed, in the absence of any counterpresumption or evidence special to the case, to be in fact married. 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. A presumption established by our Code of Civil Procedure is 'that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage.' *Semper praesumitur pro matrimonio* –Always presume marriage. This jurisprudential attitude towards marriage is based on the prima facie presumption that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage. Here, given the undisputed, even accepted, fact that Dr. Jacob and petitioner lived together as husband and wife, the Court finds that the presumption of marriage was not rebutted in this case.

On the issue of legality of adoption of Pedro Pilapil, the Court ruled that respondent's adoption has not been sufficiently established.

REPUBLIC OF THE PHILIPPINES, *petitioner*, -versus- COURT OF APPEALS AND ANGELINA M. CASTRO, *respondents.*
G.R. No. 103047, SECOND DIVISION, September 2, 1994, PUNO, *J.*

At the time the subject marriage was solemnized on June 24, 1970, the law governing marital relations was the New Civil Code. The law provides that no marriage shall be solemnized without a marriage license first issued by a local civil registrar. Being one of the essential requisites of a valid marriage, absence of a license would render the marriage void ab initio. Here, the Court held that, under the circumstances of the case, the documentary and testimonial evidence presented by private respondent Castro sufficiently established the absence of the subject marriage license.

FACTS

On June 24, 1970, Angelina M. Castro and Edwin F. Cardenas were married in a civil ceremony performed by Judge Pablo M. Malvar, City Court Judge of Pasay City. The marriage was celebrated

without the knowledge of Castro's parents. Defendant Cardenas personally attended to the processing of the documents required for the celebration of the marriage, including the procurement of the marriage license. In fact, the marriage contract itself states that marriage license no. 3196182 was issued in the name of the contracting parties on June 24, 1970 in Pasig, Metro Manila. The couple did not immediately live together as husband and wife since the marriage was unknown to Castro's parents. Thus, it was only in March 1971, when Castro discovered she was pregnant, that the couple decided to live together. However, their cohabitation lasted only for four (4) months. Thereafter, the couple parted ways. On October 19, 1971, Castro gave birth. The baby was adopted by Castro's brother, with the consent of Cardenas. The baby is now in the United States. Desiring to follow her daughter, Castro wanted to put in order her marital status before leaving for the States. She thus consulted a lawyer, Atty. Frumencio E. Pulgar, regarding the possible annulment of her marriage. Through her lawyer's efforts, they discovered that there was no marriage license issued to Cardenas prior to the celebration of their marriage. Castro testified that she did not go to the civil registrar of Pasig on or before June 24, 1970 in order to apply for a license. Neither did she sign any application therefor. She affixed her signature only on the marriage contract on June 24, 1970 in Pasay City. Petitioner, on the other hand, insisted that the certification and the uncorroborated testimony of private respondent are insufficient to overthrow the legal presumption regarding the validity of a marriage.

The trial court denied the petition. It ruled that the inability of the certifying official to locate the marriage license is not conclusive to show that there was no marriage license issued. On appeal, the CA declared the marriage between the contracting parties null and void and directed the Civil Registrar of Pasig to cancel the subject marriage contract; hence, this petition for review on *certiorari* by Republic of the Philippines.

ISSUE

Whether or not the marriage between Castro and Cardenas was valid. (NO)

RULING

At the time the subject marriage was solemnized on June 24, 1970, the law governing marital relations was the New Civil Code. The law provides that no marriage shall be solemnized without a marriage license first issued by a local civil registrar. Being one of the essential requisites of a valid marriage, absence of a license would render the marriage *void ab initio*.

The certification of "due search and inability to find" issued by the civil registrar of Pasig 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. Unaccompanied by any circumstance of suspicion and pursuant to Section 29, Rule 132 of the Rules of Court, a certificate of "due search and inability to find" sufficiently proved that his office did not issue marriage license no. 3196182 to the contracting parties.

Here, the Court held that, under the circumstances of the case, the documentary and testimonial evidence presented by private respondent Castro sufficiently established the absence of the subject marriage license.

ROMMEL JACINTO DANTES SILVERIO, *petitioner*, -versus- REPUBLIC OF THE PHILIPPINES, *respondent.*

G.R. No. 174689, FIRST DIVISION, October 19, 2007, CORONA, *J.*

The sex of a person is determined at birth, visually done by the birth attendant by examining the genitals of the infant. Without a law recognizing sex reassignment, the determination of a person's sex at the time of birth is immutable, if not attended by error.

FACTS

Rommel Jacinto Dantes Silverio, a Filipino, was born male per his birth certificate. Feeling trapped in a man's body, he underwent sex reassignment surgery in Bangkok, Thailand and transformed himself into a "woman". Since then, Rommel lived as a female and is in fact engaged to his American fiancé. To allow him to marry his fiancé under Philippine law, Rommel filed a petition to change his name from "Rommel Jacinto" to "Mely", and his sex from "male" to "female" in his birth certificate.

Thereafter, the trial court ruled in favor of the petitioner, holding that granting the petition would be more in consonance with the principles of justice and equity. On appeal, the CA rendered a decision in favor of the Republic. It ruled that the trial court's decision lacked legal basis. There is no law allowing the change of either name or sex in the certificate of birth on the ground of sex reassignment through surgery. Petitioner moved for reconsideration but it was denied. Hence, this petition.

ISSUE

Whether or not a person's first name can be changed on the ground of sex reassignment. (NO)

RULING

Petitioner's basis in praying for the change of his first name was his sex reassignment. He intended to make his first name compatible with the sex he thought he transformed himself into through surgery. However, a change of name does not alter one's legal capacity or civil status. RA 9048 does not sanction a change of first name on the ground of sex reassignment. Rather than avoiding confusion, changing petitioner's first name for his declared purpose may only create grave complications in the civil registry and the public interest. Before a person can legally change his given name, he must present proper or reasonable cause or any compelling reason justifying such change. In addition, he must show that he will be prejudiced by the use of his true and official name. In this case, he failed to show, or even allege, any prejudice that he might suffer as a result of using his true and official name.

A person's sex is an essential factor in marriage and family relations. It is a part of a person's legal capacity and civil status. In this connection, Article 413 of the Civil Code provides: ART. 413. All other matters pertaining to the registration of civil status shall be governed by special laws. But there is no such special law in the Philippines governing sex reassignment and its effects. This is fatal to petitioner's cause.

The changes sought by petitioner will have serious and wide-ranging legal and public policy consequences. First, even the trial court itself found that the petition was but petitioner's first step towards his eventual marriage to his male fiancé. However, marriage, one of the most sacred social institutions, is a special contract of permanent union between a man and a woman. One of its essential

requisites is the legal capacity of the contracting parties who must be a male and a female. To grant the changes sought by petitioner will substantially reconfigure and greatly alter the laws on marriage and family relations. It will allow the union of a man with another man who has undergone sex reassignment (a male-to-female post-operative transsexual). Second, there are various laws which apply particularly to women such as the provisions of the Labor Code on employment of women, certain felonies under the Revised Penal Code and the presumption of survivorship in case of calamities under Rule 131 of the Rules of Court, among others. These laws underscore the public policy in relation to women which could be substantially affected if petitioner's petition were to be granted.

REPUBLIC OF THE PHILIPPINES, *petitioner*, -versus- JENNIFER B. CAGANDAHAN, *respondent.*
G.R. No. 166676, SECOND DIVISION, September 12, 2008, QUISUMBING, *J.*

Where the person is biologically or naturally intersex the determining factor in his gender classification would be what the intersexed person, having reached the age of majority, with good reason thinks of his/her sex. Here, respondent thinks of himself as a male and considering that his body produces high levels of male hormones (androgen), there is preponderant biological support for considering him as being male.

FACTS

Jennifer B. Cagandahan was born and registered as a female in her birth certificate. She was later diagnosed with Congenital Adrenal Hyperplasia (CAH), a condition wherein a person is genetically female but secretes male hormones. Because of Jennifer's very rare condition, she has both male and female sex organs, did not develop breasts or ovaries, and never had her monthly period. Feeling that she has become a male person in mind and body, she filed a Petition to change her name from "Jennifer" to "Jeff", and her sex from "female" to "male".

ISSUE

Whether or not Jennifer can change her sex or gender, from female to male, on the ground of her medical condition known as CAH, and her name from 'Jennifer' to 'Jeff'. (YES)

RULING

The current state of Philippine statutes apparently compels that a person be classified either as a male or as a female, but this Court is not controlled by mere appearances when nature itself fundamentally negates such rigid classification. Where the person is biologically or naturally intersex, the determining factor in his gender classification would be what the individual, like Jennifer (now Jeff), having reached the age of majority, with good reason thinks of his/her sex. Respondent here thinks of himself as a male and considering that his body produces high levels of male hormones (androgen), there is preponderant biological support for considering him as being male. Sexual development in cases of intersex persons makes the gender classification at birth inconclusive. It is at maturity that the gender of such persons, like respondent, is fixed. Since the gender of intersexed persons is fixed only at maturity, the original entries in the birth certificate are thus correctible under Rule 108 of the Rules of Court.

In this case, intersexed Jeff lets nature take its course without taking unnatural steps to interfere with such development. Nature made him male over time and Jeff simply chose what nature has given him.

REPUBLIC OF THE PHILIPPINES, *petitioner*, -versus- LIBERTY D. ALBIOS, *respondent.*
G.R. No. 198780, THIRD DIVISION, October 16, 2013, MENDOZA, *J.*

Under Article 2 of the Family Code, consent is an essential requisite of marriage. Article 4 of the same Code provides that the absence of any essential requisite shall render a marriage void ab initio. Under said Article 2, for consent to be valid, it must be (1) freely given and (2) made in the presence of a solemnizing officer. A "freely given" consent requires that the contracting parties willingly and deliberately enter into the marriage. Consent must be real in the sense that it is not vitiated nor rendered defective by any of the vices of consent under Articles 45 and 46 of the Family Code, such as fraud, force, intimidation, and undue influence. Consent must also be conscious or intelligent, in that the parties must be capable of intelligently understanding the nature of, and both the beneficial or unfavorable consequences of their act. Their understanding should not be affected by insanity, intoxication, drugs, or hypnotism. Based on the above, consent was not lacking between Albios and Fringer. Here, their freely given consent is best evidenced by their conscious purpose of acquiring American citizenship through marriage. There was a clear intention to enter into a real and valid marriage to fully comply with the requirements of an application for citizenship. There was a full and complete understanding of the legal tie that would be created between them, since it was that precise legal tie which was necessary to accomplish their goal.

FACTS

Liberty D. Albios, a Filipina, paid Daniel Lee Fringer, an American, $2,000.00 for the latter to marry Liberty for purposes of immigration. In 2004, Liberty and Daniel were married out of jest. Immediately after the marriage, they separated and never lived as husband and wife. However, Liberty's immigration application was denied. In 2006, Liberty filed a Petition for declaration of nullity of her marriage with Daniel on the ground that they never really had any intention of entering into a married state or complying with any of their essential marital obligations.

According to the OSG, consent should be distinguished from motive, the latter being inconsequential to the validity of marriage. The OSG also argues that the present case does not fall within the concept of a marriage in jest. The parties here intentionally consented to enter into a real and valid marriage, for if it were otherwise, the purpose of Albios to acquire American citizenship would be rendered futile.

Later, both the RTC and CA declared the marriage *void ab initio*, explaining that when marriage was entered into for a purpose other than the establishment of a conjugal and family life, such was a farce and should not be recognized from its inception.

ISSUE

Whether or not a marriage, contracted for the sole purpose of acquiring American citizenship and in consideration of $2,000.00, void ab initio on the ground of lack of consent. (NO)

RULING

Under Article 2 of the Family Code, consent is an essential requisite of marriage. Article 4 of the same Code provides that the absence of any essential requisite shall render a marriage *void ab initio*. Under said Article 2, for consent to be valid, it must be (1) freely given and (2) made in the presence of a solemnizing officer. A "freely given" consent requires that the contracting parties willingly and

deliberately enter into the marriage. Consent must be real in the sense that it is not vitiated nor rendered defective by any of the vices of consent under Articles 45 and 46 of the Family Code, such as fraud, force, intimidation, and undue influence. Consent must also be conscious or intelligent, in that the parties must be capable of intelligently understanding the nature of, and both the beneficial or unfavorable consequences of their act. Their understanding should not be affected by insanity, intoxication, drugs, or hypnotism. Based on the above, consent was not lacking between Albios and Fringer. Here, their freely given consent is best evidenced by their conscious purpose of acquiring American citizenship through marriage. There was a clear intention to enter into a real and valid marriage to fully comply with the requirements of an application for citizenship. There was a full and complete understanding of the legal tie that would be created between them, since it was that precise legal tie which was necessary to accomplish their goal.

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. Other considerations, not precluded by law, may validly support a marriage.

SALLY GO-BANGAYAN, *petitioner*, -versus- BENJAMIN BANGAYAN, JR., *respondent.*
G.R. No. 201061, SECOND DIVISION, July 3, 2013, CARPIO, *J.*

Under Article 35 of the Family Code, a marriage solemnized without a license, except those covered by Article 34 where no license is necessary, "shall be void from the beginning." In this case, the marriage between Benjamin and Sally was solemnized without a license.

FACTS

In September 1973, Benjamin married Azucena. In 1979, Benjamin developed a romantic relationship with Sally. In December 1981, Azucena left for the United States of America. In February 1982, Benjamin and Sally lived together as husband and wife. Sally's father was against the relationship. On 7 March 1982, in order to appease her father, Sally brought Benjamin to an office in Santolan, Pasig City where they signed a purported marriage contract. Sally, knowing Benjamin's marital status, assured him that the marriage contract would not be registered.

The relationship of Benjamin and Sally ended in 1994 when Sally left for Canada. She then filed criminal actions for bigamy and falsification of public documents against Benjamin, using their simulated marriage contract as evidence. Benjamin, in turn, filed a petition for declaration of a non-existent marriage and/or declaration of nullity of marriage before the trial court on the ground that his marriage to Sally was bigamous and that it lacked the formal requisites to a valid marriage.

ISSUE

Whether or not the marriage of Benjamin to Sally was valid and existing. (NO)

RULING

The Court sees no inconsistency in finding the marriage between Benjamin and Sally null and *void ab initio* and, at the same time, non-existent. Under Article 35 of the Family Code, a marriage solemnized without a license, except those covered by Article 34 where no license is necessary, "shall be void from the beginning." In this case, the marriage between Benjamin and Sally was solemnized without

a license. It was duly established that no marriage license was issued to them and that Marriage License No. N-07568 did not match the marriage license numbers issued by the local civil registrar of Pasig City for the month of February 1982. The case clearly falls under Section 3 of Article 35 which made their marriage *void ab initio*. The marriage between Benjamin and Sally was also non-existent.

In relation to the above ruling, the marriage of petitioner and respondent was not bigamous. For bigamy to exist, the second or subsequent marriage must have all the essential requisites for validity except for the existence of a prior marriage. In this case, there was really no subsequent marriage. Benjamin and Sally just signed a purported marriage contract without a marriage license. The supposed marriage was not recorded with the local civil registrar and the National Statistics Office. In short, the marriage between Benjamin and Sally did not exist. They lived together and represented themselves as husband and wife without the benefit of marriage.

JAIME O. SEVILLA, *petitioner*, -versus- CARMELITA N. CARDENAS, *respondent.*
G.R. No. 167684, FIRST DIVISION, July 31, 2006, CHICO-NAZARIO, *J.*

The certification to be issued by the Local Civil Registrar 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. Here, the testimony of the representative from the Office of the Local Civil Registrar of San Juan, Ms. Perlita Mercader, stated that they cannot locate the logbook due to the fact that the person in charge of the said logbook had already retired. This belies the claim that all efforts to locate the logbook or prove the material contents therein, had been exerted.

FACTS

Petitioner Jaime O. Sevilla claimed that on 19 May 1969, through machinations, duress and intimidation employed upon him by Carmelita N. Cardenas and the latter's father, retired Colonel Jose Cardenas of the Armed Forces of the Philippines, he and Carmelita went to the City Hall of Manila and they were introduced to a certain Reverend Cirilo D. Gonzales, a supposed Minister of the Gospel. On the said date, the father of Carmelita caused him and Carmelita to sign a marriage contract before the said Minister of the Gospel. According to Jaime, he never applied for a marriage license for his supposed marriage to Carmelita and never did they obtain any marriage license from any Civil Registry, consequently, no marriage license was presented to the solemnizing officer. For her part, Carmelita refuted these allegations of Jaime, and claims that she and Jaime were married civilly on 19 May 1969, and in a church ceremony thereafter on 31 May 1969.

The trial court declared the nullity of the marriage of the parties, holding that being one of the essential requisites for the validity of the marriage, the lack or absence of a license renders the marriage *void ab initio*. No marriage license no. 2770792 was ever issued by Local Civil Registrar of the Municipality of San Juan, hence, the marriage license no. 2770792 appearing on the marriage contracts executed on May 19, 1969 and on May 31, 1969 was fictitious. On appeal, the CA reversed the decision of the trial court and uphold the validity of the marriage of the contracting parties.

ISSUE

Whether or not the marriage of Jaime to Carmelita was valid and existing. (YES)

RULING

The certification to be issued by the Local Civil Registrar 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. Such certification shall be sufficient proof of lack or absence of record as stated in Section 28, Rule 132 of the Rules of Court. Here, the testimony of the representative from the Office of the Local Civil Registrar of San Juan, Ms. Perlita Mercader, stated that they cannot locate the logbook due to the fact that the person in charge of the said logbook had already retired. This belies the claim that all efforts to locate the logbook or prove the material contents therein, had been exerted. Moreover, the absence of the logbook is not conclusive proof of non-issuance of Marriage License No. 2770792. It can also mean, as we believed true in the case at bar, that the logbook just cannot be found. In the absence of showing of diligent efforts to search for the said logbook, the Court cannot easily accept that absence of the same also means nonexistence or falsity of entries therein.

Finally, the rule is settled that every intendment of the law or fact leans toward the validity of the marriage, the indissolubility of the marriage bonds. The courts look upon this presumption with great favor. It is not to be lightly repelled; on the contrary, the presumption is of great weight. The Court is mindful of the policy of the 1987 Constitution to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family. Thus, any doubt should be resolved in favor of the validity of the marriage.

SYED AZHAR ABBAS, *petitioner*, -versus- GLORIA GOO ABBAS, *respondent.*
G.R. No. 183896, THIRD DIVISION, January 30, 2013, VELASCO, JR., *J.*

A marriage is generally void ab initio if celebrated without a marriage license. Here, the marriage between Syed and Gloria without the requisite marriage license should be declared null and void.

FACTS

Syed Azhar Abbas, a Pakistani, decided to stay in the Philippines two (2) years after meeting Gloria Goo Abbas, a Filipina. While Syed was staying at the house of Gloria's mother in Manila, Gloria's mother arrived with two (2) men. Syed underwent a "ceremony" as a requirement for his stay in the Philippines. They signed a document, which Syed learned later on was a "marriage certificate". Upon investigation, Syed discovered that the marriage license was procured in Carmona, Cavite, where neither Syed nor Gloria resided. Likewise, the marriage license was issued under a different name, and that no marriage license was ever issued for Syed and Gloria per certification of the Municipal Civil Registrar of Carmona, Cavite.

ISSUE

Whether or not the marriage between Syed and Gloria should be declared *void ab initio* based on the lack of marriage license. (YES)

RULING

As the marriage of Gloria and Syed was solemnized on January 9, 1993, Executive Order No. 209, or the Family Code of the Philippines, is the applicable law. The pertinent provisions that would apply to this particular case are Articles 3, 4 and 35(3), which read as follows: Art. 3. The formal requisites of marriage are: (1) Authority of the solemnizing officer; (2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and (3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration

that they take each other as husband and wife in the presence of not less than two witnesses of legal age. 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. Art. 35. The following marriages shall be void from the beginning: x x x x (3) Those solemnized without a license, except those covered by the preceding Chapter.

A marriage is generally *void ab initio* if celebrated without a marriage license. Here, the marriage between Syed and Gloria without the requisite marriage license should be declared null and void.

A certification issued by the civil registrar enjoyed probative value, as his duty was to maintain records of data relative to the issuance of a marriage license. The certification likewise enjoys the presumption of regularity, and such presumption may only be rebutted upon proof of the claimant that no diligent search was made or that the certification did not categorically state that no such marriage license was made or found. In this case, not only did Gloria fail to explain why she procured a marriage license in Carmona, Cavite, where neither party resides. There is also proof that diligent search was made by the Municipal Civil Registrar to find Syed and Gloria's marriage license since they were able to trace the marriage license written at the marriage certificate, albeit registered in another couple's names.

OSCAR P. MALLION, *petitioner*, -versus- EDITHA ALCANTARA, *respondent.*
G.R. No. 141528, SECOND DIVISION, October 31, 2006, AZCUNA, *J.*

Res judicata as a bar by prior judgment obtains in the present case. Res judicata is defined as "a matter adjudged; a thing judicially acted upon or decided; refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit."

FACTS

In 1995, petitioner Oscar Mallion filed a petition before the San Pablo City RTC (Civil Case No. SP 4341-95) seeking a declaration of nullity of his marriage to respondent alleging his wife's psychological incapacity. The case was dismissed upon the finding that petitioner failed to adduce preponderant evidence to warrant the grant of the relief he is seeking. In 1999, Oscar filed another petition for declaration of nullity of marriage, this time alleging that his marriage with respondent Edith Alcantara (Edith) was null and void due to the fact that it was celebrated without a valid marriage license. For her part, respondent filed an answer with a motion to dismiss, praying for the dismissal of the petition on the ground of res judicata and forum shopping. On the other hand, because there is no identity as to the cause of action, petitioner claims that res judicata does not lie to bar the second petition.

ISSUE

Whether or not a final judgment denying a petition for declaration of nullity of marriage on the ground of psychological incapacity bars a subsequent petition for declaration of nullity on the ground of lack of marriage license. (YES)

RULING

Res judicata as a bar by prior judgment obtains in the present case. Res judicata is defined as "a matter adjudged; a thing judicially acted upon or decided; refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit."

The instant case is premised on the claim that the marriage is null and void because no valid celebration of the same took place due to the alleged lack of a marriage license. In Civil Case No. SP 4341-95, however, petitioner impliedly conceded that the marriage had been solemnized and celebrated in accordance with law. Petitioner is now bound by this admission. The alleged absence of a marriage license which petitioner raises now could have been presented and heard in the earlier case. Suffice it to state that parties are bound not only as regards every matter offered and received to sustain or defeat their claims or demand but as to any other admissible matter which might have been offered for that purpose and of all other matters that could have been adjudged in that case.

Petitioner forgets that he is simply invoking different grounds for the same cause of action. In both petitions, petitioner has the same cause - the declaration of nullity of his marriage to respondent. What differs is the ground upon which the cause of action is predicated. Litigants are provided with the options on the course of action to take in order to obtain judicial relief. Once an option has been taken and a case is filed in court, the parties must ventilate all matters and relevant issues therein. The losing party who files another action regarding the same controversy will be needlessly squandering time, effort and financial resources because he is barred by law from litigating the same controversy all over again. Having expressly and impliedly conceded the validity of their marriage celebration, petitioner is now deemed to have waived any defects therein. For this reason, the Court finds that the present action for declaration of nullity of marriage on the ground of lack of marriage license is barred by the decision in Civil Case No. 4341-95.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- JOSE A. DAYOT, *Respondent*.
G.R. No. 175581, THIRD DIVISION, March 28, 2008, CHICO-NAZARIO,J.

For the exception in Article 76 to apply, ***it is necessary thereto that the man and the woman must have attained the age of majority, and that, being unmarried, they have lived together as husband and wife for at least five years.*** *It is indubitably established that* ***Jose and Felisa have not lived together for five years at the time they executed their sworn affidavit of cohabitation and contracted marriage.*** *Even the Republic admitted that Jose and Felisa started living together only in June 1986, or barely five months before the celebration of their marriage.*

It cannot be denied that the marriage between Jose and Felisa were celebrated ***without the formal requisite of a marriage license nor did Jose and Felisa meet the legal requirement in Article 76, that they should have lived together as husband and wife for at least five years,*** *so as to be excepted from the requirement of a marriage license.*

FACTS:

The records disclose that on November 24, 1986, Jose Dayot (Jose) and Felisa Tecson-Dayot (Felisa) were married at the Pasay City Hall. In lieu of a marriage license, Jose and Felisa **executed a sworn affidavit of marital cohabitation attesting that both of them had attained the age of maturity, and that being unmarried, they had lived together as husband and wife for at least five years.**

However, on July 7, 1993, Jose filed a Complaint for Annulment and/or Declaration of Nullity of Marriage with the Regional Trial Court of Biñan, Laguna (RTC). He contended that his marriage with Felisa was a sham claiming that no marriage ceremony was celebrated between the parties; **that he did not execute the sworn affidavit stating that he and Felisa had lived as husband and wife for at least five years**; and that his consent to the marriage was secured through fraud. According to Jose, he was introduced to Felisa in 1986, the same year when the marriage occurred. In her defense, Felisa denied Jose's allegations and defended the validity of their marriage.

The RTC ruled that based from the testimonies and evidence presented by both parties, the marriage celebrated between Jose and Felisa was valid. Likewise, the Court of Appeals (CA) did not accept Jose's assertion that his marriage to Felisa was void ab initio for the lack of a marriage license ruling that under Article 76 of the Civil Code, a marriage may be solemnized with the parties executing an affidavit of marriage between a man and a woman who have lived together as husband and wife for at least five years. Aggrieved, Jose filed a Motion for Reconsideration.

The CA granted Jose's motion and set aside its earlier decision. The appellate court relied on the ruling of the Supreme Court in ***Niñal vs Bayadog***. **The CA ratiocinated the importance of the five year continuous cohabitation period before they may avail of the exception in acquiring a marriage license under the Civil Code.**

ISSUE:

Whether or not the affidavit of marital cohabitation executed by Jose and Felisa does not affect the validity of their marriage (NO)

RULING:

Under the rules of statutory construction, exceptions, as a general rule, should be strictly but reasonably construed. For the exception in Article 76 to apply, **it is necessary thereto that the man and the woman must have attained the age of majority, and that, being unmarried, they have lived together as husband and wife for at least five years.**

It is indubitably established that **Jose and Felisa have not lived together for five years at the time they executed their sworn affidavit of cohabitation and contracted marriage.** Even the Republic admitted that Jose and Felisa started living together only in June 1986, or barely five months before the celebration of their marriage.

The insistence of the Republic that the falsity of the statements in the parties' affidavit will not affect the validity of the marriage since all the parties' affidavit will not affect the validity of marriage, since all the essential and formal requisites were complied with deserves scant consideration. It cannot be denied that the marriage between Jose and Felisa were celebrated **without the formal requisite of a marriage license nor did Jose and Felisa meet the legal requirement in Article 76, that they should have lived together as husband and wife for at least five years,** so as to be excepted from the requirement of a marriage license.

RODOLFO G. NAVARRO, *Complainant*, -versus- JUDGE HERNANDO C. DOMAGTOY, *Respondent*.
A.M. NO. MTJ-96-1088, SECOND DIVISION, July 19 1996, ROMERO,J.

Article 41 of the Civil Code clearly provides that ***the spouse present must institute a summary proceeding as provided in the Family Code for the declaration of presumptive death of the absentee. Even if the spouse present has a well-founded belief that the absent spouse was already dead, a summary proceeding for the declaration of presumptive death is necessary*** *in order to contract a subsequent marriage. In the case at bar, Tagadan did not institute a summary proceeding for the declaration of his first wife's presumptive death. Absent this judicial declaration, he remains married to his first wife.*

As provided for in Article 8, a marriage can be held outside of the judge's chambers or courtroom only in the following instances: (1) at the point of death; (2) in remote places in accordance with Article 29; or (3) upon request of both parties in a sworn statement to this effect. ***There is no pretense that either Sumaylo or Del Rosario was at the point of death or in a remote place.*** *Moreover, the written request presented addressed to the respondent Judge was made by only one party.* ***Although Judge Domagtoy was not clothed with jurisdiction to solemnize the marriage, it does not affect the validity of the marriage.***

FACTS:

The complainant in this administrative case submitted evidence in relation to two specific acts committed by respondent Municipal Trial Court Judge Hernando Domagtoy, which, he contends, exhibits gross misconduct as well as inefficiency in office and ignorance of the law.

First, it is claimed that respondent judge solemnized the wedding between Gaspar A. Tagadan and Arlyn F. Borga, **despite the knowledge that the groom is merely separated from his wife.** Second, it is alleged **that he performed a marriage ceremony between Floriano Dador Sumaylo and Gemma G. Del Rosario outside his court's jurisdiction** on October 27, 1994.

In response to the charges against him, respondent judge claims that in the first act, **he merely relied on an Affidavit confirming the fact that Mr. Tagadan and his first wife had not seen each other for almost seven years**. With respect to the second charge, he maintains that in solemnizing the marriage between Sumaylo and Del Rosario, he did not violate Article 7, Paragraph 1 of the Family Code which states that marriage may be solemnized by any member of the judiciary within the court's jurisdiction and that Article 8 thereof applies to the case in question.

ISSUE:

Whether or not Judge Domagtoy showed gross misconduct as well as inefficiency in office and ignorance of the law in solemnizing the two marriages (YES)

RULING:

With regard to the first act, Judge Domagtoy's assertions that a joint affidavit is sufficient proof of the presumptive death of Tagadan's first wife is without merit. Article 41 of the Civil Code clearly provides that **the spouse present must institute a summary proceeding as provided in the Family Code for the declaration of presumptive death of the absentee**. **Even if the spouse present has a well-founded belief that the absent spouse was already dead, a summary**

proceeding for the declaration of presumptive death is necessary in order to contract a subsequent marriage. In the case at bar, Tagadan did not institute a summary proceeding for the declaration of his first wife's presumptive death. Absent this judicial declaration, he remains married to his first wife. Thus, the second marriage contracted by Tagadan is bigamous and void.

The second issue involves the solemnization of a marriage outside the jurisdiction of Judge Domagtoy. As provided for in Article 8, a marriage can be held outside of the judge's chambers or courtroom only in the following instances: (1) at the point of death; (2) in remote places in accordance with Article 29; or (3) upon request of both parties in a sworn statement to this effect. **There is no pretense that either Sumaylo or Del Rosario was at the point of death or in a remote place.** Moreover, the written request presented addressed to the respondent Judge was made by only one party. **Although Judge Domagtoy was not clothed with jurisdiction to solemnize the marriage, it does not affect the validity of the marriage.**

The said acts performed by Judge Domagtoy shows his lack of comprehension of the law. Such neglect or gross ignorance is not allowed with lawyers much especially to the members of the judiciary who is presumed to know and understand the law.

ZENAIDA S. BESO, *Complainant*, -versus- JUDGE JUAN DAGUMAN, MCTC, Sta. Margarita-Tarangan-Pagsanjan, Samar, *Respondent*.
A.M. No. MTJ-99-1211, FIRST DIVISION, January 28, 2000, YNARES-SANTIAGO,J.

If the parties are: (1) ***at the point of death;*** *(2)* ***in a remote place;*** *or (3)* ***upon the request of both parties in writing in a sworn statement to this effect****, they do not need their marriage to be solemnized in the chambers of the judge or in open court, in the churchm or in the office of the consul-general, consul, or vice-consul.*

In this case, ***there is no pretense that either complainant Beso or her fiance Yman was at the point of death or in a remote place. Neither was there a sworn written request made by the contracting parties to respondent Judge that the marriage be solemnized outside his chambers or at a place other than his sala.*** *Based on the comments made by the respondent and the evidence, respondent Judge was* ***prompted more by urgency to solemnize the marriage because complainant was an overseas worker****.*

FACTS:

Complainant Zenaida Beso charges respondent Judge Daguman with Neglect of Duty and Abuse of Authority for solemnizing marriage outside of his jurisdiction between her and her then-fiance, Bernardito Yman (Yman).

In his comment, respondent Judge averred that the civil marriage of the complainant and Yman had to be solemnized though outside his territory as municipal Judge of Samar. He claims that complainant and her fiance went to his station in Sta. Margarita, Samar unannounced on August 28, 1997. They urgently requested the respondent Judge to solemnize their marriage because complainant said she must leave that same day to be able to fly from Manila for abroad as scheduled.

ISSUE:

Whether or not Judge Daguman may be held liable for solemnizing a marriage outside of his jurisdiction (YES)

RULING:

Article 8 of the Family Code gives the exception to the general rule that the marriage shall be solemnized in the chambers of the judge or in open court. If the parties are: (1) **at the point of death;** (2) **in a remote place;** or (3) **upon the request of both parties in writing in a sworn statement to this effect**, they do not need their marriage to be solemnized in the chambers of the judge or in open court, in the churchm or in the office of the consul-general, consul, or vice-consul.

In this case, **there is no pretense that either complainant Beso or her fiance Yman was at the point of death or in a remote place**. **Neither was there a sworn written request made by the contracting parties to respondent Judge that the marriage be solemnized outside his chambers or at a place other than his sala.** Based on the comments made by the respondent and the evidence, respondent Judge was **prompted more by urgency to solemnize the marriage because complainant was an overseas worker** who respondent realized deserved more than ordinary official attention under present Government policy.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- CRASUS L. IYOY, *Respondent*.
G.R. No. 152577, SECOND DIVISION, September 21, 2005, CHICO-NAZARIO,J.

*As it is worded, Article 26, paragraph 2, refers to a special situation wherein **one of the married couples is a foreigner who divorces his other Filipino spouse.** By its plain and literal interpretation, the said provision cannot be applied to the case of respondent Crasus and his wife Fely because **at the time Fely obtained her divorce, she was still a Filipino citizen.***

FACTS:

Respondent Crasus Iyoy filed before the Regional Trial Court (RTC) of Cebu City a Complaint for the declaration of nullity of marriage by respondent. It was alleged in the said complaint that respondent married Fely Ada Rosal-Iyoy (Fely) on December 16, 1961. As a result of their union, they had five children. In **1984**, **Fely left the Philippines** for the United States of America. **Barely a year after Fely left** for the United States, **respondent received a letter from her requesting that the sign the enclosed divorce papers but he disregarded the said request.** Sometime in **1985**, through letters from Fely addressed to their children, **respondent learned that Fely got married to an American** with whom he had a child. Respondent asserts that Fely's acts brought danger and dishonor to the family, and clearly demonstrated her psychological incapacity to perform the essential obligations of marriage. Respondent, likewise, alleged that Fely was hot tempered, a nagger, and extravagant. Such incapacity, being incurable and continuing, constitutes a ground for declaration of nullity of marriage under Article 36.

The RTC promulgated a judgment declaring the marriage of respondent and Fely null and void ad initio finding the latter psychologically incapacitated. Petitioner Republic filed an appeal with the Court of Appeals (CA) which affirmed the decision of the RTC. It used Article 26 of the Family Code which states that 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 the capacity to remarry under Philippine Law.

In this petition filed by the Republic, it asserts that abandonment by and sexual infidelity of respondent's wife do not constitute psychological incapacity and that the CA committed serious errors of law in ruling that Article 26, Paragraph 2 of the Family Code is inapplicable to the case at bar.

ISSUE:

(1) Whether or not respondent sufficiently proved his wife's psychological incapacity (NO)

(2) Whether or not Article 26, Paragraph 2 of the Family Code of the Philippines is applicable to the case at bar (NO)

RULING:

(1) The totality of evidence presented during trial is insufficient to support the finding of psychological incapacity of Fely. Psychological incapacity must be characterized by: (a) **gravity**; (b) **juridical antecedence**; and (c) **incurability**. Fely's hot-temper, nagging, and extravagance; her abandonment of respondent Crasus; her marriage to an American; and even her flaunting of her American family and her American surname, may have hurt and embarrassed respondent Crasus and the rest of the family. Nonetheless, the afore-described characteristics, behavior, and acts of Fely **do not satisfactorily establish a psychological or mental defect that is serious or grave, and which has been existence at the time of celebration of the marriage, and is incurable.**

(2) As it is worded, Article 26, paragraph 2, refers to a special situation wherein **one of the married couples is a foreigner who divorces his other Filipino spouse.** By its plain and literal interpretation, the said provision cannot be applied to the case of respondent Crasus and his wife Fely because **at the time Fely obtained her divorce, she was still a Filipino citizen.** At the time she filed for divorce, Fely was still a Filipino citizen, and pursuant to the nationality principle embodied in Article 15 of the Civil Code of the Philippines, she was still bound by Philippine laws on family rights and duties, status, condition, 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. Thus, Fely could not have valid obtained a divorce from respondent Crasus.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- CIPRIANO ORBECIDO III, *Respondent*.
G.R. No. 154380, FIRST DIVISION, October 5, 2005, QUISUMBING,J.

The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship at the time a valid divorce obtained abroad by the alien spouse *capacitating the latter to remarry.*

In this case, when Cipriano's wife was naturalized as an American citizen, there was still a valid marriage that has been celebrated between her and Cipriano. However, the naturalized alien wife subsequently obtained a valid divorce capacitating her to remarry. Clearly, the two elements of Article 26, Paragraph 2 are present in this case. Thus, Cipriano, the "divorces" Filipino spouse, should be allowed to remarry.

FACTS:

Cipriano Orbecido III (Respondent) married Lady Myros Villanueva on May 24, 2981. Their marriage was blessed with two children. In 1986, respondent's wife left for the United States bringing along their son. A few years later, **respondent discovered that his wife has been naturalized as an American Citizen.**

Sometime in 2000, **respondent learned from his son that his wife had** obtained a divorce decree and then married a certain Innocent Stanley. He thereafter filed with the trial court a petition for authority to remarry invoking Paragraph 2 of Article 26 of the Family Code. No opposition was filed and thus, the Court granted his petition. The Republic sought reconsideration but it was denied. Hence, this petition.

ISSUE:

Whether or not respondent can remarry under Article 26 of the Family Code (YES)

RULING:

In ruling this case, it is important to consider the legislative intent of this provision. If the Court is to give meaning to the legislative intent to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who,after obtaining a divorce is no longer married to the Filipino spouse, then the instant case must be deemed as coming within the contemplation of Paragraph 2 of Article 26. The two elements of Article 26, Paragraph 2 are: (1) **there is a valid marriage that has been celebrated between a Filipino citizen and a foreigner;** and (2) **a valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.**

The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship at the time a valid divorce obtained abroad by the alien spouse capacitating the latter to remarry.

In this case, when Cipriano's wife was naturalized as an American citizen, there was still a valid marriage that has been celebrated between her and Cipriano. However, the naturalized alien wife subsequently obtained a valid divorce capacitating her to remarry. Clearly, the two elements of Article 26, Paragraph 2 are present in this case. Thus, Cipriano, the "divorces" Filipino spouse, should be allowed to remarry.

GERBERT R. CORPUZ, *Petitioner*, -versus-DAISYLYN TIROL STO. TOMAS and THE SOLICITOR GENERAL, *Respondent*.
G.R. No. 186571, THIRD DIVISION, August 11, 2010, BRION,J.

As the RTC correctly stated, the provision was included to avoid the absurd situation where the Filipino spouse remains married to the alien spouse, who, after obtaining a divorce, is no longer married to the Filipino spouse. 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.*

Given the rationale and intent behind the enactment, ***only the Filipino spouse can invoke the second paragraph of Article 26 of the Family Code; the alien spouse can claim no right under this provision.***

FACTS:

Petitioner Gerbert Corpuz (Gerbert) was a **former Filipino citizen who acquired Canadian citizenship through naturalization on November 29, 2000**. **On January 18, 2005, Gerbert married respondent Daisylyn Sto. Tomas,** a Filipina, in Pasig City. Due to work and other professional commitments, Gerbert left for Canada soon after the wedding. He returned to thePhilippines sometime in April 2005 to surprise Daisylyn, but was shocked to discover that his wife was having an affair with another man. **Gerbert returned to Canada and filed a petition for divorce which was granted** by the Canadian Supreme Court on December 8, 2005 and took effect a month later.

Two years after the divorce, Gerbert has found another Filipina to marry. Gerbert went to the Pasig City Civil Registry Office and registered the Canadian divorce decree on his and Daisylyn's marriage certificate. Despite the registration of the divorce decree, an official of the National Statistics Office (NSO) informed Gerbert that the marriage between him and Daisylyn still subsists under Philippine law and to be enforceable, the foreign divorce decree must first be judicially recognized by a competent Philippine court.

Accordingly, Gerbert filed a petition for judicial recognition offoreign divorce and/or declaration of marriage as dissolved with the Regional Trial Court of Laoag City (RTC). However, the RTC denied Gerbert's petition concluding that **Gerbert was not the proper party to institute the action for judicial recognition of the foreign divorce decree as he is a naturalized Canadian citizen.** It ruled that only the Filipino spouse can avail of the remedy, under the second paragraph of Article 26 of the Family Code.

ISSUE:

Whether or not Article 26, Paragraph 2 of the Family Code extends to aliens the right to petition a court of this jurisdiction for the recognition of a foreign divorce decree (NO)

RULING:

The alien spouse can claim no right under the second paragraph of Article 26 of the Family Code as the substantive right it establishes is in favor of the Filipino spouse. As the RTC correctly stated, the provision was included to avoid the absurd situation where the Filipino spouse remains married to the alien spouse, who, after obtaining a divorce, is no longer married to the Filipino spouse. 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.

Given the rationale and intent behind the enactment, the RTC was correct in limiting the applicability of the provision for the benefit of the Filipino spouse. In other words, **only the Filipino spouse can invoke the second paragraph of Article 26 of the Family Code; the alien spouse can claim no right under this provision.**

HERMINIA BORJA-MANZANO, *Petitioner,* -versus- JUDGE ROQUE R. SANCHEZ, MTC, Infanta, Pangasinan, *Respondent.*
A.M. No. MTJ-00-1329, FIRST DIVISION, March 8, 2001, DAVIDE, JR,J.

*For this **Article 34 of the Family Code** to apply, **the following requisites must concur:***

(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 the parties must be present at the time of marriage;
(4) The parties must execute an affidavit stating that they have lived together for at least five years; and
(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.

However, in this case, not all of these requirements are present. The fact that Manzano and Payao ***had been living apart from their respective spouses for a long time is immaterial as their marriage bonds with their legal spouses have not been severed.*** *Respondent judge knew or should have known that* ***a subsisting previous marriage is a diriment impediment which would make the subsequent marriage null and void.***

FACTS:

Complainant avers **that she was the lawful wife of the late David Manzano** (Manzano), **having been married to him on May 21, 1966.** However, on **March 22, 1993, her husband contracted another marriage with one Luzviminda Payao (Payao) before respondent Judge.** When respondent Judge solemnized said marriage, he knew or ought to know that it was void and bigamous, as the marriage contract clearly stated that **both contracting parties were "separated"**.

Respondent Judge, on the other hand, claims in his Comment that when he officiated the marriage between Manzano and Payao he did not know that Manzano was legally married. What he knew was that the two had been living together as husband and wife for seven years already without the benefit of marriage, as manifested in their joint affidavit.

ISSUE:

Whether or not the respondent judge may be held administratively liable for solemnizing the marriage of David Manzano who is validly married with petitioner (YES)

RULING:

Article 34 of the Family Code provides a situation in which a marriage license is no longer 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. For this provision to apply, **the following requisites must concur:**

(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 the parties must be present at the time of marriage;

(4) The parties must execute an affidavit stating that they have lived together for at least five years; and
(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.

However, in this case, not all of these requirements are present. The fact that Manzano and Payao **had been living apart from their respective spouses for a long time is immaterial as their marriage bonds with their legal spouses have not been severed.** Respondent judge knew or should have known that **a subsisting previous marriage is a diriment impediment which would make the subsequent marriage null and void.** Respondent judge cannot deny the knowledge of Manzano's and Payao's subsisting previous marriages as it was clearly stated in their affidavits.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- MARELYN TANEDO MANALO, *Respondent*.
G.R. No. 221029, EN BANC, April 24, 2018, PERALTA,J.

Paragraph 2 of Article 26 speaks of a divorce validly obtained abroad by the alien spouse capacitating him or her to remarry. Based on a clear and plain reading of the provision, ***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.*** *As such, the Court is bound by the words of the statute.*

The provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. ***Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: The Filipino spouse will effectively be without a husband or wife.***

FACTS:

Respondent Marelyn Manalo was previously married in the Philippines to a Japanese national named Yoshino Minoro. However, a case for divorce was filed by the respondent in Japan and after due proceedings, a divorce decree was rendered by the Japanese Court. By virtue of this judgment, respondent and her divorced Japanese husband are no longer living with each other. On January 10, 2012, respondent filed a petition for cancellation of entry of marriage in Registry of San Juan, Metro Manila, by virtue of divorce rendered by a Japanese Court.

The trial court denied the petition for lack of merit ruling that the divorce obtained by the respondent in Japan cannot be recognized in pursuant of Article 15 of the Civil Code. They held that the Philippine law does not afford Filipinos the right for a divorce, whether they are in the country or living abroad, if they are married to Filipino or to foreigners, or if they celebrated marriage in the Philippines or in another country.

On appeal, the Court of Appeals overturned the decision of the trial court holding that Article 26 of the Family Code of the Philippines is applicable even if it was Manalo who filed for divorce against her Japanese husband because the decree they obtained makes the latter no longer married to the former, thereby capacitating him to remarry.

ISSUE:

Whether or not the divorce obtained by the respondent abroad should be recognized in the Philippines (YES)

RULING:

Paragraph 2 of Article 26 speaks of a divorce validly obtained abroad by the alien spouse capacitating him or her to remarry. Based on a clear and plain reading of the provision, **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.** As such, the Court is bound by the words of the statute.

The purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in a country where it was rendered, is no longer married to the Filipino spouse. The provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. **Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: The Filipino spouse will effectively be without a husband or wife.** A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstances as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. 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.

On the contrary, there is no real and substantial difference between a Filipino who initiated foreign divorce proceedings and a Filipino who obtained a divorce decree upon the instance of his or her alien spouse. In the eyes of the Philippine and foreign laws, both are considered as Filipinos who have the same rights and obligations in an alien land. The circumstances surrounding them are alike. Were it not for Paragraph 2 of Article 26, both are still married to their foreigner spouses who are no longer their wives/husbands. Hence, **to make a distinction between them based merely on the superficial difference of whether they initiated the divorce proceedings or not is utterly unfair.** Indeed, the treatment gives undue favor to one and unjustly discriminate against the other**.**

VOID MARRIAGES

AMELIA GARCIA-QUIAZON, JENNETH QUIAZON and MARIA JENNIFER QUIAZON, *Petitioners*, -versus- MA. LOURDES BELEN, for and in behalf of MARIA LOURDES ELISE QUIAZON, *Respondent*.

G.R. No. 189121, SECOND DIVISION, July 31, 2005, PEREZ,J.

In a void marriage, it was though no marriage has taken place, thus, it cannot be the source of rights. ***Any interested party may attack the marriage directly or collaterally. A void marriage can be questioned even beyond the lifetime of the parties to the marriage.***

Unlike in voidable marriages which must be questioned during the lifetime of the parties and not after the death of the either, void marriages can be questioned even after the death of either party.

FACTS:

On September 12, 1994, Maria Lourdes Elise Quiazon (Respondent), represented by her mother, Ma. Lourdes Belen (Lourdes), filed a Petition for Letters of Administration before the Regional Trial Court (RTC) of Las Piñas City. Respondent claims that she is the natural child of Eliseo Quiazon (Eliseo) having been conceived and born at the time when her parents were both capacitated to marry each other. Insisting on the legal capacity of Eliseo and Lourdes to marry, **Elise impugned the validity of Eliseo's Marriage to Amelia by claiming that it was bigamous for having been contracted during the subsistence of the latter's marriage with one Filipito Sandico (Filipito).**

The petition was opposed by Amelia Garcia-Quiazon (Amelia), whom Eliseo was married, and her two children with Eliseo.

The RTC directed the issuance of Letters of Administration to respondent upon posting the necessary bond. The Court of Appeals affirmed the decision of the trial court in its entirety validating the findings of the RTC that respondent was able to prove that Eliseo and Lourdes lived together as husband and wife by establishing a common residence in Las Piñas City.

ISSUE:

Whether or not the Court of Appeals erred in declaring that

RULING:

Contrary to the position taken by the petitioners, the existence of a previous marriage between Amelia and Filipito was sufficiently established by no less than the Certificate of Marriage issued by the Diocese of Tarlac and signed by the officiating priest of the Parish of San Nicolas de Tolentino in Capas, Tarlac. This piece of evidence proves that the subsequent marriage between Eliseo and Amelia was void and bigamous as Amelia was previously validly married.

In a void marriage, it was though no marriage has taken place, thus, it cannot be the source of rights. **Any interested party may attack the marriage directly or collaterally. A void marriage can be questioned even beyond the lifetime of the parties to the marriage.**

It must be pointed out that at the time of the celebration of the marriage of Eliseo and Amelia, the law in effect was the Civil Code, and not the Family Code, making the ruling in Niñal v. Bayadog applicable four-square to the case at hand. In Niñal, the Court, in no uncertain terms, allowed therein petitioners to file a petition for declaration of nullity of their father's marriage to herein respondent after the death of their father. The Court ruled that **unlike in voidable marriages which must be questioned during the lifetime of the parties and not after the death of the either, void marriages can be questioned even after the death of either party.**

RENATO A. CASTILLO, *Petitioner*, -versus- LEA P. DE LEON CASTILLO, *Respondent*.
G.R. No. 189607, FIRST DIVISION, April 18, 2016, SERENO,J.

The validity of a marriage and all its incidents ***must be determined in accordance with the law in effect at the time of its celebration.*** *In this case,* ***the law in force at the time respondent contracted both marriages was the Civil Code. The requirement of a judicial decree of nullity does not apply to marriages that were celebrated before the effectivity of the Family Code.***

FACTS:

On May 25, 1972, respondent Lea De Leon Castillo (Respondent) married Benjamin Bautista (Benjamin). However, the marriage lacked a marriage license. On January 6, 1979, respondent married again, this time to the petitioner Renato Castillo (Renato).

On May 28, 2001, Renato filed before the RTC a Petition for Declaration of Nullity of Marriage, praying that his marriage to Lea be declared void due to her subsisting marriage to Benjamin and her psychological incapacity. On January 3, 2002, respondent filed an action to declare her first marriage to Benjamin void.

The Regional Trial Court declared the marriage between Renato and petitioner null and void ab initio on the ground that it was a bigamous marriage under Article 41 of the Family Code holding that the fact that Lea's marriage to Benjamin was subsisting when she married Renato. The Court of Appeals, however, reversed the decision of the lower court and upheld the validity of the marriage of respondent and Renato. They ruled that since both marriages were solemnized before the effectivity of the Family Code, the Civil Code is the applicable law. In addition, the Civil Code does not state that a judicial decree is necessary in order to establish the nullity of a marriage.

ISSUE:

Whether or not the marriage between Renato and the respondent is void ab initio (NO)

RULING:

The validity of a marriage and all its incidents **must be determined in accordance with the law in effect at the time of its celebration.** In this case, **the law in force at the time respondent contracted both marriages was the Civil Code.**

While it is true that under the Family Code, a judicial declaration of absolute nullity of marriage is required where the nullity of a previous marriage is invoked for purposes of contracting a second marriage, the same cannot be said with the Civil Code. **The requirement of a judicial decree of nullity does not apply to marriages that were celebrated before the effectivity of the Family Code.**

FEDERICO C. SUNTAY, *Petitioner*, -versus- ISABEL COJUANGCO-SUNTAY and HON. GREGORIO S. SAMPAGA, Presiding Judge, Branch 78, Regional Trial Court, Malolos, Bulacan, *Respondents*.
G.R. No. 132524, SECOND DIVISION, December 29, 1998, MARTINEZ,J.

The fundamental distinction between void and voidable marriages is that void marriage is deemed never to have taken place at all. *The effects of void marriages, with respect to property relations of the spouses are provided for under Article 144 of the Civil Code.* ***Children born of such marriages who are called natural children by legal fiction have the same status, rights and obligations as acknowledged natural children under Article 89 irrespective of whether or not the parties to the void marriage are in good faith or in bad faith.***

FACTS:

On July 9, 1958, Emilio Aguinaldo Suntay (Son of the petitioner) and Isabel Cojuangco (Cojuangco-Suntay) were married in the Portuguese Colony of Macao and out of this marriage, four children were born namely Margarita Guadalupe, Isabel Aguinaldo, and Emilio Aguinaldo.

However, after four years of marriage, their relationship soured when Cojuangco-Suntay filed a criminal case of parricide against Emilio. Emilio was acquitted but in response, he filed **a complaint for legal separation** which was granted by the Court of First Instance (CFI). The CFI held that the fact that Emilio was sufferring from the mental illness of schizophrenia rendered him psychological incapacitated to perform the basic obligations of marriage thus, **the CFI rendered the marriage null and void.**

Emilio died before his mother and when Cristina Aguinaldo-Suntay (Cristina) died, Cojuangco-Suntay filed before the Regional Trial Court (RTC) of Malolos, Bulacan, a petition for the issuance of letters of administration over Cristina's estate. Federico Suntay (Petitioner), husband of Cristina, opposed the motion and **argued that Cojuangco-Suntay's children with Emilio were illegitimate as a result of their marriage being declared null and void.**

ISSUE:

Whether or not the children of Cojuangco-Suntay and Emilio are illegitimate (NO)

RULING:

The fundamental distinction between void and voidable marriages is that void marriage is deemed never to have taken place at all. The effects of void marriages, with respect to property relations of the spouses are provided for under Article 144 of the Civil Code. **Children born of such marriages who are called natural children by legal fiction have the same status, rights and obligations as acknowledged natural children under Article 89 irrespective of whether or not the parties to the void marriage are in good faith or in bad faith.**

On the other hand, 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. Juridically, the annulment of a marriage dissolves the special contract as if it had never been entered into but the law makes express provisions to prevent the effects of the marriage from being totally wiped out. **The status of**

children born in voidable marriages is governed by the second paragraph of Article 89 which provides that:

> **Children conceived of voidable marriages before the decree of annulment shall be considered legitimate; and children conceived thereafter shall have the same status, rights and obligations as acknowledged natural children**, and are also called natural children by legal fiction.

Petitioner, however, strongly insists that the dispositive portion of the CFI decision has categorically declared that the marriage of respondent Isabel's parents is null and void and that the legal effect of such declaration is that the marriage from its inception is void and the children born out of said marriage is illegitimate. Such argument cannot be sustained. Articles 80, 81, 82 and 83 of the New Civil Code classify what marriages are void while Article 85 enumerates the causes for which a marriage may be annulled.

ENGRACE NIÑAL for Herself and as Guardian ad Litem of the minors BABYLINE NIÑAL, INGRID NIÑAL, ARCHIE NIÑAL, and PEPITO NIÑAL, JR., *Petitioners,* -versus- NORMA BAYADOG, *Respondent.*
G.R. No. 133778, FIRST DIVISION, March14, 2000, YNARES-SANTIAGO,J.

Voidable and void marriages are not identical. A voidable marriage cannot be assailed collaterally except in a direct proceeding while a void marriage can be attacked collaterally. Consequently, void marriages can be questioned even after the death of either party but voidable marriages 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.*

The marriage between Pepito and Norma lacks the requisite of a marriage license. To compensate for this fact, ***they executed an affidavit*** *wherein they state that they have been cohabiting as husband and wife, without legal impediment to marry, for more than 5 years. However, it can be gleaned from the records that* ***Pepito and Norma married only one year and eight months after the death of the former's first wife.*** *Thus, it can be said that the affidavit executed by Pepito and Norma is false and as such,* ***their marriage must be declared void for lacking a marriage license.***

FACTS:

Pepito Niñal (Pepito) was married to Teodulfa Bellones on September 26, 1974. Out of their marriage were born herein petitioners. Teodulfa was shot by Pepito resulting in her death on April 24, 1985. One year and 8 months thereafter, **Pepito and respondent Norma Bayadog (Norma) got married without a marriage license.** In lieu thereof, **Pepito and Norma executed an affidavit stating that they had lived together as husband and wife for at least five years and were thus exempt from securing a marriage license.** On February 19, 1997, Pepito died in a car accident. After their father's death, petitioners filed a petition for declaration of nullity of the marriage of Pepito to Norma alleging that the said marriage was void for lack of a marriage license.

In response, Norma filed a motion to dismiss on the ground that petitioners have no cause of action since they are not among the persons who would file an action for annulment of marriage under Article 47 of the Family Code.

The Regional Trial Court (RTC) ruled that petitioners should have filed the action to declare null and void their father's marriage to respondent before his death,applying by analogy Article 47 of the Family Code which enumerates the time and the persons who could initiate an action for annulment of marriage.

ISSUE:

(1) Whether or not the petitioners may question the validity of the marriage of Pepito and Norma (YES)

(2) Whether or not the marriage between Pepito and Norma is valid (NO)

RULING:

(1) The lower court erred in applying Article 47 of the Family Code. Article 47 pertains to the grounds, periods and persons who can file an annulment suit, not a suit for declaration of nullity of marriage. The Code is silent as to who can file a petition to declare the nullity of a marriage. **Voidable and void marriages are not identical.** A marriage that is annulable is valid until otherwise declared by the court; whereas a marriage that is void ab initio is considered as having never to have taken place and cannot be the source of rights. The first can be generally ratified or confirmed by free cohabitation or prescription while the other can never be ratified.

A voidable marriage cannot be assailed collaterally except in a direct proceeding while a void marriage can be attacked collaterally. Consequently, void marriages can be questioned even after the death of either party but voidable marriages 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.

(2) The marriage between Pepito and Norma lacks the requisite of a marriage license. To compensate for this fact, **they executed an affidavit** wherein they state that they have been cohabiting as husband and wife, without legal impediment to marry, for more than 5 years. However, it can be gleaned from the records that **Pepito and Norma married only one year and eight months after the death of the former's first wife.** Thus, it can be said that the affidavit executed by Pepito and Norma is false and as such, **their marriage must be declared void for lacking a marriage license.**

DOROTHY B. TERRE, *complainant* -versus- ATTY. JORDAN TERRE, *respondent.*
AC No. 2349, EN BANC, 03 July 1992, PER CURIAM.

For purposes of determining whether a person is legally free to contract a second marriage, a judicial declaration that the first marriage was null and void ab initio is essential. In this case, Atty. Terre's claim that he believed in good faith that his prior marriage with Dorothy was void ab initio and no action for a judicial declaration of nullity was necessary is a spurious defense.

FACTS:

Dorothy B. Terre charged Atty. Jordan Terre with grossly immoral conduct on the ground that he contracted a second marriage and lived with one Helina Malicdem other than Dorothy while his prior marriage with the latter was still subsisting.

Atty. Terre averred that he contracted his marriage with Dorothy in 1977 upon her representation that she was single. Upon learning that Dorothy was already married to a certain Merlito Bercenilla in 1968, he contracted marriage with Helina because he believed in good faith that his marriage to Dorothy was void ab initio.

Prior to her marriage with Atty. Terre, Dorothy stated that Atty. Terre explained to her that her marriage with Merlito was void ab initio, hence there was no need for a court order to declare it as such.

ISSUE:

Whether or not the subsequent marriage of Atty. Terre was valid. (NO)

RULING:

Atty. Terre's claim that he believed in good faith that his prior marriage with Dorothy was void ab initio and no action for a judicial declaration of nullity was necessary is a spurious defense.

Jordan Terre, being a lawyer, knew or should have known that such an argument ran counter to the prevailing case law of this court which holds that for purposes of determining whether a person is legally free to contract a second marriage, a judicial declaration that the first marriage was null and void ab initio is essential.

When Atty. Terre contracted marriage with Helina, his prior marriage with Dorothy was still subsisting and no judicial action was initiated, or any judicial declaration obtained as to the nullity of such prior marriage of Atty. Terre with Dorothy.

YASUO IWASAWA, *petitioner*, **-versus- FELISA CUSTODIO GANGAN (a.k.a FELISA GANGAN ARAMBULO, and FELISA GANGAN IWASAWA) and the LOCAL CIVIL REGISTRAR OF PASAY CITY,** *respondents.*
GR No. 204169, FIRST DIVISION, 11 September 2013, VILLARAMA, JR., J.

A judicial declaration of nullity is required before a valid subsequent marriage can be contracted; or else, what transpires is a bigamous marriage, which is void from the beginning as provided in Article 35 (4) of the Family Code of the Philippines. In this case, the documentary exhibits taken together establish the nullity of the marriage of Yasuo to Felisa on the ground that their marriage is bigamous.

FACTS:

Yasuo Iwasawa, a Japanese national, filed a petition for declaration of nullity of his marriage with Felisa Custodio Gangan for being bigamous, based on Article 35 (4) in relation to Article 41 of the Family Code.

When Yasuo met Felisa in the Philippines, the latter introduced herself as "single" and "has never been married before". Eventually, they got married and resided in Japan. Sometime after, Felisa became depressed and it was then when Yasuo learned that Felisa was previously married to one Raymond Arambulo who already passed away.

ISSUE:

Whether or not the marriage of Yasuo to Felisa is void ab initio for being bigamous. (YES)

RULING:

This Court has consistently held that a judicial declaration of nullity is required before a valid subsequent marriage can be contracted; or else, what transpires is a bigamous marriage, which is void from the beginning as provided in Article 35 (4) of the Family Code of the Philippines.

In this case, the documentary exhibits taken together establish the nullity of the marriage of Yasuo to Felisa on the ground that their marriage is bigamous. The exhibits proved the following facts: (1) that Felisa married Raymond in 1194; (2) that Felisa contracted a second marriage with Yasuo in 2002; (3) there was no judicial declaration of nullity of Felisa's prior marriage at the time she married Yasuo; (4) and the second marriage of Felisa to Yasuo is bigamous.

MINORU FUJIKI, *petitioner* **-versus- MARIA PAZ GALELA MARINAY, SHINICHI MAEKARA, LOCAL CIVIL REGISTRAR OF QUEZON CITY, and THE ADMINISTRATOR AND CIVIL REGISTRAR GENERAL OF THE NATIONAL STATISTICS OFFICE,** respondents.
GR No. 196049, SECOND DIVISION, 26 June 2013, CARPIO, J.

While the Philippines does not have a divorce law, Philippine courts may, however, recognize a foreign divorce decree under the second paragraph of Article 26 of the Family Code, to capacitate a Filipino citizen to remarry when his or her foreign spouse obtained a divorce decree abroad. In this case, there is therefore no reason to disallow Fujiki to simply prove as a fact the Japanese Family Court judgment nullifying the marriage between Marinay and Maekara on the ground of bigamy.

FACTS:

Minoru Fujiki, a Japanese national, married Maria Marinay in the Philippines in 2004. However, they eventually lost contact with each other. In 2008, Marinay married Shinichi Maekara, another Japanese, without her prior marriage with Fujiki being dissolved. Marinay allegedly suffered physical abuse from Maekara and so she left the latter and reestablished her relationship with Fujiki.

Fujiki helped Marinay obtain a judgment from a family court in Japan which declared the marriage between Marinay and Maekara void for being bigamous. Subsequently, Fujiki filed a petition before the RTC titled "Judicial Recognition of Foreign Judgment (or Decree of Absolute Nullity of Marriage)" and prayed that the Japanese Family Court judgment be recognized in the Philippines and the subsequent marriage of Fujiki to Maekera be declared void ab initio under Articles 35 (4) and 41 of the Family Code.

The RTC denied the petition stating that the petition was in gross violation of Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (AM No. 02-11-10-SC). It took the view that only "the husband or the wife", in this case either Maekara or Marinay, can file the petition to declare their marriage void, and not Fujiki.

ISSUE:

(1) Whether or not AM No. 02-11-10-SC is applicable in this case. (NO)
(2) Whether or not Fujiki, a husband of a prior marriage, can file a petition to recognize a foreign judgment nullifying the subsequent marriage between Marinay and Maekera on the ground of bigamy. (YES)

RULING:

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. 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 of Court. Philippine courts cannot presume to know the foreign laws under which the foreign judgment was rendered.

While the Philippines does not have a divorce law, Philippine courts may, however, recognize a foreign divorce decree under the second paragraph of Article 26 of the Family Code, to capacitate a Filipino citizen to remarry when his or her foreign spouse obtained a divorce decree abroad.

In this case, there is therefore no reason to disallow Fujiki to simply prove as a fact the Japanese Family Court judgment nullifying the marriage between Marinay and Maekara on the ground of bigamy. The Japanese Family Court judgment is fully consistent with Philippine public policy, as bigamous marriages are declared void from the beginning under Article 35 (4) of the Family Code.

REPUBLIC OF THE PHILIPPINES, *petitioner* **-versus- MERLINDA L. OLAYBAR,** *respondent.*
GR No. 189538, THIRD DIVISION, 10 February 2014, PERALTA, J.

In Fujiki v. Marinay, the Court held that a petition for correction or cancellation of an entry in the civil registry cannot substitute for an action to invalidate a marriage. A direct action is necessary 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. In this case, in allowing the correction of the subject certificate of marriage by cancelling the wife portion thereof, the trial court did not, in any way, declare the marriage void as there was no marriage to speak of.

FACTS:

Merlinda Olaybar requested from the National Statistics Office a Certificate of No Marriage (CENOMAR) as one of the requirements for her marriage with her boyfriend. Upon its receipt, she discovered she was already married to a certain Ye Son Sune in 2002. However, she denied having contracted marriage and claimed that she did not know the alleged husband. Her signature was also allegedly forged. Thus, she filed a Petition for Cancellation of Entries in the Marriage Contract, especially the wife portion thereof.

The Office of the Solicitor General argued that in directing the cancellation of the entries in the wife portion of the certificate of marriage, the RTC, in effect, declared the marriage void ab initio. Thus, the petition instituted by Merlinda was actually a petition for declaration of nullity of marriage in the guise of a Rule 108 proceeding which provides the procedure for cancellation or correction of entries in the civil registry.

ISSUE:

Whether or not the cancellation of "ALL THE ENTRIES IN THE WIFE PORTION OF THE ALLEGED MARRIAGE CONTRACT" is in effect declaring the marriage void ab initio (NO)

RULING:

In Fujiki v. Marinay, the Court held that a petition for correction or cancellation of an entry in the civil registry cannot substitute for an action to invalidate a marriage. A direct action is necessary 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.

In this case, with the testimonies and other evidence presented, the RTC held that Merlinda's signature in the marriage certificate was not hers and was forged. Therefore, it was established that no marriage was celebrated. On the contrary, aside from the certificate of marriage, no such evidence was presented to show the existence of marriage. In allowing the correction of the subject certificate of marriage by cancelling the wife portion thereof, the trial court did not, in any way, declare the marriage void as there was no marriage to speak of.

PSYCHOLOGICAL INCAPACITY

LEOUEL SANTOS, *petitioner* **-versus- THE HONORABLE COURT OF APPEALS AND JULIA ROSARIO BEDIA-SANTOS**, *respondents.*

GR No. 112019, EN BANC, 04 January 1995, VITUG, J.

Psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved. The factual settings in the case at bench, in no measure at all, can come close to the standards required to decree a nullity of marriage.

FACTS:

Leouel Santos married Julia Bedia on 20 September 1986. They lived with Julia's parents and eventually, Julia gave birth to a son. However, their relationship turned sour and it was in 1988 when Julia left for the United States despite Leouel's pleas to dissuade her.

Seven months after her departure, Julia called Leouel for the first time and promised to return home upon the expiration of her contract. She never did. When Leouel had the chance to visit the United States, he desperately tried to locate or somehow get in touch with Julia, but all efforts were to no avail.

Having failed to get Julia to come home, Leouel filed with the Regional Trial Court a complaint for "Voiding of Marriage Under Article 36 of the Family Code". He argued that the failure of Julia to return home, or at the very least to communicate with him for more than five years, are circumstances which clearly show her being psychologically incapacitated to enter married life.

ISSUE:

Whether or not the marriage should be declared void ab initio on the ground of psychological incapacity. (NO)

RULING:

Psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.

Psychological incapacity should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage, expressed by Article 68 of the Family Code. There is hardly any doubt that the intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.

The factual settings in the case at bench, in no measure at all, can come close to the standards required to decree a nullity of marriage.

REPUBLIC OF THE PHILIPPINES, *petitioner* **-versus- RODOLFO O. DE GRACIA,** *respondent.*
GR No. 171557, SECOND DIVISION, 12 February 2014, PERLAS-BERNABE, J.

Although expert opinions furnished by psychologists regarding the psychological temperament of parties are usually given considerable weight by the courts, the existence of psychological incapacity must still be proven by independent evidence. In this case, the psychological report does not explain in reasonable detail how Natividad's condition could be characterized as grave, deeply-rooted, and incurable within the parameters of psychological incapacity jurisprudence.

FACTS:

Rodolfo de Gracia and Natividad Rosalem were married in 1969. In 1998, Rodolfo filed a complaint for declaration of nullity of marriage, alleging that Natividad was psychologically incapacitated to comply with her essential marital obligations.

Rodolfo alleged that when he joined and trained with the army, Natividad left their conjugal home and sold their house without his consent. Then, she moved to another city where she lived with a certain Engineer Terez and bore him a child. After their cohabitation, Natividad contracted a second marriage with one Antonio Mondarez.

Upon submitting herself for psychiatric evaluation, Dr. Zalsos reported that both Rodolfo and Natividad were psychologically incapacitated to comply with the essential marital obligations. Natividad lacked willful cooperation of being a wife and a mother to her children while Rodolfo failed to perform his obligations as a husband, for having sired a son with another woman.

ISSUE:

Whether or not Natividad is psychologically incapacitated to comply with her essential marital obligations. (NO)

RULING:

There exists insufficient factual or legal basis to conclude that Natividad's emotional immaturity, irresponsibility, or even sexual promiscuity, can be equated with psychological incapacity. The psychological report does not explain in reasonable detail how Natividad's condition could be characterized as grave, deeply-rooted, and incurable within the parameters of psychological incapacity jurisprudence.

Although expert opinions furnished by psychologists regarding the psychological temperament of parties are usually given considerable weight by the courts, the existence of psychological incapacity must still be proven by independent evidence.

To the Court's mind, Natividad's refusal to live with Rodolfo and to assume her duties as wife and mother as well as her emotional immaturity, irresponsibility and infidelity do not rise to the level of psychological incapacity that would justify the nullification of the parties' marriage. Indeed, to be declared clinically or medically incurable is one thing; to refuse or be reluctant to perform one's duties is another.

CHI MING TSOI, *petitioner,* **-versus- COURT OF APPEALS and GINA LAO-TSOI,** *respondents.*
GR No. 119190, SECOND DIVISION, 16 January 1997, TORRES, JR., J.

One of the essential marital obligations under the Family Code is "To procreate children based on the universal principle that procreation of children through sexual cooperation is the basic end of marriage." Constant non-fulfillment of this obligation will finally destroy the integrity or wholeness of the marriage. In the case at bar, the senseless and protracted refusal of one of the parties to fulfill the above marital obligation is equivalent to psychological incapacity.

FACTS:

Chi Ming Tsoi and Gina Lao-Tsoi were married on 22 May 1988. On the night of their wedding day, they slept together on the same bed in the same room. According to Gina, they were supposed to have sexual intercourse, but Chi Ming Tsoi turned his back on her and went to sleep. It continually happened on the second, third and fourth nights.

When they had their honeymoon in Baguio City for four days, Chi Ming Tsoi distanced himself and there was still no attempt of sexual intercourse between them.

Because of this, they both submitted themselves for medical examinations. The result of Gina's physical examination was she was healthy, normal, and still a virgin. As for Chi Ming Tsoi, his penis was examined for the purpose of finding out whether he was impotent. The result showed that there was no evidence of impotency and he was capable of erection and of having sexual intercourse with a woman.

ISSUE:

Whether or not the alleged refusal to have sexual intercourse constitutes psychological incapacity. (YES)

RULING:

Chi Ming Tso also claims that he wanted to have sex with Gina; that the reason for Gina's refusal may not be psychological but physical disorder as stated above. Assuming it to be so, he would have discussed with Gina or asked her what is ailing her, and why she balks and avoids him every time he wanted to have sexual intercourse with her. He never did. At least, there is nothing in the record to show that he had tried to find out or discover what the problem with his wife could be.

One of the essential marital obligations under the Family Code is "To procreate children based on the universal principle that procreation of children through sexual cooperation is the basic end of marriage." Constant non-fulfillment of this obligation will finally destroy the integrity or wholeness of the marriage. In the case at bar, the senseless and protracted refusal of one of the parties to fulfill the above marital obligation is equivalent to psychological incapacity.

ROBERT F. MALLILIN, *petitioner* **-versus- LUZ G. JAMESOLAMIN and the REPUBLIC OF THE PHILIPPINES,** *respondents.*
GR No. 192718, SECOND DIVISION, 18 February 2015, MENDOZA, J.

The Court reiterated that the act of living an adulterous life cannot automatically be equated with a psychological disorder, especially when no specific evidence was shown that promiscuity was a trait already existing at the inception of marriage. The petitioner must be able to establish that the respondent's unfaithfulness was a manifestation of a disordered personality, which made her completely unable to discharge the essential obligations of the marital state.

FACTS:

Robert Mallilin filed a complaint for declaration of nullity of marriage under Art. 36 of the Family Code. He alleged that at the time of the celebration of their marriage, Luz Jamesolamin was suffering from psychological and mental incapacity and unpreparedness to enter into such marital life and to comply with its essential obligations and responsibilities. He disclosed that Luz was already living in California and had married an American. He also revealed that when they were still engaged, Luz continued seeing and dating another boyfriend, a certain Lt. Liwag. He also claimed that from the outset, Luz had been remiss in her duties both as a wife and as a mother.

Before the SC, Robert argued that the sexual indiscretion of Luz with different men coupled with the fact that she failed to function as a home maker to her family and as a housewife to him incapacitated her from accepting and complying with her essential marital obligations. For said reason, he asserts that the case of Luz was not a mere case of sexual infidelity, but clearly an illness that was rooted on some debilitating psychological condition which incapacitated her to carry out the responsibilities of a married woman. Robert avers that a sex maniac is not just a mere sexual infidel but one who is suffering from a deep psychological problem.

ISSUE:

Whether or not Luz was psychologically incapacitated to comply with the essential obligations of marriage warranting the annulment of their marriage. (NO)

RULING:

As correctly found by the CA, sexual infidelity or perversion and abandonment do not, by themselves, constitute grounds for declaring a marriage void based on psychological incapacity. Robert argues that the series of sexual indiscretion of Luz were external manifestations of the psychological defect that she was suffering within her person, which could be considered as nymphomania or "excessive sex hunger." Other than his allegations, however, no other convincing evidence was adduced to prove that these sexual indiscretions were grave, deeply rooted, and incurable within the term of psychological incapacity embodied in Article 36.

To stress, Robert's testimony alone is insufficient to prove the existence of psychological incapacity. The Court reiterated that the act of living an adulterous life cannot automatically be equated with a psychological disorder, especially when no specific evidence was shown that promiscuity was a trait already existing at the inception of marriage. The petitioner must be able to establish that the respondent's unfaithfulness was a manifestation of a disordered personality, which made her completely unable to discharge the essential obligations of the marital state.

BRENDA B. MARCOS, *petitioner* **-versus- WILSON G. MARCOS,** *respondent.*
GR No. 136490, THIRD DIVISION, 19 October 2000, PANGANIBAN, J.

The guidelines set in Santos vs. CA do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "medically or clinically identified." What is important is the presence of evidence that can adequately establish the party's psychological condition. For indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

FACTS:

Brenda filed before the RTC a complaint for Declaration of Nullity of Marriage under Art. 36 of the Family Code. She alleged that due to Wilson's failure to engage in any gainful employment, they would often quarrel and as a consequence, he would hit and beat her. He would even force her to have sex with him despite her weariness. He would also inflict physical harm on their children for a slight mistake and was so severe in the way he chastised them. Brenda also submitted herself to a psychologist for psychological evaluation while the appellant on the other hand did not.

The RTC found the Wilson to be psychologically incapacitated to perform his marital obligations mainly because of his failure to find work to support his family and his violent attitude towards Brenda and their children. Reversing the RTC, the CA held that psychological incapacity had not been established by the totality of the evidence presented. It ruled that it is essential in a petition for annulment is the allegation of the root cause of the spouse's psychological incapacity which should also be medically or clinically identified, sufficiently proven by experts and clearly explained in the decision. Wilson was not subjected to any psychological or psychiatric evaluation. The psychological findings about Wilson by the psychiatrist were based only on the interviews conducted with Brenda.

ISSUE:

Whether or not CA could set aside the findings by the RTC of psychological incapacity of a respondent in a Petition for declaration of nullity of marriage simply because the respondent did not subject himself to psychological evaluation. (NO)

RULING:

The guidelines set in Santos vs. CA do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "medically or clinically identified." What is important is the presence of evidence that can adequately establish the party's psychological condition. For indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

GLENN VIÑAS, *petitioner,* **-versus- MARY GRACE PAREL-VIÑAS,** *respondent.*
GR No. 208790, THIRD DIVISION, 21 January 2015, REYES, J.

Mere "difficulty," "refusal" or "neglect" in the performance of marital obligations or "ill will" on the part of the spouse is different from "incapacity" rooted on some debilitating psychological condition or illness. Indeed, irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage and not due to some psychological illness that is contemplated by said rule. In this case, Mary Grace's departure from their home indicates either a refusal or mere difficulty, but not absolute inability to comply with her obligation to live with her husband.

FACTS:

Glenn filed a Petition for the declaration of nullity of his marriage with Mary Grace. He alleged that Mary Grace was insecure, extremely jealous, outgoing and prone to regularly resorting to any pretext to be able to leave the house. Further, Mary Grace refused to perform even the most essential household chores. According to Glenn, Mary Grace had not exhibited the foregoing traits and behavior during their whirlwind courtship. He likewise alleged that Mary Grace was not remorseful about the death of the infant whom she delivered. Glenn later found out that she left for an overseas employment in Dubai.

A clinical psychologist diagnosed Mary Grace to be suffering from a Narcissistic Personality Disorder with anti-social traits. Dr. Tayag concluded that Mary Grace and Glenn's relationship is not founded on mutual love, trust, respect, commitment and fidelity to each other.

ISSUE:

Whether or not the psychological incapacity of Mary Grace was proved. (NO)

RULING:

Mere "difficulty," "refusal" or "neglect" in the performance of marital obligations or "ill will" on the part of the spouse is different from "incapacity" rooted on some debilitating psychological condition

or illness. Indeed, irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage and not due to some psychological illness that is contemplated by said rule.

It is worth noting that Glenn and Mary Grace lived with each other for more or less seven years. The foregoing established fact shows that living together as spouses under one roof is not an impossibility. Mary Grace's departure from their home indicates either a refusal or mere difficulty, but not absolute inability to comply with her obligation to live with her husband.

More so, Dr. Tayag's conclusions about the respondent's psychological incapacity were based on the information fed to her by only one side – the petitioner – whose bias in favor of her cause cannot be doubted. For, effectively, Dr. Tayag only diagnosed the respondent from the prism of a third-party account; she did not actually hear, see and evaluate the respondent and how he would have reacted and responded to the doctor's probes.

REPUBLIC OF THE PHILIPPINES, *petitioner* **-versus- LOLITA QUINTERO-HAMANO,** *respondent.*
GR No. 149498, THIRD DIVISION, 20 May 2004, CORONA, J.

The guidelines incorporate the three basic requirements earlier mandated by the Court in Santos v. CA: "psychological incapacity must be characterized by (a) gravity (b) juridical antecedence and (c) incurability." The foregoing guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "medically or clinically identified." Toshio's act of abandonment was doubtlessly irresponsible, but it was never alleged nor proven to be due to some kind of psychological illness.

FACTS:

Lolita Quintero-Hamano filed a complaint for declaration of nullity of her marriage to her husband Toshio Hamano, a Japanese national, on the ground of psychological incapacity, which incapacity became manifest only after the celebration of their marriage.

Lolita alleged that one month after their marriage, Toshio returned to Japan and promised to return in their conjugal home by Christmas to celebrate the holidays with their family. After sending money to Lolita for two months, Toshio stopped giving financial support. She wrote him several times, but he never responded.

ISSUE:

Whether or not Lolita was able to prove the psychological incapacity of Toshio to perform his marital obligations. (NO)

RULING:

The guidelines incorporate the three basic requirements earlier mandated by the Court in Santos v. CA: "psychological incapacity must be characterized by (a) gravity (b) juridical antecedence and (c) incurability." The foregoing guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "medically or clinically

identified." What is important is the presence of evidence that can adequately establish the party's psychological condition.

Toshio's act of abandonment was doubtlessly irresponsible, but it was never alleged nor proven to be due to some kind of psychological illness. After respondent testified on how Toshio abandoned his family, no other evidence was presented showing that his behavior was caused by a psychological disorder. Although, as a rule, there was no need for an actual medical examination, it would have greatly helped respondent's case had she presented evidence that medically or clinically identified his illness.

As we ruled in Molina, it is not enough to prove that a 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.

DAVID B. DEDEL, *petitioner,* **-versus- COURT OF APPEALS and SHARON L. CORPUZ-DEDEL a.k.a. JANE IBRAHIM,** *respondents.*
GR No. 151867, FIRST DIVISION, 29 January 2004, YNARES-SANTIAGO, J.

Respondent's sexual infidelity or perversion and abandonment do not by themselves constitute psychological incapacity within the contemplation of the Family Code. Neither could her emotional immaturity and irresponsibility be equated with psychological incapacity. It must be shown that these acts are manifestations of a disordered personality which make her completely unable to discharge the essential obligations of the marital state, not merely due to her youth, immaturity or sexual promiscuity.

FACTS:

David Dedel and Sharon Corpuz-Dedel started out as acquaintances and eventually led to the exchange of their marital vows. Their union produced four children.

David alleged that during the marriage, Sharon turned out to be an irresponsible and immature wife and mother. She had extra-marital affairs with several men. Despite undergoing a psychiatric treatment, Sharon did not stop her illicit relationship with one Mustafa Ibrahim, a Jordanian national whom she married and had two children. When Mustafa left the country, Sharon returned to David bringing along her two children by Mustafa. Thereafter, Sharon abandoned David and joined Mustafa in Jordan with their two children.

A psychological evaluation on Sharon showed that Such immaturity and irresponsibility in handling the marriage like her repeated acts of infidelity and abandonment of her family are indications of Anti-Social Personality Disorder amounting to psychological incapacity to perform the essential obligations of marriage.

ISSUE:

Whether or not the aberrant sexual behavior of Sharon falls within psychological incapacity under the Family Code. (NO)

RULING:

A personality disorder is a very complex and elusive phenomenon which defies easy analysis and definition. In this case, respondent's sexual infidelity can hardly qualify as being mentally or psychically ill to such an extent that she could not have known the obligations she was assuming, or knowing them, could not have given a valid assumption thereof. Sharon's promiscuity did not exist prior to or at the inception of the marriage. What is, in fact, disclosed by the records is a blissful marital union at its celebration, later armed in church rites, and which produced four children.

Respondent's sexual infidelity or perversion and abandonment do not by themselves constitute psychological incapacity within the contemplation of the Family Code. Neither could her emotional immaturity and irresponsibility be equated with psychological incapacity. It must be shown that these acts are manifestations of a disordered personality which make her completely unable to discharge the essential obligations of the marital state, not merely due to her youth, immaturity or sexual promiscuity.

JUANITA CARATING-SIAYNGCO, *Petitioner*, -versus- MANUEL SIAYNGCO, *Respondent*
G.R. No. 158896, SECOND DIVISION, October 27, 2004, CARPIO, J.

"Psychological incapacity" under Article 36 of the Family Code is not meant to comprehend all possible cases of psychoses. It should refer, rather, to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage. Psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.

FACTS

Petitioner and respondent Manuel were married at civil rites on 27 June 1973 and before the Catholic Church on 11 August 1973. After discovering that they could not have a child of their own, the couple decided to adopt a baby boy in 1977, who they named Jeremy.

On 25 September 1997, or after twenty-four years of married life together, respondent Manuel filed for the declaration of its nullity on the ground of psychological incapacity of petitioner Juanita. He alleged that all throughout their marriage, his wife exhibited an over domineering and selfish attitude towards him which was exacerbated by her extremely volatile and bellicose nature; that she incessantly complained about almost everything and anyone connected with him like his elderly parents, the staff in his office and anything not of her liking like the physical arrangement, tables, chairs, wastebaskets in his office and with other trivial matters; that she showed no respect or regard at all for the prestige and high position of his office as judge of the Municipal Trial Court; that she would yell and scream at him and throw objects around the house within the hearing of their neighbors; that she cared even less about his professional advancement as she did not even give him moral support and encouragement; that her psychological incapacity arose before marriage, rooted in her deep-seated resentment and vindictiveness for what she perceived as lack of love and appreciation from her own parents since childhood and that such incapacity is permanent and incurable and, even if treatment could be attempted, it will involve time and expense beyond the emotional and physical capacity of the parties; and that he endured and suffered through his turbulent and loveless marriage to her for twenty-two (22) years.

In her Answer, petitioner Juanita alleged that respondent Manuel is still living with her at their conjugal home in Malolos, Bulacan; that he invented malicious stories against her so that he could be free to marry his paramour; that she is a loving wife and mother; that it was respondent Manuel who was remiss in his marital and family obligations; that she supported respondent Manuel in all his endeavors despite his philandering; that she was raised in a real happy family and had a happy childhood contrary to what was stated in the complaint.

Respondent Manuel presented Dr. Valentina Garcia whose professional qualifications as a psychiatrist were admitted by petitioner Juanita. From her psychiatric evaluation, Dr. Garcia concluded that Manuel de Jesus Siayngco and Juanita Victoria Carating-Siayngco contributed to the marital collapse. There is a partner relational problem which affected their capacity to sustain the marital bond with love, support and understanding.

The partner relational problem (coded V61/10 in the Fourth Edition of the Diagnostic and Statistical Manual of Mental Disorders or DSM IV) is secondary to the psychopathology of both spouses. Manuel and Juanita had engaged themselves in a defective communication pattern which is characteristically negative and deformed. This affected their competence to maintain the love and respect that they should give to each other.

Dr. Eduardo Maaba, whose expertise as a psychiatrist was admitted by respondent Manuel, testified that he conducted a psychiatric evaluation on petitioner Juanita, the results of which were embodied in his report. Said report stated that the psychiatric evaluation found the respondent to be psychologically capacitated to comply with the basic and essential obligations of marriage.

ISSUE

Whether the Court of Appeals erred in declaring the marriage of petitioner and respondent void (YES)

RULING

We have here a case of a husband who is constantly embarrassed by his wife's outbursts and overbearing ways, who finds his wife's obsession with cleanliness and the tight reign on his wallet "irritants" and who is wounded by her lack of support and respect for his person and his position as a Judge. In our book, however, these inadequacies of petitioner which led respondent to file a case against her do not amount to psychological incapacity to comply with the essential marital obligations.

"Psychological incapacity" under Article 36 of the Family Code is not meant to comprehend all possible cases of psychoses. It should refer, rather, to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage. Psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.

What emerges from the psychological report of Dr. Garcia as well as from the testimonies of the parties and their witnesses is that the only essential marital obligation which respondent Manuel was not able to fulfill, if any, is the obligation of fidelity.Sexual infidelity, per se, however, does not constitute psychological incapacity within the contemplation of the Family Code. An unsatisfactory marriage, however, is not a null and void marriage. Mere showing of "irreconcilable differences" and "conflicting personalities" in no wise constitutes psychological incapacity.

JAIME F. VILLALON, *Petitioner*, -versus- MA. CORAZON N. VILLALON, *Respondent*
G.R. NO. 167206, FIRST DIVISION, November 18, 2005, YNARES-SANTIAGO, *J*.
The court held that psychological incapacity, as a ground for the declaration of nullity of a marriage, must be characterized by juridical antecedence, gravity and incurability.

FACTS

Petitioner filed a petition for the annulment of his marriage to respondent before the Regional Trial Court of Pasig City. As ground therefor, petitioner cited his psychological incapacity which he claimed existed even prior to his marriage. According to petitioner, the manifestations of his psychological incapacity were: (a) his chronic refusal to maintain harmonious family relations and his lack of interest in having a normal married life; (b) his immaturity and irresponsibility in refusing to accept the essential obligations of marriage as husband to his wife; (c) his desire for other women and a life unchained from any spousal obligation; and (d) his false assumption of the fundamental obligations of companionship and consortium towards respondent.

respondent filed an answer denying petitioner's allegations. She asserted that her 18-year marriage to petitioner has been 'fruitful and characterized by joy, contentment and hopes for more growth in their relationship and that their marital squabbles were normal based on community standards. Petitioner's success in his professional life aided him in performing his role as husband, father, and provider. Respondent claimed that petitioner's commitment to his paternal and marital responsibilities was beyond reproach.

The Office of the Solicitor General (OSG) subsequently entered its appearance in behalf of the Republic of the Philippines and submitted an opposition to the petition.

Petitioner presented Dr. Natividad Dayan, a clinical psychologist, to testify on his alleged psychological disorder of 'Narcissistic Histrionic Personality Disorder with 'Casanova Complex. Dr. Dayan described the said disorder as 'a pervasive maladaptation in terms of interpersonal and occupational functioning with main symptoms of grand ideation about oneself, self-centeredness, thinking he is unique and wanting to always be the one followed, the I personality. A person afflicted with this disorder believes that he is entitled to gratify his emotional and sexual feelings and thus engages in serial infidelities. Likewise, a person with 'Casanova Complex exhibits habitual adulterous behavior and goes from one relationship to another.

ISSUE

Whether the petitioner is psychologically incapacitated in fulfilling his essential marital obligations (NO)

RULING

The totality of the evidence in this case does not support a finding that petitioner is psychologically incapacitated to fulfill his marital obligations. On the contrary, what is evident is the fact that petitioner was a good husband to respondent for a substantial period of time prior to their separation, a loving father to their children and a good provider of the family. Although he engaged in marital infidelity in at least two occasions, the same does not appear to be symptomatic of a grave psychological disorder which rendered him incapable of performing his spousal obligations. The

same appears as the result of a general dissatisfaction with his marriage rather than a psychological disorder rooted in petitioner's personal history.

The court held that psychological incapacity, as a ground for the declaration of nullity of a marriage, must be characterized by juridical antecedence, gravity and incurability.

In the case at bar, petitioner failed to establish the incurability and gravity of his alleged psychological disorder. While Dr. Dayan described the symptoms of one afflicted with Narcissistic Histrionic Personality Disorder as 'self-centered', 'characterized by grandiose ideation and 'lack of empathy in relating to others' , and one with Casanova Complex as a 'serial adulterer', the evidence on record betrays the presence of any of these symptoms. Sexual infidelity, by itself, is not sufficient proof that petitioner is suffering from psychological incapacity. It must be shown that the acts of unfaithfulness are manifestations of a disordered personality which make petitioner completely unable to discharge the essential obligations of marriage. The evidence on record fails to convince us that petitioner's marital indiscretions are symptomatic of psychological incapacity under Article 36 of the Family Code. On the contrary, the evidence reveals that petitioner was a good husband most of the time when he was living with respondent, a loving father to his children as well as a good provider.

MA. ARMIDA PEREZ-FERRARIS, *Petitioner*, -versus- BRIX FERRARIS*, Respondent*.
G.R. NO. 162368, FIRST DIVISION, July 17, 2006, YNARES-SANTIAGO, J.

FACTS

The Regional Trial Court of Pasig City rendered a Decision denying the petition for declaration of nullity of petitioner's marriage with Brix Ferraris. The trial court noted that suffering from epilepsy does not amount to psychological incapacity under Article 36 of the Civil Code and the evidence on record were insufficient to prove infidelity. Dr. Dayan, petitioner's witness testified that the psychological tests conducted to petitioner revealed that he is suffering from a mixed personality disorder.

ISSUE

Whether the petitioner is psychologically incapacitated to fulfill his essential marital obligations (NO)

RULING

The term "psychological incapacity" to be a ground for the nullity of marriage under Article 36 of the Family Code, refers to a serious psychological illness afflicting a party even before the celebration of the marriage. 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. As all people may have certain quirks and idiosyncrasies, or isolated characteristics associated with certain personality disorders, there is hardly any doubt that the intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. It is for this reason that the Court relies heavily on psychological experts for its understanding of the human personality. However, the root cause must be identified as a psychological illness and its incapacitating nature must be fully explained, which petitioner failed to convincingly demonstrate. We find respondent's alleged mixed personality disorder, the "leaving-the-house" attitude whenever

they quarreled, the violent tendencies during epileptic attacks, the sexual infidelity, the abandonment and lack of support, and his preference to spend more time with his band mates than his family, are not rooted on some debilitating psychological condition but a mere refusal or unwillingness to assume the essential obligations of marriage.

While petitioner's marriage with the respondent failed and appears to be without hope of reconciliation, the remedy however is not always to have it declared void ab initio on the ground of psychological incapacity. An unsatisfactory marriage, however, is not a null and void marriage. No less than the Constitution recognizes the sanctity of marriage and the unity of the family; it decrees marriage as legally "inviolable" and protects it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

LEONILO ANTONIO, *Petitioner,* -versus- MARIE IVONNE F. REYES*, Respondent*
G.R. NO. 155800, THIRD DIVISION, March 10, 2006, **TINGA, J.**

Republic vs. Molina established the guidelines presently recognized in the judicial disposition of petitions for nullity under Article 36. The Court has consistently applied Molina since its promulgation in 1997, and the guidelines therein operate as the general rules.

FACTS:

Petitioner and respondent met in August 1989 when petitioner was 26 years old and respondent was 36 years of age. Barely a year after their first meeting, they got married before a minister of the Gospel at the Manila City Hall, and through a subsequent church wedding at the Sta. Rosa de Lima Parish, Bagong Ilog, Pasig, Metro Manila on 6 December 1990. Out of their union, a child was born on 19 April 1991, who sadly died five (5) months later.

On 8 March 1993, petitioner filed a petition to have his marriage to respondent declared null and void. He anchored his petition for nullity on Article 36 of the Family Code alleging that respondent was psychologically incapacitated to comply with the essential obligations of marriage. He asserted that respondent's incapacity existed at the time their marriage was celebrated and still subsists up to the present

As manifestations of respondent's alleged psychological incapacity, petitioner claimed that respondent persistently lied about herself, the people around her, her occupation, income, educational attainment and other events or things.

In support of his petition, petitioner presented Dr. Dante Herrera Abcede, a psychiatrist, and Dr. Arnulfo V. Lopez, a clinical psychologist, who stated, based on the tests they conducted, that petitioner was essentially a normal, introspective, shy and conservative type of person. On the other hand, they observed that respondent's persistent and constant lying to petitioner was abnormal or pathological. It undermined the basic relationship that should be based on love, trust and respect. They further asserted that respondent's extreme jealousy was also pathological. It reached the point of paranoia since there was no actual basis for her to suspect that petitioner was having an affair with another woman. They concluded based on the foregoing that respondent was psychologically incapacitated to perform her essential marital obligations.

In opposing the petition, respondent claimed that she performed her marital obligations by attending to all the needs of her husband. She asserted that there was no truth to the allegation that she fabricated stories, told lies and invented personalities.

ISSUE

Whether the state of facts as presented by petitioner sufficiently meets the standards set for the declaration of nullity of a marriage under Article 36 of the Family Code. (YES)

RULING

Republic vs. Molina established the guidelines presently recognized in the judicial disposition of petitions for nullity under Article 36. The Court has consistently applied *Molina* since its promulgation in 1997, and the guidelines therein operate as the general rules. They warrant citation in full:

1) The burden of proof to show the nullity of the marriage 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 the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision.
3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage.
4) Such incapacity must also be shown to be medically or clinically permanent or incurable.
5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.
6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children.
7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.

Petitioner had sufficiently overcome his burden in proving the psychological incapacity of his spouse. Apart from his own testimony, he presented witnesses who corroborated his allegations on his wife's behavior, and certifications from Blackgold Records and the Philippine Village Hotel Pavillon which disputed respondent's claims pertinent to her alleged singing career. He also presented two expert witnesses from the field of psychology who testified that the aberrant behavior of respondent was tantamount to psychological incapacity. The root cause of respondent's psychological incapacity has been medically or clinically identified, alleged in the complaint, sufficiently proven by experts, and clearly explained in the trial court's decision. The initiatory complaint alleged that respondent, from the start, had exhibited unusual and abnormal behavior "of peren[n]ially telling lies, fabricating ridiculous stories, and inventing personalities and situations," of writing letters to petitioner using fictitious names, and of lying about her actual occupation, income, educational attainment, and family background, among others.

Respondent's psychological incapacity was established to have clearly existed at the time of and even before the celebration of marriage. She fabricated friends and made up letters from fictitious characters well before she married petitioner. he gravity of respondent's psychological incapacity is sufficient to prove her disability to assume the essential obligations of marriage. It is immediately discernible that the parties had shared only a little over a year of cohabitation before the exasperated petitioner left his wife. Whatever such circumstance speaks of the degree of tolerance of petitioner, it likewise supports the belief that respondent's psychological incapacity, as borne by the record, was so grave in extent that any prolonged marital life was dubitable. Respondent is evidently unable to comply with the essential marital obligations as embraced by Articles 68 to 71 of the Family Code. Article 68, in particular, enjoins the spouses to live together, observe mutual love, respect and fidelity, and render mutual help and support. As noted by the trial court, it is difficult to see how an inveterate pathological liar would be able to commit to the basic tenets of relationship between spouses based on love, trust and respect.

The Court of Appeals clearly erred when it failed to take into consideration the fact that the marriage of the parties was annulled by the Catholic Church. The appellate court apparently deemed this detail totally inconsequential as no reference was made to it anywhere in the assailed decision despite petitioner's efforts to bring the matter to its attention.Such deliberate ignorance is in contravention of Molina, which held that interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.

The final point of contention is the requirement in *Molina* that such psychological incapacity be shown to be medically or clinically permanent or incurable. Petitioner points out that one month after he and his wife initially separated, he returned to her, desiring to make their marriage work. However, respondent's aberrant behavior remained unchanged, as she continued to lie, fabricate stories, and maintained her excessive jealousy. From this fact, he draws the conclusion that respondent's condition is incurable.

JORDAN CHAN PAZ, *Petitioner*, -versus- JEANICE PAVON PAZ, *Respondent*
G.R. No. 166579, SECOND DIVISION, February 18, 2010, CARPIO, J.

The Court first declared that psychological incapacity must be characterized by (a) gravity; (b) judicial antecedence; and (c) incurability. It must be confined "to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."

FACTS

Jordan and Jeanice met sometime in November 1996. Jeanice was only 19 years old while Jordan was 27 years old. In January 1997, they became a couple and, on 10 May 1997, they were formally engaged. They had their civil wedding on 3 July 1997, and their church wedding on 21 September 1997. They have one son, Evan Gaubert, who was born on 12 February 1998. After a big fight, Jeanice left their conjugal home on 23 February 1999.

On 15 September 1999, Jeanice filed a petition for declaration of nullity of marriage against Jordan. Jeanice alleged that Jordan was psychologically incapable of assuming the essential obligations of marriage. According to Jeanice, Jordan's psychological incapacity was manifested by his

uncontrollable tendency to be self-preoccupied and self-indulgent, as well as his predisposition to become violent and abusive whenever his whims and caprices were not satisfied.

Psychologist Cristina R. Gates (Gates) testified that Jordan was afflicted with "Borderline Personality Disorder as manifested in his impulsive behavior, delinquency and instability." Gates concluded that Jordan's psychological maladies antedate their marriage and are rooted in his family background. Gates added that with no indication of reformation, Jordan's personality disorder appears to be grave and incorrigible.

Jordan denied Jeanice's allegations. Jordan asserted that Jeanice exaggerated her statements against him. Jordan said that Jeanice has her own personal insecurities and that her actions showed her lack of maturity, childishness and emotional inability to cope with the struggles and challenges of maintaining a married life.

ISSUE

Whether Jordan is psychologically incapacitated to comply with the essential marital obligations (NO)

RULING

The Court first declared that psychological incapacity must be characterized by (a) gravity; (b) judicial antecedence; and (c) incurability. It must be confined "to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."

The Court explained:

(a) Gravity - It must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage;

(b) Judicial Antecedence - It must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and

(c) Incurability - It must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.

What the law requires to render a marriage void on the ground of psychological incapacity is downright incapacity, not refusal or neglect or difficulty, much less ill will. The mere showing of "irreconcilable differences" and "conflicting personalities" does not constitute psychological incapacity.

Furthermore, Gates did not particularly describe the "pattern of behavior" which showed that Jordan indeed suffers from Borderline Personality Disorder. Gates also failed to explain how such a personality disorder made Jordan psychologically incapacitated to perform his obligations as a husband.

Likewise, Jeanice was not able to establish with certainty that Jordan's alleged psychological

incapacity was medically or clinically permanent or incurable. Gates' testimony on the matter was vague and inconclusive.

In sum, the totality of the evidence presented by Jeanice failed to show that Jordan was psychologically incapacitated to comply with the essential marital obligations and that such incapacity was grave, incurable, and existing at the time of the solemnization of their marriage.

JOCELYN M. SUAZO, *Petitioner,* -versus- ANGELITO SUAZO and REPUBLIC OF THE PHILIPPINES, *Respondents*
G.R. No. 164493, SECOND DIVISION, March 10, 2010, BRION, *J.*

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. Accordingly, it is no longer necessary to introduce expert opinion in a petition under Article 36 of the Family Code if the totality of evidence shows that psychological incapacity exists and its gravity, juridical antecedence, and incurability can be duly established.

FACTS

Jocelyn and Angelito were 16 years old when they first met in June 1985; they were residents of Laguna at that time. Soon thereafter, Jocelyn and Angelito's marriage was arranged and they were married on March 3, 1986 in a ceremony officiated by the Mayor of Biñan. Without any means to support themselves, Jocelyn and Angelito lived with Angelito's parents after their marriage. They had by this time stopped schooling. Jocelyn took odd jobs and worked for Angelito's relatives as household help. Angelito, on the other hand, refused to work and was most of the time drunk. Jocelyn urged Angelito to find work and violent quarrels often resulted because of Jocelyn's efforts.
Jocelyn left Angelito sometime in July 1987. Angelito thereafter found another woman with whom he has since lived. They now have children.

Ten years after their separation, or on October 8, 1997, Jocelyn filed with the RTC a petition for declaration of nullity of marriage under Article 36 of the Family Code, as amended. She claimed that Angelito was psychologically incapacitated to comply with the essential obligations of marriage. Angelito did not answer the petition/complaint. Neither did he submit himself to a psychological examination with psychologist Nedy Tayag.

ISSUE

Whether there is basis to nullify Jocelyn's marriage with Angelito under Article 36 of the Family Code. (NO)

RULING

Santos v. Court of Appeals declared that psychological incapacity must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability. It should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." It must be confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."

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. Accordingly, it is no longer necessary to introduce expert opinion in a petition under Article 36 of the Family Code if the totality of evidence shows that psychological incapacity exists and its gravity, juridical antecedence, and incurability can be duly established.

Both the psychologist's testimony and the psychological report did not conclusively show the root cause, gravity and incurability of Angelito's alleged psychological condition.

We first note a critical factor in appreciating or evaluating the expert opinion evidence – the psychologist's testimony and the psychological evaluation report – that Jocelyn presented. Based on her declarations in open court, the psychologist evaluated Angelito's psychological condition only in an indirect manner – she derived all her conclusions from information coming from Jocelyn whose bias for her cause cannot of course be doubted. Given the source of the information upon which the psychologist heavily relied upon, the court must evaluate the evidentiary worth of the opinion with due care and with the application of the more rigid and stringent set of standards outlined above, i.e., that there must be a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a psychological incapacity that is grave, severe and incurable.

In saying this, we do not suggest that a personal examination of the party alleged to be psychologically incapacitated is mandatory; jurisprudence holds that this type of examination is not a mandatory requirement. While such examination is desirable, we recognize that it may not be practical in all instances given the oftentimes estranged relations between the parties. For a determination though of a party's complete personality profile, information coming from persons intimately related to him (such as the party's close relatives and friends) may be helpful. This is an approach in the application of Article 36 that allows flexibility, at the same time that it avoids, if not totally obliterate, the credibility gaps spawned by supposedly expert opinion based entirely on doubtful sources of information.

We find Jocelyn's testimony to be insufficient. Jocelyn merely testified on Angelito's habitual drunkenness, gambling, refusal to seek employment and the physical beatings she received from him – all of which occurred *after* the marriage. Significantly, she declared in her testimony that Angelito showed no signs of violent behavior, assuming this to be indicative of a personality disorder, during the courtship stage or at the earliest stages of her relationship with him. She testified on the alleged physical beatings after the marriage, not before or at the time of the celebration of the marriage. She did not clarify when these beatings exactly took place – whether it was near or at the time of celebration of the marriage or months or years after. This is a clear evidentiary gap that materially affects her cause, as the law and its related jurisprudence require that the psychological incapacity must exist at the time of the celebration of the marriage.

ROBERTO DOMINGO, *Petitioner*, -versus- COURT OF APPEALS and DELIA SOLEDAD AVERA represented by her Attorney-in-Fact MOISES R. AVERA, *Respondents*
G.R. No. 104818, THIRD DIVISION, September 17, 1993, ROMERO, *J.*

The Family Code settled once and for all the conflicting jurisprudence on the matter of whether the petition for judicial declaration of a void marriage is necessary. A declaration of the absolute nullity of a marriage is now explicitly required either as a cause of action or a ground for defense. 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 be free from legal infirmity is a final judgment declaring the previous marriage void.

FACTS

On May 29, 1991, private respondent Delia Soledad A. Domingo filed a petition before the Regional Trial Court of Pasig entitled "Declaration of Nullity of Marriage and Separation of Property" against petitioner Roberto Domingo. The petition alleged among others that: they were married on November 29, 1976 at the YMCA Youth Center Bldg., as evidenced by a Marriage Contract Registry No. 1277K-76 with Marriage License No. 4999036 issued at Carmona, Cavite; unknown to her, he had a previous marriage with one Emerlina dela Paz on April 25, 1969 which marriage is valid and still existing; she came to know of the prior marriage only sometime in 1983 when Emerlina dela Paz sued them for bigamy; from January 23 1979 up to the present, she has been working in Saudi Arabia and she used to come to the Philippines only when she would avail of the one-month annual vacation leave granted by her foreign employer since 1983 up to the present, he has been unemployed and completely dependent upon her for support and subsistence; out of her personal earnings, she purchased real and personal properties with a total amount of approximately P350,000.00, which are under the possession and administration of Roberto; sometime in June 1989, while on her one-month vacation, she discovered that he was cohabiting with another woman; she further discovered that he had been disposing of some of her properties without her knowledge or consent; she confronted him about this and thereafter appointed her brother Moises R. Avera as her attorney-in-fact to take care of her properties; he failed and refused to turn over the possession and administration of said properties to her brother/attorney-in-fact; and he is not authorized to administer and possess the same on account of the nullity of their marriage. The petition prayed that a temporary restraining order or a writ of preliminary injunction be issued enjoining Roberto from exercising any act of administration and ownership over said properties; their marriage be declared null and void and of no force and effect; and Delia Soledad be declared the sole and exclusive owner of all properties acquired at the time of their void marriage and such properties be placed under the proper management and administration of the attorney-in-fact.

ISSUE

Whether or not a petition for judicial declaration of a void marriage is necessary. If in the affirmative, whether the same should be filed only for purposes of remarriage.(YES)

RULING

There is no question that the marriage of petitioner and private respondent celebrated while the former's previous marriage with one Emerlina de la Paz was still subsisting, is bigamous. As such, it is from the beginning. Petitioner himself does not dispute the absolute nullity of their marriage.

The Family Code settled once and for all the conflicting jurisprudence on the matter of whether the petition for judicial declaration of a void marriage is necessary. A declaration of the absolute nullity of a marriage is now explicitly required either as a cause of action or a ground for defense. 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 be free from legal infirmity is a final judgment declaring the previous marriage void.

In fact, the requirement for a declaration of absolute nullity of a marriage is also for the protection of the spouse who, believing that his or her marriage is illegal and void, marries again. With the judicial declaration of the nullity of his or her first marriage, the person who marries again cannot be charged with bigamy.

Just over a year ago, the Court made the pronouncement that there is a necessity for a declaration of absolute nullity of a prior subsisting marriage before contracting another in the recent case of *Terre v. Terre*. The Court, in turning down the defense of respondent Terre who was charged with grossly immoral conduct consisting of contracting a second marriage and living with another woman other than complainant while his prior marriage with the latter remained subsisting, said that "for purposes of determining whether a person is legally free to contract a second marriage, a judicial declaration that the first marriage was null and void *ab initio* is essential."

When a marriage is declared void *ab initio*, the law states that the final judgment therein 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."

Private respondent's ultimate prayer for separation of property will simply be one of the necessary consequences of the judicial declaration of absolute nullity of their marriage. Thus, petitioner's suggestion that in order for their properties to be separated, an ordinary civil action has to be instituted for that purpose is baseless. The Family Code has clearly provided the effects of the declaration of nullity of marriage, one of which is the separation of property according to the regime of property relations governing them. It stands to reason that the lower court before whom the issue of nullity of a first marriage is brought is likewise clothed with jurisdiction to decide the incidental questions regarding the couple's properties.

LEONILA G. SANTIAGO, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*
G.R. No. 200233, FIRST DIVISION, JULY 15, 2015, SERENO, *CJ*

In the crime of bigamy, both the first and second spouses may be the offended parties depending on the circumstances, as when the second spouse married the accused without being aware of his previous marriage. Only if the second spouse had knowledge of the previous undissolved marriage of the accused could she be included in the information as a co-accused.

FACTS

Four months after the solemnization of their marriage on 29 July 1997, Leonila G. Santiago and Nicanor F. Santos faced an Information for bigamy. Petitioner pleaded "not guilty," while her putative husband escaped the criminal suit.

The prosecution adduced evidence that Santos, who had been married to Estela Galang since 2 June 1974, asked petitioner to marry him. Petitioner, who 'was a 43-year-old widow then, married Santos on 29 July 1997 despite the advice of her brother-in-law and parents-in-law that if she wanted to remarry, she should choose someone who was "without responsibility."
Petitioner asserted her affirmative defense that she could not be included as an accused in the crime of bigamy, because she had been under the belief that Santos was still single when they got married. She also averred that for there to be a conviction for bigamy, his second marriage to her should be

proven valid by the prosecution; but in this case, she argued that their marriage was void due to the lack of a marriage license.

ISSUE

Whether the petitioner should be held liable for the crime of bigamy. (YES)

RULING

The crime of bigamy does not necessary entail the joint liability of two persons who marry each other while the previous marriage of one of them is valid and subsisting. As explained in Nepomuceno:

In the crime of bigamy, both the first and second spouses may be the offended parties depending on the circumstances, as when the second spouse married the accused without being aware of his previous marriage. Only if the second spouse had knowledge of the previous undissolved marriage of the accused could she be included in the information as a co-accused.

Therefore, the lower courts correctly ascertained petitioner's knowledge of Santos's marriage to Galang. Both courts consistently found that she knew of the first marriage as shown by the totality of the following circumstances: (1) when Santos was courting and visiting petitioner in the house of her in-laws, they openly showed their disapproval of him; (2) it was incredible for a learned person like petitioner to not know of his true civil status; and (3) Galang, who was the more credible witness compared with petitioner who had various inconsistent testimonies, straightforwardly testified that she had already told petitioner on two occasions that the former was the legal wife of Santos.

LUPO ALMODIEL ATIENZA, *Complainant*, -versus- JUDGE FRANCISCO F. BRILLANTES, JR., METROPOLITAN TRIAL COURT, BRANCH 20, MANILA, *Respondent*

A.M. No. MTJ-92-706, EN BANC, March 29, 1995, QUIASON, J.

Article 40 is applicable to remarriages entered into after the effectivity of the Family Code on August 3, 1988 regardless of the date of the first marriage. Besides, under Article 256 of the Family Code, said Article is given "retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws." This is particularly true with Article 40, which is a rule of procedure. Respondent has not shown any vested right that was impaired by the application of Article 40 to his case.

FACTS

Complainant alleges that he has two children with Yolanda De Castro, who are living together. He stays in said house, which he purchased in 1987, whenever he is in Manila.

In December 1991, upon opening the door to his bedroom, he saw respondent sleeping on his (complainant's) bed. Upon inquiry, he was told by the houseboy that respondent had been cohabiting with De Castro. Complainant did not bother to wake up respondent and instead left the house after giving instructions to his houseboy to take care of his children.

Thereafter, respondent prevented him from visiting his children and even alienated the affection of his children for him.

Complainant claims that respondent is married to one Zenaida Ongkiko with whom he has five children, as appearing in his 1986 and 1991 sworn statements of assets and liabilities. Furthermore, he alleges that respondent caused his arrest on January 13, 1992, after he had a heated argument with De Castro inside the latter's office.

Respondent denies that he caused complainant's arrest and claims that he was even a witness to the withdrawal of the complaint for Grave Slander filed by De Castro against complainant. According to him, it was the sister of De Castro who called the police to arrest complainant.

Respondent also denies having been married to Ongkiko, although he admits having five children with her. He alleges that while he and Ongkiko went through a marriage ceremony before a Nueva Ecija town mayor on April 25, 1965, the same was not a valid marriage for lack of a marriage license. Respondent claims that when he married De Castro in civil rites in Los Angeles, California on December 4, 1991, he believed, in all good faith and for all legal intents and purposes, that he was single because his first marriage was solemnized without a license.

Respondent argues that the provision of Article 40 of the Family Code does not apply to him considering that his first marriage took place in 1965 and was governed by the Civil Code of the Philippines; while the second marriage took place in 1991 and governed by the Family Code.

ISSUE

Whether or not the Family Code applies to respondent (YES)

RULING

Under the Family Code, there must be a judicial declaration of the nullity of a previous marriage before a party thereto can enter into a second marriage. Article 40 of said Code provides:

"The absolute nullity of a previous marriage may be invoked for the purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void."

Article 40 is applicable to remarriages entered into after the effectivity of the Family Code on August 3, 1988 regardless of the date of the first marriage. Besides, under Article 256 of the Family Code, said Article is given "retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws." This is particularly true with Article 40, which is a rule of procedure. Respondent has not shown any vested right that was impaired by the application of Article 40 to his case.

The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. The reason is that as a general rule no vested right may attach to, nor arise from, procedural laws.

MEYNARDO L. BELTRAN, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, and HON. JUDGE FLORENTINO TUAZON, JR., being the Judge of the RTC, Brach 139, Makati City, *Respondents*
G.R. No. 137567, SECOND DIVISION, June 20, 2000, BUENA, *J*.

FACTS

Petitioner Meynardo Beltran and wife Charmaine E. Felix were married on June 16, 1973 at the Immaculate Concepcion Parish Church in Cubao, Quezon City.

On February 7, 1997, after twenty-four years of marriage and four children,[2] petitioner filed a petition for nullity of marriage on the ground of psychological incapacity under Article 36 of the Family Code before Branch 87 of the Regional Trial Court of Quezon City. The case was docketed as Civil Case No. Q-97-30192.

In her Answer to the said petition, petitioner's wife Charmaine Felix alleged that it was petitioner who abandoned the conjugal home and lived with a certain woman named Milagros Salting.[4] Charmaine subsequently filed a criminal complaint for concubinage[5] under Article 334 of the Revised Penal Code against petitioner and his paramour before the City Prosecutor's Office of Makati. Petitioner, in order to forestall the issuance of a warrant for his arrest, filed a Motion to Defer Proceedings Including the Issuance of the Warrant of Arrest in the criminal case. Petitioner argued that the pendency of the civil case for declaration of nullity of his marriage posed a prejudicial question to the determination of the criminal case.

ISSUE

Whether pendency of the petition for declaration of nullity of his marriage based on psychological incapacity under Article 36 of the Family Code is a prejudicial question that should merit the suspension of the criminal case for concubinage filed against him by his wife.

RULING

The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

The pendency of the case for declaration of nullity of petitioner's marriage is not a prejudicial question to the concubinage case. For a civil case to be considered prejudicial to a criminal action as to cause the suspension of the latter pending the final determination of the civil case, it must appear not only that the said civil case involves the same facts upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the aforesaid civil action, the guilt or innocence of the accused would necessarily be determined.

Art. 40 of the Family Code provides:

> 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.

In *Domingo vs. Court of Appeals*, this Court ruled that the import of said provision is that for purposes of remarriage, the only legally acceptable basis for declaring a previous marriage an absolute nullity is a final judgment declaring such previous marriage void, whereas, for purposes of other than remarriage, other evidence is acceptable.

So that in a case for concubinage, the accused, like the herein petitioner need not present a final judgment declaring his marriage void for he can adduce evidence in the criminal case of the nullity of his marriage other than proof of a final judgment declaring his marriage void.

With regard to petitioner's argument that he could be acquitted of the charge of concubinage should his marriage be declared null and void, suffice it to state that even a subsequent pronouncement that his marriage is void from the beginning is not a defense.

IMELDA MARBELLA-BOBIS, *Petitioner*, -versus- ISAGANI D. BOBIS, *Respondent*
G.R. No. 138509, FIRST DIVISION, July 31, 2000, YNARES-SANTIAGO, *J.*

Article 40 of the Family Code, which was effective at the time of celebration of the second marriage, requires a prior judicial declaration of nullity of a previous marriage before a party may remarry. The clear implication of this is that it is not for the parties, particularly the accused, to determine the validity or invalidity of the marriage. Whether or not the first marriage was void for lack of a license is a matter of defense because there is still no judicial declaration of its nullity at the time the second marriage was contracted. It should be remembered that bigamy can successfully be prosecuted provided all its elements concur two of which are a previous marriage and a subsequent marriage which would have been valid had it not been for the existence at the material time of the first marriage.

FACTS

On October 21, 1985, respondent contracted a first marriage with one Maria Dulce B. Javier. Without said marriage having been annulled, nullified or terminated, the same respondent contracted a second marriage with petitioner Imelda Marbella-Bobis on January 25, 1996 and allegedly a third marriage with a certain Julia Sally Hernandez. Based on petitioners complaint-affidavit.

Sometime thereafter, respondent initiated a civil action for the judicial declaration of absolute nullity of his first marriage on the ground that it was celebrated without a marriage license. Respondent then filed a motion to suspend the proceedings in the criminal case for bigamy invoking the pending civil case for nullity of the first marriage as a prejudicial question to the criminal case.

ISSUE

Whether the subsequent filing of a civil action for declaration of nullity of a previous marriage constitutes a prejudicial question to a criminal case for bigamy. (NO)

RULING

A prejudicial question is one which arises in a case the resolution of which is a logical antecedent of the issue involved therein. It is a question 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. It must appear not only that the civil case involves facts upon which the criminal action is based, but also that the resolution of the issues raised in the civil action would necessarily be determinative of the criminal case. Consequently, the defense must involve an issue similar or intimately related to the same issue raised in the criminal action and its resolution determinative of whether or not the latter action may proceed. Its two essential elements are: crtualibräry

(a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and

(b) the resolution of such issue determines whether or not the criminal action may proceed.

A prejudicial question does not conclusively resolve the guilt or innocence of the accused but simply tests the sufficiency of the allegations in the information in order to sustain the further prosecution of the criminal case. A party who raises a prejudicial question is deemed to have hypothetically admitted that all the essential elements of a crime have been adequately alleged in the information, considering that the prosecution has not yet presented a single evidence on the indictment or may not yet have rested its case. A challenge of the allegations in the information on the ground of prejudicial question is in effect a question on the merits of the criminal charge through a non-criminal suit.

Article 40 of the Family Code, which was effective at the time of celebration of the second marriage, requires a prior judicial declaration of nullity of a previous marriage before a party may remarry. The clear implication of this is that it is not for the parties, particularly the accused, to determine the validity or invalidity of the marriage. Whether or not the first marriage was void for lack of a license is a matter of defense because there is still no judicial declaration of its nullity at the time the second marriage was contracted. It should be remembered that bigamy can successfully be prosecuted provided all its elements concur two of which are a previous marriage and a subsequent marriage which would have been valid had it not been for the existence at the material time of the first marriage.

In the case at bar, respondents clear intent is 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 Article 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first. A party may even enter into a marriage aware of the absence of a requisite - usually the marriage license - and thereafter contract a subsequent marriage without obtaining a declaration of nullity of the first on the assumption that the first marriage is void. Such scenario would render nugatory the provisions on bigamy.

SOCIAL SECURITY COMMISSION, ***Petitioner*, *-versus-* EDNA A. AZOTE, *Respondent***
G.R. No. 209741, SECOND DIVISION**,** April 15, 2015, MENDOZA, *J.*

Using the parameters outlined in Article 41 of the Family Code, Edna, without doubt, failed to establish that there was no impediment or that the impediment was already removed at the time of the celebration of her marriage to Edgardo. Settled is the rule that "whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence." Edna could not adduce evidence to prove that the earlier marriage of Edgardo was either annulled or dissolved or whether there was a declaration of Rosemarie's presumptive death before her marriage to Edgardo. What is apparent is that Edna was the second wife of Edgardo. Considering that Edna was not able to show that she was the legal spouse of a deceased-member, she would not qualify under the law to be the beneficiary of the death benefits of Edgardo.

FACTS

On June 19, 1992, respondent Edna and Edgardo, a member of the Social Security System (SSS), were married in civil rites. Edgardo submitted Form E-4 to the SSS with Edna and their three older children as designated beneficiaries. Thereafter or on September 7, 2001, Edgardo submitted another Form E-4 to the SSS designating his three younger children as additional beneficiaries.

On January 13, 2005, Edgardo passed away. Shortly thereafter, Edna filed her claim for death benefits with the SSS as the wife of a deceased-member. It appeared, however, from the SSS records that Edgardo had earlier submitted another Form E-4 on November 5, 1982 with a different set of beneficiaries, namely: Rosemarie Azote (*Rosemarie*), as his spouse; and Elmer Azote (*Elmer*), as dependent, born on October 9, 1982. Consequently, Edna's claim was denied. Her children were adjudged as beneficiaries and she was considered as the legal guardian of her minor children. The benefits, however, would be stopped once a child would attain the age of 21.

On March 13, 2007, Edna filed a petition with the SSC to claim the death benefits, lump sum and monthly pension of Edgardo. She insisted that she was the legitimate wife of Edgardo. In its answer, the SSS averred that there was a conflicting information in the forms submitted by the deceased. Summons was published in a newspaper of general circulation directing Rosemarie to file her answer. Despite the publication, no answer was filed and Rosemarie was subsequently declared in default.

In the Resolution, dated December 8, 2010, the SSC dismissed Edna's petition for lack of merit. Citing Section 24(c) of the SS Law, it explained that although Edgardo filed the Form E-4 designating Edna and their six children as beneficiaries, he did not revoke the designation of Rosemarie as his wife-beneficiary, and Rosemarie was still presumed to be his legal wife.

ISSUE

Whether petitioner is entitled to claim benefits as the deceased's wife (NO)

RULING

It is undisputed that the second marriage of Edgardo with Edna was celebrated at the time when the Family Code was already in force. Article 41 of the Family Code expressly states:

Art. 41. *A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead.* In case of disappearance where there is danger 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 a 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.

Using the parameters outlined in Article 41 of the Family Code, Edna, without doubt, failed to establish that there was no impediment or that the impediment was already removed at the time of

the celebration of her marriage to Edgardo. Settled is the rule that "whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence." Edna could not adduce evidence to prove that the earlier marriage of Edgardo was either annulled or dissolved or whether there was a declaration of Rosemarie's presumptive death before her marriage to Edgardo. What is apparent is that Edna was the second wife of Edgardo. Considering that Edna was not able to show that she was the legal spouse of a deceased-member, she would not qualify under the law to be the beneficiary of the death benefits of Edgardo.

The existence of two Form E-4s designating, on two different dates, two different women as his spouse is already an indication that only one of them can be the legal spouse. As can be gleaned from the certification issued by the NSO,[31] there is no doubt that Edgardo married Rosemarie in 1982. Edna cannot be considered as the legal spouse of Edgardo as their marriage took place during the existence of a previously contracted marriage. For said reason, the denial of Edna's claim by the SSC was correct. It should be emphasized that the SSC determined Edna's eligibility on the basis of available statistical data and documents on their database as expressly permitted by Section 4(b) (7) of R.A. No. 8282.

VINCENT PAUL G. MERCADO, *Petitioner*, -versus- CONSUELO TAN, *Respondent*.
G.R. No. 137110, THIRD DVISION, August 1, 2000, PANGANIBAN, *J.*

*Under **Article 40 of the Family Code,** '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.' But here, the final judgment declaring null and void accused's previous marriage came not before the celebration of the second marriage, but after, when the case for bigamy against accused was already tried in court. And what constitutes the crime of bigamy is the act of any person who shall contract a second subsequent marriage 'before' the former marriage has been legally dissolved.*

FACTS:

Accused Dr. Vincent Mercado and complainant Ma. Consuelo Tan got married on June 27, 1991 by reason of which a Marriage Contract was duly executed and signed by the parties. As entered in said document, the status of accused was 'single'. There is no dispute either that at the time of the celebration of the wedding with complainant, **accused was actually a married man**, having been in lawful wedlock with Ma. Thelma Oliva in a solemnized marriage ceremony. The civil marriage between accused and complainant was confirmed in a church ceremony on June 29, 1991. Both marriages were consummated when out of the first consortium, Ma. Thelma Oliva bore accused two children.

A letter-complaint for **bigamy** was filed by complainant which eventually resulted in the institution of the present case against accused, Dr. Vincent G. Mercado. More than a month after the bigamy case was lodged, accused filed an action for **Declaration of Nullity of Marriage** against Ma. Thelma V. Oliva, and in a Decision, the marriage between Vincent G. Mercado and Ma. Thelma V. Oliva was declared null and void.

Accused is charged with bigamy under Article 349 of the Revised Penal Code for having contracted a second marriage with herein complainant Ma. Consuelo Tan when at that time he was previously united in lawful marriage with Ma. Thelma V. Oliva without said first marriage having been legally dissolved.

It is an admitted fact that when the second marriage was entered into with Ma. Consuelo, accused's prior marriage with Ma. Thelma V. Oliva was subsisting, **no judicial action having yet been initiated or any judicial declaration obtained as to the nullity of such prior marriage** with Ma. Thelma V. Oliva. Since no declaration of the nullity of his first marriage had yet been made at the time of his second marriage, it is clear that accused was a married man when he contracted such second marriage with complainant on June 27, 1991. He was still at the time validly married to his first wife.

ISSUE:

Whether or not petitioner is entitled to an acquittal on the basis of reasonable doubt. (NO)

RULING:

The Court impressed the need for a judicial declaration of nullity. It is now settled that the **fact that the first marriage is void from the beginning is not a defense in a bigamy charge**. As with a voidable marriage, there must be a **judicial declaration of the nullity of a marriage before contracting the second marriage**. The Code Commission believes that the parties to a marriage should not be allowed to assume that their marriage is void, even if such is the fact, but must first secure a judicial declaration of nullity of their marriage before they should be allowed to marry again.

In the instant case, petitioner contracted a second marriage although there was yet no judicial declaration of nullity of his first marriage. In fact, he instituted the Petition to have the first marriage declared void only after complainant had filed a letter-complaint charging him with bigamy. By contracting a second marriage while the first was still subsisting, he committed the acts punishable under Article 349 of the Revised Penal Code.

That he subsequently obtained a judicial declaration of the nullity of the first marriage was immaterial. To repeat, the crime had already been consummated by then. Moreover, his view effectively encourages delay in the prosecution of bigamy cases; an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that.

LUCIO MORIGO y CACHO, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 145226, SECOND DVISION, February 6, 2004, QUISIMBING, *J.*

*The **first element of bigamy** as a crime requires that the accused must have been **legally married**. But in this case, legally speaking, the petitioner was never married to Lucia Barrete. Thus, there is no first marriage to speak of. Under the principle of retroactivity of a marriage being declared void ab initio, the two were never married "from the beginning." **The contract of marriage is null; it bears no legal effect.** Taking this argument to its logical conclusion, for legal purposes, petitioner was not married to Lucia at the time he contracted the marriage with Maria Jececha. The existence and the **validity of the first marriage being an essential element of the crime of bigamy**, it is but logical that a conviction for said offense cannot be sustained where there is no first marriage to speak of. The petitioner, must, perforce be acquitted of the instant charge.*

FACTS:

Appellant Lucio Morigo and Lucia Barrete were boardmates at the house of Catalina Tortor at Tagbilaran City, Province of Bohol, for a period of four (4) years. Eventually, Lucio Morigo and Lucia

Barrete lost contact with each other. Lucio Morigo was surprised to receive a card from Lucia Barrete from Singapore. The former replied and after an exchange of letters, they became sweethearts.

Lucia returned to the Philippines but left again for Canada to work there. While in Canada, they maintained constant communication. Lucia came back to the Philippines and proposed to petition appellant to join her in Canada. Both agreed to get married, thus they were married on August 30, 1990 at the *Iglesia de Filipina Nacional* at Catagdaan, Pilar, Bohol.

Lucia reported back to her work in Canada leaving appellant Lucio behind. Lucia filed a petition with the Ontario Court for divorce against appellant which was granted by the court on January 17, 1992 and to take effect on February 17, 1992.

On October 4, 1992, appellant Lucio Morigo married Maria Jececha Lumbago, Accused filed a complaint for **judicial declaration of nullity of marriage**. The complaint seek among others, the declaration of nullity of accused's marriage with Lucia, on the ground that **no marriage ceremony actually took place**. Appellant was charged with Bigamy.

ISSUE:

Whether or not petitioner committed bigamy. (NO)

RULING:

The **first element of bigamy** as a crime requires that the accused must have been **legally married**. But in this case, legally speaking, the petitioner was never married to Lucia Barrete. Thus, there is no first marriage to speak of. Under the principle of retroactivity of a marriage being declared void *ab initio*, the two were never married "from the beginning." **The contract of marriage is null; it bears no legal effect.** Taking this argument to its logical conclusion, for legal purposes, petitioner was not married to Lucia at the time he contracted the marriage with Maria Jececha. The existence and **the validity of the first marriage being an essential element of the crime of bigamy**, it is but logical that a conviction for said offense cannot be sustained where there is no first marriage to speak of. The petitioner, must, perforce be acquitted of the instant charge.

The present case is analogous to, but must be distinguished from *Mercado v. Tan*. In the latter case, the judicial declaration of nullity of the first marriage was likewise obtained after the second marriage was already celebrated. We held therein that:

> A judicial declaration of nullity of a previous marriage is necessary before a subsequent one can be legally contracted. One who enters into a subsequent marriage without first obtaining such judicial declaration is guilty of bigamy. This principle applies even if the earlier union is characterized by statutes as "void."

It bears stressing though that in *Mercado*, the first marriage was actually solemnized not just once, but twice: first before a judge where a marriage certificate was duly issued and then again six months later before a priest in religious rites. Ostensibly, at least, the first marriage appeared to have transpired, although later declared void *ab initio.*

In the instant case, however, **no marriage ceremony at all was performed** by a duly authorized solemnizing officer. Petitioner and Lucia Barrete merely signed a marriage contract on their own.

The mere private act of signing a marriage contract bears no semblance to a valid marriage and thus, needs no judicial declaration of nullity. Such act alone, without more, cannot be deemed to constitute an ostensibly valid marriage for which petitioner might be held liable for bigamy unless he first secures a judicial declaration of nullity before he contracts a subsequent marriage. Under the circumstances of the present case, we held that petitioner has not committed bigamy.

SUSAN NICDAO CARIÑO, *Petitioner*, -versus- SUSAN YEE CARIÑO, *Respondent*.
G.R. No. 132529, FIRST DVISION, February 2, 2001, YNARES-SANTIAGO, *J.*

*Under **Article 40 of the Family Code**, 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. Meaning, 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. However, for **purposes other than remarriage**, **no judicial action is necessary** to declare a marriage an absolute nullity.*

Presumed validity of Nicdao's marriage w/ the deceased cannot stand as there is no marriage license, burden of proof of validity was w/ her. It does not follow however, that since the marriage of petitioner and the deceased is declared void ab initio, the "death benefits" would now be awarded to Yee.

FACTS:

During the lifetime of the late SPO4 Santiago S. Cariño, he **contracted two marriages**, the first was with petitioner Susan Nicdao Cariño, with whom he had two offsprings, and the second was with respondent Susan Yee Cariño, with whom he had no children in their almost ten year cohabitation.

SPO4 Santiago S. Cariño became ill and bedridden due to diabetes complicated by pulmonary tuberculosis. He passed away under the care of Susan Yee who spent for his medical and burial expenses. Both petitioner and respondent filed claims for **monetary benefits and financial assistance** pertaining to the deceased from various government agencies.

Respondent Susan Yee admitted that her marriage to the deceased took place during the subsistence of, and without first obtaining a judicial declaration of nullity of, the marriage between petitioner and the deceased. She, however, claimed that she had no knowledge of the previous marriage and that she became aware of it only at the funeral of the deceased, where she met petitioner who introduced herself as the wife of the deceased. To bolster her action for collection of sum of money, respondent contended that the marriage of petitioner and the deceased is void *ab initio* because the same was solemnized without the required marriage license. In support thereof, respondent presented the marriage certificate of the deceased and the petitioner which bears no marriage license number and a certification from the Local Civil Registrar that there is n*o record of such marriage license.* The trial court ruled in favor of respondent, Susan Yee.

ISSUE:

Whether or not the absolute nullity of marriage may be invoked to settle claims to death benefits. (NO)

RULING:

Under **Article 40 of the Family Code**, 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. Meaning, 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. However, for **purposes other than remarriage, no judicial action is necessary** to declare a marriage an absolute nullity.

Presumed validity of Nicdao's marriage w/ the deceased cannot stand as there is no marriage license, burden of proof of validity was w/ her. It does not follow however, that since the marriage of petitioner and the deceased is declared void ab initio, **the "death benefits**" would now be awarded to Yee. As stated earlier, for purposes of remarriage, there must first be a prior judicial declaration of the nullity of a previous marriage, though void, before a party can enter into a second marriage, otherwise, the second marriage would also be void. Considering then that the marriage of Yee and the deceased is a bigamous marriage, having been solemnized during the subsistence of a previous marriage then presumed to be valid, the application of Article 148 is therefore in order. As to the property regime of petitioner Susan Nicdao and the deceased, Article 147 of the Family Code governs as they were both legally capacitated. The difference bet 147 and 148 is that wages and salaries earned by either party during the cohabitation period will be split equally between them even if only one party contributed in 147, whereas in 148 wages and salaries earned by each party belong to him or her exclusively. So under Art 147, Susan Nicdao is entitled to half of the remunerations and the other half belong to the legal heirs of Santiago, who are in this case, the children of Susan Nicdao.

ANTONIA ARMAS y CALISTERIO, *Petitioner*, -versus- MARIETTA CALISTERIO, *Respondent*.
G.R. No. 136467, THIRD DVISION, April 6, 2000, VITUG, *J.*

*In the case at bar, it remained undisputed that respondent Marietta's first husband, James William Bounds, had been absent or had **disappeared for more than eleven years** before she entered into a second marriage in 1958 with the deceased Teodorico Calisterio. This second marriage, having been contracted during the **regime of the Civil Code**, should thus be deemed valid **notwithstanding the absence of a judicial declaration of presumptive death** of James Bounds.*

FACTS:

Teodorico Calisterio died intestate, leaving several parcels of land. Teodorico was survived by his wife, herein respondent Marietta Calisterio. Teodorico was the second husband of Marietta who had previously been married to James William Bounds. James Bounds disappeared without a trace. odorico and Marietta were married eleven years later without Marietta having priorly secured a court declaration that James was presumptively dead.

On 09 October 1992, herein petitioner Antonia Armas y Calisterio, a surviving sister of Teodorico, filed with the Regional Trial Court ("RTC") of Quezon City, Branch 104, a petition entitled, "In the Matter of Intestate Estate of the Deceased Teodorico Calisterio y Cacabelos, Antonia Armas, Petitioner," claiming to be *inter alia*, the sole surviving heir of Teodorico Calisterio, the marriage between the latter and respondent Marietta Espinosa Calisterio being allegedly bigamous and thereby null and void.

Respondent Marietta opposed the petition. Marietta stated that her first marriage with James Bounds had been dissolved due to the latter's **absence**, his whereabouts being unknown, for more than eleven years before she contracted her second marriage with Teodorico. Contending to be the surviving spouse of Teodorico, she sought priority in the administration of the estate of the decedent.

ISSUE:

Whether or not the marriage between Teodoro Calisterio and the respondent is bigamous. (NO)

RULING:

The marriage between the deceased Teodorico and respondent Marietta was solemnized on 08 May 1958. The **law in force at that time was the Civil Code**, not the Family Code which took effect only on 03 August 1988. Article 256 of the Family Code itself limited its retroactive governance only to cases where it thereby would not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.

Verily, the applicable specific provision in the instant controversy is Article 83 of the New Civil Code which provides:

> Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:
>
> (1) The first marriage was annulled or dissolved; or
> (2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court.

A **judicial declaration of absence of the absentee spouse is not necessary as long as the prescribed period of absence is met**. It is equally noteworthy that the marriages in these exceptional cases are, by the explicit mandate of Article 83, to be deemed valid "until declared null and void by a competent court."

In contrast, under the 1988 Family Code, in order that a subsequent bigamous marriage may exceptionally be considered valid, the following conditions must concur; *viz.*: (a) The prior spouse of the contracting party must have been absent for four consecutive years, or two years where there is danger of death under the circumstances stated in Article 391 of the Civil Code at the time of disappearance; (b) the spouse present has a well-founded belief that the absent spouse is already dead; and (c) there is, unlike the old rule, 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. The last condition is consistent and in consonance with the requirement of judicial intervention in subsequent marriages as so provided in Article 41 in relation to Article 40 of the Family Code.

In the case at bar, it remained undisputed that respondent Marietta's first husband, James William Bounds, had been absent or had disappeared for more than eleven years before she entered into a second marriage in 1958 with the deceased Teodorico Calisterio. This **second marriage, having been contracted during the regime of the Civil Code, should thus be deemed valid notwithstanding the absence of a judicial declaration of presumptive death** of James Bounds.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- MARIA FE ESPINOSA CANTOR, *Respondent.*
G.R. No. 184621, EN BANC, December 10, 2013, BRION, *J.*

*The law did not define what is meant by "**well-founded belief.**" It depends upon the circumstances of each particular case. Its determination, so to speak, remains on a **case-to-case basis**. To be able to comply with this requirement, 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. It **requires exertion of active effort, not a mere passive one.***

In the case at bar, the Court is of the view that the respondent merely engaged in a "passive search" where she relied on uncorroborated inquiries from her in-laws, neighbors and friends. She failed to conduct a diligent search because her alleged efforts are insufficient to form a well-founded belief that her husband was already dead.

FACTS:

The respondent and Jerry were married and lived together as husband and wife in their conjugal dwelling in Agan Homes, Koronadal City, South Cotabato. Sometime later, the couple had a violent quarrel brought about by: (1) the respondent's inability to reach "sexual climax" whenever she and Jerry would have intimate moments; and (2) Jerry's expression of animosity toward the respondent's father. After their quarrel, Jerry left their conjugal dwelling and this was the last time that the respondent ever saw him. Since then, she had not seen, communicated nor heard anything from Jerry or about his whereabouts.

More than four (4) years from the time of Jerry's disappearance, the respondent filed before the RTC a petition for her husband's **declaration of presumptive death**. She claimed that she had a **well-founded belief** that Jerry was already dead. She alleged that she had inquired from her mother-in-law, her brothers-in-law, her sisters-in-law, as well as her neighbors and friends, but to no avail. In the hopes of finding Jerry, she also allegedly made it a point to check the patients' directory whenever she went to a hospital. All these **earnest efforts**, the respondent claimed, proved futile, prompting her to file the petition in court.

ISSUE:

Whether the respondent had a well-founded belief that Jerry is already dead. (NO)

RULING:

Before a judicial declaration of presumptive death can be obtained, it must be shown that the prior spouse had been absent for four consecutive years and the present spouse had a well-founded belief

that the prior spouse was already dead. Under Article 41 of the Family Code, there are four **(4) essential requisites** for the declaration of presumptive death:

> 1. That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code;
> 2. That the present spouse wishes to remarry;
> 3. That the present spouse has a well-founded belief that the absentee is dead; and
> 4. That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.

The law did not define what is meant by "well-founded belief." It **depends upon the circumstances of each particular case.** Its determination, so to speak, remains on a **case-to-case basis.** To be able to comply with this requirement, 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. It **requires exertion of active effort, not a mere passive one.**

In the case at bar, the respondent's "well-founded belief" was anchored on her alleged "**earnest efforts**" to locate Jerry.

These efforts, however, fell short of the "**stringent standard**" and degree of diligence required by jurisprudence for the following reasons:

First, the respondent did not actively look for her missing husband. It can be inferred from the records that her hospital visits and her consequent checking of the patients' directory therein were unintentional. She did not purposely undertake a diligent search for her husband as her hospital visits were not planned nor primarily directed to look for him. This Court thus considers these attempts insufficient to engender a belief that her husband is dead.

Second, she did not report Jerry's absence to the police nor did she seek the aid of the authorities to look for him. While a finding of well-founded belief varies with the nature of the situation in which the present spouse is placed, under present conditions, we find it proper and prudent for a present spouse, whose spouse had been missing, to seek the aid of the authorities or, at the very least, report his/her absence to the police.

Third, she did not present as witnesses Jerry's relatives or their neighbors and friends, who can corroborate her efforts to locate Jerry. Worse, these persons, from whom she allegedly made inquiries, were not even named. As held in Nolasco, the present spouse's bare assertion that he inquired from his friends about his absent spouse's whereabouts is insufficient as the names of the friends from whom he made inquiries were not identified in the testimony nor presented as witnesses.

Lastly, there was no other corroborative evidence to support the respondent's claim that she conducted a diligent search. Neither was there supporting evidence proving that she had a well-founded belief other than her bare claims that she inquired from her friends and in-laws about her husband's whereabouts.

In sum, the Court is of the view that the respondent merely engaged in a "passive search" where she relied on uncorroborated inquiries from her in-laws, neighbors and friends. She failed to conduct a diligent search because her alleged efforts are insufficient to form a well-founded belief that her husband was already dead.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- YOLANDA CADACIO GRANADA, *Respondent.*
G.R. No. 187512, SECOND DIVISION, June 13, 2012, SERENO, *J.*

*The **Family Code** provision prescribes a "**well-founded belief**" that the absentee is already dead before a petition for **declaration of presumptive death** can be granted. The law does not define what is meant by a **well-grounded belief**. Belief is a **state of the mind** or condition prompting the doing of an overt act. It may be proved by direct evidence or circumstantial evidence which may tend, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded in truth.*

*In the case at bar, respondent was allegedly **not diligent in her search** for her husband. Petitioner argues that if she were, she would have sought information from the Taiwanese Consular Office or assistance from other government agencies in Taiwan or the Philippines. She could have also utilized mass media for this end, but she did not. Worse, she failed to explain these omissions.*

FACTS:

Respondent Yolanda Cadacio Granada (Yolanda) met Cyrus Granada (Cyrus) at Sumida Electric Philippines, an electronics company in Paranaque where both were then working. The two eventually got married. Their marriage resulted in the birth of their son, Cyborg Dean Cadacio Granada.

Sometime later, when Sumida Electric Philippines closed down, Cyrus went to Taiwan to seek employment. Yolanda claimed that from that time, she had not received any communication from her husband, notwithstanding efforts to locate him. Her brother testified that he had asked the relatives of Cyrus regarding the latter's whereabouts, to no avail.

After **nine (9) years** of waiting, Yolanda filed a Petition to have Cyrus declared **presumptively dead**. The RTC rendered a Decision declaring Cyrus as presumptively dead.

Petitioner Republic of the Philippines, represented by the Office of the Solicitor General (OSG), filed a Motion for Reconsideration of this Decision. Petitioner argued that Yolanda had failed to exert earnest efforts to locate Cyrus and thus failed to prove her well-founded belief that he was already dead. However, the RTC denied the motion.

ISSUE:

Whether the respondent had a well-founded belief that her husband is already dead. (NO)

RULING:

The Family Code provision prescribes a "well-founded belief" that the absentee is already dead before a petition for declaration of presumptive death can be granted. As noted by the Court in that case, the **four requisites** for the declaration of presumptive death under the Family Code are as follows:

1. That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code;
2. That the present spouse wishes to remarry;
3. That the present spouse has a well-founded belief that the absentee is dead; and
4. That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.

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**. The spouse present is, thus, burdened to prove that his spouse has been absent and that he has a well-founded belief that the absent spouse is already dead before the present spouse may contract a subsequent marriage. The law does not define what is meant by a well-grounded belief.

Belief is a **state of the mind** or condition prompting the doing of an overt act. It may be proved by direct evidence or circumstantial evidence which may tend, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded in truth.

Applying the foregoing standards to the present case, petitioner points out that respondent Yolanda did not initiate a diligent search to locate her absent husband. While her brother Diosdado Cadacio testified to having inquired about the whereabouts of Cyrus from the latter's relatives, these relatives were not presented to corroborate Diosdado's testimony. In short, respondent was allegedly not diligent in her search for her husband. Petitioner argues that if she were, she would have sought information from the Taiwanese Consular Office or assistance from other government agencies in Taiwan or the Philippines. She could have also utilized mass media for this end, but she did not. Worse, she failed to explain these omissions.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- GREGORIO NOLASCO, *Respondent.*
G.R. No. 94053, THIRD DIVISION, March 17, 1993, FELICIANO, *J.*

*When **Article 41** is compared with the old provision of the Civil Code, which it superseded, the following crucial differences emerge. Under Article 41, the time required for the presumption to arise has been **shortened to four (4) years**; however, there is need for a judicial declaration of presumptive death to enable the spouse present to remarry. Also, Article 41 of the Family Code imposes a stricter standard than the Civil Cod**e: Article 83 of the Civil Code** merely requires either that there be no news that such absentee is still alive; or the absentee is generally considered to be dead and believed to be so by the spouse present, or is presumed dead under Article 390 and 391 of the Civil Code. The Family Code, upon the other hand, prescribes as "**well founded belief**" that the absentee is already dead before a petition for declaration of presumptive death can be granted.*

FACTS:

Respondent Gregorio Nolasco filed before the Regional Trial Court of Antique a petition for the declaration of presumptive death of his wife Janet Monica Parker, invoking **Article 41 of the Family Code.** The petition prayed that respondent's wife be declared presumptively dead or, in the alternative, that the marriage be declared null and void. The Republic argued, first, that Nolasco did not possess a **well-founded belief** that the absent spouse was already dead.

During trial, respondent Nolasco testified that he was a seaman and that he had first met Janet Monica Parker, a British subject, in a bar in England during one of his ship's port calls. From that chance meeting onwards, Janet Monica Parker lived with respondent Nolasco on his ship for six (6) months until they returned to respondent's hometown after his seaman's contract expired. Respondent married Janet Monica Parker in a Catholic rite.

Respondent Nolasco further testified that after the marriage celebration, he obtained another employment contract as a seaman and left his wife with his parents. Sometime later, while working overseas, respondent received a letter from his mother informing him that Janet Monica had given birth to his son. The same letter informed him that Janet Monica had left Antique. Respondent claimed he then immediately asked permission to leave his ship to return home.

Respondent further testified that his efforts to look for her himself whenever his ship docked in England proved fruitless. He also stated that all the letters he had sent to his missing spouse at No. 38 Ravena Road, Allerton, Liverpool, England, the address of the bar where he and Janet Monica first met, were all returned to him. He also claimed that he inquired from among friends but they too had no news of Janet Monica.

On cross-examination, respondent stated that he had lived with and later married Janet Monica Parker despite his lack of knowledge as to her family background. He insisted that his wife continued to refuse to give him such information even after they were married. He also testified that he did not report the matter of Janet Monica's disappearance to the Philippine government authorities.

ISSUE:

Whether or not Nolasco has a well-founded belief that his wife is already dead. (NO)

RULING:

When A**rticle 41 is compared with the old provision of the Civil Code**, which it superseded, the following crucial differences emerge. Under Article 41, the time required for the presumption to arise has been **shortened to four (4) years**; however, there is need for a **judicial declaration of presumptive death** to enable the spouse present **to remarry**. Also, Article 41 of the Family Code imposes a stricter standard than the Civil Code: Article 83 of the Civil Code merely requires either that there be no news that such absentee is still alive; or the absentee is generally considered to be dead and believed to be so by the spouse present, or is presumed dead under Article 390 and 391 of the Civil Code. The Family Code, upon the other hand, prescribes as "**well founded belief**" that the absentee is already dead before a petition for declaration of presumptive death can be granted.

The Court believes that respondent Nolasco failed to conduct a search for his missing wife with such diligence as to give rise to a "well-founded belief" that she is dead.

In the case at bar, the Court considers that the investigation allegedly conducted by respondent in his attempt to ascertain Janet Monica Parker's whereabouts is too sketchy to form the basis of a reasonable or well-founded belief that she was already dead. When he arrived in San Jose, Antique after learning of Janet Monica's departure, instead of seeking the help of local authorities or of the British Embassy, he secured another seaman's contract and went to London, a vast city of many millions of inhabitants, to look for her there.

Respondent's testimony, however, showed that he confused London for Liverpool and this casts doubt on his supposed efforts to locate his wife in England.

The Court also views respondent's claim that Janet Monica declined to give any information as to her personal background even after she had married respondent too convenient an excuse to justify his failure to locate her. The same can be said of the loss of the alleged letters respondent had sent to his wife which respondent claims were all returned to him. Respondent said he had lost these returned letters, under unspecified circumstances.

Neither can this Court give much credence to respondent's bare assertion that he had inquired from their friends of her whereabouts, considering that respondent did not identify those friends in his testimony. Moreover, even if admitted as evidence, said testimony merely tended to show that the missing spouse had chosen not to communicate with their common acquaintances, and not that she was dead.

In fine, respondent failed to establish that he had the well-founded belief required by law that his absent wife was already dead that would sustain the issuance of a court order declaring Janet Monica Parker **presumptively dead.**

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- THE HONORABLE COURT OF APPEALS (TENTH DIVISION), and ALAN B. ALEGRO, *Respondents.*
G.R. No. 159614, SECOND DIVISION, December 9, 2005, CALLEJO, SR., *J.*

Article 41 of the Family Code of the Philippines *requires the spouse present to institute a s**ummary proceeding for the declaration of presumptive death of the absentee**, without prejudice to the effect of reappearance of the absent spouse, for the purpose of contracting the subsequent marriage.*

*The spouse present is, thus, burdened to prove that his spouse has been absent and that he has a well-founded belief that the absent spouse is already dead before the present spouse may contract a subsequent marriage. The **law does not define what is meant by a well-grounded belief**.*

FACTS:

Alan B. Alegro filed a petition in the Regional Trial Court (RTC) for the declaration of presumptive death of his wife, Rosalia (Lea) A. Julaton.

At the hearing, Alan adduced evidence that he and Lea were married and that one evening, Lea arrived home late and he berated her for being always out of their house. He told her that if she enjoyed the life of a single person, it would be better for her to go back to her parents. Lea did not reply. Alan narrated that, when he reported for work the following day, Lea was still in the house, but when he arrived home later in the day, Lea was nowhere to be found. Alan thought that Lea merely went to her parents' house. However, Lea did not return to their house anymore.

Alan further testified that one day, after his work, he went to the house of Lea's parents to see if she was there, but he was told that she was not there. He also went to the house of Lea's friend, Janeth Bautista, but he was informed by Janette's brother-in-law, Nelson Abaenza, that Janeth had left for Manila. When Alan went back to the house of his parents-in-law, he learned from his father-in-law that Lea had been to their house but that she left without notice. Alan sought the help

of *Barangay* Captain Juan Magat, who promised to help him locate his wife. He also inquired from his friends of Lea's whereabouts but to no avail.

He decided to go to Manila to look for Lea, but his mother asked him to leave after the town fiesta of Catbalogan, hoping that Lea may come home for the fiesta. Alan agreed. However, Lea did not show up. He went to a house in Navotas where Janeth, Lea's friend, was staying. When asked where Lea was, Janeth told him that she had not seen her. He failed to find out Lea's whereabouts despite his repeated talks with Janeth. Alan decided to work as a part-time taxi driver. On his free time, he would look for Lea in the malls but still to no avail. He returned to Catbalogan and again looked for his wife but failed.

Alan **reported Lea's disappearance to the local police station.** The police authorities issued an Alarm Notice. Alan also **reported Lea's disappearance to the National Bureau of Investigation (NBI)**.

ISSUE:

Whether or not respondent has a well-founded belief that his wife is already dead. (NO)

RULING:

Article 41 of the Family Code of the Philippines requires the spouse present to **institute a summary proceeding for the declaration of presumptive death of the absente**e, without prejudice to the effect of reappearance of the absent spouse, for the purpose of contracting the subsequent marriage.

The spouse present is, thus, burdened to prove that his spouse has been absent and that he has a well-founded belief that the absent spouse is already dead before the present spouse may contract a subsequent marriage. The law does not define what is meant by a well-grounded belief.

Belief is a state of the mind or condition prompting the doing of an overt act. It may be **proved by direct evidence or circumstantial evidence** which may tend, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded in truth. Any fact or circumstance relating to the character, habits, conditions, attachments, prosperity and objects of life which usually control the conduct of men, and are the motives of their actions, was, so far as it tends to explain or characterize their disappearance or throw light on their intentions, competence evidence on the ultimate question of his death.

In this case, the respondent failed to present Janeth Bautista or Nelson Abaenza or any other person from whom he allegedly made inquiries about Lea to corroborate his testimony. On the other hand, the respondent admitted that when he returned to the house of his parents-in-law, his father-in-law told him that Lea had just been there but that she left without notice.

The respondent declared that Lea left their abode after he chided her for coming home late and for being always out of their house, and told her that it would be better for her to go home to her parents if she enjoyed the life of a single person. Lea, thus, left their conjugal abode and never returned. Neither did she communicate with the respondent after leaving the conjugal abode because of her resentment to the chastisement she received from him barely a month after their marriage. What is so worrisome is that, the respondent failed to make inquiries from his parents-in-law regarding Lea's

whereabouts before filing his petition in the RTC. It could have enhanced the credibility of the respondent had he made inquiries from his parents-in-law about Lea's whereabouts considering that Lea's father was the owner of Radio DYMS.

The respondent did report and seek the help of the local police authorities and the NBI to locate Lea, but it was only an afterthought. He did so only after the OSG filed its notice to dismiss his petition in the RTC.

In sum, the Court finds and so holds that the respondent **failed to prove that he had a well-founded belief**, before he filed his petition in the RTC, that his spouse Rosalia (Lea) Julaton was already dead.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- GLORIA BERMUDEZ-LORINO, *Respondents.*
G.R. No. 160258, THIRD DIVISION, November 29, 2005, GARCIA, *J.*

*In **Summary Judicial Proceedings** under the Family Code, there is no reglementary period within which to perfect an appeal, precisely because judgments rendered thereunder, by express provision of **Section 247, Family Code,** supra, are "**immediately final and executory**". It was erroneous, therefore, on the part of the RTC to give due course to the Republic's appeal and order the transmittal of the entire records of the case to the Court of Appeals.*

FACTS:

Respondent Gloria, and her husband were married. Out of this marriage, she begot three (3) children, namely: Francis Jeno, Fria Lou and Fatima.

Before they got married, Gloria was unaware that her husband was a habitual drinker, possessed with violent character/attitude, and had the propensity to go out with friends to the extent of being unable to engage in any gainful work. Because of her husband's violent character, Gloria found it safer to leave him behind and decided to go back to her parents together with her three (3) children. In order to support the children, Gloria was compelled to work abroad. From the time of her physical separation from her husband, Gloria has not heard of him at all. She had absolutely no communications with him, or with any of his relatives.

Nine (9) years after she left her husband, Gloria filed a verified petition with the Regional Trial Court (RTC) under the rules on Summary Judicial Proceedings in the Family Law provided for in the Family Code. The RTC, finding merit in the summary petition, rendered judgment granting the same.

Despite the **judgment being immediately final and executory** under the provisions of **Article 247 of the Family Code.**

The Office of the Solicitor General, for the Republic of the Philippines, nevertheless filed a Notice of Appeal. Acting thereon, the RTC had the records elevated to the Court of Appeals.

ISSUE:

Whether or not CA acquired jurisdiction over the appeal. (NO)

RULING:

In **Summary Judicial Proceedings** under the Family Code, there is no reglementary period within which to perfect an appeal, precisely because judgments rendered thereunder, by express provision of **Section 247, Family Code**, supra, are "**immediately final and executory**". It was erroneous, therefore, on the part of the RTC to give due course to the Republic's appeal and order the transmittal of the entire records of the case to the Court of Appeals.

An appellate court acquires no jurisdiction to review a judgment which, by express provision of law, is immediately final and executory. As we have said in Veloria vs. Comelec, "the r**ight to appeal is not a natural right** nor is it a part of due process, for it is **merely a statutory privilege**." Since, by express mandate of **Article 247 of the Family Code, all judgments rendered in summary judicial proceedings in Family Law are "immediately final and executory**", the right to appeal was not granted to any of the parties therein. The Republic of the Philippines, as oppositor in the petition for declaration of presumptive death, should not be treated differently. It had no right to appeal the RTC decision of November 7, 2001.

Nothing is more settled in law than that when a judgment becomes final and executory it becomes immutable and unalterable. The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and whether made by the highest court of the land.

But, if only to set the records straight and for the future guidance of the bench and the bar, let it be stated that the RTC's decision was immediately final and executory upon notice to the parties. It was erroneous for the OSG to file a notice of appeal, and for the RTC to give due course thereto. The Court of Appeals acquired no jurisdiction over the case, and should have dismissed the appeal outright on that ground.

EDUARDO P. MANUEL, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 165842, SECOND DIVISION, January 29, 2005, CALLEJO, SR., *J.*

*The provision on **reappearance** in the Family Code as a remedy to effect the termination of the subsequent marriage does not preclude the spouse who was declared presumptively dead from availing other remedies existing in law. This court had, in fact, recognized that a subsequent marriage may also be terminated by **filing "an action in court to prove the reappearance of the absentee** and obtain a declaration of dissolution or termination of the subsequent marriage."*

*Therefore, for the **purpose of not only terminating the subsequent marriage but also of nullifying the effects of the declaration of presumptive death and the subsequent marriage, mere filing of an affidavit of reappearance would not suffice**. Celerina's choice to file an action for annulment of judgment will, therefore, lie.*

FACTS:

The Regional Trial Court of Tarlac City declared petitioner Celerina J. Santos (Celerina) **presumptively dead** after her husband, respondent Ricardo T. Santos (Ricardo), had filed a petition for declaration of absence or presumptive death for the purpose of remarriage.

Ricardo alleged that he and Celerina rented an apartment somewhere in San Juan, Metro Manila; after they had gotten married on June 18, 1980. After a year, they moved to Tarlac City. They were engaged in the buy and sell business.

Ricardo claimed that their business did not prosper. As a result, Celerina convinced him to allow her to work as a domestic helper in Hong Kong. Ricardo initially refused but because of Celerina's insistence, he allowed her to work abroad. She allegedly applied in an employment agency. She left Tarlac two months after and was never heard from again.

Ricardo further alleged that he exerted efforts to locate Celerina. He went to Celerina's parents in Cubao, Quezon City, but they, too, did not know their daughter's whereabouts. He also inquired about her from other relatives and friends, but no one gave him any information.

Ricardo claimed that it was **almost 12 years** from the date of his Regional Trial Court petition since Celerina left. He believed that she had passed away.

On November 17, 2008, Celerina filed a **petition for annulment of judgment** before the Court of Appeals on the grounds of extrinsic fraud and lack of jurisdiction. She argued that she was deprived her day in court when Ricardo, despite his knowledge of her true residence, misrepresented to the court that she was a resident of Tarlac City. According to Celerina, her true residence was in Neptune Extension, Congressional Avenue, Quezon City. This residence had been her and Ricardo's conjugal dwelling since 1989 until Ricardo left in May 2008. As a result of Ricardo's misrepresentation, she was deprived of any notice of and opportunity to oppose the petition declaring her presumptively dead.

The Court of Appeals issued the resolution dismissing Celerina's petition for annulment of judgment for being a wrong mode of remedy. According to the Court of Appeals, the proper remedy was to file a sworn statement before the civil registry, declaring her reappearance in accordance with Article 42 of the Family Code.

ISSUE:

Whether the Court of Appeals erred in dismissing Celerina's petition for annulment of judgment for being a wrong remedy for a fraudulently obtained judgment declaring presumptive death. (YES)

RULING:

The Family Code provides that the **second marriage is in danger of being terminated by the presumptively dead spouse when he or she reappears.** Based on Article 42 of the Family Code of the Philippines, 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.

In other words, the Family Code provides the presumptively dead spouse with the remedy of terminating the subsequent marriage by mere reappearance.

However, **reappearance does not always immediately cause the subsequent marriage's termination.** The subsequent marriage may still subsist despite the absent or presumptively dead spouse's reappearance (1) if the first marriage has already been annulled or has been declared a

nullity; (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; or (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.

If, as Celerina contends, Ricardo was in bad faith when he filed his petition to declare her presumptively dead and when he contracted the subsequent marriage, such marriage would be considered void for being bigamous under Article 35(4) of the Family Code. This is because the circumstances lack the element of "well-founded belief under Article 41 of the Family Code, which is essential for the exception to the rule against bigamous marriages to apply.

The provision on reappearance in the Family Code as a remedy to effect the termination of the subsequent marriage does not preclude the spouse who was declared presumptively dead from availing other remedies existing in law. This court had, in fact, recognized that a subsequent marriage may also be terminated by filing "an action in court to prove the reappearance of the absentee and obtain a declaration of dissolution or termination of the subsequent marriage."

Celerina does not admit to have been absent. She also seeks not merely the termination of the subsequent marriage but also the nullification of its effects. She contends that reappearance is not a sufficient remedy because it will only terminate the subsequent marriage but not nullify the effects of the declaration of her presumptive death and the subsequent marriage.

Celerina is correct. Therefore, for the **purpose of not only terminating the subsequent marriage but also of nullifying the effects of the declaration of presumptive death and the subsequent marriage, mere filing of an affidavit of reappearance would not suffice**. Celerina's choice to file an action for annulment of judgment will, therefore, lie.

CELERINA J. SANTOS, *Petitioner*, -versus- RICARDO T. SANTOS, *Respondents.*
G.R. No. 187061, SECOND DIVISION, October 8, 2014, LEONEN, *J.*

*The 1995 case of **Santos v. Court of Appeals** was the first case that attempted to lay down the standards for determining psychological incapacity under **Article 36 of the Family Code**. Santos declared that "**psychological incapacity** must be characterized by **(a) gravity, (b) juridical antecedence, and (c) incurability.**" Furthermore, the incapacity "should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage."*

FACTS:

Petitioner Maria Teresa and respondent Rodolfo De La Fuente, Jr. (Rodolfo) first met when they were students at the University of Sto. Tomas. Soon thereafter, they became sweethearts. While they were still sweethearts, Maria Teresa already noticed that Rodolfo was an introvert and was prone to jealousy. She also observed that Rodolfo appeared to have no ambition in life and felt insecure of his siblings, who excelled in their studies and careers. Maria Teresa and Rodolfo got married and had two children.

Rodolfo's attitude worsened as they went on with their marital life. He was **jealous of everyone** who talked to Maria Teresa, and would even skip work at his family's printing press to **stalk** her. Rodolfo's

jealousy was so severe that he once poked a gun at his own 15-year old cousin who was staying at their house because he suspected his cousin of being Maria Teresa's lover.

In addition, Rodolfo treated Maria Teresa like a **sex slave**. They would have sex four (4) or five (5) times a day. One day, the couple quarreled because Rodolfo suspected that Maria Teresa was having an affair. In the heat of their quarrel, Rodolfo poked a gun at Maria Teresa's head. Maria Teresa, with their two (2) daughters in tow, left Rodolfo and their conjugal home after the gun poking incident. Maria Teresa never saw Rodolfo again after that, and she supported their children by herself. Maria Teresa filed a petition for declaration of nullity of marriage.

ISSUE:

Whether or not the marriage between Teresa and Rodolfo should be nullified based on psychological incapacity. (YES)

RULING:

The 1995 case of ***Santos v. Court of Appeals*** was the first case that attempted to lay down the standards for determining psychological incapacity under **Article 36 of the Family Code**. *Santos* declared that "**psychological incapacity** must be characterized by **(a) gravity, (b) juridical antecedence, and (c) incurability.**" Furthermore, the incapacity "should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage."

Dr. Lopez's testimony, as corroborated by petitioner, sufficiently proved that respondent suffered from psychological incapacity. Respondent's paranoid personality disorder made him distrustful and prone to extreme jealousy and acts of depravity, incapacitating him to fully comprehend and assume the essential obligations of marriage.
The **juridical antecedence** of respondent's psychological incapacity was also sufficiently proven during trial. Petitioner attested that she noticed respondent's jealousy even before their marriage, and that he would often follow her to make sure that she did not talk to anyone or cheat on him. She believed that he would change after they got married; however, this did not happen. Respondent's jealousy and paranoia were so extreme and severe that these caused him to poke a gun at petitioner's head.
The **incurability** and severity of respondent's psychological incapacity were likewise discussed by Dr. Lopez. He vouched that a person with paranoid personality disorder would refuse to admit that there was something wrong and that there was a need for treatment. This was corroborated by petitioner when she stated that respondent repeatedly refused treatment. Petitioner consulted a lawyer, a priest, and a doctor, and suggested couples counselling to respondent; however, respondent refused all of her attempts at seeking professional help. Respondent also refused to be examined by Dr. Lopez.

Article 68 of the Family Code obligates the husband and wife "to live together, observe mutual love, respect and fidelity, and render mutual help and support." In this case, petitioner and respondent may have lived together, but the facts narrated by petitioner show that respondent failed to, or could not, comply with the obligations expected of him as a husband. He was even apathetic that petitioner filed a petition for declaration of nullity of their marriage.

MARIA TERESA B. TANI-DE LA FUENTE, *Petitioner*, -versus- RODOLFO DE LA FUENTE, JR., *Respondents.*
G.R. No. 188400, SECOND DIVISION, March 8, 2017, LEONEN, *J.*

*With the effectivity of the Family Code, the period of seven years under the first paragraph of Article 390 of the Civil Code was reduced to four consecutive years. Thus**, before the spouse present may contract a subsequent marriage, he or she must institute summary proceedings for the declaration of the presumptive death of the absentee spouse, without prejudice to the effect of the reappearance of the absentee spouse.***

FACTS:

Eduardo was married to Rubylus Gaña. He met the private complainant Tina B. Gandalera in Dagupan City. Eventually, as one thing led to another, they went to a motel where, despite Tina's resistance, Eduardo succeeded in having his way with her. Eduardo proposed marriage on several occasions, assuring her that he was single. Eduardo even brought his parents to Baguio City to meet Tina's parents, and was assured by them that their son was still single.

Tina finally agreed to marry Eduardo. They got married; It **appeared in their marriage contract that Eduardo was "single."**

The couple was happy during the first three years of their married life. Through their joint efforts, they were able to build their home. However, Manuel started making himself scarce and went to their house only twice or thrice a year. Tina was jobless, and whenever she asked money from Eduardo, he would slap her. Eduardo took all his clothes, left, and **did not return**. Worse, he stopped giving financial support.

Sometime in August 2001, Tina became curious and made inquiries from the National Statistics Office (NSO) in Manila where she learned that Eduardo had been **previously married**. She secured an NSO-certified copy of the marriage contract. She was so embarrassed and humiliated when she learned that Eduardo was in fact already married when they exchanged their own vows.

The court rendered judgment finding Eduardo guilty beyond reasonable doubt of bigamy.

Eduardo further testified that he declared he was "single" in his marriage contract with Tina because he believed in good faith that his first marriage was invalid. He did not know that he had to go to court to seek for the nullification of his first marriage before marrying Tina. Eduardo further claimed that he was only forced to marry his first wife because she threatened to commit suicide unless he did so.

ISSUE:

Whether or not Eduardo is guilty of bigamy. (YES)

RULING:

For the accused to be held guilty of bigamy, the prosecution is burdened to prove the felony: **(a) he/she has been legally married**; and **(b) he/she contracts a subsequent marriage without the former marriage having been lawfully dissolved**. The felony is consummated on the celebration

of the second marriage or subsequent marriage. It is essential in the prosecution for bigamy that the alleged second marriage, having all the essential requirements, would be valid were it not for the subsistence of the first marriage.

In the present case, the prosecution proved that the petitioner was married to Gaña in 1975, and such marriage was **not judicially declared a nullity**; hence, the marriage is presumed to subsist. The prosecution also proved that the petitioner married the private complainant in 1996, long after the effectivity of the Family Code.

It was the burden of the petitioner to prove his defense that when he married the private complainant in 1996, he was of the well-grounded belief that his first wife was already dead, as he had not heard from her for more than 20 years since 1975. He should have adduced in evidence a decision of a competent court declaring the presumptive death of his first wife as required by Article 349 of the Revised Penal Code, in relation to Article 41 of the Family Code.

With the effectivity of the Family Code, the period of seven years under the first paragraph of Article 390 of the Civil Code was reduced to four consecutive years. Thus**, before the spouse present may contract a subsequent marriage, he or she must institute summary proceedings for the declaration of the presumptive death of the absentee spouse, without prejudice to the effect of the reappearance of the absentee spouse.**

ART.41 FAMILY CODE

REPUBLIC OF THE PHILIPPINES, *Petitioner*, *v.* **JOSE B. SAREÑOGON, JR.**, *Respondent*.
G.R. No. 199194, SECOND DIVISION, February 10, 2016, DEL CASTILLO, *J.*:

The "well-founded belief" requisite under Article 41 of the Family Code is complied with only upon a showing that sincere honest-to-goodness efforts had indeed been made to ascertain whether the absent spouse is still alive or is already dead.

In the case at bar, the RTC ruled that Jose's "well-founded belief that Netchie was already dead upon the following grounds:

> *(1) Jose allegedly tried to contact Netchie''s parents while he was still out of the country, but did not reach them as they had allegedly left Clarin, Misamis Occidental;*
>
> *(2) Jose believed/presumed that Netchie was already dead because when he returned home, he was not able to obtain any information that Netchie was still alive from Netchie''s relatives and friends;*
>
> *(3) Jose''s testimony to the effect that Netchie is no longer alive, hence must be presumed dead, was corroborated by Jose''s older brother, and by Netchie''s aunt, both of whom testified that he (Jose) and Netchie lived together as husband and wife only for one month and that after this, there had been no information as to Netchie''s whereabouts.*

FACTS:

On November 4, 2008, respondent Jose B. Sarefiogon, Jr. (Jose) filed a Petition[5] before the Regional Trial Court (RTC) of Ozamiz City-Branch 15 the declaration of presumptive death of his wife, Netchie S.[7]Sareñogon (Netchie).

In an Amended Order dated Februrary 11, 2009, the RTC set the Petition for initial hearing on April 16, 2009. It likewise directed the publication of said Order in a newspaper of general circulation in the cities of Tangub, Ozamiz and Oroquieta, all in the province of Misamis Occidental. Nobody opposed the Petition. Trial then followed.

Jose testified that he first met Netchie in Clarin, Misamis Occidental in 1991, They later became sweethearts and on August 10,1996, they got married in civil rites at the Manila City Hall. However, they lived together as husband and wife for a month only because he left to work as a seaman while Netchie went to Hongkong as a domestic helper. For three months, he did not receive any communication from Netchie. He likewise had no idea about her whereabouts. While still abroad, he tried to contact Netchie''s parents, but failed, as the latter had allegedly left Clarin, Misamis Occidental.

He returned home after his contract expired. He then inquired from Netchie''s relatives and friends about her whereabouts, but they also did not know where she was. Because of these, he had to presume that his wife Netchie was already dead. He filed the Petition before the RTC so he could contract another marriage pursuant to Article 41 of the Family Code.
The RTC found that Netchie had disappeared for more than four years, reason enough for Jose to conclude that his wife was indeed already dead.

ISSUE:

Whether or not the alleged efforts of respondent in locating his missing wife do not sufficiently support a "well-founded belief" that respondent''s absent wife x x x is probably dead. (NO)

RULING:

The "well-founded belief" requisite under Article 41 of the Family Code is complied with only upon a showing that sincere honest-to-goodness efforts had indeed been made to ascertain whether the absent spouse is still alive or is already dead.

Article 41 of the Family Code pertinently provides that:

Art. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of

presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse. (83a)

In the case at bar, the RTC ruled that Jose 1ms "well-founded belief that Netchie was already dead upon the following grounds:

(1) Jose allegedly tried to contact Netchie''s parents while he was still out of the country, but did not reach them as they had allegedly left Clarin, Misamis Occidental;

(2) Jose believed/presumed that Netchie was already dead because when he returned home, he was not able to obtain any information that Netchie was still alive from Netchie''s relatives and friends;

(3) Jose''s testimony to the effect that Netchie is no longer alive, hence must be presumed dead, was corroborated by Jose''s older brother, and by Netchie''s aunt, both of whom testified that he (Jose) and Netchie lived together as husband and wife only for one month and that after this, there had been no information as to Netchie''s whereabouts.

REPUBLIC OF THE PHILIPPINES, Petitioner vs **LUDYSON C. CATUBAG**, Respondent
G.R. No. 210580, SECOND DIVISION, APRIL 18, 2018, REYES, JR., *J.:*

Prevailing jurisprudence has time and again pointed out four (4) requisites under Article 41 of the Family Code that must be complied with for the declaration of presumptive death to prosper: first, the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code. Second, the present spouse wishes to remarry. Third, the present spouse has a well-founded belief that the absentee is dead. Fourth, the present spouse files for a summary proceeding for the declaration of presumptive death of the absentee.

FACTS:

On June 26, 2003, private respondent and Shanaviv tied the knot in Rizal, Cagayan. The marriage was solemnized by Honorable Judge Tomas D. Lasam at the Office of the Municipal Judge, Rizal, Cagayan. Sometime in April 2006, private respondent and his family were able to acquire a housing unit located at Rio del Grande Subdivision, Enrile Cagayan. Thereafter, private respondent returned overseas to continue his work. While abroad, he maintained constant communication with his family. On July 12, 2006, while working abroad, private respondent was informed by his relatives that Shanaviv left their house and never returned. In the meantime, private respondent's relatives took care of the children.

Worried about his wife's sudden disappearance and the welfare of his children, private respondent took an emergency vacation and flew back home. Private respondent looked for his wife in Enrile Cagayan, but to no avail. He then proceeded to inquire about Shanaviv's whereabouts from their close friends and relatives, but they too could offer no help. Private respondent travelled as far as Bicol, where Shanaviv was born and raised, but he still could not locate her.

Private respondent subsequently sought the help of Bombo Radyo Philippines, one of the more well-known radio networks in the Philippines, to broadcast the fact of his wife's disappearance. Moreover, private respondent searched various hospitals and funeral parlors in Tuguegarao and in Bicol, with no avail.

On May 4, 2012, after almost seven (7) years of waiting, private respondent filed with the RTC a petition to have his wife declared presumptively dead.

On May 23, 2013, the RTC rendered its Decision granting the Petition.

ISSUES:

Whether or not private respondent has not established a well-founded belief that his wife is presumptively dead. (YES)

RULING:

Prevailing jurisprudence has time and again pointed out four (4) requisites under Article 41 of the Family Code that must be complied with for the declaration of presumptive death to prosper: first, the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code. Second, the present spouse wishes to remarry. Third, the present spouse has a well-founded belief that the absentee is dead. Fourth, the present spouse files for a summary proceeding for the declaration of presumptive death of the absentee.

In seeking a declaration of presumptive death, it is the present spouse who has the burden of proving that all the requisites under Article 41 of the Family Code are present. In the instant case, since it is private respondent who asserts the affirmative of the issue, then it is his duty to substantiate the same. He who alleges a fact has the burden of proving it and mere allegations will not suffice.

The Court finds that private respondent's efforts falls short of the degree of diligence required by jurisprudence for the following reasons:

First, private respondent claims to have inquired about his missing wife's whereabouts from both friends and relatives. Further, he claims to have carried out such inquiries in the place where they lived and in the place where his wife was born and raised. However, private respondent failed to present any of these alleged friends or relatives to corroborate these "inquiries." Moreover, no explanation for such omission was given. As held in the previous cases, failure to present any of the persons from whom inquiries were allegedly made tends to belie a claim of a diligent search.

Second, private respondent did not seek the help of other concerned government agencies, namely, the local police authorities and the National Bureau of Investigation (NBI). In *Cantor,* the Court reasoned that while a finding of well-founded belief varies with the nature of the situation, it would still be prudent for the present spouse to seek the aid of the authorities in searching for the missing spouse. Absent such efforts to employ the help of local authorities, the present spouse cannot be said to have actively and diligently searched for the absentee spouse.

Finally, aside from the certification of Bombo Radyo's manager, private respondent bases his "well-founded belief' on bare assertions that he exercised earnest efforts in looking for his wife. Again, the present spouse's bare assertions, uncorroborated by any kind of evidence, falls short of the diligence required to engender a well-founded belief that the absentee spouse is dead.

Taken together, the Court is of the view that private respondent's efforts in searching for his missing wife, Shanaviv, are merely passive. Private respondent could have easily convinced the Court

otherwise by providing evidence which corroborated his "earnest-efforts." Yet, no explanation or justification was given for these glaring omissions. Again, he who alleges a fact has the burden of proving it by some other means than mere allegations.

Stripped of private respondent's mere allegations, only the act of broadcasting his wife's alleged disappearance through a known radio station was corroborated. This act comes nowhere close to establishing a well-founded belief that Shanaviv has already passed away. At most, it just reaffirms the unfortunate theory that she abandoned the family.

ESTRELLITA TADEO-MATIAS, *Petitioner*, *v.* REPUBLIC OF THE PHILIPPINES, *Respondent*.
G.R. No. 230751, THIRD DIVISION April 25, 2018, VELASCO JR., *J.*:

The petition for the declaration of presumptive death filed by petitioner is not an action that would have warranted the application of Article 41 of the FC because petitioner was not seeking to remarry. A reading of Article 41 of the FC shows that the presumption of death established therein is only applicable for the purpose of contracting a valid subsequent marriage under the said law.

FACTS:

The petitioner and Wilfredo entered into a lawful marriage on January 7, 1968 in Imbo, Anda, Pangasinan. After the solemnization of their marriage vows, the couple put up their conjugal home at 106 Molave street, Zone B. San Miguel, Tarlac City

Wilfredo continued to serve the Philippines and on September 15, 1979, he set out from their conjugal home to again serve as a member of the Philippine Constabulary. Wilfredo never came back from his tour of duty in Arayat, Pampanga since 1979 and he never made contact or communicated with the petitioner nor to his relatives.

That according to the service record of Wilfredo issued by the National Police Commission, Wilfredo was already declared missing since 1979. Petitioner constantly pestered the then Philippine Constabulary for any news regarding her beloved husband Wilfredo, but the Philippine Constabulary had no answer to his whereabouts, neither did they have any news of him going AWOL, all they know was he was assigned to a place frequented by the New People's Army.

Weeks became years and years became decades, but the petitioner never gave up hope, and after more than three (3) decades of awaiting, the petitioner is still hopeful, but the times had been tough on her, especially with a meager source of income coupled with her age, it is now necessary for her to request for the benefits that rightfully belong to her in order to survive.

That one of the requirements to attain the claim of benefits is for a proof of death or at least declaration of presumptive death by the Honorable Court. That this petition is being filed not for any other purpose but solely to claim for the benefit under P.D. No. 1638 as amended.

The RTC issued a Decision in Spec. Proc. No. 4850 granting the petition using Article 41 of the Family Code of the Philippines.

ISSUE:

Whether or not Article 41 of the Family Code should be applied in this case. (NO)

RULING:

The petition for the declaration of presumptive death filed by petitioner is not an action that would have warranted the application of Article 41 of the FC shows that the presumption of death established therein is only applicable for the purpose of *contracting a valid subsequent marriage* under the said law. Thus:

Art. 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

Here, petitioner was forthright that she was not seeking the declaration of the presumptive death Wilfredo as a prerequisite for remarriage. In her petition for the declaration of presumptive death, petitioner categorically stated that the same was filed "*not for any other purpose but solely to claim for the benefit under P.D. No. 1638 a amended.*

Given that her petition for the declaration of presumptive death was *not* filed for the purpose of remarriage, petitioner was clearly relying on the presumption of death under either Article 390 or Article 391 of the Civil Code as the basis of her petition. Articles 390 and 391 of the Civil Code express the general rule regarding presumption s of death for *any* civil purpose, to wit:

Art. 390. After an absence of seven years, it being unknown whether or not the absence still lives, he shall be presumed dead for all purposes except for those of succession.

The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of five years shall be sufficient in order that his succession may be opened.

Art. 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

(1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;

(2) A person in the armed forces who has taken part in war, and has been missing for four years;

(3) a person who has been in danger of death under other circumstances and his existence has not been known for four years.

Verily, the RTC's use of Article 41 of the FC as its basis in declaring the presumptive death of Wilfredo was misleading and grossly improper. The petition for the declaration of presumptive death filed by the petitioner was based on the Civil Code, and not on Article 41 of the FC.

VOIDABLE MARRIAGES

AURORA A. ANAYA, plaintiff-appellant, vs. **FERNANDO O. PALAROAN,** defendant-appellee.
G.R. No. L-27930, EN BANC, November 26, 1970, REYES, J.B.L., *J.:*

Non-disclosure of a husband's pre-marital relationship with another woman is not one of the enumerated circumstances that would constitute a ground for annulment; and it is further excluded by the last paragraph of the article, providing that "no other misrepresentation or deceit as to ... chastity" shall give ground for an action to annul a marriage. While a woman may detest such non-disclosure of premarital lewdness or feel having been thereby cheated into giving her consent to the marriage, nevertheless the law does not assuage her grief after her consent was solemnly given, for upon marriage she entered into an institution in which society, and not herself alone, is interested. The lawmaker's intent being plain, the Court's duty is to give effect to the same, whether it agrees with the rule or not.

FACTS:

The complaint in said Civil Case No. E-00431 alleged, *inter alia*, that plaintiff Aurora and defendant Fernando were married on 4 December 1953; that defendant Fernando filed an action for annulment of the marriage on 7 January 1954 on the ground that his consent was obtained through force and intimidation, which action was docketed in the Court of First Instance of Manila as Civil Case No. 21589; that judgment was rendered therein on 23 September 1959 dismissing the complaint of Fernando, upholding the validity of the marriage and granting Aurora's counterclaim; that (per paragraph IV) while the amount of the counterclaim was being negotiated "to settle the judgment," Fernando had divulged to Aurora that several months prior to their marriage he had pre-marital relationship with a close relative of his; and that "the non-divulgement to her of the aforementioned pre-marital secret on the part of defendant that definitely wrecked their marriage, which apparently doomed to fail even before it had hardly commenced ... frank disclosure of which, certitude precisely precluded her, the Plaintiff herein from going thru the marriage that was solemnized between them constituted 'FRAUD', in obtaining her consent, within the contemplation of No. 4 of Article 85 of the Civil Code" (sic) (Record on Appeal, page 3). She prayed for the annulment of the marriage and for moral damages.

ISSUE:

Whether or not the non-disclosure to a wife by her husband of his pre-marital relationship with another woman is a ground for annulment of marriage. (NO)

RULING:

ART. 86. Any of the following circumstances shall constitute fraud referred to in number 4 of the preceding article:

(1) Misrepresentation as to the identity of one of the contracting parties;
(2) Non-disclosure of the previous conviction of the other party of a crime involving moral turpitude, and the penalty imposed was imprisonment for two years or more;

(3) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband.

No other misrepresentation or deceit as to character, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage.

Non-disclosure of a husband's pre-marital relationship with another woman is not one of the enumerated circumstances that would constitute a ground for annulment; and it is further excluded by the last paragraph of the article, providing that "no other misrepresentation or deceit as to ... chastity" shall give ground for an action to annul a marriage. While a woman may detest such non-disclosure of premarital lewdness or feel having been thereby cheated into giving her consent to the marriage, nevertheless the law does not assuage her grief after her consent was solemnly given, for upon marriage she entered into an institution in which society, and not herself alone, is interested. The lawmaker's intent being plain, the Court's duty is to give effect to the same, whether it agrees with the rule or not.

FERNANDO AQUINO, petitioner, vs. **CONCHITA DELIZO,** respondent.
G.R. No. L-15853, EN BANC, July 27, 1960, GUTIERREZ DAVID, *J.*:

Under the new Civil Code, concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband constitutes fraud and is ground for annulment of marriage. (Art. 85, par. (4) in relation to Art. 86, par. (3). In the case of Buccat vs. Buccat (72 Phil., 19) cited in the decision sought to be reviewed, which was also an action for the annulment of marriage on the ground of fraud, plaintiff's claim that he did not even suspect the pregnancy of the defendant was held to be unbelievable, it having been proven that the latter was already in an advanced stage of pregnancy (7th month) at the time of their marriage. That pronouncement, however, cannot apply to the case at bar. Here the defendant wife was alleged to be only more than four months pregnant at the time of her marriage to plaintiff. At that stage, we are not prepared to say that her pregnancy was readily apparent, especially since she was "naturally plump" or fat as alleged by plaintiff.

FACTS:

The dismissed complaint, which was filed on September 6, 1955, was based on the ground of fraud, it being alleged, among other things, that defendant Conchita Delizo, herein respondent, at the date of her marriage to plaintiff, herein petitioner Fernando Aquino, on December 27, 1954, concealed from the latter that fact that she was pregnant by another man, and sometime in April, 1955, or about four months after their marriage, gave birth to a child. In her answer, defendant claimed that the child was conceived out of lawful wedlock between her and the plaintiff.

ISSUE:

Whether or not the concealment of the wife at the time of marriage that she is pregnant by a man other than her husband constitutes fraud. (YES).

RULING:

Under the new Civil Code, concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband constitutes fraud and is ground for annulment of marriage. (Art. 85, par. (4) in relation to Art. 86, par. (3). In the case of *Buccat vs. Buccat* (72 Phil., 19)

cited in the decision sought to be reviewed, which was also an action for the annulment of marriage on the ground of fraud, plaintiff's claim that he did not even suspect the pregnancy of the defendant was held to be unbelievable, it having been proven that the latter was already in an advanced stage of pregnancy (7th month) at the time of their marriage. That pronouncement, however, cannot apply to the case at bar.

Here the defendant wife was alleged to be only more than four months pregnant at the time of her marriage to plaintiff. At that stage, we are not prepared to say that her pregnancy was readily apparent, especially since she was "naturally plump" or fat as alleged by plaintiff. According to medical authorities, even on the 5th month of pregnancy, the enlargement of a woman's abdomen is still below the umbilicus, that is to say, the enlargement is limited to the lower part of the abdomen so that it is hardly noticeable and may, if noticed, be attributed only to fat formation on the lower part of the abdomen. It is only on the 6th month of pregnancy that the enlargement of the woman's abdomen reaches a height above the umbilicus, making the roundness of the abdomen more general and apparent. (See Lull, Clinical Obstetrics, p. 122)

If, as claimed by plaintiff, defendant is "naturally plump", he could hardly be expected to know, merely by looking, whether or not she was pregnant at the time of their marriage more so because she must have attempted to conceal the true state of affairs. Even physicians and surgeons, with the aid of the woman herself who shows and gives her subjective and objective symptoms, can only claim positive diagnosis of pregnancy in 33% at five months. and 50% at six months. (XI Cyclopedia of Medicine, Surgery, etc. Pregnancy, p. 10).

JOEL JIMENEZ, plaintiff-appellee, vs. **REMEDIOS CAÑIZARES,** defendant. **Republic of the Philippines,** intervenor-appellant.
G.R. No. L-12790, EN BANC, August 31, 1960, PADILLA, J.:

The law specifically enumerates the legal grounds, that must be proved to exist by indubitable evidence, to annul a marriage. In the case at bar, the annulment of the marriage in question was decreed upon the sole testimony of the husband who was expected to give testimony tending or aiming at securing the annulment of his marriage he sought and seeks. Whether the wife is really impotent cannot be deemed to have been satisfactorily established, because from the commencement of the proceedings until the entry of the decree she had abstained from taking part therein. Although her refusal to be examined or failure to appear in court show indifference on her part, yet from such attitude the presumption arising out of the suppression of evidence could not arise or be inferred because women of this country are by nature coy, bashful and shy and would not submit to a physical examination unless compelled to by competent authority. "Impotency being an abnormal condition should not be presumed. The presumption is in favor of potency." The lone testimony of the husband that his wife is physically incapable of sexual intercourse is insufficient to tear asunder the ties that have bound them together as husband and wife.

FACTS:

In a complaint filed on 7 June 1955 in the Court of First Instance of Zamboanga the plaintiff Joel Jimenez prays for a decree annulling his marriage to the defendant Remedios Cañizares contracted on 3 August 1950 before a judge of the municipal court of Zamboanga City, upon the ground that the office of her genitals or vagina was too small to allow the penetration of a male organ or penis for copulation; that the condition of her genitals as described above existed at the time of marriage and

continues to exist; and that for that reason he left the conjugal home two nights and one day after they had been married.

ISSUE:

Whether the marriage in question may be annulled on the strength only of the lone testimony of the husband who claimed and testified that his wife was and is impotent.

RULING:

Marriage in this country is an institution in which the community is deeply interested. The state has surrounded it with safeguards to maintain its purity, continuity and permanence. The security and stability of the state are largely dependent upon it. It is the interest 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. The incidents of the status are governed by law, not by will of the parties.

The law specifically enumerates the legal grounds, that must be proved to exist by indubitable evidence, to annul a marriage. In the case at bar, the annulment of the marriage in question was decreed upon the sole testimony of the husband who was expected to give testimony tending or aiming at securing the annulment of his marriage he sought and seeks. Whether the wife is really impotent cannot be deemed to have been satisfactorily established, becase from the commencement of the proceedings until the entry of the decree she had abstained from taking part therein. Although her refusal to be examined or failure to appear in court show indifference on her part, yet from such attitude the presumption arising out of the suppression of evidence could not arise or be inferred because women of this country are by nature coy, bashful and shy and would not submit to a physical examination unless compelled to by competent authority. This the Court may do without doing violence to and infringing in this case is not self-incrimination. She is not charged with any offense. She is not being compelled to be a witness against herself. "Impotency being an abnormal condition should not be presumed. The presumption is in favor of potency." The lone testimony of the husband that his wife is physically incapable of sexual intercourse is insufficient to tear asunder the ties that have bound them together as husband and wife.

LEGAL SEPARATION

JOSE DE OCAMPO, petitioner, vs. **SERAFINA FLORENCIANO,** respondent.
G.R. No. L-13553, February 23, 1960, EN BANC, BENGZON, *J.*:

As we understand the article, it does not exclude, as evidence, any admission or confession made by the defendant outside of the court. It merely prohibits a decree of separation upon a confession of judgment. Confession of judgment usually happens when the defendant appears in court and confesses the right of plaintiff to judgment or files a pleading expressly agreeing to the plaintiff's demand.

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

FACTS:

The record shows that on July 5, 1955, the complaint for legal separation was filed. As amended, it described their marriage performed in 1938, and the commission of adultery by Serafina, in March 1951 with Jose Arcalas, and in June 1955 with Nelson Orzame.

Because the defendant made no answer, the court defaulted her, and pursuant to Art. 101 above, directed the provincial fiscal to investigate whether or not collusion existed between the parties. The fiscal examined the defendant under oath, and then reported to the Court that there was no collusion. The plaintiff presented his evidence consisting of the testimony of Vicente Medina, Ernesto de Ocampo, Cesar Enriquez, Mateo Damo, Jose de Ocampo and Capt. Serafin Gubat.

ART. 100.—The legal separation may be claimed only by the innocent spouse, provided there has been no condonation of or consent to the adultery or concubinage. Where both spouses are offenders, a legal separation cannot be claimed by either of them. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition.

ART. 101.—No decree of legal separation shall be promulgated upon a stipulation of facts or by confession of judgment.

In case of non-appearance of the defendant, the court shall order the prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the State in order to take care that the evidence for the plaintiff is not fabricated.

ISSUE:

Whether or not Art 101 completely prohibits decree of legal separation upon confession or stipulation of facts. (NO)

RULING:

As we understand the article, it does not exclude, as evidence, any admission or confession made by the defendant outside of the court. It merely prohibits a decree of separation upon a confession of judgment. Confession of judgment usually happens when the defendant appears in court and confesses the right of plaintiff to judgment or files a pleading expressly agreeing to the plaintiff's demand.

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

The mere circumstance that defendants told the Fiscal that she "like also" to be legally separated from her husband, is no obstacle to the successful prosecution of the action. When she refused to answer the complaint, she indicated her willingness to be separated. Yet, the law does not order the dismissal.

Allowing the proceeding to continue, it takes precautions against collusion, which implies more than consent or lack of opposition to the agreement.

BENJAMIN BUGAYONG, plaintiff-appellant, vs. **LEONILA GINEZ,** defendant-appellee.
G.R. No. L-10033, EN BANC December 28, 1956, FELIX, *J.:*

Condonation is the forgiveness of a marital offense constituting a ground for legal separation or, as stated in I Bouver's Law Dictionary, p. 585, condonation is the "conditional forgiveness or remission, by a husband or wife of a matrimonial offense which the latter has committed". The act of the husband in persuading her to come along with him, and the fact that she went with him and consented to be brought to the house of his cousin Pedro Bugayong and together they slept there as husband and wife for one day and one night, and the further fact that in the second night they again slept together in their house likewise as husband and wife — all these facts have no other meaning in the opinion of this court than that a reconciliation between them was effected and that there was a condonation of the wife by the husband. The reconciliation occurred almost ten months after he came to know of the acts of infidelity amounting to adultery.

FACTS:

As early as July, 1951, Benjamin Bugayong began receiving letters from Valeriana Polangco (plaintiff's sister-in-law) and some from anonymous writers (which were not produced at the hearing) informing him of alleged acts of infidelity of his wife which he did not even care to mention. On cross-examination, plaintiff admitted that his wife also informed him by letter, which she claims to have destroyed, that a certain "Eliong" kissed her. All these communications prompted him in October, 1951 to seek the advice of the Navy Chaplain as to the propriety of a legal separation between him and his wife on account of the latter's alleged acts of infidelity, and he was directed to consult instead the navy legal department.

In August, 1952, plaintiff went to Asingan, Pangasinan, and sought for his wife whom he met in the house of one Mrs. Malalang, defendant's godmother. She came along with him and both proceeded to the house of Pedro Bugayong, a cousin of the plaintiff-husband, where they stayed and lived for 2 nights and 1 day as husband and wife. Then they repaired to the plaintiff's house and again passed the night therein as husband and wife. On the second day, Benjamin Bugayong tried to verify from his wife the truth of the information he received that she had committed adultery but Leonila, instead of answering his query, merely packed up and left, which he took as a confirmation of the acts of infidelity imputed on her. After that and despite such belief, plaintiff exerted efforts to locate her and failing to find her, he went to Bacarra, Ilocos Norte, "to soothe his wounded feelings"

ISSUE:

Whether or not the adultery has been condoned by the husband. (YES)

RULING:

ART. 100. The legal separation may be claimed only by the innocent spouse, *provided there has been no condonation of or consent to the adultery or concubinage*. Where both spouses are offenders, a legal separation cannot by either of them. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition.

Condonation is the forgiveness of a marital offense constituting a ground for legal separation or, as stated in I Bouver's Law Dictionary, p. 585, condonation is the "conditional forgiveness or remission, by a husband or wife of a matrimonial offense *which the latter has committed*".

In August, 1952, he went to Pangasinan and looked for his wife and after finding her they lived together as husband and wife for 2 nights and 1 day, after which he says that he tried to verify from her the truth of the news he had about her infidelity, but failed to attain his purpose because his wife, instead of answering his query on the matter, preferred to desert him, probably enraged for being subjected to such humiliation. And yet he tried to locate her, though in vain. Now, do the husband's attitude of sleeping with his wife for 2 nights despite his alleged belief that she was unfaithful to him, amount to a condonation of her previous and supposed adulterous acts?

The act of the husband in persuading her to come along with him, and the fact that she went with him and consented to be brought to the house of his cousin Pedro Bugayong and together they slept there as husband and wife for one day and one night, and the further fact that in the second night they again slept together in their house likewise as husband and wife — all these facts have no other meaning in the opinion of this court than that a reconciliation between them was effected and that there was a condonation of the wife by the husband. The reconciliation occurred almost ten months after he came to know of the acts of infidelity amounting to adultery.

ELISEA LAPERAL, petitioner, vs. **REPUBLIC OF THE PHILIPPINES,** oppositor.
G.R. No. L-18008, EN BANC, October 30, 1962, BARRERA, *J.:*

Legal separation alone is not a ground for wife's change of name. A woman's married status is not affected by a decree of legal separation, there being no severance of the vinculum, and under Article 372 of the New Civil Code, she must continue using the name and surname employed by her before the separation.

FACTS:
In 1958, petitioner Elisea L. Santamaria was decreed legally separated from her husband Enrique R. Santamaria. In 1960, she filed a petition to be allowed to change her name and/or be permitted to resume using her maiden name Elisea Laperal. The City Attorney of Baguio opposed the petition on the ground that the same violates the provisions of Article 370 (should be 372) of the Civil Code, and that it is not sanctioned by the Rules of Court.

The court denied the petition. Upon petitioner's motion, however, the court, treating the petition as one for change of name, reconsidered its decision and granted the petition on the ground that to allow petitioner, who is a businesswoman decreed legally separated from her husband, to continue using her married name would give rise to confusion in her finances and the eventual liquidation of the conjugal assets. Hence, this appeal by the State.

ISSUE:

Should petitioner be allowed to change her name or be permitted to resume using her maiden name? (NO)

RULING:

Article 372 of the Civil Code reads:

ART. 372. When legal separation has been granted, the wife shall continue using her name and surname employed before the legal separation.

The language of the statute is mandatory that the wife, even after the legal separation has been decreed, shall continue using her name and surname employed before the legal separation. This is so because her married status is unaffected by the separation, there being no severance of the vinculum. It seems to be the policy of the law that the wife should continue to use the name indicative of her unchanged status for the benefit of all concerned.

Even applying Rule 103, the fact of legal separation alone — which is the only basis for the petition — is, not a sufficient ground to justify a change of the name of petitioner, for to hold otherwise would be to provide an easy circumvention of the mandatory provisions of Article 372.

The finding that petitioner's continued use of her husband surname may cause undue confusion in her finances was without basis. It must be considered that the issuance of the decree of legal separation in 1958, necessitate that the conjugal partnership between her and Enrique had automatically been dissolved and liquidated. Hence, there could be no more occasion for an eventual liquidation of the conjugal assets.

ONG ENG KIAM a.k.a. WILLIAM ONG, petitioner, vs. **LUCITA G. ONG,** respondent.
G.R. No. 153206, FIRST DIVISION, October 23, 2006, AUSTRIA-MARTINEZ, *J.*:

The argument of William that since Lucita has abandoned the family, a decree of legal separation should not be granted is without merit, following Art. 56, par. (4) of the Family Code which provides that legal separation shall be denied when both parties have given ground for legal separation. The abandonment referred to by the Family Code is abandonment without justifiable cause for more than one year. As it was established that Lucita left William due to his abusive conduct, such does not constitute abandonment contemplated by the said provision.

FACTS:

Ong Eng Kiam, also known as William Ong (William) and Lucita G. Ong (Lucita) were married on July 13, 1975 at the San Agustin Church in Manila. They have three children: Kingston, Charleston, and Princeton who are now all of the age of majority.

On March 21, 1996, Lucita filed a Complaint for Legal Separation under Article 55 par. (1) of the Family Code before the Regional Trial Court (RTC) of Dagupan City, Branch 41 alleging that her life with William was marked by physical violence, threats, intimidation and grossly abusive conduct. RTC rendered its Decision decreeing legal separation, the CA affirmed *in toto* the RTC Decision.

ISSUE:

Whether or not respondent is guilty of abandonment thus the petition for legal separation should be denied. (NO)

RULING:

The argument of William that since Lucita has abandoned the family, a decree of legal separation should not be granted is without merit, following Art. 56, par. (4) of the Family Code which provides

that legal separation shall be denied when both parties have given ground for legal separation. The abandonment referred to by the Family Code is abandonment without justifiable cause for more than one year. As it was established that Lucita left William due to his abusive conduct, such does not constitute abandonment contemplated by the said provision.

RIGHTS AND OBLIGATIONS BETWEEN HUSBAND & WIFE:

MARIANO B. ARROYO, plaintiff-appellant, vs. **DOLORES C. VASQUEZ DE ARROYO,** defendant-appellee.
G.R. No. L-17014, EN BANC, August 11, 1921, STREET, *J.:*

It is not within the province of the courts of this country to attempt to compel one of the spouses to cohabit with, and render conjugal rights to, the other. Of course where the property rights of one of the pair are invoked, an action for restitution of such rights can be maintained. But we are disinclined to sanction the doctrine that an order, enforceable by process of contempt, may be entered to compel the restitution of the purely personal rights of consortium.

FACTS:

Mariano Arroyo and Dolores Vasquez de Arroyo were married in 1910 and have lived together as man and wife until July 4, 1920 when the wife went away from their common home with the intention of living separate from her husband. Mariano's efforts to induce her to resume marital relations were all in vain. Thereafter, Mariano initiated an action to compel her to return to the matrimonial home and live with him as a dutiful wife. Dolores averred by way of defence and cross-complaint that she had been compelled to leave because of the cruel treatment of her husband. She in turn prayed that a decree of separation be declared and the liquidation of the conjugal partnership as well as permanent separate maintenance. The trial judge, upon consideration of the evidence before him, reached the conclusion that the husband was more to blame than his wife and that his continued ill-treatment of her furnished sufficient justification for her abandonment of the conjugal home and the permanent breaking off of marital relations with him.

ISSUE:

Whether or not the courts can compel one of the spouses to cohabit with each other. (NO)

RULING:

It is not within the province of the courts of this country to attempt to compel one of the spouses to cohabit with, and render conjugal rights to, the other. Of course where the property rights of one of the pair are invoked, an action for restitution of such rights can be maintained. But we are disinclined to sanction the doctrine that an order, enforceable by process of contempt, may be entered to compel the restitution of the purely personal rights of consortium. At best such an order can be effective for no other purpose than to compel the spouses to live under the same roof; and the experience of these countries where the court of justice have assumed to compel the cohabitation of married people shows that the policy of the practice is extremely questionable.

We are therefore unable to hold that Mariano B. Arroyo in this case is entitled to the unconditional and absolute order for the return of the wife to the marital domicile, which is sought in the part of the complaint; though he is, without doubt, entitled to a judicial declaration that his wife has

presented herself without sufficient cause and that it is her duty to return. Therefore, reversing the judgment appealed from, in respect both to the original complaint and the cross-bill, it is declared that Dolores Vasquez de Arroyo has absented herself from the marital home without sufficient cause; and she is admonished that it is her duty to return. The plaintiff is absolved from the cross-complaint, without special pronouncement as to costs of either instance.

ARTURO PELAYO, plaintiff-appellant, vs. **MARCELO LAURON, ET AL.,** defendants-appellees.
G.R. No. L-4089, EN BANC, January 12, 1909, TORRES, *J.*:

Spouses are mutually bound to support each other, there can be no question but that, when either of them by reason of illness should be in need of medical assistance, the other is under the unavoidable obligation to furnish the necessary services of a physician in order that health may be restored, and he or she may be freed from the sickness by which life is jeopardized; the party bound to furnish such support is therefore liable for all expenses, including the fees of the medical expert for his professional services. This liability originates from the above-cited mutual obligation which the law has expressly established between the married couple.

FACTS:

Petitioner Pelayo, a physician, rendered a medical assistance during the child delivery of the daughter-in-law of the defendants. The just and equitable value of services rendered by him was P500.00 which the defendants refused to pay without alleging any good reason. With this, the plaintiff prayed that the judgment be entered in his favour as against the defendants for the sum of P500.00 and costs. RTC absolved the defendant. CA affirmed the RTC ruling.

ISSUE:

Whether or not the defendants are obliged to pay the petitioner for the medical assistance rendered to their daughter-in-law. (NO)

RULING:

Spouses are mutually bound to support each other, there can be no question but that, when either of them by reason of illness should be in need of medical assistance, the other is under the unavoidable obligation to furnish the necessary services of a physician in order that health may be restored, and he or she may be freed from the sickness by which life is jeopardized; the party bound to furnish such support is therefore liable for all expenses, including the fees of the medical expert for his professional services. This liability originates from the above-cited mutual obligation which the law has expressly established between the married couple.

The rendering of medical assistance in case of illness is comprised among the mutual obligations to which the spouses are bound by way of mutual support as provided by the law or the Code. Consequently, the obligation to pay the plaintiff for the medical assistance rendered to the defendant's daughter-in-law must be couched on the husband.

ERLINDA ILUSORIO K. ILUSORIO *Petitioner*, -versus - SYLVIA K. ILUSORIO, JOHN DOE AND JANE DOE, *Respondents.*
G.R. No. 139789, FIRST DIVISION, May 12, 2000, PARDO, *J.*

POTENCIANO ILUSORIO, MA. ERLINDA I. BILDNER, AND SYLVIA ILUSORIO *Petitioners,* -versus - COURT OF APPEALS and ERLINDA K. ILUSORIO, *Respondents.*
G.R. No. 139808, FIRST DIVISION, May 12, 2000, PARDO, *J.*

Habeas Corpus *is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his capture and detention, to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf.*

To justify the grant of the petition, ***the restraint of liberty*** *must be an* ***illegal*** *and* ***involuntary deprivation of freedom of action.***

In this case, the wife (Erlinda) filed a petition for habeas corpus to have custody over her husband, but was denied by the Court because of the absence of actual and defective deprivation of liberty on the part of her husband.

FACTS:

Erlinda Ilusorio was the wife of lawyer, Potenciano Ilusorio. Potenciano was 86 years old at the time, who possessed extensive property which valued at millions of pesos; he was Chairman of the Board and President of Baguio Country Club.

The two married on 11 July 1942 and had 6 children. However, in 1972, Erlinda and Potenciano separated from bed and board for undisclosed reasons.

On 30 December 1997, upon Potenciano's arrival from the United States, he stayed with Erlinda fo about 5 months in Antipolo City. According to their children, their mother gave Potenciano an overdose of the latter's prescribed antidepressant drug, which lead to his health's deterioration.

On 25 February 1998, Erlinda filed with the RTC a petition for guardianship over the person and property of Potenciano Ilusorio because of the latter's advanced age, frail health, poor eyesigh, and impaired judgment. However, Potenciano did not return to Antipolo City and instead lived in Makati.

On 11 March 1999, Erlinda filed with the Court of Appeals a petition for habeas corpus to have the custody of Potenciano Ilusorio. According to her, the respondents refused her demands to see and visit her husband.
The Court of Appeals denied and dismissed the petition due to lack of unlawful restraint or detention of the subject of the petition.

ISSUE:

Whether or not a wife may (or Erlinda in this case) secure a writ of habeas corpus to compel her husband to live with her. (NO).

RULING:

A writ of habeas corpus extends to all cases of illegal confinement or detention, or by which the rightful custody of a person is withheld from the one entitled thereto. It is available (a) where a person continues to be unlawfully denied of one or more of his constitutional freedoms, (b) where there is denial of due process, (c) where the restraints are not merely involuntary but rather unnecessary, and (d) where deprivation of freedom originally valid has later become arbitrary.

The essential element and purpose of the writ of habeas corpus is to inquire into all manner of involuntary restraint, and to relieve a person therefrom if such restraint is illegal.

The evidence shows that there was no actual and effective detention or deprivation of Potenciano's liberty that would justify the issuance of the writ. His age does not render him mentally incapacitated. No court is empowered as a judicial authority to compel a husband to live with his wife. Every husband or wife has the liberty to refuse to see his or her spouse for private reasons, this may be done without threat of any penalty attached to the exercise of their own right.

ELOISA GOITA Y DE LA CAMARA, *plaintiff-appellant,* -versus- CAMPOS RUEDA, *defendant-appellee*

G.R. No. 11263, SECOND DIVISION, November 2, 1916, TRENT, *J.*

Article 152 of the Civil Code gives the instances when the obligation to give support shall cease and the failure of the wife to live with her husband is not one of them. The rule that the husband who is obliged to support his wife, at his option, may choose to pay her a fixed pension or receiving and maintaining her in his own home is not absolute

FACTS:

The parties were legally married in the city of Manila and lived together for a about a month. One month after their marriage, the defendant demanded from the plaintiff that she perform unchaste and lascivious acts on his genital organs. However, the plaintiff refused to perform any of his demands. Due to her refusal, the defendant maltreated her by inflicting injuries upon her face and different parts of her body. The defendant demanded her to leave the conjugal abode and take refuge in the home of her parents.

The plaintiff filed an action against her husband for support outside of the conjugal domicile. The case was dismissed and the plaintiff appealed to the Court of First Instance, however, the latter ruled that the defendant cannot be compelled to support the plaintiff except in his own house and it be by virtue of a judicial decree granter her divorce or separation from the defendant. Hence, the plaintiff appealed before the Supreme Court.

ISSUE:

Whether or not the defendant can be compelled to support the plaintiff outside their conjugal home. (YES)

RULING:

Article 143 of the Civil Code states:

The following are obliged to support each other reciprocally to the whole extent specified in the preceding article:

1. The consorts.

Article 152 of the Civil Code gives the instances when the obligation to give support shall cease and the failure of the wife to live with her husband is not one of them. The rule that the husband who is obliged to support his wife, at his option, may choose to pay her a fixed pension or receiving and maintaining her in his own home is not absolute. The supreme court of Spain held in its decision that it is not absolute as to prevent cases wherein, either because this right would be opposed to the exercise of a preferential right or because of the existence of some justifiable cause morally opposed to the removal of the the party enjoying the maintenance. The right of selection must be understood as being restricted.

PROPERTY RELATIONS

BRIGIDO B. QUIAO, *petitioner* –versus- RITA C. QUIAO, ET AL., *respondents*
G.R. No. 176556, SECOND DIVISION, July 4, 2012, REYES, *J.*

Whether because of annulment or legal separation, Arts. 102 and 129 of the Family Code apply when it comes to liquidation of Absolute Community assets and Conjugal Property assets, respectively, depending on the property regime of the spouses.

Without stipulation, marriages before the Family Code are under CPG, and marriages after are under ACP.

FACTS:

Rita C. Quiao (Rita) and Brigido B. Quiao (Brigido) were married sometime in 1977. The Civil Code (not Family Code) governed their marriage, and because they did not stipulate a property regime, theirs was automatically a Conjugal Partnership of Gains. In 2000, Rita filed a complaint for legal separation against petitioner Brigido B. Quiao (Brigido). RTC rendered a decision declaring the legal separation thereby awarding the custody of their 3 minor children in favor of Rita and all remaining properties shall be divided equally between the spouses subject to the respective legitimes of the children and the payment of the unpaid conjugal liabilities.

Brigido's share, however, of the net profits earned by the conjugal partnership is forfeited in favor of the common children because Brigido is the offending spouse.

Neither party filed a motion for reconsideration and appeal within the period *270 days later or after more than nine months* from the promulgation of the Decision, the petitioner filed before the RTC a Motion for Clarification, asking the RTC to define the term "Net Profits Earned."

RTC held that the phrase "NET PROFIT EARNED" denotes "the remainder of the properties of the parties after deducting the separate properties of each [of the] spouse and the debts." It further held that after determining the remainder of the properties, it shall be forfeited in favor of the common children because the offending spouse does not have any right to any share of the net profits earned, pursuant to Articles 63, No. (2) and 43, No. (2) of the Family Code.

The petitioner claims that the court *a quo* is wrong when it applied Article 129 of the Family Code, instead of Article 102. He confusingly argues that Article 102 applies because there is no other provision under the Family Code which defines net profits earned subject of forfeiture as a result of legal separation.

ISSUES:

1. Whether Article 102 on dissolution of absolute community or Article 129 on dissolution of conjugal partnership of gains is applicable in this case.

2. Whether the offending spouse acquired vested rights over 1/2 of the properties in the conjugal partnership.

3. Whether the computation of "net profits" earned in the conjugal partnership of gains the same with the computation of "net profits" earned in the absolute community

I.
In relation to Article 63(2) of the Family Code. While the couple was married before the effectivity of the Family Code, their separation took place when the Family Code was operative; therefore, the Family Code is the applicable law in the liquidation of CPG assets and liabilities.

II.
The offending spouse did not acquire vested rights over 1/2 of the properties in the conjugal partnership.The petitioner is saying that since the property relations between the spouses is governed by the regime of Conjugal Partnership of Gains under the Civil Code, the petitioner acquired vested rights over half of the properties of the Conjugal Partnership of Gains, pursuant to Article 143 of the Civil Code, which provides: "All property of the conjugal partnership of gains is owned in common by the husband and wife."

While one may not be deprived of his "vested right," he may lose the same if there is due process and such deprivation is founded in law and jurisprudence. Here, the petitioner was accorded his right to due process. First, he was well-aware that the respondent prayed in her complaint that all of the conjugal properties be awarded to her. In fact, in his Answer, the petitioner prayed that the trial court divide the community assets between the petitioner and the respondent as circumstances and evidence warrant after the accounting and inventory of all the community properties of the parties. Second, when the decision for legal separation was promulgated, the petitioner never questioned the trial court's ruling forfeiting what the trial court termed as "net profits," pursuant to Article 129(7) of the Family Code. Thus, the petitioner cannot claim being deprived of his right to due process.

Moreover, Art. 176 of the Family Code specifically states that the guilty spouse must forfeit his/her share in the conjugal partnership profits.

III.
The computation of "net profits" earned in the conjugal partnership of gains is not the same with the computation of "net profits" earned in the absolute community.

When a couple enters into a regime of absolute community, the husband and the wife become joint owners of all the properties of the marriage. Whatever property each spouse brings into the marriage, and those acquired during the marriage (except those excluded under Article 92 of the

Family Code) form the common mass of the couple's properties. And when the couple's marriage or community is dissolved, that common mass is divided between the spouses, or their respective heirs, equally or in the proportion the parties have established, irrespective of the value each one may have originally owned.

In this case, assuming arguendo that Art 102 is applicable, since it has been established that the spouses have no separate properties, what will be divided equally between them is simply the "net profits." And since the legal separation decision states that the 1/2 share decision in the net profits shall be awarded to the children, Brigido will still be left with nothing.

On the other hand, when a couple enters into a regime of conjugal partnership of gains under Article 142 of the Civil Code, "the husband and the wife place in common fund the fruits of their separate property and income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage." From the foregoing provision, each of the couple has his and her own property and debts. The law does not intend to effect a mixture or merger of those debts or properties between the spouses. Rather, it establishes a complete separation of capitals.

Here, since it was already established by the trial court that the spouses have no separate properties, there is nothing to return to any of them. The listed properties above are considered part of the conjugal partnership. Thus, ordinarily, what remains in the above-listed properties should be divided equally between the spouses and/or their respective heirs. However, since the trial court found the petitioner the guilty party, his share from the net profits of the conjugal partnership is forfeited in favor of the common children, pursuant to Article 63(2) of the Family Code. Again, like in the absolute community regime, nothing will be returned to the guilty party in the conjugal partnership regime, because there is no separate property which may be accounted for in the guilty party's favor.

BENIGNO TODA, JR., *Petitioner,* -versus - COURT OF APPEALS AND ROSE MARIE TUASON-TODA, *Respondents.*
G.R. No. 78583-4, SECOND DIVISION, March 26, 1990, REGALDO, *J.*

Article 190. of the Civil Code states "In the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place save in virtue of a judicial order."

This article explains that in order for separation of property to be effected, there must be a decree of the court approving the contract of agreement of the parties.

In this case, respondent insists on the compromise agreement's effectivity on the date of its execution and not after its judicial approval.

FACTS:

Benigno Toda, Jr. (Benigno) and Rose Marie Tuason-Toda (Rose Marie) were married on 9 June 1951 and had two children. Apparently, individual difference of the two came about, and an alleged infidelity of Benigno prompted Rose Marie to file on 18 December 1979 a petition for termination of conjugal partnership for alleged mismanagement and dissipation of conjugal funds against Benigno. On **1 April 1981**, a joint petition for judicial approval of dissolution of conjugal partnership under Article 191 of the Civil Code was consolidated with the former civil case. The latter petition (filed on

1 April 1981), embodied a compromise agreement allocating to the spouses their respective shares in the conjugal partnership of assets, was **signed by the parties on 30 March 1981** beforehand. Said petition and compromise agreement were **approved by the trial court on 9 June 1981**. However, said agreement failed to fully subserve the intended amicable settlement of all the disputes of the spouses.

Benigno appealed from the orders of the trial court, but was subsequently disposed by the Court of Appeals.

Rose Marie argues that the Court of Appeals erred in holding that the compromise agreement of the parties became effective only after its judicial approval on 9 June 1981, and not upon its execution on 30 March 1981.

ISSUE:

Whether the compromise agreement became effective on its approved date of the trial court or when the parties signed it. (DATE OF APPROVAL OF THE TRIAL COURT).

RULING:

Article 190 of the Civil Code states, "in the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place sae in virtue of a judicial order." Simply put, separation of property is effected by the decree of the court approving the same; mere execution of contract or agreement of the parties does not suffice. Without judicial approval, it shall be deemed void.

Therefore, the conjugal partnership of Benigno and Rose Marie should be considered dissolved only on **9 June 1981 when the trial court approved** their joint voluntary dissolution of their conjugal partnership.

ANTONIA R. DELA PENA and ALVIN JOHN B. DELA PENA, *petitioners* –versus- GEMMA REMILYN C. AVILA and FAR EAST BANK & TRUST CO. *respondents*
G.R. No. 187490, SECOND DIVISION, February 8, 2012, Carpio, *J.*

The phrase "married to" is merely descriptive of the civil status of the wife and cannot be interpreted to mean that the husband is also a registered owner. Because it is likewise possible that the property was acquired by the wife while she was still single and registered only after her marriage, neither would registration thereof in said manner constitute proof that the same was acquired during the marriage and, for said reason, to be presumed conjugal in nature.

FACTS:

The suit concerns a 277 square meter parcel of residential land, together with the improvements thereon, situated in Marikina City and previously registered in the name of petitioner Antonia R. Dela Peña (Antonia), "married to Antegono A. Dela Peña" (Antegono) under Transfer Certificate of Title (TCT) No. N-32315 of the Registry of Deeds of Rizal. On 7 May 1996, Antonia obtained from A.C. Aguila & Sons, Co. (Aguila) a loan in the sum of P250,000.00. On the very same day, Antonia also executed in favor of Aguila a notarized Deed of Real Estate Mortgage over the property, for the purpose of securing the payment of said loan obligation.

On 4 November 1997, Antonia executed a notarized Deed of Absolute Sale over the property in favor of respondent Gemma Remilyn C. Avila (Gemma), for the stated consideration of P600,000.00. Utilizing the document, Gemma caused the cancellation of TCT No. N-32315 as well as the issuance of TCT No. 337834 of the Marikina City Registry of Deeds, naming her as the owner of the subject realty.

On 18 May 1998, Antonia and her son, petitioner Alvin John B. Dela Peña (Alvin), filed against Gemma the complaint for annulment of deed of sale docketed before Branch 272 of the Regional Trial Court (RTC) of Marikina City. Claiming that the subject realty was conjugal property, the Dela Peñas alleged, among other matters, that the 7 May 1996 Deed of Real Estate Mortgage Antonia executed in favor of Aguila was not consented to by Antegono who had, by then, already died.

ISSUE:

Whether the subject property is considered a conjugal property so that the mortgaged entered into by petitioner is void because of lack of consent from petitioner's husband.

RULING:

The subject property cannot be considered a conjugal property

Pursuant to Article 160 of the Civil Code of the Philippines, all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife. Although it is not necessary to prove that the property was acquired with funds of the partnership, proof of acquisition during the marriage is an essential condition for the operation of the presumption in favor of the conjugal partnership.

Not having established the time of acquisition of the property, the Dela Peñas insist that the registration thereof in the name of "Antonia R. Dela Peña, of legal age, Filipino, married to Antegono A. Dela Peña" should have already sufficiently established its conjugal nature. Confronted with the same issue in the case Ruiz vs. Court of Appeals, this Court ruled, however, that the phrase "married to" is merely descriptive of the civil status of the wife and cannot be interpreted to mean that the husband is also a registered owner. Because it is likewise possible that the property was acquired by the wife while she was still single and registered only after her marriage, neither would registration thereof in said manner constitute proof that the same was acquired during the marriage and, for said reason, to be presumed conjugal in nature. "Since there is no showing as to when the property in question was acquired, the fact that the title is in the name of the wife alone is determinative of its nature as paraphernal, i.e., belonging exclusively to said spouse."

SPOUSES RICKY WONG AND ANITA CHAN, LEONADRO JOSON, JUANITO SANTOS, EMERITO SICAT AND CONRADO LAGMAN, *petitioners* -versus- HON. INTERMEDIATE APPELLATE COURT and ROMARICO HENSON, *respondnets*
G.R. No. 70082, THIRD DIVISION, August 19, 1991, FERNAN, *C.J.*

The presumption of the conjugal nature of the properties subsists in the absence of clear, satisfactory and convincing evidence to overcome said presumption.

In this case, there is no proof where Romarico obtained the money to repay the loan he used to purchase the said properties. Absence any proof, the said properties are not exclusively owned by Romarico.

Under the Civil Code, a wife may bind the conjugal partnership only when she purchases things or borrows money to purchase things necessary for the support of the family if the husband fails to deliver the proper sum. Furthermore, a wife may only bind the same when the administration of the conjugal partnership is transferred to the wife by the courts or by the husband and when the wife gives moderate donations for charity.

In this case, the spouses Wong failed to establish any of the circumstances mentioned in the Civil Code

FACTS:

Private respondent Romarico Henson married Katrina Pineda. During their marriage, Romarico bought a 1,787 square-meter parcel of land in Angeles City from his father. Katrina entered into an agreement with Anita Chan where the latter consigned to Katrina pieces of jewelry for sale, however, Katrina failed to return the pieces of jewelry within the 20-day period agreed upon. Anita Chan demanded payment of their value.

Katrina issued a check worth Php 55,000 in favor of Anita Chan, however, the said check was dishonored for lack of funds. Hence, Katrina was charged with estafa. The lower court dismissed the case because Katrina's liability is civil in nature. Spouses Wong then filed an action for collection of a sum of money against Katrina and her husband. Atty. Gregorio Albino, Jr. appeared as counsel for Katrina only.

The court ordered Katrina and her husband to pay the spouses Wong Php 321,830.95 with legal interest. A writ of execution was issued levied upon the four lots in Angeles City which were owned by Romarico Henson. The lots were sold in a public auction.

Romarico filed an action for annulment of the decision, the writ of execution, levy on execution and the auction sale. He alleged that he was not given his day in court because he was not represented by counsel. He did not also file an answer to the complaint and was not declared in default in the case. The lower court rendered a decision in favor of Romarico. The defendants appealed and the Intermediate Appellate Court affirmed in toto the decision of the lower court. Hence, the appeal before the Supreme Court

ISSUE:

I. Whether or not the properties are conjugal in nature. (YES)

II. Whether or not Katrina's obligation may be charge against the conjugal partnership. (NO)

RULING:

I.
The presumption of the conjugal nature of the properties subsists in the absence of clear, satisfactory and convincing evidence to overcome said presumption or to prove that the properties are exclusively owned by Romarico.

In this case, there is no proof where Romarico obtained the money to repay the loan he used to purchase the said properties. Absence any proof, the said properties are not exclusively owned by Romarico.

II.
Under the Civil Code, a wife may bind the conjugal partnership only when she purchases things or borrows money to purchase things necessary for the support of the family if the husband fails to deliver the proper sum. Furthermore, a wife may only bind the same when the administration of the conjugal partnership is transferred to the wife by the courts or by the husband and when the wife gives moderate donations for charity.

In this case, the spouses Wong failed to establish any of the circumstances mentioned in the Civil Code. Therefore, the spouses Wong may not bind the conjugal assets to answer for Katrina's personal obligation to them.

ANTONIO A. S. VALDEZ, *Petitioner,* -versus - REGIONAL TRIAL COURT, BRANCH 102, QUEZON CITY AND CONSUELO M. GOMEZ-VALDEZ, *Respondents.*
G.R. No. 122749, FIRST DIVISION, July 31, 1996, VITUG, *J.*

*Paragraph one of Article 147 states, "When a man and a woman who are **capacitated** to marry each other, live exclusively with each other as husband and wife without the benefit marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership."*

In this case, Consuelo Valdez insists on the non-applicability of Article 147 of the Civil Code where parties are psychologically incapacitated. However, the Court clarified the definition of the word "capacitated" refered to in the article.

The term capacitated refers to the legal capacity of a party to contract marriage. Under this property regime, property acquired during the union is prima facie presumed to have been obtained through their joint efforts.

FACTS:

Antonio Valdez and Consuelo Gomez were married on 6 January 1971 and had 5 children. On 22 June 1992, Valdez sought the declaration of nullity of marriage pursuant to Article 36 of the Family Code. The trial court declared the marriage null and void on the ground of their mutual psychological incapacity.

In addition, the petitioner and respondent were directed to start the proceedings on the liquidation of their common properties.

Consuelo Gomez sought a clarification on that portion of the decision directing compliance with Articles 50, 51, 52 of the Family Code. She argues that the Family Code did not contain any provision on the procedure of liquidation of common property in "unions without marriage."

The trial court clarified that Article 147 of the Family Code explicitly provides that the property acquired by both parties during their union, in absence of proof of the contrary, are presumed to have been obtained through the joint efforts of the parties and will be owned by them in equal shares.

Thus, in liquidation of properties owned in common by the plaintiff and defendant, the provisions on ownership found in the Civil Code shall apply.

ISSUE:

Whether or not Article 147 of the Family Code applies to cases where the parties are psychologically incapacitated. (YES)

RULING:

In a void marriage, regardless of the cause thereof, the property relations of the parties during the period of cohabitation is governed by the provisions of Article 147 or 148 of the Family Code, as the case may be.

> Article 147. When a man and a woman who are **capacitated** to marry each other, live exclusively with each other as husband and wife without the benefit marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.
> Xxx

The term "**capacitated**" in the provision, specifically in the first paragraph of the law, refers to **legal capacity of a party to contract marriage**, or any male or female of the age of 18 years or upwards not under any of the impediments mentioned in Articles 37 and 38 of the Code.
The trial court correctly applied the law.

SPS. TRINIDAD S. ESTONINA AND PAULINO ESTONINA *Petitioners,* -versus - COURT OF APPEALS SPS. CELSO ATAYAN AND NILDA HICBAN AND CONSUELO VDA. DE GARCIA, HEIRS OF CASTOR GARCIA AND SANTIAGO GARCIA, JR. , *Respondents.*
G.R. No. 111547, THIRD DIVISION, January 27, 1997, FRANCISCO, *J.*

Article 160 of the Civil Code *states, "All property of the marriage is* ***presumed*** *to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." Jurisprudence and the law itself dictates that this presumption shall only apply when there is proof that the property was acquired during the marriage.*

In this case, the property in dispute was claimed by Consuelo Garcia to be in the nature of a conjugal property, but did not present any proof to bolster such claims. Hence, the Court deemed the property as exclusive to Santiago Garcia.

FACTS:

The case involves a lot owned by Santiago Garcia, who had children with Adela Isoreta (his first wife) and Consuelo Garcia (his second wife). Years after the death of Santiago Garcia, the same lot became subject of a dispute among Trinidad Estonina against Consuelo Garcia, each with their heirs or children.

On 10 March 1973, CFI Manila granted Trinidad Estonina's application for a writ of preliminary attachment.

On 14 August 1977, while the case was pending, the children of Adela Isoreta executed a deed selling, transferring, and conveying unto the spouses Celso Atayan and Nilda Hicban 5/10 of their share in the parcel of land. Likewise, the children of Consuelo Garcia sold 4/10 of their share in same parcel of land to the Atayan spouses. A total of 9/10 of their share were sold to the Atayan spouses.

Subsequently, Trinidad Estonina obtained a favourable decision, and said parcel of land was sold at a public auction where Trinidad Estonina was the highest bidder. Consuelo Garcia appealed the decision but the Intermediate Appellate Court ruled in favour of Trinidad Estonina, thus issuing a TCT in the name of Trinidad Estonina.

On 25 July 1985, spouses Atayan filed a complaint for annulment of sheriff's sale and transfer certificate of title with damages, and claimed that they own 9/10 of the land.

RTC dismissed the complaint for lack of merit. RTC pointed out that the property in question was acquired during the marriage of Santiago Garcia and Consuelo Gaza, and is presumed to be conjugal in nature.

On the contrary, the Court of Appeals held that the lot was the exclusive property of Santiago Garcia and not conjugal.

ISSUE:

Whether or not the property in question is conjugal. (YES)

RULING:

Article 160 of the Civil Code states, "All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife."

The Court explained the applicability of said rule: **such presumption applies only when there is proof that property was acquired during the marriage**.

The petitioners were unable to present any proof that the property in question was acquired during the marriage of Consuelo and Santiago. Their only claim was the fact that Santiago was married to Consuelo.

Evidence on record and jurisprudence proves that the property involved is the exclusive property of the deceased Santiago Garcia.

AYALA INVESTMENT & DEVELOPMENT CORP. AND ABELARDO MAGSAJO *Petitioners,* -versus - COURT OF APPEALS AND SPS. ALFREDO AND ENCARNACION CHING , *Respondents.*
G.R. No. 118305, SECOND DIVISION, February 12, 1998, MARTINEZ, *J.*

*Article 161, of the Civil Code states: "The conjugal partnership shall be liable for: (1) All debts and obligations contracted by the husband **for the benefit of the conjugal partnership**, and those contracted by the wife, also for the same purpose, in the cases where she may legally bind the partnership; xxx"*

It is required that there must be proof that some advantage must have accrued to the benefit of the conjugal partnership in order for Article 161 to be applicable.

In this case, petitioner contends that since the guarantee is in favor of the husband, a benefit for the family may result. Hence, petitioner claimed benefits the family would reasonably anticipate, but such were not benefits contemplated by Article 161, because those were only anticipations. The benefits that the law speaks of are those that are derived directly from the use of the loan.

FACTS:

Philippine Blooming Mills (PBM) obtained a P50,300,000.00 loan from petitioner Ayala Investment & Development Corp (AIDC). As an added security for the credit line extended to PBM, respondent Alfredo Ching executed security arrangements, which made him jointly and severally answerable with PBM's indebtedness to AIDC.

PBM failed to pay the loan, thus prompting AIDC to file a case for sum of money against OBM and respondent Alfredo Ching. The trial court rendered judgment ordering PBM and Alfredo Ching to jointly and severally pay AIDC the principal amount with interests.

Private respondents then filed a case against petitioners to enjoin the auction sale alleging that petitioners cannot enforce the judgment against the conjugal partnership on the ground that the subject loan did not redound to the benefit of the said conjugal partnership. The lower court thus issued a Temporary Restraining Order, which prevented petitioner from proceeding with the enforcement of the writ of execution and with the sale of the properties at public auction.

Subsequently, the auction took place. Since AIDC was the only bidder, it was issued a Certificate of Sale by petitioner. However, AIDC filed a petition for certiorari before the CA questioning the order of the lower court enjoining the sale, to which the CA granted and further nullified order enforcing the auction. The CA added that the loan procured from AIDC was for the benefit of PBM and not for the benefit of the conjugal partnership.

ISSUE:

Whether or not the loan acquired by PBM from AIDC as guaranteed by Alfredo Ching be redounded to the conjugal partnership of the spouses. (NO).

RULING:

Article 161, of the Civil Code states: "The conjugal partnership shall be liable for: (1) All debts and obligations contracted by the husband **for the benefit of the conjugal partnership**, and those contracted by the wife, also for the same purpose, in the cases where she may legally bind the partnership; xxx"

The evidence presented show that Alfredo Ching signed the loan on behalf of PBM, petitioner did not adduce any evidence to prove that Alfredo Ching is acting as surety redounded to the benefit of the conjugal partnership.

PBM has a personality distinct and separate from the family of the petitioners-appellee. Article 161 speaks of benefits that must directly benefit the conjugal partnership, not merely a by-product. There

must be a **clear showing** (a) that there is some advantage, which clearly accrued to the welfare of the spouses, or (b) benefits to his family, or (c) that such obligations are productive of some benefit to the family. None of these requisites are present.

Furthermore, the benefits that the law speaks of are those that are derived directly from the use of the loan. The loan in this case is a corporate loan, which extended to and used by PBM itself. This is contrary to the argument of petitioner that the family may reasonably **anticipate** some benefits. Hence, there is no certainty that the contract is productive of some benefits to the conjugal partnership.

SPOUSES ANTONIO and LUZVIMINDA GUIANG, *petitioners,* -versus- COURT OF APPEALS and GILDA CORPUZ, *respondents.*
G.R. No. 125172, FIRST DIVISION, June 26, 1998, PANGANIBAN, *J.*

The sale of conjugal property requires the consent of both the husband and the wife. The absence of the consent of one renders the sale null and void.

In the present case, his wife went to Manila to look for work abroad and given that the lot was located in South Cotabato, she was unable to participate in the administration of the conjugal properties. She even expressed her disapproval of the sale through a letter in which the husband disregarded and push through with the sale. Absence of the consent of the private respondent rendered the sale void.

FACTS:

Gilda Corpuz and Judie Corpuz are legally married spouses. The couple bought a 421 sq. meter lot from Manuel Callejo and Gilda Gorpuz was the one who signed as vendee. On April 22, 1988, spouses Corpuz sold one-half portion of their lot the the petitioners. However, sometime in January 1990, Harriet Corpuz, the daughter of spouses Corpuz, learned that her father intended to sell the remaining one-half portion, including their house, to the petitioners. She informed her mother through a letter and the latter replied that she was objecting to the sale. Instead of giving the letter to her father, Harriet gave the letter to Mrs. Luzviminda Guiang so that the latter would advise Judie Corpuz.

However, in the absence of his wife, Judie Corpuz pushed through the sale of the remaining one-half portion of the property. In order to cure the defect in Judie Corpuz's title, Luzviminda Guiang executed another agreement with Manuela Jimenez Callejo.

Private respondent filed a complaint against her husband and petitioner-spouses Antonio and Luzviminda Guiang to declare a certain deed of sale null and void. The RTC declared the Deed of Transfer of Rights null and void. The Court of Appeals affirmed the decision of the trial court. Hence, the appeal by the petitioners before the Supreme Court.

ISSUE:

Whether or not the assailed Deed of Transfer of Rights were validly executed. (NO)

RULING:

The sale of conjugal property requires the consent of both the husband and the wife. The absence of the consent of one renders the sale null and void.

Article 124 of the Family Code states the following:

> "The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly and in case of disagreement, the husband's decision shall prevail, **subject to the recourse to the court by the wife for the proper remedy**, which must be availed of **within five years** from the date of the contract implementing such decision"

In the event that one spouse is incapacitated or **otherwise unable to participate in the administration of the conjugal properties**, the other spouse may assume sole powers of administration. However, a **written consent** of the other spouse or the disposition or encumbrance must have the authority of the court. In the **absence of such authority or consent**, the disposition or encumbrance shall be **void**

In the present case, his wife went to Manila to look for work abroad and given that the lot was located in South Cotabato, she was unable to participate in the administration of the conjugal properties. She even expressed her disapproval of the sale through a letter in which the husband disregarded and push through with the sale. Absence of the consent of the private respondent rendered the sale void

PHILIPPINE NATIONAL BANK, *petitioner* -versus- VENANCIO REYES, JR., *respondent*
G.R. No. 212483, SECOND DIVISION, October 5, 2016, LEONEN, *J.*

A spouse's consent is indispensable for the disposition or encumbrance of conjugal properties. A real estate mortgage over a conjugal property is void if the non-contracting spouse did not give consent.

If the loan was taken out to be used for the family business, there is no need to prove actual benefit. The law presumes the family benefited from the loan and the conjugal partnership is held liable. However, if the conjugal partnership is insufficient to cover the liability, the husband is solidarity liable with the wife for the unpaid balance.

Laches does not apply where the delay is within the period prescribed by law.

FACTS:

Venancio married Lilia in 1973. They purchased 3 lots in Bulacan, which were later mortgaged to petitioner bank to secure a loan. When the spouses failed to pay their loan, petitioner foreclosed the 3 properties.

Venancio filed a complaint for annulment of certificate of sale and real estate mortgage against petitioner, Lilia and the Sheriff of Bulacan. He claimed that the mortgage constituted over the properties was void because Lilia undertook the loan and mortgage without his consent and falsified his signature on the PNs.

The RTC ordered the annulment of the mortgage and directed Lilia to reimburse petitioner the loan amount with interest. The CA affirmed the RTC's ruling.

ISSUES:

1) Whether the real estate mortgage is void.

2) Whether the conjugal partnership can be held liable for the loan contracted unilaterally by Lilia.

3) Whether respondent is guilty of laches and whether his claim is now barred by estoppel.

RULING:

I.
The real estate mortgage is void for want of consent from respondent. The Reyes Spouses were married before the Family Code took effect. Hence, their property regime is Conjugal Partnership of Gains. The applicable provision is Article 124 of the Family Code, which states that any disposition or encumbrance of a conjugal property by one spouse must be consented to by the other; otherwise, it is void. Here, respondent presented clear and convincing evidence that his signature, as it appeared on the mortgage contract, was forged.

II.
The conjugal partnership can be held liable for the loan. There are two scenarios considered: one is when the husband, or in this case, the wife, contracts a loan to be used for the family business and the other is when she acts as a surety or guarantor. If she is a mere surety or guarantor, evidence that the family benefited from the loan need to be presented before the conjugal partnership can be held liable.

On the other hand, if the loan was taken out to be used for the family business, there is no need to prove actual benefit. The law presumes the family benefited from the loan and the conjugal partnership is held liable.

Here, the loan was used as additional working capital for respondent's printing business. There is thus a presumption that it redounded to the benefit of the family; hence, the conjugal partnership may be held liable for the loan amount. There is no need to prove actual benefit to the family.

Further, what the lower courts declared void was the real estate mortgage attached to the conjugal property of the Reyes Spouses. A mortgage is merely an accessory agreement and does not affect the principal contract of loan.

Here, the real estate mortgage is void and legally inexistent because it was an encumbrance attached to a conjugal property without the consent of the other spouse. Although petitioner cannot foreclose the mortgage over the conjugal property in question, it can still recover the loan amount from the conjugal partnership. If the conjugal partnership is insufficient to cover the liability, the husband is solidarily liable with the wife for the unpaid balance. Petitioner can recover the remaining unpaid balance from the separate properties of either respondent or his wife Lilia.

III.
Respondent is not guilty of laches. Laches means the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been

done earlier. It is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. Since respondent filed the Complaint within the period of redemption prescribed by law, he is not guilty of laches.

JOSEFA BAUTISTA FERRER, *petitioner* -versus- SPS. MANUEL M. FERRER & VIRGINIA FERRER and SPS. ISMAEL M. FERRER and FLORA FERRER, *respondents.*
G.R. No. 166496, FIRST DIVISION, November 29, 2006, CHICO-NAZARIO, *J.*

FACTS:

Petitioner acquired a piece of lot before her marriage to Alfredo Ferrer. Her husband applied for a loan with the Social Security System to build improvements on her lot, including a residential house and a two-door apartment building. However, it was during their marriage that payment of the loan was made using their conjugal funds. She also alleged that from their conjugal funds, they constructed a warehouse on the lot. Respondent Manuel occupied one door apartment building and the warehouse.

However, in September 1991, he stopped paying rentals and alleged that he acquired ownership over the property by virtue of a Deed of Sale executed by Alfredo in favor of respondents Manuel, Ismael and their spouses. Petitioner alleged that respondents made her husband sign a document purported to be his last will and testament when he the latter was already bedridden.

Alfredo filed a complaint against the respondents, however, when the case reached the Supreme Court, it was dismissed and affirmed the findings of the RTC and Court of Appeals.

Petitioner then filed a complaint against the respondents for payment of conjugal improvements, sum of money, and accounting with prayer for injunction and damages. The respondents filed a motion to dismiss, arguing that petitioner had no cause of action against them and that the cause of action was barred by prior judgment.

The RTC denied the motion to dismiss. The CA reversed the decision of the lower court and granted the petition. Hence, an appeal made by the petitioner before the Supreme Court.

ISSUE:

Whether or not the petitioner is entitled to reimbursement for the improvements over the subject lot. (NO)

RULING:

Under Article 120 of the Family Code, the obligation to reimburse rests on the spouse upon whom ownership of the entire property is vested. There is no obligation on the part of the purchaser of the property to reimburse in case the property is sold by the owner spouse. Furthermore, it is the owner-spouse who has the obligation to reimburse the conjugal partnership or the spouse who expended the acts or efforts. Hence, the petitioner is entitled to collect reimbursement only from her husband.

In the present case, the subject property was precisely declared as the exclusive property of Alfredo and there was a valid deed of sale between him and the respondents. Since there is no obligation on

the part of the purchaser to reimburse, the respondents do not have the obligation to respect petitioner's right to be reimbursed.

SPOUSES ONESIFORO and ROSARIO ALINAS, *petitioners*, *vs. SPOUSES VICTOR and ELENA ALINAS, respondents*
G.R. No. 158040, THIRD DIVISION, April 14, 2008, AUSTRIA-MARTINEZ, *J*

Article 124 of the Family Code states that the administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. . . .In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. ***In the absence of such authority or consent the disposition or encumbrance shall be void.*** *Thus, pursuant to Article 124 of the Family Code and jurisprudence, the sale of petitioners' conjugal property made by petitioner Onesiforo alone is void in its entirety.*

FACTS:

Spouses Onesiforo and Rosario Alinas (petitioners) separated sometime in 1982, they left behind two lots identified as Lot 896-B-9-A with a bodega standing on it and Lot 896-B-9-B with petitioners' house. Petitioner Onesiforo Alinas (Onesiforo) and respondent Victor Alinas (Victor) are brothers. Petitioners allege that they entrusted their properties to Victor and Elena Alinas (respondent spouses) with the agreement that any income from rentals of the properties should be remitted to the Social Security System (SSS) and to the Rural Bank of Oroquieta City (RBO), as such rentals were believed sufficient to pay off petitioners' loans with said institutions. Lot 896-B-9-A with the bodega was mortgaged as security for the loan obtained from the RBO, while Lot 896-B-9-B with the house was mortgaged to the SSS. Onesiforo alleges that he left blank papers with his signature on them to facilitate the administration of said properties. Sometime in 1993, petitioners discovered that their two lots were already titled in the name of respondent spouses. Apparently, both were foreclosed and was reacquired by the respondent. Furthermore, records show that Onesiforo executed a Deed of Absolute Sale in favor of the respondents, selling lot B to them.

Because of this, petitioners filed with the Regional Trial Court (RTC) of Ozamis City a complaint for recovery of possession and ownership of their conjugal properties with damages against respondent spouses.

ISSUE:

Whether or not the sale by Onesiforo of the lot without the consent of his wife is void even if they have already separated (YES)

RULING:

With regard to the first lot, the Court ruled that petitioners' contention that the respondent spouses merely redeemed the property from RBO is belied by evidence. Needless to stress, the sale was made after the redemption period had lapsed. The trial court, therefore, correctly held that respondent spouses acquired their title from RBO.

However, with regard to Lot 896-B-9-B (with house), the Court finds it patently erroneous for the CA to have applied the principle of equity in sustaining the validity of the sale of Onesiforo's one-half share in the subject property to respondent spouses. Although petitioners were married before the enactment of the Family Code on August 3, 1988, the sale in question occurred in 1989. Thus, their property relations are governed by Chapter IV on Conjugal Partnership of Gains of the Family Code.

Article 124 of the Family states the administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. . . .In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. **In the absence of such authority or consent the disposition or encumbrance shall be void.** Thus, pursuant to Article 124 of the Family Code and jurisprudence, the sale of petitioners' conjugal property made by petitioner Onesiforo alone is void in its entirety.

ANTONIO DOCENA and ALFREDA DOCENA, *petitioners*, *vs. HON. RICARDO P. LAPESURA, in his capacity as Presiding Judge of the RTC, Branch III, Guian, Eastern Samar; RUFINO M. GARADO, Sheriff IV; and CASIANO HOMBRIA*, *respondents*.
G.R. No. 140153, THIRD DIVISION, March 28, 2001, GONZAGA-REYES, *J*

Under the Family Code, the administration of the conjugal property belongs to the husband and the wife jointly. It does not, however require them to always act together. They may individually exercise their power of administration. It was also ruled that under the provisions of the Family Code, the husband could have filed the petitions alone. The signing of the attached certificate of non-forum shopping only by the husband is not a fatal defect. The Court ruled that such certificate signed by Antonio Docena alone is sufficient as substantial compliance with the rules.

FACTS:

On June 1, 1977, private respondent Casiano Hombria filed a Complaint for the recovery of a parcel of land against his lessees, petitioner-spouses Antonio and Alfreda Docena. The petitioners claimed ownership of the land based on occupation since time immemorial. The Court of Appeals reversed the judgment of the trial court and ordered the petitioners to vacate the land they have leased from the plaintiff-appellant. Upon private respondent's motion for execution of the said resolution, the public respondent sheriff filed a Manifestation requesting that he "*be clarified in the determination of that particular portion which is sought to be excluded prior to the delivery of the land adjudged in favor of plaintiff Casiano Hombria*" in view of the defects in the Commissioner's Report and the Sketches attached thereto. Pblic respondent sheriff issued an *alias* Writ of Demolition. The petitioners filed a Motion to Set Aside or Defer the Implementation of Writ of Demolition. This motion was denied by the public respondent judge.

A Petition for *Certiorari* and Prohibition was filed by the petitioners with the Court of Appeals, alleging grave abuse of discretion on the part of the trial court judge in issuing the Orders dated November 18, 1998 and March 17, 1999, and of the sheriff in issuing the *alias* Writ of Demolition. In a Resolution dated June 18, 1999, the Court of Appeals dismissed the petition on the grounds that the petition was filed beyond the 60-day period provided under Section 4 of Rule 65 of the 1997 Revised Rules of Civil Procedure as amended by Bar Matter No. 803 effective September 1, 1998, and that the certification of non-forum shopping attached thereto was signed by only one of the petitioners.

ISSUE:

Whether or not it is sufficient that only one of the spouses signed the certificate of non-forum shopping (YES)

RULING:

The Court ruled that such certificate signed by Antonio Docena alone is sufficient as substantial compliance with the rules. Under the Family Code, the administration of the conjugal property belongs to the husband and the wife jointly. It does not, however require them to always act together. They may individually exercise their power of administration. It was also ruled that under the provisions of the Family Code, the husband could have filed the petitions alone. The signing of the attached certificate of non-forum shopping only by the husband is not a fatal defect.

THELMA A. JADER-MANALO, *petitioner*, *vs. NORMA FERNANDEZ C. CAMAISA and EDILBERTO CAMAISA, respondents*.
G.R. No. 147978, FIRST DIVISION, January 23, 2002, KAPUNAN, *J*

The law requires that the disposition of a conjugal property by the husband as administrator in appropriate cases requires the written consent of the wife, otherwise, the disposition is void. Significantly, petitioner herself admits that Norma refused to sign the contracts to sell. Respondent Norma may have been aware of the negotiations for the sale of their conjugal properties. However, being merely aware of a transaction is not consent.

FACTS:

The present controversy had its beginning when petitioner Thelma A. Jader-Manalo allegedly came across an advertisement placed by respondents, Spouses Camaisa, in the Classified Ads Section in a newspaper for the sale of their ten-door apartments. Interested in buying the two properties, she negotiated for the purchase through a real estate broker, Mr. Proceso Ereno, authorized by respondent spouses. Subsequently, the sale was agreed upon. This agreement was handwritten by petitioner and signed by Edilberto. When petitioner pointed out the conjugal nature of the properties, Edilberto assured her of his wife's conformity and consent to the sale. When petitioner met again with respondent spouses and the real estate broker at Edilberto's office for the formal affixing of Norma's signature, she was surprised when respondent spouses informed her that they were backing out of the agreement because they needed "spot cash" for the full amount of the consideration. Petitioner reminded respondent spouses that the contracts to sell had already been duly perfected and Norma's refusal to sign the same would unduly prejudice petitioner. Still, Norma refused to sign the contracts prompting petitioner to file a complaint for specific performance and damages against respondent spouses.

ISSUE:

Whether or not the contracts to sell were effective despite the lack of the written consent of one of the spouses (NO)

RULING:

The law requires that the disposition of a conjugal property by the husband as administrator in appropriate cases requires the *written consent* of the wife, otherwise, the disposition is void. Thus, Article 124 of the Family Code provides: "the administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly…In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. *These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. In the absence of such authority or consent the disposition or encumbrance shall be void.."* The properties subject of the contracts in this case were conjugal; hence, for the contracts to sell to be effective, the consent of both husband and wife must concur. Respondent Norma Camaisa admittedly did not give her written consent to the sale. Even granting that respondent Norma actively participated in negotiating for the sale of the subject properties, which she denied, her written consent to the sale is required by law for its validity. Significantly, petitioner herself admits that Norma refused to sign the contracts to sell. Respondent Norma may have been aware of the negotiations for the sale of their conjugal properties. However, being merely aware of a transaction is not consent.

HONORIO L. CARLOS, *petitioner*, *vs. MANUEL T. ABELARDO, respondent*.
G.R. No. 146504, FIRST DIVISION, April 9, 2002, KAPUNAN, *J*

Article 121 of the Family Code explicitly provides that conjugal partnership shall be liable for debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited. While respondent did not and refused to sign the acknowledgment executed and signed by his wife, undoubtedly, the loan redounded to the benefit of the family because it was used to purchase the house and lot which became the conjugal home of respondent and his family. Hence, notwithstanding the alleged lack of consent of respondent, he shall be solidarily liable for such loan together with his wife.

FACTS:

Petitioner averred in his complaint filed that respondent and his wife Maria Theresa Carlos-Abelardo approached him and requested him to advance the amount of US$25,000.00 for the purchase of a house and lot. To enable and assist the spouses conduct their married life independently and on their own, petitioner issued a check in the name of a certain Pura Vallejo, seller of the property, who acknowledged receipt thereof. The amount was in full payment of the property. Regarding this, the petitioner had made several attempts to collect the money loaned to them but to no avail. Petitioner then made a formal demand for the payment of the amount of US$25,000.00 but the spouses failed to comply with their obligation. Respondent claimed that the said US$25,000.00 was never intended as loan. It was his share of income on contracts obtained by him from H.L. Carlos Construction Inc., a firm owned by petitioner. He further averred that he did not sign the acknowledgment executed and signed by his wife.

ISSUE:

Whether or not the respondent is solidarily liable for the loan along with his wife despite his lack of consent thereto (YES)

RULING:

The Court ruled that the loan is the liability of the conjugal partnership pursuant to Article 121 of the Family Code which states that the conjugal partnership shall be liable for, among others, all debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the conjugal partnership of gains, or by both spouses or by one of them with the consent of the other and debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited; If the conjugal partnership is insufficient to cover the foregoing liabilities, the spouses shall be solidarily liable for the unpaid balance with their separate properties.

While respondent did not and refused to sign the acknowledgment executed and signed by his wife, undoubtedly, the loan redounded to the benefit of the family because it was used to purchase the house and lot which became the conjugal home of respondent and his family. Hence, notwithstanding the alleged lack of consent of respondent, he shall be solidarily liable for such loan together with his wife.

IMELDA RELUCIO, *petitioner*, *vs. ANGELINA MEJIA LOPEZ, respondent*.
G.R. No. 138497, FIRST DIVISION, January 16, 2002, PARDO, *J*

Article 128 of the Family Code refers only to spouses, to wit: "If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property, or for authority to be the sole administrator of the conjugal partnership property . . ." The administration of the property of the marriage is entirely between them, to the exclusion of all other persons. Respondent alleges that Alberto J. Lopez is her husband. Therefore, her first cause of action is against Alberto J. Lopez. There is no right-duty relation between petitioner and respondent that can possibly support a cause of action. In fact, none of the three elements of a cause of action exists.

FACTS:

Private respondent Angelina Mejia Lopez filed a petition for "APPOINTMENT AS SOLE ADMINISTRATRIX OF CONJUGAL PARTNERSHIP OF PROPERTIES, FORFEITURE, *ETC*.," against defendant Alberto Lopez and petitioner Imelda Relucio. Angelina stated that she and Lopez separated, and he had then been cohabiting with Relucio. It was alleged that in the period of Relucio and Lopez's cohabitation, they established a fortune due to stockholdings in different corporations. However, in order to avoid defendant Lopez obligations as a father and husband, he excluded the private respondent and their four children from sharing or benefiting from the conjugal properties and the income or fruits there from. As such, defendant Lopez either did not place them in his name or otherwise removed, transferred, stashed away or concealed them from the private-respondent. He placed substantial portions of these conjugal properties in the name of petitioner Relucio. It was also averred that in the past twenty five years since defendant Lopez abandoned the private-respondent, he has sold, disposed of, alienated, transferred, assigned, canceled, removed or stashed away properties, assets and income belonging to the conjugal partnership with the private-respondent and either spent the proceeds thereof for his sole benefit and that of petitioner Relucio and their two illegitimate children or permanently and fraudulently placed them beyond the reach of the private-respondent and their four children.

ISSUE:

Whether or not there is a cause of action against petitioner Relucio (NO)

RULING:

Nowhere in the allegations does it appear that relief is sought against petitioner. Respondent's causes of action were all against her husband.

The cause of action is for *judicial appointment* of respondent as administratrix of the conjugal partnership or absolute community property arising from her marriage to Alberto J. Lopez. Petitioner is a complete stranger to this cause of action. Article 128 of the Family Code refers only to spouses, to wit: "If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property, or for authority to be the sole administrator of the conjugal partnership property . . ." The administration of the property of the marriage is entirely between them, to the exclusion of all other persons. Respondent alleges that Alberto J. Lopez is her husband. Therefore, her first cause of action is against Alberto J. Lopez. There is no right-duty relation between petitioner and respondent that can possibly support a cause of action. In fact, none of the three elements of a cause of action exists.

HOMEOWNERS SAVINGS & LOAN BANK, *petitioner*, *vs. MIGUELA C. DAILO, respondent.*
G.R. No. 153802, SECOND DIVISION, March 11, 2005, TINGA, *J*

Article 124 of the Family Code requires the consent of the other spouse to the mortgage of conjugal properties. In Guiang v. Court of Appeals, it was held that the sale of a conjugal property requires the consent of both the husband and wife. In applying Article 124 of the Family Code, this Court declared that the absence of the consent of one renders the entire sale null and void, including the portion of the conjugal property pertaining to the husband who contracted the sale. The same principle in Guiang squarely applies to the instant case.

FACTS:

Respondent Miguela C. Dailo and Marcelino Dailo, Jr. were married on August 8, 1967. During their marriage, the spouses purchased a house and lot. The Deed of Absolute Sale, however, was executed only in favor of the late Marcelino Dailo, Jr. as vendee thereof to the exclusion of his wife. Subsequently, Marcelino Dailo, Jr. executed a Special Power of Attorney (SPA) in favor of one Lilibeth Gesmundo, authorizing the latter to obtain a loan from petitioner Homeowners Savings and Loan Bank to be secured by the spouses Dailo's house and lot. Pursuant to the SPA, Gesmundo obtained a loan in the amount of P300,000.00 from petitioner. As security therefor, Gesmundo executed on the same day a Real Estate Mortgage constituted on the subject property in favor of petitioner. The abovementioned transactions, including the execution of the SPA in favor of Gesmundo, took place without the knowledge and consent of respondent, Gesmundo's wife, Miguela. Unable to pay the loan, the property was subject to extrajudicial foreclosure. After the extrajudicial sale thereof, a Certificate of Sale was issued in favor of petitioner as the highest bidder. After the lapse of one year without the property being redeemed, petitioner, through its vice-president, consolidated the ownership thereof by executing on June 6, 1996 an Affidavit of Consolidation of Ownership and a Deed of Absolute Sale.

Claiming that she had no knowledge of the mortgage constituted on the subject property, which was conjugal in nature, respondent instituted a petition for *Nullity of Real Estate Mortgage and Certificate*

of Sale, Affidavit of Consolidation of Ownership, Deed of Sale, Reconveyance with Prayer for Preliminary Injunction and Damages against petitioner.

ISSUE:

Whether or not the mortgage of the conjugal property made by Marcelino alone is valid (NO)

RULING:

Petitioner argues that although Article 124 of the Family Code requires the consent of the other spouse to the mortgage of conjugal properties, the framers of the law could not have intended to curtail the right of a spouse from exercising full ownership over the portion of the conjugal property pertaining to him under the concept of co-ownership. Thus, petitioner would have this Court uphold the validity of the mortgage to the extent of the late Marcelino Dailo, Jr.'s share in the conjugal partnership.|||In *Guiang v. Court of Appeals*, it was held that the sale of a conjugal property requires the consent of both the husband and wife. In applying Article 124 of the Family Code, this Court declared that the absence of the consent of one renders the entire sale null and void, including the portion of the conjugal property pertaining to the husband who contracted the sale. The same principle in *Guiang* squarely applies to the instant case.

IN RE: PETITION FOR SEPARATION OF PROPERTY: ELENA BUENAVENTURA MULLER, *petitioner*, *vs*. HELMUT MULLER, *respondent*.
G.R. No. 149615, FIRST DIVISION, August 29, 2006, YNARES-SANTIAGO, *J.*

Section 7, Article XII of the 1987 Constitution states: Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain. Respondent was aware of the constitutional prohibition and expressly admitted his knowledge thereof to this Court. He declared that he had the Antipolo propertytitled in the name of petitioner because of the said prohibition. His attempt at subsequently asserting or claiming a right on the said property cannot be sustained.|

FACTS:

Petitioner Elena Buenaventura Muller and respondent Helmut Muller were married in Germany. The couple resided in Germany at a house owned by respondent's parents but decided to move and reside permanently in the Philippines in 1992. By this time, respondent had inherited the house inGermany from his parents which he sold and used the proceeds for the purchase of a parcel of land in Antipolo, Rizal and the construction of a house. The Antipolo property was registered in the name of petitioner. The spouses eventually separated.

The respondent filed a petition for separation of properties before the Regional Trial Court of Quezon City. The trial court rendered a decision which terminated the regime of absolute community of property between the petitioner and respondent. It also decreed the separation of properties between them and ordered the equal partition of personal properties located within the country, excluding those acquired by gratuitous title during the marriage. With regard to the Antipolo property, the court held that it was acquired using paraphernal funds of the respondent. However, it ruled that respondent

cannot recover his funds. Thus-- however, pursuant to Article 92 of the Family Code, properties acquired by gratuitous title by either spouse during the marriage shall be excluded from the community property. The real property, therefore, inherited by petitioner in Germany is excluded from the absolute community of property of the herein spouses. Necessarily, the proceeds of the sale of said real property as well as the personal properties purchased thereby, belong exclusively to the petitioner. However, the part of that inheritance used by the petitioner for acquiring the house and lot in this country cannot be recovered by the petitioner, its acquisition being a violation of Section 7, Article XII of the Constitution which provides that "save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations or associations qualified to acquire or hold lands of the public domain." The respondent appealed.

ISSUE:

Whether or not the respondent is entitled to reimbursement on the money used for the construction of the house in Antipolo (NO)

RULING:

Section 7, Article XII of the 1987 Constitution states: Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain. Respondent was aware of the constitutional prohibition and expressly admitted his knowledge thereof to this Court. He declared that he had the Antipolo propertytitled in the name of petitioner because of the said prohibition. His attempt at subsequently asserting or claiming a right on the said property cannot be sustained.||Save for the exception provided in cases of hereditary succession, respondent's disqualification from owning lands in the Philippines is absolute. Not even an ownershipin trust is allowed. Besides, where the purchase is made in violation of an existing statute and in evasion of its express provision, no trust can result in favor of the party who is guilty of the fraud. To hold otherwise would allow circumvention of the constitutional prohibition.

JUAN SEVILLA SALAS, JR., ***petitioner*****,** ***vs. EDEN VILLENA AGUILA, respondent*****.**
G.R. No. 202370, SECOND DIVISION, September 23, 2013, CARPIO, *J*

The property acquired during the marriage is prima facie presumed to have been obtained through the couple's joint efforts and governed by the rules on co-ownership. In the present case, Salas did not rebut this presumption. In a similar case where the ground for nullity of marriage was also psychological incapacity, we held that the properties acquired during the union of the parties would be governed by co-ownership. Accordingly, the partition of the Discovered Properties should be sustained.

FACTS:

On 7 September 1985, petitioner Juan Sevilla Salas, Jr. (Salas) and respondent Eden Villena Aguila (Aguila) were married. However, five months after the bith of their daughter, Salas left their conjugal dwelling. Subsequently, Aguila filed for a petition for nullity of marriage alleging pyschological incapacity on the part of Salas. The petition states that they "have no conjugal properties whatsoever." It was granted. However, on 10 September 2007, Aguila filed a Manifestation and Motion stating that she discovered: (a) two 200-square-meter parcels of land with improvements located in San Bartolome, Quezon City; and (b) a 108-square-meter parcel of land with

improvement located in Tondo, Manila. The registered owner of the Discovered Properties is "Juan S.Salas, married to Rubina C. Salas." The manifestation was set for hearing on 21 September 2007. However, Salas' notice of hearing was returned unserved with the remark, "RTS Refused to Receive." Salas filed an Opposition to the Manifestation alleging that there is no conjugal property to be partitioned based on Aguila's petition. According to Salas, Aguila's statement was a judicial admission and was not made through palpable mistake. Salas claimed that Aguila waived her right to the Discovered Properties.

ISSUE:

Whether or not there should be partition of the discovered properties (YES)

RULING:

Basic is the rule that the party making an allegation in a civil case has the burden of proving it by a preponderance of evidence. Salas alleged that contrary to Aguila's petition stating that they had no conjugal property, they actually acquired the Waived Properties during their marriage. However, it was found that Salas failed to prove the existence and acquisition of the Waived Properties during their marriage. On the other hand, Aguila proved that the Discovered Properties were acquired by Salas during their marriage. In *Villanueva v. Court of Appeals*, the Court held that the question of whether the properties were acquired during the marriage is a factual issue. Factual findings of the RTC, particularly if affirmed by the CA, are binding on us, except under compelling circumstances not present in this case. The property acquired during the marriage is *prima facie* presumed to have been obtained through the couple's joint efforts and governed by the rules on co-ownership.

Article 147 of the Family Code applies to the union of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless declared void under Article 36 of the Family Code, as in this case. Article 147 of the Family Code provides: "When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership. In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares…"

In the present case, Salas did not rebut this presumption. In a similar case where the ground for nullity of marriage was also psychological incapacity, we held that the properties acquired during the union of the parties would be governed by co-ownership. Accordingly, the partition of the Discovered Properties should be sustained.

EDILBERTO U. VENTURA, JR., *petitioner*,*vs*.SPOUSES PAULINO and EVANGELINE ABUDA, *respondents.*
G.R. No. 202932, SECOND DIVISION, October 23, 2013, CARPIO, *J*

In unions between a man and a woman who are incapacitated to marry each other, the ownership over the properties acquired during the subsistence of that relationship shall be based on the actual contribution of the parties. It is necessary for each of the partners to prove his or her actual contribution to the acquisition of property in order to be able to lay claim to any portion of it. Presumptions of co-ownership and equal contribution do not apply. The title itself shows that the Vitas property is owned

by Esteban alone. The phrase "married to Socorro Torres" is merely descriptive of his civil status, and does not show that Socorro co-owned the property.

FACTS:

Socorro Torres (Socorro) and Esteban Abletes (Esteban) were married on 9 June 1980. Although Socorro and Esteban never had common children, both of them had children from prior marriages: Esteban had a daughter named Evangeline Abuda (Evangeline),and Socorro had a son, who was the father of Edilberto U. Ventura, Jr. (Edilberto), the petitioner in this case. Evidence shows that Socorro had a prior subsisting marriage to Crispin Roxas (Crispin) when she married Esteban. Socorro married Crispin on 18 April 1952. This marriage was not annulled, and Crispin was alive at the time of Socorro's marriage to Esteban. Esteban's prior marriage, on the other hand, was dissolved by virtue of his wife's death in 1960. According to Edilberto, sometime in 1968, Esteban purchased a portion of a lot, the remaining was thereafter purchased by Evangeline on her father's behalf sometime in 1970. On 6 September 1997, Esteban sold the Vitas and Delpan properties to Evangeline and her husband, Paulino Abuda (Paulino).

Sometime in 2000, Leonora Urquila (Leonora), the mother of Edilberto, discovered the sale. Thus, Edilberto, represented by Leonora, filed a Petition for Annulment of Deeds of Sale before the RTC-Manila. Edilberto alleged that the sale of the properties was fraudulent because Esteban's signature on the deeds of sale was forged. Respondents, on the other hand, argued that because of Socorro's prior marriage to Crispin, her subsequent marriage to Esteban was null and void. Thus, neither Socorro nor her heirs can claim any right or interest over the properties purchased by Esteban and respondents.

ISSUE:

Whether or not the properties were conjugal (NO)

RULING:

Edilberto admitted that in unions between a man and a woman who are incapacitated to marry each other, the ownership over the properties acquired during the subsistence of that relationship shall be based on the actual contribution of the parties. It is necessary for each of the partners to prove his or her actual contribution to the acquisition of property in order to be able to lay claim to any portion of it. Presumptions of co-ownership and equal contribution do not apply.

Art 148 of the Family Code states that: "In cases of cohabitation [wherein the parties are incapacitated to marry each other],only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit. If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article. The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith."

Applying the foregoing provision, the properties can be considered common if: (1) these were acquired during the cohabitation of Esteban and Socorro; and (2) there is evidence that the properties were acquired through the parties' actual joint contribution of money, property, or industry. Edilberto argues that the certificate of title covering the properties show that the parcel of land is co-owned by Esteban and Socorro, however, the Court did not agree. The title itself shows that the Vitas property is owned by Esteban alone. The phrase "married to Socorro Torres" is merely descriptive of his civil status, and does not show that Socorro co-owned the property. The evidence on record also shows that Esteban acquired ownership over the Vitas property prior to his marriage to Socorro, even if the certificate of title was issued after the celebration of the marriage. Registration under the Torrens title system merely confirms, and does not vest title.

MARIETTA N. BARRIDO, *petitioner*, *vs. LEONARDO V. NONATO, respondent*.
G.R. No. 176492, THIRD DIVISION, October 20, 2014, PERALTA *J*

Under this property regime, property acquired by both spouses through their work and industry shall be governed by the rules on equal co-ownership. Any property acquired during the union is prima facie presumed to have been obtained through their joint efforts. Here, the former spouses both agree that they acquired the subject property during the subsistence of their marriage. Thus, it shall be presumed to have been obtained by their joint efforts, work or industry, and shall be jointly owned by them in equal shares.

FACTS:

In the course of the marriage of respondent Leonardo V. Nonato and petitioner Marietta N. Barrido, they were able to acquire a property situated in Eroreco, Bacolod City, consisting of a house and lot, covered by Transfer Certificate of Title *(TCT)* No. T-140361. On March 15, 1996, their marriage was declared void on the ground of psychological incapacity. Since there was no more reason to maintain their co-ownership over the property, Nonato asked Barrido for partition, but the latter refused. Thus, on January 29, 2003, Nonato filed a Complaint for partition before the Municipal Trial Court in Cities *(MTCC)* of Bacolod City, Branch 3. Barrido claimed, by way of affirmative defense, that the subject property had already been sold to their children, Joseph Raymund and Joseph Leo. She likewise moved for the dismissal of the complaint because the MTCC lacked jurisdiction, the partition case being an action incapable of pecuniary estimation.

ISSUE:

Whether or not there should be partition of the property (YES)

RULING:

The records reveal that Nonato and Barrido's marriage had been declared void for psychological incapacity under Article 36 of the Family Code. During their marriage, however, the conjugal partnership regime governed their property relations. Although Article 129 provides for the procedure in case of dissolution of the conjugal partnership regime, Article 147 specifically covers he effects of void marriages on the spouses' property relations.

This particular kind of co-ownership applies when a man and a woman, suffering no illegal impediment to marry each other, exclusively live together as husband and wife under a void marriage or without the benefit of marriage. Under this property regime, property acquired by both spouses

through their work and industry shall be governed by the rules on equal co-ownership. Any property acquired during the union is *prima facie* presumed to have been obtained through their joint efforts. Here, the former spouses both agree that they acquired the subject property during the subsistence of their marriage. Thus, it shall be presumed to have been obtained by their joint efforts, work or industry, and shall be jointly owned by them in equal shares. Barrido, however, claims that the ownership over the property in question is already vested on their children, by virtue of a Deed of Sale. But aside from the title to the property still being registered in the names of the former spouses, said document of sale does not bear a notarization of a notary public. It must be noted that without the notarial seal, a document remains to be private and cannot be converted into a public document, making it inadmissible in evidence unless properly authenticated. Unfortunately, Barrido failed to prove its due execution and authenticity. In fact, she merely annexed said Deed of Sale to her position paper. Therefore, the subject property remains to be owned in common by Nonato andBarrido, which should be divided in accordance with the rules on co-ownership.

EUSTAQUIO MALLILIN, JR., *petitioner*, *vs. MA. ELVIRA CASTILLO, respondent*.
G.R. No. 136803, SECOND DIVISION, June 16, 2000, MENDOZA, *J*

Art. 148 of the Family Code now provides for a limited co-ownership in cases where the parties in union are incapacitated to marry each other. In this case, there may be a co-ownership between the parties herein. Consequently, whether petitioner and respondent cohabited and whether the properties involved in the case are part of the alleged co-ownership are genuine and material.

FACTS:

On February 24, 1993, petitioner Eustaquio Mallilin, Jr. filed a complaint for "Partition and/or Payment of Co-Ownership Share, Accounting and Damages" against respondent Ma. Elvira Castillo. The complaint, docketed as Civil Case No. 93-656 at the Regional Trial Court in Makati City, alleged that petitioner and respondent, both married and with children, but separated from their respective spouses, cohabited after a brief courtship sometime in 1979 while their respective marriages still subsisted. During their union, they set up the Superfreight Customs Brokerage Corporation, with petitioner as president and chairman of the board of directors, and respondent as vice-president and treasurer. The business flourished and petitioner and respondent acquired real and personal properties which were registered solely in respondent's name. In 1992, due to irreconcilable differences, the couple separated. Petitioner demanded from respondent his share in the subject properties, but respondent refused alleging that said properties had been registered solely in her name.

ISSUE:

Whether or not there is co-ownership between the parties even if they both had relationships when they were living together (YES)

RULING:

Art. 148 of the Family Code now provides for a limited co-ownership in cases where the parties in union are incapacitated to marry each other. It states: In cases of cohabitation not falling under the preceding article, only the properties acquired by both of the parties through their actual joint contribution of money, property or industry shall be owned by them in common in proportion to

their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credits. If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding article. The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

In this case, there may be a co-ownership between the parties herein. Consequently, whether petitioner and respondent cohabited and whether the properties involved in the case are part of the alleged co-ownership are genuine and material. All but one of the properties involved were alleged to have been acquired after the Family Code took effect on August 3, 1988. With respect to the property acquired before the Family Code took effect if it is shown that it was really acquired under the regime of the Civil Code, then it should be excluded.

ELNA MERCADO-FEHR, *petitioner*, *vs. BRUNO FEHR, respondent*.
G.R. No. 152716, THIRD DIVISION, October 23, 2003, PUNO, *J*

Under the property regime of Article 147 of the Family Code, property acquired by both spouses through their work and industry shall be governed by the rules on equal co-ownership. The disputed property, Suite 204 of LCG Condominium, was purchased on installment basis on July 26, 1983, at the time when petitioner and respondent were already living together. Hence, it should be considered as common property of petitioner and respondent.|||

FACTS:

The marriage between the parties were declared null and void on the basis of psychological incapacity. By this reason, the conjugal partnership of property existing between the parties is dissolved and in lieu thereof, a regime of complete separation of property between the said spouses is established in accordance with the pertinent provisions of the Family Code, without prejudice to the rights previously acquired by creditors. Petitioner filed a motion for reconsideration of said Order with respect to the adjudication of Suite 204, LCG Condominium and the support of the children. Petitioner alleged that Suite 204 was purchased on installment basis at the time when petitioner and respondent were living exclusively with each other as husband and wife without the benefit of marriage, hence the rules on co-ownership should apply in accordance with Article 147 of the Family Code.

Resolving said motion, the trial court held in an Order dated October 5, 2000 that since the marriage between petitioner and respondent was declared void *ab initio*, the rules on co-ownership should apply in the liquidation and partition of the properties they own in common pursuant to Article 147 of the Family Code. The court, however, noted that the parties have already agreed in principle to divide the properties and/or proceeds from the sale thereof proportionately among them and their children as follows: 1/3 for petitioner, 1/3 for respondent and 1/3 for the children. It also affirmed its previous ruling that Suite 204 of LCG Condominium was acquired prior to the couple's cohabitation and therefore pertained solely to respondent.

ISSUE:

Whether or not the condominium is co-owned by the parties (YES)

RULING:

Article 147 applies to unions of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless void, as in the case at bar. This provision creates a co-ownership with respect to the properties they acquire during their cohabitation. This peculiar kind of co-ownership applies when a man and a woman, suffering no legal impediment to marry each other, so exclusively live together as husband and wife under a void marriage or without the benefit of marriage. The term "capacitated" in the provision (in the first paragraph of the law) refers to the legal capacity of a party to contract marriage, i.e., any "male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Article 37 and 38" of the Code. Under this property regime, property acquired by both spouses through their work and industry shall be governed by the rules on equal co-ownership.

The disputed property, Suite 204 of LCG Condominium, was purchased on installment basis on July 26, 1983, at the time when petitioner and respondent were already living together. Hence, it should be considered as common property of petitioner and respondent.

JACINTO SAGUID, *Petitioner*, v. HON. COURT OF APPEALS, THE REGIONAL TRIAL COURT, BRANCH 94, BOAC, MARINDUQUE and GINA S. REY, *Respondents*. G.R. No. 150611, FIRST DIVISION, June 10, 2003, YNARES-SANTIAGO, *J.*

The regime of limited co-ownership of property governing the union of parties who are not legally capacitated to marry each other, but who nonetheless live together as husband and wife, applies to properties acquired during said cohabitation in proportion to their respective contributions. Co-ownership will only be up to the extent of the proven actual contribution of money, property or industry. Absent proof of the extent thereof, their contributions and corresponding shares shall be presumed to be equal.

It is not disputed that Gina and Jacinto were not capacitated to marry each other because the former was validly married to another man at the time of her cohabitation with the latter. Their property regime therefore is governed by Article 148 of the Family Code, which applies to bigamous marriages, adulterous relationships, relationships in a state of concubinage, relationships, where both man and woman are married to other persons, and multiple alliances of the same married man. Under this regime,." . . only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions . . ." Proof of actual contribution is required.

As in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue. Contentions must be proved by the competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. This applies with more vigor where, as in the instant case, the plaintiff was allowed to present evidence ex parte. The plaintiff is not automatically entitled to the relief prayed for. The law gives the defendant some measure of protection as the plaintiff must still prove the allegations in the complaint. Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief. Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.

In the case at bar, the controversy centers on the house and the personal properties of the parties. Private respondent alleged in her complaint that she contributed P70,000.00 for the completion of their

house. However, nowhere in her testimony did she specify the extent of her contribution. What appears in the record are receipts in her name for the purchase of construction materials on November 17, 1995 and December 23, 1995, in the total amount of P11,413.00.

On the other hand, both parties claim that the money used to purchase the disputed personal properties came partly from their joint account with First Allied Development Bank. While there is no question that both parties contributed in their joint account deposit, there is, however, no sufficient proof of the exact amount of their respective shares therein. Pursuant to Article 148 of the Family Code, in the absence of proof of extent of the parties' respective contribution, their share shall be presumed to be equal. Here, the disputed personal properties were valued at P111,375.00, the existence and value of which were not questioned by the petitioner. Hence, their share therein is equivalent to one-half, i.e., P55,687.50 each.

FACTS:

Seventeen-year old Gina S. Rey was married, but separated de facto from her husband, when she met petitioner Jacinto Saguid in Marinduque, sometime in July 1987. After a brief courtship, the two decided to cohabit as husband and wife in a house built on a lot owned by Jacinto's father. Their cohabitation was not blessed with any children. Jacinto made a living as the patron of their fishing vessel "Saguid Brothers." Gina, on the other hand, worked as a fish dealer, but decided to work as an entertainer in Japan from 1992 to 1994 when her relationship with Jacinto's relatives turned sour. Her periodic absence, however, did not ebb away the conflict with petitioner's relatives. In 1996, the couple decided to separate and end up their 9-year cohabitation.

On January 9, 1997, private respondent filed a complaint for Partition and Recovery of Personal Property with Receivership against the petitioner with the Regional Trial Court of Boac, Marinduque. She alleged that from her salary of $1,500.00 a month as entertainer in Japan, she was able to contribute P70,000.00 in the completion of their unfinished house. Also, from her own earnings as an entertainer and fish dealer, she was able to acquire and accumulate appliances, pieces of furniture and household effects, with a total value of P111,375.00. She prayed that she be declared the sole owner of these personal properties and that the amount of P70,000.00, representing her contribution to the construction of their house, be reimbursed to her.

Private respondent testified that she deposited part of her earnings in her savings account with First Allied Development Bank. Her Pass Book shows that as of May 23, 1995, she had a balance of P21,046.08. She further stated that she had a total of P35,465.00 share in the joint account deposit which she and the petitioner maintained with the same bank. Gina declared that said deposits were spent for the purchase of construction materials, appliances and other personal properties.

In his answer to the complaint, petitioner claimed that the expenses for the construction of their house were defrayed solely from his income as a captain of their fishing vessel. He averred that private respondent's meager income as fish dealer rendered her unable to contribute in the construction of said house. Besides, selling fish was a mere pastime to her; as such, she was contented with the small quantity of fish allotted to her from his fishing trips. Petitioner further contended that Gina did not work continuously in Japan from 1992 to 1994, but only for a 6-month duration each year. When their house was repaired and improved sometime in 1995–1996, private respondent did not share in the expenses because her earnings as entertainer were spent on the daily needs and business of her parents. From his income in the fishing business, he claimed to have saved a total of P130,000.00, P75,000.00 of which was placed in a joint account deposit with private Respondent. This savings, according to petitioner was spent in purchasing the disputed personal properties.

On May 21, 1997, the trial court declared the petitioner as in default for failure to file a pre-trial brief. Petitioner filed for two motions of reconsideration, both were denied. Private respondent was allowed to present evidence ex parte.

RTC ordered, among others, Jacinto Saguid to return and/or reimburse to the plaintiff the amount of P70,000.00 which the latter actually contributed to the construction and completion of the house.

On appeal, said decision was affirmed by the Court of Appeals; however, the award of P50,000.00 as moral damages was deleted for lack of basis. The appellate court ruled that the propriety of the order which declared the petitioner as in default became moot and academic in view of the effectivity of the 1997 Rules of Civil Procedure. It explained that the new rules now require the filing of a pre-trial brief and the defendant's non-compliance therewith entitles the plaintiff to present evidence ex parte.

ISSUE:

Whether or not the CA is correct when it affirmed the decision of RTC that private respondent's share of P70,000.00 shall be reimbursed. (NO)

RULING:

It is not disputed that Gina and Jacinto were not capacitated to marry each other because the former was validly married to another man at the time of her cohabitation with the latter. Their property regime therefore is governed by Article 148 of the Family Code, which applies to bigamous marriages, adulterous relationships, relationships in a state of concubinage, relationships, where both man and woman are married to other persons, and multiple alliances of the same married man. Under this regime,." . . only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions . . ." Proof of actual contribution is required.

In the case at bar, although the adulterous cohabitation of the parties commenced in 1987, which is before the date of the effectivity of the Family Code on August 3, 1998, Article 148 thereof applies because this provision was intended precisely to fill up the hiatus in Article 144 of the Civil Code. Before Article 148 of the Family Code was enacted, there was no provision governing property relations of couples living in a state of adultery or concubinage. Hence, even if the cohabitation or the acquisition of the property occurred before the Family Code took effect, Article 148 governs.

In the cases of *Agapay v. Palang*, and *Tumlos v. Fernandez*, which involved the issue of co-ownership of properties acquired by the parties to a bigamous marriage and an adulterous relationship, respectively, we ruled that proof of actual contribution in the acquisition of the property is essential. The claim of co-ownership of the petitioners therein who were parties to the bigamous and adulterous union is without basis because they failed to substantiate their allegation that they contributed money in the purchase of the disputed properties. Also in *Adriano v. Court of Appeals*, we ruled that the fact that the controverted property was titled in the name of the parties to an adulterous relationship is not sufficient proof of co-ownership absent evidence of actual contribution in the acquisition of the property.

As in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue. Contentions must be proved by the competent

evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. This applies with more vigor where, as in the instant case, the plaintiff was allowed to present evidence ex parte. The plaintiff is not automatically entitled to the relief prayed for. The law gives the defendant some measure of protection as the plaintiff must still prove the allegations in the complaint. Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief. Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.

In the case at bar, the controversy centers on the house and the personal properties of the parties. Private respondent alleged in her complaint that she contributed P70,000.00 for the completion of their house. However, nowhere in her testimony did she specify the extent of her contribution. What appears in the record are receipts in her name for the purchase of construction materials on November 17, 1995 and December 23, 1995, in the total amount of P11,413.00.

On the other hand, both parties claim that the money used to purchase the disputed personal properties came partly from their joint account with First Allied Development Bank. While there is no question that both parties contributed in their joint account deposit, there is, however, no sufficient proof of the exact amount of their respective shares therein. Pursuant to Article 148 of the Family Code, in the absence of proof of extent of the parties' respective contribution, their share shall be presumed to be equal. Here, the disputed personal properties were valued at P111,375.00, the existence and value of which were not questioned by the petitioner. Hence, their share therein is equivalent to one-half, i.e., P55,687.50 each.

The Court of Appeals thus erred in affirming the decision of the trial court which granted the reliefs prayed for by private Respondent. On the basis of the evidence established, the extent of private respondent's co-ownership over the disputed house is only up to the amount of P11,413.00, her proven contribution in the construction thereof. Anent the personal properties, her participation therein should be limited only to the amount of P55,687.50.

LUPO ATIENZA, *Petitioner*, vs. YOLANDA DE CASTRO, *Respondent.* G.R. No. 169698, SECOND DIVISION, November 29, 2006, GARCIA, *J.*

It is not disputed that the parties herein were not capacitated to marry each other because petitioner Lupo Atienza was validly married to another woman at the time of his cohabitation with the respondent. Their property regime, therefore, is governed by Article 1488 of the Family Code, which applies to bigamous marriages, adulterous relationships, relationships in a state of concubinage, relationships where both man and woman are married to other persons, and multiple alliances of the same married man. Under this regime, …only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions ... Proof of actual contribution is required.

As it is, the regime of limited co-ownership of property governing the union of parties who are not legally capacitated to marry each other, but who nonetheless live together as husband and wife, applies to properties acquired during said cohabitation in proportion to their respective contributions. Co-ownership will only be up to the extent of the proven actual contribution of money, property or industry. Absent proof of the extent thereof, their contributions and corresponding shares shall be presumed to be equal.

As in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. The petitioner as plaintiff below is not automatically entitled to the relief prayed for. The law gives the defendant some measure of protection as the plaintiff must still prove the allegations in the complaint. Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief. Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.

It is the petitioner's posture that the respondent, having no financial capacity to acquire the property in question, merely manipulated the dollar bank accounts of his two (2) corporations to raise the amount needed therefor. Unfortunately for petitioner, his submissions are burdened by the fact that his claim to the property contradicts duly written instruments, i.e., the Contract to Sell dated March 24, 1987, the Deed of Assignment of Redemption dated March 27, 1987 and the Deed of Transfer dated April 27, 1987, all entered into by and between the respondent and the vendor of said property, to the exclusion of the petitioner.

In making proof of his case, it is paramount that the best and most complete evidence be formally entered. Rather than presenting proof of his actual contribution to the purchase money used as consideration for the disputed property, Lupo diverted the burden imposed upon him to Yolanda by painting her as a shrewd and scheming woman without the capacity to purchase any property. Instead of proving his ownership, or the extent thereof, over the subject property, Lupo relegated his complaint to a mere attack on the financial capacity of Yolanda. He presented documents pertaining to the ins and outs of the dollar accounts of ENRICO and EURASIAN, which unfortunately failed to prove his actual contribution in the purchase of the said property. The fact that [Yolanda] had a limited access to the funds of the said corporations and had repeatedly withdrawn money from their bank accounts for their behalf do not prove that the money she used in buying the disputed property, or any property for that matter, came from said withdrawals.

As we see it, petitioner's claim of co-ownership in the disputed property is without basis because not only did he fail to substantiate his alleged contribution in the purchase thereof but likewise the very trail of documents pertaining to its purchase as evidentiary proof redounds to the benefit of the respondent. In contrast, aside from his mere say so and voluminous records of bank accounts, which sadly find no relevance in this case, the petitioner failed to overcome his burden of proof. Allegations must be proven by sufficient evidence. Simply stated, he who alleges a fact has the burden of proving it; mere allegation is not evidence.

FACTS:

Sometime in 1983, petitioner Lupo Atienza, then the President and General Manager of Enrico Shipping Corporation and Eurasian Maritime Corporation, hired the services of respondent Yolanda U. De Castro as accountant for the two corporations. In the course of time, the relationship between Lupo and Yolanda became intimate. Despite Lupo being a married man, he and Yolanda eventually lived together in consortium beginning the later part of 1983. Out of their union, two children were born. However, after the birth of their second child, their relationship turned sour until they parted ways.

On May 28, 1992, Lupo filed in the RTC of Makati City a complaint against Yolanda for the judicial partition between them of a parcel of land with improvements located in Bel-Air Subdivision, Makati

City. In his complaint, Lupo alleged that the subject property was acquired during his union with Yolanda as common-law husband and wife, hence the property is co-owned by them.

Elaborating, Lupo averred in his complaint that the property in question was acquired by Yolanda sometime in 1987 using his exclusive funds and that the title thereto was transferred by the seller in Yolanda's name without his knowledge and consent. He did not interpose any objection thereto because at the time, their affair was still thriving. It was only after their separation and his receipt of information that Yolanda allowed her new live-in partner to live in the disputed property, when he demanded his share thereat as a co-owner.

In her answer, Yolanda denied Lupo's allegations. According to her, she acquired the same property for ₱2,600,000.00 using her exclusive funds. She insisted having bought it thru her own savings and earnings as a businesswoman.

In a decision dated December 11, 2000, the trial court rendered judgment for Lupo by declaring the contested property as owned in common by him and Yolanda and ordering its partition between the two in equal shares. CA reversed and set aside that of the trial court and adjudged the litigated property as exclusively owned by Yolanda.

In decreeing the disputed property as exclusively owned by Yolanda, the CA ruled that under the provisions of Article 148 of the Family Code vis-à-vis the evidence on record and attending circumstances, Yolanda's claim of sole ownership is meritorious, as it has been substantiated by competent evidence. To the CA, Lupo failed to overcome the burden of proving his allegation that the subject property was purchased by Yolanda thru his exclusive funds.

ISSUE:

Whether or not CA is correct when it ruled that under the provisions of Article 148 of the Family Code vis-à-vis the evidence on record and attending circumstances, Yolanda's claim of sole ownership is meritorious, as it has been substantiated by competent evidence since Lupo failed to overcome the burden of proof. (YES)

RULING:

It is not disputed that the parties herein were not capacitated to marry each other because petitioner Lupo Atienza was validly married to another woman at the time of his cohabitation with the respondent. Their property regime, therefore, is governed by Article 1488 of the Family Code, which applies to bigamous marriages, adulterous relationships, relationships in a state of concubinage, relationships where both man and woman are married to other persons, and multiple alliances of the same married man. Under this regime, …only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions ... Proof of actual contribution is required.

As it is, the regime of limited co-ownership of property governing the union of parties who are not legally capacitated to marry each other, but who nonetheless live together as husband and wife, applies to properties acquired during said cohabitation in proportion to their respective contributions. Co-ownership will only be up to the extent of the proven actual contribution of money, property or industry. Absent proof of the extent thereof, their contributions and corresponding shares shall be presumed to be equal.

Here, although the adulterous cohabitation of the parties commenced in 1983, or way before the effectivity of the Family Code on August 3, 1998, Article 148 thereof applies because this provision was intended precisely to fill up the hiatus in Article 144 of the Civil Code. Before Article 148 of the Family Code was enacted, there was no provision governing property relations of couples living in a state of adultery or concubinage. Hence, even if the cohabitation or the acquisition of the property occurred before the Family Code took effect, Article 148 governs.

As in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. The petitioner as plaintiff below is not automatically entitled to the relief prayed for. The law gives the defendant some measure of protection as the plaintiff must still prove the allegations in the complaint. Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief. Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.

It is the petitioner's posture that the respondent, having no financial capacity to acquire the property in question, merely manipulated the dollar bank accounts of his two (2) corporations to raise the amount needed therefor. Unfortunately for petitioner, his submissions are burdened by the fact that his claim to the property contradicts duly written instruments, i.e., the Contract to Sell dated March 24, 1987, the Deed of Assignment of Redemption dated March 27, 1987 and the Deed of Transfer dated April 27, 1987, all entered into by and between the respondent and the vendor of said property, to the exclusion of the petitioner.

In making proof of his case, it is paramount that the best and most complete evidence be formally entered. Rather than presenting proof of his actual contribution to the purchase money used as consideration for the disputed property, Lupo diverted the burden imposed upon him to Yolanda by painting her as a shrewd and scheming woman without the capacity to purchase any property. Instead of proving his ownership, or the extent thereof, over the subject property, Lupo relegated his complaint to a mere attack on the financial capacity of Yolanda. He presented documents pertaining to the ins and outs of the dollar accounts of ENRICO and EURASIAN, which unfortunately failed to prove his actual contribution in the purchase of the said property. The fact that Yolanda had a limited access to the funds of the said corporations and had repeatedly withdrawn money from their bank accounts for their behalf do not prove that the money she used in buying the disputed property, or any property for that matter, came from said withdrawals.

As it is, the disquisition of the court a quo heavily rested on the apparent financial capacity of the parties. On one side, there is Lupo, a retired sea captain and the President and General Manager of two corporations and on the other is Yolanda, a Certified Public Accountant. Surmising that Lupo is financially well heeled than Yolanda, the court a quo concluded, sans evidence, that Yolanda had taken advantage of Lupo. Clearly, the court a quo is in error.

As we see it, petitioner's claim of co-ownership in the disputed property is without basis because not only did he fail to substantiate his alleged contribution in the purchase thereof but likewise the very trail of documents pertaining to its purchase as evidentiary proof redounds to the benefit of the respondent. In contrast, aside from his mere say so and voluminous records of bank accounts, which sadly find no relevance in this case, the petitioner failed to overcome his burden of proof. Allegations

must be proven by sufficient evidence. Simply stated, he who alleges a fact has the burden of proving it; mere allegation is not evidence.

True, the mere issuance of a certificate of title in the name of any person does not foreclose the possibility that the real property covered thereby may be under co-ownership with persons not named in the certificate or that the registrant may only be a trustee or that other parties may have acquired interest subsequent to the issuance of the certificate of title. However, as already stated, petitioner's evidence in support of his claim is either insufficient or immaterial to warrant the trial court's finding that the disputed property falls under the purview of Article 148 of the Family Code. In contrast to petitioner's dismal failure to prove his cause, herein respondent was able to present preponderant evidence of her sole ownership. There can clearly be no co-ownership when, as here, the respondent sufficiently established that she derived the funds used to purchase the property from her earnings, not only as an accountant but also as a businesswoman engaged in foreign currency trading, money lending and jewelry retail. She presented her clientele and the promissory notes evincing substantial dealings with her clients. She also presented her bank account statements and bank transactions, which reflect that she had the financial capacity to pay the purchase price of the subject property.

All told, the Court finds and so holds that the CA committed no reversible error in rendering the herein challenged decision and resolution.

THE FAMILY AS AN INSTITUTION

SPOUSES JULIETA B. CARLOS AND FERNANDO P. CARLOS, *Petitioners*, *v.* JUAN CRUZ TOLENTINO, *Respondent*. G.R. No. 234533, THIRD DIVISION, June 27, 2018, VELASCO JR., *J.*

Juan and Mercedes appear to have been married before the effectivity of the Family Code on August 3, 1988. There being no indication that they have adopted a different property regime, the presumption is that their property relations is governed by the regime of conjugal partnership of gains. Article 119 of the Civil Code.

Since the subject property was acquired on March 17, 1967 during the marriage of Juan and Mercedes, it formed part of their conjugal partnership. It follows then that Juan and Mercedes are the absolute owners of their undivided one-half interest, respectively, over the subject property.

Meanwhile, as in any other property relations between husband and wife, the conjugal partnership is terminated upon the death of either of the spouses. In respondent Juan's Comment filed before the Court, the Verification which he executed on February 9, 2018 states that he is already a widower. Hence, the Court takes due notice of the fact of Mercedes' death which inevitably results in the dissolution of the conjugal partnership.
In the present case, while it has been settled that the congruence of the wills of the spouses is essential for the valid disposition of conjugal property, it cannot be ignored that Mercedes' consent to the disposition of her one-half interest in the subject property remained undisputed. It is apparent that Mercedes, during her lifetime, relinquished all her rights thereon in favor of her grandson, Kristoff.

Furthermore, Mercedes' knowledge of and acquiescence to the subsequent sale of the subject property to Spouses Carlos is evidenced by her signature appearing in the MOA33 dated April 12, 2011 and the Deed of Absolute Sale dated September 12, 2011. We are also mindful of the fact that Spouses Carlos had already paid a valuable consideration in the amount of P2,300,000.00 for the subject property

before Juan's adverse claim was annotated on Kristoffs title. The said purchase and acquisition for valuable consideration deserves a certain degree of legal protection.

Given the foregoing, the Court is disinclined to rule that the Deed of Donation is wholly void ab initio and that the Spouses Carlos should be totally stripped of their right over the subject property. In consonance with justice and equity, We deem it proper to uphold the validity of the Deed of Donation dated February 15, 2011 but only to the extent of Mercedes' one- half share in the subject property. And rightly so, because why invalidate Mercedes' disposition of her one-half portion of the conjugal property that will eventually be her share after the termination of the conjugal partnership? It will practically be absurd, especially in the instant case, since the conjugal partnership had already been terminated upon Mercedes' death.

Accordingly, the right of Kristoff, as donee, is limited only to the one- half undivided portion that Mercedes owned. The Deed of Donation insofar as it covered the remaining one-half undivided portion of the subject property is null and void, Juan not having consented to the donation of his undivided half.

FACTS:

The instant case arose from a complaint for annulment of title with damages filed by respondent Juan Cruz Tolentino (Juan) against his wife, Mercedes Tolentino (Mercedes), his grandson, Kristoff M. Tolentino (Kristoff), herein petitioners Spouses Julieta B. Carlos (Julieta) and Fernando P. Carlos (Spouses Carlos), and the Register of Deeds of Quezon City.

The subject matter of the action is a parcel of land with an area of 1,000 square meters and all the improvements thereon located in Novaliches, Quezon City, covered by Transfer Certificate of Title (TCT) No. RT-90746 (116229) issued on March 17, 1967 and registered in the name of Juan C. Tolentino, married to Mercedes Tolentino (the subject property).

Without Juan's knowledge and consent, Mercedes and Kristoff, who were then residing in the subject property, allegedly forged a Deed of Donation dated February 15, 2011, thereby making it appear that Juan and Mercedes donated the subject property to Kristoff. Thus, by virtue of the alleged forged Deed of Donation, Kristoff caused the cancellation of TCT No. RT-90764 (116229), and in lieu thereof, TCT No. 004-20110033208 was issued in his name on March 9, 2011.

In April 2011, Kristoff offered the sale of the subject property to Julieta's brother, Felix Bacal (Felix), who is also the administrator of the lot owned by Julieta which is adjacent to the subject property. When Felix informed Julieta of the availability of the subject property, Spouses Carlos then asked him to negotiate for its purchase with Kristoff. After, Kristoff and Julieta executed a Memorandum of Agreement (MOA) dated April 12, 2011 stating that Kristoff is selling the subject property to Julieta in the amount of P2,300,000.00, payable in two (2) installments. On May 28, 2011, Julieta made the first payment in the amount of P2,000,000.00 while the second payment in the amount of P300,000.00 was made on June 30, 2011.13 On the same day, a Deed of Absolute Sale was executed between Kristoff and Julieta.

Upon learning of the foregoing events, Juan executed an Affidavit of Adverse Claim which was annotated on TCT No. 004-2011003320 on July 15, 2011, to wit:

> NOTICE OF ADVERSE CLAIM : EXECUTED UNDER OATH BY JUAN C. TOLENTINO, CLAIMING FOR THE RIGHTS, INTEREST AND PARTICIPATION OVER THE PROPERTY, STATING AMONG

> OTHERS THAT HE DISCOVERED ON JULY 14, 2011 THAT SAID PARCEL OF LAND HAS BEEN DONATED TO KRISTOFF M. TOLENTINO BY VIRTUE OF A DEED OF DONATION PU[R]PORTEDLY EXECUTED BY JUAN C. TOLENTINO & MERCEDES SERRANO ON FEB. 15, 2011. THAT AS A RESULT OF THE FORGED DEED OF DONATION, HIS TITLE WAS CANCELLED. THAT HE DECLARE THAT HE HAVE NOT SIGNED ANY DEED OF DONATION IN FAVOR OF SAID KRISTOFF M. TOLENTINO. NEITHER DID HE SELL, TRANSFER NOR WAIVE IDS RIGHTS OF OWNERSHIP OVER THE SAID PROPERTY. OTHER CONDITIONS SET FORTH IN DOC. NO. 253, PAGE NO. 52, BOOK NO. V, SERIES OF 2011 OF NOTARY PUBLIC OF QC, MANNY GRAGASIN. DATE INSTRUMENT – JUNE 15, 2011

Juan also filed a criminal complaint for Falsification of Public Document before the Office of the City Prosecutor of Quezon City against Kristoff.

Meanwhile, Kristoff and Julieta executed another Deed of Absolute Sale dated September 12, 2011 over the subject property and, by virtue thereof, the Register of Deeds of Quezon City cancelled TCT No. 004- 2011003320 and issued TCT No. 004-201101350219 on December 5, 2011 in favor of Spouses Carlos. The affidavit of adverse claim executed by Juan was duly carried over to the title of Spouses Carlos.

RTC found that Juan's signature in the Deed of Donation dated February 15, 2011 was a forgery. Despite such finding, however, it dismissed Juan's complaint.

The RTC found that at the time Spouses Carlos fully paid the agreed price in the MOA on June 30, 2011, which culminated in the execution of the Deed of Absolute Sale on even date, Kristoff was the registered owner of the subject property covered by TCT No. 004-2011003320. Further, when the MOA and the Deed of Absolute Sale dated June 30, 2011 were executed, nothing was annotated on the said title to indicate the adverse claim of Juan or any other person. It was only on July 15, 2011 when Juan's adverse claim was annotated on Kristoff's title.

The fact that a second Deed of Absolute Sale dated September 12, 2011 was executed is immaterial since the actual sale of the subject property took place on June 30, 2011 when Spouses Carlos fully paid the purchase price. Thus, relying on the face of Kristoff's title without any knowledge of irregularity in the issuance thereof and having paid a fair and full price of the subject property before they could be charged with knowledge of Juan's adverse claim, the RTC upheld Spouses Carlos' right over the subject property.

CA found that Spouses Carlos were negligent in not taking the necessary steps to determine the status of the subject property prior to their purchase thereof. It stressed that Julieta failed to examine Kristoff s title and other documents before the sale as she merely relied on her brother, Felix. Accordingly, the CA ruled that Juan has a better right over the subject property.

ISSUE:

Whether or not Spouses Carlos have the better right over the subject property than Juan. (NO)

RULING:

Juan and Mercedes appear to have been married before the effectivity of the Family Code on August 3, 1988. There being no indication that they have adopted a different property regime, the

presumption is that their property relations is governed by the regime of conjugal partnership of gains. Article 119 of the Civil Code thus provides:

> **Article 119**. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code, shall govern the property relations between husband and wife.

Likewise, the Family Code contains terms governing conjugal partnership of gains that supersede the terms of the conjugal partnership of gains under the Civil Code. Article 105 of the Family Code states:

> **Article 105**. In case the future spouses agree in the marriage settlements that the regime of conjugal partnership of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application.
>
> The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256.

Since the subject property was acquired on March 17, 1967 during the marriage of Juan and Mercedes, it formed part of their conjugal partnership. It follows then that Juan and Mercedes are the absolute owners of their undivided one-half interest, respectively, over the subject property.

Meanwhile, as in any other property relations between husband and wife, the conjugal partnership is terminated upon the death of either of the spouses. In respondent Juan's Comment filed before the Court, the Verification which he executed on February 9, 2018 states that he is already a widower. Hence, the Court takes due notice of the fact of Mercedes' death which inevitably results in the dissolution of the conjugal partnership.

In retrospect, as absolute owners of the subject property then covered by TCT No. RT-90746 (116229), Juan and Mercedes may validly exercise rights of ownership by executing deeds which transfer title thereto such as, in this case, the Deed of Donation dated February 15, 2011 in favor of their grandson, Kristoff. With regard to Juan's consent to the afore-stated donation, the RTC, however, found that such was lacking since his signature therein was forged. Notably, the CA did not overturn such finding, and in fact, no longer touched upon the issue of forgery. On the other hand, it must be pointed out that the signature of Mercedes in the Deed of Donation was never contested and is, therefore, deemed admitted.

In the present case, while it has been settled that the congruence of the wills of the spouses is essential for the valid disposition of conjugal property, it cannot be ignored that Mercedes' consent to the disposition of her one-half interest in the subject property remained undisputed. It is apparent that Mercedes, during her lifetime, relinquished all her rights thereon in favor of her grandson, Kristoff.

Furthermore, Mercedes' knowledge of and acquiescence to the subsequent sale of the subject property to Spouses Carlos is evidenced by her signature appearing in the MOA33 dated April 12, 2011 and the Deed of Absolute Sale dated September 12, 2011. We are also mindful of the fact that

Spouses Carlos had already paid a valuable consideration in the amount of P2,300,000.00 for the subject property before Juan's adverse claim was annotated on Kristoffs title. The said purchase and acquisition for valuable consideration deserves a certain degree of legal protection.

Given the foregoing, the Court is disinclined to rule that the Deed of Donation is wholly void ab initio and that the Spouses Carlos should be totally stripped of their right over the subject property. In consonance with justice and equity, We deem it proper to uphold the validity of the Deed of Donation dated February 15, 2011 but only to the extent of Mercedes' one- half share in the subject property. And rightly so, because why invalidate Mercedes' disposition of her one-half portion of the conjugal property that will eventually be her share after the termination of the conjugal partnership? It will practically be absurd, especially in the instant case, since the conjugal partnership had already been terminated upon Mercedes' death.

Accordingly, the right of Kristoff, as donee, is limited only to the one- half undivided portion that Mercedes owned. The Deed of Donation insofar as it covered the remaining one-half undivided portion of the subject property is null and void, Juan not having consented to the donation of his undivided half.

Upon the foregoing perspective, Spouses Carlos' right, as vendees in the subsequent sale of the subject property, is confined only to the one-half undivided portion thereof. The other undivided half still belongs to Juan. As owners pro indiviso of a portion of the lot in question, either Spouses Carlos or Juan may ask for the partition of the lot and their property rights shall be limited to the portion which may be allotted to them in the division upon the termination of the co-ownership.35 This disposition is in line with the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so—*quando res non valet ut ago, valeat quantum valere potest.*

Lastly, as a matter of fairness and in line with the principle that no person should unjustly enrich himself at the expense of another, Kristoff should be liable to reimburse Spouses Carlos of the amount corresponding to one-half of the purchase price of the subject property.

SPOUSES AUGUSTO HONTIVEROS and MARIA HONTIVEROS, *Petitioners, vs.* REGIONAL TRIAL COURT, Branch 25, Iloilo City and SPOUSES GREGORIO HONTIVEROS and TEODORA AYSON, *Respondents*. G.R. No. 125465, SECOND DIVISION, June 29, 1999, MENDOZA, *J.*

The absence of the verification required in Art. 151 does not affect the jurisdiction of the court over the subject matter of the complaint. The verification is merely a formal requirement intended to secure an assurance that matters which are alleged are true and correct. If the court doubted the veracity of the allegations regarding efforts made to settle the case among members of the same family, it could simply have ordered petitioners to verify them. As this Court has already ruled, the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may be served. Otherwise, mere suspicion or doubt on the part of the trial court as to the truth of the allegation that earnest efforts had been made toward a compromise but the parties efforts proved unsuccessful is not a ground for the dismissal of an action. Only if it is later shown that such efforts had not really been exerted would the court be justified in dismissing the action. Thus, Art. 151 provides:

> *No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but*

that the same have failed. It if is shown that no such efforts were in fact made, the case must be dismissed. This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

Moreover, as petitioners contend, Art. 151 of the Family Code does not apply in this case since the suit is not exclusively among family members. Citing several cases decided by this Court, petitioners claim that whenever a stranger is a party in a case involving family members, the requisite showing of earnest efforts to compromise is no longer mandatory. They argue that since private respondent Ayson is admittedly a stranger to the Hontiveros family, the case is not covered by the requirements of Art. 151 of the Family Code.

We agree with petitioners. The inclusion of private respondent Ayson as defendant and petitioner Maria Hontiveros as plaintiff takes the case out of the ambit of Art. 151 of the Family Code. Under this provision, the phrase members of the same family refers to the husband and wife, parents and children, ascendants and descendants, and brothers and sisters, whether full or half-blood.

Religious relationship and relationship by affinity are not given any legal effect in this jurisdiction. Consequently, private respondent Ayson, who is described in the complaint as the spouse of respondent Hontiveros, and petitioner Maria Hontiveros, who is admittedly the spouse of petitioner Augusto Hontiveros, are considered strangers to the Hontiveros family, for purposes of Art. 151.

FACTS:

On December 3, 1990, petitioners, the spouses Augusto and Maria Hontiveros, filed a complaint for damages against private respondents Gregorio Hontiveros and Teodora Ayson before the Regional Trial Court of Iloilo City, Branch 25. In said complaint, petitioners alleged that they are the owners of a parcel of land, in the town of Jamindan, Province of Capiz, as shown by OCT No. 0-2124, issued pursuant to the decision of the Intermediate Appellate Court, dated April 12, 1984, which modified the decision of the Court of First Instance of Capiz, dated January 23, 1975, in a land registration case filed by private respondent Gregorio Hontiveros; that petitioners were deprived of income from the land as a result of the filing of the land registration case; that such income consisted of rentals from tenants of the land in the amount of P66,000.00 per year from 1968 to 1987, and P595,000.00 per year thereafter; and that private respondents filed the land registration case and withheld possession of the land from petitioners in bad faith.

In their answer, private respondents denied that they were married and alleged that private respondent Hontiveros was a widower while private respondent Ayson was single. They denied that they had deprived petitioners of possession of and income from the land. On the contrary, they alleged that possession of the property in question had already been transferred to petitioners on August 7, 1985, by virtue of a writ of possession, dated July 18, 1985, issued by the clerk of court of the Regional Trial Court of Capiz, Mambusao, the return thereof having been received by petitioners counsel; that since then, petitioners have been directly receiving rentals from the tenants of the land; that the complaint failed to state a cause of action since it did not allege that earnest efforts towards a compromise had been made, considering that petitioner Augusto Hontiveros and private respondent Gregorio Hontiveros are brothers; that the decision of the Intermediate Appellate Court in Land Registration Case No. N-581-25 was null and void since it was based upon a ground which was not passed upon by the trial court; that petitioners claim for damages was barred by prescription with respect to claims before 1984; that there were no rentals due since private respondent Hontiveros was a possessor in good faith and for value; and that private respondent Ayson had

nothing to do with the case as she was not married to private respondent Gregorio Hontiveros and did not have any proprietary interest in the subject property. Private respondents prayed for the dismissal of the complaint and for an order against petitioners to pay damages to private respondents by way of counterclaim, as well as reconveyance of the subject land to private respondents.

On May 16, 1991, petitioners filed an Amended Complaint to insert therein an allegation that earnest efforts towards a compromise have been made between the parties but the same were unsuccessful. The private respondents filed an answer denying the allegation.

On July 19, 1995, petitioners moved for a judgment on the pleadings on the ground that private respondents answer did not tender an issue or that it otherwise admitted the material allegations of the complaint. Private respondents opposed the motion alleging that they had denied petitioners claims and thus tendered certain issues of fact which could only be resolved after trial.

On November 23, 1995, the trial court denied petitioners motion. At the same time, however, it dismissed the case on the ground that the complaint was not verified as required by Art. 151 of the Family Code and, therefore, it did not believe that earnest efforts had been made to arrive at a compromise.

ISSUE:

Whether or not RTC erred in dismissing the complaint on the ground that it does not allege under oath that earnest efforts toward a compromise were made prior to the filing thereof as required by Article 151 of the Family Code. (YES)

RULING:

The trial court erred in dismissing petitioner's complaint on the ground that, although it alleged that earnest efforts had been made toward the settlement of the case but they proved futile, the complaint was not verified for which reason the trial court could not believe the veracity of the allegation.

The absence of the verification required in Art. 151 does not affect the jurisdiction of the court over the subject matter of the complaint. The verification is merely a formal requirement intended to secure an assurance that matters which are alleged are true and correct. If the court doubted the veracity of the allegations regarding efforts made to settle the case among members of the same family, it could simply have ordered petitioners to verify them. As this Court has already ruled, the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may be served. Otherwise, mere suspicion or doubt on the part of the trial court as to the truth of the allegation that earnest efforts had been made toward a compromise but the parties efforts proved unsuccessful is not a ground for the dismissal of an action. Only if it is later shown that such efforts had not really been exerted would the court be justified in dismissing the action. Thus, Art. 151 provides:

> No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. It if is shown that no such efforts were in fact made, the case must be dismissed. This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

Moreover, as petitioners contend, Art. 151 of the Family Code does not apply in this case since the suit is not exclusively among family members. Citing several cases decided by this Court, petitioners claim that whenever a stranger is a party in a case involving family members, the requisite showing of earnest efforts to compromise is no longer mandatory. They argue that since private respondent Ayson is admittedly a stranger to the Hontiveros family, the case is not covered by the requirements of Art. 151 of the Family Code.

We agree with petitioners. The inclusion of private respondent Ayson as defendant and petitioner Maria Hontiveros as plaintiff takes the case out of the ambit of Art. 151 of the Family Code. Under this provision, the phrase members of the same family refers to the husband and wife, parents and children, ascendants and descendants, and brothers and sisters, whether full or half-blood.

Religious relationship and relationship by affinity are not given any legal effect in this jurisdiction. Consequently, private respondent Ayson, who is described in the complaint as the spouse of respondent Hontiveros, and petitioner Maria Hontiveros, who is admittedly the spouse of petitioner Augusto Hontiveros, are considered strangers to the Hontiveros family, for purposes of Art. 151.

GAUDENCIO GUERRERO, *Petitioner*, vs. REGIONAL TRIAL COURT OF ILOCOS NORTE, BR. XVI, JUDGE LUIS B. BELLO, JR., PRESIDING, and PEDRO G. HERNANDO, *Respondents*. G.R. No. 109068, FIRST DIVISION, January 10, 1994, BELLOSILLO, *J.*

The Constitution protects the sanctity of the family and endeavors to strengthen it as a basic autonomous social institution. This is also embodied in Art. 149, and given flesh in Art. 151, of the Family Code, which provides:

> ***Art. 151**. No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same had failed. If it is shown that no such efforts were in fact made, the case must be dismissed.*

This rule shall not apply to cases which may not be the subject of compromise under the Civil Code. Further, Art. 151 is contemplated by Sec. 1, par. (j), Rule 16, of the Rules of Court which provides as a ground for motion to dismiss "(t)hat the suit is between members of the same family and no earnest efforts towards a compromise have been made."

But the instant case presents no occasion for the application of the above-quoted provisions. As early as two decades ago, we already ruled in Gayon v. Gayon that the enumeration of "brothers and sisters" as members of the same family does not comprehend "sisters-in-law". In that case, then Chief Justice Concepcion emphasized that "sisters-in-law" (hence, also "brothers-in-law") are not listed under Art. 217 of the New Civil Code as members of the same family. Since Art. 150 of the Family Code repeats essentially the same enumeration of "members of the family", we find no reason to alter existing jurisprudence on the matter. Consequently, the court a quo erred in ruling that petitioner Guerrero, being a brother-in-law of private respondent Hernando, was required to exert earnest efforts towards a compromise before filing the present suit.

FACTS:

Filed by petitioner as an *accion publican* against private respondent, this case assumed another dimension when it was dismissed by respondent Judge on the ground that the parties being brother-

in-law the complaint should have alleged that earnest efforts were first exerted towards a compromise.

Admittedly, the complaint does not allege that the parties exerted earnest towards a compromise and that the same failed. However, private respondent Pedro G. Hernando apparently overlooked this alleged defect since he did not file any motion to dismiss nor attack the complaint on this ground in his answer. It was only on 7 December 1992, at the pre-trial conference, that the relationship of petitioner Gaudencio Guerrero and respondent Hernando was noted by respondent Judge Luis B. Bello, Jr., they being married to half-sisters hence are brothers-in-law, and on the basis thereof respondent Judge gave petitioner five (5) days "to file his motion and amended complaint" to allege that the parties were very close relatives, their respective wives being sisters, and that the complaint to be maintained should allege that earnest efforts towards a compromise were exerted but failed. Apparently, respondent Judge considered this deficiency a jurisdictional defect.

On 11 December 1992, Guerrero moved to reconsider the 7 December 1992 Order claiming that since brothers by affinity are not members of the same family, he was not required to exert efforts towards a compromise. Guerrero likewise argued that Hernando was precluded from raising this issue since he did not file a motion to dismiss nor assert the same as an affirmative defense in his answer.

On 22 December 1992, respondent Judge denied the motion for reconsideration holding that "[f]ailure to allege that earnest efforts towards a compromise is jurisdictional such that for failure to allege same the court would be deprived of its jurisdiction to take cognizance of the case." He warned that unless the complaint was amended within five (5) days the case would be dismissed.

On 29 January 1993, the 5-day period having expired without Guerrero amending his complaint, respondent Judge dismissed the case, declaring the dismissal however to be without prejudice.

ISSUE:

Whether or not brothers by affinity are considered members of the same family contemplated in Art. 217, par. (4), and Art. 222 of the New Civil Code, as well as under Sec. 1, par. (j), Rule 16, of the Rules of Court requiring earnest efforts towards a compromise before a suit between them may be instituted and maintained. (NO)

RULING:

The Constitution protects the sanctity of the family and endeavors to strengthen it as a basic autonomous social institution. This is also embodied in Art. 149, and given flesh in Art. 151, of the Family Code, which provides:

> **Art. 151**. No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same had failed. If it is shown that no such efforts were in fact made, the case must be dismissed.
>
> This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

Considering that Art. 151 herein-quoted starts with the negative word "No", the requirement is mandatory that the complaint or petition, which must be verified, should allege that earnest efforts towards a compromise have been made but that the same failed, so that "[i]f it is shown that no such efforts were in fact made, the case must be dismissed."

Further, Art. 151 is contemplated by Sec. 1, par. (j), Rule 16, of the Rules of Court which provides as a ground for motion to dismiss "(t)hat the suit is between members of the same family and no earnest efforts towards a compromise have been made."

The Code Commission, which drafted the precursor provision in the Civil Code, explains the reason for the requirement that earnest efforts at compromise be first exerted before a complaint is given due course —

> This rule is introduced because it is difficult to imagine a sadder and more tragic spectacle than a litigation between members of the same family. It is necessary that every effort should be made toward a compromise before a litigation is allowed to breed hate and passion in the family. It is known that a lawsuit between close relatives generates deeper bitterness than between strangers . . . A litigation in a family is to be lamented far more than a lawsuit between strangers . . .

But the instant case presents no occasion for the application of the above-quoted provisions. As early as two decades ago, we already ruled in *Gayon v. Gayon* that the enumeration of "brothers and sisters" as members of the same family does not comprehend "sisters-in-law". In that case, then Chief Justice Concepcion emphasized that "sisters-in-law" (hence, also "brothers-in-law") are not listed under Art. 217 of the New Civil Code as members of the same family. Since Art. 150 of the Family Code repeats essentially the same enumeration of "members of the family", we find no reason to alter existing jurisprudence on the matter. Consequently, the court a quo erred in ruling that petitioner Guerrero, being a brother-in-law of private respondent Hernando, was required to exert earnest efforts towards a compromise before filing the present suit.

In his Comment, Hernando argues that ". . . although both wives of the parties were not impleaded, it remains a truism that being spouses of the contending parties, and the litigation involves ownership of real property, the spouses' interest and participation in the land in question cannot be denied, making the suit still a suit between half-sisters . . ."

Finding this argument preposterous, Guerrero counters in his Reply that his "wife has no actual interest and participation in the land subject of the . . . suit, which the petitioner bought, according to his complaint, before he married his wife." This factual controversy however may be best left to the court a quo to resolve when it resumes hearing the case.

HIYAS SAVINGS and LOAN BANK, INC. *Petitioner*, vs. HON. EDMUNDO T. ACUÑA, in his capacity as Pairing Judge of Regional Trial Court, Branch 122, Caloocan City, and ALBERTO MORENO, *Respondent.* G.R. No. 154132, FIRST DIVISION, August 31, 2006, AUSTRIA-MARTINEZ, *J.*

In Magbaleta v. Gonong, the case involved brothers and a stranger to the family, the alleged owner of the subject property. The Court, taking into consideration the explanation made by the Code Commision in its report, ruled that:

> *[T]hese considerations do not, however, weigh enough to make it imperative that such efforts to compromise should be a jurisdictional pre-requisite for the maintenance of an action whenever a stranger to the family is a party thereto, whether as a necessary or indispensable one. It is not always that one who is alien to the family would be willing to suffer the inconvenience of, much less relish, the delay and the complications that wranglings between or among relatives more often than not entail. Besides, it is neither practical nor fair that the determination of the rights of a stranger to the family who just happened to have innocently acquired some kind of interest in any right or property disputed among its members should be made to depend on the way the latter would settle their differences among themselves. x x x.*

Hence, once a stranger becomes a party to a suit involving members of the same family, the law no longer makes it a condition precedent that earnest efforts be made towards a compromise before the action can prosper.

In the subsequent case of De Guzman v. Genato. the case involved spouses and the alleged paramour of the wife. The Court ruled that due to the efforts exerted by the husband, through the Philippine Constabulary, to confront the wife, there was substantial compliance with the law, thereby implying that even in the presence of a party who is not a family member, the requirements that earnest efforts towards a compromise have been exerted must be complied with, pursuant to Article 222 of the Civil Code, now Article 151 of the Family Code.

While De Guzman was decided after Magbaleta, the principle enunciated in the Magbaleta is the one that now ***prevails.***

Petitioner makes much of the fact that the present case involves a husband and his wife while Magbaleta is a case between brothers. However, the Court finds no specific, unique, or special circumstance that would make the ruling in Magbaleta as well as in the abovementioned cases inapplicable to suits involving a husband and his wife, as in the present case. In the first place, Article 151 of the Family Code and Article 222 of the Civil Code are clear that the provisions therein apply to suits involving "members of the same family" as contemplated under Article 150 of the Family Code and Article 217 of the Civil Code, to wit:

> ***ART. 150.*** *Family relations include those:*
> *(1) Between husband and wife;*
> *(2) Between parents and children;*
> *(3) Among other ascendants and descendants; and*
> *(4) Among brothers and sisters, whether of the full or half blood.*
>
> ***ART. 217.*** *Family relations shall include those:*
> *(1) Between husband and wife;*
> *(2) Between parent and child;*
> *(3) Among other ascendants and their descendants;*
> *(4) Among brothers and sisters.*

Petitioner also contends that the trial court committed grave abuse of discretion when it ruled that petitioner, not being a member of the same family as respondent, may not invoke the provisions of Article 151 of the Family Code.

Suffice it to say that since the Court has ruled that the requirement under Article 151 of the Family Code is applicable only in cases which are exclusively between or among members of the same family, it necessarily follows that the same may be invoked only by a party who is a member of that same family.

FACTS:

On November 24, 2000, Alberto Moreno (private respondent) filed with the RTC of Caloocan City a complaint against Hiyas Savings and Loan Bank, Inc. (petitioner), his wife Remedios, the spouses Felipe and Maria Owe and the Register of Deeds of Caloocan City for cancellation of mortgage contending that he did not secure any loan from petitioner, nor did he sign or execute any contract of mortgage in its favor; that his wife, acting in conspiracy with Hiyas and the spouses Owe, who were the ones that benefited from the loan, made it appear that he signed the contract of mortgage; that he could not have executed the said contract because he was then working abroad.

On May 17, 2001, petitioner filed a Motion to Dismiss on the ground that private respondent failed to comply with Article 151 of the Family Code wherein it is provided that no suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. Petitioner contends that since the complaint does not contain any fact or averment that earnest efforts toward a compromise had been made prior to its institution, then the complaint should be dismissed for lack of cause of action.

Private respondent filed his Comment on the Motion to Dismiss with Motion to Strike Out and to Declare Defendants in Default. He argues that in cases where one of the parties is not a member of the same family as contemplated under Article 150 of the Family Code, failure to allege in the complaint that earnest efforts toward a compromise had been made by the plaintiff before filing the complaint is not a ground for a motion to dismiss. Alberto asserts that since three of the party-defendants are not members of his family the ground relied upon by Hiyas in its Motion to Dismiss is inapplicable and unavailable. Alberto also prayed that defendants be declared in default for their failure to file their answer on time. Petitioner filed a Reply, private respondent filed his rejoinder.

On November 8, 2011, RTC issued the first of its assailed Orders denying the Motion to Dismiss, thus:

The court agrees with plaintiff that earnest efforts towards a compromise is not required before the filing of the instant case considering that the above-entitled case involves parties who are strangers to the family. As aptly pointed out in the cases cited by plaintiff, *Magbaleta v. G[o]nong*, L-44903, April 25, 1977 and *Mendez v. [B]iangon*, L-32159, October 28, 1977, if one of the parties is a stranger, failure to allege in the complaint that earnest efforts towards a compromise had been made by plaintiff before filing the complaint, is not a ground for motion to dismiss.

Insofar as plaintiff's prayer for declaration of default against defendants, the same is meritorious only with respect to defendants Remedios Moreno and the Register of Deeds of Kaloocan City. A declaration of default against defendant bank is not proper considering that the filing of the Motion to Dismiss by said defendant operates to stop the running of the period within which to file the required Answer.

On May 7, 2002, the RTC issued the second assailed Order denying petitioner's Motion for Partial Reconsideration. The trial court ruled:

Reiterating the resolution of the court, dated November 8, 2001, considering that the above-entitled case involves parties who are strangers to the family, failure to allege in the complaint that earnest efforts towards a compromise were made by plaintiff, is not a ground for a Motion to Dismiss.

Additionally, the court agrees with plaintiff that inasmuch as it is defendant Remedios Moreno who stands to be benefited by Art. 151 of the Family Code, being a member of the same family as that of plaintiff, only she may invoke said Art. 151.

ISSUE:

Whether or not plaintiff is correct that earnest efforts towards a compromise is not required before the filing of the instant case considering that the above-entitled case involves parties who are strangers to the family. (YES)

RULING:

Article 151 of the Family Code provides as follows:

> No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.
>
> This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

Article 222 of the Civil Code from which Article 151 of the Family Code was taken, essentially contains the same provisions, to wit:

> No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in Article 2035.
>
> The Code Commission that drafted Article 222 of the Civil Code from which Article 151 of the Family Code was taken explains:
>
> [I]t is difficult to imagine a sadder and more tragic spectacle than a litigation between members of the same family. It is necessary that every effort should be made toward a compromise before a litigation is allowed to breed hate and passion in the family. It is known that a lawsuit between close relatives generates deeper bitterness than between strangers.

In *Magbaleta v. Gonong*, the case involved brothers and a stranger to the family, the alleged owner of the subject property. The Court, taking into consideration the explanation made by the Code Commision in its report, ruled that:

> [T]hese considerations do not, however, weigh enough to make it imperative that such efforts to compromise should be a jurisdictional pre-requisite for the maintenance of an action whenever a stranger to the family is a party thereto, whether as a necessary or indispensable one. It is not always that one who is alien to the family would be willing to suffer the

> inconvenience of, much less relish, the delay and the complications that wranglings between or among relatives more often than not entail. Besides, it is neither practical nor fair that the determination of the rights of a stranger to the family who just happened to have innocently acquired some kind of interest in any right or property disputed among its members should be made to depend on the way the latter would settle their differences among themselves. x x x.

Hence, once a stranger becomes a party to a suit involving members of the same family, the law no longer makes it a condition precedent that earnest efforts be made towards a compromise before the action can prosper.

In the subsequent case of *De Guzman v. Genato.* the case involved spouses and the alleged paramour of the wife. The Court ruled that due to the efforts exerted by the husband, through the Philippine Constabulary, to confront the wife, there was substantial compliance with the law, thereby implying that even in the presence of a party who is not a family member, the requirements that earnest efforts towards a compromise have been exerted must be complied with, pursuant to Article 222 of the Civil Code, now Article 151 of the Family Code.

While *De Guzman* was decided after *Magbaleta*, the principle enunciated in the *Magbaleta* is the one that now **prevails** because it is reiterated in the subsequent cases *of Gonzales v. Lopez*, *Esquivias v. Court of Appeals, Spouses Hontiveros v. Regional Trial Court, Branch 25, Iloilo City,* and the most recent case of *Martinez v. Martinez*. Thus, Article 151 of the Family Code applies to cover when the suit is exclusively between or among family members.

Petitioner makes much of the fact that the present case involves a husband and his wife while *Magbaleta* is a case between brothers. However, the Court finds no specific, unique, or special circumstance that would make the ruling in *Magbaleta* as well as in the abovementioned cases inapplicable to suits involving a husband and his wife, as in the present case. In the first place, Article 151 of the Family Code and Article 222 of the Civil Code are clear that the provisions therein apply to suits involving "members of the same family" as contemplated under Article 150 of the Family Code and Article 217 of the Civil Code, to wit:

> **ART. 150.** Family relations include those:
> (1) Between husband and wife;
> (2) Between parents and children;
> (3) Among other ascendants and descendants; and
> (4) Among brothers and sisters, whether of the full or half blood.
>
> **ART. 217.** Family relations shall include those:
> (1) Between husband and wife;
> (2) Between parent and child;
> (3) Among other ascendants and their descendants;
> (4) Among brothers and sisters.

Petitioner also contends that the trial court committed grave abuse of discretion when it ruled that petitioner, not being a member of the same family as respondent, may not invoke the provisions of Article 151 of the Family Code.

Suffice it to say that since the Court has ruled that the requirement under Article 151 of the Family Code is applicable only in cases which are exclusively between or among members of the same family, it necessarily follows that the same may be invoked only by a party who is a member of that same family.

HEIRS OF DR. MARIANO FAVIS, SR., REPRESENTED BY THEIR CO–HEIRS AND ATTORNEYS–IN–FACT MERCEDES A. FAVIS AND NELLY FAVIS–VILLAFUERTE, *Petitioners*, *v.* JUANA GONZALES, HER SON MARIANO G. FAVIS, MA. THERESA JOANA D. FAVIS, JAMES MARK D. FAVIS, ALL MINORS REPRESENTED HEREIN BY THEIR PARENTS, SPS. MARIANO FAVIS AND LARCELITA D. FAVIS, *Respondents*. G.R. No. 185922, SECOND DIVISION, January 15, 2014, PEREZ, *J.*

The appellate court correlated this provision with Section 1, par. (j), Rule 16 of the 1997 Rules of Civil Procedure, which provides:

> *Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:*
>
> *xxx*
>
> *(j) That a condition precedent for filing the claim has not been complied with.*

The appellate court's reliance on this provision is misplaced. Rule 16 treats of the grounds for a motion to dismiss the complaint. It must be distinguished from the grounds provided under Section 1, Rule 9 which specifically deals with dismissal of the claim by the court motu proprio. Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides:

> *Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.*

Section 1, Rule 9 provides for only four instances when the court may motu proprio dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) litis pendentia; (c) res judicata; and (d) prescription of action.

It was in Heirs of Domingo Valientes v. Ramas cited in P.L. Uy Realty Corporation v. ALS Management and Development Corporation where we noted that the second sentence of Section 1 of Rule 9 does not only supply exceptions to the rule that defenses not pleaded either in a motion to dismiss or in the answer are deemed waived, it also allows courts to dismiss cases motu propio on any of the enumerated grounds. The tenor of the second sentence of the Rule is that the allowance of a motu propio dismissal can proceed only from the exemption from the rule on waiver; which is but logical because there can be no ruling on a waived ground.

Thus was it made clear that a failure to allege earnest but failed efforts at a compromise in a complaint among members of the same family, is not a jurisdictional defect but merely a defect in the statement of a cause of action. Versoza was cited in a later case as an instance analogous to one where the conciliation process at the barangay level was not priorly resorted to. Both were described as a "condition precedent for the filing of a complaint in Court." In such instances, the consequence is precisely what is stated in the present Rule. Thus:

> *x x x The defect may however be waived by failing to make seasonable objection, in a motion to dismiss or answer, the defect being a mere procedural imperfection which does not affect the jurisdiction of the court.*

In the case at hand, the proceedings before the trial court ran the full course. The complaint of petitioners was answered by respondents without a prior motion to dismiss having been filed. The decision in favor of the petitioners was appealed by respondents on the basis of the alleged error in the ruling on the merits, no mention having been made about any defect in the statement of a cause of action. In other words, no motion to dismiss the complaint based on the failure to comply with a condition precedent was filed in the trial court; neither was such failure assigned as error in the appeal that respondent brought before the Court of Appeals.

Therefore, the rule on deemed waiver of the non–jurisdictional defense or objection is wholly applicable to respondent. If the respondents as parties–defendants could not, and did not, after filing their answer to petitioner's complaint, invoke the objection of absence of the required allegation on earnest efforts at a compromise, the appellate court unquestionably did not have any authority or basis to motu propio order the dismissal of petitioner's complaint.

FACTS:

Dr. Mariano Favis, Sr. (Dr. Favis) was married to Capitolina Aguilar (Capitolina) with whom he had seven children named Purita A. Favis, Reynaldo Favis, Consolacion Favis–Queliza, Mariano A. Favis, Jr., Esther F. Filart, Mercedes A. Favis, and Nelly Favis–Villafuerte. When Capitolina died in March 1944, Dr. Favis took Juana Gonzales (Juana) as his common–law wife with whom he sired one child, Mariano G. Favis (Mariano). When Dr. Favis and Juana got married in 1974, Dr. Favis executed an affidavit acknowledging Mariano as one of his legitimate children. Mariano is married to Larcelita D. Favis (Larcelita), with whom he has four children, named Ma. Theresa Joana D. Favis, Ma. Cristina D. Favis, James Mark D. Favis and Ma. Thea D. Favis.

Dr. Favis died intestate on 29 July 1995 leaving the following properties:

1. A parcel of residential land located at Bonifacio St. Brgy. 1, Vigan, Ilocos Sur, consisting an area of 898 square meters, more or less, bounded on the north by Salvador Rivero; on the East by Eleutera Pena; on the South by Bonifacio St., and on the West by Carmen Giron; x x x;
2. A commercial building erected on the aforesaid parcel of land with an assessed value of P126,000.00; x x x;
3. A parcel of residential land located in Brgy. VII, Vigan, Ilocos Sur, containing an area of 154 sq. ms., more or less, bounded on the North by the High School Site; on the East by Gomez St., on the South by Domingo [G]o; and on the West by Domingo Go; x x x;
4. A house with an assessed value of P17,600.00 x x x;
5. A parcel of orchard land located in Brgy. VI, Vigan, Ilocos Sur, containing an area of 2,257 sq. ma. (sic) more or less, bounded on the North by Lot 1208; on the East by Mestizo River; on the South by Lot 1217 and on the West by Lot 1211–B, 1212 and 1215 x x x.

On 16 October 1994, Dr. Favis allegedly executed a Deed of Donation transferring and conveying properties described in (1) and (2) in favor of his grandchildren with Juana.

Claiming that said donation prejudiced their legitime, Dr. Favis' children with Capitolina, petitioners herein, filed an action for annulment of the Deed of Donation, inventory, liquidation and partition of property before the Regional Trial Court (RTC) of Vigan, Ilocos Sur, Branch 20 against Juana, Spouses Mariano and Larcelita and their grandchildren as respondents.

In their Answer with Counterclaim, respondents assert that the properties donated do not form part of the estate of the late Dr. Favis because said donation was made *inter vivos*, hence petitioners have no stake over said properties.

The RTC, in its Pre–Trial Order, limited the issues to the validity of the deed of donation and whether or not respondent Juana and Mariano are compulsory heirs of Dr. Favis.

In a Decision dated 14 November 2005, the RTC nullified the Deed of Donation and cancelled the corresponding tax declarations. The trial court found that Dr. Favis, at the age of 92 and plagued with illnesses, could not have had full control of his mental capacities to execute a valid Deed of Donation. Holding that the subsequent marriage of Dr. Favis and Juana legitimated the status of Mariano, the trial court also declared Juana and Mariano as compulsory heirs of Dr. Favis.

The Court of Appeals *motu proprio* ordered the dismissal of the complaint for failure of petitioners to make an averment that earnest efforts toward a compromise have been made, as mandated by Article 151 of the Family Code. The appellate court justified its order of dismissal by invoking its authority to review rulings of the trial court even if they are not assigned as errors in the appeal.

Petitioners filed a motion for reconsideration contending that the case is not subject to compromise as it involves future legitime. The Court of Appeals rejected petitioners' contention when it ruled that the prohibited compromise is that which is entered between the decedent while alive and compulsory heirs. In the instant case, the appellate court observed that while the present action is between members of the same family it does not involve a testator and a compulsory heir. Moreover, the appellate court pointed out that the subject properties cannot be considered as "future legitime" but are in fact, legitime, as the instant complaint was filed after the death of the decedent.

ISSUE:

Whether or not appellate court may *motu propio* dismiss the order of dismissal of the complaint for failure to allege therein that earnest efforts towards a compromise have been made. (NO)

RULING:

Article 151 of the Family Code provides as follows:

> No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.
>
> This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

The appellate court correlated this provision with Section 1, par. (j), Rule 16 of the 1997 Rules of Civil Procedure, which provides:

> Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> x x x
>
> (j) That a condition precedent for filing the claim has not been complied with.

The appellate court's reliance on this provision is misplaced. Rule 16 treats of the grounds for a motion to dismiss the complaint. It must be distinguished from the grounds provided under Section 1, Rule 9 which specifically deals with dismissal of the claim by the court *motu proprio*. Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides:

> Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Section 1, Rule 9 provides for only four instances when the court may motu proprio dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) litis pendentia; (c) res judicata; and (d) prescription of action.

The error of the Court of Appeals is evident even if the consideration of the issue is kept within the confines of the language of Section 1(j) of Rule 16 and Section 1 of Rule 9. That a condition precedent for filing the claim has not been complied with, a ground for a motion to dismiss emanating from the law that no suit between members from the same family shall prosper unless it should appear from the verified complaint that earnest efforts toward a compromise have been made but had failed, is, as the Rule so words, a ground for a motion to dismiss. Significantly, the Rule requires that such a motion should be filed "within the time for but before filing the answer to the complaint or pleading asserting a claim." The time frame indicates that thereafter, the motion to dismiss based on the absence of the condition precedent is barred. It is so inferable from the opening sentence of Section 1 of Rule 9 stating that defense and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. There are, as just noted, only four exceptions to this Rule, namely, lack of jurisdiction over the subject matter; litis pendentia; res judicata; and prescription of action. Failure to allege in the complaint that earnest efforts at a compromise has been made but had failed is not one of the exceptions. Upon such failure, the defense is deemed waived.

It was in *Heirs of Domingo Valientes v. Ramas* cited in *P.L. Uy Realty Corporation v. ALS Management and Development Corporation* where we noted that the second sentence of Section 1 of Rule 9 does not only supply exceptions to the rule that defenses not pleaded either in a motion to dismiss or in the answer are deemed waived, it also allows courts to dismiss cases motu propio on any of the enumerated grounds. The tenor of the second sentence of the Rule is that the allowance of a *motu propio* dismissal can proceed only from the exemption from the rule on waiver; which is but logical because there can be no ruling on a waived ground.

Thus was it made clear that a failure to allege earnest but failed efforts at a compromise in a complaint among members of the same family, is not a jurisdictional defect but merely a defect in the statement of a cause of action. *Versoza* was cited in a later case as an instance analogous to one where the conciliation process at the barangay level was not priorly resorted to. Both were described as a "condition precedent for the filing of a complaint in Court." In such instances, the consequence is precisely what is stated in the present Rule. Thus:

> x x x The defect may however be waived by failing to make seasonable objection, in a motion to dismiss or answer, the defect being a mere procedural imperfection which does not affect the jurisdiction of the court.

In the case at hand, the proceedings before the trial court ran the full course. The complaint of petitioners was answered by respondents without a prior motion to dismiss having been filed. The decision in favor of the petitioners was appealed by respondents on the basis of the alleged error in the ruling on the merits, no mention having been made about any defect in the statement of a cause of action. In other words, no motion to dismiss the complaint based on the failure to comply with a condition precedent was filed in the trial court; neither was such failure assigned as error in the appeal that respondent brought before the Court of Appeals.

Therefore, the rule on deemed waiver of the non–jurisdictional defense or objection is wholly applicable to respondent. If the respondents as parties–defendants could not, and did not, after filing their answer to petitioner's complaint, invoke the objection of absence of the required allegation on earnest efforts at a compromise, the appellate court unquestionably did not have any authority or basis to *motu propio* order the dismissal of petitioner's complaint.

The facts of the case show that compromise was never an option insofar as the respondents were concerned. The impossibility of compromise instead of litigation was shown not alone by the absence of a motion to dismiss but on the respondents' insistence on the validity of the donation in their favor of the subject properties. Nor could it have been otherwise because the Pre–trial Order specifically limited the issues to the validity of the deed and whether or not respondent Juana and Mariano are compulsory heirs of Dr. Favis. Respondents not only confined their arguments within the pre–trial order; after losing their case, their appeal was based on the proposition that it was error for the trial court to have relied on the ground of vitiated consent on the part of Dr. Favis.

The Court of Appeals ignored the facts of the case that clearly demonstrated the refusal by the respondents to compromise. Instead it ordered the dismissal of petitioner's complaint on the ground that it did not allege what in fact was shown during the trial. The error of the Court of Appeals is patent.

FAMILY HOME

JOSE MODEQUILLO, *Petitioner,* vs. HON. AUGUSTO V. BREVA FRANCISCO SALINAS, FLORIPER ABELLAN-SALINAS, JUANITO CULAN-CULAN and DEPUTY SHERIFF FERNANDO PLATA respondents. G.R. No. 86355, FIRST DIVISION, May 31, 1990, GANCAYCO, *J.*

Articles 152 and 153 of the Family Code provide as follows:

> ***Art. 152.*** *The family home, constituted jointly by the husband and the wife or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated.*
>
> ***Art. 153****. The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.*

Under the Family Code, a family home is deemed constituted on a house and lot from the time it is occupied as a family residence. There is no need to constitute the same judicially or extrajudicially as required in the Civil Code. If the family actually resides in the premises, it is, therefore, a family home as contemplated by law. Thus, the creditors should take the necessary precautions to protect their interest before extending credit to the spouses or head of the family who owns the home.

Article 155 of the Family Code also provides as follows:

> ***Art. 155.*** *The family home shall be exempt from execution, forced sale or attachment except:*
> *(1) For non-payment of taxes;*
> *(2) For debts incurred prior to the constitution of the family home;*
> *(3) For debts secured by mortgages on the premises before or after such constitution; and*
> *(4) For debts due to laborers, mechanics, architects, builders, material men and others who have rendered service or furnished material for the construction of the building.*

The exemption provided as aforestated is effective from the time of the constitution of the family home as such, and lasts so long as any of its beneficiaries actually resides therein.

In the present case, the residential house and lot of petitioner was not constituted as a family home whether judicially or extrajudicially under the Civil Code. It became a family home by operation of law only under Article 153 of the Family Code. It is deemed constituted as a family home upon the effectivity of the Family Code on August 3, 1988 not August 4, one year after its publication in the Manila Chronicle on August 4, 1987 (1988 being a leap year).

FACTS:

On January 29, 1988, a judgment was rendered by the Court of Appeals in CA-G.R. CV No. 09218 entitled *"Francisco Salinas, et al. vs. Jose Modequillo, et al."* Said judgement havin become final and executory, a writ of execution was issued by the Regional Trial Court of Davao City to satisfy the said judgment on the goods and chattels of the defendants Jose Modequillo and Benito Malubay at Malalag, Davao del Sur.

On July 7, 1988, the sheriff levied on a parcel of residential land located at Poblacion Malalag, Davao del Sur containing an area of 600 square meters with a market value of P34,550.00 and assessed value of P7,570.00 per Tax Declaration No. 87008-01359, registered in the name of Jose Modequillo in the office of the Provincial Assessor of Davao del Sur; and a parcel of agricultural land located at Dalagbong Bulacan, Malalag, Davao del Sur containing an area of 3 hectares with a market value of P24,130.00 and assessed value of P9,650.00 per Tax Declaration No. 87-08-01848 registered in the name of Jose Modequillo in the office of the Provincial Assessor of Davao del Sur.

A motion to quash and/or to set aside levy of execution was filed by defendant Jose Modequillo alleging therein that the residential land located at Poblacion Malalag is where the family home is built since 1969 prior to the commencement of this case and as such is exempt from execution, forced sale or attachment under Articles 152 and 153 of the Family Code except for liabilities mentioned in Article 155 thereof, and that the judgment debt sought to be enforced against the family home of defendant is not one of those enumerated under Article 155 of the Family Code. As to the agricultural land although it is declared in the name of defendant it is alleged to be still part of the public land and the transfer in his favor by the original possessor and applicant who was a member of a cultural minority was not approved by the proper government agency. An opposition thereto was filed by the plaintiffs.

In an order dated August 26, 1988, the trial court denied the motion. A motion for reconsideration thereof was filed by defendant and this was denied for lack of merit on September 2, 1988.

ISSUE:

Whether or not a final judgment of the Court of Appeals in an action for damages may be satisfied by way of execution of a family home constituted under the Family Code. (NO)

RULING:

Articles 152 and 153 of the Family Code provide as follows:

> **Art. 152.** The family home, constituted jointly by the husband and the wife or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated.
>
> **Art. 153**. The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

Under the Family Code, a family home is deemed constituted on a house and lot from the time it is occupied as a family residence. There is no need to constitute the same judicially or extrajudicially as required in the Civil Code. If the family actually resides in the premises, it is, therefore, a family home as contemplated by law. Thus, the creditors should take the necessary precautions to protect their interest before extending credit to the spouses or head of the family who owns the home.

Article 155 of the Family Code also provides as follows:

> **Art. 155.** The family home shall be exempt from execution, forced sale or attachment except:
> (1) For non-payment of taxes;
> (2) For debts incurred prior to the constitution of the family home;
> (3) For debts secured by mortgages on the premises before or after such constitution; and
> (4) For debts due to laborers, mechanics, architects, builders, material men and others who have rendered service or furnished material for the construction of the building.

The exemption provided as aforestated is effective from the time of the constitution of the family home as such, and lasts so long as any of its beneficiaries actually resides therein.

In the present case, the residential house and lot of petitioner was not constituted as a family home whether judicially or extrajudicially under the Civil Code. It became a family home by operation of law only under Article 153 of the Family Code. It is deemed constituted as a family home upon the effectivity of the Family Code on August 3, 1988 not August 4, one year after its publication in the Manila Chronicle on August 4, 1987 (1988 being a leap year).

The contention of petitioner that it should be considered a family home from the time it was occupied by petitioner and his family in 1969 is not well- taken. Under Article 162 of the Family Code, it is provided that "the provisions of this Chapter shall also govern existing family residences insofar as said provisions are applicable." It does not mean that Articles 152 and 153 of said Code have a retroactive effect such that all existing family residences are deemed to have been constituted as family homes at the time of their occupation prior to the effectivity of the Family Code and are exempt from execution for the payment of obligations incurred before the effectivity of the Family Code. Article 162 simply means that all existing family residences at the time of the effectivity of the Family Code, are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code. Article 162 does not state that the provisions of Chapter 2, Title V have a retroactive effect.

Is the family home of petitioner exempt from execution of the money judgment aforecited? No. The debt or liability which was the basis of the judgment arose or was incurred at the time of the vehicular accident on March 16, 1976 and the money judgment arising therefrom was rendered by the appellate court on January 29, 1988. Both preceded the effectivity of the Family Code on August 3, 1988. This case does not fall under the exemptions from execution provided in the Family Code.

As to the agricultural land subject of the execution, the trial court correctly ruled that the levy to be made by the sheriff shall be on whatever rights the petitioner may have on the land.

FLORANTE F. MANACOP, *Petitioner*, vs. COURT OF APPEALS and F.F. CRUZ & CO., INC., *Respondents*. G.R. No. 104875, THIRD DIVISION, November 13, 1992, MELO, *J.*

Petitioner harps on the supposition that the appellate court should not have pierced the veil of corporate fiction because he is distinct from the personality of his corporation and, therefore, the writ of attachment issued against the corporation cannot be used to place his own family home in custodia legis. This puerile argument must suffer rejection since the doctrine in commercial law adverted to and employed in exculpation by petitioner, during the pendency of his petition for certiorari in the appellate court and even at this stage, may not be permitted to simply sprout from nowhere for such subtle experiment is prescribed by the omnibus motion rule under Section 8, Rule 15 of the Revised Rules of Court, thus:

A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived.
The spirit that surrounds the foregoing statutory norm is to require the movant to raise all available exceptions for relief during a single opportunity so that multiple and piece-meal objections may be avoided.

Lastly, petitioner is one of the belief that his abode at Quezon City since 1972 is a family home within the purview of the Family Code and therefore should not have been subjected to the vexatious writ. Yet, petitioner must concede that respondent court properly applied the discussion conveyed by Justice Gancayco in this regard when he spoke for the First Division of this Court in Modequillo vs. Breva.

FACTS:

Following the dismissal of his petition for certiorari in C.A.-G.R. SP No. 23651 by the Thirteenth Division of respondent Court (Justice Buena (P), Gonzaga-Reyes and Abad Santos, Jr., JJ.; Page 60, Rollo), petitioner airs his concern over the propriety thereof by claiming in the petition at hand that the disposition, in practical effect, allows a writ of preliminary attachment issued by the court of origin against his corporation to be implemented on his family home which is ordinarily exempt from the mesne process.

Owing to the failure to pay the sub-contract cost pursuant to a deed of assignment signed between petitioner's corporation and private respondent herein, the latter filed on July 3, 1989, a complaint for a sum of money, with a prayer for preliminary attachment, against the former. As a consequence of the order on July 28, 1989, the corresponding writ for the provisional remedy was issued on August 11, 1989 which triggered the attachment of a parcel of land in Quezon City owned by Manacop Construction President Florante F. Manacop, herein petitioner.

In lieu of the original complaint, private respondent submitted an amended complaint on August 18, 1989 intended to substitute Manacop Construction with Florante F. Manacop as defendant who is "doing business under the name and style of F.F. Manacop Construction Co., Inc.". After the motion for issuance of summons to the substituted defendant below was granted, petitioner filed his answer to the amended complaint on November 20, 1989.

Petitioner's Omnibus Motion filed on September 5, 1990 grounded on (1) irregularity that attended the issuance of the disputed writ inspite the absence of an affidavit therefor; (2) the feasibility of utilizing the writ prior to his submission as party-defendant, and (3) exemption from attachment of his family home did not merit the serious consideration of the court of origin. This nonchalant response constrained petitioner to elevate the matter to respondent court which, as aforesaid, agreed with the trial court on the strength of the ensuing observations.

ISSUE:

Whether or not a final and executory decision promulgated and a writ of execution issued before the effectivity of the Family Code can be executed on a family home constituted under the provisions of the said Code. (YES)

RULING:

Petitioner harps on the supposition that the appellate court should not have pierced the veil of corporate fiction because he is distinct from the personality of his corporation and, therefore, the writ of attachment issued against the corporation cannot be used to place his own family home in custodia legis. This puerile argument must suffer rejection since the doctrine in commercial law adverted to and employed in exculpation by petitioner, during the pendency of his petition for certiorari in the appellate court and even at this stage, may not be permitted to simply sprout from

nowhere for such subtle experiment is prescribed by the omnibus motion rule under Section 8, Rule 15 of the Revised Rules of Court, thus:

> A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

The spirit that surrounds the foregoing statutory norm is to require the movant to raise all available exceptions for relief during a single opportunity so that multiple and piece-meal objections may be avoided.

Another mistaken notion entertained by petitioner concerns the impropriety of issuing the writ of attachment on August 11, 1989 when he "was not yet a defendant in this case." This erroneous perception seems to suggest that jurisdiction over the person of petitioner, as defendant below, must initially attach before the provisional remedy involved herein can be requested by a plaintiff.

Petitioner seeks to capitalize on the legal repercussion that *ipso facto* took place when the complaint against him was amended. He proffers the idea that the extinction of a complaint via a superseding one carries with it the cessation of the ancilliary writ of preliminary attachment. We could have agreed with petitioner along this line had he expounded the adverse aftermath of an amended complaint in his omnibus motion. But the four corners of his motion in this respect filed on September 5, 1990 are circumscribed by other salient points set forth by Us relative to the propriety of the assailed writ itself. This being so, petitioner's eleventh hour effort in pressing a crucial factor for exculpation must be rendered ineffective and barred by the omnibus motion rule.

Lastly, petitioner is one of the belief that his abode at Quezon City since 1972 is a family home within the purview of the Family Code and therefore should not have been subjected to the vexatious writ. Yet, petitioner must concede that respondent court properly applied the discussion conveyed by Justice Gancayco in this regard when he spoke for the First Division of this Court in *Modequillo vs. Breva.*

FLORANTE F. MANACOP, *Petitioner*, vs. COURT OF APPEALS and E & L MERCANTILE, INC., *Respondents*. G.R. No. 97898, THIRD DIVISION, August 11, 1997, PANGANIBAN, *J.*

In Manacop v. Court of Appeals, petitioner himself as a party therein raised a similar question of whether this very same property was exempt from preliminary attachment for the same excuse that it was his family home. In said case, F.F. Cruz & Co., Inc. filed a complaint for a sum of money. As an incident in the proceedings before it, the trial court issued writ of attachment on the said house and lot. In upholding the trial court (and the Court of Appeals) in that case, we ruled that petitioner incurred the indebtedness in 1987 or prior to the effectively of the Family Code on August 3, 1988. Hence, petitioner's family home was not exempt from attachment "by sheer force of exclusion embodied in paragraph 2, Article 155 of the Family Code cited in Modequillo."

Petitioner contends that the trial court erred in holding that his residence was not exempt from execution in view of his failure to show that the property involved "has been duly constituted as a family home in accordance with law." He asserts that the Family Code and Modequillo require simply the occupancy of the property by the petitioner, without need for its judicial or extrajudicial constitution as a family home.

Petitioner is only partly correct. True, under the Family Code which took effect on August 3, 1988, the subject property became his family home under the simplified process embodied in Article 153 of said code. However, Modequillo explicitly ruled that said provision of the Family Code does not have retroactive effect. In other words, prior to August 3, 1988, the procedure mandated by the Civil Code had to be followed for a family home to be constituted as such. There being absolutely no proof that the subject property was judicially or extrajudicially constituted as a family home, it follows that the law's protective mantle cannot be availed of by petitioner. Since the debt involved herein was incurred and the assailed orders of the trial court issued prior to August 3, 1988, the petitioner cannot be shielded by the benevolent provisions of the Family Code.

FACTS:

Petitioner Florante F. Manacop and his wife Eulaceli purchased on March 10, 1972 a 446-square-meter residential lot with a bungalow, in consideration of P75,000.00. The property, located in Commonwealth Village, Commonwealth Avenue, Quezon City, is covered by Transfer Certificate of Title No. 174180.

On March 17, 1986, Private Respondent E & L Merchantile, Inc. filed a complaint against petitioner and F.F. Manacop Construction Co., Inc. before the Regional Trial Court of Pasig, Metro Manila to collect an indebtedness of P3,359,218.45. Instead of filing an answer, petitioner and his company entered into a compromise agreement with private respondent, the salient portion of which provides:

> c. That defendants will undertake to pay the amount of P2,000,000.00 as and when their means permit, but expeditiously as possible as their collectibles will be collected.

On April 20, 1986, the trial court rendered judgment approving the aforementioned compromise agreement. It enjoined the parties to comply with the agreement in good faith. On July 15, 1986, private respondent filed a motion for execution which the lower court granted on *September 23, 1986*. However, execution of the judgment was delayed. Eventually, the sheriff levied on several vehicles and other personal properties of petitioner. In partial satisfaction of the judgment debt, these chattels were sold at public auction for which certificates of sale were correspondingly issued by the sheriff.

On August 1, 1989, petitioner and his company filed a motion to quash the alias writs of execution and to stop the sheriff from continuing to enforce them on the ground that the judgment was not yet executory. They alleged that the compromise agreement had not yet matured as there was no showing that they had the means to pay the indebtedness or that their receivables had in fact been collected. They buttressed their motion with supplements and other pleadings.

On August 11, 1989, private respondent opposed the motion on the following grounds: (a) it was too late to question the September 23, 1986 Order considering that more than two years had elapsed; (b) the second alias writ of execution had been partially implemented; and (c) petitioner and his company were in bad faith in refusing to pay their indebtedness notwithstanding that from February 1984 to January 5, 1989, they had collected the total amount of P41,664,895.56. On September 21, 1989, private respondent filed an opposition to petitioner and his company's addendum to the motion to quash the writ of execution. It alleged that the property covered by TCT No. 174180 could not be considered a family home on the grounds that petitioner was already living abroad and that

the property, having been acquired in 1972, should have been *judicially* constituted as a family home to exempt it from execution.

On *September 26, 1989*, the lower court denied the motion to quash the writ of execution and the prayers in the subsequent pleadings filed by petitioner and his company. Finding that petitioner and his company had not paid their indebtedness even though they collected receivables amounting to P57,224,319.75, the lower court held that the case had become final and executory. It also ruled that petitioner's residence was not exempt from execution as it was not duly constituted as a family home, pursuant to the Civil Code.

CA dismissed the petitioner's petition for certiorari. The appellate court quoted with approval the findings of the lower court that: (a) the judgment based on the compromise agreement had become final and executory, stressing that petitioner and his company had collected the total amount of P57,224,319.75 but still failed to pay their indebtedness and (b) there was no showing that petitioner's residence had been duly constituted as a family home to exempt it from execution.

Petitioner and his company filed a motion for reconsideration of this Decision on the ground that the property covered by TCT No. 174180 was exempt from execution. On March 21, 1991, the Court of Appeals rendered the challenged Resolution denying the motion. It anchored its ruling on *Modequillo v. Breva*, which held that "all existing family residences at the time of the effectivity of the Family Code are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code."

ISSUE:

Whether or not a final and executory decision promulgated and a writ of execution issued before the effectivity of the Family Code can be executed on a family home constituted under the provisions of the said Code. (YES)

RULING:

In *Manacop v. Court of Appeals*, petitioner himself as a party therein raised a similar question of whether this very same property was exempt from preliminary attachment for the same excuse that it was his family home. In said case, F.F. Cruz & Co., Inc. filed a complaint for a sum of money. As an incident in the proceedings before it, the trial court issued writ of attachment on the said house and lot. In upholding the trial court (and the Court of Appeals) in that case, we ruled that petitioner incurred the indebtedness in 1987 or prior to the effectively of the Family Code on August 3, 1988. Hence, petitioner's family home was not exempt from attachment "by sheer force of exclusion embodied in paragraph 2, Article 155 of the Family Code cited in *Modequillo*."

Petitioner contends that the trial court erred in holding that his residence was not exempt from execution in view of his failure to show that the property involved "has been duly constituted as a family home in accordance with law." He asserts that the Family Code and *Modequillo* require simply the occupancy of the property by the petitioner, without need for its judicial or extrajudicial constitution as a family home.

Petitioner is only partly correct. True, under the Family Code which took effect on August 3, 1988, the subject property became his family home under the simplified process embodied in Article 153 of said code. However, *Modequillo* explicitly ruled that said provision of the Family Code does not

have retroactive effect. In other words, prior to August 3, 1988, the procedure mandated by the Civil Code had to be followed for a family home to be constituted as such. There being absolutely no proof that the subject property was judicially or extrajudicially constituted as a family home, it follows that the law's protective mantle cannot be availed of by petitioner. Since the debt involved herein was incurred and the assailed orders of the trial court issued prior to August 3, 1988, the petitioner cannot be shielded by the benevolent provisions of the Family Code.

In view of the foregoing discussion, there is no reason to address the other arguments of petitioner other than to correct his misconception of the law. Petitioner contends that he should be deemed residing in the family home because his stay in the United States is merely temporary. He asserts that the person staying in the house is his overseer and that whenever his wife visited this country, she stayed in the family home. This contention lacks merit.

The law explicitly provides that occupancy of the family home either by the owner thereof or by "any of its beneficiaries" must be actual. That which is "actual" is something real, or actually existing, as opposed to something merely possible, or to something which is presumptive or constructive. 10 Actual occupancy, however, need not be by the owner of the house specifically. Rather, the property may be occupied by the "beneficiaries" enumerated by Article 154 of the Family Code.

> **Art. 154**. The beneficiaries of a family home are:
> (1) The husband and wife, or an unmarried person who is the head of the family; and
> (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for lead support.

This enumeration may include the in-laws where the family home is constituted jointly by the husband and wife. But the law definitely excludes maids and overseers. They are not the beneficiaries contemplated by the Code. Consequently, occupancy of a family home by an overseer like *Carmencita V. Abat* in this case is insufficient compliance with the law.

SPOUSES ARACELI OLIVA-DE MESA and ERNESTO S. DE MESA, *Petitioner,* vs. SPOUSES CLAUDIO D. ACERO, JR. and MA. RUFINA D. ACERO, SHERIFF FELIXBERTO L. SAMONTE and REGISTRAR ALFREDO SANTOS, *Respondents*. G.R. No. 185064, SECOND DIVISION, January 16, 2012, REYES, *J.*

Here, the subject property became a family residence sometime in January 1987. There was no showing, however, that the same was judicially or extrajudicially constituted as a family home in accordance with the provisions of the Civil Code. Still, when the Family Code took effect on August 3, 1988, the subject property became a family home by operation of law and was thus prospectively exempt from execution. The petitioners were thus correct in asserting that the subject property was a family home.

The family home's exemption from execution must be set up and proved to the Sheriff before the sale of the property at public auction. Despite the fact that the subject property is a family home and, thus, should have been exempt from execution, we nevertheless rule that the CA did not err in dismissing the petitioners' complaint for nullification of TCT No. T-221755 (M). We agree with the CA that the petitioners should have asserted the subject property being a family home and its being exempted from execution at the time it was levied or within a reasonable time thereafter.

The settled rule is that the right to exemption or forced sale under Article 153 of the Family Code is a personal privilege granted to the judgment debtor and as such, it must be claimed not by the sheriff, but by the debtor himself before the sale of the property at public auction. It is not sufficient that the person claiming exemption merely alleges that such property is a family home. This claim for exemption must be set up and proved to the Sheriff. x x x.

Having failed to set up and prove to the sheriff the supposed exemption of the subject property before the sale thereof at public auction, the petitioners now are barred from raising the same. Failure to do so estop them from later claiming the said exemption.

The family home is a real right, which is gratuitous, inalienable and free from attachment. It cannot be seized by creditors except in certain special cases. However, this right can be waived or be barred by laches by the failure to set up and prove the status of the property as a family home at the time of the levy or a reasonable time thereafter.

In this case, it is undisputed that the petitioners allowed a considerable time to lapse before claiming that the subject property is a family home and its exemption from execution and forced sale under the Family Code. The petitioners allowed the subject property to be levied upon and the public sale to proceed. One (1) year lapsed from the time the subject property was sold until a Final Deed of Sale was issued to Claudio and, later, Araceli's Torrens title was cancelled and a new one issued under Claudio's name, still, the petitioner remained silent. In fact, it was only after the respondents filed a complaint for unlawful detainer, or approximately four (4) years from the time of the auction sale, that the petitioners claimed that the subject property is a family home, thus, exempt from execution.

For all intents and purposes, the petitioners' negligence or omission to assert their right within a reasonable time gives rise to the presumption that they have abandoned, waived or declined to assert it. Since the exemption under Article 153 of the Family Code is a personal right, it is incumbent upon the petitioners to invoke and prove the same within the prescribed period and it is not the sheriff's duty to presume or raise the status of the subject property as a family home.

FACTS:

This involves a parcel of land situated at No. 3 Forbes Street, Mount Carmel Homes Subdivision, Iba, Meycauayan, Bulacan, which was formerly covered by Transfer Certificate of Title (TCT) No. T-76.725 (M) issued by the Register of Deeds of Meycauayan, Bulacan and registered under Araceli's name. The petitioners jointly purchased the subject property on April 17, 1984 while they were still merely cohabiting before their marriage. A house was later constructed on the subject property, which the petitioners thereafter occupied as their family home after they got married sometime in January 1987.

Sometime in September 1988, Araceli obtained a loan from Claudio D. Acero, Jr. (Claudio) in the amount of ₱100,000.00, which was secured by a mortgage over the subject property. As payment, Araceli issued a check drawn against China Banking Corporation payable to Claudio.

When the check was presented for payment, it was dishonored as the account from which it was drawn had already been closed. The petitioners failed to heed Claudio's subsequent demand for payment.

Thus, on April 26, 1990, Claudio filed with the Prosecutor's Office of Malolos, Bulacan a complaint for violation of Batas Pambansa Blg. 22 (B.P. 22) against the petitioners. On October 21, 1992, the RTC rendered a Decision acquitting the petitioners but ordering them to pay Claudio the amount of ₱100,000.00 with legal interest from date of demand until fully paid.

On March 15, 1993, a writ of execution was issued and Sheriff Felixberto L. Samonte (Sheriff Samonte) levied upon the subject property. On March 9, 1994, the subject property was sold on public auction; Claudio was the highest bidder and the corresponding certificate of sale was issued to him.

Sometime in February 1995, Claudio leased the subject property to the petitioners and a certain Juanito Oliva (Juanito) for a monthly rent of ₱5,500.00. However, the petitioners and Juanito defaulted in the payment of the rent and as of October 3, 1998, their total accountabilities to Claudio amounted to ₱170,500.00.

Meanwhile, on March 24, 1995, a Final Deed of Sale4 over the subject property was issued to Claudio and on April 4, 1995, the Register of Deeds of Meycauayan, Bulacan cancelled TCT No. T-76.725 (M) and issued TCT No. T-221755 (M) in his favor.

Unable to collect the aforementioned rentals due, Claudio and his wife Ma. Rufina Acero (Rufina) (collectively referred to as Spouses Acero) filed a complaint for ejectment with the Municipal Trial Court (MTC) of Meycauayan, Bulacan against the petitioners and Juanito. In their defense, the petitioners claimed that Spouses Acero have no right over the subject property. The petitioners deny that they are mere lessors; on the contrary, they are the lawful owners of the subject property and, thus cannot be evicted therefrom.

On July 22, 1999, the MTC rendered a Decision, giving due course to Spouses Acero's complaint and ordering the petitioners and Juanito to vacate the subject property. Finding merit in Spouses Acero's claims, the MTC dismissed the petitioners' claim of ownership over the subject property. According to the MTC, title to the subject property belongs to Claudio as shown by TCT No. T-221755 (M).

The MTC also stated that from the time a Torrens title over the subject property was issued in Claudio's name up to the time the complaint for ejectment was filed, the petitioners never assailed the validity of the levy made by Sheriff Samonte, the regularity of the public sale that was conducted thereafter and the legitimacy of Claudio's Torrens title that was resultantly issued.

The petitioners appealed the MTC's July 22, 1999 Decision to the RTC. This appeal was, however, dismissed in a Decision dated November 22, 1999 due to the petitioners' failure to submit their Memorandum. The petitioners sought reconsideration of the said decision but the same was denied in an Order dated January 31, 2000.

Consequently, the petitioners filed a petition for review7 with the CA assailing the RTC's November 22, 1999 Decision and January 31, 2000 Order. In a December 21, 2006 Decision, the CA denied the petitioner's petition for review. This became final on July 25, 2007.9

In the interregnum, on October 29, 1999, the petitioners filed against the respondents a complaint10 to nullify TCT No. T-221755 (M) and other documents with damages with the RTC of Malolos, Bulacan. Therein, the petitioners asserted that the subject property is a family home, which is exempt from execution under the Family Code and, thus, could not have been validly levied upon for purposes of satisfying the March 15, 1993 writ of execution.

On September 3, 2002, the RTC rendered a Decision, which dismissed the petitioners' complaint. Citing Article 155(3) of the Family Code, the RTC ruled that even assuming that the subject property is a family home, the exemption from execution does not apply. A mortgage was constituted over the subject property to secure the loan Araceli obtained from Claudio and it was levied upon as payment therefor.

CA affirmed the RTC's disposition in its Decision dated June 6, 2008. The CA ratiocinated that the exemption of a family home from execution, attachment or forced sale under Article 153 of the Family Code is not automatic and should accordingly be raised and proved to the Sheriff prior to the execution, forced sale or attachment. The appellate court noted that at no time did the petitioners raise the supposed exemption of the subject property from execution on account of the same being a family home.

ISSUE:

Whether or not the lower courts erred in dismissing the petitioners' complaint for nullification of TCT No. T-221755 (M). (NO)

RULING:

The petitioners maintain that the subject property is a family home and, accordingly, the sale thereof on execution was a nullity. In *Ramos v. Pangilinan,* this Court laid down the rules relative to exemption of family homes from execution:

For the family home to be exempt from execution, distinction must be made as to what law applies based on when it was constituted and what requirements must be complied with by the judgment debtor or his successors claiming such privilege. Hence, two sets of rules are applicable.

If the family home was constructed before the effectivity of the Family Code or before August 3, 1988, then it must have been constituted either judicially or extra-judicially as provided under Articles 225, 229-231 and 233 of the Civil Code. Judicial constitution of the family home requires the filing of a verified petition before the courts and the registration of the court's order with the Registry of Deeds of the area where the property is located. Meanwhile, extrajudicial constitution is governed by Articles 240 to 242 of the Civil Code and involves the execution of a public instrument which must also be registered with the Registry of Property. Failure to comply with either one of these two modes of constitution will bar a judgment debtor from availing of the privilege.

On the other hand, for family homes constructed after the effectivity of the Family Code on August 3, 1988, there is no need to constitute extrajudicially or judicially, and the exemption is effective from the time it was constituted and lasts as long as any of its beneficiaries under Art. 154 actually resides therein. Moreover, the family home should belong to the absolute community or conjugal partnership, or if exclusively by one spouse, its constitution must have been with consent of the other, and its value must not exceed certain amounts depending upon the area where it is located. Further, the debts incurred for which the exemption does not apply as provided under Art. 155 for which the family home is made answerable must have been incurred after August 3, 1988. All family homes constructed after the effectivity of the Family Code (August 3, 1988) are constituted as such by operation of law. All existing family residences as of August 3, 1988 are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code.

The foregoing rules on constitution of family homes, for purposes of exemption from execution, could be summarized as follows:

> **First**, family residences constructed before the effectivity of the Family Code or before August 3, 1988 must be constituted as a family home either judicially or extrajudicially in accordance with the provisions of the Civil Code in order to be exempt from execution;
> **Second**, family residences constructed after the effectivity of the Family Code on August 3, 1988 are automatically deemed to be family homes and thus exempt from execution from the time it was constituted and lasts as long as any of its beneficiaries actually resides therein;
> **Third**, family residences which were not judicially or extrajudicially constituted as a family home prior to the effectivity of the Family Code, but were existing thereafter, are considered as family homes by operation of law and are prospectively entitled to the benefits accorded to a family home under the Family Code.

Here, the subject property became a family residence sometime in January 1987. There was no showing, however, that the same was judicially or extrajudicially constituted as a family home in accordance with the provisions of the Civil Code. Still, when the Family Code took effect on August 3, 1988, the subject property became a family home by operation of law and was thus prospectively exempt from execution. The petitioners were thus correct in asserting that the subject property was a family home.

The family home's exemption from execution must be set up and proved to the Sheriff before the sale of the property at public auction. Despite the fact that the subject property is a family home and, thus, should have been exempt from execution, we nevertheless rule that the CA did not err in dismissing the petitioners' complaint for nullification of TCT No. T-221755 (M). We agree with the CA that the petitioners should have asserted the subject property being a family home and its being exempted from execution at the time it was levied or within a reasonable time thereafter.

While it is true that the family home is constituted on a house and lot from the time it is occupied as a family residence and is exempt from execution or forced sale under Article 153 of the Family Code, such claim for exemption should be set up and proved to the Sheriff before the sale of the property at public auction. Failure to do so would estop the party from later claiming the exemption.

Although the Rules of Court does not prescribe the period within which to claim the exemption, the rule is, nevertheless, well-settled that the right of exemption is a personal privilege granted to the judgment debtor and as such, it must be claimed not by the sheriff, but by the debtor himself at the time of the levy or within a reasonable period thereafter;

"In the absence of express provision it has variously held that claim (for exemption) must be made at the time of the levy if the debtor is present, that it must be made within a reasonable time, or promptly, or before the creditor has taken any step involving further costs, or before advertisement of sale, or at any time before sale, or within a reasonable time before the sale, or before the sale has commenced, but as to the last there is contrary authority."

Under the cited provision, a family home is deemed constituted on a house and lot from the time it is occupied as a family residence; there is no need to constitute the same judicially or extrajudicially.

The settled rule is that the right to exemption or forced sale under Article 153 of the Family Code is a personal privilege granted to the judgment debtor and as such, it must be claimed not by the sheriff, but by the debtor himself before the sale of the property at public auction. It is not sufficient that the person claiming exemption merely alleges that such property is a family home. This claim for exemption must be set up and proved to the Sheriff. x x x.

Having failed to set up and prove to the sheriff the supposed exemption of the subject property before the sale thereof at public auction, the petitioners now are barred from raising the same. Failure to do so estop them from later claiming the said exemption.

Indeed, the family home is a sacred symbol of family love and is the repository of cherished memories that last during one's lifetime. It is likewise without dispute that the family home, from the time of its constitution and so long as any of its beneficiaries actually resides therein, is generally exempt from execution, forced sale or attachment.

The family home is a real right, which is gratuitous, inalienable and free from attachment. It cannot be seized by creditors except in certain special cases. However, this right can be waived or be barred by laches by the failure to set up and prove the status of the property as a family home at the time of the levy or a reasonable time thereafter.

In this case, it is undisputed that the petitioners allowed a considerable time to lapse before claiming that the subject property is a family home and its exemption from execution and forced sale under the Family Code. The petitioners allowed the subject property to be levied upon and the public sale to proceed. One (1) year lapsed from the time the subject property was sold until a Final Deed of Sale was issued to Claudio and, later, Araceli's Torrens title was cancelled and a new one issued under Claudio's name, still, the petitioner remained silent. In fact, it was only after the respondents filed a complaint for unlawful detainer, or approximately four (4) years from the time of the auction sale, that the petitioners claimed that the subject property is a family home, thus, exempt from execution.

For all intents and purposes, the petitioners' negligence or omission to assert their right within a reasonable time gives rise to the presumption that they have abandoned, waived or declined to assert it. Since the exemption under Article 153 of the Family Code is a personal right, it is incumbent upon the petitioners to invoke and prove the same within the prescribed period and it is not the sheriff's duty to presume or raise the status of the subject property as a family home.

The petitioners' negligence or omission renders their present assertion doubtful; it appears that it is a mere afterthought and artifice that cannot be countenanced without doing the respondents injustice and depriving the fruits of the judgment award in their favor. Simple justice and fairness and equitable considerations demand that Claudio's title to the property be respected. Equity dictates that the petitioners are made to suffer the consequences of their unexplained negligence.

PERLA G. PATRICIO, *Petitioner*, *v.* MARCELINO G. DARIO III and THE HONORABLE COURT OF APPEALS, Second Division, *Respondents*. G.R. No. 170829, FIRST DIVISION, November 20, 2006, YNARES-SANTIAGO, *J.*

The family home is a sacred symbol of family love and is the repository of cherished memories that last during one's lifetime.9 It is the dwelling house where husband and wife, or by an unmarried head of a family, reside, including the land on which it is situated. It is constituted jointly by the husband and the

wife or by an unmarried head of a family. The family home is deemed constituted from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

The law explicitly provides that occupancy of the family home either by the owner thereof or by "any of its beneficiaries" must be actual. That which is "actual" is something real, or actually existing, as opposed to something merely possible, or to something which is presumptive or constructive. Actual occupancy, however, need not be by the owner of the house specifically. Rather, the property may be occupied by the "beneficiaries" enumerated in Article 154 of the Family Code, which may include the in-laws where the family home is constituted jointly by the husband and wife. But the law definitely excludes maids and overseers. They are not the beneficiaries contemplated by the Code.

Article 154 of the Family Code enumerates who are the beneficiaries of a family home: (1) The husband and wife, or an unmarried person who is the head of a family; and (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

To be a beneficiary of the family home, three requisites must concur: (1) they must be among the relationships enumerated in Art. 154 of the Family Code; (2) they live in the family home; and (3) they are dependent for legal support upon the head of the family.

Moreover, Article 159 of the Family Code provides that the family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of 10 years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This rule shall apply regardless of whoever owns the property or constituted the family home. The rule in Article 159 of the Family Code may thus be expressed in this wise: If there are beneficiaries who survive and are living in the family home, it will continue for 10 years, unless at the expiration of 10 years, there is still a minor beneficiary, in which case the family home continues until that beneficiary becomes of age.

It may be deduced from the view of Dr. Tolentino that as a general rule, the family home may be preserved for a minimum of 10 years following the death of the spouses or the unmarried family head who constituted the family home, or of the spouse who consented to the constitution of his or her separate property as family home. After 10 years and a minor beneficiary still lives therein, the family home shall be preserved only until that minor beneficiary reaches the age of majority. The intention of the law is to safeguard and protect the interests of the minor beneficiary until he reaches legal age and would now be capable of supporting himself. However, three requisites must concur before a minor beneficiary is entitled to the benefits of Art. 159: (1) the relationship enumerated in Art. 154 of the Family Code; (2) they live in the family home, and (3) they are dependent for legal support upon the head of the family.

FACTS:

On July 5, 1987, Marcelino V. Dario died intestate. He was survived by his wife, petitioner Perla G. Patricio and their two sons, Marcelino Marc Dario and private respondent Marcelino G. Dario III. Among the properties he left was a parcel of land with a residential house and a pre-school building built thereon situated at 91 Oxford corner Ermin Garcia Streets in Cubao, Quezon City, as evidenced

by Transfer Certificate of Title (TCT) No. RT-30731 (175992) of the Quezon City Registry of Deeds, covering an area of seven hundred fifty five (755) square meters, more or less.

On August 10, 1987, petitioner, Marcelino Marc and private respondent, extrajudicially settled the estate of Marcelino V. Dario. Accordingly, TCT No. RT-30731 (175992) was cancelled and TCT No. R-213963 was issued in the names of petitioner, private respondent and Marcelino Marc.

Thereafter, petitioner and Marcelino Marc formally advised private respondent of their intention to partition the subject property and terminate the co-ownership. Private respondent refused to partition the property hence petitioner and Marcelino Marc instituted an action for partition before the Regional Trial Court of Quezon City which was docketed as Civil Case No. Q-01-44038 and raffled to Branch 78.

On October 3, 2002, the trial court ordered the partition of the subject property in the following manner: Perla G. Patricio, 4/6; Marcelino Marc G. Dario, 1/6; and Marcelino G. Dario III, 1/6. The trial court also ordered the sale of the property by public auction wherein all parties concerned may put up their bids. In case of failure, the subject property should be distributed accordingly in the aforestated manner.

Private respondent filed a motion for reconsideration but was denied hence the appeal to CA which was also denied. Upon the motion for reconsideration filed to the CA, the same was partially granted, In the now assailed Resolution, the Court of Appeals dismissed the complaint for partition filed by petitioner and Marcelino Marc for lack of merit. It held that the family home should continue despite the death of one or both spouses as long as there is a minor beneficiary thereof. The heirs could not partition the property unless the court found compelling reasons to rule otherwise. The appellate court also held that the minor son of private respondent, who is a grandson of spouses Marcelino V. Dario and Perla G. Patricio, was a minor beneficiary of the family home.

ISSUE:

Whether or not partition of the family home is proper where one of the co-owners refuse to accede to such partition on the ground that a minor beneficiary still resides in the said home. (NO)

RULING:

Private respondent claims that the subject property which is the family home duly constituted by spouses Marcelino and Perla Dario cannot be partitioned while a minor beneficiary is still living therein namely, his 12-year-old son, who is the grandson of the decedent. He argues that as long as the minor is living in the family home, the same continues as such until the beneficiary becomes of age. Private respondent insists that even after the expiration of ten years from the date of death of Marcelino on July 5, 1987, i.e., even after July 1997, the subject property continues to be considered as the family home considering that his minor son, Marcelino Lorenzo R. Dario IV, who is a beneficiary of the said family home, still resides in the premises.

On the other hand, petitioner alleges that the subject property remained as a family home of the surviving heirs of the late Marcelino V. Dario only up to July 5, 1997, which was the 10th year from the date of death of the decedent. Petitioner argues that the brothers Marcelino Marc and private respondent Marcelino III were already of age at the time of the death of their father, hence there is no more minor beneficiary to speak of.

The family home is a sacred symbol of family love and is the repository of cherished memories that last during one's lifetime.9 It is the dwelling house where husband and wife, or by an unmarried head of a family, reside, including the land on which it is situated. It is constituted jointly by the husband and the wife or by an unmarried head of a family. The family home is deemed constituted from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

The law explicitly provides that occupancy of the family home either by the owner thereof or by "any of its beneficiaries" must be actual. That which is "actual" is something real, or actually existing, as opposed to something merely possible, or to something which is presumptive or constructive. Actual occupancy, however, need not be by the owner of the house specifically. Rather, the property may be occupied by the "beneficiaries" enumerated in Article 154 of the Family Code, which may include the in-laws where the family home is constituted jointly by the husband and wife. But the law definitely excludes maids and overseers. They are not the beneficiaries contemplated by the Code.

Article 154 of the Family Code enumerates who are the beneficiaries of a family home: (1) The husband and wife, or an unmarried person who is the head of a family; and (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

To be a beneficiary of the family home, three requisites must concur: (1) they must be among the relationships enumerated in Art. 154 of the Family Code; (2) they live in the family home; and (3) they are dependent for legal support upon the head of the family.

Moreover, Article 159 of the Family Code provides that the family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of 10 years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This rule shall apply regardless of whoever owns the property or constituted the family home. The rule in Article 159 of the Family Code may thus be expressed in this wise: If there are beneficiaries who survive and are living in the family home, it will continue for 10 years, unless at the expiration of 10 years, there is still a minor beneficiary, in which case the family home continues until that beneficiary becomes of age.

It may be deduced from the view of Dr. Tolentino that as a general rule, the family home may be preserved for a minimum of 10 years following the death of the spouses or the unmarried family head who constituted the family home, or of the spouse who consented to the constitution of his or her separate property as family home. After 10 years and a minor beneficiary still lives therein, the family home shall be preserved only until that minor beneficiary reaches the age of majority. The intention of the law is to safeguard and protect the interests of the minor beneficiary until he reaches legal age and would now be capable of supporting himself. However, three requisites must concur before a minor beneficiary is entitled to the benefits of Art. 159: (1) the relationship enumerated in Art. 154 of the Family Code; (2) they live in the family home, and (3) they are dependent for legal support upon the head of the family.

The Court then resolved the issue now of whether or not Marcelino Lorenzo R. Dario IV, the minor son of private respondent, can be considered as a beneficiary under Article 154 of the Family Code.

As to the first requisite, the beneficiaries of the family home are: (1) The husband and wife, or an unmarried person who is the head of a family; and (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate. The term "descendants" contemplates all descendants of the person or persons who constituted the family home without distinction; hence, it must necessarily include the grandchildren and great grandchildren of the spouses who constitute a family home. *Ubi lex non distinguit nec nos distinguire debemos*. Where the law does not distinguish, we should not distinguish. Thus, private respondent's minor son, who is also the grandchild of deceased Marcelino V. Dario satisfies the first requisite.

As to the second requisite, minor beneficiaries must be actually living in the family home to avail of the benefits derived from Art. 159. Marcelino Lorenzo R. Dario IV, also known as Ino, the son of private respondent and grandson of the decedent Marcelino V. Dario, has been living in the family home since 1994, or within 10 years from the death of the decedent, hence, he satisfies the second requisite.

However, as to the third requisite, Marcelino Lorenzo R. Dario IV cannot demand support from his paternal grandmother if he has parents who are capable of supporting him. The liability for legal support falls primarily on Marcelino Lorenzo R. Dario IV's parents, especially his father, herein private respondent who is the head of his immediate family. The law first imposes the obligation of legal support upon the shoulders of the parents, especially the father, and only in their default is the obligation imposed on the grandparents. Marcelino Lorenzo R. Dario IV is dependent on legal support not from his grandmother, but from his father.

Thus, despite residing in the family home and his being a descendant of Marcelino V. Dario, Marcelino Lorenzo R. Dario IV cannot be considered as beneficiary contemplated under Article 154 because he did not fulfill the third requisite of being dependent on his grandmother for legal support.

With this finding, there is no legal impediment to partition the subject property. The law does not encourage co-ownerships among individuals as oftentimes it results in inequitable situations such as in the instant case. Co-owners should be afforded every available opportunity to divide their co-owned property to prevent these situations from arising.

PATERNITY AND FILIATION

MARIANO ANDAL, assisted by mother Maria Dueñas as guardian *ad litem*, and MARIA DUEÑAS, *Plaintiffs,* -versus- EDUVIGIS MACARAIG, *Defendant.*
G.R. No. L-2474, EN BANC, May 30, 1951, Bautista, Angelo, *J.*

According to Manresa, impossibility of access by husband to wife would include (1) absence during the initial period of conception, (2) impotence which is patent, continuing and incurable, and (3) imprisonment, unless it can be shown that cohabitation took place through corrupt violation of prison regulations.

Emiliano was clearly present during the initial period of conception, especially during the period comprised between August 21, 1942 and September 10, 1942, which is included in the 120 days of the 300 next preceding the birth of the child Mariano Andal. Moreover, while Emiliano was already suffering from tuberculosis and his condition then was so serious that he could hardly move and get up from bed,

this does not prevent carnal intercourse. There is neither evidence to show that Emiliano was suffering from impotency, patent, continuous and incurable, nor was there evidence that he was imprisoned.

FACTS

Mariano Andal (Mariano), a minor, assisted by his mother Maria Dueñas (Maria), as guardian ad litem, brought an action in the Court of First Instance of Camarines Sur for the recovery of the ownership and possession of a parcel of land situated in the barrio of Talacop, Calabanga, Camarines Sur. It was alleged that Mariano was the legitimate son of Emiliano Andal (Emiliano) and Maria, and that Emiliano received the subject parcel of land as a donation *propter nuptias* from his mother, Eduvigis Macaraig.

In January 1941, Emiliano became sick of tuberculosis. Felix, his brother, came to live in his house to help him work on his farm. Emiliano's sickness worsened and he became so weak that he became essentially bedridden. On September 10, 1942, Maria eloped with Felix, and both went to live in the house of Maria's father until the middle of 1943. Since May, 1942, Felix and Maria had sexual intercourse and treated each other as husband and wife. On January 1, 1943, Emiliano died without the presence of his wife, who did not even attend his funeral. On June 17, 1943, Maria Dueñas gave birth to a boy, who was given the name of Mariano Andal.

ISSUE

Whether or not Mariano can be considered a legitimate son of Emiliano (YES)

RULING

Since Mariano was born on June 17, 1943, and Emiliano died on January 1, 1943, Mariano is presumed to be the legitimate son of Emiliano and Maria as Mariano was born within three hundred (300) days following the dissolution of the marriage. This presumption can only be rebutted by proof that it was physically impossible for the husband to have had access to his wife during the first 120 days of the 300 next preceding the birth of the child.

There is no evidence in this case to prove that it was physically impossible for Emiliano to have access to Maria. According to Manresa, impossibility of access by husband to wife would include (1) absence during the initial period of conception, (2) impotence which is patent, continuing and incurable, and (3) imprisonment, unless it can be shown that cohabitation took place through corrupt violation of prison regulations.

Emiliano was clearly present during the initial period of conception, especialy during the period comprised between August 21, 1942 and September 10, 1942, which is included in the 120 days of the 300 next preceding the birth of the child Mariano Andal. During that initial period, Emiliano and Maria were still living in one roof. Even if Felix was having illicit intercourse with Maria then, this does not preclude cohabitation between Emiliano and his wife. Moreover, while Emiliano was already suffering from tuberculosis and his condition then was so serious that he could hardly move and get up from bed, this does not prevent carnal intercourse. There is neither evidence to show that Emiliano was suffering from impotency, patent, continuous and incurable, nor was there evidence that he was imprisoned. The presumption of legitimacy under the Civil Code in favor of the child has not, therefore, been overcome.

TEOFISTA BARBIERA, *Petitioner,* -versus- PRESENTACION B. CATOTAL, *Defendant.*
G.R. No. 138493, THIRD DIVISION, June 15, 2000, Panganiban, *J.*

A birth certificate may be ordered cancelled upon adequate proof that it is fictitious. Thus, void is a certificate which shows that the mother was already fifty-four years old at the time of the child's birth and which was signed neither by the civil registrar nor by the supposed mother. Because her inheritance rights are adversely affected, the legitimate child of such mother is a proper party in the proceedings for the cancellation of the said certificate.

FACTS

Presentacion B. Catotal (Presentacion) filed with the Regional Trial Court of Lanao del Node, Branch II, Iligan City, a petition for the cancellation of the entry of birth of Teofista Babiera (Teofista) in the Civil Registry of Iligan City.

Presentacion alleged that she was the only child of Eugenio Babiera and Hermogena Cariñosa; that on September 20, 1996 a baby girl was delivered by "hilot" in the house of spouses Eugenio and Hermogena Babiera and without the knowledge of said spouses; that Flora Guinto, the mother of the child and a housemaid of spouses Eugenio and Hermogena Babiera, caused the registration of birth of her child, by simulating that she was the child of the spouses Eugenio, then 65 years old and Hermogena, then 54 years old, and made Hermogena Babiera appear as the mother by forging her signature; that the birth certificate of Teofista was void *ab initio* as it contained the following false entries: a) The child is made to appear as the legitimate child of the late spouses Eugenio Babiera and Hermogena Cariñosa, when she is not; b) The signature of Hermogena Cariñosa, the mother, is falsified/forged. She was not the informant; c) The family name BABIERA is false and unlawful and her correct family name is GUINTO, her mother being single; d) Her real mother was Flora Guinto and her status, an illegitimate child; and that the void and simulated birth certificate of Teofista Guinto would affect the hereditary rights of petitioner.

By way of special and affirmative defenses, defendant/respondent contended that the petition states no cause of action, it being an attack on the legitimacy of the respondent as the child of the spouses Eugenio and Hermogena; that plaintiff has no legal capacity to file the instant petition pursuant to Article 171 of the Family Code; and finally that the instant petition is barred by prescription in accordance with Article 170 of the Family Code.

ISSUE

1. Whether or not Presentacion has no legal capacity to file the instant petition under Art. 171 of the Family Code; (NO)
2. Whether or not the petition is barred by prescription under Art. 170 of the Family Code; (NO) and
3. Whether or not Teofista was the real child of Hermogena based on the evidence presented. (NO)

RULING

1. Art. 171 of the Family Code is not applicable. it applies to instances in which the father impugns the legitimacy of his wife's child. The provision, however, presupposes that the child was the undisputed offspring of the mother. The present case alleges and shows that Hermogena did not give birth to petitioner. In other words, the prayer herein is not to declare

that petitioner is an illegitimate child of Hermogena, but to establish that the former is not the latter's child at all. Verily, the present action does not impugn petitioner's filiation to Spouses Eugenio and Hermogena Babiera, because there is no blood relation to impugn in the first place.

2. The present action involves the cancellation of petitioner's Birth Certificate; it does not impugn her legitimacy. Thus, the prescriptive period set forth in Article 170 of the Family Code does not apply. Verily, the action to nullify the Birth Certificate does not prescribe, because it was allegedly void *ab initio*.
3. There is no evidence of Hermogena's pregnancy, such as medical records and doctor's prescriptions, other than the Birth Certificate itself. In fact, no witness was presented to attest to the pregnancy of Hermogena during that time. Moreover, at the time of her supposed birth, Hermogena was already 54 years old. Even if it were possible for her to have given birth at such a late age, it was highly suspicious that she did so in her own home, when her advanced age necessitated proper medical care normally available only in a hospital.

MARISSA BENITEZ-BADUA, *Petitioner,* -versus- COURT OF APPEALS, VICTORIA BENITEZ LIRIO and FEODOR BENITEZ AGUILAR, *Respondents.*
G.R. No. 105625, SECOND DIVISION, January 24, 1994, Puno, *J.*

A careful reading of Arts. 164, 166, 170, and 171 of the Family Code will show that they do not contemplate a situation, like in the instant case, where a child is alleged not to be the child of nature or biological child of a certain couple. Rather, these articles govern a situation where a husband (or his heirs) denies as his own a child of his wife. The case at bench is not one where the heirs of the late Vicente are contending that petitioner is not his child by Isabel. Rather, their clear submission is that petitioner was not born to Vicente and Isabel.

FACTS

Private respondents Victoria Benitez Lirio (Victoria) and Feodor Benitez Aguilar (Feodor) were Vicente Benitez' sister and nephew, respectively. Both of them filed a petition praying for the issuance of letters of administration of Vicente's estate in favor of Feodor. Petitioner Marissa Benitez-Badua (Marissa) opposed the petition. She alleged that she is the sole heir of the deceased Vicente Benitez and capable of administering his estate.

Petitioner tried to prove that she is the legitimate son of Vicente and his wife, Isabel Chipongian by presenting the following: (1) her Certificate of Live Birth; (2) Baptismal Certificate; (3) Income Tax Returns and Information Sheet for Membership with the GSIS of the late Vicente naming her as his daughter; and (4) School Records. She also testified that the said spouses reared an continuously treated her as their legitimate daughter.

The trial court ruled in favor of petitioner and relied on Arts. 166 and 170 of the Family Code. The CA held that the trial court erred in applying Articles 166 and 170 of the Family Code.

ISSUE

Whether or not the CA erred in not applying Arts. 164, 166, 170, and 171 of the Family Code (NO)

RULING

A careful reading of the above articles will show that they do not contemplate a situation, like in the instant case, where a child is alleged not to be the child of nature or biological child of a certain couple. Rather, these articles govern a situation where a husband (or his heirs) denies as his own a child of his wife. The case at bench is not one where the heirs of the late Vicente are contending that petitioner is not his child by Isabel. Rather, their clear submission is that petitioner was not born to Vicente and Isabel.

RODOLFO S. AGUILAR, *Petitioner,* -versus- EDNA G. SIASAT, *Respondents.*
G.R. No. 200169, SECOND DIVISION, January 28, 2015, Del Castillo, *J.*

Filiation may be proved by an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned, and such due recognition in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required.

It was erroneous for the CA to treat Exhibit G as mere proof of open and continuous possession of the status of a legitimate child under the second paragraph of Article 172 of the Family Code; it is evidence of filiation under the first paragraph thereof, the same being an express recognition in a public instrument.

FACTS

Spouses Alfredo Aguilar and Candelaria Siasat-Aguilar (the Aguilar spouses) died, intestate and without debts, on August 26, 1983 and February 8, 1994, respectively. Included in their estate are two parcels of land (herein subject properties) covered by Transfer Certificates of Title Nos. T-25896 and T-(15462) 1070 of the Registries of Deeds of Bago and Bacolod (the subject titles).

Petitioner filed a civil case for mandatory injunction with damages against respondent Edna G. Siasat. The complaint alleged that petitioner is the only son and sole surviving heir of the Aguilar spouses; that he (petitioner) discovered that the subject titles were missing, and thus he suspected that someone from the Siasat clan could have stolen the same; that he executed affidavits of loss of the subject titles and filed the same with the Registries of Deeds of Bacolod and Bago; that on June 22, 1996, he filed before the Bacolod RTC a Petition for the issuance of second owner's copy of Certificate of Title No. T-25896, which respondent opposed; and that during the hearing of the said Petition, respondent presented the two missing owner's duplicate copies of the subject titles.

To prove filiation, petitioner presented, among other documents, Alfredo Aguilar's Social Security System (SSS) Form E-1 (Exhibit G) dated October 10, 1957, a public instrument subscribed and made under oath by Alfredo Aguilar during his employment with BMMC, which bears his signature and thumb marks and indicates that petitioner, who was born on March 5, 1945, is his son and dependent.

The RTC and CA essentially ruled against petitioner, and ruled that he failed to present sufficient evidence that establish his filiation with the deceased spouses Aguilar.

ISSUE

Whether or not the CA erred in not taking into consideration petitioner's Exhibit G (SSS Form E-1, was acknowledged and notarized before a notary public, executed by Alfredo Aguilar, recognizing the petitioner as his son) as public document that satisfies the requirement of Article 172 of the Family Code in the establishment of the legitimate filiation of the petitioner with his father, Alfredo Aguilar (YES)

RULING

The filiation of illegitimate children, like legitimate children, is established by (1) the record of birth appearing in the civil register or a final judgment; or (2) an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned. Filiation may be proved by an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned, and such due recognition in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required.

It was erroneous for the CA to treat Exhibit G as mere proof of open and continuous possession of the status of a legitimate child under the second paragraph of Article 172 of the Family Code; it is evidence of filiation under the first paragraph thereof, the same being an express recognition in a public instrument.

ALEJANDRA ARADO HEIRS: JESUSA ARADO, VICTORIANO ALCORIZA, PEDRO ARADO, HEIRS: JUDITHO ARADO, JENNIFER ARADO, BOBBIE ZITO ARADO, SHIRLY ABAD, ANTONIETA ARADO, NELSON SOMOZA, JUVENIL ARADO, NICETAS VENTULA, AND NILA ARADO, PEDRO ARADO, TOMASA V. ARADO, *Petitioners*, -versus- ANACLETO ALCORAN and ELENETTE SUNJACO, *Respondents.*

G.R. No. 163362, FIRST DIVISION, July 8, 2015, Bersamin, *J.*

Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children. One of the ways filiation of legitimate children is established is by any of the record of birth appearing in the civil register or a final judgment. Considering that Nicolas, the putative father, had a direct hand in the preparation of the birth certificate, reliance on the birth certificate of Anacleto as evidence of his paternity was fully warranted.

FACTS

Raymundo Alcoran (Raymundo) was married to Joaquina Arado (Joaquina), and their marriage produced a son named Nicolas Alcoran (Nicolas). In turn, Nicolas married Florencia Limpahan (Florencia) but their union had no offspring. During their marriage, however, Nicolas had an extramarital affair with Francisca Sarita (Francisca), who gave birth to respondent Anacleto Alcoran (Anacleto) on July 13, 1951 during the subsistence of Nicolas' marriage to Florencia. In 1972, Anacleto married Elenette Sonjaco.

Joaquina had four siblings, i.e., Alejandra, Nemesio, Celedonia and Melania, all surnamed Arado. Nemesio had six children, namely: (1) Jesusa, who was married to Victoriano Alcoriza; (2) Pedro, who was married to Tomasa Arado; (3) Teodorico; (4) Josefina; (5) Gliceria; and (6) Felicisima. During the pendency of the case, Pedro died, and was substituted by his following heirs, to wit: (1) Juditho and

his spouse, Jennifer Ebrole; (2) Bobbie Zito and his spouse, Shirly Abad; (3) Juvenil and his spouse, Nicetas Ventula; (4) Antonieta and her spouse, Nelson Somoza; and (5) Nila.

Alejandra, Jesusa, Victoriano Alcoriza, Pedro and Tomasa filed in the RTC a complaint for recovery of property and damages (with application for a writ of preliminary mandatory injunction) against Anacleto and Elenette. The aforementioned plaintiffs argue, among others, that Nicolas did not recognize Anacleto as his spurious child during his lifetime.

The RTC opined that Anacleto established that he was really the acknowledged illegitimate son of Nicolas. It cited the certificate of birth of Anacleto (Exhibit 4) and Page 53, Book 4, Register No. 214 of the Register of Births of the Municipality of Bacong (Exhibit 3), which proved that Nicolas had himself caused the registration of Anacleto's birth by providing the details thereof and indicating that he was the father of Anacleto. It observed that the name of Nicolas appeared under the column "Remarks" in the register of births, which was the space provided for the name of the informant; that because the plaintiffs did not present evidence to refute the entry in the register of births, the entry became conclusive with respect to the facts contained therein. The CA agreed with the RTC.

ISSUE

Whether or not Anacleto is the illegitimate son of Nicolas (YES)

RULING

Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children. One of the ways filiation of legitimate children is established is by any of the record of birth appearing in the civil register or a final judgment.

Rightly enough, the RTC and the CA unanimously concluded that Nicolas had duly acknowledged Anacleto as his illegitimate son. The birth certificate of Anacleto appearing in the Register of Births of the Municipality of Bacong, Negros Oriental showed that Nicolas had himself caused the registration of the birth of Anacleto. The showing was by means of the name of Nicolas appearing in the column "Remarks" in Page 53, Book 4, Register No. 214 of the Register of Births. Based on the certification issued by the Local Civil Registrar of the Municipality of Bacong, Negros Oriental, the column in the Register of Births entitled "Remarks" (*Observaciones*) was the space provided for the name of the informant of the live birth to be registered. Considering that Nicolas, the putative father, had a direct hand in the preparation of the birth certificate, reliance on the birth certificate of Anacleto as evidence of his paternity was fully warranted.

ROMEO F. ARA AND WILLIAM A. GARCIA, *Petitioners*, -versus- DRA. FELY S. PIZARRO AND HENRY ROSSI, *Respondents*.
G.R. No. 187273, SECOND DIVISION, February 15, 2017, Leonen, *J.*

For a claim of filiation to succeed, it must be made within the period allowed, and supported by the evidence required under the Family Code. If filiation is sought to be proved under the second paragraph of Article 172 of the Family Code, the action must be brought during the lifetime of the alleged parent.

Josefa passed away in 2002. After her death, petitioners could no longer be allowed to introduce evidence of open and continuous illegitimate filiation to Josefa. The only evidence allowed under the law

would be a record of birth appearing in the civil register or a final judgment, or an admission of legitimate filiation in a public document or a private signed, handwritten instruction by Josefa.

FACTS

Romeo F. Ara and William A. Garcia (petitioners), and Dra. Fely S. Pizarro and Henry A. Rossi (respondents) all claimed to be children of the late Josefa A. Ara (Josefa), who died on November 18, 2002.

Petitioners assert that Fely S. Pizarro (Pizarro) was born to Josefa and her then husband, Vicente Salgado (Salgado), who died during World War II. At some point toward the end of the war, Josefa met and lived with an American soldier by the name of Darwin Gray (Gray). Romeo F. Ara (Ara) was born from this relationship. Josefa later met a certain Alfredo Garcia (Alfredo), and, from this relationship, gave birth to sons Ramon Garcia (Ramon) and William A. Garcia (Garcia). Josefa and Alfredo married on January 24, 1952. After Alfredo passed away, Josefa met an Italian missionary named Frank Rossi, who allegedly fathered Henry Rossi (Rossi).

The Regional Trial Court rendered a decision finding petitioners Ara and Garcia to be children of Josefa, and including them in the partition of properties. The Court of Appeals omitted petitioners from the enumeration of Josefa's descendants. The Court of Appeals found that the Trial Court erred in allowing petitioners to prove their status as illegitimate sons of Josefa after her death.

Petitioners argue that the Court of Appeals erroneously applied Article 285 of the Civil Code, which requires that an action for the recognition of natural children be brought during the lifetime of the presumed parents, subject to certain exceptions. Petitioners assert that during Josefa's lifetime, Josefa acknowledged all of them as her children directly, continuously, spontaneously, and without concealment.

ISSUE

Whether or not petitioners may prove their filiation to Josefa through their open and continuous possession of the status of illegitimate children, found in the second paragraph of Article 172 of the Family Code (NO)

RULING

If filiation is sought to be proved under the second paragraph of Article 172 of the Family Code, the action must be brought during the lifetime of the alleged parent. An alleged parent is the best person to affirm or deny a putative descendant's filiation. Absent a record of birth appearing in a civil register or a final judgment, an express admission of filiation in a public document, or a handwritten instrument signed by the parent concerned, a deceased person will have no opportunity to contest a claim of filiation.

Josefa passed away in 2002. After her death, petitioners could no longer be allowed to introduce evidence of open and continuous illegitimate filiation to Josefa. The only evidence allowed under the law would be a record of birth appearing in the civil register or a final judgment, or an admission of legitimate filiation in a public document or a private signed, handwritten instruction by Josefa.

NARCISO SALAS, *Petitioners*, -versus- ANNABELLE MATUSALEM, *Respondent*.
G.R. No. 180284, FIRST DIVISION, September 11, 2013, Villarama, Jr., *J.*

A certificate of live birth purportedly identifying the putative father is not competent evidence of paternity when there is no showing that the putative father had a hand in the preparation of the certificate. Thus, if the father did not sign in the birth certificate, the placing of his name by the mother, doctor, registrar, or other person is incompetent evidence of paternity. Neither can such birth certificate be taken as a recognition in a public instrument and it has no probative value to establish filiation to the alleged father.

FACTS

Annabelle Matusalem (respondent) filed a complaint for Support/Damages against Narciso Salas (petitioner) in the Regional Trial Court (RTC) of Cabanatuan City. Respondent testified that petitioner told her he is already a widower and he has no more companion in life because his children are all grown-up. Petitioner at the time already knows that she is a single mother as she had a child by her former boyfriend in Italy. Thereafter, they saw each other weekly and petitioner gave her money for her child. When she became pregnant with petitioner's child, it was only then she learned that he is in fact not a widower. She wanted to abort the baby but petitioner opposed it because he wanted to have another child. On the fourth month of her pregnancy, petitioner rented an apartment where she stayed with a housemaid; he also provided for all their expenses. She gave birth to their child, Christian Paulo, on December 28, 1994 at the Good Samaritan Hospital in Cabanatuan City. Before delivery, petitioner even walked her at the hospital room and massaged her stomach, saying he had not done this to his wife. She filled out the form for the child's birth certificate and wrote all the information supplied by petitioner himself. It was also petitioner who paid the hospital bills and drove her baby home. He was excited and happy to have a son at his advanced age who is his "look-alike," and this was witnessed by other boarders, visitors and Grace Murillo, the owner of the apartment unit petitioner rented.

Petitioner, for his part, denied paternity of the child Christian Paulo. He claimed that he was motivated by no other reason except genuine altruism when he agreed to shoulder the expenses for the delivery of said child, unaware of respondent's chicanery and deceit designed to "scandalize" him in exchange for financial favor.

The RTC ruled in favor of respondent. The Court of Appeals (CA) affirmed the same, citing *Ilano vs. CA* where the Supreme Court ruled that the last paragraph of the then Art. 283 of the Civil Code (now Art. 172 of the Family Code) permits hearsay and reputation evidence, as provided in the Rules of Court, with respect to illegitimate filiation

ISSUE

Whether or not respondent's evidence sufficiently proved that her son, Christian Paulo, is the illegitimate child of petitioner (NO)

RULING

Respondent presented the Certificate of Live Birth of Christian Paulo Salas in which the name of petitioner appears as his father but which is not signed by him. Admittedly, it was only respondent

who filled up the entries and signed the said document though she claims it was petitioner who supplied the information she wrote therein.

A certificate of live birth purportedly identifying the putative father is not competent evidence of paternity when there is no showing that the putative father had a hand in the preparation of the certificate. Thus, if the father did not sign in the birth certificate, the placing of his name by the mother, doctor, registrar, or other person is incompetent evidence of paternity. Neither can such birth certificate be taken as a recognition in a public instrument and it has no probative value to establish filiation to the alleged father.

JANICE MARIE JAO, represented by her mother and guardian ad litem, ARLENE S. SALGADO, *Petitioner,* -versus- THE HONORABLE COURT OF APPEALS and PERICO V. JAO, *Respondents.*
G.R. No. L-49162, SECOND DIVISION, July 28, 1987, Padilla, *J.*

There is now almost universal scientific agreement that blood grouping tests are conclusive as to non-paternity, although inconclusive as to paternity — that is, the fact that the blood type of the child is a possible product of the mother and alleged father does not conclusively prove that the child is born by such parents; but, if the blood type of the child is not the possible blood type when the blood of the mother and that of the alleged father are crossmatched, then the child cannot possibly be that of the alleged father.

FACTS

Petitioner Janice Marie Jao, then a minor, represented by her mother and guardian-ad-litem Arlene Salgado, filed a case for recognition and support with the Juvenile and Domestic Relations Court against private respondent Perico V. Jao. The latter denied paternity so the parties agreed to a blood grouping test which was in due course conducted by the National Bureau of Investigation (NBI) upon order of the trial court. The result of the blood grouping test, held 21 January 1969, indicated that Janice could not have been the possible offspring of Perico V. Jao and Arlene S. Salgado.

The trial court initially found the result of the tests legally conclusive but upon plaintiff's (herein petitioner's) second motion for reconsideration, it ordered a trial on the merits, after which, Janice was declared the child of Jao, thus entitling her to his monthly support.

Jao appealed to the Court of Appeals (CA), questioning the trial court's failure to appreciate the result of the blood grouping tests. As there was no showing whatsoever that there was any irregularity or mistake in the conduct of the tests, Jao argued that the result of the tests should have been conclusive and indisputable evidence of his non-paternity. The CA upheld Jao's contentions and reversed the trial court's decision.

ISSUE

Whether or not the blood grouping test is admissible and conclusive as to the issue of non-paternity (YES)

RULING

There is now almost universal scientific agreement that blood grouping tests are conclusive as to non-paternity, although inconclusive as to paternity — that is, the fact that the blood type of the child

is a possible product of the mother and alleged father does not conclusively prove that the child is born by such parents; but, if the blood type of the child is not the possible blood type when the blood of the mother and that of the alleged father are crossmatched, then the child cannot possibly be that of the alleged father. Citing Tolentino, the Court held that Medical science has shown that there are four types of blood in man which can be transmitted through heredity. Although the presence of the same type of blood in two persons does not indicate that one was begotten by the other, yet the fact that they are of different types will indicate the impossibility of one being the child of the other. Thus, when the supposed father and the alleged child are not in the same blood group, they cannot be father and child by consanguinity.

ARTEMIO G. ILANO, *Petitioner,* -versus- THE COURT OF APPEALS and MERCEDITAS (sic) S. ILANO, represented by her mother, LEONCIA DE LOS SANTOS, *Respondent.*
G.R. No. 104376, SECOND DIVISION, February 23, 1994, Nocon, *J.*

The last paragraph of Article 283 contains a blanket provision that practically covers all the other cases in the preceding paragraphs. "Any other evidence or proof" that the defendant is the father is broad enough to render unnecessary the other paragraphs of this article. When the evidence submitted in the action for compulsory recognition is not sufficient to meet requirements of the first three paragraphs, it may still be enough under the last paragraph. This paragraph permits hearsay and reputation evidence, as provided in the Rules of Court, with respect to illegitimate filiation.

FACTS

Petitioner Artemio G. Ilano courted Leoncia de los Santos (Leoncia) for four (4) years, after which, petitioner and Leoncia became intimate and with petitioner's promise of marriage, they both eloped to Guagua, Pampanga. They stayed at La Mesa Apartment, located behind the Filipinas Telephone Company branch office, of which he is the president and general manager. He came home to her three or four times a week. Thereafter, while they were living in Highway 54, Makati, private respondent Merceditas S. Ilano (private respondent) was born. Petitioner arrived after five o'clock in the afternoon. When the nurse came to inquire about the child, Leoncia was still unconscious so it was from petitioner that the nurse sought the information. Inasmuch as it was already past seven o'clock in the evening, the nurse promised to return the following morning for his signature. However, he left an instruction to give birth certificate to Leoncia for her signature, as he was leaving early the following morning.

During the time that petitioner and Leoncia were living as husband and wife, he showed concern as the father of Merceditas. When Merceditas was in Grade I at the St. Joseph Parochial School, he signed her Report Card for the fourth and fifth grading periods as her parent. Since Merceditas started to have discernment, he was already the one whom she recognized as her Daddy. He treated her as a father would to his child. He would bring home candies, toys, and anything a child enjoys. He would take her for a drive, eat at restaurants, and even cuddle her to sleep.

The trial court was not satisfied that petitioner was the father of private respondent because it did not believe that her mother and defendant were in cohabitation during the period of her conception, and took into account the testimony of Melencio S. Reyes who frequented the apartment where Leoncia de los Santos was living and who positively testified that he took care of all the bills and that he shared the same bed with plaintiffs mother. The CA reversed the decision of the trial court.

ISSUE

Whether or not private respondent sufficiently proved her filiation with and the paternity of petitioner (YES)

RULING

Private respondent's evidence to establish her filiation with and the paternity of petitioner is too overwhelming to be ignored or brushed aside by the highly improbable and fatally flawed testimony of Melencio and the inherently weak denials of petitioner. The Supreme Court found that the role played by Melencio S. Reyes in the relationship between Leoncia and appellant (sic) was that of a man Friday although appellant (sic) would not trust him to the hilt and unwittingly required him to submit to Leoncia an accounting of his expenditures for cash advances given to him by Leoncia, Artemio or Guagua Telephone System which would not have been the case, if it were true that there was an intimate relationship between him and plaintiff's mother.

To establish "the open and continuous possession of the status of an illegitimate child," it is necessary to comply with certain jurisprudential requirements. "Continuous" does not, however, mean that the concession of status shall continue forever but only that it shall not be of an intermittent character while it continues. The possession of such status means that the father has treated the child as his own, directly and not through other, spontaneously and without concealment though without publicity.

Merceditas bore the surname of "Ilano" since birth without any objection on the part of Artemio, the fact that since Merceditas had her discernment she had always known and called Artemio as her "Daddy"; the fact that each time Artemio was at home, he would play with Merceditas, take her for a ride or restaurants to eat, and sometimes sleeping with Merceditas and does all what a father should do for his child — bringing home goodies, candies, toys and whatever he can bring her which a child enjoys which Artemio gives Merceditas are positive evidence that Merceditas is the child of Artemio and recognized by Artemio as such.

Granting ex gratia argument that private respondent's evidence is not sufficient proof of continuos possession of status of a spurious child, respondent court applied next paragraph (4) of Article 283.

While defendant's signature does not appear in the Certificate of Live Birth, the evidence indubitably discloses that Leoncia gave birth on December 30, 1963 to Merceditas at 4:27 p.m. at the Manila Sanitarium. Artemio arrived at about 5:00 p.m. At about 7:00 p.m., a nurse came who made inquiries about the biodata of the born child. The inquiries were directed to Artemio which were about the name of the father, mother and child. After the interview the nurse told them that the information has to be recorded in the formal form and has to be signed by Artemio but because there is no office, as it was past 7:00 p.m., the nurse would just return in the morning for Artemio's signature. Artemio gave the instruction to the nurse to give the biodata to Leoncia for her signature as he was leaving very early the following morning.

Citing *Roces v. Civil Registrar of Manila* where the Court held that the principle that if the father did not sign in the birth certificate, the placing of his name by the mother, doctor, register, or other person is incompetent evidence of paternity does not apply to this case because it was the alleged father himself who went to the municipal building and gave all the data about his daughter's birth, the Court

held that the totality of evidence in this case effectively proved beyond reasonable doubt that petitioner was the father of private respondent.

CORITO OCAMPO TAYAG, *Petitioner,* -versus- HON. COURT OF APPEALS and EMILIE DAYRIT CUYUGAN, *Respondent.*
G.R. No. 95229, FIRST DIVISION, June 9, 1992, Regalado, *J.*

A natural child having a right to compel acknowledgment, but who has not been in fact legally acknowledged, may maintain partition proceedings for the division of the inheritance against his co-heirs ; and the same person may intervene in proceedings for the distribution of the estate of his deceased natural father, or mother. In neither of these situations has it been thought necessary for the plaintiff to show a prior decree compelling acknowledgment. The obvious reason is that in partition suits and distribution proceedings the other persons who might take by inheritance are before the court; and the declaration of heirship is appropriate to such proceedings.

FACTS

Private respondent, in her capacity as mother and legal guardian of minor Chad D. Cuyugan, filed on April 9, 1987 a complaint denominated "Claim for Inheritance" against herein petitioner as the administratrix of the estate of the late Atty. Ricardo Ocampo. Private respondent, in her complaint, alleged that she and Atty. Ocampo had an illicit amorous relationship with each other that, as a consequence thereof, they begot a child who was christened Chad Cuyugan in accordance with the ardent desire and behest of said Atty. Ocampo.

Petitioner contends that the action to claim for inheritance filed by herein private respondent in behalf of the minor child, Chad Cuyugan, is premature and the complaint states no cause of action, she submits that the recognition of the minor child, either voluntarily or by judicial action, by the alleged putative father must first be established before the former can invoke his right to succeed and participate in the estate of the latter. Petitioner asseverates that since there is no allegation of such recognition in the complaint denominated as "Claim for Inheritance," then there exists no basis for private respondent's aforesaid claim and, consequently, the complaint should be dismissed.

ISSUE

1. Whether or not two causes of action, one to compel recognition and the other to claim inheritance, may be joined in one complaint (YES); and
2. Whether or not the action to compel recognition had prescribed. (NO)

RULING

1. In *Briz v. Briz, et al.*, the Supreme Court had the occasion to rule that the doctrine must be considered well settled, that a natural child having a right to compel acknowledgment, but who has not been in fact legally acknowledged, may maintain partition proceedings for the division of the inheritance against his co-heirs ; and the same person may intervene in proceedings for the distribution of the estate of his deceased natural father, or mother. In neither of these situations has it been thought necessary for the plaintiff to show a prior decree compelling acknowledgment. The obvious reason is that in partition suits and distribution proceedings the other persons who might take by inheritance are before the court; and the declaration of heirship is appropriate to such proceedings.

2. Article 256 of the Family Code states that the Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws. It becomes essential, therefore, to determine whether the right of the minor child to file an action for recognition is a vested right or not.
   Under the circumstances obtaining in the case at bar, the right of action of the minor child has been vested by the filing of the complaint in court under the regime of the Civil Code and prior to the effectivity of the Family Code. Citing its ruling in *Republic of the Philippines vs. Court of Appeals, et al*. the Court held that the fact of filing of the petition already vested in the petitioner her right to file it and to have the same proceed to final adjudication in accordance with the law in force at the time, and such right can no longer be prejudiced or impaired by the enactment of a new law.

JOHN PAUL E. FERNANDEZ, et al., *Petitioners,* -versus- THE COURT OF APPEALS and CARLITO S. FERNANDEZ, *Respondents.*
G.R. No. 108366, SECOND DIVISION, February 16, 1994, Puno, *J.*

While baptismal certificates may be considered public documents, they can only serve as evidence of the administration of the sacraments on the dates so specified. They are not necessarily competent evidence of the veracity of entries therein with respect to the child's paternity

FACTS

Violeta P. Esguerra, as mother and guardian *ad litem* of petitioners Claro Antonio Fernandez and John Paul Fernandez, filed an action for recognition and support against the private respondent before another branch of the RTC of Quezon City, Branch 87. To bolster their case, petitioners presented the following documentary evidence: their certificates of live birth, identifying respondent Carlito as their father; the baptismal certificate of petitioner Claro which also states that his father is respondent Carlito; photographs of Carlito taken during the baptism of petitioner Claro; and pictures of respondent Carlito and Claro taken at the home of Violeta Esguerra. Petitioners likewise presented as witnesses, Rosario Cantoria, Dr. Milagros Villanueva, Ruby Chua Cu, and Fr. Liberato Fernandez. The first three witnesses told the trial court that Violeta Esguerra had, at different times, introduced the private respondent to them as her "husband". Fr. Fernandez, on the other hand, testified that Carlito was the one who presented himself as the father of petitioner Claro during the latter's baptism.

In defense, respondent Carlito denied Violeta's allegations that he sired the two petitioners. He averred he only served as one of the sponsors in the baptism of petitioner Claro. This claim was corroborated by the testimony of Rodante Pagtakhan, an officemate of respondent Carlito who also stood as a sponsor of petitioner Claro during his baptism. The Private respondent also presented as witness, Fidel Arcagua, a waiter of the Lighthouse Restaurant. He disputed Violeta's allegation that she and respondent Carlito frequented the said restaurant during their affair. Arcagua stated he never saw Violeta Esguerra and respondent Carlito together at the said restaurant. Private respondent also declared he only learned he was named in the birth certificates of both petitioners as their father after he was sued for support.

The trial court ruled in favor of petitioners, but the Court of Appeals reversed the same ruling that the proof relied upon by the trial court is inadequate to prove the private respondent's paternity and filiation of petitioners.

ISSUE

Whether or not the evidence presented by petitioners prove the paternity and filiation of private respondent (NO)

RULING

Petitioners cannot rely on the photographs showing the presence of the private respondent in the baptism of petitioner Claro. These photographs are far from proofs that private respondent is the father of petitioner Claro. As explained by the private respondent, he was in the baptism as one of the sponsors of petitioner Claro. His testimony was corroborated by Rodante Pagtakhan. Secondly, the pictures taken in the house of Violeta showing private respondent showering affection to Claro fall short of the evidence required to prove paternity. Thirdly, the baptismal certificates of petitioner Claro naming private respondent as his father has scant evidentiary value. There is no showing that private respondent participated in its preparation. While baptismal certificates may be considered public documents, they can only serve as evidence of the administration of the sacraments on the dates so specified. They are not necessarily competent evidence of the veracity of entries therein with respect to the child's paternity. Fourth, the certificates of live birth of the petitioners identifying private respondent as their father are not also competent evidence on the issue of their paternity. Again, the records do no show that private respondent had a hand in the preparation of said certificates. A birth certificate no signed by the alleged father therein indicated is not competent evidence of paternity.

CAMELO CABATANIA, *Petitioner,* -versus- COURT OF APPEALS and CAMELO REGODOS, *Respondents*.
G.R. No. 124814, THIRD DIVISION, October 21, 2004, Corona, *J.*

In this age of genetic profiling and deoxyribonucleic acid (DNA) analysis, the extremely subjective test of physical resemblance or similarity of features will not suffice as evidence to prove paternity and filiation before the courts of law.

FACTS

A petition for recognition and support was filed by Florencia Regodos in behalf of her minor son, private respondent Camelo Regodos. Florencia claimed that while working as a household maid for petitioner, she and the latter engaged in sexual intercourse as a result of which, she got pregnant 27 days later. Later, on suspicion that Florencia was pregnant, petitioner's wife sent her home. But petitioner instead brought her to Singcang, Bacolod City where he rented a house for her. On September 9, 1982, assisted by a hilot in her aunt's house in Tiglawigan, Cadiz City, she gave birth to her child, private respondent Camelo Regodos.

Petitioner alleged that he met Florencia on board the Ceres bus bound for San Carlos City and invited her to dinner. While they were eating, she confided that she was hard up and petitioner offered to lend her save money. Later, they spent the night in San Carlos City and had sexual intercourse. While doing it, he felt something jerking and when he asked her about it, she told him she was pregnant with the child of her husband. They went home the following day. In March 1982, Florencia, then already working in another household, went to petitioner's house hoping to be re-employed as a servant there. Since petitioner's wife was in need of one, she was re-hired. However petitioner's wife

noticed that her stomach was bulging and inquired about the father of the unborn child. She told petitioner's wife that the baby was by her husband. Because of her condition, she was again told to go home and they did not see each other anymore.

The trial court ruled in favor of private respondent and held that based on the personal appearance of the child then there can never be a doubt that the plaintiff-minor is the child of the defendant with plaintiff-minor's mother, Florencia Regodos. The CA affirmed the same.

ISSUE

Whether or not the evidence adduced by private respondent prove petitioner's paternity and filiation (NO)

RULING

A high standard of proof is required to establish paternity and filiation. An order for recognition and support may create an unwholesome situation or may be an irritant to the family or the lives of the parties so that it must be issued only if paternity or filiation is established by clear and convincing evidence.

Private respondent presented a copy of his birth and baptismal certificates, the preparation of which was without the knowledge or consent of petitioner. A certificate of live birth purportedly identifying the putative father is not competent evidence of paternity when there is no showing that the putative father had a hand in the preparation of said certificate. The local civil registrar has no authority to record the paternity of an illegitimate child on the information of a third person.

In this age of genetic profiling and deoxyribonucleic acid (DNA) analysis, the extremely subjective test of physical resemblance or similarity of features will not suffice as evidence to prove paternity and filiation before the courts of law.

MAURICIO SAYSON, ROSARIO SAYSON-MALONDA, BASILISA SAYSON-LIRIO, REMEDIOS SAYSON-REYES and JUANA C. BAUTISTA, *Petitioners* -versus- THE HONORABLE COURT OF APPEALS, DELIA SAYSON, assisted by her husband, CIRILO CEDO, JR., EDMUNDO SAYSON AND DORIBEL SAYSON, *Respondents*
G.R. NOS. 89224-25, FIRST DIVISION, January 23, 1992, CRUZ, *J.*

Doribel's birth certificate is a formidable piece of evidence. It is one of the prescribed means of recognition under Article 265 of the Civil Code and Article 172 of the Family Code.

The birth certificate must be upheld in line with Legaspi v. Court of Appeals, where we ruled that ***"the evidentiary nature of public documents must be sustained in the absence of strong, complete and conclusive proof of its falsity or nullity."***

FACTS:

When spouses Teodoro and Isabel Bautista died, their properties were left in the possession of Private respondents Delia, Edmundo, and Doribel, all surnamed Sayson, who claimed to be their children. They asserted that Delia and Edmundo were the adopted children and Doribel was the legitimate daughter of Teodoro and Isabel.

Petitioners, however, filed a complaint for partition and accounting of the intestate estate of Teodoro and Isabel Sayson. The petitioners, in addition, argued that Doribel is not the legitimate daughter of Teodoro and Isabel but was in fact born to one Edita Abila, who manifested in a petition for guardianship of the child that she was her natural mother. The action was resisted by private respondents.

ISSUE:

Whether or not Doribel is the legitimate daughter of Teodoro and Isabel. (YES)

RULING:

Doribel's birth certificate is a formidable piece of evidence. It is one of the prescribed means of recognition under Article 265 of the Civil Code and Article 172 of the Family Code. It is true, as the petitioners stress, that the birth certificate offers only *prima facie* evidence of filiation and may be refuted by contrary evidence. However, such evidence is lacking in the case at bar.

Mauricio's testimony that he was present when Doribel was born to Edita Abila was understandably suspect, coming as it did from an interested party. The affidavit of Abila denying her earlier statement in the petition for the guardianship of Doribel is of course hearsay, let alone the fact that it was never offered in evidence in the lower courts. Even without it, however, the birth certificate must be upheld in line with *Legaspi v. Court of Appeals*, where we ruled that **"the evidentiary nature of public documents must be sustained in the absence of strong, complete and conclusive proof of its falsity or nullity."**

Another reason why the petitioners' challenge must fail is the impropriety of the present proceedings for that purpose. Doribel's legitimacy cannot be questioned in a complaint for partition and accounting but in a direct action seasonably filed by the proper party.

WILLIAM LIYAO, JR., represented by his mother Corazon Garcia, *Petitioner* -versus-
JUANITA TANHOTI-LIYAO, PEARL MARGARET L. TAN,
TITA ROSE L. TAN AND LINDA CHRISTINA LIYAO, *Respondents.*
G.R. No. 138961, SECOND DIVISION, March 7, 2002, DE LEON, JR., *J.*

It is settled that the legitimacy of the child can be impugned only in a direct action brought for that purpose, by the proper parties and within the period limited by law.

It is clear that the present petition initiated by Corazon G. Garcia as guardian ad litem of the then minor, herein petitioner, ***to compel recognition by respondents of petitioner William Liyao, Jr, as the illegitimate son of the late William Liyao cannot prosper. It is settled that a child born within a valid marriage is presumed legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress****. We cannot allow petitioner to maintain his present petition and subvert the clear mandate of the law that only the husband, or in exceptional circumstances, his heirs, could impugn the legitimacy of a child born in a valid and subsisting marriage. The child himself cannot choose his own filiation.*

FACTS:

William Liyao, Jr., represented by his mother Corazon, filed an action for compulsory recognition as the illegitimate (spurious) child of the late William Liyao against herein respondents before the RTC. Petitioner Liyao, jr. insisted that his mother, Corazon, had been living separately for ten (10) years from her husband, Ramon Yulo. Corazon cohabited with the late William Liyao from 1965 up to the time of William's untimely demise in 1975. On June 9, 1975, Corazon gave birth to William Liyao, Jr. at the Cardinal Santos Memorial Hospital. During her stay at the hospital, William Liyao visited and stayed with her and the new born baby, William, Jr. (Billy). Petitioner alleged that since birth, he had been in continuous possession and enjoyment of the status of a recognized and acknowledged child of William Liyao by the latter's direct and overt acts.

Respondents, on the other hand, stated that their parents, William Liyao and Juanita Tanhoti-Liyao, were legally married and that Corazon Garcia is still married to Ramon Yulo and was not legally separated from her husband.

The trial court ruled for the petitioner, saying that it was convinced by preponderance of evidence that deceased William Liyao sired William Liyao, Jr. The Court of Appeals, however, reversed the ruling of the trial court saying that the law favors the legitimacy rather than the illegitimacy of the child and "the presumption of legitimacy is thwarted only on ethnic ground and by proof that marital intimacy between husband and wife was physically impossible at the period cited in Article 257 in relation to Article 255 of the Civil Code."

ISSUE:

Whether or not petitioner may impugn his own legitimacy to be able to claim from the estate of his supposed father, William Liyao. (NO)

RULING:

Under the New Civil Code, a child born and conceived during a valid marriage is presumed to be legitimate. The presumption of legitimacy of children does not only flow out from a declaration contained in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. The presumption is grounded in a policy to protect innocent offspring from the odium of illegitimacy. The presumption of legitimacy of the child, however, is not conclusive and consequently, may be overthrown by evidence to the contrary. Hence, Article 255 of the New Civil Code provides: Article 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate. Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child. This physical impossibility may be caused: 1) By the impotence of the husband; 2) By the fact that husband and wife were living separately in such a way that access was not possible; 3) By the serious illness of the husband.

Impugning the legitimacy of the child is a strictly personal right of the husband, or in exceptional cases, his heirs for the simple reason that he is the one directly confronted with the scandal and ridicule which the infidelity of his wife produces and he should be the one to decide whether to conceal that infidelity or expose it in view of the moral and economic interest involved. It is only in

exceptional cases that his heirs are allowed to contest such legitimacy. Outside of these cases, none - even his heirs - can impugn legitimacy; that would amount to an insult to his memory.

It is therefore clear that the present petition initiated by Corazon G. Garcia as guardian *ad litem* of the then minor, herein petitioner**, to compel recognition by respondents of petitioner William Liyao, Jr, as the illegitimate son of the late William Liyao cannot prosper. It is settled that a child born within a valid marriage is presumed legitimate even though the mother may have declared against its legitimacy or may have been sentenced as an adulteress**. We cannot allow petitioner to maintain his present petition and subvert the clear mandate of the law that only the husband, or in exceptional circumstances, his heirs, could impugn the legitimacy of a child born in a valid and subsisting marriage. The child himself cannot choose his own filiation.

JINKIE CHRISTIE A. DE JESUS and JACQUELINE A. DE JESUS, represented by their mother, CAROLINA A. DE JESUS, *Petitioners,* -versus- THE ESTATE OF DECEDENT JUAN GAMBOA DIZON, ANGELINA V. DIZON, CARLOS DIZON, FELIPE DIZON, JUAN DIZON, JR. and MARYLIN DIZON and FORMS MEDIA CORP., QUAD MANAGEMENT CORP., FILIPINAS PAPER SALES CO., INC. and AMITY CONSTRUCTION & INDUSTRIAL ENTERPRISES, INC., *Respondents.*
G.R. No. 142877, THIRD DIVISION, October 2, 2001, VITUG, *J.*

There is perhaps no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate.

In an attempt to establish their legitimate filiation to the late Juan G. Dizon, petitioners, in effect, would impugn their legitimate status as being the children of Danilo de Jesus and Carolina Aves de Jesus. This cannot be done because the law itself establishes the legitimacy of children conceived or born during the marriage of the parents. ***The presumption of legitimacy fixes a civil status for the child born in wedlock, and only the father, or in exceptional instances the latter's heirs, can contest in an appropriate action the legitimacy of a child born to his wife. Thus, it is only when the legitimacy of a child has been successfully impugned that the paternity of the husband can be rejected.***

FACTS:

Danilo de Jesus and Carolina Aves de Jesus got married and it was during this marriage that Jacqueline de Jesus and Jinkie Christie de Jesus, herein petitioners, were born. In a notarized document, a certain Juan G. Dizon acknowledged Jacqueline and Jinkie de Jesus as being his own illegitimate children by Carolina Aves de Jesus. When Juan G. Dizon died intestate, leaving behind considerable assets, petitioners filed a complaint for Partition with Inventory and Accounting of the Dizon estate with the RTC.

Respondents, the surviving spouse and legitimate children of late Juan Dizon sought the dismissal of the case, arguing that the complaint would call for altering the status of petitioners from being the legitimate children of the spouses Danilo de Jesus and Carolina de Jesus to instead be the illegitimate children of Carolina de Jesus and deceased Juan Dizon.

ISSUE:

Whether or not Jacqueline and Jinkie de Jesus is Juan G. Dizon's own illegitimate children. (NO)

RULING:

The filiation of illegitimate children, like legitimate children, **is established** by (1) the record of birth appearing in the civil register or a final judgment; or (2) an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned. In the absence thereof, filiation shall be proved by (1) the open and continuous possession of the status of a legitimate child; or (2) any other means allowed by the Rules of Court and special laws. **The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required.** In fact, any authentic writing is treated not just a ground for compulsory recognition; it is in itself a voluntary recognition that does not require a separate action for judicial approval**. Where, instead, a claim for recognition is predicated on other evidence merely tending to prove paternity, i.e., outside of a record of birth, a will, a statement before a court of record or an authentic writing, judicial action within the applicable statute of limitations is essential in order to establish the child's acknowledgment.** A scrutiny of the records would show that petitioners were **born during the marriage of their parents.** The certificates of live birth would also identify Danilo de Jesus as being their father. **There is perhaps no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate.** This presumption indeed becomes conclusive in the absence of proof that there is physical impossibility of access between the spouses during the first 120 days of the 300 days which immediately precedes the birth of the child due to (a) the physical incapacity of the husband to have sexual intercourse with his wife; (b) the fact that the husband and wife are living separately in such a way that sexual intercourse is not possible; or (c) serious illness of the husband, which absolutely prevents sexual intercourse. Quite remarkably, upon the expiration of the periods set forth in Article 170, and in proper cases Article 171, of the Family Code (which took effect on 03 August 1988), the action to impugn the legitimacy of a child would no longer be legally feasible and the status conferred by the presumption becomes fixed and unassailable.

In an attempt to establish their legitimate filiation to the late Juan G. Dizon, petitioners, in effect, would impugn their legitimate status as being the children of Danilo de Jesus and Carolina Aves de Jesus. This cannot be done because the law itself establishes the legitimacy of children conceived or born during the marriage of the parents. **The presumption of legitimacy fixes a civil status for the child born in wedlock, and only the father, or in exceptional instances the latter's heirs, can contest in an appropriate action the legitimacy of a child born to his wife. Thus, it is only when the legitimacy of a child has been successfully impugned that the paternity of the husband can be rejected.**

In the matter of the intestate estate of the late JUAN "JHONNY" LOCSIN, SR., LUCY A. SOLINAP (Daughter of the late Maria Locsin Araneta), the successors of the late LOURDES C. LOCSIN, MANUEL C. LOCSIN, ESTER LOCSIN JARANTILLA and the intestate estate of the late JOSE C. LOCSIN, JR., *Petitioners*, -versus- JUAN C. LOCSIN, JR., *Respondent.*
G.R. No. 146737, THIRD DIVISION, December 10, 2001, SANDOVAL-GUTIERREZ, *J.*

In Fernandez v. Court of Appeals, the Court held ***that "a birth certificate not signed by the alleged father (who had no hand in its preparation) is not competent evidence of paternity."***

A birth certificate is a formidable piece of evidence prescribed by both the Civil Code and Article 172 of the Family Code for purposes of recognition and filiation. However, birth certificate offers ***only***

prima facie evidence of filiation and may be refuted by contrary evidence. *Its evidentiary worth cannot be sustained where there exists strong, complete and conclusive proof of its falsity or nullity. In this case, respondent's Certificate of Live Birth No. 477 entered in the records of the Local Civil Registry (from which Exhibit "D" was machine copied) has all the badges of nullity. Without doubt, the authentic copy on file in that office was removed and substituted with a falsified Certificate of Live Birth.*

The glaring discrepancies between the two Certificates of Live Birth (Exhibits "D" and "8") have overturned the genuineness of Exhibit "D" entered in the Local Civil Registry. What is authentic is Exhibit "8" recorded in the Civil Registry General.

Respondent's photograph with his mother near the coffin of the late Juan C. Locsin cannot and will not constitute proof of filiation. Anybody can have a picture taken while standing before a coffin with others and thereafter utilize it in claiming the estate of the deceased.

FACTS:

11 months after Juan "Jhonny" Locsin, Sr. died, respondent Juan E. Locsin, Jr. filed with the RTC a petition praying that he be appointed Administrator of the Intestate Estate of the deceased. He alleged that he is an acknowledged natural child of the late Juan Locsin and that he is the only surviving legal heir of the decedent.

The opposition avereed that respondent is not a child or an acknowledged natural child of the late Juan Locsin, who during his lifetime, never affixed "Sr." in his name.

To support respondent's claim that he is an acknowledged narural child of the deceased, the intestate estate, respondent submitted a machine copy (marked as Exhibit "D") of his Certificate of Live Birth No. 477 found in the bound volume of birth records in the Office of the Local Civil Registrar. Exhibit "D" contains the information that respondent's father is Juan C. Locsin, Sr. Respondent also offered in evidence a photograph (Exhibit "C") showing him and his mother, Amparo Escamilla, in front of a coffin bearing Juan C. Locsin's dead body.

Petitioners claimed that Certificate of Live Birth No. 477 (Exhibit "D") is spurious. They submitted a certified true copy of Certificate of Live Birth No. 477 found in the Civil Registrar General, Metro Manila, marked as Exhibit "8", indicating that the birth of respondent was reported by his mother, Amparo Escamilla, and that the same does not contain the signature of the late Juan C. Locsin. They observed as anomalous the fact that while respondent was born on October 22, 1956 and his birth was recorded on January 30, 1957, however, his Certificate of Live Birth No. 447 (Exhibit "D") was recorded on a December 1, 1958 **revised form**. Exhibit "8" appears on a July, 1956 form, already used before respondent's birth. This scenario clearly suggests that Exhibit "D" was falsified.

The RTC ruled for respondent and found Certificate of Live Birth No. 477 (Exhibit "D") and the photograph (Exhibit "C") are sufficient proofs of respondent's illegitimate filiation with the deceased. The CA affirmed the RTC's decision.

ISSUE:

Whether or not respondent Juan Locsin, Jr. was able to prove his filiation with the late Juan C. Locsin, Sr. (NO)

RULING:

The Supreme Court, through Justice Jose C. Vitug, held:

> "The filiation of illegitimate children, like legitimate children, is established by (1) the record of birth appearing in the civil register or a final judgment; or (2) an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned. In the absence thereof, filiation shall be proved by (1) the open and continuous possession of the status of a legitimate child; or (2) any other means allowed by the Rules of Court and special laws. The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of record, or in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required. In fact, any authentic writing is treated not just a ground for compulsory recognition; it is in itself a voluntary recognition that does not require a separate action for judicial approval. Where, instead, a claim for recognition is predicated on other evidence merely tending to prove paternity, i.e., outside of a record of birth, a will, a statement before a court of record or an authentic writing, judicial action within the applicable statute of limitations is essential in order to establish the child's acknowledgment."

In Fernandez v. Court of Appeals, the Court held **that "a birth certificate not signed by the alleged father (who had no hand in its preparation) is not competent evidence of paternity."**

A birth certificate is a formidable piece of evidence prescribed by both the Civil Code and Article 172 of the Family Code for purposes of recognition and filiation. However, birth certificate offers **only prima facie evidence of filiation and may be refuted by contrary evidence.** Its evidentiary worth cannot be sustained where there exists strong, complete and conclusive proof of its falsity or nullity. In this case, respondent's Certificate of Live Birth No. 477 entered in the records of the Local Civil Registry (from which Exhibit "D" was machine copied) has all the badges of nullity. Without doubt, the authentic copy on file in that office was removed and substituted with a falsified Certificate of Live Birth.

The glaring discrepancies between the two Certificates of Live Birth (Exhibits "D" and "8") have overturned the genuineness of Exhibit "D" entered in the Local Civil Registry. What is authentic is Exhibit "8" recorded in the Civil Registry General.

Respondent's photograph with his mother near the coffin of the late Juan C. Locsin cannot and will not constitute proof of filiation. Anybody can have a picture taken while standing before a coffin with others and thereafter utilize it in claiming the estate of the deceased.

GERARDO B. CONCEPCION, *Petitioner,* -versus- COURT OF APPEALS and MA. THERESA ALMONTE, *Respondents.*
G.R. No. 123450, THIRD DIVISION, August 31, 2005, CORONA, *J.*

The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

The law requires that every reasonable presumption be made in favor of legitimacy. The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. It is grounded on the policy to protect the innocent offspring from the odium of illegitimacy. Impugning the legitimacy of a child is a strictly personal right of the husband or, in exceptional cases, his heirs. ***Since the marriage of Gerardo and Ma. Theresa was void from the very beginning; he never became her husband and thus never acquired any right to impugn the legitimacy of her child.***

The presumption of legitimacy proceeds from the sexual union in marriage, particularly during the period of conception. To overthrow this presumption on the basis of Article 166 (1)(b) of the Family Code, it must be shown beyond reasonable doubt that there was no access that could have enabled the husband to father the child. Sexual intercourse is to be presumed where personal access is not disproved, unless such presumption is rebutted by evidence to the contrary. The presumption is quasi-conclusive and may be refuted only by the evidence of physical impossibility of coitus between husband and wife within the first 120 days of the 300 days which immediately preceded the birth of the child.

FACTS:

Gerardo Concepcion filed a petition to have his marriage to Ma. Theresa Almonte annulled on the ground of bigamy. He alleged that nine years before he married Ma. Theresa, she had married one Mario Gopiao, which marriage was never annulled.

The RTC annulled Ma. Theresa's marriage to Gerardo for being bigamous and as a result declared Jose Gerardo as an illegitimate child. The custody of the child was awarded to Ma. Theresa while Gerardo was granted visitation rights. Ma. Theresa argued that there was nothing in the law granting visitation rights in favor of the putative father of an illegitimate child. She further maintained that Jose Gerardo's surname should be changed from Concepcion to Almonte, her maiden name, following the rule that an illegitimate child shall use the mother's surname. When brought to the appellate court, it held that Jose Gerardo was not the son of Ma. Theresa by Gerardo but by Mario during her first marriage.

ISSUE:

Whether or not Jose Gerardo was the legitimate son of Mario during Ma. Theresa's first marriage. (YES)

RULING:

Article 164 of the Family Code is clear. A child who is conceived or born during the marriage of his parents is legitimate. As a guaranty in favor of the child and to protect his status of legitimacy, Article 167 of the Family Code provides: Article 167. The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

The law requires that every reasonable presumption be made in favor of legitimacy. The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. It is grounded on the policy to protect the innocent offspring from the odium of illegitimacy. Impugning the legitimacy of a child is a strictly personal right of the husband or, in exceptional cases, his heirs. **Since the marriage of Gerardo and Ma. Theresa was void from the very beginning; he never became her husband and thus never acquired any right to impugn the legitimacy of her child.**

The presumption of legitimacy proceeds from the sexual union in marriage, particularly during the period of conception. To overthrow this presumption on the basis of Article 166 (1)(b) of the Family Code, it must be shown beyond reasonable doubt that there was no access that could have enabled the husband to father the child. Sexual intercourse is to be presumed where personal access is not disproved, unless such presumption is rebutted by evidence to the contrary. The presumption is quasi-conclusive and may be refuted only by the evidence of physical impossibility of coitus between husband and wife within the first 120 days of the 300 days which immediately preceded the birth of the child.

Sexual union between spouses is assumed. Evidence sufficient to defeat the assumption should be presented by him who asserts the contrary. There is no such evidence here. Thus, the presumption of legitimacy in favor of Jose Gerardo, as the issue of the marriage between Ma. Theresa and Mario, stands. As a legitimate child, Jose Gerardo shall have the right to bear the surnames of his father Mario and mother Ma. Theresa, in conformity with the provisions of the Civil Code on surnames. A persons surname or family name identifies the family to which he belongs and is passed on from parent to child. Hence, Gerardo cannot impose his surname on Jose Gerardo who is, in the eyes of the law, not related to him in any way.

EDGARDO A. TIJING and BIENVENIDA R. TIJING, *Petitioners*, vs. COURT OF APPEALS (Seventh Division) and ANGELITA DIAMANTE, *Respondents.*
G.R. No. 125901, SECOND DIVISION, March 8, 2001, QUISIMBING, *J.*

The trial court observed that the child and Bienvenida had strong similarities in their faces. ***The resemblance between a minor and his alleged parent is competent and material evidence to establish parentage.***

FACTS:

Petitioner Bienvenida served as the laundrywoman of respondent Angelita. According to Bienvenida, Angelita went to her house to fetch her for an urgent laundry job. Bienvenida left her four-month old son, Edgardo, Jr. under the care of Angelita as she usually let Angelita take care of the child while she was doing laundry. When Bienvenida returned, Angelita and her son were gone. Bienvenida went to Angelita's house where she was informed that Angelita had moved to another place. She looked for her missing son together with her husband in various places however they saw no traces of his whereabouts.

Four years later, Bienvenida read in a tabloid an article about the death of Tomas Lopez, allegedly the common-law husband of Angelita, and whose remains were lying in state in Hagonoy, Bulacan. She later on went to Bulacan, where she allegedly saw her son for the first time after

four years. She averred that her son was already named as John Thomas Lopez and that Angelita refused to return to her the boy despite her demand to do so.

Petitioner Bienvenida and her husband then filed their petition for habeas corpus to recover their son. Petitioners' witnesses claimed that Tomas Lopez could not have possibly fathered John Thomas Lopez as the latter was sterile because of an accident. Furthermore, Tomas Lopez himself admitted that John Thomas Lopez was only an adopted son.

The trial court held that Tomas Lopez could not have fathered the child since Angelita and her common-law husband could not have children. It also held that the minor and Bienvenida showed strong facial similarity. The CA reversed the decision rendered by the trial court. The evidence adduced by Bienvenida was not sufficient to establish that she was the mother of the minor.

ISSUE:

Whether or not the evidence presented by Bienvenida is sufficient to establish that John Thomaz Lopez is actually her missing son. (YES)

RULING:

First, there is evidence that Angelita could no longer bear children. She herself admitted that she **underwent ligation** before she lived with Tomas Lopez without the benefit of marriage.

Second, there **is strong evidence which proves that Tomas Lopez is no longer capable of siring a son.** Benjamin Lopez declared in court that his brother, Tomas, was sterile because of the accident and that Tomas admitted to him that John Thomas Lopez was only an adopted son.
Third, it was unusual that the birth certificate of John Thomas Lopez was filed by Tomas Lopez instead of the midwife and on August 4, 1989, four months after the alleged birth of the child. Under the law, the attending physician or midwife in attendance at birth should cause the registration of such birth. Only in default of the physician or midwife, can the parent register the birth of his child. The certificate must be filed with the local civil registrar within thirty days after the birth. Significantly, the birth certificate of the child stated Tomas Lopez and private respondent were legally married on October 31, 1974, in Hagonoy, Bulacan, which is false because even private respondent had admitted she is a "common-law wife". This **false entry** puts to doubt the other data in said birth certificate.

Fourth, the trial court observed that the child and Bienvenida had strong similarities in their faces. **The resemblance between a minor and his alleged parent is competent and material evidence to establish parentage.**

Fifth, Bienvenida, unlike respondent, **presented clinical records** consisting of a log book, discharge order and the signature of petitioners.

ARNEL L. AGUSTIN, *Petitioner*, -versus- HON. COURT OF APPEALS AND MINOR MARTIN JOSE PROLLAMANTE, REPRESENTED BY HIS MOTHER/GUARDIAN FE ANGELA PROLLAMANTE, *Respondents*.
G.R. No. 162571, THIRD DIVISION, June 15, 2005, CORONA, *J.*

DNA testing is a valid means to prove paternity. For too long, illegitimate children have been marginalized by fathers who choose to deny their existence. The growing sophistication of DNA testing technology finally provides a much needed equalizer for such ostracized and abandoned progeny. The Court has long believed in the merits of DNA testing and have repeatedly expressed as much in the past. This case comes at a perfect time when DNA testing has finally evolved into a dependable and authoritative form of evidence gathering. The Court therefore reiterated that DNA testing is a valid means of determining paternity.

FACTS:

Respondents Fe Angela and her son Martin Prollamante sued Martin's alleged biological father, Arnel Agustin, for support.

Respondents alleged that Arnel impregnated Fe. Arnel insisted on aborting the child, but Fe decided otherwise and gave birth to Martin out of wedlock. The birth certificate was purportedly signed by Arnel as the father. They further alleged that Arnel shouldered the hospital expenses but later refused Fe's requests for Martin's support and even suggested to place the child for adoption. Arnel denied having fathered the child. While Fe was carrying five-month old Martin at the Capitol Hills Golf and Country Club parking lot, Arnel sped off in his van, with the open car door hitting Fe's leg. This incident was reported to the police. Months later, Fe was diagnosed with leukemia and has, since then, been undergoing chemotherapy. Fe and Martin then sued Arnel for support.

In his answer, Arnel denied having fathered the child because his affair with Fe had allegedly ended long before Martin's conception. He alleged that Fe had at least one other secret lover and that she became so obsessed with him that she even resorted to various devious ways and means to alienate him from his wife and family. Arnel also claimed that the signature attributed to him in the acknowledgment of Marin's birth certificate were falsified.

Respondents therefore filed a motion in court for issuance of an order to direct all parties to submit themselves to DNA Paternity testing. Petitioner Arnel filed a motion to dismiss the complaint for lack of cause of action since under the law an illegitimate child is not entitled to support if not recognized by the putative father.

The trial court denied the motion to dismiss the complaint and ordered the parties to submit themselves to DNA paternity testing. The CA affirmed the ruling of the trial court.

ISSUES:

1. Whether or not Martin has no right to ask for support and must first establish his filiation in a separate suit under Article 283 in relation to Article 265 of the Civil Code. (NO)
2. Whether or not DNA testing is a valid means to prove paternity. (YES)

RULING:

1. The assailed resolution and order did not convert the action for support into one for recognition but merely allowed the respondents to prove their cause of action against petitioner. But even if the assailed resolution and order effectively integrated an action to compel recognition with an action for support, such was valid and in accordance with jurisprudence.

   In Tayag v. Court of Appeals, the Court allowed the integration of an action to compel recognition with an action to claim one's inheritance. The two causes of action, one to compel recognition and the other to claim inheritance, may be joined in one complaint.

   In Briz vs. Briz, et al. the Court held that, there is no absolute necessity requiring that the action to compel acknowledgment should have been instituted and prosecuted to a successful conclusion prior to the action in which that same plaintiff seeks additional relief in the character of heir. Certainly, there is nothing so peculiar to the action to compel acknowledgment as to require that a rule should be here applied different from that generally applicable in other cases.

   Although the instant case deals with support rather than inheritance, as in Tayag, the basis or rationale for integrating them remains the same. Whether or not respondent Martin is entitled to support depends completely on the determination of filiation. A separate action will only result in a multiplicity of suits, given how intimately related the main issues in both cases are. To paraphrase Tayag, the declaration of filiation is entirely appropriate to these proceedings.

2. For too long, illegitimate children have been marginalized by fathers who choose to deny their existence. The growing sophistication of DNA testing technology finally provides a much needed equalizer for such ostracized and abandoned progeny. The Court has long believed in the merits of DNA testing and have repeatedly expressed as much in the past. This case comes at a perfect time when DNA testing has finally evolved into a dependable and authoritative form of evidence gathering. The Court therefore reiterated that DNA testing is a valid means of determining paternity.

   The case of Wilson v. Lumb shows that DNA testing is so commonly accepted that, in some instances, ordering the procedure has become a ministerial act. The Supreme Court of St. Lawrence County, New York pointed out that a determination of paternity made by any other state, whether established through the parents acknowledgment of paternity or through an administrative or judicial process, must be accorded full faith and credit, if and only if such acknowledgment meets the requirements set forth in section 452(a)(7) of the social security act.

   In Rafferty v. Perkins, the Supreme Court of Mississippi ruled that DNA test results showing paternity were sufficient to overthrow the presumption of legitimacy of a child born during the course of a marriage: The presumption of legitimacy having been rebutted by the results of the blood test eliminating Perkins as Justin's father, even considering the evidence in the light most favorable to Perkins, we find that no reasonable jury could find that Easter is not Justin's father based upon the 99.94% probability of paternity concluded by the DNA testing.

IN RE: PETITION FOR CHANGE OF NAME AND/OR CORRECTION/CANCELLATION OF ENTRY IN CIVIL REGISTRY OF JULIAN LIN CARULASAN WANG also known as JULIAN LIN WANG, to be amended/corrected as JULIAN LIN WANG,
JULIAN LIN WANG, duly represented by his mother ANNA LISA WANG *v.*
CEBU CITY CIVIL REGISTRAR, duly represented by the Registrar OSCAR B. MOLO
G.R. No. 159966, SECOND DIVISION, March 30, 2005, TINGA, *J.*

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

In the case at bar, the only reason advanced by petitioner for the dropping his middle name is convenience. However, how such change of name would make his integration into Singaporean society easier and convenient is not clearly established. That the continued use of his middle name would cause confusion and difficulty ***does not constitute proper and reasonable cause*** *to drop it from his registered complete name.*

In addition, petitioner is only a minor. Considering the nebulous foundation on which his petition for change of name is based, ***it is best that the matter of change of his name be left to his judgment and discretion when he reaches the age of majority.*** *As he is of tender age, he may not yet understand and appreciate the value of the change of his name and granting of the same at this point may just prejudice him in his rights under our laws.*

FACTS:

Julian Lin Carulasan Wang was born in Cebu City to parents Anna Lisa Wang and Sing-Foe Wang who were then not yet married to each other. When his parents subsequently got married, they executed a deed of legitimation of their son so that the child's name was changed from Julian Lin Carulasan to Julian Lin Carulasan Wang.

Petitioner, however sought to drop his middle name and have his registered name changed from Julian Lin Carulasan Wang to Julian Lin Wang because he may be discriminated against in Singapore. The RTC ruled that under Article 174 of the Family Code, legitimate children have the right to bear the surnames of the father and the mother, and there is no reason why this right should now be taken from petitioner Julian, considering that he is still a minor. The trial court added that when petitioner Julian reaches the age of majority, he could then decide whether he will change his name by dropping his middle name.

ISSUE:

Whether or not the law allows one to drop the middle name from his registered name. (NO)

RULING:

Middle names serve to identify the maternal lineage or filiation of a person as well as further distinguish him from others who may have the same given name and surname as he has. Our laws on the use of surnames state that legitimate and legitimated children shall principally use the surname of the father. The Family Code gives legitimate children the right to bear the surnames of the father

and the mother, while illegitimate children shall use the surname of their mother, unless their father recognizes their filiation, in which case they may bear the fathers surname.

Accordingly, the registration in the civil registry of the birth of such individuals requires that the middle name be indicated in the certificate. The registered name of a legitimate, legitimated and recognized illegitimate child thus contains a given or proper name, a middle name, and a surname.

In the case at bar, the only reason advanced by petitioner for the dropping his middle name is convenience. However, how such change of name would make his integration into Singaporean society easier and convenient is not clearly established. That the continued use of his middle name would cause confusion and difficulty **does not constitute proper and reasonable cause** to drop it from his registered complete name.

In addition, petitioner is only a minor. Considering the nebulous foundation on which his petition for change of name is based, **it is best that the matter of change of his name be left to his judgment and discretion when he reaches the age of majority.** As he is of tender age, he may not yet understand and appreciate the value of the change of his name and granting of the same at this point may just prejudice him in his rights under our laws.

JOEY D. BRIONES, *Petitioner,* -versus- MARICEL P. MIGUEL, FRANCISCA P. MIGUEL and LORETA P. MIGUEL, *Respondents.*
G.R. No. 156343, THIRD DIVISION, October 18, 2004, PANGANIBAN, *J.*

An illegitimate child is under the sole parental authority of the mother. In the exercise of that authority, she is entitled to keep the child in her company. The Court will not deprive her of custody, absent any imperative cause showing her unfitness to exercise such authority and care.

Under Article 213 of the Family Code, no child under seven years of age shall be separated from the mother, except when the court finds cause to order otherwise. *Bearing in mind the welfare and the best interest of the minor as the controlling factor, the Court held that the CA did not err in awarding care, custody, and control of the child to Respondent Loreta.* ***There is no showing at all that she is unfit to take charge of him.***

FACTS:

Petitioner Joey D. Briones alleged that the minor Michael Kevin Pineda is his illegitimate son with respondent Loreta P. Miguel as evidenced by his birth certificate. According to Joey, respondent Loreta is now married to a Japanese national and is presently residing in Japan. He caused his son Michael to be brought to the Philippines so that he could take care of him and send him to school. Further, Joey's parents assisted him in taking care of the child. He prayed for the custody of his son be given to him as his biological father and as he has demonstrated his capability to support and educate him.

Respondent Miguel, however, prayed that the custody of her minor child be given to her by reason of the minor's illegitimacy. She likewise stated that Joey was deported from Japan when he was found to have committed an infraction of the laws of Japan; that Joey was having an illicit affair with another woman; that her marriage to a Japanese national is for the purpose of availing the privileges of staying temporarily in Japan to pursue her work so she could be able to send money to her son. She

prayed that the custody of her minor child be given to her under Article 213, Paragraph 2 of the Family Code.

The CA applied Article 213 of the Family Code and awarded the custody of Michael to his mother.

ISSUE:

Whether or not petitioner, as the natural father, may be denied the custody and parental care of his own child. (YES)

RULING:

Having been born outside a valid marriage, the minor is deemed an illegitimate child of petitioner and Respondent Loreta. Article 176 of the Family Code of the Philippines explicitly provides that illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. This is the rule regardless of whether the father admits paternity.

There are only two classes of children -- legitimate (and those who, like the legally adopted, have the rights of legitimate children) and illegitimate. All children conceived and born outside a valid marriage are illegitimate, unless the law itself gives them legitimate status. Under Article 176 of the Family Code, all illegitimate children are generally placed under one category, without any distinction between *natural* and *spurious*. The concept of natural child is important only for purposes of legitimation. Without the subsequent marriage, a natural child remains an illegitimate child.

Obviously, Michael is a natural (illegitimate, under the Family Code) child, as there is nothing in the records showing that his parents were suffering from a legal impediment to marry at the time of his birth. Both acknowledge that Michael is their son. As earlier explained and pursuant to Article 176, parental authority over him resides in his mother, Respondent Loreta, notwithstanding his father's recognition of him.

Moreover**, under Article 213 of the Family Code, no child under seven years of age shall be separated from the mother, except when the court finds cause to order otherwise.** Bearing in mind the welfare and the best interest of the minor as the controlling factor, the Court held that the CA did not err in awarding care, custody, and control of the child to Respondent Loreta**. There is no showing at all that she is unfit to take charge of him.**

GRACE M. GRANDE, *Petitioner,* -versus- PATRICIO T. ANTONIO, *Respondent.*
G.R. No. 206248, EN BANC, February 18, 2014, VELASCO, JR., *J.*

*It is clear that the general rule is that an illegitimate child **shall** use the surname of his or her mother. The exception provided by RA 9255 is, in case his or her filiation is expressly recognized by the father through the record of birth appearing in the civil register or when an admission in a public document or private handwritten instrument is made by the father. In such a situation, the illegitimate child **may use** the surname of the father.*

*Parental authority over minor children is lodged by Art. 176 on the mother; **hence, respondent's prayer has no legal mooring.** Since parental authority is given to the mother, then custody over the minor children also goes to the mother, unless she is shown to be unfit. Art. 176 gives illegitimate*

children the right to decide if they want to use the surname of their father or not. ***It is not the father (herein respondent) or the mother (herein petitioner) who is granted by law the right to dictate the surname of their illegitimate children.***

FACTS:

Petitioner Grace Grande and respondent Patricio Antonio for a period of time lived together as husband and wife, although Antonio was at that time already married to someone else. Out of this illicit relationship, two sons were born. The children were not expressly recognized by respondent as his own in the Record of Births of the children in the Civil Registry. Respondent soon filed a petition for judicial approval of recognition of the filiation of the two children with Prayer to take Parental Authority, Parental Physical Custody, and Correction/Change of Surname of Minors before the RTC. Petitioner on the other hand, speculated that Article 176 of the Family Code as amended by Republic Act No. (RA) 9255, may not be invoked by a father to compel the use by his illegitimate children of his surname without the consent of their mother.

ISSUE:

Whether or not the father has a right to compel the use of his surname by his illegitimate children upon his recognition of their filiation. (NO)

RULING:

Central to the core issue is the application of Art. 176 of the Family Code. It is clear that the general rule is that an illegitimate child **shall** use the surname of his or her mother. The exception provided by RA 9255 is, in case his or her filiation is expressly recognized by the father through the record of birth appearing in the civil register or when an admission in a public document or private handwritten instrument is made by the father. In such a situation, the illegitimate child **may use** the surname of the father.

Parental authority over minor children is lodged by Art. 176 on the mother; **hence, respondent's prayer has no legal mooring.** Since parental authority is given to the mother, then custody over the minor children also goes to the mother, unless she is shown to be unfit. Art. 176 gives illegitimate children the right to decide if they want to use the surname of their father or not**. It is not the father (herein respondent) or the mother (herein petitioner) who is granted by law the right to dictate the surname of their illegitimate children.**

On its face, Art. 176, as amended, is free from ambiguity. And where there is no ambiguity, one must abide by its words. The use of the word "may" in the provision readily shows that an acknowledged illegitimate child is under no compulsion to use the surname of his illegitimate father. The word "may" is permissive and operates to confer discretion upon the illegitimate children.

REPUBLIC OF THE PHILIPPINES, *Petitioner,* -versus- TRINIDAD R.A. CAPOTE, *Respondent.*
G.R. No. 157043, FIRST DIVISION, February 2, 2007, CORONA, *J.*

An illegitimate child whose filiation is not recognized by the father bears only a given name and his mother' surname, and does not have a middle name. The name of the unrecognized illegitimate child therefore identifies him as such. It is only when the illegitimate child is legitimated by the subsequent marriage of his parents or acknowledged by the father in a public document or private handwritten

instrument that he bears both his mother's surname as his middle name and his father's surname as his surname, reflecting his status as a legitimated child or an acknowledged child.

The law and facts obtaining here favor Giovanni's petition. Giovanni availed of the proper remedy, a petition for change of name under Rule 103 of the Rules of Court, and complied with all the procedural requirements. After hearing, the trial court found (and the appellate court affirmed) that the evidence presented during the hearing of Giovanni's petition sufficiently established that, under ***Art. 176 of the Civil Code, Giovanni is entitled to change his name as he was never recognized by his father while his mother has always recognized him as her child.*** *A change of name will erase the impression that he was ever recognized by his father. It is also to his best interest as it will facilitate his mother's intended petition to have him join her in the United States. This Court will not stand in the way of the reunification of mother and son.*

FACTS:

Respondent Trinidad Capote filed a petition for change of name of her ward from Giovanni N. Gallamaso to Giovanni Nadores. Respondent Capote claimed that Giovanni Gallamaso is the illegitimate natural child of Corazon P. Nadores and Diosdado Gallamaso and was born prior to the effectivity of the New Family Code and as such, his mother used the surname of the natural father despite the absence of marriage between them. The father, Diosdado Gallamaso, from the time Giovanni was born and up to the present, failed to take up his responsibilities to him on matters of financial, physical, emotional and spiritual concerns. Giovanni is now fully aware of how he stands with his father and he desires to have his surname changed to that of his mother's surname.

The trial court rendered a decision ordering the change of name from Giovanni N. Gallamaso to Giovanni Nadores. The CA affirmed the RTC decision ordering the change of name.

ISSUE:

Whether or not the minor Giovanni is entitled to have his surname changed to that of his mother's surname. (YES)

RULING:

When Giovanni was born in 1982 (prior to the enactment and effectivity of the Family Code of the Philippines), the pertinent provision of the Civil Code then as regards his use of a surname, read:

> Art. 366. A natural child acknowledged by both parents shall principally use the surname of the father. If recognized by only one of the parents, a natural child shall employ the surname of the recognizing parent.

Applying this provision in the case, Giovanni should have carried his mother's surname from birth. The records **do not reveal any act or intention on the part of Giovanni's putative father to actually recognize him.** Meanwhile, according to the Family Code which repealed, among others, Article 366 of the Civil Code:

> Art. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. . . .

In the case of *In Re: Petition for Change of Name and/or Correction/Cancellation of Entry in Civil Registry of Julian Lin Carulasan Wang*, the Court held that an illegitimate child whose filiation is not recognized by the father bears only a given name and his mother' surname, and does not have a middle name. The name of the unrecognized illegitimate child therefore identifies him as such. It is only when the illegitimate child is legitimated by the subsequent marriage of his parents or acknowledged by the father in a public document or private handwritten instrument that he bears both his mother's surname as his middle name and his father's surname as his surname, reflecting his status as a legitimated child or an acknowledged child.

The law and facts obtaining here favor Giovanni's petition. Giovanni availed of the proper remedy, a petition for change of name under Rule 103 of the Rules of Court, and complied with all the procedural requirements. After hearing, the trial court found (and the appellate court affirmed) that the evidence presented during the hearing of Giovanni's petition sufficiently established that, under **Art. 176 of the Civil Code, Giovanni is entitled to change his name as he was never recognized by his father while his mother has always recognized him as her child.** A change of name will erase the impression that he was ever recognized by his father. It is also to his best interest as it will facilitate his mother's intended petition to have him join her in the United States. This Court will not stand in the way of the reunification of mother and son.

MARIA ROSARIO DE SANTOS, *Petitioner,* -versus- HON. ADORACION G. ANGELES, JUDGE, REGIONAL TRIAL COURT OF CALOOCAN CITY, BRANCH 121 and CONCHITA TALAG DE SANTOS, *Respondents.*

G.R. No. 105619, EN BANC, December 12, 1995, ROMERO, *J.*

*Article 269 itself **clearly limits the privilege of legitimation to natural children as defined thereunder.** There was, therefore, from the outset, an intent to exclude children conceived or born out of illicit relations from the purview of the law.*

In the case at bar, there is no question that all the children born to private respondent and deceased Antonio de Santos were conceived and born when the latter's valid marriage to petitioner's mother was still subsisting. That private respondent and the decedent were married abroad after the latter obtained in Nevada, U.S.A. a decree of divorce from his legitimate wife does not change this fact, for a divorce granted abroad was not recognized in this jurisdiction at the time.

Although natural children can be legitimized, and natural children by legal fiction enjoy the rights of acknowledged natural children, this does not necessarily lead to the conclusion that natural children by legal fiction can likewise be legitimized.

FACTS:

Dr. Antonio de Santos married Sofia Bona, which union was blessed with a daughter, herein petitioner Maria Rosario de Santos. After some time, Antonio fell in love and married Conchita Talag de Santos, herein private respondent in another country. This union produced eleven children. Less than a month later, after the death of Sophia, Antonio and private respondent contracted another marriage celebrated under Philippine laws.

After the death of Antonio, private respondent went to court asking for the issuance of letters of administration in her favor in connection with the settlement of her late husband's estate. After six years, petitioner Santos decided to intervene. She argued that private respondent's children were

illegitimate. The RTC declared private respondent's ten children legitimated and thereupon instituted and declared them, along with petitioner and private respondent, as the heirs of Antonio de Santos. Petitioner sought reconsideration but this was denied. Hence, she filed the instant petition contending that since only natural children can be legitimized, the trial court mistakenly declared as legitimated her half brothers and sisters.

ISSUE:

Whether or not natural children by legal fiction can be legitimized. (NO)

RULING:

Article 269 of the Civil Code expressly states:

> "Art. 269**. Only natural children can be legitimized.** Children born outside wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other, are natural."

The Civil Code provides three rights which, in varying degrees, are enjoyed by children, depending on their filiation: use of surname, succession and support. Legitimate children and legitimated children are entitled to all three. Thus they "shall principally use the surname of the father," and shall be entitled to support from their legitimate ascendants and descendants, as well as to a legitime consisting of one-half of the hereditary estate of both parents, and to other successional rights, such as the right of representation. "These rights as effects of legitimacy cannot be renounced." Natural children recognized by both parents and natural children by legal fiction shall principally use the surname of the father. If a natural child is recognized by only one parent, the child shall follow the surname of recognizing parent. Both types of children are entitled to receive support from the parent recognizing them. They also cannot be deprived of their legitime equivalent to one-half of that pertaining to each of the legitimate children or descendants of the recognizing parent, to be taken from the free disposable portion of the latter's estate. Recognized illegitimate children other than natural, or spurious issues, are, in their minority, under the parental authority of their mothers and, naturally, take the latter's surname. The only support which they are entitled to is from the recognizing parent, and their legitime, also to be taken from the free portion, consists of four-fifths of the legitime of an acknowledged natural child or two-fifths that of each legitimate child. Unrecognized illegitimate children are not entitled to any of the rights above mentioned.

Article 269 itself **clearly limits the privilege of legitimation to natural children as defined thereunder.** There was, therefore, from the outset, an intent to exclude children conceived or born out of illicit relations from the purview of the law.

In the case at bar, there is no question that all the children born to private respondent and deceased Antonio de Santos were conceived and born when the latter's valid marriage to petitioner's mother was still subsisting. That private respondent and the decedent were married abroad after the latter obtained in Nevada, U.S.A. a decree of divorce from his legitimate wife does not change this fact, for a divorce granted abroad was not recognized in this jurisdiction at the time.

Another point to be considered is that although natural children can be legitimized, and natural children by legal fiction enjoy the rights of acknowledged natural children, **this does not necessarily lead to the conclusion that natural children by legal fiction can likewise be legitimized**. As has

been pointed out, much more is involved here than the mere privilege to be legitimized. The rights of other children, like the petitioner in the case at bench, may be adversely affected as her testamentary share may well be reduced in the event that her ten surviving half siblings should be placed on par with her, when each of them is rightfully entitled to only half of her share.

Finally, attention must be drawn to the fact that this case has been decided under the provisions of the Civil Code, not the Family Code which now recognizes only two classes of children: legitimate and illegitimate**. "Natural children by legal fiction" are nothing if not pure fiction.**

RICHELLE P. ABELLA, for and in behalf of her minor daughter, MARL JHORYLLE ABELLA, *Petitioner,* -versus – POLICARPIO CABAÑERO, *Respondent.*
G.R. No. 206647, SECOND DIVISION, August 9, 2017, LEONEN, *J.*

Indeed, an ***integrated determination of filiation is "entirely appropriate" to the action for support filed by petitioner Richelle for her child.*** *An action for support may very well resolve that ineluctable issue of paternity if it involves the same parties, is brought before a court with the proper jurisdiction, prays to impel recognition of paternal relations, and invokes judicial intervention to do so.*

Thus, it was improper to rule here, as the Court of Appeals did, that it was impossible to entertain petitioner's child's plea for support without her and petitioner first surmounting the encumbrance of an entirely different judicial proceeding.

FACTS:

Petitioner Richelle alleged that while she was still a minor in the years 2000 to 2002, she was repeatedly sexually abused by respondent Cabañero inside his rest house at Barangay Masayo, Tobias Fornier, Antique. 9 As a result, she allegedly gave birth to a child on August 21, 2002. Richelle added that on February 27, 2002, she initiated a criminal case for rape against Cabañero, This, however, was dismissed. Later, she initiated another criminal case, this time for child abuse under Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act. This, too, was dismissed. Richelle prayed for the child's monthly allowance in the amount of P3,000.00.

RTC dismissed Richelle's Complaint without prejudice, on account of her failure to implead her minor child, Jhorylle, as plaintiff. CA sustained. It ruled that filiation proceedings should have first been separately instituted to ascertain the minor child's paternity and that without these proceedings having first resolved in favour of the child's paternity claim, petitioner's action for support could not prosper.

ISSUE:

Whether CA erred in ruling that filiation proceedings should have first been separately instituted to ascertain the minor child's paternity and that without these proceedings having first resolved in favour of the child's paternity claim, petitioner's action for support could not prosper. (YES)

RULING:

While it is true that the grant of support was contingent on ascertaining paternal relations between respondent and petitioner's daughter, Jhorylle, it was unnecessary for petitioner's action for support to have been dismissed and terminated by the Court of Appeals in the manner that it did. Instead of dismissing the case, the Court of Appeals should have remanded the case to the Regional Trial Court. There, petitioner and her daughter should have been enabled to present evidence to establish their cause of action — inclusive of their underlying claim of paternal relations — against respondent.

Indeed, an **integrated determination of filiation is "entirely appropriate" to the action for support filed by petitioner Richelle for her child.** An action for support may very well resolve that ineluctable issue of paternity if it involves the same parties, is brought before a court with the proper jurisdiction, prays to impel recognition of paternal relations, and invokes judicial intervention to do so. This does not run afoul of any rule. To the contrary, and consistent with Briz v. Briz, this is in keeping with the rules on proper joinder of causes of action. This also serves the interest of judicial economy — avoiding multiplicity of suits and cushioning litigants from the vexation and costs of a protracted pleading of their cause.

Thus, it was improper to rule here, as the Court of Appeals did, that it was impossible to entertain petitioner's child's plea for support without her and petitioner first surmounting the encumbrance of an entirely different judicial proceeding. Without meaning to lend credence to the minutiae of petitioner's claims, it is quite apparent that the rigors of judicial proceedings have been taxing enough for a mother and her daughter whose claim for support amounts to a modest P3,000.00 every month. When petitioner initiated her action, her daughter was a toddler; she is, by now, well into her adolescence. The primordial interest of justice and the basic dictum that procedural rules are to be "liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding"impel us to grant the present Petition.

IN THE MATTER OF PETITION FOR CANCELLATION OF CERTIFICATES OF LIVE BIRTHS OF YUHARES JAN BARCELOTE TINITIGAN AND AVEE KYNNA NOELLE BARCELOTE TINITIGAN JONNA KARLA BAGUIO BARCELOTE, *Petitioner,* -versus – REPUBLIC OF THE PHILIPPINES, RICKY O. TINITIGAN, and LOCAL CIVIL REGISTRAR, DAVAO CITY, *Respondents.*
G.R. No. 222095, SECOND DIVISION, August 7, 2017, CARPIO, *J.*

*Upon the effectivity of **RA 9255**, the provision that illegitimate children **shall** use the surname and shall be under the parental authority of their mother was retained, with an added provision that they **may** use the surname of their father if their filiation has been expressly recognized by their father.*

*In Calimag v. Heirs of Macapaz, we held that "under Section 5 of Act No. 3753, the declaration of **either** parent of the [newborn] **legitimate** child shall be sufficient for the registration of his birth in the civil register, and only in the registration of birth of an **illegitimate** child does the law require that the birth certificate be signed and sworn to **jointly by the parents of the infant**, or **only by the mother if the father refuses to acknowledge the child."***

*Since the undisputed facts show that the children were born outside a valid marriage after 3 August 1988, specifically in June 2008 and August 2011, respectively, then they are the illegitimate children of Tinitigan and Barcelote. **The children shall use the surname of their mother, Barcelote.** Clearly, the subject birth certificates were not executed consistent with the provisions of the law respecting the registration of birth of illegitimate children. Aside from the fact that the entry in the subject birth*

certificates as to the surname of the children is incorrect since it should have been that of the mother, the subject birth certificates are also incomplete as they lacked the signature of the mother.

FACTS:

Petitioner alleged that she bore a child out of wedlock with a married man named Ricky O. Tinitigan (Tinitigan) in her relative's residence in Sibulan, Santa Cruz, Davao del Sur. She was not able to register the birth of their child, whom she named Yohan Grace Barcelote, because she did not give birth in a hospital. To hide her relationship with Tinitigan, she remained in Santa Cruz, Davao del Sur while Tinitigan lived with his legitimate family in Davao City and would only visit her. On 24 August 2011, she bore another child with Tinitigan, whom she named as Joshua Miguel Barcelote. Again, she did not register his birth to avoid humiliation, ridicule, and possible criminal charges. Thereafter, she lost contact with Tinitigan and she returned to Davao City.

When her first child needed a certificate of live birth for school admission, Barcelote finally decided to register the births of both children. However, upon submission of the copies of the late registration of the births to the NSO, Barcelote was informed that there were two certificates of live birth (subject birth certificates) with the same name of the mother and the years of birth of the children in their office.

Thus, Barcelote filed a petition with the RTC for the cancellation of the subject birth certificates registered by Tinitigan without her knowledge and participation, and for containing erroneous entries.

RTC ruled in favour of Barcelote. CA reversed and set aside the decision of the RTC. It ruled that the registrations of the children's births, caused by Tinitigan and certified by a registered midwife, Erlinda Padilla, were valid under Act No. 3753, and such registrations did not require the consent of Barcelote. The CA further ruled that the children can legally and validly use the surname of Tinitigan, since Republic Act No. (RA) 9255, amending Article 176 of the Family Code, allows illegitimate children to use the surname of their father if the latter had expressly recognized them through the record of birth appearing in the civil register.

ISSUE:

Whether the CA erred in not cancelling the certificates of live birth. (YES)

RULING:

Upon the effectivity of **RA 9255**, the provision that illegitimate children **shall** use the surname and shall be under the parental authority of their mother was retained, with an added provision that they **may** use the surname of their father if their filiation has been expressly recognized by their father.

The law is clear that illegitimate children shall use the surname and shall be under the parental authority of their mother. The use of the word "**shall**" underscores its mandatory character. The discretion on the part of the illegitimate child to use the surname of the father is conditional upon proof of compliance with RA 9255 and its IRR.

Since the undisputed facts show that the children were born outside a valid marriage after 3 August 1988, specifically in June 2008 and August 2011, respectively, then they are the illegitimate children

of Tinitigan and Barcelote. **The children shall use the surname of their mother, Barcelote.** The entry in the subject birth certificates as to the surname of the children is therefore incorrect; their surname should have been "**Barcelote**" and not "Tinitigan."

We do not agree with the CA that the subject birth certificates are the express recognition of the children's filiation by Tinitigan, because they were not duly registered in accordance with the law.

In Calimag v. Heirs of Macapaz, we held that "under Section 5 of Act No. 3753, the declaration of **either** parent of the [newborn] **legitimate** child shall be sufficient for the registration of his birth in the civil register, and only in the registration of birth of an **illegitimate** child does the law require that the birth certificate be signed and sworn to **jointly by the parents of the infant**, or **only by the mother if the father refuses to acknowledge the child."**

Thus, it is mandatory that the mother of an illegitimate child signs the birth certificate of her child in all cases, irrespective of whether the father recognizes the child as his or not. The only legally known parent of an illegitimate child, by the fact of illegitimacy, is the mother of the child who conclusively carries the blood of the mother. Thus, this provision ensures that individuals are not falsely named as parents.

Clearly, the subject birth certificates were not executed consistent with the provisions of the law respecting the registration of birth of illegitimate children. Aside from the fact that the entry in the subject birth certificates as to the surname of the children is incorrect since it should have been that of the mother, the subject birth certificates are also incomplete as they lacked the signature of the mother.

ROMEO F. ARA AND WILLIAM A. GARCIA, *Petitioners,* -versus – DRA. FELY S. PIZARRO AND HENRY ROSSI, *Respondents.*
G.R. No. 222095, SECOND DIVISION, August 7, 2017, CARPIO, *J.*

An alleged parent is the best person to affirm or deny a putative descendant's filiation. Absent a record of birth appearing in a civil register or a final judgment, an express admission of filiation in a public document, or a handwritten instrument signed by the parent concerned, a deceased person will have no opportunity to contest a claim of filiation.

*Petitioners submitted in evidence a **delayed registration of birth** of Garcia, pursuant to this rule. **A delayed registration of birth, made after the death of the putative parent, is tenuous proof of filiation.***

*Josefa passed away in 2002. After her death, petitioners could no longer be allowed to introduce evidence of open and continuous illegitimate filiation to Josefa. The only evidence allowed under the law would be **a record of birth appearing in the civil register** or a **final judgment**, or an **admission of legitimate filiation in a public document or a private signed, handwritten instruction by Josefa.***

FACTS:

Petitioners and respondents all claimed to be children of the late Josefa A. Ara (Josefa). Petitioners assert that Fely S. Pizarro (Pizarro) was born to Josefa and her then husband, Vicente Salgado (Salgado), who died during World War II. At some point toward the end of the war, Josefa met and

lived with an American soldier by the name of Darwin Gray (Gray). Romeo F. Ara (Ara) was born from this relationship. Josefa later met a certain Alfredo Garcia (Alfredo), and, from this relationship, gave birth to sons Ramon Garcia (Ramon) and William A. Garcia (Garcia). Josefa and Alfredo married on January 24, 1952. After Alfredo passed away, Josefa met an Italian missionary named Frank Rossi, who allegedly fathered Henry Rossi (Rossi).

Petitioners, together with Ramon and herein respondent Rossi (collectively, plaintiffs a quo), verbally sought partition of the properties left by the deceased Josefa, which were in the possession of respondent Pizarro.

RTC awarded certain properties to Rossi and Pizarro whereas the remaining properties are declared under the co-ownership of all the plaintiffs and defendant. CA held that only respondents were the children of the late Josefa. Hence, this appeal. Petitioners claim that the Court of Appeals did not apply the second paragraph of Article 172 of the Family Code, which states that filiation may be established even without the record of birth appearing in the civil register, or an admission of filiation in a public or handwritten document.

ISSUE:

Whether petitioners may prove their filiation to Josefa through their open and continuous possession of the status of illegitimate children. (NO)

RULING:

Petitioners did not present evidence that would prove their illegitimate filiation to their putative parent, Josefa, after her death as provided under Articles 172 and 175 of the Family Code.

True, birth certificates offer prima facie evidence of filiation. To overthrow the presumption of truth contained in a birth certificate, a high degree of proof is needed. However, the circumstances surrounding the delayed registration prevent us from according it the same weight as any other birth certificate.

Thus, petitioners submitted in evidence a **delayed registration of birth** of Garcia, pursuant to this rule. **A delayed registration of birth, made after the death of the putative parent, is tenuous proof of filiation.** Thus, we are unable to accord petitioner Garcia's delayed registration of birth the same evidentiary weight as regular birth certificates.

Even without a record of birth appearing in the civil register or a final judgment, filiation may still be established after the death of a putative parent through an **admission of filiation in a public document** or a **private handwritten instrument, signed by the parent concerned**. However, petitioners did not present in evidence any admissions of filiation.

Josefa passed away in 2002. After her death, petitioners could no longer be allowed to introduce evidence of open and continuous illegitimate filiation to Josefa. The only evidence allowed under the law would be **a record of birth appearing in the civil register** or a **final judgment**, or an **admission of legitimate filiation in a public document or a private signed, handwritten instruction by Josefa.**

An alleged parent is the best person to affirm or deny a putative descendant's filiation. Absent a record of birth appearing in a civil register or a final judgment, an express admission of filiation in a public document, or a handwritten instrument signed by the parent concerned, a deceased person will have no opportunity to contest a claim of filiation.

The limitation that an action to prove filiation as an illegitimate child be brought within the lifetime of an alleged parent acknowledges that there may be other persons whose rights should be protected from spurious claims. This includes other children, legitimate and illegitimate, whose statuses are supported by strong evidence of a categorical nature.

ADOPTION

ROSARIO MATA CASTRO and JOANNE BENEDICTA CHARISSIMA M. CASTRO, A.K.A. "MARIA SOCORRO M. CASTRO" and "JAYROSE M. CASTRO", *Petitioners,* -versus – JOSE MARIA JED LEMUEL GREGORIO and ANA MARIA REGINA GREGORIO, *Respondents.*
G.R. No. 188801, SECOND DIVISION, October 15, 2014, LEONEN, *J.*

*The law on adoption requires that the adoption by the father of a child born out of wedlock obtain not only the consent of his **wife** but also the consent of his **legitimate children.** The provision is mandatory. As a general rule, the husband and wife must file a **joint petition** for adoption. The law provides for several exceptions to the general rule, as in a situation **where a spouse seeks to adopt his or her own children born out of wedlock.***

For Jose to be eligible to adopt Jed and Regina, Rosario must first signify her consent to the adoption. Jose, however, did not validly obtain Rosario's consent. His submission of a fraudulent affidavit of consent in her name cannot be considered compliance of the requisites of the law.

FACTS:

Atty. Jose G. Castro (Jose) adopted respondents Jed and Regina. Jose is the estranged husband of petitioner Rosario and the father of petitioner Joanne. Rosario alleged that she and Jose were married on August 5, 1962 in Laoag City. Rosario allegedly left Jose after a couple of months because of the incompatibilities between them. Rosario and Jose, however, briefly reconciled in 1969. Rosario gave birth to Joanne a year later. She and Jose allegedly lived as husband and wife for about a year even if she lived in Manila and Jose stayed in Laoag City. Jose would visit her in Manila during weekends. Afterwards, they separated permanently because Rosario alleged that Jose had homosexual tendencies.

Jose filed a petition for adoption before the Regional Trial Court of Batac, Ilocos Norte, alleging that Jed and Regina were his illegitimate children with Lilibeth Fernandez Gregorio (Lilibeth), whom Rosario alleged was his erstwhile housekeeper.

The trial court approved the petition. Rosario and Joanne filed a petition for annulment of judgment. However, the Court of Appeals denied the petition. Hence, this appeal. Petitioners argue that they should have been given notice by the trial court of the adoption, as adoption laws require their consent as a requisite in the proceedings. They argue that because of the fabricated consent obtained by Jose and the alleged false information shown in the birth certificates presented as evidence before the trial court, they were not given the opportunity to oppose the petition since the entire proceedings were concealed from them.

ISSUE:

Whether the pettioners are correct in arguing that they should have been given notice by the trial court of the adoption. (YES)

RULING:

As Jose filed the petition for adoption on August 1, 2000, it is **Republic Act No. 8552** which applies over the proceedings. The law on adoption requires that the adoption by the father of a child born out of wedlock obtain not only the consent of his **wife** but also the consent of his **legitimate children.** The provision is mandatory. As a general rule, the husband and wife must file a **joint petition** for adoption. The law provides for several exceptions to the general rule, as in a situation **where a spouse seeks to adopt his or her own children born out of wedlock.** In this instance, joint adoption is not necessary. However, the spouse seeking to adopt must first obtain the consent of his or her spouse.

In the absence of any decree of legal separation or annulment, Jose and Rosario remained legally married despite their de facto separation. For Jose to be eligible to adopt Jed and Regina, Rosario must first signify her consent to the adoption. Jose, however, did not validly obtain Rosario's consent. His submission of a fraudulent affidavit of consent in her name cannot be considered compliance of the requisites of the law. Had Rosario been given notice by the trial court of the proceedings, she would have had a reasonable opportunity to contest the validity of the affidavit. Since her consent was not obtained, Jose was ineligible to adopt.

The consent of the adopter's other children is necessary as it ensures harmony among the prospective siblings. It also sufficiently puts the other children on notice that they will have to share their parent's love and care, as well as their future legitimes, with another person.

It is undisputed that Joanne was Jose and Rosario's legitimate child and that she was over 10 years old at the time of the adoption proceedings. Her written consent, therefore, was necessary for the adoption to be valid.

REPUBLIC OF THE PHILIPPINES, *Petitioner* – versus – COURT OF APPEALS and ZENAIDA C. BOBILES, *Respondents.*

G.R. No. 92326, SECOND DIVISION, January 24, 1992, REGALADO, *J.*

A petition cannot be dismissed by reason of failure to comply with a law which was not yet in force and effect at the time. As long as the petition for adoption was sufficient in form and substance in accordance with the law in governance at the time it was filed, the court acquires jurisdiction and retains it until it fully disposes of the case.

In the case at bar, the rights concomitant to and conferred by the decree of adoption will be for the best interests of the child. His adoption is with the consent of his natural parents. The representative of the Department of Social Welfare and Development unqualifiedly recommended the approval of the petition for adoption and the trial court dispensed with the trial custody for several commendatory reasons, especially since the child had been living with the adopting parents since infancy. Further, the said petition was with the sworn written consent of the children of the adopters.

FACTS:

Zenaida Corteza Bobiles filed a petition to adopt Jason Condat, then six years old and who had been living with her family since he was four months old before the RTC.

The petition for adoption was filed by private respondent Zenaida C. Bobiles on February 2, 1988, when the law applicable was Presidential Decree No. 603, the Child and Youth Welfare Code. Under said code, a petition for adoption may be filed by either of the spouses or by both of them. However, after the trial court rendered its decision and while the case was pending on appeal in the Court of Appeals, Executive Order No. 209, the Family Code, took effect on August 3, 1988. Under the said new law, joint adoption by husband and wife is mandatory.

Petitioner contended that the petition for adoption should be dismissed for it was filed solely by private respondent without joining her husband, in violation of Article 185 of the Family Code which requires joint adoption by the spouses. It argued that the Family Code must be applied retroactively to the petition filed by Mrs. Bobiles, as the latter did not acquire a vested right to adopt Jason Condat by the mere filing of her petition for adoption.

ISSUE:

Whether or not the petition for adoption should be dismissed. (NO)

RULING:

A petition cannot be dismissed by reason of failure to comply with a law which was not yet in force and effect at the time. As long as the petition for adoption was sufficient in form and substance in accordance with the law in governance at the time it was filed, the court acquires jurisdiction and retains it until it fully disposes of the case.

In determining whether or not to set aside the decree of adoption the interests and welfare of the child are of primary and paramount consideration. The welfare of a child is of paramount consideration in proceedings involving its custody and the propriety of its adoption by another, and the courts to which the application for adoption is made is charged with the duty of protecting the child and its interests and, to bring those interests fully before it, it has authority to make rules to accomplish that end. Ordinarily, the approval of the adoption rests in the sound discretion of the court. This discretion should be exercised in accordance with the best interests of the child, as long as the natural rights of the parents over the child are not disregarded. In the absence of a showing of grave abuse, the exercise of this discretion by the approving official will not be disturbed.

In the case at bar, the rights concomitant to and conferred by the decree of adoption will be for the best interests of the child. His adoption is with the consent of his natural parents. The representative of the Department of Social Welfare and Development unqualifiedly recommended the approval of the petition for adoption and the trial court dispensed with the trial custody for several commendatory reasons, especially since the child had been living with the adopting parents since infancy. Further, the said petition was with the sworn written consent of the children of the adopters.

Adoption statutes, being humane and salutary, hold the interests and welfare of the child to be of paramount consideration. They are designed to provide homes, parental care and education for unfortunate, needy or orphaned children and give them the protection of society and family in the

person of the adopted, as well as to allow childless couples or persons to experience the joys of parenthood and give them legally a child in the person of the adopted for the manifestation of their natural parental instincts.

HERBERT CANG, *Petitioner* – versus – COURT OF APPEALS and Spouses RONALD V. CLAVANO and MARIA CLARA CLAVANO, *Respondents.*
G.R. No. 105308, THIRD DIVISION, September 25, 1998, ROMERO, *J.*

Based on Article 188 of the Family Code, the written consent of the natural parent to the adoption is a requisite for its validity. Nevertheless, the requirement of written consent can be dispensed with **if the parent has abandoned the child** or that **such parent is "insane or hopelessly intemperate."**

In reference to abandonment of a child by his parent, the act of abandonment imports "any conduct of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child." It means "**neglect or refusal to perform the natural and legal obligations of care and support which parents owe their children**."

In the instant case, only the affidavit of consent of the natural mother was attached to the petition for adoption. Petitioner's consent, as the natural father is lacking. Nonetheless, the petition sufficiently alleged the fact of abandonment of the minors for adoption by the natural father. This Court finds that both the lower court and the Court of Appeals failed to appreciate facts and circumstances that should have elicited a different conclusion on the issue of whether petitioner has so abandoned his children, thereby making his consent to the adoption unnecessary. In the instant case records disclose that petitioner's conduct did not manifest a settled purpose to forego all parental duties and relinquish all parental claims over his children as to constitute abandonment. **Physical estrangement alone, without financial and moral desertion, is not tantamount to abandonment.**

FACTS:

Keith, Charmaine, and Joseph Anthony are the natural children of Herbert Cang and Anna Marie Clavano. Later due to the extramarital affairs of Herbert, Anna filed a petition for legal separation which was granted. The decree of legal separation conferred Anna the custody of the children. Meanwhile, Ronald V. Clavano and Maria Clara Diago Clavano, respectively the brother and sister-in-law of Anna Marie, filed a petition for adoption the three children before the Branch 14 of RTC Cebu City. This petition was accompanied by an affidavit of consent executed by Anna. The affidavit further alleged that Herbert had long forfeited his parental rights over their children.

Herbert, upon knowing the institution of such petition for adoption, went home to the Philippines and interposed his opposition to the adoption claiming that the petition was defective since it lacks his consent. He also moved for the reacquisition of his custody over his children and the same was later granted by Branch 19 of RTC Cebu City. Later, the RTC Branch 14, issued a decree granting the petition for adoption and in doing so, the RTC ruled that Herbert has abandoned his children and such abandonment is a ground for dispensing with his consent to the adoption. On appeal, the CA affirmed the decree of adoption. Motion for reconsideration filed by Herbert was likewise denied. Hence this appeal.

ISSUE:

Whether the petition for adoption was defective for lack of Herbert's consent. (YES)

RULING:

Based on Article 188 of the Family Code, the written consent of the natural parent to the adoption is a requisite for its validity. Nevertheless, the requirement of written consent can be dispensed with **if the parent has abandoned the child** or that **such parent is "insane or hopelessly intemperate."** However, in cases where the father opposes the adoption primarily because his consent thereto was not sought, the matter of whether he had abandoned his child becomes a proper issue for determination. The issue of abandonment by the oppositor natural parent is a preliminary issue that an adoption court must first confront. In reference to abandonment of a child by his parent, the act of abandonment imports "any conduct of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child." It means "**neglect or refusal to perform the natural and legal obligations of care and support which parents owe their children**."

In the instant case, only the affidavit of consent of the natural mother was attached to the petition for adoption. Petitioner's consent, as the natural father is lacking. Nonetheless, the petition sufficiently alleged the fact of abandonment of the minors for adoption by the natural father. This Court finds that both the lower court and the Court of Appeals failed to appreciate facts and circumstances that should have elicited a different conclusion on the issue of whether petitioner has so abandoned his children, thereby making his consent to the adoption unnecessary. In the instant case records disclose that petitioner's conduct did not manifest a settled purpose to forego all parental duties and relinquish all parental claims over his children as to constitute abandonment. **Physical estrangement alone, without financial and moral desertion, is not tantamount to abandonment.** While admittedly, petitioner was physically absent as he was then in the United States, he was not remiss in his natural and legal obligations of love, care and support for his children. He maintained regular communication with his wife and children through letters and telephone. He used to send packages by mail and catered to their whims. Indeed, it would be against the spirit of the law if financial consideration were to be the paramount consideration in deciding whether to deprive a person of parental authority over his children. There should be a holistic approach to the matter, taking into account the physical, emotional, psychological, mental, social and spiritual needs of the child. The conclusion of the courts below that petitioner abandoned his family needs more evidentiary support other than his inability to provide them the material comfort that his admittedly affluent in-laws could provide. There should be proof that he had so emotionally abandoned them that his children would not miss his guidance and counsel if they were given to adopting parents. The letters he received from his children prove that petitioner maintained the more important emotional tie between him and his children. The children needed him not only because he could cater to their whims but also because he was a person they could share with their daily activities, problems and triumphs. The law is clear that either parent may lose parental authority over the child only for a valid reason. No such reason was established in the legal separation case. In the instant case for adoption, the issue is whether or not petitioner had abandoned his children as to warrant dispensation of his consent to their adoption. Deprivation of parental authority is one of the effects of a decree of adoption. But there cannot be a valid decree of adoption in this case precisely because, as this Court has demonstrated earlier, the finding of the courts below on the issue of petitioner's abandonment of his family was based on a misappropriation that was tantamount to non-

appreciation, of facts on record. Said petition must be denied as it was filed without the required consent of their father who, by law and under the facts of the case at bar, has not abandoned them.

IN THE MATTER OF THE PETITION FOR A WRIT OF HABEAS CORPUS OF MINOR ANGELIE ANNE C. CERVANTES, NELSON L. CERVANTES and ZENAIDA CARREON CERVANTES, *Petitioners* – versus – GINA CARREON FAJARDO and CONRADO FAJARDO, *Respondents.*
G.R. No. 79955, SECOND DIVISION, January 27, 1989, PADILLA, *J.* (Resolution)

In all cases involving the custody, care, education and property of children, the latter's welfare is paramount. The provision that no mother shall be separated from a child under five (5) years of age, will not apply ***where the Court finds compelling reasons to rule otherwise.*** *In all controversies regarding the custody of minors, the foremost consideration is the moral, physical and social welfare of the child concerned, taking into account the resources and moral as well as social standing of the contending parents. Never has this Court deviated from this criterion.*

It is undisputed that respondent Conrado Fajardo is legally married to a woman other than respondent Gina Carreon, and his relationship with the latter is a common-law husband and wife relationship. ***His open cohabitation with co-respondent Gina Carreon will not accord the minor that desirable atmosphere where she can grow and develop into an upright and moral-minded person.***

Besides, the minor has been legally adopted by petitioners with the full knowledge and consent of respondents. A decree of adoption has the effect, among others, of dissolving the authority vested in natural parents over the adopted child, except where the adopting parent is the spouse of the natural parent of the adopted, in which case, parental authority over the adopted shall be exercised jointly by both spouses.

FACTS:

Angelie Anne Fajardo, the child of Conrado Fajardo and Gina Carreon out of their common law marriage, was offered for adoption to Zenaida Carreon-Cervantes and Nelson Cervantes. Affidavit of Consent to the adoption of the child was also executed by Gina Carreon. Later, Spouses Cervantes filed a petition for adoption before the RTC of Rizal which granted the petition making Angelie Anne Cervantes the child of the spouses Cervantes.

Later, the spouses Cervantes received a letter from the biological parents of Angelie demanding a sum of money to which they never heeded. The biological parents threatened to get back the child in case of non-payment. True to their word, Gina Carreon took the child and brought her to her residence. Demand to return the child were also unheeded. This prompted spouses Cervantes to file a petition for a writ of *Habeas Corpus* before the Supreme Court.

ISSUE:

Whether Gina Carreon is entitled to the custody of the child. (NO)

RULING:

In all cases involving the custody, care, education and property of children, the latter's welfare is paramount. The provision that no mother shall be separated from a child under five (5) years of age, will not apply **where the Court finds compelling reasons to rule otherwise.** In all controversies

regarding the custody of minors, the foremost consideration is the moral, physical and social welfare of the child concerned, taking into account the resources and moral as well as social standing of the contending parents. Never has this Court deviated from this criterion.

It is undisputed that respondent Conrado Fajardo is legally married to a woman other than respondent Gina Carreon, and his relationship with the latter is a common-law husband and wife relationship. **His open cohabitation with co-respondent Gina Carreon will not accord the minor that desirable atmosphere where she can grow and develop into an upright and moral-minded person.** Besides, respondent Gina Carreon had previously given birth to another child by another married man with whom she lived for almost three (3) years but who eventually left her and vanished. For a minor (like Angelie Anne C. Cervantes) to grow up with a sister whose "father" is not her true father, could also affect the moral outlook and values of said minor. Upon the other hand, petitioners who are legally married appear to be morally, physically, financially, and socially capable of supporting the minor and giving her a future better than what the natural mother (herein respondent Gina Carreon), who is not only jobless but also maintains an illicit relation with a married man, can most likely give her.

Besides, the minor has been legally adopted by petitioners with the full knowledge and consent of respondents. A decree of adoption has the effect, among others, of dissolving the authority vested in natural parents over the adopted child, except where the adopting parent is the spouse of the natural parent of the adopted, in which case, parental authority over the adopted shall be exercised jointly by both spouses. The adopting parents have the right to the care and custody of the adopted child and exercise parental authority and responsibility over him.

MACARIO TAMARGO, CELSO TAMARGO, and AURELIA TAMARGO, *Petitioners* – versus – HON. COURT OF APPEALS; THE HON. ARISTON L. RUBIO, RTC Judge, Branch 20, Vigan, Ilocos Sur; VICTOR BUNDOC; and CLARA BUNDOC, *Respondents*.
G.R. No. 85044, THIRD DIVISION, June 3, 1992, FELICIANO, *J.*

Retroactive effect may not be given to the decree of adoption so as to impose a liability upon the adopting parents accruing at a time when adopting parents had no actual or physically custody over the adopted child. *Retroactive affect may perhaps be given to the granting of the petition for adoption where such is essential to permit the accrual of some benefit or advantage in favor of the adopted child.*

Put a little differently, no presumption of parental dereliction on the part of the adopting parents, the Rapisura spouses, could have arisen since Adelberto was not in fact subject to their control at the time the tort was committed.

FACTS:

Due to a shooting incident that led to the death of Jennifer Tamargo, a civil case for damages was filed by Macario Tamargo and spouses Celso and Aurelia Tamargo, the adopting parent and natural parents of Jennifer Tamargo, respectively, against spouses Victor and Clara Bundoc, natural parents of Adelberto Bundoc, a minor. Prior to the incident, there is pending petition to adopt Adelberto Bundoc filed by spouses Sabas and Felisa Rapisura before the RTC of Ilocos Sur. The said petition was granted after Adelberto had shot and killed Jennifer. In their Answer, the spouses **Bundoc contended that due to the approval of the petition for adoption, parental authority over Adelberto has already shifted to the spouses Rapisura**, hence they the indispensable party to the

case. The RTC dismissed the petition holding that Spouses Bundoc is not the indispensable party. Motion for reconsideration was likewise denied due to failure to file it within the reglementary period and failure to observe the 3-day notice rule. The Tamargos then elevated the case to the CA via petition for *mandamus* and *certiorari* however the same was also dismissed. Hence this petition.

ISSUE:

Whether the effects of adoption, insofar as parental authority is concerned may be given retroactive effect so as to make the adopting parents the indispensable parties in a damage case filed against their adopted child, for acts committed by the latter, when actual custody was yet lodged with the biological parents. (NO)

RULING:

The shooting of Jennifer by Adelberto with an air rifle occured when parental authority was still lodged in respondent Bundoc spouses, the natural parents of the minor Adelberto. It would thus follow that the **natural parents who had then actual custody of the minor Adelberto**, are the indispensable parties to the suit for damages. The Court does not believe that parental authority is properly regarded as having been retroactively transferred to and vested in the adopting parents, the Rapisura spouses, at the time the air rifle shooting happened. **Retroactive effect may not be given to the decree of adoption so as to impose a liability upon the adopting parents accruing *at a time when adopting parents had no actual or physically custody over the adopted child*.** Retroactive affect may perhaps be given to the granting of the petition for adoption where such is essential to permit the accrual of some benefit or advantage in favor of the adopted child. In the instant case, however, to hold that parental authority had been retroactively lodged in the Rapisura spouses so as to burden them with liability for a tortious act that they could not have foreseen and which they could not have prevented (since they were at the time in the United States and had no physical custody over the child Adelberto) would be unfair and unconscionable. Such a result, moreover, would be inconsistent with the philosophical and policy basis underlying the doctrine of vicarious liability. **Put a little differently, no presumption of parental dereliction on the part of the adopting parents, the Rapisura spouses, could have arisen since Adelberto was not in fact subject to their control at the time the tort was committed.**

Article 35 of the Child and Youth Welfare Code fortifies the conclusion reached above. Article 35 provides as follows:
"Art. 35. Trial Custody. — No Petition for adoption shall be finally granted unless and until the adopting parents are given by the courts a supervised trial custody period of at least six months to assess their adjustment and emotional readiness for the legal union. During the period of trial custody, parental authority shall be vested in the adopting parents." (Emphasis supplied)
Under the above Article 35, parental authority is provisionally vested in the adopting parents during the **period of trial custody**, i.e., before the issuance of a decree of adoption, precisely because the adopting parents are given actual custody of the child during such trial period. In the instant case, the trial custody period either had not yet begun or had already been completed at the time of the air ri e shooting; in any case, actual custody of Adelberto was then with his natural parents, not the adopting parents.

ISABELITA S. LAHOM, *Petitioner* – versus – JOSE MELVIN SIBULO (previously referred to as "DR. MELVIN S. LAHOM"), *Respondent*.
G.R. No. 143989, FIRST DIVISION, July 14, 2003, VITUG, *J*.

While adoption has often been referred to in the context of a "right," the privilege to adopt is itself ***not naturally innate or fundamental*** *but rather a* ***right merely created by statute****. It is a privilege that is governed by the state's determination on what it may deem to be for the best interest and welfare of the child. Matters relating to adoption, including the withdrawal of the right of an adopter to nullify the adoption decree, are subject to regulation by the State. Concomitantly, a right of action given by statute may be taken away at anytime before it has been exercised.*

It was months after the effectivity of R.A. No. 8552 that herein petitioner filed an action to revoke the decree of adoption granted in 1975. By then, the new law, had already abrogated and repealed the right of an adopter under the Civil Code and the Family Code to rescind a decree of adoption. The Court should now hold that the action for rescission of the adoption decree, having been initiated by petitioner after RA 8552 had come into force, no longer could be pursued.

FACTS:

Petitioner Isabelita S. Lahom and her late husband legally adopted respondent Jose Melvin Sibulo. In keeping with the court order, the Civil Registrar of Naga City changed the name "Jose Melvin Sibulo" to "Jose Melvin Lahom." However, in view of respondent's insensible attitude resulting in a strained and uncomfortable relationship between him and petitioner, the latter has suffered wounded feelings, knowing that after all respondent's only motive to his adoption is his expectancy of his alleged rights over the properties of herein petitioner and her late husband, clearly shown by his filing of a civil case for partition against petitioner. Mrs. Lahom commenced a petition to rescind the decree of adoption before the Regional Trial Court (RTC), Branch 22, of Naga City. Respondent moved for the dismissal of the petition, contending principally that petitioner had no cause of action in view of the provisions of R.A. No. 8552 (Domestic Adoption Act). The statute deleted from the law the right of adopters to rescind a decree of adoption. Petitioner asseverated, by way of opposition, that the proscription in R.A. No. 8552 should not retroactively apply, i.e., to cases where the ground for rescission of the adoption vested under the regime of then Article 348 of the Civil Code and Article 192 of the Family Code. The trial court dismissed the petition. Hence, the present petition.

ISSUE:

Whether the adoption, decreed on 05 May 1972, may still be revoked or rescinded by an adopter after the effectivity of R.A. No. 8552. (No)

RULING:

It was months after the effectivity of R.A. No. 8552 that herein petitioner filed an action to revoke the decree of adoption granted in 1975. By then, the new law, had already abrogated and repealed the right of an adopter under the Civil Code and the Family Code to rescind a decree of adoption. The Court should now hold that the action for rescission of the adoption decree, having been initiated by petitioner after RA 8552 had come into force, no longer could be pursued.

Even before the passage of the statute, an action to set aside the adoption is subject to the five-year bar rule under Rule 100 of the Rules of Court and that the adopter would lose the right to revoke the

adoption decree after the lapse of that period. The exercise of the right within a prescriptive period is a condition that could not fulfil the requirements of a vested right entitled to protection. It must also be acknowledged that a person has no vested right in statutory privileges. While adoption has often been referred to in the context of a "right," the privilege to adopt is itself **not naturally innate or fundamental** but rather a **right merely created by statute**. It is a privilege that is governed by the state's determination on what it may deem to be for the best interest and welfare of the child. Matters relating to adoption, including the withdrawal of the right of an adopter to nullify the adoption decree, are subject to regulation by the State. Concomitantly, a right of action given by statute may be taken away at anytime before it has been exercised.

While R.A. No. 8552 has unqualifiedly withdrawn from an adopter a consequential right to rescind the adoption decree even in cases where the adoption might clearly turn out to be undesirable, it remains, nevertheless, the bounden duty of the Court to apply the law. Dura lex sed lex would be the hackneyed truism that those caught in the law have to live with. It is still noteworthy, however, that an adopter, while barred from severing the legal ties of adoption, can always for valid reasons cause the forfeiture of certain benefits otherwise accruing to an undeserving child. For instance, upon the grounds recognized by law, an adopter may deny to an adopted child his legitime and, by a will and testament, may freely exclude him from having a share in the disposable portion of his estate.

IN THE MATTER OF THE ADOPTION OF STEPHANIE NATHY ASTORGA GARCIA
G.R. No. 148311, THIRD DIVISION, March 31, 2005, SANDOVAL-GUTIERREZ, *J.*

*Notably, the law is likewise silent as to what **middle name** an adoptee may use. Article 365 of the Civil Code merely provides that "an adopted child shall bear the **surname** of the adopter."*

Being a legitimate child by virtue of her adoption, it follows that Stephanie is entitled to all the rights provided by law to a legitimate child without discrimination of any kind, including the right to bear the surname of her father and her mother, as discussed above. This is consistent with the intention of the members of the Civil Code and Family Law Committees as earlier discussed. In fact, it is a Filipino custom that the initial or surname of the mother should immediately precede the surname of the father.

Additionally, as aptly stated by both parties, Stephanie's continued use of her mother's surname (Garcia) as her middle name will maintain her maternal lineage.

FACTS:

Stephanie Nathy Astorga Garcia is the biological child of Honorato B. Catindig and Gemma Astorga Garcia out of wed-lock. Due to the demise of Gemma, Honorato filed a petition to adopt his minor illegitimate child and prayed that Stephanie's middle name Astorga be changed to "Garcia," her mother's surname, and that her surname "Garcia" be changed to "Catindig," his surname. The trial court granted the petition and pronounced Stephanie as the child of Honorato and shall be known as **Stephanie Nathy Catindig**. Later, Honorato filed a motion for clarification and/or reconsideration praying that Stephanie should be allowed to use the surname of her natural mother as her middle name. The trial court, however, denied the same holding that there is no law or jurisprudence allowing an adopted child to use the surname of his biological mother as his middle name. Hence, this present petition.

ISSUE:

Whether an illegitimate child may use the surname of her mother as her middle name when she is subsequently adopted by her natural father. (YES)

RULING:

As correctly submitted by both parties, there is no law regulating the use of a middle name. Even Article 176 11 of the Family Code, as amended by Republic Act No. 9255, otherwise known as "An Act Allowing Illegitimate Children To Use The Surname Of Their Father," is silent as to what middle name a child may use.

Notably, the law is likewise silent as to what **middle name** an adoptee may use. Article 365 of the Civil Code merely provides that "an adopted child shall bear the **surname** of the adopter."

Being a legitimate child by virtue of her adoption, it follows that Stephanie is entitled to all the rights provided by law to a legitimate child without discrimination of any kind, including the right to bear the surname of her father and her mother, as discussed above. This is consistent with the intention of the members of the Civil Code and Family Law Committees as earlier discussed. In fact, it is a Filipino custom that the initial or surname of the mother should immediately precede the surname of the father.

Additionally, as aptly stated by both parties, Stephanie's continued use of her mother's surname (Garcia) as her middle name will maintain her maternal lineage. It is to be noted that Article 189(3) of the Family Code and Section 18, Article V of RA 8552 (law on adoption) provide that the adoptee remains an intestate heir of his/her biological parent. Hence, Stephanie can well assert or claim her hereditary rights from her natural mother in the future.

Moreover, records show that Stephanie and her mother are living together in the house built by petitioner for them at 390 Tumana, San Jose, Baliuag, Bulacan. Petitioner provides for all their needs. Stephanie is closely attached to both her mother and father. She calls them "Mama" and "Papa". Indeed, they are one normal happy family. Hence, to allow Stephanie to use her mother's surname as her middle name will not only sustain her continued loving relationship with her mother but will also eliminate the stigma of her illegitimacy.

It is a settled rule that adoption statutes, being humane and salutary, should be liberally construed to carry out the beneficent purposes of adoption. The interests and welfare of the adopted child are of primary and paramount consideration, hence, every reasonable intendment should be sustained to promote and fulfill these noble and compassionate objectives of the law.

DIWATA RAMOS LANDINGIN, *Petitioner,* -versus – REPUBLIC OF THE PHILIPPINES, *Respondent.*

G.R. No. 164948, FIRST DIVISION, June 27, 2006, CALLEJO, SR., *J.*

*The written consent of the biological parents is **indispensable** for the validity of a decree of adoption. Indeed, the natural right of a parent to his child requires that his consent must be obtained before his parental rights and duties may be terminated and re-established in adoptive parents. In this case, petitioner failed to submit the written consent of Amelia Ramos to the adoption.*

Since the primary consideration in adoption is the best interest of the child, it follows that the financial capacity of prospective parents should also be carefully evaluated and considered. Certainly, the adopter should be in a position to support the would-be adopted child or children, in keeping with the means of the family.

At the time of the filing of the petition, petitioner was 57 years old, employed on a part-time basis as a waitress, earning $5.15 an hour and tips of around $1,000 a month. Petitioner's main intention in adopting the children is to bring the latter to Guam, USA. She has a house at Quitugua Subdivision in Yigo, Guam, but the same is still being amortized. Petitioner likewise knows that the limited income might be a hindrance to the adoption proceedings.

FACTS:

Diwata Ramos Landingin, a citizen of the United States of America (USA), of Filipino parentage and a resident of Guam, USA, filed a petition for the adoption of minors Elaine Dizon Ramos, Elma Dizon Ramos, and Eugene Dizon Ramos. The minors are the natural children of Manuel Ramos, petitioner's brother, and Amelia Ramos.

She alleged that when Manuel died on May 19, 1990, the children were left to their paternal grandmother, Maria Taruc Ramos; their biological mother, Amelia, went to Italy, re-married there and now has two children by her second marriage and no longer communicated with her children by Manuel Ramos nor with her in-laws from the time she left up to the institution of the adoption; the minors are being financially supported by the petitioner and her children, and relatives abroad; as Maria passed away on November 23, 2000, petitioner desires to adopt the children; the minors have given their written consent to the adoption; she is qualified to adopt as shown by the fact that she is a 57-year-old widow, has children of her own who are already married, gainfully employed and have their respective families; she lives alone in her own home in Guam, USA, where she acquired citizenship, and works as a restaurant server. She came back to the Philippines to spend time with the minors; her children gave their written consent to the adoption of the minors. Petitioner's brother, Mariano Ramos, who earns substantial income, signified his willingness and commitment to support the minors while in petitioner's custody.

The trial court granted the petition. However, the OSG appealed and contended that the trial court erred in granting the petition for adoption despite the lack of consent of the proposed adoptees' biological mother. CA reversed the ruling of the RTC. Hence, this appeal. Petitioner, nonetheless, argues that the written consent of the biological mother is no longer necessary because when Amelia's husband died in 1990, she left for Italy and never came back. Hence, Amelia, the biological mother, had effectively abandoned the children. Petitioner further contends that it was by twist of fate that after 12 years, when the petition for adoption was pending with the RTC that Amelia and her child by her second marriage were on vacation in the Philippines. Pagbilao, the DSWD social worker, was able to meet her, and during the meeting, Amelia intimated to the social worker that she conformed to the adoption of her three children by the petitioner.

ISSUE:

1. Whether the petitioner is entitled to adopt the minors without the written consent of their biological mother Amelia Ramos. (NO)
2. Whether petitioner is financially capable of supporting the adoptees. (NO)

RULING:

1. Clearly, the written consent of the biological parents is **indispensable** for the validity of a decree of adoption. Indeed, the natural right of a parent to his child requires that his consent must be obtained before his parental rights and duties may be terminated and re-established in adoptive parents. In this case, petitioner failed to submit the written consent of Amelia Ramos to the adoption. Petitioner's contention must be rejected. When she filed her petition with the trial court, Rep. Act No. 8552 was already in effect. Section 9 thereof provides that if the written consent of the biological parents cannot be obtained, the written consent of the legal guardian of the minors will suffice. If, as claimed by petitioner, that the biological mother of the minors had indeed abandoned them, she should, thus have adduced the written consent of their legal guardian.

When Amelia left for Italy, she had not intended to abandon her children, or to permanently sever their mother-child relationship. She was merely impelled to leave the country by financial constraints. Yet, even while abroad, she did not surrender or relinquish entirely her motherly obligations of rearing the children to her now deceased mother-in- law, for, as claimed by Elaine herself, she consulted her mother, Amelia, for serious personal problems. Likewise, Amelia continues to send financial support to the children, though in minimal amounts as compared to what her affluent in-laws provide.

2. Since the primary consideration in adoption is the best interest of the child, it follows that the financial capacity of prospective parents should also be carefully evaluated and considered. Certainly, the adopter should be in a position to support the would-be adopted child or children, in keeping with the means of the family.

According to the Adoption Home Study Report forwarded by the Department of Public Health & Social Services of the Government of Guam to the DSWD, petitioner is no longer supporting her legitimate children, as the latter are already adults, have individual lives and families. At the time of the filing of the petition, petitioner was 57 years old, employed on a part-time basis as a waitress, earning $5.15 an hour and tips of around $1,000 a month. Petitioner's main intention in adopting the children is to bring the latter to Guam, USA. She has a house at Quitugua Subdivision in Yigo, Guam, but the same is still being amortized. Petitioner likewise knows that the limited income might be a hindrance to the adoption proceedings.

MANUEL L. BAUTISTA, SPS. ANGEL SAHAGUN and CARMELITA BAUTISTA and ANIANO L. BAUTISTA, *Petitioners,* – versus – MARGARITO L. BAUTISTA, *Respondent.*
G.R. No. 202088, SECOND DIVISION, March 8, 2017, PERALTA, *J.*

There is an implied trust when a property is sold and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. This is sometimes referred to as a purchase money resulting trust, the elements of which are: (a) an actual payment of money, property or services, or an equivalent, constituting valuable consideration; and (b) such consideration must be furnished by the alleged beneficiary of a resulting trust.

FACTS:

The case stemmed from a Complaint for Partition and Accounting with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction filed by the petitioners against Margarito

and the other defendants over several properties allegedly co-owned by them, which included the subject property.

The Bautista Siblings Margarito, Manuel, Carmelita, Aniano, Florencia and Ester owned a lending business through a common fund from the proceeds of the sale of a parcel of coconut land they inherited from their mother. Through the said the lending business, the siblings acquired several real properties in San Pablo City.

On March 2, 1998 Amelia Mendoza obtained consecutive loans from Florencia and secured the same with a real estate mortgage of a land situated in Sta Monica Laguna. The said loans was also executed with a Kasulutan. Thereafter, Florencia received the owner's duplicate copy of the property and in turn, entrusted it to Carmelita when she went overseas.

On November 28, 2002, Amelia allegedly sold the subject property to Margarito through a Kasulatan ng Bilihan Tuluyan for Php500k and likewise cancelled the loan through another "Cancellation and Discharge of Mortgage." On the same date, Florencia filed a petition for issuance of a Second owner's duplicate because she misplaced the one given to her.

Furthermore, due to the failure of the parties to settle their differences, petitioners subsequently instituted a Complaint for Partition and Accounting with Prayer for Temporary. There was a partial settlement on the other properties, but the Sta Monica Property remained unsettled.

The RTC ruled in favor of partition of all of the properties but when Margarito appealed to the CA, it reversed and concluded that petitioners failed to establish that they are co-owners of the Sta. Monica property. It held that the TCT under Margarito's name was an indefeasible and incontrovertible title to the property and has more probative weight than the blank Kasulatan adduced by the petitioners. Consequently, petitioners' action for partition and accounting cannot be acted upon because they failed to prove that they are co-owners of the Sta. Monica property.

ISSUE:

Whether or not Margarito is the sole owner of the Sta Monica Property. (NO)

RULING:

The Court ruled that although a certificate of title is the best proof of ownership of a piece of land, the mere issuance of the same in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate or that the registrant may only be a trustee or that other parties may have acquired interest subsequent to the issuance of the certificate of title. The principle that a trustee who puts a certificate of registration in his name cannot repudiate the trust by relying on the registration is one of the well-known limitations upon a title.

There is an implied trust when a property is sold, and the legal estate is granted to one party, but the price is paid by another for the purpose of having the beneficial interest of the property. This is sometimes referred to as a purchase money resulting trust, the elements of which are: (a) an actual payment of money, property or services, or an equivalent, constituting valuable consideration; and (b) such consideration must be furnished by the alleged beneficiary of a resulting trust.

A trust, which derives its strength from the confidence one reposes on another especially between families, does not lose that character simply because of what appears in a legal document.56 From the foregoing, this Court finds that an implied resulting trust existed among the parties. The pieces of evidence presented demonstrate their intention to acquire the Sta. Monica property in the course of their business, just like the other properties that were also the subjects of the partition case and the compromise agreement they entered into. Although the Sta. Monica property was titled under the name of Margarito, the surrounding circumstances as to its acquisition speak of the intent that the equitable or beneficial ownership of the property should belong to the Bautista siblings.

ROSA GICANO and NENITA GEOLLEGUE, *Petitioners,* – versus – ROSA GEGATO, RESURRECCION GEGATO and CATALINA GEGATO, *Respondents.*
G.R. No. L-63575, FIRST DIVISION, January 20, 1988, NARVASA, *J.*

When filed, their action had already been extinguished by prescription. They had slept on their rights. Time eroded their right of action and ultimately erased it, as a sandcastle on a shore is slowly and inexorably obliterated by the rising tide.

FACTS:

The property in question was originally co-owned in equal shares by Maximo Juanico married to Rosa Gegato, and Matilde Geolingo married to Dion Mongcal.

Maximo died and was survived by his wife Rosa and 3 minor children. The other co-owner, Matilde and husband, Dionisio also died, and their only child Loreto, who inherited the property sold her share to Rosa Gicano in Dec 14, 1951.

On Aug 23, 1952, a Deed of Sale or a deed of dacion en pago de dueda was made in order to satisfy the debt of the Maximo to Rosa. The document intended to transfer the ½ share of the Maximo of the said land. Furthermore, it was signed by Rosa Gegato and her second husband, Raymund Pundon in behalf of their 2 minor children. The sale was registered, and ownership was transferred to Rosa Gicano.

23 years later, Rosa Gegato and her daughters, brought an action to compel Rosa to reconvey the lot owned by her late husband Maximo because it was never their intention to sell the entire ½ of the said lot but only 1/3 of it and because they were deceived by the former to sign the document even though they are unable to read and write English.

Rosa Gicano filed a motion to dismiss the complaint on the ground of lack of cause of action, laches, estoppel and prescription. The trial court granted the motion to dismiss but on appeal, the CA reversed the decision of the trial.

ISSUE:

Whether or not the action is barred by prescription. (YES)

RULING:

In the case at bar, Rosa Gegato and her minor children by her deceased husband, Maximo Juanico (said children being represented by their judicial guardian, Ramundo Pundon) had executed a deed

of sale and acknowledged it before a notary public which, upon its face, transferred the entirety of Maximo Juanico's right, share and interest in Lot 181 to Rosa Gicano. Now, if it be true that they were deceived into executing that deed of sale by Rosa Gicano, who taking advantage of their ignorance had made them believe that the deed conveyed only 1/3 of the children's share in their inheritance from their father, they certainly had the right to sue Rosa Gicano, and after presenting evidence of the fraud perpetrated upon them, recover so much of the property as they had never intended to transfer, and recover the damages thereby suffered by them. But they certainly did not have all the time in the world to bring that suit. They had to do it within ten (10) years from the issuance to Rosa Gicano of title to the property on the strength of the supposedly fraudulent deed of sale. They did not file their action within this statutory period. They filed it only after twenty-three (23) years. When filed, their action had already been extinguished by prescription. They had slept on their rights. Time eroded their right of action and ultimately erased it, as a sandcastle on a shore is slowly and inexorably obliterated by the rising tide.

WILSON GO and PETER GO, *Petitioners,* – versus – THE ESTATE OF THE LATE FELISA TAMIO DE BUENA VENTURA, *Respondents.*
G.R. No. 211972, FIRST DIVISION, July 22, 2015, PERLAS-BERNABE, *J.*

A purchaser in good faith is one who buys the property of another without notice that some other person has a right to, or an interest in, such property and pays a full and fair price for the same at the time of such purchase, or before he has notice of some other person's claim or interest in the property. Corollary thereto, when a piece of land is in the actual possession of persons other than the seller, the buyer must be wary and should investigate the rights of those in possession. Without making such inquiry, one cannot claim that he is a buyer in good faith.

FACTS:

Felisa Buenaventura, was the mother of the Petitioner Bella and respondents Resurrecion, Rhea and Regina, owned a parcel of land with 3 story building (D'Lourds Building). In 1960, Felisa sold the same property to her daughter Bella, married to Delfin SR., and Felimon Sr., the common law husband of Felisa.

Sometime, in 1968, Resurrecion A. Bihis (Resurrecion), the other daughter of Felisa, sister of Bella, and respondent began to occupy the 2nd floor the D'Lourds Building and stayed therein until her death in 2007. Thereafter, the TCT of the said sold property was irretrievably destroyed in the interim, Bella caused its reconstitution and was issued another TCT.

On 1994, when Felisa died in 1994, she allegedly bequeathed, in a disputed last will and testament, half of the subject property to Resurrecion and her daughters, Rhea A. Bihis (Rhea) and Regina Bihis (Regina). Thus, also on the same year, the Bihis family caused an adverse claim on the said TCT. Felisa's purported will likewise declared Bella as the administrator of the subject property.

Based on the appointment, Bella filed a petition for the probate of Felisa's will. She was eventually appointed as the administrix of the estate of Felisa and, in an inventory of Felisa's properties, Bella included the subject property as part of said estate. But on 1997, the adverse claim of the Bihis Family was cancelled. The next day, the heirs of Filemon Sr. executed a purported Extrajudicial Settlement of the estate of Filemon Buenaventura, Sr., and caused its annotation. Due to this, a new TCT was issued in the names of heirs of Filemon Sr., Bella and her co petitioners. On the very same day, they sold the property to Wilson and Peter by Bella, et al, and such transaction was completely unknown

to Felisa's other's heirs, the Bihis family. Thus, a new TCT was issued to them. Wilson and Peter filed an ejectment cases against the occupants and/or lessees of the subject property.

The probate court revoked the appointment of Bella as administrix of the Estate of Felisa and eventually, granted letters of administration to Resurrecion. Hence, the estate of Felisa, as represented by Bihis family filed a complaint for reconveyance of the said property alleging that Felisa, during her lifetime, merely entrusted the subject property to Felimon, Sr., Bella, and Delfin, Sr. for the purpose of assisting Bella and Delfin, Sr. to obtain a loan and mortgage from the Government Service Insurance System (GSIS). To facilitate the transaction, Felisa agreed to have the title over the subject property transferred to Bella and Felimon, Sr. However, Felisa never divested herself of her ownership over the subject property, as evidenced by her continuous residence thereon, as well as her act of leasing several units to various tenants. In fact, in a letter dated September 21, 1970 addressed to Delfin, Sr., Felisa reminded Bella, Delfin, Sr., and Felimon, Sr. that the subject property was merely entrusted to them for Bella and Delfin, Sr. to procure a loan from the GSIS. At the bottom of the letter, Bella's and Delfin, Sr.' s signatures appear beside their names.

Likewise, they alleged that Wilson and Peter were buyers in bad faith because they knew that the property was in litigation. The RTC ruled that there was implied trust between Felisa, Bella and Felimon, Sr. because it was never the intention of Felisa to transfer the said property to them. The Court, however, did not grant the reconveyance because the said property because Wilson and Peter were buyer in good faith.

On appeal to the CA, the CA modified the ruling and ordered the 1) nullification of the Dead of sale in favor of Wilson and Peter and 2) to reconvey the property to the estate of Felisa.

ISSUE:

Whether or not Wilson and Peter are purchasers in good faith. (NO)

RULING:

A purchaser in good faith is one who buys the property of another without notice that some other person has a right to, or an interest in, such property and pays a full and fair price for the same at the time of such purchase, or before he has notice of some other person's claim or interest in the property. Corollary thereto, when a piece of land is in the actual possession of persons other than the seller, the buyer must be wary and should investigate the rights of those in possession. Without making such inquiry, one cannot claim that he is a buyer in good faith. When a man proposes to buy or deal with realty, his duty is to read the public manuscript, that is, to look and see who is there upon it and what his rights are. A want of caution and diligence, which an honest man of ordinary prudence is accustomed to exercise in making purchases, is in contemplation of law, a want of good faith. The buyer who has failed to know or discover that the land sold to him is in adverse possession of another is a buyer in bad faith.

In his testimony before the RTC, Wilson claimed to have verified the validity of the title covering the subject property before the Registry of Deeds. However, he also admitted that two (2) months had lapsed before the sale could be consummated because his lawyer advised him to request Bella, one of the sellers, to cancel the encumbrance annotated on the title of the subject property. He also claimed that he had no knowledge about the details of such annotation, and that he was aware that individuals other than the sellers were in possession of the subject property.

As aptly concluded by the CA, such knowledge of the existence of an annotation on the title covering the subject property and of the occupation thereof by individuals other than the sellers negates any presumption of good faith on the part of Wilson and Peter when they purchased the subject property. A person who deliberately ignores a significant fact which would create suspicion in an otherwise reasonable man is not an innocent purchaser for value, as in this case.

Additionally, the Court finds that the action for reconveyance instituted by respondents has not yet prescribed, following the jurisprudential rule that express trusts prescribe in ten (10) years from the time the trust is repudiated.

In this case, there was a repudiation of the express trust when Bella, as the remaining trustee, sold the subject property to Wilson and Peter on January 23, 1997. As the complaint for reconveyance and damages was filed by respondents on October 17, 1997, or only a few months after the sale of the subject property to Wilson and Peter, it cannot be said that the same has prescribed.