

**PERSONS AND FAMILY RELATIONS 1A***Finals, 1S 24-25*

Consolidated codal, case law and commentary

Codal

Commentary

Case law

**TITLE IV**  
**Property Relations Between Husband and Wife**

**Chapter 1**  
**General Provisions**

**Art. 74** ★

The property relations between husband and wife shall be governed in the following order:

- (1) By marriage settlements executed before the marriage;
- (2) By the provisions of this Code; and
- (3) By the local customs.

The order in Art. 74 **must be followed**.

The rest of the chapter (Arts. 75-81) deals with the limits of a marriage settlement.

- This implies that between a valid marriage settlement and the FC, the former prevails.
- No. (3) must be correlated by the provision in the CIVIL CODE that customs which are contrary to law, public order or public policy shall not be countenanced (Art. 11).
  - Hence, a custom contrary to that has no valid effect insofar as the property relations between the spouses are concerned.

*ACP as default***Art. 75** ★

The future spouses may, in the marriage settlements, agree upon the regime of absolute community, conjugal partnership of gains, complete separation of property, or any other regime. In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community of

property as established in this Code shall govern.

*Art. 75 no retroactive effect for pre-FC marriages***Pana v. Heirs of Juanite, G.R. 164201, December 10, 2012**

The property relations governing the spouse is the conjugal partnership of gains (CPG), them being married before the effectivity of the Family Code, and no evidence of a prenuptial agreement between them has been presented.

The FC's default application of the absolute community property (ACP) cannot be given retroactive effect through Art. 256.

- That provision does not intend to reach back and automatically convert into ACP all CPG that existed before 1988, **excepting only those with prenuptial agreement**. This will impair their acquired or vested rights to such separate properties.

Currently, ACP may be the property regime of the spouses in any of the following cases:

1. There was a marriage settlement, but it was declared void.
2. There was no marriage settlement.
3. The marriage settlement explicitly provided for the ACP (although this would seem superfluous).

The list of property regimes in Art. 75 is nonexclusive.

*Modifications on the prenuptial agreement***Art. 76**

In order that any modification in the marriage settlements may be valid, it must be made before the celebration of the marriage, subject to the provisions of Articles 66, 67, 128, 135, and 136.

A marriage settlement can only be modified if:

1. It is **made before the celebration of the marriage**; and
2. Complied with Arts. 66, 67, 128, 135, and 136.
  - a. Arts. 66 and 67 refer to the reconciliation after a legal separation and revival of the spouses' former property regime.
  - b. Art. 128 refers to the right of the present spouse to administer the conjugal partnership property if the other spouse

- abandons the family.  
c. Arts. 135 and 136 refer to judicial separation of property.

### Form of the marriage settlement

#### Art. 77

The marriage settlements and any modification thereof shall be in writing, signed by the parties and executed before the celebration of the marriage. They shall not prejudice third persons unless they are registered in the local civil registry where the marriage contract is recorded as well as in the proper registries of property.

The **form of the marriage settlement** must be:

1. In writing
2. Signed by the future spouses
3. Executed ante-nuptial (before marriage)

If the settlement will prejudice third persons, the settlement must be recorded in:

1. The local civil registry; and
2. Registries of property.

### Marriage settlements of minor spouses

#### Art. 78.

**REPEALED by RA 11596** (An act prohibiting child marriages and imposing penalties for violations thereof).

### Marriage settlement for persons with limitations to the capacity to act

#### Art. 79.

For the validity of any marriage settlement executed by a person upon whom a sentence of **civil interdiction** has been pronounced or who is subject to any other disability, it shall be indispensable for the guardian appointed by a competent court to be made a party thereof.

Parties to a marriage settlement where one or both spouses have civil interdiction:

1. Future wife

2. Future husband
3. The guardian appointed by the court

### From the RPC–

#### ART. 34. Civil interdiction.

Civil interdiction shall deprive the offender during the time of his sentence of the rights of parental authority, or guardianship, either as to the person or property of any ward, of **marital authority**, of the right to manage his property and of the right to dispose of such property by any act or any conveyance *inter vivos*.

### Conflict of laws

#### Art. 80

In the absence of a contrary stipulation in a marriage settlement, the property relations of the spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence,

This rule shall not apply:

- (1) Where both spouses are aliens;
- (2) With respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and
- (3) With respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situated in a foreign country whose laws require different formalities for its extrinsic validity.

**General rule:** A marriage settlement can dictate which law/s apply to the spouses' properties.

- **Exception:** If there is no marriage settlement, Philippine laws apply notwithstanding the place of the celebration of the marriage (*lex nationalii*).
  - **Exceptions to the exception** (**Art. 80 is inapplicable**) when:
    - Both spouses are aliens (*lex nationalii*)
    - Extrinsic validity of contracts executed in a foreign country over foreign properties (*lex loci celebrationis*)
    - Extrinsic validity of contracts executed in the Philippines over foreign properties abroad (*lex rei loci sitae*)

**Examples:****1. Where both spouses are aliens**

John and Emma, both American citizens, marry in the United States and later reside in the Philippines. Their property relations will not be governed by Philippine law but by the laws of their nationality, which in this case, would likely be the United States' community property or separate property regime.

**2. Extrinsic validity of contracts executed in a foreign country over foreign properties**

Maria, a Filipino citizen, marries Carl, a German citizen. While living in Germany, they enter into a contract concerning a piece of real estate that Carl owns in Berlin. The contract specifies that German laws will govern the property. Since the property is in Germany and the contract was executed there, the property relations will follow German law, not Philippine law.

**3. Extrinsic validity of contracts executed in the Philippines over foreign properties abroad**

Anna, a Filipino citizen, and Michael, an Australian citizen, marry in the Philippines. They execute a marriage settlement in the Philippines regarding a beachfront property in Sydney, Australia. However, Australian law requires additional formalities, such as registration with the Land Titles Office, for such agreements to be valid. In this case, Philippine law will not govern the extrinsic validity of the agreement because Australian law mandates different formalities.

*Canceled marriage; its effects on the marriage settlement***Art. 81**

Everything stipulated in the settlements or contracts referred to in the preceding articles in consideration of a future marriage, including donations between the prospective spouses made therein, shall be rendered void if the marriage does not take place. However, stipulations that do not depend upon the celebration of the marriage shall be valid.

**General rule:** A marriage that does not take place voids the stipulations in the marriage settlements, including DPN.

- **Exception:** Stipulations that do not depend upon the celebration of the marriage are valid.
  - **Example:** Support of a common child, if stipulated, does not depend on the marriage.

⚠ *The voiding happens by operation of law.*

## Chapter 2

### Donations by Reason of Marriage

**Art. 82** ★

Donations by reason of marriage are those which are made before its celebration, in consideration of the same, and in favor of one or both of the future spouses.

**Requisites of a donation propter nuptias (DPN):**

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

**Art. 83**

These donations are governed by the rules on ordinary donations established in Title III of Book III of the CIVIL CODE, insofar as they are not modified by the following articles.

Applicable law on DPN: Bk. III, tit. III, CIVIL CODE

- Suppletory, and specific rules: Arts. 82 to 87, FC.
- In case of conflict, the FC prevails.

*Donations within a non-ACP marriage***Art. 84**

If the future spouses agree upon a regime other than the absolute community of property, they cannot donate to each other in their marriage settlements more than one-fifth of their present property. Any excess shall be considered void.

**General rule:** Non-ACP marriages cannot donate to each other in their marriage settlements.

- **Exception:** Donations are allowed if it is less than or equal to 1/5 of

their present property.

- Anything excess of the 1/5–*not the entire donation*–will be voided by operation of law.

**MCG:** This article implies that a DPN can be made in a marriage settlement.

#### DPN of a property with a lien

##### Art. 85

Donations by reason of marriage of property subject to encumbrances shall be valid. In case of foreclosure of the encumbrance and the property is sold for less than the total amount of the obligation secured, the donee shall not be liable for the deficiency. If the property is sold for more than the total amount of said obligation, the donee shall be entitled to the excess.

**Class example:** Your godfather has a debt worth P10 million to a bank. A house in Bel-Air was the collateral for that debt. Your godfather donates to you, the future husband, the Bel-Air house. However, the bank executes on that house because your godfather failed to pay his debt.

- **Case 1:** If the Bel-Air house sold for just P5 million, you (the future spouses) will not be liable for the remaining P5 million debt of your godfather.
- **Case 2:** If the Bel-Air house sold for P15 million, the P10 million goes to the bank, while the P5 million goes to you (the future spouses).

#### Revocation of a DPN

##### Art. 86 ★

A donation by reason of marriage **may** be revoked by the donor in the following cases:

- (1) If the marriage is not celebrated or judicially declared void *ab initio* except donations made in the marriage settlements, which shall be governed by Article 81;
- (2) When the marriage takes place without the consent of the parents or guardian, as required by law;
- (3) When the marriage is annulled, and the donee acted in bad faith;
- (4) Upon legal separation, the donee being the guilty spouse;
- (5) If it is within a resolutive condition and the condition is complied with;
- (6) When the donee has committed an act of ingratitude as specified by the provisions of the CIVIL CODE on donations in general.

**“May”** – Even though such cases are present, the donor may still choose not to revoke the DPN.

- In the end, the donor has discretion whether to revoke or not.
- However, the donor can only revoke if any of the cases are present.

**Par. 1** talks about a marriage not taking place, or eventually declared void *ab initio* (e.g. Art. 36).

- **Exception:** DPN in the marriage settlement that are not contingent upon the celebration of the marriage remain valid (*see Art. 81*).

**Par. 2** talks about the couples who need parental consent.

- Art. 14 requires that if any of the contracting party in a marriage is aged 18 to 21, he/she requires parental consent.

**Par. 3** talks about an annulled marriage (*see Arts. 45-46*) and the donee acted in bad faith (e.g. the donee concealed that he was a drug addict before the celebration of the marriage).

**Par. 4** talks about legal separation (*see Art. 55, et seq.*) and the donee is the guilty spouse (e.g. the donee committed repeated physical violence against a common child).

**Par. 5** talks about a resolutive condition over the DPN.

- **Example:** Your godfather donates a house in Bel-Air to you, provided that your family resides in it. Hence, if your family no longer resides over the Bel-Air house, the godfather may revoke the DPN because the resolutive condition has been complied with.

**Par. 6** talks about acts of ingratitude as provided by the NCC.

*The NCC provides–*

##### Art. 765

The donation may also be revoked at the instance of the donor, by reason of ingratitude in the following cases:

- (1) If the donee should commit some offense against the person, the honor or the property of the donor, or of his wife or children under his parental authority;
- (2) If the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it, unless the crime or the act has been committed against the donee himself, his wife or children under his authority;
- (3) If he unduly refuses him support when the donee is legally or morally bound to give support to the donor.

*No donations during marriage!***Art. 87**

Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, **except moderate gifts which the spouses may give each other on the occasion of any family rejoicing.** The prohibition also applies to persons living together as husband and wife without a valid marriage.

**General rule:** Donations between spouses, including persons living as husband and wife without a valid marriage (i.e. Art. 147), during the marriage shall be void.

- **Exception:** Moderate gifts for each other during family rejoicing.
- **MCG:** This is very subjective. It depends on how well-off the spouses are.

**Legend**

- ♠ – ACP only
- ♣ – CPG only
- ♦ – ACP and CPG, *mutatis mutandis*

### Chapter 3

## System of Absolute Community

**Section 1. – General Provisions***When ACP commences***Art. 88 ♦**

The absolute community of property between spouses shall commence at the precise moment that the marriage is celebrated. Any stipulations, express or implied, for the commencement of the community regime at any other time shall be void.

**ACP commences at the time of I do's.**

- A marriage settlement declaring that the ACP will only take effect after, say, their 5th anniversary, is void.

- This is an *absolute rule*, by operation of law.

**Art. 89 ♦**

No waiver of rights, interests, shares and effects of the absolute community of property during the marriage can be made **except in case of judicial separation of property.**

When the waiver takes place upon a judicial separation of property, or after the marriage has been dissolved or annulled, the same shall appear in a public instrument and shall be recorded as provided in Article 77. The creditors of the spouse who made such waiver may petition the court to rescind the waiver to the extent of the amount sufficient to cover the amount of their credits.

**Example:**

Rory and Jess are married under the absolute community of property regime. During their marriage, Rory owns a commercial building that is part of their absolute community property.

**Invalid waiver:** Rory has accumulated significant personal debts from her failed business venture. She decides to waive her share of the community property (the commercial building) in favor of Jess, hoping to protect the building from being used to pay her creditors.

- This waiver of her rights to the community property during the marriage is not allowed unless there is a judicial separation of property. Rory's creditors can still claim against the commercial building, as the waiver has no effect without proper legal proceedings.

**Valid waiver:** After some time, Rory and Jess file for judicial separation of property, which is approved by the court. Rory then executes a waiver of her rights to the commercial building. The waiver is properly documented in a public instrument and recorded as required under Art. 77.

- Rory's creditors become aware of the waiver and believe that it unfairly deprives them of resources to collect their debts. They file a petition with the court to rescind the waiver to the extent necessary to cover Rory's outstanding debts. The court reviews the waiver and grants the creditors' petition, allowing them to satisfy their claims from Rory's share in the property.

*ACP is a special type of co-ownership*



**Art. 90** ♠

The provisions on co-ownership shall apply to the absolute community of property between the spouses in all matters not provided for in this Chapter.

Rule governing ACP: Family Code

- In cases not covered by the FC, refer to co-ownership provisions under Arts. 484-501, CIVIL CODE.
- **The ACP is a special type of co-ownership.**

**Section 2. – What Constitutes Community Property****Art. 91** ♠

Unless otherwise provided in this Chapter or in the marriage settlements, the community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.

**General rule:** The ACP consists of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.

- **Exceptions:**
  1. Those excluded in the FC (e.g. Art. 92); and
  2. Those excluded by the marriage settlements.

⚠ *This is a mandatory rule (“shall”).*

**Nobleza v. Nuega, G.R. 193038, March 11, 2015**

Actual contribution is not relevant in determining whether a piece of property is community property for the law itself defines what constitutes community property.

**Art. 92** ♠ ★

The following shall be excluded from the community property:

- (1) Property acquired during the marriage by gratuitous title by either spouse, and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator, grantor that they shall

form part of the community property;

- (2) Property for personal and exclusive use of either spouse. However, jewelry shall form part of the community property;
- (3) Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as the income, if any of such property.

**Par. 1, an example:**

Anna and Ben are married under the absolute community of property regime. During their marriage, Anna's wealthy aunt gifts her a beachfront property through a donation. The donation deed states that the property is being given to Anna personally and exclusively, without any mention that it should form part of the absolute community of property.

- Since the property was acquired by Anna during the marriage by gratuitous title (donation) and there is no stipulation from the donor (Anna's aunt) that the property should become part of the community property, the beachfront property remains Anna's exclusive property.
- If Anna leases the beachfront property to a resort operator, the rental income and any profits from the lease are also Anna's exclusive property.

**Par. 3, an example:**

Laura and Peter are married under the absolute community of property regime. Before marrying Laura, Peter was married to Jane, with whom he has two legitimate children (Mark and Emma). Jane has since passed away.

Before his marriage to Laura, Peter inherited a farm from his parents. This farm was acquired before the marriage and is, therefore, excluded from the absolute community of property because Peter has legitimate descendants (Mark and Emma) from his previous marriage.

- The farm's fruits and income (e.g., profits from crops, lease earnings, or rent) are also excluded from the absolute community of property. These fruits and income will belong solely to Peter and will likely be preserved as part of the inheritance for his legitimate descendants (Mark and Emma).
- If Peter decides to sell the farm during his marriage to Laura, the proceeds from the sale will also be excluded from the absolute community and remain separate because the farm was originally acquired before the marriage (fruits and income).

**Sps. Abrenica v. Law Firm of Abrenica, G.R. 180572, June 18, 2012**



Art. 92(3) excludes from the community property the property acquired before the marriage of a spouse who has legitimate descendants by a former marriage; and the fruits and the income, if any, of that property.

- Hence, these excluded properties may be executed on.

### Presumption

#### Art. 93 ♠️★

Property acquired during the marriage is presumed to belong to the community, unless it is proved that it is one of those excluded therefrom.

This is only a presumption, which may be rebutted by proving that a property is excluded from the community property.

- Failure to rebut means that the property is still presumed to be part of the ACP.

### Section 3. – Charges Upon and Obligations of the Absolute Community

#### Art. 94 ♠️★

The absolute community of property shall be liable for:

- (1) The support of the spouses, their common children, and legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;
- (2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the community, or by both spouses, or by one spouse with the consent of the other;
- (3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited;
- (4) All taxes, liens, charges and expenses, including major or minor repairs, upon the community property;
- (5) All taxes and expense for mere preservation made during marriage upon the separate property of either spouse used by the family;
- (6) Expenses to enable either spouse to commence or complete a professional or vocational course, or other activity for self-improvement;
- (7) Antenuptial debts of either spouse insofar as they have redounded to the benefit of the family;
- (8) The value of what is donated or promised by both spouses in favor of

their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement;

- (9) Antenuptial debts of either spouse other than those falling under paragraph (7) of this Article, the support of illegitimate children of either spouse, and liabilities incurred by either spouse by reason of a crime or a quasi-delict, in case of absence or insufficiency of the exclusive property of the debtor-spouse, the payment of which shall be considered as advances to be deducted from the share of the debtor-spouse upon liquidation of the community; and
- (10) Expenses of litigation between the spouses unless the suit is found to be groundless.

If the community property is insufficient to cover the foregoing liabilities, except those falling under paragraph (9), the spouses shall be solidarily liable for the unpaid balance with their separate properties.

#### Sunga-Chan v. CA, G.R. 164401, June 25, 2008



The ACP may be held liable for the obligations contracted by either spouse, if the family has benefited.

- Hence, absent any indication otherwise, the use and appropriation by the petitioner of the assets of Shellite even after it was discontinued on May 30, 1992 may reasonably be considered to have been used for her and her husband's benefit.

#### Nobleza (supra art. 91)

Art. 94(3) provides that the ACP shall only be liable for debts or obligations contracted by either spouse without the consent of the other to the extent that the family has been benefited;

- If there's no evidence that the family benefited, the ACP may not be held liable for such debt or obligation.

#### Art. 95 ♦️

Whatever may be lost during the marriage in any game of chance, betting, sweepstakes, or any other kind of gambling, whether permitted or prohibited by law, shall be borne by the loser and shall not be charged to the community but any winnings therefrom shall form part of the community property.

In gambling or any other game of chance:

- Loses → losing spouse alone
- Winnings → goes to the ACP

#### Section 4. – Ownership, Administration, Enjoyment and Disposition of the Community Property

##### Art. 96 ♦

The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for a proper remedy, which must be availed within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

##### Outline of the rules:

1. Joint administration
  - The administration and enjoyment of the community property belong to **both spouses jointly**.
2. In case of disagreement
  - The **husband's decision prevails**, subject to recourse to the court by the wife for a proper remedy.
  - The wife must file the court action **within five years** from the date of the contract implementing the husband's decision.
3. When one spouse is incapacitated
  - If one spouse is incapacitated or unable to participate in administering the common properties, the other spouse may assume sole powers of administration.
4. Limitations on the sole powers of administration (in 3)
  - The spouse assuming sole administration **cannot dispose of or encumber** the common property without:

- The written consent of the other spouse; **or**
  - Authority from the court
5. Dispositions without consent or authority
    - Disposition or encumbrance of the property **without the required consent or court approval is void**.
    - However, the transaction is treated as a **continuing offer** by:
      - The **consenting spouse**; and
      - The **third person** involved in the transaction.
  6. Perfection of the “continuing offer”
    - The transaction may be **perfected** and become binding if:
      - The nonconsenting spouse **accepts** the transaction; **or**
      - **Court authorization** is granted **before the offer is withdrawn** by either or both offerors.

**MCG:** The law says the encumbrance without the other spouse's consent is void. But it seems that it can be ratified. This “continuing offer” is somewhere in between a void and voidable contract, because the latter can be ratified.

##### Art. 97 ♠

Either spouse may dispose by will of his or her interest in the community property.

Art. 97 applies only to the absolute community of property, where the spouses have defined and fixed shares. It does not apply to the conjugal partnership of gains, where the specific interests of the spouses remain undetermined (inchoate) until the partnership is dissolved.

*Donations from the CPG—not allowed (generally)!*

##### Art. 98

Neither spouse may donate any community property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the community property for charity or on occasions of family rejoicing or family distress.

**General rule:** A spouse cannot donate any community property.

- **Exception:** When the other spouse consents to such a donation.
  - **Exception to the exception:** Consent of the other spouse is



not required when the donation is made:

1. For charity
2. During family rejoicing
3. During family distress.

## Section 5. – Dissolution of Absolute Community Regime

### Art. 99 ♦ ★

The absolute community **terminates**:

- (1) Upon death of either spouse;
- (2) When there is a decree of legal separation;
- (3) When the marriage is annulled or declared void; or
- (4) In case of judicial separation of property during the marriage under Articles 134 to 138.

### Noveras v. Noveras, G.R. 188289, August 20, 2014

The grant of judicial separation of the ACP **automatically dissolves** the absolute community regime, as per Art. 99(4).

- Termination under Art. 99 happens by operation of law.

### Art. 100 ♦

The **separation in fact** between husband and wife shall not affect the regime of absolute community **except that**:

- (1) The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported;
- (2) When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding;
- (3) In the absence of sufficient community property, the separate property of both spouses shall be solidarily liable for the support of the family. The spouse present shall, upon proper petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share.

**General rule:** Separation in fact does not affect the property regime.

- **Exceptions:**

1. The absent spouse loses the right to be supported
2. The absent spouse's consent may be substituted by a judicial authorization
3. The absent spouse's separate property may be administered (through a judicial authority) by the present spouse if the ACP is lacking to support the family

## Abandonment

### Art. 101 ♦

If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for receivership, for judicial separation of property or for authority to be the sole administrator of the absolute community, subject to such precautionary conditions as the court may impose.

The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.

A spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be prima facie presumed to have no intention of returning to the conjugal dwelling.

Options of the spouse if the other spouse **abandons him or fails to comply with his obligations** to the family:

1. Petition the court for receivership
2. Petition the court for judicial separation of property
3. Petition the court to be the sole administrator of the ACP

**"Obligations"** – Refer to marital, parental, or property relations.

**"Abandonment"** is either:

1. Leaving the conjugal dwelling for a period of three months, or
2. Failing to give any information about his whereabouts for three months.

## Section 6. – Liquidation of the Absolute Community Assets and Liabilities

## Procedure in liquidation of the ACP

### Art. 102 ♠ ★

Upon dissolution of the absolute community regime, the following procedure shall apply:

- (1) An inventory shall be prepared, listing separately all the properties of the absolute community and the exclusive property of each spouse.
- (2) The debts and obligations of the absolute community shall be paid out of its assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties in accordance with the provisions of the second paragraph of Article 94.
- (3) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.
- (4) The net remainder of the properties of the absolute community shall constitute its **net assets**, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements, or unless there has been a voluntary waiver of such share as provided in this Code. For purposes of computing the **net profits** subject to forfeiture in accordance with Articles 43, No. (2) and 63, No. (2), the said profits shall be the increase in the value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution.
- (5) The presumptive legitimes of the common children shall be delivered upon partition, in accordance with Article 51.
- (6) Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children.

#### Quiao v. Quiao, G.R. 176556, July 4, 2012 ♥

The definition of "net profits" Art. 102(4) also applies in CPG, because Arts. 43, 63(2) make it applicable.

- Art. 102(4) applies to both the dissolution of the ACP under Art. 102 and CPG under Art. 129.

**Net assets** – What remains after the debts and obligations have been paid from the total assets of the absolute community.

- ACP – debts and obligations = Net assets

⚠ *The concept of a net assets apply to ACP only.*

**Net profits** – Derived from the net assets by subtracting the market value of the properties at the time of marriage, with the resulting total representing the net profits.

- Net assets (previous market value) – Net assets (current market value) = Net profits

#### Example:

Juan and Maria were married under the absolute community of property regime. After 15 years of marriage, their marriage was dissolved due to legal separation. The following are the details of their properties and obligations:

1. Inventory of properties
  - Community properties (Total = P7.5 million)
    - a. Family home: P6 million
    - b. Car: P1 million
    - c. Savings account: P500,000
  - Juan's exclusive property
    - a. Inherited land (gratuitous title): P3 million
  - Maria's exclusive property
    - a. Jewelry (inherited): P1 million
2. Debts and obligations (Total = P3 million)
  - Mortgage in the family home: P2 million
  - Business loan: P1 million
3. Pay community debts and obligations from the ACP
  - P7.5 million – P3 million = P4.5 million
4. Determine net assets of the community and divide equally
  - P4.5 million ÷ 2 = P2.25 million each spouse
5. Final distributions
  - Juan = P2.25 million + P3 million (inherited land.) = P5.25 million
  - Maria = P2.25 million + P1 million (jewelry) = P3.25 million

#### Liquidation after death of a spouse

#### Art. 103 ♦

Upon the termination of the marriage by death, the community property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the community property either judicially or extrajudicially within one year from the death of the deceased spouse. If upon the lapse of the said period, no liquidation is made, any disposition or encumbrance involving the

community property of the terminated marriage shall be void.

Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.

#### Outline of rules for liquidation of the ACP upon death of a spouse:

1. Liquidation during estate settlement – Upon termination of the marriage by death, the community property shall be liquidated in the same judicial proceeding for the settlement of the estate of the deceased spouse.
2. Alternative liquidation methods – If no judicial settlement proceeding is initiated, the surviving spouse must liquidate the community property:
  - a. Judicially
  - b. Extrajudicially
3. Timeframe – The liquidation must be completed within **one year** from the death of the deceased spouse.
4. Consequences of non-liquidation – If the ACP is not liquidated within a year, any **disposition** (e.g., sale, donation) or **encumbrance** (e.g., mortgage) involving the community property shall be **void**.
5. If the surviving spouse contracts a subsequent marriage without first complying with the liquidation requirements:
  - a. The **mandatory regime of complete separation of property** shall govern the property relations in the subsequent marriage.
  - b. This applies regardless of any agreement to the contrary in the subsequent marriage.
    - i. *E.g.* if the spouses agree to have CPG, they won't have it if the remarrying spouse didn't liquidate within a year his/her ACP in the first marriage.

#### Art. 104 ♦

Whenever the liquidation of the community properties of two or more marriage contracted by the same person before the effectivity of this Code is carried out simultaneously, the respective capital, fruits and income of each community shall be determined upon such proof as may be considered according to the rules of evidence. In case of doubt as to which community the existing properties belong, the same shall be divided between or among the different communities in proportion to the capital and duration of each.

#### What does this situation contemplate?

This provision contemplates situations where one person has entered into multiple marriages (e.g., due to remarriage after the death of or separation from a prior spouse) *prior to the effectivity of the Family Code* (August 3, 1988) and the liquidation of the community properties of these marriages occurs at the same time.

It addresses issues in determining which properties belong to which marriage, especially when the same person is a spouse in all these marriages.

### Chapter 3 Conjugal Partnership of Gains

#### Section 1. – General Provisions

#### Art. 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 provision of this Chapter shall also apply to conjugal partnership 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.

A marriage settlement is required to have conjugal partnership of gains (CPG).

- The marriage settlement supersedes this chapter insofar as it does not contravene the FC.

The FC's provisions on CPH has retroactive effect for CPGs already existing pre-FC, insofar as it does not impair vested rights (*see Art. 256*).

#### Art. 106 ♣

Under the regime of conjugal partnership of gains, the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through

their efforts or by chance, and, upon dissolution of the marriage or the partnership, the net gains or benefits obtained by either or both spouses shall be divided equally between them, unless otherwise agreed in the marriage settlement.

### What is placed in the common funds in a CPG?

- The proceeds, products, fruits and incomes (PPFI) of:
  1. The separate properties
  2. Acquired through efforts (e.g. salary) or chance (e.g. gambling)
- Upon dissolution, the net gains shall be divided equally.
  - Unless the prenuptial agreement provides otherwise (i.e. a different proportion).

### Art. 107

The rules provided in Articles 88 and 89 shall also apply to conjugal partnership of gains.

That is–

1. The CPG commences at the moment of I do's.
2. There can be no waiver or rights, interests, shares, etc. except in case of judicial separation of property.

### Art. 108 ♣

The conjugal partnership shall be governed by the rules on contract of partnership in all that is not in conflict with what is expressly determined in this Chapter or by the spouses in their marriage settlements.

Read with Art. 74. Hence, the following applies, in order of preference:

1. The marriage settlement
2. FAMILY CODE
3. CIVIL CODE, Arts. 1167, et seq. (partnerships).

## Section 2. – Exclusive Property of Each Spouse

### Art. 109 ♣★

The following shall be the exclusive property of each spouse:

- (1) That which is brought to the marriage as his or her own;
- (2) That which each acquires during the marriage by gratuitous title;
- (3) That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the spouses; and
- (4) That which is purchased with exclusive money of the wife or the husband.

Hence, these are **not part** of the CPG.

### Art. 110 ♣

The spouses retain the ownership, possession, administration and enjoyment of their exclusive properties.

Either spouse may, during the marriage, transfer the administration of his or her exclusive property to the other by means of a public instrument, which shall be recorded in the registry of property of the place where the property is located.

**General rule:** The spouse retains the ownership, possession, administration and enjoyment of his exclusive properties.

- **Exception:** The spouse may transfer the administration to the other spouse through:
  1. A public instrument,
  2. Record in the registry of property.

### Art. 111 ♣

Either spouse may mortgage, encumber, alienate or otherwise dispose of his or her exclusive property.

For exclusive properties, no spousal consent required (*duh, CPG nga diba. –MCG*).

### Art. 112 ♣

The alienation of any exclusive property of a spouse administered by the other automatically terminates the administration over such property and the proceeds of the alienation shall be turned over to the owner-spouse.

**Example:**

Suppose the wife transferred the administration of her Bel-Air house to her husband. However, the husband sold the said house without telling his wife.

As a consequence of Art. 112, the husband's administration over the Bel-Air house is terminated (by operation of law), and the proceeds of the sale should be given to the wife.

**Art. 113** ♣

Property donated or left by will to the spouses, jointly and with designation of determinate shares, shall pertain to the donee-spouse as his or her own exclusive property, and in the absence of designation, share and share alike, without prejudice to the right of accretion when proper.

**Example:**

A wealthy relative of spouses Fiona and Farquaad donated a parcel of land to both of them.

**Scenario 1:** The donation deed stipulated that Fiona will own 60% of the land, while Farquaad will own 40%.

- **Result:** They will own their respective shares as exclusive properties because the donation provided for the couple's determinate shares.

**Scenario 2:** The donation simply left to the spouses the property, jointly, without specifying how much of the property each spouse will own.

- Result: Fiona and Farquaad will own the property **share and share alike**, meaning each will own **50%** of the beach house as their **exclusive property**, unless otherwise agreed.

**Scenario 3:** If Fiona and Farquaad jointly own the property (50-50) and Fiona dies without heirs to inherit her share, Farquaad may acquire Fiona's share through **accretion**, making him the sole owner of the property.

*Onerous-gratuitous*

**Art. 114** ♣

If the donations are onerous, the amount of the charges shall be borne by the exclusive property of the donee-spouse, whenever they have been advanced by the conjugal partnership of gains.

**Art. 115** ♣

Retirement benefits, pensions, annuities, gratuities, usufructs and similar benefits shall be governed by the rules on gratuitous or onerous acquisitions as may be proper in each case.

**Art. 114** – If conjugal funds are used to pay the obligations attached to an onerous donation, the donee-spouse shall reimburse the conjugal partnership but the property remains to be his or her exclusive property.

**Art. 115** – Whether retirement benefits, pensions, and annuities are conjugal or separate will depend upon how it was obtained and the circumstances of the case.

**Section 3. – Conjugal Partnership Property**

*Presumption*

**Art. 116** ♦★

All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal **unless the contrary is proved**.

**Muñoz v. Ramirez, G.R. 156125, August 25, 2010**

**Generally**, all property acquired during the marriage is presumed to be conjugal **unless the contrary is proved**.

Properties acquired by gratuitous title by either spouse, during the marriage, shall be excluded from the community property and be the exclusive property of each spouse.

**Sps. Go v. Yamane, G.R. 160762, May 3, 2006** ♥

The presumption that all property of the marriage is presumed to belong to the conjugal partnership operates only when the party invoking it proves



that the property was acquired during the marriage.

The presumption in favor of conjugality does not operate if there is no showing of when the property alleged to be conjugal was acquired.

- The presumption may be rebutted only with strong, clear, categorical and convincing evidence.
- The burden of proof rests upon the party asserting it.

**Dela Peña v. Avila, G.R. 187490, February 8, 2012 ♥**



Proof of acquisition during the marriage is an essential condition for the operation of the presumption in favor of the conjugal partnership.

The phrase "married to" in the registration of the property is merely descriptive of the civil status of the wife and cannot be interpreted to mean that the husband is also a registered owner.

**Cordova v. Ty, G.R. 246255, February 3, 2021**



Even when the manner in which the properties were acquired does not appear, the presumption will still apply.

- Hence, so long as the property was acquired during the marriage, the presumption kicks in.

**General rule:** For the presumption to apply, the property in question must be acquired during the marriage.

- Titling the property in the name of the spouses does not automatically mean that the property is conjugal.

⚠️ *A title does not confer ownership.*

### Art. 117 ♣️★

The following are conjugal partnership properties:

- (1) Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;
- (2) Those obtained from the labor, industry, work or profession of either or both spouses;
- (3) The fruits, natural, industrial, or civil, due or received during the marriage from the common property, as well as the net fruits from the exclusive property of each spouse;
- (4) The share of either spouses in the hidden treasure which the law awards to the finder or owner of the property where the treasure is found;

- (5) Those acquired through occupation such as fishing or hunting;
- (6) Livestock existing upon the dissolution of the partnership in excess of the number of each kind brought to the marriage by either spouse; and
- (7) Those which are acquired by chance, such as winnings from gambling or betting. However, losses therefrom shall be borne exclusively by the loser-spouse.

The list is self-explanatory, but some points to emphasize:

- An onerous title refers to acquisitions of a valuable consideration (a car, for instance).
  - If such a thing is brought from the common fund, the thing will belong to the conjugal partnership, regardless of who will use it.
- *Fruits* of the common property and *net fruits* of the exclusive properties are conjugal.
  - Take note of the distinction—for exclusive properties, only the net fruits (e.g. income or rental minus the expenses for that property's administration such as repairs/maintenance) belong to the conjugal partnership.

### Art. 118 ♣️

Property bought on installments paid partly from exclusive funds of either or both spouses and partly from conjugal funds belongs to the buyer or buyers if full ownership was vested before the marriage and to the conjugal partnership if such ownership was vested during the marriage. In either case, any amount advanced by the partnership or by either or both spouses shall be reimbursed by the owner or owners upon liquidation of the partnership.

### Ownership determination:

1. If ownership was vested *before* marriage → The property remains the spouse's **exclusive property**, even if conjugal funds were later used to pay for the installments.
  - a. In this case, the CPG will be reimbursed.
2. If ownership was vested *after* marriage → The property belongs to the **conjugal partnership**, regardless of whether the initial or partial payments were made using exclusive funds.
  - a. In this case, the spouse will be reimbursed.

### Art. 119 ♠️

Whenever an amount of credit payable within a period of time belongs to one of the spouses, the sums which may be collected during the marriage in partial payments or by installments on the principal shall be the exclusive property of the spouse. However, interests falling due during the marriage on the principal shall belong to the conjugal partnership.

#### Example:

Before marrying Lorelai, Luke lent P500,000 to his friend Taylor under a loan agreement payable in five annual installments of P100,000 each. The agreement also required Taylor to pay an interest rate of 5% per year on the remaining principal. After Lorelai and Luke married under the conjugal partnership of gains, Taylor continued to repay the loan.

- The total principal of P500,000 will remain as Luke's exclusive property.
- The total interest collected during the marriage (P60,000) is included in the conjugal partnership property

#### Art. 120 ★♣

The ownership of improvements, whether for utility or adornment, made on the separate property of the spouses at the expense of the partnership or through the acts or efforts of either or both spouses shall pertain to the conjugal partnership, or to the original owner-spouse, subject to the following rules:

When the cost of the improvement made by the conjugal partnership and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of one of the spouses shall belong to the conjugal partnership, subject to reimbursement of the value of the property of the owner-spouse at the time of the improvement; otherwise, said property shall be retained in ownership by the owner-spouse, likewise subject to reimbursement of the cost of the improvement.

In either case, the ownership of the entire property shall be vested upon the reimbursement, which shall be made at the time of the liquidation of the conjugal partnership.

#### Example:

Carlos and Elena married in 1987. Before their marriage, Elena inherited a beachfront property in Batangas, making it her separate property. During their marriage, they used P3 million of conjugal funds to build a modern

beachfront villa on the land to generate rental income.

- Value of land before improvements: P2 million
- Cost of improvements: P3 million
- Current market value: P6 million

#### 1. Determine ownership

- a. The cost of the improvement and the resulting increase in value of the property are greater than the original value of the beachfront land.
- b. Under Art. 120, ownership of the entire property (land + villa) now belongs to the conjugal partnership, subject to reimbursement.

#### 2. Reimbursement

- a. At the time of liquidation of the conjugal partnership, Elena (the original owner of the land) must be reimbursed the value of the land at the time of the improvement (P2 million).

**Tl;dr:** When the cost of the improvement and the increase in value exceed the original value of the separate property, **ownership transfers** to the conjugal partnership. However, the original owner-spouse is entitled to reimbursement of the property's value at the time the improvement was made.

#### Case law illustration

#### Muñoz (supra, art. 116)

Erlinda Ramirez owned a lot. However, that land was mortgaged to the GSIS because Eliseo Ramirez took out a P136,500 housing loan. Eventually, Erlinda took out a loan from petitioner Muñoz, and she used that to pay the rest of the housing loan. The housing loan was used to build a house in that land.

- Eliseo only paid around P60,755.76 as salary deduction to the house
- Erlinda paid P176,445.27 (from the Muñoz loan)
- It is fairly reasonable that the value of the residential lot is more than P60,000.
  - Hence, the subject property remained the exclusive paraphernal property of Erlinda

#### Section 4. – Charges Upon and Obligations of the Conjugal Partnership

#### Art. 121 ★♣

The conjugal partnership shall be liable for:

- (1) The support of the spouse, their common children, and the legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;
- (2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the conjugal partnership of gains, or by both spouses or by one of them with the consent of the other;
- (3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have benefited;
- (4) All taxes, liens, charges, and expenses, including major or minor repairs upon the conjugal partnership property;
- (5) All taxes and expenses for mere preservation made during the marriage upon the separate property of either spouse;
- (6) Expenses to enable either spouse to commence or complete a professional, vocational, or other activity for self-improvement;
- (7) Ante-nuptial debts of either spouse insofar as they have redounded to the benefit of the family;
- (8) The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement; and
- (9) Expenses of litigation between the spouses unless the suit is found to be groundless.

If the conjugal partnership is insufficient to cover the foregoing liabilities, the spouses shall be solidarily liable for the unpaid balance with their separate properties.

#### **Cordova** (*supra*, art. 116)

There are **two scenarios** that the family may benefit under an Art. 121(3) debt and obligation:

1. Where the husband contracts obligations on behalf of the family business, the law presumes, and rightly so, that such obligation will redound to the benefit of the conjugal partnership.
2. If the money or services are given to another person or entity, and the husband acted only as a surety or guarantor, that contract cannot, by itself, alone be categorized as falling within Art. 121(3).

In all cases, the burden of proof that the debt was contracted for the benefit of the conjugal partnership of gains lies with the creditor-party litigant claiming as such.

Civil liability arising from a criminal case may be executed on the conjugal partnership, when such liability (e.g. restitution, reparation or indemnity)

falls under in either of the scenarios.

#### *Scenario #2 in Cordova*

#### **Security Bank v. Mar Tierra Corp., G.R. 143382, November 29, 2006**

If the money is given to another entity and the husband acted only as a surety or guarantor, the transaction cannot itself be deemed an obligation for the benefit of the conjugal partnership.

1. There is no presumption that it is to benefit the conjugal partnership.
2. Proof must be presented if indeed it redounded to the benefit of the conjugal partnership.

#### **Art. 122** ★♣

The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal properties partnership except insofar as they redounded to the benefit of the family.

Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.

However, the payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purpose above-mentioned.

#### **Pana** (*supra*, art. 75)

The civil indemnity that the decision in a criminal imposed on a spouse may be enforced against their conjugal assets after the responsibilities enumerated in Art. 121 have been covered.

- Compare with: *Cordova*. This is because the judgment of civil indemnity was brought by a guilty verdict in the criminal case. Hence, it is a “fine and indemnity” as contemplated by Art. 122.

#### For **liabilities arising from criminal cases**:

- If guilty → fines and indemnities (Art. 122, but only after Art. 121)
- If not guilty and civil aspect only → debt and obligations (Art. 121(3))

**Sps. Ros v. PNB, G.R. 170166, April 6, 2011 ♥**

Debts contracted by the husband for and in the exercise of the industry or profession by which he contributes to the support of the family cannot be deemed to be his exclusive and private debts.

No actual benefit may be proved. It is enough that the benefit to the family is **apparent** at the signing of the contract.

*Gambling, again*

**Art. 123 ♦**

Whatever may be lost during the marriage in any game of chance or in betting, sweepstakes, or any other kind of gambling whether permitted or prohibited by law, shall be borne by the loser and shall not be charged to the conjugal partnership but any winnings therefrom shall form part of the conjugal partnership property.

**Section 5. – Administration of the Conjugal Partnership Property****Art. 124 ♦**

The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

**Alexander v. Sps. Escalona, G.R. 256141, July 19, 2022**

**12**

**General rule:** The alienation or encumbrance of the conjugal property, without the authority of the court or the written consent of the other spouse, made after the effectivity of the Family Code is void.

Unless the transaction is accepted by the non-consenting spouse or is authorized by the court, an action for declaration of nullity of the contract may be filed before the continuing offer on the part of the consenting spouse and the third person becomes ineffective.

- The action to nullify the void alienation or encumbrance of the conjugal property, without authority of the court or the written consent of the other spouse, is **not imprescriptible**.

*Donations, again*

**Art. 125 ♦**

Neither spouse may donate any conjugal partnership property without the consent of the other. However, either spouse may, without the consent of the other, make moderate donations from the conjugal partnership property for charity or on occasions of family rejoicing or family distress.

Head over to the discussions in Arts. 96 and 98 (same rules apply for both ACP and CPG).

**Section 6. – Dissolution of Conjugal Partnership Regime****Art. 126 ♦ ★**

The conjugal partnership terminates:

- (1) Upon death of either spouse;
- (2) When there is a decree of legal separation;
- (3) When the marriage is annulled or declared void; or
- (4) In case of judicial separation of property during the marriage under Articles 134 to 138.

**Art. 127 ♦**

The separation in fact between husband and wife shall not affect the regime of conjugal partnership, except that:

- (1) The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported;

- (2) When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding;
- (3) In the absence of sufficient conjugal partnership property, the separate property of both spouses shall be solidarily liable for the support of the family. The spouse present shall, upon petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share.

#### Art. 128

If a spouse without just cause **abandons** the other or fails to comply with his or her obligation 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, **subject to such precautionary conditions** as the court may impose.

The obligations to the family mentioned in the preceding paragraph refer to marital, parental or property relations.

A spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without intention of returning. The spouse who has left the conjugal dwelling for a period of three months or has failed within the same period to give any information as to his or her whereabouts shall be prima facie presumed to have no intention of returning to the conjugal dwelling.

**Same rules for ACP and CPG.** See discussions on Arts. 99-101.

#### Alipio v. CA, G.R. 134100, September 29, 2000

A creditor cannot sue the surviving spouse of a decedent in an ordinary proceeding for the collection of a sum of money chargeable against the conjugal partnership and that the proper remedy is for him to file a claim in the settlement of estate of the decedent.

**MCG:** Can you sue a dead person?!?!?

#### Section 7. – Liquidation of the Conjugal Partnership Assets and Liabilities

#### Art. 129

Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:

- (1) An inventory shall be prepared, listing separately all the properties of the conjugal partnership and the exclusive properties of each spouse.
- (2) Amounts advanced by the conjugal partnership in payment of personal debts and obligations of either spouse shall be credited to the conjugal partnership as an asset thereof.
- (3) Each spouse shall be reimbursed for the use of his or her exclusive funds in the acquisition of property or for the value of his or her exclusive property, the ownership of which has been vested by law in the conjugal partnership.
- (4) The debts and obligations of the conjugal partnership shall be paid out of the conjugal assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties, in accordance with the provisions of paragraph (2) of Article 121.
- (5) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.
- (6) Unless the owner had been indemnified from whatever source, the loss or deterioration of movables used for the benefit of the family, belonging to either spouse, even due to fortuitous event, shall be paid to said spouse from the conjugal funds, if any.
- (7) The **net remainder** of the conjugal partnership properties shall constitute the profits, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements or unless there has been a voluntary waiver or forfeiture of such share as provided in this Code.
- (8) The presumptive legitimes of the common children shall be delivered upon the partition in accordance with Article 51.
- (9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children.

*To repeat*

#### Quiao v. Quiao, G.R. 176556, July 4, 2012

The definition of "net profits" Art. 102(4) also applies in CPG, because Arts. 43, 63(2) make it applicable.



- Art. 102(4) applies to both the dissolution of the ACP under Art. 102 and CPG under Art. 129.

**Net profits** – The increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution.

⚠ *There is no concept of a “net assets” in CPG because 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.*

- Hence, whatever is left of the conjugal partnership, after paying for the debts and obligations, will be returned to the spouses.

#### Order of liquidation for CPG:

1. Inventory.
2. Add: Advances of the CPG for a spouse's debts and obligations
3. Less: Reimbursement of a spouse for the use of his/her exclusive property, and value of his/her exclusive property whose ownership has been vested in the CPG (as in the case of Art. 118 and 120)
4. Less: Debts and obligations of the CPG.
  - a. If insufficient, use exclusive properties.
  - b. Whatever remains of the exclusive properties → return to owner-spouse
5. Less: Reimbursement of the loss or deterioration of movables (cars) used for the family, belonging to either spouses.
6. Net remainder of the CPG → divide equally for the spouses

#### Cases when the net profits of the CPG are forfeited:

1. Contracting a valid bigamous marriage (the presumption of death and subsequent reappearance thingy) in bad faith (Art. 43(2)).
2. The guilty spouse in a legal separation (Art. 63(2)).
3. Annulled marriages (Art. 45, in rel. to 50).

**Q:** Is there forfeiture in case of nullity of marriages, such as Art. 36?

**A:** No. You go to Art. 147 or 148. The provisions on ACP/CPG do not apply to nullity of marriages.

#### Augusto v. Dy, G.R. 218731, February 13, 2019

Upon a spouse's death, 1/2 of the property should go to the surviving spouse as his share from the conjugal estate, plus 1/4 representing his share as the surviving spouse of Marcosa (inheritance from his wife). The sole child is

entitled to 1/4 of the property as her inheritance from her mother.

- The surviving spouse and child become co-owners of the property.
- Each co-owner of property which is held pro indiviso exercises his rights over the whole property and may use and enjoy the same.
  - Hence, if a co-owner sells the whole property as his, the sale will affect only his own share, but not the non-consenting co-owner.

#### Art. 130 ♦

Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.

If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extra-judicially within six months from the death of the deceased spouse. If upon the lapse of the six-month period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void.

Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage.

#### Art. 131 ♦

Whenever the liquidation of the conjugal partnership properties of two or more marriages contracted by the same person before the effectivity of this Code is carried out simultaneously, the respective capital, fruits and income of each partnership shall be determined upon such proof as may be considered according to the rules of evidence. In case of doubt as to which partnership the existing properties belong, the same shall be divided between the different partnerships in proportion to the capital and duration of each.

**Same rules for ACP and CPG.** See discussions on Arts. 103-104.

#### Art. 132 ♣

The Rules of Court on the administration of estates of deceased persons shall

be observed in the appraisal and sale of property of the conjugal partnership, and other matters which are not expressly determined in this Chapter.

#### Art. 133 ♣

From the common mass of property support shall be given to the surviving spouse and to the children during the liquidation of the inventoried property and until what belongs to them is delivered; but from this shall be deducted that amount received for support which exceeds the fruits or rents pertaining to them.

Once a spouse dies, the surviving spouse and the children become co-heirs of the estate left by the deceased.

- Hence, during liquidation they have a right to get certain amounts from what they technically own to support themselves.
- The amount which they are allowed to get must at least be equivalent to the fruits or rents arising from the share which they will eventually obtain after liquidation.

### Chapter 5 Separation of Property of the Spouses and Administration of Common Property by One Spouse During the Marriage

#### Art. 134

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

**General rule:** Separation of property during the marriage is not allowed.

- **Exception:** When a judicial order says so.
  - **Exception to the exception:** They may have separation of property, other than a court order, if it's provided in the marriage settlement.

Judicial separation of property (JSP) can either be:

1. Voluntary (Art. 136)
2. Sufficient cause (Art. 135)

#### Sufficient causes

#### Art. 135

Any of the following shall be considered sufficient cause for judicial separation of property:

- (1) That the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction;
- (2) That the spouse of the petitioner has been judicially declared an absentee;
- (3) That loss of parental authority of the spouse of petitioner has been decreed by the court;
- (4) That the spouse of the petitioner has abandoned the latter or failed to comply with his or her obligations to the family as provided for in Article 101;
- (5) That the spouse granted the power of administration in the marriage settlements has abused that power; and
- (6) That at the time of the petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable.

In the cases provided for in Numbers (1), (2), and (3), the presentation of the final judgment against the guilty or absent spouse shall be enough basis for the grant of the decree of judicial separation of property.

#### Dela Cruz v. Dela Cruz, G.R. L-19565, January 30, 1968



The word "abandonment," when referring to the act of one consort of leaving the other, is "the act of the husband or the wife who leaves his or her consort willfully, and with an intention of causing perpetual separation."

Mere refusal or failure of the husband as administrator of the conjugal partnership to inform the wife of the progress of the family businesses does not constitute abuse of administration.

Abuse connotes willful and utter disregard of the interests of the partnership, evidenced by a repetition of deliberate acts and/or omissions prejudicial to the wife.

- Hence, the judicial recourse in Art. 127 and 128 is designed to protect the conjugal partnership from waste and shield the spouse from want.

#### Voluntary

#### Art. 136

The spouses may jointly file a verified petition with the court for the voluntary dissolution of the absolute community or the conjugal partnership of gains, and for the separation of their common properties.

All creditors of the absolute community or of the conjugal partnership of gains, as well as the personal creditors of the spouse, shall be listed in the petition and notified of the filing thereof. The court shall take measures to protect the creditors and other persons with pecuniary interest.

**Sollano v. Zaide-Sollano, G.R. 246794, December 2, 2021**

The separation of property is not effected by the mere execution of the contract or agreement of the parties, but by the decree of the court approving the same.

- JSP cannot be extrajudicial!

*Liquidation – apply ACP/CPG;  
Support pendente lite*

**Art. 137**

Once the separation of property has been decreed, the absolute community or the conjugal partnership of gains shall be liquidated in conformity with this Code.

During the pendency of the proceedings for separation of property, the absolute community or the conjugal partnership shall pay for the support of the spouses and their children.

*JSP → CSP*

**Art. 138**

After dissolution of the absolute community or of the conjugal partnership, the provisions on complete separation of property shall apply.

Head over to Arts. 143-146 to see how that (CSP) works.

**Art. 139**

The petition for separation of property and the final judgment granting the

same shall be recorded in the proper local civil registries and registries of property.

Recording requirement of the JSP petition and judgment in the–

1. Local civil registry
2. Registry of property

**Art. 140**

The separation of property shall not prejudice the rights previously acquired by creditors.

*Right of creditors to be informed of the JSP*

**Sollano (supra, art. 136)**

In voluntary dissolution of conjugal partnership of gains, the spouses are required to file a verified petition before the court and notify both their conjugal and personal creditors of the filing thereof.

This is important because the compromise agreement does not only stipulate the dissolution and partition of the spouses' conjugal assets, but also provides for the payment of conjugal debts.

**Art. 141**

The spouses may, in the same proceedings where separation of property was decreed, file a motion in court for a decree reviving the property regime that existed between them before the separation of property in any of the following instances:

- (1) When the civil interdiction terminates;
- (2) When the absentee spouse reappears;
- (3) When the court, being satisfied that the spouse granted the power of administration in the marriage settlements will not again abuse that power, authorizes the resumption of said administration;
- (4) When the spouse who has left the conjugal home without a decree of legal separation resumes common life with the other;
- (5) When parental authority is judicially restored to the spouse previously deprived thereof;
- (6) When the spouses who have separated in fact for at least one year, reconcile and resume common life; or
- (7) When after voluntary dissolution of the absolute community of

property or conjugal partnership has been judicially decreed upon the joint petition of the spouses, they agree to the revival of the former property regime. No voluntary separation of property may thereafter be granted.

The revival of the former property regime shall be governed by Article 67.

List is straightforward, but it must be correlated with the enumeration in Art. 135.

Insofar as voluntary separation is concerned, it can only be done once.

**MCG:** You can have a voluntary separation, and then have it revived. However, it does not foreclose having another JSP, but this time, "for cause." And have it revived again.

#### Art. 142

The administration of all classes of exclusive property of either spouse may be transferred by the court to the other spouse:

1. When one spouse becomes the guardian of the other;
2. When one spouse is judicially declared an absentee;
3. When one spouse is sentenced to a penalty which carries with it civil interdiction; or
4. When one spouse becomes a fugitive from justice or is in hiding as an accused in a criminal case.

If the other spouse is not qualified by reason of incompetence, conflict of interest, or any other just cause, the court shall appoint a suitable person to be the administrator.

Note that this pertains to the administration of the exclusive property.

A spouse can administer the other spouse's exclusive properties only by judicial decree.

But if the other spouse is unqualified by reason of:

1. Incompetence,
  2. Conflict of interest, or
  3. Any other just cause,
- the court may appoint a third party.

## Chapter 6 Regime of Separation of Property

### Art. 143

Should the future spouses agree in the marriage settlements that their property relations during marriage shall be governed by the regime of separation of property, the provisions of this Chapter shall be supplementary.

You need a marriage settlement to have the regime of separation of property.

- In such a case, the FC becomes supplementary (see Art. 74)

### Art. 144

Separation of property may refer to present or future property or both. It may be total or partial. In the latter case, the property not agreed upon as separate shall pertain to the absolute community.

The separation of property takes effect at the moment of I do's.

- But, you can stipulate that the separation is complete or partial.
  - If partial, the properties outside the separation shall be ACP.
- You can also stipulate that certain future properties can be separate or not.

### Art. 145

Each spouse shall own, dispose of, possess, administer and enjoy his or her own separate estate, without need of the consent of the other. To each spouse shall belong all earnings from his or her profession, business or industry and all fruits, natural, industrial or civil, due or received during the marriage from his or her separate property.

### Art. 146

Both spouses shall bear the family expenses in proportion to their income, or, in case of insufficiency or default thereof, to the current market value of their separate properties.

The liabilities of the spouses to creditors for family expenses shall, however, be solidary.

**Yao v. Perello, G.R. 153828, October 24, 2003 ♥**

When the spouses' property regime is complete separation of property (CSP), the only time the separate properties of the spouses can be made to answer for liabilities to creditors is when those liabilities are incurred for family expenses.

**Abid-Babano v. Executive Secretary, G.R. 201176, August 28, 2019**

The requirement under RA 6713 and similar laws that the sworn statement of assets, liabilities, and net worth (SALN) to be filed by every government official must include assets, liabilities, and net worth of the spouse of the filer is construed not to include the assets, liabilities, and net worth of spouses whose property regime during the marriage is by law or by agreement prior to the marriage one of complete separation of property.

**Chapter 7**  
**Property Regime of Unions Without Marriage**

**Art. 147 ★**

When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of

the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.

*Requisites for the application of Art. 147***Ocampo v. Ocampo, G.R. 198908, August 3, 2015**

For Art. 147 to operate, the man and the woman:

1. Must be capacitated to marry each other
2. Live exclusively with each other as husband and wife
3. Their union is without the benefit of marriage or their marriage is void

*Presumption***Uy v. Sps. Lacsamana, G.R. 206220, August 19, 2015**

Art. 147 provides that properties acquired during cohabitation are presumed to be co-owned unless the contrary is proven.

*Donations***Perez v. Perez-Senerpida, G.R. 233365, March 24, 2021 ♥**

Under Art. 147, the donation of any property acquired during the cohabitation by one party without the consent of the other is void.

**Rationale:** If the parties are allowed to dispose of their shares in said properties like in a true co-ownership, it will destroy their relationship. The FC would like to encourage the parties to legalize their union some day and is just smoothing out the way until their relationship ripens into a valid union.

**Art. 148 ★**

In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint



deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her 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.

### Presumption

#### Vda. de Cañada v. Baclot, G.R. 221874, July 7, 2020



Under Art. 148, the ownership of the properties jointly acquired by the parties who are cohabiting under the circumstances provided is **relative to their respective contributions, requiring actual proof.**

- Absent proof, the presumption is that their contributions are equal.
- However, if proof of actual contribution per se was not shown, co-ownership will not arise.

⚠ *While a certificate of title is not conclusive proof of ownership, it does not foreclose the possibility that the property is co-owned by other persons.*

### Requisites for presumption to apply

#### Ventura v. Sps. Abuda, G.R. 202932, October 23, 2013

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.

A property of an Art. 148 cohabitation can be considered common if:

1. These were acquired during the cohabitation; and
2. There is evidence that the properties were acquired through the parties' joint contribution of money, property or industry.

### Burden of proof

#### Lavadia v. Heirs of Luna, G.R. 171914, July 23, 2014



Whoever alleges co-ownership carried the burden of proof to confirm such fact.

Proof of actual contribution is required for the presumption of co-ownership to arise.

### Arts. 147 vs. 148

	Art. 147	Art. 148
Scope of cohabitation	Capacitated to marry and live together as husband and wife without marriage <b>or</b> under a void marriage	Not an Art. 147 relationship, including situations where one or both parties are married to another
Ownership of property	Wages, salaries, and properties acquired through work or industry are owned in equal shares under co-ownership	Only properties acquired through actual joint contributions of money, property, or industry are owned in proportion to contributions
Presumption of contribution	Equal contribution unless proven otherwise	Equal contributions in the absence of proof to the contrary <b>but</b> requires <b>actual</b> joint contribution for ownership
Encumbrance or disposition	Neither party can encumber or dispose of shared property without the other's consent during cohabitation. This includes donations.	-
Forfeiture of shares	In cases of bad faith, the guilty party's share is forfeited in favor of common children or, in their absence, the innocent party.	The share of a party in bad faith accrues to the conjugal partnership (if married), <b>or</b> follows the forfeiture rules of Art. 147.
Recognition of bad faith	Differentiates between good and bad faith	Applies forfeiture rules even if both parties are

	when determining forfeiture.	in bad faith.
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## TITLE V The Family

### Chapter 1 The Family as an Institution

#### Art. 149

The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect.

#### Art. 150

Family relations include those:

- (1) Between husband and wife;
- (2) Between parents and children;
- (3) Among brothers and sisters, whether of the full or half-blood.

Any person not included in the enumeration cannot be considered as within the term "family relations."

#### Art. 151

No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the same case must be dismissed.

This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

### Magbaleta v. Gonong, G.R. L-44903, April 22, 1977

The prohibition in Art. 151 does not apply when a third party is involved.

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.

### Chapter 2 The Family Home

*What is a family home?*

#### Art. 152

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

*Constitution of a family home*

#### 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.

*"Except as hereinafter provided"* – Go head to Art. 155.

*"And to the extent of the value allowed by law"* – Go head to Art. 157.

### Sps. De Mesa v. Sps. Acero, G.R. 185064, January 16, 2012

**Rules on constitution of family homes**, for purposes of exemption from execution:

1. Family residences constructed *before* the effectivity of the Family Code must be constituted as a family home either judicially or

extrajudicially in accordance with the provisions of the Civil Code to be exempt from execution.

2. Family residences constructed *after* the effectivity of the Family Code 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 reside therein.
3. Family residences which were not judicially or extrajudicially constituted as a family home prior to the effectiveness 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.

The right to exemption or forced sale under Art. 153 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.

- Hence, the exemption from execution must be proven before the sale of the family home at public auction.

#### *Who are entitled to live in a family home*

##### **Art. 154**

The beneficiaries of a family home are:

- (1) The husband and wife, or an unmarried person who is the head of a family; and
- (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

#### *Instances when the family home may be executed*

##### **Art. 155**

The family home shall be exempt from execution, forced sale or attachment **except:**

- (1) For nonpayment of taxes;
- (2) For debts incurred prior to the constitution of the family home;
- (3) For debts secured by mortgages on the premises before or after such constitution; and
- (4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

##### **Sps. Fortaleza v. Sps. Lapitan, G.R. 178288, August 15, 2012**

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 Art. 153, 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.

##### **Taruc v. Maximo, G.R. 227728, September 28, 2022**

The claim for exemption must be set up and proven. The debtor has the burden of proving the exemption, i.e. that the home:

1. Was duly constituted as a family home
2. Was constituted jointly by the husband and wife or by an unmarried head of a family
3. Was resided by the family
4. Forms part of the properties of the ACP/CPG, or of the exclusive properties of either spouse, with the latter's consent, or property of the unmarried head of the family
5. Has an actual value of P300,000 in urban, and P200,000 in rural areas

##### **Art. 156**

The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent. It may also be constituted by an unmarried head of a family on his or her own property.

Nevertheless, property that is the subject of a conditional sale on installments where ownership is reserved by the vendor only to guarantee payment of the purchase price may be constituted as a family home.

The family home must be a part of the:

1. ACP,
2. CPG,
3. Exclusive property of either spouse with the latter's consent, or
4. Constituted by an unmarried head of a family on his own property.

Par. 2 talks about how a property on conditional sale can still become a family home. **Example:**

Spouses Mark and Sofia purchase a house and lot in Cavite from a developer through a conditional sale agreement. The purchase price is P5 million, payable in 60 monthly installments of P83,333. Under the agreement, the

developer retains ownership of the property until the purchase price is fully paid. However, the spouses immediately move into the house with their children and use it as their primary residence.

Even though the developer retains ownership of the property under the conditional sale agreement to guarantee payment of the installments, the house and lot may be constituted as a family home.

#### *Value of the family home at constitution*

##### **Art. 157**

The actual value of the family home shall not exceed, at the time of its constitution, the amount of the three hundred thousand pesos in urban areas, and two hundred thousand pesos in rural areas, or such amounts as may hereafter be fixed by law.

In any event, if the value of the currency changes after the adoption of this Code, the value most favorable for the constitution of a family home shall be the basis of evaluation.

For purposes of this Article, urban areas are deemed to include chartered cities and municipalities whose annual income at least equals that legally required for chartered cities. All others are deemed to be rural areas.

At the time of constitution, the family home's value must not exceed:

- P300,000 → urban
- P200,000 → rural

**“Urban”** – Cities and municipalities whose annual income is at least equivalent to a chartered city.

##### **Eulogio v. Bell, G.R. 186322, July 8, 2015 ♥**

The exemption of the family home from execution, forced sale or attachment is limited to P300,000 in urban areas and P200,000 in rural areas.

- Any amount in excess of those limits can be applied to the payment of any of the obligations specified in Arts. 155 and 160.

Any subsequent improvement or enlargement of the family home by the persons constituting it, its owners, or any of its beneficiaries will still be exempt from execution, forced sale or attachment provided the following conditions obtain:

1. the actual value of the property at the time of its constitution has been determined to fall below the statutory limit; and
2. the improvement or enlargement does not result in an increase in its value exceeding the statutory limit.

##### **Art. 158**

The family home may be sold, alienated, donated, assigned or encumbered by the owner or owners thereof with the written consent of the person constituting the same, the latter's spouse, and a majority of the beneficiaries of legal age. In case of conflict, the court shall decide.

To sell the family home, the owner must obtain the written consent of

1. The person constituting it,
2. His/her spouse, and
3. A majority of the beneficiaries of legal age.

In case of conflict, the court shall decide.

#### *Death of a spouse; effects on the family home*

##### **Art. 159**

The family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of ten years or for as long as there is a minor beneficiary, and the heirs cannot partition the same **unless the court finds compelling reasons therefor**. This rule shall apply regardless of whoever owns the property or constituted the family home.

**Q:** What happens to the family home if one of the spouses dies?

**A:** If one of the spouses dies, the family home remains intact and protected, continuing to serve as the residence of the surviving spouse and their beneficiaries (e.g. a minor child).

The family home cannot be divided or partitioned among the heirs of the deceased spouse for 10 years from the time of death or for as long as there is a minor beneficiary, whichever is longer, unless a court finds compelling reasons to allow partition.

##### **Art. 160 ★**

When a creditor whose claims is not among those mentioned in Article 155 obtains a judgment in his favor, and he has reasonable grounds to believe that the family home is actually worth more than the maximum amount fixed in Article 157, he may apply to the court which rendered the judgment for an order directing the sale of the property under execution. The court shall so order if it finds that the actual value of the family home exceeds the maximum amount allowed by law as of the time of its constitution. If the increased actual value exceeds the maximum allowed in Article 157 and results from subsequent voluntary improvements introduced by the person or persons constituting the family home, by the owner or owners of the property, or by any of the beneficiaries, the same rule and procedure shall apply.

At the execution sale, no bid below the value allowed for a family home shall be considered. The proceeds shall be applied first to the amount mentioned in Article 157, and then to the liabilities under the judgment and the costs. The excess, if any, shall be delivered to the judgment debtor.

#### **Eulogio** (*supra*, art. 157)

To warrant the execution sale of a family home under Art. 160, creditors need to establish these facts:

1. there was an increase in its actual value;
2. the increase resulted from *voluntary* improvements on the property introduced by the persons constituting the family home, its owners or any of its beneficiaries; and
3. the increased actual value exceeded the maximum allowed under Art. 157.

There are two kinds of debt where the family home may be executed on:

1. An Art. 155 debt, and
2. An Art. 160 debt.

For an Art. 155 debt, the creditor must show that the debt or obligation falls under any of the enumeration there.

For an Art. 160 debt, the creditor must establish the requisites in *Eulogio*.

- This is more difficult because the creditor must first establish the market value of the family home.

#### **Example:**

A family home was constituted in 2010 with an assessed value of P250,000, within the P300,000 maximum value allowed under Article 157.

In 2023, the homeowner voluntarily added a second floor and other major improvements, increasing the home's market value to P1,200,000.

Later that year, the homeowner failed to pay a P500,000 loan, prompting the creditor to file a case and obtain a favorable judgment. The creditor, knowing the home's value now far exceeds the P300,000 limit, petitioned the court for an execution sale. After verifying that the increase in value resulted from voluntary improvements, the court approved the sale. At auction, no bid below P300,000 (the maximum exempt amount) was accepted.

The proceeds were distributed as follows: P300,000 was preserved for the family home exemption, P500,000 was applied to the judgment debt and costs, and the remaining surplus was returned to the homeowner.

- Take note of the order of payment here.
- In an Art. 160 debt, you set aside P300,000/P200,000 first, then, pay the debt or obligation.
  - Any remaining funds will be returned to the owner.
- However, in an Art. 155 debt, you pay the debt first, then you get whatever's left (if anything).

#### **Art. 161**

For purposes of availing of the benefits of a family home as provided for in this Chapter, a person may constitute, or be the beneficiary of, only one family home.

There can only be one legal family home.

- Other homes, then, are not exempt from execution.

#### **Art. 162**

The provisions in this Chapter shall also govern existing family residences insofar as said provisions are applicable.

### **TITLE VI Paternity and Filiation**

#### **Chapter 1 Legitimate Children**



**Art. 163**

The filiation of children may be by nature or by adoption. Natural filiation may be legitimate or illegitimate.

**Cua Ko v. Republic, G.R. 210984, April 12, 2023**

**Legitimacy** – A civil status established if a person is born during the subsistence of a marriage.

**Filiation** – A relationship, the state of being someone's offspring. It is determined mainly by biology.

It may be the law that solely declares who are legitimate children, but in no way can it alter blood relationships.

*Definition;*

*Artificial insemination*

**Art. 164**

Children conceived **or** born during the marriage of the parents are legitimate.

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.

The following are legitimate children (under Art. 164):

1. Children conceived and born during marriage
2. Children conceived outside of marriage, but born during a marriage
3. Children conceived as a result of artificial insemination

The FC contemplates two cases of artificial insemination:

1. The wife + the husband's sperm
2. The wife + a donor sperm.

**Requisites to have a child conceived of artificial insemination be considered a legitimate child:**

1. There is a written instrument authorizing or ratifying the insemination

2. Executed and signed by the parents
3. Before the birth of the child
  - a. Note that the codal states "or ratified," hence, it's possible for this instrument to be executed *after* the child's birth.

**Cua Ko (supra, art 163)**

Art. 164 assumes two things:

1. That the child was born during the subsistence of a marriage; and
2. That this subsisting marriage is the marriage of their parents.

The reality, however, is that a child can be born during the subsistence of a marriage, but not necessarily that of their biological parents.

*Nonmarital children, defined*

**Art. 165**

Children conceived and born outside a valid marriage are illegitimate, **unless otherwise provided in this Code.**

The codal states "valid marriage." Hence, a *void ab initio* marriage produces illegitimate child, except:

1. Children conceived or born before the finality of an Art. 36 nullity
2. Children conceived or born before the finality of an Art. 45 annulment.
3. Children conceived or born in a void Art. 53 marriage
4. Children conceived prior to the termination of the void bigamous marriage under Art. 41.

It is clear, therefore, that unless made as an express exception by law, a child born outside a lawful wedlock shall be illegitimate.

*Grounds to impugn legitimacy*

**Art. 166**

Legitimacy of a child may be impugned only on the following grounds:

- (1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:
  - (a) The physical incapacity of the husband to have sexual intercourse with his wife;

- (b) The fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or
- (c) Serious illness of the husband, which absolutely prevented sexual intercourse;
- (2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, **except in the instance provided in the second paragraph of Article 164; or**
- (3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.

The grounds herein are exclusive.

They are:

1. Physical impossibility of sexual intercourse in the first 120 days of the 300 days which preceded the child's birth, due to:
  - a. Impotence of the husband
  - b. They were living separately
  - c. Serious illness of the husband
2. Proven by scientific evidence (i.e. DNA testing) that the child is not the offspring of the father, except for cases of artificial insemination.
3. That in case of artificial insemination, there's been a vitiation of consent.

### **Yap v. Yap, G.R. 222259, October 17, 2022 ♥**

Children who enjoy the presumption of legitimacy under Art. 164 may impugn this presumption through any of the grounds provided under Art. 166.

Separation alone is insufficient to impugn the presumption of legitimacy. There must be proof of the **impossibility of sexual union**.

### *Presumption of legitimacy*

#### **Art. 167**

The child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

### *Overthrowing the presumption of legitimacy*

#### **Yap (id.)**

When the filiation and paternity of children are in issue, the case should be resolved taking into consideration the welfare and best interests of the children.

In the case of a legitimate child wanting to prove and establish her true filiation (which could make her an illegitimate child):

1. It is imperative that the child first overthrow the presumption that she is the marital daughter.
  - a. The presumption may also be overturned when it was proven that for biological or other scientific reasons, the child could not have been that of the husband (DNA testing).
2. Once the presumption of legitimacy has been impugned, the paternity of the husband can be rejected.

### **Santiago v. Jornacion, G.R. 230049, October 6, 2021 ♥**



The presumption of legitimacy in Art. 167 is not conclusive, and may be overthrown by evidence to the contrary. It was never the intent of the legislators to elevate the presumption of legitimacy to a higher position than a proven fact.

- The presumption that a child born in wedlock is legitimate is only a disputable presumption.
- The burden of proving paternity is on the person who alleges that the putative father is the biological father of the child.

### *Legitimacy of children born in a second marriage*

#### **Art. 168**

If the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rules shall govern in the absence of proof to the contrary:

- (1) A child born one hundred eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage;
- (2) A child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage.

#### **Art. 169**

The legitimacy or illegitimacy of a child born after three hundred days

following the termination of the marriage shall be proved by whoever alleges such legitimacy or illegitimacy.

### *Standing and prescription to impugn legitimacy*

#### **Art. 170**

The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

#### **Art. 171**

The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

- (1) If the husband should die before the expiration of the period fixed for bringing his action;
- (2) If he should die after the filing of the complaint, without having desisted therefrom; or
- (3) If the child was born after the death of the husband.

A matrix may be found [here](#).

### *Collateral action not allowed*

#### **Miller v. Miller, G.R. 200344, August 28, 2019**

Legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through a collateral attack.

- Hence, a Rule 108 correction of entry proceedings is not applicable to impugn legitimacy.

## **Chapter 2 Proof of Filiation**

#### **Art. 172 ★**

The filiation of legitimate children is established by any of the following:

- (1) The record of birth appearing in the civil register or a final judgment; or
- (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

- (1) The open and continuous possession of the status of a legitimate child; or
- (2) Any other means allowed by the Rules of Court and special laws.

#### **Heirs of Fabillar v. Paller, G.R. 231459, January 21, 2019**

A baptismal certificate *alone* is not sufficient to resolve a disputed filiation, and the courts must peruse other pieces of evidence instead of relying only on a canonical record.

- A baptismal certificate only has evidentiary value to prove filiation only if considered alongside other evidence of filiation.
- Other proof of filiation include a baptismal certificate, a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, testimonies of witnesses, and other kinds of proof admissible under Rule 130 of the Rules of Court.

#### **Salas v. Matsusalem, G.R. 180284, September 11, 2013**

The following *do not* establish filiation:

1. The birth certificate, if the putative father did not sign the document.
2. The baptismal certificates are not necessarily competent evidence of the veracity of entries therein with respect to the child's paternity.
3. Pictures taken of the mother and her child together with the alleged father.
4. The statement of account from the hospital in which the putative father is the payee.
5. Handwritten notes if they do not contain admission of filiation and signature by the alleged father.

#### **Aguilar v. Siasat, G.R. 200169, January 28, 2015**

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.

- Hence, an SSS Form E-1 satisfies the requirement for proof of filiation and relationship.

Guidelines on the requirement of affixing the signature of the acknowledging parent in any **private handwritten instrument**:

1. **If lone piece of evidence** → strict compliance that it be signed by the acknowledging parent.
2. **If accompanied by other evidence** → it suffices that the claim therein be shown to have been made and handwritten by the acknowledging parent.

#### **Geronimo v. Santos, G.R. 197099, September 28, 2015**

The court may allow the introduction of secondary evidence in actions which involve allegations that the opposing party is not the child of a particular couple—even if such evidence is similar to the kind of proof under Art. 172(2).

⚠ *In this case, the court allowed the admission of secondary evidence (GSIS forms, school records) and a collateral attack because what was being assailed is the fact that the respondent is not a child at all of the her claimed parents. Hence, filiation—not legitimacy—was being impugned.*

#### *Prima facie case required for order for DNA testing*

#### **Lucas v. Lucas, G.R. 190710, June 6, 2011**

A court order for blood testing is considered a search, which, under the constitution, must be preceded by a finding of probable cause to be valid.

- Hence, during the hearing on the motion for DNA testing, the petitioner must present **prima facie evidence or establish a reasonable probability of paternity**.

Still, **DNA testing is discretionary** upon the court.

- If there is already preponderance of evidence to establish paternity and the DNA test would only be corroborative, the court, in its discretion, may disallow DNA testing.

#### *Immutability of judgment vis-a-vis DNA testing*

#### **Gocolay v. Gocolay, G.R. 220606, January 11, 2021**

For a supervening event to stay a final and executory order, the event must

be shown to have materially changed the parties' situation or altered the order's substance, rendering execution inequitable.

- Hence, the conviction of a party into falsifying birth records (into making it appear that the child is a marital child) does not cancel order for DNA testing.
  - The falsification, if anything, only forecloses the chance that the child is a marital child—but not the filiation.

#### *Standing and prescription to **claim** legitimacy*

#### **Art. 173**

The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action.

The action already commenced by the child shall survive notwithstanding the death of either or both the parties.

Generally, to claim legitimacy, only the child has standing.

A matrix may be found [here](#).

Note that Arts. 170-17 talk about *impugning*. Art. 173 talks about *claiming*.

#### *Rights of a legitimate child*

#### **Art. 174**

Legitimate children shall have the right:

- (1) To bear the surnames of the father and the mother, in conformity with the provisions of the Civil Code on Surnames;
- (2) To receive support from their parents, their ascendants, and in the proper cases, their brothers and sisters, in conformity with the provisions of this Code on Support; and
- (3) To be entitled to the legitime and other successional rights granted to them by the Civil Code.

1. Rules on surnames are embodied in Arts. 364-380, NCC.
2. Rules on support are embodied in Arts. 194-208, FC.
3. Rules on succession are discussed in Arts. 774-1105, NCC.

### Chapter 3 Illegitimate Children

#### Art. 175 ★

Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except that when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

To establish illegitimate filiation, go to Art. 172, *mutatis mutandis*.

The prescription is the same as that of Art. 173, except that when the action is based on the grounds of “open and continuous possession,” and “other means allowed by the Rules of Court and special laws,” the action is allowed only as long as the alleged parent is alive.

#### Santiago (*supra*, art. 167)

While scientific proof is allowed to impugn legitimacy under Art. 166(2), the same type of proof should also be allowed to establish filiation under Art. 175 in relation to Art. 172, par. 2.

- Hence, you can also use DNA testing to prove that you're an illegitimate child of someone.

#### Rights of an illegitimate children

#### Art. 176

Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children **may** use the surname of their father if filiation has been expressly recognized by their father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. *Provided*, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child.

### Grande v. Antonio, G.R. 206248, February 18, 2014 ♥

Art. 176 gives the acknowledged illegitimate children the right to decide if they want to use the surname of their father or not.

- The use of the word "may" shows that an acknowledged illegitimate child is under no compulsion to use the surname of his illegitimate father. "May" is permissive and operates to confer discretion.

### Chapter 4 Legitimated Children

#### Requisites for legitimation

#### Art. 177

Children conceived **and** born outside of wedlock of parents who, at the time of conception of the former, were not disqualified by any impediment to marry each other, or were so disqualified only because either or both of them were below eighteen (18) years of age, may be legitimated.

#### Requisites for legitimation:

1. The child is conceived and born by an unmarried couple
2. The couple, at the time of conception, must be capacitated to marry
3. If incapacitated, such incapacity must only pertain to age (i.e. a case of teenage pregnancy)

#### Art. 178

Legitimation shall take place by a subsequent valid marriage between parents. The annulment of a voidable marriage shall not affect legitimation.

A child can be legitimated after the marriage of his/her parents.

- If that marriage is subsequently annulled, the legitimation will persist.

#### Art. 179

Legitimated children shall enjoy the same rights as legitimate children.



So see Art. 174.

**BBB v. AAA, G.R. 193225, February 9, 2015**

When the father acknowledges a nonbiological child as his son for the purposes of legitimation, he is estopped from making an assertion contrary to his previous representations.

- This, despite the fact that the legal process of legitimation was trifled with.
- Hence, the nonbiological legitimated child shall be considered legitimate.

**Art. 180**

The effects of legitimation shall retroact to the time of the child's birth.

Obviously by legal fiction, though the marriage took place only after the birth of the child.

**Art. 181**

The legitimation of children who died before the celebration of the marriage shall benefit their descendants.

**MCG:** Suppose you were a child of your parents who were high school sweethearts. However, they never married. So, you're an illegitimate child. Both your biological parents didn't marry.

But here comes a class reunion some 40 years later. Your biological parents met again and, you know, they fell in love again. By this time, you're probably now in your 40's, and your parents are of late age already. You already have a family and children of your own.

For some reason, the high school sweethearts got engaged and planned to get married. But you die before they get married.

You, the dead child, can get legitimated after such marriage. However, the benefits of such legitimation will only affect your descendants, such that they will have the successional rights as that of a legitimate child by right of representation (your child can inherit from your parents).

**Art. 182**

Legitimation may be impugned only by those who are prejudiced in their rights, within five years from the time their cause of action accrues.

**Republic v. Boquiren, G.R. 250199, February 13, 2023**

The legitimation of children cannot be collaterally attacked; it can be impugned only in a direct proceeding for that purpose. Because legitimation equalizes children born out of wedlock with legitimate children, it stands to reason that the status of legitimated children cannot be collaterally attacked.

The cause of action to impugn the legitimation accrues only upon the death of the parents of the legitimated child because it is only at that time when the successional rights to the legitime will vest.

**TITLE VII  
Adoption**

**REPUBLIC ACT 11642**

**Domestic Administrative Adoption and Alternative Child Care Act**

**Bagcat-Gullas v. Gullas, G.R. 264146, August 7, 2023**

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.

*Declaration of policies*

**§2**

The best interest of the child shall be the paramount consideration in the enactment of alternative care, custody, and adoption policies.

No child shall be subject of administrative proceedings unless the status of the child has been declared legally available for adoption except in cases of relative or step-parent adoption where such declaration is not required.

It is hereby recognized that the administrative adoption processes for the cases of legally-available children, relative, stepchild, and adult adoptees are the most expeditious proceedings that will redound to their best interest.

#### *Definition of terms*

#### **§4**

**Adoption** – A socio-legal process of providing a permanent family to a child whose parents had voluntarily or involuntarily given up their parental rights, permanently transferring all rights and responsibilities, along with filiation, making the child a legitimate child of the adoptive parents: *Provided*, That adult adoption shall also be covered by the benefits of this Act;

In the interest of clarity, adoption shall cease to be part of alternative child care and become parental care as soon as the process is completed.

**Child** – A person below 18 years of age or a person 18 years of age or over but who is unable to fully take care or protect himself or herself from abuse, neglect, cruelty, exploitation, or discrimination because of physical or psychological disability or condition: *Provided*, That for the purposes of this Act, where relevant, a child shall also refer to an adult son, daughter, or offspring.

**Child Legally Available for Adoption (CLAA)** – A child in whose favor a certification was issued by the NACC that such child is legally available for adoption after the fact of abandonment or neglect has been proven through the submission of pertinent documents, or one who was voluntarily committed by the child's parents or legal guardians.

**Certificate Declaring a Child Legally Available for Adoption** – The final written administrative order issued by the NACC declaring a child to be abandoned and neglected, and committing such child to the care of the NACC through a foster parent, guardian, or duly licensed child-caring or child-placing agency. The rights of the biological parents, guardian, or other custodian to exercise authority over the child shall cease upon issuance of the CDCLAA.

**Inter-country adoption** – The socio-legal process of adopting a child by a foreign national or a Filipino citizen habitually a resident outside Philippine territory which complies with the principles stated in the Hague Convention of 1993.

**Supervised Trial Custody (STC)** – The period of time after the placement of a child in an adoptive home whereby an adoption social worker helps the

adoptive family and the child in the adjustment process to facilitate the legal union through adoption.

#### *The NACC*

#### **§5**

#### *National Authority for Child Care*

The Inter-Country Adoption Board (ICAB) is hereby reorganized to a one-step quasi-judicial agency on alternative child care, known as the National Authority for Child Care (NACC), attached to the DSWD.

All duties, functions, and responsibilities of the ICAB, the DSWD, and those of other government agencies relating to alternative child care and adoption are hereby transferred to the NACC.

#### **§6**

#### *Jurisdiction of the NACC*

The NACC shall have original and exclusive jurisdiction over all matters pertaining to alternative child care, including declaring a child legally available for adoption; domestic administrative adoption; adult adoption; foster care; adoptions under the Simulated Birth Rectification Act; and inter-country adoption.

#### *The RACCO*

#### **§9**

#### *Regional Alternative Child Care Office (RACCO)*

There shall also be a Regional Alternative Child Care Office (RACCO) created for each region of the country, which shall be headed by a Regional Alternative Child Care (RACC) officer.

#### **Who may adopt? (§21)**

1. Any Filipino citizen–
  - a. At least 25 years old
  - b. Has full civil capacity and legal rights
  - c. Has not been convicted of any crime involving moral turpitude
  - d. Good moral character
  - e. Emotionally and psychologically capable of caring for children

- f. At least 16 years older than the adoptee.
  - i. **Except:** If the adopter is the biological parent, or is the spouse of the adoptee's parent.
2. Legal guardian of the child
3. Foster parent of the child
4. Philippine government officials and employees deployed or stationed abroad: Provided, That they are able to bring the child with them
5. Foreign nationals–
  - a. Permanent/habitual residents of the Philippines for at least 5 years
    - i. **Except:**
      1. A former Filipino citizen who seeks to adopt a relative within the 4th civil degree of consanguinity or affinity
      2. One who seeks to adopt the legitimate child of the Filipino spouse
      3. One who is married to a Filipino and seeks to adopt jointly (with the spouse) a relative within the 4th civil degree of the Filipino spouse.
  - b. Possessing the same qualifications in (1)
  - c. They come from a country with diplomatic relations with the Philippines
  - d. The laws of the adopter acknowledge the validity of a Certificate of Adoption, acknowledge the child as a legal child of the adopters, and allow the child's entry into that country.

**General rule:** Spouses shall **jointly** adopt.

- **Except:**
  1. When one spouse seeks to adopt the legitimate children of the other
  2. When one spouse seeks to adopt his own illegitimate children
    - a. In this case, the other spouse must consent.
  3. When the spouses are legally separated

#### Who may be adopted? (§22)

1. Any child who has been issued a CDCLAA
2. The legitimate child of one spouse by the other spouse
3. An illegitimate child by a qualified adopter to improve status of legitimacy
4. A Filipino of legal age, if such a person has been consistently considered and treated by the adopters as their own child for a period of 3 years

5. A foster child
6. A child whose adoption has been previously rescinded
7. A child whose parents have died
  - a. No adoption proceedings shall be initiated within 6 months from the parents' death.
8. A relative of the adopter.

#### Whose consent is required for the adoption? (§23)

1. The adoptee, if 10 years old or over;
2. The biological parents of the child (if known), or the legal guardian, or the proper government instrumentality which has legal custody of the child;
  - a. **Except:** A Filipino of legal age who has been consistently considered and treated as their own child by the adopters for 3 years. *No more parental consent required.*
3. The legitimate and adopted children, 10 years or over, of the adopters;
4. The illegitimate children, 10 years or over, of the adopter **if living with said adopter or over whom the adopter exercises parental authority and the latter's spouse;** and
5. The spouse, if any, of the person adopting/to be adopted.

#### §31

##### Where to File the Petition

The petition together with complete and original supporting documents shall be filed by the petitioners with the RACCO of the city or municipality where the PAPs reside.

Upon receipt by the RACCO of the petition and its supporting documents, a copy of the petition shall be published once a week for three (3) successive weeks in a newspaper of general circulation.

#### §32

##### Administrative Adoption Process

There shall be no adversarial proceedings and all domestic adoption cases shall be decided within sixty (60) calendar days from the receipt of the Deputy Director for Services of the recommendation of the RACCO on the petition.

#### §34

##### Order of Adoption

An Order of Adoption obtained under this Act shall have the same effect as a Decree of Adoption issued pursuant to the Domestic Adoption Act of 1998. A motion or reconsideration may be filed before the NACC, through the Executive Director, within fifteen (15) calendar days from an Order denying the adoption.

### **§35** *Judicial Recourse*

Orders of Adoption may be appealed before the Court of Appeals within ten (10) days from receipt of the order by the interested party, or from the denial of the motion for reconsideration; otherwise, the same shall be final and executory. Rule 43 of the 1997 Rules of Civil Procedure, as amended, shall have supplementary application.

### **What are the effects of adoption?**

1. **Legitimacy** – The adoptee shall be considered the legitimate child of the adopter.
  - a. The legitimate filiation that is created between the adopter and the adoptee shall be extended to the adopter's parents, adopter's legitimate siblings, and legitimate descendants.
2. **Parental authority** – Adoptive parents shall now have full parental authority over the child. All legal ties between the biological parents and the adoptee shall be served and be vested on the adopters.
3. **Succession** – Adopters and adoptee shall have reciprocal rights of succession without distinction from legitimate filiations. But if the adoptees and their biological parents have left a will, the law on testamentary succession shall govern.

### **§47 ★** *Grounds for Rescission of Administrative Adoption*

The adoption may be rescinded only upon the petition of the adoptee with the NACC, or with the assistance of the SWDO if the adoptee is a minor, or if the adoptee is eighteen (18) years of age or over but who is incapacitated or by his or her guardian on any of the following grounds committed by the adopter(s):

- (a) Repeated physical or verbal maltreatment by the adopter despite having undergone counseling;
- (b) Attempt on the life of the adoptee;
- (c) Sexual abuse or violence; or
- (d) Abandonment and failure to comply with parental obligations.

Adoption, being in the best interest of the child, shall not be subject to rescission by the adopter. However, the adopter may disinherit the adoptee for causes provided in Article 919 of the Civil Code of the Philippines.

### **§53** *Effects of Rescission*

If the petition for rescission of adoption is granted, the legal custody of the NACC shall be restored if the adoptee is still a child. The reciprocal right and obligations of the adopters and the adoptee to each other shall be extinguished.

In cases when the petition for rescission of adoption is granted and the biological parents can prove that they are in a position to support and care for the child and it is in the child's best interest, the biological parents may petition the NACC for the restoration of their parental authority over the child.

The NACC shall order the Civil Registrar General to cancel the amended birth certificate and restore the original birth certificate of the adoptee.

Succession rights shall revert to its status prior to adoption, but only as of the date of the approval of the petition for rescission of adoption. Vested rights acquired prior to rescission shall be respected.

All the foregoing effects of rescissions of adoption shall be without prejudice to the penalties imposed under the Revised Penal Code if the criminal acts are properly proven.

### *Anti-discrimination*

### **§54** *Violations and Penalties*

Under this Act, adoption discrimination acts, including labelling, shaming, bullying, negative stigma, among others, are prohibited. Any person who shall commit said adoption discrimination acts shall be penalized with a fine of not less than Ten thousand pesos (P10,000.00) but not more than Twenty thousand pesos (P20,000.00), at the discretion of the court.

## **REPUBLIC ACT 11767** **Foundling Recognition and Protection Act**

**§3***Definition of a Foundling*

For purposes of this Act, a foundling shall be a **deserted or abandoned child or infant with unknown facts of birth and parentage**. This shall also include those who have been duly registered as a foundling during her or his infant childhood, but have reached the age of majority without benefitting from adoption procedures upon the passage of this law.

**§4***Finder*

The finder shall be a **person of legal age who discovered the deserted or abandoned child**: *Provided*, That if the actual finder is a minor, his or her parent or legal guardian shall assist in making the report. The finder shall report **within forty-48 (48) hours upon discovery** of the child to inform the Local Social Welfare and Development Office (LSWDO), closest to him/her, or any safe haven provider, which shall in turn coordinate with the NACC through the Regional Alternative Child Care Office (RACCO), for the provision of appropriate care and services in line with the foundling's needs and best interest.

**§5***Citizenship Status of a Foundling Found in the Philippines and/or in Philippine Embassies, Consulates and Territories Abroad*

A foundling found in the Philippines and/or in Philippine embassies, consulates and territories abroad is **presumed a natural-born Filipino citizen** regardless of the status or circumstances of birth. As a natural-born citizen of the Philippines, a foundling is accorded with rights and protections at the moment of birth equivalent to those belonging to such class of citizens whose citizenship does not need perfection or any further act.

The presumption of natural-born status of a foundling **may not be impugned** in any proceeding **unless substantial proof of foreign parentage is shown**. The natural-born status of a foundling shall not also be affected by the fact that the birth certificate was simulated, or that there was absence of a legal adoption process, or that there was inaction or delay in reporting, documenting, or registering a foundling.

**§6***Administrative Adoption and Status of Legitimacy*

In the event that the biological parents cannot be identified and located, the foundling shall be declared legally available for adoption subject to existing

laws, rules and regulations and taking into consideration the best interest of the child.

**What are safe havens?**

1. A licensed child-caring agency
2. A licensed child-placing agency
3. A church (worship held with regularity)
4. DOH-accredited health facilities
5. A Local Social Welfare and Development Office
6. DSWD- or LGU-managed residential care facilities

**REPUBLIC ACT 8043****Inter-Country Adoption Act of 1995****§3***Definition of Terms*

**Inter-country adoption** - The socio-legal process of adopting a Filipino child by a foreigner or a Filipino citizen permanently residing abroad where the petition is filed, the supervised trial custody is undertaken, and the decree of adoption is issued outside the Philippines.

**§7***Inter-Country Adoption as the Last Resort*

The Board shall ensure that all **possibilities for adoption of the child under the Family Code** have been exhausted and that inter-country adoption is in the best interest of the child. Towards this end, the Board shall set up the guidelines to ensure that steps will be taken to place the child in the Philippines before the child is placed for inter-country adoption: *Provided, however*, That the maximum number that may be allowed for foreign adoption shall not exceed six hundred (600) a year for the first five (5) years.

**Who may be adopted?**

- Same as §22 of RA 11642.

**Who may adopt?**

An alien or a Filipino citizen permanently residing abroad if he/she:

- (a) At least 27 years old and 16 years older than the child to be adopted,



unless the adopter is the parent of the child or the spouse of such parent

- (b) If married, the spouses must jointly adopt
- (c) Has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone appropriate counseling from an accredited counselor in his/her country
- (d) Has not been convicted of a crime involving moral turpitude
- (e) Is eligible to adopt under his/her national law
- (f) Is in a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted
- (g) Agrees to uphold the basic rights of the child as embodied under Philippine laws, the U.N. Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of this Act;
- (h) Comes from a country with whom the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption is allowed under his/her national laws; and
- (i) Possesses all the qualifications and none of the disqualifications provided herein and in other applicable Philippine laws.

#### Where to file?

- In the NACC, through an intermediate agency, whether governmental or an authorized and accredited agency, in the country of the PAP.

### §11

#### *Family Selection/Matching*

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

### REPUBLIC ACT 11222

#### **Simulated Birth Rectification Act**

#### What is simulated birth?

The tampering of the civil registry to make it appear in the record of birth that a child was born to a person who is not such child's biological mother, causing the loss of the true identity and status of such child.

#### What are the objectives of the law?

1. To grant amnesty and allow the rectification of the simulated birth of a child, provided that:
  - a. The simulation was made for the best interests of the child, and
  - b. The child has been consistently considered and treated by the person/s who simulated such birth as their own child.
2. To fix the status and filiation of a child whose birth was simulated
3. To exempt from criminal, civil, and administrative liability those who simulated the birth record of a child.
  - a. To be exempt, the petition for adoption of the child must be filed within 10 years from the effectivity of the law.
4. To allow for a simpler and less costly administrative adoption proceeding where the child has been living with the person or persons who simulated his/her birth for at least 3 years before the effectivity of this act.
5. To educate and inform the public about the rectification of simulated births, and encourage them to avail the benefits of this act.

#### What is the remedy?

The person/s who simulated the birth of the child may avail of the administrative proceedings for the adoption and rectification of the simulated birth record of the child (head over to RA 11642).

#### When was the law approved?

The president signed the law on Feb. 21, 2019. Hence, the amnesty remains available through 2029.

### TITLE VIII Support

#### Art. 194

Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work.

Support includes everything indispensable for (it's a nonexhaustive list) –

1. Sustenance
2. Dwelling (house)
3. Clothing
4. Medical attendance
5. Education
6. Transportation

All of these, in keeping with the financial capacity of the family.

- So, it's relative.

### **Dempsey v. RTC, G.R. 77737-38, August 15, 1988**



Illegitimate children have rights of the same nature as legitimate and adopted children. This is enunciated in Art. 3, PD 603 which provides that "all children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors." Rights must be enforced or protected to the extent that it is possible to do so.

- An illegitimate child is entitled to be supported.

*Anti-VAWC law (RA 9262)*

### **Acharon v. People, G.R. 224946, November 9, 2021 ♥**

Mere failure or an inability to provide financial support is not punishable by RA 9262.

### **Cumigad v. AAA, G.R. 219715, December 6, 2021**

Victims of economic abuse may file a petition for a protection order. Among the reliefs that a court may grant is provision for spousal and child support, which shall be deducted from the offender's salary or income.

The deprivation or denial of sufficient financial support to the woman and her child is an act of violence penalized under RA 9262, and is deemed a continuing offense.

- Economic abuse is not only the absolute refusal to provide financial support, but also the act of "deliberately providing the woman's children insufficient financial support."
- The financial support must be sufficient to meet the needs of the woman and her child.

**Art. 195 ★**

Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the next preceding article:

- (1) The spouses;
- (2) Legitimate ascendants and descendants;
- (3) Parents and their legitimate children and the legitimate and illegitimate children of the latter;
- (4) Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and
- (5) Legitimate brothers and sister, whether of the full and half-blood.

### **Mabugay-Otamias v. Republic, G.R. 189516, June 8, 2016**

The benefit of exemption from execution of pension benefits is a statutory right that may be waived, especially in order to comply with a husband's duty to provide support under CONST. art. XV and the Family Code.

- Hence, a retired military's pension benefits may be executed to provide support for his family, provided that the pensioner waives that right against execution.

The court may order the withholding of a percentage of the income/salary of the respondent by the employer, which shall be automatically remitted directly to the woman notwithstanding laws to the contrary (RA 9262).

*Support for nonmarital children*

### **Abella v. Cabañero, G.R. 206647, August 9, 2017**

To establish filiation, an action for compulsory recognition may be filed against the putative father ahead of an action for support. In the alternative, an action for support may be directly filed, where the matter of filiation shall be integrated and resolved.

- Hence, the direct filing of an action for support, where the issue of compulsory recognition may be integrated and resolved is a valid route.

### **Gotardo v. Buling, G.R. 165166, August 15, 2012**

Since filiation is beyond question, support follows as a matter of obligation. A parent is obliged to support his child, whether legitimate or illegitimate (read with *Dempsey*).

*Support among illegitimate siblings*

**Art. 196**

Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth in Article 194 except only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence.

**General rule:** Brothers and sisters, even if not legitimately related (whether of full or half-blood), are obligated to support each other.

- **Exception:**

1. When the claimant is legal age, and
2. Their need for support arises due to their own fault or negligence.

*Source of support***Art. 197**

In case of legitimate ascendants; descendants, whether legitimate or illegitimate; and brothers and sisters, whether legitimately or illegitimately related, only the separate property of the person obliged to give support shall be answerable provided that in case the obligor has no separate property, the absolute community or the conjugal partnership, if financially capable, shall advance the support, which shall be deducted from the share of the spouse obliged upon the liquidation of the absolute community or of the conjugal partnership.

**Outline of rules:**

1. **Obligated persons:** Legitimate ascendants, descendants (legitimate or illegitimate), and brothers or sisters (legitimate or illegitimate) are entitled to support.
2. **Source of support:** The separate property of the obligor is primarily liable for support.
3. **Advance from ACP/CPG:** If the obligor has no separate property, the conjugal partnership or absolute community may advance the support if financially capable.
4. **Reimbursement:** Any support advanced by the conjugal/absolute community is to be deducted from the obligor spouse's share during the liquidation of the property regime.

**Example:**

Leo is obliged to support his illegitimate son, Mike, but Leo has no separate

property. Leo's wife, Clara, agrees to use their conjugal funds for Mike's support. Upon dissolution of the conjugal partnership, the amount advanced for Mike's support will be deducted from Leo's share.

*Support pendente lite***Art. 198**

During the proceedings for legal separation or for annulment of marriage, and for declaration of nullity of marriage, the spouses and their children shall be supported from the properties of the absolute community or the conjugal partnership. After the final judgment granting the petition, the obligation of mutual support between the spouses ceases. However, in case of legal separation the court may order that the guilty spouse shall give support to the innocent one, specifying the terms of such order.

The codal talks about support pendente lite between spouses and their children during the proceedings for:

1. Legal separation
2. Annulment
3. Nullity

Once the couple has been granted legal separation, annulment or nullity, the spouses are no longer required to support each other.

- Take note that only support between the spouses are severed.
- However, the court has the discretion to require the guilty spouse—in a legal separation case—to continue supporting his/her spouse.

*Non-appealability of orders support pendente lite***Calderon v. Roxas, G.R. 185595, January 9, 2013**

The subject orders on the matter of support pendente lite are but an incident to the main action for declaration of nullity of marriage.

- An interlocutory order merely resolves incidental matters and leaves something more to be done to resolve the merits of the case.
- Hence, orders for support pendente lite are not appealable.
  - The remedy is to allege grave abuse of discretion, which is a Rule 65 proceedings.

*Scope of support pendente lite***Lim-Lua v. Lua, G.R. 175279-80, June 5, 2013**

Any amount that seeks to be credited as monthly support should only cover those incurred for sustenance and household expenses.

- Support pendente lite does not include the procurement of a Volkswagen Beetle and BMW 316i for the children.
- Allowing those expenses completely ignores the unfair consequences to the spouse whose sustenance and wellbeing was given due regard by the trial and appellate courts.

### Art. 199 ★

Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:

- (1) The spouse;
- (2) The descendants in the nearest degree;
- (3) The ascendants in the nearest degree; and
- (4) The brothers and sisters.

This enumeration will make a comeback in funerals.

### Mangonon v. CA, G.R. 125041, June 30, 2006

The **more remote relatives** may be held to shoulder the responsibility should the claimant prove that those who are called upon to provide support do not have the means to do so.

- Hence, a wealthy grandfather may be obliged to support his granddaughters if his son is financially incapable.

*Who gives and receive support; priority*

### Art. 200

When the obligation to give support falls upon two or more persons, the payment of the same shall be divided between them in proportion to the resources of each.

However, in cases of urgent need and by special circumstances, the judge may order only one of them to furnish the support provisionally, without prejudice to his right to claim from the other obligors the share due from them.

When two or more recipients at the same time claim support from one and the same person legally obliged to give it, should the latter not have

sufficient means to satisfy all claims, the order established in the preceding article shall be followed, **unless the concurrent obligees should be the spouse and a child subject to parental authority, in which case the child shall be preferred.**

The codal talks about two things:

1. Who gives support, if two or more persons are obliged; and
2. Who receives support, if the person obliged cannot support both.

### Who gives support

1. The two (or more) persons shall give support to the person in proportion to their resources (a.k.a. the richer gets to give more).
2. In case of urgent needs, the court may order only one of them to give support.
  - a. The other one obliged (the one not called by the court) must pay the one obliged by the court to support.

### Who receives support

1. When two (or more) recipients are claiming support from one person and that person cannot support both, the order in Art. 199 should be followed.
2. But if the ones needing support is a spouse and a child, the latter who is under parental care, gets to bump his/her parent!

**MCG:** So, I am a lawyer, and, assuming I am a middle aged woman, should I get my father's support over my mom who is an octogenarian?!?!

- Only children under parental care of the parent obliged to support can get ahead of his/her parent.

*Support—it's a two-way street!*

### Art. 201

The amount of support, in the cases referred to in Articles 195 and 196, shall be in proportion to the resources or means of the giver and to the necessities of the recipients.

### Art. 202

Support in the cases referred to in the preceding article shall be reduced or increased proportionately, according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to furnish the same.

Arts. 201 and 202 simply say that support is always adjusted. It's not fixed. The actual amount of support depends on:

1. Resources or means of the giver
2. Necessities of the recipients

It may be increased or decreased depending on those two factors.

### **Cumigad** (*supra*, art. 194)

The award of support must be based on sufficient evidence showing the financial capacity of the persons obliged to give support and the expenses incurred by the person entitled to receive it.

- Hence, a dad who is a bank manager must increase his support to his daughter who just started schooling.

### **Art. 203**

The obligation to give support shall be demandable from the time the person who has a right to receive the same needs it for maintenance, but it shall not be paid **except from the date of judicial or extrajudicial demand**.

Support pendente lite may be claimed in accordance with the Rules of Court.

Payment shall be made within the first five days of each corresponding month, or when the recipient dies, his heirs shall not be obliged to return what he has received in advance.

### *Options for support*

### **Art. 204**

The person obliged to give support shall have the option to fulfill the obligation either by paying the allowance fixed, or by receiving and maintaining in the family dwelling the person who has a right to receive support. The latter alternative cannot be availed of in case there is a moral or legal obstacle thereto.

### **Mangonon** (*supra*, art. 199)

The obligor is given the choice as to how he could dispense his obligation to give support. Thus, he may give the determined amount of support to the claimant or he may allow the latter to stay in the family dwelling. The second option cannot be availed of in case there are circumstances, legal or moral,

which should be considered.

- However, with the filing of this case, and the allegations hurled at one another by the parties, the relationships among the parties had certainly been affected.
  - Hence, the rich grandpa cannot avail the second option.

### *Exemption from execution*

### **Art. 205**

The right to receive support under this Title as well as any money or property obtained as such support shall not be levied upon on attachment or execution.

Support money cannot be executed on.

### *Support from strangers*

### **Art. 206**

When, without the knowledge of the person obliged to give support, it is given by a stranger, the latter shall have a right to claim the same from the former, **unless it appears that he gave it without intention of being reimbursed**.

If a stranger (someone not legally obligated) provides support to a person who is entitled to receive it, without the knowledge of the person legally obliged to give that support, the stranger has the right to claim reimbursement from the obligor.

- There's no such thing as a free lunch.

However, this right to reimbursement does not apply if it is evident that the stranger gave the support as a gift, without expecting repayment.

### **Art. 207**

When the person obliged to support another **unjustly refuses or fails to give support when urgently needed** by the latter, any third person may furnish support to the needy individual, with right of reimbursement from the person obliged to give support. This Article shall particularly apply when the father or mother of a child under the age of majority unjustly refuses to



support or fails to give support to the child when urgently needed.

In case the person obliged unjustly refuses/fails to give support when urgently needed, any third person can help.

- But that third person has a **right of reimbursement** from the person legally obliged to give support.

#### **Acharon** (*supra*, art. 194)

The proper understanding of § 5(e) of RA 9262, insofar as it deals with the deprivation, or threat of deprivation, of financial support is that there must be allegation and proof that the act was done with the **intent to control or restrict the woman's and/or her child's or her children's actions or decisions**.

To be punished by §5(i) of RA 9262, it must ultimately be proven that the accused had the **intent of inflicting mental or emotional anguish** upon the woman, thereby inflicting **psychological violence** upon her, with the willful denial of financial support being the means selected by the accused to accomplish said purpose.

#### **Art. 208**

In case of contractual support or that given by will, the excess in amount beyond that required for legal support shall be subject to levy on attachment or execution.

Furthermore, contractual support shall be subject to adjustment whenever modification is necessary due to changes of circumstances manifestly beyond the contemplation of the parties.

**Excess subject to levy** – When support is provided through a contract or a will and exceeds the amount required by law for legal support, the excess can be seized or attached to satisfy debts or legal claims against the recipient.

**Adjustments to contractual support** – Contractual support can be adjusted if unforeseen circumstances arise that were not anticipated when the contract was made. This ensures fairness and adaptability to changing situations.

### **A.M. No. 21-03-02-SC** **Rules on Action for Support and Petition for Recognition and Enforcement of Foreign Decisions or Judgments on Support**

#### **Procedure for action on support**

**Where to file:** An action for support shall be filed in the court which has territorial jurisdiction over the place where the plaintiff or defendant actually resides, at the election of the plaintiff.

If the defendant does not reside in the Philippines or his or her whereabouts are unknown, the action shall be filed in the court where the plaintiff resides, or where any property of the defendant is located in the Philippines.

#### **Time limits:**

1. The defendant shall file his or her answer to the complaint within 15 calendar days after service of summons
2. The pre-trial shall be set not later than 30 calendar days from the filing of the last responsive pleading
3. The plaintiff shall complete the presentation of evidence within 30 calendar days from the initial trial, while the defendant shall complete the presentation of evidence within 30 calendar days from initial presentation of defendant's evidence
4. The court shall render judgment within a period of 30 calendar days upon admission of evidence

The only **pleadings allowed to be filed**, which must be all verified, are:

1. the complaint,
2. the answer (which may contain a compulsory claim and/or cross-claim), and
3. the answer to such counterclaim and/or cross-claim.

#### **Recognition and enforcement of foreign decisions or judgments on support**

The petition shall be verified and must allege the following:

- The names, contact details and dates of birth of the petitioner and the respondent;
- The name and date of the birth of the person for whom support is sought;
- Basis of the petition;
- The enforceability of the decision or judgment in the State where it was rendered;
- Financial circumstances of the petitioner;
- Financial circumstances of the respondent, including the name and

address of the employer, nature and location of the assets of the respondent; and

- Any other information that may assist in the location of the respondent.

The foreign judgment or decision for support shall be recognized and enforced if it meets any of the following criteria:

- Either the petitioner or the respondent was a habitual resident in the State where the decision was rendered at the time proceedings was instituted; or
- The respondent had submitted to the jurisdiction of the judicial or administrative authority of another state, either expressly or by defending on the merits without objecting to the jurisdiction at the first available opportunity.

An **appeal** shall be allowed only on the following grounds:

1. Absence of bases for recognition and enforcement;
2. Existence of grounds for refusing recognition and enforcement;
3. Presence of questions or issues regarding the authenticity or integrity of the foreign judgment or decision or any of the documentary requirements; and
4. Fulfillment of the obligation.

## **TITLE IX Parental Authority**

### **Chapter 1 General Provisions**

#### **Art. 209**

Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.

#### **Tamargo v. CA, G.R. 85044, June 3, 1992**

Parental liability is a natural or logical consequence of the duties and responsibilities of parents which includes instructing, controlling and

disciplining of the child.

#### **Art. 210**

Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law.

#### **Sagala-Eslao v. CA, G.R. 116773, January 16, 1997**

When a parent entrusts the custody of a minor to another, such as a friend or godfather, even in a document, what is given is merely temporary custody and it does not constitute a renunciation of parental authority.

- The right attached to parental authority is purely personal.
- A waiver of parental authority is only allowed in cases of adoption, guardianship and surrender to a children's home/orphanage.

#### **Cang v. CA, G.R. 105308, September 25, 1998**



Parental authority cannot be entrusted to a person simply because he could give the child a larger measure of material comfort than his natural parent.

There should be a holistic approach to the matter, taking into account the physical, emotional, psychological, mental, social and spiritual needs of the child.

- Hence, the requirement of written consent for adoption can only be dispensed with if the parent has abandoned the child or that such parent is insane or hopelessly intemperate.

#### **Art. 211 ★**

The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

Children shall always observe respect and reverence towards their parents and are obliged to obey them as long as the children are under parental authority.

#### **Art. 212**

In case of absence or death of either parent, the parent present shall

continue exercising parental authority. The remarriage of the surviving parent shall not affect the parental authority over the children, unless the court appoints another person to be the guardian of the person or property of the children.

### *Tender age presumption*

#### **Art. 213 ★**

In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

#### **Pablo-Gualberto v. Gualberto, G.R. 154994, June 28, 2005**

Art. 213 is **mandatory** and contemplates a situation where the parents are legally separated or de facto separated.

- The tender age presumption may only be overcome by compelling evidence of the mother's unfitness.

To deprive the wife of custody, the husband must clearly establish that her moral lapses have had an adverse effect on the welfare of the child or have distracted the offending spouse from exercising proper parental care.

#### **Beckett v. Sarmiento, A.M. RTJ-12-2326, January 30, 2013**

In disputes concerning post-separation custody over a minor, the well-settled rule is that **no child under seven years of age shall be separated from the mother**, unless the court finds compelling reasons to order otherwise.

- In custody cases, the foremost consideration is always the welfare and best interest of the child

⚠ *Jurisprudence may not be necessarily binding as this is an administrative case by a disgruntled father against the judge.*

### *Tender-age presumption applies to illegitimate children*

#### **Masbate v. Relucio, G.R. 235498, July 30, 2018**

Art. 213(2) does not even distinguish between legitimate and illegitimate children in declaring that no child under seven years old shall be separated from the mother unless the court finds compelling reasons to order

otherwise.

The court will not deprive the mothers of custody absent a showing of the mother's unfitness (e.g. neglect, abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity, affliction with a communicable disease)

#### **Art. 214**

In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority.

#### **Sps. Gabun v. Stolk, G.R. 234660, June 26, 2023**

Where the parental authority is granted solely to the mother as in the case of illegitimate children, the substitute parental authority shall be exercised by the grandparents or the specified persons as provided under Arts. 214 and 216, in case of the mother's death, absence, or unsuitability.

Nonetheless, the biological father may still exercise substitute parental authority if he is the child's actual custodian under Art. 216.

### *Filial privilege*

#### **Art. 215**

No descendant shall be compelled, in a criminal case, to testify against his parents and grandparents, except when such testimony is indispensable in a crime against the descendant or by one parent against the other.

Take note of the scope of the filial privilege:

- Only covers a descendant testifying against
  - His parents, and
  - Grandparents.

This privilege does not apply when the descendant's testimony is indispensable in a crime where the descendant is the victim, or when the parents are the party-litigants.

This privilege only covers criminal cases! For the blanket ban on family members suing each other, head to Art. 151.

## Chapter 2 Substitute and Special Parental Authority

### Art. 216 ★

In default of parents or a judicially appointed guardian, the following persons shall exercise **substitute parental authority** over the child in the order indicated:

- (1) The surviving grandparent, as provided in Art. 214;
- (2) The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and
- (3) The child's actual custodian, over twenty-one years of age, unless unfit or disqualified.

Whenever the appointment of judicial guardian over the property of the child becomes necessary, the same order of preference shall be observed.

### Sps. Gabun (*id.*)

A biological father of an illegitimate child can still have custody of the child, provided that the mother, the grandparents, and the oldest brother/sister are unfit or disqualified. This contemplates the situation where the child is under the actual custody of the father.

- The biological father who is in actual custody is last in the order.

### CCC v. DDD, G.R. 264846, February 5, 2024

In awarding custody, the court shall consider the best interests of the minor and shall give paramount consideration to his material and moral welfare.

- Hence, the **uncle and aunts** could be granted custody over a child if it is shown that the father (after the death of the mother) is unfit to exercise parental authority.

### Foundlings

### Art. 217

In case of foundlings, abandoned neglected or abused children and other

children similarly situated, parental authority shall be entrusted in summary judicial proceedings to heads of children's homes, orphanages and similar institutions duly accredited by the proper government agency.

This has been modified with the Foundling Protection and Recognition Act (RA 11767). Foundlings may be relinquished in the custody of safe havens, without a need for judicial proceedings.

- A finder of a foundling is required to report such foundling to authorities within 48 hours upon discovery of the child.

### Special parental authority of schools, etc.

### Art. 218

The school, its administrators and teachers, or the individual, entity or institution engaged in child care shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody.

Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution.

### Art. 219

Those given the authority and responsibility under the preceding Article shall be principally and solidarily liable for damages caused by the acts or omissions of the unemancipated minor. The parents, judicial guardians or the persons exercising substitute parental authority over said minor shall be subsidiarily liable.

The respective liabilities of those referred to in the preceding paragraph shall not apply if it is proved that they exercised the proper diligence required under the particular circumstances.

All other cases not covered by this and the preceding articles shall be governed by the provisions of the Civil Code on quasi-delicts.

### St. Joseph's College v. Miranda, G.R. 182353, June 29, 2010



Art. 218 requires the exercise of a higher degree of care, caution and foresight incumbent upon the school, its administrators and teachers.

- Hence, a neglect in preventing a foreseeable injury and damage equates to neglect in exercising the utmost degree of diligence

required of schools, its administrators and teachers.

This special parental authority only extends to minors. Hence, Ateneo doesn't have special parental authority over its law students.

### Chapter 3 Effect of Parental Authority Upon the Persons of the Children

#### Art. 220

The parents and those exercising parental authority shall have with the respect to their **unemancipated children** on wards the following rights and duties:

- (1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
- (2) To give them love and affection, advice and counsel, companionship and understanding;
- (3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
- (4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
- (5) To represent them in all matters affecting their interests;
- (6) To demand from them respect and obedience;
- (7) To impose discipline on them as may be required under the circumstances; and
- (8) To perform such other duties as are imposed by law upon parents and guardians.

#### Knutson v. Sarmiento-Flores, G.R. 239215, July 12, 2022 ♥

A mother who maltreated her child resulting in physical, sexual, or psychological violence defined and penalized under RA 9262 is not absolved from criminal liability notwithstanding that the measure is intended to protect both women and their children.

- Hence, RA 9262 allows the father of the offended party to apply for protection and custody orders on behalf of his child.

#### Opinion of Caguioa, J., *dissenting*:

That RA 9262 does not cover violence committed by a mother against her own child is in full accord not only with the plain language of its provisions, but also with the intent and spirit that animate it.

#### Opinion of Lazaro-Javier, J., *concurring*:

In the case of married couples, this representation is available to parents, as recognized by Art. 220(6) that a parent or both parents have the right to represent their children in all matters affecting their interests.

#### Versoza v. People, G.R. 184535, September 3, 2019

Under no circumstances must child abuse be allowed to hide behind a shroud of secrecy, even more so if it is committed under the guise of parental authority.

The title of a parent or guardian is not a magic word to be wielded with immunity.

#### Parental liability

#### Art. 221

Parents and other persons exercising parental authority shall be **civilly liable** for the injuries and damages caused by the **acts or omissions of their unemancipated children** living in their company and under their parental authority subject to the appropriate defenses provided by law.

To hold parents and other persons exercising parental authority over a child civilly liable, it must be shown that:

1. The child is unemancipated (minor) living with the parents; and
2. Under the parents' parental authority.

#### Tamargo (*supra*, art. 209)

Parental liability is a species of vicarious liability. Parental liability is a natural or logical consequence of the duties and responsibilities of parents which includes instructing, controlling and disciplining the child.

The civil law assumes that when an unemancipated child living with its parents commits a tortious act, the parents were negligent in the



performance of their legal and natural duty closely to supervise.

### *Guardian ad litem*

#### **Art. 222**

The courts may appoint a guardian of the child's property or a guardian ad litem when the best interests of the child so requires.

#### **A.M. No. 03-02-05-SC Rule on Guardianship of Minors**

#### **Who may file a petition for appointment of a guardian?**

- Any relative
- A person on behalf of the minor
- The minor himself, if over 14 years old
- The DOH or DSWD secretary in case of an insane minor who needs hospitalization

#### **What are the grounds?**

- death, continued absence, or incapacity of his parents;
- suspension, deprivation or termination of parental authority;
- remarriage of his surviving parent, if the latter is found unsuitable to exercise parental authority; or
- when the best interests of the minor so require.

#### **Who may be appointed a guardian?**

1. the **surviving grandparent** and in case several grandparents survive, the court shall select any of them taking into account all relevant considerations;
2. the **oldest brother or sister** of the minor over twenty-one years of age, unless unfit or disqualified;
3. the actual custodian of the minor over twenty-one years of age, unless unfit or disqualified; and
4. any other person, who in the sound discretion of the court, would serve the best interests of the minor.

#### **What are the factors the court should look at in appointing a guardian?**

- moral character;
- physical, mental and psychological condition;
- financial status;
- relationship of trust with the minor;
- availability to exercise the powers and duties of a guardian for the

**full period of the guardianship;**

- lack of conflict of interest with the minor; and
- ability to manage the property of the minor.

**MCG:** Take note that the rules require that the guardian be available for the full period of the guardianship. Hence, the court may avoid appointing a 96-year-old grandparent to watch over his or her grandson until the end of the guardianship.

#### **What are the duties of a guardian?**

- Pay the ward's debts from personal property and income; sell or encumber real property if necessary with court approval.
- Settle the ward's accounts; collect debts or compromise them with court approval, and represent the ward in legal matters.
- Manage the ward's property frugally, using income for their maintenance; sell or encumber property if income is insufficient with court authorization.
- Consent to property partition jointly owned by the ward, with court approval after a hearing and investigation.
- Submit a verified inventory of the ward's property within three months of appointment and annually thereafter.
- Report newly discovered or acquired property of the ward within three months of discovery or acquisition.
- Provide an annual accounting of the ward's property or more frequently if required by the court.

#### **What are the grounds for termination of guardianship?**

- The ward has come of age
- The ward has died

#### **What are the grounds for removal of the guardian?**

- A guardian may be removed if they become insane, incapable, unsuitable, wasteful, or fail to account for the ward's property within 30 days of a due date.
- Resignation of a guardian is allowed for justifiable causes with court approval.
- Removal or resignation requires submission and court approval of the ward's property accounting.
- The court appoints a new guardian upon removal or resignation.

**MCG:** Surely, you can't force someone to perform involuntary servitude if he or she doesn't want to be a guardian anymore.

*Discipline;*

*Commitment of a child to a child-caring home*

**Art. 223**

The parents or, in their absence or incapacity, the individual, entity or institution exercising parental authority, may petition the proper court of the place where the child resides, for an order providing for disciplinary measures over the child. The child shall be entitled to the assistance of counsel, either of his choice or appointed by the court, and a summary hearing shall be conducted wherein the petitioner and the child shall be heard.

However, if in the same proceeding the court finds the petitioner at fault, irrespective of the merits of the petition, or when the circumstances so warrant, the court may also order the deprivation or suspension of parental authority or adopt such other measures as it may deem just and proper.

**Art. 224**

The measures referred to in the preceding article may include the commitment of the child for not more than thirty days in entities or institutions engaged in child care or in children's homes duly accredited by the proper government agency.

The parent exercising parental authority shall not interfere with the care of the child whenever committed but shall provide for his support. Upon proper petition or at its own instance, the court may terminate the commitment of the child whenever just and proper.

**Chapter 4****Effect of Parental Authority Upon the Property of the Children****Art. 225**

The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

Where the market value of the property or the annual income of the child exceeds P50,000, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten per centum (10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the proper court

of the place where the child resides, or, if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely suppletory except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply.

**Art. 226**

The property of the unemancipated child earned or acquired with his work or industry or by onerous or gratuitous title shall belong to the child in ownership and shall be devoted exclusively to the latter's support and education, unless the title or transfer provides otherwise.

The right of the parents over the fruits and income of the child's property shall be limited primarily to the child's support and secondarily to the collective daily needs of the family.

**Art. 227**

If the parents entrust the management or administration of any of their properties to an unemancipated child, the net proceeds of such property shall belong to the owner. The child shall be given a reasonable monthly allowance in an amount not less than that which the owner would have paid if the administrator were a stranger, unless the owner grants the entire proceeds to the child. In any case, the proceeds thus given in whole or in part shall not be charged to the child's legitime.

**Outline of the rules of parental authority over the child's property**

*(a.k.a. when child actors come into play)*

**Legal guardianship by parents (Art. 225)****1. Joint guardianship:**

- a. Both parents jointly exercise legal guardianship over the unemancipated child's property without court appointment.
- b. In case of disagreement, the father's decision prevails unless overruled by a judicial order.

**2. Bond requirement:**

- a. Required if the property's market value or annual income exceeds P50,000.
  - b. Bond must be at least 10% of the property's value or income to guarantee performance.
- 3. **Petition for approval:**
  - a. A verified petition for bond approval must be filed in the proper court where the child resides or where the property is located (if the child resides abroad).
  - b. The proceeding is summary and special, resolving issues related to the obligations of guardianship.
- 4. **Applicability of rules:**
  - a. Ordinary guardianship rules apply only if:
    - i. The child is under substitute parental authority.
    - ii. A guardian is a stranger.
    - iii. A parent has remarried.
  - b. Otherwise, ordinary rules are merely suppletory.

#### **Ownership and use of child's property (Art. 226)**

- 1. **Ownership:**
  - a. The unemancipated child fully owns property earned or acquired by work, industry, or transfer.
- 2. **Use of property:**
  - a. Exclusively for the child's support and education unless otherwise specified by the transfer
- 3. **Fruits and income:**
  - a. Parents may use the property's income:
    - i. primarily → child's support and
    - ii. secondarily → family needs.

#### **Administration of parents' property to the child (Art. 227)**

- 1. **Net proceeds:**
  - a. Belong to the property's owner (parent).
- 2. **Allowance for the child:**
  - a. The child-administrator must receive a reasonable monthly allowance.
  - b. The allowance cannot be less than what a stranger-administrator would earn.
- 3. **Grants by owner:**
  - a. If the owner grants part or all proceeds to the child, these cannot be charged against the child's legitime.

#### **REPUBLIC ACT 9231 Anti-Child Labor Law**

#### **Outline of the rules on a working child**

##### **Sec. 2-A: Hours of Work of a Working Child**

- 1. **Children below 15 years old**
  - a. Maximum of 20 hours per week
  - b. Work limited to 4 hours per day
  - c. Prohibited from working between 8 p.m. to 6 a.m.
- 2. **Children aged 15 to below 18 years old**
  - a. Maximum of 8 hours per day and 40 hours per week
  - b. Prohibited from working between 10 p.m. to 6 a.m.

##### **Sec. 12-B: Ownership and Administration of Working Child's Income**

- 1. **Ownership**
  - a. Income belongs to the child and is primarily for their support, education, or skills acquisition, and secondarily for family needs
  - b. A maximum of 20% of the income may be allocated to family needs
- 2. **Administration**
  - a. Administered by both parents or by one parent in case of absence/incapacity of the other
  - b. If both parents are absent/incapacitated, the Family Code's order of parental authority applies.

##### **Sec. 12-C: Trust Fund for Working Child's Income**

- 1. **Applicability**
  - a. Required if the child earns at least P200,000 annually
- 2. **Trust fund requirements**
  - a. At least 30% of the earnings must be placed in a trust fund
  - b. Semi-annual accounting of the fund must be submitted to the Department of Labor and Employment (DOLE).
  - c. The child gains full control of the trust fund upon reaching the age of majority.

##### **Sec. 12-D: Prohibition Against Worst Forms of Child Labor**

- 1. **Prohibited practices**
  - a. Slavery-like practice (e.g., trafficking, debt bondage, forced labor, armed conflict)
  - b. Use or exploitation of children in prostitution, pornography, or illegal activities (e.g., drug trafficking).
  - c. Hazardous work that harms a child's health, safety, or morals, including:
    - i. Work that debases or demeans a child's dignity.
    - ii. Exposure to physical, emotional, or sexual abuse.

- iii. Work performed in dangerous environments or conditions (e.g., underground, underwater, or at extreme heights).
- iv. Use of hazardous machinery, tools, or chemicals.
- v. Exposure to biological agents or explosives.
- vi. Any work involving extreme physical, mental, or environmental stress.

## Chapter 5 Suspension or Termination of Parental Authority

### *Permanent termination*

#### Art. 228 ★

Parental authority terminates **permanently**:

- (1) Upon the death of the parents;
- (2) Upon the death of the child; or
- (3) Upon emancipation of the child.

Of course, there can be no parental authority anymore if there's no parent to speak of ... or a child.

- The age of emancipation is 18.

### *Termination that may be revived*

#### Art. 229

Unless subsequently revived by a final judgment, parental authority also terminates:

- (1) Upon adoption of the child;
- (2) Upon appointment of a general guardian;
- (3) Upon judicial declaration of abandonment of the child in a case filed for the purpose;
- (4) Upon final judgment of a competent court divesting the party concerned of parental authority; or
- (5) Upon judicial declaration of absence or incapacity of the person exercising parental authority.

Under the circumstances in Art. 229, parental authority is terminated, but it may be subsequently revived, e.g.:

- (1) Upon rescission of the adoption order
- (2) Upon termination of the guardianship
- (3) Those mentioned in the succeeding articles.

### *Civil interdiction*

#### Art. 230

Parental authority is suspended upon conviction of the parent or the person exercising the same of a crime which carries with it the penalty of **civil interdiction**. The authority is automatically reinstated upon service of the penalty or upon pardon or amnesty of the offender.

The accessory penalty of civil interdiction is removed by–

- 1. Service of the sentence; and
- 2. A pardon or executive clemency, when it explicitly states so.

Hence, upon the occurrence of either of those, the parental authority shall be deemed restored by operation of law.

#### Art. 231

The court in an action filed for the purpose in a related case may also **suspend parental authority** if the parent or the person exercising the same:

- (1) Treats the child with excessive harshness or cruelty;
- (2) Gives the child corrupting orders, counsel or example;
- (3) Compels the child to beg; or
- (4) Subjects the child or allows him to be subjected to acts of lasciviousness.

The grounds enumerated above are deemed to include cases which have resulted from culpable negligence of the parent or the person exercising parental authority.

If the degree of seriousness so warrants, or the welfare of the child so demands, the court shall deprive the guilty party of parental authority or adopt such other measures as may be proper under the circumstances.

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

The suspension or deprivation under Art. 231 can be judicially decreed in a case specifically filed for that purpose or in a related case.

The phrase “in a related case” can be an “offshoot of an incident or a collateral pronouncement in another case.” It may be “an independent or collateral proceeding.”

Like Art. 229, the suspension or deprivation may be revoked and the parental authority revived in a case filed for the purpose or in the same proceeding if the court finds that the cause therefor has ceased and will not be repeated.

### Art. 232

If the person exercising parental authority has subjected the child or allowed him to be subjected to sexual abuse, such person shall be permanently deprived by the court of such authority.

Art. 232 contemplates two things:

1. The parent himself/herself sexually abuses the child, or
2. The parent himself/herself allows the child to be sexually abused.

In either case, permanent deprivation of parental authority can be declared by the court.

### Art. 233

The person exercising substitute parental authority shall have the same authority over the person of the child as the parents.

In no case shall the school administrator, teacher of individual engaged in child care exercising special parental authority inflict corporal punishment upon the child.

**Corporal punishment** – Infliction of physical disciplinary measures to a student.

- It must be noted that only persons exercising special parental authority cannot inflict corporal punishment. Parents and persons exercising substitute parental authority can inflict corporal punishment (see Art. 220(8)).

### Sps. Dorao v. Sps. BBB and CCC, G.R. 235737, April 26, 2023

Resorting to harsh and degrading methods of discipline is contrary to public policy.

- Hence, because these acts are contrary to public policy, the defendant may be liable for damages under Art. 21, NCC (abuse of rights).

### REPUBLIC ACT 11861 Expanded Solo Parents Welfare Act

#### Who are considered solo parents?

1. A parent who provides sole parental care and support of the child or children due to–
  - a. Birth as a consequence of rape, even without final conviction: Provided, That the mother has the sole parental care and support of the child or children: Provided, further, That the solo parent under this category may still be considered a solo parent under any of the categories in this section;
  - b. Death of the spouse;
  - c. Detention of the spouse for at least three (3) months or service of sentence for a criminal conviction;
  - d. Physical or mental incapacity of the spouse as certified by a public or private medical practitioner;
  - e. Legal separation or de facto separation for at least six (6) months, and the solo parent is entrusted with the sole parental care and support of the child or children;
  - f. Declaration of nullity or annulment of marriage, as decreed by a court recognized by law, or due to divorce, subject to existing laws, and the solo parent is entrusted with the sole parental care and support of the child or children; or
  - g. Abandonment by the spouse for at least six (6) months;
2. Spouse or any family member of an Overseas Filipino Worker (OFW), or the guardian of the child or children of an OFW: Provided, That the said OFW belongs to the low/semi-skilled worker category and is away from the Philippines for an uninterrupted period of twelve (12) months: Provided, further, That the OFW, his or her spouse, family member, or guardian of the child or children of an OFW falls under the requirements of this section;
3. Unmarried mother or father who keeps and rears the child or children;
4. Any legal guardian, adoptive or foster parent who solely provides parental care and support to a child or children;



5. Any relative within fourth civil degree of consanguinity or affinity of the parent or legal guardian who assumes parental care and support of the child or children as a result of the death, abandonment, disappearance or absence of the parents or solo parent for at least six months: Provided, That in cases of solo grandparents who are senior citizens but who have the sole parental care and support over their grandchildren who are unmarried, or unemployed and 22 years old or below, or those 22 years old or over but who are unable to fully take care or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition, they shall be entitled to the benefits of this Act in addition to the benefits granted to them by Republic Act No. 9257, otherwise known as the 'Expanded Senior Citizens Act of 2003'; or
6. A pregnant woman who provides sole parental care and support to the unborn child or children.

#### **Who are considered children or dependents?**

- Those living with and dependent upon the solo parent for support who are unmarried, unemployed and 22 years old or below, or those over 22 years old but who are unable to fully take care or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

#### **What are some of the benefits of the law?**

- A forfeitable and noncumulative parental leave of not more than seven working days with pay every year for solo parents who have rendered at least six months of service.
- Scholarship programs for solo parents and a full scholarship for one child of a solo parent in institutions of basic, higher and technical vocational skills education.
- Monthly cash subsidy of P1,000 per solo parent who is earning a minimum wage and below.
- 10% discount and zero-rated VAT on baby's milk, food and micronutrient supplements, and sanitary diapers purchased, duly prescribed medicines, vaccines, and other medical supplements purchased from the birth of the child or children until six years of age of a solo parent who is earning less than P250,000 annually.

### **REPUBLIC ACT 10165 Foster Care Act of 2012**

#### **What is foster care?**

- The provision of planned temporary substitute parental care to a

child by a foster parent.

#### **Who may be placed under foster care?**

1. A child who is abandoned, surrendered, neglected, dependent or orphaned;
2. A child who is a victim of sexual, physical, or any other form of abuse or exploitation;
3. A child with special needs;
4. A child whose family members are temporarily or permanently unable or unwilling to provide the child with adequate care;
5. A child awaiting adoptive placement and who would have to be prepared for family life;
6. A child who needs long-term care and close family ties but who cannot be placed for domestic adoption;
7. A child whose adoption has been disrupted;
8. A child who is under socially difficult circumstances such as, but not limited to, a street child, a child in armed conflict or a victim of child labor or trafficking;
9. A child who committed a minor offense but is released on recognizance, or who is in custody supervision or whose case is dismissed; and
10. child who is in need of special protection as assessed by a social worker, an agency or the DSWD.

#### **Who may be a foster parent?**

1. Must be of legal age;
2. Must be at least sixteen (16) years older than the child unless the foster parent is a relative;
3. Must have a genuine interest, capacity and commitment in parenting and is able to provide a familial atmosphere for the child;
4. Must have a healthy and harmonious relationship with each family member living with him or her;
5. Must be of good moral character;
6. Must be physically and mentally capable and emotionally mature;
7. Must have sufficient resources to be able to provide for the family's needs;
8. Must be willing to further hone or be trained on knowledge, attitudes and skills in caring for a child; and
9. Must not already have the maximum number of children under his foster care at the time of application or award, as may be provided in the implementing rules and regulations (IRR) of this Act.

#### **How long will the foster care last?**

- Three years, unless earlier revoked by the DSWD. It can be renewed.

#### **What is long-term foster care?**

- It grants the foster parent custody over the foster child without the requirement of the eventuality of adoption of the latter by the former.

#### When is foster care terminated?

1. Return of the child to biological parents;
2. Placement for adoption of the child;
3. Death of the child;
4. Death of both foster parents;
5. Expiration of the FPA; and
6. In all cases where placement becomes prejudicial to the welfare of the child, such as, but not limited to, abandonment, maltreatment, sexual assault, violence or other forms of abuse.

#### Parental authority of foster parents

##### §6

##### *Parental Authority of a Foster Parent*

Foster parents shall have the rights, duties and liabilities of persons exercising substitute parental authority, as may be provided under the Family Code over the children under their foster care.

##### §7

##### *Limitations on Parental Authority of Foster Parents*

Foster parents shall only have the rights of a person with special parental authority to discipline the foster children as defined under Section 233 of the Family Code, insofar as it prohibits the infliction of corporal punishment upon the child.

While a foster parent has substitute parental authority, he/she only has special parental authority when it comes to discipline.

- Hence, the foster parent cannot inflict corporal punishment.

**We return to the CIVIL CODE! 😊**

## TITLE X Funerals

#### Who gets to call the shots in the funeral arrangements

### Art. 305

The duty and the right to make arrangements for the funeral of a relative shall be in accordance with the order established for support under [Article 199 of the Family Code]. In case of descendants of the same degree, or of brothers and sisters, the oldest shall be preferred. In case of ascendants, the paternal shall have a better right.

Art. 199 of the FC provides this order:

1. The spouse
2. The descendants in the nearest degree;
  - a. If in the same degree, the oldest is preferred
3. The ascendants in the nearest degree; and
  - a. Paternal side has a better right.
4. The brothers and sisters.
  - a. If in the same degree, the oldest is preferred

### Art. 306

Every funeral shall be in keeping with the social position of the deceased.

### Art. 307

The funeral shall be in accordance with the expressed wishes of the deceased. In the absence of such expression, his religious beliefs or affiliation shall determine the funeral rites. In case of doubt, the form of the funeral shall be decided upon by the person obliged to make arrangements for the same, after consulting the other members of the family.

Hence, it follows this order–

1. Wishes of the dead
2. Religious belief
3. Discretion of the person obliged in Art. 305, upon consultation with other relatives.

### Art. 308

No human remains shall be retained, interred, disposed of or exhumed without the consent of the persons mentioned in [Article 199 of the Family Code] and Article 305.

**MCG:** Not even in the West Philippine Sea!

**Art. 309**

Any person who shows disrespect to the dead, or wrongfully interferes with a funeral shall be liable to the family of the deceased for damages, material and moral.

Disrespect to the dead or wrongful interference with the funeral gives rise to a cause of action for damages.

**Art. 310**

The construction of a tombstone or a mausoleum shall be deemed a part of the funeral expenses, and shall be chargeable to the conjugal partnership property, if the deceased is one of the spouses.

Funeral expenses are chargeable to the ACP/CPG, if the deceased is married.

**TITLE XIII  
Use of Surnames**

*Legitimate child*

**Art. 364 ★**

Legitimate and legitimated children shall **principally** use the surname of the father.

**Alanis v. CA, G.R. 216425, November 11, 2020 ♥**

A legitimate child is entitled to use the surname of either parent as a last name.

"Principally" in Art. 364, NCC does not mean "exclusively." This gives ample room to incorporate into Art. 364 the state policy of ensuring the fundamental equality of women and men before the law.

*Adopted child*

**Art. 365**

An adopted child shall bear the surname of the adopter.

**Republic v. CA & Wong, G.R. 97906, May 21, 1992**

An adoptive child may file a Rule 103 petition to change his surname to that of his natural parents'.

The law (Art. 189, FC, and Art. 365, NCC) does not go so far as to unqualifiedly prohibit the use of any other surname, and only subjects such recourse to the obtention of the requisite judicial sanction.

Art. 366-368 impliedly repealed by the FAMILY CODE.

See Art. 176, FC, and Grande for the discussion on the surname of a nonmarital child.

*Surname of a child of annulment*

**Art. 369**

Children conceived before the decree annulling a voidable marriage shall principally use the surname of the father.

Note that this only covers the instance where the marriage was annulled (hence, Art. 45 of the Family Code comes in).

*A married woman's name*

**Art. 370**

A married woman may use:

- (1) Her maiden first name and surname and add her husband's surname, or
- (2) Her maiden first name and her husband's surname, or
- (3) Her husband's full name, but prefixing a word indicating that she is his wife, such as "Mrs."

**Art. 371**

In case of annulment of marriage, and the wife is the guilty party, she shall resume her maiden name and surname. If she is the innocent spouse, she may resume her maiden name and surname. However, she may choose to continue employing her former husband's surname, unless:

- (1) The court decrees otherwise, or
- (2) She or the former husband is married again to another person.

**Art. 372**

When legal separation has been granted, the wife shall continue using her name and surname employed before the legal separation.

**Art. 373**

A widow may use the deceased husband's surname as though he were still living, in accordance with Article 370.

**General rule:** A married woman has four name options, e.g.:

1. Corazon Cojuanco
2. Corazon Cojuanco-Aquino
3. Corazon Aquino
4. Mrs. Benigno Aquino Jr.

**In case of annulment–**

1. If the wife is the guilty party → revert to maiden name and surname
2. If the wife is innocent → discretion to revert or retain
  - a. Unless–
    - i. The court decrees otherwise, or
    - ii. Her husband remarries
  - b. She cannot use her former husband's surname.

**In case of legal separation–**

1. The wife shall continue using the name she's been using prior to the legal separation.
2. Recall: In legal separation, the marital ties are not severed!

**In case of the death of the husband–**

1. The wife can continue using the surname of her husband, or
2. Pick any of those in Art. 370 (i.e. revert to her maiden name and surname).

**Art. 374**

In case of identity of names and surnames, the younger person shall be obliged to use such additional name or surname as will avoid confusion.

Thus, if parents would want to name their son after his godfather who is not related to them, the said son must use an additional name or surname. Hence, if the name of the godfather is Juan de la Cruz, the godson must use an additional name such as Juan *Pedro* de la Cruz.

**Art. 375**

In case of identity of names and surnames between ascendants and descendants, the word “Junior” can be used only by a son. Grandsons and other direct male descendants shall either:

- (1) Add a middle name or the mother's surname, or
- (2) Add the Roman numerals II, III, and so on.

If Juan de la Cruz Jr., who is married to Julieta Santos, has a son with the same name, such son shall use Juan *Ricardo* de la Cruz, or Juan *Santos* de la Cruz, or Juan de la Cruz *III*. If Juan de la Cruz names his son after his father, Roberto de la Cruz, such son shall be named Roberto de la Cruz *II*.

**REPUBLIC ACT 9048**  
**Clerical Error Law, as amended by RA 10172**

**§1**

*Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname*

No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname, the day and month in the date of birth or sex of a person where it is patently clear that there was a clerical or typographical error or mistake in the entry, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.

**General rule:** Entries in the civil register can only be changed by a judicial

order.

- **Exceptions:** When the correction concerns clerical/typographical errors of, or change of:
  1. First name
  2. Nickname
  3. Day and month of the date of birth
  4. Sex of a person

*What's a typo?*

### §2(3) *Definition of Terms*

‘Clerical or typographical error’ refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is **harmless and innocuous**, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, **which is visible to the eyes or obvious to the understanding**, and can be corrected or changed only by reference to other existing record or records: *Provided, however*, That no correction must involve the change of nationality, age, or status of the petitioner.

A **clerical or typographical error** is–

1. A mistake committed in the performance of clerical work
2. That is harmless and innocuous
3. Which is visible to the eye or obvious to the understanding
4. And can be corrected or changed only by reference to other existing record/s.

It **does not include corrections** in the–

1. Nationality
2. Age (year of birth)
3. Status (legitimacy)

**Who may file a petition under RA 9048?**

- Any person having direct and personal interest in the correction of a clerical/typographical error.

**Where should the petition be filed?**

1. **General rule:** Local civil registry office where the record sought to be corrected is being kept
  - a. If not practical in that venue, he shall file it in the LCR where he is currently residing.

- b. If living abroad, he shall file it with the nearest Philippine consulate.

**What are the grounds for changing a first name?**

1. The name is ridiculous, tainted with dishonor or extremely difficult to write or pronounce.
2. The new first name/nickname has been habitually and continuously used by the petitioner and he has been publicly known by that first name or nickname in the community.
3. The change will avoid confusion.

**What are the documentary requirements/evidence needed?**

1. **Generally:** A certification from the appropriate law enforcement agencies that he has no pending case or no criminal record.
2. **For change of date of birth or sex:**
  - a. Earliest school record/documents
  - b. Medical records
  - c. Baptismal certificates
3. **For change of gender:**
  - a. Certification by an accredited government physician attesting that the petitioner has not undergone sex change or transplant.

**What is the publication requirement?**

- The petition should be published at least once a week for two consecutive weeks in a newspaper of general circulation.
  - This only applies for a change in first name or nickname, and correction in the d.o.b.

**What is the procedure?**

- The LCR posts the petition for 10 days in a bulletin board.
- After the last day of the posting/publication, the LCR renders a decision within five days, whether to approve it or not.
  - If denied, the petitioner can–
    - Appeal to the civil-registrar general (CRG), or
    - Seek judicial recourse.
- The CRG may, within 10 days following receipt of the LCR’s decision, impugn it on the following grounds:
  - The error is not clerical or typographical
  - The correction is substantial/controversial
  - The basis for the change of name is not under the ones allowed by law.
- If the CRG does not impugn, the LCR’s decision becomes final and executory.
- If the CRG, impugns, the petitioner can–
  - Seek reconsideration, or



- Seek judicial recourse.

### **RULES OF CIVIL PROCEDURE**

#### **Rule 108 – Cancellation Or Correction Of Entries In The Civil Registry**

Corrections that are not included in RA 9048 must be done judicially, through a Rule 108 proceeding.

##### **Who may file a petition?**

- Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register.

##### **Where to file the petition?**

- In the RTC where the civil registry is located.

##### **Who are the parties?**

- The civil-registrar and all persons who have or claim any interest which would be affected (*see Almojuela*).
- Those parties will be given summons, and may oppose the petition within fifteen days from notice of the petition, or from the last date of publication of such notice.

##### **What is the publication requirement?**

- Once a week for three consecutive weeks in a newspaper of general circulation in the province.

#### *Jurisprudential grounds for a change of name*

##### **Republic v. Bolante, G.R. 160597, July 20, 2006**

A person can be authorized to change his name not only for reasonable cause/compelling reason, but also that he will be prejudiced by the use of his true and official name.

Jurisprudence has recognized certain justifying grounds to warrant a change of name. Among these are:

1. When the name is ridiculous, dishonorable, or extremely difficult to write or pronounce
2. When the change will avoid confusion
3. When one has been continuously used and been known since childhood by a Filipino name, and was unaware of alien parentage
4. When the surname causes embarrassment and there is no showing

that the desired change of name was for a fraudulent purpose or that the change of name will prejudice public interest.

##### **Wang v. Cebu City Civil Registrar, G.R. 159966, March 30, 2005**

The touchstone for the grant of a change of name is that there be "proper and reasonable cause" for which the change is sought.

1. This is at the discretion of the court.
2. The evidence presented need only be satisfactory to the court and not all the best evidence available.

Hence, mere convenience is not a ground for a change of name (or, in this case, removal of the middle name).

#### *Parties in the case*

##### **Almojuela v. Republic, G.R. 211724, August 24, 2016**

Rule 108 of the Rules of Court provides the procedure for the correction of substantial changes in the civil registry through an appropriate adversary proceeding.

The rule mandates two sets of notices to potential oppositors:

1. one given to persons named in the petition
2. given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties

Hence, the local civil registrar as well as all other persons who have or claim to have any interest that would be affected thereby should be impleaded.

⚠ *Failure to implead those parties will result in the dismissal of the petition.*

#### *Civil actions*

##### **Art. 377**

Usurpation of a name and surname may be the subject of an action for damages and other relief.

##### **Art. 378**

The unauthorized or unlawful use of another person's surname gives a right of action to the latter.

The following are the elements of usurpation of a name:

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

### Art. 379

The employment of pen names or stage names is permitted, provided it is done in good faith and there is no injury to third persons. **Pen names and stage names cannot be usurped.**

### Art. 380

Except as provided in the preceding article, no person shall use different names and surnames.

### Anti-alias law

#### Ursua v. CA, G.R. 112170, April 10, 1996, April 10, 1996 ♥

An alias is a name/s used by a person or intended to be used by him **publicly and habitually** used in business transactions in addition to his real name by which he is registered at birth or baptized at the first time or substitute name authorized by a competent authority.

- Hence, to be found guilty of the Anti-Alias Law, the person must use the alias publicly and habitually.

#### People v. Estrada, G.R. 164368-69, April 2, 2009

The required publicity in the use of an alias must be **made openly, or in an open manner or place**, or to cause it to become generally known. The intent to publicly use the alias must be manifest.

- Hence, the repeated use of an alias within the single day cannot be deemed "habitual," as it does not amount to a customary practice or use.

### TITLE XVI Civil Register

### Art. 407

All acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register.

### Art. 408

The following shall be entered in the civil register:

(1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filiation; (15) voluntary emancipation of a minor; and (16) changes of name.

### Art. 409

In cases of legal separation, adoption, naturalization and other judicial orders mentioned in the preceding article, it shall be the duty of the clerk of the court which issued the decree to ascertain whether the same has been registered, and if this has not been done, to send a copy of said decree to the civil registry of the city or municipality where the court is functioning.

Arts. 407-409 talk about the required data that need to be kept in the civil registry. In addition to that, the FC also requires certain documents to be placed in the civil registry, such as the marriage settlement (*see* Art. 77, FC).

### Civil register as a public document and a prima facie evidence

### Art. 410

The books making up the civil register and all documents relating thereto shall be considered public documents and shall be prima facie evidence of the facts therein contained.

### Art. 411

Every civil registrar shall be civilly responsible for any unauthorized alteration made in any civil register, to any person suffering damage thereby. However, the civil registrar may exempt himself from such liability if he proves that he has taken every reasonable precaution to prevent the unlawful alteration.

Hence, the marriage certificate, which is recorded in the civil registry, is the

best evidence of marriage.

Unauthorized alteration of such books will render the civil registrar civilly responsible to the person suffering damage thereby.

- Unless the civil registrar can show that he has taken reasonable precautions—he's exempt from liability.

**Art. 412** has been modified by RA 9048. Head over to the discussion of RA 9048 to see how entries in the civil registry may be corrected.

### **Art. 413**

All other matters pertaining to the registration of civil status shall be governed by special laws.

### **REPUBLIC ACT 11909**

#### **Permanent Validity of the Certificates of Live Birth, Death, and Marriage Act**

The certificates of live birth, death, and marriage issued, signed, certified, or authenticated by the PSA and its predecessor, the NSO, and the local civil registries—

- shall have permanent validity regardless of the date of issuance and
- shall be recognized and accepted in all government or private transactions or services requiring submission thereof, as proof of identity and legal status of a person, provided that:
  1. The document remains intact, readable, and still visibly contains the authenticity and security features;
  2. This is without prejudice to correction of entries;
  3. The submission of a PSA-authenticated birth certificate shall be without prejudice to the submission of other supporting documents that the end-user agency, company or entity may use in determining the identity of applicants, particularly those classified as special cases such as dual citizens, persons with dissolved marriages, and those with late registered certificates of live birth.

**MCG:** Foreign embassies are not covered by the law.