

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

Consolidated codal, case law, and commentary

Codal

Commentary

Case law

REPUBLIC ACT 386

An Act to Ordain and Institute the Civil Code of the Philippines

Art. 1

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

*When laws take effect***Art. 2 ★**

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

Basa v. Mercado, G.R. L-42226 (Jul. 26, 1935)A newspaper of general circulation:

1. Is published for dissemination of local news/general information;
2. Has a bona fide subscription list of paying subscribers; and
3. Published at regular intervals.

Tañada v. Tuvera, G.R. L-63915, (Apr. 24, 1985 & Dec. 29, 1986) ♥

The phrase "unless it is otherwise provided" pertains to the date of effectivity, because publication is indispensable, though the legislature may shorten the 15-day period.

The following are required to be published:

1. All statutes, including local application and private laws;
2. All executive and administrative orders and proclamations, except those without general applicability;
3. Presidential issuances "of a public nature" or "of general applicability";
4. Decisions or abstracts of decisions of the Supreme Court and the Court of Appeals, as they deemed to be;
5. Documents/classes of documents required to be published by law; and
6. Documents that the president shall determine to have general applicability and legal effect.

Dep't of Finance v. Dela Cruz, G.R. 209331, Aug. 24, 2015

Issuances that are merely interpretative regulation and internal in nature (e.g. regulating only the personnel of the agency and not the public) need not be published to be effective.

Garcillano v. House of Representatives, G.R. 170338, Dec. 23, 2008

Publication is needed to satisfy due process, and it is imperative for it will be the height of injustice to punish a citizen for the transgression of a law or rule which he had no notice whatsoever.

*Ignorance of the law***Art. 3**

Ignorance of the law excuses no one from compliance therewith.

DMCI v. CA, G.R. 137837, Apr. 20, 2001

Article 3 is limited only to mandatory and prohibitory laws. This is deduced from the language of Art. 3—it pertains only to "compliance" with laws.

In re Brehm v. Republic, G.R. L-18566, Sep. 30, 1963

A provision is construed to be mandatory when it contains words of

positive prohibition and couched in the negative terms importing that the act shall not be done otherwise than designated. Provisions using “may” are directory and can only operate if it does not conflict with the mandatory provisions.

Retroactivity of laws; vested rights principle

Art. 4

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

Laws are retrospective in the following nature:

1. When the law itself provides retroactivity
2. Remedial law (no vested rights)
3. Penal law, insofar as it is favorable to the accused
4. Emergency laws and authorized by police power
5. Curative laws, provided no vested rights are impaired
6. Substantive right, provided no vested rights are impaired

Mandatory, prohibitory, and permissive laws

Art. 5

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

Exceptions:

1. The law makes the act valid, but penalizes the violator.
2. The law itself authorizes its validity
3. The law makes the act only voidable
4. The law recognizes the nullity of the act, but nonetheless recognizes its effects as valid.

Sps. Cueno v. Sps. Bautista, G.R. 246445, Mar. 2, 2023

The word "void" in Art. 5 came from the Spanish Civil Code word "nullos," which refers to both void and voidable actions/contracts.

Waiver of rights

Art. 6

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

Gongon v. CA, L-24421, Apr. 30, 1970

Waiver of rights contrary to public policy may be declared as void by the courts. The public policy may be inferred from a statute.

Repeal of laws

Art. 7

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

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

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

Oceanmarine Resources v. Nedic, G.R. 236263, Jul. 19, 2022

A general repeal provision (e.g. “Repealing clause”) does not repeal an existing law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.

Abello v. Banco Filipino, G.R. 232706, Jul. 18, 2022

Implied repeal takes place when two statutes:

1. Cover the same subject matter;
2. Are clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and
3. Both cannot be given effect.

Martinez v. Van Buskirk, G.R. L-5691, Dec. 27, 1910

Customs are acts, where the performance of which:

1. has not proved destructive or injurious and;
2. which have, therefore, been acquiesced by society for so long a time.

Judicial decisions

Art. 8

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

Abello, supra art. 7

A doctrine laid by the Supreme Court is prospective in nature. A prior doctrine, as a general rule, is recognized as a "good law" prior to its abandonment.

Duty to render judgment

Art. 9

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

Interpretation of doubtful statutes

Art. 10

In case of doubt in the interpretation or application of laws, it is

presumed that the lawmaking body intended right and justice to prevail.

Customs

Art. 11

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

Art. 12

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

Anaban v. Anaban-Alfiler, G.R. 249011, Mar. 15, 2021

The habits and customs of a people, the dogmas and doctrines of a religion cannot be superior to or have precedence over laws relating to public policy, because laws and its incidents affect public policy.

In proving a custom as a fact, the lead government agency for such a determination is the National Commission on Indigenous Peoples.

Legal periods

Art. 13 ★

When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights, from sunset to sunrise.

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

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

day included.

Abello, supra art. 7

In computing periods, Art. 13 is the general rule.

CIR v. Pacero, G.R. 162155, Aug. 28, 2007

1987 Admin. Code, Book I, Ch. 8, §31 provides that:

1. Year = 12 calendar months
2. Month = 30 days, unless it refers to a specific calendar month
3. Day = 24 hours
4. Night = sunset to sunrise

(Modified by **Abello**: 1987 Admin. Code applies in particular to periods embraced within that law.)

Generality of penal laws

Art. 14

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

Treaty stipulations

An example of a treaty or treaty stipulation, as an exception to the general application of our criminal law, is the Bases Agreement entered into by and between the Philippines and the USA, and the 1998 RP-US Visiting Forces Agreement (*Reyes RPC, pp. 10-11*).

Principles of public international law

The following are not subject to the operation of our criminal laws:

1. Sovereigns and other chiefs of state; and
2. Ambassadors, ministers plenipotentiary, ministers resident, and charges d'affaires (*Reyes, RPC, p. 13*).

Territory, defined

Phil. Const., art. I provides the definition and extent of Philippine territory where Philippine penal laws are applicable.

Conflict of Laws

Lex Nationalii

Art. 15 ★

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

Republic v. Manalo, G.R. 221029, Apr. 24, 2018 ♥

Art. 26, ¶2 of the Family Code carves a narrow exemption from the nationality rule, such that Filipino spouses are allowed to initiate divorce proceedings abroad in a mixed marriage.

Llorente v. CA, G.R. 124371, Nov. 23, 2000

Only Filipino nationals are covered by the policy against divorce. However, Filipinos who eventually become aliens (i.e. become a US citizen), may obtain divorces abroad, provided they are valid according to their national law.

⚠ **Modified by Manalo.**

Fujiki v. Marinay, G.R. 196049, Jun. 26, 2013 ♥

In a foreign judgment relating to the status of a marriage involving a citizen of a foreign country (i.e. divorce contracted abroad), local courts only decide whether to extend its effect to the Filipino party.

Ambrose v. Suque-Ambrose, G.R. 206761, Jun. 23, 2021

Art. 15 does not apply when the alien spouse is seeking to annul his marriage to a Filipina spouse because the legal capacity to get

married and its consequences, including the nullification of void marriage is governed by the law of the place where the marriage was entered into (*lex loci celebrationis*). The foreigner spouse, however, is not precluded from bringing in the action/suing just because he's an alien.

Lex Rei Sitae;

Lex Nationalii for intrinsic validity

Art. 16 ★

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

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

Extrinsic validity – The formalities and solemnities which must be followed under the law.

Intrinsic validity – Refers to the legality of an instrument (e.g. whether the order and allocation of successional rights are in accordance with law).

Orion Savings Bank v. Suzuki, G.R. 205487, Nov. 12, 2014

Matters concerning the title and disposition of real property shall be governed by Philippine law (*lex rei sitae*) for properties in the country. The reason is by the very nature of immovable property.

Testate Estate of Amos G. Bellis v. Bellis, G.R. L-23678, Jun. 6, 1967

Art. 16, ¶12 renders applicable to the national law of the person who died, in intestate or testamentary succession with regard to:

1. the order of succession;
2. amount of successional rights;
3. intrinsic validity of the provisions of the will; and
4. the capacity to succeed.

Art. 16, ¶12 is a specific provision that is not an exemption to Art. 17, ¶13. It specifically applies to testate and intestate successions.

Lex Loci Celebrationis for extrinsic validity

Art. 17 ★

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

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

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

Lex Loci Solutionis – Matters connected with the performance of contracts are regulated by the *law in force at the place of performance*.

For the purposes of **Art. 17, ¶12**, Philippine embassies are considered Philippine territory.

Art. 17, ¶13 – Philippine laws cannot be rendered useless by foreign statutes, decisions, and even treaties (*But see pacta sunt servanda*).

Llorente, supra art. 15

Whatever public policy or good customs may be involved in our system of legitimes, Congress did not intend to extend the same to the succession of foreign nationals. Congress specifically left the amount of successional rights to the decedent's national law (*lex nationalii*).

Art. 18

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

Abuse of Rights

Art. 19 ★

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

California Clothing v. Quiñones, G.R. 175822, Oct. 23, 2013

Art. 19's elements are:

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

Bad faith or malice is a conscious and intentional design to do a wrongful act for a dishonest or moral obliquity. Complementing Art. 19 are Arts. 20-21.

Art. 20 ★

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

Art. 21 ★

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

Arts. 20-21, compared ("special torts")

	Art. 20	Art. 21
How violated?	Wilful or negligence	Wilful
What is violated?	Law	Morals, good customs or public policy
How restituted?	Indemnification	Compensation

Wassmer v. Velez, L-20089, Dec. 26, 1964 ❤️

Generally, a breach of a promise to marry is not an actionable wrong. However, to walk out when the matrimony is about to be solemnized is palpably and unjustifiably contrary to good customs for which the defendant must be held answerable in damages.

Baksh v. CA, G.R. 97336, Feb. 19, 1993

Violating the Filipino's concept of morality and brazenly defying the traditional respect Filipinos have for women (e.g. fraud and deceit to the victim in a promise to marriage, and wilful injury to her honor and reputation) trigger the application of Art. 21.

Art. 21 is designed to expand the concept of torts or quasi-delicts by granting legal remedy for moral wrongs not in the Civil Code.

Guevarra v. Banach, G.R. 214016, Nov. 24, 2021 ❤️

The human relations provisions (particularly Art. 20-21) presuppose

that the party seeking damages must have acted in good faith. Otherwise, he cannot claim damages.

Unjust Enrichment

Art. 22 ★

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

Republic v. Ballocanag, G.R. 163794, Nov. 28, 2008

Doctrine of unjust enrichment – A person shall not be allowed to profit or enrich himself inequitably at another's expense.

The doctrine applies when:

1. A person unjustly retains a benefit to the loss of another, or
2. A person retains the money/property of another against the fundamental principles of justice, equity and good conscience.

Art. 23

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

Arts. 22-23, compared

	Art. 22	Art. 23
How done?	Act of performance by another, or any other means	Act or event not due to fault or negligence

What's the result?	Expense of someone	Damage to property
How compensated?	Return of the thing	Indemnification

Equity jurisdiction; social justice

Art. 24

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

De Lima v. Laguna Tayabas Co., G.R. L-35697-99, Apr. 15, 1988

Pleadings as well as remedial laws should be construed liberally in order that the litigants may have ample opportunity to pursue their respective claims and that a possible denial of substantial justice due to technicalities may be avoided.

Thoughtless extravagance

Art. 25

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

Thoughtless extravagance may only be stopped:

1. By order of the courts; and
2. Upon petition of:
 - a. The government, or
 - b. Private charitable institution.

Art. 26

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

1. Prying into the privacy of another's residence;
2. Meddling with or disturbing the private life or family relations of another;
3. Intriguing to cause another to be alienated from his friends;
4. Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

Sps. Ching v. Choachuy, G.R. 179736, Jun. 26, 2013

An individual's right to privacy under Art. 26(1) should not be confined to one's house/residence as it may extend to places where one has the right to exclude the public or deny them access. It covers places, locations, or even situations which an individual considers as private.

Two-fold test for expectation of privacy:

1. Whether the individual has exhibited an expectation of privacy; and
2. Whether this expectation is one that society recognizes as reasonable.

RCPI v. Verchez, G.R. 164349, Jan. 31, 2006

Disrupting the filial tranquility of a family (i.e. delay in delivering a telegraph) are tortious acts and/or omissions analogous to the ones mentioned in Art. 26 which, in turn, are among the instances of quasi-delict when the courts may award moral damages under Art. 2219.

Art. 27

Any person suffering material or moral loss because a **public servant**

or **employee** refuses or neglects, without just cause, to perform his official duty may file an **action for damages and other relief** against the latter, without prejudice to any disciplinary administrative action that may be taken.

A public official is supposed to be an agent or at least a representation of the government and, therefore, the law exacts on him or her an obligation to be very vigilant and just so that the public can be assured that the government is truly effective in servicing their needs (*Sta. Maria, p. 35*)

Art. 28

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

Willaware v. Jesichris, G.R. 195549, Sep. 3, 2014

Characteristics of unfair competition:

1. It must involve an **injury** to a competitor/trade rival; and
2. It must involve acts which are contrary to **good conscience or shocking to judicial sensibilities, or otherwise unlawful**

Art. 29

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

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

Conviction → Civil liability (Art. 101, RPC)

Acquittal

- a. *If not proven beyond reasonable doubt* → separate civil action for damages (preponderance of evidence)
- b. *If not indicated* → infer from the decision

Art. 30

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

Requisites of Art. 30:

1. There was a criminal offense
2. No criminal case was filed
3. A civil action was brought

Only a preponderance of evidence is required.

Noncriminal act or omissions

Art. 31

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

Art. 31 seeks to give a remedy and cause of action to persons injured of acts which do not necessarily arise from the commission of a

crime (*culpa contractual* and *quasi-delicts*) (Sta. Maria, pp. 41-45).

Constitutional rights

Art. 32

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

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

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

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

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

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

For **violations of constitutional rights**, civil action may proceed against:

1. Any public officer or employee, or
2. Any private individual.

Exception: Judges

- **Exception:** When the act/omission is a criminal offense, then judges can be held liable under Art. 32.

The provision extends the applicability of the Bill of Rights against private individuals (*see generally* Republic v. Sandiganbayan & Dimaano).

Art. 33

In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed

independently of the criminal prosecution, and shall require only a preponderance of evidence.

Rationale: To provide citizens a way to vindicate their rights without relying on the government

Meaning: Defamation, fraud, and physical injuries are construed in their ordinary sense. Hence, fraud could include estafa, and physical injuries could include death or homicide, but not criminal negligence (*Sta. Maria, pp. 59-60*).

Police liability

Art. 34

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

Art. 35

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

If during the pendency of the civil action, an information should be

presented by the prosecuting attorney, the civil action shall be **suspended** until the termination of the criminal proceedings.

Art. 36

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

Prejudicial question – one that arises in a case, the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal.

Generally: Criminal case > Civil case (when arising from same facts)

Exceptions:

1. When there is a prejudicial question that needs to be resolved first; and
2. When the law provides that criminal and civil cases can be instituted simultaneously (*Sta. Maria, pp. 64-65*).

Civil personality

Art. 37 ★

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

Juridical capacity – Fitness to be the subject of legal relations

- Acquired at birth, terminated at death.

Capacity to act – Power to do acts with legal effects

- Not inherent, can be attained or conferred and can be lost

Restrictions and modifications on capacity to act

Art. 38 ★

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

Art. 39 ★

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

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

Article 38 – restricts the capacity to act

Article 39 – modifies the capacity to act, broader (*Sta. Maria, p. 70*)

Civil personality

Art. 40 ★

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

But see Art. 5, PD 603

The civil personality of the child shall commence from the time of his conception, for all purposes favorable to him, subject to the requirements of Article 41 of the Civil Code.

Art. 41

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

Quimiging v. Icao, G.R. L-26795, Jul. 31, 1970

A conceived child, although as yet unborn, is given by law a provisional personality of its own for all purposes favorable to it, as provided in Art. 40.

The proviso "that it be born later..." is not a condition to the unborn child to have rights. Making the proviso a condition makes the entire Art. 40 useless and ineffective.

Geluz v. CA, G.R. L-16439, July 20, 1961

No action for damage could be instituted on behalf of the unborn child, because an action for pecuniary damages on account of personal injury/death pertains to the one injured.

Art. 42 ★

Civil personality is extinguished by death.

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

Continental Steel v. Montaña, G.R. 182836, Oct. 13, 2008

Death is defined as the cessation of life. Life is not synonymous with civil personality. One need not acquire civil personality before dying. Hence, if the unborn already has life, then the cessation of it prior to

delivery qualifies as death.

Art. 43

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

Joaquin v. Navarro, L-5426, May 29, 1953

Facts of survivorship need not be direct—it can be indirect, circumstantial or inferential. Where there are facts, known or knowable, from which a rational conclusion can be made, the presumption does not step in and the rule of preponderance of evidence controls.

Art. 43 only applies to persons who are called to succeed each other.

Proof of death can never be established from mere inference arising from another inference or from presumptions and assumptions (*Sta. Maria*, p. 78).

*Juridical persons***Art. 44**

The following are juridical persons:

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

shareholder, partner or member.

1. **State** – A sovereign person with the people composing it viewed as an organized corporate society under a government with the legal competence to exact obedience of its commands.
2. **Political subdivision** – Province, cities and municipalities.
3. **Corporations** – See Revised Corporation Code of the Philippines:

§2 ★

Corporation Defined. – A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incidental to its existence.

§4

Corporations Created by Special Laws or Charters. – Corporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them, supplemented by the provisions of this Code, insofar as they are applicable.

§18, ¶3

Registration, Incorporation and Commencement of Corporate Existence. – A private corporation organized under this Code commences its corporate existence and juridical personality from the date the Commission issues the certificate of incorporation under its official seal and thereupon the incorporators, stockholders/members and their successors shall constitute a body corporate under the name stated in the articles of incorporation for the period of time mentioned therein, unless said period is extended or the corporation is sooner dissolved in accordance with law.

Art. 45

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

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

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

Art. 46

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

The general law governing public corporations is **Republic Act 11232** or the Revised Corporation Code of the Philippines.

Government corporations are created by **special charters** passed by Congress. However, **RA 11232** applies in a **supplementary nature**.

Corporate fiction – Corporations have a distinct juridical personality different from its shareholder, partner, or member.

- The obligation of the corporation is not the obligation of the stockholders and vice versa.
- Shareholders are not the owner of corporate property, which is owned by the corporation as a distinct legal person.
- **Exceptions:** When the fiction is used to defeat public convenience, justify wrong, protect fraud, defend crime, confuse legitimate legal or judicial issues, and perpetrate deception or otherwise circumvent the law.

Dissolution of corporations

Art. 47

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

What law governs dissolution of corporations:

1. *Private corporation* – Title XIV, Revised Corporation Code
2. *Chartered corporations* – Their special charter, or in the lack thereof, the Revised Corporation Code
3. *Partnership* – Title IX, Chapter 3, NCC

**EXECUTIVE ORDER 209
THE FAMILY CODE OF THE PHILIPPINES**

Art. 1 ★

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

Marriage as a special contract cannot be restricted by discriminatory policies of private individuals or corporations (*Sta. Maria, p. 99*).

PT&T v. NLRC, G.R. 118978, May 23, 1997

Employment rules that forbid or restrict the employment of married women, but do not apply to married men are void not only for violating the equal protection clause, but also on the fundamental state policy on marriage.

Duncan v. Glaxo, G.R. 162994, Sep. 17, 2004

The prohibition against personal/marital relationships of competitor companies is reasonable because said relationships may compromise the interests of the company. It is a valid exercise of management prerogative.

Star Paper v. Simbol, G.R. 164774, April 12, 2006

The standard of reasonableness must be used to assess the exercise of a management prerogative, like the policy of banning spouses from working in the same company. The employer has the burden to prove the existence of a reasonable business necessity.

Capin-Cadiz v. Brent, G.R. 187417, Feb. 24, 2016

A demand to marry as a condition for reinstatement is coercive, oppressive and discriminatory. It deprives the party of the freedom to choose one's status, which is a privilege that inheres in a person as an intangible and inalienable right (*see also* Art. 2(2)).

Essential requisites

Art. 2 ★

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

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

“Male and a female”

Silverio v. Republic, G.R. 174689, Oct. 19, 2007

Sexual reassignment is not a legal ground to effect changes in one's birth certificate, as there is no law providing for such. Considering that there is no law legally recognizing sex reassignment, the determination of a person's sex made at the time of his or her birth, if not attended by error, is immutable.

Republic v. Cagandahan G.R. 166676, Sep. 12, 2008 ♥

When the person is biologically or naturally intersex, the determining factor in their gender classification would be what the individual, having reached the age of majority, with good reason thinks of their sex.

Falcis v. Civil Registrar General, G.R. 217910, Sep. 3, 2019

Lacking a manifestly restrictive textual definition of marriage, the constitution is capable of accommodating a contemporaneous understanding of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC). The plain text and meaning of our constitutional provisions do not prohibit SOGIESC.

To continue to ground the family as a social institution on the concept of the complementarity of the sexes is to perpetuate the discrimination faced by couples, whether opposite-sex or same-sex, who do not fit into that mold.

⚠ *Obiter? The court dismissed Falcis because of a lack of an actual case or controversy.*

"Consent freely given"

Republic v. Albios, G.R. 198780, Oct. 16, 2013 ♥

Consent is valid when:

1. It is freely given, and
 2. Made in the presence of a solemnizing officer.
- A "freely given" consent requires that the contracting parties willingly and deliberately enter into the marriage.

- Consent must be real in the sense that it is not vitiated nor rendered defective by any of the vices of consent, such as fraud, force, intimidation, and undue influence (see Art. 45(3-4)).
- Consent must also be conscious or intelligent, in that the parties must be capable of intelligently understanding the nature of, and both the beneficial or unfavorable consequences of their act.

*Formal requisites***Art. 3 ★**

The formal requisites of marriage are:

1. Authority of the solemnizing officer;
2. A valid marriage license except in the case provided for in Chapter 2 of this Title; and
3. A marriage ceremony which takes place with the appearance of the contracting party before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

*Effects of lacking requisites***Art. 4 ★**

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

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

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

1. Lacking essential → Void
2. Lacking formal → Void

3. Defect essential → *Voidable* (Art. 45)
4. Irregularity formal → Valid, but liability could arise

Lacking marriage license

Abbas v. Abbas, G.R. 183896, Jan. 30, 2013

A certification by the local civil registrar attesting that their purported marriage license was actually issued for another couple is an indication that the marriage was contracted without a formal requisite and, therefore, void.

Go-Bangayan v. Bangayan, G.R. 201061, Jul. 3, 2013

A certification by the local civil registrar attesting that a marriage license purportedly issued to the couple was not in the range of licenses and in a different form (alphanumeric vs. numeric) issued by that office is enough to prove that the marriage was contracted without a formal requisite and, therefore, void.

Kho v. Republic & Kho, G.R. 187462, Jun. 1, 2016

To be considered void on the ground of absence of a marriage license, the law requires that the absence of such marriage license must:

1. be apparent on the marriage contract, or at the very least,
2. supported by a certification from the local civil registrar that no such marriage license was issued to the parties.

Vitangcol v. People, G.R. 207406, Jan. 13, 2016

A mere certification from the local civil registrar that such a marriage license number was not found is insufficient to prove the lack of such license.

Administrative liability

Cosca v. Palaypayon, A.M. MTJ-92-721, Sep. 30, 1994

A judge who solemnizes a marriage without having been shown a

valid marriage license and merely requires the submission of the marriage license after the marriage ceremony acts improperly.

Status of children outside a valid marriage

Aquino v. Aquino, G.R. 208912, Dec. 7, 2021

Children conceived and born outside a valid marriage are illegitimate or nonmarital.

However, this does not mean extramarital affair—it is possible that either of them are below marriageable age, chose not to marry, the mother is a victim of sexual assault, or when the father of an unborn child may have died before being able to marry the child's mother.

Art. 5

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

Minimum requirements in a marriage ceremony;

Marriages in articulo mortis

Art. 6

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

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

officer.

The absence of witnesses in a marriage ceremony is not such a serious flaw and would therefore only constitute an irregularity (*Sta. Maria, p. 130*).

Art. 7

Marriage may be solemnized by:

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

Limits of the following solemnizing officers:

1. Judge/justice – Only in the jurisdiction of the court (i.e. RTC judges = entire judicial region; appellate courts = entire Philippines)
2. Religious minister:
 - a. Authorized by his church
 - b. Registered with the civil registrar general
 - c. Within the limits of the authority granted
 - d. One of the parties is a member of his religion.

3. Ship/airplane captain – Only marriages in articulo mortis between passengers or crew members inside the ship/plane
4. Military commander – Only marriages in articulo mortis between *persons* within the zone of military operation.
5. Filipino diplomats – Only marriages between Filipinos abroad.

Keuppers v. Murcia, A.M. MTJ-15-1860, Apr. 3, 2018

A judge who solemnizes a marriage outside of his territorial jurisdiction violates Art. 7, and is guilty of grave misconduct and conduct prejudicial to the best interest of the service. Moreover, Art. 8 disallows solemnizing the marriage in a venue other than the judge's courtroom or chambers.

Art. 8

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

Art. 8 is directory. Its nonobservance will not invalidate a marriage but can subject the person or persons who cause the violation to civil, criminal, or administrative liability (*Sta. Maria, p. 144*).

Art. 9

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

of this Title.

If the contracting parties obtain a marriage license in a place other than the place where either of them reside, **it is merely an irregularity** which will not render null and void the marriage celebrated on the basis of such license (*Sta. Maria, p. 145*).

Art. 10

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

The marriage ceremony shall be in accordance with the laws of the Philippines because Article 17 of the Civil Code provides that when contracts, among others, are executed before the diplomatic officials of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution (*Sta. Maria, p. 145*).

Procedure in obtaining a marriage license, generally

Art. 11

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

1. Full name of the contracting party;
2. Place of birth;
3. Age and date of birth;
4. Civil status;
5. If previously married, how, when and where the previous marriage was dissolved or annulled;
6. Present residence and citizenship;

7. Degree of relationship of the contracting parties;
8. Full name, residence and citizenship of the father;
9. Full name, residence and citizenship of the mother; and
10. Full name, residence and citizenship of the guardian or person having charge, in case the contracting party has neither father nor mother and is under the age of twenty-one years.

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

Art. 12

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

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

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

Getting a marriage license for remarriage

Art. 13

In case either of the contracting parties has been previously married, the applicant shall be required to furnish, instead of the birth or baptismal certificate required in the last preceding article, the **death certificate of the deceased spouse** or the **judicial decree of the absolute divorce**, or the **judicial decree of annulment or declaration of nullity** of his or her previous marriage.

In case the death certificate cannot be secured, the party shall make an affidavit setting forth this circumstance and his or her actual civil status and the name and date of death of the deceased spouse.

Consent of parent required for a party aged 18-21

Art. 14

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

Noncompliance with the parental consent requirement does not make the marriage invalid or void, but **merely annulable** which means that the marriage is valid until annulled (*Sta. Maria, p. 150*).

Advice required for a party aged 21-25.

Art. 15

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

Absence of parental advice **does not affect the marriage**. It does not even make the marriage annulable (*Sta. Maria, p. 152*).

Marriage counseling required when a party is 18-25;

Nonattendance will delay issuance of license for 3 months

Art. 16

In the cases where **parental consent or parental advice is needed**, the party or parties concerned shall, in addition to the requirements of the preceding articles, attach a certificate issued by a priest, imam or minister authorized to solemnize marriage under Article 7 of this Code or a marriage counselor duly accredited by the proper government agency to the effect that the contracting parties have undergone **marriage counseling**. Failure to attach said certificates of marriage counseling shall **suspend the issuance of the marriage license for a period of three months** from the completion of the publication of the application. Issuance of the marriage license

within the prohibited period shall subject the issuing officer to administrative sanctions but shall not affect the validity of the marriage.

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

10-day publication period

Art. 17

The local civil registrar shall prepare a notice which shall contain the full names and residences of the applicants for a marriage license and other data given in the applications. The notice shall be posted for ten consecutive days on a bulletin board outside the office of the local civil registrar located in a conspicuous place within the building and accessible to the general public. This notice shall request all persons having knowledge of any impediment to the marriage to advise the local civil registrar thereof. The marriage license shall be issued after the completion of the period of publication.

Nonissuance of a marriage license

Art. 18 ★

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

Only court intervention directing the nonissuance of the marriage license can empower the local civil registrar to validly refuse to issue said license. The court action may be brought by the local civil

registrar himself or by any interested party.

If, despite an injunction order from the court, the local civil registrar nevertheless issues a marriage license and a marriage is solemnized on the basis of such marriage license, the marriage will still be valid because the validity of the marriage license is not affected by the violation of the injunction. The issuance of the license despite the restraining order can be considered only as an irregularity (*Sta. Maria*, pp. 155-156).

Marriage license fees

Art. 19

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

Effectivity of marriage license

Art. 20 ★

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

The date of the signing of the local civil registrar of the marriage license is the date of the issue.

If it is not claimed and therefore not used within 120 days, it shall automatically become ineffective (*Sta. Maria*, p. 157).

*Foreigner/mixed marriages***Art. 21**

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

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

A certificate of legal capacity is necessary because the Philippines adheres to the national law of the contracting parties with respect to their legal capacity to contract marriage.

Illustrative example: If a 16-year-old United States citizen is legally allowed to marry in the United States and wants to marry a Filipino here, he can do so by obtaining a certificate of legal capacity stating that in the United States, persons 16 years of age can be validly married. He can thereafter show this to the local civil registrar where he is residing in the Philippines and a marriage license will subsequently be issued (*Sta. Maria, p. 158*).

Garcia v. Recio, G.R. 138322, Oct. 2, 2001

A duly authenticated and admitted certificate is prima facie evidence of legal capacity to marry on the part of the alien applicant for a marriage license.

However, if without the certificate of legal capacity the marriage license was nevertheless issued, the marriage celebrated on the basis of such marriage license will still be considered valid as this is merely an irregularity.

*Content of the marriage certificate***Art. 22**

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

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

The primary or **best evidence of a marriage is the marriage contract** or marriage certificate (*Sta. Maria, pp. 161-162*).

*Duties of the solemnizing officer and local civil registrar***Art. 23**

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

Art. 24

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

Art. 25

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

Because the local civil registrar is the official charged with the preparation and keeping of all documents regarding marriage, any certification issued by him in connection with any matter involving the marriage of any particular individual within his jurisdiction is given high probative value (*Sta. Maria*, pp. 170-171; see also *Abbas, Go-Bangayan, Kho, and Vitangcol*).

Art. 26 ★

All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 3637 and 38.

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

¶1

Par. 1 follows the rule of ***lex loci celebrationis*** – a marriage formally

valid where celebrated is valid everywhere.

Exceptions:

1. When either party is aged below 18.
2. Bigamous or polygamous marriages.
3. Where there is a mistake of identity.
4. Void marriages analogous to Arts. 36 and 53.
5. Incestuous marriages.
6. Marriages against public policy (Art. 38).
7. Same-sex marriages (*Sta. Maria*, pp. 173-183).

¶2

Par. 2 provides for the recognition of divorce obtained in another country that will allow the divorced Filipino spouse to remarry.

Purpose: To avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse.

Tenchavez v. Escano, G.R. L-19671, Nov. 29, 1965

A foreign divorce between Filipino citizens, sought and decreed after the effectivity of the new Civil Code, is not entitled to recognition as valid in the Philippines. Moreover, the spouse was a Filipina at the time of the divorce, so Art. 15 (NCC) applied.

Bayot v. CA, G.R. 155635, Nov. 7, 2008

Art. 26(2) has **two requisites**:

1. There is a valid (mixed) marriage that has been celebrated between a Filipino citizen and a foreigner.
2. A valid divorce is obtained abroad *by the alien spouse capacitating him or her to remarry*.

Application of Art. 26(2) rests on **three legal premises**:

1. A divorce obtained abroad by an alien married to a Philippine national may be recognized in the Philippines, provided the decree of divorce is valid according to the national law of the

foreigner.

- a. Hence, the divorce decree and the law on divorce must be proved as a fact during the trial.
2. The reckoning point is not the citizenship of the divorcing parties at birth or at the time of marriage, but their citizenship at the time a valid divorce is obtained abroad.
3. An absolute divorce secured by a Filipino married to another Filipino is contrary to our concept of public policy and morality and shall not be recognized in this jurisdiction.

⚠ *This has been modified by Manalo. However, noteworthy here is the implicit suggestion that the point of reckoning in the nationality (determinative if Art. 15 [NCC] will apply or not) is the time the divorce decree took effect.*

Noveras v. Noveras, G.R. 188289, Aug. 20, 2014



Absent a valid recognition of the divorce decree, it follows that the parties are still legally married in the Philippines.

The requirements of presenting the **(1) foreign divorce decree and (2) the national law of the foreigner** must comply with our Rules of Evidence.

Corpuz v. Sto Tomas, G.R. 186571, Aug. 11, 2010



The alien spouse can claim no right under Art. 26(2) of the Family Code as the substantive right it establishes is in favor of the Filipino spouse.

Art. 26(2) provided the Filipino spouse a substantive right to have his or her marriage to the alien spouse considered as dissolved, capacitating him or her to remarry.

Juego-Sakai v. Republic, G.R. 224015, Jul. 23, 2018



Despite the fact that the petitioner participated in the divorce proceedings abroad, and even if it is assumed that she initiated the same, she must still be allowed to benefit from the exception provided under Art. 26(2).

Republic v. Manalo, G.R. 221029, Apr. 24, 2018 ♥



A validly obtained foreign divorce initiated by the Filipino spouse can be recognized and given legal effects in the Philippines.

Based on a clear and plain reading of Art. 26(2), it only requires that there be a divorce validly obtained abroad. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding.

Art. 26(2) has two requisites to apply:

1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and
2. A valid divorce is obtained, capacitating the parties to remarry regardless of the spouse who initiated the divorce proceedings.

Rivera v. Woo, G.R. 248355, Nov. 23, 2021



The starting point in any recognition of a foreign divorce judgment is the acknowledgement that Philippine courts do not take judicial notice of foreign judgment and laws.

The presentation solely of the divorce decree, without more, will not suffice. Its authenticity must be proven, together with the alien's applicable national law.

In re Ordaneza v. Republic, G.R. 254484, Nov. 24, 2021



A foreign divorce “by agreement” may be judicially recognized in the Philippines.

Republic v. Kikuchi, G.R. 243646, Jun. 22, 2022



For a petition for judicial recognition of foreign divorce to prosper, the party pleading it must prove the fact of divorce and the national law of the foreign spouse.

To do so, an official and authentic English translation of the foreign law must be provided to the court.

Republic v. Ng, G.R. 249238, Feb. 27, 2024

If the divorce is valid according to the national law of the alien spouse and allows said spouse to remarry—**regardless of the modality** (i.e. mutual, administrative) by which the divorce was obtained—Article 26(2) applies and entitles the Filipino spouse to obtain recognition of the foreign divorce.

*Marriages exempt from a marriage license***Art. 27**

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

Art. 28

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

Art. 29

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

Art. 30

The original of the affidavit required in the last preceding article, together with a legible copy of the marriage contract, shall be sent by

the person solemnizing the marriage to the local civil registrar of the municipality where it was performed within the period of thirty days after the performance of the marriage.

Art. 31

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

Art. 32

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

Art. 33

Marriages among Muslims or among members of the ethnic cultural communities may be performed validly without the necessity of a marriage license, **provided they are solemnized in accordance with their customs, rites or practices**.

Art. 34 ★

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

The exception in **Art. 34** has **two requisites**:

1. The parties must have lived as such for at least 5 years characterized by **exclusivity and continuity** that is unbroken.
2. They must be without any legal impediment to marry.
 - a. The absence of legal impediment is **only required at the time of the celebration** of the marriage—not for the entire 5 years (*Sta. Maria, pp. 198-201*).

⚠️ *But see Oca v. Necessario. Necessario is an administrative case. Hence, its holding that the parties must be capacitated for the entire 5 years is doubtful.*

De Castro v. Assidao-De Castro, G.R. 160172, Feb. 12, 2008



A false affidavit of cohabitation for the purposes of Art. 34 is not a mere irregularity, but an absence of the formal requisite. Consequently, the failure to obtain and present a marriage license renders a marriage void *ab initio*.

OCA v. Necessario, A.M. MTJ-07-1691, Apr. 2, 2013



The five-year period of cohabitation should be one of a perfect union valid under the law but rendered imperfect only by the absence of the marriage contract. The parties should have been capacitated to marry each other during the entire period and not only at the time of the marriage.

⚠️ *This is an administrative case. This passage in the text could be a dictum.*

Void and voidable marriages

Void marriages – Not valid since its inception:

1. Art. 4 (exceptions: Arts. 27, 28, 31-34, 35(2))
 2. Art. 35
 3. Art. 36 (psychological incapacity)
 4. Art. 37 (incest)
 5. Art. 38 (public policy)
 6. Arts. 40-41 (“valid” bigamous marriage)
 7. Art. 44 (bad faith in rel. to Arts. 40-42)
 8. Art. 53 (in rel. to Art. 52)
- There can be no other void marriages outside of these specified by law.
 - Void marriages can be collaterally attacked, and it is

imprescriptible.

- The special rules on co-ownership under Arts. 147 or 148 will govern for void marriages, and not Arts. 50-52.

Void marriages

Art. 35 ★

The following marriages shall be void from the beginning:

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

People v. Odtuhan, G.R. 191566, Jul. 17, 2013

A judicial declaration of nullity is required before a valid subsequent marriage can be contracted, else it is bigamous.

Only when the nullity of the marriage is so declared can it be held as void. So long as there is no such declaration, the presumption is that the marriage exists.

Garcia-Quiazon v. Belen, G.R. 189121, Jul. 31, 2013

A void marriage can be questioned even beyond the lifetime of the parties to the marriage.

In a void marriage, no marriage has taken place and it cannot be the source of rights, such that any interested party may attack the marriage directly or collaterally without prescription, which may be

filed even beyond the lifetime of the parties to the marriage.

Castillo v. De Leon Castillo, G.R. 189607, Apr. 18, 2016

For marriages celebrated before the Family Code, no judicial decree to establish the invalidity of a void marriage was necessary, but such a decree was needed for a voidable marriage.

Psychological incapacity

Art. 36 ★

A marriage contracted by any party who, at the time of the celebration, was **psychologically incapacitated** to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

Jurisprudential guidelines

Tan-Andal v. Andal, G.R. 196359, May 11, 2021 ♥

Revised Molina Guidelines:

1. The burden of proof to show the nullity of the marriage, by clear and convincing evidence, belongs to the plaintiff.
2. **(a)** Psychological incapacity is neither a mental incapacity nor a personality disorder that must be proven through expert opinion. **(b)** There must be proof, however, of the durable or enduring aspects of a person's personality, called "personality structure," which manifests itself through clear acts of dysfunctionality that undermines the family. The spouse's personality structure must make it impossible for him or her to understand and, more important, to comply with his or her essential marital obligations. **(c)** Proof of these aspects of personality need not be given by an expert. Ordinary witnesses who have been present in the life of the spouses before the latter contracted marriage may testify on behaviors that they have consistently observed from the supposedly incapacitated spouse.
3. The incapacity must be proven to be existing at "the time of the celebration" of the marriage.

4. The incapacity must be legally incurable, meaning that the incapacity is so enduring and persistent with respect to a specific partner, whereby the couple's respective personality structures are so incompatible and antagonistic that the only result of the union would be the inevitable and irreparable breakdown of the marriage.
5. Such illness must be grave enough, not in the sense of a serious or dangerous illness, to bring about the disability of the party to assume the essential obligations of marriage. Mild characterological peculiarities, mood changes, and occasional emotional outbursts are excluded.
6. The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife, as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.
7. Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.
8. The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition.

Republic v. CA & Molina, G.R. 108763, Feb. 13, 1997

Mere showing of "irreconcilable differences" and "conflicting personalities" do not constitute psychological incapacity. It is essential that the spouses must be shown to be incapable of doing their marital responsibilities due to some psychological illness.

⚠ **Modified by Tan-Andal. See the changes [here](#).**

Psychological incapacity

Datu v. Datu, G.R. 209278, Sep. 15, 2021

As a legal concept, psychological incapacity cannot be characterized as **incurable**. Instead, it is permanent relative to a specific partner. However, psychological incapacity can be **grave**, not in the sense that it is a serious or dangerous mental illness, but that it excludes mild characterological peculiarities, mood changes, occasional emotional outbursts. The incapacity must be shown to be due to a genuinely serious psychic cause. And, as explicitly required by the law, the incapacity must have **existed before or during the celebration** of the marriage.

Montealto-Laylo v. Ymbang, G.R. 240802, Sep. 29, 2021

The second Molina guidelines must be understood in relation to the **totality of evidence rule**. With this rule, the judge's scope of inquiry transcends the misplaced prominence given to expert opinion by psychologists and psychiatrists, thereby rendering such **expert testimony not indispensable**. Ordinary witnesses' testimonies should be accorded just as much evidentiary weight as expert testimony in supporting a finding of psychological incapacity.

Estella v. Perez, G.R. 249250, Sep. 29, 2021

The evidence must show by **clear and convincing evidence** the essence of psychological incapacity to overcome the presumed validity of one's marriage.

Clear and convincing evidence means that the evidence presented by a party during trial must be highly and substantially more probable to be true than not and the trier of fact (judge) must have a firm belief or conviction in its factuality. The evidence must be **substantially greater than a 50% likelihood** of being true.

Espiritu v. Boac-Espiritu, G.R. 247583, Oct. 6, 2021

Circumstances such as:

1. Forms of addiction demonstrative of such insensitivity or inability,
2. Abandonment by one spouse or the other, or
3. Instances of actual loss of trust, love, and respect for each

other
are included in the essence of the problematic personality structure or psychic causes that spawn psychological incapacity.

Caraullo-Padua v. Padua, G.R. 208258, Apr. 27, 2022

Psychological incapacity consists of the following:

1. A true inability to commit oneself to the essentials of marriage;
2. Inability to commit oneself must refer to the essential obligations of marriage: the conjugal act, the community of life and love, the rendering of mutual help, the procreation and education of offspring; and
3. Inability must be tantamount to a psychological abnormality.

Dela Cruz-Lanuza v. Lanuza, G.R. 242362, Apr. 17, 2024

Unjustified absence from the marital home for decades may be considered as part of the totality of evidence that a person is psychologically incapacitated to comply with the essential obligations of marriage.

*Property regime post-nullity***Diño v. Diño, G.R. 178044, Jan. 19, 2011**

Marriages nullified under Art. 36 are **governed under the ordinary rules on co-ownership**. Hence, there is no need to wait for the liquidation, partition, and distribution of the parties' properties before a decree is issued.

*Incestuous marriages***Art. 37**

Marriages between the following are incestuous and void from the beginning, whether the relationship between the parties be legitimate or illegitimate:

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

blood.

Incestuous marriages have been universally condemned as grossly indecent, immoral, and inimical to the purity and happiness of the family and the welfare of future generations (*Sta. Maria*, p. 261).

Void for public policy

Art. 38

The following marriages shall be void from the beginning for reasons of public policy:

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

Carungcong v. People, G.R. 181409, Feb. 11, 2010

The relationship by affinity between the surviving spouse and the kindred of the deceased spouse continues even after the death of the deceased spouse, regardless of whether the marriage produced children or not.

Affinity prohibitions

Step-brother and step-sister can marry each other as this

relationship by affinity is not included in the prohibition.

In the event that the marriage is annulled or nullified, there can be no question that the relationship by affinity between step parents and step children as well as parents in law and children in law is terminated. The said persons become strangers to each other. This will allow them to marry each other legally.

Adoption prohibitions

An adopted can validly marry the following: the parents, illegitimate child, and other relatives, whether by consanguinity or affinity, of the adopter.

The adopter can validly marry the legitimate, illegitimate or adopted child, the natural parent, and other relatives, whether by consanguinity or affinity, of the adopted (*Sta. Maria*, pp. 272-275).

Art. 39

The action or defense for the declaration of absolute nullity of a marriage shall not prescribe.

A.M. 02-11-10-SC

Rule on declaration of absolute nullity of void marriages and annulment of voidable marriages.

Who may file: Solely the husband or the wife (§2).

- In case a party dies at any stage of the proceedings before the entry of judgment, the court shall order the case closed and terminated (§24).

⚠ A void marriage can still be collaterally attacked by any interested party in any proceeding where the determination of the validity of marriage is necessary.

Art. 40 ★

The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

For purposes of remarriage, the only legally accepted basis for declaring a previous marriage an absolute nullity is a final judgment declaring such marriage void. For purposes other than remarriage, other evidence is acceptable (*Sta. Maria*, p. 289).

Social Security Commission v. Azote, G.R. 209741, Apr. 15, 2015

Although the SSC is not intrinsically empowered to determine the validity of marriages, it is required by §4(b)(7) of RA 8282 to examine available statistical and economic data to ensure that the benefits fall into the rightful beneficiaries.

Pulido v. People, G.R. 220149, Jul. 27, 2021 ♥

A judicial declaration of absolute nullity is not necessary to prove a void *ab initio* prior and subsequent marriages in a bigamy case. Hence, it is a defense for bigamy.

“Valid bigamous marriage”

Art. 41 ★

A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of

presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

General rule: As a general rule, a marriage contracted during the lifetime of the first spouse is null and void.

Exception: A “bigamous” marriage may be considered valid if, prior to the subsequent marriage and without prejudice to the effect of the reappearance of the other spouse, the present spouse obtains a judicial declaration of presumptive death (*Sta. Maria*, pp. 302-303).

Art. 391, NCC

The following shall be presumed dead for all purposes ...:

1. A person on board a vessel lost during a sea voyage, or an aeroplane which is missing ...
2. A person in the armed forces who has taken part in war ...
3. A person who has been in danger of death for other circumstances ...

Republic v. Narceda, G.R. 182760, Apr. 10, 2013

The remedy of a losing party in a summary proceeding is a petition for Certiorari. This is because no appeal can be had of a judgment in a summary proceeding for the declaration of presumptive death.

Republic v. Sareñogon, G.R. 199194, Feb. 10, 2016 ♥

The “well-founded belief” requisite under Article 41 of the Family Code is complied with only upon a showing that sincere honest-to-goodness efforts had indeed been made to ascertain whether the absent spouse is still alive or is already dead.

Republic v. Tampus, G.R. 214243, Mar. 16, 2016

The “well-founded belief” in the absentee's death necessitates

exertion of an active effort, not a passive one. This can only be complied upon a proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts, but **whether he is still dead or alive.**

Republic v. Leveste, G.R. 235580, Feb. 13, 2019

A well-founded belief depends upon:

1. The inquiries to be drawn from a great many **circumstances occurring before and after** the disappearance of the absent spouse; and
2. The **nature and extent of the inquiries** made by the present spouse.

SSS v. Vda. de Bailon, G.R. 165545, Mar. 24, 2006

If a second marriage has been contracted because of a presumption that the former spouse is dead, such presumption continues in spite of the spouse's physical reappearance, and **by fiction of law**, he or she must still be regarded as legally an absentee until the subsequent marriage is terminated as provided by law.

If the subsequent marriage is not terminated by registration of an affidavit of reappearance or by judicial declaration, but by death of either spouse, the marriage cannot be questioned except in a direct action for annulment.

Republic v. Catubag, G.R. 210580, Apr. 18, 2018

Some **jurisprudential guidelines** to determine the existence of a well-founded belief:

1. The mere act of inquiring from relatives falls short of the diligence required by law.
2. Despite alleged "earnest efforts," (e.g. inquiring with neighbors and friends; looking at hospitals' patient directories) the present spouse engaged in a mere "passive-search."
3. It's insufficient to have bare assertions without any corroborative evidence, and presenting witnesses.

Reappearance

Art. 42 ★

The subsequent marriage referred to in the preceding article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void *ab initio*.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed.

Santos v. Santos, G.R. 187061, Oct. 8, 2014

The proper remedy for a judicial declaration of presumptive death obtained by extrinsic fraud is an **action to annul the judgment**. An affidavit of reappearance is not the proper remedy when the person declared presumptively dead has never been absent.

Under Art. 42, the termination of subsequent marriage by reappearance is **subject to:**

1. The nonexistence of a judgment annulling the previous marriage;
2. Recording in the civil registry of the residence of the parties to the subsequent marriage of the sworn statement of fact and circumstances of reappearance;
3. Due notice to the spouses of the subsequent marriage of the reappearance; and
4. Reappearance must either be undisputed or judicially determined.

Art. 42—by registering an affidavit of reappearance—is the only instance where a marriage is terminated extrajudicially.

- The affidavit can be filed by any interested party.
- If the absent spouse reappears without filing an affidavit, there will technically exist a valid “bigamous” marriage.

*Criminal liability (RPC)***Art. 349
Bigamy**

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

*Effects of reappearance***Art. 43**

The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:

1. The children of the subsequent marriage **conceived** prior to its termination shall be considered legitimate, and their custody and support in case of dispute shall be decided by the court in a proper proceeding;
2. The absolute community of property or conjugal partnership, as the case may be, **shall** be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her spouse of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;
3. Donations by reason of marriage shall remain valid, **except that if the donee contracted the marriage in bad faith**, such donations made to said donee are **revoked by operation of law**;
4. The innocent spouse **may** revoke the designation of the other spouse who acted in bad faith as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable; and
5. The spouse who contracted the subsequent marriage in bad faith shall be **disqualified to inherit** from the innocent spouse by testate and intestate succession.

Art. 44

If **both spouses** of the subsequent marriage acted in **bad faith**, said marriage shall be **void ab initio** and all donations by reason of marriage and testamentary dispositions made by one in favor of the other are revoked by operation of law.

In a valid bigamous marriage, if:

1. Both spouses are in bad faith → Void, Art. 44 applies
2. Either/no spouse in bad faith → Terminated, Art. 43 applies

The present spouse must not be in bad faith up to the time of the solemnization of the subsequent marriage (*Sta. Maria, p. 316*).

Art. 43(2-5) exceptionally apply only to void subsequent marriages that occur as a result of the nonobservance of Art. 40 (*Sta. Maria, p. 363*).

- Arts. 43 and 44 also apply to Art. 45 (voidable marriages) (see Art. 50).

Voidable marriage

Voidable marriages – Considered valid up to the time it is terminated (see table [here](#)).

Art. 45

A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was **eighteen years of age or over but below twenty-one**, and the marriage was solemnized without the **consent of the parents, guardian or person having substitute parental authority over the party**, in that order, unless after obtaining the age of twenty-one, such party freely cohabited with the other and both lived as husband

- and wife;
2. That either party was of **unsound mind**, unless such party after coming to reason, freely cohabited with the other as husband and wife;
 3. That the consent of either party was obtained by **fraud**, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;
 4. That the consent of either party was obtained by **force, intimidation or undue influence**, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;
 5. That either party was **physically incapable** of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or
 6. That either party was afflicted with a **sexually-transmissible disease** found to be serious and appears to be incurable.

Annulment cases – Actions *in rem* (lit. against the world), where the “res” is the relation between the parties/marital tie.

- **Venue:** Nationality or domicile of the parties

⚠ **Ratification cancels out the 5-year prescriptive period** (*Sta. Maria*, pp. 342-346).

Ratification – The spouses nevertheless subsequently manifest their approval of the marital union, despite the presence of some defects at the time of the marriage ceremony.

- There is **no ratification** for cases of incurable physical incapability (Par. 5) and incurable STD (Par. 6). The five-year prescriptive period still applies.

Vices of consent

Art. 46

Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:

1. Non-disclosure of a **previous conviction** by final judgment of the other party of a crime involving moral turpitude;

2. Concealment by the wife of the fact that at the time of the marriage, she was **pregnant** by a man other than her husband;
3. Concealment of a **sexually transmissible disease**, regardless of its nature, existing at the time of the marriage, or
4. Concealment of **drug addiction**, habitual **alcoholism** or **homosexuality** or lesbianism existing at the time of the marriage.

Almelor v. RTC Las Piñas, G.R. 179620, Aug. 26, 2008

It is the **concealment** of homosexuality, and not homosexuality per se, that vitiates the consent of the innocent party.

Villanueva v. CA & Canalita-Villanueva, G.R. 132955, Oct. 27, 2006

Lack of cohabitation per se is not a ground to annul the marriage. The failure to cohabit becomes relevant only if it arises as a result of the perpetration of any of the grounds for annulling the marriage, such as lack of parental consent, insanity, fraud, intimidation, or undue influence.

Republic v. Villacorta, G.R. 249953, Jun. 23, 2021

It is the concealment of the fact of pregnancy by another man **at the time of marriage** that constitutes fraud as a ground for annulment.

Legal standing and prescriptive periods for annulment

Art. 47

The action for annulment of marriage must be filed by the following persons and within the periods indicated herein:

1. For causes mentioned in number 1 of Article 45, by the party whose parent or guardian did not give his or her consent, within five years after attaining the age of twenty-one; or by the parent or guardian or person having legal charge of the minor, at any time before such party has reached the age of twenty-one;

2. For causes mentioned in number 2 of Article 45, by the sane spouse who had no knowledge of the other's insanity; or by any relative guardian or person having legal charge of the insane, at any time before the death of either party; or by the insane spouse during a lucid interval or after regaining sanity;
3. For causes mentioned in number 3 of Article 45, by the injured party, within five years after the discovery of the fraud.
4. For causes mentioned in number 4 of Article 45, by the injured party, within five years from the time the force, intimidation or undue influence disappeared or ceased;
5. For causes mentioned in numbers 5 and 6 of Article 45, by the injured party, within five years after the marriage.

Duty of the prosecutor

Art. 48

In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

Malacampo-Sin v. Sin, G.R. 137590, Mar. 26, 2001

The protection of marriage as a sacred institution requires not just the defense of a true and genuine union but the exposure of an invalid one as well.

Juliano-Llave v. Republic, G.R. 169766, Mar. 30, 2011

Assuming that there is a lack of report of collusion or a lack of participation by the public prosecutor, the lack of participation of a fiscal does not invalidate the proceedings in the trial court.

Remedial law stuff

- **Governing rule:** A.M. 02-11-10-SC (Mar. 2003)
- If the RTC erroneously renders a default judgment in an annulment case, this would not prevent the decree from having a legal effect.
- No valid compromise is possible on the validity of marriage.
- In all cases, a full-blown hearing must be taken.

Collusion – For the purposes of getting an annulment, the parties come up with an agreement to make it appear that the marriage is defective .

Stipulation of facts – Admission by spouses in court agreeing to the existence of the act constituting the ground for annulment.

Confession of judgment – Admission made in court by the respondent admitting fault as invoked by the plaintiff to sever the marriage ties (*Sta. Maria, p. 347-353*).

Support pendente lite

Art. 49

During the pendency of the action and in the absence of adequate provisions in a written agreement between the spouses, the Court shall provide for the support of the spouses and the custody and support of their common children. The Court shall give paramount consideration to the moral and material welfare of said children and their choice of the parent with whom they wish to remain as provided for in Title IX. It shall also provide for the appropriate visitation rights of the other parent.

Support and custody *pendente lite* are given at the discretion of the court.

- However, no child below 7 years of age shall be separated from the mother, unless the court provides otherwise.
- While custody of a child can be awarded to one parent, the other parent can exercise visitatorial rights, unless the court

decides otherwise (*Sta. Maria*, pp. 354-360).

Arts. 43(3-5) & 44 applicable to void marriages under Arts. 40 & 45

Art. 50

The effects provided for in paragraphs (2), (3), (4) and (5) of Article 43 and in Article 44 shall also apply in proper cases to marriages which are declared *void ab initio* or annulled by final judgment under Articles 40 and 45.

The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of their presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.

All creditors of the spouses as well as of the absolute community or the conjugal partnership shall be notified of the proceedings for liquidation.

In the partition, the conjugal dwelling and the lot on which it is situated, shall be adjudicated in accordance with the provisions of Articles 102 and 129.

Under **§21 of A.M. 02-11-10-SC**, after the entry of judgment as a consequence of the finality of a nullity or annulment decree, the presumptive legitime of the common children shall be delivered pursuant to Arts. 50-51 (*Sta. Maria*, p. 364).

Art. 50 does not apply to other void marriages (e.g. not the void subsequent marriage in Art. 40 in rel. To Arts. 52-53). The rule that will apply is the rule on co-ownership (*see Valdes*).

Diño (id.)

Art. 50 only applies to marriages declared void or annulled under Art. 40 or Art. 45.

Art. 40 and 45 marriages are governed either by ACP or CPG. Hence, there is a need to liquidate, partition, and distribute their properties before a decree is issued.

Valdes v. RTC Quezon City, G.R. 122749, Jul. 31, 1996 ♥

Art. 50 relates only to voidable marriages, and exceptionally, to void marriages under Art. 40 and 45.

Delivery of presumptive legitimes

Art. 51

In said partition, the value of the presumptive legitimes of all common children, computed as of the date of the final judgment of the trial court, shall be delivered in cash, property or sound securities, unless the parties, by mutual agreement judicially approved, had already provided for such matters.

The children or their guardian, or the trustee of their property, may ask for the enforcement of the judgment.

The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitime.

Valdes (id.)

In a void marriage, regardless of a cause thereof, the property relations of the parties during the period of cohabitation is governed by the provisions of Art. 147 or 148, as the case may be. Hence, the property regime shall be liquidated pursuant to the ordinary rules on co-ownership.

Nicdao-Cariño v. Cariño, G.R. 132529, Feb. 2, 2001

- Art. 147 – Applies to unions of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless void for other reasons, like the absence of a marriage license.
- Art. 148 – Property regime of *bigamous marriages*, adulterous relationships, relationships in a state of concubine, relationships where both man and woman are married to other persons, multiple alliances of the same married man.

⚠ *Sta. Maria (p. 368): The application of Art. 148 in the void subsequent marriage in violation of Art. 40 is inaccurate. Valdez must prevail.*

Republic v. Olaybar, G.R. 189538, Feb. 10, 2014

A direct action is necessary to prevent circumvention of the substantive and procedural safeguards of marriage. A petition for correction or cancellation of an entry in the civil registry cannot substitute for an action to invalidate a marriage.

The decision of nullity or annulment will become final 15 days from receipt of the parties (unless an MR is filed).

Upon finality, an entry of judgment shall be issued. Subsequently, a decree will be issued, which is the best evidence of a nullity or annulment.

Legitime – Part of the testator’s property which he cannot dispose of because the law has reserved it for certain heirs (compulsory heirs).

- For *void marriages*, delivery of presumptive legitimes is **not required**, **except** in the void subsequent marriage of Art. 40, in rel. to Arts. 52-53.

Art. 52

The judgment of annulment or of absolute nullity of marriage, the partition and distribution of the properties of the spouses, and the delivery of the children’s presumptive legitimes shall be recorded in

the appropriate civil registry and registries of property; otherwise, the same shall not affect third persons.

Art. 53

Either of the former spouses may marry again after complying with the requirements of the immediately preceding Article; **otherwise, the subsequent marriage shall be null and void.**

Liquidation of properties

1. Void marriages – Ordinary rules of co-ownership
 - a. Except: Subsequent void marriage under Art. 40.
2. Voidable marriages – ACP or CPG, through Art. 43 (2-5) or 44

David v. Calilung, G.R. 241036, Jan. 26, 2021

Only an aggrieved or injured spouse may file a petition for declaration of nullity of marriage under Art. 53. It cannot be filed by the compulsory or intestate heirs of the spouses or by the state.

The heirs can only question the validity of the marriage of the said spouses in a proceeding for the settlement of the estate of their deceased father filed in the regular courts.

The **partition** required in Art. 52 is **only material to marriages which have been judicially nullified or annulled.**

Hence, if the prior spouse died and the surviving spouse remarried, the latter is not required to comply with the liquidation, partition, and distribution of properties of the first marriage, and the delivery of the presumptive/actual legitime of the children (Sta. Maria, 370-371).

Art. 54

Children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory shall be considered **legitimate**. Children conceived or born of the subsequent marriage under Article 53 shall likewise be **legitimate**.

General rule: Children conceived *and* born outside a valid marriage or inside a void marriage are illegitimate.

- Children conceived *or* born inside a voidable marriage are legitimate.
- Children conceived *and* born inside a void marriage are illegitimate, except as provided in Art. 54.

Illustrative example for Art 36: If after only two days from the receipt of the judicial nullity decree, the parties met and had sex and resulted in the conception of the child, that child shall be considered their legitimate child after birth.

- Because the judicial decree of nullity becomes final after 15 days from the receipt of the parties (*Sta Maria, pp. 372-373*).

Legal separation

A decree of legal separation or relative divorce does not affect the marital status, there being no severance of the *vinculum*.

- The marriage is not dissolved.
- It only involves bed-and-board separation (*a mensa et thoro*) of the spouses.
- The decree of separation is terminable at the will of the parties by merely filing a manifestation in court.

Grounds

Art. 55 ★

A petition for legal separation may be filed on any of the following grounds:

1. Repeated physical violence or grossly abusive conduct

directed against the petitioner, a common child, or a child of the petitioner;

2. Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
3. Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
4. Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
5. Drug addiction or habitual alcoholism of the respondent;
6. Lesbianism or homosexuality of the respondent;
7. Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
8. Sexual infidelity or perversion;
9. Attempt by the respondent against the life of the petitioner; or
10. Abandonment of petitioner by respondent without justifiable cause for more than one year.

For purposes of this Article, the term “child” shall include a child by nature or by adoption.

This is an exclusive list.

Grounds for denial

Art. 56

The petition for legal separation shall be **denied** on any of the following grounds:

1. Where the aggrieved party has condoned the offense or act complained of;
2. Where the aggrieved party has consented to the commission of the offense or act complained of;
3. Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation;
4. Where both parties have given ground for legal separation;

5. Where there is collusion between the parties to obtain decree of legal separation; or
6. Where the action is barred by prescription.

1. **Condonation** – Act of forgiving the offense after its commission. It may be expressed or implied.
2. **Consent** – When either of the spouses agreed to/did not object to the act giving rise to a ground for legal separation.
3. **Connivance** – Denotes direction, influence, or other action with knowledge and belief that such action would produce certain results and which results are produced.
4. **Equal guilt** – He who comes into equity must come with clean hands.
5. **Collusion** – A corrupt agreement to procure divorce.
6. **Prescription** – see Art. 57 (*Sta Maria*, pp. 405-410).

Prescriptive period

Art. 57

An action for legal separation shall be filed within five years from the time of the occurrence of the cause.

Cooling-off period

Art. 58

An action for legal separation shall in no case be tried before six months shall have elapsed since the filing of the petition.

Exception:

§19, RA 9262 Legal Separation Cases.

In cases of legal separation, where violence as specified in this Act is alleged, Article 58 of the Family Code shall not apply. The court shall proceed on the main case and other incidents of the case as soon as possible. The hearing on any application for a protection

order filed by the petitioner must be conducted within the mandatory period specified in this Act.

Other matters incident to the legal separation (e.g. custody, support pendente lite) may be heard during the cooling-off period.

Art. 59

No legal separation may be decreed unless the Court has taken steps toward the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation is highly improbable.

Art. 60

No decree of legal separation shall be based upon a stipulation of facts or a confession of judgment.

In any case, the Court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed.

Proof by **preponderance of evidence** is required to substantiate the ground for legal separation.

Gandionco v. Peñaranda, G.R. 79284, Nov. 27, 1987

A civil action for legal separation, based on concubinage, may proceed ahead of, or simultaneously with, a criminal action for concubinage, because the civil action is not one “to enforce the civil liability arising from the offense” even if both actions arise from or are related to the same offense.

*Effects of a pending petition***Art. 61**

After the filing of the petition for legal separation, the spouses shall be entitled to live separately from each other.

The court, in the absence of a written agreement between the spouses, shall designate either of them or a third person to administer the absolute community or conjugal partnership property. The administrator appointed by the court shall have the same powers and duties as those of a guardian under the Rules of Court.

Sabalones v. CA, G.R. 106169, Feb. 14, 1994

The appointment of a temporary administrator may be implied in an order of the court. For instance, the court's denial of the guilty spouse any share in the conjugal properties also disqualifies him as administrator thereof.

*Support pendente lite***Art. 62**

During the pendency of the action for legal separation, the provisions of Article 49 shall likewise apply to the support of the spouses and the custody and support of the common children.

An action for legal separation is **abated by the death** of the plaintiff.

*Effects of legal separation***Art. 63**

The decree of legal separation shall have the following effects:

1. The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;
2. The absolute community or the conjugal partnership shall be

dissolved and liquidated but the offending spouse shall have no right to any share of the net profits earned by the absolute community or the conjugal partnership, which shall be forfeited in accordance with the provisions of Article 43(2);

3. The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code; and
4. The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law.

Macadangdang v. CA, G.R. L-38287, October 23, 1981

The dissolution and liquidation of the property regime of the spouses automatically follows, as an inevitable incident of, the judgment decreeing legal separation—for the purpose of determining the share of each spouse in the conjugal assets.

Even if they can legally live apart, a spouse can still be held criminally liable for bigamy, concubinage or adultery if he or she commits the act. This is so because they are still married to each other (*Sta. Maria, p. 424*).

*Donations and insurance***Art. 64**

After the finality of the decree of legal separation, the innocent spouse may revoke the donations made by him or by her in favor of the offending spouse, as well as the designation of the latter as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable. The revocation of the donations shall be recorded in the registries of property in the places where the properties are located. Alienations, liens and encumbrances registered in good faith before the recording of the complaint for revocation in the registries of property shall be respected. The revocation of or change in the designation of the insurance

beneficiary shall take effect upon written notification thereof to the insured.

The action to revoke the donation under this Article must be brought within five years from the time the decree of legal separation become final.

Reconciliation

Art. 65

If the spouses should reconcile, a corresponding joint manifestation under oath duly signed by them shall be filed with the court in the same proceeding for legal separation

Effects of reconciliation

Art. 66

The reconciliation referred to in the preceding Articles shall have the following consequences:

1. The legal separation proceedings, if still pending, shall thereby be terminated at whatever stage; and
2. The final decree of legal separation shall be set aside, but the separation of property and any forfeiture of the share of the guilty spouse already effected shall subsist, unless the spouses agree to revive their former property regime.

The court's order containing the foregoing shall be recorded in the proper civil registries.

⚠ *But see* §23(e) and §24 of AM 02-11-12-SC (Rule on Legal Separation), which provides that reconciling spouses may adopt a new property regime, different from the one they had before separation.

Property regime

Art. 67

The agreement to revive the former property regime referred to in the preceding Article shall be executed under oath and shall specify:

1. The properties to be contributed anew to the restored regime;
2. Those to be retained as separated properties of each spouse; and
3. The names of all their known creditors, their addresses and the amounts owing to each.

The agreement of revival and the motion for its approval shall be filed with the court in the same proceeding for legal separation, with copies of both furnished to the creditors named therein. After due hearing, the court shall, in its order, take measure to protect the interest of creditors and such order shall be recorded in the proper registries of properties.

The recording of the ordering in the registries of property shall not prejudice any creditor not listed or not notified, unless the debtor-spouse has sufficient separate properties to satisfy the creditor's claim.

The recording of the order, the listing or nonlisting of the creditors in the said recorded order, and the notification of the creditors will have an effect on the creditors' claims as provided for in the last paragraph of Art. 67 (*Sta. Maria, p. 438*).

Rights and obligations between husband and wife

Art. 68 ★

The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

Lacson v. San Jose-Lacson, G.R. L-23482, Aug. 30, 1968

There is, therefore, virtue in making it as difficult as possible for

married couples—impelled by no better cause than their whims and caprices—to abandon each other's company. The general happiness of the married life is secured by its indissolubility.

Arroyo v. Arroyo, G.R. 17014, Aug. 11, 1921

The court isn't competent to issue an injunction requiring a spouse to return to the conjugal home and live with him as a wife according to the precepts of law and morality.

Lilius v. Manila Railroad, G.R. 39587, Mar. 24, 1934

In order that a husband may recover damages for deprivation of his wife's assistance during her illness from an accident, it is necessary for him to prove the existence of such assistance and his wife's willingness to continue rendering it had she not been prevented from so doing by her illness.

Procreation is also an essential marital obligation considering that such obligation springs from the universal principle that procreation of children through sexual cooperation is the basic end of marriage (*Sta. Maria, p. 452, citing Chi Ming Tsoi v. CA*).

⚠️ **A husband can be held liable for raping his wife.**

Q: What could be a remedy for a spouse who is seeking damages against his/her spouse for a breach of marital obligation?

A: It could be Arts. 19-21 of the NCC, as the case may be (abuse of rights) (*see also Tenchavez, supra art. 26 FC*).

Art. 69

The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

Domicile – Place where the parties intend to have their permanent residence with the intention of always returning even if they have left it for some time (*Sta. Maria, p. 458*).

Art. 70

The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from the separate properties.

Art. 71

The management of the household shall be the right and the duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

Art. 72

When one of the spouses neglects his or her duties to the conjugal union or commits acts which tend to bring danger, dishonor or injury to the other or to the family, the aggrieved party may apply to the court for relief.

The management of the household shall be the right and duty of both spouses regardless of the property regime involved in the marriage.

- The relief alluded to in Art. 72 may include filing for legal separation, an Art. 36 nullity, among others (*Sta. Maria, pp. 460-461*).

Art. 73

Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may

object only on valid, serious, and moral grounds.

In case of disagreement, the court shall decide whether or not:

1. The objection is proper; and
2. Benefit has occurred to the family prior to the objection or thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the separate property of the spouse who has not obtained consent.

The foregoing provisions shall not prejudice the rights of creditors who acted in good faith.

Making the separate property of the erring spouse liable even if the obligations she or he incurred redounded to the benefit of the family, is a way of penalizing the said spouse for engaging in a seriously invalid and immoral profession or occupation (*Sta. Maria, p. 465*).

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