

FAMILY CODE PRIMER

english version



FAMILY CODE PRIMER

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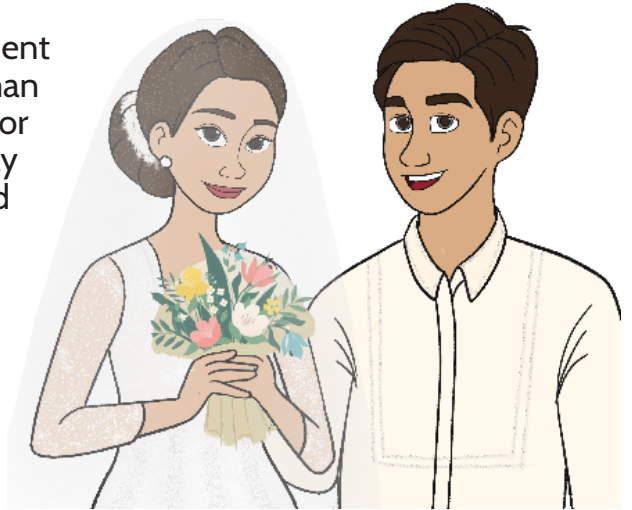
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I. MARRIAGE

MARRIAGE

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



MARRIAGE VS ORDINARY CONTRACTS

MARRIAGE	ORDINARY CONTRACTS
As a contract	
A special contract and a social institution.	Mere contracts (agreement)
Applicable Law	
Family Code	Civil Code
Right to stipulate	
General rule: Governed by the law and not the agreements between the husband and wife. Exception: Marriage settlements may be agreed upon by the husband and wife.	Governed by the agreements of the parties.
Gender requirement	
Must be between a man and a woman.	No gender requirement.
Dissolution	
Dissolved by the death or annulment of the marriage. Husband and wife cannot agree to end the marriage.	Parties to the contract can agree to end the contract.



A. REQUISITES OF MARRIAGE

ESSENTIAL REQUISITES

I. Legal Capacity

- a. Husband and wife should be **18 years old**;
- b. Must be between a **man and a woman**,
- i. Effect of sex-change

The Supreme Court said that sex is determined by visually looking at the genitals of a baby at the time of birth and that there is no law legally recognizing sex reassignment. (*Silverio v. Republic*, G.R. No. 174689, October 19, 2007, 537 SCRA 373) This means that the husband and wife must be a man and a woman from birth.

Intersex individuals: Congenital Adrenal Hyperplasia (CAH) which is a condition where the person afflicted has both male and female characteristics and organs (Intersex). The Supreme Court said that it is up to the individual what gender they may choose. (*Republic v. Cagandahan*, G.R. No. 166676, September 12, 2008, 565 SCRA 72)

- c. No impediment to marry each other.
 - i. The husband nor the wife must be in a valid and existing relationship.
 - ii. The husband and the wife must not be related to each other, by blood (*consanguinity*) or by law (*affinity*).

II. Consent

- a. Freely given

Consent here refers to the consent of the contracting parties. The consent must refer to the contracting parties' bona fide intention to be married to the other. i.e. to make the woman his wife. (*People v. Santiago*, G.R. No. 27972, 1927)

- i. Marriage is a voluntary act.
 1. If there is consent but vitiated by error, fraud, intimidation, force, etc., the consent is not given freely, therefore the marriage is voidable – meaning valid until annulled.
 2. If there is no consent – the husband or the wife or both do not want to get married to the other/ each other – the marriage is invalid/ void.



III. No Subsisting Marriage

A judicial decree terminating the previous marriage is required for remarriage.

FORMAL REQUISITES

I. Authority of the Solemnizing Officer

Marriage may be solemnized by:

- a. Any incumbent member of the judiciary within the court's jurisdiction;
 - i. A judge can solemnize marriage only within his territorial jurisdiction. but in the case of *Navarro v Domagtoy*, the Supreme Court said that such defect is only an irregularity in the formal requisite but it does not affect the validity of the marriage. The judge may, however, be held administratively liable (259 SCRA 129.)
- b. 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;
- c. Any ship captain or airplane chief in case the marriage is between passengers or crew members, where either party is at the point of death and the ship/plane is at sea/in flight or at stopovers;
- d. Any military commander of a unit to which a chaplain is assigned, in the absence of the latter, during a military operation, likewise only if the marriage is between persons within the zone of military operation, whether members of the armed forces or civilians, and either party is at the point of death;
- e. Any consul-general, consul, or vice-consul where the marriage is between Filipino citizens abroad

II. Marriage License

- a) 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. (65a) Marriages celebrated without a marriage license before the effectivity of the Family Code are void ab initio as marriage license was an essential requisite in the Civil Code. (*Kho v. Republic*, G.R. No. 147862, 2016)



- b) Marriage license is different from a marriage certificate. A marriage license gives authority to the bride and groom to marry each other.

On the other hand, a marriage certificate only shows that there has been a marriage between two individuals.

Alcantara v Alcantara

G.R. No. 167776, August 28, 2007

The Supreme Court ruled that the issuance of a marriage license is the most important requisite in the validity of a marriage as it is the only act whereby the state intervenes in the formation of the family. Without a marriage license, the marriage should be considered void. To be considered void on the ground of the absence of such marriage license, the law requires that the absence of such marriage license must be apparent on the marriage contract of at the very least, supported by a certification from the local civil registrar that no such marriage license was issued to the parties.

III. Marriage ceremony

- a. The family code requires the following:
 - i. The bride and groom must personally appear;
 1. Marriage by proxy is not allowed in the Philippines.
 - ii. The marriage must be done in the presence of the following:
 1. The solemnizing officer;
 2. Not less than two (2) individuals who are of legal age.

IV. Divorce

- a. Divorce under our law is possible only when the national law of a foreign spouse permits it. Divorce between a Filipino citizen and a foreigner which capacitates the latter to remarry shall capacitate the Filipino spouse to marry.

Republic of the Philippines v. Manalo

G.R.No. 221029, 2018

Divorces obtained abroad by Filipino citizens may now be validly recognized in the Philippines but only in cases of mixed marriages involving a Filipino and a foreigner. Family Code makes no distinction as to who obtains the divorce. All that is required is that it is validly obtained abroad. A Filipino who initiates the divorce proceeding against a foreign spouse still ends up in the same position as one whose foreign spouse initiated proceedings: they both no longer have spouses. There should be no distinction between the two cases in order to avoid the absurd situation where a Filipino spouse is still married to the alien spouse even though the latter is capacitated by his own laws to remarry and is no longer married to the Filipino



Galapon vs. Republic

G.R. No. 243722, January 22, 2020

In the recent case of Manalo, the Court en banc extended the scope of Article 26 (2) to even cover instances where the divorce decree is obtained solely by the Filipino spouse. Pursuant to the majority ruling in Manalo, Article 26 (2) applies to mixed marriages where the divorce decree is: (i) obtained by the foreign spouse; (ii) obtained jointly by the Filipino and foreign spouse; and (iii) obtained solely by the Filipino spouse. Based on the records, Cynthia and Park obtained a divorce decree by mutual agreement under the laws of South Korea. The sufficiency of the evidence presented by Cynthia to prove the issuance of said divorce decree and the governing national law of her husband Park was not put in issue. Thus, the Court ruled that as confirmed by Manalo, the divorce decree obtained by Park, with or without Cynthia's conformity, falls within the scope of Article 26 (2) and merits recognition in this jurisdiction.

Note:

Philippine laws do not provide for absolute divorce between Filipinos except between Muslim Filipinos and Filipino citizens cannot obtain a divorce abroad.

B. MARRIAGES EXEMPTED FROM LICENSE REQUIREMENT

I. **Marriages at the point of death**

- a. A marriage in articulo mortis is a marriage where one of the parties is at the point of death.
- b. The person who solemnized the marriage under articulo mortis must execute an affidavit before the local civil registrar stating that he solemnized the marriage under articulo mortis. The original copy of the affidavit shall be submitted to the local civil registrar of the city or municipality where the marriage was performed within the period of 30 days.

II. **Marriages in remote places**

- a. 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.

III. **Marriages among Muslims or members of ethnic cultural communities.**

- a. For as long as the marriage was done in accordance with the traditions of the group. If it is mixed marriage, then the requirement of a marriage license cannot be dispensed with.
- b. A marriage between Muslim and non-Muslim is governed by the Family Code of the Philippines (*Atillano Nollora Jr. v People of the philippines*, G.R. No. 191425)



- IV. **Marriages between parties cohabiting for at least 5 years**
 - a. Living together exclusively and continuously for at least 5 years as husband and wife; and
 - b. No legal impediment to marry each other. 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 Supreme Court ruled that the parties should have been capacitated to marry each other during the entire period and not only during the time of the marriage (*Office of the Court Administrator v Judge Anatalio Necessario*, A.M. No. MTJ-07-1691, April 2, 2013).

- V. **Marriages at the point of death solemnized by a ship captain or airplane pilot.**

- VI. **Marriages within zones of military operation.**

C. VOID AND VOIDABLE MARRIAGES

VOID MARRIAGES

- a. A void marriage is that which is not valid from its inception.
- b. Void marriages can never be ratified or cured by any act of any of the contracting parties.
- c. **Types:**
 - i. **Absence of any of the essential or formal requisites** of marriage;
 - ii. Those **contracted by any party below eighteen years of age** even with the consent of parents or guardians; Furthermore, under Republic Act No. 11696 or the otherwise known as “An Act Prohibiting the Practice of Child Marriage and Imposing Penalties for Violations Thereof;” those who facilitated and solemnized such marriages shall be held criminally liable.
 - iii. 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;
 - iv. Those **solemnized without license**, except those covered the preceding Chapter;



Alcantara v Alcantara

G.R. No. 167776, August 28, 2007

The Supreme Court ruled that the issuance of a marriage license is the most important requisite in the validity of a marriage as it is the only act whereby the state intervenes in the formation of the family. Without a marriage license, the marriage should be considered void. To be considered void on the ground of the absence of such marriage license, the law requires that the absence of such marriage license must be apparent on the marriage contract of at the very least, supported by a certification from the local civil registrar that no such marriage license was issued to the parties.

- v. Those **bigamous or polygamous marriages not failing under Article 41;**

Bigamous

A person who marries another, knowing that the latter is already married and that his marriage is valid and subsisting, can be prosecuted for bigamy (*People vs Archilla*, 1 SCRA 698).

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 via a summary proceeding in a court of competent jurisdiction.

Polygamous

Except those allowed under special laws such as the Muslim Code or under Article 41 of the Family Code, the law prohibits a married man or woman from contracting another bond of union as long as the consort is alive.

- vi. Those contracted through **mistake of one contracting party as to the identity of the other;**

The oft-given example of mistake in identity is when one of the contracting parties marries the twin of the other party, believing that such twin is his or her lover. This ground goes into the very essentials of a valid marriage as there is complete absence of consent, thereby rendering the marriage void ab initio.

- vii. Those **subsequent marriages that are void under Article 53;**

Failure to make a liquidation, partition and distribution of the properties of the previous marriage.

- viii. Marriage contracted by any party, who at the time of the celebration of the marriage, **was Psychologically Incapacitated;**



1. It involves a senseless, protracted, and constant refusal to comply with the essential marital obligations by one or both of the spouses although he, she or they are physically capable of performing such obligations (*Chi Ming Tsoi v. Court of Appeals*, 78 SCAD 57, 266 SCRA 325).
2. There are 3 characteristics for determining psychological incapacity:
 - a. **Gravity** - grave or serious such that the party cannot carry out normal and ordinary duties of marriage under ordinary circumstances;
 - b. **Juridical Antecedence** - it must be rooted in the history of the party before the marriage; and
 - c. **Incurability** - must be incurable OR the cure is beyond the means of the party (*Santos v. Bedia-Santos*, G.R. No. 112019, 1995)

Note:

Please remember that a final judgment declaring a previous marriage void is necessary for purposes of remarriage (Art. 40, Civil Code).

3. Jurisprudential Guidelines:

Republic v Molina
G.R. No. 108763, 1997

Molina Doctrine in Psychological Incapacity

- a. The burden of proof to show the nullity of the marriage belongs to the plaintiff. This is to be investigated by the OSG for collusion.
- b. The root cause of the psychological incapacity must be:
 1. Medically or clinically identified;
 2. Alleged in the complaint;
 3. Sufficiently proven by the experts; and
 4. Clearly explained in the decision.
- c. The incapacity must be proven to be existing at “the time of the celebration” of the marriage.
- d. Such incapacity must also be shown to be medically or clinically permanent or incurable.
- e. Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.
- f. 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.
- g. Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling/decisive, should be given great respect by our courts.
- h. 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.



Ting v. Velez-Ting

G.R. No. 166562, 2009

The Supreme Court ruled that the stringent requirements set forth by Molina should be relaxed and applied case-to-case. To require the allegation of the root cause of psychological incapacity by an accredited psychologist may prove too expensive for the parties. But where the parties had full opportunity to present expert opinions, such will be weighed by the Court in its decision.

Tan-Andal v Andal

G.R.No. 196359, May 11, 2021

The Supreme Court overruled its decisions in the previous cases on psychological incapacity. Psychological incapacity consists of clear acts of dysfunctionality that show a lack of understanding and concomitant compliance with one's essential marital obligations due to psychic causes. The court now categorically abandons the second Molina guideline. Psychological incapacity is neither a mental incapacity nor a personality disorder that must be proven through expert opinion. 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. It is not a medical illness that has to be medically or clinically identified; hence, expert opinion is not required. Difficult to prove as it may be, a party to a nullity case is still required to prove juridical antecedence because it is an explicit requirement of the law. Proof of juridically antecedent psychological incapacity may consist of testimonies describing the environment where the supposedly incapacitated spouse lived that may have led to a particular behavior.

As an explicit requirement of the law, the psychological incapacity must be shown to have been existing at the time of the celebration of the marriage, and is caused by a durable aspect of one's personality structure, one that was formed before the parties married. Furthermore, it must be shown to be caused by a genuinely serious psychic cause. To prove psychological incapacity, a party must present clear and convincing evidence of its existence.

ix. Incestuous Marriages

Regardless of whether the relationship is legitimate or illegitimate, marriage between the following are void:

- a. Between ascendants and descendants of any degree; and
- b. Between brothers and sisters, whether of the full or half-blood.



- x. **Marriages contrary to 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 parents and the adopted child;
 6. Between the surviving spouse of the adopted child and the adopter;
 7. Between an adopted child and a legitimate child of the adopter;
 8. Between the adopted children of the same adopter;
 9. Between parties where one, with the intention to marry the other, killed that other person's spouse or his or her own spouse.
- xi. **Non-compliance with recording requirement after declaration of nullity**

Previously, under the Civil Code, no judicial declaration for nullity of previous marriage was required to contract a subsequent marriage. However, under the Family Code, a subsequent marriage shall now be void if the following are not recorded in the appropriate civil registry and registry of property:

- (1) Judgment of annulment or absolute nullity of previous marriage;
- (2) Partition and distribution of the spouses' properties; and
- (3) Delivery of the children's presumptive legitime

VOIDABLE MARRIAGES

A marriage that is annulable is valid until otherwise declared by the court.

a. Types

- i. **Marriage of a party 18 years of age or over but below 21 solemnize without the consent** of the parents, guardian or person having substitute parental authority over the part, in that order;

The law considers persons of the age of at least 18 years and below 21 years as not possessing that degree of maturity to be able to comprehend thoroughly the consequences and serious responsibilities of marital relations. Hence, before marriage, he or she must obtain parental consent.

- ii. **Unsound mind;**

Must exist at the time of the celebration of the marriage. Insanity that occurs after the celebration of marriage does not constitute a cause for nullity (*Katipunan v. Tenorio*, G.R. No. 43442, 1937).



There must be such a derangement of the mind to prevent the party from comprehending the nature of the contract and from giving to it his free and intelligent consent.

iii. Consent was obtained by fraud;

Fraud refers to the non-disclosure or concealment of certain circumstances which materially affect the essence of marriage. Hence there is no fraud when there is no concealment or there is disclosure.

- a. Non-disclosure of a previous conviction by final judgment of the other party of a crime involving moral turpitude;
- b. Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;

Buccat v. Buccat

G.R. No 47101, 1941

The woman was 7 months pregnant at the time she met petitioner. He cannot claim that the pregnancy was concealed from him and that he was defrauded into marrying her.

Aquino v. Delizo

G.R. No. L-15853, 1960

But where the wife concealed the fact that she was 4 months pregnant during the time of the marriage and was “naturally plump,” Delizo could hardly be expected to know, by mere looking, whether or not she was pregnant at the time of the marriage.

- c. Concealment of sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or

Almelor v. RTC

G.R. No. 179620, 2008

It is the concealment of homosexuality, and not homosexuality per se, that vitiates the consent of the innocent party. Such concealment presupposes bad faith and intent to defraud the other party in giving consent to the marriage.

- d. Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage.

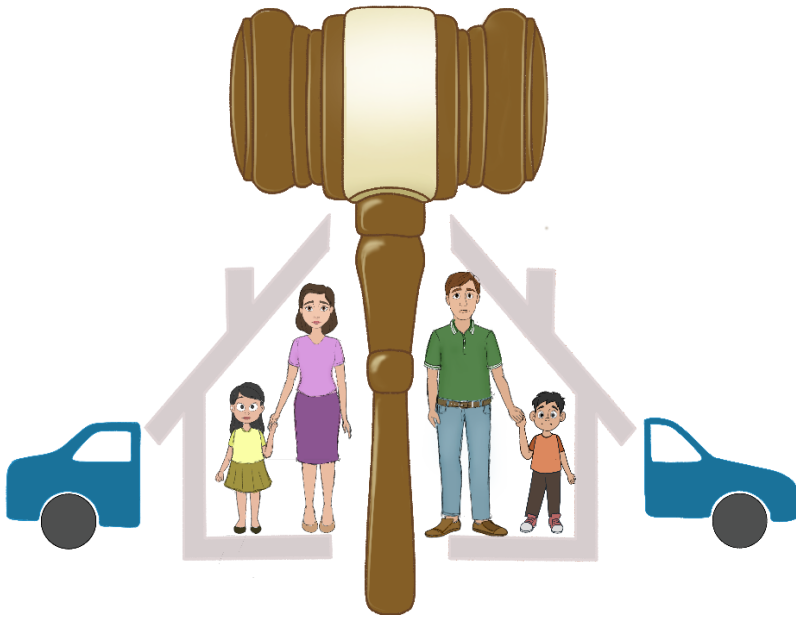
No other misrepresentation or deceit as to character, health, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage. (86a)



- iv. Consent was obtained by force, intimidation or undue influence;
- v. Impotency
- vi. **Serious and incurable** sexually transmitted disease (STD).

Void	Voidable
Action for nullity.	Action for annulment.
Considered as having never to have taken place and cannot be the source of rights.	Valid until otherwise declared by the court.
Can never be ratified.	Can be generally ratified or confirmed by free cohabitation or prescription.
Can be attacked collaterally.	Cannot be assailed collaterally except in a direct proceeding. This means that its validity can only be questioned in a proceeding specifically initiated for such purpose.
Can be questioned even after the death of either party.	Can be assailed only during only during the lifetime of the parties and not after death of either.

II. LEGAL SEPARATION



A. GROUNDS

- a. Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
- b. Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
- c. 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;
- d. Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned; Drug addiction or habitual alcoholism of the respondent;
- e. Lesbianism or homosexuality of the respondent;
- f. Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
 - Adultery is not a continuing crime; it is consummated at every moment of carnal knowledge. Thus, every sexual act is a ground for legal separation. (*People v. Zapata and Bondoc*, G.R. No. L-3047, 1951)
- g. Sexual infidelity or perversion;
- h. Attempt by the respondent against the life of the petitioner; or
- i. Abandonment of petitioner by respondent without justifiable cause for more than one year.
 - To be a ground for legal separation, abandonment must be without just cause. (*Ong Eng Kiam v. Ong*, G.R. No. 153206, 2006)

For purposes of this Article, the term “child” shall include a child by nature or by adoption. (9a)



B. DEFENSES

- a. Where the aggrieved party has condoned the offense or act complained of
 - i. The Supreme Court ruled that condonation may be given expressly or impliedly. An example of an implied condonation is when a husband repeatedly has intercourse with the wife despite the wife's cruelty. "Although he did not wish it, [he did it] eventually for the sake of peace." (*Willan v. Willan*, G.R. No. L-13553, 1960)
- b. Where the aggrieved party has consented to the commission of the offense or act complained of;
 - i. A husband who doesn't interfere with regard to the amorous relations between his wife and Ramos constitutes consent. (*People v. Sensano and Ramos*, G.R. No. L-37720, 1933)
- c. Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation;
- d. Where both parties have given ground for legal separation;
- e. Where there is collusion between the parties to obtain decree of legal separation; or
 - i. Collusion in matrimonial cases is the act of married persons in procuring a divorce by mutual consent, whether by preconcerted commission by one of a matrimonial offense, or by failure, in pursuance of agreement, to defend divorce proceedings. (*Brown v. Yambao*, G.R. No. L-10699, 1957)
- f. Where the action is barred by prescription.

C. COOLING-OFF PERIOD

Rule: The case shall not be tried (on the merits) within six months from the filing of the petition. To enable the contending spouses to settle their differences.

Exception: If the ground for the petition constitutes "violence" as defined in R.A. No. 9262 or the Anti-Violence Against Women and their Children Act.

D. RECONCILIATION EFFORTS

- a. 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. 59)
- b. Consequences:
 - i. The legal separation proceedings, if still pending, shall thereby be terminated at whatever stage; and

- ii. 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. (108a)

E. EFFECTS OF FILING THE PETITION

- a. Spouses shall be entitled to live separately from each other.
- b. 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.

F. EFFECTS OF DECREE OF LEGAL SEPARATION

- a. The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;
- b. 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);
- c. The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code. However, R.A. No. 9262 (Anti-Violence Against Women and Their Children Act of 2004) prohibits the awarding of custody of minor children to the perpetrator of a woman who is suffering from battered woman syndrome.
- d. The obligation of mutual support between the spouses ceases. By way of exception, the court may, however, order the guilty spouse to give support to the innocent spouse.

III. RIGHTS AND OBLIGATIONS BETWEEN HUSBAND AND WIFE



A. OBLIGATIONS OF THE HUSBAND AND WIFE

a. Live together

- i. Cohabitation or consortium (including sexual intercourse)
 1. The husband can be charged of rape if the wife does not consent to sexual intercourse.
- ii. The wife may establish a separate residence or domicile in the following cases:
 1. If the husband continually indulges in illicit relations with others even if the concubine or concubines are not brought into the marital abode. (*Dadivas v. Villanueva*, 54 Phil. 92).
 2. If the husband is immoderate or barbaric in his demands for sexual intercourse. (*Goitia v. Campos-Rueda*, 35 Phil. 252).
 3. If the husband maltreats her. (*Goitia v. Campos-Rueda*, 35 Phil. 252; *Arroyo v. Vasquez de Arroyo*, 42 Phil. 54).
 4. If the husband continually gambles, refuses to support the family, and insults the wife. (*Panuncio v. Sula*, [C.A.] 34 O.G. 1291).

Arroyo v Arroyo
42 PHIL 54

The court however cannot compel a spouse to live with the other spouse if the latter does not want to as the said duties are highly personal. It is not within the province of the courts of this country to attempt to compel one of the spouses to cohabit with and render conjugal rights to the other. It has been held that the wife's domestic assistance and conjugal companionship are purely personal and voluntary acts which neither the spouses may be compelled to render.



People v Jumawan
G.R. No. 187495, April 21, 2014

Husbands do not have property rights over their wives' bodies. Sexual intercourse, albeit within the realm of marriage, if not consensual, is rape.

b. Observe mutual love, respect, and fidelity

iii. The law requires mutual love, not obedience.

Chi Ming Tsoi v CA
266 SCRA 324

Husband and wife are obliged to live together under one roof, observe mutual love, respect and fidelity, and render mutual help and support. These marital obligations are very essential that failure of a spouse to perform these obligations due to psychological causes could be considered a ground to nullify the marriage under Article 36 of the Family Code. Procreation is one of the essential marital obligations.

c. Render mutual help and support

d. The court cannot force them to comply with the obligations mandated by law except for support.

Note:

Either spouse may exercise any legitimate profession, occupation, business, or activity without the consent of the other. Under R.A. No. 9262, if the husband prevents his wife from engaging in any legitimate profession, occupation, business, or activity, he has committed an act of violence punishable by the said law, except in cases where the husband objects on valid, serious, and moral grounds.

IV. PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE



A. GENERAL PROVISIONS

MARRIAGE SETTLEMENTS

According to [Art. 74](#), Property relations between husband and wife are governed:

1. By marriage settlements executed before the marriage;
2. By the provisions of this Code;
3. By the local custom.

REQUISITES FOR VALIDITY

[Art. 75](#). The future spouses may, in the marriage settlements, agree upon the regime of absolute community, conjugal partnership of gains, complete separation of property, or any other regime. In the absence of marriage settlement, or when the regime agreed upon is void, the system of absolute community of property as established in this Code shall govern.

MARRIAGE SETTLEMENT

An agreement entered into by parties about to be married for the purpose of fixing the terms and conditions of their property relations during the marriage. This is more popularly known as “**prenuptial agreement.**”

Governed by Philippine law if both parties are Filipinos, regardless of the place of the celebration of the marriage and their residence.

Note: Marriage settlements are considered accessory to the marriage, therefore as per [Art. 81](#), stipulations in consideration of future marriage and donations will be void if the marriage does not take place



REQUISITES OF MARRIAGE SETTLEMENTS AND MODIFICATIONS MADE THEREON

1. Made in writing
2. Signed by the parties
3. Executed before the marriage celebration
4. Not to prejudice third persons unless registered in the local civil registry where the marriage is recorded and in registries of property
5. If executed by a person below 21 years, valid only when persons required to give consent to the marriage (father, mother, or guardian, respectively) are made parties to the agreement (Art. 78)
6. If executed by a person upon whom civil interdiction has been pronounced or who is subject to any other disability, valid only when his guardian appointed by a competent court is made party to the agreement (Art. 79)

B. DONATION BY REASON OF MARRIAGE

REQUISITES OF DONATION PROPTER NUPTIAS

1. Made before the celebration of marriage;
 - a. In donations done during marriage, a spouse cannot donate to persons which the other spouse may inherit from as it constitutes an indirect donation. (*Nazareno v. Birog*, 45 O.G. No. 5, 1947)
 - b. Donation between husband and wife is prohibited during the marriage. The prohibition applies also to those who are living together as husband and wife without a valid marriage. The prohibition lies on the fact that there could be undue influence
2. Made in consideration of marriage;
3. In favor of one or both of the future spouses;
4. Donor must be one of the betrothed or any third person Donations.

DONATIONS EXCLUDED

1. Ordinary wedding gifts given after the celebration of the marriage
2. Donations in favor of future spouses made before marriage but not in consideration thereof
3. Donations made in favor of persons other than the spouses even if founded on the intended marriage



WHO MAY DONATE

1. Spouses to each other
2. Parents of one or both spouses
3. Third persons to either or both spouses

RULES FOR DONATIONS BEFORE MARRIAGE

General rule: Future spouses who agree upon a regime other than ACP cannot donate to each other more than 1/5 of their present property (excess shall be considered void). (Art. 84)

DONATIONS OF PROPERTY SUBJECT TO ENCUMBRANCES

Are considered valid.

In cases of foreclosure:

if property value < obligation: donee shall not be liable for the deficiency

if property value > obligation: donee shall be entitled to the excess (Art. 85)

GROUNDS FOR REVOCATION OF DONATION PROPTER NUPTIAS [Art. 86]

1. If the marriage is not celebrated or judicially declared void ab initio, EXCEPT donations made in marriage settlements which shall be void instead of revocable.
2. When the marriage takes place without the consent of the parents or guardians, as required by law.
3. When the marriage is annulled, and the donee acted in bad faith.
4. Upon legal separation, if the donee is the guilty spouse.
5. If a resolutive condition happens or is fulfilled.
6. When donee has committed an act of ingratitude: [Art. 765, CC]
 - a. An offense against person or property of donor, or his wife or children under parental authority.
 - b. An imputation to the donor of any criminal offense, or any act involving moral turpitude, even if proven, unless the crime is committed against the donee, his wife or children under his authority.
 - c. Refusing to support the donor, if he/she is legally required to do so.



Donations propter nuptias	Ordinary donations
Does not require express acceptance	Express acceptance necessary
May be made by minors (Art. 78)	Cannot be made by minors
May include future property	Cannot include future property
If present property is donated and property is not absolute community, limited to 1/5 (Art. 84)	No limit to donation of present property provided legitimes are not impaired
Grounds for revocation - in Art. 86	Grounds for revocation - in donation laws

C. SYSTEM OF ABSOLUTE COMMUNITY

GENERAL PROVISIONS

Article 88

The absolute community of property between spouses shall commence at the precise moment that the marriage is celebrated. Any stipulation, express or implied, for the commencement of the community regime at any other time shall be void. (145a)

Article 89

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

When the waiver takes place upon a judicial separation of property, or after the marriage has been dissolved or annulled, the same shall appear in a public instrument and shall be recorded in the local civil registry where the marriage contract is recorded as well as in the proper registries of properties..

Article 77

The creditors of the spouse who made such waiver may petition the court to rescind the waiver to the extent of the amount sufficient to cover the amount of their credits. (146a)

Article 90

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

**Note:**

- a. Absolute Community of Property Regime refers to a special kind of co-ownership. The husband and the wife become joint owners of all the properties of the marriage. Hence, the provisions on co-ownership shall apply supplementary.
- b. The Absolute Community of Property Regime shall commence at the precise moment of the celebration of marriage. It cannot commence during the marriage.
- c. The spouses cannot waive their rights, interests, shares and effects in the absolute community during the marriage except in case of judicial separation of property.

WHAT CONSTITUTES COMMUNITY PROPERTY**Article 91**

Unless otherwise provided in this Chapter or in the marriage settlements, the community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter. (197a)

Article 92

The following shall be excluded from the community property:

1. Property acquired during the marriage by gratuitous title by either spouse, and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator or grantor that they shall form part of the community property;
2. Property for personal and exclusive use of either spouse. However, jewelry shall form part of the community property;
3. Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as the income, if any, of such property. (201a)

Article 93

Property acquired during the marriage is presumed to belong to the community, unless it is proved that it is one of those excluded therefrom. (160)



- a. As a general rule, all property that each spouse owned before the marriage shall automatically be considered as part of the absolute community upon the celebration of the marriage.
- b. Property acquired during the marriage using the exclusive money of a spouse shall become part of the absolute community because there is no provision in the chapter that is similar to this principle.

CHARGES AND OBLIGATIONS OF THE ABSOLUTE COMMUNITY

Article 94

The absolute community of property shall be liable for:

- 1. The support of the spouses, their common children, and legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;
- 2. All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the community, or by both spouses, or by one spouse with the consent of the other;
- 3. Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited;
- 4. All taxes, liens, charges and expenses, including major or minor repairs, upon the community property;
- 5. All taxes and expenses for mere preservation made during marriage upon the separate property of either spouse used by the family;
- 6. Expenses to enable either spouse to commence or complete a professional or vocational course, or other activity for self-improvement;
- 7. Ante-nuptial debts of either spouse insofar as they have redounded to the benefit of the family;
- 8. The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement;
- 9. Ante-nuptial debts of either spouse other than those falling under paragraph (7) of this Article, the support of illegitimate children of either spouse, and liabilities incurred by either spouse by reason of a crime or a quasi-delict, in case of absence or insufficiency of the exclusive property of the debtor-spouse, the payment of which shall be considered as advances to be deducted from the share of the debtor-spouse upon liquidation of the community; and
- 10. Expenses of litigation between the spouses unless the suit is found to be groundless.

If the community property is insufficient to cover the foregoing liabilities, except those falling under paragraph (9), the spouses shall be solidarily liable for the unpaid balance with their separate properties. (161a, 162a, 163a, 202a-205a)



Article 95

Whatever may be lost during the marriage in any game of chance betting, sweepstakes, or any other kind of gambling, whether permitted or prohibited by law, shall be borne by the loser and shall not be charged to the community but any winnings there, from shall form part of the community property. (164a)

- a. If the community property is not enough to pay off all the obligations mentioned in Article 94, the separate property of either spouses will have to answer for it and their liability is solidary.
- b. Personal obligations of a spouse that the absolute community may be compelled to pay
 - i. Ante-nuptial debt which did not redound to the benefit of the family
 - ii. Support of illegitimate children
 - iii. Civil liability arising from crime or quasi-delict
- c. A spouse who gambles or engages in any game of chance or betting shall bear the loss and he cannot charge it to the absolute community. However, if he wins, the winnings will become part of the community.

OWNERSHIP, ADMINISTRATION, ENJOYMENT AND DISPOSITION OF THE COMMUNITY PROPERTY

Article 96

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

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (206a)

Article 97

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



Article 98

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

- a. Husband and wife are co-owners of the absolute community property. As such, they shall jointly manage or administer the same except when:
 - i. one spouse is incapacitated; or
 - ii. one delegated to the other spouse the sole authority to administer the community property.

In any case, disposition or encumbrance of property must have the other spouse's written consent or authority of the court; otherwise, it shall be void. The transaction shall instead be construed as a continuing offer which may be perfected upon obtaining such consent or authorization.

- b. Decision of the husband prevails in case of disagreement on the management and administration of the absolute community
- c. A spouse cannot donate to a third person a community property without the consent of the other spouse to protect a spouse from the reckless and unreasonable act of generosity of the other spouse which may result in diminution of the common property to the damage and prejudice of the said spouse.

DISSOLUTION OF ABSOLUTE COMMUNITY REGIME

A. The absolute community terminates:

- i. Upon the death of either spouse;
- ii. When there is a decree of legal separation.
- iii. When the marriage is annulled or declared void; or (4)
- iv. In case of judicial separation of property during the marriage under Articles 134 to 138. (175a)

B. The separation in fact between husband and wife shall not affect the regime of absolute community

Exception:

- 1. The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported;
- 2. When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding;



3. In the absence of sufficient community property, the separate property of both spouses shall be solidarily liable for the support of the family. The spouse present shall, upon proper petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share. (178a)

C. Actions that may be filed by the abandoned spouse

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

The obligations refer to marital, parental or property relations.

D. Abandonment

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

Abandonment implies a departure by one spouse with the avowed intent never to return, followed by a prolonged absence without just cause.

LIQUIDATION OF THE ABSOLUTE COMMUNITY ASSETS AND LIABILITIES

A. Procedure upon the dissolution of the absolute community regime:

1. An inventory shall be prepared, listing separately all the properties of the absolute community and the exclusive properties of each spouse.
2. The debts and obligations of the absolute community shall be paid out of its assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties in accordance with the provisions of the second paragraph of Article 94.
3. Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.



4. The net remainder of the properties of the absolute community shall constitute its net assets, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements, or unless there has been a voluntary waiver of such share provided in this Code. For purpose of computing the net profits subject to forfeiture in accordance with Articles 43, No. (2) and 63, No. (2), the said profits shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution.
5. The presumptive legitimes of the common children shall be delivered upon partition, in accordance with Article 51.
6. Unless otherwise agreed upon by the parties, in the partition of the properties, the conjugal dwelling and the lot on which it is situated shall be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children. (n)

B. Liquidation of the estate

1. Liquidation commenced upon the termination of the marriage by death
 - a. Upon the death of a spouse, the absolute community which has been dissolved by the death of said spouse evolves into a co-ownership of the surviving spouse and their common children (*Marigsa v Macabuntoc*, 17 PHIL, 107).
2. If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the community property either judicially or extra-judicially within six months from the death of the deceased spouse.
3. If upon the lapse of the six months period, no liquidation is made, any disposition or encumbrance involving the community property of the terminated marriage shall be void.
4. Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage. (n)

D. CONJUGAL PARTNERSHIP OF GAINS

i. Commencement

- a. It commences at the precise moment of the celebration of the marriage



- ii. Under the present law, it will only apply if there is a marriage settlement and it is the property regime agreed upon by the parties.
- iii. What comprises the conjugal partnership
 - a. As a rule, only those properties acquired during the marriage through the efforts or industry of either or both spouses as well as the income or fruits of their exclusive properties that accrue during the marriage will comprise the conjugal partnership
- iv. Rules governing
 - a. The rules on partnership shall likewise apply to the conjugal partnership.
- v. Void provision
 - a. Any stipulation which excludes the partners from any share of the profits and losses of the partnership is void

EXCLUSIVE PROPERTY OF EACH SPOUSE

1. That which is brought to the marriage as his or her own;
 - a property owned by either spouses before the marriage shall remain as his or her exclusive property as this is a property that he or she brought to the marriage
2. That which each acquires during the marriage by gratuitous title;
3. That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the spouses; and
4. That which is purchased with exclusive money of the wife or of the husband. (148a)

As a general rule, there's a presumption that a property bought during the marriage is conjugal.

Exception: if the money used to buy that property is the exclusive money of a spouse.

OWNERSHIP, ADMINISTRATION, ENJOYMENT OF EXCLUSIVE PROPERTY

1. Rights
 - a. A spouse shall retain the ownership and enjoyment of his or her exclusive property.
 - b. Said spouse may transfer the administration of the property to the other spouse but the same should be done in a public instrument and duly recorded in the registry of the property of the place where the property is located.
2. Sale or Encumbrance of the property
 - a. Even if the property is under the administration of the other spouse, it does not preclude the owner-spouse from selling or encumbering said property without the consent of the administering spouse.



3. Property involved in litigation

- a. If an exclusive property is involved in litigation, only the owner-spouse will litigate and need not include the other spouse.
- b. If the action for the recovery of an exclusive property also involves the conjugal property, the other spouse must be impleaded as party plaintiff.

4. Donated Property

- a. A property donated or left by will to both spouses during the marriage is an exclusive property. The shares shall be equal absent a specific designation of shares.
- b. If the donation is subject to an onerous condition, the donee spouse shall bear the cost in complying with the condition.

CONJUGAL PARTNERSHIP PROPERTY

1. Presumption

- a. All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved.
- b. For this presumption to apply, it is condition sine qua non that proof of its acquisition during the marriage is duly established (*Jacson v CA*, 170 SCRA 333).

2. Conjugal Properties

- a. The following are conjugal partnership properties:
 - 1. Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;
 - 2. Those obtained from the labor, industry, work or profession of either or both of the spouses;
 - 3. The fruits, natural, industrial, or civil, due or received during the marriage from the common property, as well as the net fruits from the exclusive property of each spouse;

the fruits of exclusive properties of either spouse is considered conjugal only if it accrued during the marriage and the fruit is called **net fruits**
 - 4. The share of either spouse in the hidden treasure which the law awards to the finder or owner of the property where the treasure is found;
 - 5. Those acquired through occupation such as fishing or hunting;



6. Livestock existing upon the dissolution of the partnership in excess of the number of each kind brought to the marriage by either spouse; and
7. Those which are acquired by chance, such as winnings from gambling or betting. However, losses therefrom shall be borne exclusively by the loser-spouse. (153a, 154a, 155, 159)
8. Property bought on installments paid partly from exclusive funds from either or both spouses and partly from conjugal funds if ownership was vested during the marriage
9. Interest falling due during the marriage on the principal amount
10. The ownership of improvements, whether for utility or adornment, made on the separate property of the spouses at the expense of the partnership or through the acts or efforts of either or both of the spouses

CHARGES UPON AND OBLIGATIONS OF THE CONJUGAL PARTNERSHIP

1. Liabilities of the Conjugal Partnership

1. The support of the spouse, their common children, and the legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;
2. All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the conjugal partnership of gains, or by both spouses or by one of them with the consent of the other;

When the obligation becomes due, the conjugal partnership shall be answerable for it and not the husband and the wife individually as independent debtors, such that the concept of joint or solidary liability, as between them, does not arise (*Alipio v CA*, 341 SCRA 441).

3. Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have benefited;
4. All taxes, liens, charges, and expenses, including major or minor repairs upon the conjugal partnership property;
5. All taxes and expenses for mere preservation made during the marriage upon the separate property of either spouse;
6. Expenses to enable either spouse to commence or complete a professional, vocational, or other activity for self-improvement;



7. Ante-nuptial debts of either spouse insofar as they have redounded to the benefit of the family;
8. The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement; and
9. Expenses of litigation between the spouses unless the suit is found to be groundless.

2. Solidary Liability of the Spouses

If the conjugal partnership is insufficient to cover the foregoing liabilities, the spouses shall be solidarily liable for the unpaid balance with their separate properties. (161a)

3. Personal debts and fines

The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal partnership

Exception: They redounded to the benefit of the family.

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

Exception: The payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purpose above-mentioned. (163a)

4. Games of Chance or Betting

Losses shall be borne by the loser and shall not be charged to the conjugal partnership (164a)



ADMINISTRATION OF THE CONJUGAL PARTNERSHIP PROPERTY

1. **The husband and wife are joint administrators of the conjugal partnership.**
 - a. In case one is incapacitated, the other spouse may assume the sole power of administration
 - b. In case of incapacity or inability to participate of one spouse, the powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse
 - c. Where the husband sold a conjugal partnership property without the knowledge and onset of the wife, the sale is void (*Sps. Antonio Guiang v CA*, G.R. No. 125172, June 26, 1998).
 - d. If the sale was with the knowledge but without the approval of the wife, thereby resulting in disagreement, such sale is annulable at the instance of the wife who is given five years from the date the contract implementing the decision of the husband to institute the case (*Sps. Ravina v Villa Abrille, et. al.*, G.R. No. 160708, October 16, 2009).
2. **Donation of conjugal property**
 - a. No donation may be made without the consent of the other
 - b. Either spouse, may, without the consent of the other, make moderate donations from the conjugal partnership property for charity or on occasions of family rejoicing or family distress

DISSOLUTION OF CONJUGAL PARTNERSHIP REGIME

- I. **When Conjugal Partnership Terminates**
 1. Upon the death of either spouse;
 2. When there is a decree of legal separation;
 3. When the marriage is annulled or declared void; or
 4. In case of judicial separation of property during the marriage under Articles 134 to 138. (175a)
- II. **Effects of Separation In Fact**
 1. The separation in fact between husband and wife shall not affect the regime of conjugal partnership, except that:
 - The spouse who leaves the conjugal home or refuses to live therein, without just cause, shall not have the right to be supported;
 - When the consent of one spouse to any transaction of the other is required by law, judicial authorization shall be obtained in a summary proceeding;



In the absence of sufficient conjugal partnership property, the separate property of both spouses shall be solidarily liable for the support of the family. The spouse present shall, upon petition in a summary proceeding, be given judicial authority to administer or encumber any specific separate property of the other spouse and use the fruits or proceeds thereof to satisfy the latter's share. (178a)

III. Actions that may be filed by the abandoned spouse

If a spouse without just cause abandons the other or fails to comply with his or her obligations to the family, the aggrieved spouse may petition the court for

1. Receivership
2. Judicial separation of property
3. Authority to be the sole administrator of the absolute community

**LIQUIDATION OF THE CONJUGAL PARTNERSHIP
ASSETS AND LIABILITIES**

I. PROCEDURE FOR LIQUIDATION

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

1. An inventory shall be prepared, listing separately all the properties of the conjugal partnership and the exclusive properties of each spouse.
2. Amounts advanced by the conjugal partnership in payment of personal debts and obligations of either spouse shall be credited to the conjugal partnership as an asset thereof.
3. Each spouse shall be reimbursed for the use of his or her exclusive funds in the acquisition of property or for the value of his or her exclusive property, the ownership of which has been vested by law in the conjugal partnership.
4. The debts and obligations of the conjugal partnership shall be paid out of the conjugal assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties, in accordance with the provisions of paragraph (2) of Article 121.
5. Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.
6. Unless the owner had been indemnified from whatever source, the loss or deterioration of movables used for the benefit of the family,



belonging to either spouse, even due to fortuitous event, shall be paid to said spouse from the conjugal funds, if any.

7. The net remainder of the conjugal partnership properties shall constitute the profits, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements or unless there has been a voluntary waiver or forfeiture of such share as provided in this Code.
8. The presumptive legitimes of the common children shall be delivered upon the partition in accordance with Article 51.
9. In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children. (181a, 182a, 183a, 184a, 185a)

Barrido v Nonato

G.R. No. 176492, October 20, 2014

The procedure in the liquidation of conjugal partnership under Article 129 of the Family Code applies only to valid and voidable marriages. Thus, if the marriage is void on the ground of psychological incapacity of a party under Article 36, the property relation of the parties is governed by co-ownership under Article 147 of the Family Code. The liquidation shall be done in accordance with the liquidation of co-ownership in the Civil Code.

SEPARATION OF PROPERTY OF THE SPOUSES AND ADMINISTRATION OF COMMON PROPERTY BY ONE SPOUSE DURING THE MARRIAGE

- I. **Judicial Separation of Property During Marriage**
 - A. If the spouses did not execute a written agreement regarding their property regime prior to the marriage, they can no longer change it after the marriage ceremony has taken place unless they have secured judicial approval.
- II. **Grounds for Judicial Separation of Property**
 - A. That the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction;
 - B. That the spouse of the petitioner has been judicially declared an absentee;



- C. That loss of parental authority of the spouse of petitioner has been decreed by the court;
- D. That the spouse of the petitioner has abandoned the latter or failed to comply with his or her obligations to the family as provided for in Article 101;
- E. That the spouse granted the power of administration in the marriage settlements has abused that power; and
- F. That at the time of the petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable.

III. Voluntary Separation of the Property

- A. Even without any grounds, the husband and wife may dissolve their conjugal partnership or absolute community by mutual agreement.
- B. The agreement for voluntary separation of property takes effect from the time of the judicial order decreeing the separation of the properties and not from the signing of the agreement (*Toda, Jr. v CA*, 183 SCRA 713).

SEPARATION OF PROPERTY	
When it applies	Agreed upon in the marriage settlements by the spouses
	Mandatory under Arts. 103 & 130, FC (subsequent marriages contracted by a surviving spouse without judicial settlement of previous property regime)
	Judicial separation of property (Voluntary or just cause)
	Default property regime when there is reconciliation between spouses after judicial separation of property
What it consists of	Present or future property or both
	Each spouse's earnings from his or her own profession, business, or industry
	Natural, industrial or civil fruits of spouse's separate properties
	May be total or partial. If partial, property not considered separate is presumed to pertain to the ACP
Liabilities	Family expenses: Both spouses are liable in proportion to their income; if insufficient, based on the current value of their separate properties
	Creditors for family expenses: Spouses solidarily liable



Ownership, administration, enjoyment, and disposition	Spouses may own, dispose, possess, and administer separate estates without the consent of the other
	Administration of exclusive properties may be transferred between spouses when: <ol style="list-style-type: none"> 1. One spouse becomes the other spouse's guardian 2. One spouse is judicially declared an absentee 3. One spouse is given the penalty of civil interdiction 4. One spouse becomes a fugitive
	Conveyance between the spouses is allowed under Art. 1490, NCC.

E. REGIME OF SEPARATION OF PROPERTY

- I. Each spouse shall own, administer, use, and enjoy his or her exclusive property to the exclusion of the other. Each spouse has control and ownership of his or her own properties which will include "all earnings from his or her profession, business or industry and all fruits, natural, industrial or civil, due or received during the marriage from his or her separate property." Expenses of the family shall be shouldered by the spouses in proportion to their income, or, in case of insufficiency or default thereof, to the current market value of their separate properties.

F. PROPERTY REGIME OF UNIONS WITHOUT MARRIAGE

I. ARTICLE 147

- A. They have an informal civil relationship that entitles the parties to some rights.
- B. Presumption that properties acquired while they lived together have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares.

1. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.



C. Co-owned properties

1. Properties acquired while they lived together
 - a) **PRESUMPTION:** obtained by joint efforts, work or industry, hence, co-owned
 - b) However, a party who did not participate in the acquisition shall be deemed to have contributed jointly in the acquisition if the efforts consisted in the care and maintenance of the family and of the household

D. Forfeiture of Share of Bad Faith Spouse

1. In favor of the common children or their descendants
2. In the absence of (1), in favor to the respective surviving descendants (children of guilty spouse)
3. Innocent spouse

E. Liquidation Processes

1. In accordance with the rules of co-ownership in so far as not in conflict with Art. 147 or 148

II. ARTICLE 148

- A. All properties acquired during the duration of the relationship are presumed to be separately owned.
 1. Only those acquired by both of the parties through their actual joint contribution of money, property, or industry are co-owned.
 2. There must be an actual contribution. Otherwise, there is no co-ownership and no presumption of equal shares.
 3. Actual contribution is a condition sine qua non
 4. For the share of the spouse who is validly married to another, it shall belong to the ACP or CPG of such valid marriage.

Luna v Zaballero-Luna
G.R. No. 171914, July 23, 2014

When the marriage is void because one party has the legal impediment to marry the other is in the case of bigamous marriage, the property relation of the parties shall be governed by co-ownership under Article 148 of the Famile Code where actual contribution must be proven.

V. THE FAMILY



A. THE FAMILY AS AN INSTITUTION

I. Filipino Family as foundation of the Nation

- a. Family is considered as the foundation of the nation and a basic social institution which public policy cherishes and protects.
- b. The 1987 Constitution provides that “the State recognizes the sanctity of family life and shall protect and strengthen the family as a basic social institution (Sec. 12, Art. II)

II. Family Relations

- a. Family relations include those:
 1. Between husband and wife;
 2. Between parents and children;
 3. Among brothers and sisters, whether of the full or half-blood. (217a)
- b. The enumeration under this article should be construed strictly. Any person who is not included in the enumeration is not considered within the term of “family relation”.

III. Earnest Efforts to Compromise

- a. In order to preserve the unity of the family, the law requires that if a person files a case against a member of his own family, he must first exert earnest efforts to settle the matter amicably; otherwise, the suit is dismissible.
 1. The Supreme Court ruled that a suit filed by the plaintiff against his sister-in-law and nephews and nieces is not a suit between the members of the same family.

Hence, the requirement that earnest efforts must be employed to reach an amicable settlement is no longer required. (*Gayon v Gayon*, 36 SCRA 104).

- b. The failure to exert earnest efforts to settle the matter amicably in a suit between the members of the same family, as a ground to dismiss the case, must be alleged before the filing of an answer.

B. THE FAMILY HOME

I. What Constitutes Family Home

- A. The family home refers to the house and lot where the family resides. It is constituted by the husband and wife or by an unmarried head of the family. Residing in the family home is a real right.
- B. Deemed constituted the moment the family resides therein. Both the house and the land where it stands are owned by the husband or wife or by the unmarried head of the family
 1. Houses and lots that were built before the effectivity of the Family Code, but were not constituted either judicially or extrajudicially under the provisions of the Civil Code, are still considered as family homes. However, these houses are considered as family homes only upon the effectivity of the FC and not at the time they were built (*Augusto v Bрева*, G.R. No. 86355, May 31, 1990).
- C. The family home cannot be constituted by the husband or wife alone

II. Exempt from Execution

- A. The family home shall be exempt from execution, forced sale or attachment except:
 1. For nonpayment of taxes;
 2. For debts incurred prior to the constitution of the family home;
 3. For debts secured by mortgages on the premises before or after such constitution; and
 4. For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building. (243a)
- B. The exemption is effective from the time of the constitution of the family home as such. However, the exemption is not absolute.
- C. The right of exemption is a personal privilege granted debtor and should be claimed and proven by him before the public auction. Failure of the debtor to prove that the house and lot was their family home bars him from invoking the exemption (*De Mesa v Acero, et. al.*, G.R. No. 185064, January 16, 2012).

III. Beneficiaries

A. The beneficiaries of a family home are:

1. The husband and wife, or an unmarried person who is the head of a family; and
2. Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support. (226a)

B. Requisites that must concur to be considered a beneficiary:

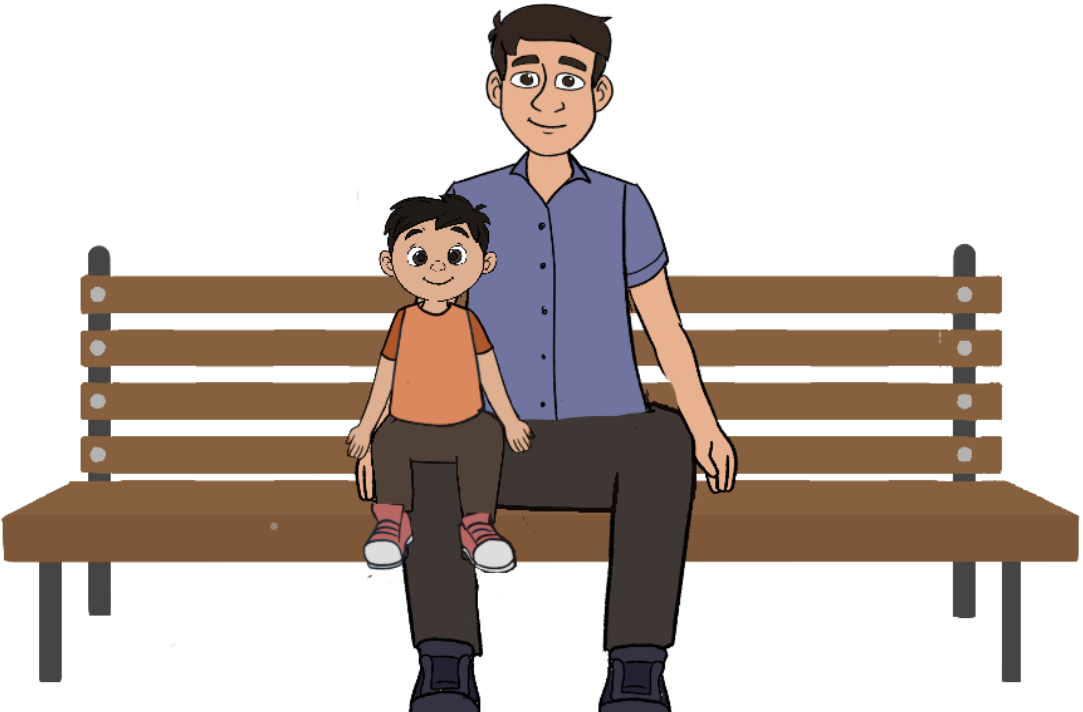
1. they must be among the relationships enumerated in Article 154 of the Family Code
2. they live in the family home
3. they are dependent for legal support upon the head of the family

IV. Disposition of Family Home

A. As a limitation on the rights of disposition of owners, the law specifically provides that the family home cannot be sold, alienated, donated, assigned or encumbered without the written consent of the following:

1. person constitution the same
2. the latter's spouse
3. a majority of the beneficiaries of legal age

VI. PATERNITY AND FILIATION



- I. **Paternity and Filiation** refer to the relationship or tie which exists between parents and their children
 - A. **Paternity**- refers to the status of the father in relation his his child
 - B. **Maternity**- refers to the status of the mother in relation to her child
 - C. **Filiation**- refers to the status of a child in relation to his parents

 - II. Under the New Family Code, there are only two classes of children:
 - A. Legitimate Children
 - B. Illegitimate Children
 - C. Legitimated Children

 - III. The filiation of children may be by nature or by adoption
 - A. **Natural Filiation**- the relationship of the child to his parents is by blood
 - B. **Filiation by Adoption**- artificial in nature and the relationship is only created by law
- A. LEGITIMATE CHILDREN**
- I. The children who are born during the lawful marriage

 - II. **Child Born of Artificial Insemination**
 - A. Considered as legitimate provided the following requisites are present:
 1. both spouses have authorized in writing the performance of artificial insemination on the wife
 2. if the husband had no knowledge of the artificial insemination, he ratified it upon knowledge



3. the instrument containing the agreement of the parties must be executed before the birth of the child and shall be recorded in the civil registry together with the birth certificate of the child
- B. No criminal liability for adultery of a wife artificially inseminated without the consent of the husband (*US v Abad Santos*, 36 PHIL 243).

III. Ways to Impugn Legitimacy of a Child

- A. That it was **physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days** which immediately preceded the birth of the child because of:

the presumption on the first ground becomes conclusive in the absence of proof that there was physical impossibility of access between the spouses in the first 120 days of the 300 days which immediately preceded the birth of the child

1. the physical incapacity of the husband to have sexual intercourse with his wife;
 2. the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or
 3. serious illness of the husband, which absolutely prevented sexual intercourse;
- B. That it is proved that for **biological or other scientific reasons, the child could not have been that of the husband**, except in the instance provided in the second paragraph of Article 164; or
- The fact that the husband had undergone vasectomy is not enough proof to rebut the presumption of legitimacy of the child sired by his wife because it is still possible, despite the vasectomy, the sperm can re-channel itself and effect a fertilization.
- C. That in case of children conceived through **artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.** (255a)

IV. DNA

- A. The latest and most effective method of determining filiation is through DNA test
- B. The process for DNA paternity testing had an accuracy rate of 99.99% in establishing paternity. It was first accepted as evidence by the Supreme Court in the case of *Tijing v CA*.



V. Rules Governing in Case of Two Marriages

- A. If the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rules shall govern in the absence of proof to the contrary:
 1. A child born before one hundred eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage;
 2. A child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage. (259a)

B. PROOF OF FILIATION

I. Primary Proof of Filiation

- A. The record of birth appearing in the civil register or a final judgment; or proof that comes from an official government source

It has been held that if the alleged father did not sign in the birth certificate, the placing of his name by the mother, or doctor or registrar, is incompetent evidence of paternity of said child (*Berciles vs. GSIS*, 128 SCRA 53; *Reyes vs. Court of Appeals*, 135 SCRA 439).
- B. An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

II. Secondary Proof of Filiation

- A. The open and continuous possession of the status of a legitimate child;
 1. Open and continuous possession of the status of a legitimate child does not mean that the concession of status shall continue forever but only that it shall not be of an intermittent character while it continues. There must be a showing of the permanent intention of the supposed father to consider the child as his own, by continuous and clear manifestation of paternal affection and care (*Mendoza vs. Court of Appeals*, 201 SCRA 675).
- B. Any other means allowed by the Rules of Court and special laws.



III. Action to Claim Legitimacy

- A. An action to claim legitimacy may be brought by the child anytime during his or her lifetime. The heirs of the child may bring the action if the child died during minority or in the state of insanity. In these cases, the heirs have only five years from the death of the child within which to institute the action

IV. Rights of the Legitimate Children

- A. Bear the surname of his father and mother
- B. Receive support from his parents, ascendants or brother and sisters,
- C. Be entitled to the legitime and other successional rights

C. ILLEGITIMATE CHILDREN

I. The children born out of wedlock or inside a void marriage

A. Exceptions:

1. Children of marriages void under Art. 36 (psychological incapacity); and
2. Under Art. 53 (subsequent marriages which did not comply with Art. 52)

II. Action for Claiming Illegitimate Filiation

- A. An illegitimate child may prove his illegitimate filiation only during the lifetime of his putative father if his evidences of filiation are only the secondary proofs of filiation
 1. However, if the child was born before the effectivity of the Family Code on August 3, 1988, the law that will govern is the Civil Code of the Philippines which provides that an illegitimate child whose putative father dies during his minority, has four years upon reaching the age of majority within which to file an action to prove his filiation. This is a vested right which cannot be removed by a new law; thus, a legitimate child may still invoke this right even if his putative father died after the effectivity of the new Family Code (*Bernabe vs. Alejo*, January 21, 2002).

III. Surname of Mother

- A. Illegitimate children shall use the surname of their mother because only maternity is certain
- B. The passage of **RA 9255** now allows illegitimate children to carry the surname of their putative father if acknowledged by the latter



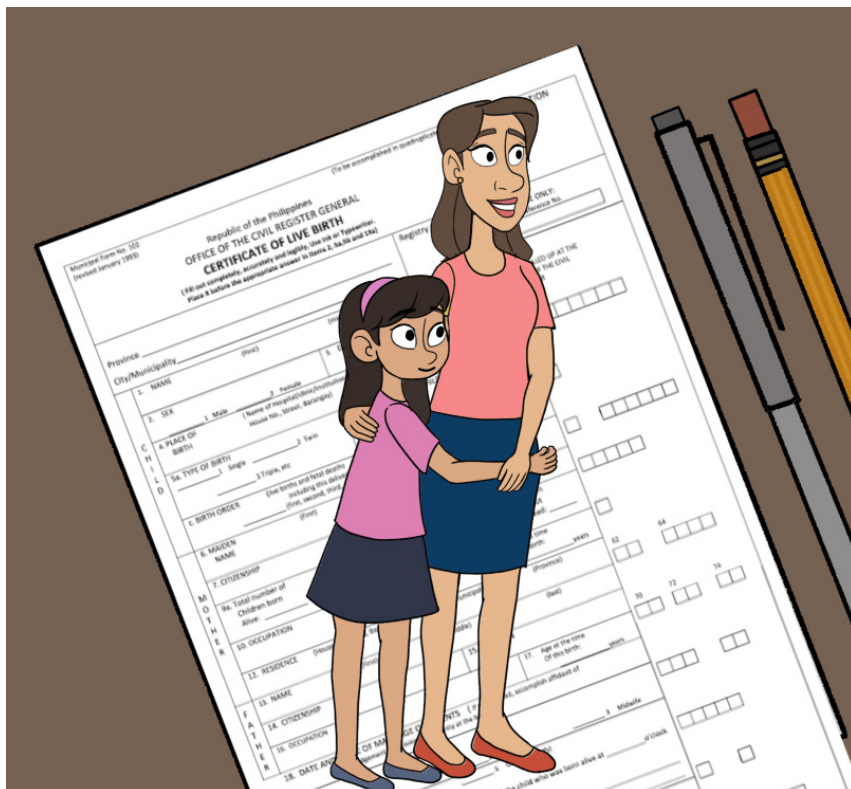
D. LEGITIMATED CHILDREN

- I. Conceived and born outside of wedlock to parents who, at the time of the conception of the child, were not disqualified by any legal impediment to marry each other and said parents subsequently entered into a lawful marriage

- II. **Requirements for Legitimation**
 - A. The child was conceived and born outside of wedlock.
 - B. The parents do not suffer any legal impediments to marry each other at the time of the conception of the child.
 - C. The parents subsequently enters into a valid marriage.

- III. **Rights**
 - A. Entitled to the same hereditary right and shall carry the surname of the father.

VII. ADOPTION



I. Repealed Provisions

A. The provisions on Adoption found in Article 183 to 193 (Title VII) of the Family Code has already been repealed by R.A. 8552 approved on February 25, 1998 by Pres. Fidel V. Ramos. Furthermore, there is another law which amended our law on adoption and that is the **Inter-Country Adoption Law of 1995** or R.A. 8043 approved by Pres. Ramos on June 7, 1995. Thus, our present law on adoption is now primarily governed by R.A. 8552 and R.A. 8043.

- II. **Adoption** is a juridical act, a proceeding in rem which creates between two persons a relationship similar to that which results from legitimate paternity and filiation. (*Lazatin v. Campos*, G. R. No. L-43955-56, 1979)
- III. Adoption is an **artificial process of establishing a relationship of parent and child** between persons who are generally not related by nature. This process is done by law, hence, adoption is purely a **statutory creation**. It is therefore important that all requirements for adoption under the law must be strictly complied with; otherwise, an adoption decree issued by the court without complying with such requirements will be null and void.



Republic vs. Court of Appeals & Zenaida Bobiles
205 SCRA, 356

The Supreme Court ruled that adoption statutes, as well as matters of procedure leading up to adoption, can be liberally construed to carry out the beneficent purposes of adoption and for as long as there is substantial compliance with the mandatory requirements under the law. As a matter of policy of the state, all measures to maintain the natural parent's authority and custody of their children must be encouraged and implemented. Only when such efforts prove to be insufficient and no appropriate placement or adoption within the child's extended family is available shall adoption by an unrelated person be considered.

Our present law on adoption holds the **paramount interest and welfare of the child** to be adopted and is designed to provide these children a brighter future.

REPUBLIC ACT NO. 8552 Domestic Adoption Act of 1998

A. Who can adopt

1. Filipino Citizens [Sec. 7(a), RA 8552]

- a. Of legal age
- b. With full civil capacity and legal rights
- c. Of good moral character and has not been convicted of any crime involving moral turpitude
- d. Emotionally and psychologically capable of caring for children
- e. At least sixteen (16) years older than adoptee, except when adopter is biological parent of the adoptee or is the spouse of the adoptee's parent
- f. In a position to support and care for his/her children in keeping with the means of the family
- g. Has undergone pre-adoption service

2. Aliens [Sec. 7(b), RA 8552]

Same for Filipinos provided further that:

- a. His/her country has diplomatic relations with the Philippines
- b. Has been living in the Philippines for **3 continuous years** prior to the filing of application and maintains such residence until the decree is entered

Note: absences not exceeding 60 days per 1 year for professional, business, or emergency reasons are allowed



- c. Has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country
- d. His/her government allows the adoptee to enter his/her country as his/her adoptee and reside there permanently as an adopted child
- e. Has submitted all the necessary clearances and such certifications as may be required

Requirements of residency and certification of legal capacity may be waived under the following circumstances:

- a. Adopter is a former Filipino Citizen who seeks to adopt a relative within the 4th degree of consanguinity or affinity.
- b. Adopter seeks to adopt the legitimate child of his/her Filipino spouse
- c. Adopter is married to a Filipino Citizen and seeks to adopt jointly with his/her spouse a relative within the 4th degree of consanguinity or affinity of the Filipino spouse

Note: Requirements may not be waived for an alien married to a former Filipino

3. Guardians [Sec. 7(c), RA 8552]

With respect to their wards, after the termination of the guardianship and clearance of his/her accountabilities.

General Rule: Husband and wife must jointly adopt

Exception [Sec. 7]:

- a. One spouse seeks to adopt the legitimate child of the other
- b. One spouse seeks to adopt his own illegitimate child, provided that the other spouse has signified their consent thereto
- c. Spouses are legally separated from each other

B. Who can be adopted

I. Those who can be adopted [Sec. 8, RA 8552]:

- a. Minor (below 18) who has been administratively or judicially declared available for adoption
- b. Legitimate son/daughter of one spouse by another
- c. Illegitimate son/daughter by a qualified adopter to improve the child's status to that of legitimacy
- d. A person of legal age if, prior to the adoption, said person has been consistently considered and treated by the adopter(s) as his/her child since minority



- e. A child whose previous adoption has been rescinded
- f. A child whose biological or adoptive parent(s) has died, provided that no proceedings shall be initiated within 6 months from the time of death of said parent(s)

II. Exceptions to the Requirement of a Certification that the Child is Available for Adoption [Sec. 4, RA 8552]:

- a. Adoption of an illegitimate child by his/her biological parent;
- b. Adoption of a child by his/her stepparent;
- c. Adoption by a relative within the 4th civil degree by consanguinity or affinity

III. Persons whose written consent is necessary for adoption [Sec. 9, RA 8552]

- 1. The prospective adoptee if 10 years or older
- 2. The prospective adoptee's biological parents, legal guardian or the government instrumentality or institution that has custody of the child
- 3. The prospective adopters' legitimate and adopted children who are 10 years or older
- 4. The prospective adopters' illegitimate children, if any, who are 10 years or older and living with them
- 5. The spouse, if any, of the person adopting or to be adopted.

Note: A decree of adoption shall be effective as of the date the original petition was filed. It also applies in case the petitioner dies before the issuance of the decree of adoption to protect the interest of the adoptee. [Sec. 13, RA 8552]

C. Foundlings

Foundling shall refer to a deserted or abandoned infant or a child found, with parents, guardian, or relatives being unknown, or a child committed in an orphanage or charitable or similar institution with unknown facts of birth and parentage and registered in the Civil Register as a foundling. [Sec. 3(h), *Rules And Regulations To Implement The Domestic Adoption Act Of 1998*]

I. When is a child considered a foundling?

It shall be the duty of the DSWD or the child-placing or child-caring agency which has custody of the child to exert all efforts to locate his/her unknown biological parent(s). If such efforts fail, **the child shall be registered as a foundling** and subsequently be the subject of legal proceedings where he/she shall be declared abandoned. [Sec. 5, RA 8552]



If efforts to locate the child's parent/s fail, the child shall be registered as a foundling and within three (3) months from the time he/she is found, be the subject of legal proceedings where he/she shall be declared abandoned. [Sec. 5, Rules And Regulations To Implement The Domestic Adoption Act Of 1998]

Poe-Llamanzares v. COMELEC
G.R. No. 22169 (2016)

Domestic laws on adoption also support the principle that foundlings are Filipinos. These laws do not provide that adoption confers citizenship upon the adoptee. Rather, the adoptee must be a Filipino in the first place to be adopted. The Inter-Country Adoption Act (R.A. No. 8043), the Domestic Adoption Act (R.A. No. 8552) and the Court's A.M. No. 02- 6-02-SC or the "Rule on Adoption," all expressly refer to "Filipino children" and include foundlings as among Filipino children who may be adopted.

D. Pre-Adoption Procedures

a. Voluntary commitment by biological parent(s) wanting to put their child up for adoption

1. Counseling on their options other than adoption
2. Explaining to them the implications of losing their parental authority over the child
3. Continuing services shall be provided after relinquishment to cope with feelings of loss, etc. and other services for the reintegration to the community of the biological parent(s)
4. Biological parent(s) who decided to put the child for adoption shall sign the Deed of Voluntary Commitment (DVC), which shall be rescissible within 3 months from signing of the same

b. Involuntary commitment of abandoned/neglected child

1. Filing of a petition at Regional DSWD in the form of an affidavit and with the required supporting documents
2. Posting of the petition, then recommendation by the Regional Director of the DSWD (5 days each)
3. Issuance of certification by DSWD Secretary declaring the child legally available for adoption within 3 months following involuntary commitment

c. Required supporting documents for a petition for the declaration of involuntary commitment:

1. Social Case Study Report by DSWD / LGU / institution charged with child's custody



2. Proof of efforts to locate the child's parents/known relatives
 - a. Written certification that a local/national radio/TV case was aired on 3 different occasions
 - b. Publication in 1 newspaper of general circulation
 - c. Police report/barangay certification of due diligence
 - d. Returned registered mail to last known address of parents
3. Birth certificate, if available
4. Recent photo and photo upon abandonment of child

E. Adoption Procedures

Note: DSWD must certify the child as legally available for adoption as a prerequisite for adoption proceedings. [RA 9253]

After the decree of adoption, the court may also issue a travel authority, if needed.

The case study report by the DSWD/LGU is indispensable. Without it, the adoption decree shall be void. (*DSWD v. Judge Belen*, RTJ-96-1362, 1997)

F. Who may not adopt

Those who may not adopt [Art. 184, FC, amended by RA 8552]:

1. The guardian, with respect to the ward, prior to the approval of the final accounts rendered upon the termination of the guardianship
2. Any person convicted of a crime of moral turpitude

G. Rights of an Adopted Child

1. Parental Authority [Sec. 16, RA 8552]

Except in cases where the biological parent is the adopter's spouse, all legal ties between biological parent and adoptee shall be severed, and the same shall then be vested on the adopters.

The general effect of the adoption decree is to transfer to the adopting parents the parental authority of the parents by nature, as if the child had been born in lawful wedlock.

The relationship established by adoption is limited to the adopting parent and does not extend to his other relatives, except as expressly provided by law.

The law does not prohibit the biological parent(s) from entering an agreement with the adopters on post adoption visitation. Neither do our laws compel the adopters to grant visitation rights if such is not beneficial to the child.

2. Legitimacy [Sec. 17, RA 8552]

The adoptee shall be considered the legitimate son/daughter of the adopters for all intents and purposes, and as such is entitled to all rights and obligations provided by law to legitimate children born to them without discrimination of any kind. The adoptee is entitled to love, guidance, and support in keeping with the means of the family.



3. Succession [Sec. 18, RA 8552]

In legal and intestate succession, the adopter and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parents had left a will, the law on testamentary succession shall govern.

Legal or intestate succession to the estate of the adopted shall be governed by the following rules:

- a. Legitimate and illegitimate children, descendants and the surviving spouse of the adoptee shall inherit in accordance with the ordinary rules of legal/intestate succession.
- b. When the surviving spouse OR illegitimate children AND adopters concur, they shall inherit on a 50-50 basis.
- c. When the surviving spouse AND illegitimate children AND adopters concur, they shall inherit on a 1/3-1/3-1/3 basis.
- d. When only adopters survive, they shall inherit 100% of the estate.
- e. When only collateral blood relatives survive, ordinary rules of legal or intestate succession shall apply. [Art. 190 (as amended), FC]

Between adoptee and adopter

The relationship created by the adoption is between only the adopting parents and the adopted child and does not extend to the blood relatives of either party. [Sayson v. CA, supra]

Between adoptee and adopter's relatives

The relationship created by adoption is exclusively between the adopter and the adopted. Hence, the adopted child has no right to inherit from the relatives of his adopted parents.

While an adopted child has the same rights as a legitimate child, these rights do not include the right of representation. The relationship created by the adoption is between only the adopting parents and the adopted child and does not extend to the blood relatives of either party. [Sayson v. CA, supra]

Between adoptee and biological parents

One effect of adoption is that the adopted shall remain an intestate heir of his parents and other blood relatives. [Art. 189, FC]

Since many biological parents relinquish their child for adoption by reason of poverty or emotional unpreparedness, their biological child should not be prevented from inheriting if they were able to improve their lot. There is nothing that precludes the biological parents to give their biological child his or her rightful share in their last will and testament.

4. Name [Art. 365, CC.]

An adopted child shall bear the surname of the adopter.



Republic v. CA and Wong
G.R. No. 97906 (1992)

While an effect of adoption is that the adoptee shall bear the surname of the adopter, the change of surname of the adopted child is more an incident rather than the object of adoption proceedings. The purpose of adoption is to effect a new status of relationship between the child and his or her adoptive parents, and the change of name is more of an incident only than the object of the proceeding.

Sec. 13 of RA 8552 allows the change of first name to be instituted in the same proceeding as the adoption: “the decree of adoption shall state the name by which the child is to be known.”

In re: Adoption of Stephanie Nathy Astorga Garcia
G.R. No. 148311 (2005)

The law is silent as to what middle name the adoptee may use but the SC has held that an adoptee is entitled to all the rights provided by law to a legitimate child, including the right to bear the surname of her father and mother.

5. Nationality

Adoption does not confer citizenship of the adopter to the adopted. Under Sec. 3, Art. IV of the Constitution, Philippine citizenship may be lost/acquired [only] in the manner provided by law. The adoption of an alien is not a means of acquiring Philippine citizenship. A Filipino adopted by an alien does not lose his Philippine citizenship.

The right to confer citizenship belongs to the State (political) and cannot be granted by a citizen through adoption. Adoption creates a relationship between the adopter and adoptee, not between the State and the adoptee. [Tolentino]

H. Rescission of Adoption

Adoptee may file action for rescission, with the assistance of DSWD if he/she is a minor or over 18 but incapacitated, based on the following grounds [Sec. 19, RA 8552]:

1. Repeated physical and verbal maltreatment by adopters despite having undergone counseling
2. Attempt on life of adoptee
3. Sexual assault or violence
4. Abandonment or failure to comply with parental obligations

Adoption, being in the best interest of the child, shall not be subject to rescission by the adopter. However, the **adopter may disinherit the child** based on causes enumerated in Art. 919 of CC:

1. Conviction of an attempt on the life of the adopter
2. Having accused, without grounds, the adopter of a crime punishable by imprisonment for more than 6 years



3. Conviction of adultery/concubinage with the adopter's spouse
4. Having caused the adopter to make or change a will by force, intimidation or undue influence
5. Refusal without just cause to support the adopter
6. Maltreatment of the adopter by word/deed
7. Living a dishonorable/disgraceful life
8. Conviction of a crime which carries with it the penalty of civil interdiction

Effects of Rescission [Sec. 20, RA 8552]:

1. Restoration of parental authority of the adoptee's biological parent(s) OR the legal custody of the Department if the adoptee is a minor or incapacitated.
2. Extinguishing of the reciprocal rights and obligations of the adopters and adoptee.
3. Cancellation of the new birth certificate of the adoptee as ordered by the court and restoration of the adoptee's original birth certificate.
4. Reverting successional rights to its status prior to adoption but not only as of the date of judgment of judicial rescission.
5. Vested rights acquired prior to judicial rescission shall be respected.

Note: Rescission contemplates a situation where the adoption decree remains valid until its termination.

I. Rectification of Simulated Birth

Simulation of birth is the tampering of the civil registry making it appear in the birth records that a certain child was born to a person who is not his or her biological mother, causing such child to lose his or her true identity and status. [Sec. 3(j), RA 8552]

Any person who shall cause the fictitious registration of the birth of a child under the name(s) of a person who is not his or her biological parents shall be penalized for simulation of birth with the penalty of prision mayor in its medium period and a fine not exceeding Fifty thousand pesos (P50,000.00). [Sec. 21(b), RA 8552]

However, subject to certain requirements, Republic Act No. 11222 or the Simulated Birth Rectification Act grants amnesty to persons who made it appear that they are the biological parents of a child whom they consistently treated as their own, and the simulation of birth was for the best interest of the child.

Three-in-one Procedure

- Correction of entries in birth certificate
- Deed of Voluntary Commitment or
- Declaration of abandonment
- Adoption decree



Sec. 8 of the SC Rule on Adoption requires that the petition that seeks to rectify a simulated birth allege that:

1. Petitioner is applying for rectification of a simulated birth;
2. The simulation of birth was made prior to the date of effectivity of RA 8552 and the application for rectification of the birth registration and the petition for adoption were filed within five years from said date;
3. The petitioner made the simulation of birth for the best interests of the adoptee; and
4. The adoptee has been consistently considered and treated by the petitioner as his own child.

REPUBLIC ACT 8043: Law on Inter-Country Adoption

Inter-Country Adoption refers to the sociolegal process of adopting a Filipino child by a foreigner or a Filipino citizen permanently residing abroad where the petition is filed, the supervised trial custody is undertaken, and the decree of adoption is issued outside the Philippines.

A. When Allowed

No child shall be matched to a foreign adoptive family unless it can be satisfactorily shown that the child cannot be adopted locally [Sec. 11, RA 8043].

B. Who Can Adopt

Sec. 9, RA 8043. Any alien or Filipino citizen permanently residing abroad may file an application for inter-country adoption of a Filipino child if he/she:

- (a) Is at least twenty-seven (27) years of age and at least sixteen (16) years older than the child to be adopted, at the time of application unless the adopter is the parent by nature of the child to be adopted or the spouse of such parent;
- (b) If married, his/her spouse must jointly file for the adoption;
- (c) Has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone the appropriate counseling from an accredited counselor in his/her country;
- (d) Has not been convicted of a crime involving moral turpitude;
- (e) Is eligible to adopt under his/her national law;
- (f) Is in a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted;
- (g) Agrees to uphold the basic rights of the child as embodied under Philippine laws, the U.N. Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of this Act;
- (h) Comes from a country with whom the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption is allowed under his/her national laws; and
- (i) Possesses all the qualifications and none of the disqualifications provided herein and in other applicable Philippine laws.



C. Who Can be Adopted

1. Only a legally-free child may be the subject of inter-country adoption [Sec. 8].

A legally-free child is one who has been voluntarily or involuntarily committed to the DSWD of the Philippines, in accordance with the Child and Youth Welfare Code [Sec. 3(f)].

2. A Filipino child [Sec. 3(a)]
3. Below 15 years old [Sec. 3(b)]

In order that such child may be considered for placement, the following documents must be submitted to the Board:

1. Child study
2. Birth Certificate / Foundling Certificate
3. Deed of Voluntary Commitment / Decree of Abandonment / Death Certificate of parents
4. Medical Evaluation / History
5. Psychological Evaluation, if necessary
6. Recent photo of the child [Sec. 8]

D. Inter-Country Adoption Procedure

1. Pre-Adoptive Placement Costs

- i. Sec. 12, RA 8043. The applicant(s) shall bear the following costs incidental to the placement of the child;
 - (a) The cost of bringing the child from the Philippines to the residence of the applicant(s) abroad, including all travel expenses within the Philippines and abroad; and
 - (b) The cost of passport, visa, medical examination and psychological evaluation required, and other related expenses.

The Inter-Country Adoption Board shall also collect fees, charges, and assessments [Sec.13].

2. Venue for Filing Applications

Applications shall be filed either with:

- a. The Philippine Regional Trial Court having jurisdiction over the child, or with
- b. The Board, through an intermediate agency (governmental or accredited agency) in the country of the prospective adoptive parents [Sec. 10].



3. Family Selection / Matching Process

The Board shall ensure that inter-country adoption is done in the best interest of the child [Sec. 7].

The matching of the child with an applicant involves three stages:

- (1) pre-matching,
- (2) matching conference, and
- (3) post-matching conference [Sec. 37, RA 8043 Amended IRR].

Before the Board approves the matching proposal, no matching arrangement shall be made between the applicant and the child's parents/guardians or custodians concerning a particular child, except in cases of adoption of a relative or in cases where the child's best interests is at stake [Sec. 38, RA 8043 Amended IRR]. This is to preserve the integrity of the adoption proceedings.

4. Applicant's Acceptance

Once the matching proposal is approved, a notice of matching shall be sent to the concerned Central Authority or foreign adoption agency within five (5) days.

The applicant/s shall notify the Central Authority or Foreign Adoption Agency (FAA) in writing of their decision on the matching proposal within fifteen (15) working days from receipt of said proposal.

If the applicant/s needs additional information about the child and/ or they need more time to make a decision, an extension of thirty (30) working days may be granted. [Sec. 37, RA 8043 Amended IRR]

5. Pre-Departure Preparation of the Child

The concerned Child Placing Agency shall prepare the child for his/ her placement to minimize the anxiety and trauma due to separation from persons with whom the child may have formed attachments. [Sec. 41, RA 8043 Amended IRR]

6. Physical Transfer of the Child

For not later than twenty (20) working days after the issuance of the child's visa, the adoptive parents or anyone of them shall personally fetch the child from the Philippines. The applicant shall stay in the country with the child for at least five (5) days to allow bonding among them.

The unauthorized failure to do so may result in the cancellation of the Placement Authority. [Sec. 42, RA 8043 Amended IRR]



7. Trial Custody

Trial custody begins upon the physical transfer of the child to the applicant who, as custodian, shall exercise substitute parental authority over the child. [Sec. 44, RA 8043 Amended IRR]

The trial custody shall last for six (6) months during which the Central Authority and/or the FAA shall be responsible for the pre-adoptive placement, care and family counseling of the child. [Sec. 45, RA 8043 Amended IRR]

Any serious ailment, injury or abuse of the child from the adoptive parent(s) or from other household members or the adoptive parent(s) suffer from any serious ailment or injury that will make the adoption untenable shall be reported to the Board.

In the event that all efforts to restore the parent-child relationship between the child and applicant/s fail, the placement may be terminated and the child may be given a new placement or repatriated. [Secs. 46, 48, 49, RA 8043 Amended IRR]

8. Petition for Adoption

If a satisfactory pre-adoptive relationship is formed between the applicant/s and the child, the Board shall transmit an Affidavit of Consent to the Adoption. The Central Authority and/or the FAA shall file the petition for adoption of the child to the proper court or agency in accordance with their national law. [Secs. 50 and 51, RA 8043 Amended IRR]

9. Decree of Adoption

A copy of the final Decree of Adoption or its equivalent shall be transmitted by the Central Authority and/or the FAA to the Board within one (1) month after its issuance. [Sec. 52, RA 8043 Amended IRR]

Tamargo v. CA
G.R. No.85044 (1992)

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



Lazatin v. Campos
G.R. No. L-54955-54 (1979)

Adoption is a juridical act, proceeding in rem. Because it is artificial, the statutory requirements in order to prove it must be strictly carried out. Petition must be announced in publications and only those proclaimed by the court are valid. Adoption is never presumed.

Santos v. Aranzanso
G.R. No. L-23828 (1966)

Validity of facts behind a final adoption decree cannot be collaterally attacked without impinging on that court's jurisdiction.

DSWD v. Belen
G.R. TJ-96-1362 (1997)

Participation of the appropriate government instrumentality in performing the necessary studies and precautions is important and is indispensable to assure the child's welfare.

Landingin v. Republic
G.R. No. 164948 (2006)

Consent for adoption must be written and notarized.

Sayson v. CA
G.R. No. 89224-25 (1992)

Although an adopted child is deemed to be a legitimate child and have the same rights as the latter, these rights do not include the right of representation (because the adopted child has no right to inherit from the grandparent). The relationship created by the adoption is between only the adopting parents and the adopted child. It does not extend to the blood relatives of either party.

VIII. SUPPORT



I. Composition

- a. Sustenance or Food;
- b. Dwelling;
- c. Clothing;
- d. Medical Attendance;
- e. Education; which shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority,
- f. Transportation.

II. Who are Obligated to Support

- a. Spouses;
- b. Legitimate ascendants and descendants;
- c. Parents and their legitimate children and the legitimate and illegitimate children of the latter;
- d. Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and
- e. Legitimate brothers and sisters, whether of full or half-blood.

De Asis v CA
303 SCRA 176

The Supreme Court ruled that the compromise agreement entered into by the mother whereby she renounced the claim of support for her son from the defendant who denied paternity subject to the condition that said defendant will not pursue his counterclaim, is not valid.



Sanchez v Zulueta
68 PHIL. 110

A child born out of an adulterous relationship of the wife and another man is not entitled to support from the husband. A valid defense to refuse support by a husband to a child claiming support is when the child is the fruit of an adulterous relationship of the wife, for in such case, the child is not that of the person from whom support is demanded

III. Amount

- a. shall be in proportion to the resources or means of the giver and to the necessities of the recipient.

IV. Order of Support

- a. When two or more persons are obliged to give support, liability shall devolve upon the following, in this order:
 - (1) Spouse
 - (2) Descendants in the nearest degree
 - (3) Ascendants in the nearest degree
 - (4) Siblings
- b. When two or more persons are obliged to give support, liability shall devolve upon the following, in this order:
 - (1) Child subject to parental authority
 - (2) Spouse
 - (3) Descendants in the nearest degree
 - (4) Ascendants in the nearest degree
 - (5) Siblings

V. Support Given by Stranger

- a. If without the knowledge of the person entitled to support, the stranger shall have a right to claim the same from the former, unless it appears that he gave it without intention of being reimbursed.

IX. PARENTAL AUTHORITY



- I. **Parental Authority** is the sum total of the rights of parents over the person and property of their unemancipated children. Parental authority refers to the right and duty of parents under the law to protect their children, to care for them in sickness and in health, and to do whatever may be necessary for their care, maintenance and preservation.

A. GENERAL PROVISIONS

I. **Joint Parental Authority**

- A. Parental authority shall be exercised jointly by the father and the mother over the person and property of their common children.
- B. Requisites:
1. the paternity is certain; and
 2. the father and the mother of the illegitimate child must be living together under one roof with the child.

II. **Preferential Choice of the Father**

- A. In case of conflict between the parents in the manner of rearing the child under their joint parental authority, the decision of the father shall prevail.

III. **Absence or Death of Parent or Remarriage**

- A. In case of absence or death of either parent, the parent present or alive
- B. Remarriage of one parent won't affect the parental authority over the children



IV. Separation

A. In case the parents of the child are separated, whether legally or by a de facto separation, parental authority shall be exercised by the parent designated by the court.

B. **General Rule: Child below 7 years old-** custody is with the mother

Exception: there are compelling reasons to deprive the mother of such custody.

Dacasin vs. Del Mundo-Dacasin
G.R. No. 168785, Feb. 5, 2010

The second paragraph of Article 213 of the Family Code, which provides that “no child under seven years of age shall be separated from the mother unless there are compelling reasons”, is mandatory. The Joint Custody Agreement executed by the parents of the child after obtaining a divorce in the United States cannot be enforced here as it is void ab initio for being contrary to law. The agreement would have been valid if the spouses have not divorced or separated because the law provides for joint parental authority when the spouses live together

C. **Child above 7 years old-** the child is given the right to choose but the choice of the child may be overruled by the court if it finds the same to be not in the best interest of the child

V. Substitute Parental Authority

A. Given by law to grandparents in case of death, absence or unsuitability of the child's parents to exercise parental authority

B. If both the paternal and maternal grandparents of the child are still living, the court will decide to whom the custody and parental authority over the child be awarded taking into consideration the best interest and welfare of the child.

B. SUBSTITUTE AND SPECIAL PARENTAL AUTHORITY

I. Parents in Default

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

1. The surviving grandparent, as provided in Article 214;
2. The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and



3. The child's actual custodian, over twenty-one years of age, unless unfit or disqualified.

II. Children Entrusted in Summary Judicial Proceedings

Foundling- a child with no known parents.

Abandoned, neglected, or abused children- those whose parents are known but were deserted, abandoned or not anymore provided the required parental care and guidance by their said parents

III. Special Parental Authority

- A. The school, its administrators and teachers, or the individual, entity or institution engaged in child are shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody.
- B. Where the school is academic rather than technical or vocational in nature, responsibility for the tort committed by the student will attach to the teacher-in-charge of such student, following the first part of the provision. However, if the establishment is a school of arts and trades, it is the head thereof, and only he, shall be held liable as an exception to the general rule (*Amadora vs. Court of Appeals*, G.R. No. 47745, April 15, 1988)

C. EFFECT OF PARENTAL AUTHORITY UPON THE PERSONS OF THE CHILDREN

- I. **Rights and Duties of Persons Exercising Parental Authority upon the Person of a Child**
 1. To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
 2. To give them love and affection, advice and counsel, companionship and understanding;
 3. To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
 4. To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
 5. To represent them in all matters affecting their interests;



6. To demand from them respect and obedience;
7. To impose discipline on them as may be required under the circumstances; and
8. To perform such other duties as are imposed by law upon parents and guardians.

II. Vicarious Liability of Parents

- A. Parents are principally and primarily liable for the acts or omissions of their unemancipated children which resulted to the damage or prejudice of another
- B. It is necessary that the unemancipated child must still be living in their company and under their parental authority

III. Civil Liability of Parents

- A. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law.
- B. Adopting parents are not liable for the crime committed by their adopted child during the pendency of the adoption proceeding in court. This is because when the child committed the act, he was still under the custody and parental authority of his natural parents. (*Tamargo vs. Court of Appeals*, 209 SCRA 518).

D. EFFECT OF THE PARENTAL AUTHORITY UPON THE PROPERTY OF THE CHILDREN

I. Joint Legal Guardianship

- A. The father and the mother shall jointly exercise legal guardianship over the property of their unemancipated child without the necessity of a court appointment.
 1. The authority of the parents over the property of their children as legal guardian is limited only to acts of administration or management. It does not include acts of encumbrance or disposition (*Nario vs. Philippine American Life Ins. Co.*, 20 SCRA 434).

B. In case of disagreement

General Rule: The father's decision shall prevail.

Exception: Unless there is judicial order to the contrary



II. Nature of Administration

- A. The property of the unemancipated child earned or acquired with his work or industry or by onerous or gratuitous title shall belong to the child in owner and shall be devoted exclusively to the latter's support and education, unless the title or transfer provides otherwise
- B. The right of the parents over the fruits and incomes of the child's property shall be limited primarily to the child's support and secondarily to the collective daily needs of the family

E. SUSPENSION AND TERMINATION OF PARENTAL AUTHORITY

I. When Terminated

- A. Upon the death of the parents;
- B. Upon the death of the child; or
- C. Upon emancipation of the child.

Unless subsequently revived by a final judgment, parental authority also terminates:

- A. Upon adoption of the child;
- B. Upon appointment of a general guardian;
- C. Upon judicial declaration of abandonment of the child in a case filed for the purpose;
- D. Upon final judgment of a competent court divesting the party concerned of parental authority; or
- E. Upon judicial declaration of absence or incapacity of the person exercising parental authority

II. When Suspended

- A. Upon conviction of the parent or the person exercising the same of a crime which carries with it the penalty of civil interdiction
- B. Parent does the following:
 - 1. Treats the child with excessive harshness or cruelty;
 - 2. Gives the child corrupting orders, counsel or example;
 - 3. Compels the child to beg; or
 - 4. Subjects the child or allows him to be subjected to acts of lasciviousness.



Exception: If the child was subjected to or allowed to be subjected to sexual abuse, parental authority shall be not just suspended but permanently deprived

III. When Reinstated

- A. Automatically upon service of penalty (civil interdiction)
- B. Automatically upon pardon or amnesty of the offender.
- C. By judicial order, if the court finds that the cause therefore has ceased and will not be repeated

X. EMANCIPATION OF AGE OF MAJORITY

I. When Emancipation Takes Place

- A. By attainment of majority, at the age of eighteen years
- B. Marriage is no longer a ground for emancipation as the age of majority and the marriage age are already the same

II. Effects of Emancipation

- A. Termination of parental authority over the person and property of the child emancipated
- B. The person emancipated becomes qualified and responsible for all acts of civil life.

Exception:

- A. Persons possessing parental authority over the emancipated individual are needed to give their respective parental consent until the emancipated individual is at the age of twenty-one.



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