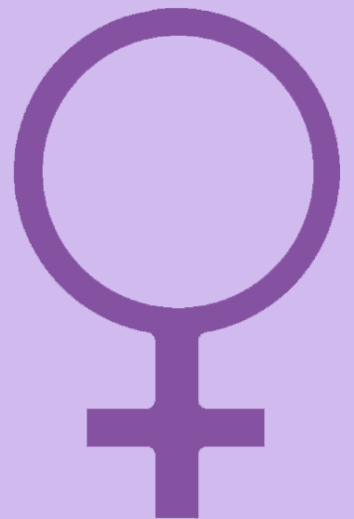


Paralegal Manual on the Elimination of Violence and Discrimination against Women



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2021

Introduction

Violence and discrimination against women, girls and persons with diverse SOGIESC remain one of the prevalent issues in the society. In recent years, the government has issued policies and implemented programs and services addressing gender-based violence. Non-government organizations and other stakeholders took part in this effort but cases of abuse, violence, oppression and discrimination against women, girls and persons with diverse SOGIESC still persist. An even greater problem is the unreported cases due to the “culture of silence” where victim-survivors tend to dismiss their ordeal because of their lack of faith in the Philippine justice system. The human rights of these marginalized sectors have yet to be fully realized. To this end, SALIGAN continue to advocate for the empowerment of local communities, victim-survivors and government frontliners toward the elimination of gender-based violence.

This Paralegal Manual on the Elimination of Violence and Discrimination Against Women, 4th Edition, is a guide to help community-based paralegals exercise their commitment to protect and advocate for the implementation of the human rights of women, girls and persons with diverse SOGIESC. The substantial information provided in this manual can be used to train new set of paralegals and to inform victim-survivors, advocates and duty-bearers of the rights, legal remedies and processes available to victim-survivors of gender-based violence.

This revised edition, now, contains five chapters which may be categorized into three parts: fundamentals for understanding gender-sensitivity and the legal system in the Philippines, legal framework for the protection and implementation of the human rights of women, and paralegal skills. The first part is composed of the newly added Chapter I on Fundamentals of Gender-awareness and Chapter II on Philippine Legal System. The second part is composed of Chapter III on Women Rights and the Law which contains recent updates on laws and jurisprudence and Chapter IV on legal remedies and procedures involve in filing redress for violation of rights. Lastly, the third part is composed of Chapter V on Paralegal skills. With the revisions introduced in this edition, the paralegals are expected to have a better grasp of the relevant knowledge and skills that can strengthen the response and management of gender-based incidence in their communities. Further, this training manual can help enhance the active and meaningful participation of various stakeholders in advocating for gender equality and elimination of violence and discrimination against women, girls and persons with diverse SOGIESC.

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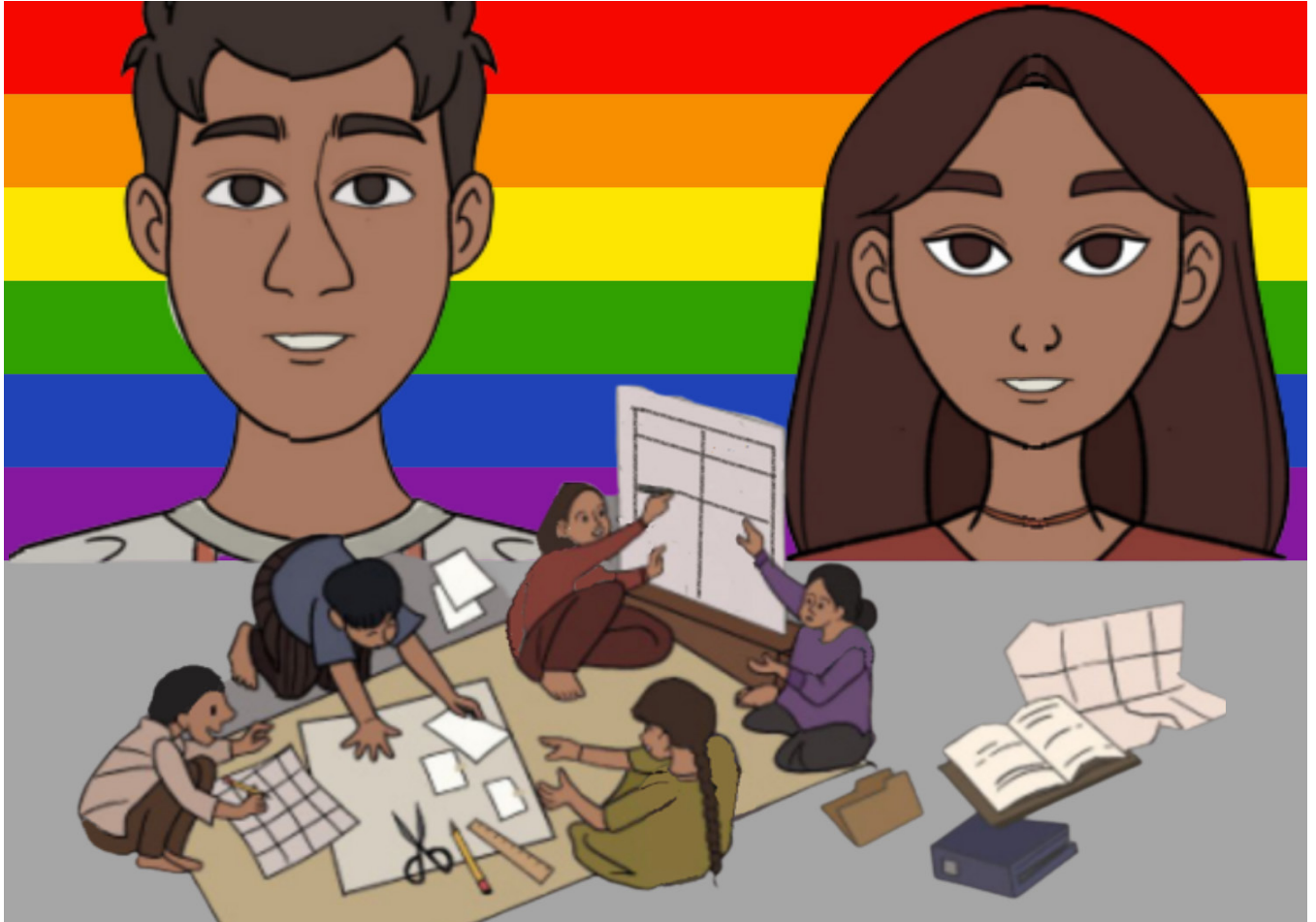
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Chapter I on gender awareness aims to provide an understanding on the different concepts and principles of gender, manifestations of gender bias in the community such as gender stereotyping, violence against women and non-recognition of women's contribution in the economy and how these practices and beliefs contribute to gender inequalities. Thus, this chapter will provide the needed information for the paralegals to advocate for change in belief, behavior and value that will help attain gender equality.

SEX AND GENDER

“Sex” and “gender” are words that are used interchangeably despite having different meanings.

I. SEX

refers to the biological attributes of a person which includes the physical and physiological characteristics, such as the chromosomes, gene and hormone levels and functions. It is inherent and assigned at birth. It cannot be chosen nor changed. Thus, sex correctly refers to the reproductive/sexual organs of a person which primarily dictate whether that person is a man or a woman.

MALE	FEMALE
Reproductive organs: penis, balls/ scrotum, sperm/semen	Vagina, ovary, egg cells, breasts, fallopian tube, uterus
Hormones: testosterone, androgen	Progesterone, estrogen
Chromosomes: xy	x

Aside from the sexual or reproductive organs, there appear to be no difference between man and woman. If you look at humans from head to toe, they generally have the same body parts- head, eyes, nose, ears, mouth, hand and feet.

Even parts of the body that can't be seen, such as the brain, stomach, lungs, intestines, etc. are all the same for a man and a woman.

There are some who say that men and women act or behave differently. For instance, men are perceived to have masculine traits, such as strong, intelligent, decisive, aggressive and steadfast. While, women are seen to have feminine traits such as being tender, modest, caring and emotional. This may be true for some occasions but not all the time and not for all men and women. These traits and characteristic cannot be the basis in identifying whether a person is a man and a woman. These traits are what we refer to as gender.

II. GENDER

Gender is a range of socially constructed roles, traits and characteristics of a woman, man and gender diverse people. It is not a binary nor is it static. Gender can change overtime and across cultures.

These sets of feminine and masculine traits are assigned to women and men, respectively. This is where the problem of women begins because masculine traits are treated superior and more important than feminine traits.

Thus, believed to possess masculine traits, men are given high stature in the families, organizations and society than women. Men and women are categorized according to these assigned gender characteristics and not on their individual identities, preferences and capacities.

SEX	GENDER
Biological and physical	Social and cultural
Natural and/or inherent	Nurtured, taught and shaped by economy, religion and/or traditional values
Unchanging (except in case of sex re-assignment/surgery)	Differs from society and changes overtime

III. RELATIONSHIP BETWEEN SEX AND GENDER

Gender characteristics are assigned based on a person's gender. Eventually, gender characteristics are considered natural or inherent to one's sex. For instance, when a person is born female, her family will say that she will be emotional, modest and proper. In the same way, when a person is born male, he will be strong, decisive and brave.

This kind of association or relationship of sex and gender is problematic. First, what society say as definite is not always certain. The only difference people have when born is sex - that is definite. The personality and behavior of each person change according to their character and how they were raised and nurtured. We know that not all women are modest and emotional. In the same way, not all men are brave and aggressive. Second, because masculine characteristics are considered more important, a person's

status automatically increases when one is born male. This limits the opportunities and entitlements of women. We have seen that the only difference between men and women are their genitals or reproductive system.

However, the evolution and development of the role and status of women in society continue to change.

The various institutions in our society- family, school, religion, mass media and laws, play a major role in shaping and raising women and men according to their particular characteristics

PHILIPPINE “HERSTORY”



The law which is reflective of our prevailing culture has already been documented. The present laws on women or laws affecting gender issues are products of our country's history. It is imperative that paralegals realize that the laws that govern everyone, including those who criticize them, are based on the accounts of our nation, which has already experienced many chapters throughout its history.

I. PRE-COLONIAL PERIOD (BEFORE 1521)

The political order in the Philippines before the Spaniards came is very different from the present. There was no central government in the whole archipelago nor a single set of laws that governed the country. Rather, each barangay had their own leaders - women and men - and laws are implemented within its jurisdiction. Often, these laws were not written. Formal and informal laws could not be distinguished from each other.

There are many accounts from various historians who say that the relationship between women and men was more egalitarian during this period. Ownership over natural resources was communal and not private.

Hunting for daily sustenance of the family was a joint responsibility of women and men. The same is also true with the administration of the household and the community. Divorce can be acquired by both women and men. It was also during this period where we see the babaylan, revered women spiritual leaders.

II. SPANISH COLONIZATION (1521- 1898)

When the Spaniards came to the Philippines in the 18th century, they brought with them a foreign religion, culture and a set of laws. No legislature was set up on the islands. Instead, the colonizers implemented laws that were issued by the Spanish King, through Royal Decrees. There was union of State and the Church. The law for one is the law for the other.

The Spanish laws that were once implemented in the country categorized women with children and imbeciles. These laws provide that women are not capable of rational thinking and independence. There are only two roles that they are considered fit to do in society, and these are either to be a nun or a mother..

A. Education

Women were not allowed to study except for the purpose of preparing them for their future roles as mothers or nuns.

B. Family

The law gave men the power to be “kings” within their families. In the concept of *pater familias*, the wife and the children are under the authority of the father/ husband. The women could not engage in any economic, political, or cultural activity, except when they have the consent of their husbands. The properties of spouses were under the control of the husband.

If a husband dies, it is illegal for the wife to get married again within 301 days after his death.

The reason for this law is for the protection of the husband and his family, by ensuring the paternity of the child in the widow's womb, should there be any.

C. Commerce

In commerce, women were likewise under the authority of the men in their lives. The concept of *pater familias* also applies in this area. Women were prohibited to do the following specific acts, among others, without the consent of their husbands:

1. enter into contracts;
2. own and acquire properties;
3. appear before the courts and sue;
4. register and publish literary and scientific works; and
5. engage in business

D. Political

The right to vote was not conferred to women. In short, women had no voice in political issues. When Filipinos were not allowed to hold positions as *cabezas de barangay* and other positions in the community, women were not given the same right.

When the Spanish colonial rule ended, their laws were not totally abrogated. For example, the Penal Code, the Civil Code, the Code of Commerce, and Marital laws continued to be in force even when the Philippines was placed under the American rule.

III. AMERICAN COLONIAL RULE (1898-1941/ 1944-1946)

The Philippines was placed under the Americans when they defeated the Spaniards in the Spanish-American War. The laws that were placed in the Philippines (those that had come from Spain), however, continued to be in force. Only the political laws were suspended and later changed by the Americans.

One of the biggest influences of Americans on the Philippines in the area of law is the Constitution. The Philippine Constitutions—from 1935, 1973 and 1987—are greatly influenced by the American rule. The Philippine legal system - the whole structure of the government is based on the American system.

The American policy with respect to education of women was more lenient than that of the Spaniards. Public education was free for both women and men.

College academic courses that were previously closed to women were made accessible to them.

Under Act 2710, Filipino citizens could get a divorce from their spouses under any of the two exclusive grounds: (a) the woman is guilty of adultery, or (b) the man is guilty of concubinage.

The Revised Penal Code was enacted and became effective in 1932. Under this law, discrimination against women continued to prevail. For example, marital infidelity was considered a criminal act, but the standard applied to women was different from that applied to men.

On one hand, “adultery” was a crime committed by married women who had sexual intercourse with men other than their husbands. On the other hand, for men to be held liable for the crime of concubinage, they had to have engaged in sex with another woman under scandalous circumstances. Mere sexual intercourse would not make the husband criminally liable. In addition to this, the penalty imposable for adultery is heavier than that imposable for concubinage.

Remember that from 1935-1945, a Commonwealth Government was set up in the Philippines in anticipation of the setting up of a republic. But in 1941, the Japanese came and established their imperial government in the country.

IV. JAPANESE OCCUPATION (1941-1944)

While this period is short, it brought so much pain and suffering to women. The Japanese imperial government’s policy of rounding up women and forcing them to provide sexual services to the Japanese troops traumatized thousands of women in the Philippines who were considered as “comfort women”. It continues to be a harrowing experience to its victims not just in the Philippines but also in Asian countries which were occupied by the Japanese.

A. The Japanese provided additional grounds for divorce, which are the following:

1. attempt on the life of the petitioner;
2. contagious disease;
3. insanity that is incurable;
4. conviction by final judgment that carries with it the penalty imprisonment for more than six (6) years-
5. repeated infliction of physical violence on the petitioner, such that spouses could no longer live together without putting the petitioner in danger;
6. intentional or unjustifiable abandonment for more than a year prior to the filing of the petition;
7. intentional leaving from the conjugal home by the respondent for three (3) consecutive years;
8. contracting a subsequent marriage while the first marriage is still subsisting; and
9. inflicting gross insult to the petitioner, where the cohabitation of the spouses is no longer practical.

Executive Order No. 141 of 1943 was effective in the Philippines until 23 October 1944, when the re-establishment of the Commonwealth Government was declared.

V. REPUBLIC (1945- 1986)

In divorce, Act No 2710 became effective once again in 1944 and was in effect until it was superseded by the New Civil Code on 30 August 1950. Under the New Civil Code, divorce was no longer allowed but spouses were allowed to separate under the concept of “legal separation.” When the court declared that spouses were legally separated, they could continue to live apart, although their marital ties are still not severed.

There were only three (3) grounds for legal separation:

1. if the wife committed adultery;
2. if the husband committed concubinage; and
3. if there was an attempt on the life of the petitioner by the respondent.

Aside from this, the rights and obligations of the spouses were spelled out under the New Civil Code. These are:

1. The husband shall fix the residence of the family;
2. The husband is responsible for the support of the family while the wife manages the affairs of the household;
3. The purchase by the wife of jewelry and other precious objects is voidable, unless her husband consents to the transaction;
4. The wife may exercise any profession or engage in business. However, the husband may object if:
 - a. his income is sufficient for the family;
 - b. the objection is based on serious and valid grounds.
5. The husband shall be the administrator of the conjugal community property of the spouses;
6. The wife cannot, without her husband's consent, accept any gift, donation or inheritance, except from her ascendants, descendants, parents-in-law, and collateral relatives within the fourth civil degree; and
7. As a general rule, the wife cannot sue and be sued without her husband joining her.

In 1975, the National Commission on the Role of Filipino Women (NCRFW) was established as an agency under the Office of the President. Its thrust was on organizing women, conducting policy studies and lobbying, establishing a clearing house and information center on women and monitoring the implementation of the UN CEDAW.

In August 2009, the NCRFW was renamed as Philippine Commission for Women (PCW) and its mandate was expanded by the enactment of Republic Act 9710, otherwise known as the Magna Carta of Women (MCW).

The PCW is the primary policy-making and coordinating body on women and gender equality concerns. As the oversight body on women's concerns, the PCW acts as a catalyst for gender mainstreaming, and lead advocate of women's empowerment, gender equity and gender equality in the country.

VI. 1986– PRESENT

When the 1973 Constitution was abrogated after the EDSA political revolution, there were many provisions on women that were incorporated in the new (1987) Constitution. Examples of these provisions are the following:

Article II: Declaration of Principles and State Policies

a. Section 12

The State recognizes the sanctity of the family and shall protect and strengthen it as an inviolable social institution. The State shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the government

b. Section 14

The State shall recognize the role of women in nation-building and shall ensure the fundamental equality before the law of women and men.

Article XIII: Social Justice and Human Rights

a. Section 11

The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the under-privileged sick, elderly, disabled, women and children.

b. Section 14

The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enable them to realize their full potential in the service of the nation.

On 3 August 1988, the Family Code became effective and it amended some of the very important provisions of the New Civil Code that pertain to the rights of women. Some of the rights that were introduced by way of the Family Code are:

1. The administration of the conjugal or community property shall be jointly shared by the husband and wife;
2. The family domicile (residence) shall likewise be chosen by the husband and the wife;
3. The wife may exercise any profession, or engage in any business activity, even without the consent of the husband, except if there is a valid, serious and moral ground;
4. The management of the household affairs shall be shared by both husband and wife;
5. The obligation to render support to the family rests on both the husband and wife.

The Family Code also provides provisions on marriage, legal separation, separation of spouses under Article 36, property relations, family and paternity and filiation.

Outside of the Family Code, there were other laws on women's rights that were enacted. Some of these laws are:

1. *Republic Act 7192 (Women in Nation-building Act of 1992)*, where women are given the right to enter into contracts of insurance, get passports visa or other documents needed in traveling, even without the consent of their husbands. They were also given the right to study in military schools.
2. *Republic Act 6725 (1989)*, which clarified the rule against discrimination against women in terms of wages, promotion and access to trainings.
3. *Republic Act 7877 (Anti-Sexual Harassment Act of 1995)* which criminalized sexual harassment in workplaces and school.
4. *Republic Act 8353 (Anti-Rape Law of 1997)* which expanded the very limited definition of rape in the Revised Penal Code and re-classified it from "Crimes against Chastity" to "Crimes against Persons."
5. *Republic Act 9262 (Anti-Violence Against Women and their Children Act of 2004)* which seeks to address the prevalence of violence against women and their children by defining what acts are considered violence against women and

providing remedies therefor.

6. *Republic Act 9710 (Magna Carta for Women of 2009)* is a comprehensive women's human rights law that seeks to eliminate discrimination through the recognition, protection, fulfillment and promotion of the rights of Filipino women, especially those belonging in the marginalized sectors of the society.
7. *Republic Act 11313 (Safe Spaces Act)* which expanded the coverage of the RA No. 7877 to include all forms of gender-based sexual harassment committed in educational or training institutions, workplaces, including online and public spaces. It also penalizes perpetrators who are peers or subordinate to the victim-survivors.
8. *Republic Act 11648 (Act of Raising the Age of Sexual Consent)* which recognized the right of children to be protected from sexual abuse and exploitation by increasing the age of statutory rape from 12 to 16 years old.
9. *Republic Act 11596 (Act Prohibiting the Practice of Child Marriage)* which penalized the facilitation of child marriage, solemnization of child marriage, and cohabitation with a child.

VII. SOME POINTS FOR REFLECTION

A. *Our laws are largely foreign in origin.*

It should be noted that most of our (prevailing) laws come from the Spaniards and the Americans.

B. *Change in the laws is a protracted process.*

It will also be noted that it takes so long to change the law. Even if the changing times call for an amendment or a repeal of the law, it takes quite a while to have a responsive rule. For example, even if more women have been doing "reproductive" work, i.e. work outside of the household, it was only in 1988 that there has been a repeal of the rule allowing men to control the academic activities of their wives.

C. *The law reflects the values imbedded in our culture.*

Remember that the law merely reflects the prevailing values of society at the time of its enactment. Thus, it becomes even more arduous to change a law if the culture has not changed. For example, the Anti Rape Law had a difficult time in Congress because the society's and legislators' (most of whom are men) view of women and of rape has not substantially changed so far.

MANIFESTATIONS OF GENDER BIAS

On a daily basis both men and women of all ages and stature perform acts that display prejudice toward one gender over the other. This prejudice is molded by our personal experiences, upbringing and culture. A simple example of this bias is when a stay-at-home woman who cares for her child, manages the household and does community work for an average of 12 hours, is asked what her work is will immediately answer-- “I don’t have a work”. In this situation, work done outside formal economy which is mostly dominated by men is “not considered as work”.

It is important for paralegals to be able to know what are the different manifestations of gender bias and to identify what are the practices relating to this, so as for them to be able to respond accordingly.

MANIFESTATION OF GENDER BIAS	FORMS	VISION
<p>ECONOMIC MARGINALIZATION is the process which forces women out into the periphery of economic & social life, on the periphery of decision-making process, as well as diminishing the value of the activities in which they engage and through which they contribute to the national development process.</p>	<ul style="list-style-type: none"> • Non-valuation/ non-recognition or undervaluation of women’s work • Women have less access to or control over resources and benefits • Unequal pay for work of equal value • Unequal or limited opportunities for women • Women’s vulnerability from exacting sexual favors 	<ul style="list-style-type: none"> • Equal pay for work of equal value • Economic Independence • Economic Opportunities

<p>GENDER STEREOTYPE is a generalized view or preconception about attributes or characteristics, or the roles that are or ought to be possessed by, or performed by, women and men. A gender stereotype is harmful when it limits women's and men's capacity to develop their personal abilities, pursue their professional careers and/or make choices about their lives.</p>	<ul style="list-style-type: none"> • Girls are expected to play with dolls and boys should play with trucks • Housekeeping and childcare are women's responsibility • Men always have the final say in choosing the place to live and the school for their children 	<ul style="list-style-type: none"> • Liberation from stereotyped images • Non-sexist child rearing • Non sexist language
<p>POLITICAL SUBORDINATION is the institutionalized subordination by men of women in terms of decision-making in families, organizations and in the society.</p>	<ul style="list-style-type: none"> • Higher status of men in the family, in organizations and in society • Men's decision generally prevails • Non-inclusion or not genuine participation of women in decision-making process • Women are placed in a lower rank or position, they are seen as weak, oppressed and owned by men 	<ul style="list-style-type: none"> • Recognition of women's capabilities • Quality of women participation in decision-making processes
<p>MULTIPLE BURDEN refers to the involvement of women in the three spheres of work, namely, the reproductive, productive and community work.</p>	<ul style="list-style-type: none"> • Women working for longer and more fragmented days than men 	<ul style="list-style-type: none"> • Shared parenting • Shared housework • Shared breadwinning



One of the roles of the paralegals is to integrate gender perspective into policies and programs that respond to the needs of women, men and persons of diverse SOGIESC in local communities. To do this, the paralegals must know the different powers, functions and structure of the government so they can engage with it accordingly. Aside from this, the paralegals are also expected to provide legal assistance to said groups of people in a gender-sensitive and gender responsive manner. It is, therefore, imperative that they be oriented about the Philippine legal system and the law. These topics will be discussed under Chapter II.

LAWS

I. KINDS OF LAWS.

A. Formal Laws

Formal laws of the society are usually written. Examples of formal laws are the: Family Code, Revised Penal Code and others.

B. Informal Laws

Informal laws refer to the customs and traditions of the people. These customs and traditions guide the lives of the people. While these are not usually written down and there is no obligation to comply with these laws, there are sanctions for not observing them.

Examples of informal laws which govern the “right conduct” of women and girls are not to go home at night, don’t be too friendly with men or boys, be subservient to your husbands, etc. If the woman or the girl does not observe these laws, she is subjected to sanctions and considered a “bad woman.”

Control over women’s and girl’s lives is made possible through these laws. It is the informal laws that are used more often and more effectively for this purpose which are also made bases for the formal laws.

II. SOURCE OF LAW

A. Formal Laws

Formal laws are made by legislators at the national level. These legislators are the Senators and the Representatives who are elected to the Congress of the Philippines. There are also local legislators. These are the councilors from the barangay, municipality, city barangay and the board members on the provincial level.

Formal laws can only be enacted by the above-mentioned persons as they are the ones with authority and duty to enact laws which are to be observed by everybody.

Ordinary citizens cannot enact laws because they are not authorized with the same duty, except in the process of “initiative.”

At present, if the sexes of the legislators are disaggregated, it becomes apparent that most people elected or appointed to enact formal laws are men.

B. Informal Laws

While informal laws are collectively developed by the members of society without a need of a formal authorization, it is still the men's viewpoint and opinions that are considered in the formulation of informal laws because men's status in society is higher than that of women. It is their voice which is mainly, if not exclusively, considered.

III. ELEMENTS OF FORMAL LAWS

1. Rules regarding the conduct of people;
2. Formulated by an authorized entity, particularly the legislative branch of government.
3. Obligation to comply with the rules among all persons which are covered by such; and
4. They are written.

IV. EXAMPLES OF LAWS IN THE PHILIPPINES

Titles of the formal laws of the Philippines and the periods during which they were enacted:

PERIOD	TITLE OF LAWS
American Period (1898-1946)	Commonwealth Act
Republic (1946 -1967)	Republic Act
Marcos Regime (1967 - 1986)	Batas Pambansa and Presidential Decree (enacted by the President under his legislative powers)
1986 Freedom Constitution (February 1986 -1987)	Executive Order (from the President because there was no legislature yet)
1987 Constitution (1987 - present)	Republic Act

THE PHILIPPINE LEGAL SYSTEM

The law does not exist in a vacuum. It subsists within a legal system. Who makes the laws, who implements the laws, and who interprets the laws, are important aspects of the study of law. It is indispensable for paralegals to have a full grasp and appreciation of the structure and operation of our government as the machinery of rule-making, rule implementation and rule-adjudication.

The legal system of the Philippines pertains to the entire system provided for by the Constitution and other laws relating to the framework of government and its administration.

To understand fully how the Philippine legal system works, it is paramount that a paralegal has the knowledge that a paralegal has the knowledge of the powers of the State.

1. **Police Power** – the power to restrain and regulate the use of liberty and property in promoting public welfare.
2. **Eminent Domain** – the power of the State to expropriate private property for public use, such as the construction of roads and the like, with due compensation.
3. **Power of Taxation** – the power to impose financial burden upon persons and property as a means of raising revenue to defray the necessary expenses of the government.

There are three (3) branches of government:

I. EXECUTIVE

A. **Nature.** Executive power is vested in the President by the people. The power of the President is delegated to the cabinet secretaries.

B. Composition

1. President
2. Vice-President

3. Cabinet: comprised of the department secretaries who serve as alter egos of the President within the competence of their respective departments, such as the Department of Interior and Local Government and others.

C. Some of the Duties/Powers of the President

1. Dutifully implement the law;
2. Appoint particular government officials;
3. Exercise control over all departments, bureaus, and officers;
4. Act as Commander-in-chief of the Armed Forces of the Philippines;
5. Grant executive clemency which includes pardon, amnesty, reprieves, commutations, remission of fines and forfeitures.
6. Enter into contracts or guarantees foreign loans;
7. Submit to Congress a budget as basis for the General Appropriation Act; and
8. Address Congress at the opening of its regular session and appear before it at any other time.

II. LEGISLATURE

A. **Nature.** Congress has two (2) chambers:

1. the Senate; and
2. the House of Representatives.

B. **Composition.** The Congress is composed of the following:

1. **Senate** which has twenty-four (24) members elected at-large
2. **House of Representatives:** There are now 312 seats
 - a. 253 from congressional districts;
 - b. 59 party-list representatives.

C. **Some of the Duties/ Powers of Congress**

1. Enact, amend and repeal laws;

2. Decide all contests relating to the election, returns and qualifications of its respective members;
3. Confirm the President's appointees through the Commission on Appointments;
4. Conduct inquiries in aid of legislation;
5. Declare the existence of a state of war;
6. Grant the President emergency powers;
7. Control the disbursement of public funds; and
8. Serve as tribunal for impeachment proceedings against the President, Vice-President, the Commissions on Audit, Civil Service and Elections, and the Ombudsman.

III. JUDICIARY

- A. **Nature.** Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been grave abuse of discretion on the part of any branch or instrumentality of the government.
- B. **Composition.** The Supreme Court is composed of a Chief Justice and fourteen (14) Associate Justices. The lower courts are composed of judges appointed by the President.
- C. **Some of the Duties/ Powers of the Judiciary**
 1. Decide controversies between parties;
 2. Judicial review to determine whether a government official agency has acted with grave abuse of discretion;
 3. Hear and decide cases affecting ambassadors, other public ministers, and consuls and petitions for certiorari, quo warranto, mandamus and habeas corpus;
 4. Appoint temporary judges of lower courts,
 5. Order a change of venue or place of trial,

6. Promulgate rules concerning the protection and enforcement of constitutional rights, procedure in all courts, the admission to the practice of law, and legal assistance to the underprivileged; and
7. Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

IV. INTER-RELATION AMONG THE BRANCHES

The importance of the existing form of government is the presence of separation of powers between its three branches. There is checks and balance among the different branches because each one is separate and independent from the other.

A. The Executive

1. *With the legislature*

- a. has veto power; and
- b. the proposed budget submitted to Congress is the basis for the appropriations bill.

2. *With the judiciary*

- a. because of executive clemency, court decisions may be set aside; and
- b. appoints the members of the Supreme Court and other courts.

B. The Judiciary

1. may invalidate enacted executive orders or laws, by declaring them unconstitutional; and
2. determine whether the acts of the executive or the legislative were performed within their authority or with abuse of discretion.

C. The Legislature

1. *With the Executive*

- a. may override the veto power of the President by a 2/3 vote of all its members;

- b. may declare the President's election as void;
- c. may review or revoke the President's declaration of martial law;
- d. may grant emergency powers to the President; and
- e. through the Commission on Appointments, approves Presidential appointees.

2. With the Judiciary

- a. prescribes the qualifications for lower court judges; and
- b. may enact new laws that will provide new interpretations for cases already decided by the court;

3. With both the executive and the judiciary

- a. fixes the salary of the President, Vice-President and judges;

V. CONSTITUTIONAL COMMISSIONS

There are three constitutional commissions that enjoy independence and full fiscal autonomy from the main branches of the government.

- A. **Civil Service Commission:** Act as the central personnel agency of the government, the CSC was mandated to establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service.
- B. **Commission on Election:** The COMELEC is generally mandated to enforce and administer all election laws and regulations.
- C. **Commission on Audit:** The COA has the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of and expenditures or uses of funds and property owned or held in trust by or pertaining to the Government.

VI. COMMISSION ON HUMAN RIGHTS

The CHR, as the Philippines' national human rights institution, is mandated to conduct investigations on human rights violations against marginalized and vulnerable sectors of the society, involving civil and political rights. While it is also an independent office that was created by virtue of the 1987 Constitution, unlike the three constitutional commissions above, the CHR enjoys fiscal autonomy only in a limited sense.

V. LOCAL GOVERNMENT

The four kinds of local government units (LGUs) are the: (i) Barangay; (ii) Municipality; (iii) City and the (iv) Province. The branches of the government operate at the local level through the following:

A. Executive

The Chief executives are the Governor (for the province), Mayor (for the municipality and city), and the Punong Barangay (for the barangay).

Except for the barangay, the chief executive is assisted by the vice-governor or vice-mayor.

B. Legislature

The councilors of the local government units enact the ordinances and resolutions that constitute the law within the province, city, municipality or barangay.

These ordinances and resolutions are passed by the councilors when they convene as a legislative body. The Vice-Governor or Vice-Mayor or Punong Barangay, as the case may be, presides over these councils.

C. Judiciary

The Judiciary has no existing counterpart at the local government level. However, within the barangay, there is the “Katarungang Pambarangay” where members try to settle disputes through conciliation proceedings.

PARALEGALISM



I. PHILOSOPHY OF PARALEGALISM

The concept of paralegalism is one way by which women and girls are educated and empowered with the use of basic legal knowledge to protect their rights. The use of law as a means for protecting basic human rights of women requires conscientized society and individuals who can guide others in the use the law. The qualifications, duties and tasks of a paralegal are important part of the paralegal training.

II. CONCEPT

A paralegal is an individual who is knowledgeable about the legal skills but is not a lawyer. The paralegal works according to the legal needs of the people's organization without having to ask for direct assistance from a lawyer.

A. BASES FOR PARALEGALISM

1. VIEWS ON CHANGE

- a. **CHARITY.** It has no intention to change the societal structures. This view accepts the present structures, without seeing its limitations. The assistance extended is only temporary, only for particular cases, and only for as long as the individual client needs it. Legal assistance is viewed as a free service to be given away to the unfortunate victims of society.
- b. **DEVELOPMENTAL.** It embraces the view that there is a need for change. However, change mostly comes from above or from those who have the power. The effects of the change are felt by the masses when businesses and the economy in general become better.

As a consequence of the assistance to be provided to people, it is expected that their social status will get better.

However, there is no intention to change the whole system, but with maximizing the resources and enhancing the skills of the people, more will be benefited.

- c. **LIBERATIONIST.** Genuine change can only come about if there is a thorough structural change. Thus, it is necessary to strengthen and mobilize the basic sectors. The change it seeks comes from a conscientized and strong movement of workers, farmers and urban poor.

2. THE SOCIAL RESPONSIBILITIES

- a. Lack of capacity of the different basic sectors to protect their interests;
- b. Low number of lawyers cannot support the legal needs of sectors;
- c. Only the rich has the means to hire lawyers to protect their interest;
- d. Most lawyers work within the framework of and supportive of the present system of inequality;
- e. The remedy given by the client-lawyer relationship is only temporary;
- f. Most people are dependent on the lawyer in the protection of their rights;

- g. here is a need to know and use the law in order to change the present inequitable system of society; and,
- h. Genuine change can only be realized if it springs from people and communities belonging to the basic sectors of society.

B. BASES FOR THE FORMATION OF PARALEGALS

1. People should not passively accept the present legal and social system;
2. The over-dependence of people on lawyers supports the present social system. The basic sectors of society should protect their interest and in order to do this, they should not be overly dependent on lawyers; and
3. Paralegalism is a necessary element where people can work within the premises of the law while working for structural change.

C. DUTIES OF A PARALEGAL

The paralegal has various duties, to wit:

1. WITH THE COURT

- a. Gathering evidence necessary for the resolution of the case;
- b. Interviewing witnesses; and
- c. Following-up the cases pending before the court

2. WITH THE BASIC SECTORS OF SOCIETY

- a. Organizing people's organizations;
- b. Explaining to people their rights and the laws affecting their sector;
- c. Presenting the inadequacy of the law and its implementation; and
- d. Awareness-raising and organizing of the basic sectors.

3. TOWARDS CHANGING SOCIETY

- a. Solidarity with citizens in looking for solutions to social problems;
- b. Promoting a different kind of relationship between a lawyer and client striving for a relationship that is not overly-dependent.

- c. Continuous organization for the purpose of preparing people in their struggling for their rights; and
- d. Advocating for laws that promote the rights of the basic sector.

4. **TOGETHER WITH THE LAWYER**

- a. Helping people in the quest for solutions to their problems; and
- b. Mobilizing people in order to hasten the struggle for the protection of their rights.

TRADITIONAL LEGAL AID VERSUS ALTERNATIVE LEGAL AID

TRADITIONAL LEGAL AID	ALTERNATIVE LEGAL AID
Accepts without question the legitimacy of the legal system and the social setting in which it thrives.	Recognizes that there is inequality in the societal structure.
Recognizes that all laws are legitimate. These laws must be implemented to the fullest.	Does not accept all laws as true and legitimate, holds the view that there is a need to change laws that are oppressive
Thinks that injustice in society is due to the human frailty and to the wrong implementation of laws.	Reasons out that it is structural inequality which is the root of injustice in society.
Legal aid is a form of charity to the unfortunate.	Encourages self-confidence and collective action and discourages over-dependence on lawyers.
Maintains a lawyer-client relationship that is overly-dependent.	Has a perspective of changing the societal structures.
Does not promote any strategic change in the societal structure.	Views legal aid as an instrument of change in society.



Everyone is affected by gender inequality but women and girls are most impacted with discrimination, violence and exploitation. One of the barriers in exercising the full range of their human rights is the law governing in their community. In recent years, there have been developments in law that realize the different rights and entitlements of women and girls, such as their sexual and reproductive health and rights, economic rights, family rights and participation rights. This Chapter will provide a comprehensive discussion of laws implementing the aforesaid categories of rights. The knowledge about these laws will strengthen not just the paralegals but also the victim survivors and other stakeholders in their fight to eliminate gender discrimination, exploitation and abuse.

WOMEN'S RIGHTS ARE HUMAN RIGHTS

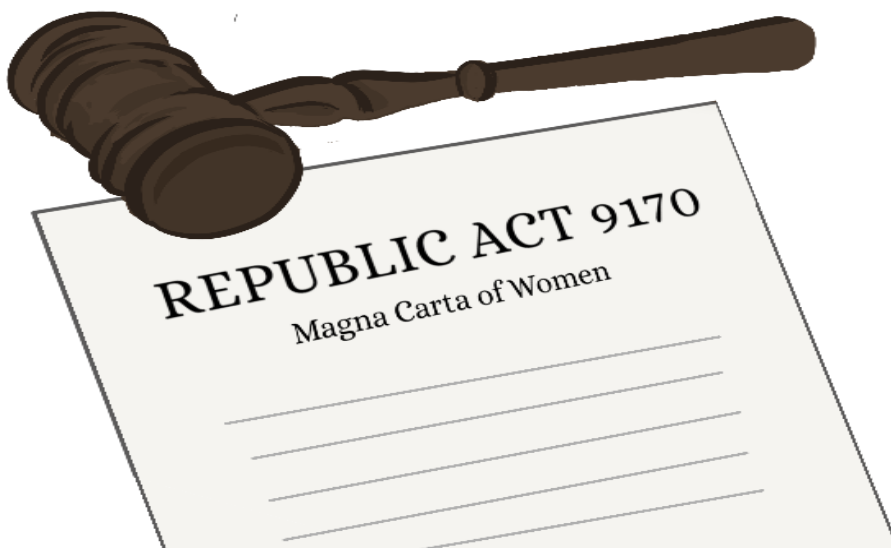
I. BASIC PRINCIPLES OF HUMAN RIGHTS¹

- A. **Human rights are UNIVERSAL.** This means that all human beings are equally entitled to human rights.
- B. **Human rights are INALIENABLE.** Human rights should not be taken away, except in specific situations and according to due process. For instance, a person's right to liberty may be restricted if a court of law finds him or her guilty of committing a crime.
- C. **Human rights are INDIVISIBLE and INTERDEPENDENT.** This means that one set of rights cannot be enjoyed fully without the other. For instance, making progress in civil and political rights makes it easier to exercise economic, social, and cultural rights. Similarly, violations of economic and cultural rights can negatively affect many other rights.
- D. **Human rights are EQUAL.** Article 1 of the United Nations Universal Declaration of Human Rights (UDHR) states that "All human beings are born free and equal in dignity and rights." Freedom from discrimination, set out in Article 2, is what ensures this equality.
- E. **Human rights are NON-DISCRIMINATORY.** Non-discrimination cuts across all international human rights law. This principle is present in all major human rights treaties. It also provides the central theme of 2 core instruments: The International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.
- D. **Human rights are both RIGHTS and OBLIGATIONS.** State-signatories have the obligation under international law to respect, protect, and fulfill human rights.
 - 1. The obligation to **respect** means that States must refrain from interfering with or curtailing the enjoyment of human rights.

2. The obligation to **protect** requires States to protect individuals and groups against human rights abuses.
3. The obligation to **fulfill** means that States must take positive action to facilitate the enjoyment of basic human rights. On the other hand, while individuals are entitled to human rights, they are also under obligation to respect and stand up for the human rights of others.

MAGNA CARTA OF WOMEN

The Magna Carta of Women² (MCW) is a comprehensive law on women's human rights that seeks to eliminate discrimination against women by recognizing, protecting, fulfilling, and promoting the rights of Filipino women, especially those in the marginalized sectors. The law defines **DISCRIMINATION AGAINST WOMEN** the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on the basis of the equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field;



- I. Any act or **omission**, including by law, policy, administrative measure, or practice, that directly or indirectly excludes or restricts women in the recognition and promotion of their rights and their access to and enjoyment of opportunities, benefits, or privileges;
- II. A measure or practice of general application for mechanisms to offset or address sex or gender-based disadvantages or limitation on women as a result of which, they are denied or restricted in the recognition and protection of their rights and in their access to and enjoyment of opportunities, benefits, or privileges, or women, more than men are shown to have suffered the greater adverse effects of those measures or practices; and
- III. Discrimination compounded by or intersecting with other grounds, status, or condition, such as ethnicity, age, poverty, or religion.

A. The MCW also spells out every woman's right to the following:

1. Protection from all forms of violence, including those committed by the State.
2. Protection and security in times of disaster, calamities, and other crisis situations.
3. Participation and representation.
4. Equal treatment before the law.
5. Equal access and elimination of discrimination against women in education, scholarships, and training.
6. Equal participation in sports.
7. Non-discrimination in employment in the field of military, police, and other similar services.
8. Non-discriminatory and non-derogatory portrayal of women in media and film.
9. Comprehensive health services and health information and education covering all stages of a woman's life cycle.
10. Gynecological leave benefits.
11. Equal rights in all matters relating to marriage and family relations.

The MCW also guarantees the civil, political, and economic rights of women in the marginalized sectors. It defines “*marginalized sectors*” as those who belong to the basic, disadvantaged, or vulnerable groups who are mostly living in poverty and have little or no access to land, basic social and economic services such as health care, education, water and sanitation, employment and livelihood opportunities, housing security, physical infrastructure, and the justice system.

These include but are not limited to women in the following sectors or groups: small farmers and rural workers, fisherfolk, urban poor, workers in the formal economy, workers in the informal economy, migrant workers, indigenous peoples, Moro, children, senior citizens, persons with disabilities, and solo parents.

B. The MCW guarantees their right to the following:

1. **Food security and resources for food production**, including equal rights in the titling of the land and issuance of stewardship contracts and patents;
2. **Localized, accessible, secure, and affordable housing;**
3. **Employment, livelihood, credit, capital, and technology;**
4. **Skills training, scholarships**, especially in research and development aimed towards women friendly farm technology;
5. **Representation and participation** in policy-making or decision-making bodies in the local, regional, national, and international levels;
6. **Access to information** regarding policies on women, including programs, projects and funding outlays that affect them;
7. **Social protection;**
8. **Recognition and preservation of cultural identity and integrity** provided that these cultural systems and practices are not discriminatory to women;
9. **Inclusion in discussions on peace and development;**
10. **Services and interventions for women in especially difficult circumstances or WEDC;**
11. **Protection of girl-children** against all forms of discrimination in education, health and nutrition, and skills development; and **Protection of women senior citizens.**

Local government units (LGUs) are mandated to deliver services and interventions for **women who are in difficult circumstances**, such as temporary and protective custody, medical and dental services, psychological and psychiatric evaluation, counseling and legal services, productivity skills capability building, livelihood and financial assistance, job placement, and transportation assistance.

Filipino women living abroad also benefit from the law. Section 37 of the MCW mandates the **designation of a gender focal point in the consular section of Philippine embassies or consulates.**

IMPLEMENTATION OF THE LAW

Under the MCW, the State, **the private sector, society in general, and all individuals** shall contribute to the recognition, respect, and promotion of the rights of women defined and guaranteed in the Magna Carta of Women defined under the law.

Still, it is the Philippine Government that shall have the primary duty to implement the said law.

This means that **all government offices, including local government units and government-owned and controlled corporations, shall be responsible for implementing the provisions of the Magna Carta of Women that falls within their mandate, particularly those that guarantee the rights of women that require specific action from the State.**

The **Commission on Human Rights** shall act as the **Gender and Development Ombudsman** to ensure the promotion and protection of women's human rights.

MARRIAGE AND FAMILY RELATIONS



One of the laws a paralegal must study is The Family Code of the Philippines, which became effective on 04 August 1988. The rules governing marriage are an important training component in the study of violence against women which is apparent and rampant within the family home. Considering the prevalence of battery and other forms of violence within the family, it is necessary for a paralegal to understand the legal aspects of family life.

MARRIAGE

I. DEFINITION

Marriage is a special contract of permanent union between a man and a woman entered into in accordance with the law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation.²

II. REQUISITES OF A VALID MARRIAGE

A. Essential

1. Legal capacity of the parties: a male and a female and both should be at least 18 years old
 - a. 18-20 years old: parental consent is required
 - b. 21-25 years old: only parental advice is necessary
2. Consent freely given in the presence of the solemnizing officer

B. Formal

1. Authority of the solemnizing officer
2. A valid marriage license, except in cases provided by law
3. Marriage ceremony: the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife. This should take place in the presence of not less than two (2) witnesses of legal age.

C. Effects of Absence or Defect in the Requisites

1. Absence of any of the essential or formal requisites: The marriage is void ab initio.

² The Family Code of the Philippines (Article 1).

Exception: Under Article 35 of the Family Code, lack of authority of the solemnizing officer does not render the marriage void if either or both contracting parties believed in good faith that the solemnizing officer had authority. This is known as a “good faith marriage”

2. Defect in the essential requisites: The marriage is voidable.
3. Irregularity in the formal requisites: The marriage is valid but the party responsible for the irregularity shall be liable civilly, administratively, or criminally.

A marriage is valid when all the formal and essential requisites of marriage are satisfied by the parties.

A void ab initio marriage is one that is invalid from the very beginning. It is considered “to have never taken place and cannot be the source of rights”³ However, a voidable or annulable marriage is valid until the court declares it terminated.

III. DUTIES OF HUSBAND AND WIFE

1. Live together
2. Observe mutual love, respect and fidelity
3. Render mutual help and support

III. VOID MARRIAGES

The following are considered void marriages:

- A. Marriages that lack any one of the essential or formal requisites:⁴
 1. A party is below eighteen (18) years of age;
 2. The solemnizing officer had no legal authority to perform marriages, unless either or both parties believed in good faith that he had the legal authority to do so;
 3. There was no valid marriage license;

³ Suntay v. Cojuangco-Suntay, G.R. No. 132524, 29 December 1998
⁴ Family Code (Article 35).

4. The marriage is bigamous or polygamous;
 5. The marriage was contracted through a mistake of one of the parties as to the identity of the other; and
 6. The marriage was contracted subsequent to a judgment of annulment or absolute nullity of a previous marriage where the judgment has not been recorded in the appropriate civil registry.
- B. A marriage contracted by a party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage⁵ (See Chapter III on Psychological Incapacity for the detailed discussion.)
- C. Incestuous marriages or marriages between the following relatives:⁶
1. Between ascendants and descendants of any degree or
 2. Between brothers and sisters, whether of full or half-blood.
- D. Marriages that are against public policy, which are the following:⁷
1. Between collateral blood relatives up to the 4th civil degree (nephew/niece, aunt/uncle, and first cousins);
 2. Between step-parents and step-children;
 3. Between parents-in-law and children-in-law;
 4. Between the adopting parent and the adopted child;
 5. Between the surviving spouse of the adopting parent and the adopted child;
 6. Between the surviving spouse of the adopted child and the adopter;
 7. Between the adopted child and the legitimate child of the adopter;
 8. Between adopted children of the same adopter; or
 9. Between parties where one, with the intention to marry the other, killed the other person's spouse, or his/her own spouse.

5 Family Code (Article 36).

6 Family Code (Article 37).

8 Family Code (Article 38)

IV. VOIDABLE MARRIAGES

A marriage may be annulled on the following grounds, which must be proven to be existing at the time of marriage:⁸

1. Where the party seeking the annulment was between 18 and 21 years of age and the marriage was contracted without the consent of his/her parents or guardian;
2. Where one of the parties was of unsound mind;
3. Where the consent of either party was obtained by fraud;

*The fraud being referred to above constitutes any of the following:*¹⁰

- a. Non-disclosure of a previous conviction by final judgment involving moral turpitude;

Note: Moral turpitude includes everything that is contrary to justice, honesty, or good morals.⁹ The crimes under the Revised Penal Code are considered as crimes involving moral turpitude.

- b. Concealment of a sexually transmitted disease, regardless of its nature, existing at the time of the marriage;
 - c. Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;
 - d. Concealment of drug addiction, habitual alcoholism, homosexuality, or lesbianism, existing at the time of marriage.
4. Where consent of either party was obtained through force, intimidation, or undue influence;
 5. Where either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or
 6. Where either party was afflicted with sexually transmissible disease found to be serious and appears to be incurable.

The grounds for the annulment of a marriage are only those specified by law. Irreconcilable differences, immaturity, or infidelity are not grounds considered by the Supreme Court to nullify or annul a valid marriage.

⁸ Family Code (Article 45).
⁹ In Re: Vinzon, 19 SCRA 815, 27 April 1967

GROUND	WHO MAY FILE THE SUIT	PRESCRIPTION PERIOD
1. No parental consent	a. Parent or guardian having legal charge of the party who did not give consent	Anytime before the party without consent reaches 21 years old
	b. Party who did not give consent	Within 5 years after reaching 21 years old
2. Insanity	a. Sane spouse without knowledge of insanity	At anytime before death of either spouse
	b. Relative, guardian or person having legal charge of the insane spouse	At anytime before death of either spouse
	c. Insane spouse	During lucid interval or after regaining sanity
3. Fraud	Injured party	Within 5 years after discovery of fraud
4. Vitiating Consent	Injured party	Within 5 years from the time force, intimidation or undue influence disappeared
5. Incapacity to consummate; sexually transmitted disease (STD)	Injured party	Within 5 years of marriage ceremony

Prescriptive Period for Voidable Marriages

A prescriptive period is the time within which a case can be filed in court. After such period, a case can no longer be filed.

It is important to know until when one can file a case based on any of the grounds enumerated for voidable marriages. If the period provided by law has already lapsed, a case can no longer be filed in court.

PARENTAL AUTHORITY



The Family Code also governs parents' authority over and responsibilities to their children, as well as children's obligations to their parents. The issue of violence at home requires an understanding of the scope and extent of this authority. In addition, the custody of children is one of the major issues that spouses need to address in case of their separation.

I. CONCEPT

Parents have the natural right and duty to take care of their children. This duty includes caring for the person and property of minor children.¹⁰

10 Family Code (Article 209).

For their part, children have the duty to observe respect and reverence toward their parents.

Children are obliged to obey their parents as long as the former are under the latter's parental authority.¹¹

II. PURPOSE OF AUTHORITY

The purpose of the law in granting parental authority are the following:

1. To care for and rear children for civic consciousness and efficacy and
2. To develop the moral, mental and physical character and well-being of children.

Parents shall be civilly liable for the injuries and damages caused by the acts and omissions of their minor children living in their company and under their parental authority. However, they may avoid liability if they can show that they exercised the diligence required under particular circumstances.

[Note: The enumeration pertains to the exercise of parental authority rather than its transfer or termination]

Parental authority and responsibility may not be renounced or transferred, except in the cases authorized by law, such as adoption, or in cases where there is final judgment divesting parental authority.

1. Over legitimate children: The father and the mother shall jointly exercise parental authority. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.
2. Over illegitimate children: Illegitimate children shall be under the parental authority of their mother. Under the law, the father has no authority over the child although he may be granted visitation rights.

III. CIRCUMSTANCES THAT MAY AFFECT PARENTAL AUTHORITY

In case of the absence or death of either parent, the parent present shall continue exercising parental authority.

11 Family Code (Article 211).

Parental authority is not affected by the remarriage of the surviving spouse, unless the court appoints another person to be the guardian of the person or property of the children.

In case of separation of the parents, the parent designated by the Court shall exercise parental authority.

In making the designation, the Court shall take into account all relevant considerations, especially the choice of the child over seven (7) years of age. If the child is younger than seven (7) years old, authority shall be exercised by the mother, unless there are compelling reasons for granting the authority to another person.

In case of death, absence, or unsuitability of the parents, the surviving grandparent shall exercise substitute parental authority.

In case there are several grandparents surviving, the Court will designate the grandparent who shall exercise substitute parental authority, taking into account all relevant considerations, especially the choice of the child over seven (7) years of age, unless the person chosen is unfit.

IV. SUBSTITUTE PARENTAL AUTHORITY

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

1. The surviving grandparent;
2. The oldest brother or sister, over twenty-one (21) years of age, unless unfit or disqualified; or
3. Heads of children's homes, orphanages, and similar institutions (after summary judicial proceedings have been conducted) in the case of foundlings, abandoned, neglected, or abused children.

V. NATURE OF LIABILITY

The parents, judicial guardians, or the persons exercising substitute parental authority over the minor shall be subsidiarily liable.

VI. SPECIAL PARENTAL AUTHORITY

Individuals or institutions with special parental authority:

1. Schools;
2. School administrators;
3. Teachers; and
4. Individuals organizations, or institutions engaged in childcare.

The above-mentioned persons and institutions shall have special parental authority and responsibility over minor children while they are under their supervision, instruction, or custody.

The scope extends to all authorized activities whether inside or outside the premises of the school. However, once children have passed the minority age or as soon as they have been officially removed from the school or institution, the special parental authority and responsibility ceases.

Individuals and institutions given special parental authority are principally and solidarily liable for damages caused by the acts or omissions of the minor, unless it is proven that they exercised the proper diligence required under particular circumstances.

VII. EFFECT OF PARENTAL AUTHORITY UPON THE PROPERTY OF CHILDREN

The following are considered the property of the child:

1. Those earned or acquired with the child's work or industry;
2. Those acquired through sale, barter or other onerous title;
3. Those acquired by gratuitous titles such donations or inheritance;
4. Fruits and income of the property of child; and
5. Insurance proceeds.

Where the value of the property or the annual income of the child exceeds P50,000, the parent concerned must furnish a bond not less than 10% of the value of the property or the annual income. If the value of the property or annual income does not exceed P50,000, parental authority may be exercised even without a bond.

The property of the child shall be devoted exclusively to the child's support and education. However, if the title or document of transfer provides for other purposes,

the property shall be used as provided. The rights of the parents over the fruits and income of the child's property shall be limited. They are required to use those, primarily, for the child's support and, secondarily, for the collective daily needs of the family.

VIII. TERMINATION OR DEPRIVATION OF PARENTAL AUTHORITY

- A. The following are the grounds for the permanent termination of parental authority:
1. Death of the parents;
 2. Death of the child;
 3. Emancipation of the child (when the child reaches 18 years of age); and
 4. Subjecting the child or allowing the child to be subjected to sexual abuse.
- B. Parental authority can be terminated on the following grounds but may be revived by judgment:
1. Adoption of the child;
 2. Appointment of a general guardian;
 3. Judicial declaration of abandonment of the child;
 4. Final judgment of court divesting the party concerned of parental authority; and
 5. Judicial declaration of absence or incapacity of the person exercising parental authority.

The immediately preceding enumeration of grounds are not permanent and thus may be restored or returned to the parents or persons originally exercising it. Thus, under the following instances, parental authority is revived:

1. If the adoption is judicially rescinded and the child has not yet reached the age of majority, parental authority is reinstated to the parents by nature;
2. In case of termination of guardianship over the child, parental authority is restored to the persons previously exercising it, if the child is still a minor;
3. In case of a judicial restoration of parental authority to the abandoning parent upon the latter's return;
4. In case of judicial restoration of parental authority to the person judicially divested of it;

5. In case of judicial restoration of the parental authority to the absent parent who has returned or to an incapacitated person who has regained his or her capacity.

IX. SUSPENSION OF PARENTAL AUTHORITY

The following are reasons for the suspension of parental authority by the court:

1. Conviction of the parent of a crime that carries with it the penalty of civil interdiction;¹²
2. Treating the child with excessive harshness or cruelty;
3. Giving the child corrupting orders, counsel, or example;
4. Compelling the child to beg;
5. Subjecting the child or allowing the child to be subjected to acts of lasciviousness;¹³
and
6. Tolerating the commission of the abovementioned acts by third persons.

The Court shall deprive the guilty party of parental authority if the degree of the aforementioned circumstances is grave or serious or when the welfare of the child demands such deprivation. Where only one parent is guilty, the other one who is innocent may not be deprived of the custody of the child.

Revocation of the Suspension of Parental Authority

For grounds no. 2 to 5, the suspension or deprivation may be revoked and the parental authority revived in a case filed for such purpose or in the same proceeding if the Court finds that the cause for the suspension or termination has ceased and will be repeated. If the suspension was due to a conviction, the authority is automatically reinstated after the penalty has been served or if the offender is pardoned or covered by a grant of amnesty.¹⁴

12 Family Code (Article 230).

13 Family Code (Article 231).

14 Family Code (Article 230).

PROPERTY RELATIONS



One of the effects of marriage has to do with the acquisition and administration of property or the property relations of the spouses. The law allows the parties to make their own rules to govern their economic relationship through the execution of a marriage settlement also known as “pre-nuptial agreement” Their property relations shall be primarily governed by their marriage settlement if one has been executed. If none, the same will be governed by the system of absolute community of property as long as the marriage was contracted after the effectivity of the Family Code on 4 August 1988 or by the regime of conjugal partnership of gains before the said date.

Even though the rules on property relations have been changed by the Family Code, wherein both spouses now have equal rights in the administration of their properties, there are still provisions in the Code contending that, in case of conflicting decisions on the administration and utilization property, the husband’s decisions shall prevail.

I. PROPERTY REGIMES

The property relations between the spouses shall be governed by their pre-nuptial agreement or, in its absence, by the provisions of the Family Code. The possible property regimes are the following:

- a. Absolute community of property;
- b. Conjugal partnership of gains;
- c. Complete separation of properties;
- d. A combination of the above regimes; and
- e. Any other regime (e.g., dowry system).

II. REQUISITES OF A VALID PRE-NUPTIAL AGREEMENT

- a. It is written;
- b. It is signed by the parties;
- c. It is executed before the celebration of the marriage;
- d. Any modification must be in writing, signed by the parties and executed before the celebration of marriage;
- e. Only the spouses can be parties to the agreement;
- f. The marriage must be validly celebrated after execution of the agreement;
- g. The agreement must be registered in the local civil registry in order to affect third persons;
- h. The agreement must embrace all properties owned by the spouses in accordance with the rules provided by law, except those excluded by the law; and
- i. It must not be contrary to law, morals good customs, public policy, or public order.

III. EXAMPLES OF VOID AGREEMENTS

The following provisions may render the marriage settlement or pre-nuptial agreement void:

- a. Prohibiting the parties from marrying others even after the marriage is dissolved;
- b. Stating that the parties may live separately while married;
- c. Prohibiting a party from seeking separation despite the existence of legal grounds;
- d. Stating that the property of the spouses shall be administered by a third party;
or
- e. Stating that all properties of the wife shall go to the husband (or vice versa).

IV. ABSOLUTE COMMUNITY OF PROPERTY

The future spouses may agree upon the regime of absolute community of property in a marriage settlement. In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community of property shall govern.

Under this regime, the spouses shall jointly own all the property they possess before their marriage and acquired during the marriage, except those properties excluded by law or in a marriage settlement. Upon the dissolution of the marriage, the net remainder of the properties shall be divided equally between the spouses and their heirs.

A. Commencement of the Community regime

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.

B. Properties constituting of the community property

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

C. Properties excluded from the community property

The following shall be excluded from the community property:

1. Property that was donated to or inherited by either spouse during the marriage, and the income from the property, unless it is expressly provided by the donor, testator, or grantor, shall form part of the community property;
2. Property for personal and exclusive use of either spouse, but jewelry shall form part of the community property; and
3. Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, as well as the fruits and the income, if any, of such property.

V. CONJUGAL PARTNERSHIP OF GAINS

A. Concept

1. In conjugal partnership of gains, the husband and wife place in a common fund
 - a. the proceeds, products, fruits, and income from their separate properties;
 - b. those properties acquired by either or both spouses through their efforts; and
 - c. those properties acquired by either or both spouses by chance (like prizes won from lottery).
2. Upon dissolution of the marriage or of the partnership, the net gains or benefits obtained by either or both spouses shall be divided equally between them, unless otherwise agreed on in a marriage settlement.

Under the conjugal partnership, the exclusive properties of the spouses shall remain separate and distinct from those they acquired during the marriage.

B. Conjugal partnership property

The following shall form part of the conjugal partnership:

1. Those acquired during the marriage at the expense of the common fund, whether the acquisition be for the partnership or for only one of the spouses. Take note that if the money came from the common fund, the property acquired belongs to the conjugal partnership;
2. Those obtained from the labor, industry, work, or profession of either or both of the spouses which also include pensions and benefits where premium payments were deducted from the salary of retiring spouse;

3. Income and other benefits due or received during the marriage from the common property, as well as the net fruits from the exclusive property of each spouse;
4. The share of either spouse in the hidden treasure when the law awards to the finder or owner 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, but losses shall be borne exclusively by the loser-spouse.

C. Exclusive property of the spouses

The following are considered the exclusive property of each spouse:

1. That which is brought to the marriage as his or her own (excluded from the common fund);
2. That which each acquired during the marriage by gratuitous title, except for:
 - a. Property acquired by gratuitous title from third persons, such as by gift or simple donations;
 - b. Property acquired by onerous title, according to the following:
 - i. By redemption: ownership depends on whoever has the right to redeem;
 - ii. By barter: depends on who owns the traded property;
 - iii. By sale: if the funds used were the exclusive money of one of the spouses, the purchased property shall remain separate from the conjugal partnership; or
 - iv. By onerous donation: if the property was donated to only one of the spouses, it shall be separate from the conjugal partnership and the charges advanced shall be borne by his/her exclusive property.
 - c. That which is acquired by right of redemption, by barter, or by exchange with property belonging to only one of the spouses.
 - d. That which is purchased with exclusive money of the wife or of the husband.

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

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

D. Property bought on installments

1. If the property bought in installments is paid partly from the exclusive funds of either or both spouses and partly from conjugal funds, full ownership shall belong to the buyer/s, if full ownership was vested before the marriage. Any amount advanced by the partnership shall be reimbursed by the partnership.
2. If the property bought on installments is paid partly from exclusive funds of either or both spouses and partly from conjugal funds, full ownership shall belong to the conjugal partnership, if the full ownership was vested during the marriage. Any amount advanced by the spouse shall be reimbursed by the same spouse/s.

VI. OWNERSHIP OF IMPROVEMENTS MADE ON A PROPERTY

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

1. When the cost of the improvements made by the conjugal partnership and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of the spouses shall belong to the conjugal partnership, subject to reimbursement by the partnership of the value of the property of the owner-spouse at the time of improvement;
2. But if the resulting increase in value is less than the value of the property at the time of the improvement, the property shall be retained in ownership by the owner-spouse, subject to reimbursement to the partnership for the cost of the improvement.

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

VII. CHARGES

- A. **The following may be charged to the community property or the conjugal partnership:**
 1. Support of the spouses, their common children, and the legitimate children of either spouse.
 2. The support of illegitimate children shall be borne by the separate property of the parent-spouse, but if there are no separate properties or if such is insufficient, the community property and the conjugal partnership shall advance the support, which shall be deducted from the share of the spouse with illegitimate children upon the liquidation of the community property or the conjugal partnership;
 3. All debts and obligations contracted during the marriage for the benefit of the community or conjugal property by both spouses or either of them with the consent of the other; 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 and minor repairs upon the community property and 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 start or complete a professional, vocational, or other activity for self-improvement;
 7. Debts incurred before the marriage by 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 starting or completing a professional, vocational or other activity for self-improvement; and

9. Expenses of litigation between the spouses, unless the suit is found to be groundless.

B. Obligation of the conjugal partnership of gains

Aside from those enumerated above, the conjugal partnership shall be liable for the following obligations in case the spouse who is bound should have no or insufficient exclusive property. These payments made, however, shall be considered as advances that will be deducted from the spouse's share at the time of the liquidation of the partnership.

1. Personal debts contracted by the husband or the wife before the marriage other than those exclusively for common legitimate children's self improvement;
2. Support of illegitimate children of either spouse; and
3. Liability of either spouse for a crime or quasi-delict.

VIII. ADMINISTRATION OF THE COMMUNITY PROPERTY AND CONJUGAL PARTNERSHIP

In both regimes, the administration and enjoyment of the properties shall belong to both spouses, jointly. In case of disagreement, the husband's decision shall prevail, but the wife may seek recourse in the courts for proper remedy.

A spouse may assume sole powers of administration in the event that the other spouse is incapacitated or unable to participate in the administration (such as when the spouse is working abroad).

IX. DISPOSITION, SALE, OR MORTGAGE OF PROPERTY

The authority to dispose, sell, or mortgage property shall belong to both spouses jointly.

In case one spouse is designated as an administrator of the property, the disposition, sale, or mortgage of property requires his/her consent.

Any disposition, sale, or mortgage without the written consent of the other spouse or authority of the court shall be void. However, the transaction shall be considered

as a continuing offer on the part of the consenting spouse and the third person.

This 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.

X. DISSOLUTION OF THE COMMUNITY PROPERTY AND CONJUGAL PARTNERSHIP

The community property or conjugal partnership is terminated under any of the following circumstances:

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.

XI. EFFECT OF SEPARATION DE FACTO

There is “separation de facto” or separation in fact when the spouses are separated without going through the courts.

This kind of separation shall not affect either the community property or the conjugal partnership, except that:

1. The spouse who leaves the conjugal home or refuses to live therein, without just cause, has no right to be given support;
2. When the law requires the consent of one spouse to any transaction, judicial authorization shall be obtained in a summary proceeding;
3. In the absence of sufficient community or conjugal property, the separate property of the 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 dispose or mortgage any specific separate property of the other spouse and use its fruits or proceeds to satisfy the latter’s share.

XII. ABANDONMENT



A spouse is deemed to have abandoned the other when he or she has left the conjugal dwelling without any intention of returning.

The spouse who has left the conjugal dwelling and has not returned for a period of there (3) months or who 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.

In such case, the abandoned spouse may petition the court for:

1. Receivership;
2. Judicial separation of property; or
3. Authority as sole administrator of the community property or conjugal partnership, subject to such precautionary conditions as the court may impose.

XIII. SEPARATION OF PROPERTIES

The following rules shall govern if there is an express declaration in the marriage settlement or pre-nuptial agreement that the property regime of the spouses shall be complete separation of property.

These rules shall also govern when the court orders the separation of property.

1. The separation of property between the spouses during the marriage shall not take place, except by judicial order or when stipulated in the marriage settlement.
2. Each or both spouses may file a petition with the court for the dissolution of the community property or conjugal partnership based on any of the following causes:
 - 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 the petitioner has been decreed by the court;
 - d. That the spouse of the petitioner has abandoned the latter or failed to comply with his obligations to the family; and
 - e. That at the same time of the petition, the spouses have been separated in fact for at least one year and reconciliation is highly improbable.

PROVISIONAL ORDERS



Under the rules covered by A.M. No. 02-11-12-SC issued by the Supreme Court, which took effect on 15 March 2003, the provisional orders for support, custody, visitation rights, hold-departure orders, and protection orders may be availed of during the pendency of cases for, declaration of nullity of marriage, and annulment, or legal separation.

From the word “provisional,” these orders are intended to temporarily resolve the issues of support, custody, visitation rights, etc., while the court has yet to make a final declaration of nullity of marriage or annulment.

At any time during the proceeding for legal separation or declaration of nullity of marriage or annulment, the court, by itself or upon the request of any of the parties or guardian, may issue the following provisional orders with or without need of a hearing.

These orders may be enforced immediately and for such period and conditions as the court may determine.

However, the court shall provide only for the support of the spouses and the support and custody of the common children if there are no adequate provisions in a written agreement.

Provisional orders that may be issued:

1. Spousal support
2. Child support
3. Child custody
4. Visitation rights
5. Hold-departure order
6. Protection order

I. SPOUSAL SUPPORT

For spousal support, the court may be guided by the following factors in determining the amount of support that a spouse is entitled to:

- a. Standard of living of the spouses during the marriage;
- b. Whether the spouse seeking support has custody of a child whose circumstances make it appropriate for that spouse to seek outside employment;
- c. The comparative financial resources of the spouses;
- d. The needs and obligations of each spouse;
- e. The contribution of each spouse to the marriage;
- f. The age and health of the spouses;
- g. The physical and emotional conditions of the spouse;
- h. The ability of the supporting spouse to give support; and
- i. Such other factors as the court may determine.

The Court may direct the deduction of the provisional spousal support from the salary of the parent or spouse.

II. CHILD SUPPORT

For child support, the court may require either or both parents to give an amount necessary for the support, maintenance, and education of the child, and the amount shall be in proportion to the means of the giver and to the needs of the child.

The Court may also consider the following factors in determining the amount of provisional support:

- a. The financial resources of the parents;
- b. The physical and emotional health of the child and his/her special needs;
- c. The standard of living the child has been accustomed to; and
- d. The non-monetary contributions that the parents will make toward the care and well-being of the child.

The Court may direct the deduction of the provisional child support from the salary of the parent or spouse.

III. CHILD CUSTODY

In determining the rightful custody of the child, the Court shall consider the best interests of the child and shall give paramount consideration to the material and moral welfare of the child.

A. The court may likewise consider the following factors:

1. The agreement of the parties;
2. The desire and ability of each parent to foster an open and loving relationship between the child and the other parent;
3. The child's health, safety, and welfare;
4. Any history of child or spousal abuse on the part of the parent seeking custody, and on the part of any person having an intimate relationship with either parent;
5. The nature and frequency of contact with both parents;
6. Habitual use of alcohol or regulated substances;
7. Marital misconduct;
8. The most suitable physical, emotional, spiritual, psychological, and educational

environment; and

9. The preference of the child, if over seven (7) years of age and of sufficient discernment, unless the parent chosen is unfit.

B. The Court may award provisional custody to the following persons and in accordance with the following order of preference:

1. To both parents, jointly;
2. To either parent, taking into account the factors mentioned above and the preference of the child over seven years of age, unless the parent chosen is unfit;
3. To the surviving grandparent, or if there are several of them, to the grandparent chosen by the child over seven years of age and of sufficient discernment, unless the grandparent is unfit or disqualified;
4. To the eldest brother or sister over twenty-one years of age, unless s/he is unfit or disqualified;
5. To any other person deemed by the Court suitable to provide proper care and guidance for the child.

IV. REMEDIES WHEN A WOMAN IS DEPRIVED OF CUSTODY OVER HER CHILD

A. Habeas Corpus

The objective of a petition for habeas corpus is to obtain a writ or an order issued by the Court directing the respondent to present in Court the body of the person detained at the time and place specified in the writ.

This petition may be filed if the rightful custody of the child is withheld without due cause.

B. Petition for Custody

The mother may also file a petition to obtain custody of her child. The issue of custody is likewise resolved in the decision of the Court in petitions for legal separation, annulment, or declaration of nullity of marriage. Even in the absence of these petitions and if neither parent is inclined to file a similar petition, either of them may still file a petition for custody over the child.

The Court shall not separate a child below seven (7) years of age from his or her mother, unless there are compelling reasons to do so. The best interest of the child shall be the paramount consideration, but the Court shall also inquire and take into account the choice of the child, should the latter be over seven (7) years old.

V. VISITATION RIGHTS

Appropriate visitation rights shall be provided to the parent who is not awarded provisional custody, unless found unfit and disqualified by the Court.

VI. HOLD-DEPARTURE ORDER

While the main cause for legal separation or declaration of nullity of marriage or annulment is pending, no child of the parties shall be brought out of the country without prior order from the court.

In this regard, the Court may issue a hold-departure order addressed to the Bureau of Immigration and Deportation, directing it not to allow the departure of the child from the Philippines without the permission of the Court.

VI. PROTECTION ORDER

The Court may issue an Order of Protection requiring any person:

- a. To stay away from the home, school, business, or place of employment, or from any other specific place designated by the Court, of the child, other parent, or any other party;
- b. To refrain from harassing, intimidating, or threatening such child or other parent or any person to whom custody of the child is awarded;
- c. To refrain from committing acts that create an unreasonable risk to the health, safety, or welfare of the child;
- d. To permit a parent, or a person entitled to visitation, to visit the child at stated period;
- e. To permit a party to enter the residence during a specified period in order to take personal belongings not otherwise contested before the Court;
- f. To comply with such other orders as are necessary for the protection of the child.

LEGAL SEPARATION



One of the remedies available to women suffering from violent marital relationships is legal separation, the legal basis for which can be found in the Family Code of the Philippines.

The Family Code provides for the ten exclusive legal grounds for a petition for legal separation. Most of these grounds display different forms of violence against women. A decree of legal separation does not terminate a marriage. It merely involves separation of bed and board. This decree may be terminated by the parties by filing a manifestation in court.

I. GROUNDS FOR LEGAL SEPARATION

- A. Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

This covers the injured party, a common child or the injured party's child from another person. The frequency of physical violence inflicted upon the injured party, and not the severity of the act, is the factor considered by the court.

- B. Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
- C. Attempt of the 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 (6) years, even if pardoned;
- E. Drug addiction or habitual alcoholism of the respondent;
- F. Lesbianism or homosexuality of the respondent;
- G. Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
- H. Sexual infidelity or perversion
- I. Attempt by the respondent against the life of the petitioner; or
- J. Abandonment of the petitioner by the respondent without justifiable cause for more than one (1) year.

II. GROUNDS FOR DENYING A PETITION FOR LEGAL SEPARATION

A. Condonation

Condonation is the forgiveness, expressed or implied, given after the occurrence of the act or offense that constitutes the ground for legal separation.

Condonation is expressed when it is manifested in words or in writing. For example, the wife wrote her husband a letter telling him that she is willing to take him back despite his womanizing.

Implied condonation is seen from the acts of the innocent spouse that show forgiveness. If a spouse knew that a ground for legal separation existed but nevertheless cohabited or had sexual intercourse with the other, the law recognized this an act of implied condonation.

B. Consent

Consent is the permission or willingness to agree to the commission of the offense or act complained of. Consent is given before the act is committed. It may likewise be express or implied. For example, an agreement that either spouse may live with another without interference from the other.

C. Connivance

Connivance is not just giving consent to the other spouse to commit an offense or act but also participating in the act that will constitute the ground for legal separation.

For example, the husband hired a detective to observe and then seduce his wife. Later, the husband files a petition for legal separation against the wife on the ground of sexual infidelity. The petition may be dismissed because the husband connived with the other man in seducing the wife.

D. Mutual Guilt

In case of mutual guilt, both parties have given a ground for legal separation.

E. Collusion

There is collusion if the parties conspire to fabricate a ground for legal separation when in fact none exists.

F. Prescription

Prescription is the extinction or loss of the right for file an action for failure to file the same within the period fixed by law. A petition for legal separation prescribes when the petition is not filed within five (5) years from the time of the occurrence of the cause.

III. RULES IN HEARING AN ACTION FOR LEGAL SEPARATION

- A. The petition shall be filed in the Family Court of the province or city where the petitioner or respondent has been residing for at least six (6) months prior to the date of filing, at the election of the petitioner.
- B. The petition shall not be tried before six (6) months have elapsed since its filing as to give the parties an opportunity for reconciliation.

However, if the ground involves violence against the woman or the child, the six-month period shall be waived, and the petition shall be heard immediately.

- C. Failure to observe the six-month cooling-off period is a ground to set aside a decree of legal separation.
- D. The Court shall not hear the case unless it has taken steps toward the reconciliation of the parties and is fully satisfied, despite such efforts, that reconciliation is highly improbable.
- E. The respondent will not be declared “in default” even if he fails to file an “Answer” but the Court will proceed to hear the case.
- F. No decrees of legal separation shall be based on a stipulation of facts or a confession of judgment.
- G. The court shall order the prosecuting attorney or fiscal to determine whether there is collusion between the parties and to ensure that evidence is not fabricated or suppressed.

IV. EFFECTS OF A DECREE OF LEGAL SEPARATION

Where the court has determined that there are grounds for granting the petition for legal separation, the following shall apply:

- A. The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

After the filing of the petition for legal separation and even before the promulgation of a court decision, the spouses are allowed to live separately from each other.

- B. The absolute community of property or conjugal partnership of gains shall be dissolved and liquidated. The guilty spouse shall have no right to any share in the net profits earned by the absolute community or conjugal partnership. His/her share shall be forfeited in favor of the common children, or if there are none, the children of the guilty spouse by a previous marriage or, in default of children, the innocent spouse.
- C. The court, after rendering a decision granting the petition, shall issue the decree of legal separation only after the registration of:
 - 1. The entry of judgment granting the petition for legal separation in the Civil Registries where the marriage was celebrated and where the Family court is located; and

2. The approved partition and distribution of the properties of the spouses in the proper Register of Deeds.
- D. The custody over the minor children shall be awarded to the innocent spouse by the court subject to the following rules and taking into consideration the best interest of the children.

No child below seven (7) years of age shall be separated from his or her mother unless there are compelling reasons to award custody to the father or other person. If the child is over seven (7) years of age, the court shall inquire which parent the child wishes to remain with, and the choice of the child shall be respected, unless the parent chosen is unfit.
 - E. The guilty spouse is disqualified from inheriting from the innocent spouse.
 - F. The innocent spouse may revoke the donations given by him/her in favor of the guilty spouse within 5 years from the date of decision granting the petition for legal separation, even if the insurance policy is designated as irrevocable.

V. EFFECT OF RECONCILIATION BETWEEN THE SPOUSES

If the spouses should reconcile, they should file in court a joint manifestation under oath that they have reconciled. Depending on when the reconciliation took place, a decree of reconciliation shall be issued by the court, subject to the following rules:

- A. If it occurred while the action for legal separation is pending, the court shall immediately issue an order terminating the proceeding.
- B. If it occurred after the rendition of judgment granting the petition but before the issuance of the decree of legal separation, the spouses shall express in their manifestation whether or not they agree to revive their former property regime or choose a new regime.
- C. If the spouses reconciled after the issuance of the Decree, upon motion, the court shall issue a decree of reconciliation which declares that the Decree is set aside but the separation of property and any forfeiture of the share of the guilty spouse already effected subsists, unless the spouses have agreed to revive their former property regime or adopt a new regime.

PSYCHOLOGICAL INCAPACITY

Another important remedy found in the Family Code that is relevant to the issue of violence against a legally married woman is the provision in Article 36 of the said Code. It states that a marriage contracted by any party who at the time of the marriage was psychologically incapacitated to comply with the essential marital obligations of marriage, shall be void even if such incapacity becomes manifest only after the solemnization of marriage. Even if it is not expressly stated in Article 36 that violence against women is a ground for filing a case, it may be inferred that the infliction of violence against the wife is a clear manifestation of psychological incapacity to perform the essential marital obligations required of a spouse.

The Family Code does not provide a definition of psychological incapacity. Thus, the Supreme Court has held that judicial understanding of psychological incapacity may be informed by evolving standards, taking into account the particulars of each case, current trends in psychological and even canonical thoughts and experience.

In Republic vs. Molina, the Supreme Court laid down more definitive guidelines in the interpretation and application of psychological incapacity, to wit:

1. The burden of proof to show the nullity of the marriage rests on the petitioner. In case of doubt, the court shall resolve in favor of the existence and continuation of the marriage in order to promote the policy of the State that the family is an inviolable social institution.
2. The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision;
3. The incapacity must be proven to be existing at the time of the celebration of the marriage;
4. Such incapacity must be shown to be medically or clinically permanent or incurable;
5. Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage, such as the following;
 - To live together;
 - To observe mutual love;
 - To observe mutual respect;

- To observe fidelity;
 - To render mutual help and support;
 - To fix the family domicile;
 - With respect to children: to provide support, to educate and instruct them by right precept and good example, to impose discipline, to represent them in all matters affecting their interests, etc.;
 - To procreate children;
 - To jointly support the family.
6. While the church annulment is not controlling or decisive, interpretation given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines shall be given great respect by our courts.

Either party, even the one psychologically incapacitated, may file the petition. In another case, *Santos vs. Court of Appeals*, the Supreme Court reiterated that to render a marriage null and void such psychological incapacity must be:

- (1) Grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage;
- (2) Juridical Antecedence or it must be rooted in history of the party before the marriage; and
- (3) Incurable or the cure would be beyond the means of the party involved.

In a long line of cases decided by the Supreme Court, there have been no substantial deviation from the rules set forth in *Santos* and *Molina* cases. Both are still good law. However, in *Kalaw vs. Fernandez* the Supreme Court observed that the guidelines under *Molina* have turned out to be rigid, such that their application to every instance practically condemned the petitions for declaration of nullity to the fate of certain rejection due to an implied rule in every case that the incapacity must be medically or clinically permanent or incurable as sufficiently proven by experts.

Hence the Supreme Court En Banc, in the case of *Tan-Andal v. Andal*, unanimously modified the interpretation of the requirements of psychological incapacity. The Court pronounced that *psychological incapacity is not a medical but a legal concept*.

It refers to a personal condition that prevents a spouse to comply with fundamental marital obligations only in relation to a specific partner that may exist at the time of the marriage but may have revealed through behavior subsequent to the ceremonies.

It need not be a mental or personality disorder.

Psychological incapacity need not be a permanent and incurable condition. Therefore, the testimony of psychologist or psychiatrist is not mandatory in all cases. The totality of the evidence must show clear and convincing evidence the cause the declaration of nullity of marriage.

EFFECTS OF THE DECLARATION OF NULLITY OF MARRIAGE BASED ON PSYCHOLOGICAL INCAPACITY

1. **Civil Status.** The marital relations between the spouses shall be severed. Consequently, both of the parties are allowed to remarry. If the woman is the guilty party she shall resume her maiden name but if not, she has the option to do so or not.
2. **Property Relations.** Since the marriage was void, no absolute community of property or conjugal partnership of gains was established. The property relations between the parties will be governed by the rules on co-ownership.

The properties acquired by the parties while they lived together shall be owned by them in equal shares. Even if one of the parties did not participate in the acquisition of any property but because his/her efforts consisted in the care and maintenance of the family and of the household, s/he is still entitled to an equal share.

Only properties acquired during cohabitation shall be owned in common. Income derived from their separate properties are excluded.

The share of the party in bad faith shall be forfeited in favor of their common children or descendants. In the absence of children or descendants, such share shall belong to the innocent party.

3. **Status of Children.** Children conceived or born before the declaration of nullity of marriage are legitimate.
4. **Custody of Children.** The custody of minor children shall be awarded to the innocent spouse, but the paramount consideration shall be the best interest of the children.

When the child is below seven (7) years of age, custody shall be awarded to the mother unless there are compelling reasons to award custody to the father or another person. If the child is above seven (7) years of age, the court shall take into consideration the choice of the child, unless the chosen parent is considered unfit.

SUPPORT



Financial support to herself and her children is one of the serious problems that beset a wife after deciding to sever her abusive marital relationship with her husband. In many cases, a woman is incapable of living alone because she is unable to support herself and her children. Because of this, they are forced to stay in the relationship despite its distressful nature.

I. CONCEPT

The concept underlying support is the obligation of the persons to take care and attend to the welfare of their close relatives. Support comprises everything indispensable for:

1. Sustenance/food;
2. Dwelling;
3. Clothing;
4. Medical attendance;

5. Education of the persons entitled to be supported, which includes schooling or training for some profession, trade, or vocation, even beyond the age of majority; and
6. Transportation, which shall include expenses in going to and from school, or to and from the place of work.

II. PERSONS OBLIGED TO GIVE SUPPORT

1. The spouses;
2. Legitimate ascendants and descendants;
3. Parents and their legitimate and the legitimate children and illegitimate children of the latter;
4. Parents and their illegitimate children and the legitimate children of the latter;
5. Legitimate brothers and sisters, whether of full or half-blood;¹⁵ and
6. Brothers and sisters not legitimately related, whether of the full or half-blood, except only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence.¹⁶

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

- a. The spouses;
- b. The descendants in the nearest degree;
- c. The ascendants in the nearest degree;
- d. The brothers and sisters.

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

When there are more than one person demanding support from the same person, and the latter does not have sufficient means to satisfy all claims, the above-mentioned order shall be followed. However, if the persons claiming support should be the spouse and the child, the child shall be preferred over the spouse.

15 Family Code (Article 195)

16 Family Code (Article 196)

III. RULES ON SUPPORT, IF FURNISHED BY A PERSON NOT OBLIGED TO GIVE IT

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

When the person obliged to support another unjustly refuses or fails to give support when urgently needed by the latter, any third person may furnish support to the needy individual

And such person has the right to seek reimbursement from the person obliged to give support. This shall particularly apply when the parents of a minor unjustly refuse to support or fail to give support to the child when urgently needed.

IV. PROPERTIES LIABLE FOR SUPPORT

- A. Between legitimate ascendants and descendant whether legitimate or illegitimate; and brothers and sisters, whether legitimately or illegitimately related.

Only the separate property of the person obliged to give support shall be answerable. In case a person has no separate property, the absolute community or conjugal partnership, if financially capable, shall advance the support.

This shall be deducted from the share of the spouse obliged to give support upon the liquidation of the absolute community or conjugal partnership.

- B. Between the spouses and their children

During the proceedings for legal separation or annulment of marriage, the spouses and their children shall be supported from the properties of the absolute community or conjugal partnership. The obligation of mutual support between the spouses ceases after final judgment is rendered granting the petition. However, in case of legal separation, the court may order the guilty spouse to give support to the innocent one from his separate property.

V. AMOUNT OF SUPPORT

The amount of support that may be ordered by the court shall be in proportion to the resources or means of the giver and the necessities of the recipient.

The amount of support may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources of the giver.

VI. WHEN SUPPORT IS DEMANDABLE

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

Payment shall be made within the first five (5) days of each corresponding month. When the recipient dies, his or her heirs shall not be obliged to return what has been already received.

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

DOMESTIC VIOLENCE AND VIOLENCE IN INTIMATE RELATIONSHIPS



RA 9262 - VIOLENCE AGAINST WOMEN AND THEIR CHILDREN (VAWC)

VAWC refers to “any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.”

It includes, but is not limited to, the following acts:

1. Physical violence: bodily or physical harm
2. Sexual violence: acts that are sexual in nature, including but not limited to:
 - a. rape
 - b. sexual harassment
 - c. acts of lasciviousness
 - d. treating a woman or her child as a sex object
 - e. making demeaning and sexually suggestive remarks
 - f. physically attacking the sexual parts of the victim's body
 - g. forcing her/him to watch obscene publications and indecent shows
 - h. forcing the woman or her child to do indecent acts and/or make films thereof
 - i. forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser
 - j. causing the victim to engage in sexual activity by force, threat, or coercion
 - k. prostituting the woman or her child
3. Psychological violence: acts or omissions causing mental or emotional suffering to the victim, such as but not limited to:
 - a. intimidation
 - b. harassment
 - c. stalking
 - d. damage to property
 - e. public ridicule or humiliation
 - f. repeated verbal abuse
 - g. marital infidelity
 - h. causing or allowing the victim to witness the physical, sexual, or psychological abuse of a family member
 - i. causing or allowing the victim to witness pornography in any form
 - j. to causing or allowing the victim to witness abusive injury to pets
 - k. unlawful or unwanted deprivation of the right to custody and/or visitation of common children

4. Economic abuse: acts that make a woman financially dependent, including but not limited to:
 - a. withdrawal of financial support
 - b. preventing the victim from engaging in any legitimate profession, occupation, business or activity (except when the other spouse/partners objects on valid, serious, and moral grounds)
 - c. deprivation of financial resources and the right to conjugal, community or property owned in common
 - d. destroying household property
 - e. controlling the victim's own money or properties

I. VAWC AS A PUBLIC CRIME

Violence against women and their children shall be considered a PUBLIC offense, which means that a complaint may be filed by ANY CITIZEN having personal knowledge of the circumstances involving the commission of the crime.

II. FILING OF VAWC CASES

Cases of violence against women and children shall be filed in the Regional Trial Court that has been designated as a Family Court, said court having original and exclusive jurisdiction over them. When there is no designated Family Court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed, at the option of the complainant.

III. BATTERED WOMAN SYNDROME AS A DEFENSE

Survivors who are found by the courts to be suffering from battered woman syndrome shall not have any civil or criminal liability even in the absence of any of the elements required for self-defense under the Revised Penal Code.

In determining the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/psychologists.

IV. PROHIBITED DEFENSE

Being under the influence of alcohol, any illicit drug, or any other mind-altering substance shall not be a defense for the commission of any of the crimes constituting violence against women and children.

V. EXEMPTION FROM LIABILITY OF INTERVENING PERSONS

In every case of violence against women and their children, any person, whether a private individual, police authority, or barangay official, who, acting in accordance with law, responds or intervenes and did not use violence or restraint more than that necessary to ensure the safety of the victim, shall not be liable for any criminal, civil or administrative liability resulting from the case.

VI. PROGRAM FOR PERPETRATORS

The Department of Social Welfare and Development (DSWD) shall provide rehabilitative counseling and treatment to perpetrators towards learning constructive ways of coping with anger and emotional outbursts and reforming their ways. When necessary, the offender shall be ordered by the Court to submit to psychiatric treatment or confinement.

VII. PROTECTION ORDERS

A protection order is an order issued to prevent further acts of violence against a woman or her child. It is also an order granting other necessary reliefs specified under R.A. No. 9262. The purpose is to safeguard the victim from further harm, minimize any disruption in the victim's daily life, and facilitate the opportunity and ability of the victim to independently regain control over her life.

VIII. KINDS OF PROTECTION ORDERS

Kinds	Permanent Protection Order (PPO)	Temporary Protection Order (TPO)	Barangay Protection Order (BPO)
Nature	A protection order that may grant some or all the reliefs mentioned in Section 8 of R.A. No. 9262 and shall be effective until revoked by the court	A protection order that may grant some or all the reliefs mentioned in Section 8 of R.A. No. 9262 and will be effective for thirty (30) days, unless extended or renewed by the court	A protection order that orders the perpetrator to desist from causing physical harm or threatening to cause physical harm to the woman or her child and will remain effective for fifteen (15) days, unless renewed
When issued and by whom	It is issued by the court after notice and hearing.	It is issued by the court on the date of the filing of the application. It is granted after <i>ex parte</i> determination that such order should be issued.	<p>The BPO is issued by:</p> <ul style="list-style-type: none"> • Punong Barangay • Any available Barangay Kagawad <p>If the Punong Barangay is unavailable to act on the application for BPO order must be accompanied by an attestation by the Barangay Kagawad that the Punong Barangay was unavailable at the time of the issuance of the BPO.</p>
Where to file	<ul style="list-style-type: none"> - Regional Trial Court - Metropolitan Trial Court - Municipal Trial Court - Municipal Circuit Trial Court <ul style="list-style-type: none"> ○ with territorial jurisdiction over the place of residence of the petitioner ○ If a family court exists in the place of residence of the petitioner, the application shall be filed with that court. 		In the Barangay

<p>Procedure</p>	<ol style="list-style-type: none"> 1. The application for a protection order must be: <ul style="list-style-type: none"> - in writing, - signed, and - verified under oath by the applicant 2. It may be filed as: <ul style="list-style-type: none"> - an independent action - an incidental relief in any civil or criminal case which involves issues of violence against women and children. 	<p>The Punong Barangay who receives the applications for a BPO shall issue the protection order to the applicant on the date of filing after ex parte determination of the basis of the application. Immediately after the issuance of an ex parte BPO, the Punong Barangay or Barangay Kagawad shall personally serve a copy of the same on the respondent, or direct any barangay official to effect its personal service. The parties may be accompanied by a non-lawyer advocate in any proceeding before the Punong Barangay.</p>
	<ol style="list-style-type: none"> 3. The application shall contain the following information: <ol style="list-style-type: none"> a. names and addresses of petitioner and respondent; b. description of relationships between petitioner and respondent; c. a statement of circumstances of the abuse; d. description of the reliefs requested by petitioner. e. request for counsel and reasons for such; f. request for waiver of application fees until hearing; g. attestation that there is no pending application for a protection order in another court. 4. If applicant is not the victim, the application must be accompanied by an affidavit of the applicant attesting to: <ol style="list-style-type: none"> a. circumstances of the abuse suffered by the victim, and b. the circumstances of consent given by the victim for the filing of the application. 	

Who may file	<ol style="list-style-type: none"> 1. the offended party; 2. parents or guardians of the offended party; 3. ascendants, descendants or collateral relatives within the fourth civil degrees of consanguinity or affinity; 4. officers or social workers of the DSWD or social workers of local government units; 5. police officers, preferably those in charge of women and children's desks; 6. punong barangay or barangay kagawad; 7. lawyer, counselor, therapist or healthcare provider of the petitioner; 8. at least two (2) concerned responsible citizens of the city or municipality where the violence against women and children occurred and who has personal knowledge of the offense committed. 		
Enforceability	PPO is enforceable anywhere in the Philippines and it is effective until revoked by a court upon application of the person in whose favor the order was issued.	TPO issued enforceable anywhere in the Philippines and it is effective for thirty (30) days but may be renewable as need arises.	BPO shall be effective for fifteen (15) days.

IX. RIGHTS OF VICTIMS

In addition to their rights under existing laws, the victim of violence against women and children shall have the following rights:

- a) to be treated with respect and dignity
- b) to avail of legal assistance from the PAO of the Department of Justice (DOJ) or any public legal assistance office
- c) to be entitled to support services from the DSWD and LGUs
- d) to be entitled to all legal remedies and support as provided for under the Family Code, and
- e) to be informed of their rights and services available to them including their right to apply for a protection order.

X. OTHER FEATURES OF THE LAW:

- A. **Damages.** Any victim of violence shall be entitled to
1. actual
 2. compensatory
 3. moral
 4. exemplary damages
- B. **Hold Departure order.** A court shall expedite the issuance of a hold-departure order in cases prosecuted under this Act.
- C. **Exemption from payment of docket fee and other expenses.** The petitioner or applicant is exempt from payment of filing fee, transcript of stenographic notes, and other fees if:
1. the victim is indigent or
 2. there is an immediate necessity due to imminent danger or threat of danger to act on an application for a protection order.
- D. **Entitlement to leave.** Victims of violence shall be entitled to take a paid leave of absence up to ten (10) days. The leave shall be in addition to other paid leaves under the Labor Code and the Civil Service Rules and Regulations. The leave may be extendible when there is a need for extension (as specified in the protection order).
- E. **Confidentiality.** All records pertaining to cases of violence against women and their children including those in the barangay shall be confidential.

All public officers and employees and public or private clinics or hospitals shall respect the right of privacy of the victim.

Any person who publishes or causes to be published (in any format) the name, address, telephone number, school, business address, employer or other identifying information of the victim or an immediate family member without their consent shall be liable for contempt of court.

- F. **Prohibition of Mediation.** No barangay official/chairman shall cause the mediation of VAWC cases.

DUTIES AND RESPONSIBILITIES UNDER THE ANTI-VAWC LAW

Agency/Office	Duties and Responsibilities
Courts	<ul style="list-style-type: none"> a. RTCs designated as Family Courts shall exercise exclusive and original jurisdiction over VAWC cases b. Confidentiality Rule as to VAWC cases c. To undergo Training on VAWC d. Prohibition Against Conciliation e. Confiscation of firearms or deadly weapon of respondent to prevent him from using it against petitioner f. Issuance of a Permanent or Temporary Protection Order (PPO/TPO) when applied for by petitioner g. Court to order the immediate personal service of TPO on respondent by the court sheriff h. Court to schedule a hearing on the issuance of a PPO prior to or on the date of expiration of a TPO i. To direct the Public Attorney's Office (PAO) to represent petitioner in applications for protection orders if petitioner lacks the economic means to hire counsel j. Court to appoint a lawyer for the respondent if he appears without counsel during the hearing on the PPO k. If respondent fails to appear on the hearing of the PPO, the court shall allow ex parte presentation of evidence by the applicant and render judgment based on the evidence presented l. As much as possible, the court shall hear the application for PPO in one (1) day m. Court to extend or renew the effectivity of a TPO for thirty (30) days at a time, until final judgment on the application for PPO is issued n. Court shall ensure immediate personal service of the PPO to the respondent o. Court must ensure that the Notice of Sanction is printed on the protection order it issues p. Court shall immediately proceed to hear cases for legal separation when violence is alleged as a ground therefor, and shall not apply the six-month "cooling-off" period as mandated by Art. 58 of the Family code q. Court shall prioritize hearings for protection order applications r. MTCs, MeTCs or MCTCs having territorial jurisdiction over a barangay shall hear complaints of violations of BPOs

Prosecutors/Court Personnel	<ol style="list-style-type: none"> a. Assistance in the preparation of applications for protection orders by court personnel b. When directed by court, the Public Attorney's Office (PAO) shall represent petitioner in applications for protection orders if petitioner lacks the economic means to hire counsel c. PAO to facilitate the legal representation of petitioner if PAO determines that petitioner can afford the services of counsel d. Must communicate with the victim in a language understood by the woman or her child e. Must inform the victim of her/his rights, including legal remedies available and the procedure, privileges for indigent litigants f. To undergo Training on VAWC
Barangay Officials/ Law Enforcers	<ol style="list-style-type: none"> a. Enforcement of Protection Orders (temporary or permanent) by Law Enforcers <ul style="list-style-type: none"> - accompanying respondent to gather his things from petitioner's residence - accompanying petitioner to the residence of the parties to ensure that petitioner is safely restored to the possession of her personal effects - supervise the petitioner or respondent's removal of his/her personal belongings b. Issuance and Enforcement of Barangay Protection Orders (BPO) by barangay officers c. Personal service by Punong Barangay or Barangay Kagawad or any designated barangay official of the BPO to the respondent d. Prohibition Against Conciliation e. Filing petitions for protection orders by police officers or barangay officials (Punong Barangay or Barangay Kagawad) f. Assistance in the preparation of applications for protection orders by barangay officials g. Assistance in the application for protection orders by law enforcement agents h. Assistance in the service of TPOs by law enforcement agents i. Barangay officials must ensure that the Notice of Sanction is printed on the protection order they issue j. Barangay officials shall prioritize hearings for protection order applications k. Respond immediately to calls for help or protection of the victim by entering the dwelling, if necessary, whether or not a protection order has been issued, to ensure the safety of the victims l. Confiscate any deadly weapon in the perpetrator's possession within plain view

	<p>m. Transport or escort victims to a safe place of their choice or to a clinic or hospital</p> <p>n. Arrest the suspected perpetrator even without warrant</p> <ul style="list-style-type: none"> - when any of the acts of violence (as defined) is occurring - when he/she has personal knowledge that an act of abuse has just been committed and imminent danger exists to the life and limb of the victim <p>o. To undergo Training on VAWC</p>
Healthcare Providers	<p>a. Filing petitions for protection orders</p> <p>b. Once he/she suspects abuse or has been informed by the victim of violence, he/she shall:</p> <ul style="list-style-type: none"> a. properly document the victim's physical, emotional, or psychological injuries b. properly record the victim's suspicions, observations, and circumstances of the examination or visit c. automatically provide the victim free of charge a medical certificate concerning the examination or visit d. safeguard the records and make them available to the victim upon request and at actual cost e. provide the victim immediate and adequate notice of rights and remedies under this Act, and the services available to them <p>c. To undergo Training on VAWC</p>
Local Government Units/ Government Agencies	<p>a. Appropriate government agency to investigate respondent if he is a law enforcement officer</p> <p>b. DSWD or any appropriate government agency to provide petitioner with permanent shelter and other social services like counselling and rehabilitation when needed</p> <p>c. Filing petitions for protection orders by social workers of the DSWD or social workers of LGUs</p> <p>d. Establish programs such as education and information campaigns or seminars and symposia on the nature, causes, incidence and consequences of violence and its impact on society</p> <p>e. Ensure the sustained education and training of their personnel on the prevention of VAWC</p> <p>f. DSWD to provide rehabilitative counselling for perpetrators</p> <p>g. To undergo Training on VAWC</p> <p>h. mapping of available services for VAWC victim-survivors.</p>

WOMEN AND LABOR



LAWS ON WOMEN WORKERS (INFORMAL LABOR)

I. THE 1987 PHILIPPINES CONSTITUTION

Sec. 18 of Art. II of the 1987 Constitution provides that: “The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.”

Meanwhile, Sec. 14 of Art. XIII emphasizes that: “The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.”

These provisions are rooted in Sec. 3 of Art. XIII which provides:

- A. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
- B. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.
- C. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
- D. The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
- E. The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

II. WOMEN'S RIGHTS AND PROTECTION UNDER THE LABOR CODE (PD 442) AND OTHER SPECIAL LAWS

The Labor Code and other special laws provide for certain facilities for women, maternity leave benefits, family planning services and its incentives, prohibition on discrimination against women in employment, unlawful stipulation against marriage, prohibited actions of employers against women workers, and classification of certain women workers.

A. Protection Against Discrimination

1. Discrimination (Art. 133)

It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex. The following are acts of discrimination:

- a. Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and
 - b. Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.
2. Prohibited Acts (Art. 135, PD 442)
 - a. Discharge on account of pregnancy, or while on leave or in confinement due to pregnancy
 - b. Discharge or refusal of admission upon returning to work for fear that she may again be pregnant
 - c. Denial of benefits provided for women workers under the Labor Code
 - d. Discharge for the purpose of preventing the enjoyment of the benefits provided under the Labor Code

3. Stipulation Against Marriage (Art 134, PD442)

It shall be unlawful for an employer to:

- a. Require as a condition of employment or continuation of employment that a woman employee shall not get married
 - b. stipulate expressly or tacitly that, upon getting married, a woman employee shall be deemed resigned or separated
 - c. dismiss, discharge, discriminate, or otherwise prejudice a woman employee merely by reason of her marriage
4. Work discrimination against women night workers on account of pregnancy (Art. 158)

Before and after childbirth, for a period of at least 16 weeks, which shall be divided between the time before and after childbirth, or for such additional periods in respect of which a medical certificate is produced stating that said additional periods are necessary for the health of the mother or child, a woman night worker shall not:

- a. be dismissed or given notice of dismissal for reasons connected to her pregnancy, childbirth, or childcare responsibilities
- b. lose benefits regarding her status, seniority and access to promotion which may attach to her regular night work position

5. Sexual Harassment (RA 7877 as amended by RA 11313)

The law safeguards all workers, regardless of sexual orientation, gender identity or expression, or sex characteristics (SOGIESC), against the following acts which may be committed either by employers or their representative(s):

- a. making a sexual favor as a condition in the hiring or in the employment, reemployment of an individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges
 - b. limiting, segregating, or classifying the employee which in any way would discriminate, deprive, or diminish employment opportunities or otherwise adversely affect said employee for refusal to grant a sexual favor
6. Work discrimination on account of their status as solo parents (RA 8982) whether male or female, with respect to terms and conditions of employment.
7. Age Discrimination (R.A. 10911 and D.O. No. 170-17)

Prohibits arbitrary age limitations in employment and promotes employment of individuals on the basis of their abilities, knowledge, skills, and qualifications rather than their age

B. Facilities for Women to Ensure Their Safety and Health (PD 442)

1. In appropriate cases, regulations may require an employer to (Art. 130, PD 442):
 - a. provide seats proper for women and permit them to use such seats when they are free from work and during working hours, provided they can perform their duties in this position without detriment to efficacy;
 - b. establish separate toilets and lavatories for men and women and provide dressing rooms and nursery; and
 - c. determine standards for retirement or termination in special occupations.

2. Lactation / Breastfeeding Station (RA 10028)

- a. All health and non-health facilities, establishments, or institutions shall establish lactation stations with facilities such as: lavatory for hand-washing, refrigerator or appropriate cooling facilities for storage of expressed milk, electrical outlet for breast pumps, small locker to store equipment, small table and comfortable seats; and
- b. Room or space that allows privacy and not located in the toilet.
- c. Family Welfare Program (FWP) for all employees (PD442)
 - i. Family planning services (mandatory for establishments habitually employing 200 or more workers)
 - ii. Integration of ten (10) dimensions of Family Welfare Program in the implementation of programs and project promoting family planning (DO 56-03)
- d. Mandatory facilities for all night workers, women and men alike (RA 10151):
 - i. Suitable first aid facilities - safe and healthful working conditions
 - ii. Sleeping or rest quarters in the establishment
 - iii. Transportation from the work premises to the nearest point of the worker's residence
- e. Safety and Health Measures for Workers who by the Nature of their Work have to Stand at Work and/or Frequently Walk (D.O. No. 178-17)

Directs employers and/or establishments to institute measures to address the risks to the safety and health of the workers, such as:

- i. rest periods to break or cut the time spent on standing or walking;
- ii. appropriate flooring or mats that will mitigate the impact of frequent walking and prevent fatigue;
- iii. tables or work surfaces with adjustable heights to allow workers to alternately sit and stand while performing tasks;
- iv. readily accessible seats to be used during rest periods or even during working hours; or
- v. use of footwear which is practical and comfortable (not pinching the feet or toes; well-fitted; provide adequate cushion and support; either flat or low heels that must be wide-based or wedge-type and no higher than 1 inch).

C. Leave Benefits

1. **Maternity Leave Benefits for Women Employees (RA 8282 as amended by RA 11210)**
 - a. Expanded Maternity Leave Law (EMLL) shall cover the following:
 - i. Female workers in the Public Sector
 - ii. Female workers in the Private Sector
 - iii. Female workers in the Informal Economy
 - iv. Female members who are voluntary contributors to the Social Security System
 - v. Female national athletes
 - b. The following benefits are granted under the 105-day Expanded Maternity Leave Law (EMLL) to the corresponding sectors:
 - i. Paid leave benefit granted to a qualified female worker in the **PUBLIC SECTOR**, for the duration of:
 - 105 days for live childbirth, regardless of the mode of delivery, and an additional 15 days paid leave if the female worker qualifies as a solo parent under RA 8972, or the “Solo Parents’ Welfare Act of 2000.
 - 60 days paid leave for miscarriage and emergency termination of pregnancy.
 - ii. Paid leave benefit granted to a qualified female worker in the **PRIVATE SECTOR** covered by the SSS, including those in the informal economy, for the duration of:
 - 105 days for live childbirth, regardless of the mode of delivery, and an additional 15 days paid leave if the female worker qualifies as a solo parent under RA 8972, or the “Solo Parents’ Welfare Act of 2000.
 - 60 days paid leave for miscarriage and emergency termination of pregnancy.
 - iii. Employed female workers shall receive full pay which consists of (1) SSS maternity benefit computed based on their average daily salary credit

and (2) salary differential to be paid by the employer, if any:

- An option to extend for an additional 30 days without pay.
 - Paid maternity leave, allowances, and benefits granted to female national athletes.
- iv. Health care services for prenatal, delivery, postpartum, and pregnancy-related conditions granted to female workers, particularly those who are neither voluntary nor regular members of the SSS, as governed by the existing rules and regulations of the Philippine Health Insurance Corporation (PhilHealth)¹⁷
- v. **Coverage (Sec 3).** All covered female workers in government and the private sector, including those in the informal economy, regardless of civil status or the legitimacy of her child, shall be granted one hundred five (105) days maternity leave with full pay and an option to extend for an additional thirty (30) days without pay.
- vi. **Non-Diminution of Benefits.** Nothing in the law shall be construed as to diminish existing maternity benefits currently enjoyed whether or not these are granted under collective bargaining agreements (CBA) or present laws, if the same are more beneficial to the female worker.
- Any other working arrangement which the female worker shall agree to, during the additional maternity leave period, shall be allowed: Provided, that this shall be consented to in writing by the female worker and shall primarily uphold her maternal functions and the requirements of postnatal care. (Sec. 14)
- vii. **Availing of Benefits Not a Ground for Dismissal.** Those who avail of the benefits of this Act, whether in the government service or private sector, shall be assured of security of tenure. As such, the exercise of this option by them shall not be used as basis for demotion in employment or termination. The transfer to a parallel position or reassignment from one organizational unit to another in the same agency or private enterprise shall be allowed:

Provided, that it shall not involve a reduction in rank, status, salary, or

otherwise amount to constructive dismissal. (Sec. 15)

They can also apply for maternity leave at any instance of pregnancy.

viii. Non-discrimination. No employer whether in the public or private sector shall discriminate against the employment of women in order to avoid the benefits provided for in this Act. (Sec. 16)

2. Special Leave Benefit (RA 9710). A women employee who undergoes a surgery caused by gynecological disorders may take a leave of two (2) months per year with full pay based on gross monthly compensation provided that they have rendered continuous aggregate employment service of at least six (6) months for the last twelve (12) months.

3. Parental Leave for Solo Parent (RA 8972)

Parental Leave refers to leave benefits granted to a solo parent to enable said parent to perform parental duties and responsibilities where physical presence is required.

Parental leave is non-cumulative and can be availed only during the current year. Further, it can only be availed after the issuance of the Solo Parent ID.

The law clearly indicates that the granting of the 7-day parental leave is on top of other mandatory leave benefits.

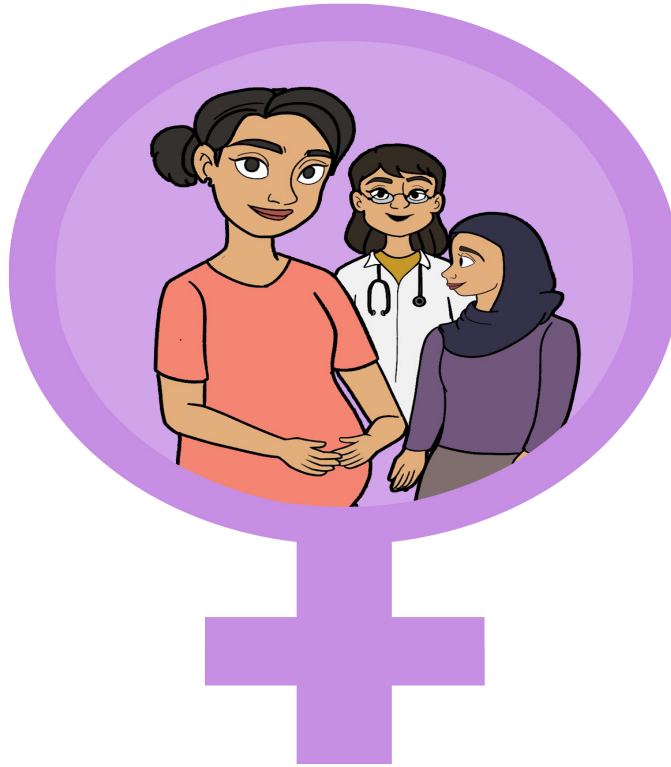
A solo parent can apply for parental leave for any child, as long as the child is living with such parent, dependent for support, unmarried, unemployed and below eighteen (18) years old, or eighteen (18) years old and above but is incapable of self-support and/or with physical/mental defect/disability

4. Leave for Victim-Survivors of VAWC or Violence Against Women and their Children (RA 9262). Ten (10) days paid leave which shall cover days that a victim-survivor has to attend to medical and legal concerns - extendible when the necessity arises as prescribed in the protection order.

D. Work Schedule

1. Employment of Night Workers (RA 10151, repealing articles 130 and 131 of PD 442 or the Labor Code). Repeal of the night work prohibition on women. Requirements when assigning pregnant and nursing workers to render night work:
 - a. Certification by a competent physician as to fitness to render night work, stating the period of pregnancy that she can safely work.
 - b. An alternative to night work for at least 16 weeks (to be divided between the time before and after childbirth); periods in addition to 16 weeks shall be supported by a medical certificate stating health reasons for the mother and child.
 - c. Measures such as transfer to day work where possible, social security benefits, and extension of maternity leave.
 - d. Mandatory facilities for all women night workers such as the following:
 - i. Suitable first aid facilities
 - ii. Safe and healthful working conditions
 - iii. Sleeping or rest quarters in the establishment
 - iv. Transportation from the work premises to the nearest point of the worker's residence
 - v. Other protective measures in support of night workers
 - e. Lactation periods (RA 10028) - compensable lactation breaks for nursing employees shall not be less than 40 minutes for every eight-hour working period, in addition to their time-off for meals; and
 - f. Flexible work schedule for all solo parents, male and female alike (RA 8972) - provided that it does not affect individual and company productivity

SEXUAL AND REPRODUCTIVE RIGHTS



RAPE

I. THE ANTI-RAPE LAW OF 1997 (R.A. No. 8353)

Under R.A. No. 8353, there are two modes of committing rape. First is rape by sexual intercourse and second is rape through sexual assault.

A. Elements of Rape by Sexual Intercourse

1. Offender is a man;
2. Offender had carnal knowledge of a woman;

3. Such act is accomplished under any of the following circumstances:
 - a. By using force, threat or intimidation;
 - b. When the woman is deprived of reason or is otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority;
 - d. When the woman is under 16 years of age (Statutory Rape) or is demented. (*R.A. No. 8353 as amended by R.A. No. 11648*)

Carnal knowledge is defined as the act of a man having sexual intercourse or sexual bodily connections with a woman. (*People v. Pareja, G.R. No. 188979, September 5, 2012*)

B. Elements of Rape through Sexual Assault

1. Offender commits an act of sexual assault;
2. The act of sexual assault is committed by any of the following means:
 - a. By inserting his penis into another person's mouth or anal orifice; or
 - b. By inserting any instrument or object into the genital or anal orifice of another person;
3. The act of sexual assault is accomplished under any of the following circumstances:
 - a. By using force or intimidation; or
 - b. When the offended party is deprived of reason or otherwise unconscious; or
 - c. By means of fraudulent machination or grave abuse of authority; or
 - d. When the offended party is under 12 years of age or demented.

II. OLD ANTI-RAPE LAW v. R.A. NO. 8353

Old Anti-Rape Law	R.A. 8553
Crime against chastity	Crime against persons
May be committed by a man against a woman only	Under the 2nd type, sexual assault may be committed by any person against any person
<p>PRIVATE CRIME</p> <p>Complaint must be filed by the woman or her parents, grandparents or guardian if the woman was a minor or incapacitated</p>	May be prosecuted even if the woman does not file a complaint
Marriage of the victim w/ one of the offenders benefits not only the principal but also the accomplices and accessories	Marriage extinguishes the penal action only as to the principal (the person who married the victim), and cannot be extended to co-principals in case of MULTIPLE RAPE
Marital rape is NOT recognized	Marital rape is recognized

III. DISCUSSIONS ON THE TWO MODES BY WHICH RAPE IS COMMITTED:

A. RAPE BY SEXUAL INTERCOURSE

1. Offender and offended party

The offended party is always a woman and the offender is always a man.

A person inducing another to commit the act of rape while causing the latter uncontrollable fear of an equal if not a greater injury, can be held liable as principal by inducement. (*People vs. Rene Siao*, G.R. No. 126021, March 3, 2000)

2. Penetration is necessary

Penetration, even partial is necessary. The slightest penetration is enough. (*People v. Selfaison*, G.R. No. L-14732, January 28, 1961) Complete penetration is NOT necessary. The slightest penetration–contact with the labia–will consummate the rape. (*People v. Orita*, G.R. No. 88724, 1990)

3. A broken hymen is not an essential element of rape

A freshly broken hymen is not an essential element of rape. Even the fact that the hymen of the victim is still intact does not rule out the possibility of rape. (*People v. Ortoa*, G.R. No. 174484, February 23, 2009)

4. Exact Date of sexual abuse is not an essential element of rape

In rape cases, the material fact or circumstances to be considered is the occurrence of the rape, not the time of its commission.

The date or time the rape was committed is not an essential ingredient as it is the carnal knowledge through force and intimidation that is the gravamen of the offense. It is, thus, sufficient that the date of commission alleged is as near as possible to the actual date. (*People v. Ceredon*, G.R. No. 167179, January 28, 2008)

5. Lack of Consent

Carnal knowledge of the female with her consent is not rape, provided she is above the age of consent or is capable in the eyes of the law of giving consent. R.A. 11648 of 2021, the Anti-Rape Law has been amended to increase the age of consent to sixteen (16) years of age.

Thus, mere copulation, with the woman passively acquiescent, does not constitute rape.

The female must not at any time consent; her consent, given at any time prior to penetration, however reluctantly given, or if accompanied with mere

verbal protests and refusals, prevents the act from being rape, provided the consent is willing and free of initial coercion.

Thus, where a man takes hold of a woman against her will and she afterward consents to intercourse before the act is committed, his act is not rape. However, where the female consents, but then withdraws her consent before penetration, and the act is accomplished by force, it is rape; and where a woman offers to allow a man to have intercourse with her on certain conditions and he refuses to comply with the conditions, but accomplishes the act without her consent, he is guilty of rape. (*People v. Butiong, G.R. No. 168932, October 19, 2011*)

Only one of the four circumstances mentioned in paragraph 1 is sufficient.

Thus, when force or intimidation is employed by the offender, it is not necessary that the woman be unconscious when he had carnal knowledge of her. (*Reyes, Criminal Law Book 2*)

B. RAPE THROUGH SEXUAL ASSAULT

1. Offender and offended party.

Rape can now be committed by a man or a woman. If a woman or a man inserts an instrument into the anal orifice of a man, she or he can be liable for rape. Inserting a finger inside the genital orifice of a woman is rape through sexual assault, considering that a finger is also an “object.”

2. Rape through Sexual Assault as distinguished from Rape through Sexual Intercourse

3. Rape through Sexual Assault as distinguished from Rape through Sexual Intercourse

The insertion of fingers constitutes consummated rape through sexual assault under R.A. No. 8353. The contact of the male’s penis with the woman’s vagina is referred to as “rape by sexual intercourse,” while the sexual abuse under paragraph 2 of Art. 266-A, RPC is categorized as “rape through sexual assault.”

Rape through sexual assault is committed when a finger is inserted in the victim's vagina or where the accused partially inserted his penis into the victim's anal orifice. (*People v. Lindo, G.R. No. 189818, August 9, 2010*)

C. CIRCUMSTANCES BY WHICH RAPE IS ACCOMPLISHED

1. Force, threat, or intimidation

Force employed against the victim of the rape need not be of such character as could not be resisted.

It is not necessary that the force employed against the complaining woman in rape to be so great or of such a character as could not be resisted. It is sufficient that the force used is sufficient to consummate the culprit's purpose of copulating with the offended woman. (*People v. Savellano, G.R. No. L-31227, 1974*)

2. Intimidation

There is intimidation if the act of the accused produces fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. (*People v. Leonardo, G.R. No. 181036, July 6, 2010*).

Intimidation must be viewed in light of the victim's perception and judgment at the time of rape and not by any hard and fast rule.

3. Moral Ascendancy or Influence

The Supreme Court has ruled that the moral ascendancy or influence exercised by the accused over the victim substitutes the element of physical force or intimidation such as those committed by:

- a. Fathers against their daughters (*People v. Bayona, G.R. No. 133343, 2000*)

- b. Stepfathers against their stepdaughters (*People v. Vitor, G.R. No. 113690, 1995*)
 - c. A godfather against his goddaughter (*People v. Casil, G.R. No. 110836, 1995*)
 - d. Uncles against their nieces (*People v. Betonio, G.R. No. 119165, 1997*)
- The first cousin of the victim's mother (*People v. Perez, G.R. No. 129213, 1999*)

When the offender has an ascendancy or influence over the girl, it is not necessary that she put up a determined resistance.

A rape victim does not have the burden of proving resistance. (*People v. Metin, G.R. No. 140781, 2003*)

4. When the offended party is deprived of reason or is otherwise unconscious.

In the rape of a woman deprived of reason or otherwise unconscious, the victim has no will. (*Reyes, Criminal Law Book 2*) "Deprived of reason or unconscious" means that the victim has no will to give consent intelligently and freely. The inquiry should likewise determine whether the victim was fully informed of all considerations so as to make a free and informed decision regarding the grant of consent.

Sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act constitutes rape.

Proving the presence of force or intimidation would be of no legal consequence because a person of weak intellect is not expected to give effective resistance to an act the implications of which she does not fully comprehend. (*People v. Abendano, G.R. Nos. 105536-37, March 21, 1995*).

- 5. Offended party with a mental disability is either deprived of reason or demented.**
- 6. Offended party with a mental disability is either deprived of reason or demented.**

Article 266-A, paragraph 1 of the RPC, as amended, provides for two circumstances when having carnal knowledge of a woman with a mental disability is considered rape, to wit: paragraph 1(b) - when the offended party is deprived of reason; and paragraph 1(d) - when the offended party is demented.

Under paragraph 1(d), the term demented refers to a person who has dementia, which is a condition of deteriorated mentality, characterized by marked decline from the individual's former intellectual level and often by emotional apathy, madness, or insanity. On the other hand, under paragraph 1(b), the phrase deprived of reason has been interpreted to include those suffering from mental abnormality, deficiency, or retardation. (*People v. Ventura, Sr., G.R. No. 205230, March 12, 2014*)

7. A deaf-mute is not necessarily deprived of reason.

These circumstances must be proven. Intercourse with a deaf-mute is not rape of a woman deprived of reason, in the absence of proof that she is an imbecile. (*People v. Caoile, G.R. No. 203041, June 5, 2013*)

8. By means of fraudulent machination or grave abuse of authority

a. Fraudulent Machination

When a person is a victim of fraudulent machination or manipulation, such as when she is induced to have carnal knowledge to treat a person's disease that is inexistent, she is not in full control of his or her decisions. He or she acts without full or with false knowledge of the circumstances from which he or she bases his or her actions. Therefore, any consent he or she gives is either false or not his or her own. Any lack of resistance may not be interpreted as voluntariness. (*People v. Quintos, G.R. No. 199402, November 12, 2014*)

b. Grave Abuse of Authority

Having sexual intercourse with grave abuse of authority is rape. Having sexual intercourse with a minor and virgin with abuse of authority is qualified seduction.

c. When the woman is under 16 years old

i. Statutory rape

Republic Act No. 11648 which further amended Article 2106-A (1) (d) of Act No. 3815 as amended by RA No. 8353 otherwise known as the Anti-Rape Law, increased the age of sexual consent from 12 years of age to 16 years, thus providing a stronger protection against rape & sexual exploitation.

Under the new law, statutory rape is committed by a person who shall have carnal knowledge of another person when the offended party is under sixteen (16) years of age or is demented. However, it also provided that there shall be no criminal liability on the part of the person having carnal knowledge of another person under sixteen (16) years of age when the age difference of the parties is not more than three (3) years and the sexual act in question is proven to be consensual, non-abusive and non-exploitative: Provided further that if the victim is under thirteen (13) years of age, this exception shall not apply.

ii. Consensual, non-abusive and non-exploitative sexual act

RA No 11648 defined non-abusive to mean the absence of undue influence, intimidation, fraudulent machinations, coercion, threat, physical, sexual, psychological or mental injury or maltreatment either with intention or through neglect during the conduct of sexual activities with child victim. On the other hand, non-exploitative shall mean there is no actual or attempted act or acts of unfairly taking advantage of the child's position of vulnerability differential power or trust during the conduct of sexual activities.

iii. Burden of Proof in Statutory Rape

To convict an accused of the crime of statutory rape, the prosecution carries the burden of proving:

1. The age of the complainant;
2. The identity of the accused; and
3. The sexual intercourse between the accused and the complainant.

(People v. Layco, Sr., G.R. No. 182181, May 8, 2009)

Guidelines in Appreciating the Age of Victim

1. The original or certified true copy of birth certificate is the best evidence to prove the age of the victim.
 2. In the absence of the birth certificate, similar authentic documents – i.e., baptismal certificate and school records – showing the victim's date of birth may be submitted to the court.
 3. Should the foregoing be not available on account of loss or destruction, the credible testimony of the mother or any relative by consanguinity or affinity qualified to testify on matters respecting pedigree shall be sufficient under certain conditions.
 4. If all the foregoing cannot be obtained, the testimony of the victim will suffice provided that it is expressly and clearly admitted by the accused. (*People v. Domingo*, G.R. No. 177136, June 20, 2008, citing *People v. Barcena*)
9. **Rape may be proved by the uncorroborated testimony of the offended woman.**

The testimony of the offended party most often is the only one available to prove directly the commission of rape; corroboration by other eyewitnesses is seldom available. In fact, the presence of such eyewitnesses would, in certain cases, place a serious doubt as to the possibility of its commission. The testimony, however, must be conclusive, logical and probable. (*People v. Landicho, C.A., 43 O.G. 3767*)

An accused may be convicted of rape on the sole testimony of the offended women, provided it is credible, natural, convincing and consistent with human nature and the normal course of things. [*People vs. Pascua, 462 Phil 245, 252 (2003)*].

Untenable defenses

a. Lack of Medical Examination

In rape, the medical examination of the victim is not an indispensable element for the successful prosecution thereof because it all depends upon the evidence offered and as long as such evidence convinces the court, a conviction by the crime of rape is proper. (*People v. Belandres, G.R.*

No. L-2801, March 31, 1950)

b. Lack of Sperm

Absence of sperm in a victim's vagina also does not foreclose the possibility that she was raped by the accused.

The absence of sperm in her vagina during the time she was examined could have been caused by a number of reasons none of which, however, would have any bearing on whether she was in fact raped or not. (*People v. Roco, G.R. No. 205200, September 21, 2016*)

c. Immoral Character

The victim's moral character in rape is immaterial where it is shown that intimidation was used for the victim to have sex with the accused. (*Sison v. People, G.R. No. 187229, February 22, 2012*) The fact that the offended party may have been of an unchaste character constitutes no defense in a charge of rape, provided that the illicit relations were committed with force and violence, etc. (*People v. Blanco, 46 Phil. 113*)

This is also known as the Rape Shield Rule which provides that the past sexual conduct of the offended party, any opinion thereof, and the offended party's reputation are all immaterial in rape. (*Sec. 6, R.A. No. 8505*)

d. Sweetheart Theory

In rape, the "sweetheart" defense must be proven by compelling evidence: first, that the accused and the victim were lovers; and second, that she consented to the alleged sexual relations. The second is as important as the first, because love is not a license for lust. (*People v. Victoria, G.R. No. 201110, July 6, 2015*)

10. Qualified rape

Rape through sexual intercourse or sexual assault is qualified by any of the following circumstances:

1. If the victim:
 - a. Is a child below 7 years old;

- b. Is under 18 years old (but 7 years or above) and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim;
 - c. Is under the custody of the police or military authorities or any law enforcement agency or penal institution;
 - d. Is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of rape;
 - e. Suffered permanent or physical mutilation or disability by reason or on the occasion of rape
2. If the offender:
 - a. Is afflicted with a sexually transmissible disease and the virus or disease is transmitted to the victim;
 - b. Is a member of the AFP or PNP or any law enforcement agency or penal institution, and took advantage of his position;
 - c. Knew of the pregnancy of the offended party at the time of the commission of rape;
 - d. Knew of the mental disability, emotional disorder, and/or physical handicap of the offended party at the time of the commission of rape.
 3. If rape is committed in full view of the spouse, parent, any of the children, or other relatives within the third civil degree of consanguinity.

11. Consummated rape

For the consummation of the crime of rape, it is not essential that there be a complete penetration of the female organ; neither is it essential that there be a rupture of the hymen. (*Reyes, Criminal Law Book 2*)

12. No frustrated rape

There is NO crime of FRUSTRATED RAPE because in rape, from the moment the offender has carnal knowledge of the victim, he actually attains his purpose and, from that moment also, all the essential elements of the offense have been accomplished. (*People v. Orita, G.R. No. 88724, 1990*)

13. Attempted rape

Rape must have specific intent or lewd design. For rape to be consummated, a slight brush or scrape of the penis on the external layer of the vagina will not suffice. Mere touching of the external layer of the vagina without the intent to enter the same cannot be construed as slight penetration. Accused is only liable for ATTEMPTED RAPE.

If there is no sexual intercourse and only acts of lewdness are performed, the crime may be rape through sexual assault under Paragraph 2 or acts of lasciviousness under Art. 336 of the Revised Penal Code.

Effects of Pardon

1. Subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed but only as to the husband.
2. When the legal husband is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty, provided that their marriage is NOT VOID ab initio.

D. THE RAPE VICTIM ASSISTANCE AND PROTECTION ACT OF 1998 (R.A. No. 8505)

1. Rape Crisis Center

The Department of Social Welfare and Development (DSWD), the Department of Health (DOH), the Department of the Interior and Local Government (DILG), the Department of Justice (DOJ), and a lead non-government organization (NGO) with proven track record or experience in handling sexual abuse cases, shall establish in every province and city a rape crisis center located in a government hospital or health clinic or in any other suitable place for the purpose of:

- (a) Providing rape victims with psychological counselling, medical and health services, including their medico-legal examination;
- (b) Securing free legal assistance or service, when necessary, for rape victims;

- (c) Assisting rape victims in the investigation to hasten the arrest of offenders and the filing of cases in court;
- (d) Ensuring the privacy and safety of rape victims;
- (e) Providing psychological counselling and medical services whenever necessary for the family of rape victims;
- (f) Developing and undertaking a training program for law enforcement officers, public prosecutors, lawyers, medico-legal officers, social workers, and barangay officials on human rights and responsibilities, gender sensitivity and legal management of rape cases; and
- (g) Adopting and implementing programs for the recovery of rape victims.

The DSWD shall be the lead agency in the establishment and operation of the Rape Crisis Center.

2. Duty of the Police Officer

Upon receipt by the police of the complaint for rape, it shall be the duty of the police officer to:

- (a) Immediately refer the case to the prosecutor for inquest/investigation if the accused is detained; otherwise, the rules of court shall apply;
- (b) Arrange for counselling and medical services for the offended party; and
- (c) Immediately make a report on the action taken.

It shall be the duty of the police officer or the examining physician, who must be of the same gender as the offended party, to ensure that only persons expressly authorized by the offended party shall be allowed inside the room where the investigation or medical or physical examination is being conducted.

For this purpose, a women's desk must be established in every police precinct throughout the country to provide a police woman to conduct investigation of complaints of women rape victims.

In the same manner, the preliminary investigation proper or inquest of women rape victims must be assigned to female prosecutor or prosecutors after the police shall have endorsed all the pertinent papers thereof to the same office.

3. Protective Measures

At any stage of the investigation, prosecution and trial of a complaint for rape, the police officer, the prosecutor, the court and its officers, as well as the parties to the complaint shall recognize the right to privacy of the offended party and the accused. Towards this end, the police officer, prosecutor, or the court to whom the complaint has been referred may, whenever necessary to ensure fair and impartial proceedings, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial and that the name and personal circumstances of the offended party and/or the accused, or any other information tending to establish their identities, and such circumstances or information on the complaint shall not be disclosed to the public.

The investigating officer or prosecutor shall inform the parties that the proceedings can be conducted in a language or dialect known or familiar to them.

4. Rape Shield

In prosecutions for rape, evidence of complainant's past sexual conduct, opinion thereof or of his/her reputation shall not be admitted unless, and only to the extent that the court finds, that such evidence is material and relevant to the case.

THE SAFE SPACES ACT (R.A. No. 11313)

The State recognizes that both men and women must have equality, security and safety not only in the private, but also in the streets, public spaces, online, workspaces, and educational and training institutions. The law penalizes acts of gender-based sexual harassment in public spaces and expands the 1995 Anti-Sexual Harassment Act. The local government units are mandated to pass ordinances localizing the application of the law while other agencies have been given tasks to implement the law like the Metro Manila Development Authority, Philippine National Police, Women and Children Protection Desk and the Anti-Cybercrime Group of the PNP.

I. IMPORTANT CONCEPTS UNDER THE LAW

A. Catcalling

Catcalling refers to unwanted remarks directed towards a person, commonly done in the form of wolf-whistling and misogynistic, transphobic, homophobic, and sexist slurs.

B. Gender-based online sexual harassment

This refers to an online conduct targeted at a particular person that causes or is likely to cause another mental, emotional or psychological distress, and fear of personal safety, sexual harassment acts including unwanted sexual remarks and comments, threats, uploading or sharing of one's photos without consent, video and audio recordings, cyberstalking and online identity theft.

C. Public spaces

This refer to streets and alleys, roads, sidewalks, public parks, buildings, schools, churches, public washrooms, malls, internet shops, restaurants and cafes, transportation terminals, public markets, spaces used as evacuation centers, government offices, common carriers, public utility vehicles (PUVs) as well as private vehicles covered by app-based transport network services, other recreational spaces such as, but not limited to, cinema halls, theaters and spas, bars and clubs, resorts and water parks, hotels and casinos, and all other areas, regardless of ownership, openly accessible or offered to be accessed by the public.

D. Gender-Based Streets and Public Spaces Sexual Harassment

1. The crimes of gender-based streets and public spaces sexual harassment are committed through any unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks.
2. Includes catcalling, wolf-whistling, unwanted invitations, misogynistic, transphobic, homophobic and sexist slurs, persistent uninvited comments or gestures on a person's appearance, relentless requests for personal details, statement of sexual comments and suggestions, public masturbation or flashing of private parts, groping, or any advances, whether verbal or physical, that is unwanted and has threatened one's sense of personal space and physical safety, and committed in public spaces such as alleys, roads, sidewalks and parks.

E. Gender-Based Online Sexual Harassment

Includes acts that use information and communications technology in terrorizing and intimidating victims through:

1. Physical, psychological, and emotional threats,
2. Unwanted sexual misogynistic, transphobic, homophobic and sexist remarks and comments online whether publicly or through direct and private messages,
3. Invasion of victim's privacy through cyberstalking and incessant messaging,
4. Uploading and sharing without the consent of the victim any form of media that contains photos, voice, or video with sexual content,
5. Any unauthorized recording and sharing of any of the victim's photos, videos, or any information online,
6. Impersonating identities of victims online or posting lies about victims to harm their reputation, or
7. Filing false abuse reports to online platforms to silence victims

F. Qualified Gender-Based Streets, Public Spaces and Online Sexual Harassment

1. If the act takes place in a common carrier or PUV, including, but not limited to, jeepneys, taxis, tricycles, or app-based transport network vehicle services, where the perpetrator is the driver of the vehicle and the offended party is a passenger;
2. If the offended party is a minor, a senior citizen, or a person with disability (PWD), or a breastfeeding mother nursing her child;
3. If the offended party is diagnosed with a mental condition tending to impair consent;
4. If the perpetrator is a member of the uniformed services, such as the PNP and the Armed Forces of the Philippines (AFP), and the act was perpetrated while the perpetrator was in uniform; and
5. If the act takes place in the premises of a government agency offering frontline services to the public and the perpetrator is a government employee.

G. Gender-Based Sexual Harassment in the Workplace

1. An act or series of acts involving any unwelcome sexual advances, requests or demand for sexual favors or any act of sexual nature, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems, that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities;
2. A conduct of sexual nature and other conduct based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems; and
3. A conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient: Provided, That the crime of gender-based sexual harassment may also be committed between peers and those committed to a superior officer by a subordinate, or to a teacher by a student, or to a trainer by a trainee.

H. Gender Based Sexual Harassment in Educational and Training Institutions

1. All schools, whether public or private, shall designate an officer-in-charge to receive complaints regarding violations of this Act, and shall ensure that the victims are provided with a gender-sensitive environment that is both respectful to the victims' needs and conducive to truth-telling.
2. Every school must adopt and publish grievance procedures to facilitate the filing of complaints by students and faculty members.
3. Even if an individual does not want to file a complaint or does not request that the school take any action on behalf of a student or faculty member, and school authorities have knowledge or reasonably know about a possible or impending act of gender-based sexual harassment or sexual violence, the school should promptly investigate to determine the veracity of such information or knowledge and the circumstances under which the act of gender-based sexual harassment or sexual violence were committed, and take appropriate steps to resolve the situation.
4. If a school knows or reasonably should know about acts of gender-based sexual harassment or sexual violence being committed that creates a hostile environment, the school must take immediate action to eliminate the same acts, prevent their recurrence, and address their effects.

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (RA 9003) AS AMENDED BY EXPANDED ANTI-TRAFFICKING IN PERSONS ACT (R.A. NO. 10364)

Republic Act 9208, also known as the Anti-Trafficking in Persons Act of 2003, institutes policies to eliminate trafficking in persons especially women and children. It establishes the necessary institutional mechanism to protect and support trafficked persons and provides penalties for its violations. In 2012, the law was amended through RA 10364 also known as the Expanded Anti-Trafficking in Persons Act. It was further amended in 2022 by RA 11862.

I. Trafficking in Persons

The recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent/knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power, or of position, taking advantage of the vulnerability of the person, or, the giving/receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude, or the removal or sale of organs.

The recruitment, transportation, transfer, harboring, adoption, or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes shall also be considered as trafficking in persons even if it doesn't involve any of the means set forth in the preceding paragraph.

II. Prostitution

Any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

III. Forced Labor

The extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt bondage or deception including any work or service extracted from any person under the menace of penalty.

IV. Slavery

The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

V. Involuntary Servitude

A condition of enforced and compulsory service induced by means of any scheme, plan or pattern, intended to cause a person to believe that if he or she did not enter into or continue in such condition, he or she or another person would suffer serious harm or other forms of abuse or physical restraint, or threat of abuse or harm, or coercion including depriving access to travel documents and withholding salaries, or the abuse or threatened abuse of the legal process.

VI. Sex Tourism

A program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.

VII. Sexual Exploitation

Participation by a person in prostitution, pornography or the production of pornography, in exchange for money, profit or any other consideration or where the participation is caused or facilitated by any means of intimidation or threat, use of force, or other forms of coercion, abduction, fraud, deception, debt bondage, abuse of power or of position or of legal process, taking advantage of the vulnerability of the person, or giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or in sexual intercourse or lascivious conduct caused or facilitated by any means as provided in the law.

VIII. Debt Bondage

Pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt.

IX. Pornography

Any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes.

X. Acts punishable and their respective penalties and sanctions

A. Acts of trafficking in persons (Sec. 4, R.A. No. 9208 as amended by R.A. No. 10364). It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

1. To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, or sexual exploitation;
2. To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
3. To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;

4. To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;
5. To maintain or hire a person to engage in prostitution or pornography;
6. To adopt persons by any form of consideration for exploitative purposes or to facilitate the same for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
7. To adopt or facilitate the adoption of persons with or without consideration for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage, or to facilitate illegal child adoptions or child-laundering, or for other exploitative purposes;
8. To recruit, hire, adopt, transport, transfer, obtain, harbor, maintain, provide, offer, receive or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person;
9. To recruit, transport, obtain, transfer, harbor, maintain, offer, hire, provide, receive or adopt a child to engage in armed activities in the Philippines or abroad;
10. To recruit, transport, transfer, harbor, obtain, maintain, offer, hire, provide or receive a person by means defined in Section 3 of the law for purposes of forced labor, slavery, debt bondage and involuntary servitude, including a scheme, plan, or pattern intended to cause the person either:
 - a. To believe that if the person did not perform such labor or services, he or she or another person would suffer serious harm or physical restraint; or
 - b. To abuse or threaten the use of law or the legal processes; and
11. To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt or receive a child for purposes of exploitation or trading them, including but not limited to, the act of paring and/or selling a child for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include:

- a. All forms of slavery or practices similar to slavery, involuntary servitude, debt bondage and forced labor, including recruitment of children for use in armed conflict;
 - b. The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances;
 - c. The use, procuring or offering of a child for the production and trafficking of drugs; and
 - d. The use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals; and
12. To organize or direct other persons to commit the offenses defined as acts of trafficking.

Penalty for the Act of Trafficking in Persons: Imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00);

13. To recruit, transport, obtain, transfer, harbor, maintain, offer, hire, provide, receive, or adopt a child for deployment abroad as a migrant worker. In the case of overseas domestic work, a ‘child’ means a person below 24 years old.

ACTS THAT PROMOTE TRAFFICKING IN PERSONS (SEC. 5 OF R.A. NO. 9208 AS AMENDED BY R.A. NO. 10364). THE FOLLOWING ACTS WHICH PROMOTE OR FACILITATE TRAFFICKING IN PERSONS, SHALL BE UNLAWFUL:

1. To knowingly lease or sublease, use or allow to be used any house, building, tourism enterprise, or similar establishment, or any vehicle, or any computer system, hardware, or other computer-related device, or any digital platform and application for the purpose of promoting trafficking in persons;
2. To produce, print and issue or distribute unissued, tampered or fake counseling on certificates, registration stickers and certificates of any government agency which issues these certificates, decals and such other markers as proof of compliance

with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;

3. To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;
4. To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;
5. To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports, knowing they are not in possession of required travel documents, or are in possession of tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;
6. To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies;
7. To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery.
8. To tamper with, destroy, or cause the destruction of evidence, or to influence or attempt to influence witnesses, in an investigation or prosecution of a case under this law;
9. To destroy, conceal, remove, confiscate or possess, or attempt to destroy, conceal, remove, confiscate or possess, any actual or purported passport or other travel, immigration or working permit or document, or any other actual or purported government identification, of any person in order to prevent or restrict, or attempt

to prevent or restrict, without lawful authority, the person's liberty to move or travel in order to maintain the labor or services of that person;

10. To utilize his or her office to impede the investigation, prosecution or execution of lawful orders in a case under this law.
11. For internet intermediaries to knowingly or by gross negligence allow their internet infrastructure to be used for the purpose of promoting trafficking in persons.
12. For internet cafes, kiosks, hotspots, and establishments offering WiFi access to knowingly or by gross negligence allow their facilities to be used for the purpose of promoting trafficking in persons.
13. For financial intermediaries to knowingly or by gross negligence allow their services, online platforms, and applications, among others, to be used for the purpose of promoting trafficking in persons.
14. To knowingly or by gross negligence facilitate or assist in the entry into the country of persons who are convicted sex offenders, whether at international and local airports, territorial boundaries, and seaports, for the purpose of promoting trafficking in persons.
15. To arrange, facilitate, or cause the introduction or encounter of persons who are suspected or convicted sex offenders in any jurisdiction to a child. Actual introduction or encounter need not occur; it is sufficient that there is deliberate attempt to cause it.

XI. Deportation

If a foreigner commits any offense described under paragraph (1) or (2) in the exceptions above or violates any pertinent provision of this Act as an accomplice or accessory to, or by attempting any such offense, he or she shall be immediately deported after serving his or her sentence and shall be barred permanently from entering the country.

XII. Public Official

If the offender who uses a trafficked person is a public official, he or she shall be dismissed from service and shall suffer perpetual absolute disqualification to hold public office, in addition to any imprisonment or fine received pursuant to any other provision of this law.

XIII. Attempted Trafficking in Persons (Sec. 4-A as provided by R.A. No. 10364)

1. Where there are acts to initiate the commission of a trafficking offense but the offender failed to or did not execute all the elements of the crime, by accident or by reason of some cause other than voluntary desistance, such overt acts shall be deemed as an attempt to commit an act of trafficking in persons. As such, an attempt to commit any act of trafficking in persons shall constitute attempted trafficking in persons.
2. In cases where the victim is a child, any of the following acts shall also be deemed as attempted trafficking in persons:
 - a. Facilitating the travel of a child who travels alone to a foreign country or territory without valid reason therefor and without the required clearance or permit from the Department of Social Welfare and Development, or a written permit or justification from the child's parent or legal guardian;
 - b. Executing, for a consideration, an affidavit of consent or a written consent for adoption;
 - c. Recruiting a woman to bear a child for the purpose of selling the child;
 - d. Simulating a birth for the purpose of selling the child; and
 - e. Soliciting a child and acquiring the custody thereof through any means from among hospitals, clinics, nurseries, daycare centers, refugee or evacuation centers, and low-income families, for the purpose of selling the child.

ACCOMPLICE (Sec. 4-B as provided by R.A. No. 10364)

Whoever knowingly aids, abets, cooperates in the execution of the offense by previous or simultaneous acts defined in this Act.

ACCESSORY (Sec. 4-C as provided by R.A. No. 10364)

Whoever has the knowledge of the commission of the crime, and without having participated therein, either as principal or as accomplice, takes part in its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime;
2. By concealing or destroying the body of the crime or effects or instruments thereof, in order to prevent its discovery;
3. By harboring, concealing or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his or her public functions or is known to be habitually guilty of some other crime.

VICTIMS OF TRAFFICKING (Sec. 17, 17-A and 17-B, R.A. No. 9208 as amended by R.A. No. 10364)

Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking enumerated or in obedience to the order made by the trafficker in relation thereto.

In this regard, the consent of a trafficked person to the intended exploitation set forth in this law shall be irrelevant.

Victims of trafficking for purposes of prostitution as defined under Section 4 of this Act are not covered by Article 202 of the Revised Penal Code and as such, shall not be prosecuted, fined, or otherwise penalized under the said law.

1. Temporary Custody of Trafficked Victims

The rescue of victims should be done as much as possible with the assistance of the DSWD or an accredited NGO that services trafficked victims.

Through the assistance of police officers, the victim shall immediately be placed in the temporary custody of the local social welfare and development office, or any accredited or licensed shelter institution devoted to protecting trafficked persons after the rescue.

2. Irrelevance of Past Sexual Behavior, Opinion Thereof or Reputation of Victims and of Consent of Victims in Cases of Deception, Coercion and Other Prohibited Means

The past sexual behavior or the sexual predisposition of a trafficked person shall be considered inadmissible in evidence for the purpose of proving consent of the victim to engage in sexual behavior, or to prove the predisposition, sexual or otherwise, of a trafficked person.

Furthermore, the consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the means set forth in the definition of trafficking in persons has been used.

3. Confidentiality (Sec. 7, R.A. No. 9208, as amended by R.A. No. 10364)

Law enforcement officers, prosecutors, judges, court personnel, social workers and medical practitioners shall **protect the right to privacy of the trafficked person in all stages of the case** to encourage victims to file complaints. Any of the following may be undertaken to ensure that the guarantee under the law is implemented:

- (a) closed-door investigation, prosecution or trial.
- (b) the name and personal circumstances of the trafficked person or any other information tending to establish the identity of the trafficked person and his or her family shall not be disclosed to the public.

EXTRA-TERRITORIAL JURISDICTION (Sec. 26-A, R.A. No. 9208, as amended by RA 10364)

The State shall exercise jurisdiction over any act defined and penalized under this Act, even if committed outside the Philippines and whether or not such act or acts constitute an offense at the place of commission, the crime being a continuing offense, if it was commenced in the Philippines or committed in another country; provided that in the latter case, the suspect or accused:

1. Is a Filipino citizen; or
2. Is a permanent resident of the Philippines; or
3. Has committed the act against a citizen of the Philippines.

No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the Philippines, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Secretary of Justice.

The government may surrender or extradite persons accused of trafficking in the Philippines to the appropriate international court if any, or to another State pursuant to the applicable extradition laws and treaties.

RESPONSIBLE PARENTHOOD AND REPRODUCTIVE HEALTH LAW (RA NO. 10354)¹⁸

I. Guiding principles that govern the Reproductive Health Law

The Guiding principles of the RPRH law are rooted in the human rights of all persons including their right to equality and nondiscrimination, the right to sustainable human development, the right to health including reproductive health, the right to education and information, and the right to choose and make decisions for themselves in accordance to their religious convictions, ethics, cultural beliefs and the demands of responsible parenthood.

In particular, the law upholds and guarantees the following principles:

- a. The right to make free and informed decisions of every person particularly couples, adult individuals, women and adolescents including preference and choice for family planning (FP) methods and determination of ideal family size;
- b. The provision of effective and quality RH care services by the state that will lead to universal access to affordable and quality RH care and services;
- c. The provision of truthful information and education on RH; and
- d. The preferential access to the poor and the marginalized. (Section 3)

II. Objectives

The main objective of the comprehensive law on reproductive health is to ensure that RH services and information are provided to the people, especially to the marginalized sectors of the society. The RH Law guarantees that Filipinos have an informed choice and they will be able to avail of services based on this informed choice.

¹⁸ A-primer-on-the-Reproductive-Health-Law.pdf (plcpd.org.ph)
RA10354_RPRHLawIRR1.pdf (doh.gov.ph)

III. Responsible Parenthood

Responsible parenthood is the will and ability of parent(s) to respond to the needs and aspirations of the family and children. It is the shared responsibility between parents to determine and achieve the desired number and timing of their children according to their own aspirations. (Section 4[v]).

IV. Reproductive Health

Reproductive health can be defined as a state of complete well-being in matters relating to one's sexual and reproductive life. It implies that people are able to have a responsible, safe, consensual and satisfying sex life and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. Further, it implies that men and women attain equal relationships in matters related to sexual relations and reproduction. (Section 4[p]).

V. The Elements of Reproductive Healthcare (Sec. 4[q]):

- a. Family planning information and services which shall include as a first priority making women of reproductive age fully aware of their respective cycles to make them aware of when fertilization is highly probable, as well as highly improbable;
- b. Maternal, infant and child health and nutrition, including breastfeeding;
- c. Proscription of abortion and management of abortion complications;
- d. Adolescent and youth reproductive health guidance and counseling;
- e. Prevention, treatment and management of reproductive tract infections (RTI), HIV and AIDS and other sexually transmittable infections (STI);
- f. Elimination of violence against women and children and other forms of sexual and gender-based violence;
- g. Education and counseling on sexuality and reproductive health;
- h. Treatment of breast and reproductive tract cancers and other gynecological conditions and disorders;

- i. Male responsibility and involvement and men's reproductive health;
- j. Prevention, treatment and management of infertility and sexual dysfunction;
- k. Reproductive health education for the adolescents; and
- l. Mental health aspect of reproductive health care.

AN ACT PROHIBITING THE PRACTICE OF CHILD MARRIAGE AND IMPOSING PENALTIES FOR VIOLATION THEREOF

One of the elements for a valid celebration of marriage under the Civil Code of the Philippines is that the parties should both belong to majority age, that is, at least eighteen (18) years old. While marriage to minor is not valid under the law, it doesn't amount to a violation of any penal law thus the celebration of which does not legally hold persons allowing such marriage. At most, only the solemnizing officer can be held civilly liable but that is only when the latter do not ensure compliance to the elements of marriage or the absence of authority to solemnize. In many cultures, such as within the Muslim community, child marriage has been prevalent and allowed in respect to their beliefs and traditions that women are marriageable as soon as they reach the age of puberty. This practice has led to girls being married to adult men especially detrimental to their development as a child. Hence, the need to abolish all traditional and cultural practices and structures that perpetuate discrimination, abuse, and exploitation of children such as child marriage like previously enacted laws protecting the latter.

I. CHILD MARRIAGE

Any marriage entered into where one or both parties are children and solemnized in civil or church proceedings, or in any recognized traditional, cultural or customary manner. It shall include an Informal union or cohabitation outside of wedlock between an adult and a child or between children.

II. UNLAWFUL AND PROHIBITED ACTS

A. Facilitation of Child Marriage

1. Any person who causes, fixes, facilitates, or arranges a child marriage shall suffer imprisonment and fine: Provided, however, that should the perpetrator be an ascendant, parent, adoptive parent, step parent, or guardian of the child, the penalty shall be higher.

2. Any person who produces, prints issues and/or distributes fraudulent or tampered document such as birth certificates, affidavits of delayed registration of birth and/or foundling certificates for the purpose of misrepresenting the age of the child to facilitate child marriage or evade liability under this law, without prejudice to liability under other laws:

Provided, that if the perpetrator is a public officer, he or she shall be dismissed from the service and may be perpetually disqualified from holding office, at the discretion of the courts.

B. Solemnization of Child Marriage

Any person who performs or officiates a child marriage shall suffer imprisonment and fine: Provided, however, that if the perpetrator is a public officer, he or she shall be dismissed from the service and may be perpetually disqualified from holding office, at the discretion of the courts.

C. Cohabitation of an Adult with a Child Outside Wedlock

An adult partner who cohabits with a child outside wedlock shall suffer imprisonment and fine: Provided, however, that if the perpetrator is a public officer, he or she shall likewise be dismissed from office, at the discretion of the courts without prejudice to higher penalties imposed under other laws.

III. CHILD MARRIAGE A PUBLIC CRIME

Child marriage is considered as a public crime, thus reports and complaints on the violation under this law can be initiated by any concerned individual.

IV. LEGAL EFFECT OF CHILD MARRIAGE

Child marriage is void ab initio, and the action or defense for the declaration of absolute nullity of marriage shall not prescribe in accordance with Articles 35 and 39 of The Family Code of the Philippines. Articles 50 and 54 of The Family Code of the Philippines shall govern on matters of support, property relations, and custody of children after the termination of child marriage.

WOMEN POLITICAL PARTICIPATION AND REPRESENTATION

CONSTITUTIONAL PROVISION



Sec. 14, of Art. II of the 1987 Constitution provides that: “The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.”

LGC PROVISION ON SECTORAL REPRESENTATION

I. PARTYLIST - SECTORAL REPRESENTATIVES

Party-list representatives are indirectly elected via a party-list election wherein the voter votes for the party and not for the party's nominees; the votes are then arranged in descending order, with the parties that won at least 2% of the national vote given one seat, with additional seats determined by a formula dependent on the number of votes garnered by the party.

No party wins more than three seats. If the number of sectoral representatives does not reach 20% of the total number of representatives in the House, parties that haven't won seats but garnered enough votes to place them among the top sectoral parties are given a seat each until the 57 seats are filled.

Party-list was open to underrepresented community sectors or groups, including women, labor, peasant, urban poor, indigenous cultural, youth, and other such sectors as may be defined by law. However, a 2013 Supreme Court decision clarified that the party-list is a system of proportional representation open to various kinds of groups and parties, and not an exercise exclusive to marginalized sectors.

As a sector lacking a well-defined political constituency, women may be represented by a sectoral party in the party-list system.

II. WOMEN IN NATION BUILDING ACT (RA 7192)

A. Equality in Capacity to Act

Women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances.

In all contractual situations where married men have the capacity to act, married women shall have equal rights.

To this end:

- (1) Women shall have the capacity to borrow and obtain loans and execute security and credit arrangement under the same conditions as men;
- (2) Women shall have equal access to all government and private sector programs granting agricultural credit, loans and non-material resources and shall enjoy equal treatment in agrarian reform and land resettlement programs;
- (3) Women shall have equal rights to act as incorporators and enter into insurance contracts; and
- (4) Married women shall have rights equal to those of married men in applying for passport, secure visas and other travel documents, without need to secure the consent of their spouses.

In all other similar contractual relations, women shall enjoy equal rights and shall have the capacity to act which shall in every respect be equal to those of men under similar circumstances. (Sec. 5)

B. Equal Membership in Clubs

Women shall enjoy equal access to membership in all social, civic and recreational clubs, committees, associations and similar other organizations devoted to public purpose. They shall be entitled to the same rights and privileges accorded to their spouses if they belong to the same organization. (Sec. 6)

C. Admission to Military Schools

Any provision of the law to the contrary notwithstanding, consistent with the needs of the services, women shall be accorded equal opportunities for appointment, admission, training, graduation and commissioning in all military or similar schools of the Armed Forces of the Philippines and the Philippine National Police not later than the fourth academic year following the approval of this Act in accordance with the standards required for men except for those minimum essential adjustments required by physiological differences between sexes.

MCW RELEVANT PROVISION ON PARTICIPATION

I. MAGNA CARTA OF WOMEN

A. The role of the State in enforcing women's rights:

1. The State shall provide the necessary mechanisms to enforce women's rights and adopt and undertake all legal measures necessary to foster and promote the equal opportunity for women to participate in and contribute to the development of the political, economic, social, and cultural realms.
2. The State, in ensuring the full integration of women's concerns in the mainstream of development, shall provide ample opportunities to enhance and develop their skills, acquire productive employment and contribute to their families and communities to the fullest of their capabilities.
3. In pursuance of this policy, the State reaffirms the right of women in all sectors to participate in policy formulation, planning, organization, implementation, management, monitoring, and evaluation of all programs, projects, and services. It shall support policies, researches, technology, and training programs and other support services such as financing, production, and marketing to encourage active participation of women in national development. (Sec. 2)

B. PARTICIPATION AND REPRESENTATION OF WOMEN UNDER MCW

The State shall undertake temporary special measures to accelerate the participation and equitable representation of women in all spheres of society particularly in the decision-making and policy-making processes in government and private entities to fully realize their role as agents and beneficiaries of development. (Sec. 11)

The State shall institute the following affirmative action mechanisms so that women can participate meaningfully in the formulation, implementation, an evaluation of policies, plans, and programs for national, regional, and local development:

1. **Empowerment within the Civil Service.** Within the next five (5) years, the number of women in third (3rd) level positions in government shall be incrementally increased to achieve a fifty-fifty (50-50) gender balance;
2. **Development Councils and Planning Bodies.** To ensure the participation of women in all levels of development planning and program implementation, at least forty percent (40%) of membership of all development councils from the regional, provincial, city, municipal, and barangay levels shall be composed of women;
3. **Other Policy and Decision-Making Bodies.** Women's groups shall also be represented in international, national, and local special and decision-making bodies;
4. **International Bodies.** The State shall take all appropriate measures to ensure the opportunity of women, on equal terms with men and without any discrimination to represent their government at the international level and to participate in the work of international organizations;
5. **Integration of Women in Political Parties.** The State shall provide incentives to political parties with women's agenda. It shall likewise encourage the integration of women in their leadership hierarchy, internal policy-making structures, appointive, and electoral nominating processes; and
6. **Private Sector.** The State shall take measures to encourage women leadership in the private sector in the form of incentives.

OTHER CRIMES COMMITTED AGAINST WOMEN UNDER THE REVISED PENAL CODE

REVISED PENAL CODE PROVISION

Since time immemorial, violence against women has incessantly been a problem in the Philippine society. There are provisions under the Revised Penal Code defining various crimes on violence against women, including the appropriate penalty imposed on the offender.

Included in this part are crimes on physical abuse and other forms of maltreatment within the domicile. Moreover, crimes relating to sexual exploitation and abuse of women and girls are also pertinent in our understanding of the laws on violence against women. However, there are provisions under the Revised Penal Code that may be viewed as unjust to women and girls because of the limited definition and inappropriate penalties for the corresponding crimes.

The table below shall give the paralegal an overview and general knowledge as to what crime may be imputed to an accused.

However, it must be noted that the crimes listed below are of general application and do not consider the relationship between the victim and the accused. Conversely, RA 9262 (Anti-Violence Against Women and Children Act) considers the “intimate” relationship between the accused and the victim.

However, this distinction does not make R.A. 9262 and the crimes under the Revised Penal Code mutually exclusive. In fact, one may use as a basis for filing a case of violation of RA 9262 any crimes listed below that may be found in the Revised Penal Code. In any case, the victim-survivor is given a wide spectrum as to what law she may rely upon. Victim-survivor may opt to file a case for the appropriate crime under the Revised Penal Code or under R.A. 9262.

I. CRIMES RELATED TO VIOLENCE AGAINST WOMEN

When the Woman is Harmed		
Physical Injuries		
Serious Physical Injuries	<ul style="list-style-type: none"> Becomes Insane, imbecile, impotent or blind 	<ul style="list-style-type: none"> Incapacity from habitual work-PERMANENT
	<ul style="list-style-type: none"> Loses the use of speech, hear, smell or an eye, foot, arm or leg and becomes incapacitated to work in which he/she is habitually engaged; Offended party becomes deformed 	<ul style="list-style-type: none"> Ill/Incapacity from habitual work- OVER 90 DAYS Ill/Incapacity from labor- 31-90 DAYS
Less Serious Physical Injuries	<ul style="list-style-type: none"> Physical Injuries not described under serious physical injuries 	<ul style="list-style-type: none"> Incapacity from labor/ medical assistance- 10-30 DAYS
Slight Physical Injuries	<ul style="list-style-type: none"> Physical injuries which do not prevent the offended party from engaging in his/her habitual work or which do not require medical attendance Ill-treatment by a deed without causing injury 	<ul style="list-style-type: none"> Incapacity from labor/ medical attendance- FEWER THAN 10 DAYS
When the Woman Dies		
Parricide	<ul style="list-style-type: none"> Any person who kills his/her father, mother, or child whether legitimate or illegitimate, or any of his/her ascendants or descendants or his/her spouse 	
Murder	<ul style="list-style-type: none"> Killing with attendant circumstances: <ul style="list-style-type: none"> Treachery Consideration of a price By means of inundation of fire, poison etc. On occasion of a calamity With evident premeditation; or With cruelty 	

Homicide	<ul style="list-style-type: none"> • Killing without the attendant circumstances in murder 	
When the Woman is Threatened		
Threats and Coercion		
Grave Threats	<ul style="list-style-type: none"> • Any person who shall threaten another with the infliction upon the person, honor or property of the latter or her family of any wrong amounting to a crime 	
Light threats	<ul style="list-style-type: none"> • A threat to commit a wrong not constituting a crime. 	
Other light threats	<ul style="list-style-type: none"> • Threaten with a weapon • Threaten another with some harm not constituting a crime and did not persist; 	
Grave Coercion	<ul style="list-style-type: none"> • Without authority of law; • By means of violence, threat or intimidation; and • Prevent woman from doing something not prohibited by law or compel her to do something against her will whether right or wrong. 	
Light coercion	<ul style="list-style-type: none"> • By means of violence; • Seize anything belonging to his/her debtor for the purpose of applying it in her debt • Unjust vexation 	
Libel	<ul style="list-style-type: none"> • Malicious • Imputation is directed at a natural or juridical person; • To cause dishonor or discredit 	
Slander	<ul style="list-style-type: none"> • Oral defamation • Expression used is defamatory; 	

Slander by Deed	<ul style="list-style-type: none"> • Act performed in the presence of another person to dishonor or discredit the offended party (e.g. slapping) 	
Intriguing Against Honor	<ul style="list-style-type: none"> • Applicable if the source of the intrigue cannot be determined • Committed to some tricky and secret plot • Remarks may be true or not 	
Abuses against Chastity	<ul style="list-style-type: none"> • Any public officer who shall solicit or make immoral advances to a woman interested in matters pending before such officer 	
	<ul style="list-style-type: none"> • Warden or public officer charged with the custody of a person who shall solicit or make immoral advances to a woman under his/her custody or a person's wife, daughter, sister or relative 	
When there is Sexual Infidelity		
Concubinage	<ul style="list-style-type: none"> • Man is married • Committed any of the ff: <ul style="list-style-type: none"> - Keeps a mistress in the conjugal dwelling; or - Sexual intercourse under scandalous circumstances who is not his wife; or - Cohabiting with her in another place • Mistress knows the man to be married 	
Bigamy	<ul style="list-style-type: none"> • Offender is legally married; • Marriage not yet dissolved; • Contracts a second marriage; • Second marriage has all the essential requisites for validity. 	

Sexual Crimes		
With Sexual Intercourse		
Rape	<ul style="list-style-type: none"> • Offender and offended party; • Penetration is necessary; • A broken hymen is not an essential element of rape; • Exact date of sexual abuse is not an essential element of rape; • Lack of Consent; • Only one of the four circumstances mentioned in paragraph 1 is sufficient. 	
Simple Seduction	<ul style="list-style-type: none"> • There is sexual intercourse between the perpetrator and the victim • It was committed by means of deceit (usually, a promise to marry) • Offended party is sixteen and over but under sixteen years of age. 	
Qualified Seduction	<ul style="list-style-type: none"> • The offended party is a virgin; • She must be sixteen and over but under eighteen years of age;; • The offender has sexual intercourse with her; and 	
	<ul style="list-style-type: none"> • The offender is a person in public authority, priest, house servant, domestic, guardian, teacher, one entrusted with the education or custody of the offended party, or a brother or ascendant of the latter. 	
Corruption of Minors	<ul style="list-style-type: none"> • Accused acted habitually or with the abuse of authority or confidence, promoted or facilitated the prostitution or corruption of persons below 18 years of age and; • That he acted in order to satisfy the lust of another. 	

Without sexual intercourse		
Rape through sexual assault	<ul style="list-style-type: none"> • Offender and offended party • Rape through Sexual Assault as distinguished from Rape through Sexual Intercourse 	
Acts of Lasciviousness	<ul style="list-style-type: none"> • There is no sexual intercourse but there is a lascivious act • The offender has lewd designs • The act is done: (a) using force or intimidation; (b) offended party is deprived of reason or is otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; or (d) offended party is under 12 years of age or demented 	
Consented Acts of Lasciviousness	<ul style="list-style-type: none"> • There is a lascivious act • The act is accompanied by abuse of authority, confidence, relationship or deceit • The victim is: (a) a virgin over 12 but under 18 years of age, or a widow with good reputation, or single; or (b) sister or descendant, regardless of age 	

Conflict, whether between persons or groups, is one of the constants in a society with members having a variety of interests. Actions violating the rights of others or the societal order often lead to the filing of cases requiring different modes of remedy.

A, Types of Cases in the Philippines Legal System

1. Criminal Case is one by which the State prosecutes a person for an act or omission punishable by law.¹⁹

Example: Violation of R.A. 9262 or the Anti-Violence against Women Law, theft, physical injuries

¹⁹ Rules of Court, Rule I, Section 3

2. Civil Case is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.²⁰

Example: Property dispute, Torts

3. Administrative Case is one which resolves issues between the government and the person or groups violating an administrative regulation.

Example: A barangay official unduly influencing an applicant for protection order to compromise or abandon any relief sought under R.A. 9262 shall be administratively liable.²¹

Criminal and civil cases are settled in courts following the rules prescribed by the Rules of Court adopted by the Supreme Court such as in Municipal Trial Courts (MTC), Municipal Trial Court in Cities (MTCC) etc. Courts also try administrative cases but only in instances of appeal when all administrative remedies have been exhausted. Agencies which exercise adjudicatory powers are called “quasi-judicial agencies” which resolve administrative cases.

Examples of quasi-judicial agencies are the Civil Service Commission, National Labor Relations Commission, Department of Agrarian Reform and others.

One must first identify the nature of a case in order to determine whether a criminal, civil or administrative case is the appropriate remedy. The following table simplifies the differences between the three.

	Criminal	Civil	Administrative
Nature	Judicial	Judicial	Quasi-Judicial
Parties	People of the Philippines (Complainant) vs. Accused	Plaintiff vs. Defendant	Disciplining agency vs. employee or public official Private person vs. a public officer
Legal Basis	Revised Penal Code and Special Penal Laws	Civil Code of the Philippines and Special Laws	Administrative Code, Local Government Code, and administrative regulations

²⁰ Ibid

²¹ Republic Act 9262, Anti-violence Against Women and their Children Act of 2004, Section 33

Procedural Basis	Rules of Court (Rule 110-127)	Rules of Court (Rule 2- 109)	Implementing Rules and Regulations (IRR) issued by administrative agencies.
Subject Matter Jurisdiction	Determined by the penalty prescribed by law	Determined by the amount of damages or the relief sought	Determined by the violated law and the IRR.
Venue	Place where the act was committed	Personal Actions: Place of residence of the plaintiff or the defendant Real Actions: Place where the real property can be found (e.g., land)	Administrative agency (regional/ national) In case of local government officials: <ul style="list-style-type: none"> • Place of office if the official belongs to a province, highly urbanized city or independent city • Sangguniang Panlalawigan, Bayan or Panlungsod in other cases • Ombudsman
Initiatory Pleading	Information	Complaint/ Petition	Verified Complaint to the administrative agency
Evidence	Guilt beyond Reasonable Doubt	Preponderance of Evidence	Substantial Evidence
Penalties	Imprisonment and/or fine	Damages	Damages; forfeiture of position/license

II. Nature of Case

In determining the proper case to be filed to remedy an issue, one must identify the nature of the offense made. In a criminal case, the violation of a penal law whether under the Revised Penal Code or a special law makes the action criminal in nature. A violation of a provision of Republic Act 9262 or the Anti-Violence Against Women and their Children (Anti-VAWC) may result to a criminal case as it has penal provisions which prescribes a penalty of imprisonment.

A civil case is based on a breach of an obligation required from a party or person. At times it is filed to redress the deprivation of a person's right, status or property. A mother deprived of her infant by the father may file a civil case to take custody of her minor child.

In this case, both the mother and the father have the right to take care of the child, although through a civil case, the court will determine who has the better right. The wrong suffered in a civil case is not so grave as to require a penalty of imprisonment.

Lastly, an administrative case is usually filed when a public officer goes beyond their functions or misbehaves. It may also be filed in case a person/group does not follow a regulation issued by an administrative agency in the conduct of a business or act.

II. Parties

A complainant/victim in a criminal case is represented by a prosecutor. In the docketing of cases, instead of the name of the complainant, it is the "People of the Philippines" that is written on the title. This is because the commission of a crime not only offends the victim but also the State (People of the Philippines) which has an interest in maintaining peace and order in the society.

In a civil case, the party complaining is the "plaintiff" who files the case while the defendant is the one from whom the relief is demanded. Unlike in a criminal case, the complainant in a civil case is not represented by the State but only by herself or through a lawyer.

In an administrative case, if the complaining party is the agency, it is represented by its own counsel while the respondent or the person being disciplined or complained of may also be represented by a counsel/lawyer.

III. Jurisdiction

Jurisdiction is the power and authority of the court to try, hear, and decide a case. It also includes the power to execute decisions.

Jurisdiction is determined by looking at the allegations in a complaint stating the ultimate facts which constitute the cause of action.

1. **In criminal cases**, the court trying the cases must have jurisdiction over the following:
 - a. The subject matter;
 - b. The place where the crime has been committed; and
 - c. The person of the accused.

The subject matter in a criminal action is the crime itself. The power of the court to hear depends on the penalty prescribed by the penal law pursuant to BP 129 or the Judiciary Reorganization Act of 1980 which designates which courts may decide cases of the same class. Crimes punishable by imprisonment of 6 years or less are cognizable in MTCs/MCTC/MTCC/MeTC while those punishable by more than 6 years of imprisonment are cognizable in RTCs.

On the other hand, the jurisdiction over the person of the accused is acquired upon his/her (a) arrest or (b) voluntary appearance.

2. **In civil cases**, the court trying the cases must have jurisdiction over the following:
 - a. The subject matter
 - b. The parties
 - c. Issues
 - d. Res (if the case involves a property or a thing)

Jurisdiction over the subject matter in a civil case is determined by law. In a collection of a sum of money, the amount sought after will determine which court (MTC or RTC) has jurisdiction.

As to jurisdiction over the parties, the court acquires jurisdiction over the plaintiff upon the filing of a complaint/petition and over the defendant upon service of summons or voluntary appearance.

The issues are the disputed points identified by looking through the complaint and the answer of the defendant. Lastly, the res is the property or thing that is being disputed or under litigation.

3. **In administrative cases, jurisdiction** depends on the relevant laws as well as the rules issued and implemented by the quasi-judicial administrative agency. It is the quasi-judicial agency whose rules and regulations (subject matter) were violated which will be the one to hear the case. As to the respondent, jurisdiction over him/her is acquired by service of its order, resolution or summons indicating its initial action on the petition or complaint.

If a survivor of violence chooses to file a petition for legal separation or dissolution of marriage, or to obtain custody of her children or recover damages for the injury caused by the violence inflicted against her, she can bring a civil action before the courts. Filing cases of these nature require the observance of the rules governing a civil action. It is for this reason that a paralegal and a survivor must understand the intricate rules and procedures in the filing of a civil case.



If the woman decides to fight against violence in the context of and using the legal system, she should consider the fact that she is expected to observe some rules in the process of having her complaint resolved in court. Most of these rules are found in the Revised Rules of Court, as well as in the 1997 rules of Civil Procedure. The Supreme Court, as the highest court in the country, has the power to promulgate and enforce these rules.

CIVIL PROCEDURE

I. FILING THE PETITION

A. The Petition shall be filed in the docket section of the court having jurisdiction over the case. The following are the contents of the petition:

1. simple, direct and concise but material allegations of facts which form the bases of the causes of action;
2. specific relief sought from the court;
3. names and residences of both parties;
4. proof of legal capacity of the parties to sue and be sued.

In case the action is based on a document, it is important that a summary of the document is stated in the petition and the original or a copy thereof is attached to the petition as an exhibit.

II. CASE RAFFLE

After filing the petition, the case shall be raffled to determine which branch of the court will try the case. A raffle prevents the judges from selecting the cases they will hear and decide. It likewise prevents the parties from choosing the judges they want to hear their cases.

III. SERVICE OF SUMMONS

Summons is a notice to a defendant that a case has been brought against him/her. It is issued within five (5) days from the court's receipt of the initiatory pleading. It requires the defendant to file an Answer within thirty (30) days after service of summons, unless a different period is fixed by the court.

A. Purpose of summons

A party must be served with the summons in order for the court to acquire jurisdiction over his person. If no summons was served and the case went on to trial, the entire proceedings may be void including the judgment rendered by the court. The principle behind this is due process. If the defendant was not notified of the complaint or petition filed against him/her and defendant was not given the opportunity to present his/her defense, the whole process shall not be considered valid and legal.

B. Contents of the summons:

1. the name of the court (RTC or MTC) and the names of the parties to the action;
2. a direction that the respondent answer within thirty (30) days; and
3. a notice that unless the respondent answers, plaintiff will take judgment by default and may be granted the relief applied for.

IV. FILING OF THE ANSWER

A. An answer is a pleading in which the defending party sets forth defenses from the complaint and the relief sought for by the plaintiff.

1. Functions of an Answer

- a. simplifies and clarifies the issues;
- b. prevents a favorable judgment for the claimant by setting forth defenses.

2. **Effect of failure to file an Answer.** The respondent may be declared in default.

Note, however, that in a petition for legal separation, annulment, and declaration of nullity of marriage, the court shall not order a respondent in default, despite failure to file an Answer.

3. Effect of order of default

- a. The court may render judgment granting the relief sought by the petitioner, unless the court requires the petitioner to submit evidence;
- b. The party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.

V. PRE-TRIAL

Pre-trial is a mandatory conference between the parties, with their counsels, held in the presence of the judge. The court orders this before commencing trial in order to expedite the proceedings or to simplify the issues without dispensing justice.

A. Points considered during pre-trial

1. possibility of an amicable settlement between the parties;
 - a. simplification of the issues;
 - b. possibility of obtaining stipulations or admissions of facts and of documents;
 - c. limitation of the number and identification of witness/es and the setting of the trial dates;
 - d. propriety of rendering judgment on the pleading;
 - e. Marking and examination of evidence; and
 - f. Others that may aid in the prompt disposition of the action

B. Effect of a party's failure to appear during pre-trial

The failure without just cause of a party and counsel to appear during the pre-trial, despite notice, shall result in the waiver of any objection/s to the faithfulness and due execution of the evidence marked. If it is the plaintiff or his/her counsel who failed to appear without valid cause, this shall cause the dismissal of the action. If it is the defendant or his/her counsel, this will allow the plaintiff to present evidence ex parte.

In petitions for annulment, declaration of nullity of marriage and legal separation, in case the respondent fails to appear, the pre-trial shall proceed but the court shall require the public prosecutor to investigate the non-appearance of the respondent. If there is no collusion, the court shall require the public prosecutor to intervene for the State during the trial on the merits to prevent suppression or fabrication of evidence.

C. Reference to mediation

At the pre-trial, the court may refer the issues to a mediator who shall assist the parties in reaching an agreement on matters not prohibited by law.

In case mediation is not availed of or where it fails, the court shall proceed with the pre-trial.

VI. TRIAL

Trial is a process of presentation of evidence and judgment of a legal controversy or dispute.

A. Order of trial

1. Presentation of plaintiff/petitioner's evidence in support of her complaint;
2. Presentation of defendant/respondent's evidence in support of his/her defense;
3. Presentation of rebuttal evidence to refute/counter the evidence submitted by the adverse party;
4. Submission of a party's memorandum. The memorandum contains a summary of all the evidence and arguments presented by the parties in the course of trial.

B. Steps in examining a witness

1. direct examination;
2. cross examination;
3. re-direct examination;
4. re-cross examination.

VII. JUDGMENT

A judgment is the decision of the court on the claims and defenses raised by the parties during trial.

VIII. APPEAL

1. Appeal is the act of elevating a lower court's judgment or decision for review by a higher court. This is taken by filing a written notice of appeal containing the judgment or decision of the lower court, the errors committed by said lower court, the appellant's (appealing party) supporting arguments, and the relief sought for.
2. Pre-condition:
In petitions for annulment, declaration of nullity of marriage and legal separation, no appeal from the decision of the lower court shall be allowed unless the appellant has filed a motion for reconsideration or a motion for new trial within 15 days from notice of judgment.
3. The Notice of Appeal may be filed by the aggrieved party or by the Solicitor General.
4. The notice of appeal may be filed within 15 days from notice of denial of the motion for reconsideration or new trial.

CRIMINAL PROCEDURE



A criminal action is one by which the State prosecutes a person for an act or omission punishable by law. There are various penal laws that can protect women and children from abuse and violence as discussed in the previous chapters. It is important that paralegals have the basic knowledge of criminal procedure in order to apply these laws to address the need for protection and justice of victims.

I. INQUEST

An inquest is an informal and summary investigation conducted by a prosecutor in a criminal case where the person arrested or detained without a warrant of arrest is under investigation to determine whether sufficient evidence exists for the person's continued detention and prosecution in court.

The inquest must be concluded within the following periods to be reckoned from the time of arrest:

1. within 12 hours, for crimes punishable with imprisonment from 1 day to 30 days;
2. within 18 hours, for crimes punishable with imprisonment from 1 month and 1 day to 6 years;
3. within 36 hours, for crimes punishable with imprisonment from 6 years and 1 day to death.

If there is no complaint or information filed within the above periods, the detaining officers may be held liable for the crime of delay in the delivery of detained persons.

II. PRELIMINARY INVESTIGATION

A preliminary investigation is an inquiry or proceeding for the purpose of determining whether there is sufficient ground to believe that a crime has been committed and the respondent is probably guilty thereof and should be held for trial.

The persons who may conduct a preliminary investigation are the following:

1. Provincial or City Prosecutors
2. Judges of the Municipal Trial Court;
3. State prosecutors; and
4. Other officers authorized by law (such as prosecutors of the Office of the Ombudsman).

III. FILING OF A CRIMINAL COMPLAINT

The filing of a criminal complaint, by the complainant, a police officer, or another person, triggers the conduct of a preliminary investigation.

If the officer conducting the preliminary investigation believes that probable cause exists to hold the accused for trial, the proper information shall be filed in the court having jurisdiction over the case.

1. Cases falling within the jurisdiction of the Regional Trial Court: Offenses punishable with imprisonment exceeding six (6) years
2. Cases within the jurisdiction of the Municipal Trial Court:
 - a. Violations of city or municipal ordinances committed within their territorial jurisdiction;
 - b. Offenses punishable with imprisonment not exceeding six (6) years.

IV. ARREST

Arrest is the taking of a person into custody in order that one may be bound to answer for the commission of an offense. An arrest may be made by: (i) an actual restraint of the person to be arrested; or (ii) his voluntary submission to the custody of the person making the arrest.

A. Arrest with warrant

A warrant of arrest is an order issued by the court commanding a peace officer to arrest the person specified therein.

1. Request of a valid warrant of arrest
2. Existence of probable cause in relation to a particular crime: Probable Cause: such facts and circumstances that would lead a reasonable and prudent person to believe that a crime has been committed and that the accused is probably guilty thereof.
3. Personal determination by a judge as to the existence of probable cause;
4. Examination under oath or affirmation of the complainant and witnesses one may produce; and
5. Particular description of the person or persons to be arrested.

B. Execution of a warrant of arrest

1. ***Who may execute a warrant of arrest?*** The arrest may be made by a police officer or any person authorized by law.

2. ***When should the warrant be executed?*** After the warrant has been delivered to a peace officer for execution, the arrest must be made within ten (10) days from its receipt. Within then (10) days after the expiration of the period, the officer shall then make a report to the judge who issued the warrant.
3. A warrant of arrest shall remain valid even after the lapse of ten (10) days. The period prescribed for executing the arrest is solely for administrative purposes.

C. Making an arrest by virtue of a warrant

1. When may an arrest be made?

An arrest may be made on any day and at any time of the day or night.

2. Must the warrant be presented when making the arrest?

The officer need not have the warrant in his or her possession at the time of the arrest. But, after the arrest, if the person arrested so requires, the warrant shall be shown to the person as soon as practicable.

3. May an officer seek assistance in effecting the arrest?

An officer making a lawful arrest may orally summon as many persons necessary to aid in making the arrest. A person so summoned must aid him/her when s/he can render assistance without detriment to himself/herself.

4. What can an officer do in case the person arrested is inside a building?

An officer making the arrest may break into any building or enclosure in which the person to be arrested is or is reasonably believed to be. But this can only be done if s/he is refused admittance after announcing his/her authority and purpose. After entering the building or enclosure, s/he may break out to liberate himself/herself.

D. Warrantless Arrests

As a general rule, arrests must be made by virtue of a warrant of arrest. Thus, warrantless arrests are considered as mere exceptions to the general rule.

Pursuant to this, there should only be few instances when arrests may be validly made without a warrant.

1. When may a person be arrested without a warrant?
 - a. When, in the presence of the person making the arrest, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
 - b. When an offense has just been committed and the person making the arrest has probable cause to believe, based on personal knowledge of facts and circumstances, that the person to be arrested has committed it;
 - c. When the person to be arrested is a prisoner who has escaped from a penal establishment or place where prisoner is serving final judgment or temporarily confined while his/her case is pending.
2. Who may make a warrantless arrest?
 - a. Peace officer; or
 - b. Private person/ citizen's arrest.
3. Making a warrantless arrest
 - a. Time of arrest
 - i. An arrest may be made on any day and at any time of the day or night.
 - b. Instances when an officer may seek assistance to arrest
 - i. If an officer effects the arrest, one may orally summon as many persons as deem necessary to aid the officer in making the arrest.
 - ii. A person so summoned must aid him/her when s/he can render assistance without detriment to himself/herself.
 - c. When the person to be arrested is inside a building
 - i. If an officer effects the arrest, s/he may break into any building or enclosure in which the person to be arrested is or is reasonably believed to be.

But this can only be done if one is refused admittance after announcing the authority and purpose. After entering the building or enclosure, officer may break out to liberate himself/herself.

4. Right of a person under arrest

A person being arrested has the right to be informed of any violation of the law, the right to stay silent and the possible use of the person statements against him/her. The latter must also be informed as to his/her right to counsel and in case one cannot afford one, a lawyer shall be provided to assist him/her. All this rights must be clearly communicated while the person is being arrested at a language he/she can well understand.

These rights are what we commonly call as “Miranda rights”. Once detained, the arrested shall have the right to be visited by a lawyer and to confer privately with counsel at any hour of the day or in urgent cases, of the night. Any relative may also visit the person arrested to subject to reasonable regulation.

V. SEARCH AND SEIZURE

A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer (police), commanding him/her to search for personal property therein and bring it before the court.

A. Search and seizure by virtue of a search warrant

1. Requisites of a valid search warrant:

- a. existence of probable cause in connection with a specific offense; Probable Cause consists of such facts and circumstances which would lead a reasonable and prudent person to believe that a crime has been committed and that the things to be seized are in the place to be searched.
- b. personal determination by the judge as to the existence of probable cause;
- c. examination under oath and affirmation of the complainant and the witnesses that the officer may produce and;

- d. particular description of the place to be searched and things to be seized.
2. Personal property that may be seized:
 - a. subject of the offense
 - b. stolen or embezzled and other proceeds or fruits of the offense
 - c. used or intended to be used as the means of committing an offense

B. Serving the search warrant

The search warrant must be served within ten (10) days from its date of issuance. After such period, it shall be void.

1. Conducting the search and seizure
 - a. Person to conduct a search and seizure:
 - A peace officer.
 - b. Time of search
 - The warrant must direct that it be served at daytime. If there is an affidavit asserting that the property is on the person or in the place ordered to be searched, a direction may be inserted that it may be served at any time of the day or night.
 - c. Proper conduct of search
 - The search must be made in the presence of the lawful occupant of any member of his/her family. In their absence, it may be made in the presence of two (2) witnesses of sufficient age and discretion residing in the same locality.
 - d. Refusal to be searched despite due notice
 - A peace officer who is not allowed to enter or search despite giving notice of officers authority and purpose has the right to break open any outer or inner door or window of a house or any part of a house to execute the

- e. Procedure after conducting the search and seizure
 - The officer must give the lawful occupant of the premises a detailed receipt of the property seized. In the latter's absence, the receipt must be left in the place where the seized property was found in the presence of at least two (2) witnesses of sufficient age and discretion residing in the same locality.

C. Warrantless search

As a general rule, any search and seizure must be made by virtue of a search warrant. Therefore, warrantless searches and seizures are mere exceptions to the general rule.

Pursuant to this, there should be only a few instances when searches and seizures may be made without a warrant.

1. Valid warrantless searches and seizures
 - a. incidental to a lawful arrest;
 - b. made on moving vehicles;
 - c. with the consent of the owner;
 - d. involves prohibited articles in plain view (ex. Shabu, drugs);
 - e. involves smuggled articles;
 - f. stop and frisk;
 - g. search of vessels and aircraft;
 - h. exigent and emergency circumstances; and
 - i. inspection of buildings and other premises for the enforcement of fire,
2. Effects of invalid searches and seizures
 - a. incidental to a lawful arrest;
 - b. made on moving vehicles;
 - c. with the consent of the owner;

- d. involves prohibited articles in plain view (ex. Shabu, drugs);
- e. involves smuggled articles;
- f. stop and frisk;
- g. search of vessels and aircraft;
- h. exigent and emergency circumstances; and
- i. inspection of buildings and other premises for the enforcement of fire, sanitary, and building regulations.

3. Effects of invalid searches and seizures

- a. any evidence obtained shall be inadmissible in any court proceeding;
- b. the officer who conducted the search may be held liable for the crime of violation of domicile;
- c. damages may be claimed under Art. 32 of the Civil Code for the violation of the right against unreasonable searches and seizures.

VI. BAIL

Bail is a security given for the release of a person in custody of the law (detained), furnished by the accused or a bondsman to guarantee his/her appearance before any court

The right to bail flows from the presumption of innocence in favor of the accused enshrined in the Bill of Rights of the Constitution.

An accused is entitled to bail as a matter of right except when charged for a capital offense or an offense punishable by reclusion perpetua when the evidence of guilt is strong.

A. KINDS OF BAIL

1. Cash bond: furnished by the accused
2. Property bond: furnished by the accused. For example, real property that shall be given as security for the amount of the bail.

3. Corporate surety: posted by the surety company
4. Recognizance: Recognizance is a mode of securing the release of any person in custody or detention for the commission of an offense who is unable to post bail due to abject poverty.

The court where the case of such person has been filed shall allow the release of the accused on recognizance to the custody of a qualified member of the barangay, city or municipality where the accused resides. It is also applicable in case of an offense charged in violation of an ordinance or a crime with an imposable penalty of 6 months of imprisonment or less and/or fine of P2,000 under R.A. No. 6036.

B. BAIL MAY BE FILED IN:

1. The court where the case is pending; in absence or unavailability of judge thereof, with any judge of the RTC, MeTC, MTC or MCTC in the province, city, or municipality of arrest; or if the accused is arrested in a province, city or municipality
2. OTHER THAN where the case is pending, bail may be filed in any RTC of said place. If no RTC judge is available, bail may be filed with any MTC, MeTC or MCTC judge therein.

The filing of an application for bail is not a bar to objections on illegal arrest, invalid arrest warrant, or the lack of or irregular preliminary investigation for the charge against the accused, provided that the accused raises them before entering a plea. The court shall then resolve the matter as early as practicable but not later than the start of the trial of the case.

VII. GROUNDS FOR CANCELLATION OF THE BAIL BOND

- A. Surrender of the accused
- B. Death of the accused
- C. Acquittal or dismissal of the case
- D. Execution of the sentence

VIII. MOTION TO QUASH THE INFORMATION OR COMPLAINT

A motion filed by the accused before entering plea, which hypothetically admits the truth of the facts spelled out in the complaint or information at the same time that it sets up a matter which if duly proved would preclude further proceedings. It aims to quash or destroy the complaint alleging that it has no ground.

IX. ARRAIGNMENT

After the information has been filed, the accused shall appear before the court for arraignment. Arraignment shall be made in open court by reading the complaint or information and asking the accused whether he/she pleads guilty or not guilty.

A. During or before the arraignment, the accused may file a:

1. Motion for a bill of particulars: a motion asking for clearer and more definite information to enable the accused to properly plead and prepare for trial;
2. Motion to quash information or complaint

X. PRE-TRIAL

Pre-trial is a mandatory conference between the parties, with their counsels, held in the presence of the judge.

The court orders this before commencing trial in order to expedite the proceedings or to simplify issues without dispensing justice.

A. Subjects considered during pre-trial

1. Plea bargaining;
2. Stipulation of facts;
3. Waiver of objection to admissibility of evidence; and
4. Other matters as may aid the court in the prompt disposition of the case.

XI. TRIAL

Trial is the process of presenting evidence which results in a judgment of a legal controversy or dispute.

In criminal cases, the complainant is the State and the prosecutor controls the prosecution. However, the private complainant may employ the services of a private prosecutor.

A. Order of trial:

1. The prosecution shall present evidence to prove the charge;
2. The accused may present evidence to prove one's defense;
3. The parties may respectively present rebutting evidence only to refute/ counter the evidence of the adverse party;
4. Upon admission of the evidence of the parties, the case is deemed submitted for decision unless the court requires them to orally or submit written memoranda.

Note: When the accused admits the criminal act in the complaint or information but gives a defense, the order of trial can be modified in a way that the accused presents the evidence.

B. Steps in examining a witness:

1. direct examination;
2. cross examination;
3. re-direct examination;
4. re-cross examination.

XII. JUDGMENT

A judgment is the final adjudication of the court that the accused is guilty or not guilty of the offense charged and the imposition of the proper penalty and civil

liability. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

A. Contents of a judgment

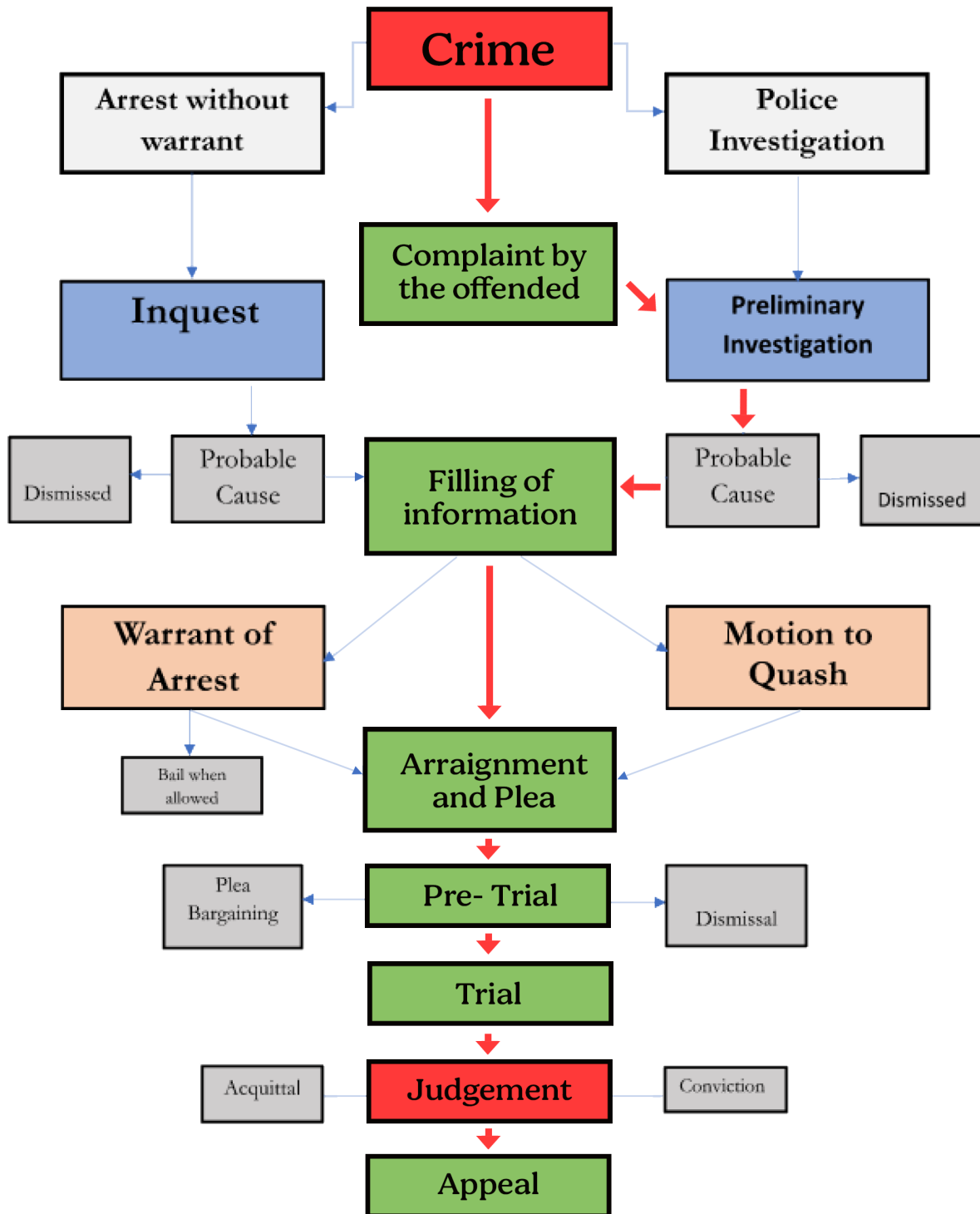
1. If the judgment is of conviction:
 - a. Qualification of the offense and the aggravating and mitigating circumstances;
 - b. Participation of the accused to the offense (e.g. principal, accomplice, accessory);
 - c. Penalty imposed; and
 - d. Civil liability or damages to be recovered from the accused.
2. When the judgment is of acquittal:
 - a. State whether there is absolute failure to prove the guilt of the accused or merely failed to prove guilt beyond reasonable doubt; and
 - b. Determination whether civil liability exists.

XIII. APPEAL

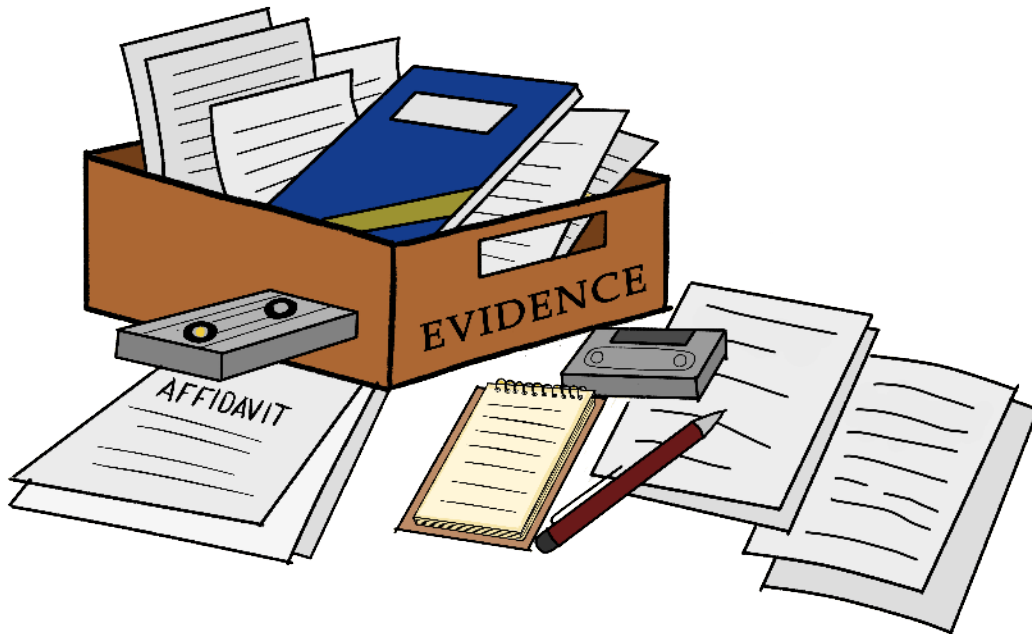
Appeal is the act of elevating a lower court's judgment or decision for review by a higher court. An appeal is taken by filing a written notice of appeal which contains the judgment or decision of the lower court, the errors committed by said lower court, the appellant's (appealing party) supporting arguments and the relief prayed for. Any party may appeal from a final judgment or order of the court except if it would place the accused in double jeopardy. Double jeopardy is exposing the accused to the risk of punishment for the same offense. For example, the prosecution may not appeal a judgment of acquittal.

If the lower court renders judgment imposing the death penalty, the case shall be automatically reviewed by the Supreme Court.

FLOW CHART OF CRIMINAL PROCEDURE



EVIDENCE



In using our justice system, there are rules that must be understood and followed. Among these rules are those that deal with evidence which can be presented in courts. The judge, in hearing the case, will be guided by these rules. Even if the allegations of the victim-survivor are true, it is still necessary to present before the judge admissible and competent evidence so that the victim-survivor can be granted the relief/remedy which the person asks from the court. Our justice system prescribes rules in submitting and objecting to the evidence being presented before the judge. These rules need to be followed, whether the case filed before the court constitutes a civil or a criminal action.

I. CONCEPT OF EVIDENCE

Evidence is the means of determining or discovering the truth of an allegation or event. The testimony of a witness or objects (document, picture, map, drawing, plans, fingerprints, gun, bullet, etc.) presented before a court or tribunal to prove certain allegations are also called evidence.

All evidence presented in court must be perceived by the judge through any of his or her five (5) senses: sight, hearing, touch, smell or taste.

II. ADMISSIBILITY

Evidence is admissible only if it is:

- A. **Competent:** It is not among those excluded by law or prohibited by the rules on evidence; and
- B. **Relevant:** It has a relation to the fact in issue based on logic and the pleadings; and

III. KINDS OF EVIDENCE

- A. **Direct.** It establishes a fact without the need to refer to inferences or implications.

Example:

1. “I saw him hit Maria.”
2. “I saw Pedro rape Maria.”

- B. **Circumstantial/Indirect.** It does not directly prove an allegation but tends to establish its probability.

Example:

“After I heard Maria scream, I saw Pedro leaving the backyard from where Maria’s screams seemed to be coming from.”

This may be taken as evidence that Pedro was the one who raped Maria.

- C. **Corroborative.** This kind strengthens evidence already presented by means of other evidence that proves the allegation.

Example:

“When Maria arrived home, I noticed that her dress was tattered.”

This testimony corroborates the earlier testimony of Maria that she had been raped.

- D. **Cumulative.** This is additional evidence of the same kind as those already presented and establishes the same issue.

Example:

Two individuals saw Maria being beaten up by her husband. The testimonies of these two persons are considered cumulative.

- E. **Positive.** Testimonial evidence is positive when a witness states that an event occurred or the person knows it transpired.

Example: “I saw Maria’s uncle enter her room at 1 o’clock in the morning.”

- F. **Negative.** It is negative evidence when an individual declares that the person did not witness the event or the person does not know what actually happened.

Example: “I did not see Maria’s uncle enter her room at 1 o’clock in the morning.”

IV. SOURCES OF EVIDENCE (based on the type of evidence)

A. Testimonial/Oral

- “Testimonial evidence refers to declarations or statements of witnesses,

B. Object evidence refers to material or physical things.

- *example:* gun, tattered panties, bottle

C. Documentary refers to any document (paper) which is presented and allowed as evidence in a trial or hearing

- *example:* marriage contract, birth certificate, medical certificate, income tax return

V. SOME RULES OF EVIDENCE

A. Original Document Rule

When the subject of the inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself.

Example: If the evidence proving a valid marriage is a marriage contract, only its original can be presented.

B. Instances when the rule is inapplicable

1. When the original is lost, destroyed or cannot be produced in court.

Example: The marriage contract was lost when the petitioner's house was burned down, or if she cannot locate it despite diligent efforts to find it.

2. When the original is in the custody or under the control of the other party and the latter fails to produce it after reasonable notice.

Example: In a legal separation case, the respondent does not present the car registration in spite of the court's order. Hence, the petitioner may present a photocopy of such document,

3. When the original is a public record or is recorded in a public office for which a certified copy will be sufficient.

Example: death certificate

C. Secondary evidence may be presented when the original document is unavailable.

Presentation of secondary evidence:

1. Prove the execution or existence of the document;

2. Establish that the original document was lost without bad faith on the part of the party presenting it;

3. Prove the contents of the document by any of the following means: i. by a copy; ii. by a recital of its contents in some authentic document; or by the testimony of witnesses.

VI. PAROL EVIDENCE RULE

When the terms of an agreement have been reduced to writing, no evidence shall be admissible other than the contents of the written agreement.

Example: When the spouses are separated and they executed an agreement providing for support, the provisions of such agreement must be the terms by which the parties are bound. They cannot allege that there are other terms not stated in the agreement or terms written on the agreement are different from those that they had agreed upon.

A. Instances when the rule is inapplicable

[Note: These grounds will not be considered unless put in issue in a verified pleading]

When the party seeking to present evidence to add, modify, or explain the terms of the agreement puts in issue in a verified pleading that:

1. There is a mistake in the written agreement, or if it fails to express the true intent and agreement of the parties, or the issue is the validity of the written agreement.

Example: There is a typographical or clerical error.

2. There is an intrinsic ambiguity in the written agreement.

Example: Under the agreement, the estranged husband is bound to give his wife support for their children's school expenses. Tuition fees were not mentioned. There is an ambiguity because the agreement may refer only to allowances, food and transportation fare.

VII. HEARSAY RULE

It is a statement other than one made by the declarant while testifying at a trial or hearing, offered to prove the truth of the facts asserted therein. It is generally *inadmissible*.

A. When out-of-court statements not considered as hearsay

A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement.

1. Statements made before and inconsistent with the declarant's testimony;
2. Statements consistent with the present testimony and is offered to rebut a charge against declarant.
3. Identification of a person made after perceiving the latter.

A person may only testify based on personal knowledge.

Example: "I saw Macario hitting his wife on the street"
"I heard Matilda crying for help inside their house."

B. Instances when the hearsay rule is inapplicable

1. Dying Declaration

The statement and declaration made by a dying person pertains to the cause and surrounding circumstances of the latter's death.

Example: Mario chanced upon a dying woman. Before the woman died, she told Mario that Boy Bagsik raped and stabbed her. Mario may testify on the statements made by the dead victim.

2. Declaration against interest

A declaration against one's own interest, which the declarant would not have made if the latter did not believe it to be true, may be used against the declarant

if the person is deceased, out of the country, or unable to testify.

3. Common reputation

This refers to facts, existing previous to the controversy, as to boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community, or respecting marriage or moral character.

Example: “Boy Bagsik is known as a troublemaker in our community.”

4. Res Gestae

The first form of res gestae are statements made by a person while a startling occurrence is taking place.

The second form of res gestae are statements which accompany an equivocal act and which gives such act legal significance

Example: A person saw Pedro running after Maria while holding a stick. This is an equivocal act subject to multiple interpretations. If Pedro was also screaming “I will kill you,” the statement constitutes res gestae

5. Records of regularly conducted business

A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by writing, typing, electronic, optical or other similar means at or near the time of or from transmission or supply of information by a person with knowledge thereof, and kept in the regular course or conduct of a business activity, and such was the regular practice to make the memorandum, report, record, or data compilation by electronic, optical or similar means, all of which are shown by the testimony of the custodian or other qualified witnesses, is excepted from the rule on hearsay evidence.

6. Testimony at a former proceeding

The testimony of a witness given in a former case or proceeding involving the same parties and subject matter may be given in evidence against the adverse party who had the opportunity to cross-examine the witness if the witness is deceased, out of the country or unable to testify.

7. Residual Exception

A statement not specifically covered by any of the foregoing exceptions, having equivalent circumstantial guarantees of trustworthiness. It is the court which will determine its admissibility based on whether it is (a) a material fact (b) more probative on the point being offered than other evidence, and (c) the interest of justice will be best served by the admission of the statement as evidence

VIII. OPINION RULE

The opinion of a witness is not admissible in evidence,

Example: “I believe that Maria’s husband planned to kill her.” The witness must establish the circumstances which led him/her to believe that Maria’s husband had planned to kill her.

A. Instances when the opinion rule is inapplicable

1. The opinion of an expert witness may be received in evidence.

Example: Opinion of a medico-legal officer or psychiatrist regarding his/her examination of the complainant.

2. The opinion of an ordinary witness may be received in evidence **IF:**
 - a. It is to identify a handwriting with which the witness has sufficient familiarity;

- b. It is to prove the validity of an agreement to which the witness was attesting
- c. It is to testify on the mental sanity of a person with whom the witness is sufficiently acquainted; or
- d. It is to testify on the impressions of the emotion, behavior, condition, or appearance of a person.

IX. MARITAL DISQUALIFICATION RULE

Neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except when they are the adverse parties to the case. This disqualification shall cease upon the dissolution of marriage brought about by divorce, death, annulment of marriage, or declaration of absolute nullity of marriage.

X. MARITAL PRIVILEGE RULE

The husband or the wife cannot be examined without the consent of the other as to any communication received in confidence by one from the other. The disqualification exists even after the death of the spouse or dissolution of the marriage.

XI. ELECTRONIC EVIDENCE RULE²²

Electronic documents or evidence are functional equivalents of paper-based documents. These are data or information received, recorded, transmitted, stored or produced electronically. To be admissible, it must comply with the rules of admissibility and related laws and is authenticated. Its authentication is made either; (1) by the proof of the person who digitally signed the electronic document; (2) other appropriate security procedures; (3) and other evidence showing its integrity.

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Rules on Electronic Evidence, A.M. No. 01-7-01-SC

A. Electronic audios, photographs and videos as evidence

The rules on electronic evidence provide that it must be shown, presented, or displayed to the court and shall be identified or explained or authenticated by the person who made the recording or some other person competent to testify on the accuracy thereof. Its authenticity shall be proved by the person introducing it as evidence.

B. Testimony by electronic means

The court may authorize the presentation of testimonial evidence by electronic means when there is a necessity for such and prescribe terms and conditions for the protection of the parties and the witness/es.

XII. IMPLICATIONS FOR THE PARALEGALS

A. In preparing the statements of the witnesses, ensure that:

1. Only true accounts and not mere opinions are stated; and
2. The testimony of the witnesses are based on their own personal knowledge.

B. In taking custody of articles/objects that may be used in evidence:

1. Request the witness to put a label/mark on it;
2. Make a record of the date, time, place and persons within the proximity at the time the articles were turned over to you; and
3. Take a picture of the object immediately if possible.

C. In taking pictures, drafting plans or drawing sketches:

1. Note when it was taken and the persons who witnessed the taking of picture, the drafting of the plans or the drawing of the sketches;
2. Ask the person who took the picture or drafted the plan or drew the sketch to sign it.

XIII. THE ANTI-WIRE TAPPING LAW (R.A. 4200)

It states that it shall be unlawful for any person, not being authorized by the parties to any **private communication** or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or dictaphone or walkie-talkie or tape recorder, or however otherwise described.

It shall also be unlawful for any person to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any private communication or spoken word, or to replay the same for any other person or persons, or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person.

Recording of a video or audio with a mobile phone

When the conversation is recorded using a mobile phone, whether video or audio, a clear showing that both parties consented to its recording must be present. (*Salcedo-Ortanez v. Court of Appeals*). *It also does not matter who recorded the conversation since the intent of the law is to penalize all persons unauthorized to make such recording.*

XIV. RULE ON THE EXAMINATION OF A CHILD WITNESS²³

A child witness is any person who at the time of giving testimony is below 18 years old, or is 18 years old or over but is unable to fully take care or protect one from abuse, neglect, cruelty, etc. because of a physical or mental disability or condition.

The following rules shall apply to the examination of a child who is a victim of a crime, an accused, or a witness to a crime:

1. The court may appoint a guardian for the child.

2. Competency to testify: Every child is presumed qualified to be a witness; but the court shall conduct a competency examination when there is substantial doubt regarding the ability of the child to perceive or distinguish truth from falsehood. The examination shall be conducted only by the judge. The lawyers can only submit questions to the judge.
3. When a child does not understand English or Filipino, an interpreter may be appointed by the court.
4. If a child does not understand or respond to the questions, the court may appoint a facilitator who may be a child psychologist, psychiatrist, social worker, guidance counselor, teacher, religious leader, parent or relative. The lawyers can ask questions to the child only through the facilitator.
5. Support persons may accompany the child to the witness stand.
6. The child may use dolls, puppets, drawings, mannequins, or any other appropriate demonstrative device to assist one's testimony.
7. The lawyer may be prohibited from approaching the child if the latter is fearful or intimidated.
8. The court may allow the child to testify in a narrative form. Leading questions may be allowed. Objections should be made in a manner so as not to confuse, frighten or intimidate the child.
9. When a child testifies, the public may be excluded from the courtroom.
10. The testimony of a child may be taken in a room outside the court and be televised to the court by live-link television.
11. The chair on the witness stand or the screen may be placed in such a manner that the child cannot see the accused while testifying.

12. If the child cannot testify in open court, the testimony may be taken and preserved by videotape.
13. All records concerning child witnesses shall be kept confidential.
14. The child may refuse to testify on personal information concerning one's character which might endanger child's life or that of family.
15. In child abuse cases, videotaped and audiotaped in-depth investigative or disclosure interviews may be admitted as evidence.
16. Evidence to prove that the alleged victim engaged in other sexual behavior or sexual predisposition is not admissible in court.

KATARUNGANG PAMBARANGAY



Before a civil or criminal case can be filed before the courts, the survivor must go through the process prescribed in the Katarungang Pambarangay, unless the nature of her complaint is not included in the jurisdiction of the Lupong Tagapamayapa. The purpose of the Katarungang Pambarangay is to provide a venue for settlement of disputes among the parties who reside in the same municipality or city. It is important to know which types of disputes are within and outside the scope of the Katarungang Pambarangay and the process of settling disputes under this system.

I. CONCEPT

One of the guiding principles of the Local Government Code is the strengthening of the local governments and decentralization of the powers of the national government. Towards this end, the city and municipal governments were given the opportunity to settle disputes between residents in their barangays. The existing law on the Katarungang Pambarangay (Presidential Decree 1508) was incorporated in the Local Government Code of 1991.

Another reason for the creation of the Katarungang Pambarangay is to regulate the number of cases in the regular courts. There will be no need to file a case in court if the parties enter into an amicable settlement at the barangay level.

II. JURISDICTION

All disputes between parties residing in the same city or municipality must be brought before the Katarungang Pambarangay except for disputes enumerated below.

III. DISPUTES THAT MAY PROCEED DIRECTLY TO COURT

1. Where one party is the government;
2. Where one party is a public officer or employee and the dispute relates to the performance of his or her official functions;
3. Offenses where there is no private offended party;
4. Where one party is a corporation, partnership or a judicial entity;
5. Where the dispute involves real properties located in different cities or municipalities unless the parties agree to submit their differences to amicable settlement by an appropriate *lupon*;
6. Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding one thousand pesos (P1,000.00). Note however that no clarification

made on this instance has been made by the DOJ or any court based on the amendments in the Revised Penal Code increasing the fines on various offenses;

7. Disputes involving parties who actually reside in barangays of different cities or municipalities except where such barangay units adjoin each other and the parties agree to submit their differences by an appropriate *lupon*;
8. Petitions for *habeas corpus* or where a person has been arrested or detained without legal basis;
9. Where the action is coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support *pendente lite*; and
10. Such other classes of disputes which the President of the Philippines may determine as outside the jurisdiction of the Katarungang Pambarangay.

IV. VENUE FOR AMICABLE SETTLEMENT

1. If the parties reside in the same barangay, their dispute shall be brought before the *lupon* of their barangay;
2. If the parties reside in different barangays within the same city or municipality, the dispute shall be brought in the barangay where the respondent resides.

V. PROCEDURE FOR AMICABLE SETTLEMENT

The barangay is not a court. It cannot render a decision and order the parties to comply with such decision. The process before the Katarungang Pambarangay is merely one of conciliation and if the parties fail to reach a settlement, the barangay has no authority to arrest a party or impose its own decision.

1. Filing of a complaint, verbally or in writing, with the punong barangay (who is also the *lupon* chair);

2. Issuance of summons to the respondent, with notice to the complainant, to afford the opportunity to explain the respondent's side. The parties may bring their own witnesses but cannot appear with the assistance of lawyer;
3. If the parties fail to reach a settlement within fifteen (15) days from their first meeting, the *lupon* chair will set a date for the constitution of the *pangkat ng tagapagkasundo*;
4. The *pangkat* will convene within three (3) days from its constitution. If the parties still fail to reach an agreement with fifteen (15) days from the day the *pangkat* convened, it may be extended for another period which shall not exceed fifteen (15) days to give them sufficient time to arrive at a settlement;
5. If the agreement is reached at any level (either the *lupon* or *pangkat*), the amicable settlement shall be reduced to writing and signed by the parties.

The terms of the amicable settlement must be complied with and it may be enforced by the *lupong tagapamayapa* within six (6) months from the date of settlement. After the lapse of such time, the party must proceed to the regular courts for its enforcement.

If the parties fail to reach an agreement, the secretary of the barangay will issue a "certification to file action in court" (CFA).

The law provides for the constitution of the *pangkat*. However, in practice, the *pangkat* is no longer constituted when the parties fail to arrive at a settlement. Also, the 15-day period is not normally followed.

After three (3) meetings by the parties, the secretary of the barangay will already issue a CFA.

6. The prescriptive period for any legal action shall be suspended while the dispute is under conciliation in the barangay. The prescriptive period shall resume only upon receipt by the complainant of the certification to file action.
7. If the dispute falls within the jurisdiction of the Katarungang Pambarangay but is brought directly to court, the action may not be entertained and the case may be dismissed unless a certificate to file action is presented.



After going through the substantive laws and the procedural rules that apply in criminal and civil cases, it is but necessary to focus on the skills that a paralegal is expected to possess. Case analysis, conducting legal interviews, preparing affidavits, and doing legal research are some of these skills. It is likewise important for the paralegal to understand and live by the rules on ethics that stand as guidelines in her advocacy for women's rights within the framework of the legal system.

CASE ANALYSIS

One of the basic skills that a paralegal need to learn is case analysis. Paralegals encounter a variety of disputes but not all disputes can be filed as a case in court. Not all instances of violence and abuse can be brought before the court.

In disputes that can be brought to the court, case analysis will help in strengthening the case. The paralegal will learn what issues need to be raised, what evidence needs to be presented to the court, and what arguments need to be researched and strengthened.

I. Find out if there is a cause of action:

Know the “T.A.R.P” method (Thing , Act, Right and Prayer),

THING : That is involved in the case

ACT : Act that caused the case to be filed

RIGHT : Right that was violated or obligation that was not complied with

PRAYER : Write the relief that the aggrieved party wants to be granted by the court.

For example:

a. A woman was physical abused by her partner.

Thing : The woman

Act : Physical abuse

Right : The right to be protected from physical harm.

Prayer : damages

b. A parent refusing to support the education of his/her child.

Thing : support

Act : refusal to support

Right : the right to be supported by parents and to be provided with education

Prayer : the amount of support needed

II. Know the facts

Example:

“Attorney, I am beaten up by my husband. This happens whenever he comes home drunk, and that is often. He does not give me money, then he beats me up and our four (4) children as well. I do not know how to budget the income that I earn as a market vendor, and then he does this to me.”

Facts:

Look for the important information, such as:

- Married couple (legally married or common-law relationship? If married, when were they married?)
- Have four children (What are the children’s names? What are their ages?)
- Regular beating from the husband (How regular is the beating? When did it start? How does the husband inflict violence on the wife?)
- Husband has no work (since when has he not been working?)

III. Know the issue

There are three kinds of issues:

1. Legal - What is the right interpretation of the law”?

Example: Is the infliction of physical violence a manifestation of psychological incapacity under Article 36 of the Family Code?

2. Factual - From the two contradicting versions of facts by the parties, which version is true? What is the chronological sequence of events?

Example: Did Juana leave the conjugal home because she had a lover or because she was beaten up by Turing, her husband?

3. Both legal and factual – An encompassing issue covers both legal and factual issues.

Example:

- a. Legal issue: Is there abandonment when a woman leaves the conjugal home because she is subjected to beatings by her husband?
- b. Factual Issue: Is the woman really subjected to beatings? Is the husband's psychological incapacity grave and incurable?

LEGAL INTERVIEW



The interview of a VAW survivor and her (possible) witness is conducted to gather information that would help in building a case. Conducting a Legal interview is one of the most basic skills that a paralegal is expected to learn and master. The paralegal is one of the first persons that a survivor will get to talk to – even before a lawyer – and therefore, the information that a paralegal gathers from the survivor is a basis for the documents that will be drawn up and the steps that will be undertaken.

Remember that conducting a legal interview is different from psychological counseling. In a legal interview, the main purpose of the interview is the gathering of data or information for the case. It is likewise important to show to the survivor-interviewee that the paralegal conducting the interview is a friend. However, In the latter, the purpose is to show to the survivor that she has someone to turn to in facing her problem, whether she files a case or not.

I. DEFINITION

Legal interview is the communication of two or more persons that is primarily intended to gather information that may be used for a case or for an issue that is legal in nature.

The elements of a legal interview are:

1. It takes place between an interviewer and an interviewee;
2. The issue that is given attention has a legal aspect. The problem at hand is a legal problem of the interviewee or of another person; and
3. The interviewer, who may be a paralegal or a lawyer, presents her opinion as to the possible legal remedies

II. REQUIREMENTS IN A LEGAL INTERVIEW

A. Knowledge of the Law

It is not necessary that the interviewer be an expert in the law. The basic requirement is for the interviewer to connect the problem of the interviewee to the law.

B. Knowledge of the purpose of the interview

This is important in order for the interviewer to know what data or information to look for during the interview. This way, time is not wasted dwelling on information that is not very important to the problem being addressed.

C. Adequate Preparation

Before the scheduled interview, the interviewer should have an idea on what questions need to be answered by the interviewee and what will be the flow of the interview questions. It would help if the interviewer has a questionnaire or interview forms at hand. However, it is also important that the interviewer does not stick to the questions in the interview forms only, especially if there are other questions that need to be answered. There are instances where the questions

have to be expanded in order to have a better understanding of the facts and issues involved.

III. SOME POINTS FOR THE INTERVIEWER TO REMEMBER

A. Proper Set-up

1. The environment

The place where the interview shall be held should have some privacy and should be comfortable.

Arrange the seats in such a way that the interview becomes more personal. (For example, do not place anything that physically divides the interviewer and the interviewee, like a table.)

It is also important that the decorations and other objects inside the venue appear to be neutral. Take out any object that may distract the attention of the interviewee.

2. Emotional preparedness

It is important that the interviewer and the interviewee are comfortable with each other. This is important so that the interviewer gets information that needs to be gathered from the interviewee.

The interviewer has the obligation to foster a relationship with the interviewee that is based on trust. The interview will not be fruitful if there is no trust between the interviewer and the interviewee. If there is no trust, the information gathered may not be accurate.

B. Initiating the interview

The interviewer should explain at the outset the importance of being open and of having information that is both complete and accurate.

There are two ways of initiating the interview, depending on the circumstances of the interview:

1. Let the interviewee start telling her story. The interviewer may encourage the interviewee to say whatever it is that she is thinking or whatever it is bothering her. This method is good in winning the trust of the interviewee. On the other-hand, this method may take too long before it can be expected that the interviewee will say many facts that are not even relevant to her legal problem.
2. But if the pros and cons of this method are weighed, it will become apparent that this method is still effective because the interviewer will get information that may help in understanding and pursuing the case or legal problem. Furthermore, the interviewer may get an idea of what the interviewee expects of her.
3. If the interviewee is having a hard time talking during the interview, or if she is uncomfortable talking about her legal problem, it may be better to have the interviewer start the interview by propounding questions to the interviewee. But if there comes a point where the interviewee can tell her story without feeling uncomfortable, the interviewee should tell her story at her own pace.

C. Information that the interviewer should get

It is important that the interviewer has a clear idea of what information needs to be gathered during the interview. This will dictate the flow of the whole interview.

The interviewer should treat with confidentiality the information she gathers from the interviewee, especially if the information should be on very sensitive matters.

At the outset, the interviewer should assure the interviewee that whatever she says during the interview shall, as much as possible, be treated with confidentiality. This assurance may facilitate the interviewee to disclose important information.

D. Manner of conducting the Interview

1. If it is necessary to write down notes while conducting the interview, it is important to explain this to the interviewee.
2. As much as possible, do not interrupt the interviewee while she is relating her story.
3. Watch out for legal angles in the story.
4. Refrain, as much as possible, from giving your personal opinion or judgment about the interviewee's previous acts.
5. Be sensitive about non-verbal communication, such as being restless or the refusal to talk about certain issues.

IV. COMMON PROBLEMS IN CONDUCTING LEGAL INTERVIEWS

A. On the interviewee

1. Usually, the interviewee does not know all the facts and incidents relevant to the issue. And even if she knows them, she may have difficulty relating them to the interviewer in an orderly manner. There are also instances where, due to nervousness or fear of being judged, the interviewee finds it difficult to tell the exact story. In these cases, it is important for the interviewer to be patient, respectful, and persistent.
2. The interviewee may also have a hard time recalling the relevant events and the chronology of the same. This is especially true if she is under stress and/or if a long period of time has elapsed between the events and the interview date.
3. The interviewee may have a hidden need for attention or sympathy. She may be afraid that she will be judged as a "bad person" by the interviewer if she discloses everything to the latter. This problem may also crop up if there is lack of trust on the part of the interviewee towards the interviewer.

B. On the interviewer

1. The interviewer may fail to recognize the weaknesses or limitations of the interviewee;
2. The interviewer may rely more on verbal communication as a source of information than what may be received from non-verbal communication;
3. The interviewer may suffer from lack of sympathy;
4. The interviewer's lack of trust in the interviewee will also prevent a meaningful and open interview from being conducted.

C. Note-taking

It is important to take down notes on the information gathered from the legal interview because it will serve as a record to which the interviewer can refer during the course of the research. It is important to relay to the interviewee the need and importance of taking down notes during the interview.

In order to prevent any feeling of discomfort on the parts of the interviewee, note-taking can be done right after the interview (and not during), if the interviewer has a very good memory.

To allay any apprehension on the part of the interviewee that some of what she says is being ignored by the interviewer, it is important that the interviewer takes down notes from the start of the interview.

Note-taking during the interview may be done if the reason for such act is explained to the interviewee.

V. THINGS TO WATCH OUT DURING THE INTERVIEW

- A. Remember that the actual events and chronology thereof may be presented differently by someone who has another mind-set version of what transpired;

1. All conversations undergo through the following process and there may be difficulties encountered in each step;
 - a. Expression of message
 - i. Source of the message
 - ii. Manner of expressing the message
 - b. Receipt of the message
 - i. Recipient of the message
 - ii. Understanding/ appreciation of the message
2. The information given by the witnesses depends on reliability of their memory. In some cases, there will be errors in recalling the event. The following factors may affect the ability to recall events:
 - a. Receipt of the message
 - i. Attention given
 - ii. Stress level
 - iii. Expectations that are rooted in:
 - Culture
 - Personal preferences
 - Experiences
 - b. Reliability of memory
 - c. Retrieval of memory
3. Choosing the witnesses
 - a. It is easier for the judge to believe a witness who is amiable;
 - b. The perception of the judge is affected by the words chosen by the witness:
 - i. Use of the words “perhaps”, “maybe”;
 - ii. Repeating that which has been said before, which may be perceived as an indicator of uncertainty in what the witness is saying;
 - iii. Use of rhetorics which mean nothing is substance; and
 - iv. The tone of the voice used.

4. Do's and don'ts
 - a. Don't contradict the version of the client;
 - b. Refrain from making any personal judgements on the interviewee;
 - c. Be serious; and
 - d. Make sure that the witness knows her role and

AFFIDAVIT-MAKING



An affidavit is a document that is frequently used in cases and other legal proceedings. More often than not, the paralegal will encounter an affidavit during the course of her work in connection with a case she is supporting. A survivor of violence against women most probably would have to execute an affidavit, especially if she chooses to file a criminal case against the perpetrator. Thus, the affidavit is a basic document that a paralegal needs to know how to make. The paralegal will find out that affidavit making is a simple and easy task and can easily be mastered.

I. CONCEPT

The affidavit is a document that states something about a certain event. It is executed by a person called the “affiant,” who in effect, states one’s personal knowledge about this certain event.

The statement made by the affiant is sworn to in order to verify that what is written in the document is true and correct and is based on one’s personal knowledge. And

because this is a sworn statement, the document is considered a public document.

This means that if and when the document is used in a particular case, it may be presented or introduced in evidence without need of proving first that it was duly executed by the affiant. And because it is a sworn statement, the affiant may be prosecuted for the crime of perjury, if she is found to have made an untrue statement under the affidavit.

The affidavit may narrate a certain event that is needed to be disclosed or told by the affiant. The affidavit is considered to be a frequently used legal form that a paralegal needs to be familiarized with. Thus, it is necessary for the paralegal to master the skill of affidavit-making.

II. THE PARTS OF AN AFFIDAVIT

A. The place of execution

Republic of the Philippines)
_____ City) S.S.

This is found in the uppermost left corner of the document. From the place of execution, the reader will be able to check if the notary public was within his/her jurisdiction when s/he administered the oath of the affiant.

B. The scilicet

“SS”

The scilicet is written on the space beside the place of execution. Scilicet is taken from the Latin terms “scire licet”, which means “namely”, “to wit” or “in particular”. This is written on the affidavit to show the particular place where the document was executed.

C. The title of the document

“Affidavit”

The title is written on the center after the space where the place of execution is written.

It is important to place the title so that at first glance, the reader will be advised that the document s/he is holding is an affidavit.

D. Personal circumstances of the affiant

“I, Maria Fulgoso y Mercedes, of legal age, single/married, and a resident of 123 Maria del Barrio Street, Mexico, Pampanga, after having been sworn in accordance with law, do hereby depose and state that:”

The personal circumstances of the affiant are written on the first part of the affidavit. The name of the affiant, her nationality, her age (or the fact that she is or is not of legal age), civil status and her residence are all written on this part of the affidavit. The second part of the paragraph states that the affiant freely and willfully executed the affidavit.

E. The body of the affidavit

“1. My husband is Sergio Fulgoso, of legal age and a resident of 123 Maria del Barrio Street, Mexico, Pampanga;

1. We were married at the Quezon City Hall on 31 May 1990 before Hon. RTC Judge Jaime Salazar of Quezon City;
2. We have 2 children, namely Corazon and Angelica Fulgoso. Corazon was born on 23 January 1992 and Angelica on 30 March 1993;
3. Etc.”

After writing the personal circumstances of the affiant, the affiant then states the allegations that are related to the particular event which is being related. These allegations must be of the affiant’s personal knowledge. It is better if the body is written in such a way that there are numbers to the paragraphs and the events are chronologically arranged. In order to have a clearer statement of facts, it is suggested that each paragraph should contain only one idea or point.

F. The last paragraph in the body of the affidavit

“6. This statement is executed in order to attest to the truth of the foregoing and for the purpose of filing a complaint for physical injuries against my husband, Sergio Fulgoso.”

In the last paragraph of the statement, the affiant must state the reason(s) for executing the affidavit.

G. The signature of the affiant

“IN WITNESS WHEREOF, I have hereunto affixed my signature this – day of ___, 202_, in

(signature)

Maria Mercedes Y Fulgoso

Affiant”

The signature of the affiant should be affixed after the last paragraph of the body of the affidavit. The signature affirms the fact that the affidavit was executed by the affiant. It is also necessary that the affiant state the date and place when she affixed her signature to the affidavit.

H. Jurat

“SUBSCRIBED AND SWORN TO before me this - day of 200_, the affiant exhibiting to me her Government issued ID. No. _____ issued on _____ at _____.”

(signature)

NOTARY PUBLIC

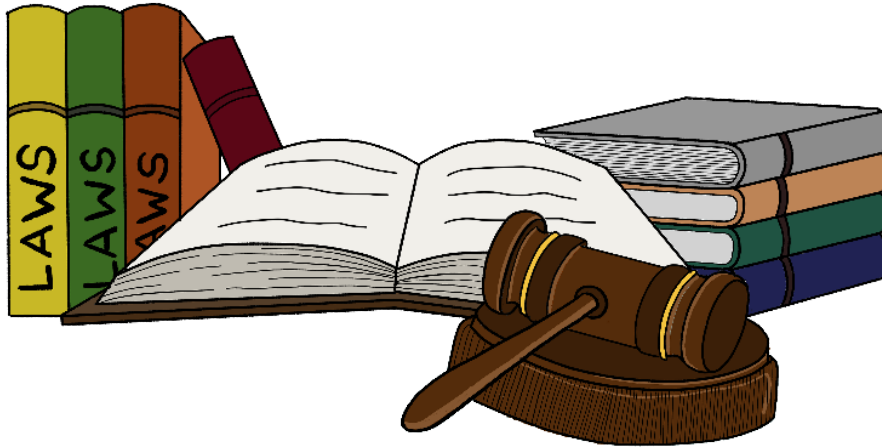
Until 31st of December 202_

PTR No. _____

Doc. No. _____
Page No. _____
Book No. _____
Series of 202__.”

The jurat is the certification of an official who is authorized to administer oaths that the statement was signed and subscribed before him/her. The type of government-issued identification card of the affiant, its date and place of issuance must also be stated.

LEGAL RESEARCH AND BIBLIOGRAPHY



Research is an important task of a paralegal. Research skills can be used for a particular case filed in court, for a negotiation, or for a certain issue confronting the community, the union, or any other organization. In legal research, the paralegal particularly looks for the answer to a particular legal problem, or for data that would help in answering a legal issue. The time consumed by lawyers and judges in doing research work is much more than that allotted for hearings in the courtroom. As long as the paralegal recognizes that books are friends and tools, she will have a fruitful, time doing research work.

I. LEGAL RESEARCH

Legal research refers to the process undertaken in order to seek answers to legal questions. The answers to these questions are found in law books, principles of law, or court decisions that are related to the legal issue at hand. Because it is impossible for anybody to know all the laws, principles and court decisions, it is imperative that the paralegal knows how to have access to them, whenever s/ he needs them. The process of looking for these answers is called legal research.

II. LEGAL BIBLIOGRAPHY

The use of books is an important component of legal research. Because there are so many laws and books relating to these laws, it is important for the paralegal to know how she can look for the books that may provide the answer to the legal question

that needs to be answered. The science of studying books on laws is called legal bibliography.

III. USES OF LEGAL RESEARCH

A paralegal performs many tasks that require legal research. Some examples of tasks that involve legal research are the following:

1. Preparation for a case;
2. Preparation for a negotiation (for extra-judicial settlement on matters like support, custody, collective bargaining agreement, grievance and lobbying for particular bill or policy);
3. Knowledge about particular rights and obligations: for trainings and for publications (information-dissemination).

IV. SOURCES OF LAW

A. The Constitution

The Constitution is the highest law of the land. This means that all laws and issuances, court decisions and government policies should not be contrary to the Constitution.

The Constitution may be formulated and amended by representatives of the citizens. These representatives are elected by their constituencies in order to serve in the Constitutional Convention. In lieu of a constitutional convention, the President may also form a Constitutional Commission and appoints the members thereof. Congress may also convene as a constituent body that can introduce amendments or overhaul the Constitution. Whatever method used, the discussions of the elected or appointed members of the body which wrote or amended the constitution should be available to the paralegal. These proceedings are recorded by the government. The library of the College of Law of the University of the Philippines has copies of these proceedings.

B. Treaties: agreements entered into by countries

Whenever the Philippines enters into a treaty, it should ratify the provisions of the treaty. For example, there are Labor Organization (ILO) Conventions that were ratified by the Philippine government regarding the rights of women workers.

These conventions and other treaties that were entered into by the Philippine government should be bases for the advocacy of new laws or policies of the government.

Thus, it is imperative that we know the contents of these treaties.

Copies of the treaties entered into by the Philippine government are found in the Department of Foreign Affairs (DFA) and the Senate which is mandated to ratify treaties in order to be recognized as part of Philippine laws.

C. National Laws

Usually, national laws are enacted by legislative branch, the Philippine Congress. These laws may come in the form of special laws or codes. A code is a collection of laws or rules that usually cover only one particular topic or issue. Examples of codes that have been enacted are the New Civil Code, Family Code, Revised Penal Code, Child and Youth Welfare Code, Labor Code and Administrative Code.

Official copies of laws may be found in the Bills and Index section of both the House of Representatives and the Senate. If there is a need to research the deliberations and debates of the legislators concerning particular law, the paralegal can conduct her research at the Secretariat of any of the two chambers of Congress and ask for the records and journals therefrom.

D. Ordinances

Ordinances are another kind of law. This is enacted by the legislative bodies of local governments, the sanggunian. Ordinances are considered law although their effectivity is limited to the local community that is covered by the jurisdiction of the sanggunian which enacted them. The sanggunian secretary of the concerned

local government unit keeps copies of the ordinances passed by the respective sanggunian.

E. Rules issued by the departments

Rules and regulations issued by the different departments of the Executive branch in order to implement the national laws are likewise sources of law. Examples of these rules are the Implementing Rules and Regulations, Administrative Orders and Administrative Circulars. If the paralegal needs copies of the rules, she should go to the concerned department and ask for copies therefrom.

F. Case law

Under the concept of “stare decisis”, decisions of the Supreme Court are considered part of the law of the country.

This kind of law has the force and effect of law because they are the official interpretation of the law. Decisions promulgated by the Supreme Court are written and may be read by the public on the “advanced sheets” that are found in the Supreme Court. These decisions are also published in the Supreme Court Reports Annotated (SCRA), although advanced sheets are issued earlier than SCRA volumes. Before year 1961, decisions of the Supreme Court are published in the Philippine Reports.

G. Opinion of experts

Opinions of experts in particular fields of law are also used as arguments in a case or legislative/ policy advocacy.

Experts are lawyers recognized as authorities by the other lawyers, judges and other sectors in the legal profession. These experts have had the opportunity to study and analyze the details of a particular branch of law. Examples of Filipino experts are Arturo Tolentino, Fernandez and J.B.L. Reyes for civil law; Joselito Chan, Samson Alcantara, Cesario Azucena for labor law; Luis B. Reyes for criminal law.

There are also others who may be considered experts in different branches of law. Most of the experts have published books where they expound their own interpretations of the law. These published books may be found in the libraries of different law schools.

V. PROCEDURE IN LEGAL RESEARCH

A. Analysis of the law

Before conducting the actual research, the paralegal should look at the data on hand. For example, before the paralegal looks up cases and experts' opinions on the issue of psychological incapacity, she should first know what are the behavioral manifestations that were exhibited by the husband of the survivor. This is where legal interview becomes meaningful, so that the paralegal will know what facts are relevant in building the case.

B. Identification of issue(s)

After gathering all the data, the paralegal now analyzes the data and identifies issues that need to be answered.

For example, if the research is related to a particular case, the following questions may guide the paralegals in identifying the issues:

1. What is the source of conflict between the parties? What are they fighting about?
2. What provision(s) of law should be used in the resolution of the case?
3. How would these provision(s) be implemented in the light of case?

C. Research on laws

1. Statute or Case Method

This method is used if the paralegal knows the title of the case or the title of the law that provides an answer to the issue at hand.

2. Topic or Analytical Method

This method is used when the paralegal knows under which the issue at hand is placed.

3. “Words and Phrases” Method

This method is useful when the resolution of the issue requires a clarification of definitions of certain words or phrases.

VI. LEGAL BIBLIOGRAPHY

Most of the following books are found in the Law Library of law schools and university. Anybody can use the library as long as a letter of request is presented to the librarian.

1. For the meanings of words and phrases

- a. Ballentine’s Law Dictionary
- b. Black’s Law Dictionary
- c. Nolledo, Dictionary of Legal Terms

2. For a deeper understanding of the issue

- a. Encyclopedia
 - i. American Jurisprudence
 - ii. Corpus Juris Secundum
 - iii. Venida, Philippine Encyclopedia of Law and Jurisprudence
- b. Reference Books
 - i. Arturo Tolentino, Civil Code
 - ii. Luis Reyes, Criminal Law
 - iii. Ernesto Pineda, Family Code
 - iv. Alicia Sempio-Dy, Family Code

3. For contents of laws

a. Subject approach

- i. Philippine Annotated Laws
- ii. Philippine Permanent and General Statutes
- iii. Moran, Index to Republic Acts
- iv. Presidential Decrees, Guide to Subject Index
- v. Feliciano, Subject Guide to PDs (1972-1975)
- vi. Vital Legal Documents

b. Text of Statutes

- i. Public Laws by the Philippine Commission
- ii. Public Laws of the Commonwealth
- iii. Laws and Resolutions of the Republic of the Philippines
- iv. Vital Legal Documents of the New Society
- v. Official Gazette f. Philippine Permanent and General Statutes

4. For case law

a. Supreme Court decisions that are chronologically arranged

- i. Philippine Reports (1901-1961)
- ii. Official Gazette (1961-present)
- iii. Supreme Court Reports Annotated (1961-present)

b. Subject Approach: Supreme Court decisions arranged according to subject

- i. Philippine Digest
- ii. Republic of the Philippines Digest
- iii. SCRA Quick Index d. Velayo's Digest of Supreme Court and Court of Appeals decisions

SOME GUIDELINES IN LEGAL RESEARCH

1. Use the proper steps in conducting the research.
2. Start from the latest, working your way to the earliest.
3. Always write down the title of the book that is the source of the information, the name of the author or editor of the book, the year in which it was published, and the page on which the information was taken.

BALANCING LEGAL AND EXTRA-LEGAL TACTICS

Not all disputes can be coursed through a legal battle. There are also legal issues that can be successfully brought to the extra-legal (or metalegal) arena. This arena is neither legal nor illegal. The advocacy is not within the framework of the legal system, but it does not also disregard this system. There are many legal issues that can be attacked by the paralegals by means of extra legal tactics. Some forms of these tactics are found below. Also listed below are the advantages and the limitations of extra-legal tactics. A good paralegal needs to know how to balance the legal and extra-legal tactics.

I. PRINCIPLES AND ASSUMPTIONS

- A. The law reflects and supports the system that is prevailing within the society in which the law thrives. Thus, the limitations of the system is also reflected in the application of the law. The law is not sufficient and is not always an effective response to the problems of society. If the paralegal's work is limited only to the legal arena, the gains that may be reaped in her quest for justice and genuine societal transformation may also be very limited.
- B. Within the legal system, there are many limitations in looking for effective responses to society's problems:
 - 1. The bureaucracy and very slow mechanism of government agencies;
 - 2. The technical nature of the law that may be used by powerful and cunning sectors to their advantage; and
 - 3. The propensity of the bureaucracy to ignore the true situation of society and instead, to focus only on laws, regulations and administrative issuances.
- C. The law can be an effective tool in changing society if it has the support and is relevant to the basic sectors of society.

- D. Legal tactics should be considered as support only to the organizing effort of the basic sectors and should be used under this framework. The sectors should not confine their struggle to the legal arena.

II. EXTRA-LEGAL TACTICS

Extra-legal tactics refer to acts that are intended to resolve a problem outside the legal processes set by law.

Concept

1. The tactics are not legal because they are outside the processes set by law. However, in most cases, it does not make the tactics illegal or against the law as they are protected by the right to freedom of expression or other basic human rights.
2. There is danger that they may be the cause of a case or disciplinary action being filed against the actor(s), because the acts are between legal and illegal.
3. In many cases, extra-legal tactics need the support of many people in order to be effective.

EXTRA-LEGAL AND LEGAL TACTICS

	ADVANTAGES	DISADVANTAGES
LEGAL	<ul style="list-style-type: none"> • The order or decision of a court has the force of law. • The adverse party is compelled to confront the issue and answer the accusation. • Do not need the support of many people. (except for the person who filed the case) 	<ul style="list-style-type: none"> • The procedure can be prolonged and expensive. • Can be used as a tool in order to block a remedy to the problem. • The results usually depend on the lawyer. Cannot affect the interest of the adverse party unless the case is won.

EXTRALEGAL	<ul style="list-style-type: none"> • Can be used as a means to encourage many people to act on a certain issue. (an effective means for learning and participating by the members of the organization) • Can hasten the process of looking for answers to the legal problem. • Are not hampered by the limitations that are presented in legal processes. 	<ul style="list-style-type: none"> • Sometimes, the success of the tactics depends on the level of support • Cannot ascertain that the adverse party will listen to the organization. (adverse party may choose to ignore the act)
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Guide questions:

1. For the legal tactics

- a. Does the complainant/plaintiff have strong evidence in support of the case?
- b. Do the laws support the allegations of the complainant/plaintiff?
- c. Can the complainant/ plaintiff spare more time in seeking a resolution to her case?
- d. Are the tactics being adopted in response to the illegal acts of the adverse party?

2. For the extra-legal tactics

- a. Is the support group for the extra-legal tactics strong, comprehensive and active?
- b. If needed, can the members of the organization stand the prolonged procedure?
- c. Are all the members of the organization united in the employment of these guidelines?

- d. Will the adverse party feel the negative effects brought about by the extra-legal tactics?
- e. Are the members of the organization emotionally prepared to respond if and when the adverse party retaliates?
- f. Are the tactics employed appropriate to the members of the organization?
- g. Are the members aware what they are fighting for?
- h. Are they organized and will they be able to respond for the issue at hand?



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SALIGAN seeks to effect social change by working with women, the basic sectors, and local communities for their empowerment through the creative use of law and legal resources.