INTRODUCTION

Brief History of Family Law in the Philippines

Four centuries of Spanish rule in the Philippines and more than fifty years of American influence have left its indelible mark on family law in the Philippines. With their characteristic humor, some Filipinos would make light of this influence by labeling it as “four centuries in a convent and fifty years of Hollywood.” That in essence accounts for the evolution of the Filipino psyche from its essentially Malay roots and, consequently, the Philippine laws, which were crafted to rule their day-to-day lives.

Family law in the Philippines is rooted in various philosophies, customs and traditions embodied in the Spanish Civil Code, which became effective in the Philippines in 1889. It is a historical fact that the Philippines had been under Spanish rule for 400 years. Spanish colonization was brought about by the discovery of the islands bordered on the West by the South China Sea and on the East by the Pacific Ocean by Ferdinand Magellan in 1521. It was thereafter named as the Philippine Islands in honor of King Philip II (or Felipe) of Spain, who authorized the expedition. In accordance with the Spanish patriarchal tradition, the husband has full authority and responsibility for the family while the wife has a secondary role but is amply protected by law.

At the turn of the century in 1898, Spain ceded the Philippines to the United States under the Treaty of Paris. The Philippines was acquired by the United States for $20,000 dollars. American legal influence then became pervasive in the Civil Code of the Philippines. The wife acquired more power when she was permitted for the first time to sell and dispose of her paraphernal properties (properties acquired before the marriage and/or inherited properties before and during the marriage) without the consent of the husband. This became a reality for the Filipino wife in 1932 during the Philippine Commonwealth era when the Philippines was still considered a territory of the United States.

The provisions on family law, prior to the enactment of the present Family Code, were contained in the Civil Code of the Philippines. The Civil Code of the Philippines was prepared by a Code Commission created by Executive Order No. 48 on March 20, 1947. The Code was approved as Republic Act. No. 386 on June 18, 1949 and took effect one year after publication in the Official Gazette or more precisely on August 30, 1950. The Civil Code contained “new provisions chosen with care from the codes, laws and judicial decisions of other countries as well as from the works of jurists of various nations. Among them are Spain, the various states of the American Union – especially California and Louisiana – France, Argentina, Germany, Mexico, Switzerland, England and Italy. In addition, there are a number of articles, which restate doctrines laid down by the Supreme Court of the Philippines. Finally, there are hundreds of amendments and
new rules agreed upon by the Commission originally in order to consecrate Filipino customs or to rectify unjust and unwise provisions heretofore in force or to clarify doubtful articles and clauses in the present Code, or to afford solutions to numerous questions and situations not foreseen in the Civil Code of 1889 and other laws.”

The present Family Code of the Philippines was signed into law by former President Corazon C. Aquino on July 6, 1987 under Executive Order No. 209. It took effect on August 3, 1988, one year after its publication in a newspaper of general circulation.

The Family Code repealed several articles in the Civil Code of 1950, like the following articles: on marriage (Arts. 52 to 96), legal separation (Arts. 97 to 108), rights and obligations between husband and wife (Arts. 109 to 117), property relations between husband and wife (Arts. 118 to 215), on the family (Arts. 216 to 254), on paternity and filiation (Arts. 255 to 289), on support (Arts. 290 to 304), on parental authority (Arts. 311 to 355), on emancipation and age of majority (Arts. 397 to 406). Some portions of the Child and Youth Welfare Code (also known as Presidential Decree 603) were likewise repealed together with all laws, decrees executive orders, proclamations, rules and regulations or parts thereof, which are inconsistent with the Family Code.

The Family Code grants spouses equal rights, gives dual authority to parents in the family and provides for special protection for children in case either parent remarries. Strong Catholic grounding and the Filipinos’ reverence for family life discouraged the implementation of divorce laws in the Philippines. Before the effectivity of the Civil Code of 1950, the provisions on marriage were found in Act 3613, which was subsequently amended by a succession of Commonwealth Acts until it was repealed by Republic Act 386, better known as the Civil Code of 1950.

Absolute divorce was introduced on March 11, 1917 when the legislature passed Act No. 2710. This was replaced during the Japanese regime by Executive Order No. 141 which likewise provided for absolute divorce. Act 2710 was revived on October 23, 1944 after the liberation of the Philippines from the Japanese occupation when General Douglas MacArthur, as commander-in-chief of the Philippine – American Army, proclaimed all laws of any other government in the Philippines other than the Commonwealth of the Philippines null and void. But that has since been abrogated when the Civil Code of 1950 was passed. The provisions on absolute divorce have been converted to legal separation (which is only separation from bed and board) in the Civil Code. Up to the present time even with the promulgation of the Family Code, divorce is not available to warring Filipino couples. This does not hold true however for Muslims in the Philippines.

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3 Ibid. pp. 312-313
Muslims are not covered by the provisions of marriage in the Family Code. The Muslim Code governs the Muslim family and allows the Muslim to divorce any of their spouses. The Muslim males are allowed to have four spouses. Some Filipino non-Muslim males have resorted to the Muslim law to avail of divorce by converting to Islam. Otherwise, they go to foreign shores like Guam, Costa Rica, the Dominican Republic or the United States to avail of a divorce decree. The foreign divorce obtained by Filipinos has no validity whatsoever for as long as they remain Filipino citizens.\footnote{Art. 15. Laws relating to family rights and duties, or to the status, conditions and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad}

There is however one type of foreign divorce which is recognized by the Family Code under Article 26.\footnote{Art. 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 37 and 38. Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse, the Filipino spouse shall have capacity to remarry under Philippine law. (As amended by E.O. 227)} This is a divorce obtained by an alien spouse against a Filipino spouse. Such foreign divorce is valid and is recognized in the Philippines thus enabling the Filipino spouse to remarry. Article 26 of the Family Code sought to remedy an anomalous situation under the Civil Code of 1950, where a Filipino spouse who was divorced by an alien spouse remained married to an alien spouse who is not anymore married to the Filipino spouse.

\textbf{Court Procedure In Family Law In The Philippines}

Family law cases are filed like any other civil cases before a regular Regional Trial Court designated to handle domestic cases. In October 28, 1997, the Family Courts Act (Republic Act No. 8369) was passed by Congress providing for the creation of Family Courts. Pending funding for these special courts, the regular Regional Trial Courts have been designated to hear family law cases falling within their jurisdiction. The court procedure in family law deviates from the ordinary civil cases in a few instances:

1. When a legal separation case is filed and a pre-trial ensues, the parties are usually given a six-month “cooling off” period within which to settle their differences and effect a possible reconciliation. It is only after six months that the trial of the case can begin.

2. Prior to the trial of the case in legal separation and annulment cases, the Court refers the case to the State Prosecutor who will conduct an investigation to determine whether collusion exists between the parties and to see to it that evidence is not fabricated or suppressed. No decree of legal separation can be granted if it is based on a stipulation of facts or a confession of judgment.\footnote{Art. 60 of the Family Code} This is done because the State,
following constitutional precepts, aims to preserve the marriage and the family as an “inviolable social institution.” If the respondent does not file an answer nor appear at the trial of the case, the State Prosecutor appears for the State and conducts the cross-examination of the witnesses.

3. Since February 13, 1997 when the Supreme Court came out with a decision on the precedent-setting *Molina* case and laid down eight (8) guidelines for annulment cases filed under Article 36 of the Family Code, the Office of the Solicitor General has been instructed to file its comment or opposition to any of the annulment cases filed under Article 36. Under the new Supreme Court rule, this requirement is merely permissive.

4. There is no default in annulment or legal separation cases. In ordinary civil cases, failure on the part of the respondent to answer the petition within a period of 15 days from service of summons can render the respondent in default.

5. Where children are concerned or the subject of litigation, “the Court shall give paramount consideration to the moral and material welfare” of the children. To pursue this end, the Court asks the assistance of the Department of Social Welfare to conduct a social case study and submit the same to the Court.

**Summary Proceedings**

The Family Code also provides for summary judicial proceedings in the following cases:

1. When spouses are separated in fact or one has abandoned the other, and one needs the consent of the other in a transaction, and such consent is withheld or cannot be obtained, one spouse can seek judicial authorization from the Court for the transaction by filing a verified petition stating all those facts.

2. In petitions for judicial authorization to administer or encumber specific separate property of the abandoning spouse or to use the fruits thereof to support the family;

3. Petitions involving parental authority;

4. Claims for damages by either spouse, except costs of proceedings, may be litigated only in a separate action.

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7 Art. 36 provides for the annulment of marriage based on psychological incapacity of any party in fulfilling the essential obligations of marriage. It will be discussed in Chapter 2

8 Art. 49 of the Family Code

9 Art. 239 of the family Code

10 Art. 248 of the Family Code

11 Art. 249 of the Family Code

12 Art. 240 of the Family Code
The Supreme Court Rules

More recently, the Supreme Court issued several rules of procedure in Family Law cases, namely:

1. Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC) effective March 15, 2003
3. Rule on Provisional Orders (A.M.02-11-12-SC effective May 15, 2003
4. Rule on Guardianship of Minors (A.M.03-02-05-SC) effective May 1, 2003
5. Rule on Adoption (A.M.02-6-02-SC) effective August 22, 2002
6. Rule on the Examination of Child Witness (A.M. No.00-4-07-SC) effective December 15, 2000

Alternative Dispute Resolution

If the parties in Family Law cases desire to avoid lengthy protracted litigation, there is the Alternative Dispute Resolution Act (Republic Act No.9285), which took effect on April 2, 2004 to fall back on.
Chapter 1

Marriage in the Philippines

The Family Code was promulgated out of the “need to implement policies embodied in the 1987 Constitution that strengthen marriage and the family as basic social institutions and ensure equality between men and women.” 

Article 1 of the Family Code defines marriage as “a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.”

Requisites of Marriage

The essential requisites of marriage in the Philippines are provided under Article 2 of the Family Code, to wit:

(1) Legal capacity of the contracting parties, who must be male and female;
(2) Consent freely given.

Any male or female, 18 years of age or over, not under any impediment mentioned in Articles 37 and 38, may contract marriage. It should be noted that if the contracting parties are between the ages of eighteen and twenty-one, they are required to obtain the consent of their parents or guardian to the marriage. Between the ages of twenty-one and twenty-five, the parties are obliged to seek the advice of their parents or guardian upon the intended marriage. This provision embodies the Filipino custom and tradition of “pamanhikan” (which literally means going to the house of the bride to ask for her hand in marriage) where couples honor their elders by seeking their permission or advice prior to marriage. In addition to this, the parties are required to undergo marriage counseling and be certified by a priest or by a marriage counselor, duly accredited by a proper government agency, as having undergone such counseling.

The formal requisites of marriage are provided in Article 3 of the Family Code:

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13 Third Whereas clause of Executive Order 209
14 Art. 37 provides for incestuous marriages that are void from the beginning;
   Art. 38 enumerates void marriages for reasons of public policy;
15 Art. 5 of the Family Code
Rights and Obligations Between the Husband and Wife

Under Article 68 of the Family Code, “the husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.” They are likewise jointly responsible for the support of the family and maintenance of the household.

Property Relations Between the Husband and Wife

Ever since the Family Code was promulgated, Filipino couples have become more aware of the benefits of entering into a pre-nuptial agreement. This agreement governs the property relations between the future spouses. Before the enactment of the Family Code, property relations were governed by the system of conjugal partnership of gains, if no pre-nuptial agreement on complete separation of property has been entered into.

At present, future spouses who fail to enter into a pre-nuptial agreement are now governed by the regime of absolute community automatically. There is cause for alarm particularly for the moneyed spouse whose marriage may not succeed. At the end of a failed marriage, a moneyed spouse may be forced to part with half of his/her properties, including those which were inherited prior to the marriage, in favor of an unworthy spouse. The future spouses can however, avoid this automatic coverage by choosing the system of their property relations in a pre-nuptial agreement indicating a system of conjugal partnership of gains or a complete separation of property or any other regime.

A. What Constitutes Community Property

Article 91 of the Family Code states that “unless otherwise provided in this Chapter or in the marriage settlements, the community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.”

However, the following are excluded from the community property:

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16 Art. 35 enumerates marriages which are void from the beginning.

17 Art. 45 enumerates marriages which annulable or voidable.
Property acquired during the marriage by gratuitous title by either spouse and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator, or grantor that they shall form part of the community property.

Property for personal and exclusive use of either spouse. However, jewelry shall form part of the community property.

Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage and the fruits as well as the income, if any, of such property. (Article 92 of the Family Code)

B. What Constitutes Conjugal Partnership of Gains

If the future spouses have chosen this system in their pre-nuptial agreement, it simply means that they agree to “place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance, and upon dissolution of the marriage or of the partnership, the net gains or benefits obtained by either or both spouses shall be divided equally between them, unless otherwise agreed in the marriage settlements.”

In this system, “all property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved.”

The following are considered as conjugal partnership properties:

1. Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only of the spouses;

2. Those obtained from the labor, industry, work or profession of either or both of the spouses;

3. The fruits, natural industrial, or civil, due or received during the marriage from the common property, as well as the net fruits from the exclusive property of each spouse;

4. The share of either spouse in the hidden treasure which the law awards to the finder or owner of the property where the treasure is found;

5. Those acquired through occupation such as fishing or hunting;

6. Livestock existing upon the dissolution of the partnership in excess of the number of each kind brought to the marriage by either spouse; and

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18 Article 106 of the Family Code
19 Art. 116 of the Family Code
(7) Those which are acquired by chance, such as winnings from gambling or betting. However, losses therefrom shall be borne exclusively by the loser-spouse.” 20

By choosing the system of conjugal partnership, the future spouse can hold in exclusive ownership the following exclusive properties:

(1) That which is brought to the marriage as his or her own;
(2) That which each acquires during the marriage by gratuitous title;
(3) That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the spouses; and
(4) That which is purchased with exclusive money of the wife or of the husband. 21

C. Complete Separation of Properties

If the future spouses failed to choose the system of complete separation of properties in their marriage settlements, it is still possible for them to be governed by this regime during their marriage by going to court for a judicial order. The judicial separation of property may be voluntary or for sufficient cause.

Article 135 enumerates what may be considered as sufficient cause for judicial separation of property:

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

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

20 Art. 117 of the Family Code

21 Art. 109 of the Family Code
Property Relations of Live-in Couples

Cohabitation Under a Void Marriage or Without Legal Impediment to Marry

Article 147 of the Family Code provides for the property relations of couples, who are living together under a void marriage or who are living together without the benefit of marriage but are capacitated to marry. The rules of co-ownership govern the property relationship of these couples. In this regime, the wages, salaries, and properties acquired through their work and industry are owned in equal shares.

Properties acquired during their live-in period shall be presumed to have been obtained through their joint efforts, work or industry, unless proven otherwise. If a party did not contribute in the acquisition of said properties, said party shall be presumed to have contributed to the acquisition if the party’s “efforts consisted in the care and maintenance of the family and the household.” The sale and disposition of the share in such properties cannot be effected without the consent of the other party, until after their cohabitation ends.

The share of the party in bad faith in a void marriage shall be forfeited in favor of their common children. In case of waiver or default by any or all of the common children, the share of the party in bad faith shall go to the respective surviving descendants. In case there are no descendants, the share shall accrue to the innocent party.

Cohabitation with Impediments

The property relations of couples living together but with impediments to marry are governed by Article 148 of the Family Code. In this case, the parties can own only the properties acquired through their “actual joint contribution on money, property or industry.” Ownership is limited in proportion to their “respective contribution.” Unless proven otherwise, the contribution shall be presumed to be equal. This presumption applies to joint deposits of money and evidences of credit.

If one party is legally married to a third person (other than the live-in partner), his/her share in the co-ownership shall belong to the absolute community or conjugal partnership of the valid marriage. If a party acted in bad faith and is not validly married to a third party, his/her share in the co-ownership shall be forfeited in accordance with the preceding Article 147.

Chapter 2

Annulment of Marriage in the Philippines-A Liberalized Divorce?
BACKGROUND:

The Philippines is a predominantly Catholic country. As such this factor accounts for the fact that there is no divorce in the Family Code of the Philippines, which took effect on August 3, 1988 during the incumbency of then President Corazon C. Aquino when she signed Executive Order No. 209, as amended by Executive Order No. 277.

But for a majority of Filipinos, there is a lot of reason to rejoice with the passage of the Family Code. Though divorce is not actually provided for in the Family Code, except indirectly through Article 26, the Family Code has adopted a Canon Law provision which many have labeled as a “liberalized divorce” in the Philippines. That provision is Article 36 of the Family Code, which provides that:

“A marriage contracted by any party who, at the time of the celebration, was psychologically Incapacitated to comply with essential marital obligations of marriage, shall likewise be void even if such Incapacity becomes manifest only after its solemnization. (As amended by Executive Order No. 227).”

This provision is similar to Canon 1095 of the Canon Law under which a party can obtain an annulment from the Catholic Matrimonial Tribunal. Under Canon 1095, the following are considered incapable of contracting marriage: (1) those who lack sufficient use of reason (as distinguished from mental illness); (2) those who lack judgmental discretion concerning the matrimonial rights and duties to be mutually handed over and accepted; (3) those, who due to a serious psychic anomaly, cannot assume the essential obligations of matrimony.

Before the passage of the Family Code, (Article 36 in particular), many Catholic Filipinos were able to obtain annulment from the Catholic Church on these grounds, but they remain married legally because the Catholic Matrimonial Tribunal is not a court of law and the Civil Code, then in effect, did not provide for annulment on those grounds available in the Catholic Church. To remedy the situation where Catholic Filipinos remain married in the eyes of the law but whose marriages had already been annulled by the Catholic Church, the members of the Civil Code Revision Committee and the Family Code Committee deemed it wise to adopt and include in the Family Code the ground for annulling a marriage under the Catholic Church on the basis of the psychological incapacity of any of the spouses. That is the raison d’etre for Article 36 of the Family Code. The passage of Article 36 therefore provided Filipinos with a cause for celebration.

After August 3, 1988, it became relatively easy for Filipinos to file for annulment on the ground of the psychological incapacity of one or both of the spouses in fulfilling

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22 Art. 26 provides for the recognition of a foreign divorce obtained by a spouse against a Filipino spouse.
the essential obligations of marriage. A flurry of annulment cases ensued. Thus, a new field of law practice was opened to lawyers in the Philippines.

The term “psychological incapacity” was not defined by the Family Code. It was left up to the trial court’s discretion to decide what constituted “psychological incapacity.” The essential marital obligations referred to in Article 36 are those enumerated under Articles 68-71, 220, 221 and 225 of the Family Code. These articles provide for the obligation of spouses to live together, observe mutual love, respect and fidelity and render mutual help and support (Arts. 68-71). The rest deals with the rights and duties of parents over the persons (Arts. 220, 221) and properties (Art. 2250) of their children.

The Santos and Molina Cases

While a majority of Filipinos were complacently contemplating on how easy it was now to get an annulment in the Philippines in lieu of a divorce, which could not be countenanced by the Catholic Church, the Supreme Court jolted the contemplating Filipinos out of their complacency when it came out with the decisions on the Santos case and the Molina case.

The Supreme Court affirmed the decision of the trial court and the Court of Appeals in denying the annulment in the Santos case. And in the Molina case, the Supreme Court denied and reversed the annulment decree granted by the lower court and affirmed by the Court of Appeals under Article 36 and gave due course to the appeal of the Solicitor General in behalf of the State. It gave a stricter interpretation of psychological incapacity under the Family Code and reiterated its stand to uphold the State Policy embodied in Section 12, Article II of the 1987 Philippine Constitution which “recognizes the sanctity of family life” and aims to “protect and strengthen the family as a basic autonomous social institution.”

In the Santos case, the Supreme Court decided that the refusal of the wife to live with the husband, a decision she arrived at after the celebration of the marriage – is not “psychological incapacity” and cannot be a ground for declaration of nullity of marriage under Article 36.

In that case the couple, Leouel Santos and Julia Bedia, got married in 1986. After the birth of their child, family quarrels ensued. The wife, a nurse, then left for the United States in 1988 against the wishes of the husband. She never came back. In 1990, the husband then went for a training program in the United States as a member of the Armed Forces of the Philippines. He was not able to find his wife. He then filed for an annulment upon his return to the Philippines.

The trial court dismissed his petition in 1991, which dismissal was confirmed by the Court of Appeals. The Supreme Court ruled that Article 36 was not meant “to comprehend all such possible cases of psychoses” and that psychological incapacity

should refer to no less than a mental (not physical) incapacity that causes a party to be truly incogntive of the basic marital covenants.” It is confined “to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.”

In the *Molina* case, the Supreme Court, through Mr. Justice Artemio Panganiban, responded to the appeal of the Office of the Solicitor General (OSG), which attacked the appealed decision as one which tended “establish the most liberal divorce procedure in the world, which is anathema to our culture.” It laid down the following eight guidelines for the interpretation and application of Article 36:

1. The burden of proof to show the nullity of marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it “as the foundation of the nation.” It decrees marriage as legally “inviolable,” thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be “protected” by the State.

   *The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.*

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. Article 36 of the Family Code requires that the incapacity must be psychological – not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *elusdem generis*, nevertheless such root cause must be identified as a psychologically illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

3. The incapacity must be proven to be existing at the “time of celebration” of the marriage. The evidence must show that the illness was existing when the parties exchanged their “I do’s”. The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

4. Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse,
not necessarily absolute against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illness of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

5. Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, “mild characteriological peculiarities, mood changes, occasional emotional outbursts” cannot be accepted as root causes. The illness must be shown as down right incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

6. The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

7. Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides: “The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature.”

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally—subject to our law on evidence – what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and Church – while remaining Independent, separate and apart from each other – shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.
8. The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the State. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the defensor vinculi contemplated under Canon 1095.

In the Molina case, the petitioner wife charged that the husband was “highly immature and a habitually quarrelsome individual”. After one year of marriage, the husband Molina showed signs of Immaturity and irresponsibility because he preferred to spend time with his peers and friends on whom he squandered his money. He depended on his parents for assistance and was never honest in his finances. This resulted in frequent quarrels. In February 1986, Molina lost his job and they quarreled. The following year, the petitioner wife resigned from her job and went to live with her parents in the northern part of the Philippines, in Baguio. A few weeks later, Molina left his wife and child and has since abandoned them. According to the Petitioner, this showed that her husband was “psychologically incapable” of complying with the essential marital obligations and that it would be in their “best interests” to have the marriage annulled. The husband admitted that they could no longer live together as husband and wife. He maintained that their quarrels were due to his wife’s insistence on maintaining her group of friends, refusal to perform marital duties such as cooking meals, failure to run the household and handle finances. Although the trial court declared the marriage null and void, which decision was upheld by the Court of Appeals, the Supreme Court overturned the decision on appeal of the Office of the Solicitor General (OSG) and stated that it was an erroneous and incorrect interpretation of “psychological incapacity.”

With these two cases, the Filipinos are forewarned that it will not be very easy after all to get an annulment in the Philippines. They cannot just pass off any quarrel or emotional immaturity as signs of psychological incapacity, even if these symptoms are certified by a licensed psychiatrist, as in the Molina case.

There are many sectors though who have criticized the Supreme Court for these decisions. They believe that the Supreme Court has interpreted the Family Code provision too strictly, when precisely the aim was to provide for a liberalized divorce in the Philippines. Some lawyers in the Office of the Solicitor General (OSG) also found reason to grumble about this decision. Under the Molina guidelines, the OSG was required to give their comment or opposition on all the annulment cases to be filed in the Philippines.
The Supreme Court Amends Molina Guideline

In March 15, 2003, the Supreme Court issued the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC) which toned down the stringent requirements laid down in the Molina case.

a) On the Filing of Memorandum by the Office of the Solicitor General (OSG)

It is not anymore mandatory for the OSG to file their certification, stating their agreement or opposition to the petitions for declaration of nullity of marriage under Article 36 of the Family Code. It is now merely permissive on the part of the court to require the filing of memorandum either by the public prosecutor or the OSG. Section 18 of said Rule provides:

“The court may require the parties and the public prosecutor, in consultation with the Office of the Solicitor General, to file their respective memoranda in support of their claims within fifteen days from the date the trial is terminated. It may require the Office of the Solicitor General to file its own memorandum if the case is of significant interest to the State. No other pleadings or papers may be submitted without leave of court. After the lapse of the period herein provided, the case will be considered submitted for decision, with or without the memoranda.”

b) The Root Cause of Psychological Incapacity and Expert Opinion under Article 36 of the Family Code

The Supreme Court Rule likewise did away with the requirement in the Molina case that the petition should allege the root cause of the psychological incapacity of any of the parties, which must be medically and clinically identified and sufficiently proven by experts, in the proceedings on declaration of nullity of marriage. Section 2 (d) of said Rule merely requires now the showing/alleging of the “physical manifestations” indicative of psychological incapacity, to wit:

“What to Allege- A petition under Article 36 of the Family Code shall allege the complete facts showing that either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged.”

Supreme Court Associate Justice Antonio Carpio, in his decision in the Barcelona case, explained the effect of the new Rules:
“Procedural rules apply to actions pending and unresolved at the time of their passage. The obvious effect of the new Rules providing “expert opinion need not be alleged” in the petition is that there is also no need to allege the root cause of the psychological incapacity. Only experts in the fields of neurological and behavioral sciences are competent to determine the root cause of psychological incapacity. Since the new Rules do not require the petition to allege expert opinion on the psychological incapacity, it follows that there is also no need to allege in the petition the root cause of the psychological incapacity.”

(Diana M. Barcelona vs. Court of Appeals and Tadeo R. Bengzon, SC First Division G.R. No. 130087 September 24 2003)

While the Supreme Court may have done away with some of the stringent requirements in filing for annulment under Article 36 of the Family Code, the fact remains that, for majority of the Filipinos, getting an annulment or having a marriage declared null and void remains a pipe dream, as the expense involved in getting a psychiatrist or a clinical psychologist to prove the case is still beyond reach. That- plus the fact that the Supreme Court increased the filing fees for filing petitions in court in year 2004-are probably good enough reasons for the Philippine lawmakers to pass an inexpensive divorce law in the country.

OTHER GROUNDS FOR ANNULMENT OF MARRIAGE:

There are other grounds in the Family Code for the annulment of marriage with effect of declaring a marriage void ab initio or voiding what used to be valid marriage. These are the void and voidable marriages. The provisions on void marriages are found in Articles 35, 36, 37 and 38 of the Family Code.

Void Marriages:

“Art. 35. The following marriages shall be void from the beginning:

1. Those contracted by any party below eighteen years of age even with the consent of parents or guardians;

2. Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;

3. Those solemnized without license , except those covered by the preceding Chapter;

4. Those bigamous or polygamous marriages not falling under Article 41;

5. Those contracted through mistake of one contracting party as to the identity of the other; and

6. Those subsequent marriages that are void under Article 53. (N.B. Those void for non-delivery of the presumptive legitime).
Art. 37. Marriages between the following are incestuous and void from the beginning, whether the relationship between the parties be legitimate or illegitimate:

1. Between ascendants and descendants of any degree; and

2. Between brothers and sisters, whether of the full or half blood. (81a)

Art. 38. The following marriages shall be void from the beginning for reasons for public policy:

1. Between collateral blood relatives, whether legitimate or illegitimate, up to the fourth civil degree;

2. Between step-parents and step-children;


4. Between the adopting parent and the adopted child;

5. Between the surviving spouse of the adopting parent and the adopted child;

6. Between the surviving spouse of the adopted child and the adopter;

7. Between the adopted child and a legitimate child of the adopter;

8. Between adopted children of the same adopter; and

9. Between parties where one, with the intention to marry the other, killed that other person’s spouse, or his or her own spouse. (82a)"

There is no prescriptive period in filing for the nullity of marriages which are void ab initio. Article 39 is quoted hereunder.

“Art. 39 The action or defense for the declaration of absolute nullity of marriage shall not prescribe. “ (However, in the case of marriages celebrated before the effectivity of this Code and falling under Article 36, such action or defense shall prescribed in ten years after this code shall have taken effect). 24

Voidable Marriages:

24 The last sentence of Article 39 has been discarded. There is no more prescriptive period of ten years within which to file an annulment based on Article 36 of the Family Code.
Voidable marriages are those marriages, which are valid until annulled. These can be found in Articles 40, 45 and 46.

“Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.”

Art. 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

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

2. That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;

3. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

4. That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with other as husband and wife;

5. That either party was physically incapable of consummating marriage with the other, and such incapacity continues and appears to be incurable; or

6. That either party was afflicted with a sexually-transmissible disease found to be serious and appears to be incurable.

Art. 46. Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:

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

2. Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;

3. Concealment of sexually-transmissible disease, regardless of its nature, existing at the time of the marriage; or
4. Concealment of drug addiction, habitual alcoholism, homosexuality or lesbianism existing at the time of the marriage.

No other misrepresentaion or deceit as to character, health, rank, fortune or chastity shall constitute such fraud as will as give grounds for action for the annulment of marriage.”

Prescriptive period:

Voidable marriages under Article 45 have a prescriptive period of five (5) years after reaching the age of 21, if filed by a party whose parent did not give consent to the marriage or anytime before reaching the age of 21, if filed by the parent or guardian of the minor; or five (5) from the discovery of the fraud, or after the force, intimidation or undue influence ceased; or five (5) years after the marriage where one party was physically incapable of consummating the marriage or either party was afflicted with a sexually transmissible disease where both are incurable; or at any time before the death of either party, if the ground is insanity;

EFFECTS OF ANNULMENT OF MARRIAGE:

The Case of the Absent Spouse

There are marriages, which have been contracted in the honest belief that the previous spouse has been dead. In that case, if the supposedly dead spouse suddenly appears, the subsequent marriage is therefore null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In order that the present spouse may contract a subsequent marriage, there is a necessity to institute a summary proceeding for the declaration of the presumptive death of the absent spouse. This is without prejudice to the effect of reappearance of the absent spouse.

In such a case, the reappearance of the absent spouse shall automatically terminate the subsequent marriage by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void ab initio. The termination of the subsequent marriage produces the following effects:

“Art. 43. The termination of the subsequent marriage referred to in preceding Article shall produce the following effects:

1. The children of the subsequent marriage conceived prior to its termination shall be considered legitimate and their custody and support in case of dispute shall be decided by the court in a proper proceeding:

25 Art. 41 of the Family Code

26 Art. 42 of the Family Code
2. The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there be none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;

3. Donations by reason of marriage shall remain valid except that if the donee contracted the marriage in bad faith, such donations made to said donee are revoked by operation of law;

4. The innocent spouse may revoke the designation of the other spouse who acted in bad faith as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable; and

5. The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by estate or intestate succession.

Art. 44. If both spouses of the subsequent marriage acted in bad faith, said marriage shall be void ab initio and all donations by reason of marriage and testamentary dispositions made by one in favor of the other are revoked by operation of law.

These effects shall also apply to other marriages which are declared void ab initio or are voidable by annulment.

DELIVERY OF THE PRESUMPTIVE LEGITIME:

One of the effects of the annulment of marriage under Article 36 and other null and void marriages, which was not provided for in the Civil Code of 1950, is found in Articles 50, 51, 52 and 53 of Family Code. These are the provisions for delivery of the presumptive legitime of the children of the annulled marriage.

“Art. 50. The effects provided by paragraph (2), (3), (4) and (5) of Article 43 and by Article 44 shall also apply in proper cases to marriages which are declared void ab initio or annulled by final judgment under Article 40 and 45.

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

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

In the partition, the conjugal dwelling and the lot on which it is situated shall be adjudicated in accordance with the provisions of Articles 102 and 129.
Art. 51. In said partition, the value of the presumptive legitimes of all the common children computed as of the date of the final judgment of the trial court, shall be delivered in cash, property or sound securities, unless the parties, by mutual agreement judicially approved, had already provided for such matters.

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

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

Art. 52. The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses, and the delivery of the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect third person.

Art. 53. Either of the former spouses may marry again after compliance with the requirements of the immediately preceding Article; otherwise, the subsequent marriages shall be null and void."

This provision is a boon to the children of annulled marriage and the spouse who has custody of the children. But the spouse delivering the presumptive legitime may not be all too happy to part with his or her property prematurely during his/her lifetime in favor of children of the annulled marriage, particularly if there is only one property to speak of.

However, we are not all too concerned as to whether one spouse is happy or not with the delivery of the presumptive legitime of the children. Dura lex, sed lex. The law is hard, but that is the law.

Article 888 of the Civil Code of 1950 provides that the share of the legitimate children in the estate of the parents is one-half (1/2) of the entire net estate. Applied to this case, one-half of the interest in a house and lot of the spouses, for example, should therefore be delivered as the presumptive legitime of the children.

But the problem arises – not in the matter of the delivery of the legitime but in the interpretation of the term “properties of the spouses” and the implementation as to which properties should be subjected to the delivery of the presumptive legitime - the conjugal properties alone or the conjugal properties together with the exclusive properties of the spouses? 27

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27 N.B. This is a problem that would arise for annulled marriages, which are governed by the system of conjugal partnership of gains, since the exclusive properties of the spouses would not be included in the conjugal partnership. If the marriage is governed by the system of absolute community, then there is no question that the exclusive properties acquired before the marriage become part of the absolute community, with certain exceptions provided for under paragraphs 2 and 3 of Article 92 of the Family Code.
Legitime, as the Civil Code defines it, “is that part of the testator’s property which he cannot dispose of because the law has reserved it for certain heirs, who are therefore called compulsory heirs.” 28 It comprises the net estate of a person. Therefore, when a person dies his net estate consists, not only of his share in the conjugal partnership (which is one-half) but also his/her exclusive properties which he/she may have inherited from his parents or were bequests to him, or were acquired gratuitously before and during marriage.

Under the system of conjugal partnership, which governed property relations between spouses before the effectivity of the Family Code in 1988, if no pre-nuptial agreement had been entered into, and after the effectivity of the Family Code, if such system were chosen in a pre-nuptial agreement, the only properties that could be considered conjugal are: (1) the proceeds, products, fruits and income from their separate properties and (2) those acquired by either or both spouses through their efforts or by chance. Inherited properties or properties acquired gratuitously before and during the marriage were considered exclusive properties of the spouses, among others. The system of conjugal partnership prevailed, if the parties were unable to sign a pre-nuptial agreement indicating that their relationship should be governed by system of complete separation of property.

Under the Family Code, however, if the parties who got married after August 3, 1988 did not sign a pre-nuptial agreement on the system of their property relations, indicating whether they intended to be governed by a system of complete separation of property or a conjugal partnership, or any other, their relations shall be governed by the system of absolute community of property.

**Two Schools of Thought:**

There are two schools of thought in the interpretation of which properties should be subjected to the delivery of the presumptive legitime of the children of annulled marriages. This has been one of the bitterly litigated issues in annulment proceedings.

First- the presumptive legitime can be only taken from the conjugal properties of the spouses.

Secondly - the presumptive legitime can be taken from both the conjugal properties of the spouses and the inherited or exclusive properties of each of the spouses.

The second theory is derived from the interpretation of the word “legitime”. Legitime as defined by Black’s Law Dictionary, is “the net estate of a deceased person.” Hence, the term “net estate” includes both conjugal property and the exclusive or inherited properties of the deceased. The second theory also bases its strength on generality of the term “properties of the spouses” in Article 50 of the Family Code - where it states that “the final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses…..” and on Article 51 which states that in said partition, the value of the presumptive legitimes of all common children

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28 Art. 886, Civil Code
computed as the date of the final judgment of the court, shall be delivered in cash, property or sound securities, unless the parties, by mutual agreement judicially approved, had already provided for such matters. x x x “

The second theory presupposes that the term “properties of the spouses” being considered for liquidation and distribution, being a generic term, means both inherited and/or exclusive properties and the conjugal properties. While it is true that in the partition of properties, the exclusive properties of the spouses are segregated from the conjugal ones, what is being liquidated and distributed in the annulment proceedings are really the conjugal partnership properties alone. This matter has yet to be interpreted and decided upon by the Supreme Court in the annulment cases that will be brought up on appeal. But I submit that this is not entirely a gray area if one were to consider the spirit and intent of the law on the delivery of the presumptive legitime in the Family Code.

I believe that the correct interpretation of the term “properties of the spouses” being considered for liquidation and distribution in Article 50 refer to the conjugal properties only or community property, as the case may be. And it is only from these conjugal properties/ community property that the presumptive legitime of the children may be taken. It is my position that the first theory should prevail – that the legitime of the legitimate children can only be taken from the conjugal properties or community properties of the spouses, not from the exclusive or inherited properties of the spouses.

The Spirit and Intent of the Law:

We have delved into the spirit and intent behind the delivery of the presumptive legitime. The minutes of the Civil Code Revision Committee and the Family Code Committee on July 28, 1984 and August 11, 1984 reveal that the main interest of the framers of the Family Code was to protect the interests of the children of the first marriage by providing not only for their support in the annulment proceedings but also for the delivery of their presumptive legitimes. The Minutes of the Committee on July 28, 1984 are quoted hereunder:

“Justice (Jose B. L.) Reyes posed the question: Suppose the judgment has become final but the parties have not delivered the legitime to the children, can the former spouse remarry? Or is it enough that the judgment of annulment should become final that the former spouses can remarry subject only to execution of the distribution.

Justice Reyes pointed out that the problem here is if the former spouses remarry before the delivery of the legitime to the children, there may be other intervening interests.

Director (now Supreme Court Justice Flerida Ruth) Romero raised a counter-question. Suppose they do remarry, what is the status of the marriage? Justice Reyes replied that the marriage is void.
Director Romero opined that upon the judgment of nullity, the former spouses should already be qualified to remarry. Justice Reyes remarked that unless the condition is fulfilled, they should not be allowed to remarry since, otherwise, there will later be complications in liquidation. The other members, however, were of the view that since the delivery of the legitime to the children may take sometime, the parties should already be qualified to remarry. Justice Reyes pointed out that they are trying to protect the children of the first marriage.

Judge (now retired Justice of the Court of Appeals Leonor Ines) Luciano remarked that the delivery of the property has nothing to do with the decree of annulment. Justice Reyes explained that his point is if they are allowed to remarry before the delivery of the legitimes, the said delivery will inevitably be delayed.”

The Minutes of the Committee on August 11, 1984, are quoted hereunder.

“With respect to Article 141, Justice (Eduardo) Caguioa put into question the soundness of the requirement regarding the delivery of the presumptive legitime. He remarked that it is good in the case of legal separation but in the case of annulment it will prevent the aggrieved party from having the marriage annulled since if the other party does not comply with the requirement, the marriage will not be annulled. Director Romero pointed out that as Justice Reyes said last time, before the spouses contract a subsequent marriage, they want to be very sure that the legitimes of the children are protected. Justice Caguioa countered this will put the innocent party at the mercy of the guilty one.

Dean (Fortunato) Gupit proposed that they study the possibility of adopting the new development in France where the children, especially the illegitimate and natural ones, are already given in advance whatever successional rights they have, so that in case they have subsequent families, all ties with the previous ones are completely terminated.

Justice Caguioa agreed that they should protect the children but this should not stop the decision from becoming final; they can put it as a condition for contracting a subsequent marriage. xxxx

Justice Caguioa explained that, in order to protect the children of the previous marriage although the spouses have the right to remarry as soon as their marriage has been annulled, they want to put a sanction so that the obligation before said right may be implemented will be complied with right away.”

The Civil Code Revision Committee and the Family Code Committee may not have included in their deliberations any discussion on where the presumptive legitime should be taken from. It can be presumed that when they were discussing the delivery of the presumptive legitime, it flowed from a discussion of the partition, distribution and the liquidation of the conjugal properties of the spouses. Note that Article 43, Section 2 of the Family Code states that “the absolute community of property or the conjugal partnership as the case may be, shall be dissolved and liquidated…..”
Hence, when Articles 50 and 52 of the Family Code provide that the liquidation, partition and distribution of the properties of the spouses and the delivery of the presumptive legitime shall be included in the final judgment of annulment and recorded in the registry of properties, it can be presumed that the members of the Committee were thinking of the conjugal properties or the absolute community, which ever is applicable for the particular marriage that is being annulled.

If the system prevailing in the marriage being annulled is the conjugal partnership of gains, the Committee could not have intended that a parent should be forced to prematurely part with his/her inherited or exclusive property during his/her lifetime in order to provide for the presumptive legitime of the children. This could result in the children being in a better financial position than the parent, who may suffer financial reverses in their later years and would have no more assets to fall back on, simply because they have delivered the presumptive legitimes of their children in advance.

The real intent of the framers of the Family Code in providing for the delivery of the presumptive legitime from the conjugal properties / absolute community of the spouses was to provide for the children of the first marriage from the conjugal properties/absolute community of the parents so that in the event the one parent enters into a subsequent marriage, the children from the prior marriage would not be prejudiced in their ultimate sucessional rights. When a parent marries for a second time and the properties from the first marriage are commingled with the properties acquired during the second marriage, because there was no delivery of the presumptive legitime, the children from the first marriage would be greatly prejudiced if the children of the second marriage get to inherit from properties which were acquired during the first marriage.

This situation has resulted in a lot of inequity and bitter quarrels among heirs in the distribution of assets between the children of the first marriage and the children of the second marriage when the common parent dies. It is our position that the framers of the Family Code wanted to avoid this all too familiar controversy among heirs and intended that the legitime of the children of the first/annulled marriage should be taken from the conjugal properties/absolute community of the spouses only.

If the annulled marriage is however governed by the system of absolute community, then there is no need for this distinction because in this system, all properties, including the exclusive properties of the spouses acquired before marriage, are commingled. And the legitime may be derived from the properties belonging to the absolute community.

Chapter 3

Legal Separation –A Relative Divorce

If for a time there was absolute divorce in the Philippines during the American regime (Act 2710) and during the Japanese occupation (Executive Order No. 141), the absolute divorce law was finally stricken down by a group of militant Filipino women leaders prior to the enactment of the Civil Code of 1950. The provisions on absolute
divorce has since then been converted to legal separation or relative divorce, which allows only the separation of spouses from bed and board and does not dissolve the marriage bonds. “Relative divorce, which does not dissolve the bonds of matrimony, leaves the way open for future reconciliation. Thus, the hope for a return of happiness to a broken home is not entirely abandoned.”

This must have been the primordial factor which led the Filipino women leaders then to oppose the absolute divorce law.

Legal separation can only be decreed by the courts on any of the following grounds mentioned in Article 55 of the Family Code:

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

For purpose of this Article, the term “child” shall include a child by nature or by adoption. (97a)

Not all petitions for legal separation can be granted by the courts. It shall be denied on any of the following grounds provided in Article 56:

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

(4) Where both parties have given ground for legal separation;

(5) Where there is collusion between the parties to obtain the decree of legal separation; or

(6) Where the action is barred by prescription. (100a)

An action for legal separation prescribes after five years from the occurrence of the cause. 30

Legal separation produces the following effects:

(1) The spouses shall be entitled to live separately from each other, but the marriage bonds shall not be severed;

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

(3) The custody of the minor children shall be awarded to the innocent spouse, subject to the provisions of Article 213 of this Code; and

(4) The offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law. (106a)

In addition to the effects above - mentioned, “the innocent spouse may revoke any donation made by him or by her in favor of the offending spouse, as well as the designation of the latter as the beneficiary of an insurance policy, even if such designation be stipulated as irrevocable.” There is a prescriptive period of five years from the time the decree of legal separation has become final within which to bring an action to revoke the donation. 31

Chapter 4

Parents and Children

Paternity and Filiation

The filiation of children may be by nature or adoption. Natural filiation may be legitimate or illegitimate. Children borne out of artificial insemination of the wife with the sperm of the husband or a donor are likewise considered legitimate. 32 (Arts. 163 and

30 Art. 57 of the Family Code
31 Art. 64 of the Family Code
32 Arts. 163 and 164 of the Family Code
164 of the Family Code) Adopted children acquire the all the rights, obligations and status of legitimate children.

The Family Code likewise sought to protect children from the stigma of illegitimacy and all its legal consequences in Article 54, which provides that:

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

Legitimacy of a child may be impugned only on the following grounds provided in Article 166, to wit:

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

(a) the physical incapacity of the husband to have sexual intercourse with his wife;
(b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or
(c) serious illness of the husband, which absolutely prevented intercourse;

(2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; or

(3) That in case of children conceived through artificial insemination, that written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation or undue influence.”

Legitimate children shall have the right to use the surname of the father and the mother. Most recently in Year 2004, Republic Act No. 9255 was passed allowing illegitimate children to use the surname of the father, if such child has been recognized or acknowledged by the father. Before that illegitimate children could only use the surname of the mother and shall be under the parental authority of the mother.

The law likewise protects the legitimacy of children against the whims of their mother or vindictiveness of parents against each other when it provided under Article 167 that “the child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.”

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33 Art. 53 provides for subsequent marriages which are not valid until the presumptive legitime of the children of the previously annulled marriage has been delivered.
34 Arts. 174 and 176 of the Family Code: Art. 176 was amended by R.A.9255 which took effect on March 19,2004.
Support and Parental Authority

Support is the obligation between spouses and their children. In the Philippines, however, as in perhaps other Oriental countries, filial obligation demands that children support their parents in their old age. So Article 195 of the Family Code provides that legitimate ascendants and descendants are obliged to support each other and so with legitimate brothers and sisters, whether of full blood or half blood. Parents are also obliged to support their illegitimate children and both their legitimate and illegitimate grandchildren and vice-versa.

During the pendency of legal actions for the annulment of marriage, declaration of nullity of marriage or legal separation, where issues of custody and support are taken up, it is provided under Article 49 of the Family Code that “the Court shall give paramount consideration to the moral and material welfare of the said children and their choice of the parent with whom they wish to remain as provided for in Title IX. It shall also provide for appropriate visitation rights of the other parent.” However, under Article 213 of the Family Code, “no child under seven years of age shall be separated from the mother unless the Court finds compelling reasons to order otherwise.” To take away custody from the maternal figure of a child under seven, the paramount consideration should always be the “moral and material welfare” or best interests of the child. In case either parent is unsuitable, substitute parental authority can be given to the surviving grandparent or the one designated by the Court.

Support is granted, increased or reduced, according to the “necessities of the recipient and the resources or means of the person obliged to furnish the same.” Parents are obliged to support their children until they reach the age of majority (18 years old) or finish their education or training for a profession, trade or vocation, whichever comes first. It goes to show that the Filipino children have a right to be supported even beyond the age of majority.

Parental authority includes “the caring for and rearing of such children for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.” Parents shall exercise joint parental authority over their minor children. In case of disagreement, “the father’s decision shall prevail, unless there is a judicial order to the contrary.” The rights and duties of parents over their children and the effect of their parental authority over the persons and property of the children are provided in Articles 220, 221 and 225 of the Family Code.

Parental authority may also be suspended or taken by the courts under Article 231, depending on the seriousness of the situation or if “the welfare of the child so demands,” if the parent /person exercising the same:

1. Treats the child with excessive harshness or cruelty;
2. Gives the child corrupting orders, counsel or example;
3. Compels the child to beg; or
Subjects the child or allows him to be subjected to acts of lasciviousness;

Protection Measures against Violence

In March 27, 2004, the Philippines Congress passed the Anti-Violence against Women and their Children Act or Republic Act No. 9262, an act which defines violence against women and their children and provides for protective measures for victims and prescribing penalties therefore.

Section 5 of the law covers different acts of violence: physical, sexual, psychological violence and economic abuse. Some of the acts, aside from attempting, threatening or causing physical harm to the women or children, are acts which control or restrict the woman’s or her child’s movement or conduct, to wit:

1) Threatening or actually depriving the woman or her child of custody or access to her/his family;

2) Depriving or threatening to deprive the woman or her children of financial support or deliberately providing insufficient support;

3) Depriving or threatening to deprive the woman or her child of a legal right;

4) Preventing the woman from engaging in a legitimate profession, occupation or business activity or controlling the victim’s own money or properties or solely controlling the conjugal or common money or properties;

5) Inflicting or threatening to inflict harm on oneself for the purpose of controlling her actions or decisions;

6) Causing or attempting to cause the woman or child to engage in any sexual activity, which does not constitute rape by threat of force, physical harm or through intimidation against the woman or her child or immediate family;

7) Engaging in purposeful, knowing or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This act shall include, but not be limited to, the following:

   a) stalking or following the woman or her child in public or private places;

   b) peering in the window or lingering outside the residence of the woman or her child;

   c) entering or remaining in the dwelling or on the property of the woman or her child against her will;

   d) destroying the property and personal belonging or inflicting harm to animals or pets of the woman or her child; and

   e) engaging in any form of harassment or violence;

   f) causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including but not limited to,
repeated verbal and emotional abuse and denial of financial support or custody of minor children or denial of access to the woman’s child/children.

Section 8 of the law provides for the issuance of a **Barangay Protection Order (BPO)**, which is somewhat like a stay-away order from the village council, or a **Temporary Protection Order (TPO)** which can ripen into a **Permanent Protection Order (PPO)**. It is something akin to a Temporary Restraining Order (TRO) which is good for 20 days and which can also ripen into a Writ of Preliminary Injunction, a provisional remedy in ordinary civil cases.

The protection orders can provide for the following reliefs:

a) Prohibition of the respondent from committing or threatening the violent acts referred to in Section 5.

b) Prohibition of the respondent from harassing, annoying, telephone contacting or communicating with the petitioner;

c) Removal or exclusion of the respondent from the residence of the petitioner, regardless of ownership;

d) Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court;

e) Directing lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership;

f) Granting temporary or permanent custody of children to the petitioner;

g) Directing the respondent to provide support to the woman or her child;

h) Prohibiting the respondent from use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court;

i) Restitution for actual damages caused by the violence inflicted;

j) Direct the Department of Social Welfare to provide temporary shelter and other social services for the petitioner;

k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member;

The TPO is even better than a Temporary Restraining Order (TRO) as it is issued by the Family Court for thirty (30) days during which a hearing shall be held for the issuance of the PPO prior to or on the expiration date of the TPO. What is unique about the PPO is that the Courts can make the PPO final “regardless of the conviction or acquittal of the respondent.” Section 16 of said law further provides that:

“Even in a dismissal, a **PPO shall be granted** as long as **there is no clear showing** that the act from which the order might arise **did not exist.**”
The law has been hailed by feminists but decried by the male sector of the population as being discriminatory against men and unconstitutional for depriving the men of equal protection of the law. What if the men were subjected by strong and predatory women to the violence referred to in the law? They would not be able to avail of the protection measures under the law, as the law exists for women and children only. The constitutionality of the law remains to be tested in the Philippine Courts.

Chapter 5

Inheritance

The Philippine law on succession is found in the Civil Code of the Philippines, from Articles 774 up to 1105. Like most of the countries in Europe and Latin America, the Philippines is one country which has preserved the system of legitime. This is one
legacy of the Spanish Civil Code to the Civil Code of the Philippines. Its purpose is to preserve the customs and traditions of the Filipino people and to promote family solidarity. It was passed “to protect the children and the surviving widow or widower from the unjustified anger or thoughtlessness of the other spouse.”  

**Compulsory Heirs**

The following are regarded as compulsory heirs under Article 887 of the Civil Code:

1) *Legitimate children and descendants;*

2) *In default of the foregoing, legitimate parents and ascendants;*

3) *The widow or widower;*

4) *Acknowledged natural children and natural children by legal fiction;*

5) *Other illegitimate children referred to in Article 287.*

Among the compulsory heirs mentioned above, the last two categories need to be defined. Acknowledged natural children are those born to parents who did not have any legal impediment to marry at the time of their births and have been acknowledged by their parents. Natural children by legal fiction are those “conceived of void marriages and those conceived after the judicial annulment of voidable marriages.” “Other illegitimate children” refer to children born of adulterous or incestuous relationships. They may also succeed as compulsory heirs provided their filiation is duly proved.  

Under the law, the presence of descendants will exclude the ascendants from succession. The nearest in degree will exclude the others. For example: If parents and children survive the deceased, the children will inherit from the deceased. If parents and grandparents survive, the parents will inherit. If the grandchildren and grandparents survive, the grandchildren will inherit by right of representation to the grandparents’ estate.

Note that brothers and sisters are not compulsory heirs. However, brothers and sisters and other persons who are not compulsory heirs (friends et.al.) can inherit from the testator provided the legitime of the compulsory heirs are not impaired. They would then be called as voluntary heirs.

A single person (unmarried, no parent, no children) can give away properties to anyone, if there is a will. If there is no will, the brothers and sisters of the single person, whether of full blood or half blood, will inherit in equal shares. If the single person has

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36 Ibid. pp. 213-214
no brothers or sisters, the next degree relatives (e.g. grandparents, aunts, uncles or cousins) will inherit from the single person, who is an only child.

Dead persons cannot disinherit compulsory heirs. Disinheritance can only be effected if there is a just cause. The just causes are mentioned in the succeeding paragraphs.

**Testate or Intestate Succession**

The right to succeed arises from the moment of the death of the decedent. The right to inherit under the law is either by will (testate) or without a will (intestate). The will of a person should comply with the formalities required under Articles 804, 805 and 806 of the Civil Code of 1950. Otherwise, it could just be a holographic will or one which is written by hand.

There are some procedural requirements to be followed upon death of a testator:

a) The Will should be produced by the custodian within 20 days after learning of the death.

b) The Will should be probated during the lifetime of the testator or after death of the testator.

c) The Bureau of Internal Revenue (BIR) should be notified of the death within thirty (30) days, otherwise there is a penalty.

d) The heirs should pay the estate and inheritance tax and file the tax return within six (6) months from death. An extension can be allowed for meritorious cases.

**Legitime**

Under Article 888 of the Civil Code, mentioned before, the legitime of legitimate children and descendants consists of one-half (1/2) of the hereditary estate of the father and of the mother. If there is a will, the latter may freely dispose of the remaining half, (also called the “free portion”) subject to the rights of illegitimate children and of the surviving spouse. If there is no will, the surviving child or parent will inherit the whole estate.

The legitime of the surviving spouse is the same share as each legitimate child, if there are two or more legitimate children. If there is only one legitimate child or descendant, the surviving spouse gets one-fourth (1/4) of the hereditary estate. In either case, the legitime of the surviving spouse is taken from the free portion that the testator can dispose of. If there are no legitimate descendants but only legitimate ascendants, the surviving spouse gets one-fourth of the hereditary estate, which is also taken from

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37 Art. 892 of the Civil Code
the free portion. As in the case of legitimate children, the legitime of the legitimate ascendants consists of one half (1/2) of the estate of the children and descendants.

If there are illegitimate children only, the surviving spouse gets one-third of the estate and so do the illegitimate children. The remaining one-third shall be at the free disposal of the testator.

Under Article 176 of the Family Code, the legitime of illegitimate children shall consist of one-half of the legitime of a legitimate child. Since the Family Code does not make anymore distinction between the different types of illegitimate children, and since the Family Code repealed all provisions of the Civil Code inconsistent with it, it is understood that the three different types of illegitimate children shall be entitled to the same legitime of one-half of the share of each legitimate child.

The first paragraph of Article 895 of the Civil Code conforms with Article 176 of the Family Code and specifies that “the legitime of each acknowledged natural child and each of the natural children by legal fiction shall consist of one-half of the legitime of each legitimate children or descendants.”

The second paragraph of Article 895 of the Civil Code is the one considered repealed by Article 176 of the Family Code because it provides that:

“The legitime of an illegitimate child who is neither an acknowledged natural child or a natural child by legal fiction shall be equal to four-fifths of the legitime of an acknowledged natural child.”

All classes of illegitimate children are now put in the same category in terms of their legitime, which is one-half of the legitime of a legitimate child.

The legitime of the illegitimate children shall be taken from the free portion of the estate, or that which is at the free disposal of the testator. The total of such legitime cannot exceed the free portion and the legitime of the surviving spouse must first be fully satisfied.

There are other combinations of survivorship with the illegitimate children. Articles 896, 897, 899, 900, and 901, respectively, of the Civil Code, provides for the amount of their respective legitimes, as follows:

1) Illegitimate children = ¼ and legitimate parents or ascendants = ½
2) Surviving spouse = same share as each legitimate child; legitimate children = ½; and illegitimate children = ½ of the share of each legitimate child;

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38 Art. 893 of the Civil Code
39 Art. 889 of the Civil Code
40 Art. 894 of the Civil Code
41 Paragraph 3 of Article 895 of the Civil Code
3) Surviving spouse = 1/8; legitimate parents or ascendants = ½; illegitimate children= ¼; Free portion= ¼; Note that the surviving spouse gets less if she co-exists with legitimate parents and illegitimate children of the deceased.
4) If the surviving spouse is alone, he/she is entitled to ½ of the estate.
5) If the illegitimate children survive alone, they are entitled to ½ of the estate. In both the last two cases, the other half shall be at the free disposal of the testator.

Just Causes for Disinheritance

The testator cannot omit a compulsory heir in a will nor can he disinherit a compulsory heir in the direct line without just cause. Otherwise, the institution of heirs can be annulled and the will can be disregarded and considered null and void. Intestate succession will then take place. Devises and legacies shall however be valid for as long as it is not inofficious and does not impair the legitime.  

The just causes for disinheriting compulsory heirs are mentioned in Articles 919, 920 and 921 of the Civil Code. Neither can an heir renounce or compromise a future legitime. Such an act is void under Article 905 of the Civil Code.

The sufficient causes for disinheriting legitimate or illegitimate children or descendants under Article 919 are:

1. When a child or descendant has been found guilty of an attempt against the life of the testator, his or her spouses, descendants, or ascendants;
2. When a child or descendant has accused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation as been found groundless;
3. When a child or descendant has been convicted of adultery or concubinage with the spouse of the testator;
4. When a child or descendant by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made;
5. A refusal without justifiable cause to support the parent or ascendant who disinherits such child or descendant;
6. Maltreatment of the testator by word or deed, by the child or descendant;
7. When a child or descendant leads a dishonorable or disgraceful life;
8. Conviction of a crime which carries with it the penalty of civil interdiction.

42 Articles 854 and 918 of the Civil Code
The sufficient causes for disinheriting legitimate or illegitimate parents or ascendants under Article 920 are:

1. When the parents have abandoned their children or induced their daughters to live a corrupt or immoral life, or attempted against their virtue;

2. When the parent or ascendant has been convicted of an attempt against the life of the testator, his or her spouse, descendants, or ascendants;

3. When the parent or ascendants has accused the testator of a crime for which the law prescribes imprisonment for six years or more if the accusation has been found to be false;

4. When the parent or ascendant has been convicted of adultery or concubinage with the spouse of the testator;

5. When the parent or ascendant by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made;

6. The loss of parental authority for causes specified in this code;

7. The refusal to support the children or descendants without justifiable cause;

8. An attempt by one of the parents against the life of the other unless there has been a reconciliation between them.

The sufficient causes for disinheriting a spouse under Article 921 are:

1. When the spouse has been convicted of an attempt against the life of the testator, his or her descendants, or ascendants;

2. When the spouse has accused the testator of a crime for which the law prescribes imprisonment for six years or more, and the accusation has been found to be false;

3. When the spouse by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made;

4. When the spouse has given cause for legal separation;

5. When the spouse has given grounds for the loss of parental authority;

6. Unjustifiable refusal to support the children or the other spouse.

Reconciliation, however, between the offender and offended party deprives the latter of the right to disinherit and any disinheritance which may have been made shall have no effect. 43 The children or descendants of the disinherited person shall have the

43 Art.922 of the Civil Code
right to the legitime of the disinherit heir but the disinherit parent shall not have the usufruct or administration of the property which constitutes the legitime.44

**Conflict of Law on Property and Succession**

While the general rule in the Philippines is that real or personal property is subject to the law of the country where it is situated (*lex situs or lex rei sitae*), in matters of succession to the property, it is the national law of the decedent that governs the estate of the decedent. This provision is found in Article 16 of the Civil Code, which provides that:

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

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

Applying the provisions of this law, for example, if a Filipino citizen makes a will in the US and dies as a Filipino citizen, the real property which is located in the Philippines shall be subject to Philippine law in accordance with Article 16 above.

However, if the Filipino obtained US citizenship before he dies, has properties in the US and the Philippines, then questions with respect to: (1) the order of succession (2) the amount of successional rights and (3) the intrinsic validity of testamentary provisions shall be governed by US laws, regardless of the nature of his property and regardless of the country where his property may be found.

In an actual case cited by the late eminent Supreme Court Justice Ramon Aquino, “where an American woman, a citizen of California, died leaving personal properties located in the Philippines, the succession to her estate is governed by California law, her personal or national law, and in the absence of proof as to the nature of said law, it must be presumed to be the same as Philippine law, the *lex fori*. Since her estate, consisting of her one-half share of the community assets was transmitted by will to her heirs, inheritance tax is due on said transmission as provided in Philippine law.”45

>“If the application of a foreign law is invoked under Article 16, said law must be proved.”46

It has been noted by a Philippine legal luminary, the late former Senator Arturo Tolentino, that “the second paragraph of this Article (Article 16) applies only when a legal or testamentary succession has taken place in the Philippines in accordance with the

44 Art. 923 of the Civil Code


46 Supra; Slade Perkins v. Perkins, 57 Phil.205,210
law of the Philippines; and the foreign law is consulted only in regard to the order of succession or the extent of successional rights; in other words, the second paragraph of this article can be invoked only when the deceased was vested with a descendible interest in property within the jurisdiction of the Philippines.”

The Renvoi Doctrine

These are instances where there is a conflict of laws concerning succession, particularly a conflict between the nationality and domiciliary theories. For example, an American citizen residing in the Philippines dies, with or without a will in the Philippines, has real and personal properties in the US and the Philippines. According to the second paragraph of Article 16, (the nationality theory), the succession to the estate of the American should be governed by US law. However, according to the US law, where the domiciliary theory is followed, the law applicable is Philippine law because the American has his domicile (residence) in the Philippines. What occurs is a situation where Article 16 refers the question of succession to the foreign law, while the foreign law makes a referral back to Philippine law. This is called the Renvoi Doctrine under French law.

According to another legal luminary on Philippine civil laws, the late former Senator Ambrosio Padilla, “the better rule would be to apply the *lex situs* concerning immovable property and to apply either the law of citizenship or domicile concerning personal property within their respective jurisdiction. The municipal law of the State of the forum will govern unless a foreign law should be clearly applicable.”

Conclusion – Recent Trends of Law Reform in Family Laws

In the recent past, a bill was filed in Congress by the progressive and liberal-minded former Congresswoman (now Governor) from the Province of Aurora, the Honorable Bellaflor Angara- Castillo, who was one of the top law practitioners in the

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Philippines prior to her getting elected to Congress, providing for the legalization of gay relationships with the introduction of the Domestic Partnership Act. But this bill did not pass Congress approval. Then Congresswoman Angara-Castillo also filed a bill in Congress providing for the legalization of divorce in the Philippines. This bill has met with a strong opposition from the members of the clergy led by the well-known Manila Cardinal Jaime Sin. Former Philippine President Joseph Ejercito Estrada and current President Gloria Macapagal-Arroyo have also made known their opposition to any divorce law being passed in the Philippines. But the proponents of divorce have come out with strong arguments and position papers in major Philippine newspapers supporting the passage of a divorce bill in the Philippines. It remains a matter of speculation whether the Philippines will finally follow the path of many Catholic nations like Spain, Italy and Ireland of providing for a divorce law in their respective countries.
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FAMILY LAW IN THE PHILIPPINES
-An Overview-

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FOREWORD

Since its inception almost four (4) decades ago, the Law Association for Asia and the Pacific (LAWASIA) has consistently advocated that law is not the exclusive preserve of magistrates and lawyers, or of savants and philosophers. Hence, law must be demystified and popularized among those bound by it.

If the rule of law is to flourish, as we all wish it should, then the people, especially the ordinary citizens, must know and understand the principles and values that underlie the legal prescriptions.

The grim reality is that most of our people are not aware of the basic legal precepts that weave into their daily lives. Neither do they understand the intricacies of the processes and procedures needed to secure what is theirs under the law.

As a consequence of our history, we have imported into our legal system concepts and structures of foreign origin and adopted institutions characteristic of others’ way of life. To be sure, our statute books are replete with instances, which depart from, or even clash with, our indigenous culture, customs and traditions.

Almost total is the alienation of the ordinary citizen from the mainstream of his own legal system. In the past, he would approach his tribal or feudal chief to solicit his wise counsel or resolve a dispute. Our present system requires him to overcome his fear and anxiety and to endure the inconvenience of appearing before some unfamiliar, unfriendly courts to bring a grievance, collect a claim, or otherwise clarify issues involving his wife, the upbringing of his children or the settlement of family debts.

It is in this context that I welcome this compilation of family laws of the different jurisdictions in the Asia-Pacific Region. Presented by acknowledged practitioners and scholars, this compilation will enhance understanding of the Region’s varied legal systems, reflecting its diverse philosophies, cultures and experiences. Surely, it makes interesting reading even if one simply compares, through our laws, how the peoples of the Region think and live.

More importantly though, the easy prose in which the presentation is written makes this book readable even by laymen. By this book, our family law has become less threatening, more accessible and user friendly.

To Filipinos, the inclusion of the Philippine family law in a book that will be circulated in the Asia Pacific Region gains additional relevance as many of our countrymen are now in foreign countries to work and find better fortunes. Even though they are living abroad, they are bound by our laws relating to family rights and duties, or to the status, condition and legal capacity of persons.
Furthermore, we have included in our Constitution a system of initiative and referendum. People can directly propose and enact legislation or approve or reject a legislative proposal. This constitutional innovation will gain more life if our citizens are familiar with at least those basic laws that profoundly affect their lives, i.e. the laws on marriage and family.

As in other parts of the Region, the family is a basic social institution and stability of society is anchored on a strong, solid and happy family.

Again, I congratulate my friend who is an experienced family law practitioner in the Philippines, Ms. Diane Franco, for her meaningful contribution.

I am happy that the Family Law Section is able to come up with this much-needed compilation. Congratulations for a job well done and best wishes to the leadership and members of the Section and LAWASIA.

MERVYN G. ENCANTO
President (1999-2001)
LAWASIA