



# Law on Marriage

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# Outline

THE FAMILY CODE

MARRIAGE

VOID, AND VOIDABLE  
MARRIAGES

LEGAL SEPARATION

RIGHTS AND OBLIGATIONS  
BETWEEN HUSBAND AND  
WIFE

The background features a light gray base with large, organic, overlapping shapes in muted olive green and dusty rose. In the top left corner, there are stylized, layered patterns of thin, needle-like lines in light and dark gray, resembling foliage or a pine branch. Two thin, white, flowing lines curve across the bottom right of the image.

# The Family Code

# The Family Code

- Our primary law governing marriage and family relations.
- Signed into law by the late Pres. Corazon C. Aquino on July 6, 1987 as Executive Order No. 209.
- It was drafted by the Civil Code Revision Committee of the University of the Philippines Law Center.
- The Committee finished the draft on May 4, 1987 and was submitted to the late Pres. Cory Aquino for approval into law as we did not have a Philippine Congress yet at that time.
- The Family Code took effect on **August 3, 1988**.
- It has nine (9) Titles:
  - Title I. Marriage
  - Title II. Legal Separation
  - Title III. Rights and Obligations between Husband and Wife
  - Title IV. Property Relations between Husband and Wife
  - Title V. The Family
  - Title VI. Paternity and Filiation
  - Title VII. Adoption

(Con't)

- Title VIII. Support
- Title IX. Parental Authority
- Title X. Emancipation and Age of Majority
- Title XI. Summary Judicial Proceedings in the Family Law
- Title XII. Final Provisions

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Marriage

# Marriage in General

- Special Contract – 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. (Article 1 of the Family Code)
- Social Institution – in our jurisdiction, marriage is not only a civil contract, but a new relation or institution the maintenance of which the public is deeply interested. This proceeds from the constitutional mandate that the State recognizes the sanctity of family life and affords protection to the family as a basic autonomous social institution. (Section 12, Article II of the 1987 Constitution)
- Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State. (Section 2, Article XV of the 1987 Constitution)
- Marriage is governed by law – its nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations of the spouses during the marriage.

# Marriage distinguished from ordinary contracts

## MARRIAGE

- Only two persons of opposite sex may enter into a contract of marriage, and only one such contract may exist at the same time.
- The nature, consequences, and incidents of marriage are governed by law and not subject to an agreement (exception: property relations of spouses during the marriage).
- Cannot be revoked, dissolved, or otherwise terminated by the parties, but only by the sovereign power of the State.
- Marriage is not a mere regular contract, but also a social institution.

## ORDINARY CONTRACT

- May be entered into by any number of persons, whether of the same or different sexes.
- The parties are free to establish such stipulations, clauses, terms, and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.
- The parties may, by mutual agreement, terminate an ordinary contract.

# Presumptions favoring Marriage

- If a man and a woman deport themselves as husband and wife, they are presumed, in the absence of counter-presumption or evidence to the case, to be in fact married.
- The law favors the validity of marriage, and the burden of proof to show the nullity of marriage rests upon the party seeking its nullity.



# Requisites for a Valid Marriage

- Rule for Marriages Celebrated Abroad:
  - All marriages involving Filipino citizens solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, shall also be valid in the Philippines. (Exceptions: Articles 35(1), (4), (5), (6), 36, 37, and 38 of the FC)
- Rule for Marriages Celebrated in the Philippines
  - Essential Requisites (2)
  - Formal Requisites (3)

# Essential Requisites for Marriage

- Legal Capacity
  - Parties must be a natural male and a natural female
  - Parties must be at least eighteen (18) years of age
  - Parties must not be suffering from any legal impediments under Articles 37 and 38
- Consent
  - Personal declaration made by the groom and the bride during the marriage ceremony that they are taking each other as husband and wife. So long as there was valid consent, the marriage remains valid notwithstanding the absence of love.
  - The marriage remains valid even if it was entered into for purposes other than love. In *Republic v. Albios* (G.R. No. 198780, October 16, 2013) – a Filipino citizen got married to an American citizen solely for the purpose of acquiring American citizenship in consideration of money. Their marriage was declared valid.
  - If consent was defective, marriage is not void but merely voidable.

# Sexes of the Parties

- Same-sex marriage is not recognized as valid here in the Philippines, even if the marriage is solemnized abroad and valid there as such. The reason is that in our jurisdiction, marriage is defined as a special contract of permanent union between a man and a woman.
- In *Rommel Jacinto Dantes Silverio v. Republic of the Philippines* (G.R. No. 174689, October 22, 2007), the Supreme Court ruled that there is no law legally recognizing sex reassignment and its effects. Rommel had undergone a sex reassignment surgery in Bangkok, Thailand because she felt that she was a woman trapped inside a man's body, and petitioned for her name indicated on his certificate of live birth to be changed from "Rommel" to "Mely" and sex from "Male" to "Female". The Supreme Court rejected her.
- However, in *Republic v. Jennifer Cagandahan* (G.R. No. 166676, September 12, 2008), the Supreme Court ruled that for persons with a medical condition known as Congenital Adrenal Hyperplasia (CAH, or having ambiguous genitalia), the determining factor in their gender classification would be what the individual having reached the age of majority, with good reason thinks of as his/her sex.

# Age of the Parties

- If any party is below 18 years of age, the marriage is VOID even if the same is void and even if the marriage is solemnized outside the Philippines and valid there as such.
- The minimum age for marriage should be reckoned not on the date of filing of the application for marriage license, but on the date of the marriage.

# Formal Requisites for Marriage

- Authority of the Solemnizing Officer
- Valid Marriage License
- Marriage Ceremony

# Valid Marriage License

- If the marriage was celebrated without a marriage license, the same is void.
- If the marriage license was spurious or fake, the marriage is void.
- However, if there is a mere irregularity in the issuance of the marriage license, the validity of the marriage is not affected, but the party responsible for the irregularity shall be liable (civilly, criminally, and administratively). In *Alcantara v. Alcantara* (G.R. No. 167746, August 28, 2007), the Supreme Court held that the issuance of a marriage license in a city or municipality which is not the residence of either of the contracting parties and the issuance of the marriage license despite the absence of publication or prior to the completion of the 10-day period for publication are mere irregularities which do not affect the validity of marriage.
- The local civil registrar is required to issue the marriage license after the completion of the 10-day publication period, even if any impediment is known to him, unless otherwise ordered by the court.

# Marriages Exempt from Marriage License

- Marriage in *Articulo Mortis*
- Marriages in remote places
- Marriages among Muslims and ethnic cultural communities
- Legal ratification of marital cohabitation

# Marriage in Articulo Mortis

- Art. 27. In case either or both of the contracting parties are at the point of death, the marriage may be solemnized without necessity of a marriage license and shall remain valid even if the ailing party subsequently survives.
- Art. 31. A marriage in articulo mortis between passengers or crew members may also be solemnized by a ship captain or by an airplane pilot not only while the ship is at sea or the plane is in flight, but also during stopovers at ports of call.
- Art. 32. A military commander of a unit, who is a commissioned officer, shall likewise have authority to solemnize marriages in articulo mortis between persons within the zone of military operation, whether members of the armed forces or civilians.



# Marriages in remote places

- Requirement: The residence of either party is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar.

# Marriages among Muslims and ethnic cultural communities

- Requisites:
  - The marriage must be among Muslims or among members of ethnic cultural communities; and
  - The marriage must be solemnized in accordance with their customs, rites, or practices.
- In such case, the Code of Muslim Personal Laws (PD 1083) shall apply or the applicable law of the ethnic cultural community involved.
- In case of a marriage between a Muslim and a non-Muslim, the Family Code will apply.

# Marital Cohabitation

- Requisites:
  - The man and the woman must have been living together as husband and wife for at least five (5) years before the marriage;
  - The parties must have no legal impediment to marry each other during the five-year period of cohabitation (exclusivity).
  - The parties must execute an affidavit (Affidavit of Cohabitation) stating that they have lived together for at least 5 years and are without any legal impediment to marry each other.
- The falsity or invalidity of the Affidavit of Cohabitation renders the marriage void ab initio. (compare it to the situation where the marriage license is defective)

# Persons authorized to solemnize marriage

- Members of the judiciary
  - Incumbent members and can solemnize within their jurisdiction.
  - When a judge solemnizes a marriage outside his jurisdiction, it is merely an irregularity in the formal requisite which does not render the marriage void, but may subject the officiating officer to liability.
- Priests, rabbi, imam, and other religious ministers
  - Must be duly authorized by his church or sect in writing;
  - His written authority must be duly registered with the Civil Registrar General;
  - Must act within the limits of his/her written authority; and
  - At least one contracting parties must belong to his church or sect.
- Ship captain or airplane chief
  - Marriage must be in articulo mortis; and
  - Marriage must be between passengers and/or crew members.
  - Such authority may be exercised not only while the ship is at sea or the plane is in flight but also during stopovers at ports of call.

# Persons authorized to solemnize marriage (con't)

- Military commanders of a unit
  - Must be a commissioned officer;
  - Assigned chaplain to his unit must be absent;
  - Marriage must be in articulo mortis; and
  - Marriage must be solemnized within the zone of military operations.
  - The contracting parties need not be members of the armed forces. They may be civilians.
- Consul-general, consul, or vice-consul
  - Marriage must be celebrated abroad in the country where the consul holds office; and
  - Marriage must be between Filipino citizens.
- Mayors (on the basis of the Local Government Code which became effective on Jan. 1, 1992)
  - Marriages solemnized by a mayor outside his territorial jurisdiction is a mere irregularity which does not affect the validity of the marriage.
  - Mayors can only solemnize marriages starting Jan. 1, 1992. Hence, marriages solemnized by a mayor between the period of August 3, 1998 and December 31, 1991 are VOID.

# Marriage Ceremony

- No prescribed form or religious rite for the solemnization of the marriage is required.
- Minimum requirements:
  - First, there should be the personal appearance of the contracting parties before a solemnizing officer (hence, online marriages are invalid);
  - Second, their personal declaration by the contracting parties that they take each other as husband and wife; and
  - Third, such personal declaration by the parties must be done in the presence of the solemnizing officer and at least two (2) witnesses that they take each other as husband and wife (hence, proxy marriages are invalid).
- If the signing of the marriage contract was done in the presence of the solemnizing officer, there is a marriage ceremony even if the parties did not verbalize their consent to the marriage.

# Marriage Contract

- It is the best documentary evidence of a marriage.
- However, the absence of a marriage contract is not proof that no marriage took place because other evidence may be presented to prove the fact of marriage.
- Other possible proof of marriage: testimony of the witnesses to the matrimony, the couple's public and open cohabitation as husband and wife after the wedding, and the birth and baptismal certificate of children born during the marriage.

# Marriages Celebrated Abroad

- General Rule: For marriages involving Filipino citizens celebrated abroad, they are considered valid in the Philippines if they are valid in the place where the marriage was celebrated.
  - Marriage without a marriage license;
  - Marriage celebrated by a person who is authorized to solemnize a marriage in the place of celebration even if not authorized here in the Philippines;
  - Marriage by proxy or online marriages.
- Exceptions:
  - Articles 35(1), (3), (5), and (6), 36, 37, and 38 of the Family Code.
  - Same-sex marriage (Article 1 of the Family Code)



# Absence of Divorce in the Philippines


- First: Philippine laws do not provide for absolute divorce.
- Second: The marital bond between two Filipino citizens cannot be dissolved even by an absolute divorce obtained abroad.
- Third: An absolute divorce obtained abroad by a couple who are both aliens (foreigners) may be recognized in the Philippines provided it is consistent with their respective national laws.
- Fourth: In mixed marriages involving a Filipino and an alien, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad by the alien spouse capacitation him or her to remarry.

# Mixed Marriages

- A mixed marriage refers to a situation where a Filipino citizen is validly married to an alien or foreigner.
- 2<sup>nd</sup> paragraph, Article 26 of the Family Code: Where a marriage between a Filipino citizen and a foreigner is validly celebrated and **a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.**
- In Republic v. Manalo (G.R. No. 221029. April 24, 2018), the Supreme Court extended the application of Article 26(2) to cover mixed marriages where it was the Filipino citizen who divorced his/her foreign spouse because: (1) the letter of the law does not demand that the alien spouse should be the one to **initiate** (vs. obtain) the proceeding; and (2) even assuming the term “*obtain*” should be interpreted to mean initiate, the Court will not follow the letter of the statute when to do so would lead to absurd conclusions (i.e. the Filipino spouse remains married to his/her alien spouse who is no longer considered married to his/her Filipino spouse a foreign divorce decree was rendered). **Hence, foreign divorce decrees obtained to nullify a marriage between a Filipino and an alien may already be recognized in our jurisdiction regardless of who between the spouses initiated the divorce.**

# Reckoning Point in Determining Citizenship

- However, when the Filipino spouse has attained foreign citizenship, then Article 26(2) of the Family Code will no longer apply consistent with the principle *lex nationalii* (the law of nationality of the person determines his/her rights and duties).
- In Republic v. Orbecido III (G.R. No. 154380, October 5, 2005), the Supreme Court held that the reckoning point is not the citizenship of the parties at the time of the marriage, but their citizenship at the time a valid divorce decree is obtained by the alien spouse capacitating him/her to remarry.
- The foreign judgment and its authenticity must be proven as facts before our courts together with the alien's applicable national law. Once it has been proven that the divorce obtained abroad is valid and it capacitated the foreign spouse to remarry, the Filipino spouse also regains his/her capacity to remarry at the same time that the foreign spouse reacquired his/her capacity to remarry.

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# Void, and Voidable Marriages

# Nature of Void Marriage

- Void marriages are those which lack an essential requisite. It is *ipso facto* void without need of any judicial declaration of nullity.
  - Exception: For purposes of remarriage (Article 40 of the Family Code).
- They are inexistent from the very beginning (*void ab initio*).
- A void marriage can be questioned even after the death of either party to the marriage.
- Void marriages have no legal effects. The parties to a void marriage are not in fact considered real spouses and hence are not obliged to support each other.
- Children born to void marriages are considered illegitimate.
  - Exception: Articles 36 and 53.

# Void Marriages under Art. 35

- Article 35(1) – If any of the parties to the marriage is below eighteen (18) years old.
- Article 35(2) – If the solemnizer is not authorized to perform marriages.
  - Exception: If either or both parties believed in good faith that the solemnizing officer had legal authority to do so.
- Article 35(3) – Lack of Marriage License
  - Exception: 4 exceptions
- Article 35(4) – Bigamous or Polygamous Marriages
  - Exception: Article 41 of the Family Code (spouse has disappeared)
- Article 35(5) – Mistake in identity
- Article 35(6) – Failure to register the judgment of annulment/nullity, partition and distribution of properties, and delivery of presumptive legitimes.

# Void Marriage under Art. 36

- Psychological incapacity is the kind of incapacity which causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage.
- It contemplates the incapacity or inability to take cognizance of and to assume the basic marital obligations, and not merely the difficulty, refusal, or neglect in the performance of said marital obligations.
- Psychological incapacity is neither a mental incapacity nor a personality disorder that must be proven through expert opinion. There must be proof, however, of the durable or enduring aspects of a person's personality, called "personality structure," which manifests itself through clear acts of dysfunctionality that undermines the family. The spouse's personality structure must make it impossible for him or her to understand and, more important, to comply with his or her essential marital obligations. (Rosanna L. Tan-Andal v. Mario Victor M. Andal, G.R. No. 196359. May 11, 2021)
- Some call Article 36 the “Implied Divorce Law of the Philippines”

# Characteristics of Psychological Incapacity

- **Incurability** - the incapacity is so enduring and persistent with respect to a specific partner, and contemplates a situation where the couple's respective personality structures are so incompatible and antagonistic that the only result of the union would be the inevitable and irreparable breakdown of the marriage.
- **Gravity** - not in the sense that the psychological incapacity must be shown to be a serious or dangerous illness. It must be shown that the incapacity is caused by a genuinely serious psychic cause. Mild characterological peculiarities, mood changes, occasional emotional outbursts are excluded.
- **Juridical Antecedence** - must be existing at the time of the celebration of the marriage, even if such incapacity becomes manifest only after its solemnization. This distinguishes psychological incapacity from divorce, because divorce severs a marital tie for causes, psychological or otherwise, that may have developed after the marriage celebration.



# Persuasive Effect of Canon Law

- The persuasive effect of the decisions of the National Appellate Matrimonial Tribunal of the Catholic Church of the Philippines on nullity cases pending before secular courts is retained.
- Article 36 of the Family Code was lifted from canon law, specifically, Canon 1095 of the New Code of Canon Law.<sup>256</sup> As such, Canon 1095 should be taken into account in interpreting Article 36 and in deciding psychological incapacity cases.
- Canon 1095. The following are incapable of contracting marriage:
  - 1) those who lack the sufficient use of reason;
  - 2) those who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted;
  - 3) those who are not able to assume the essential obligations of marriage for causes of a psychic nature.

# Expert opinion not required

- Testimony of the psychologist is not required.
- Personal examination of the allegedly psychologically incapacitated spouse is not required.
- So long as the totality of evidence sufficiently proves the psychological incapacity of one or both of the spouses, a decree of nullity of marriage under Article 36 may be issued (Totality of Evidence Rule).
- However, testimony or findings of an expert witness or psychologist may still be helpful.
- The burden of proof in proving psychological incapacity is still on the plaintiff.

# Illustrative Cases of Psychological Incapacity

- Republic v. Mola Cruz (G.R. No. 236629, July 23, 2018) – sexual infidelity and abandonment
- Maria Teresa B. Tani-Dela Fuente v. Rodolfo Dela Dela Fuente Jr. (G.R. No. 188400, March 8, 2017) – paranoid personality, extreme jealousy, acts of depravity
- Leonilo Antonio v. Marie Ivonne F. Reyes (G.R. No. 155800, March 10, 2006) – wife was pathological liar
- Chi Ming Tsoi v. Court of Appeals and Gina Lao-Tsoi (G.R. No. 119190, January 16, 1997) – continuous and unexplainable refusal to have sexual intercourse with the wife for an unreasonable length of time

# Void Marriages under Art. 37

- Called Incestuous Marriages
- Article 37(1) – Between ascendants and descendants of any degree (legitimate or illegitimate)
- Article 37(2) - Between brothers and sisters (full blood or half-blood, legitimate or illegitimate)

# Void Marriages under Art. 38

- Void for being against public policy
- Article 38(1) – Between collateral blood relatives within the 4<sup>th</sup> civil degree (legitimate or illegitimate). Covered: Uncles and aunts, nieces and nephews, first cousins
- Article 38(2) – Between step-parents and step-children
- Article 38(3) – Between parents-in-law and children-in-law
- Article 38(4) – Between the adopting parent and adopted child
- Article 38(5) – Between the surviving spouse of the adopting parent and the adopted child
- Article 38(6) – Between the surviving spouse of the adopted child and the adopting parent
- Article 38(7) – Between an adopted child and a legitimate child
- Article 38(8) – Between the adopted children of the same adopter
- Article 39(9) – Between parties where one, with the intention of marrying the other, killed that other person's spouse or his/her own spouse

# Void Marriage under Article 40

- Where the prior marriage is void but a party thereto did not secure a judicial declaration of nullity of the said prior marriage before contracting a subsequent marriage, the said subsequent marriage is void under Article 40.
- However, if the prior marriage is perfectly valid or voidable, and a party thereto contracts another marriage prior to its termination, the subsequent marriage is void for being bigamous under Article 35(4).
- If the 2<sup>nd</sup> marriage is celebrated prior to the effectivity of the Family Code, Article 40 will not apply. Hence no judicial decree is necessary for a party to the first marriage to contract another marriage.
- Conversely, if the 2<sup>nd</sup> marriage is celebrated during the effectivity of the Family Code, Article 40 will already apply. Thus, a judicial declaration of absolute nullity of the first marriage is now required.
- Article 40 is required only for purposes of remarriage.

# Void Marriage under Article 41

- Applicable law if the presumption of death is for purposes of remarriage.
- Requisites:
  1. The absent spouse has been missing for four (4) consecutive years, or two (2) consecutive years if the disappearance occurred where there is danger of death under Art. 391 of the Civil Code;
    - a) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;
    - b) A person in the armed forces who has taken part in war, and has been missing for four years;
    - c) A person who has been in danger of death under other circumstances and his existence has not been known for four years.
  2. The present/living spouse wishes to remarry;
  3. The present/living spouse has a well-founded belief that the absentee spouse is dead; and
  4. The present spouse files a summary proceeding (court case) for the declaration of presumptive death of the absent spouse.
- “Well-founded belief” requires the present spouse to prove that his/her belief was the result of diligent and reasonable efforts to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead.

# Effect of Reappearance

- Mere reappearance of the spouse thought to be dead will not automatically terminate the subsequent marriage.
- An Affidavit of Reappearance or a sworn statement of fact and circumstances of reappearance has to be recorded in the civil registry of the residence of the parties to the subsequent marriage.



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# End

Thank you and study well