(DIS)PROVING FOREIGN LAW: UNDERSTANDING PROCESSUAL PRESUMPTION IN THE PHILIPPINES AND ARGUING FOR A CONFRONTATIONAL APPROACH IN DEALING WITH CONFLICT CASES*

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ABSTRACT

Processual presumption, described as a "well-embedded" principle in this jurisdiction, has been largely unexplored. This paper attempts to fill that vacuum. Composed of three parts, it examines how processual presumption operates in the cases where it was invoked by our Supreme Court. In the first part, it inquires into the pertinent conflict areas in Philippine law where the question of foreign law, as a fact, usually arises, surveying in the process various cases relating to the conflict areas in consideration, observing that the application of the said concept is preceded by two steps, namely characterization and ascertainment and application of the proper law, and it is in the second stage where processual presumption may or may not be brought into play. In the second part, this article analyzes how, in the conflict areas being observed, the doctrine of processual presumption functions as a tool in determining foreign law for failure of the proponent of such a law to overcome the burden of proof imposed upon him by our law on evidence, noting that the proof required is remarkably technical. In the third part, this study looks into the "apparent" exceptions to the use of processual presumption, while discussing the dynamics involved in a conflict of laws litigation as a civil proceeding, as well as suggesting a confrontational approach by which to avoid, as it were, the so-called problem of processual presumption. This article concludes by reinforcing the need to go back to basics as far as conflict trials are concerned, leaving a note to our Supreme Court for further analysis.

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> *"Down the oft-trodden path in our judicial system, by common sense, tradition and the law, the Judge in trying a case sees only with judicial eyes as he ought to know nothing about the facts of the case, except those which have been adduced judicially in evidence. Thus, when the case is up for trial, the judicial head is empty as to facts involved and it is incumbent upon the litigants to the action to establish by evidence the facts upon which they rely."*
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> —*Lopez v. Sandiganbayan*[1]

Processual presumption, although considered as a "well-embedded" principle in private international law,[2] is one of the least explored doctrines on the subject. Generally speaking, it is a process by which a court, in a case involving a foreign element where one of the parties specifically invokes the application of foreign law but was unable to prove the same, applies the relevant substantive domestic law on the controversy on the assumption that the law of the forum is the same with or identical to the unestablished substantive foreign law.[3] But this general statement, often used by our courts, seems to be deficient

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[1] G.R. No. 103911, 249 SCRA 281, 282, Oct. 13, 1995.

[2] *See* Bank of Am., NT & SA v. Am. Realty Corp., G.R. No. 133876, 321 SCRA 659, 674, Dec. 29, 1999. The Court in that case, relative to proof of foreign law and processual presumption, said:

> In a long line of decisions, this Court adopted the well-imbedded principle in our jurisdiction that there is no judicial notice of any foreign law. A foreign law must be properly pleaded and proved as a fact. Thus, if the foreign law involved is not properly pleaded and proved, our courts will presume that the foreign law is the same as our local or domestic or internal law. This is what we refer to as the doctrine of processual presumption. (Citations omitted.)

The earliest case which appears to have first introduced the principle that a foreign law must be pleaded as a fact in our jurisdiction is the 1910 case of Sy Joc Lieng v. Sy Quia, G.R. No. 4718, 16 Phil. 137, Mar. 19, 1910. The oldest case which appears to have initially introduced the consequence of failure to prove foreign law as a fact is the 1915 case of Yam Ka Lim v. Insular Collector, G.R. No. 9906, 30 Phil. 46, Mar. 5, 1915.

[3] A distinction must be made between substantive law and procedural law.

> *Substantive law* creates substantive rights and the two terms in this respect may be said to be synonymous. Substantive rights is a term which includes those rights which one enjoys under the legal system prior to the disturbance

in explaining the "true method" involved in processual presumption. This paper examines the fundamental method of processual presumption as applied by our Supreme Court, particularly the approach that underlies this technique in connection with certain types of cases, the pattern employed, and the factors considered in deciding when to apply this doctrine, as well as the basis, rationale, and end result achieved when such a doctrine is adopted.

Article 3 of the Civil Code[4] may be cited as the starting point of the presumption of familiarity with local or domestic law, which is why Philippine courts, in cases involving the application of foreign law which was not proved, apply Philippine law. The said Article provides, "Ignorance of the law excuses no one from compliance therewith." The "law" referred to in this Article is domestic law, not foreign law.[5] Therefore, everyone, especially judges, is conclusively presumed to know Philippine law, and ignorance thereof is inexcusable except that it may be the basis of good faith in the proper cases.[6] The same, however, cannot be said of foreign law which is treated as a fact under our law.[7] It follows that ignorance of foreign law cannot be considered as ignorance of the law as contemplated in Article 3, but only ignorance of fact.[8] Particularly with respect to judges and domestic law, our courts are required, under Section 1 of Rule 129 of the Rules of Court, to take judicial notice of "the official acts of the legislative" department of the Philippines, and a statute is an "official act" of the legislature. This goes beyond Article 3 in that judges are not merely conclusively presumed to know Philippine law, but they are also mandated to take judicial notice of it.[9] Based on considerations of expediency and convenience, judicial notice simply means that evidence respecting certain

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> of normal relations. Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to *adjective or remedial law*, which prescribes the method of enforcing rights or obtain[ing] redress for their invasion.

Bustos v. Lucero, G.R. No. 2068, 81 Phil. 640, 649-50, Mar. 8, 1949. (Citations omitted, emphasis supplied.) As will be seen later, this distinction is relevant because in private international law, procedural laws are not generally subject to processual presumption, since it is widely accepted that the law of the forum, or *lex fori*, governs remedial matters in conflict of laws cases.

[4] Unless otherwise indicated, all articles that will be cited in this paper are from the Civil Code of the Philippines.

[5] I ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES WITH THE FAMILY CODE OF THE PHILIPPINES 19 (1990 ed.).

[6] *See* Kasilag v. Rodriguez, G.R. No. 46623, 69 Phil. 217, Dec. 7, 1939.

[7] Del Socorro v. Van Wilsem, G.R. No. 193707, 744 SCRA 516, Dec. 10, 2014, *citing* Llorente v. CA, G.R. No. 124371, 399 Phil. 342, 354, Nov. 23, 2000; Fluemer v. Hix, G.R. No. 32636, 54 Phil. 867, Mar. 17, 1930.

[8] JOVITO R. SALONGA, PRIVATE INTERNATIONAL LAW 100 (1995).

[9] *See id. See also* II FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 833 (10th ed. 2010).

matters, including local statutes, will be dispensed with, such notice being equivalent to proof.[10] This principle, however, does not apply to foreign law which, as stated, is viewed as a fact under Philippine law.[11]

Since the doctrine of processual presumption may be relevant in cases involving a foreign element, it would be well to relate this principle to the existing conflict rules under Philippine law, particularly those which govern personal status and capacity, succession, property, and acts and contracts. The conflict rules with respect to these matters can be found in Articles 15, 16, and 17.

In Article 15, our Civil Code provides that "[l]aws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad." It can be seen at once that the Civil Code, or Philippine law, applies to Filipino citizens, wherever they may be, in regard to (a) family rights and duties, (b) status, (c) condition, and (d) legal capacity. Thus, the nationality theory (*lex patriæ*) prevails in this jurisdiction, as opposed to the domiciliary theory (*lex domicilii*) which governs in common law jurisdictions like the United States.[12] The reason for this rule, which is the same as that found in Article 9 of the Spanish Civil Code,[13] is that citizenship is not lost by mere residence in another country, and therefore capacity to marry, divorce, contract, etc. of Filipino citizens residing outside the

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[10] Land Bank of the Philippines v. Yatco Agricultural Enterprises, G.R. No. 172551, 713 SCRA 370, Jan. 15, 2014. *See also* Republic v. Sandiganbayan, G.R. No. 152375, 662 SCRA 152, 212, Dec. 16, 2011, where the Court explained:

> Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them. Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not *bona fide* disputed.
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> The foundation for judicial notice may be traced to the civil and canon law maxim, *manifesta (or notoria) non indigent probatione.* The taking of judicial notice means that the court will dispense with the traditional form of presentation of evidence. In so doing, the court assumes that the matter is so notorious that it would not be disputed. (Citations omitted.)

[11] *See also* TOLENTINO, *supra* note 5, at 19.

[12] *Id.* at 50.

[13] The *Código Civil de España de 1889* or the Spanish Civil Code of 1889, was extended to the Philippines by virtue of the Royal Decree of July 31, 1889. *See generally* RUBÉN F. BALANE, THE SPANISH ANTECEDENTS OF THE PHILIPPINE CIVIL CODE, 54 PHIL. L.J. 1 (1979).

The Spanish Civil Code took effect in the Philippines on Dec. 7, 1889. Celestial v. Cachopero, G.R. No. 142595, 413 SCRA 469, Oct. 15, 2003, *citing* Mijares v. Nery, G.R. No. 1380, 3 Phil. 195, Jan. 18, 1904, Insular Gov't v. Aldecoa & Co., G.R. No. 6098, 19 Phil. 505, Aug. 12, 1911, *and* Barretto v. Tuason, G.R. No. 36811, 59 Phil. 845, Mar. 31, 1934.

Philippines must be governed by Philippine law.[14] A corollary of the principle in Article 15 is that Philippine personal law applies exclusively to Filipino citizens in the cases cited therein.[15]

With respect to *inter vivos* transfers of real and personal property,[16] as well as incidents relative to such properties (like taxation), paragraph 1 of Article 16 provides that "Real as well as personal property is subject to the law of the country where it is situated." The principle embodied here is *lex situs*, which subjects property, whether movable or immovable, to the law of the country where it is located. Our Code retained the *lex situs* rule with regard to real property but changed the rule with respect to personal property. Formerly or under the Spanish Civil Code, movables were subject to the same law that governed their owner pursuant to the principle *mobilia sequuntur personam* (the property follows the owner).[17] The reason for this change is two-fold: first, in view of the modern trend to dissociate personal property from its owner; and second, because a great deal of the movables in the country belong to foreign nationals.[18] Thus, Philippine law applies to real and personal property located in the Philippines.

However, the rule on succession or *mortis causa* transfers of property appears to be different. In paragraph 2 of Article 16, the Code provides:

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

Further, Article 1039 was added in our Code, which provides that "Capacity to succeed is governed by the law of the nation of the decedent." As such, it is immediately apparent that the principle enunciated in paragraph 2, Article 16 and Article 1039 is the same.[19] Thus, the national law of the decedent governs (a) the order of succession, (b) the amount of successional rights, (c) the intrinsic

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[14] I FRANCISCO R. CAPISTRANO, CIVIL CODE OF THE PHILIPPINES WITH COMMENTS AND ANNOTATIONS 18 (1950).

[15] *See, e.g.*, Van Dorn v. Romillo, Jr., G.R. No. 68470, 139 SCRA 139, Oct. 8, 1985.

[16] I RAMON C. AQUINO AND CAROLINA GRIÑO-AQUINO, THE CIVIL CODE OF THE PHILIPPINES AND FAMILY CODE 34 (1990).

[17] *See* I AMBROSIO PADILLA, CIVIL LAW: CIVIL CODE ANNOTATED 68 (7th ed. 1975); TOLENTINO, *supra* note 5, at 53.

[18] CAPISTRANO, *supra* note 14, at 20.

[19] RUBÉN F. BALANE, JOTTINGS AND JURISPRUDENCE IN CIVIL LAW (SUCCESSION) 563 (2010 ed.).

validity of testamentary provisions, and (d) capacity to succeed. Reading the quoted provision as a whole, it appears that in succession, the rule followed is *lex patriæ* regardless of the nature and location of the property under succession. This is because the *subject* of the second paragraph of Article 16 is succession, while the property under succession is the *object*.[20]

Dean Francisco R. Capistrano explains the rationale for the above principle thus:

> With regard to succession there is only one will, express in testamentary, and presumed in intestate succession. The oneness and universality of an inheritance can not be divided or broken up merely because of the different countries where properties of the estate are situated. Hence, succession must be governed by only one law, the national law of the decedent, which is the generally accepted principle on the subject.[21]

Therefore, Article 16, paragraph 1 must be viewed as a related but separate rule from Article 16, paragraph 2—related because both deal with property, but separate because each is concerned with different circumstances. The first paragraph of Article 16 applies to all transactions, events, relations, etc. involving real or personal property, including property under succession, but excludes the specific successional matters relating to the descent and distribution of property *mortis causa*, or those exclusively governed by the law on succession, which are covered by the second paragraph of Article 16. Thus, the real property in the Philippines of a deceased foreign national is subject to estate tax under our Tax Code (Art. 16, par. 1), but the distribution thereof to his heirs is controlled by his national law (Art. 16, par. 2).[22] It will be noted that this interpretation is consistent with the legislative intent as related by Dean Capistrano as quoted above. Accordingly, if the whole or a part of the estate of a deceased person is located in the Philippines, he is said to have a "descendible interest" therein and Article 16, paragraph 2 comes into play, according to which the decedent's national law should be consulted in matters relating to succession such as the distribution of his estate to his heirs.[23]

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[20] The author gives credit to Dean Merlin M. Magallona for making him realize this basic grammatical distinction during one of his recitations in class.

[21] CAPISTRANO, *supra* note 14, at 21.

[22] *See* Collector v. Fisher, G.R. No. 11622, 1 SCRA 93, Jan. 28, 1961, involving a similar situation.

[23] *See* Gibbs v. Gov't of the Philippine Islands, G.R. No. 35694, 59 Phil. 293, Dec. 23, 1933. The phrase "descendible interest" was taken from this case.

Next, with respect to acts and contracts, paragraph 1 of Article 17 lays down the rule of *lex loci celebrationis* (the law of the place of execution) or *lex loci contractus* (the law of the place where the contract is made). According to this principle, the formal validity of contracts, wills, and other instruments is governed by the law of the place of execution. In connection with this, Articles 815 to 817 (in relation to Art. 15 and 17) give every testator, whether Filipino or alien and wherever he may be, five choices as to what law to follow for the form of his will, *viz.* law of citizenship, law of place of execution, law of domicile, law of residence, or Philippine law.[24] The reason for this rule is practical necessity.[25] One exception to the *lex loci celebrationis* principle is provided in paragraph 2 of the same Article, which mandates that Philippine law should govern the form of contracts executed abroad before diplomatic or consular officials of the Philippines.

The overriding exception to the *lex loci celebrationis* rule is given in paragraph 3 of Article 17. This rule on public policy renders ineffectual any agreement entered into in a foreign jurisdiction that is contrary to Philippine public policy, public order, or good customs. In private international law, foreign laws (in addition to foreign judgments and contracts executed abroad) shall not be recognized if: (a) they would contravene a well-established and important policy of the forum; or (b) they would be *contra bonos mores*.[26]

Summarizing the above provisions, the following conflict rules, with respect to the matters mentioned above, obtain in the Philippines: *lex patriæ* (Art. 15, 16, par. 2, 815-817, and 1039), *lex situs* (Art. 16, par. 1), *lex loci celebrationis* or *lex loci contractus* (Art. 17, par. 1 and 815-817), *lex fori* (Art. 17, par. 3), *lex domicilii* (Art. 815-817), and Philippine law (Art. 15, 17, par. 2, and 815-817). Interpreting and interrelating the abovementioned conflict rules, it may therefore be said that Philippine law applies exclusively to Filipino citizens wherever they may be in regard to family rights and duties, status, condition, and legal capacity. Philippine law also applies to *inter vivos* conveyances of real and personal property (as well as incidents relative thereto) located in the Philippines, including property under succession, whether owned by Filipinos or foreign nationals. Corollarily, *lex situs* would apply if the real or personal property is located outside the Philippines even if the owner thereof be a Filipino. But with regard to successional matters, including *mortis causa* transfers and distributions of property and particularly with regard to the order of succession, the amount of successional rights, and the validity of testamentary provisions, the applicable law depends on the nationality of the decedent. Finally, acts and contracts are valid in the Philippines if they are

[24] BALANE, *supra* note 19, at 175-76.
[25] CAPISTRANO, *supra* note 14, at 23.
[26] PADILLA, *supra* note 17, at 76-77.

valid where celebrated, provided that they do not contravene important Philippine public policy considerations, and none of the other exceptions apply.[27]

With this overview, I now proceed to outline the flow of this essay. In this paper, I examine how processual presumption operates in the cases where it was invoked and applied by our Supreme Court. I observe that the application of foreign law in conflict problems involves a two-fold process: *first*, the determination of the particular local conflict rule that governs the matter in issue,[28] and *second*, the ascertainment and application of the proper law on the subject. It is in the second step where processual presumption, sometimes called presumed-identity approach,[29] presumption of identity of laws, or presumption of similarity of laws,[30] may or may not be brought into play.[31] I argue that processual presumption is a technique whereby our courts interpret and apply an unproved foreign law through an equivalent or counterpart Philippine law. It is a tool or method in discovering or giving some face to foreign law. This does not mean, however, that domestic law or *lex fori* is applied; on the contrary, foreign law is utilized *as it appears* in Philippine law. In resorting to processual presumption, our courts decide a case in the way in which they think a foreign court or tribunal, whose law was not established as a fact, would decide had the case been brought before such foreign court or tribunal.

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[27] As indicated earlier, to this category also belongs foreign law, specifically its application. The "exceptions" being referred to here pertain to the exceptions to the application of foreign law. Generally, they are classified into three categories: (1) when the local law expressly so provides; (2) when there is failure to plead and prove foreign law; and (3) when the case falls under any of the exceptions to the rule of comity. Particularly, foreign law, even if properly pleaded and proved, would not be applied if: (a) the foreign law is contrary to an important public policy of the forum; (b) the foreign law is procedural in nature; (c) the issue is related to property; (d) the issue involved in the enforcement of foreign claim is fiscal or administrative; (e) the foreign law or judgment is contrary to good morals; (f) the application of foreign law will work undeniable injustice to the citizens of the forum; (g) the foreign law is penal in character; and (h) the application of foreign law might endanger the vital interests of the State. JORGE R. COQUIA & ELIZABETH AGUILING-PANGALANGAN, CONFLICT OF LAWS: CASES, MATERIALS AND COMMENTS 145-53 (2000).

[28] In private international law, this step is called "characterization." For a full discussion on this topic, see Arthur H. Robertson, *A Survey of the Characterization Problem in the Conflict of Laws*, 52 HARV. L. REV. 747 (1939); Ernest G. Lorenzen, *The Qualification, Classification, or Characterization Problem in the Conflict of Laws*, 50 YALE L. J. 743 (1941); SALONGA, *supra* note 8, at 139-56.

[29] EDI-Staffbuilders Int'l, Inc. v. NLRC, G.R. No. 145587, 537 SCRA 409, Oct. 26, 2007.

[30] Yaad Rotem, *Foreign Law as a Distinctive Fact—To Whom Should the Burden of Proof Be Assigned?*, 14 CHI. J. INT'L L. 625, 630 (2014).

[31] For a concise overview of the historical source of processual presumption, *see* Anthony Gray, *Choice of Law: The Presumption in the Proof of Foreign Law*, 31 UNIV. N.S.W. L.J. 136, 138. (2008).

Essential to an analysis of how processual presumption works is a consideration of the pertinent conflict areas[32] in our law where the question of foreign law typically becomes an issue. The first part of this paper deals with that aspect, where I inquire into the different (but not all) terrains of Philippine law where a conflict problem may arise. Specifically, I look at the areas of succession and administration of estates of deceased persons, personal status and legal capacity, including marriage, contractual relations, and transactions involving property. In so doing, I survey various cases decided by our Supreme Court in relation to the conflict areas mentioned, and relate how the conflict rules prevailing in this jurisdiction are applied.

Next, I proceed to a scrutiny of how the doctrine of processual presumption is brought into play in the conflict areas cited. For a complete understanding of how this principle becomes material, I first look at the manner by which foreign laws, treated "like any other fact,"[33] must be proved. Then I review noted cases where this doctrine was invoked and applied, critiquing, whenever necessary, some of the pronouncements of the Court relative thereto.

I then inquire into the "apparent"[34] exceptions to the application of the presumed-identity approach. I argue that judicial notice of foreign law, considered as an exception to the application of processual presumption, is not really "judicial notice" in the true sense of the phrase. I discuss here the dynamics involved in a conflict of laws litigation as a civil proceeding and suggest an alternative lens by which the problem of processual presumption can be viewed.[35] Here, I analyze how, in a definite species of cases, the Court would, despite failure to prove foreign law, refuse to dismiss the case or assume that the unproved foreign law is the same as our law, and instead remand the case to the trial court. I argue that, in connection with the hypothesis above, this is due to the lack of an equivalent or counterpart substantive local law upon which to anchor the presumption of similarity of laws.

Finally, I summarize my arguments and observations by presenting some of the criticisms of the doctrine of processual presumption and suggest that, for a clearer and more orderly adjudication of cases involving conflict problems, particularly those in which processual presumption might be relevant, it would be useful if our courts would require the opponent (*vis-à-vis* the

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[32] That is to say, areas or subjects in Philippine law where conflict cases arise.

[33] Garcia v. Recio, G.R. No. 138322, 366 SCRA 437, Oct. 2, 2001.

[34] "Apparent," because, as will be shown later, some of the so-called exceptions are not really true exceptions.

[35] This, of course, is loosely stated. Processual presumption is not in itself a problem. By this phrase is meant the aspects, or the surrounding circumstances in a given case, that may or may not bring about the application of processual presumption.

proponent of a foreign law) to squarely meet the issue of what law should be applied, bearing in mind the civil nature of the proceedings, and not merely rely on presumptions, emphasizing the importance of a confrontational approach not only in determining the content of foreign law, but also in avoiding the operation of processual presumption.[36]

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In every case involving a foreign element, or "[a] factual situation that cuts across territorial lines and is affected by the diverse laws of two or more States,"[37] wherein the problem of which of two (or more) laws of different jurisdictions is to be applied in a given state of facts, proof of foreign law is important if such law is to be applied by the court. As mentioned earlier, our courts are expected to know only domestic law, and therefore they cannot apply that which under our law they are not expected to be learned about, even if, as a matter of personal knowledge, a judge knows the content of a foreign law.[38] Foreign law under Philippine law is a question of fact, which must not only be alleged, but also be ascertained. Under the law-as-fact model[39] to which our jurisdiction subscribes, foreign laws cannot be the subject matter of judicial notice, subject to certain exceptions. Unlike in the United States where the "Full Faith and Credit Clause" embodied in the Federal Constitution entitles States of the Union, particularly sister States, the benefit or privilege of taking judicial notice of the "public acts, records, and judicial proceedings of every other state,"[40] no such provision can be found in our Constitution or statutes mainly because the Philippines is a unitary State regulated by a single body of laws applicable to all Filipino citizens.[41]

It has been stated that "[t]he proper functioning of private international law in a domestic system is based on the appropriate application of law."[42] In conflict of laws, different rules or laws govern different matters. In the

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[36] This problem, encountered in *Asiavest Ltd. v. CA*, will be discussed thoroughly later in this article.

[37] SALONGA, *supra* note 8, at 3.

[38] *See* REGALADO, *supra* note 9, at 834.

[39] Rotem, *supra* note 30, at 629.

[40] The Full Faith and Credit Clause can be found in U.S. CONST. art. IV, § 1, which completely provides: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof." *See* COQUIA & AGUILING-PANGALANGAN, *supra* note 27, at 121.

[41] Except, of course, the Code of Muslim Personal Laws of 1977, which is applicable only to Muslims. *See* Pres. Dec. No. 1083, art. 3(3).

[42] Matthew J. Wilson, *Demystifying the Determination of Foreign Law in U.S. Courts: Opening the Door to a Greater Global Understanding*, 46 WAKE FOREST L. REV. 887, 889 (2012).

Philippines, the question of which law should apply to a particular problem depends on what the specific local conflict rule mandates. But no matter how varied the nomenclature of which law should govern a particular matter (*lex patriæ, lex domicilii, lex situs,* etc.), the problem which confronts a court in a conflict case may be simplified thus: should it apply foreign law or domestic law (*lex fori*)?[43]

There appears to be a two-step process involved in the application of foreign law in conflict problems. The *first* is the ascertainment of the particular local conflict rule that governs the matter at issue. *Second*, once the particular local conflict law has been consulted, a verification of the proper law on the subject follows. It is in this second step where processual presumption may or may not be used. The general rule is that if the proper law is foreign and the said law is pleaded and properly proved according to our law on evidence,[44] with no exception to the application of such foreign law obtaining, then that foreign law shall be employed. If, on the other hand, there is a failure to plead and prove foreign law, then generally speaking, Philippine law shall be applied on the presumption that it is the same as the foreign law. However, depending on the particular area of law or subject matter concerned, there seems to be a specific trend that our Supreme Court follows in deciding cases involving a foreign element, not on whether it should apply foreign law, but rather on how it should dispose of the case.

A survey of how the abovementioned first step is undertaken by our Supreme Court is in order, involving specific conflict rules on succession and administration, personal status and legal capacity, including marriage, contractual relations, and transactions involving property.

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[43] Some scholars argue that this question is not easily answered, and therefore certain "guideposts" have to be borne in mind by the trial judge, who must be "flexible" and who will ultimately determine "whether to apply domestic law or to decide the case against the party bearing the burden of pro[ving foreign law]," *viz*: (a) the degree to which a strong public interest is involved in the parties' dispute; (b) the parties' access to foreign law materials; (c) the possibility that the plaintiff is merely forum shopping; and (d) the nature of the foreign legal system and of the issue involved in the case, that is, the similarity of the forum law to the foreign law on the issue. Rudolf B. Schlesinger, *Recurrent Problem in Transnational Litigation: The Effect of Failure to Invoke or Prove the Applicable Foreign Law*, 59 CORNELL L. REV. 1, 12-16 (1973).

See also COQUIA & AGUILING-PANGALANGAN, *supra* note 27, at 145. Adopting the view of Schlesinger, these authors observe that the local application of the "guideposts" mentioned above "will not likely result in the application of forum law except in some cases involving marriage and family relations."

[44] *Lex fori* is applied to procedural or non-substantive matters for reasons of "practical necessity and simplification of the judicial task." (SALONGA, *supra* note 8, at 99-100.)

In cases involving successional matters, the second paragraph of Article 16 provides that "intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found." Similar to Article 15 for Filipino citizens, the second paragraph of Article 16 mandates that *lex patriæ* should apply in the cases mentioned therein. Thus, where a citizen of Illinois died in Manila and his will was probated here, the intrinsic validity of the same must be determined according to the law of Illinois.[45] A Turkish national is not allowed to state in his will that the provisions thereof shall be governed by Philippine law.[46] The provisions of the will of a citizen of Nevada who disposed of all his properties, giving to a compulsory heir something less than his legitime under Philippine law, shall be respected if these provisions are in accordance with his national law.[47] And where a citizen of Maryland, whose laws permit a testator to freely dispose of his estate in accordance with his will, bequeathed everything to her husband, and her husband, also a citizen of Maryland, bequeathed everything to his second wife, leaving only a meager amount of inheritance to his children, the laws of Maryland shall apply.[48]

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[45] *In re* Estate of Johnson, G.R. No. 12767, 39 Phil. 156, Nov. 16, 1918. Provided, of course, that the pertinent foreign law was pleaded and proved. The Court in that case said:

> If, therefore, upon the distribution of this estate, it should appear that any legacy given by the will or other disposition made therein is contrary to the law applicable in such case, the will must necessarily yield upon that point and the law must prevail. Nevertheless, it should not be forgotten that the intrinsic validity of the provisions of this will must be determined by the law of Illinois and not, as the appellant apparently assumes, by the general provisions here applicable in such matters; for in the second paragraph of article 10 of the [Spanish] Civil Code [precursor of the present art. 16 of the Philippine Civil Code], it is declared that "legal and testamentary successions, with regard to the order of succession, as well as to the amount of the successional rights and to the intrinsic validity of their provisions, shall be regulated by the laws of the nation of the person whose succession is in question, whatever may be the nature of the property and the country where it may be situated."

[46] Miciano v. Brimo, G.R. No. 22595, 50 Phil. 867, Nov. 1, 1924.

[47] Testate Estate of Bohanan v. Bohanan, G.R. No. 12105, 106 Phil. 997, Jan. 30, 1960. Particularly with regard to legitimes, the Court said in a later case, after making reference to art. 16, ¶ 2 and art. 1039, that "whatever public policy or good customs may be involved in our system of legitimes, Congress has not intended to extend the same to the succession of foreign nationals. For it has specifically chosen to leave, *inter alia*, the *amount* of successional rights, to the decedent's national law." Bellis v. Bellis, G.R. No. 23678, 20 SCRA 358, 363, June 6, 1967. (Emphasis in the original.)

[48] Ancheta v. Guersey-Dalaygon, G.R. No. 139868, 490 SCRA 140, June 8, 2006.

In family law and on matters relating thereto, including the consequences and dissolution of marriage, Article 15 provides that Philippine law is binding upon Filipino citizens, wherever they may be, with regard to family rights and duties, as well as to the status, condition, and legal capacity of persons.[49] The Supreme Court has, in a number of cases, used this Article by analogy to justify the application of an alien's *lex patriæ* concerning the matters mentioned above.[50] Said the Court in one case:

> Furthermore, being still aliens, they are not in a position to invoke the provisions of the Civil Code of the Philippines, for that Code cleaves to the principle that family rights and duties are governed by their personal law, i.e., the laws of the nation to which they belong even when staying in a foreign country (cf. Civil Code, Article 15).[51]

Thus, in the landmark case of *Van Dorn v. Romillo, Jr.*, involving an American husband and a Filipino wife whose marriage was dissolved by a

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[49] The complete text of art. 15 is as follows: "Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."

[50] *See* Recto v. Harden, G.R. No. 6897, 100 Phil. 427, 439, Nov. 29, 1956. This case involved a lawyer who was asking for his fees from the defendant spouses who were American citizens. The lawyer's services were sought in connection with the filing of the appropriate case here preparatory to the filing of a divorce abroad. After the said lawyer filed the appropriate case and obtained a favorable decision thereon, the defendant spouses instructed him to discontinue the proceedings while the case was on appeal, claiming that the contract with the plaintiff was void because, among others, its object was for the obtention of a divorce decree which is prohibited by our laws. The Court said:

> The third objection is not borne out, either by the language of the contract between them, or by the intent of the parties thereto. Its purpose was not to secure a divorce, or to facilitate or promote the procurement of a divorce. It merely sought to protect the interest of Mrs. Harden in the conjugal partnership, during the pendency of a divorce suit she intended to file in the United States. *What is more, inasmuch as Mr. and Mrs. Harden are admittedly citizens of the United States, their status and the dissolution thereof are governed—pursuant to Article 9 of the Civil Code of Spain (which was in force in the Philippines at the time of the execution of the contract in question) and Article 15 of the Civil Code of the Philippines—by the laws of the United States, which sanction divorce.* (Emphasis supplied.)

See also Van Dorn v. Romillo, Jr., G.R. No. 68470, 139 SCRA 139, Oct. 8, 1985; Pilapil v. Ibay-Somera, G.R. No. 80116, 174 SCRA 653, June 30, 1989; Quita v. CA, G.R. No. 124862, 300 SCRA 406, Dec. 22, 1998; Llorente v. CA, G.R. No. 124371, 345 SCRA 592, Nov. 23, 2000; Garcia v. Recio, G.R. No. 138322, 366 SCRA 437, Oct. 2, 2001; Republic v. Orbecido III, G.R. No. 154380, 472 SCRA 114, Oct. 5, 2005; San Luis v. San Luis, G.R. No. 133743, 514 SCRA 294, Feb. 6, 2007; Vda. de Catalan v. Catalan-Lee, G.R. No. 183622, 665 SCRA 487, Feb. 8, 2012; Orion Savings Bank v. Suzuki, G.R. No. 205487, 740 SCRA 345, Nov. 12, 2014.

[51] Vivo v. Cloribel, G.R. No. 25411, 25 SCRA 616, 618, Oct. 26, 1968.

divorce decree obtained abroad by the Filipino spouse, the Court, speaking about the American husband's capacity to sue, said:

> There can be no question as to the validity of that Nevada divorce in any States of the United States. The decree is binding on private respondent as an American citizen. For instance, private respondent cannot sue petitioner, *as her husband*, in any State of the Union. [...]
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> It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law.
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> Thus, pursuant to his national law, private respondent is no longer the husband of petitioner. He would have no standing to sue in the case below as petitioner's husband entitled to exercise control over conjugal assets.[52]

A German national who obtained a divorce decree abroad from his Filipino wife has no legal capacity to sue the latter in our courts for adultery after such divorce decree was obtained, because he can no longer be considered an "offended spouse" within the context of the Revised Penal Code, his status as a divorcee being recognized here pursuant to the nationality principle prevailing in this jurisdiction.[53] A naturalized citizen of New York who became such long before his divorce from his first wife, his marriage to his second wife, the execution of his will, and his death, is necessarily governed by foreign law, that is, his national law, for the reason that he was a foreigner not covered by our laws on family rights and duties, status, condition, and legal capacity as provided in Article 15.[54] A Filipino citizen who later became a naturalized citizen of Australia "severed his allegiance to the Philippines and the *vinculum juris* that had tied him to Philippine personal laws."[55] Because the wife who had been naturalized as an American citizen subsequently obtained a valid divorce decree from her Filipino husband, she then became capacitated to remarry under her national law.[56] The present wife of a Filipino citizen (who was previously

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[52] Van Dorn v. Romillo, Jr., G.R. No. 68470, 139 SCRA 139, 143-44, Oct. 8, 1985. (Emphasis in the original.)

[53] Pilapil v. Ibay-Somera, G.R. No. 80116, 174 SCRA 653, June 30, 1989.

[54] Llorente v. CA, G.R. No. 124371, 345 SCRA 592, Nov. 23, 2000.

[55] Garcia v. Recio, G.R. No. 138322, 366 SCRA 437, Oct. 2, 2001.

[56] Republic v. Orbecido III, G.R. No. 154380, 472 SCRA 114, Oct. 5, 2005.

divorced by his former American wife) has legal personality to file a petition for letters of administration for the settlement of her deceased husband's estate as the surviving spouse.[57]

With regard to contractual relations, the conflict rule obtaining in this jurisdiction is *lex loci contractus* as found in the first paragraph of Article 17.[58] This means that the law of the place where the contract was made or entered into should govern the "forms and solemnities" of the same. Earlier cases literally construed such a law to mean the law of the place where the agreement was executed, even without the parties choosing or intending it, and without regard to the parties' nationality. Thus, where a minor contracted with the Philippine Government to be a stenographer with salary, such contract being entered into in Chicago, Illinois, and under whose laws such minor was already considered an adult, the said minor could not invoke his minority as a defense under Philippine law when sued in the Philippines for breach of contract.[59] A contract for the purchase of railroad equipment with a foreign corporation, entered into in Canada by an agent in behalf of his principal in the Philippines, was held to be governed by the laws of Canada.[60]

The recent trend in jurisprudence, however, is to construe *lex loci contractus* to mean the law which the parties have chosen or intended, considering such factors that bear a substantial connection to the parties to the transaction.[61]

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[57] San Luis v. San Luis, G.R. No. 133743, 514 SCRA 294, Feb. 6, 2007. *See also* Vda. de Catalan v. Catalan-Lee, G.R. No. 183622, 665 SCRA 487, Feb. 8, 2012.

[58] It provides: "The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed."

[59] Government v. Frank, G.R. No. 2935, 13 Phil. 236, Mar. 23, 1909. The assumption here, of course, is that capacity to contract is a form or solemnity governed by *lex loci celebrationis* or *lex loci contractus*.

[60] Macmillan & Bloedel v. Valderama & Sons, 61 O.G. 1696 (1964).

[61] Also called the "most significant relationship" rule. *See* Zalamea v. CA, G.R. No. 104235, 228 SCRA 23, Nov. 18, 1993. *See also* Philippine Export & Foreign Loan Guarantee Corp. v. V.P. Eusebio Construction, Inc., G.R. No. 140047, 434 SCRA 202, July 13, 2004; Crescent Petroleum, Ltd. v. M/V "Lok Maheshwari," G.R. No. 155014, 474 SCRA 623, Nov. 11, 2005.

See further Saudi Arabian Airlines v. CA, G.R. No. 122191, 297 SCRA 469, 491, Oct. 8, 1998, where the Court made mention of the "connecting factor" or "point of contact" test in ascertaining the proper law to be applied in a given factual relationship. According to the Court, one or more of the following circumstances may be present to serve as the possible test for the determination of the applicable law: (1) the nationality of a person, his domicile, his residence, his place of sojourn, or his origin; (2) the seat of a legal or juridical person, such as a corporation; (3) the *situs* of a thing, or the place where a thing is, or is deemed to be situated; (4) the place where an act has been done, or the *locus actus*; (5) the place where an act is intended to come into effect; (6) the intention of the contracting parties as to the law that should govern their agreement, or the *lex loci intentionis*; (7) the place where judicial or administrative proceedings are instituted or done, or the *lex fori*; and (8) the flag of a ship.

Thus, where airline tickets were sold in the Philippines by the defendant foreign airline company to resident Filipino passengers, disputes arising therefrom should be resolved by applying Philippine law.[62] Where a Filipino corporation entered into a joint venture with an Iraqi company, the contract being executed in Iraq, and under which agreement the Filipino corporation defaulted, the laws of Iraq should apply even if there was no express choice of law that would govern such contract:

> No conflicts rule on essential validity of contracts is expressly provided for in our laws. The rule followed by most legal systems, however, is that the intrinsic validity of a contract must be governed by the *lex contractus* or "proper law of the contract." This is the law voluntarily agreed upon by the parties (the *lex loci voluntatis*) or the law intended by them either expressly or implicitly (the *lex loci intentionis*). *The law selected may be implied from such factors as [bear a] substantial connection with the transaction, or the nationality or domicile of the parties.* Philippine courts would do well to adopt the first and most basic rule in most legal systems, namely, to allow the parties to select the law applicable to their contract, subject to the limitation that it is not against the law, morals, or public policy of the forum and that the chosen law must bear a substantive relationship to the transaction.
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> In this case, the laws of Iraq bear substantial connection to the transaction, since one of the parties is the Iraqi Government and the place of performance is in Iraq. Hence, the issue of whether respondent VPECI defaulted in its obligations may be determined by the laws of Iraq.[63]

As intimated by the Court above, the reason for the change in the construction of the rule, is the lack of a specific conflict rule in our laws that particularly

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[62] Zalamea v. CA, G.R. No. 104235, 228 SCRA 23, 31, Nov. 18, 1993. Here, the Court said:

> [T]he principle of *lex loci contractus*...require[s] that the law of the place where the airline ticket was issued should be applied by the court *where the passengers are residents and nationals of the forum and the ticket is issued in such State by the defendant airline.* Since the tickets were sold and issued in the Philippines, the applicable law in this case should be Philippine law." (Emphasis supplied.)

Note that the Court also cited the plaintiffs' residence and nationality as factors to consider in applying Philippine law, in addition to the principle of *lex loci contractus.* It seems that the Court in this case was employing the so-called localization theory in private international law, without expressly mentioning the same.

[63] Philippine Export & Foreign Loan Guarantee Corp. v. V.P. Eusebio Construction, Inc., G.R. No. 140047, 434 SCRA 202, 214-15, July 13, 2004. (Citations omitted, emphasis supplied.)

governs the essential or intrinsic validity of contracts. It must be noted that the first paragraph of Article 17 refers only to the "forms and solemnities," and not to the intrinsic validity, of contracts.

So also, where a Canadian petroleum corporation sold bunker fuels to an Indian vessel owned by an Indian corporation, the latter failing to pay the former, the maritime lien being claimed by the Canadian corporation should be proved under its own laws because

> it is clear that Canada has the most significant interest in this dispute. The injured party is a Canadian corporation, the sub-charterer, which placed the orders for the supplies is also Canadian, the entity which physically delivered the bunker fuels is in Canada, the place of contracting and negotiation is in Canada, and the supplies were delivered in Canada.[64]

And, as will be seen later, in case of labor contracts, which are said to be impressed with public interest, the determination of the proper law almost always refers to Philippine law for reasons that will be explained hereafter.

For matters relating to transactions involving property, the first paragraph of Article 16 provides that "[r]eal property as well as personal property is subject to the law of the country where it is situated." This rule mandates that *lex situs*, or the law of the place where the property is located, should govern the acts and transactions relating thereto. As previously mentioned, the Philippine Civil Code changed the rule with respect to personal property, which was formerly subject to the principle *mobilia sequuntur personam* (the property follows the owner, hence, *lex domicilii* or the law of the domicile of the owner is applied), but retained the principle of *lex situs* with regard to real property. At present, both kinds of property are subject to the *lex situs* rule. Thus, where a decedent domiciled in California died therein, leaving shares of stock in a Philippine corporation, such shares of stock, being considered personal property, are subject to the taxing jurisdiction of the Philippines.[65] Explaining the foregoing rule, the Court said:

> Originally, the settled law in the United States is that intangibles have only one situs for the purpose of inheritance tax, and that such situs is in the domicile of the decedent at the time of his death. But this rule has, of late, been relaxed. The maxim *mobilia sequuntur*

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[64] Crescent Petroleum, Ltd. v. M/V "Lok Maheshwari," G.R. No. 155014, 474 SCRA 623, 642, Nov. 11, 2005.

[65] Wells Fargo Bank & Union Trust Co. v. Collector, G.R. No. 46720, 70 Phil. 325, June 28, 1940.

> *personam*, upon which the rule rests, has been described as a mere "fiction of law having its origin in consideration of general convenience and public policy, and cannot be applied to limit or control the right of the state to tax property within its jurisdiction" and must "yield to established fact of legal ownership, actual presence and control elsewhere, and cannot be applied if to do so would result in inescapable and patent injustice." [...]
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> [T]he relaxation of the original rule rests on either of two fundamental considerations: (1) upon the recognition of the inherent power of each government to tax persons, properties and rights within its jurisdiction and enjoying, thus, the protection of its laws; and (2) upon the principle that as to intangibles, a single location in space is hardly possible, considering the multiple, distinct relationships which may be entered into with respect thereto. [...]
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> * * *
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> In the instant case, the actual situs of the shares of stock is in the Philippines, the corporation being domiciled therein. And besides, the certificates of stock have remained in this country up to the time when the deceased died in California, and they were in possession of one Syrena McKee, secretary of the Benguet Consolidated Mining Company, to whom they have been delivered and indorsed in blank. [...] In other words, the owner residing in California has extended here her activities with respect to her intangibles so as to avail herself of the protection and benefit of the Philippine laws. Accordingly, the jurisdiction of the Philippine Government to tax must be upheld.[66]

A foreign corporation which has neither done business in the Philippines nor has been licensed to do so has a right to maintain an action in this country to restrain the organization of a corporation that seeks to use the former's name, because the right to the use of corporate and trade name

> [i]s a property right, a right *in rem*, which it may assert and protect against all the world, in any of the courts of the world—even in jurisdictions where it does not transact business—just the same as it may protect its tangible property, real or personal, against trespass, or conversion. [...]
>
> Since it is the trade and not the mark that is to be protected, a trade-mark acknowledges no territorial boundaries of municipalities or

[66] *Id* at 329, 332-33 (Citations omitted.)

> states or nations, but extends to every market where the trader's goods have become known and identified by the use of the mark.[67]

This doctrine, enunciated by the Court in a 1927 case, remains a prevailing rule in this jurisdiction, having been followed in a line of cases.[68]

* * *

After determining how the Philippine conflict rules operate in this jurisdiction, a closer look at the second step, or the process of ascertaining and applying the proper law (usually, foreign law), necessarily follows.

Preliminarily, it must be noted that in private international law, procedural matters, such as service of court processes like summons, presentation of evidence, rules of admissibility, requirements of proof, in general, pleading and practice, are governed by *lex fori*.[69] For the purposes of this paper, it would thus be unnecessary to discuss, whether processual presumption operates in remedial law.[70]

Given that *lex fori* governs non-substantive aspect, conflict cases domestically litigated are necessarily subject to Philippine adjective laws. Because conflict cases contain a foreign element, they would normally involve foreign law, and the rule in this jurisdiction is that foreign law is treated as a fact that must be alleged and proved. To plead foreign law successfully, there must be an allegation in the pleading about the existence of the foreign law, as well as its import and legal consequence on the event or transaction in issue.[71] Foreign statutes cannot be taken judicial notice of by our courts, except on rare occasions and special cases that will be examined later.

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[67] Western Equipment & Supply Co. v. Reyes, G.R. No. 27897, 51 Phil. 115, 128-29, Dec. 2, 1927. (Citation omitted.)

[68] *See* Sterling Products Int'l, Inc. v. Farbenfabriken Bayer Aktiengesellschaft, G.R. No. 19906, 27 SCRA 1214, Apr. 30, 1969; La Chemise Lacoste v. Fernandez, G.R. No. 63796, 129 SCRA 373, May 21, 1984; Philip Morris, Inc. v. CA, G.R. No. 91332, 224 SCRA 576, July 16, 1993; Mighty Corp. v. E. & J. Gallo Winery, G.R. No. 154342, 434 SCRA 473, July 14, 2004.

[69] SALONGA, *supra* note 8, at 99-100. *See* Northwest Orient Airlines v. CA, G.R. No. 112573, 241 SCRA 192, Feb. 9, 1995; Asiavest Merchant Bankers (M) Berhad v. CA, G.R. No. 110263, 361 SCRA 489, July 20, 2001; St. Aviation Serv. Co. v. Grand Int'l Airways, Inc., G.R. No. 140288, 505 SCRA 30, Oct. 23, 2006.

[70] *But see* Asiavest Ltd., *infra*.

[71] SALONGA, *supra* note 8, at 104. *See* Wildvalley Shipping Co. v. CA, G.R. No. 119602, 342 SCRA 213, Oct. 6, 2000.

In conflict of laws, the party who desires to have a foreign law applied to a dispute has the burden of proving such foreign law.[72] This is true whether the foreign statute being invoked is to be used as basis of either the plaintiff's claim or the defendant's defense in a civil proceeding.[73] The burden of proof (*onus probandi*) is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.[74] Therefore, our rules on evidence determine how the relevant foreign law, like any other fact, should be proved. The pertinent provisions on this may be found in our Rules of Court, particularly Sections 24 and 25 of Rule 132. These Sections provide:

> SECTION 24. *Proof of official record.* – The record of public documents referred to in paragraph (a) of section 19,[75] when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.
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> SECTION 25. *What attestation of copy must state.* – Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

The foregoing Sections lay down the procedure for proving written foreign law. Under these provisions, a writing or document may be proved as a public or

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[72] Del Socorro v. Van Wilsem, G.R. No. 193707, 744 SCRA 516, Dec. 10, 2014,; EDI-Staffbuilders Int'l, Inc. v. NLRC, G.R. No. 145587, 537 SCRA 409, Oct. 26, 2007.

[73] Garcia v. Recio, G.R. No. 138322, 366 SCRA 437, Oct. 2, 2001.

[74] RULES OF COURT, Rule 131, § 1.

[75] § 19. *Classes of documents.* – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer having legal custody of the document.[76] If the record is not kept in the Philippines, such copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.[77]

Section 24 as above-quoted is interpreted by our Supreme Court to include competent evidence like the testimony of a witness to prove the *existence* of a written foreign law.[78] Upon this point, in the early case of *Williamette Iron & Steel Works v. Muzzal*, the Court ruled that:

> Mr. Arthur W. Bolton, an attorney-at-law of San Francisco, California, since the year 1918 under oath, quoted verbatim section 322 of the California Civil Code and stated that said section was in force at the time the obligations of defendant to the plaintiff were incurred, i.e. on November 5, 1928 and December 22, 1928. This evidence sufficiently established the fact that the section in question was the law of the State of California on the above dates. A reading of sections 300 and 301 of our Code of Civil Procedure will convince one that these sections do not exclude the presentation of other competent evidence to prove the existence of a foreign law.
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> "The foreign law is a matter of fact.... You ask the witness what the law is; he may from his recollection, or on producing and referring to books, say what it is."[79]

Similarly, in *Collector of Internal Revenue v. Fisher*, the testimony of a lawyer familiar with the pertinent California law was admitted as sufficient proof of the said foreign law. The Court there said:

> To prove the pertinent California law, Attorney Allison Gibbs, counsel for herein respondents, testified that as an active member of the California Bar since 1931, he is familiar with the revenue and taxation laws of the State of California. When asked by the lower court

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[76] San Luis v. San Luis, G.R. No. 133743, 514 SCRA 294, Feb. 6, 2007.

[77] *Id.*

[78] Collector v. Fisher [hereinafter "Fisher"], G.R. No. 11622, 1 SCRA 93, Jan. 28, 1961; Yao Kee v. Sy-Gonzales, G.R. No. 55960, 167 SCRA 736, Nov. 24, 1988; Wildvalley Shipping Co., G.R. No. 119602, 342 SCRA 213, Oct. 6, 2000.

[79] [hereinafter "Williamette"], G.R. No. 42538, 61 Phil. 471, 475, May 21, 1935, *citing* 4 JONES ON EVIDENCE 3148-52 (2nd ed.), *in turn citing* "Lord Campbell concurring in an opinion of Lord Chief Justice Denman in a well-known English case where a witness was called upon to prove the Roman laws of marriage and was permitted to testify, though he referred to a book containing the decrees of the Council of Trent as controlling."

> to state the pertinent California law as regards exemption of intangible personal properties, the witness cited article 4, section 13851 (a) and (b) of the California Internal and Revenue Code as published in Derring's California Code, a publication of the Bancroft-Whitney Company, Inc. And as part of his testimony, a full quotation of the cited section was offered in evidence as Exhibit "V-2" by the respondents.
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> It is well-settled that foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice of them. Like any other fact, they must be alleged and proved.
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> Section 41, Rule 123 of our Rules of Court (now Section 25, Rule 132) prescribes the manner of proving foreign laws before our tribunals. However, although we believe it desirable that these laws be proved in accordance with said rule, we held in the case of *Willamette Iron and Steel Works v. Muzzal,* 61 Phil. 471, that "a reading of sections 300 and 301 of our Code of Civil Procedure...will convince one that these sections do not exclude the presentation of other competent evidence to prove the existence of a foreign law." In that case, we considered the testimony of an attorney-at-law of San Francisco, California who quoted verbatim a section of California Civil Code and who stated that the same was in force at the time the obligations were contracted, as sufficient evidence to establish the existence of said law. In line with this view, we find no error, therefore, on the part of the Tax Court in considering the pertinent California law as proved by respondents' witness.[80]

It must be noted that only the *existence* of the pertinent foreign law may be proved by parol evidence and not its content. If content is in issue, then Sections 24 and 25 of Rule 132 must be strictly complied with. This is clear from the following pronouncement of the Court in *Wildvalley Shipping Co., Ltd. v. Court of Appeals*,[81] where Venezuelan law was sought to be proved at the court *a quo* by the testimony of a witness:

> We do not dispute the competency of Capt. Oscar Leon Monzon, the Assistant Harbor Master and Chief of Pilots at Puerto Ordaz, Venezuela, to testify on the existence of the *Reglamento General de la Ley de Pilotaje* (pilotage law of Venezuela) and the *Reglamento Para la Zona de Pilotaje N°1 del Orinoco* (rules governing the navigation of the Orinoco River). Captain Monzon has held the aforementioned posts for eight years. As such, he is in charge of designating the pilots for

[80] *Fisher*, 1 SCRA at 104-05 (Citations omitted.).
[81] G.R. No. 119602, 342 SCRA 213, Oct. 6, 2000.

maneuvering and navigating the Orinoco River. He is also in charge of the documents that come into the office of the harbour masters.

Nevertheless, we take note that these written laws were not proven in the manner provided by Section 24 of Rule 132 of the Rules of Court.

The *Reglamento General de la Ley de Pilotaje* was published in the *Gaceta Oficial* of the Republic of Venezuela. A photocopy of the *Gaceta Oficial* was presented in evidence as an official publication of the Republic of Venezuela.

The *Reglamento Para la Zona de Pilotaje N°1 del Orinoco* is published in a book issued by the *Ministerio de Comunicaciones* of Venezuela. Only a photocopy of the said rules was likewise presented as evidence.

Both of these documents are considered in Philippine jurisprudence to be public documents for they are the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of Venezuela.

For a copy of a foreign public document to be admissible, the following requisites are mandatory: (1) It must be attested by the officer having legal custody of the records or by his deputy; and (2) It must be accompanied by a certificate by a secretary of the embassy or legation, consul general, consul, vice consular or consular agent or foreign service officer, and with the seal of his office. The latter requirement is not a mere technicality but is intended to justify the giving of full faith and credit to the genuineness of a document in a foreign country.

It is not enough that the Gaceta Oficial, *or a book published by the* Ministerio de Comunicaciones *of Venezuela, was presented as evidence with Captain Monzon attesting it. It is also required by Section 24 of Rule 132 of the Rules of Court that a certificate that Captain Monzon, who attested the documents, is the officer who had legal custody of those records made by a secretary of the embassy or legation, consul general, consul, vice consul or consular agent or by any officer in the foreign service of the Philippines stationed in Venezuela, and authenticated by the seal of his office accompanying the copy of the public document. No such certificate could be found in the records of the case.*

With respect to proof of written laws, parol proof is objectionable, for the written law itself is the best evidence. According to the weight of authority, when a foreign statute is involved, the best evidence rule requires that it be proved by a duly authenticated copy of the statute.[82]

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[82] *Id.* at 221-22 (Citations omitted, emphasis supplied.)

If the foreign law sought to be applied by a party-litigant in a case involving a foreign element is unwritten, a different rule of proof controls. In such case, oral testimony is admissible, provided it is from an expert witness, as well as printed and published books of reports of decisions of the courts of the country concerned if proved to be commonly admitted in such courts.[83] As regards the evidentiary sources that may be used to prove an unwritten foreign law, Section 46 of Rule 130 provides:

> SECTION 46. *Learned treatises.* – A published treatise, periodical or pamphlet on a subject of history, law, science, or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies, that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject.

At this point, a question might be asked: What happens if in a conflict case, foreign law was not pleaded and proved by the party relying on it?

As previously noted, the tendency of our courts in such a situation is to resort to processual presumption, or rule on the case, instead of dismissing the same, and to proceed on the assumption that the particular substantive foreign law, which was not proved, is identical with or similar to an equivalent domestic law (*i.e.*, *lex fori*). Although technically, the dismissal of the case is an alternative available to the court,[84] it is seldom exercised. A survey of Philippine cases concerning conflict of laws reveals that it is only in the case of *Crescent Petroleum, Ltd. v. M/V "Lok Maheshwari"* where the Court not only entertained such option, but also utilized the same.[85] The *Crescent* case involved the satisfaction of unpaid supplies furnished by a foreign supplier in a foreign port to a vessel of foreign registry that is owned, chartered, and sub-chartered by foreign entities. It was a suit brought by the petitioner therein for the establishment and enforcement of a maritime lien for bunker fuel it furnished to the respondent, a vessel in a foreign port, and the case was brought before a domestic court while the foreign vessel owned by a foreign corporation was docked at a local port. The pertinent portions of the decision are as follows:

> The various tests used in the U.S. to determine whether a maritime lien exists are the following:

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[83] *Id.* (Citations omitted.)

[84] COQUIA & AGUILING-PANGALANGAN, *supra* note 27, at 129.

[85] Crescent Petroleum, Ltd. v. M/V "Lok Maheshwari" [hereinafter "Crescent"], G.R. No. 155014, 474 SCRA 623, Nov. 11, 2005.

One. "In a suit to establish and enforce a maritime lien for supplies furnished to a vessel in a foreign port, whether such lien exists, or whether the court has or will exercise jurisdiction, depends on the law of the country where the supplies were furnished, which must be pleaded and proved." [...]

Two. The Lauritzen-Romero-Rhoditis trilogy of cases, which replaced such single-factor methodologies as the law of the place of supply.

In *Lauritzen v. Larsen*, [...], the [U.S.] Supreme Court adopted a multiple-contact test to determine, in the absence of a specific Congressional directive as to the statute's reach, which jurisdiction's law should be applied. The following factors were considered: (1) place of the wrongful act; (2) law of the flag; (3) allegiance or domicile of the injured; (4) allegiance of the defendant shipowner; (5) place of contract; (6) inaccessibility of foreign forum; and (7) law of the forum.

Several years after Lauritzen, the U.S. Supreme Court in the case of *Romero v. International Terminal Operating Co.* [...] held that the factors first announced in the case of Lauritzen were applicable not only to personal injury claims arising under the Jones Act but to all matters arising under maritime laws in general.

[In] *Hellenic Lines, Ltd. v. Rhoditis* [...] [t]he U.S. Supreme Court observed that of the seven factors listed in the Lauritzen test, four were in favor of the shipowner and against jurisdiction. In arriving at the conclusion that the Jones Act applies, it ruled that the application of the Lauritzen test is not a mechanical one. It stated thus: "[t]he significance of one or more factors must be considered in light of the national interest served by the assertion of Jones Act jurisdiction. [...] Moreover, the list of seven factors in Lauritzen was not intended to be exhaustive. [T]he shipowner's base of operations is another factor of importance in determining whether the Jones Act is applicable; and there well may be others."

* * *

Three. The factors provided in Restatement (Second) of Conflicts of Law have also been applied, especially in resolving cases brought under the Federal Maritime Lien Act. Their application suggests that in the absence of an effective choice of law by the parties, the forum contacts to be considered include: (a) the place of contracting; (b) the place of negotiation of the contract; (c) the place of performance; (d) the location of the subject matter of the contract; and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties.

* * *

Finding guidance from the foregoing decisions, the Court cannot sustain petitioner Crescent's insistence on the application of P.D. No. 1521 or the Ship Mortgage Decree of 1978 and hold that a maritime lien exists.

First. Out of the seven basic factors listed in the case of Lauritzen, Philippine law only falls under one – the law of the forum. All other elements are foreign – Canada is the place of the wrongful act, of the allegiance or domicile of the injured and the place of contract; India is the law of the flag and the allegiance of the defendant shipowner. Balancing these basic interests, it is inconceivable that the Philippine court has any interest in the case that outweighs the interests of Canada or India for that matter.

Second. P.D. No. 1521 or the Ship Mortgage Decree of 1978 is inapplicable following the factors under Restatement (Second) of Conflict of Laws. Like the Federal Maritime Lien Act of the U.S., P.D. No. 1521 or the Ship Mortgage Decree of 1978 was enacted primarily to protect Filipino suppliers and was not intended to create a lien from a contract for supplies between foreign entities delivered in a foreign port.

Third. Applying P.D. No. 1521 or the Ship Mortgage Decree of 1978 and rule that a maritime lien exists would not promote the public policy behind the enactment of the law to develop the domestic shipping industry. Opening up our courts to foreign suppliers by granting them a maritime lien under our laws even if they are not entitled to a maritime lien under their laws will encourage forum shopping.

Finally. The submission of petitioner is not in keeping with the reasonable expectation of the parties to the contract. Indeed, when the parties entered into a contract for supplies in Canada, they could not have intended the laws of a remote country like the Philippines to determine the creation of a lien by the mere accident of the Vessel's being in Philippine territory.

* * *

In light of the interests of the various foreign elements involved, it is clear that Canada has the most significant interest in this dispute. The injured party is a Canadian corporation, the sub-charterer which placed the orders for the supplies is also Canadian, the entity which physically delivered the bunker fuels is in Canada, the place of

> contracting and negotiation is in Canada, and the supplies were delivered in Canada.
>
> * * *
>
> It is worthy to note that petitioner Crescent never alleged and proved Canadian law as basis for the existence of a maritime lien. To the end, it insisted on its theory that Philippine law applies. Petitioner contends that even if foreign law applies, since the same was not properly pleaded and proved, such foreign law must be presumed to be the same as Philippine law pursuant to the doctrine of processual presumption.
>
> Thus, we are left with two choices: (1) dismiss the case for petitioner's failure to establish a cause of action or (2) presume that Canadian law is the same as Philippine law. *In either case, the case has to be dismissed.*
>
> It is well-settled that a party whose cause of action or defense depends upon a foreign law has the burden of proving the foreign law. Such foreign law is treated as a question of fact to be properly pleaded and proved. *Petitioner Crescent's insistence on enforcing a maritime lien before our courts depended on the existence of a maritime lien under the proper law. By erroneously claiming a maritime lien under Philippine law instead of proving that a maritime lien exists under Canadian law, petitioner Crescent failed to establish a cause of action.*
>
> Even if we apply the doctrine of processual presumption, the result will still be the same. Under P.D. No. 1521 or the Ship Mortgage Decree of 1978, the following are the requisites for maritime liens on necessaries to exist: (1) the "necessaries" must have been furnished to and for the benefit of the vessel; (2) the "necessaries" must have been necessary for the continuation of the voyage of the vessel; (3) the credit must have been extended to the vessel; (4) there must be necessity for the extension of the credit; and (5) the necessaries must be ordered by persons authorized to contract on behalf of the vessel. These do not avail in the instant case.[86]

Clearly, the dismissal of the action in *Crescent* was due to the inapplicability of Philippine law (which the petitioner therein suggested that the Court apply because the Canadian law on the matter of maritime lien was not pleaded and proved), or better still the failure of the petitioner therein to plead and, necessarily, prove *as a fact* the specific Canadian law on the subject. The Court refused to adopt and apply the principle of processual presumption

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[86] *Crescent*, 474 SCRA at 636-643. (Citations omitted, emphasis supplied.)

because, according to it, the applicable or appropriate law was Canadian law. The case was eventually dismissed for "petitioner Crescent failed to establish a cause of action."[87]

Now, again, in case of failure to plead and prove foreign law, the usual course employed by the Court is to presume that the unproven foreign law is similar to Philippine law. But which Philippine law? As will be shown below, this process assumes that there is an applicable and equivalent or counterpart domestic substantive law,[88] which, on its face, appears to be applied by the Court in a given conflict problem save when, as shown above, the equivalent or counterpart domestic law is not applicable, or some other exception obtains.

In succession, if the *lex patriæ* of the decedent was not effectively proved, according to which the order of succession, the amount of successional rights, and the intrinsic validity of the testamentary provisions of his will in case he executed one shall be regulated, processual presumption is brought into play. That is to say, the unproven national law of the decedent on the particular successional matter is presumed to be the same as Philippine law, and the corresponding domestic law *qua* foreign law governing the subject shall be applied.

Thus, in the noted case of *Miciano v. Brimo*, which involved the partition of the estate of a Turkish national, the brother of the testator argued (without proving) that Turkish law must govern the intrinsic validity of the will in question. The Court said:

> The appellant's opposition is based on the fact that the partition in question puts into effect the provisions of Joseph G. Brimo's will which are not in accordance with the laws of his Turkish nationality,

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[87] *Id.*, *citing* COQUIA & AGUILING-PANGALANGAN, *supra* note 27, at 129. It would seem that the dismissal of the action here was in order because a logical consequence of foreign law being treated "like any other fact" is that in conflict cases, it becomes a source, so to speak, of a cause of action or defense, as the case may be. If the relevant foreign law was pleaded but not proved, then there would be no evidence upon which the allegation of the plaintiff's cause of action or the defendant's defense might spring. If the foreign law sought to be applied in a conflict case is determinative of the issue or issues of the case, and such foreign statute was not pleaded, much less properly proved as in *Crescent*, then the sensible result would be that the case has to be dismissed "for failure to establish a cause of action." *See* Roger M. Michalski, *Pleading and Proving Foreign Law in the Age of Plausibility Pleading*, 59 BUFF. L. REV. 1207 (2011).

[88] Prescinding from the principle that in conflict of laws, the procedural laws of the forum are applied to the procedural aspect of a controversy brought before such forum. Corollarily, the proper law which should apply to the substantive aspect of the case can refer to no other than the substantive law governing the particular matter. Substantive law of which state, one might ask. The answer is, in general, of the state whose law is invoked, with certain exceptions. The process of applying the proper law is, of course, in itself another question.

for which reason they are void as being in violation or article 10 [now Article 16, paragraph 2] of the Civil Code which, among other things, provides the following:

> Nevertheless, legal and testamentary successions, in respect to the order of succession as well as to the amount of the successional rights and the intrinsic validity of their provisions, shall be regulated by the national law of the person whose succession is in question, whatever may be the nature of the property or the country in which it may be situated.

But the fact is that the oppositor did not prove that said testamentary dispositions are not in accordance with the Turkish laws, inasmuch as he did not present any evidence showing what the Turkish laws are on the matter, and in the absence of evidence on such laws, they are presumed to be the same as those of the Philippines.

* * *

There is, therefore, no evidence in the record that the national law of the testator Joseph G. Brimo was violated in the testamentary dispositions in question which, not being contrary to our laws in force, must be complied with and executed.

* * *

In regard to the first assignment of error which deals with the exclusion of the herein appellant as a legatee, inasmuch as he is one of the persons designated as such in will, it must be taken into consideration that such exclusion is based on the last part of the second clause of the will, which says:

> Second. I like desire to state that although by law, I am a Turkish citizen, this citizenship having been conferred upon me by conquest and not by free choice, nor by nationality and, on the other hand, having resided for a considerable length of time in the Philippine Islands where I succeeded in acquiring all of the property that I now possess, it is my wish that the distribution of my property and everything in connection with this, my will, be made and disposed of in accordance with the laws in force in the Philippine islands, requesting all of my relatives to respect this wish, otherwise, I annul and cancel beforehand whatever disposition found in this will favorable to the person or persons who fail to comply with this request.

The institution of legatees in this will is conditional, and the condition is that the instituted legatees must respect the testator's will

> to distribute his property, not in accordance with the laws of his nationality, but in accordance with the laws of the Philippines.
>
> If this condition as it is expressed were legal and valid, any legatee who fails to comply with it, as the herein oppositor who, by his attitude in these proceedings has not respected the will of the testator, as expressed, is prevented from receiving his legacy.
>
> The fact is, however, that the said condition is void, being contrary to law, for article 792 of the Civil Code (now Article 873) provides the following:
>
> > Impossible conditions and those contrary to law or good morals shall be considered as not imposed and shall not prejudice the heir or legatee in any manner whatsoever, even should the testator otherwise provide.
>
> And said condition is contrary to law because it expressly ignores the testator's national law when, according to article 10 of the Civil Code above quoted, such national law of the testator is the one to govern his testamentary dispositions.
>
> Said condition then, in the light of the legal provisions above cited, is considered unwritten, and the institution of legatees in said will is unconditional and consequently valid and effective even as to the herein oppositor.
>
> It results from all this that the second clause of the will regarding the law which shall govern it, and to the condition imposed upon the legatees, is null and void, being contrary to law.
>
> All of the remaining clauses of said will with all their dispositions and requests are perfectly valid and effective it not appearing that said clauses are contrary to the testator's national law.[89]

At first blush, it seems rather confusing how our Supreme Court disposed of the *Miciano* case. In the early part of the *ratio decidendi* quoted above, the Court was being asked by the appellant therein to apply Turkish law on the subject testament. However, it refused to do so, saying that "the oppositor did not prove that said testamentary dispositions are not in accordance with the Turkish laws, inasmuch as he did not present any evidence showing what the Turkish laws are on the matter. In the absence of evidence on such laws, they are presumed to be the same as those of the Philippines," thereby applying the

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[89] Miciano v. Brimo [hereinafter "Miciano"], G.R. No. 22595, 50 Phil. 867, 868-71, Nov. 1, 1924. (Citations omitted.)

principle of processual presumption. In the latter part of the *ratio*, however, the Court seemed to have applied, or at least desired to apply, Turkish law, it appearing that the condition in the will requiring the legatees to respect the testator's choice of law, so to speak, "expressly ignore[d] the testator's national law when, according to article 10..., such national law of the testator is the one to govern his testamentary dispositions."

The apparent perplexity above-described is easily illuminated by considering the first part of the *ratio* as the one authorizing processual presumption, and the second part as the one where, already presuming the similarity of laws between Turkey and the Philippines, the Court interprets Turkish law as how it appears, or how it thinks it appears, or how it would like Turkish law to appear, in Philippine law. From this interpretation, it becomes clear that processual presumption is in reality a process whereby our courts construe (and apply) the unestablished foreign law through Philippine law. The equivalent or counterpart Philippine law is not applied; quite the contrary, it is the foreign law that is applied.[90] Processual presumption authorizes or sanctions our courts to apply foreign law *as it appears* in Philippine law. Thus, processual presumption is actually (or at least practically) a means of interpreting and applying an unproven foreign statute under the mask of "domestic law," or "Philippine law," or "law of the forum." In resorting to processual presumption, our courts decide a case in the way in which they think a foreign court or tribunal, whose law was not proved here, would decide had that case been brought before such foreign court or tribunal.

The following cases attempt to demonstrate the abovementioned analysis:

Where a British testator who was married to his British wife here in the Philippines died in California, leaving real and personal property in this country, the property relations of the said spouses are governed by English law, both of them being foreigners.[91] Thus, in determining the taxable net estate of the

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[90] But, as will be shown later, the question of whether there is an equivalent or counterpart Philippine law of the unproved foreign law is a factor in invoking, or better still in using the technique of processual presumption.

[91] *Fisher*, 1 SCRA 93. The present rule on this matter can be found in FAM. CODE, art. 80. It provides:

> In the absence of a contrary stipulation in a marriage settlement, the property relations of spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their respective residence.
>
> This rule shall not apply:
>
> (1) Where both spouses are aliens;

testator, English law, according to which, it is claimed, all properties acquired during the marriage pertain and belong exclusively to the husband, should control. But since the supposed English law was only alleged by the proponent in his answer, and never proved, the Court was justified in applying processual presumption—that is, in presuming that the law of England is the same as the Philippine law on the matter.[92] Upon this point, the Court made the following pronouncement:

> In deciding the first issue, the lower court applied a well-known doctrine in our civil law that in the absence of any ante-nuptial agreement, the contracting parties are presumed to have adopted the system of conjugal partnership as to the properties acquired during their marriage. The application of this doctrine to the instant case is being disputed, however, by petitioner Collector of Internal Revenue, who contends that pursuant to Article 124 of the New Civil Code (now Article 80 of the Family Code), the property relation of the spouses Stevensons ought not to be determined by the Philippine law, but by the national law of the decedent husband, in this case, the law of England. It is alleged by petitioner that English laws do not recognize legal partnership between spouses, and that what obtains in that jurisdiction is another regime of property relation, wherein all properties acquired during the marriage pertain and belong exclusively to the husband. In further support of his stand, petitioner cites Article 16 of the New Civil Code (art. 10 of the old) to the effect that in testate and intestate proceedings, the amount of successional rights, among others, is to be determined by the national law of the decedent.
>
> In this connection, let it be noted that since the marriage of the Stevensons in the Philippines took place in 1909, the applicable law is Article 1325 of the old Civil Code and not Article 124 of the New Civil Code which became effective only in 1950. It is true that both articles adhere to the so-called nationality theory of determining the property relation of spouses where one of them is a foreigner and they have made no prior agreement as to the administration, disposition, and ownership of their conjugal properties. In such a case, the national law of the husband becomes the dominant law in determining the

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(2) With respect to the extrinsic validity of contracts affecting property not situated in the Philippines and executed in the country where the property is located; and

(3) With respect to the extrinsic validity of contracts entered into in the Philippines but affecting property situated in a foreign country whose laws require different formalities for its extrinsic validity.

See also Orion Savings Bank v. Suzuki, G.R. No. 205487, 740 SCRA 345, 356, Nov. 12, 2014, where the Court said that "property relations between spouses are governed principally by the national law of the spouses."

[92] *Id.*

property relation of the spouses. There is, however, a difference between the two articles in that Article 124[93] of the new Civil Code expressly provides that it shall be applicable regardless of whether the marriage was celebrated in the Philippines or abroad while Article 1325[94] of the old Civil Code is limited to marriages contracted in a foreign land.

It must be noted, however, that what has just been said refers to mixed marriages between a Filipino citizen and a foreigner. In the instant case, both spouses are foreigners who married in the Philippines. [...]

* * *

If we adopt the view of Manresa, the law determinative of the property relation of the Stevensons, married in 1909, would be the English law even if the marriage was celebrated in the Philippines, both of them being foreigners. But, as correctly observed by the Tax Court, the pertinent English law that allegedly vests in the decedent husband full ownership of the properties acquired during the marriage has not been proven by petitioner. Except for a mere allegation in his answer, which is not sufficient, the record is bereft of any evidence as to what English law says on the matter. In the absence of proof, the Court is justified, therefore, in indulging in what Wharton calls "processual presumption," in presuming that the law of England on this matter is the same as our law.

Nor do we believe petitioner can make use of Article 16 of the New Civil Code (art. 10, old Civil Code) to bolster his stand. A reading of Article 10 of the old Civil Code, which incidentally is the one applicable, shows that it does not encompass or contemplate to

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[93] CIVIL CODE, art. 124. If the marriage is between a citizen of the Philippines and a foreigner, whether celebrated in the Philippines or abroad, the following rules shall prevail:

(1) If the husband is a citizen of the Philippines while the wife is a foreigner, the provisions of this Code shall govern their property relations;

(2) If the husband is a foreigner and the wife is a citizen of the Philippines, the laws of the husband's country shall be followed, without prejudice to the provisions of this Code with regard to immovable property.

[94] Old CIVIL CODE, art. 1325. Should the marriage be contracted in a foreign country, between a Spaniard and a foreign woman or between a foreigner and a Spanish woman, and the contracting parties should not make any statement or stipulation with respect to their property, it shall be understood, when the husband is a Spaniard, that he marries under the system of the legal conjugal partnership, and when the wife is a Spaniard, that she marries under the system of law in force in the husband's country, all without prejudice to the provisions of this code with respect to real property.

> govern the question of property relation between spouses. Said article distinctly speaks of *amount of successional rights* and this term, in our opinion, properly refers to the extent or amount of property that each heir is legally entitled to inherit from the estate available for distribution. It needs to be pointed out that the *property relation* of spouses, as distinguished from *their successional rights*, is governed differently by the specific and express provisions of Title VI, Chapter I of our new Civil Code (Title III, Chapter I of the old Civil Code.) We, therefore, find that the lower court correctly deducted the half of the conjugal property in determining the hereditary estate left by the deceased Stevenson.[95]

Here, we see the Court interpreting the unproven English law in the manner in which it appears in domestic law. Also, the unproven Korean law relative to the requirement of spousal consent with regard to conveyance of conjugal property was construed as similar to our law on property relations between the spouses. Therefore, the conveyance by a Korean national of the condominium unit which, according to the certificate of title, was owned by "Yung Sam Kang 'married to' Hyun Sook Jung" was held to be merely descriptive of the civil status of the Korean transferor.[96] The result was that the conveyance of the supposed conjugal property was not invalidated for lack of spousal consent, and the transfer was upheld.[97]

On another occasion, the Court interpreted Chinese marriage law to be identical with our law on marriage, under which a village leader is not among those authorized to be a solemnizing officer, hence, the supposed marriage of the appellee to her Filipino husband in China solemnized by a village leader cannot be recognized in this jurisdiction.[98] In a recent case involving a Holland native who refused to support his child with his Filipino wife, the Court presumed that the law of Netherlands is the same as our law on support, under which the father is obliged to support his child, and failure to do so would be punishable as an act of violence against women and their children.[99]

Where a Filipino corporation entered into a joint venture with an Iraqi company, the contract being executed in Iraq and under the terms thereof the Filipino corporation defaulted, the laws of Iraq should apply, but because of the failure to prove the relevant Iraqi law on the matter, processual presumption

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[95] *Fisher*, 1 SCRA at 101-03. (Citations omitted. Emphasis in original.)

[96] Orion Savings Bank, G.R. No. 205487, 740 SCRA 345, 358, Nov. 12, 2014.

[97] *Id.*

[98] Wong Woo Yiu v. Vivo, G.R. No. 21076, 13 SCRA 552, Mar. 31, 1965.

[99] Del Socorro v. Van Wilsem, G.R. No. 193707, 744 SCRA 516, Dec. 10, 2014.

must be brought into play.[100] In that case, the Court proceeded to look at the Civil Code provisions on default and ruled that

> [T]he delay or the non-completion of the Project was caused by factors not imputable to the respondent contractor. It was rather due mainly to the persistent violations by SOB (State Organization of Buildings of the Government of Iraq) of the terms and conditions of the contract, particularly its failure to pay 75% of the accomplished work in US Dollars. Indeed, where one of the parties to a contract does not perform in a proper manner the prestation which he is bound to perform under the contract, he is not entitled to demand the performance of the other party. A party does not incur in delay if the other party fails to perform the obligation incumbent upon him.[101]

Where a shipper loaded garments on board a vessel at the Port of Manila for carriage to Colon, Free Zone, Panama, said goods to be released to the consignee named in the bill of lading, but upon arrival at the final destination, the goods were released to persons other than the named consignee, the Court presumed that the common carrier's duty of extraordinary diligence, as well as its liability for failure to exercise the same under Panama law, was the same as that in our Civil Code.[102] The deposition of the carrier's expert witness, a maritime law practitioner in Panama, as to the existence and content of Panamanian law to the effect that, under the circumstances the common carrier had no liability, was not given weight by the Court because said witness was never presented at the trial below and his deposition was taken *ex-parte*.[103]

Pakistani law which was supposed to govern certain labor contracts was interpreted by the Court in terms of Philippine labor law because first, the relevant foreign law was not pleaded and proved; second, employer-employee relationships are affected with public interest; and third, there were "multiple and substantive contacts between Philippine law and Philippine courts, on the one hand, and the relationship between the parties, upon the other: the contract was not only executed in the Philippines, it was also performed here, at least partially; private respondents are Philippine citizens and residents, while petitioner, although a foreign corporation, is licensed to do business (and actually doing business) and hence resident in the Philippines; lastly, private respondents were based in the Philippines in between their assigned flights to

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[100] Phil. Export & Foreign Loan Guarantee Corp. v. V.P. Eusebio Construction, Inc., G.R. No. 140047, 434 SCRA 202, July 13, 2004.

[101] *Id.* at 218.

[102] Nedlloyd Lijnen B.V. Rotterdam v. Glow Laks Enterprises, G.R. No. 156330, 740 SCRA 592, Nov. 19, 2014.

[103] *Id.*

the Middle East and Europe."[104] And when a two-year employment contract provided that the laws of Saudi shall govern all matters relating to termination of employment, and the Overseas Filipino Worker employed under that contract was terminated after five months for incompetence and insubordination, the labor laws of Saudi were interpreted to be the same as ours for lack of proof of the pertinent foreign law on the matter.[105] The terminated employee was therefore illegally dismissed.[106] Still, for failure to prove the applicable foreign law, Kuwaiti labor laws were understood to be as how they appear in Philippine law in a case involving a medical technologist employed under a two-year contract who was terminated after only one year of being a probationary employee.[107] Resultantly, the private recruitment agency was held solidarily liable with its foreign principal for the money claims of the terminated employee.[108]

It is interesting to note that in controversies arising out of labor contracts involving foreign law which was not alleged and proved, and consequently processual presumption was brought into play, our Supreme Court had tended to supplement its reasoning (as to why "Philippine law" per processual presumption is being applied) by mentioning other factors, such as the public interest nature of employer-employee relationships and the so-called multiple and substantive contacts test, as if to cushion and defend its position, as if simply invoking processual presumption was insufficient.. Consider the following declaration in *Pakistan International Airlines Corporation v. Ople*:

> Petitioner PIA cannot take refuge in paragraph 10 of its employment agreement which specifies, firstly, the law of Pakistan as the applicable law of the agreement and, secondly, lays the venue for settlement of any dispute arising out of or in connection with the agreement "*only* [in] courts of Karachi, Pakistan." *The first clause of paragraph 10 cannot be invoked to prevent the application of Philippine labor laws and regulations to the subject matter of this case, i.e., the employer-employee relationship between petitioner PIA and private respondents.* We have already pointed out that *that relationship is much affected with public interest and that the otherwise applicable Philippine laws and regulations cannot be rendered illusory by the parties agreeing upon some other law to govern their relationship.* Neither may petitioner invoke the second clause of paragraph 10, specifying the Karachi courts as the sole venue for the settlement of disputes between the contracting parties. Even a cursory scrutiny of the relevant circumstances of this case will show the multiple and

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[104] Pakistan Int'l Airlines v. Ople, G.R. No. 61594, 190 SCRA 90, 103, Sept. 28, 1990.

[105] EDI-Staffbuilders Int'l, Inc. v. NLRC, G.R. No. 145587, 537 SCRA 409, Oct. 26, 2007.

[106] *Id.*

[107] ATCI Overseas Corp. v. Echin, G.R. No. 178551, 632 SCRA 528, Oct. 11, 2010.

[108] *Id.*

> substantive contacts between Philippine law and Philippine courts, on the one hand, and the relationship between the parties, upon the other: the contract was not only executed in the Philippines, it was also performed here, at least partially; private respondents are Philippine citizens and residents, while petitioner, although a foreign corporation, is licensed to do business (and actually doing business) and hence resident in the Philippines; lastly, private respondents were based in the Philippines in between their assigned flights to the Middle East and Europe. All the above contacts point to the Philippine courts and administrative agencies as a proper forum for the resolution of contractual disputes between the parties. Under these circumstances, paragraph 10 of the employment agreement cannot be given effect so as to oust Philippine agencies and courts of the jurisdiction vested upon them by Philippine law. *Finally, and in any event, the petitioner PIA did not undertake to plead and prove the contents of Pakistan law on the matter; it must therefore be presumed that the applicable provisions of the law of Pakistan are the same as the applicable provisions of Philippine law.*[109]

What needs to be cushioned and defended (or explained) is the utilization of processual presumption and how it really works. The Court in *Pakistan* could have easily justified the employment of presumption of similarity of laws by simply stating that the appropriate Pakistani law was not proved, without engaging in a lengthy discussion of seemingly tangential concepts. The laws of a foreign country are read in the language of our laws precisely because the former, in a particular litigation, remained unproved, not because the foreign labor law, for instance, which was not established in the first place, is contrary to some important policy consideration of the forum. It is therefore a better rule in every suit, as a matter of course, to determine first whether processual presumption would be applied, and if so, why or why not, and on the basis of such pronouncement, proceed with an adjudication of the case. It is enough reason for the invocation of processual presumption to be justified that there was no sufficient proof of foreign law. At best, the above-quoted portion in *Pakistan*, or most of it, could only be considered *obiter dicta.*

* * *

As mentioned and as can be gleaned from the exposition above, it is settled, that in this jurisdiction, foreign law is treated as a fact. It cannot be the subject of judicial notice by our courts because a judge of a Philippine court is

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[109] Pakistan Int'l Airlines v. Ople, G.R. No. 61594, 190 SCRA 90, 103, Sept. 28, 1990, *citing* Miciano v. Brimo, G.R. No. 22595, 50 Phil. 867, Nov. 1, 1924, and Collector v. Fisher, G.R. No. 11622, 1 SCRA 93, Jan. 28, 1961. (Emphasis supplied.)

presumed to know only domestic or forum law.[110] A foreign law successfully proved is applied only for the purposes of a particular case (*pro hac vice*). The content of the said law is applied only to the specific case before the court and not to other or subsequent cases, even if they involve the same foreign law.[111] As a matter of fact, our "courts are not authorized to take judicial notice in the adjudication of cases pending before them of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge."[112] Simply put, foreign law is not among

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[110] EDI-Staffbuilders Int'l, Inc. v. NLRC, G.R. No. 145587, 537 SCRA 409, Oct. 26, 2007; ATCI Overseas Corp. v. Echin, G.R. No. 178551, 632 SCRA 528, Oct. 11, 2010; Orion Savings Bank v. Suzuki, G.R. No. 205487, 740 SCRA 345, Nov. 12, 2014..

[111] *See* William B. Stern, *Foreign Law in the Courts: Judicial Notice and Proof*, 45 CAL. L. REV. 23, 25, 28-29 (1957); P.L.G. Brereton, *Proof of Foreign Law: Problems and Initiatives*, 85 AUS. L.J. 554, 554-55 (2011).

[112] U.S. v. Claveria, G.R. No. 9282, 29 Phil. 527, 532, Feb. 13, 1915. The exception to this rule, as stated in the same case, is

> in the absence of objection, and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives by the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending.

See also Tabuena v. CA, G.R. No. 85423, 196 SCRA 650, May 6, 1991, reiterating the said rule. *See also* Republic v. Sandiganbayan (Fourth Division), G.R. No. 152375, 662 SCRA 152, 213-14 Dec. 13, 2011, involving a deposition taken in an incidental case which was not offered in evidence in the main case, which petitioner moved to be subject of judicial notice. In sustaining the Sandiganbayan's denial of the motion, the Court said:

> In adjudicating cases on trial, generally, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding that both cases may have been tried or are actually pending before the same judge. The rule though admits of exceptions.
>
> As a matter of convenience to all the parties, the court *may* properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, *with the knowledge of, and absent an objection from, the adverse party, reference is made to it for that purpose*, by name and number or in some other manner by which it is sufficiently designated; *or* when the original record of the former case or any part of it, is actually withdrawn from the archives at the court's direction, at the request or with the consent of the parties, and *admitted as part of the record of the case then pending.*
>
> Courts must also take judicial notice of the records of another case or cases, where sufficient basis exists in the records of the case before it, warranting the dismissal of the latter case." (Citations omitted, emphasis in original.)

those enumerated in Section 1[113] or Section 2[114] of Rule 129 of the Rules of Court.[115] However, this seems to be just the generally accepted principle on the matter because, in some instances, foreign law was "taken judicial notice of" by our Supreme Court.

First. In *Testate Estate of Bohanan v. Bohanan*, involving the intrinsic validity of the will of a citizen of Nevada who gave his children something short of the legitime, which the latter are entitled to under our Civil Code, the Court said:

> It is not disputed that the laws of Nevada allow a testator to dispose of all his properties by will. It does not appear that at time of the hearing of the project of partition, the above-quoted provision was introduced in evidence, as it was the executor's duty to do. The law of Nevada, being a foreign law can only be proved in our courts in the form and manner provided for by our Rules, which are as follows:
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> We have, however, consulted the records of the case in the court below and we have found that during the hearing on October 4, 1954 of the motion of Magdalena C. Bohanan for withdrawal of P20,000 as

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Compare with Tiburcio v. People's Homesite & Housing Corp., G.R. No. 13479, 106 Phil. 477, 484, Oct. 31, 1959, where the Court, *citing* 3 MANUEL V. MORÁN, COMMENTS ON THE RULES OF COURT 36-37 (1957 ed.), seems to have added an additional exception to the rule:

> "In some instance, courts have taken judicial notice of proceedings in other causes, because of their *close connection with the matter in the controversy.* Thus, in a separate civil action against the administrator of an estate arising from an appeal against the report of the committee on claims appointed in the administration proceedings of the said estate, to determine whether or not the appeal was taken on time, the court took judicial notice of the record of the administration proceedings. Courts have also taken judicial notice of previous cases to determine whether or not the case pending is a moot one or whether or not a previous ruling is applicable in the case under consideration." (Emphasis supplied.)

[113] § 1. *Judicial notice, when mandatory.* – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

[114] § 2. *Judicial notice, when discretionary.* – A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges by reason of their judicial functions.

[115] But one might ask—what about foreign legal *concepts*? See Aznar v. Garcia, G.R. No. 16749, 7 SCRA 95, Jan. 31, 1963, where the Court appears to have "taken judicial notice" of the foreign legal concept of *renvoi* and unprecedentedly applied the same to that case for the very first (and only) time in the history of Philippine jurisprudence.

> her share, the foreign law, especially Section 9905, Compiled Nevada Laws, was introduced in evidence by appellants' (herein) counsel as Exhibit "2." Again said law was presented by the counsel for the executor and admitted by the Court as Exhibit "B" during the hearing of the case on January 23, 1950 before Judge Rafael Amparo.
>
> In addition, the other appellants, children of the testator, do not dispute the above-quoted provision of the laws of the State of Nevada. Under all the above circumstances, we are constrained to hold that *the pertinent law of Nevada, especially Section 9905 of the Compiled Nevada Laws of 1925, can be taken judicial notice of by us, without proof of such law having been offered* at the hearing of the project of partition.
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> As in accordance with Article 10 of the old Civil Code, the validity of testamentary dispositions are to be governed by the national law of the testator, and as it has been decided and it is not disputed that the national law of the testator is that of the State of Nevada, already indicated above, which allows a testator to dispose of all his property according to his will, as in the case at bar, the order of the court approving the project of partition made in accordance with the testamentary provisions, must be, as it is hereby affirmed [...].[116]

And in the fairly recent case of *Ancheta v. Guersey-Dalaygon*,[117] citing *Bohanan*, the Court took judicial notice of the pertinent law of Maryland which apparently allows "a legacy to pass to the legatee the entire estate of the testator in the property which is the subject of the legacy." In that case, the Court stated:

> In her will, Audrey devised to Richard her entire estate, consisting of the following: (1) Audrey's conjugal share in the Makati property; (2) the cash amount of ₱12,417.97; and (3) 64,444 shares of stock in A/G Interiors, Inc. worth ₱64,444.00. All these properties passed on to Richard upon Audrey's death. Meanwhile, Richard, in his will, bequeathed his entire estate to respondent, except for his rights and interests over the A/G Interiors, Inc. shares, which he left to Kyle. When Richard subsequently died, the entire Makati property should have then passed on to respondent. This, of course, assumes the proposition that the law of the State of Maryland which allows "a legacy to pass to the legatee the entire estate of the testator in the property which is the subject of the legacy," was sufficiently proven in Special Proceeding No. 9625. *Nevertheless, the Court may take judicial notice*

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[116] Testate Estate of Bohanan v. Bohanan [hereinafter "Bohanan"], G.R. No. 12105, 106 Phil. 997, 1001-03, Jan. 30, 1960. (Citations omitted, emphasis supplied.) In this case, Nevada law in question provides, "Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his or her estate, real and personal, the same being chargeable with the payment of the testator's debts." *Id., citing* the Complied Nevada Laws of 1925, § 9905.

[117] [hereinafter "Ancheta"], G.R. No. 139868, 490 SCRA 140, June 8, 2006.

> *thereof in view of the ruling in* Bohanan v. Bohanan. Therein, the Court took judicial notice of the law of Nevada despite failure to prove the same. [...]
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> * * *
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> In this case, given that the pertinent law of the State of Maryland has been brought to record before the CA, and the trial court in Special Proceeding No. M-888 appropriately took note of the same in disapproving the proposed project of partition of Richard's estate, not to mention that petitioner or any other interested person for that matter, does not dispute the existence or validity of said law, then Audrey's and Richard's estate should be distributed according to their respective wills, and not according to the project of partition submitted by petitioner. Consequently, the entire Makati property belongs to respondent.[118]

It is arguable that because wills in this jurisdiction are treated sacred because they contain the final wishes of the testator, and it is hornbook principle that the will of the testator is supreme, taking judicial notice of foreign law in succession cases may somehow be justified. A closer analysis of *Bohanan* and *Ancheta* would reveal, however, that the Court "took judicial notice" of the unproven foreign law in those cases because the other party did not controvert the foreign law as presented by the proponent.[119] Taking into consideration the nature of the proceedings, the situation can be viewed in one of two ways: (1) since the opposing party failed to dispute the foreign law as a fact, he is deemed to have admitted the same; or (2) the opponent was unable to discharge the burden of evidence, which shifted to him after the proponent made out a *prima facie* case of what the foreign law is upon which he bases his claim.[120]

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[118] *Id.* at 146-47. (Emphasis supplied.)

[119] In *Bohanan*, the Court made the following statements: "It is *not disputed* that the laws of Nevada allow a testator to dispose of all his properties by will" and "[i]n addition, the other appellants, children of the testator, *do not dispute* the above-quoted provision of the laws of the State of Nevada," suggesting that the opponents should have refuted the foreign law that was invoked by the proponent thereof. *Bohanan*, 106 Phil. at 1002.

In *Ancheta*, the Court made the following observation: "In this case, given that the pertinent law of the State of Maryland has been brought to record before the CA, [...] not to mention that petitioner or any other interested person for that matter, *does not dispute* the existence or validity of said law," again indicating that had the opponents successfully disputed the foreign law, the result would have been different. Ancheta v. Guersey-Dalaygon, G.R. No. 139868, 490 SCRA 140, 157, June 8, 2006.

[120] *See* Walton v. Arabian Am. Oil Co., 233 F.2d 541 (1956). For an insightful discussion of the consequences and implications of this case, see William L. Reynolds, *What Happens When Parties Fail to Prove Foreign Law?*, 48 MERCER L. REV. 775 (1997).

What has just been said above essentially applies *mutatis mutandis* to processual presumption. True, in conflict cases, which are usually civil in nature[121] (or at least as they are understood for the purposes of this paper), and more particularly in cases that involve the application of foreign law, the burden of proof is on " 'the party who alleges the existence of a fact or thing necessary in the prosecution or defense of an action.' "[122] Under the law-as-fact system, if the plaintiff in a conflict case alleged in his complaint the applicability of a particular foreign law, upon him rests the *onus* to prove the existence and content of the same. For his part, the defendant must specifically deny the allegation of foreign law and set forth the substance of the matters upon which he relies to support his denial,[123] otherwise, *like any other fact alleged*, the foreign law would be deemed admitted[124] and a judgment on the pleadings may, as a matter of law, be entered for the plaintiff due to the defendant's failure to tender an issue.[125] That is the logical consequence of foreign law being treated "like any other fact."

Suppose that the question of foreign law was directly raised as an issue, as what happened in *Bohanan* and *Ancheta*. During trial, once the proponent thereof has established a *prima facie* case in his favor, the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case. This means that the defendant now has to squarely confront the issue raised by the plaintiff, *i.e.*, the specific foreign law invoked and its supposed applicability to the matter being litigated, by *dis*proving, as it were, the invoked foreign law, and showing why the particular foreign law should not apply, and in such case, what law should be applied by the court. If the defendant does not wish to dispute the foreign law concerned and opts to remain silent, the foreign statute could very well become a judicial admission, which need not be proved,[126] or, at the very least, a "fact deemed admitted." The defendant may, however, at his option, show that the foreign law invoked by the plaintiff is not supposed to be applied in the manner that the latter claims it to be, or that the said foreign law is not as pleaded by the other party, and in so doing, demonstrate how the particular foreign law should be applied.[127] Otherwise, the trial judge would have no

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[121] "Usually" because there may be instances when a conflict problem may arise in a special or criminal proceeding. (*See* SALONGA, *supra* note 8, at 416-20; COQUIA & AGUILING-PANGALANGAN, *supra* note 27, at 457-68.)

For a comprehensive study on the problematization of conflict of laws on criminal liability, *see* EDWARD S. STIMSON, CONFLICT OF CRIMINAL LAWS (1936).

[122] Garcia v. Recio, G.R. No. 138322, 366 SCRA 437, Oct. 2, 2001 *citing* RICARDO J. FRANCISCO, EVIDENCE: RULES OF COURT IN THE PHILIPPINES, RULES 128-134 382 (1994 ed.).

[123] RULES OF COURT, Rule 8, § 10.

[124] Rule 8, § 11.

[125] Rule 34, § 1. *See* Polido v. CA, G.R. No. 170632, 527 SCRA 248, July 10, 2007.

[126] Rule 129, § 4.

[127] Rotem, *supra* note 30, at 632.

option except to return a verdict in favor of the plaintiff.[128] It is an elementary rule of evidence that the burden of proof never parts with the party upon whom it is imposed, while the burden of evidence shifts from one side to the other depending upon the exigencies of the case in the course of the trial.[129]

The foregoing consideration finds support in the proclamation made by the Court in the very early case of *In re Estate of Johnson*:

> Upon the other point—as to whether the will was executed in conformity with the statutes of the State of Illinois—we note that it does not affirmatively appear from the transcription of the testimony adduced in the trial court that any witness was examined with reference to the law of Illinois on the subject of the execution of will. The trial judge no doubt was satisfied that the will was properly executed by examining section 1874 of the Revised Statutes of Illinois, as exhibited in volume 3 of Starr & Curtis's Annotated Illinois Statutes, 2nd ed., p. 426; and he may have assumed that he could take judicial notice of the laws of Illinois[...].
>
> Nevertheless, even supposing that the trial court may have erred in taking judicial notice of the law of Illinois on the point in question, such error is not now available to the petitioner, first, because *the petition does not state any fact from which it would appear that the law of Illinois is different from what the court found*, and, secondly, because the assignment of error and argument for the appellant in this court raises no question based on such supposed error. Though the trial court may have acted upon pure conjecture as to the law prevailing in the State of Illinois, its judgment could not be set aside, even upon application made within six months under section 113 of the Code of Civil Procedure, *unless it should be made to appear affirmatively that the conjecture was wrong.* The petitioner, it is true, states in general terms that the will in question is invalid and inadequate to pass real and personal property in the State of Illinois, but this is merely a conclusion of law. The affidavits by which the petition is accompanied contain no reference to the subject, and *we are cited to no authority in the appellant's brief which might tend to raise a doubt as to the correctness of the conclusion of the trial court.* It is very clear, therefore, that this point cannot be urged as of serious moment.[130]

Because the appellant in that case did not squarely tackle the question of foreign law, or present proof to the contrary as to what the law of Illinois is by showing

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[128] *See* Jison v. CA, G.R. No. 124853, 286 SCRA 495, Feb. 24, 1998. *See also* Prudential Guarantee v. Trans-Asia Shipping Lines, Inc., G.R. No. 151890, 491 SCRA 411, June 20, 2006. *Compare with* Walton v. Arabian Am. Oil Co., 233 F.2d 541 (1956).

[129] *See* Bautista v. Sarmiento, G.R. No. 45137, 138 SCRA 587, Sept. 23, 1985.

[130] *In re* Estate of Johnson, G.R. No. 12767, 39 Phil. 156, 172-73. (Emphasis supplied.)

why the particular foreign statute should not apply, and in such case, what law should be applied by the court on the matter at hand, or show that the foreign law invoked by the plaintiff is not supposed to be applied in the manner that the latter claims it to be, or that the said foreign law was not as pleaded by the other party, and in so doing, demonstrate how the particular foreign law should be applied, the Court eventually upheld the application of the law of Illinois. It had to enter a verdict for the proponent of the said foreign law for failure of the opponent (appellant) therein to rebut the existence and content of Illinois law presented before the court *a quo*.

In *Philippine Commercial and Industrial Bank v. Escolin*,[131] the Court ruled that if the foreign law proposed to be applied in a given case is controverted, and that issue was straightforwardly addressed by the other party in a confrontational manner, then the question of how such foreign statute would be applied, or if it should be applied at all, becomes a matter of proof on either side, the burden of evidence shifting from one party to the other. It all boils down as to who could provide a more satisfactory or preponderant proof as regards that foreign law in whose favor a favorable judgment would be entered, all in accordance with the rules on evidence. Said the Court:

> It should be borne in mind that as above-indicated, the question of what are the laws of Texas governing the matters here in issue is, in the first instance, one of fact, not of law. Elementary is the rule that foreign laws may not be taken judicial notice of and have to be proven like any other fact in dispute between the parties in any proceeding, with the rare exception in instances when the said laws are already within the actual knowledge of the court, such as when they are well and generally known or they have been actually ruled upon in other cases before it and *none of the parties concerned do not claim otherwise.*[132]

At this point, particular attention must be given to an interesting case concerning the enforcement of a foreign judgment in this jurisdiction in connection with processual presumption. In the case of *Asiavest Limited v. Court of Appeals*,[133] the petitioner therein sought to enforce a judgment rendered by a Hong Kong court against the private respondent therein, Antonio Heras. The petitioner sued private respondent in Hong Kong in the latter's capacity as guarantor when the principal debtor defaulted. Judgment was entered in favor of

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[131] [hereinafter "Philippine Commercial and Industrial Bank"], G.R. No. 27860, 56 SCRA 266, Mar. 29, 1974.

[132] *Id.* at 368, *citing* 5 MORÁN 41 (1970 ed.). (Emphasis supplied.) The undisputed foreign law becomes a judicial admission, or a fact deemed admitted. See *infra* for discussion on this.

[133] [hereinafter "Asiavest Ltd."], G.R. No. 128803, 296 SCRA 539, Sept. 25, 1998.

petitioner. However, at the time the judgment was rendered, and even before trial had begun, private respondent left Hong Kong and returned to the Philippines "for good." Consequently, summons was extraterritorially served upon private respondent through a commissioned agent of petitioner.

After the judgment was rendered, petitioner sought to enforce the foreign judgment here against private respondent. In an action for the purpose, the trial court ruled that under our rules on civil procedure and evidence, a foreign judgment enjoys a presumption of legality and validity, citing the now Section 48(b) of Rule 39 of the Rules of Court.[134] According to the trial judge, because private respondent failed to discharge the burden of overcoming the said presumption for omitting to present evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact, *vis-à-vis* the evidence presented by petitioner to prove rendition, existence, and authentication of the Hong Kong court judgment by the proper officials, the said foreign judgment must of necessity be sustained. The court *a quo* did not consider the expert testimony of Mr. Russel Warren Lousich, private respondent's witness, on the laws of Hong Kong relative to the service of summons, as sufficient evidence to repel the legal presumption accorded by our laws to a foreign judgment. Hence, the presumption in favor of the Hong Kong court judgment, to the trial judge's mind, stood and remained undefeated.

On appeal, the Court of Appeals reversed the trial court and gave credence to Mr. Lousich's testimony to the effect that under Hong Kong law, the substituted service of summons upon private respondent effected in the Philippines by the clerk of a law firm here would be valid, provided that it was done in accordance with Philippine laws. It found, however, that under Philippine law, the service of summons upon private respondent was invalid. Consequently, the judgment of the trial court was reversed and a new one entered in favor of private respondent "in the interest of justice and fair play."[135]

The Supreme Court, on petition for review, affirmed the decision of the Court of Appeals. Interestingly, processual presumption was invoked by the Court in view of the apparent failure of private respondent, through his witness Mr. Lousich, to prove the specific Hong Kong law on the service of summons under which, according to said private respondent, the manner of service of summons upon him was invalid; hence the Hong Kong court did not acquire

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[134] § 48. *Effect of foreign judgments or final orders.* – The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order, is as follows: (b) In case of judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

[135] *Asiavest Ltd.*, 296 SCRA at 547.

jurisdiction over his person, and therefore the judgment against him was a nullity. Said the Court:

> We note that there was no objection on the part of ASIAVEST on the qualification of Mr. Lousich as an expert on the Hong Kong law. Under Sections 24 and 25, Rule 132 of the New Rules of Evidence, the record of public documents of a sovereign authority, tribunal, official body, or public officer may be proved by (1) an official publication thereof or (2) a copy attested by the officer having the legal custody thereof, which must be accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. The certificate may be issued by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent, or any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting office. Nevertheless, the testimony of an expert witness may be allowed to prove a foreign law. [...]
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> There is, however, nothing in the testimony of Mr. Lousich that touched on the specific law of Hong Kong in respect of service of summons either in actions *in rem* or *in personam*, and where the defendant is either a resident or nonresident of Hong Kong. In view of the absence of proof of the Hong Kong law on this particular issue, the presumption of identity or similarity or the so-called processual presumption shall come into play. It will thus be presumed that the Hong Kong law on the matter is similar to the Philippine law.[136]

After ascertaining that the action brought against private respondent in Hong Kong was *in personam*, the Court, applying Philippine law through processual presumption, ruled that "since HERAS was not a resident of Hong Kong and the action against him was, indisputably, one *in personam*, summons should have been personally served on him in Hong Kong. The extraterritorial service in the Philippines was therefore invalid and did not confer on the Hong Kong court jurisdiction over his person. It follows that the Hong Kong court judgment cannot be given force and effect here in the Philippines for having been rendered without jurisdiction."[137]

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[136] *Id.* at 550-52. (Citation omitted.)

[137] *Id.* at 557.

Two things may be said about the way the Court ruled in *Asiavest Limited*. *One*, without invoking processual presumption, the case could have been disposed of by upholding the presumption given by our law to foreign judgments. The *onus probandi* to overcome such presumption was on private respondent, and it is clear that he was not able to discharge that burden. How could he have discharged that burden? The second paragraph of Section 48 of Rule 39 provides the answer: "[T]he judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact."[138] How could private respondent have repelled the judgment of the Hong Kong court against him? By proving that such judgment was rendered without the foreign court acquiring jurisdiction over him. How could he have proven that such court did not acquire jurisdiction over him? By proving the content of Hong Kong law on the matter. This, according to the Court, the private respondent was unable to do, stating, "In view of the absence of proof of the Hong Kong law on this particular issue[...]."[139] And because of the lack of proof of Hong Kong law, it was presumed to be the same as our law.

But what happened to the legal presumption accorded to foreign judgments? One of the several disputable presumptions (*praesumptiones juris tantum*) in our law on evidence is "[t]hat a court, or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of jurisdiction."[140] True, in *praesumptiones juris tantum*, and in presumptions in general, the proponent still has to introduce evidence of the basis of the presumption, *i.e.*, he has to introduce evidence of the existence or non-existence of the facts from which the court can draw the inference of the fact in issue.[141] It bears stressing that the petitioner in *Asiavest Limited* introduced such evidence, having "presented evidence to prove rendition, existence, and authentication of the judgment by the proper officials," aside from the fact that private respondent "admitted the existence of the Hong Kong judgment" during the pre-trial conference.[142] Having thus sufficiently established the basis of the rebuttable presumption in its favor, the petitioner in that case enjoyed such presumption, and the *onus* shifted to private respondent to defeat the same. It is obvious, though, and the Court itself observed, that private respondent was unsuccessful in overcoming that burden. So why the need to insert a principle which does not seem to be applicable to the case? In any event, matters of procedure in conflict of laws are governed by *lex fori*, Hong Kong remedial law

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[138] *Id.* at 548.

[139] *Id.* at 552.

[140] RULES OF COURT, Rule 131, § 3(n).

[141] REGALADO, *supra* note 9, at 819.

[142] *Asiavest Ltd.*, 296 SCRA at 549.

in this case. As it is, the legal presumption in favor of the judgment of the Hong Kong court should have stood because of the lack of evidence of its nullity.[143]

Two, it appears that in that case, the basis of petitioner's claim was Philippine law, while the basis of private respondent's defense was Hong Kong law. The private respondent, at the trial below, put in issue the pertinent foreign law on the matter of service of summons. Instead of meeting the issue, petitioner, after supplying the requisite basis, merely relied on the legal presumption under our law, which is not erroneous because it was really not necessary for petitioner to present evidence supporting the validity of the foreign judgment, and this the Court recognized in its decision.[144] But the parties seemed to be on different pages, hence the resulting confusion. It could be argued that things could have been clearer had the Court remanded the case and asked both parties to submit proof of the pertinent Hong Kong law. While the legal presumption of validity in favor of a foreign judgment cannot be ignored, the fact is that the legality or validity of such judgment was being attacked. That

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[143] *See also* Northwest Orient Airlines, Inc. v. CA, G.R. No. 112573, 241 SCRA 192, involving a successful enforcement of foreign judgment. In that case, the Court gave due regard to the presumption of legality and validity accorded by our law to a foreign judgment. The discussion of the Court there relative to processual presumption can only be considered *obiter* inasmuch as the disquisition on that point was signaled as "alternatively," and the Court ruled that "the extraterritorial service of summons on [private respondent] by the Japanese Court was valid not only under the processual presumption but also because of the presumption of regularity of performance of official duty." *Id.* at 208. Note that, unlike in *Asiavest Ltd.*, the Court also considered and gave weight to the presumption *juris tantum* in favor of the foreign judgment.

It seems that in *Asiavest Ltd.*, the decisions of the courts below, independently, were more logical and correct, albeit contrary to each other. The trial court upheld the legal presumption accorded to the Hong Kong judgment in view of private respondent's failure to present satisfactory evidence of its nullity. The trial judge did not give credence to private respondent's expert witness who testified on the foreign law on the matter of service of summons. On the other hand, the Court of Appeals gave weight to private respondent's expert witness, who testified that according to Hong Kong law, substituted service of summons upon private respondent effected in the Philippines by the clerk of a law firm here would be valid *provided that it was done in accordance with Philippine laws.* On petition for review, the Supreme Court only had to review the decision of the Court of Appeals, and determine whether there was factual basis for its legal conclusion that Hong Kong law was sufficiently proved. If there was, then the affirmation of the decision of the Court of Appeals was in order. If there was none, then the conclusion reached by the trial court would have been correct, and the legal presumption in favor of the Hong Kong judgment would have prevailed. In either case, a discussion and application of the doctrine of processual presumption seemed to be unnecessary.

[144] *Asiavest Ltd.*, 296 SCRA at 549. The Court there said: "At the pre-trial conference, HERAS admitted the existence of the Hong Kong judgment. On the other hand, ASIAVEST presented evidence to prove rendition, existence, and authentication of the judgment by the proper officials. *The judgment is thus presumed to be valid and binding in the country from which it comes, until the contrary is shown. Consequently, the first ground relied upon by ASIAVEST has merit. The presumption of validity accorded foreign judgment would be rendered meaningless were the party seeking to enforce it be required to first establish its validity.*" (Emphasis supplied.)

in itself should have prompted the lower courts to require both parties to support their respective claims—for private respondent, that the judgment was invalid; for petitioner, that the judgment was valid, both based on Hong Kong law. It is true that a foreign court is presumed to be acting in the lawful exercise of its jurisdiction, and such presumption is satisfactory *if uncontradicted.* But at what point will the evidence presented by a party be considered enough to *contradict* such presumption? If the presumption is overcome, what happens to the party relying on such presumption? Should he not be also given the opportunity to prove that the presumption is indeed true?

At any rate, the Court has ruled in the subsequent case of *Asiavest Merchant Bankers (M) Berhad v. Court of Appeals,*[145] a case also involving the enforcement of a foreign judgment, regarding the *praesumptio juris tantum* in our law accorded to such judgment and particularly with respect to *onus probandi,* and, significantly, without invoking and resorting to processual presumption, that:

> Generally, in the absence of a special compact, no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country; however, the rules of comity, utility and convenience of nations have established a usage among civilized states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious under certain conditions that may vary in different countries.
>
> In this jurisdiction, a valid judgment rendered by a foreign tribunal may be recognized insofar as the immediate parties and the underlying cause of action are concerned so long as it is convincingly shown that there has been an opportunity for a full and fair hearing before a court of competent jurisdiction; that the trial upon regular proceedings has been conducted, following due citation or voluntary appearance of the defendant and under a system of jurisprudence likely to secure an impartial administration of justice; and that there is nothing to indicate either a prejudice in court and in the system of laws under which it is sitting or fraud in procuring the judgment.
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> A foreign judgment is presumed to be valid and binding in the country from which it comes, until a contrary showing, on the basis of a presumption of regularity of proceedings and the giving of due notice in the foreign forum. Under Section 50(b), Rule 39 of the Revised Rules of Court [now Sec. 48(b) of the 1997 Rules of Civil Procedure], which was the governing law at the time the instant case was decided by the trial court and respondent appellate court, a judgment, against a person, of a tribunal of a foreign country having

[145] G.R. No. 110263, 361 SCRA 489, July 20, 2001.

jurisdiction to pronounce the same is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title. The judgment may, however, be assailed by evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. In addition, under Section 3(n), Rule 131 of the Revised Rules of Court, a court, whether in the Philippines or elsewhere, enjoys the presumption that it was acting in the lawful exercise of its jurisdiction. Hence, once the authenticity of the foreign judgment is proved, the party attacking a foreign judgment, is tasked with the burden of overcoming its presumptive validity.

In the instant case, petitioner sufficiently established the existence of the money judgment of the High Court of Malaya by the evidence it offered. Vinayak Prabhakar Pradhan, presented as petitioner's sole witness, testified to the effect that he is in active practice of the law profession in Malaysia; that he was connected with Skrine and Company as Legal Assistant up to 1981; that private respondent, then known as Construction and Development Corporation of the Philippines, was sued by his client, Asiavest Merchant Bankers (M) Berhad, in Kuala Lumpur; that the writ of summons were served on March 17, 1983 at the registered office of private respondent and on March 21, 1983 on Cora S. Deala, a financial planning officer of private respondent for Southeast Asia operations; that upon the filing of the case, Messrs. Allen and Gledhill, Advocates and Solicitors, with address at 24th Floor, UMBC Building, Jalan Sulaiman, Kuala Lumpur, entered their conditional appearance for private respondent questioning the regularity of the service of the writ of summons but subsequently withdrew the same when it realized that the writ was properly served; that because private respondent failed to file a statement of defense within two (2) weeks, petitioner filed an application for summary judgment and submitted affidavits and documentary evidence in support of its claim; that the matter was then heard before the High Court of Kuala Lumpur in a series of dates where private respondent was represented by counsel; and that the end result of all these proceedings is the judgment sought to be enforced.

In addition to the said testimonial evidence, petitioner offered the following documentary evidence:

* * *

Having thus proven, through the foregoing evidence, the existence and authenticity of the foreign judgment, said foreign judgment enjoys presumptive validity and the burden then fell upon the party who disputes its validity, herein private respondent, to prove otherwise.

Private respondent failed to sufficiently discharge the burden that fell upon it to prove by clear and convincing evidence the grounds which it relied upon to prevent enforcement of the Malaysian High Court judgment, namely, (a) that jurisdiction was not acquired by the Malaysian Court over the person of private respondent due to alleged improper service of summons upon private respondent and the alleged lack of authority of its counsel to appear and represent private respondent in the suit; (b) the foreign judgment is allegedly tainted by evident collusion, fraud and clear mistake of fact or law; and (c) not only were the requisites for enforcement or recognition allegedly not complied with but also that the Malaysian judgment is allegedly contrary to the Constitutional prescription that the every decision must state the facts and law on which it is based.

Private respondent relied solely on the testimony of its two (2) witnesses, namely, Mr. Alfredo N. Calupitan, an accountant of private respondent, and Virginia Abelardo, Executive Secretary and a member of the staff of the Corporate Secretariat Section of the Corporate Legal Division, of private respondent, both of whom failed to shed light and amplify its defense or claim for non-enforcement of the foreign judgment against it.

Mr. Calupitan's testimony centered on the following: that from January to December 1982 he was assigned in Malaysia as Project Comptroller of the Pahang Project Package A and B for road construction under the joint venture of private respondent and Asiavest Holdings; that under the joint venture, Asiavest Holdings would handle the financial aspect of the project, which is fifty-one percent (51%) while private respondent would handle the technical aspect of the project, or forty-nine percent (49%); and, that Cora Deala was not authorized to receive summons for and in behalf of the private respondent. Ms. Abelardo's testimony, on the other hand, focused on the following: that there was no board resolution authorizing Allen and Gledhill to admit all the claims of petitioner in the suit brought before the High Court of Malaya, though on cross-examination she admitted that Allen and Gledhill were the retained lawyers of private respondent in Malaysia.

The foregoing reasons or grounds relied upon by private respondent in preventing enforcement and recognition of the Malaysian judgment primarily refer to matters of remedy and procedure taken by the Malaysian High Court relative to the suit for collection initiated by petitioner. Needless to stress, the recognition to be accorded a foreign judgment is not necessarily affected by the fact that the procedure in the courts of the country in which such judgment was rendered differs from that of the courts of the country

in which the judgment is relied on. Ultimately, matters of remedy and procedure such as those relating to the service of summons or court process upon the defendant, the authority of counsel to appear and represent a defendant and the formal requirements in a decision are governed by the *lex fori* or the internal law of the forum, *i.e.*, the law of Malaysia in this case.

In this case, it is the procedural law of Malaysia where the judgment was rendered that determines the validity of the service of court process on private respondent as well as other matters raised by it. As to what the Malaysian procedural law is, remains a question of fact, not of law. It may not be taken judicial notice of and must be pleaded and proved like any other fact. Sections 24 and 25 of Rule 132 of the Revised Rules of Court provide that it may be evidenced by an official publication or by a duly attested or authenticated copy thereof. It was then incumbent upon private respondent to present evidence as to what that Malaysian procedural law is and to show that under it, the assailed service of summons upon a financial officer of a corporation, as alleged by it, is invalid. It did not. Accordingly, the presumption of validity and regularity of service of summons and the decision thereafter rendered by the High Court of Malaya must stand.

* * *

Lastly, there is no merit to the argument that the foreign judgment is not enforceable in view of the absence of any statement of facts and law upon which the award in favor of the petitioner was based. As aforestated, the *lex fori* or the internal law of the forum governs matters of remedy and procedure. Considering that under the procedural rules of the High Court of Malaya, a valid judgment may be rendered even without stating in the judgment every fact and law upon which the judgment is based, then the same must be accorded respect and the courts in this jurisdiction cannot invalidate the judgment of the foreign court simply because our rules provide otherwise.

All in all, private respondent had the ultimate duty to demonstrate the alleged invalidity of such foreign judgment, being the party challenging the judgment rendered by the High Court of Malaya. But instead of doing so, private respondent merely argued, to which the trial court agreed, that the burden lay upon petitioner to prove the validity of the money judgment. Such is clearly erroneous and would render meaningless the presumption of validity accorded a foreign judgment were the party seeking to enforce it be required to first establish its validity.[146]

[146] *Id.* at 497-505 (Citations omitted, emphasis supplied.)

Second. In naturalization cases, the Court apparently takes judicial notice of laws of other jurisdictions when, in previous naturalization cases it had decided, the same law was proved.

In *Yee Bo Mann v. Republic*, the Court made the statement that "since [it] has already accepted it as a fact in previous naturalization cases that the laws of China permit Filipinos to naturalize in that country," and affirmed the naturalization of the petitioner therein, even if the proof of foreign law submitted was objected to for not being compliant with the rules of admissibility.[147]

In *Leng v. Republic*,[148] the Court seemed to have changed its mind and once again required the petitioner therein to comply with Chinese law as regards the securing of permission from the Minister of Interior of China of the petitioner's change of nationality and renunciation of Chinese citizenship, instead of just, as previously held, applying Chinese law (even if unproved) and allowing naturalization on the basis of precedent, apparently following the rule earlier laid down in *Cu v. Republic*,[149] where the Court said that:

> [i]n a number of decisions rendered by this Court, it has been declared as a fact that Filipinos may acquire citizenship in the Republic of China, and, consequently, it is no longer necessary to prove the fact in subsequent cases. However, since those decisions were rendered some years ago, China has split into two governments—one the Nationalist, and the other, the Communist. No evidence was presented to show that the applicant is a citizen of Nationalist China. His mere statement that he does not believe in communism does not necessarily prove that he is a citizen of Nationalist China. It was incumbent upon him to produce in court his Alien Certificate of Registration or any other reliable official document to show that he is a resident of Nationalist China.[150]

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[147] G.R. No. 1606, 83 Phil. 749, 751, May 28, 1949. *See also* Lock Ben Ping v. Republic, G.R. No. 1675, 84 Phil. 217, July 30, 1949; Leelin v. Republic, G.R. No. 1761, 84 Phil. 352, Aug. 24, 1949; Go v. Anti-Chinese League of the Philippines, G.R. No. 1563, 84 Phil. 468, Aug. 30, 1949; Pardo v. Republic, G.R. No. 2248, 85 Phil. 323, Jan. 23, 1950; Delgado v. Republic, G.R. No. 2546, Jan. 28, 1950; Parado v. Republic, G.R. No. 2628, 86 Phil. 340, May 6, 1950.

[148] [hereinafter "Leng"], G.R. No. 19836, 14 SCRA 317, June 21, 1965.

[149] G.R. No. 7836, 97 Phil. 746, 747-48, Oct. 25, 1955.

[150] *Id.* It is curious to note that the Court did not cite any reference as to what "those decisions" were.

This rule has since been followed, and in fact reiterated, in the following cases: *Oh Hek How v. Republic*;[151] *Chua Bon Chiong v. Republic*;[152] *Que Tiac v. Republic*;[153] *Sy v. Republic*;[154] and *Po Yo Bi v. Republic*.[155]

A closer look at *Leng* and the subsequent cases that adhered to it, however, reveals that the issue therein was not whether the laws of China permit Filipinos to naturalize in that country, which is a condition *sine qua non* for Chinese nationals to be naturalized here, but whether the petitioners in those cases have secured the required certification from the Minister of Interior of China *according* to Chinese law. The Court, therefore, was still, as it were, "taking judicial notice" of Chinese law. In a post-*Leng* case, the Court even recognized that the laws of Nationalist China "grant reciprocal rights to Filipinos to become citizens of that country, [and the] Court has more than once ruled it to be of judicial notice that that reciprocity does exist."[156]

Examining the above pronouncements in naturalization cases, it would appear that the Court was not really "taking judicial notice" of the existence and content of foreign law that was proved in another case. If anything, it was "taking judicial notice" of its own decisions, which, under the law, it is permitted to do so,[157] similar to *stare decisis*. Reference was made to previously decided cases as precedents. Be that as it may, a simpler explanation can be found in the Rules itself: "These Rules shall not apply to election cases, land registration, cadastral, *naturalization* and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient."[158]

Therefore, it is clear that in naturalization cases, our courts are not strictly bound by the rules of evidence which lay down the procedure on how to prove foreign law. This obvious justification has been recognized by the Court in one case (which explanation, however, has not been repeated, or referred to, in subsequent naturalization cases):

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[151] G.R. No. 27429, 29 SCRA 94, Aug. 27, 1969.

[152] G.R. No. 29200, 39 SCRA 318, May 31, 1971.

[153] G.R. No. 20174, 43 SCRA 56, Jan. 31, 1972.

[154] G.R. No. 32287, 55 SCRA 724, Feb. 28, 1974.

[155] G.R. No. 32398, 205 SCRA 400, Jan. 27, 1992.

[156] *In re* Ng, G.R. No. 24054, 158 SCRA 492, Mar. 7, 1988.

[157] The Court is so permitted for two reasons: *first*, art. 8 provides that "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines," it being understood that "judicial decisions" refer to the decisions of our Supreme Court, and *second*, a decision of our Supreme Court is an "official act" of the judicial department of the Philippines, which must be taken judicial notice of according to RULES OF COURT, Rule 129, § 1.

[158] RULES OF COURT, Rule 1, § 4. (Emphasis supplied.)

> We realize that a copy of a foreign law certified only by the local consul of the applicant's country does not conform to the requirement concerning the certification and authentication of such law (sec. 41, Rule 123 [now Section 24, Rule 132]). *But the case at bar and the cases cited therein as precedents are not governed by the Rules of Court.* Rule 132, entitled "Applicability of the Rules," [now Rule 143] provides that "These rules shall not apply to land registration, cadastral and election cases, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient." *By reason of this provision, literal adherence to the Rules of Court, which include rules of evidence, is not obligatory in a proceeding like that under consideration.* While naturalization proceeding under the Philippine law is judicial in character, and strict compliance with the process prescribed by statute, if there were one, would be essential, yet when, as here, no specific procedure is indicated in the premises, it is only necessary that the merits of the petition be passed on and a decision reached on a fair consideration of the evidence on satisfactory proof. Accordingly, evidence of the law of a foreign country on reciprocity regarding the acquisition of citizenship, although not meeting the prescribed rule of practice by section 41 of Rule 123, may be allowed and used as basis for a favorable action if, in the light of all the circumstances, the court is satisfied of the authenticity of the written proof offered.[159]

Third. Because foreign law, like any other fact, must be proved according to our law on evidence, certainly, and precisely because such law is considered as a fact, it may be the subject of an admission, express or implied. A judicial admission, according to Section 4 of Rule 129, is a verbal or written admission made by a party in the course of the proceedings in the same case. Once made, the subject of the admission need not be proved. Said admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. The withdrawal or recantation of an admission must be specifically grounded on these premises, otherwise, the party wishing to take back his admission would be stopped from doing so.

In *Philippine Commercial and Industrial Bank*,[160] a judicial admission of a foreign law was involved. In that case, the parties in effect agreed on what Texas law provides, inasmuch as they differed only as to the manner by which said law was to be interpreted and applied. The parties were therefore estopped from subsequently taking a contrary position:

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[159] Pardo v. Republic, G.R. No. 2248, 85 Phil. 323, 329-30 Jan. 23, 1950. (Emphasis supplied.)

[160] G.R. No. 27860, 56 SCRA 266, Mar. 29, 1974.

But relative precisely to the question of how much of Mrs. Hodges' share of the conjugal partnership properties may be considered as her estate, the parties are in disagreement as to how Article 16 of the Civil Code should be applied. On the one hand, petitioner claims that inasmuch as Mrs. Hodges was a resident of the Philippines at the time of her death, under said Article 16, construed in relation to the pertinent laws of Texas and the principle of *renvoi*, what should be applied here should be the rules of succession under the Civil Code of the Philippines, and, therefore, her estate could consist of no more than one-fourth of the said conjugal properties, the other fourth being, as already explained, the legitime of her husband (Art. 900, Civil Code) which she could not have disposed of nor burdened with any condition (Art. 872, Civil Code). On the other hand, respondent Magno denies that Mrs. Hodges died a resident of the Philippines, since allegedly she never changed nor intended to change her original residence of birth in Texas, United States of America, and contends that, anyway, regardless of the question of her residence, she being indisputably a citizen of Texas, under said Article 16 of the Civil Code, the distribution of her estate is subject to the laws of said State which, according to her, do not provide for any legitime, hence, the brothers and sisters of Mrs. Hodges are entitled to the remainder of the whole of her share of the conjugal partnership properties consisting of one-half thereof. [...]

To be more explicit, all that We can and do decide in connection with the petition for *certiorari* and prohibition are: (1) that regardless of which corresponding laws are applied, whether of the Philippines or of Texas, and taking for granted either of the respective contentions of the parties as to provisions of the latter, and regardless also of whether or not it can be proven by competent evidence that Hodges renounced his inheritance in any degree, it is easily and definitely discernible from the inventory submitted by Hodges himself, as Executor of his wife's estate, that there are properties which should constitute the estate of Mrs. Hodges and ought to be disposed of or distributed among her heirs pursuant to her will in said Special Proceedings 1307; (2) that, more specifically, inasmuch as the question of what are the pertinent laws of Texas applicable to the situation herein is basically one of fact, and, *considering that the sole difference in the positions of the parties as to the effect of said laws has reference to the supposed legitime of Hodges* — it being the stand of PCIB that Hodges had such a legitime whereas Magno claims the negative — *it is now beyond controversy for all future purposes of these proceedings that whatever be the provisions actually of the laws of Texas applicable hereto, the estate of Mrs. Hodges is at least, one-fourth of the conjugal estate of the spouses*; the existence and effects of foreign laws being questions of fact, and it being the position now of PCIB that the estate of Mrs. Hodges, pursuant to the

laws of Texas, should only be one-fourth of the conjugal estate, such contention constitutes *an admission of fact*, and consequently, it would be in estoppel in any further proceedings in these cases to claim that said estate could be less, irrespective of what might be proven later to be actually the provisions of the applicable laws of Texas[...]. [...]

Relative to Our holding above that the estate of Mrs. Hodges cannot be less than the remainder of one-fourth of the conjugal partnership properties, it may be mentioned here that during the deliberations, the point was raised as to whether or not said holding might be inconsistent with Our other ruling here also that, since there is no reliable evidence as to what are the applicable laws of Texas, U.S.A. "with respect to the order of succession and to the amount of successional rights" that may be willed by a testator which, under Article 16 of the Civil Code, are controlling in the instant cases, in view of the undisputed Texan nationality of the deceased Mrs. Hodges, these cases should be returned to the court a quo, so that the parties may prove what said law provides, it is premature for Us to make any specific ruling now on either the validity of the testamentary dispositions herein involved or the amount of inheritance to which the brothers and sisters of Mrs. Hodges are entitled. After mature reflection, We are of the considered view that, at this stage and in the state of the records before Us, the feared inconsistency is more apparent than real. *Withal, it no longer lies in the lips of petitioner PCIB to make any claim that under the laws of Texas, the estate of Mrs. Hodges could in any event be less than that We have fixed above.*

* * *

It is implicit in the above ruling (referring to *In re Estate of Johnson*) that *when, with respect to certain aspects of the foreign laws concerned, the parties in a given case do not have any controversy or are more or less in agreement, the Court may take it for granted for the purposes of the particular case before it that the said laws are as such virtual agreement indicates, without the need of requiring the presentation of what otherwise would be the competent evidence on the point.* Thus, in the instant cases wherein it results from the respective contentions of both parties that even if the pertinent laws of Texas were known and to be applied, the amount of the inheritance pertaining to the heirs of Mrs. Hodges is as We have fixed above, the absence of evidence to the effect that, actually and in fact, under said laws, it could be otherwise is of no longer of any consequence, unless the purpose is to show that it could be more. *In other words, since PCIB, the petitioner-appellant, concedes that upon application of Article 16 of the Civil Code and the pertinent laws of Texas, the amount of the estate in controversy is*

> *just as We have determined it to be, and respondent-appellee is only claiming, on her part, that it could be more, PCIB may not now or later pretend differently.*[161]

Fourth. Assuming the relevant foreign law was properly pleaded and proved, it does not automatically follow that that law would be applied by our courts. The third paragraph of Article 17 provides that "[p]rohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country." This rule on public policy renders ineffectual any agreement entered into in a foreign jurisdiction which is contrary to Philippine public policy, public order, or good customs, if such agreement would be enforced here. More particularly in private international law, foreign laws, as well as foreign judgments and contracts executed abroad, shall not be recognized if (a) they would contravene a well-established and important policy of the forum, or (b) they would be *contra bonos mores.*[162]

According to Justice Jorge R. Coquia and Professor Elizabeth Aguiling-Pangalangan, the exceptions to the application of foreign law may be generally classified into three main categories, namely (1) when the local law expressly so provides, (2) when there is failure to plead and prove the foreign law or judgment, and (3) when the case falls under any of the exceptions to the rule of comity.[163] Specifically, these exceptions are when (i) the foreign law is contrary to an important public policy of the forum, (ii) the foreign law is procedural in nature, (iii) the issues are related to property, (iv) the issue involved in the enforcement of foreign claim is fiscal or administrative, (v) the foreign law or judgment is contrary to good morals, (vi) the application of foreign law will work undeniable injustice to the citizens of the forum, (vii) the foreign law is penal in character, and (viii) the application of the foreign law might endanger the vital interests of the State.[164]

Thus, where a foreign bank licensed to do business in the Philippines filed civil suits for collection before foreign courts against its debtors who failed to pay their loans granted by the former, and while the civil suits were pending, the said foreign bank extra-judicially foreclosed the real estate mortgage of a third-party mortgagor (a domestic corporation) before the Provincial Sheriff of Bulacan, which mortgagor was not impleaded in the civil suits abroad, and the said foreign bank contended that under English law, which governs the principal

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[161] *Id.* at 364-68, 370-71. (Citations omitted, emphasis supplied.)

[162] PADILLA, *supra* note 17.

[163] COQUIA & AGUILING-PANGALANGAN, *supra* note 27, at 145.

[164] *Id.* at 146-53.

agreements, the mortgagee does not lose its security interest by simply filing civil actions for sums of money, the Court, rejecting this argument, said:

> Incidentally, BANTSA alleges that under English Law, which according to petitioner is the governing law with regard to the principal agreements, the mortgagee does not lose its security interest by simply filing civil actions for sums of money.
>
> We rule in the negative.
>
> This argument shows desperation on the part of petitioner to rivet its crumbling cause. *In the case at bench, Philippine law shall apply notwithstanding the evidence presented by petitioner to prove the English law on the matter.*
>
> In a long line of decisions, this Court adopted the well-imbedded principle in our jurisdiction that there is no judicial notice of any foreign law. A foreign law must be properly pleaded and proved as a fact. Thus, if the foreign law involved is not properly pleaded and proved, our courts will presume that the foreign law is the same as our local or domestic or internal law. This is what we refer to as the doctrine of processual presumption.
>
> In the instant case, assuming *arguendo* that the English Law on the matter were properly pleaded and proved in accordance with Section 24, Rule 132 of the Rules of Court and the jurisprudence laid down in *Yao Kee, et al. vs. Sy-Gonzales*, said foreign law would still not find applicability.
>
> *Thus, when the foreign law, judgment or contract is contrary to a sound and established public policy of the forum, the said foreign law, judgment or order shall not be applied.*
>
> Additionally, *prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.*
>
> The public policy sought to be protected in the instant case is the principle imbedded in our jurisdiction proscribing the splitting up of a single cause of action.
>
> * * *
>
> Moreover, *foreign law should not be applied when its application would work undeniable injustice to the citizens or residents of the forum.* To give justice

> is the most important function of law; hence, a law, or judgment or contract that is obviously unjust negates the fundamental principles of Conflict of Laws.
>
> Clearly then, English Law is not applicable.[165]

Fifth. Aside from naturalization cases discussed above, there appears to be a set of cases wherein our Supreme Court would remand the case for further presentation of proof of the pertinent foreign law, instead of applying the principle of processual presumption, or dismissing the case, or "taking judicial notice" of the foreign law involved, or applying Philippine law for public policy considerations. This happens in cases involving foreign divorces where the status of the Filipino spouse is at issue.

It will be recalled that in processual presumption, as demonstrated above, our courts look at Philippine law and presume that it is the same as the unproved foreign law, thereby applying and interpreting the unproved foreign law as it appears in our law. As also shown above, this assumes that there is an equivalent or counterpart substantive domestic law, which is "presumed to be similar" to the unestablished foreign statute. For instance, if the foreign law being invoked is on legal support, we have our own law on the subject, which may be found in the Family Code. Thus, if a native of Holland invokes his national law to avoid supporting his child to a Filipino wife, and he was unsuccessful in proving the said law on the matter, the Court appropriately presumed that the laws of Netherlands on support are the same as ours.[166] But what happens if the foreign law relied upon has no equivalent or counterpart in our statute books?

In *Quita v. Court of Appeals*,[167] the Court remanded the case to the trial court for determination of the petitioner's citizenship at the time she obtained a divorce decree from her husband. According to the Court, once proved that petitioner was no longer a Filipino citizen when she obtained the divorce from her deceased husband, she "could very well lose her right to inherit" from the latter.

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[165] Bank of Am., NT & SA, G.R. No. 133876, 321 SCRA 659, 673-75. (Citations omitted, emphasis supplied.) It is interesting that the Court here considered the prohibition against splitting of a cause of action as an important public policy obtaining in this jurisdiction.

See also Agan, Jr. v. Philippine Int'l Air Terminals Co., G.R. No. 155001, 402 SCRA 612, May 5, 2003, where the Court voided contracts solely on the basis of public policy considerations.

[166] Del Socorro v. Van Wilsem, G.R. No. 193707, 744 SCRA 516, Dec. 10, 2014

[167] G.R. No. 124862, 300 SCRA 406, 414, Dec. 22, 1998.

In *Llorente v. Court of Appeals*,[168] the Court remanded the case to the trial court for determination of the effects of the divorce obtained by the decedent, a naturalized American citizen at the time, from petitioner. According to the Court, said divorce must be recognized in this jurisdiction, but the consequences of the same, as regards succession to the estate of the decedent, are "matters best left to the determination of the trial court."

In *Garcia v. Recio*,[169] the Court remanded the case to the trial court for determination of the legal effects of the divorce decree obtained by the respondent, a naturalized Australian citizen at the time, from his former wife. Petitioner filed a petition for declaration of nullity of marriage against respondent on the ground of bigamy. According to the Court, "there is absolutely no evidence that proves respondent's legal capacity to marry petitioner" because the divorce decree submitted as evidence before the trial court was a conditional or provisional judgment of divorce.

In *Republic v. Orbecido III*,[170] the Court stated that mere allegation of the respondent that his Filipino wife became a naturalized American citizen who thereafter obtained a divorce decree abroad from him is not enough to sustain a declaration that he was capacitated to remarry. According to the Court, aside from proving that his wife was naturalized as an American citizen, respondent "must also show that the divorce decree allows his former wife to remarry as specifically required in Article 26 (of the Family Code)." Such declaration, said the Court, "could only be made properly upon respondent's submission of the aforecited evidence in his favor."

In *San Luis v. San Luis*,[171] the Court remanded the case to the trial court for further reception of evidence on the claimed divorce decree obtained by the decedent's second wife, an American citizen, and the marriage law of California allegedly governing the marriage of respondent, the third wife, with the deceased. According to the Court, "the divorce decree allegedly obtained by [the second wife] which absolutely allowed [the deceased] to remarry, would have vested [respondent] with the legal personality to file the present petition [for issuance of letters of administration] as [the deceased's] surviving spouse."

Then in *Vda. de Catalan v. Catalan-Lee*,[172] the Court, as in *San Luis*, remanded the case to the trial court for further reception of evidence on the

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[168] G.R. No. 124371, 345 SCRA 592, 602, Nov. 23, 2000.
[169] G.R. No. 138322, 366 SCRA 437, 454, Oct. 2, 2001.
[170] G.R. No. 154380, 472 SCRA 114, 123, Oct. 5, 2005.
[171] G.R. No. 133743, 514 SCRA 294, 313, Feb. 6, 2007
[172] G.R. No. 183622, 665 SCRA 487, Feb. 8, 2012

divorce decree allegedly obtained by the decedent, a naturalized American citizen at the time, from his first wife. According to the Court, the case must be returned to the trial court because apparently no proof on the validity of the decedent's divorce under the laws of the U.S. and the marriage between petitioner and the deceased was required by it.

What is clear from the above cases is that they all involve divorce decrees obtained abroad by the alien spouse from the Filipino spouse. What is also evident is that, instead of dismissing the cases or applying the doctrine of processual presumption, the Court remanded these cases to the court *a quo* for further reception of evidence as regards foreign law. One might ask—why remand? The answer is that because these cases involve foreign divorces, or more specifically, the legal effects or consequences of such divorces upon the status, legal capacity, right to remarry, successional rights, etc. of the Filipino divorced spouse, matters on which no law exists in this jurisdiction. In such situations, our Supreme Court has no foundation, as it were, upon which to base processual presumption. Neither would it have a basis to dismiss the case simply because the pertinent foreign law on the matter was not proved, for that would be harsh, not to mention, unjust, considering the delicate matters involved in these cases. In this connection, it may not be amiss to state that the family, as well as matters concerning it, is protected by no less than our Constitution. For instance, under Section 12 of Article II of the 1987 Constitution, it is declared that the State recognizes the sanctity of family life, and it shall protect and strengthen the family as a basic autonomous social institution. The State also recognizes the Filipino family as the foundation of the nation, and it is duty-bound to strengthen its solidarity and actively promote the Filipino family's total development.[173]

* * *

Given the current state of our jurisprudence relative to proof and application of foreign law, whenever a party-litigant in a conflict of laws case invokes a foreign statute, the burden is placed on him to prove such a foreign law. And that burden is a heavy one. The opposing party need not do anything, especially if it is highly likely that the proponent would not be able to prove the content of the relevant foreign law, and if he, as the opponent, would have no interest in such a law because it would be disadvantageous to his cause or defense.[174] In such a scenario, it is as if the proponent were engaging in combat without an adversary—he is launching into the warpath, with an apparent *casus*

[173] CONST. art. XV, § 1.

[174] *See* Rotem, *supra* note 30, at 631.

belli, but without a foe; he is pulling the trigger and in so doing, wasting the gunpowder.[175]

Proving foreign law is not an easy task. Aside from being expensive,[176] it must take into consideration our remarkably technical rules on evidence with regard to proof of the same. As a matter of fact, there seems to be a dearth of conflict cases involving the issue of proving and applying foreign law where our Supreme Court actually applied the suitable foreign statute. Sections 24 and 25 of Rule 132 of our Rules of Court, often cited as the evidentiary technique in proving written law, first and foremost pertain to documentary proof of a written foreign law. But apparently, acquiring an official publication or a copy of the foreign law attested by the officer having legal custody of the document, accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and authenticated by the seal of his office, is not that easy.[177] And even if those Sections have been interpreted by the Court in a number of cases as not precluding the introduction of testimonial evidence (either in the form of testimony in open court or deposition or affidavit) regarding foreign law, still testimony seems to be insufficient.[178] Even expert testimony might not be enough, as seen in the *Wildvalley* case.[179] And although in at least two cases the expert testimony presented was held to be adequate proof of foreign law, still those are early cases—*Williamette* was decided in 1935 and *Fisher* in 1961. It also does not change the reality that the price of finding an expert on a specific foreign law is high, not to mention the additional burden of bringing that expert here, if he is abroad, just so he could testify in court.

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[175] These words were taken or borrowed from Alejandrino v. De Leon, G.R. No. 49043, Dec. 29, 1943.

[176] *See* Shaheeza Lalani, *Establishing the Content of Foreign Law: A Comparative Study*, 20 MAASTRICHT J. EUR. COMP. L. 75, 79 (2013). *See also* Reynolds, *supra* note 127; Rotem, *supra* note 30, at 633.

[177] In the several cases surveyed in this paper, almost all, if not all, documentary proof of the relevant foreign law was rejected by the Court for having fallen short of the strict requirements set by Rule 132, §§ 24 & 25.

[178] *See* Manufacturers Hanover Trust Co. v. Guerrero, G.R. No. 136804, 397 SCRA 709, Feb. 19, 2003. Here, the Court noted that although there are exceptions to the requirements laid down in the Rules as to the proof of foreign law, the evidence presented for that purpose in this case was unacceptable. The petitioner submitted an affidavit of a New York attorney which did not even state the specific New York law on the issue of damages involved, but merely contained the affiant's interpretation and opinion of the facts of the case *vis-à-vis* the alleged law and jurisprudence cited therein. Further, said affidavit was taken *ex-parte* abroad and the affiant never testified in court.

[179] Wildvalley Shipping Co. v. CA, G.R. No. 119602, 342 SCRA 213, Oct. 6, 2000. *See also* Nedlloyd Lijnen B.V. Rotterdam v. Glow Laks Enterprises, G.R. No. 156330, 740 SCRA 592, Nov. 19, 2014.

Granted that the proponent followed all the necessary steps and requirements in an attempt to prove foreign law, still he would not have an inkling if what he has done is enough until after the judgment of the court has been promulgated. That would be the only time he would know if the trial judge was sufficiently convinced, based on the proofs adduced, that the foreign law was not only properly alleged, but also properly proved. The result, under existing jurisprudential precepts, would be either one of five: (1) application of the proved foreign law to the case at hand, (2) presumption of identity of laws for failure to prove the relevant foreign law, (3) "judicial notice" of the unconfirmed foreign law for some reason, (4) application of the law of the forum because of important policy considerations, or (5) dismissal of the case "for failure to establish a cause of action." The Court could very well choose any of the five possible outcomes, or even create another one, and justify its choice through legal calisthenics at the stroke of a pen. That is dangerous.[180]

If foreign law, as repeatedly stated by our Supreme Court, is treated "like any other fact," then courts should treat foreign law as such—an *ordinary* fact. Like any other fact, proof of the same must not be that difficult to the point of being impossible to obtain. Anyway, a foreign statute is not a state of mind. In a civil proceeding concerning a conflict case where foreign law is squarely put in issue, both parties—plaintiff and defendant, proponent and opponent—should meet the issue.[181] That is to say, the proponent of the allegedly applicable foreign law should state why it should be applied, and the opponent should assert why the foreign law should not be applied, or why it is not applicable, or how it is not the way it was pleaded by the proponent, or why it should not be applied in the manner the proponent desires it to be applied, etc. Allowing, or better still requiring both parties to present their respective proofs on the relevant foreign law would lessen the cost of acquiring conclusive proof of the subject alien law especially if one of the parties has a better means of procuring the same.[182] This is the confrontational model discussed and proposed above. In any event, it is worth noting that "[t]he primary purpose of a trial, whether in a civil or criminal setting, is to determine the truth,"[183] and the importance of this quest for the "truth," no matter how elusive it might be, cannot be discounted.

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[180] In fact, it seems rather strange that processual presumption, as shown in this paper, is apparently the usual course employed by our courts when there is failure to plead and prove foreign law, treated as a fact in this jurisdiction, in cases where such law is sought to be applied. Under normal circumstances, if a fact is not properly pleaded and proved, the inescapable result would be, as what happened in *Crescent*, dismissal of the case for failure to establish a cause of action. (*See* Michalski, *supra* note 87, at 1211-12.)

[181] *See* Rotem, *supra* note 30.

[182] *Id.* at 645.

[183] RICARDO L. PRONOVE, JR., EVIDENCE IN ACTION viii (2nd prtg. 2004).

Bearing in mind the civil nature of a conflict problem, at least for the purposes of this paper, once the proponent establishes a *prima facie* proof of the relevant foreign law, the opponent should refute the same as the burden of evidence has already shifted to him at that point. The opponent must, say, overcome the *prima facie* applicability of the foreign law in question and prove that the foreign law invoked is not applicable, and that some other law should govern the matter at hand. Failing in this, a verdict should be returned to the proponent, otherwise, a favorable judgment should be entered for the opponent. If the evidence of the parties as regards the foreign law concerned is in equipoise, there seems to be no reason why the doctrine respecting such a situation in civil cases should not be applied. Thus, as enunciated by the Court in *Rivera v. Court of Appeals*:[184]

> Where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates[,] the party having the burden of proof fails upon that issue." Therefore, as "neither party was able to make out a case, neither side could establish its cause of action and prevail with the evidence it had. They are thus no better off than before they proceeded to litigate, and, as a consequence thereof, the courts can only leave them as they are. In such cases, courts have no choice but to dismiss the complaints/petitions.[185]

The above observations and recommendations, however, should in no case be understood to mean that processual presumption, an established and "well-imbedded" principle in our jurisprudential annals, must be done away with. At most, it is suggested that this doctrine be used sparingly, especially since how that concept operates has yet to be amply explained by our Supreme Court, or by any conflict of laws scholar for that matter. Moreover, several criticisms have been advanced against the utilization of this doctrine, in that "to apply domestic law to legal phenomena wholly and ineradicably rooted in a foreign legal system" would have the tendency to "violate basic dictates of fairness and common sense,"[186] *viz.*:

> The use of a presumption that the law of a foreign country is the same as the law of the forum has often been criticized, and a few American courts have deemed it necessary to dismiss cases involving

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[184] G.R. No. 115625, 284 SCRA 673, Jan. 23, 1998.

[185] *Id.* at 682, *citing* Mun. of Candijay, Bohol v. CA, G.R. No. 116702, 251 SCRA 530, Dec. 28, 1995. Put differently, the rule is that "where the evidence on an issue of fact is in equipoise (evenly balanced), or there is doubt on which side the evidence preponderates, the party having the burden of proof loses." Mahawan v. People, G.R. No. 176609, 574 SCRA 737, 754, Dec. 18, 2008. (Citation omitted.) *See also* Aba v. De Guzman, Jr., A.C. No. 7649, 662 SCRA 361, Dec. 14, 2011.

[186] Schlesinger, *supra* note 43, at 12. (Citation omitted.)

> foreign country law when that law has not been properly presented.[187] The basis of the criticism is that a presumption that the law of a foreign country is the same as the law of the forum defies the credulity of the ordinary man.... Such an inference has no rational basis in fact and constitutes little more than the arbitrary substitution of the law of the forum for the proper law applicable to the case. A pertinent criticism by Chief Justice von Moschzisker of Pennsylvania of the use of presumptions of similarity between local law and foreign law has been thus stated:
>
> > A presumption of fact is justifiable only when there is a strong probability that the fact presumed is true; without this probability, the so-called presumption becomes an arbitrary rule of law, lacking foundation, except, perhaps, as a measure of convenience or of public policy.[188]

And:

> In addition to general disapproval of courts overusing the Presumption (such as when no actual difficulty exists in providing proof of the foreign law, when the similarity between the foreign law and the forum law is a mere fiction, or for various policy reasons, such as procedural efficacy), critics have pointed to the possibility of using the Presumption strategically as an "escape hatch" to induce the application of forum law when the application of foreign law is due. It has also been argued that the Presumption undermines the goals that lawmakers attempt to accomplish with evidentiary doctrines, especially the burden of proof. To illustrate, parties whose claims are regulated to their detriment by foreign law could strategically refrain from producing evidence on the law's content in order to evoke the Presumption of Identity of Laws and thus the application of a more favorable forum law.[189]

It is therefore advised that the concept of presumed similarity of laws or processual presumption should only be employed when there is an utter lack of proof of foreign law, and at the same time, there is an equivalent or counterpart substantive law here on the exact matter in controversy, and such domestic law *qua* foreign law is applicable.

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[187] CAL. L. REVISION COMM'N, *Recommendation and Study relating to Judicial Notice of the Law of Foreign Countries* I-12 (Feb. 1, 1957), *available at* http://www.clrc.ca.gov/pub/Printed-Reports/Pub012.pdf (last visited May 8, 2015), *citing* Cuba R.R. Co. v. Crosby, 222 U.S. 473 (1922); Riley v. Pierce Oil Corp., 245 N.Y. 152, 156 N.E. 647 (1927).

[188] *Id.*, *citing* Robert von Moschzisker, *Presumptions as to Foreign Law*, 11 MINN. L. REV. 1, 4 (1926).

[189] Rotem, *supra* note 30, at 640. (Citations omitted.)

A final note. It is intriguing that, considering that foreign law is treated like any other fact in this jurisdiction, our Supreme Court, in almost all, if not all conflict cases relating to the application of foreign law, took it upon itself to calibrate the evidence submitted at the trial below, and assume the functions of a trier of facts. A logical consequence of the rule that foreign law is treated like a fact is that it cannot be considered on appeal, because, *like any other fact*, it should not, as a general rule, be considered on appeal.[190] Interestingly, in not a single conflict case did our Supreme Court invoke any of the exceptions to its appellate jurisdiction. It is settled that in petitions for review, only questions of law, not questions of fact, may be raised.[191] The Supreme Court is not a trier of facts.[192] As a rule, the findings of fact of the Court of Appeals and the trial court are final and conclusive and the Court will not review them on appeal, except

> (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[193]

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[190] Stern, *supra* note 111, at 25, 27-28.

[191] RULES OF COURT, Rule 45, § 1. *See* Goyanko, Jr. v. UCPB, G.R. No. 179096, 690 SCRA 79, Feb. 6, 2013.

[192] Calanasan v. Sps. Dolorito, G.R. No. 171937, 710 SCRA 505, Nov. 25, 2013.

[193] Co v. Vargas, G.R. No. 195167, 660 SCRA 451, 459-60, Nov. 16, 2011, *citing* DBP v. Traders Royal Bank, G.R. No. 171982, 628 SCRA 404, Aug. 18, 2010.

Might our Supreme Court be prepared to recognize that, by examining the veracity of a foreign law in a conflict case, it is in reality confronted with an issue of law, and that foreign law is not "like any other fact," but a "distinctive or unique fact"[194] or "a question of fact of a peculiar kind,"[195] or even a "question of law"?[196]

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[194] *See* Rotem, *supra* note 30.

[195] *See* Brereton, *supra* note 111, at 554, *citing* Parkasho v. Singh (Australia), P. 233, 250 (1968). *See also* Lalani, *supra* note 177, at 83, *citing* RÄTTEGÅNGSBALKEN (CODE OF JUDICIAL PROCEDURE OF SWEDEN), ch. 35, § 2.

[196] The modern trend in other jurisdictions, like the U.S., is to treat foreign law as a question of law. *See, e.g.*, Michalski, *supra* note 87; *see also* Wilson, *supra* note 42; Louise Ellen Teitz, *Determining and Applying Foreign Law: The Increasing Need for Cross-Border Cooperation*, 45 N.Y.U. J. INT'L L. & POL. 1081 (2013).

See FED. R. CIV. P. 44.1 (U.S.) which provides as follows: "A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. *The court's determination must be treated as a ruling on a question of law.*" (Emphasis supplied.)

This question, which is not covered by the scope of this paper, is the proper subject of another study.