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ABSURDITIES IN PHILIPPINE LAW OF PERSONS AND FAMILY

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INTRODUCTION

At present the civil law of the Philippines is embodied, in a very large measure, in the Civil Code. Prior to the promulgation and extension to the Philippines of the Civil Code, however, the civil law of this jurisdiction was found principally in the Novisima Recopilacion, the Siete Partidas, the Laws of Toro and such other special statutes of the Spanish Cortes as the Crown had made applicable here. The Civil Code was promulgated in Spain in May, 1889, and in July of the same year it was extended to the Philippines by Royal Decree. The Code was published in the Manila Gazette and took effect as a law on December 8, 1889.

The Civil Code however is not the only repository of the Civil law of the Philippines. Civil law in its proper sense is the body of precepts which determine and regulate the relations of assistance, authority, and obedience among members of each family, and those which exist among individuals of a society for the protection of private interests. (Sanchez Roman) Viewed in this light civil law of the Philippines is comprised, not only of the Civil Code but also of some portions of the Code of Civil Procedure and of various special laws. Among the statutes enacted by the legislature which have affected the Civil Code in a greater or less degree, are the Divorce Law (Act No. 2710), the Marriage Law (Act No. 3613) the Insolvency Law Act No. 1976), the Usury Law (Act No. 2655), the Negotiable Instruments Law (Act No. 2031), the Chattel Mortgage Law (Act No. 1508), and the Land Registration Act (Act No. 496).

This article attempts to analyze certain provisions of, or doctrines evolved under, the Civil Code and the other statutes comprising the civil law of the Philippines. The writer will

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endeavor in such analysis to demonstrate the absurdities in certain portions of the civil law. The task is a delicate and difficult one, considering the fact that men of great intelligence and learning have prepared these laws, especially the Civil Code. But the writer cannot lose sight of the fact that law is a creation of man, a fallible being, and therefore subject to imperfections.

That there are absurdities in the full sense of the word will be shown in the present discussion. But this demonstration of absurdities will be made, not for the sole purpose of exposing defects in our civil law, but for the purpose of suggesting reasonable reforms to do away with the absurdities. This paper, therefore, will have for its support only the authority of logic, reason, common sense and practical experience. It will be somehow looking in the citation of decided cases and quotation of brilliant judicial opinions.

PARTICULAR ABSURDITIES

I. *Age required for valid marriage*

Under the Marriage Law (Act No. 3613), the essential requisites of a valid marriage are the legal capacity of the contracting parties and their consent. (Sec. 1.) By "legal capacity" the law means sixteen years of age for the male and fourteen years of age for the female. (Sec. 2.) Persons below these age requirements who contract marriage, therefore, enter into a marriage that is not completely valid. Neither would the marriage be completely void; because it is simply annulable—valid until set aside by a competent court. This can be seen from the fact that one of the cases for annulment of marriage is, "That the party in whose behalf it is sought to have the marriage annulled was under the age established in section two of this Act (16 and 14 years, respectively, for male and female), unless, after attaining such age; such party freely cohabited with the other and both lived together as husband and wife." (Sec. 30, a). The action to annul such a marriage can be brought only "by the party to the marriage who was married under the age required by law, within four years after attaining the age established in section two of this Act; or by the father, guardian or other person having charge of such

nonaged male or female, at any time before such married minor has arrived at the age established by said section." (Sec. 31, a.)

It is evident from these provisions of the law that marriages by persons below the ages of 16 and 14 years, male and female respectively, are not entirely void. This may be inferred also from the fact that sections 28 and 29 of the Marriage Law do not include them among the *void* marriages. Such has also been the ruling of the Philippine Supreme Court in the case of Aguilar vs. Lazaro (4 Phil. 735).

Under this state of the law, what would be the status of a marriage between two persons who are, say, both under seven years of age? The law does not give any *minimum* age in the case of annullable marriages by reason of nonage. It is to be inferred, therefore, that whatever the age below 16 and 14, male and female respectively, the marriage is valid until set aside by a competent tribunal.

Marriage is an institution established for the procreation, maintenance and education of the species. At below seven years of age, the purpose of marriage is impossible of accomplishment. It would then be completely absurd to consider marriage contracted at such a tender age as valid until set aside. It should be entirely void.

II. *Parental consent to marriage*

The Marriage Law provides: "In case the contracting parties or either of them, being single, are less than twenty years of age as regards the male and less than eighteen years as regards the female, they shall, in addition to the requirements of the preceding sections, exhibit to the Municipal Court of the City of Manila, as the case may be, the consent to their marriage of their father, mother or guardian, or person having legal charge of them, in the order mentioned." (Sec. 9.)

The consent of the parents or guardians, however, is only a formal requirement. It has thus been repeatedly held that the marriage of two persons with the legal capacity established by law is valid, even in the absence of consent on the part of the parents or guardians of such parties when they are below 20 and 18 years, male and female respectively. (Aguilar vs. Lazaro, 4 Phil. 735; Lerma vs. Mamaril, 9 Phil. 118; U. S. vs. Lomongsod, 21 Phil. 474; Villanueva vs. Quintero, 31 Philippine, 431.)

The consent of the parents or guardians is, it can be assumed, required by the law to give the parties who are still young (being under 20 and 18, male and female respectively) something of a guide in the selection of a spouse to prevent improvident and unwise marriages. It has the same function as the consent of the husband in contracts entered into by the wife, or the consent of the tutor or guardian in contracts entered into by the minor. In the latter contracts, the consent of the husband or guardian, as the case may be, is essential to the validity of the contract; and contracts without such consent cannot be held as valid.

In view of this, it is strange that parental consent to marriage—which in one way is a contract—should not be essential to validity. Its absence does not even make the contract voidable. In short, it is practically a useless requirement, when it should serve a very important purpose. To place a requirement in the law for such an important purpose, and then to give its omission no effect whatsoever upon the validity of the marriage is, to say the least, absurd. Either the requirement should not exist at all for persons over 16 and 14 years, male and female respectively, or it should be made to form an essential part of the marriage such that its omission shall render the marriage, at least, voidable.

III. *Belief in authority of celebrant*

Section 27 of the Marriage Law provides: "No marriage shall be declared invalid because of the absence of one or several of the formal requirements of this Act, if, when it was performed, the spouses or one of them believed in good faith that the person who solemnized the marriage was actually empowered to do so, and that the marriage was perfectly legal."

This provision is an encouragement for the violation of the Marriage Law in its formal requirements. Thus, parties can wilfully and deliberately omit all formal requirements, and even get married before a person not authorized to celebrate marriages, and still claim that the marriage is valid on their mere statement that they *believed in good faith* that the celebrant had authority to celebrate the marriage. It is impossible to say whether there was any real belief in good faith, because belief is a purely mental process not subject to physical examination. We have to rely solely, therefore, upon the statement of

the parties, which is equivalent to saying that the validity of the marriage can be made to depend upon the will of the parties. That this is an absurdity seems plain enough.

IV. *Annulment by return of absentee*

It is expressly provided that: "Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse, shall be illegal and void from its performance, unless: (b) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or the absentee being generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, the marriage so contracted being valid in either case until declared null and void by a competent court." (Sec. 20, Act No. 3613). As to when and by whom the action for annulment maybe instituted, the law says: "by either party during the life of the other, or by the former husband or wife." (Sec. 31, b.)

Having in view these provisions, an example may be given thus: A and X are husband and wife. X disappears and is unheard from for at least 7 years. A then marries B. A couple of years after the second marriage, however, X returns. When she finds that her husband A had already remarried, she keeps quiet and takes no action.

Suppose that X should marry, say, Y, after learning of the marriage of her former husband A, would she be guilty of bigamy? Or if she merely lives a marital life with another man, without marriage, would she be guilty of adultery? The writer believes that in both cases the answer would be in the affirmative. That answer would be justified by the provisions of the Revised Penal Code defining adultery and bigamy. In fact, persons have been convicted of bigamy because they had knowledge of the fact that the first spouse was alive, or because they had not employed all the diligence required to ascertain the whereabouts of such first spouse. (U. S. vs. Biasbas, 25 Phil. 71; U. S. vs. San Luis, 10 Phil. 163; U. S. vs. De Vera, 28 Phil. 105.)

The absurdity of such a legal result is very patent. As far as the first spouse who has remarried is concerned, he is a spouse in the second marriage, and as long as that marriage remains intact, he should no longer be considered a spouse in the

first marriage. In other words, as long as the second marriage has not been set aside, the first marriage should be considered as non-existing as regards the spouse who has remarried. To consider the matter otherwise would be to legalize a bigamy in fact.

Now, if the first marriage is to be considered as non-existing as regards the spouse who has already remarried, why should it be considered as still subsisting as regards the spouse who has returned? The absurd result of a husband without a wife, or a wife without a husband arises.

ON DIVORCE

V. *As to grounds for Divorce*

Act No. 2710, section 1, provides: "A petition for divorce can only be filed for adultery on the part of the wife or concubinage on the part of the husband, committed in any of the forms described in article 437 (now 333 and 334) of the Penal Code." And the "divorce shall not be granted without the guilt of the defendant being established by final sentence in a criminal action." (Sec. 8.)

The requirement of adultery on the part of the wife or concubinage on the part of the husband as the only grounds for divorce leads to a couple of absurd results. Thus, if a wife is convicted of concubinage as co-defendant of a husband of an offended wife who has filed the action for concubinage, the husband cannot ask for a divorce on the basis of the conviction simply because the wife was convicted in a criminal complaint for concubinage and not for adultery. The acts may be the same, but the legal designation of the offense differs, and so no divorce can be granted. (See Francisco vs. Tayao, 50 Phil. 42.) It would be necessary for the husband to himself file a criminal complaint for adultery against his wife who has already been sentenced to jail for exactly the same acts.

So strict and specific is the requirement, that a man cannot divorce his wife, who has been convicted of prostitution because that is not adultery; and a wife cannot divorce her husband who has remarried and is living with the second wife, because that would be bigamy and not concubinage. A husband may commit rape, abduction, seduction—any act of in-

fidelity to the conjugal bed—and yet the wife can secure no divorce because the act happens to receive a legal designation other than concubinage.

Furthermore, the requisite of criminal conviction almost entirely makes divorce an impossibility. Few persons would care to send their spouses to prison just to get a divorce, because the stigma of imprisonment would also be stamped upon their children. And if they do not get their divorce, they either go through a miserable unhappy life or find connubial bliss in the arms of others without benefit of clergy.

The Divorce Law, as it is now, is a factor in promoting factual concubinage or adultery and in the propagation of illegitimate children. It was enacted to allow divorces from spouses who have committed infidelity to the marital bed, and yet it contains provisions practically nullifying such purpose.

VI. *Dissolution of the bonds of matrimony*

Section 9 of the Divorce Law provides: "The decree of divorce shall dissolve the community of property as soon as such decree becomes final, but shall not dissolve the bonds of matrimony until one year thereafter. The bonds of matrimony shall not be considered as dissolved *with regard to the spouses* who, having legitimate children, has not delivered to each of them or to their guardian appointed by the court, within said period of one year, the equivalent of what would have been due to them as their legal portion if said spouse had died intestate immediately after the dissolution of the community of property.

This provision is in its nature, confiscatory of the property of divorced spouses. There is no necessity for the requirement, because the children, despite the divorce of their parents, enjoy all the rights granted to them by law. (Sec 11, par. 3, Act No. 2710). Among these rights is the right to support; hence, there is no need for them to get their presumptive legitime within the time mentioned in Section 9. It is plainly unfair to the parents to deprive them of their property while they are still alive. Nothing would be left to the spouses, because the children are to be given the equivalent "of what would have been due them as their *legal portion* if said spouse had died *intestate* immediately after the dissolution of the community of property." That legal portion during intestacy means the whole property, if the

spouse does not have any other forced heir who would inherit concurrently with the legitimate children, as acknowledged natural children. The law thus places before the divorced spouse two alternatives: give up all his property to his children and become free to marry again, or keep his property and remain unable to remarry as long as his divorced spouse is alive. This is tantamount to saying that the law offers freedom at the price of starvation. The absurdity of such a situation seems to the writer clear enough.

But the matter becomes still worse when we consider that if one of the spouses should give the legal portion to the children, and the other spouse does not, the former will be free to remarry while the latter cannot do so. If the spouse who has given the legal portion remarries, the one who has failed to do so remains legally married but without a spouse in fact. If the latter should remarry, he would be guilty of bigamy although he has actually no first spouse.

Suppose, however, that instead of remarrying, he merely cohabits with a woman other than his divorced wife. Can he be convicted of concubinage? In cases of concubinage, the offended spouse would file the action. But who is the *offended spouse?* The divorced wife has already ceased to be a wife because she has given the children their legal portion. There would, then, be no *offended spouse.* Thus, the act would fall under the definition of concubinage, but cannot be prosecuted for lack of an *offended* wife.

Supposing, now, that after the one year allowed for reconciliation, the wife having given the children their legal portion but the husband having failed to do so, the parties should have carnal relations, out of which a child is born, what would be the status of the child? As far as the wife is concerned, the child can be a presumptive natural child and can be acknowledged by her separately, provided at the time of conception the one year had already elapsed. But as far as the husband is concerned, the child would be, in law, an adulterous child, because in the eyes of the law he is still a married man while the wife is no longer his wife but in law is an unmarried woman.

Such are the absurd situations arising from an absurd provision—paragraph 2 of Section 9 of the Divorce Law.

ON PATERNITY AND FILIATION

VII. *Adoption*

Adoption has been defined to be the act by which relations of paternity and filiation are recognized as legally existing between persons not so related by nature. (1 Cyc. 917) The Civil Code of Guatemala defines it as the act of taking as a child one who is not such of the adopter. (2 Manresa 79).

The Code of Civil Procedure provides that "an inhabitant of the Philippine Islands, not married, or a husband and wife jointly, may petition the Court of First Instance of the province in which they reside for leave to adopt a minor child." (Sec. 765.) A question that may arise under these principles is: Can a man adopt a spurious child? The law contains no specific prohibition against such an adoption, but considering that adoption refers only to those "not related by nature", can adoption take place?

First, if a married man, through illicit relations with an unmarried woman, has a child by her, and he has his own legitimate children, can he adopt the spurious child? The Civil Code proibits those having legitimate or legtimated descendants to adopt (Art. 174); but this prohibition is not found in the provisions of the Code of Civil Procedure on adoption. Other prohibitions of the Civil Code, such as those regarding guardian and ward and married persons are contained in the Code of Civil Procedure on adoption, but that relating to those having legitimate descendants were omitted. It may be inferred from this that a man with legitimate descendants is not now prohibited from adopting them. But it seems clear that he cannot adopt alone, but jointly with his wife.

Supposing that he becomes a widower. Can he adopt his spurious child? Since the spurious child is related by nature to the father, adoption cannot properly take place. Adoption is the creation of a fictitious relationship, and such fictitious relationship cannot legally be created where the relationship actually exists, by nature. This conclusion based upon the nature of adoption, is absurd.

A person can adopt a total stranger and confer upon him the rights and privileges of a child and legal heir by adoption. Surely an adulterous child of a man must be dearer to him than a stranger. He should therefore, be allowed to manifest that tender affection by being able to adopt the child and confer

upon him the rights of a legal heir. Manresa is of this opinion, stating that the adoption in such a case would allow the fulfillment of a moral obligation without scandal. (2 Manresa 80).

VIII. Support of a natural child not acknowledged

"Since the enactment of the Civil Code, the mere fact of birth of a natural child imposes no obligation upon the father and gives no legal rights to the child except in the cases mentioned in the Penal Code. Any obligation which the father may incur to support a natural child, and any right which a natural child may acquire, must arise from something else than the mere fact of birth. A different rule applies to the mother of a natural child. The fact of birth imposes upon the mother of a natural child the obligation to recognize it." (Concepcion vs. Untaran, 38 Phil. 736.)

The Civil Code, however, provides that in certain cases, the spurious child is entitled to support. (Arts. 139 and 140). The spurious child is certainly in a lower category in the legal classification of children than a natural child. Why should the mere fact that the father has not acknowledged the child, deprive him of a right which is given even to a spurious child, who cannot be legally acknowledged? What difference is there between one who *is not* acknowledged and one who *cannot be* acknowledged? Provided the paternity can be proved, there is no reason for requiring acknowledgment of a natural child before he could be entitled to support.

ON MARRIAGE PROPERTY

IX. Fruits of Paraphernal property and Wife's right to Alienate

Under the provision of Article 1385 of the Civil Code the fruits of the pharaphernal property form part of the assets of the conjugal partnership. In Article 1401 of the same Code, it is provided that the fruits coming from property belonging exclusively to either one of the spouses are included in the conjugal property.

The administration of the conjugal property, pursuant to Article 1319 of the same Code, pertains to the husband; and according to Article 1413, the husband may bind, by onerous contract, the property of the conjugal partnership. While under Section 1 of Act No. 3922 amending Article 1387 of the Civil

Code a married woman of age may alienate, encumber or mortgage or otherwise dispose of her paraphernal property * * * without the necessity of the permission of the husband.

Under these provisions of the Civil Code, therefore, an absurdity appears because should a wife desire to alienate, for example her piece of land on which are planted palay, and the husband by virtue of his right to administer and bind the conjugal partnership, which under our example, are the fruits of the palay, should object to the disposition of said paraphernal property on the ground that he had entered into a contract selling the crops with the condition that the lands be not alienated, her full freedom under the land to dispose of her property is curtailed. The purpose of the law is then rendered absurd by the right of the husband to have a say in the fruits of the paraphernal property.

X. Husband's Control over Conjugal partnership property— Wife's earnings is conjugal and yet she has no say in its management.

According to Article 1401 of the Civil Code, the property obtained by the industry, wages, or work of the spouses or either of them, is conjugal property. And as stated above, the husband is the administrator of the same.

Nowadays, however, the trend of events is going towards a different direction. Women are ofentimes earning more than men. In most cases, we find that women, in their business ventures, contribute more to the purpose of the home. They accumulate more wealth than do men. With this then as the existing conditions prevailing today, can we not see how absurd it is to give men the only say in the administration of the conjugal property? Why can we not give our women a voice in managing an affair to which they also take a hand in moulding the same? After all, what we advocate is not an exclusive say; what we desire is just a participation in the administration of a property to which they contribute a great deal.

Just imagine how bad things will look if the conjugal property acquired solely thru the earnings of the wife can be disposed of by her husband without any say of the former.

ON MENTAL SUFFERINGS

Our existing law on damages prefers a broken head to a broken heart. Just because of the fact that a contusion on the arms is visible and the pain in the heart is not, the law only

grants damages to a person who suffers physical injuries. The rule of "wrong without injury" is not recognized in the Philippines; this rule exists in the Unted States of America. In the Philippines the law grants only damages in case actual damage results from the violation of a right; no nominal damages are granted.

While the decisions of the courts are almost unanimous in granting to the heirs of the decease in homicide cases the amount of One Thousand Pesos * as indemnity yet in most cases, the same courts grants greater damages to persons suffering physical injuries. For what reasons, the Courts are silent.

From the foregoing discussion we can hardly understand why the law can barter the honor of a person to his material welfare. A man's honor is more worthy and valuable than his material welfare, for as the saying goes, "it is better poor with honor than rich with shame".

The writer, therefore, sincerely advocates a legislation on mental suffering. She pleads for a change in our law governing the grant of damages, she asks that damages be granted not only to those who suffer physically but also to those who suffer mentally.

CONCLUSION

From the foregoing discussion we can see then that there are ten absurdities in our Law on Persons and Family, namely:

(1) It is completely absurd to consider marriage contracted below seven years of age as valid until set aside when marriage is an institution established for the procreation, maintenance and education of the species.

(2) The consent of the parents of the marriage of their children below the age required by law is not essential to the validity of contract nor does its absence make the contract voidable, and therefore it is practically a useless requirement.

(3) It is a plain absurdity for the law to provide that a marriage can not be declared invalid just because of the absence of one or several of the formal requirements of the New Marthem believed in good faith that the person who solemnized the riage Law, if, when it was performed, the spouses or one of

* Editor's note. A recent law, Commonwealth Act No. 284, has fixed the minimum amount recoverable at Two Thousand Pesos.

marriage was actually empowered to do so because of the fact that belief in good faith is purely a mental process not subject to physical examination.

(4) With regards absentees the Marriage Law considers the first marriage as non-existing as regards the spouse who has already remarried and at the same time consider it as still subsisting as regards the spouse who has returned.

(5) The Divorce Law was enacted to allow divorces from spouses who have committed infidelity to the marital bed, and yet it contains provisions practically nullifying such purpose.

(6) A child born after the one year period allowed for reconciliation, as far as the wife, is concerned may be a presumptive natural child and can be acknowledged by her separately, provided at the time of conception the one year period had already elapsed, but as far as the husband is concerned, the child would be, in law, an adulterous child, because in the eyes of the law he is still a married man while the wife is no longer his wife but in law is an unmarried woman.

(7) A person can under our law, adopt a child who is entirely a stranger but he can not adopt an adulterous child who for sure must be dearer to him.

(8) Under our law, a spurious child is entitled to support yet a natural child who has not been acknowledged has no right to support.

(9) The rights of married women of age to alienate, mortgage or otherwise dispose of her paraphernal property without the necessity of the permission of the husband is made absurd by the right of the husband to administer the conjugal property.

(10) The husband being the sole administrator of the conjugal partnership, the wife has no say whatever in spite of the fact that she contributes more to the accumulation of such property.