

Proposed Grounds For The Separation Of Property During The Marriage

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SEPARATION of property, as an institution of the Civil Law, is a system governing the patrimonial relations of the spouses which recognizes the right of each of them to own to the exclusion of the other whatever either may have acquired before and during the existence of the marriage.

In its purest aspect, the regime of separation of property presupposes the absolute economic independence of the spouses from each other. Each of them owns, administers, and enjoys his or her separate property together with the fruits thereof. Salaries and wages pertain exclusively to the one who earned them. Consequently, some authors speak of the separation of property not as a system, but as a total absence of the same. In actual life, this aspect of the system does not exist, for as long as there is a marriage, each spouse is bound to contribute to the support of the family.

The more commonly adopted form of separation of property is that where there is separate ownership of property but only one administrator who is the owner of the fruits as usufructuary. Castan calls this the system of separation of property with unity of administration. Our Civil Code adopts this system when separation of property takes place by virtue of a judicial decree. (Arts. 1435 and 1436, first paragraph).

During the marriage either spouse may ask for the separation

of property based on any of the grounds mentioned in Article 1433 of the Civil Code which provides as follows:

"Either the husband or the wife may sue for a separation of the property, and it shall be decreed, whenever the spouse of the plaintiff shall have been condemned to a penalty which carries with it that of civil interdiction, or shall have been declared an absentee, or shall have given cause for divorce.

"In order that such separation may be decreed, it shall be sufficient to present the final judgment rendered against the guilty or absent spouse in any one of the three cases above mentioned."

Although the right to ask for the separation of property is granted to either husband or wife, their unequal position in the marriage relation arising from the fact that the husband is the administrator of the conjugal partnership, renders it an essentially feminine relief. This is expressly recognized in Germany, Argentina, Lower Canada, Brazil, Italy, and France where the right to ask for the separation of property is granted to the wife alone.

Civil interdiction, absence, and having given cause for divorce are the grounds for the separation of property during the marriage mentioned in Article 1433 of the Civil Code. The reason for each ground is clear. Civil interdiction deprives the person interdicted of his rights to administer and dispose of his property as well as

those of others. The personal and economic relations of the family are disturbed, thereby making the normal life of the partnership impossible. Absence of one of the spouses disrupts family life. It is physically impossible for the absentee to administer or otherwise deal with the property of the conjugal partnership. When either of the spouses has given cause for divorce, separation of property is decreed not because the guilty spouse is incapacitated legally or physically as in the two preceding grounds, but because, as Manresa sizes up the situation, it becomes extremely difficult to pretend that union and harmony of the economic interests of the marriage still exist when the conjugal felicity has been shattered.

Applying the principle of statutory construction of "inclusio unius est exclusio alterius", the grounds aforementioned are exclusive of any other. That being the case, do they sufficiently protect the interests of the spouses, particularly those of the wife? It is submitted that these grounds are lamentably inadequate in carrying out the spirit and purpose of the law.

At this point, it is helpful to turn to the laws of other Civil Law countries and look into some of the grounds which they consider a justification for the separation of property. These are:

1. Mismanagement or maladministration. The improper administration of the husband of such gravity as to endanger the property contributed by the wife is a ground for the separation of property in Argentina, Germany, Brazil, Mexico, Lower Canada, and France. Moreover, in Mexico,

whenever by reason of such maladministration, the assets of the conjugal partnership are considerably diminished, the wife may ask for the separation of property.

2. Insolvency. The institution of insolvency proceedings against the husband is a sufficient ground in Argentina and Germany. In Mexico, a declaration of insolvency is necessary. In China and Switzerland, when the partnership or any of the spouses is overburdened with debts, the spouse not so burdened may ask for the separation of property.

When the attachment against the property of either spouse is not fully satisfied, even the creditors in China and Switzerland may petition for the separation of property.

3. Non-support. In Switzerland, Germany, Lower Canada, Mexico, and China, the failure of the husband to support his family entitles the wife to ask for the separation of property.
4. Other grounds. Separation of property may be demanded:
 - a. In Switzerland, when the husband does not enter lawful security for the property contributed by the wife;
 - b. In China, when according to law, the disposition of property by one party requires the consent of the other, and such consent is refused without good reason; and

- c. In Lower Canada, when for serious reasons, it appears just and necessary that the separation be granted to safeguard the wife's interests.

Our Civil Code affords no relief to the wife in the case of the maladministration of the conjugal partnership by her husband, such maladministration not amounting to prodigality. It overlooks the fact that a bad administrator is actually and potentially more dangerous than one who is absent or civilly interdicted, for while the latter's hands are tied, the former can act freely to the detriment of the economic interests of the family. According to Dr. Velez Sarsfield, in his commentaries on the Argentine Civil Code, the provision of the law granting to the wife the right to ask for the separation of property on the ground of maladministration of her husband must be interpreted with extreme prudence in order to preserve the peace of the home. As to what act or series of acts would constitute maladministration, French jurisprudence, by the sentence of January 6, 1808, held that the law does not require any particular degree of proof, but leaves the matter to the discretion of the judge. But in order that the action may prosper, however, her property must be found in real danger of loss or dissipation.

Under our law, separation of property on the ground of insolvency of either of the spouses, when taken as a protective measure on behalf of the petitioner, comes too late to serve the purpose. Article 1438 of our Civil Code provides, "The separation of the property shall not prejudice rights previously acquired by

creditors." The petitioner, therefore, cannot, by the separation of property, withdraw his share of the conjugal assets and his separate property out of the reach of creditors, if those assets are originally chargeable for the payment of the debts already incurred.

If the purpose of the separation of property is to punish the spouse who caused the insolvency, for thereafter he loses the right to administer the conjugal property and, in certain cases, its fruits, injustice may result. Not every case of insolvency can be attributed to fault or negligence. Financial reverses causing insolvency may be due to causes which cannot be guarded against even by the exercise of the highest degree of care and diligence. In the absence of a wrongdoer, the imposition of a penalty is not only improper but unjust. If there be fault or negligence, the remedy is separation of property, not on the ground of insolvency, but on the ground of mismanagement or maladministration.

Other countries have seen the wisdom of including non-support as a ground for the separation of property. Unfortunately, our Civil Code fails to provide for this. It may be argued that it will not be necessary to resort to the separation of property when the husband who has the means to do so fails to support his wife and children, for an action for support on the part of those entitled thereto will be entertained in our courts of justice. Limiting the discussion to husbands whose main source of income is the conjugal partnership property, an action for the separation of property on the ground of non-support will be more fully protective than

an action for support, for in the former, the wife will receive not only the fruits, but the conjugal property as well, or at least, her share of it, while in the latter, all she will get is a periodical stipend sufficient to maintain her and her children. The husband who has plainly shown his lack of affection and want of responsibility towards his family continues to be the administrator of the conjugal partnership property with ample opportunity to cheat them at every turn.

In conclusion it is humbly proposed that in addition to civil interdiction, absence, and having given cause for divorce, the following be made grounds for the separation of property during the marriage:

1. Mismanagement or maladministration of the conjugal partnership; and
2. Non-support of the family by the administrator of the conjugal partnership.



The Inconstancy Of Law

HUMAN LAW is both a growth and a development. Whether we consider it as the product of spontaneous growth amidst particular environment or as a result of the conscious evolution of man's moral and intellectual forces, it must, at appropriate intervals, be renovated, or man will renovate it just the same. The natural explanation for this is, that as man cannot remain stationary, the laws made by him cannot be unyielding and lag behind the demands of his daily life. It is of the essence of life in this world that it does not and cannot remain static. In the terse language of Justice Cardozo: "We live in a world of change. If a body of law were in existence adequate for the civilization of today, it could not meet the demands of tomorrow. Society is inconstant. So long as it is inconstant . . . there can be no constancy in law . . . law defines a legal relation not always between fixed points, but often . . . between points of varying position . . . there is change whether we will it or not." Development in law, as in nature, is done by steps and not by leaps and bounds . . . "there must be no ellipsis of any intermediate process." Systematization and cognoscibility are both concomitants and conditions of the progress of any science, and the science of law is no exception.—MR. JUSTICE LAUREL.