

PHILIPPINE FAMILY LAW*

FLERIDA RUTH P. ROMERO**

INTRODUCTION

In the Philippines, as in most Asian countries, the family is regarded as the basic sociological, economic, political and developmental unit. Under the law, family relations includes those between husband and wife, parent and child, ascendants and descendants and brothers and sisters.¹

In our cultures, however, the primary unit is not merely the nuclear, but the extended, family which embraces all other members of the clan beyond the parents and children, at times reaching, in the words of a local Civil Law authority, the tenth civil degree. Hence, the elders in a clan occupy a dominant position and their wishes are not lightly set aside. Where the law ceases to grant them rights, custom and practice dictate that their wishes still prevail, or at least be accorded great weight, in major family decisions. In certain Oriental societies, this has developed into the extreme form of ancestral worship.

It is not surprising to note, therefore, that clannishness, at once a source of strength and weakness of our societies, is a common characteristic of cultures in this part of the world.

LAWS GOVERNING FAMILY RELATIONS

The Constitution of the Philippines

In recognition of the fact that the family is the bedrock of society and is a major determinant of the strength or weakness of the State, Philippine laws give due emphasis to the family as a vital social institution. The Constitution of the Philippines lays down the following policy statement: "The State shall strengthen the family as a basic social institution. The natural right and duty of parents in the rearing of the youth for civic efficiency and the development

* Lecture delivered on the occasion of the Sixteenth Anniversary Celebration of Federacion Internacional de Abogados (FIDA), October 22, 1976.

** *Professor of Law*, University of the Philippines College of Law and *Head*, Division of Continuing Legal Education, University of the Philippines Law Center.

¹ CIVIL CODE, art. 217.

of moral character shall receive the aid and support of the government.²

The Civil Code of the Philippines

The basic law which governs the relationship of the members of the family among themselves, whether as regards their persons or their properties, and to a certain extent, their relationship with people outside the family unit, is the Civil Code of the Philippines. When the country was under Spanish sovereignty, its Civil Code of 1889 was extended to the Philippines and it was operative here up to 1950 when it was amended in line with a plan to codify the law as to make them conform with "the customs, traditions and idiosyncrasies of the Filipino people and with modern trends in legislation and the progressive principles of law." It is principally in the realm of family law that the customs and traditions of the people were incorporated in the formal statute law.

The Child and Youth Welfare Code—P.D. No. 603

In order to reflect progressive trends in the treatment of the youth, a law was passed, Presidential Decree No. 603, which took effect on June 10, 1975, otherwise known as the Child and Youth Welfare Code, which recognizes the youth as a vital asset of the nation, such that "every effort should be exerted to promote his welfare and enhance his opportunities for a useful and happy life."³ This forward-looking law introduced changes mostly in the areas of parental authority and adoption.

Binding Effect of Laws

The Civil Code of the Philippines, as with other laws in the country, applies equally and uniformly to all, regardless of religious persuasion, political belief, sex or age. Where there is a conflict between the religious law and the civil law, it is axiomatic that the latter shall prevail, in line with the categorical provision that the law shall govern family relations. Hence, no custom, practice or agreement which is destructive of the family shall be recognized or given any effect.⁴ This is to be distinguished from the varying application of different laws in such countries like Indonesia, for instance, where the "adat" law, which is largely unwritten and based on custom, applies to the native population while other cultural-geographic sectors operate under other laws.

² CONST., art. 2, sec. 4.

³ Pres. Decree No. 603 (1975), art. 1.

⁴ CIVIL CODE, art. 218.

These provisions regulating family relations are of binding effect upon all Filipino citizens and follow them wherever they reside because "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."⁵

Another provision reenforcing the above policy which stresses the predominance of Philippine laws and their binding effect on the country's nationals states in part: "Prohibitive laws concerning persons, their acts or property . . . shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country."⁶

Regulation of Family Relations by Law

In the Philippines, the effect of certain State policies has been to regulate the sphere of family relations to an increasing extent. In the exercise of this regulatory power, the outer limits of the family system has been gradually eroded. For instance, the constitutional mandate making it the responsibility of the State to achieve and maintain population levels most conducive to the national welfare,⁷ is being implemented, partly through legislation on population control and family planning. In the field of taxation, every head of a family is allowed an exemption of one thousand pesos for each dependent, minor child up to the fourth one.⁸ Beyond this, there can be no more exemptions. Similarly, in the field of labor relations law, the Labor Code grants maternity leave with pay to pregnant women employees only up to the fourth delivery or miscarriage.⁹

In order to promote family solidarity, the law enjoins judicial and administrative officials to foster mutual aid, both moral and material, among its members.¹⁰ All efforts are encouraged to effect a compromise among members of the same family before a suit is filed in court which will sow discord in their relations.¹¹ In the event of a criminal case, no descendant can be compelled to testify against his parents and ascendants.¹² All kinds of presumptions to obviate the necessity of producing evidence are laid down which favor the solidarity of the family.¹³

⁵ CIVIL CODE, art. 15.

⁶ CIVIL CODE, art. 17.

⁷ CONST., art. 15, sec. 10.

⁸ TAX CODE, sec. 23.

⁹ Pres. Decree No. 442 (1974), art. 132.

¹⁰ CIVIL CODE, art. 219.

¹¹ CIVIL CODE, art. 222.

¹² CIVIL CODE, art. 315.

¹³ CIVIL CODE, art. 220 provides: "In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or facts leans toward the validity of marriage, the indissolubility of the marriage bonds, the

MARRIAGE

Marriage, a contract in form but, in essence, an inviolable social institution and a religious sacrament, is extensively governed by law as to its nature, consequences and incidents.¹⁴ Monogamy is generally observed in the Philippines which is a predominantly Christian country. Polygamy, sanctioned by the Moslem religion in the South, is expressly prohibited by law.¹⁵

Requisites of a Valid Marriage

The indispensable requisites for a valid marriage are legal capacity of the contracting parties, their consent, freely given, the authority of the person performing the marriage and a marriage license, except in marriages of exceptional character as enumerated by law.¹⁶ Absent one of these requirements, even if the parties or one of them is in good faith, the marriage shall be void.

Aside from non-compliance with these requisites, close relationship between the parties within the fourth civil degree, among others, will similarly result in a void marriage.¹⁷ Such marriages, considered void under our laws, remain void even if contracted in some other jurisdiction under whose laws they would be deemed valid. Otherwise, the Philippines follows the doctrine of *lex loci celebrationis* or *lex loci contractus* which considers marriages valid where contracted as generally valid everywhere.

Marriages which suffer from certain infirmities at the time of the contracting thereof, such as vitiated consent because of fraud or violence, lack of parental consent when so required by law, impotence or mental incapacity, are merely voidable.¹⁸ Until annulled by a competent court, however, these remain valid. If annulled, the marriage ties are completely dissolved and the parties are free to contract another marriage. Only death of one of the spouses will

legitimacy of children, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression".

¹⁴ CIVIL CODE, art. 52.

¹⁵ CIVIL CODE, art. 71 provides: "All marriages performed outside the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country, except bigamous, polygamous, or incestuous marriages as determined by Philippine law".

¹⁶ CIVIL CODE, art. 53.

¹⁷ CIVIL CODE, art. 81 provides: "Marriages between the following are incestuous and void from their performance, whether the relationship between the parties be legitimate or illegitimate: (1) Between ascendants and descendants of any degree; (2) Between brothers and sisters, whether of the full or half blood; (3) Between collateral relatives by blood within the fourth civil degrees".

¹⁸ CIVIL CODE, art. 85.

similarly completely break the marriage relation for absolute divorce is not recognized under Philippine law.

The Rights and Responsibilities of Husband and Wife

Tradition and law have made the husband the head of the family. Thus, the husband is principally responsible for the support of the family¹⁹ while the wife's duty is to manage the affairs of the household.²⁰

While the position of the wife *vis-a-vis* her husband and her own paraphernal property improved considerably after amendments were introduced to the Civil Code in 1950, in a number of instances, the power of direction and decision is still principally lodged in the latter.

Among the rights and powers of the husband are the administration of the conjugal partnership properties²¹ and those of the children under parental authority,²² the right to fix the family residence,²³ the right to prevent the wife from exercising her profession or occupation or engaging in business,²⁴ the preferential right to give or withhold consent to the marriage of a child²⁵ and others.

Prior to 1950, women were placed in the same category as infants, idiots, insanes and other incapacitated persons. The amendments introduced in 1950 recognized their full capacity to act. They can now own, administer and dispose of their own paraphernal property without the consent of their husbands,²⁶ execute a will²⁷ and succeed to the ownership and not merely usufruct of properties transmitted through inheritance by their husbands.²⁸ While as a general rule, the husband is the administrator of the conjugal partnership, the wife may now administer the same either by express

¹⁹ CIVIL CODE, art. 111 provides: "The husband is responsible for the support of the wife and the rest of the family. These expenses shall be met first from the conjugal property, then from the husband's capital, and lastly from the wife's paraphernal property. In case there is a separation of property, by stipulation in the marriage settlements, the husband and wife shall contribute proportionately to the family expenses".

²⁰ CIVIL CODE, art. 115 provides: "The wife manages the affairs of the household. She may purchase things necessary for the support of the family, and the conjugal partnership shall be bound thereby. She may borrow money for this purpose, if the husband fails to deliver the proper sum. The purchase of jewelry and precious objects is voidable, unless the transaction has been expressly or tacitly approved by the husband, or unless the price paid is from her paraphernal property".

²¹ CIVIL CODE, art. 165.

²² CIVIL CODE, art. 320.

²³ CIVIL CODE, art. 109.

²⁴ CIVIL CODE, art. 117.

²⁵ CIVIL CODE, art. 61.

²⁶ CIVIL CODE, arts. 136 & 140.

²⁷ CIVIL CODE, art. 802.

²⁸ CIVIL CODE, art. 892.

authority of her husband²⁹ or by order of the court.³⁰ Unless so authorized to be the administrator, she cannot therefore, bind the conjugal partnership without the husband's consent.³¹ However, the husband who acts as administrator may no longer dispose of or encumber real property of the conjugal partnership without the wife's consent.³² Should he do so, the wife has remedies she may avail of.³³

Dissolution of Marriage

Marriage, under Philippine law, is generally indissoluble except upon death of one of the spouses or its annulment. As earlier stated, a marriage may be annulled for reasons existing at the time of contracting thereof. Until annulled, it remains valid and the offspring born therefrom are legitimate.³⁴

Legal separation without dissolving the matrimonial bonds is, however, sanctioned on grounds of adultery on the part of the wife and concubinage on the part of the husband as well as an attempt by one spouse against the life of the other.³⁵ Unlike in the case of annulment, these grounds arise subsequent to the marriage. This action presupposes the presence of a guilty spouse and an aggrieved spouse seeking relief in adversary proceedings which can be defeated if the former proves consent, pardon, recrimination, or prescription of action. The plea for legal separation will likewise be denied if the State can prove that there was collusion between the parties or if one of the parties dies.

In consonance with the State policy to preserve the solidarity of the family, courts are enjoined to take all possible steps to effect a reconciliation before eventually granting legal separation.³⁶ The case

²⁹ CIVIL CODE, art. 168.

³⁰ CIVIL CODE, art. 196.

³¹ CIVIL CODE, art. 172.

³² CIVIL CODE, art. 166 provides: "Unless the wife has been declared a *non compos mentis* or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same".

³³ CIVIL CODE, art. 173 provides: "The wife may, during the marriage, and within ten years from the transaction questioned ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs after the dissolution of the marriage, may demand the value of property fraudulently alienated by the annulment".

³⁴ CIVIL CODE, art. 89, par. 2.

³⁵ CIVIL CODE, art. 97.

³⁶ CIVIL CODE, art. 98.

itself shall not be tried until after six months shall have elapsed since the filing of the petition in court.³⁷

The decree of legal separation or relative divorce does not sever the marriage ties but merely entitles the spouses to live separately from each other. The conjugal partnership is dissolved, the duty of mutual support ceases, the custody of the minor children is awarded to the innocent spouse and the offending partner is disqualified from inheriting from the innocent spouse whether under a will or by intestate succession.³⁸

Philippine society, being predominantly Catholic, frowns upon absolute divorce which dissolves the marriage bonds, thus paving the way for a remarriage to other parties. The University of the Philippines Law Center, however, recently proposed amendments to the law by providing for absolute divorce on restrictive grounds as part of the effort to accord equal rights to women through the amendment or repeal of the relevant laws. The proponents of the amendment seek to do away with the double standard of morality prevalent in Philippine society where marital infidelity on the part of men is, more or less, tolerated but condemned if practiced by women. Moreover, when the court has granted legal separation under present laws, the parties, not being free to marry again, have recourse to illicit relations or common-law relationships.

Short of dissolving the marriage, the law recognizes a *de facto* separation between husband and wife for a justifiable cause like maltreatment and awards support to the aggrieved wife. However, contracts entered into in advance between spouses for personal separation are considered void and of no effect.³⁹

CHILDREN

Under the Constitution of the Philippines, the State is committed to promote the physical, intellectual and social well-being of the youth.⁴⁰ Furthermore, it has pledged to give aid and support to the parents in their natural right and duty of rearing the youth for civic efficiency and the development of moral character.⁴¹ This sovereign power of guardianship which the State exercises as "the father of the country" is known as *parens patriae*.

Parental Authority

Under the law, the father and mother shall exercise jointly parental authority and responsibility over their legitimate or adopt-

³⁷ CIVIL CODE, art. 103.

³⁸ CIVIL CODE, art. 106.

³⁹ CIVIL CODE, art. 221.

⁴⁰ CONST., art. II, sec. 5.

⁴¹ CONST., art. II, sec. 4.

ed children. In case of disagreement, the father's decision shall prevail unless there is a judicial order to the contrary.

In case of the absence or death of either parent, the present or surviving parent shall continue to exercise parental authority over such children, unless in case of the surviving parent's remarriage, the court for justifiable reasons appoints another person as guardian.⁴²

In case of the absence or death of both parents, however, the grandparents, and in their default, the oldest brother or sister who is at least eighteen years of age or the relative who has actual custody of the child shall exercise parental authority.⁴³

An institution which traces its origins to the *patria potestas* of Roman times, parental authority, as now exercised, has gradually evolved from the right of life and death (*jus vitae ac necis*) to the more humane form it has now assumed due to the humanizing influence of Christianity. No longer are the rights of parents over their children emphasized but their duties of support, education, direction and protection. This mass of rights and obligations vary depending on whether the children are legitimate or illegitimate, having been born in or outside of wedlock.

The State may, however, deprive the parents of parental authority for such justifiable reasons as abandonment, treating the children with excessive harshness, giving them corrupting orders, counsels or examples and committing other acts inimical to the welfare of the child.⁴⁴

One of the most recent pieces of legislation enacted which is indicative of the solicitude of the State over the youth is Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code. Cognizant of the vital role of youth in nation-building, all institutions in society such as the church, school, guild and others are enjoined to assist the home and the State in its task of preparing the child for the responsibilities of adulthood.⁴⁵ The child is to enjoy special protection and given opportunities and facilities, by law and other means, to ensure his fullest physical, mental, emotional and spiritual development.⁴⁶

This Code lays emphasis on the importance of according dignity and respect to every child without distinction as to legitimacy

⁴² Pres. Decree No. 603 (1975), art. 17.

⁴³ Pres. Decree No. 603 (1975), art. 19.

⁴⁴ CIVIL CODE, art. 332.

⁴⁵ Pres. Decree No. 603 (1975), art. 1.

⁴⁶ Pres. Decree No. 603 (1975), art. 10.

or illegitimacy. It has not, however, gone to the extent of giving illegitimate children exactly the same rights and privileges as legitimate ones. The present Civil Code confers successional rights and rights of support even to the illegitimate not natural, often called, spurious children or bastards. In effect, the law still differentiates between legitimates and the illegitimates in the granting of rights. The culture, moreover, still attaches the age-old stigma upon those born outside of wedlock.

Adoption

Consonant with the present policy of placing the welfare of the child above all other considerations,⁴⁷ the Child and Youth Welfare Code has introduced a radical change in matters of adoption. Up to last year, under the Civil Code, couples who already have children were disqualified from adopting under the theory that they no longer need a child for their happiness. Evidently, adoption was viewed from the standpoint of the adopter.

Following the modern trend of treating adoption as a legal device to elevate the status of a child to a position equivalent to a legitimate child and provide him the comforts of a home and family, the Code has repealed the disqualification stated above. A present, as long as a person is of age and in full possession of his civil rights, he may adopt a child even though he may already have other children as long as he is in a position to support and care for his enlarged family in keeping with his means, both material and other wise.⁴⁸

Furthermore, safeguards are set up to insure the success of the adoption such as a prior case study by the Department of Social Services and Development, a six-month trial custody by the adopting parents of the child and the confidentiality of the proceedings and all its records.

CONCLUSION

Undoubtedly, Philippine laws seek to perpetuate, nay, reinforce the vitality of the family as a primal unit of society. The Constitution and implementing statutes complement each other in regulating, to an increasing extent, family relations. Within the past few years, changes have been further introduced so that local legislation may keep in step with progressive trends in this area of law. Aware of

⁴⁷ Pres. Decree No. 603 (1975), art. 8 provides: "In all questions regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration".

⁴⁸ Pres. Decree No. 603 (1975), art. 27.

the crucial role of the family organization in Philippine society, steps are continually being taken, not only in the realm of law but elsewhere, to strengthen and further develop it as a dynamic institution.

Asian countries would do well to undertake more intensive and systematic comparative studies of family laws, not as a mere academic exercise, but in order that the experiences of one may enrich the others.