

FUNDAMENTAL CONFLICT OF LAWS CONCEPTS AS APPLIED TO THE PHILIPPINE LAW ON PERSONAL AND PROPERTY RELATIONS OF COUPLES WITHIN AND WITHOUT MARRIAGE

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I. INTRODUCTION

Conflict-of-laws issues in family relations are a by-product of mobility and interaction amongst people of different nationalities or domiciles, or by the occurrence in other states of events central to the formation of the family. These interconnections have given rise to the phenomenon of interstate families. With the presence of foreign elements, legal issues arising from cross-border family relations are therefore not automatically governed by the laws of a single state.

Family law is an area of substantive law which inexorably reflects state policies often moored to fundamental personal beliefs and societal values. Thus, when courts must choose between applying domestic law or foreign law, they seldom consider the latter. Yet, with the collective interest of states to protect families, there is a need to ensure the certainty and security of the legal status of families and children. It is necessary, then, to encourage courts to consider applying foreign law in cases with foreign elements. This tension makes Conflicts Family law problems one of the most complex and sensitive areas to be examined from a Private International law perspective.

II. MARRIAGE

A. Definitions and Requisites

Article XV, Section 2 of the Philippine Constitution characterizes marriage as an “inviolable social institution” that serves as the foundation of the family, and as such, is entitled to the protection of the State. The character of marriage as an institution is accentuated in the Family Code definition of marriage:

Article 1. Marriage is a special contract of permanent union between man and woman entered into in accordance with law for the establishment of

conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within limits provided by this Code.

Therefore, despite the broad Constitutional mandate found in Article II for the State “to protect and strengthen the family as a basic autonomous social institution”, Article XV of the Constitution dispels any doubt that Philippine laws privilege families built on marriage.¹

Philippine case law has consistently recognized the legal institution of marriage as a relationship of transcendental importance.² As stated in *Avenido v. Avenido*,³ “[t]he basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony.” The legal maxim of *semper praesumitur pro matrimonio*—a presumption always arises in favor of marriage⁴—is codified in law through Article 220 of the Civil Code.⁵

Despite this presumption, cases involving marriages and remarriages of Filipinos and foreigners are not necessarily deemed valid if proven to have contravened Philippine law. These have significant impact on the property relations of the parties cohabiting.

¹ ELIZABETH AGUILING-PANGALANGAN, MARRIAGE AND UNMARRIED COHABITATION: THE RIGHTS OF HUSBANDS, WIVES, AND LOVERS, (UP College of Law, Philippines 2015), 1-2.

² See e.g. Santos v. Angeles, G.R. No. 105619, Dec. 12, 1995.

³ Avenido v. Avenido, G.R. No. 173540, Jan. 22, 2014.

⁴ *Ibid.*

⁵ CIVIL CODE, art. 220. “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 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.”

B. Validity of Marriage

1. Extrinsic Validity

The *lex loci celebrationis* principle is expressed in the first paragraph of Article 26 of the Family Code: “All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country.”

Though stated as the controlling law in all questions of validity of marriage, *lex loci celebrationis* applies only to the extrinsic requirements of marriage. Article 3 of the Family Code sets forth the formal requisites of marriage:

- a. Authority of the solemnizing officer;
- b. A valid marriage license except in the cases provided in Chapter 2 of this Title; and
- c. A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

Notice that the extrinsic validity of marriage relates to the conduct of third persons such as public officers in solemnizing the marriage, the issuance of the marriage license or performance of the marriage ceremony; it does not relate to acts attributed to the parties getting married.⁶ As long as there is compliance with the requirements imposed in the country where the marriage was celebrated, the marriage is considered valid there and everywhere. As an example, consider the marriage of two Filipinos solemnized by a notary public in Las Vegas. Since Chapter 240 of the Nevada Revised Statutes authorizes a notary public in good standing with the Nevada Secretary of State to officiate marriages, the marriage of the Filipino couple is valid in Nevada, US. The validity of this Las Vegas marriage is not undermined by the exclusion of notaries public from the list of authorized solemnizing officers under Article 7 of the Family Code of the Philippines.⁷ However, if the validity

⁶ *Contra e.g.* FAMILY CODE, art. 35(2). “The following marriages shall be void from the beginning: (2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing office had the legal authority to do so[.]”

⁷ FAMILY CODE, art. 7. “Marriage may be solemnized by: (1) Any incumbent member of the judiciary within the court’s jurisdiction; (2) Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, acting within the limits of the written authority granted by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer’s church or religious sect; (3) Any ship

of the marriage is put into question, the Nevada statute, which is the foreign law authorizing a notary public to solemnize marriage, must be properly pleaded and proven.

In *Wong Woo Yu v. Vivo*,⁸ the petitioner declared that she came to the Philippines in 1961 to join her Filipino husband, Perfecto Blas, whom she married in a ceremony celebrated by a village leader in China. Petitioner was admitted to the Philippines as a non-quota immigrant, but when the composition of the Board of Special Inquiry was changed, this ruling was reversed. In deciding whether or not this marriage was valid, the Court held that:

[A] marriage contracted outside of the Philippines which is valid under the law of the country in which it was celebrated is also valid in the Philippines. But no validity can be given to this contention because no proof was presented relative to the law of marriage in China. Such being the case, we should apply the general rule that in the absence of proof of the law of a foreign country it should be presumed that it is the same as our own.

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Since our law only recognizes a marriage celebrated before any of the officers mentioned therein, and a village leader is not one of them, it is clear that petitioner's marriage, even if true, cannot be recognized in this jurisdiction.

In *Adong v. Seng Gee*,⁹ the Court held that to establish the validity of a foreign marriage it is necessary to prove the foreign law as a question of fact, and the alleged foreign marriage by convincing evidence.

The Court held that the marriage of the decedent in China was not sufficiently proven by the presentation of a matrimonial letter. Thus, although Seng Gee alleged that he was a legitimate child of the deceased Cheng Boo and Tan Dit, who were married in China prior to the marriage of Boo with Adong in the Philippines, the Court held that "there is no competent testimony what the laws of China in the

captain or airplane chief only in the case mentioned in Article 31; (4) Any military commander of a unit to which a chaplain is assigned, in the absence of the latter, during a military operation, likewise only in the cases mentioned in Article 32; (5) Any consul-general, consul or vice-consul in the case provided in Article 10."

⁸ G.R. No. L-21076, Mar. 31, 1965.

⁹ G.R. No. L-18081, Mar. 3, 1922.

Province of Amoy concerning marriage were in 1895.” In the absence of such evidence, the alleged prior Chinese marriage was not considered valid in the Philippines.

Although in the *Wong Woo Yu* and *Adong* cases the marriages solemnized abroad would have been valid if they conformed to the *lex loci celebrationis*, proof of the foreign law enumerating requirements for a valid marriage is indispensable. Without properly pleading and proving foreign law, Philippine courts will apply the doctrine of processual presumption. The Philippines borrowed this legal concept, also called the presumed-identity approach, from common law. It provides that “unless there is a specific, applicable statute in another state, a court will presume that the common law has developed elsewhere identically with how it has developed in the court’s own state, so that the court may apply its own state’s law.”¹⁰ In sum, “where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours.”¹¹

2. Intrinsic validity

a. *Lex Nationalii*

The new Civil Code of the Philippines provides for the application of the nationality principle on significant issues in family law: “Article 15. 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.”

The municipal laws of each State specify the rules governing marriage and its termination, and the rights and duties of members of the family. For the Philippines, the substantive requirements for a valid marriage are found in Article 2 of the Family Code. These essential elements of marriage are: (1) legal capacity of the contracting parties who must be a male and a female; and (2) consent freely given in the presence of the solemnizing officer. Legal capacity to marry means that the parties entering into the marriage must be at least 18 years of age, that one party is a female and the other a male, and that neither is barred by any impediment to marry the other. The second substantive requisite is consent freely given by the parties in the presence of an authorized solemnizing officer.

Take for example, a marriage between two 17-year old Filipinos that is celebrated in Canada where the minimum age of marriage is 16. Although such

¹⁰ BLACK’S LAW DICTIONARY, 1306. *See also* PHILIPPINE LEGAL LEXICON, 2015 ed., 787; and F. MORENO, PHILIPPINE LAW DICTIONARY, 3rd ed. 748.

¹¹ Phil. Nat’l Construction Corp. v. Asiavest Merchant Bankers (M) Berhad, G.R. No. 172301, Aug. 19, 2015.

marriage is in accordance with Article 139 of the new Civil Code of 2014 of Canada, the *lex loci celebrationis*, it will not be recognized as valid in the Philippines, which follows the *lex nationalii*. Given that Article 15 of the Philippine Civil Code states that Filipino citizens are bound by laws on “status, condition and legal capacity”, it is Philippine law that sets 18 as the minimum age of marriage,¹² not Canadian law, that determines who are legally capacitated to marry.

The exceptions to the *lex loci celebrationis* rule, found in Article 71 of the Civil Code of the Philippines, are marriages that are bigamous, polygamous or incestuous. However, Article 26 of the Family Code, the law in force to this day, expanded these exceptions.¹³ Thus, a marriage, although valid in the foreign country where it was celebrated, will be void in the Philippines if: (a) either or both parties are below 18 years of age;¹⁴ (b) it is bigamous or polygamous;¹⁵ (c) a subsequent marriage is performed without recording in the Civil Registry and Registry of Properties the Judgment of annulment or declaration of nullity of the first marriage, the partition and distribution of the properties of the spouses and the delivery of the children's presumptive legitimes;¹⁶ (d) there was mistake as to the identity of the contracting party;¹⁷ (e) one of the parties was psychologically incapacitated to comply with the essential marital obligations;¹⁸ (f) the marriage is incestuous;¹⁹ or (g) the marriage is void by reason of public policy.²⁰

One should observe that these exceptions to the *lex loci celebrationis* put in issue the intrinsic validity of the marriage given that they inquire into the capacity of the contracting parties to enter into marriage.

As discussed earlier, the national law of the parties to the marriage governs questions of capacity or “the general ability of a person to marry, for instances defined by requirements of age and parental consent.”²¹

¹² FAMILY CODE, art. 5. “Any male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38, may contract marriage.”

¹³ Art. 26, ¶ 1. “All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 36, 37 and 38.”

¹⁴ Art. 35(1).

¹⁵ Art. 35(4).

¹⁶ Art. 35(6) *vis-à-vis* arts. 52-53.

¹⁷ Art. 35(5).

¹⁸ Art. 36.

¹⁹ Art. 37.

²⁰ Art. 38.

²¹ *Rabel, supra*, at 263.

Another issue that goes into the capacity to marry and is therefore not governed by the *lex loci celebrationis* is the determination of the prohibited degree of kinship. Though valid in a foreign country where the marriage was celebrated, a marriage will be void in the Philippines if it was incestuous or against public policy. An incestuous marriage is defined as one “(1) [b]etween ascendants and descendants of any degree; and (2) [b]etween brothers and sisters, whether of the full or half blood.”²²

The marriage of first cousins was part of the enumeration of incestuous marriages under Article 81 of the Civil Code. In the Family Code, it is no longer deemed incestuous but remains void on the ground of public policy under Article 38.²³ Where the intrinsic validity of the foreign marriage between a Filipino citizen and a foreigner is challenged on Article 38 grounds, Philippine courts will most likely consider it void even if the marriage was valid in the place it was contracted. At the outset, Philippine law characterizes these marriages as “void from the beginning for reasons of public policy” so it will not be unreasonable for courts to refuse to recognize these marriages.

In particular, what is the status of the marriage between two persons within the prohibited degree but who wed in a country where such marriages are legal? An English court decided a case²⁴ that involved a marriage celebrated in London of first cousins who were nationals and domiciliaries of Portugal, a state which bars first-cousin marriages. The Court held that:

If the parties had been subjects of Her Majesty domiciled in England, the marriage would undoubtedly have been valid... The law of a country where a marriage is solemnized must alone decide all questions relating to the validity of the ceremony by which the marriage is alleged to have been

²² FAMILY CODE, art. 37. “Marriages between the following are incestuous and void from the beginning, whether the relationship between the parties be legitimate or illegitimate[.]”

²³ FAMILY CODE art. 38. The following marriages shall be void from the beginning for reasons of public policy:

1. Between collateral blood relatives, whether legitimate or illegitimate up to the fourth civil degree;
2. Between step-parents and stepchildren;
3. Between parents-in-law and children-in-law;
4. Between the adopting parent and the adopted child;
5. Between the surviving spouse of the adopting parent and the adopted child;
6. Between the surviving spouse of the adopted child and the adopter;
7. Between an adopted child and the legitimate child of the adopter;
8. Between adopted children of the same adopter; and,
9. Between parties where one, with the intention to marry the other, killed that other person's spouse or his or her own spouse.

²⁴ *Sottomayor v. De Barros*, 47 L.J.P. 23; L.R. 3 P.D. (1877).

constituted; but, as in other contracts, so in that of marriage, personal capacity must depend on the law of domicile, and if the laws of any country prohibit its subjects within certain degrees of consanguinity from contracting marriage, and stamp a marriage between persons within the prohibited degrees as incestuous, this in our opinion imposes on the subjects of that country a personal incapacity which continues to affect them so long as they are domiciled in the country where the law prevails, and renders invalid a marriage between persons, both at the time of their marriage subjects of that country a personal incapacity which continues to affect them so long as they are domiciled in the country which imposes the restriction wherever such marriage may have been solemnized.

Substitute Portugal with the Philippines in a hypothetical scenario where Filipino first cousins are married in the UK. If the validity of their marriage is brought before a Philippine court, it will most likely apply the personal law of the parties, as decided in *Sottomayor*. In the Philippines, nationality is the personal law and, hence, controls capacity.

Consider another situation where first cousins who are British citizens but domiciled in California, validly marry in accordance with Section 2200 of the California Family Code. Will the validity of their marriage be recognized in the Philippines should they decide to make their permanent home here? Given that the nationality principle established in Article 15 of the Civil Code clearly states that Philippine laws “are binding upon citizens of the Philippines, even though living abroad[,]” the prohibition found in Article 31 of the Family Code should be limited to Filipino nationals. Non-Filipinos are not bound by Philippine laws on capacity to enter marriage. Furthermore, as earlier mentioned, in case of doubt as to the validity or invalidity of a marriage, there is a presumption in favor of its validity.²⁵

Whether or not the marriage is valid has implications on civil rights. *In the Matter of Bautista*,²⁶ the petitioner, a Filipino citizen, was admitted to the United States as a lawful permanent resident. He filed a visa petition seeking to accord his wife second preference status for the issuance of an immigrant visa. Following the general rule governing recognition of marriages for immigration purposes, the US Immigration Office applied *lex loci celebrationis*, which is the law of the Philippines. It denied his visa petition on the ground that their marriage was void, his wife being

²⁵ CIVIL CODE, art. 220.

²⁶ 16 IN Dec. 602 (B.I.A. 1978) available at [Interim%20Decision.%20not%20incest%20marr.2671.pdf](#).

the daughter of Petitioner's cousin. On appeal, a more accurate computation of the degree of consanguinity was made:

Since the beneficiary in this case, the child of the petitioner's cousin, is related to the petitioner in the *fifth* degree, her marriage to the petitioner is not proscribed by Article 81 of the Philippine Code, and will be deemed valid for immigration purposes... We will, therefore, sustain the appeal filed in this case, and approve the visa petition filed on the beneficiary's behalf.²⁷

Notice that the US Immigration Office applied *lex loci celebrationis*. The requisite in question in this visa proceeding case was the capacity of the parties to marry, an issue governed by the *lex nationalii*. But because the Philippines was both the state of nationality and place of celebration of the marriage, the applicable law was the Philippines. It is important though to apply Philippine law as *lex nationalii* because it will not change no matter where the marriage was celebrated. Moreover, the *lex nationalii* governs whether the case is litigated in the parties' state of citizenship, the place of celebration of the marriage or in any third state.

b. Public Policy Considerations

As discussed above, the issue of capacity to enter marriage is governed by the person's personal law, whether it be the law of his nationality or domicile. However, if the personal law is a foreign law, the court may decide not to apply it by reason of the public policy exception—"the court declines to give due course to a claim existing under a foreign law because it considers the nature of the claim unconscionable"²⁸—or that the application of the foreign law will violate a fundamental public policy of the forum.

It is worth examining if marriages which are incompatible with the *ordre public* of the state should nonetheless be recognized when raised as a preliminary question in a case, the main issue of which does not profane the mores of the forum state. An example is a case²⁹ decided in the US where an Indian man died intestate in California. Two women, both living in India, joined in a petition to determine their successional rights, alleging in their petition that at the time of the man's death, they were his legally wedded wives according to the laws of the Jat community in India. The trial

²⁷ *Id.*

²⁸ Jorge R. Coquia AND ELIZABETH AGUILING-PANGALANGAN, CONFLICT OF LAWS: CASES, MATERIALS, AND COMMENTS 212 (Central Professional Books 2000) 146.

²⁹ In re. Dalip Singh Bir Estate, 188 P. 2nd 499 (Cal. App. 1948), available at <http://law.justia.com/cases/california/court-of-appeal/2d/83/256.html>.

court found that though the decedent was legally married to the petitioners under the laws of India, under the laws of California, only the first wife of the decedent was recognized as his legal widow. Petitioners argued that Singh's polygamous marriages should be held valid since they were valid in the state where they were contracted. Ruling in favor of the petitioners, the Court held that:

The decision of the trial court was influenced by the rule of 'public policy'; but that rule, it would seem, would apply only if the decedent had attempted to cohabit with his two wives in California. Where only the question of descent of property is involved, 'public policy' is not affected... 'Public policy' would not be affected by dividing the money equally between the two wives, particularly since there is no contest between them and they are the only interested parties.

The California Court held that the public policy exception was not appropriate here since both women would not be living with their husband in California, which would have been offensive to the community. Hence, the court interpreted public policy very narrowly and "confer[red] on the wives the status of 'wife' [...] for the purposes of succession, and upon the children the status of legitimacy."

If a similar case is heard before a Philippine court, it is submitted that the approach of the California court should be adopted. Community standards of morality will not be transgressed if the parties do not seek to immerse themselves in the life of the community. At a multistate level, this will also avoid "limping marriages" which, in Private International law, refers to marriages that are valid in some states and invalid in others. There is good reason to uphold the validity of marriages when possible, in order to protect the rights and interests of children and parties who in good faith believed that they were legally married.

III. TERMINATION OF MARRIAGES

A. Void and Voidable Marriages

Article 4 of the Family Code states: "The absence of any of the essential or formal requisites of marriage results in a marriage that is void from the very beginning, and the parties may file for declaration of nullity of their marriage."³⁰

³⁰ FAMILY CODE, art. 35. The following marriages shall be void from the beginning:

(1) Those contracted by any party below eighteen years of age even with the consent of parents or guardians;

In contrast, where all the essential requisites are present but there is a defect in either the consent or capacity, this is a ground for annulment of the marriage.³¹ In contrast, an irregularity in any of the formal requisites does not affect the validity of the marriage, but renders the person responsible for the irregularity as civilly, criminally or administratively liable.³²

The case of *Fujiki v. Marinay* was about Minoru Fujiki, a Japanese national who married Maria Paz Marinay in the Philippines in 2004. The marriage crumbled when Fujiki was unable to bring his wife to Japan where he was a resident. Eventually, they lost contact with each other. In 2008, Marinay met another Japanese, Shinichi Maekara. Without her marriage to Fujiki being dissolved, Marinay and Maekara were married in the Philippines. Maekara brought Marinay to Japan, but their marriage was unhappy due to the alleged physical abuse Marinay experienced in the hands of Maekara. She left Maekara and reestablished connections with Fujiki.

In 2010, Fujiki helped Marinay obtain a judgment from a family court in Japan which declared her marriage to Maekara bigamous and thus, void. Subsequently,

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- (2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;
 - (3) Those solemnized without license, except those covered the preceding Chapter;
 - (4) Those bigamous or polygamous marriages not falling under Article 41;
 - (5) Those contracted through mistake of one contracting party as to the identity of the other; and
 - (6) Those subsequent marriages that are void under Article 53.

³¹ FAMILY CODE, art. 45. "A marriage may be annulled for any of the following causes, existing at the time of the marriage:

- (1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;
- (2) That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;
- (3) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;
- (4) That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;
- (5) That either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; or
- (6) That either party was afflicted with a sexually transmissible disease found to be serious and appears to be incurable.

³² FAMILY CODE, art. 4.

Fujiki filed a petition in the Philippine Regional Trial Court seeking the judicial recognition of the foreign Decree of Absolute Nullity of Marriage. The RTC dismissed the petition. The Supreme Court, however, reversed the RTC and granted the petition to have the Japanese Court's decision recognized in the Philippines. The Court held:

A petition to recognize a foreign judgment declaring a marriage void does not require re-litigation under a Philippine court of the case as if it were a new petition for declaration of nullity of marriage. Philippine courts cannot presume to know the foreign laws under which the foreign judgment was rendered. They cannot substitute their judgment on the status, condition and legal capacity of the foreign citizen who is under the jurisdiction of another state. Thus, Philippine courts can only recognize the foreign judgment as a fact according to the rules of evidence.

The Court further clarified the limits on its power:

In the recognition of foreign judgments, Philippine courts are incompetent to substitute their judgment on how a case was decided under foreign law. They cannot decide on the "family rights and duties, or on the status, condition and legal capacity" of the foreign citizen who is a party to the foreign judgment. Thus, Philippine courts are limited to the question of whether to extend the effect of a foreign judgment in the Philippines. In a foreign judgment relating to the status of a marriage involving a citizen of a foreign country, Philippine courts only decide whether to extend its effect to the Filipino party, under the rule of *lex nationalii* expressed in Article 15 of the Civil Code.

For this purpose, Philippine courts will only determine (1) whether the foreign judgment is inconsistent with an overriding public policy in the Philippines; and (2) whether any alleging party is able to prove an extrinsic ground to repel the foreign judgment, i.e. want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. If there is neither inconsistency with public policy nor adequate proof to repel the judgment, Philippine courts should, by default, recognize the foreign judgment as part of the comity of nations.

The Court explained that after the foreign judgment is recognized in the Philippines, it must be registered in the Philippine Civil Registry so that the change in marital status and rights flowing therefrom are officially recorded and reflected in the official registry. The court warned that without this, "there will be an inconsistency between the recognition of the effectivity of the foreign judgment and the public records in the Philippines." In addition, the Court stressed that the recognition of a

foreign judgment nullifying a marriage on the ground of bigamy does not extinguish criminal liability under Articles 89 and 94 of the Revised Penal Code.

B. Absolute Divorce

Another way by which a marriage is terminated is through absolute divorce. Transformations in society and the economy—such as the higher level of education and increased labor participation of women and changing attitudes to marriage and being unmarried—affect marriage and divorce trends. For instance, a study³³ in Malaysia shows that the divorce rate increased steadily from 2000 to 2005 among Muslims and non-Muslims. A United Nations demographic survey shows that Singapore has had a slight increase in the annual number of divorces from 7,133 in 2013 to 7,207 in 2017, while Brunei reported 522 divorces in 2013 and 566 in 2017.³⁴ Among Southeast Asian countries, only the Philippines has no law allowing divorce.

If a man and a woman who are nationals of the same country marry, domicile, and divorce there, the legal consequences of their marriage and divorce will most likely be controlled by only one law. Notwithstanding, in a conflict of laws case, a divorce decree rendered in one state may be sought recognition in other states. The Hague Convention on the Recognition of Divorces and Legal Separations³⁵ addresses this very problem and seeks to “facilitate the recognition of divorces and legal separations”³⁶ not because divorce is favored, but because it is “necessary to limit the social consequences of this unfortunate phenomenon.”³⁷ The Report explains further that:

Respect for the rights acquired in foreign countries is the very foundation of international law, and the requirements of security and stability in family matters demand the highest degree of cooperation between States

³³ PATCHARAWALAO WONGBOONSIN AND JO-PEI TAN, *CARE RELATIONS IN SOUTHEAST ASIA: THE FAMILY AND BEYOND*, BRILL (2019) 441.

³⁴ United Nations, *United Nations Demographic Yearbook 2017*, available at <https://unstats.un.org/unsd/demographic-social/products/dyb/dybsets/2017.pdf>.

³⁵ 978 UNTS 393; 8 ILM 31 (1969). Hereinafter “Convention on the Recognition of Divorces and Legal Separations.”

³⁶ *Id.*

³⁷ P. Bellet and B. Goldman, *Explanatory Report on the 1970 Convention on the Recognition of Divorces and Legal Separations*, no. 2. (1970) available at <https://www.hcch.net/en/publications-and-studies/details4/?pid=2966>. Under Art. 2 of the Convention, the State that issued the judgment, also called the State of Origin, validly acquires jurisdiction of the original case if it is the state of domicile, habitual residence or nationality of one or both of the parties.

for the sake of the private interest involved, even if this means some sacrifice of their freedom of action.

It must, moreover, not be forgotten that divorce is often followed by remarriage and that it is consequently as much a matter of facilitating the recognition of the validity of the second marriage as of recognizing the validity of the divorce. This is, of course, of particular importance for the children of this second union, to whom no blame attaches for the quarrels that broke up the first marriage and whose rights are morally as great as those of the children of that marriage.

Countries in Southeast Asia, including the Philippines, are not signatories to the Convention. There is likewise no domestic law that requires Philippine courts to recognize any foreign divorce decree. Nonetheless, courts recognize these judgments under the principle of international comity. Recognition is premised on the proper exercise of jurisdiction by the court that issued the decree, the validity of the judgment according to the parties' personal law, and compliance with the procedural requirements for proving foreign judgments.

However, where one of the spouses is a Philippine citizen, this becomes unduly complicated given that, aside from the Holy See, the Philippines is the only country in the world where there is no absolute divorce.³⁸ Instead, Philippine law provides only for legal separation³⁹—a disunion *a mensa et thoro*⁴⁰—where the marital bond

³⁸ ELIZABETH AGUILING-PANGALANGAN, MARRIAGE AND UNMARRIED COHABITATION: THE RIGHTS OF HUSBANDS, WIVES, AND LOVERS (UP College of Law, Philippines 2015) 248.

³⁹ FAMILY CODE, art 55. "A petition for legal separation may be filed on any of the following grounds:

- (1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
- (2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
- (3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
- (4) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;
- (5) Drug addiction or habitual alcoholism of the respondent;
- (6) Lesbianism or homosexuality of the respondent;
- (7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
- (8) Sexual infidelity or perversion;
- (9) Attempt by the respondent against the life of the petitioner; or
- (10) Abandonment of petitioner by respondent without justifiable cause for more than one year. For purposes of this Article, the term "child" shall include a child by nature or by adoption."

⁴⁰ Black's Law Dictionary 96 (9th ed. West 2009). "*A mensa et thoro*—from board and hearth[.] Effecting a separation of the parties rather than a dissolution of the marriage."

subsists notwithstanding the suspension of common marital life.⁴¹ This is merely a separation of bed and board—that is why legally separated spouses who engage in sexual relations with others will have committed adultery or concubinage; or if they enter into another marriage, they will be guilty of bigamy.

The general rule is that although the divorce decree was valid in the place where it was obtained, and despite years of residence by the parties in the foreign country, a decree of absolute divorce obtained by Filipinos are not recognized in Philippine jurisdiction. Again, we see the application of Article 15 of the Philippine Civil Code earlier discussed.

The case of *Tenchavez v. Escano*⁴² decided in 1965 encapsulates the law on the effect of a foreign divorce on Filipinos still prevailing to this day:

- (1) That a foreign divorce between a Filipino is not entitled to recognition as valid in this jurisdiction; and neither is the marriage contracted with another party by the divorced consort, subsequently to the foreign d decree of divorce, entitled to validity in the country;
- (2) That the remarriage of the divorced wife and her cohabitation with a person other than the lawful husband entitle the latter to a decree of legal separation conformably to Philippine law;
- (3) That the desertion and securing of an invalid divorce decree by one consort entitles the other to recover damages.

To this rule, there are only two exceptions. First is where the marriage is between a foreigner and a Filipino and the divorce is “validly obtained abroad by the alien spouse” under Article 26 of the Family Code.⁴³ The second exception is found in the Code of Muslim Personal Laws (“CMPL”),⁴⁴ which recognizes divorces obtained from Shari’a courts by Muslims who were married under Muslim rites. It bears underscoring that for the exception to arise, the Muslim Filipinos must have been married and divorced under the CMPL. If they were instead married by a judge of a trial court, Court of Appeals or Supreme Court, it is the Family Code and not the CMPL

⁴¹ *Garcia v. Recio*, G.R. No. 138322, Oct. 2, 2001. “[D]ivorces are of different types. The two basic ones are (1) absolute divorce or a vinculo matrimonii and (2) limited divorce or a *mensa et thoro*. The first kind terminates the marriage, while the second suspends it and leaves the bond in full force.”

⁴² G.R. No. L-1967, Nov. 29, 1965.

⁴³ FAMILY CODE, art. 26, ¶ 2. “Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.

⁴⁴ Pres. Dec. No. 1083 (1977). Code of Muslim Personal Laws.

which will apply. Hence, they will not be able to secure a divorce since no provision on divorce is contained in the Family Code.

At present, there is a significant number of cases decided by the Philippine Supreme Court on the issue of validity of a foreign divorce decree where at least one of the parties is a Filipino. The legal recognition given by that decree and its consequences have become one of the most challenging problems in Philippine Conflict of Laws.

*Van Dorn v. Romillo*⁴⁵ was a case which involved Alice Reyes Van Dorn, a Filipino citizen, and Richard Upton, an American citizen. They were married in Hong Kong in 1972 and established their residence in the Philippines where they raised their children. In 1982, they were divorced in the United States and thereafter, petitioner remarried in Nevada to Theodore Van Dorn. On 8 June 1983, Upton filed a suit against petitioner in the Pasay City court, alleging that Van Dorn's business in Manila was part of their conjugal property for which the latter should render an accounting and which the former had a right to manage.

In *Van Dorn v. Romillo*,⁴² the Respondent moved for dismissal on the ground that the cause of action is barred by a previous judgment in the divorce proceedings before the Nevada Court wherein respondent had acknowledged that he and petitioner had no "community property". The Pasay Court denied the motion to dismiss. Because the property involved was located in the Philippines, the Court ruled that the foreign divorce decree had no bearing in the case. The pivotal issue in this case is whether the divorce is recognized as valid in the Philippines. The Philippine Supreme Court held: "[T]here can be no question as to the validity of that Nevada divorce in any of the States of the United States. The decree is binding on private respondent as an American citizen." It further explained 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 which are considered contrary to our concept of public policy and morality. It clarified:

[A]liens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. In this case, the divorce in Nevada released private respondent from the marriage from the standards of American law, under which *divorce dissolves the marriage*.

⁴⁵ G.R. No. L-68470, Oct. 8, 1985.

The Court held that pursuant to his own national law, Upton was no longer the husband of Van Dorn and had no standing to sue to exercise control over conjugal assets:

To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligations under Article 109, *et seq.* of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served.

Similarly, the Court held in *Pilapil v. Ibay-Somera*⁴⁶ that where a foreign court has granted a divorce between Geiling, the German husband, and Pilapil, the Filipino wife, Geiling was no longer Pilapil's husband. That being the case, Geiling had no legal standing to commence an adultery case as an offended spouse.

The application of the second paragraph of Article 26 has likewise been tested in several cases involving the marriage of two Filipino citizens where one of them subsequently changes his/her citizenship. In the case of *Quita v. Court of Appeals*,⁴⁷ Fe Quita and Arturo Padlan, both Filipinos, were married in the Philippines in 1941. In 1954, Fe obtained a final judgment of divorce. After three weeks, she entered into another marriage which proved to be short-lived. Still in the US, she married for the third time. In the meantime, Arturo re-married in 1947 and had children by Blandina. When Arturo died, Blandina alleged that she was the surviving spouse of Arturo and, together with her children, claimed to be the heirs of Arturo in the intestate proceedings. In support of their contention, they submitted certified photocopies of the final judgment of divorce between Petitioner and Arturo.

During the trial, when asked whether she was an American citizen, Fe answered that she was an American citizen since 1954, the same year the decree of divorce was obtained. As a result, the trial court disregarded the divorce between Fe and Arturo which they obtained in 1954 and resolved that the marriage of Blandina and Arturo in 1947 was a bigamous marriage considered *void ab initio*. Consequently, Blandina was not a surviving spouse who can inherit from Arturo. On appeal, the Supreme Court held that the trial court must have overlooked the materiality of Fe's citizenship at the time of her divorce. Once proved that she was no longer a Filipino citizen at the time

⁴⁶ G.R. No. 80116, June 30, 1989.

⁴⁷ G.R. No. 124862, Dec. 22, 1998.

of their divorce, she could very well lose her right to inherit from Arturo. But if Fe was still a Filipino citizen at the time of the divorce—the petition which she herself filed—the divorce decree validly terminated their marriage. The Court held that the question of Fe’s citizenship had to be established in the trial court to determine her right to inherit from Arturo as his surviving spouse. As to Blandina, the Court held that having married Arturo while the prior marriage of Fe and Arturo was subsisting, her marriage to Arturo was bigamous and *void ab initio*. Consequently, she is not a surviving spouse that can inherit from him as this status presupposes a legitimate relationship.

The case of *Republic v. Orbecido*⁴⁸ is similar in that the spouses were both Filipino citizens at the time of their marriage but subsequently, the wife became a naturalized American citizen and divorced her Filipino husband. In determining the issue of whether the Filipino spouse can remarry, the Court concluded that “[p]aragraph 2 of Article 26 should be interpreted to include cases involving parties who, at the time of the celebration of the marriage were Filipino citizens, but later on, one of them becomes naturalized as a foreign citizen and obtains a divorce decree.” Otherwise, the Court said the result would be absurd and unjust. The Court likewise clarified that “the reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship *at the time a valid divorce is obtained abroad* by the alien spouse capacitating the latter to remarry.” Since Orbecido’s wife was a naturalized American citizen at the time she obtained a valid divorce that capacitated her to remarry, Orbecido, the Filipino, was allowed to remarry.

*Bayot v. Court of Appeals*⁴⁹ is illustrative of the legal premises under which a foreign divorce is recognized in Philippine jurisdiction:

First, a divorce obtained abroad by an alien married to a Philippine national may be recognized in the Philippines, provided the decree of divorce is valid according to the national law of the foreigner.

Second, the reckoning point is not the citizenship of the divorcing parties at birth or at the time of marriage, but their citizenship at the time a valid divorce is obtained abroad.

⁴⁸ G.R. No. 154380, Oct. 5, 2005.

⁴⁹ G.R. No. 155635, Nov. 7, 2008.

And third, an absolute divorce secured by a Filipino married to another Filipino is contrary to our concept of public policy and morality and shall not be recognized in this jurisdiction.⁵⁰

This requires that the foreign judgment and its authenticity must be proven as facts in accordance with Section 24, Rule 132 of the Philippine Rules of Court. Aside from this, proof must be presented on the alien's applicable national law to show the effects of the judgment on the alien himself or herself.⁵¹ This is the practical consequence of the legal maxim that courts do not take judicial notice of foreign judgments since "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country."⁵²

In the recent case of *Republic v. Manalo*⁵³, the Court held that the purpose of the second paragraph of Article 26 referring to "a divorce thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry" is "to avoid the absurd situation where the Filipino spouse remains married to the alien spouse" who is no longer considered the spouse of the Filipino after the divorce. The Court held that:

Based on a clear and plain reading of the provision, it only requires that there be a divorce validly obtained abroad. The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted.

The recognition or non-recognition of foreign divorces, similar to the cases on validity or non-validity of marriages where at least one of the parties is a Filipino, defines the personal and property rights of the parties.

IV. EFFECTS OF MARRIAGE

A. Personal Relations Between the Spouses

Personal relations between the spouses include mutual fidelity, respect, cohabitation, support, and the name that the wife may use. These are governed by the personal law of the parties. If the spouses are of different nationalities, the personal law of the husband will generally prevail as long as such is not contrary to law, customs, and good morals of the forum. Our courts may also use the Most

⁵⁰ *Id.*

⁵¹ *Corpuz v. Sto. Tomas*, G.R. No. 186571, Aug. 11, 2010.

⁵² *Id.*

⁵³ G.R. No. 221029, April 24, 2018.

Significant Relationship approach to decide the choice of law question, instead of using the traditional preference for the husband's personal law.

Article 69 of the Family Code gives both husband and wife the right to fix the family domicile. The court may find valid and compelling reasons to exempt one spouse from living with the other where, for instance, there is a legal impediment to the continued residence of the foreigner spouse in the Philippines. A case in point is *Djumantan v. Domingo*⁵⁴ where the Court decided the issue of whether an alien woman who married a Filipino in Indonesia has a right to stay in the Philippines permanently. The Court held that "there is no law guaranteeing aliens married to Filipino citizens the right to be admitted, much less to be given permanent residency, in the Philippines." It underscored that "the fact of marriage by an alien to a citizen does not withdraw her from the operation of the immigration laws governing the admission and exclusion of aliens." Hence, she is not excused from her failure to depart from the country upon the expiration of her extended stay in the Philippines.

It should be noted that *Djumantan* is a conflict of laws case since it has a foreign element—the nationality of the spouse—but that the Philippines is the only state interested in applying its law. Thus, the Philippine Court characterized the case as one of immigration rather than that of family law.

B. Property Relations Between Spouses

Article 74 of the Family Code lays down the governing law on property relations between the spouses, as follows:

The property relationship between husband and wife shall be governed in the following order:

- (1) By marriage settlements executed before the marriage;
- (2) By the provisions of this Code; and
- (3) By the local custom.

A marriage settlement is a "written agreement regarding matters of support, custody, property division and visitation" upon separation of the couple.⁵⁵ The couple who is about to be married may enter into a pre-nuptial agreement that determines which properties, if any, will be owned jointly by the spouses, and which remain exclusive. They may also determine the share of each spouse upon division of the

⁵⁴ G.R. No. 99358, Jan. 30, 1995.

⁵⁵ Merriam Webster's Dictionary of Law (1996), 307.

properties jointly owned. For majority of Filipinos, however, preparing a marriage settlement is not a primary concern or common practice. In this situation, the presumed property regime is the system of absolute community of property (“ACP”).⁵⁶ In this regime, all the properties owned by the spouses at the time of the celebration of the marriage, which necessarily means those properties each of them purchased when they were still single, as well as properties either one or both of them acquired during the marriage, belong to the community.⁵⁷ It is interesting to note that once a piece of property is proven to have been acquired during the marriage, there is a presumption in law that that property belongs to the community though the title to the property is in the name of only one of the spouses.⁵⁸ The spouse who asserts that such property is excluded from the community property has the burden to prove such claim.⁵⁹

Under the Civil Code that was in effect from August 30, 1950 until August 2, 1988, the presumed property regime was the Conjugal Partnership of Gains (“CPG”). In this regime, the spouses retained ownership of their separate property⁶⁰ but they also place in a common fund the proceeds, products, fruits, and income of their separate property, and those acquired by either or both spouses through their efforts (e.g. work) or by chance (e.g. share in hidden treasure).⁶¹ Although the same presumption applies that all properties acquired during the marriage belong to the

⁵⁶ FAMILY CODE, art. 88.

⁵⁷ FAMILY CODE, art. 91.

⁵⁸ FAMILY CODE, art. 93.

⁵⁹ FAMILY CODE, art. 92. The following shall be excluded from the community property:

- (1) Property acquired during the marriage by gratuitous title by either spouse, and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator or grantor that they shall form part of the community property;
- (2) Property for personal and exclusive use of either spouse. However, jewelry shall form part of the community property;
- (3) Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as the income, if any, of such property.

⁶⁰ FAMILY CODE, art. 110. “The spouses retain the ownership, possession, administration and enjoyment of their exclusive properties.

Either spouse may, during the marriage, transfer the administration of his or her exclusive property to the other by means of a public instrument, which shall be recorded in the registry of property of the place the property is located.”

⁶¹ FAMILY CODE, art. 106. “Under the regime of conjugal partnership of gains, the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance, and, upon dissolution of the marriage or of the partnership, the net gains or benefits obtained by either or both spouses shall be divided equally between them, unless otherwise agreed in the marriage settlements.”

CPG,⁶² there are three distinct patrimonies formed in this system: the husband's capital property or properties he owned prior to the marriage; the wife's paraphernal property or properties she acquired before the marriage; and the conjugal property to which belong all properties acquired by either or both of the spouses from the precise moment of their marriage.⁶³ If funds belonging to one patrimony is used by the other, for instance, where the husband uses funds from the CPG to pay for his gambling debts he incurred before the marriage,⁶⁴ he must reimburse that amount to the CPG.

In the case of *Bayot v. Court of Appeals*,⁶⁵ Rebecca, an American citizen of Filipino descent married Vicente, a Filipino, in the Philippines in 1979. Their marital property regime was CPG, which was the presumed property regime in the Philippines in the absence of a prenuptial agreement. Years later, Rebecca filed a petition for divorce in the Dominican Republic. The Court issued a divorce decree which likewise settled their property relations in accordance with the ex-spouses' Agreement they contracted in Manila that the only property in their conjugal partnership was their home in the Philippines. She later filed before a Philippine court a petition for declaration of nullity of her marriage. Vicente invoked the foreign divorce decree and asked for the dismissal of the case. Rebecca insisted that she was a Filipino citizen and, therefore, the divorce decree she herself obtained was not valid unto her. This case reached all the way to the Supreme Court. The Court held that when the divorce decree was granted, Rebecca was not yet recognized as a Filipino citizen and that she had identified herself in all public documents as an American citizen. As such, she was bound by the laws of the US, which allows divorce. The Court also held that since the divorce decree was valid, the adjudication on the property relations of Rebecca and

⁶² FAMILY CODE, art. 116.

⁶³ FAMILY CODE, art. 109. "The following shall be the exclusive property of each spouse:

- (1) That which is brought to the marriage as his or her own;
- (2) That which each acquires during the marriage by gratuitous title;
- (3) That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the spouses; and
- (4) That which is purchased with exclusive money of the wife or of the husband."

⁶⁴ FAMILY CODE, art. 122. "The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal partnership except insofar as they redounded to the benefit of the family.

Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.

However, the payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purpose above-mentioned."

⁶⁵ G.R. No. 155635, Nov. 7, 2008.

Vicente was binding, and that Rebecca could no longer claim that there were other properties belonging to the conjugal partnership.

Though no longer the presumed marital property regime, the CPG may be the governing property regime if indicated in the pre-nuptial agreement.

Another regime that may be chosen by the spouses-to-be is the regime of separation of property.⁶⁶ In this property regime, each spouse has complete control and ownership of his or her own properties including his or her salary, other earnings from practice of one's profession, and "all fruits natural, industrial or civil due or received during the marriage from his or her separate property."⁶⁷ This regime espouses the motto, "to each his own" (*Suum cuique*) and consequently, each spouse is empowered to "mortgage, encumber, alienate or otherwise dispose of his or her exclusive property" without having to secure the consent of the other spouse.⁶⁸ However, expenses of the family including expenses for food, utilities, and education of children are borne by the spouses "in proportion to their income, or, in case of insufficiency or default thereof, to the current market value of their separate properties."⁶⁹

The Philippine conflict of law rule on property relations between spouses is found in Article 80 of the Family Code:

Art. 80. In the absence of a contrary stipulation in a marriage settlement, the property relations of the spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence. This rule shall not apply:

- (1) Where both spouses are aliens;
- (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.

Applying Article 81, the property relations of the spouses, one of whom is a Filipino citizen and the other a foreigner, are governed by Philippine law whether the

⁶⁶ FAMILY CODE, art. 143.

⁶⁷ FAMILY CODE, art. 145.

⁶⁸ Rep. Act No. 10572, § 2, amending art. 111 of the Family Code.

⁶⁹ FAMILY CODE, art. 146.

Filipino is the husband or the wife. In accordance with the principle of immutability, their property regime will remain unaltered by any change in their nationality subsequent to the marriage.⁷⁰

A conundrum will arise if the personal law of the alien spouse has a provision identical to the Philippines in that it mandates the application of their law on marital property regimes unless both spouses are aliens. To illustrate, take a situation where one of the spouses is a citizen of the Philippines, which is State A with an absolute community of property regime, and is married to an alien from State B that follows the complete separation of property regime. Presume that both States A and B provide that their domestic law applies unless both are aliens. This gives rise to a real conflict of laws since according to the law of State A, all properties acquired by the spouses prior to and during the marriage are equally owned by the spouses irrespective of who purchased these properties. However, according to the laws of State B, the spouse who acquired the property owns it exclusively. Following the traditional approach, it is likely that the issue of ownership of property will depend on whether the court before which the case is brought will apply its own law. However, the use of a policy-centered approach could provide a less uncertain result. For instance, the most significant relationship approach, which will look at factors that will establish the center of the relationship such as where the marital or family abode is, will point to the application of that state law.

Likewise, the intersection of conflict of law rules in family law and property law will present interesting legal problems. In this situation, two provisions of the Philippine Civil Code are relevant. First is Article 15 that applies the *lex nationalii*, in relation to Article 81 of the Family Code which fixes the law on marital property relations. Second is Article 16 of the Civil Code which states that immovable and movable properties are governed by the *lex rei sitae*.

Let us consider now a situation where two Filipinos get married in Texas, which is a community property state. During their marriage, the husband purchases a property in Michigan, a non-community property state. Will that property be owned by the husband alone or will it be part of his absolute community of property that is the marital property regime in both the Philippines and Texas?

As of yet, there is no Philippine authority found on this legal point. However, there are two possible solutions. One is that the rights to immovables are determined by the law of the place where the property is situated or *lex rei sitae*. The laws governing their property relations, which in this case presumes that all properties

⁷⁰ Rabel, *supra* at 384-386.

acquired during the marriage belong to the spouses jointly, do not apply. The application of *lex rei sitae* may be justified, whether the court uses a traditional or modern approach to choice-of-law. The conventional wisdom for the *lex rei sitae* is that the “immovable property as an isolated object of rights”—thus, the State where it is situated exercise power over it, including the decision of the validity and effects of the transfer of property.⁷¹ On the other hand, the policy-centered rationale for applying the *lex rei sitae* is that the property being physically a part of the State makes that State most closely and significantly related to the property. Thus, it should be subject to the laws thereof.⁷²

An alternative answer is that since the state of nationality and the state of matrimonial domicile are community property states, then any subsequently acquired property is community property in accordance with the *lex nationalii* and/or *lex domicilii*. Since absolute community property laws provide that all properties including the salaries and compensation of the spouses go to the community, then funds that the husband used to purchase the land in Michigan are likewise community funds. This second option is the more logical and sound solution.

V. PROPERTY RELATIONS OF UNMARRIED COHABITANTS

The Family Code likewise provides for rules that govern property regimes of unions without marriage. The Code distinguishes between the property relations of unmarried cohabitants who have no legal impediments to marry but choose not to marry, on one hand, and those who are barred from marrying because of an existing impediment. The first situation is governed by Article 147⁷³ and the second by Article

⁷¹ Coquia AND AGUILING-PANGALANGAN, *supra* note 28 at 301.

⁷² *Id.*, at 302.

⁷³ FAMILY CODE, art. 147. “When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective

148.⁷⁴ The differences between these provisions are examined in *Nicdao Cariño v. Yee Cariño*.⁷⁵ In that case the Court held that since the marriage of Carino to Susan Nicdao was void for lack of a marriage license, Article 147 of the Family Code governs. The Court held:

This article applies to unions of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless void for other reasons, like the absence of a marriage license.

In contrast to Article 148, under the foregoing article, wages and salaries earned by either party during the cohabitation shall be owned by the parties in equal shares and will be divided equally between them, even if only one party earned the wages and the other did not contribute thereto. Conformably, even if the disputed “death benefits” were earned by the deceased alone as a government employee, Article 147 creates a co-ownership in respect thereto, entitling the petitioner to share one-half thereof[.]

As to the second marriage that was bigamous for having been entered during the subsistence of the marriage of Nicdao and Cariño, the Court applied Article 148:

Under Article 148 of the Family Code, which refers to the property regime of bigamous marriages, adulterous relationships, relationships in a state of concubine, relationships where both man and woman are married to other persons, multiple alliances of the same married man, [...] the properties acquired by the parties through their actual joint contribution shall belong to the co-ownership. Wages and salaries earned by each party belong to him or her exclusively. Then too, contributions in the form of

surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.”

⁷⁴ FAMILY CODE, art. 148. “In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit. If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her shall be forfeited in the manner provided in the last paragraph of the preceding Article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.”

⁷⁵ G.R. No. 132529, Feb. 2, 2001.

care of the home, children, and household, or spiritual or moral inspiration, are excluded in this regime.

The case of *San Luis v. San Luis*⁷⁶ involved the settlement of the estate of Felicísimo San Luis who married three times. When his first wife Virginia died, he married an American, Merry Lee. When the second marriage ended in divorce, he married Felicidad, the Respondent in this case. Upon the death of Felicísimo, Felicidad sought the dissolution of their conjugal partnership assets. The children of the first marriage contested this on the ground that the marriage of Felicidad and Felicísimo was void, since the divorce between him and his American wife was not valid in the Philippines. The Court held that “if respondent fails to prove the validity of both the divorce and the marriage, the applicable provision would be Article 148 of the Family Code.” It expounded on the property regime that governs unmarried cohabitation:

The regime of limited co-ownership of property governing the union of parties who are not legally capacitated to marry each other, but who nonetheless live together as husband and wife, applies to properties acquired during said cohabitation in proportion to their respective contributions. Co-ownership will only be up to the extent of the proven actual contribution of money, property or industry. Absent proof of the extent thereof, their contributions and corresponding shares shall be presumed to be equal.

Philippine law is consistent in disallowing donation⁷⁷ and sale of properties between spouses and “persons living together as husband and wife without a valid marriage.”⁷⁸ The rationale for this prohibition is that “the vulnerability of an individual, married or in unmarried cohabitation, to the undue influence or coercion of or a genuine desire to please his or her loved one might be exploited by the latter. Even to his or her own disadvantage the more trusting or submissive partner may end up donating all of his or her properties to the other.”⁷⁹ In *Matabuena v. Cervantes*,⁸⁰

⁷⁶ G.R. No. 133743, Feb. 6, 2007.

⁷⁷ FAMILY CODE, art. 87. “Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. The prohibition shall also apply to persons living together as husband and wife without a valid marriage.”

⁷⁸ CIVIL CODE, art. 1490.

⁷⁹ COQUIA AND AGUILING-PANGALANGAN, *supra* note 28 at 337.

⁸⁰ G.R. No. L-28771, Mar. 31, 1971.

the Court explained that “the dictates of morality require that the same prohibition should apply to a common law relationship.”

The notion that this rule is simple to apply because it is consistent is debatable. If cohabitation is between an alien and a Filipino citizen, the validity of the donation will not necessarily be governed by Philippine law. Recall that Article 80 of the Family Code that dictates the application of Philippine laws pertains only to property relations of married couples. Philippine laws do not mandatorily govern the property relations of unmarried cohabitants. And although there is a specific rule that prohibits donation and sale between persons cohabiting without a valid marriage, the Philippine Family Code and Civil Code are not necessarily the controlling law. Hence, where the donor is an alien whose national or domicile law does not proscribe donating to one’s partner, and if by the law of the place of donation this is valid, there is no legal obstacle for the Filipino donee to accept such donation. If, however, the donation is made in the Philippines, this could be repelled by a claim that the acceptance of the donation by the Filipino would offend the public policy of the Philippines.